



Drone Use Regulation – Update of Activity Since Study Conclusion

Background

In December 2014, the Program Review and Investigations Committee completed a study of drone use regulation, including a look at possible actions for Connecticut. Drones, or unmanned aerial systems (UAS), remain a topic of interest for the state as their availability and use continue to increase. This document provides a brief update on developments since the conclusion of the study and puts the proposed legislation based on the study recommendations into the current context.

The study found that Connecticut stakeholders have concerns about safety and privacy implications related to drone use. Legislation based on study recommendations ultimately won unanimous approval in the Senate (sSB 974) but was not brought up for a vote in the House in the 2015 session.

Primary responsibility for drone regulation rests with the Federal Aviation Authority (FAA). The FAA is solely responsible for the navigable airspace system and is therefore responsible for regulation of all aircraft operated there. However, the FAA's main concern is limited to drone safety and does not extend to privacy issues. At the time of the study, the FAA had provided little information on its regulatory strategy. Since the study concluded, the FAA has taken several actions, some specifics of which are discussed on page two of this document.

State attempts at regulating the operation of drones directly are preempted by federal law, though states do have authority to place limits on drone use for governmental purposes and/or by government employees in the course of their job responsibilities. Although most types of criminal drone use can be addressed through existing state law, the study recommended some statutory clarification. According to NCSL, 49 states have considered drone laws in the last three years, including 26 states that have passed drone laws as of December 2015.

Summary of 2015 PRI Drone Legislation (sSB 974)

Substitute Senate Bill 974, File 708 (2015), *An Act Implementing the Recommendations of the Legislative Program Review and Investigations Committee Concerning the Use of Drones*:

- established a state definition of drones as differentiated from manned aircraft (Secs. 1-2);
- outlawed the remote use of a deadly weapon, explosive or incendiary device, or release of tear gas, including remote operation through the use of a drone (Sec. 4); and
- closed some potential loopholes regarding criminal use of drones, including clarifying existing voyeurism law to address possible drone use (Secs. 3, 5-7).

Regarding governmental use of drones (Secs. 8-9), the bill established statutory provisions limiting law enforcement use of unmanned aerial systems (UAS) to the following situations:

- Pursuant to a warrant
- With prior written consent by an individual monitored by UAS
- With prior written consent by the property owner monitored by UAS
- With probable cause and exigent circumstances
- With belief there is an imminent threat to life or safety of an individual
- For search and rescue activities
- For law enforcement training activities
- For crime scene documentation or reconstruction

The bill proposed a policy for data collected with a drone:

- Warrant-based data is kept under the terms of the warrant.
- Advance consent-based data is kept under the terms of the consent agreement.
- Other drone-based data is reviewed within 90 days or destroyed. If upon review the data includes identifiable people or property:
 - With probable cause, data can be kept up to 5 years;
 - Without probable cause, data can be modified to remove identifiable people or property or otherwise destroyed within 48 hours of review.

The bill also required that governmental use of drones must be reported and made publicly available annually. Drones owned by a state agency or local law enforcement agency would need to be registered with the Office of Policy and Management.

A finding of the 2014 PRI report was that these proposed laws avoid federal preemption by creating or adjusting laws of general applicability, rather than laws specific to drone operation only.

Summary of FAA 2015 UAS Regulatory Activity

The FAA was directed and authorized to regulate unmanned aerial systems and otherwise “safely integrate UASs into the national airspace system” by the 2012 FAA Modernization Act. The act codified certain rules for model aircraft while otherwise exempting them from further regulation by the FAA. Included in the act is a definition of model aircraft with the stipulation that model aircraft must be “flown for hobby or recreational purposes.” As such, commercial use of drones is regulated by the FAA. While the FAA has been working to draft and adopt specific regulations for commercial use of drones, it has otherwise prohibited any commercial use of drones unless the operation has been specifically allowed through a waiver or exemption.

The FAA granted many more exemptions in 2015 than previous years. When the PRI study concluded in December 2014, only eight waivers had been granted for commercial use. By early December 2015, over 2,500 exemptions have been granted.

Proposed Rulemaking for Small UAS. On February 15, 2015, the FAA issued proposed rulemaking on UAS, specifically for small UAS (under 55 lbs.). The main components of the proposed rule are that UAS could be used commercially if the UAS is:

- operated during standard daylight hours;
- operated within visual sight of the pilot;
- not operated over any persons not directly involved with the operation;
- operated by a person at least 17 years or older;
- operated by a person that has passed a written FAA knowledge test;
- flown no higher than 500 feet and going no faster than 100 mph; and
- registered with the FAA and appropriately marked as such.

Comments on the proposed rulemaking were accepted in the spring of 2015, with final rules expected in mid-2016. The proposed rules for small UAS generally mirror those already in place for hobbyist drone use, except: there is no age restriction for hobbyists; hobbyists do not need to pass a test; and hobbyist flights are limited to 400 feet instead of 500 feet elevation.

Until final rules are adopted, those wishing to operate a drone for commercial purposes still must seek an exemption from the FAA. Though the proposed rule is expected to alleviate the need for many exemptions, it seems likely that exemptions will still be sought, for example, to be able to operate a drone beyond the line of sight of the pilot.

FAA UAS Registration Requirements. On December 14, 2015, the FAA published an interim final rule for small UAS registration. All UAS between 0.55 lbs. (250 grams) and 55 lbs. must be registered. Upon registration, the operator receives a single registration number and is responsible for marking his or her UAS appropriately.

The rule describes a few restrictions on who can register a drone. To be able to register any aircraft, drone or otherwise, the registrant must be a citizen, permanent resident, or corporation of the United States – this is based on existing law that is unchanged by this rule. Only persons 13 years of age or older may register. Persons younger than 13 are allowed to operate UAS recreationally if the drone has been registered by a responsible party age 13 or older. Hobbyist operators can use an electronic, web- or app-based registration system when the rule goes into effect on December 21, 2015. Operators using drones for commercial purposes must continue to use the current paper-based registration system until March 31, 2016.

Under the final rule, owners must pay a registration fee of \$5 every three years and provide their name, home address, and email address as part of the registration process. Operators may include the serial number of their UAS if they prefer to use that as the identification number, rather than having to affix the registration number to the UAS otherwise.

Though listed as “interim,” these requirements are effective December 21, 2015. Registration requirements are delayed by approximately two months for those who owned drones prior to December 21, 2015. Drones purchased after December 21 must be registered before they are flown outdoors. Regardless of date of initial ownership, those who register by January 20, 2016 will have the \$5 fee waived to encourage compliance.