

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 47**

[Docket No. FAA-2002-12377; Amendment No. 47-26]

RIN 2120-AH75

**Aircraft Registration Requirements; Clarification of "Court of Competent Jurisdiction"**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** FAA is amending language in the aircraft registration regulations governing aircraft last previously registered in a foreign country. This amendment clarifies the term "court of competent jurisdiction", and what the Administrator considers satisfactory evidence that foreign registration of an aircraft has ended or is invalid. This amendment is necessary for FAA compliance with obligations from the Convention on International Civil Aviation.

**DATES:** Effective April 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Stanford, Aircraft Registration Branch, AFS-750, Civil Aviation Registry, Flight Standards Service, Federal Aviation Administration, Post Office Box 25504, Oklahoma City, OK 73125; Telephone (405) 954-3131.

**SUPPLEMENTARY INFORMATION:**

**Availability of Rulemaking Documents**

You can get an electronic copy using the Internet by:

- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);
- (2) Visiting the Office of Rulemaking's Web page at (3) <http://www.faa.gov/avr/armhome.htm>; or
- (3) Accessing the Government Printing Office's Web page at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html).

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

**Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with

small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question about this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at <http://www.faa.gov/avr/arm/sbreffa.htm>, or by e-mailing us at [9-AWA-SBREFA@faa.gov](mailto:9-AWA-SBREFA@faa.gov).

**Background**

On August 9, 1946, the United States became a party to the Convention on International Civil Aviation, 61 Stat. 1180 (Chicago Convention). Under the Chicago Convention, the contracting parties agreed on certain principles and arrangements so international civil aviation could develop in a safe and orderly manner.

In considering the orderly registration of aircraft, Chapter III-NATIONALITY OF AIRCRAFT, Article 17 of the Chicago Convention, provides that "aircraft have the nationality of the State in which they are registered." Therefore, "an aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another" (Article 18). The rules for changing registration mandate that "the registration or transfer of registration of aircraft in any contracting State shall be made in accordance with its laws and regulations" (Article 19). Before registering an aircraft, an importing State must first ensure that the exporting State has removed the aircraft from its registry. Under Article 21 of the Chicago Convention, the importing State requests proof from the State of last registration that registration of a specific aircraft has ended and the aircraft is no longer on the exporting State's registry.

In promulgating § 47.37(b)(2), the Administrator determined that "a final judgment or decree of a court of competent jurisdiction that determines, under the law of the country concerned, that the registration has in fact become invalid" is satisfactory evidence of termination of foreign registration. The Administrator interprets the phrase "court of competent jurisdiction" to be a court of the country where the aircraft was last registered.

In two recent cases (*IAL Aircraft Holding, Inc. v. Federal Aviation Administration*, 206 F.3d 1042, vacated, 216 F.3d 1304 (11th Cir. 2000) [hereinafter referred to as *IAL Aircraft*] and *Air One Helicopters, Inc. v. Federal Aviation Admin.*, 86 F.3d 880 (9th Cir. 1996) [hereinafter referred to as *Air One*]), a divided panel of the court

interpreted the phrase "court of competent jurisdiction" differently from FAA. In *Air One*, the Ninth Circuit decided that a United States court of appeals was itself a "court of competent jurisdiction" capable of rejecting a determination of the Spanish registry that the aircraft's Spanish registry was valid. In *IAL Aircraft*, the Eleventh Circuit held that a state trial court having jurisdiction over the aircraft *in rem* was a "court of competent jurisdiction." Therefore, a state trial court could determine that a Brazilian registration was invalid, despite Brazil's continued insistence that its registration remained valid.

On July 6, 2000, the Eleventh Circuit vacated its earlier decision. The Eleventh Circuit found the court lacked Article III jurisdiction at the time it issued its decision. *IAL Aircraft* had not disclosed the sale of the aircraft while the case was pending before the court.

FAA does not agree with these decisions, which reject the agency's interpretation of its own regulation. Moreover, continuing to litigate such cases of interpretation would adversely impact FAA resources. Therefore, on May 17, 2002, FAA issued a notice of proposed rulemaking to amend § 47.37(b)(2). The proposed amendment would add language to that section to clearly state that the "court of competent jurisdiction" must be a court of the country where the aircraft was last registered. FAA did not receive any comments about the proposal.

**Paperwork Reduction Act**

There are no current or new requirements for information collection associated with this amendment.

**International Compatibility**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations. This amendment is necessary for FAA compliance with the agreements contained in the Convention.

**Executive Order 12866 and DOT Regulatory Policies and Procedures**

Executive Order 12866, Regulatory Planning and Review, directs FAA to assess both the costs and the benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination the