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Aviation & Space Alert

January 9, 2019

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Aviation & Space Attorneys
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Will the Government Shutdown Affect Your Aircraft Transaction?



Jason and I have been getting a lot of questions about how the federal government partial shutdown is affecting aircraft transactions. Many agencies, and even different offices with the FAA, are affected differently. So the effect on your transaction depends on what you're hoping to do. Here is a quick summary of the common transactions we're seeing.

The good news is that, unlike during previous shutdowns, the FAA's Aircraft Registry is open for this one. Accordingly, FAA Bills of Sale and FAA Registration Applications may still be recorded with the Registry *and aircraft sales closed*.

The bad news is that all FAA Flight Standards District Offices (FSDOs), and some

other important FAA functions, are closed. That's creating problems noted below.

Aircraft Purchases/Sales.

Because the FAA Aircraft Registry is open, *most straightforward, domestic aircraft purchases and sales can proceed as normal!*

However, the FAA Aeronautical Center Counsel office is closed. Therefore, transactions requiring or desiring FAA opinions on matters such as registration will have to wait or find other solutions.

Further, because the FSDOs are closed, obtaining ferry permits and/or special flight permits, if needed for the transaction, may not be possible. Though Designated Airworthiness Representatives (DARs) may still be able to issue such permits, that is unclear as the shutdown has affected the FAA's oversight of DARs.

Also, for importing purchased aircraft into the U.S., we are hearing some issues about Customs and Border Patrol operating hours and obtaining required decals.

Aircraft Leases.

The closure of FSDOs makes FAA Truth-in-Leasing compliance a little sticky. The local FSDO is supposed to be notified 48 hours before the first flight under a lease for large aircraft (over 12,500 lbs--anything a pound heavier than a King Air 200). How to do that when the FSDO is closed?

Well, the regulation (FAR 91.23(c)(3)) allows notification by phone. So to the extent that facsimile may still be considered "telephonic", that could be a way of complying. In fact, I like to use this method in all cases to have a written record of T-I-L compliance. Note that there is no requirement that the FSDO acknowledges receipt of that "First Flight Notice", or even that any human actually read it.

In addition, at least the Atlanta FSDO is currently taking voice messages on their phone. Again, without any requirement that the FSDO acknowledge or even have someone read or hear the notice, this should work.

Further, the regulation also allows for that First Flight Notice to be in-person at the FSDO. So perhaps taping a printed copy to the locked door of the FSDO (with a dated, timed picture), would also work.

The Truth-in-Leasing regulations also require that a copy of the lease be mailed to the FAA's "Technical Section" within 24 hours of signing. I do not know whether anyone is operating that section during the shutdown. Again, however, since there is no requirement of FAA acknowledgement, or even that a human receive or process it, and because the delivery method for this one is mail, I see no reason to change or delay operations here.



General Considerations.

Some other factors may indirectly affect your aircraft transaction, or continued aviation operations, depending on how long the shutdown lasts.

First the FAA has halted many pilot knowledge testing and check rides. Accordingly, you or your pilots may not be legal to fly if a new license or rating is needed for your new aircraft, or if currency requirements expire for existing operations. And when the government reopens, I am confident there will be a large backlog to work through. Consider that when deciding when to buy an aircraft or start a lease--having an aircraft without a pilot able to operate it doesn't do much good.

Similarly, FAA medical certifications have halted. Accordingly, especially for flight operations requiring first-class medicals issued every six months, more and more pilots will lose the ability to fly based on out of date medical certifications, with another backlog after the government reopens.

Other factors facing the entire flying public can also have particular effects on your aircraft transaction. Air traffic control operations continue. However, training has been suspended. That has placed a strain on an already stressed sector. And while TSA operations continue, they too are becoming increasingly strained as employees are not receiving paychecks, which could result in delays with more employees not coming in. You may want to build in extra time for your aircraft transaction for things like getting flight crews to or from inspections and deliveries.

In short, many aircraft deals can go forward without much effect during this government shutdown. However, in the case of sales/purchases, you may run into more hurdles as you step away from straight-forward, domestic deals. And in the case of leases, you may need to get a little creative with your Truth-In-Leasing compliance. And in all cases, the longer the shutdown continues, the more you'll need to consider the effect on the entire system.





About Hardy Law

We believe in an aviation & space industry with everyone working together for safety, innovation, utility, economic security and fun. We combine our industry and legal experiences to help people avoid making really big mistakes with their aircraft and spacecraft.

Hardy Law started in 2010 and has always focused on aviation & space law. Joe Hardy brings twenty years of experience from large and small law firms as an aviation attorney, plus twenty-eight years as a commercial pilot, including a few years as an active flight instructor. Jason Kemp brings aviation law experience from the FAA and the Jacksonville Aviation Authority (home of Cecil Spaceport and Jacksonville International Airport). Jason also holds a Master of Laws degree in Air & Space Law from the University of Mississippi. Before his legal career, Jason served in the U.S. Air Force as an aircraft maintenance technician.

- Aircraft & spacecraft purchase & sale, financing, leasing, structuring ownership and operations, regulatory compliance, FAA & International Registry recordings, insurance & liability planning
- Air carrier, manufacturer and repair station M&A and certificate transfers
- UAS (drones)- regulatory and developing law compliance
- Aircraft mechanics liens
- FAA enforcement actions
- FAA Airport Improvement Program and Grant Assurance representation
- FAA spaceport operator licensing, launch licensing & development
- Outer space & celestial body property rights
- Commercial space policy and legislation development

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