



**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 48**

**[Docket No. FAA-2018-1084, Amdt. No. 48-2]**

**RIN 2120-AL32**

**External Marking Requirement for Small Unmanned Aircraft**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule requires small unmanned aircraft owners to display the unique identifier assigned by the FAA upon completion of the registration process (registration number) on an external surface of the aircraft. Small unmanned aircraft owners are no longer permitted to enclose the FAA-issued registration number in a compartment.

**DATES:** This rule is effective [INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Send comments identified by docket number FAA-2018-1084 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

**Privacy:** In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

**Docket:** Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Natalie Wilkowske, Aircraft Registration Branch, Civil Aviation Registry, Flight Standards Service, Registry Bldg, Room 118, 6425 S. Denning Ave., Oklahoma City, OK 73169-6937; telephone 1-844-FLY-MYUA; email [UAS-ExternalMarking@faa.gov](mailto:UAS-ExternalMarking@faa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Executive Summary**

In the interim final rule titled “Registration and Marking Requirements for Small Unmanned Aircraft” (Registration IFR), the FAA provided a web-based aircraft registration process for the registration of small unmanned aircraft to facilitate compliance with the statutory requirement that all aircraft register prior to operation. See 80 FR 78593 (December 16, 2015). The Registration IFR also required that the FAA-issued number assigned during the registration process be affixed or marked on the small unmanned aircraft. To grant flexibility to the diverse types of small unmanned aircraft commercially available, the FAA required that the registration number marking be readily accessible and maintained in a condition that is readable and legible upon close visual inspection. The IFR further explained that markings in an enclosed compartment, such as a battery compartment, will be considered readily accessible if they can be accessed without the use of tools. See *id.* at 78627-28.

This interim final rule revises the small unmanned aircraft marking requirement by requiring the registration number to be marked on the exterior of the aircraft. The FAA is taking this action to address concerns expressed by the law enforcement community and the FAA’s interagency security partners regarding the risk a concealed explosive device poses to first responders who must open a compartment to find the small unmanned aircraft’s registration number.

## II. Good Cause for Immediate Adoption

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for “good cause,” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

Members of the law enforcement and security communities have expressed concern that the current rule, which allows registration numbers to be marked in an enclosed compartment, presents an imminent risk of harm to first responders. When responding to a security incident involving an unmanned aircraft, first responders seek to identify the owner or operator.<sup>1</sup> One way to do that is to obtain the registration number of the unmanned aircraft. Requiring first responders to physically handle a small unmanned aircraft to obtain the registration number poses an unnecessary safety and security risk to those individuals, as well as to others in the immediate proximity to the aircraft, because of the potential for the unmanned aircraft to conceal an explosive device in an enclosed compartment (such as the battery compartment), designed to detonate upon opening. Requiring small unmanned aircraft owners to place the registration number on an external surface of the aircraft helps to mitigate this risk because a first responder can view the number without handling the aircraft, or by using other technologies that allow for remote viewing of the aircraft’s external surface.

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<sup>1</sup> During an interagency meeting on December 2, 2016, regarding unmanned aircraft systems policy, several elements of the law enforcement community and the FAA’s interagency security partners raised concerns regarding the part 48 provision that allows the small unmanned aircraft registration number to be placed in an enclosed compartment, such as a battery compartment. Additionally, the National Protection and Programs Directorate of the Federal Protective Service sent a letter to the FAA Administrator on May 5, 2017, to highlight its specific concerns about this provision and to request that the FAA amend it.

The FAA had intended to make this change shortly after various members of the law enforcement and security communities communicated their concerns in late 2016 and early 2017. The FAA was not able to act immediately, however, due to litigation challenging the applicability of the Registration IFR to model aircraft as defined in section 336 of Public Law 112-95.<sup>2</sup> The FAA was reluctant to act during the pendency of the litigation because model aircraft comprise the largest segment of registered unmanned aircraft that would be subject to the revised marking requirement.<sup>3</sup> The National Defense Authorization Act for Fiscal Year 2018 (NDAA)<sup>4</sup> resolved the uncertainty when it was signed into law on December 12, 2017 by restoring the applicability of the Registration IFR to model aircraft. Having resolved the applicability issue, the FAA finds that notice and comment would be contrary to the public interest. After highlighting this vulnerability in a proposed rule, first responders could be exposed to additional risk during the notice and comment period as a result of the attention drawn to the vulnerability. Given that the vulnerability would remain unmitigated while the proposed rule is being finalized, the agency has determined there is good cause to issue the rule without seeking prior notice and comment.

Additionally, the APA requires agencies to delay the effective date of regulations for 30 days after publication, unless the agency finds good cause to make the regulations effective sooner. See 5 U.S.C. 553(d). Good cause exists for making this regulation effective 10 days from the date of publication based on the same rationale in the previous discussion regarding forgoing notice and comment in accordance with 5 U.S.C. 553(b)(3)(B).

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<sup>2</sup> *Taylor v. Huerta*, Case No. 15-1495, (D.C. Cir. May 19, 2017).

<sup>3</sup> As of May 31, 2018, 936,957 model aircraft owners completed the registration process and 218,033 non-model aircraft were registered. Model aircraft owners may apply a single registration number to multiple small unmanned aircraft. See 14 CFR 48.115 and 48.200.

<sup>4</sup> Pub. L. 115-91.

### **III. Comments Invited**

Consistent with the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11034; February 26, 1979), which provide that to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice, the Department requests comment on this interim final rule. The Department encourages persons to participate in this rulemaking by submitting comments containing relevant information, data, or views. The Department will consider comments received on or before the closing date for comments. The Department will consider late filed comments to the extent practicable. This interim final rule may be amended based on comments received.

### **IV. Authority for this Rulemaking**

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules; and 49 U.S.C. 44701(a)(5), which requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations and setting minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

This rule is also promulgated pursuant to 49 U.S.C. 44101-44106 and 44110-44113, which require aircraft to be registered as a condition of operation and establish the requirements for registration and registration processes.

## **V. Discussion of the Interim Final Rule**

The Registration IFR established a web-based aircraft registration process for the registration of small unmanned aircraft to facilitate compliance with the statutory requirement that all aircraft register prior to operation. See 80 FR 78593 (December 16, 2015). The Registration IFR required that the FAA-issued registration number be affixed or marked on the small unmanned aircraft. To grant flexibility to the diverse types of small unmanned aircraft commercially available, the FAA required that the registration number marking be readily accessible and maintained in a condition that is readable and legible upon close visual inspection. 14 CFR 48.205(c). The IFR further explained that markings in an enclosed compartment, such as a battery compartment, will be considered readily accessible if they can be accessed without the use of tools. See 80 FR at 78628. The FAA included this provision in the Registration IFR to accommodate the television and motion picture industry, which did not want markings to show in theatrical and television productions, and hobbyists who wanted to preserve the authenticity of model aircraft that replicate other aircraft. The FAA also included this provision to allow future consideration of the use of a serial number as a unique identifier for purposes of registration. See 80 FR at 78628.

As discussed previously, after the Registration IFR became effective, the law enforcement community and FAA's interagency security partners highlighted the risk to first responders when registration numbers are permitted to be concealed. To address this safety and security risk, the FAA is amending 14 CFR 48.205(c) to require the registration number be displayed and visible on an external surface of the small unmanned aircraft. The FAA has determined that the importance of mitigating the risk to first responders outweighs the previously

discussed aesthetic interests and justifies the minimal burden and inconvenience this change could impose on small unmanned aircraft owners.

This interim final rule does not change the acceptable methods of external marking provided in § 48.205(a) and (b). Additionally, the FAA does not specify a particular external surface upon which the registration number must be placed. The requirement is that it can be seen upon visual inspection of the aircraft's exterior. This interim final rule is effective [INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Owners must ensure each aircraft meets this requirement for any operation that occurs after [INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

## **VI. Regulatory Notices and Analyses**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354), as codified in 5 U.S.C. 601 *et seq.*, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39, as amended, 19 U.S.C. Chapter 13) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State,

local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this interim final rule.

#### A. Regulatory Evaluation

This rule revises the requirements regarding the placement of the registration number assigned to a small unmanned aircraft. Under the Registration IFR, the FAA allowed the registration number to be placed in an enclosed compartment (e.g., the battery compartment) on the small unmanned aircraft, but the FAA now requires the number to be placed on the exterior of the aircraft. While this rule changes one possible location where the registration number may be displayed, the cost to operators/owners is minimal as they will continue to use the same methods to mark the aircraft. The FAA acknowledges that there may be some minimal costs associated with reduced aesthetic freedom for UAS designed to look a particular way.

As previously discussed, if the registration number is not readily visible on the exterior of the small unmanned aircraft, first responders or other persons seeking to identify the small unmanned aircraft owner must open such enclosed compartments to view the unique identifier. Requiring first responders to physically handle a small unmanned aircraft to obtain a registration number adds an unnecessary safety and security risk to those individuals, as well as to others in the immediate proximity to the aircraft. This rule helps to mitigate those risks.

The Office of Information and Regulatory Affairs has determined that this interim final rule is a significant regulatory action pursuant to Executive Order 12866. It requires that owners of small unmanned aircraft mark the registration number on an external surface of the aircraft,

which poses a minimal burden and inconvenience if an owner must re-mark the aircraft to comply with this rule.

#### B. Regulatory Flexibility Determination

The Regulatory Flexibility Act, in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever an agency is required by 5 U.S.C. 553, or any other law, to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553, after being required by that section or any other law to publish a general notice of proposed rulemaking. The FAA found good cause to forgo notice and comment and any delay in the effective date for this rule. As notice and comment under 5 U.S.C. 553 are not required in this situation, the regulatory flexibility analyses described in 5 U.S.C. 603 and 604 are not required.

#### C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this interim final rule and determined

that it has a legitimate domestic objective—the protection of safety—and does not operate in a manner that excludes imports that meet this objective.

#### D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million.

This interim final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

#### E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this interim final rule.

#### F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. As stated in the Registration IFR,

the registration and marking requirements for small unmanned aircraft apply only to operations within the United States and there are no ICAO standards for marking small unmanned aircraft.<sup>5</sup>

## G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6f of this order and involves no extraordinary circumstances.

The FAA has reviewed the implementation of the rule and determined it is categorically excluded from further environmental review according to FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5-6.6f. The FAA has examined possible extraordinary circumstances and determined that no such circumstances exist. After careful and thorough consideration of the action, the FAA finds that this Federal action does not require preparation of an Environmental Assessment or Environmental Impact Statement in accordance with the requirements of NEPA, Council on Environmental Quality (CEQ) regulations, and FAA Order 1050.1F.

## **VII. Executive Order Determinations**

### A. Executive Order 13132, “Federalism”

The FAA has analyzed this interim final rule under the principles and criteria of Executive Order 13132, “Federalism.” The agency has determined that this action will not have a

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<sup>5</sup> Standard Practice for UAS Registration and Marking (Excluding Small Unmanned Aircraft Systems), ASTM F2851-10 (2018), *available at* <https://www.astm.org/Standards/F2851.htm>.

substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this interim final rule under Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (May 18, 2001). The agency has determined that it is not a “significant energy action” under the executive order, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

D. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This rule is not subject to the requirements of Executive Order 13771 (82 FR 9339, Feb. 3, 2017) because the costs associated with the rule are considered *de minimis*.

## **VIII. How to Obtain Additional Information**

### **A. Rulemaking Documents**

An electronic copy of a rulemaking document may be obtained by using the Internet—

- Search the Federal Document Management System (FDMS) Portal

(<http://www.regulations.gov>);

- Visit the FAA's Regulations and Policies Web page at

[http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/)

or

- Access the Government Publishing Office's Web page at:

<http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request (identified by amendment or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677.

All documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced above.

### **B. Comments Submitted to the Docket**

Comments received may be viewed by going to <http://www.regulations.gov> and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name

of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

### C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Public Law 104-121)(set forth as a note to 5 U.S.C. 601), as amended, requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the “For Further Information Contact” section at the beginning of the preamble. You can find out more about SBREFA on the Internet at:

[http://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

### **List of Subjects in 14 CFR Part 48**

Aircraft, Reporting and recordkeeping requirements, Signs and symbols, Small unmanned aircraft, Unmanned aircraft.

### **The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

### **PART 48—REGISTRATION AND MARKING REQUIREMENTS FOR SMALL UNMANNED AIRCRAFT**

1. The authority citation for part 48 continues to read as follows:

**AUTHORITY:** 49 U.S.C. 106(f), 106(g), 40101, 40103, 40113-40114, 41703, 44101-44103, 44105-44106, 44110-44113, 45302, 45305, 46104, 46301, 46306.

2. In § 48.205, revise paragraph (c) to read as follows:

**§ 48.205 Display and location of unique identifier.**

\* \* \* \* \*

(c) The unique identifier must be legibly displayed on an external surface of the small unmanned aircraft.

Issued under the authority provided by 49 U.S.C. 106(f), 41703, 44101-44103, in Washington, DC on December 21, 2018.

Daniel K. Elwell,

Acting Administrator.

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