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Media Coalition to FAA, NTIA: Let News Drones Fly Now

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Survey Shows Some Changes to Proposed Rules Needed

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A news media coalition of nearly two dozen companies and professional associations has [urged the Federal Aviation Administration](#) (FAA) to enact regulations as soon as possible authorizing the use of unmanned aerial vehicles (UAVs) to gather news.

The coalition, which includes MLRC, also submitted comments to the [National Telecommunications and Information Administration](#) (NTIA) asserting that state laws provide adequate privacy protections while balancing First Amendment rights, and that no new federal privacy regulations are necessary to address UAVs, commonly known as “drones.”

Meanwhile, a [new survey](#) conducted under the leadership of the National Professional Photographers Association (NPPA) indicates that those answering favor a micro unmanned aerial system (mUAS) rule be implemented as soon as possible and that flights of such vehicles and other small UAVs be exempted from some of the currently proposed restrictions.

FAA Comments Largely Supportive, But Changes Needed

The FAA in February issued its long-awaited notice of proposed rulemaking outlining new regulations for commercial use of UAVs flying at 500 feet or less. Commercial UAV use is currently banned in the United States unless an operator receives a special exemption. The proposed rule would govern UAVs under 55 pounds, and the FAA also invited comment as to whether it should enact a separate rule governing UAVs less than 4.5 pounds. Canada has a special rule for that size of smaller UAVs.

In its comments on the proposed rule, the news media coalition reinforced that the FAA must take the unique role of journalism into close account in enacting regulations:

The News Media Coalition firmly believes that the development of a legal environment for safe [UAV] newsgathering will further the public’s First Amendment interest in the timely receipt of information on matters of public concern, and the First Amendment rights of journalists to gather news. [UAVs] provide the safest, most practical form of aerial newsgathering, which is safer and more efficient than helicopters or other manned aircraft, as are commonly employed by news organizations currently.

The news media coalition’s comments were largely supportive of the proposed rule. For example, the proposal would require special certification for UAV operators but no pilot’s license or special medical checkup, as FAA exemptions have required.

But the rule also would limit UAVs to daylight flights and forbid flights beyond the line of sight of the operator. It also would continue the ban of flights over people.

The coalition urged the FAA to relax restrictions even further, asserting that the FAA should:

- Measure the 500-foot height limit not only above the ground, but also above any buildings or other tall obstacles, to better anticipate news operations in cities or over forested land;

- Allow operations at night with certain safeguards, suggesting that navigational lighting, transponders, and other technology can be used to ensure safety.
- Allow flights beyond the operator's line of sight, again with the use of technology, such as triangulation of a UAV's location through cellphone towers or GPS, which would ensure tracking and safety.
- Allow flights over people, so long as the drone remains at an altitude of at least 50 feet.

The coalition also endorsed the concept of a "micro" category of UAVs weighing under 4.5 pounds. The coalition also called on the FAA to authorize that category of use for newsgathering immediately, rather than awaiting enactment of a final rule. The final rule is not expected to be in place until late 2016 or 2017 at the earliest.

Coalition Tells NTIA No New Privacy Regulation Needed

The FAA has repeatedly resisted calls from Congress for new privacy regulations, telling lawmakers that the agency lacks the authority or expertise in that area. To address congressional pressure, the Obama Administration directed NTIA, a component of the U.S. Department of Commerce, to convene meetings of UAV stakeholders to discuss voluntary best practices standards.

In response to the NTIA's request for comments about the scope of those upcoming meetings, the news media coalition submitted a letter arguing that "robust, extensive and well-established state privacy laws already protect privacy."

The coalition's comments to the NTIA pointed out that ever since Kodak introduced the Brownie, the world's first portable camera, in the 1880s, American society has worked through initial public hysteria accompanying the development of each new form of technology. The comments noted state privacy laws and court decisions have continuously kept pace with technology, and that – from Peeping Tom laws to eavesdropping statutes, to common law intrusion precedent – modern state laws provide remedies that protect privacy regardless of the newsgathering platform.

The coalition also noted that these state laws have carefully balanced the constitutional interests in newsgathering:

State laws also safeguard the First Amendment rights of journalists to gather the news, and the public's right to receive the news, by firmly protecting visual journalism in public places. Federal and state courts applying these state laws have thus developed a robust body of case law balancing the right to privacy against the constitutional protections for the free press.

Because "the existing framework of state laws will apply equally well to" UAVs, the news media coalition concluded, new federal privacy protections would not be "warranted or wise."

The coalition consists of: Advance Publications, Inc.; A.H. Belo Corp.; American Broadcasting Companies, Inc.; the American Society of Media Photographers; The Associated Press; Cable News Network, Inc.; Capitol Broadcasting Co.; Cox Media Group, LLC; Fusion Media Network, LLC; Gannett Co., Inc.; Getty Images (US), Inc.; Gray Television Group, Inc.; Media Law Resource Center; National Press Photographers Association; MPA – The Association of Magazine Media; NBCUniversal Media, LLC; The New York Times Company; Reporters Committee for Freedom of the Press; The E.W. Scripps Company; Sinclair Broadcast Group, Inc.; Society of Professional Journalists; Thomson Reuters (Markets) LLC.

Survey of Journalists

On March 13, 2015 the National Press Photographers Association (NPPA) distributed a survey for news gatherers concerning the FAA Notice of Proposed Rule Making (NPRM) Regarding Operation and Certification of Small Unmanned Aircraft Systems (sUAS). The survey also included a few questions on privacy related to a Notice for Comment in the Federal Register by the National Telecommunications and Information Agency (NTIA) concerning Privacy, Transparency, and Accountability Regarding Commercial and Private Use of UAS.

The survey remained open until April 11, 2015 during which time it received 428 responses. Of those who answered almost thirty percent (30%) were independent journalists while twenty-two percent (22%) were staffers for news organizations. Of the twenty percent (20%) who answered "other" most were also independent photographers. Forty-four percent (44%) had greater than twenty (20) years' experience in their profession.

Not all respondents completed every question, but of those that did:

- Ninety percent (90%) favor an expedited Section 333 process for standard applications and COA approval process.
- Eighty-two percent (82%) were at least satisfied with the five hundred foot (500') ceiling.

- Seventy-seven percent (77%) favor an exception for newsgathering coverage of a weather event under certain restrictions.
- Seventy-five percent (75%) of respondents say they are knowledgeable or better on the topic of UAVs.
- Seventy-five percent (75%) of respondents have had at least some conversation about privacy and UAVs in their newsroom or within their organization.
- Seventy-two percent (72%) were unsatisfied with the daylight only rule.
- Seventy-two percent (72%) expressed varying degrees of dissatisfaction with regulations requiring each sUAS to be registered.
- Sixty-five percent (65%) of respondents say they are very confident that UAVs will be a useful tool in the newsroom.
- Sixty-one percent (61%) are very concerned about the state's privacy efforts.
- Fifty-eight percent (58%) say they have at least some skill with a UAV.
- Fifty-six percent (56%) of respondents are very concerned that the FAA's rules will restrict newsrooms from using UAVs.
- Fifty-three percent (53%) are very concerned about the president's privacy efforts.
- Fifty-one percent (51%) are very concerned about legal protections for privacy.
- Fifty percent (50%) favor a micro unmanned aerial system (mUAS) category with a vehicle weight of 6 lbs. or less and of those twenty-four percent (24%) support a vehicle weight of 4.4 lbs. or less.
- Forty-two percent (42%) favor sUAS operation Beyond Visual Line of Sight (BVLOS) using First-Person View (FPV).

Conclusion

Overall the coalition members believe the privacy protections provided by many state laws adequately balance those concerns with First Amendment newsgathering rights, and that no new NTIA issued privacy guidelines are needed.

With regard to safety issues the coalition members, supported by the NPPA survey findings, favor a micro drone rule – to be implemented as soon as possible. They also support a change in some of the currently proposed FAA restrictions on the use of small and micro drones to provide greater operational flexibility commensurate with their size and weight.

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