

## Risk Management Perspective on Domestic Drones Part 3 of 5 - Federal Regulation

The current regulatory landscape for drone use is a patchwork of statutes and rules. The FAA Modernization and Reform Act of 2012, sought to address this by requiring the FAA to fully integrate unmanned aircraft into the NAS by September 30, 2015, and to implement standards for drone operation. In compliance with the act, the FAA has designated six test range sites for use with both manned and unmanned flights. The Act requires a streamlined COA application process for use with Public UAS flights; requires a means of requesting commercial exemptions from the FAA for the operation of small Civil UAS (less than 55 pounds), referred to as “Section 333 Exemptions;” and bars the FAA from regulating model aircraft flights so long as they are operated in accordance with basic safety rules. Designated test sites are required, per FAA policy, to comply with state, local, and federal laws regarding privacy and civil liberties and all operators at the site must provide a written plan for the storage and use of all collected test data.<sup>19</sup>

On February 15, 2015, the FAA released the first draft of their long-awaited proposed small drone regulations, entitled “Operation and Certification of Small Unmanned Aircraft Systems” (Proposed Rules).<sup>20</sup> The Proposed Rules, as first published, provide that drone operators must be over the age of 17 and must obtain a license prior to commencing flight operations. Small drones (under 55 pounds) may only be flown under 500 feet above ground level during daylight hours at airspeeds not to exceed 100 mph. The operator or their visual observer must maintain a visual line of sight on the drones at all times during operation. Safety and privacy considerations include a prohibition against operating drones over bystanders (defined as anyone not directly involved in the drone’s operation).<sup>21</sup>

Privacy protections, with respect to surveillance data collection and its storage, are noticeably absent in large part from the Act and the Proposed Rules. To fill this gap,

the White House issued a presidential memorandum on February 15, 2015, directing federal agencies to evaluate, monitor, and report their policies for protecting private information gathered via drones.<sup>22</sup> The new rules require federal agencies to review their current policies and create additional policies as may be needed in order to ensure adequate protection of personal, private data collected via surveillance flights and ensure compliance with existing constitutional or statutory privacy and free speech protections. Agencies are directed to release an annual report disclosing locations of surveillance drone operations and to conduct follow-up policy audits every three years. Information collected by an agency’s drone surveillance operations may only be used when consistent with an authorized purpose and any data containing personal identifiable information must be destroyed after 180 days unless expressly required for an agency’s ongoing authorized mission.<sup>23</sup> Public entities and higher education institutions should review and address their surveillance collection and retention policies in light of the February, 2015 White House privacy memorandum.

<sup>19</sup> 78 FR 68360, published November 14, 2013

<sup>20</sup> <http://www.gpo.gov/fdsys/pkg/FR-2015-02-23/pdf/2015-03544.pdf>; Operation and Certification of Small Unmanned Aircraft Systems; Proposed Rule, 14 CFR Parts 21,43, 45, et al. (published Monday, February 23, 2015)

<sup>21</sup> <http://www.gpo.gov/fdsys/pkg/FR-2015-02-23/pdf/2015-03544.pdf>; Operation and Certification of Small Unmanned Aircraft Systems; Proposed Rule, 14 CFR Parts 21,43, 45, et al. (published Monday, February 23, 2015)

<sup>22</sup> <http://www.whitehouse.gov/the-press-office/2015/02/15/presidential-memorandum-promoting-economic-competitiveness-while-safegua>

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