

Docket Operations, M-30
U.S. Department of Transportation
1200 New Jersey Avenue, SE, Room W12-140
West Building Ground Floor
Washington, DC 20590-0001

Re: Docket Number FAA-2008-0188
Notice of Proposed Rulemaking
Re-Registration and Renewal of Aircraft Registration

Ladies and Gentlemen:

These comments are submitted by the law firm of DeBee Gilchrist, a Professional Corporation regarding the Notice of Proposed Rule Making (“NPRM”) for the Re-registration and Renewal of Aircraft Registration (the “Proposed Rule”) 73 Fed Reg. 10701 (Feb 28, 2008).

The stated objectives of the Proposed Rule are to increase and maintain the accuracy of the aircraft registration information in the Civil Aviation Registry (the “Registry”) by ensuring aircraft owners periodically provide information regarding registration; which information would benefit all users of the Registry, including law enforcement.

The following comments include: (a) some of issues that we have identified within the NPRM; (b) alternative courses of action for achieving the above stated objectives; and (c) our recommended amendments to the Proposed Rule provided under the NPRM.

(a) Issues

The NPRM:

- (1) Raises questions regarding the effect of a lapsed registration on an aircraft which is subject to FAA-recorded interests, such as those created under leases and mortgages. The U.S. system for recordation of these instruments (leases and mortgages) is established only for “conveyances that affect [interests] in *civil aircraft of the United States*.” 49 U.S.C. Section 44107(a)(1)(*emphasis added*). Thus, upon cancellation of a lapsed registration, the interests created by these instruments and any continued perfection resulting from such becomes unnecessarily subjected to legal dispute among parties with apposing interests.
- (2) Neglects to consider the detrimental effects on the ability to re-register an aircraft in another country. The FAA is prohibited from notifying any other country of the cancellation of a U.S. Registration without the release of existing, recorded interests or the consent of existing lienholders (Lessors and/or Mortgagees) pursuant to FAR 47.47 (Cancellation of Certificate for Export Purpose). If a lapsed registration is cancelled without a release or consent from each existing lienholder, it would appear the FAA would be forced to deny the transfer of registration from the U.S. to another Contracting State, under the terms of both the Mortgage Convention (Article IX) and its own FAR

47.47. Thus, the NPRM has the potential to prevent the re-registration of an aircraft in another jurisdiction.

- (3) Fails to address the Proposed Rule's potential to create restrictions on a lienholder's options regarding the use of an aircraft as collateral in order for it to be re-registered in another jurisdiction.
- (4) Sets forth an impractical and inefficient means to achieve its stated objectives. Although a majority of Certificate holders have been and continue to comply with the U.S. Transportation Code and its related Regulations, the NPRM purports to give the FAA authority to deem "expired" (or revoke) ALL Certificates of Aircraft Registration (FAA Form 8050-3) currently issued. Thus, any aircraft operating or to be operated outside the U.S., from the effective date of amended Part 47 (See 47.40(a)(2)), will have to have been issued a temporary or revised Certificate of Aircraft Registration, which will need to have been placed on board the aircraft to which it refers. The NPRM's statistics indicate that the FAA Aircraft Registry will be required to produce approximately twenty thousand revised Certificates for each three month period, and issue temporary Certificates of Aircraft Registration for any aircraft operating outside the U.S. (each of which would, we should presume, be required to have submitted the FAA's Declaration of International Operations, to establish the need for the temporary Certificate).
 - a. The fact that some commercial operators own from 200 to 2000 aircraft would require, if the proposed rules were enacted, require the issuance and replacement of each of these certificates every three years. For this reason alone, the comment of the industry makes sense, that the FAA incorporate some exemption for FAR Part 121 operators.
- (5) Proposed amendment to 47.31(3) would not allow for "pink-copy operations" of an aircraft which (i) was last previously registered in the US, and (ii) has no assigned US Registration Number. The result of this amendment would appear to require any purchaser of an aircraft, of which the US Registration Number has been revoked, to either cause the FAA to assign a number to the aircraft prior to purchase/closing, or request that the FAA issue a temporary Certificate of Registration, prior to ANY operation (including domestic) of the aircraft after closing.

(b) Alternative Courses of Action

FAR 47.45 (Change of Address) requires that a Certificate holder notify the FAA of any change in its permanent mailing address within thirty days of such change. FAR 47.51 (Triennial Aircraft Registration Report) already requires that all Certificate holders report to the FAA every three years. If the Certificate holder is not in compliance with these requirements, the regulations can be interpreted as providing the FAA with the authority to suspend, revoke, or deem expired a Certificate.

However, the FAA's responsive action is, generally, nominal when a holder fails to provide a current mailing address. Usually, the FAA merely attempts to locate a proper address. Furthermore, the NPRM states that the FAA confirms that "there are no current enforcement or follow-up actions" and that there is "nothing to compel the owner to complete and return the

Triennial [report].” Thus, the FAA’s takes no action concerning an ignored or inaccurate request for a triennial report.

A more precise, economically efficient, and effective outcome should result upon the implementation of the following alternatives in lieu of the Proposed Rule. We would encourage the FAA to:

- (1) Enforce 47.45 and 47.51, by revoking the Certificates of those holders who violate the same.
- (2) Amend 47.45 to include language to the effect that failure to comply with this FAR will result in automatic suspension or revocation of the Certificate, and that failure to comply is determined by the expiration of thirty days following the return of mail sent from the FAA to the Certificate holder, following the second mailing to the address noted on the Application (FAA Form 8050-1).
- (3) Amend 47.51 to include language to the effect that failure to respond accurately and completely to the request for the Triennial Report within 60 days of the 2nd mailing of such request to the address on the Application will result in automatic suspension or revocation of the Certificate.
- (4) Amend 47.41, Duration and Return of Certificate, to add as an event of suspension or revocation the failure to comply with 47.45 and 47.51 as described above.
- (5) Amend the Aircraft Registration Application form (FAA Form 8050-1) to include up to 2 parties who should receive notice or duplicate mailings of anything mailed to the Applicant. The Applicant could include (i) alternative mailing addresses for itself as a precaution, (ii) the names and addresses of one or more of its co-owners, (iii) a trustee could include the name and contact information of its beneficiary, (iv) the contact information for a Lessor or Mortgagee, or (v) nothing. Both the Applicant’s address and any notice information in the revised Application should include Email addresses and phone contacts, and could include company names, but should not include any relationship of such party to the aircraft or the Applicant (so as not to raise a cloud on title to the aircraft). The Applicant could amend its address or the names or contact information of any party mentioned in the Application, simply by submitting a new Application.
- (6) Include in the amendments to the Regulations noted above, with regard to any action taken concerning an issued Certificate, a requirement that the FAA mail copies to (i) the Certificate holder’s address as noted in the most current Application, and (ii) the address of any party noted on the most current Application. This would include a final notice of expiration, cancellation, revocation or suspension of a Certificate. This would also define the extent of the FAA’s obligation for notice prior to taking enforcement action.
- (7) Require, in the Regulations, that the FAA place notice on its electronic indices of records of any expiration, cancellation, revocation or suspension of a Certificate. This would result in the information being available to all government authorities instantaneously, for

further action as necessary against any party operating an aircraft without a valid, active Certificate.

- (8) Require that the FAA, upon expiration, cancellation, revocation or suspension, make available the US Registration Number which had been assigned to the offending aircraft, and begin referencing the aircraft only by make, model and serial number (leaving in place the notice of adverse action taken against the Certificate). This would help resolve the FAA's stated problem with regard to available numbers.

(c) Amendments to the Proposed Rule:

If the FAA, contrary to public comment enacts the proposed rule, we would urge the FAA to consider amending the Proposed Rule to accommodate the following:

- (1) Exempt US Certificated Air Carriers and the aircraft they operate, based on the fact that there are sufficient regulations and oversight of these aircraft to assure accurate and valid registration.
- (2) Any re-registration requirement that comes out of this NPRM must be easy, quick (with NO interruptions to any operations, domestic or international) and inexpensive, in order not to further burden the US aviation industry.
- (3) The NPRM's proposed amendment to FAR 47.3(a) should require the return of any Certificate that has expired, been cancelled, revoked, or suspended. Also, it should be noted that the proposed amendment to 47.3 does not include the already amended language of this paragraph, which was made effective on March 31, 2008 (Fed. Register/Vol. 73, No. 40).

I trust the above is helpful in regard to your evaluation of the NPRM. I welcome your thoughts, questions or further conversation in this regard.

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