

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Meeting: U.S. Registration of Aircraft in the Name of Owner Trustees

AGENCY: Federal Aviation Administration

ACTION: Notice of Public Meeting

SUMMARY: The FAA will be holding a public meeting on Wednesday, June 1, 2011, on the U.S. registration of aircraft in the name of owner trustees. The FAA is seeking the views from the public with respect to the use of owner trusts to register aircraft for the benefit of beneficiaries that are neither U.S. citizens nor resident aliens.

DATES: The meeting will be held on Wednesday, June 1, 2011, beginning at 9 a.m. Central Time and ending no later than 5 p.m. Central Time.

ADDRESSES: The meeting will be held at the Marriott Renaissance Convention Center Hotel, 10 North Broadway Avenue, Oklahoma City, OK 73102, Phone 405-228-8000 or 1-800-468-3571.

FOR FURTHER INFORMATION CONTACT: LaDeana Peden at 405-954-3296, Office of Aeronautical Center Counsel, Federal Aviation Administration. [Assistance for the hearing impaired is available through the Sign Language Resource Service (SLRS), Inc. at : 1-888-842-9460 or 405-721-0800 or www.SLRSinc.com.]

SUPPLEMENTARY INFORMATION: During the first part of the meeting, FAA will review the provisions of 49 U.S.C. 44102 and 14 CFR 47.7(c) and identify the issues that are relevant to compliance with those statutory and regulatory requirements in the context

of trusts with foreign beneficiaries. The second part of the meeting will provide an opportunity for attendees to provide their views to the FAA regarding the appropriate application of the statute and regulations in this context and, in particular, to answer the specific questions set forth below. At some later time, after considering comments made during the meeting, FAA will notify the public about any further action it contemplates taking.

BACKGROUND: The Federal Aviation Administration has a history of registering U.S. civil aircraft to trustees, some of which have beneficiaries that are neither U.S. citizens nor resident aliens. Title 49 U.S.C. 44102 describes the conditions under which an aircraft may be registered on the U.S. Civil Aircraft Registry under 49 U.S.C. 44103: the aircraft may not be registered under the laws of a foreign country and must be owned by a citizen of the United States (See 49 U.S.C. 40102), a foreign citizen lawfully admitted for permanent residence in the United States, or a foreign corporation that is organized and doing business under the laws of the United States or a State and the aircraft is based and primarily used in the United States. In addition, 14 CFR 47.7 makes special provision for trustees to register aircraft and, when any beneficiary of the trust is not a U.S. citizen or a resident alien, imposes additional requirements and limitations with respect to the power of such beneficiaries to influence or limit the exercise of the trustee's authority or to direct or remove a trustee. In addition, the Federal Aviation Regulations impose particular obligations on the owners (and not just the pilots in command and operators) of aircraft (See 14 CFR 91.403(a)).

The FAA has issued several interpretations of its regulations as they apply to the relationship and permissible interactions between a trustee and beneficiaries that are not

U.S. citizens or resident aliens, two of which have held that “there can be no other relationship between the trustee and beneficiaries other than that created by the trust. For example, there cannot be a lessor/lessee or bailor/bailee relationship.” (Interpretation 1981-56; similarly: Interpretation 1982-6).

In order to clarify the appropriate interpretation and application of the statutes and FAA regulations in connection with the U.S. registration of aircraft to owner trusts with beneficiaries that are neither U.S. citizens nor resident aliens, the FAA seeks a discussion with interested members of the public. In order to have a robust and productive discussion with members of the public, the FAA presents the following questions and scenarios in order to highlight some of the salient issues around which it desires discussion.

TRUST REGISTRATION QUESTIONS: At this meeting, the FAA is seeking the views from the public on the appropriate structures for using a trust to register an aircraft for the benefit of a beneficiary that is not a U.S. citizen or resident alien. The FAA would like to hear from members of the public on how a trust can be structured and implemented for purposes of aircraft registrations that satisfy statutory and regulatory requirements regarding ownership and U.S. citizenship. Simply expressed, which practices and contractual provisions must exist, and which practices and contractual provisions must be prohibited, in order to satisfy the statutory and regulatory requirements.

In order to clarify the appropriate interpretation and application of statutory provisions, FAA regulations and FAA policy in connection with U.S. registration of aircraft to owner trustees, the FAA seeks a discussion with interested members of the public about the

factors that would weigh in favor of or against a finding that a trustee is an “owner” of an aircraft.

The following questions are intended to elicit robust discussion:

1. What are the appropriate obligations to impose on a trustee of a trust with beneficiaries that are neither U.S. citizens nor resident aliens in order to satisfy the statute and regulations?
2. In the case of a trust with beneficiaries that are neither U.S. citizens nor resident aliens, which rights and actions must be prohibited on the part of the beneficiaries in order to satisfy the statute and regulations?
3. Which forms of granting possession, use or operational control of an aircraft by a trustee to its beneficiaries that are not U.S. citizens or resident aliens are permitted and which are prohibited under the statute and regulations?
4. What are the specific elements of “the trustee’s authority” (14 CFR 47.7(c)(iii)) about which the FAA should be concerned, and what are the forms of influence or limitation that the FAA should proscribe?
5. How may a beneficiary that is not a U.S. citizen or resident alien participate in the decision to remove a trustee in accordance with the statute and regulations?
6. To what extent, if any, are the FAA interpretations cited above in need of amendment?
7. Which, if any, knowledge and information requirements (e.g., address of operator, location of maintenance records, principal hangar location) are appropriate for the FAA to impose on trustees of trusts beneficiaries that are not U.S. citizens or resident aliens?

Issued in Washington D.C. on April 20, 2011.

A handwritten signature in black ink, appearing to read "Marc L. Warren". The signature is fluid and cursive, with a large initial "M" and "W".

MARC L. WARREN

Acting Chief Counsel, Federal Aviation Administration