

That Drone in Your Holiday Stocking Must Now Be Registered With the FAA

December 17, 2015

Fearing for public safety over the explosion of hobby-type drones taking to the air, on December 14, 2015, the Federal Aviation Administration (FAA) issued the first rule¹ of its kind directed at owners and operators of hobby and recreational small unmanned aircraft systems (sUAS aka drones) that now requires their registration on the FAA's new online drone registration portal.² A second, more comprehensive drone rule is expected to be issued in 2016 to allow the use of drones for certain commercial purposes where the risk to public safety is low.

In the meantime, the hobby drone rule, which goes into effect on December 21, 2015 ahead of the holiday rush, requires all hobby-type drones weighing between 0.55 pounds (about two sticks of butter) and 55 pounds that have flown prior to December 21, 2015 to be registered no later than February 19, 2016.³ For hobby drones in this weight class flying for the first time on or after December 21, 2015 (i.e. holiday stocking stuffers), the rule requires that the owner register the drone before the first flight.

The FAA structured the grace period to encourage registration of millions of preexisting drones while also requiring that all new drones be registered before first flight. To further encourage registration, the \$5.00 registration fee will be credited back to registrants if they register within the first 30 days. And to lessen the burden of registration, the rule provides that a single registration applies to as many drones as an owner/operator owns or operates. If these incentives are insufficient to prompt compliance, the rule provides civil penalties up to \$27,500, and criminal penalties including fines up to \$250,000 and/or imprisonment for up to three years.

U.S. citizens age 13 or older can register their drones at the FAA's registration portal. The registrant will need to provide the FAA with their name, physical address, mailing address (if different) and email address. Upon completion of the registration process, the FAA will provide the registrant (or certificate holder, as the FAA calls them) with a unique registration number that must be affixed to each drone.⁴ In addition, each registration must be renewed every 3 years and will require an additional \$5.00 renewal fee.

After the rule goes into effect on December 21, 2015, all operators of hobby drones falling within the weight limits of the rule must provide proof of registration in the form of a Certificate of Aircraft Registration, either in printed or electronic form—much the same way as an angler or a hunter currently provides proof of a state fishing license or a state hunting license to a game warden.⁵

A number of exceptions to the rule are worth mentioning. First, hobby drones that weigh less than 0.55 pounds (i.e. radio-controlled micro quadcopters that fit in the palm of your hand) do not require registration.⁶ The rule will not apply to drones flown solely indoors. The rule also does not apply to those who want to fly drones for commercial purposes (i.e. for pay and/or hire), or on behalf of a state or federal government agency (i.e. fire departments, police departments, etc.). Such operators must first obtain an exemption of the FAA's rules applicable to, for example, passenger-carrying aircraft, that the FAA has interpreted as also being applicable to commercial operators of unmanned drones regardless of size and weight. In addition, any types of entities other than individual hobbyists—such as corporations, or anyone wanting to record a lease or security interest—cannot use the online registration portal.

¹ See FAA Interim Final Rule (IFR) available at: https://www.faa.gov/news/updates/media/20151213_IFR.pdf

² The FAA's drone registration portal is available at: <https://www.faa.gov/uas/registration/>

³ Model radio-controlled aircraft of all types, including the type of fixed wing, radio-controlled model aircraft that have flown in parks and fields for decades, fall under the new rule.

⁴ The unique registration number may be affixed via permanent marker, label, engraving or other means, as long as the number is readily accessible and readable upon close visual inspection.

⁵ Although it is unclear whether the FAA will have the manpower to enforce the new rule against hobbyists who do not register their drones, the FAA intends to employ a strategic approach to encourage compliance ranging from outreach and education programs to administrative and/or legal action should the facts of a case so warrant.

⁶ According to the FAA, most toy drones costing \$100 or less will likely weigh less than 0.55 pounds (250 grams).

The new rule is the first concrete step that the FAA has taken in response to Congress' mandate to the FAA under Section 333 of the FAA Modernization and Reform Act of 2012 to integrate unmanned aircraft into the National Airspace System (NAS). The next big step will be the FAA's issuance in 2016 of rules that provide a legal path for using drones for commercial purposes without having to obtain prior FAA approval. Those rules will likely have a sweeping impact on business owners of all types who want to buy and sell aerial imaging and/or aerial data transmission services, including large-scale land developers, shopping mall operators and owners of other large structures, real estate agents, wedding photographers, and live TV/radio broadcast providers, to name a few, as well as industries that support those businesses, including software and hardware component suppliers, venture capital and financing providers, accountants, and the like.

In the interim, the new rule will force a dramatic change in the way consumers think about small radio-controlled unmanned aircraft in the future—they're not just toys anymore.

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If you have any questions related to this article or would like additional information, please contact your attorney at Neal Gerber Eisenberg, any attorney in the Intellectual Property & Technology Transactions practice group, or the author.

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