

Big Announcement, Small UAS: FAA Launches

Digital Media and Data Privacy Law Blog

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Unless you have been completely disconnected from all media, you are probably already aware that on Sunday, February 15, 2015, the FAA announced the release of its long-awaited rules to govern commercial sUAS (small unmanned aircraft systems) operations in the United States. The FAA's proposed sUAS rules arrived like a barely-late valentine or box of candy, with the recipients hoping to read loving prose and enjoy fresh, rich chocolates. At this point, of course, the rules are merely a *proposed* regulatory regime (as embodied in a document that is called a "Notice of Proposed Rulemaking" or "NPRM"), and it will surely take many months—probably a couple of years—for the rules to be finalized and adopted, and to go into effect. (Only then will we know for sure whether the valentine message was really a "dear John" letter or whether the candy was stale and half-eaten.) It is important to understand that, for now, the FAA's current prohibition on commercial UAS operations remains in effect, except for operators that have obtained a Section 333 Exemption from the FAA. (To date, nearly 30 entities have received exemption grants from the FAA.)

The proposed regulatory regime was described by the FAA on a February 15 press conference call as a "very flexible framework" that will "accommodate future innovation in the industry." While industry stakeholders may ultimately disagree over just how flexible the proposed rules are or should be, stakeholders do generally agree that the FAA's release of the NPRM is a big step (albeit somewhat overdue) in the right direction. You can access the FAA's NPRM [here](#). (The FAA also published a "fact sheet" as well as a short summary of the highlights of the proposed rules.)

Proposed sUAS Rules

Among the various limitations that the FAA has proposed for commercial sUAS operations are the following (*caveat*: this is neither an exhaustive nor detailed list of all the operational limitations and requirements proposed in the NPRM):

- Vehicles subject to the sUAS rules will be defined as aircraft that weigh less than 55 pounds (25 kg)
- Only visual line-of-sight ("VLOS") operations will be allowed; i.e., the small unmanned aircraft must remain within VLOS of the operator or visual observer ("VO") (i.e., if a VO is used; the proposed rules allow—but do not require—the use of a VO)

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- No person may act as an operator or VO for more than one unmanned aircraft operation at one time
- Pilots of sUAS will be considered “operators.” Operators will be required to:
 - Pass an initial aeronautical knowledge test at an FAA-approved knowledge testing center;
 - Be vetted by TSA (Transportation Security Administration);
 - Obtain an unmanned aircraft operator certificate with an sUAS rating (like existing pilot airman certificates, it will never expire);
 - Pass a recurrent aeronautical knowledge test every 24 months;
 - Be at least 17 years old;
 - Make available to the FAA, upon request, the sUAS for inspection or testing, and any associated documents/records required to be kept under FAA rules;
 - Report an accident to the FAA within 10 days of any sUAS operation that results in injury or property damage;
 - Conduct preflight inspections to ensure the sUAS is safe for operation.
- At all times the small unmanned aircraft must remain close enough to the operator for the operator to be capable of seeing the aircraft with vision unaided by any device other than corrective lenses (the use of binoculars would not satisfy this restriction)
- sUAS operations may not occur over any persons not directly involved in the operation
- sUAS operations must occur during daylight hours only (official sunrise to official sunset, local time)
- Small unmanned aircraft will be required to yield right-of-way to other aircraft, manned or unmanned
- Small unmanned aircraft will be allowed to operate with a maximum airspeed of 100 mph (87 knots)
- Small unmanned aircraft will be allowed to operate at a maximum altitude of 500 feet above ground level
- sUAS operations will be permitted to occur only when conditions allow minimum weather visibility of 3 miles from the control station
- Limitations in airspace classes:
 - No sUAS operations will be allowed in Class A (18,000 feet & above) airspace
 - sUAS operations will be allowed in Class B, C, D and E airspace only with ATC (Air Traffic Control) permission

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- sUAS operations in Class G airspace will be allowed without ATC permission

Many of these requirements dovetail with (or are at least similar to) the limitations, requirements, and restrictions that have been imposed by the FAA in its various Section 333 Exemption decisions. In fact, some of the rules proposed in the NPRM would be *less restrictive* and *more flexible* than those imposed on operators in certain Section 333 Exemption decisions.

“Micro” UAS and Model UAS

NPRM proposes a “micro” UAS classification that contemplates operations of small unmanned aircraft that weigh up to 4.4 pounds (2 kg; small-scale sUAS and hence “micro”), only in Class G airspace, only during daylight hours, at altitudes no higher than 400 feet AGL. Micro UAS operations would be permissible over people not involved in the operation of the unmanned aircraft, provided the operator certifies he or she has the requisite aeronautical knowledge to perform the operations. Other, additional restrictions, as set forth in the NPRM, would apply to the proposed micro UAS classification.

With respect to hobbyists who fly model unmanned aircraft for recreational purposes, the NPRM does not propose to change the rules of the road for such hobbyists, so long as their operation of model UAS satisfies all of the criteria applicable to model unmanned aircraft.

Presidential Memorandum: UAS Privacy Framework

In addition to—and presumably in concert with—the FAA’s release of the NPRM, President Obama on the morning of Sunday, February 15, issued a Presidential Memorandum aptly titled “Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems” (“UAS Privacy Memorandum”) in order to create a framework to begin to address some of the privacy concerns that have been voiced by the American public (and even by a U.S. Supreme Court Justice). (Reports had surfaced months ago suggesting that the UAS Privacy Memorandum was in the works.)

Among other things, the UAS Privacy Memorandum requires federal agencies, “prior to deployment of new UAS technology and at least every 3 years, [to] examine their existing UAS policies and procedures relating to the collection, use, retention, and dissemination of information obtained by UAS, to ensure that privacy, civil rights, and civil liberties are protected. Agencies shall update their policies and procedures, or issue new policies and procedures, as necessary.” In addition, federal agencies must “establish policies and procedures, or confirm that policies and procedures are in place, that provide meaningful oversight of individuals who have access to sensitive information (including any PII [personally identifiable information]) collected using UAS . . . [and] require that State, local, tribal, and territorial government recipients of Federal grant

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funding for the purchase or use of UAS for their own operations have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds." These requirements represent a logical and reasonable starting point for ensuring privacy protection at the federal level if and when agencies engage in UAS operations.

Also of significance, the UAS Privacy Memorandum tasks NTIA (the National Telecommunications and Information Administration) to initiate, by mid-May 2015, a "multi-stakeholder engagement process to develop a framework regarding privacy, accountability, and transparency for commercial and private UAS use." As such, the UAS Privacy Memorandum provides a formal structure in which various aspects of privacy that will be implicated by commercial and private UAS operations can and will be debated and addressed. As with the sUAS rules themselves, only time will tell whether the final results of the UAS Privacy Memorandum are weak or strong, satisfactory or dissatisfactory to UAS stakeholders, including the American public generally.

Issuance of the NPRM Doesn't Mean You Can Ignore State Law

State and local jurisdictions continue to contemplate legislation governing the use of UAS by individuals, commercial entities, and law enforcement, and much remains to be written about such ongoing efforts. As I've written previously, the State of North Carolina enacted several provisions governing UAS in 2014. Until the FAA's rulemaking results in final rules, many of the North Carolina provisions are of little practical significance. Nevertheless, drone enthusiasts in North Carolina must remain mindful of these state-specific laws, as should any UAS operator in any other state with applicable laws in place.

More to Come

For many industry stakeholders and drone enthusiasts, the release of the NPRM surely represents a "*Harry Potter*" moment: when a new *Harry Potter* book hit the bookshelves, people would line up for hours to get a copy and would stay up all night and skip school or work in order to read it. I'm certain that a similar phenomenon has been underway since Sunday, February 15, when the NPRM first became available on the FAA's website. (I would hazard a guess that the FAA's website had more traffic on February 15 than any other day in the history of www.faa.gov.) While I don't recommend that anyone play hooky from work or school in order to read the 195-page NPRM, I do encourage you to celebrate President's Day (February 16) by reviewing the NPRM—while the FAA Staff enjoys its well-deserved federal holiday—and I do wish you all happy reading and sweet, post-valentine dreams.

Onward and upward (but, until the FAA issues final rules, not without an exemption or not more than 400 feet, please, with a model drone used solely for recreational purposes)!