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UAVs and the Law

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Interest in Unmanned Aerial Vehicles (UAVs) or Unmanned Aerial Systems (UAS) has increased dramatically over the past couple of years. The Federal Aviation Administration (FAA) has guidelines in place for using recreational model aircraft; however, advances in technology allowing for data gathering and other potential applications such as aerial spraying have presented issues that the federal agencies are working to address.

Currently there are three classifications of UAS users. The guidelines for UAS use depends largely on the classification of the user. Recreational model aircraft have very relaxed standards as compared to the public and civil UAS use. Generally model aircraft operators must stay under 400 feet in altitude, fly at least three miles from an airport, avoid populated locations and yield the right of way to manned aircraft.¹ Because of the relaxed standards for model aircraft, the FAA has clarified that the model aircraft rules do not apply when an individual or entity operates a UAS for a purpose other than recreation. For the other two categories, civil and public use, the topic of UAS use becomes more complicated, especially when coupled with the rise of state laws and other legal concerns on the use of UAS.

The Federal Approach

The FAA policy for UAS operations is that no person may operate a UAS in the National Airspace System without specific authorization and the authorization criteria depends on the use of the UAS. Tethering a UAS to the ground does not remove the need for FAA approval.² For UAS operating as public aircraft the authority is the Certificate of Authorization (COA), for UAS operating as civil aircraft the authority is special airworthiness certificates, and for model aircraft the authority is AC 91-57.³

By FAA definition, a “public aircraft is one that is only for the United States government or owned and operated by the government of a state, the District of Columbia, or a territory or possession of the U. S. or a political subdivision...include[ing] DOD, DOJ, DHS, NASA, NOAA, state/local agencies and qualifying universities.”⁴

¹ Advisory Circular 91-57. Available at http://www.faa.gov/documentLibrary/media/Advisory_Circular/91-57.pdf

² Email from Elizabeth Forro, Program Support Specialist with the FAA Aviation Safety UAS Integration Program Office (July 25, 2014)(on file with the author).

³ http://www.faa.gov/about/initiatives/uas/reg/media/frnotice_uas.pdf

⁴ Available at <http://www.faa.gov/uas/faq/#qn5>.

Operators requesting approval of public aircraft operations by UAS must use the COA application process. The FAA has provided a sample COA application to assist public bodies to comply with the current policy.⁵ Currently, operators of public UAS must be a certified and current pilot with a medical certificate, the crew operating the UAS must be certified, and the UAS must be airworthy.⁶

Operators requesting approval for civil operations (those that are not public or recreational) must use the Special Airworthiness Certificate process, provided the aircraft has been issued a type certificate from Aircraft Certification Process in accordance with 14 CFR part 21. Part 91, § 91.319(a)(2).⁷ Because of the increased interest in UAS use, the FAA and other federal agencies involved in the process have been given a timeline of September 30, 2015 to implement a plan to integrate civil UAS into the national airspace.⁸

A recent case, *Texas Equusearch v. FAA*, challenged FAA's authority to issue "cease and desist" emails about UAS use due to the lack of regulations.⁹ The D.C. Circuit held on July 18th, 2014 that the letter was not a result of the agency's decision-making process because no legal consequences were mentioned in the email and as a result the case was dismissed. The FAA is currently working on the regulations alluded to in the *Texas Equusearch* case for UAS lighter than fifty-five pounds.

The State Approach and Other Concerns with use of UAS

It is important to note that the FAA's role in UAS deployment is ensuring that U.S. airspace will remain safe for both manned and unmanned flight; however, there are also serious issues surrounding privacy and use of UAS by law enforcement. According to the National Conference of State Legislatures "[i]n 2013, 43 states introduced 130 bills and resolutions addressing UAS issues. At the end of the year, 13 states had enacted 16 new laws and 11 states had adopted 16 resolutions."¹⁰ Arkansas had two bills HB 1904¹¹ (addressing UAS use by law enforcement) and SB 1109¹² (restricting the use video recording from UAS unless properly authorized) proposed during the 2013 legislative session. Neither bill was passed into law.

Many other states have proposed, and occasionally passed, similar legislation. Texas (Tex. Gov't Code Ann. § 423¹³) and Idaho (Idaho Code Ann. § 21-213¹⁴) have recently enacted laws regulating the use of unmanned aircraft in the state and Illinois has prohibited the use of a drone to interfere with hunters and fisherman.¹⁵ States will continue to address issues surrounding privacy while the FAA is developing regulations regarding their commercial operation. Changes to this area of law promise to be numerous and rapid over the next several years.

⁵ http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/aaim/organizations/uas/media/COA%20Sample%20Application%20v%201-1.pdf

⁶ http://www.faa.gov/documentLibrary/media/Notice/N_8900.227.pdf

⁷ http://www.faa.gov/documentLibrary/media/Notice/N_8900.227.pdf

⁸ <http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt381/pdf/CRPT-112hrpt381.pdf>

⁹ *TX Equusearch Mounted Search, et al v. FAA*, Docket No. 14-01061 (D.C. Cir. July 18, 2014)

¹⁰ <http://www.ncsl.org/research/civil-and-criminal-justice/unmanned-aerial-vehicles.aspx>

¹¹ Available at <http://www.arkleg.state.ar.us/assembly/2013/2013R/Bills/HB1904.pdf>.

¹² Available at <http://www.arkleg.state.ar.us/assembly/2013/2013R/Bills/SB1109.pdf>.

¹³ Available at <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=83R&Bill=HB912>.

¹⁴ Available at <http://legislature.idaho.gov/legislation/2013/S1134PrinterFriendly.htm>.

¹⁵ Illinois HB 1652. Available at

<http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1652&GAID=12&DocTypeID=HB&SessionID=85&GA=98>