



Federal Aviation Administration

Memorandum

Date: June 29, 2017

To: Ross Rutledge, Policy Analyst, Office of Information and Regulatory Affairs,
Office of Management and Budget (OMB)

From: John Duncan, Director, Flight Standards Service, AFS-1 *John Duncan*

Prepared by: Courtney Freeman, Attorney, Regulations Division, AGC-220, (202) 267-3267

Subject: OMB Emergency Clearance for Revision of Information Collection Request: 2120-0765 Small Unmanned Aircraft Registration System

Summary

The FAA seeks emergency clearance from OMB to revise its existing information collection 2120-0765, Small Unmanned Aircraft Registration System. This revision would permit the FAA to collect information from members of the public to facilitate the removal of their Privacy Act entries in the small UAS registration database and to provide a refund of their \$5 registration fee. This revision is for the purpose of complying with the mandate of the Court of Appeals for the District of Columbia Circuit in *Taylor v. Huerta* by July 3, 2017.¹ If the FAA does not receive emergency approval, the FAA is at risk of not complying with the mandate without undue delay.

Background – *Taylor v. Huerta*

On May 19, 2017, the Court of Appeals for the District of Columbia Circuit vacated the FAA's part 48 Registration and Marking of Small Unmanned Aircraft rule to the extent that it applies to model aircraft operating exclusively in compliance with section 336 of the FAA Modernization and Reform Act. The court found that the rule requiring owners of model aircraft who are operating exclusively in compliance with section 336 to register violated the statutory prohibition on promulgating rules and regulations regarding small unmanned aircraft operating exclusively in compliance with section 336.

The FAA believes that to be in compliance with the court's decision, the FAA must permit the owners of small unmanned aircraft operating exclusively in compliance with section 336 to delete their registration and also permit those who did not already receive a refund during the initial 30-day grace period to receive a refund of the \$5 fee paid to the FAA. The court requires compliance with its ruling beginning 45 days from its decision, which falls on July 3, 2017.

¹ *Taylor v. Huerta*, No. 15-1495 (D.C. Cir. 2017) available at [https://www.cadc.uscourts.gov/internet/opinions.nsf/FA6F27FFAA83E20585258125004FBC13/\\$file/15-1495-1675918.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/FA6F27FFAA83E20585258125004FBC13/$file/15-1495-1675918.pdf).

Although it is possible to collectively identify those who registered as “hobbyists” in the registration database, the FAA is continuing to encourage voluntary registration by all small UAS owners for purposes of continued education, which is essential to the purpose of the agency. It would therefore be counterintuitive to automatically delete the entire subset of “hobbyist” owners without allowing those who are already registered the opportunity to remain registered. Rather, the FAA has identified the narrow application of the court’s decision – owners operating exclusively in compliance with section 336 – and invites those owners who so desire to remove their information from the system and receive a refund, if they are eligible.

Litigation has already been filed against the FAA in the Eastern District of Arkansas to compel refund of the registration fee and deletion of the registration information of model aircraft owners. Any failure on the FAA’s part to comply by the date of the District of Columbia Circuit court’s mandate will surely result in more litigation activity by the public.

Planned Information Collection

For owners who are operating exclusively in compliance with section 336 to receive a refund and to successfully remove their Privacy Act entry from the system, the FAA has developed a paper form (Appendix A) that those owners must fill out and mail in to the FAA Civil Aviation Registry. This form includes a self-certification that the owner is operating exclusively in compliance with section 336 (in accordance with the court’s decision), and provides a space for electronic payment information so the FAA can electronically refund owners in accordance with 31 CFR Part 208, which requires agencies to make payments electronically.

The FAA is exploring the development of an automated system for refund and deregistration for use in the future, but at this time, it is not possible for the FAA to develop and fund an automated system in enough time to comply with the court’s mandate.

To avoid the harm that would result from a delay in the availability of a refund process for model aircraft owners operating in compliance with section 336 and a failure to comply with a court-imposed deadline, it is imperative that the FAA receive approval from OMB to conduct this information collection no later than July 7, 2017. We have reviewed the requirements for emergency clearance outlined in 5 CFR 1320.13 and believe that the situation meets the criteria outlined therein.

Therefore, the FAA is requesting the revision of OMB information collection 2120-0765, Small Unmanned Aircraft Registration System, to add the new form to permit refunds. Appendix B contains the revised supporting statement for this information collection, describing the addition of the new form and estimating the burdens for the public and the Government.

Attachments