

14 CFR Parts 45 and 47

[Docket No. 18604; Amendments Nos. 45-11 and 47-11]

Identification and Registration Marking and Aircraft Registration; Eligibility for Aircraft Registration;

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule. Revocation of Special Federal Aviation Regulation No. 39.

SUMMARY: This amendment adopts rules and procedures for the registration of aircraft owned by resident aliens and by certain domestic corporations that are not United States citizens. These rules and procedures are in response to Congressional legislation which expanded the eligibility for aircraft registration to aircraft owned by these persons. The amendment also codifies FAA administrative practice with respect to registration in the name of a partnership or a trustee, or in the name of a corporation whose United States citizenship depends on a voting trust.

EFFECTIVE DATE: January 1, 1980.

Section 47.9(f) will become effective 30 days after notice has been published in the *Federal Register* that the requirements of that paragraph have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Swimmer, Acting Chief, Technical Section (AAC-251), FAA Aircraft Registry, Aeronautical Center, P.O. Box 25082, Oklahoma City, Oklahoma 73125, Telephone: (405) 686-2284.

SUPPLEMENTARY INFORMATION: Interested persons have been afforded an opportunity to participate in the making of this amendment by Notice of Proposed Rule Making NO. 78-18, issued on December 22, 1978 (44 FR 63; January 2, 1979). That notice proposed to amend Part 47 of the Federal Aviation Regulations to provide for: (1) The registration of aircraft by an individual citizen of a foreign country who has been lawfully admitted for permanent residence in the United States (referred to in this amendment as a "resident alien"); (2) the registration of aircraft by a corporation (other than a citizen of the United States) lawfully organized and doing business under the laws of the United States or any State thereof, if the aircraft is based and primarily used in the United States; and (3) a definition of "based and primarily used in the United States." These changes are to reflect recent revisions of section 501(b) of the Federal Aviation Act of 1958 (the Act).

Additionally, certain technical amendments were proposed involving: aspects of registration by partnerships, trustees, and corporations that use voting trusts; the substitution of the term "person" where appropriate; and the provision for immediate termination of a certificate when eligibility has ceased.

A total of five public comments were received in response to the notice. Due consideration was given to all comments received. Except as discussed in this preamble, this amendment and the reasons for it are identical to the proposal and the reasons set forth in the proposal.

Four commenters addressed the definition of "based and primarily used in the United States" in proposed § 47.9(b). One commenter observed that the definition would not permit an aircraft on lease to a United States flag air carrier by a foreign-owned corporation to be registered under section 501(b)(1)(A)(ii) of the Act, since these aircraft would often log less than the required amount of flight time within the United States. The commenter recommended that the definition be broadened either to include aircraft operated by U.S. air carriers or to allow the counting of flight time between a point in the United States and a point outside the United States, or to do both. The commenter contends, without supporting evidence, that these changes would be consistent with legislative intent. However, the FAA does not agree that the suggested criteria, even if combined, would ensure that the aircraft is used primarily in the United States, as intended by Congress. Under the suggested criteria, most of the aircraft time could, in fact, be outside of the United States.

Another comment, directed at the same definition, urges that a foreign-owned U.S. corporation should be permitted to register new aircraft which it imports from foreign countries, for the ferry flights to the United States. The commenter described certain operational advantages which are not available if the ferry flights for delivery to U.S. purchasers are made under the foreign registration. However, under the rule being adopted, the corporation may register the aircraft prior to the ferry flight if it anticipates that the aircraft will comply with the 60 percent standard during the controlling period following registration.

Two commenters had almost identical comments addressed to proposed § 47.9(b). They criticized the lack of emphasis on the word "based" in the definition provided by that paragraph, and urged the imposition of a requirement that the aircraft must be maintained by an FAA-certificated

repair station or mechanic. However, the FAA considers that the requirement that 60 percent of the flight hours of the aircraft be within the United States is sufficient to ensure that the aircraft is based within the United States, a requirement that Congress imposed to prevent the use of U.S. registration as a "flag of convenience." At the same time the rule provides a criterion that is easy to apply. Moreover, U.S. registered aircraft are already required by § 91.163(b) to be maintained in accordance with Part 43. That part specifies those persons who may perform maintenance, including FAA-certificated repair stations and mechanics.

The two commenters also urged the reduction of the percentage of flight hours within the United States from 60 percent to "at least 51 percent." They criticized the 180-day period as too confining and the reporting requirements as too burdensome, and suggest the use of a one-year period.

After further consideration in light of these comments the FAA has decided that the basic period for the rule should be 6 calendar months. This will simplify the rule without making the period so long that the rule may be abused. However, the reporting requirement stated in the Notice is being retained since it is indispensable for enforcement. The FAA considers the 60 percent rule to be reasonable in the light of the intent of Congress to prevent the use of U.S. registration as a flag of convenience. The proposed percentage is sufficient to ensure that the aircraft is primarily used in the United States.

The commenters also incorrectly assumed that, on flights between a point in, and a point outside, the United States, flight time while the aircraft is in the United States would count toward the accumulated flight hours required by § 47.9(b). As adopted, § 47.9(c) has been revised to make it clear that only the flight hours accumulated on a non-stop flight between two points in the United States are considered flight hours accumulated within the United States.

Some commenters maintained that the record-keeping requirement is proposed § 47.9(e)(2) would be too burdensome for an aircraft operated exclusively within the United States, as in the case of imported aircraft operated in the United States for demonstration purposes. In response to these comments, this provision, adopted as § 47.9(f), provides that, for aircraft used exclusively in the United States while registered in the United States, a signed statement to that effect may be

submitted at the end of the reporting period in lieu of a report on the airframe time in service and total flight hours in the United States.

Section 47.9(f) will become effective 30 days after notice has been published in the *Federal Register* that the requirements of that paragraph have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

As adopted, § 47.9(e) specifically provides that the records which the corporation is required to maintain must be made available for inspection by the Administrator upon request. Section 47.9(a)(4) requires that the corporation submit with its application the location where these records will be maintained.

New § 47.41(a)(8)(ii) is being clarified by relating lapse of registration due to non-compliance with the "based and primarily used" requirement to the end of each six-month period.

One comment was received on proposed § 47.7(c) which deals with registration by a trustee when a beneficiary under the trust is neither a U.S. citizen nor a resident alien or when a trustee or beneficiary is directly or indirectly controlled by a foreign interest. Under those circumstances, § 47.7(c)(2)(iii) requires each trustee to submit an affidavit establishing that the trustee is not aware of anything which would give more than 25 percent of the power to influence or limit the trustee's authority to persons who are not United States citizens or resident aliens.

The rule further provides that in those circumstances, the trust agreement, which must be submitted, must provide that if persons who are not United States citizens or resident aliens have the power to direct or remove a trustee, then those persons may not have more than 25 percent of the aggregate power to do so.

The commenter was concerned that the proposed regulation would prohibit nonresident aliens and foreign beneficiaries from participating (in common with other participants) in the ordinary management or direction of the trust even though the requisite 75 percent control is vested in U.S. citizens or resident aliens. In response to this comment, the regulation, as adopted, makes it clear that persons who are neither U.S. citizens nor resident aliens may exercise up to 25 percent of the aggregate power to direct or remove a trustee. In addition, the rule makes it clear that those persons may have a beneficial interest in the trust that exceeds 25 percent of the aggregate beneficial interests.

The commenter also requested that the regulation direct its limitation on control over the trustee to foreign beneficiaries who are not resident aliens, and that the trustee be allowed to take direction from other beneficiaries. The FAA agrees with this comment. Therefore, proposed

§ 47.7(c)(2)(ii)(A), requiring the trustee to have full authority independent of direction from any beneficiary, has not been adopted. Other provisions of the rule prevent the trustee from taking direction from a foreign beneficiary who is not a resident alien, except as permitted in § 47.7(c)(3).

One commenter believes that the limit on the percentage of foreign beneficiaries who have authority to direct or remove trustees, should not apply to beneficiaries who have only a security interest in the aircraft. However, the rule is intended to apply to these persons since the control which they may exercise over a trustee can be as substantial as that of any other beneficiary. Accordingly, the rule, as adopted, makes it clear that references to beneficiaries under a trust include any person whose security interest in the aircraft is incorporated in the trust.

It should be noted that it is not the intent of the FAA in any way to change its existing procedure for accepting applications for registration in the name of a trustee wherein the trustees and beneficiaries are all citizens of the United States, regardless of whether the trust is an active or a passive trust.

The revised definition of "owner" used in proposed §§ 47.5(b) and 47.11(a) has not been adopted. The FAA has determined that it is not necessary to revise the existing definition at this time. Accordingly, the language in the current rule has been retained.

In addition to changes made as a result of comments, editorial changes have been made in the amendment for the sake of clarity. Section 45.33 has been amended to conform to revised section 501(b) of the Act. A new § 47.2, Definitions, has been added, bringing together some definitions found in the various sections of the subpart. The provisions on voting trusts in proposed § 47.7 have been incorporated into a new § 47.8.

On December 22, 1978, Special Federal Aviation Regulation No. 39 (44 FR 38) was issued, stating a tentative interpretation of section 501(b)(1)(A)(ii), effective immediately. Interested persons were invited to submit comments, but no comments have been received. This amendment to Part 47 covers the same subject matter, without change in the interpretation of the statute in the Special Federal Aviation Regulation. That special regulation is thus superseded and is being revoked herein.

Adoption of Amendments

Accordingly, Special Federal Aviation Regulation No. 39 (44 FR 38; January 2, 1979) is revoked, effective January 1, 1980, and Parts 45 and 47 of the Federal Aviation Regulations (14 CFR Parts 45 and 47) are amended, effective January 1, 1980, as follows:

PART 45—IDENTIFICATION AND REGISTRATION MARKING

1. By amending § 45.33 to read as follows:

§ 45.33 Sale of aircraft; removal of marks.

When an aircraft that is registered in the United States is sold, the holder of the Certificate of Aircraft Registration shall remove, before its delivery to the purchaser, all United States marks from the aircraft, unless the purchaser is—

(a) A citizen of the United States;

(b) An individual citizen of a foreign country who is lawfully admitted for permanent residence in the United States; or

(c) When the aircraft is to be based and primarily used in the United States, a corporation (other than a corporation which is a citizen of the United States) lawfully organized and doing business under the laws of the United States or any State thereof.

2. By revising the table of contents of Subpart A of Part 47 to read as follows:

PART 47—AIRCRAFT REGISTRATION

Subpart A—General

Sec.	
47.1	Applicability.
47.2	Definitions.
47.3	Registration required.
47.5	Applicants.
47.7	United States citizens and resident aliens.
47.8	Voting trusts.
47.9	Corporations not U.S. citizens.
47.11	Evidence of ownership.
47.13	Signatures and instruments made by representatives.
47.15	Identification number.
47.16	Temporary registration numbers.
47.17	Fees.
47.19	FAA Aircraft Registry.

3. By adding a new § 47.2 to read as follows:

§ 47.2 Definitions.

The following are definitions of terms used in this part:

"Act" means the Federal Aviation Act of 1958 (49 U.S.C. section 1301 *et seq.*).

"Resident alien" means an individual citizen of a foreign country lawfully admitted for permanent residence in the United States as an immigrant in conformity with the regulations of the Immigration and Naturalization Service of the Department of Justice (8 CFR Chapter 1).

"U.S. citizen" means one of the following:

(1) An individual who is a citizen of the United States or one of its possessions.

(2) A partnership of which each member is such an individual.

(3) A corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United

States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 percent of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

4. By revising § 47.3(a) to read as follows:

§ 47.3 Registration required.

(a) Section 501(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1401 (b)) defines eligibility for registration as follows:

(b) An aircraft shall be eligible for registration if, but only if—

(1)(A) it is—

(i) owned by a citizen of the United States or by an individual citizen of a foreign country who has lawfully been admitted for permanent residence in the United States; or
(ii) owned by a corporation (other than a corporation which is a citizen of the United States) lawfully organized and doing business under the laws of the United States or any State thereof so long as such aircraft is based and primarily used in the United States; and

(B) it is not registered under the laws of any foreign country; or

(2) it is an aircraft of the Federal Government, or of a State, territory, or possession of the United States or the District of Columbia or a political subdivision thereof.

5. By revising § 47.5 to read as follows:

§ 47.5 Applicants.

(a) A person who wishes to register an aircraft in the United States must submit an Application for Aircraft Registration under this part.

(b) An aircraft may be registered only by and in the legal name of its owner.

(c) Section 501(f) of the Act (49 U.S.C. 1401(f)), provides that registration is not evidence of ownership of aircraft in any proceeding in which ownership by a particular person is in issue. The FAA does not issue any certificate of ownership or endorse any information with respect to ownership on a Certificate of Aircraft Registration. The FAA issues a Certificate of Aircraft Registration to the person who appears to be the owner on the basis of the evidence of ownership submitted pursuant to § 47.11 with the Application for Aircraft Registration, or recorded at the FAA Aircraft Registry.

(d) In this part, "owner" includes a buyer in possession, a bailee, or a lessee of an aircraft under a contract of conditional sale, and the assignee of that person.

6. By adding new §§ 47.7, 47.8, and 47.9 to read as follows:

§ 47.7 United States citizens and resident aliens.

(a) *United States Citizens.* An applicant for aircraft registration under this part who is a U.S. citizen must certify to this in the application.

(b) *Resident aliens.* An applicant for aircraft registration under section 501(b)(1)(A)(i) of the Act who is a resident alien must furnish a representation of permanent residence and the applicant's alien registration number issued by the Immigration and Naturalization Service.

(c) *Trustees.* An applicant for aircraft registration under section 501(b)(1)(A)(i) of the Act that holds legal title to an aircraft in trust must comply with the following requirements:

(1) Each trustee must be either a U.S. citizen or a resident alien.

(2) The applicant must submit with the application—

(i) A copy of each document legally affecting a relationship under the trust;

(ii) If each beneficiary under the trust, including each person whose security interest in the aircraft is incorporated in the trust, is either a U.S. citizen or a resident alien, an affidavit by the applicant to that effect; and

(iii) If any beneficiary under the trust, including any person whose security interest in the aircraft is incorporated in the trust, is not a U.S. citizen or resident alien, an affidavit from each trustee stating that the trustee is not aware of any reason, situation, or relationship (involving beneficiaries or other persons who are not U.S. citizens or resident aliens) as a result of which those persons together would have more than 25 percent of the aggregate power to influence or limit the exercise of the trustee's authority.

(3) If persons who are neither U.S. citizens nor resident aliens have the power to direct or remove a trustee, either directly or indirectly through the control of another person, the trust instrument must provide that those persons together may not have more than 25 percent of the aggregate power to direct or remove a trustee. Nothing in this paragraph prevents those persons from having more than 25 percent of the beneficial interest in the trust.

(d) *Partnerships.* A partnership may apply for a Certificate of Aircraft Registration under Section 501(b)(1)(A)(i) of the Act only if each partner, whether a general or limited partner, is a citizen of the United States. Nothing in this section makes ineligible for registration an aircraft which is not owned as a partnership asset but is co-owned by—

(1) Resident aliens; or

(2) One or more resident aliens and one or more United States citizens.

§ 47.8 Voting trusts.

(a) If a voting trust is used to qualify a domestic corporation as a U.S. citizen, the corporate applicant must submit to the FAA Aircraft Registry—

(1) A true copy of the fully executed voting trust agreement, which must identify each voting interest of the applicant, and which must be binding upon each voting trustee, the applicant corporation, all foreign stockholders, and each other party to the transaction; and

(2) An affidavit executed by each person designated as voting trustee in the voting trust agreement, in which each affiant represents—

(i) That each voting trustee is a citizen of the United States within the meaning of section 101(16) of the Act;

(ii) That each voting trustee is not a past, present, or prospective director, officer, employee, attorney, or agent of any other party to the trust agreement;

(iii) That each voting trustee is not a present or prospective beneficiary, creditor, debtor, supplier or contractor of any other party to the trust agreement;

(iv) That each voting trustee is not aware of any reason, situation, or relationship under which any other party to the agreement might influence the exercise of the voting trustee's totally independent judgment under the voting trust agreement.

(b) Each voting trust agreement submitted under paragraph (a)(1) of this section must provide for the succession of a voting trustee in the event of death, disability, resignation, termination of citizenship, or any other event leading to the replacement of any voting trustee. Upon succession, the replacement voting trustee shall immediately submit to the FAA Aircraft Registry the affidavit required by paragraph (a)(2) of this section.

(c) If the voting trust terminates or is modified, and the result is less than 75 percent control of the voting interest in the corporation by citizens of the United States, a loss of citizenship of the holder of the registration certificate occurs, and § 47.41(a)(5) of this part applies.

(d) A voting trust agreement may not empower a trustee to act through a proxy.

§ 47.9 Corporations not U.S. citizens.

(a) Each corporation applying for registration of an aircraft under section 501(b)(1)(A)(ii) of the Act must submit to the FAA Registry with the application—

(1) A certified copy of its certificate of incorporation;

(2) A certification that it is lawfully qualified to do business in one or more States;

(3) A certification that the aircraft will be based and primarily used in the United States; and

(4) The location where the records required by paragraph (e) of this section will be maintained.

(b) For the purposes of registration, an aircraft is based and primarily used in the United States if the flight hours accumulated within the United States amount to at least 60 percent of the total flight hours of the aircraft during—

(1) For aircraft registered on or before January 1, 1980, the 6-calendar month period beginning on January 1, 1980, and each 6-calendar month period thereafter; and

(2) For aircraft registered after January 1, 1980, the period consisting in the remainder of the registration month and the succeeding 6 calendar months and each 6-calendar month period thereafter.

(c) For the purpose of this section, only those flight hours accumulated during non-stop (except for stops in emergencies or for purposes of refueling) flight between two points in the United States, even if the aircraft is outside of the United States during part of the flight, are considered flight hours accumulated within the United States.

(d) In determining compliance with this section, any periods during which the aircraft is not validly registered in the United States are disregarded.

(e) The corporation that registers an aircraft pursuant to section 501(b)(1)(A)(ii) of the Act shall maintain, and make available for inspection by the Administrator upon request, records containing the total flight hours in the United States of the aircraft for three calendar years after the year in which the flight hours were accumulated.

(f) The corporation that registers an aircraft pursuant to section 501(b)(1)(A)(ii) of the Act shall send to the FAA Aircraft Registry, at the end of each period of time described in paragraphs (b) (1) and (2) of this section, either—

(1) A signed report containing—
(i) The total time in service of the airframe as provided in § 91.173(a)(2)(i), accumulated during that period; and
(ii) The total flight hours in the United States of the aircraft accumulated during that period; or

(2) A signed statement that the total flight hours of the aircraft, while registered in the United States during that period, have been exclusively within the United States.

7. By amending the introductory sentence and paragraph (h) of § 47.11 to read as follows:

§ 47.11 Evidence of ownership.

Except as provided in §§ 47.33 and 47.35, each person that submits an Application for Aircraft Registration under this Part must also submit the required evidence of ownership, recordable under §§ 49.13 and 49.17 of this chapter, as follows:

(h) The trustee of property that includes an aircraft, as described in § 47.7(c), must submit either a certified copy of the order of the court appointing the trustee, or a complete and true copy of the instrument creating the trust. If there is more than one trustee, each trustee must sign the application. The Certificate of Aircraft Registration is issued to a single applicant as trustee, or to several trustees jointly as co-trustees.

§§ 47.33, 47.35 and 47.37 [Amended]

8. By amending §§ 47.33(a), 47.35(a), and 47.37(a) by deleting the words "a citizen of the United States" and substituting the words "a person".

9. By amending §§ 47.33(a)(1), 47.35(a), and 47.37(a)(1) by inserting "47.3, 47.7, 47.8, 47.9," after the words "complies with §§" and by inserting the words " , as applicable" after "47.17".

§ 47.41 [Amended]

10. By amending § 47.41 by deleting the word "or" at the end of 47.41(a)(5); by deleting the period at the end of § 47.41(a)(6) and substituting a semicolon; and by adding new paragraphs (a)(7), (8), and (9) to § 47.41 to read as follows:

§ 47.41 Duration and return of Certificate.

(a) * * *

(7) The owner, if an individual who is not a citizen of the United States, loses status as a resident alien, unless that person becomes a citizen of the United States at the same time; or

(8) If the owner is a corporation other than a corporation which is a citizen of the United States—

(i) The corporation ceases to be lawfully organized and doing business under the laws of the United States or any State thereof; or

(ii) A period described in § 47.9(b) ends and the aircraft was not based and primarily used in the United States during that period.

(9) If the trustee in whose name the aircraft is registered—

(i) Loses United States citizenship;

(ii) Loses status as a resident alien and does not become a citizen of the United States at the same time; or

(iii) In any manner ceases to act as trustee and is not immediately replaced by another who meets the requirements of § 47.7(c).

* * * * *

11. By revising § 47.43(a)(3) and (4) to read as follows:

47.43 Invalid Registration.

(a) * * *

(3) The applicant is not qualified to submit an application under this part; or

(4) The interest of the applicant in the aircraft was created by a transaction that was not entered into in good faith, but rather was made to avoid (with or without the owner's knowledge) compliance with § 501 of the Federal Aviation Act of 1958 (49 U.S.C. 1401).

* * * * *

12. Compliance with § 47.9(f) is not required until 30 days after a notice of approval of the requirements of that paragraph by the Office of Management and Budget is published in the Federal Register.

Special Federal Aviation Regulation No. 39 of December 22, 1978, 43 FR 38, is hereby revoked, effective January 1, 1980.

(Sections 307(c), 313(a), 501, 503, 1102, Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(c), 1354(a), 1401, 1403, and 1502), and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA has determined that the expected impact of the regulation is so minimal that it does not require an evaluation.

Issued in Washington, D.C. on October 24, 1979.

Langhorne Bond,
Administrator.

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