

Legal Sidebar

Unmanned and Unregulated? Court of Appeals Rejects FAA Regulation of Many Drones

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In 2015, the Federal Aviation Administration (FAA) attempted to address the proliferation of drones and some of the hazards associated with their operation with [a rule](#) requiring that all “small unmanned aircraft” register with the FAA. The online registration process created by the 2015 rule, which the FAA says is intended to allow owners of small unmanned aircraft to comply with [a statutory registration requirement](#), was designed to be less onerous than existing regulatory requirements in order to accommodate owners of these aircraft. Registration requires owners to file online and pay a \$5 fee per small unmanned aircraft, or a \$5 fee to register a “fleet” of such aircraft, with mandatory renewal every three years. According to the Rule, failure to comply may result in administrative or legal action to gain compliance as well as the imposition of civil or criminal penalties. However, a [recent decision](#) in the U.S. Court of Appeals for the District of Columbia Circuit casts considerable doubt on the viability of this “Registration Rule” as a uniform system for tracking drones and other small unmanned aircraft and contacting their owners and operators.

The court heard a challenge to the Registration Rule brought by a “model aircraft hobbyist” who argued the FAA did not have the statutory authority to issue the Registration Rule as applied to model aircraft. The hobbyist’s argument centered on Section 336(a) of the [FAA Modernization and Reform Act of 2012](#). Section 336(a) of the Act provides in part that FAA “may not promulgate any rule or regulation regarding a model aircraft, or an aircraft being developed as a model aircraft,” if the aircraft in question is: (1) flown for hobby or recreational use; (2) is operated in accordance with community-based safety guidelines; and (3) is limited to certain size specifications, and is operated in a way that does not interfere with manned aircraft (including providing prior notice when flown within 5 miles of an airport). Section 336(c) defines “model aircraft” to mean an unmanned aircraft that is: (1) capable of sustained flight; (2) is flown within visual line of sight of the person operating the aircraft; and (3) is flown for hobby or recreational purposes.

The court agreed that the Registration Rule, as applied to model aircrafts, violated the statutory prohibition found in Section 336(a) of the Act. The court made quick work of the government’s arguments in favor of application of the Registration Rule to model aircraft, dismissing its claim that preexisting statutory requirements mandated registration for aircraft by noting that FAA had not treated the requirement as applicable to model aircraft prior to 2015. The court thus found that the Act forbids the FAA from promulgating rules or regulations regarding model aircraft, and the Registration Rule is a rule or regulation regarding model aircraft, leading the court to conclude that “[s]tatutory interpretation does not get much simpler. The Registration Rule is unlawful as applied to model aircraft.”

This decision has important ramifications to users of drones, of course. In many cases they are now exempt from registering with the FAA. However, some of the [media reports](#) on the decision may be overly broad in characterizing the decision as “striking down” registration requirements for all drones. More than once the court noted that its decision vacates the Registration Rule only to the extent it applies to “model aircraft” as defined in the Act. To the extent any drone is not flown within visual line of sight of the operator, or is used for purposes other than hobby or recreation, the Registration Rule may still apply.

So what’s next? First, the FAA may choose to appeal the decision to the entire D.C. Circuit or the Supreme Court. In addition, the agency may wish to address the reach of the Registration Rule to clarify whether it still applies to drones that do not meet the statutory definition of “model aircraft.” Finally, if Congress wants the FAA to require registration

of all drones, it can address the subject in legislation. An amendment to Section 336 of the Act could provide an exemption to the restriction on model aircraft rules and regulations for registration of drones or other aircraft. This would allow the FAA to promulgate a rule similar to the Registration Rule for whatever aircraft Congress wishes to include.

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