

That Won't Fly: The D.C. Circuit Strikes Down the FAA's Registration Regime for Recreational Drones

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Last week, the U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") struck down an FAA regulation that required the owners of small Unmanned Aircraft Systems ("UAS") to register with the agency (the "Registration Rule").

In 2012, Congress passed the FAA Modernization and Reform Act ("FMRA"), which prohibited the FAA from creating "any rule or regulation regarding a model aircraft." Under the FMRA, a model aircraft is a UAS that is:

- capable of sustained flight in the atmosphere;
- flown within visual line of sight of the UAS operator; and
- flown for hobby or recreational purposes.

Background:

In December of 2015, despite the prohibition in the FMRA, the FAA rushed to create a rule requiring owners of drones between 0.55 and 55 pounds to register said drones with the agency for a five dollar fee. As a result of the Registration Rule, approximately 760,000 hobbyists have registered model aircraft with the FAA.

However, a D.C. area drone hobbyist named John Taylor challenged the FAA registration regime on two grounds: (1) under the FMRA, the FAA lacked the legal authority to issue the Registration Rule; and (2) a public notice issued by the FAA prohibiting drone operations in select geographic areas violated the FMRA.

On the first point, the D.C. Circuit sided with Taylor – given that Section 336(a) of the FMRA says that the FAA "may not promulgate any rule or regulation regarding a model aircraft," the Registration Rule was invalid insofar as it applied to model aircraft.

On the second point, however, the D.C. Circuit never reached the merits of the issue and sided with the FAA, because Taylor failed to challenge the public notice in a timely manner.

Next Steps:

Despite the D.C. Circuit's ruling, there might still be a future for recreational drone registration. Although the stereotypical regulatory posture of corporate enterprises is to oppose federal regulation of their products and services, the nascent drone industry is an exception. In response to the ruling, the Drone Manufacturers Alliance ("DMA"), a coalition comprised of leading consumer drone

companies such as 3DR, DJI, and Parrot, put out a statement:

“DMA is studying implications of ruling closely, but believes the existing system has worked well to protect the interests of safe and responsible pilots as well as the interests of society at large.”

Given the dangers associated with drone operations by untrained or careless users, UAS companies appear to generally favor the educational functions and accountability associated with registration regimes.

DJI appears to be going even further – they just announced that all of their customers must register their drones with the company, and that customer drones will not fully function until after registration is complete.

Moving forward, the FAA still has two options – appeal this decision for en banc review by a panel of judges, or work with Congress to amend the text of the FMRA. In the interim, however, the small UAS registration regime has been grounded.