

# DC Circuit overturns FAA's registration system for model aircraft; tells FAA "statutory interpretation does not get much simpler"

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In December 2015, the Federal Aviation Administration (FAA) rushed out an interim rule creating a new registration system for both commercial unmanned aircraft and model aircraft. In a long-awaited decision, the US Court of Appeals for the District of Columbia Circuit has just ruled that the Special Rule for Model Aircraft, which is contained in Section 336 of the FAA Modernization and Reform Act of 2012 (the Reform Act), invalidates the regulations as applied to hobbyists flying model aircraft.

Section 336 of the Reform Act provides that the FAA "may not promulgate any rule or regulation regarding a model aircraft." The circuit court noted that the FAA's new registration rule used the exact same definition for "model aircraft" as was contained in Section 336, leading it to the inescapable conclusion that the rulemaking was improper:

In short, the 2012 FAA Modernization and Reform Act provides that the FAA "may not promulgate any rule or regulation regarding a model aircraft," yet the FAA's 2015 Registration Rule is a "rule or regulation regarding a model aircraft." Statutory interpretation does not get much simpler. The Registration Rule is unlawful as applied to model aircraft.

Rejecting the FAA's argument that the registration rule was permissible because it was related to the preexisting statutory requirement that all aircraft be registered, the DC Circuit panel held that the FAA had gone far beyond just enforcing the aircraft registration statute by creating a completely new system for compliance, a new fee structure and a new system of penalties.

The FAA also argued that the regulation was proper based on a provision in the Reform Act requiring that the FAA act to "improve aviation safety." The court disagreed, holding that this general directive could not overcome the specific limitations of Section 336.

The panel declined to consider the plaintiff's appeal of Advisory Circular 91-57A on the grounds that it was untimely. Appeals of final FAA decisions must be brought within 60 days of issuance, and the plaintiff's notice of appeals was filed almost a year after the circular was issued.

## Open questions

The decision leaves open several questions. What should the FAA do with all of the registration data it collected? Should the agency refund the money that was improperly collected? Is there a way for it to apply the general aircraft registration statute to model aircraft operators by using the existing paper registration system? The one thing the DC Circuit was clear on, however, was that the FAA's arguments in favor of registration should be addressed to Congress, not the courts:

Congress is of course always free to repeal or amend its 2012 prohibition on FAA rules regarding model aircraft. Perhaps Congress should do so. Perhaps not. In any event, we must follow the statute as written.

With the new FAA reauthorization working its way through Congress this summer, we may not have to wait long for an answer.