

FAA's new drone registration rule paves way to next steps

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• **By Henry H. Perritt, Jr.**

On December 14, 2015, the FAA issued an "interim final rule" (IFR) requiring the operators of all drones weighing more than half-a-pound to register them with the FAA before flying them outdoors. "Registration will provide a means by which to quickly identify these small unmanned aircraft in the event of an incident or accident... and also provides an immediate and direct opportunity for the agency to educate sUAS owners on safety requirements before they begin operating," the FAA said in its summary of the new rules.

The motivation for moving quickly to impose a registration requirement was the FAA's expectation that some 1.6 million drones intended to be used as model aircraft would be sold in 2015, with half of that number sold in the fourth quarter. It expects another 600,000 to be sold to commercial operators once its February-2015 proposed rule is finalized, sometime in 2016.

The IFR imposes different requirements for recreational and hobbyist drones –which the FAA calls, "small unmanned aircraft used as model aircraft"– and for commercial users. Hobbyist and recreational users must provide only basic information: name, address, and email address, and user registration covers an unlimited number of drones operated by that user.

Commercial users must provide information about aircraft serial number, manufacturer, as well as the basic information required of model drone users. Each commercial drone must be registered and will receive a unique registration number. The new registration site for recreational operators will have "a single profile that contains all of their aircraft," each of which will have a unique registration number. Both categories of users must display the registration number on the drone. Drones flown only indoors need not be registered.

Recreational and hobbyist operators of drones that have never been flown must register through the new system after December 21 before flying any drone. Operators of hobbyist and recreational drones that were operated before December 21, must register no later than February 19, 2016. Commercial operators must register their vehicles either under the traditional paper-based system or under the new system after March 31, 2016.

The preamble to the IFR and accompanying frequently asked questions (FAQs) explain the registration requirements in terms that can be understood by unsophisticated casual purchasers, explaining drone purchasers can determine whether a new drone must be registered by comparing its weight to that of two sticks of butter.

The IFR adopts a user self-registration system rather than point-of-sale registration, preferred by many commenters. Several commenters argued that a point-of-sale registration system would have greater integrity, because no drone could be sold without the vendor's registering it. But the retail industry vigorously opposed such an approach, asserting that existing point-of-sale systems are not capable of acquiring the additional information necessary for registration, and questioning the FAA's authority to impose such a requirement.

The IFR essentially embraces the approach to impose a self-registration requirement immediately, with a gradual evolution toward point-of-sale registration. "The agency encourages innovation in point-of-sale registration as it may provide the agency with a means by which to receive information regarding small unmanned aircraft in a seamless fashion," and promised to work with retailers and manufacturers to facilitate development of such systems.

The FAA registration requirement generally tracks recommendations from a task force of stakeholders that it formed in October, 2015. NAB and the RTDNA submitted generally supportive comments. The Academy of Model Aeronautics (AMA), however, was quick to issue a press release criticizing the rule as an unnecessary burden on model aircraft users affiliated with community-based model aircraft clubs. AMA may file an action in federal court challenging the FAA's authority over model aircraft.

The FAA recognizes the compliance with the new registration requirement will be uneven. It also recognizes that a registration requirement alone is an incomplete solution for deterring irresponsible or malicious drone use. Adherence to safe practices depends ultimately on the effectiveness of an intensified public education program. Nevertheless, requiring a drone to be registered and numbered will assist state and local law-enforcement and FAA inspectors to trace drones back to their owners when mishaps occur.

The preamble and the actual rules do not explicitly exempt drone operators who have already registered their aircraft through the traditional paper-based process and received an N number, but

the IFR's repeated reference to the basic statutory registration requirement means that drones already registered need not register again through the new process.

The registration rule is a boon for newsgathering helicopter and drone operators. It is an initial first step to gain control over the thousands of hobbyist flying outside the social control model aircraft clubs and the commercial operators who ignore FAA rules for safe flight, thereby jeopardizing aerial newsgathering operations.

It also is a boon for operators of newsgathering drones who have section 333 exemptions authorizing them to fly commercially because it gives them an alternative to the archaic paper-based registration process, which requires use of a multipart carbon paper form. The present system also requires completion and submission of a notarized affidavit of ownership and sales receipt or transfer of title. The FAA's discussion recognizes that its traditional paper-based system is "too onerous for small unmanned aircraft owners and the FAA." The new system permits exemption holders to register new vehicles online.

An interim final rule under federal administrative law is an agency rule that takes effect immediately but also invites comments, with the expectation that it may be modified in a relatively short timeframe.

The registration rules do not represent a new source of authority to operate drones commercially unless the operator has a section 333 exemption, until the drone-operator ("DROP") qualification and operating rules proposed in February 2015 are finalized.

ENG helicopters are not affected by the IFR. Helicopters weigh far more than the 55-pound upper limit for application of the registration rule. Their long service lives make it likely that ownership will be transferred during their lifetime, and their high value makes it likely that they will be used to secure loans, characteristics that require a more elaborate registration system such as the present one.

Henry Perritt, Jr. is a law professor and former dean at Chicago-Kent College of Law. He has written and co-written several articles about the potential use of drones in newsgathering, and co-owns a company, Modovolate Aviation, LLC; which was formed to conduct drone research, experimentation, demonstration, and education. - See more at: http://rtdna.org/article/faa_s_new_drone_registration_rule_paves_way_to_next_steps#sthash.ZWAeybYQ.dpuf