



Enforcement of Drone Regulations

By Dean Greenblatt

If you are of a certain age, you may recall building model airplanes out of balsa wood or plastic when you were a kid. Maybe you even installed a small liquid-fueled motor and radio-controlled servos (small motors that move flight controls) operated by a hand-held transmitter. In the last decade, radio-controlled (RC) hobby aircrafts have been all but replaced by small, unmanned aircraft systems — more commonly known as drones. The boom in drone use has resulted in many new operators facing civil penalties and criminal charges for unknowingly violating local or Federal Aviation Administration (FAA) regulations.

At a Glance

The boom in use of small, unmanned aircraft systems — more commonly known as drones — has resulted in many new operators facing civil penalties and criminal charges for unknowingly violating local or Federal Aviation Administration regulations.

This article explores the most common FAA regulations drone operators violate, how violations come to the FAA's attention, how the FAA enforces its rules, and what drone operators should do if they find themselves on the receiving end of an FAA letter of investigation. Also discussed is the desire of Michigan political subdivisions to enact drone regulations contrary to the state's preemption statute.

The rise of the drones

In recent years, drones have risen in popularity. A quick Amazon search reveals that there are drones for kids, teens, adult hobbyists, and professionals at prices ranging from \$25 to more than \$1,000. Both new and existing industries have prospered because of the unique capabilities of drones: real estate marketing, movie production, farming, infrastructure inspection, augmenting emergency services, search and rescue, insurance adjusting, surveying, and transporting medical and consumer products have benefited from the application of new drone technology.

What many new drone operators don't realize is that the FAA regulates drone flights, and drones fall into the same category as the RC aircraft we played with as kids. Both are considered unmanned aircraft, defined as an aircraft operated

without the possibility of direct human intervention from within or on the aircraft.¹ Further, an unmanned aircraft system consists of the RC airplane or the drone and the components needed to communicate with it — such as the handheld transmitter or iPad or iPhone controller — and anything else required to operate it safely and efficiently in the national airspace system.² The primary difference between RC aircraft and drones, aside from the technological advancements, is that an RC aircraft must be constantly directed along a flight path by its operator, whereas a drone can autonomously maintain stable flight in a hover until otherwise directed to move by its operator.

Initially, the FAA's categorization of drones as unmanned aircraft was of little concern to drone operators. However, the rise in drone popularity prompted the FAA to introduce new requirements and regulations for drones and their operators. For example, before 2016 there was no distinction between recreational and commercial drone operators (recreational drone operators do not fly for compensation; commercial drone operators do). In 2016, the FAA required commercial drone operators to obtain a remote pilot certificate. To qualify for a certificate, an individual must be at least 16 years old, demonstrate aeronautical knowledge by passing an FAA test, and be vetted by the Transportation Security Administration (TSA). A certificate also carries additional reporting and documentation responsibilities.³

Another 2016 FAA rule that may be unfamiliar to many new drone owners is a registration requirement tied to the weight of the drone. All unmanned aircraft used for recreational purposes weighing between 0.55 and 55 pounds, including drones, must be registered with the FAA. This includes most toy drones that kids receive as gifts.⁴ However, a drone used for commercial purposes must be registered with the FAA irrespective of its weight. Additionally, both recreational and commercial operators must carry proof of registration and certification if required.⁵

Additionally, the federal statute defining recreational flight, 49 USC 44809, was amended in 2018 to include 12 specific requirements for a drone flight to be considered recreational.⁶ It states that recreational drone operators must do all of the following:

1. Register the drone and mark it with the assigned registration number. They must also possess proof of registration while operating it.
2. Operate the drone in accordance with community-based organization guidelines developed in coordination with the FAA.
3. Fly the drone for recreational purposes only.
4. Fly the drone no more than 400 feet above the ground when in uncontrolled airspace.

5. Obtain authorization before flying the drone in controlled airspace.
6. Keep the drone within an unaided visual line of sight.
7. Take an aeronautical knowledge and safety test and carry proof of passing it.⁷
8. Refrain from flying the drone at night without required additional equipment.
9. Give way to, and not interfere with, manned aircraft.
10. Not fly over any person or moving vehicle without meeting certain requirements.
11. Not interfere with emergency response activities.
12. Not operate the drone in a careless or reckless manner.⁸

New drone operators often run afoul of 49 USC 44809 simply because they are unfamiliar with its requirements.

Most recently, in December 2020, the FAA published a final rule requiring manufacturers to initiate production of drones that are remote ID-capable within 18 months.⁹ Remote ID technology is like an electronic license plate that allows for identification of an unmanned aircraft's registration information from a distance. Retrofitting existing drones with remote ID technology will be required after an additional 12 months. Remote ID will also broadcast the location of the operator's station, making identifying errant operators and subsequent enforcement of regulations much easier for the FAA.¹⁰

Finding violators, enforcing rules

So how does the FAA find drone operators who have violated regulations? Usually, the drone operators themselves tip off the FAA by posting videos of unlawful flights to their social media accounts.¹¹ The most common offenses that get the FAA's attention include drones flying over people or moving vehicles, and drone flights that are obviously beyond the operator's visual line of sight. Occasionally, a video will show a drone flying too close to manned aircraft, such as at an air show, or a flight that is too close to a major airport hub. Drone operators truly are their own worst enemies simply because they are unfamiliar with current drone regulations and are all too willing to share that unfamiliarity by publishing incriminating videos on social media.

It is important to note that as a civil agency of the United States Department of Transportation, the FAA has no ability to criminally prosecute violators. However, the FAA *can* refer criminal matters to the Department of Justice for prosecution. A more common strategy for the FAA, though, is employing one of its two enforcement mechanisms: certificate actions and civil penalties. For example, if a drone operator is certified as a remote pilot, the FAA may sanction the operator consistent with its Compliance and Enforcement Program.¹²



Sanctions can vary from remedial training to fines and certificate revocation.

In the case of a recreational drone operator without a certificate, the FAA is typically limited to imposing civil penalties. For each violation of a regulation, the FAA's maximum civil penalty is \$1,501 and is adjusted upward for inflation each year.¹³ However, each flight that runs afoul of federal aviation regulations typically includes multiple violations. For example, if a drone flies in controlled airspace without authorization, the FAA will likely charge that the operator did not fulfill all the requirements to qualify as a recreational flight. Therefore, the first charge will be that the operator did not hold a remote pilot certificate. The next charge will claim the flight was operated in airspace without authorization. Finally, the FAA will charge that the operation was careless or reckless to the point of endangering the life or property of another. The civil penalties for these three separate violations tally up to a total of \$4,503 — and that would be the best-case scenario. Typically, the FAA does not stop with just three violations from a single flight.

Once the FAA has decided to charge a drone operator with a violation, it will contact the operator through a request for an interview or a letter of investigation. Unfortunately, this initial contact provides the drone operator with an excellent opportunity for self-incrimination. Under the guise of information gathering, a competent FAA inspector may be able to obtain admissions from the drone operator — confirming that he or she was the unlicensed operator of an unregistered drone, and also confirming the location, date, and time of the violation. And while it is true that the FAA considers a compliant attitude when it formulates an enforcement strategy, the best move for a drone operator contacted by the FAA is immediately notifying a competent aviation attorney. An experienced aviation attorney will be familiar with the tactics FAA inspectors employ and can intercede early to minimize negative outcomes.

Michigan's drone preemption statute was specifically designed to eliminate this patchwork of local regulation. However, litigation leading to a statewide precedent has not yet worked its way through the Michigan courts.

Local regulations

It is important for attorneys to know that drone operators need to be concerned with more than just the FAA. Local governments in Michigan have also sought to enter the realm of drone regulation within their jurisdictions. For example, in a case that generated the attention of the drone community worldwide, Genesee County park rangers arrested and attempted to prosecute a man for flying his drone from Genesee County Parks and Recreation Commission property in December 2018. The arrest was recorded on video.¹⁴ At the time, the county had an ordinance providing that

“[n]o person shall make any ascent or descent in any balloon, airplane or parachute on any land or waters administered by or under the jurisdiction of the Commission without first obtaining written permission from the Parks Commission or its agent or except as may be necessary in the event of an emergency.”¹⁵

However, the prosecution abandoned the case because the ordinance did not refer to drones specifically. The parks commission and its rangers were subsequently informed that Michigan's Unmanned Aircraft Systems Act¹⁶ barred the county from enacting or enforcing an ordinance or resolution regulating the ownership or operation of unmanned aircraft or from otherwise engaging in the regulation of owning or operating unmanned aircraft.¹⁷

Despite being advised of the preemption statute, Genesee County enacted a new ordinance specifically banning drone flights and possession of drones on parks commission property.¹⁸ The commission also created comprehensive requirements for commercial drone activity including a daily fee and requiring a burdensome liability policy naming the commission as an insured.¹⁹ The commission's open defiance prompted the creation of a nonprofit organization, the Michigan Coalition of Drone Operators (MCDO), to challenge the county.

MCDO sued Genesee County and its parks commission in July 2019. On February 10, 2020, Genesee County Judge Joseph J. Farah granted an injunction prohibiting the commission's enforcement of any ban on possession, use, or operation of drones. The commission amended its drone ban on February 13, 2020, allowing the possession and operation of unmanned aircraft in accordance with federal and state laws.

Genesee County is not the only Michigan political subdivision with a drone ban. An Ottawa County Parks and Recreation Commission ordinance bans the use or operation of drones within or upon commission park property without prior written permission. A violation carries a \$100 fine.²⁰ Section 23 of Kent County's parks ordinances prohibits the use of county parks as a takeoff or landing site for aircraft or other flying apparatus; violating the ban is punishable by 90 days' imprisonment and a \$500 fine;²¹ Kent County's corporation counsel has informed MCDO that it will not enforce § 23 against drones. Michigan State University bans the landing of aircraft on its property; a violation of the ordinance carries a sentence of up to 90 days in jail or a \$100 fine, or both.²² Similarly, the University of Michigan bans the operation, takeoff, landing, and overflight of drones on university property. A violation is punishable by a jail sentence of 10 to 60 days or a fine, or both.²³

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Conclusion

It is safe to say most new recreational drone operators are unfamiliar with the regulations outlined in this article. It is important for drone operators to educate themselves on federal and state regulations governing drone operation to avoid becoming the recipient of a letter of investigation from the FAA or an unfortunate interaction with local police. ■



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ENDNOTES

- 49 USC 44801(11).
- 49 USC 44801(12).
- Summary of Small Unmanned Aircraft Rule (Part 107)*, FAA News, Federal Aviation Admin (June 21, 2016), available at <https://www.faa.gov/uas/media/Part_107_Summary.pdf> [<https://perma.cc/UT25-9FQQ>]. All websites cited in this article were accessed July 4, 2021.
- Register Your Drone*, Federal Aviation Admin (December 2, 2020) https://www.faa.gov/uas/getting_started/register_drone/ [<https://perma.cc/Z9ME-DQN4>].
- 14 CFR 48.15, 49 USC 44103(d), 49 USC 44809(a)(8), 49 USC 44809(a)(7), and 14 CFR 107.7(a)(2).
- See also Advisory Circular 97-57B — Exception for Limited Recreational Operations of Unmanned Aircraft, AFS-800, Federal Aviation Admin (May 31, 2019), available at <https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/1036029> [<https://perma.cc/Q58V-YWL2>].
- The Recreational UAS Safety Test (TRUST)*, Federal Aviation Admin (June 22, 2021) <https://www.faa.gov/uas/recreational_fliers/knowledge_test_updates/> [<https://perma.cc/2VVB-ZJ7>].
- Id.*
- Remote Identification of Unmanned Aircraft (Final Rule), 86 Fed Reg 4390 (January 15, 2021).
- Id.*
- E.g., *FAA investigating drone flight near Blue Angels flyover in Detroit*, Fox 2 Detroit (May 15, 2020) <<https://www.fox2detroit.com/news/faa-investigating-drone-flight-near-blue-angels-flyover-in-detroit>> [<https://perma.cc/69C3-KK2Q>].
- FAA Order 2150.3c, chg 3, *FAA Compliance and Enforcement Program* (January 24, 2020), available at <https://www.faa.gov/document_library/media/Order/FAA_2150.3C_with_CHG_3.pdf> [<https://perma.cc/P8T7-AEUW>].
- 49 USC 46301(a)(1).
- Drones and Genesee County Parks: Synopsis*, posted by jacuzziabusguy, YouTube (February 16, 2020) <<https://youtu.be/rv8znELHuCM>> [<https://perma.cc/H36G-37PW>].
- Park Rules, Section XXIII "Balloons, Airplanes and Parachutes," Genesee & Lapeer Counties (Revised April 2008), available at <http://geneseecounty.parks.org/images/contentimages/file/park_rules.pdf> [<https://perma.cc/NYU8-L6M9>].
- MCL 259.301 *et seq.*
- MCL 259.305(1).
- Genesee County Parks and Recreation Comm Park Rules, Section P910615 "Aircrafts and Drones" (revised January 23, 2019).
- Id.*
- Parks Facilities Rules & Regulations, Ordinance 94-3 as Amended by Ordinance 17-1, Ottawa County Parks & Recreation Comm (March 14, 2017), available at <https://www.miottawa.org/parks/pdf/park_rules.pdf> [<https://perma.cc/97LF-M5NQ>].
- Kent County Parks Ordinance No. 3-11-04-20, Section 23 "Aviation" (amended January 5, 2012).
- Bylaws, Ordinances & Policies, Ordinance 9.00 "Aircraft," Board of Trustees of Michigan State University (amended December 14, 2012), available at <<https://trustees.msu.edu/bylaws-ordinances-policies/ordinances/ordinance-9.00.html>> [<https://perma.cc/Q5QH-KXJA>].
- Article XVI, "An Ordinance to Regulate Parking and Traffic and to Regulate the Use and Protection of the Buildings and Property of the Regents of the University of Michigan" (revised July 2020), available at <https://regents.umich.edu/files/meetings/01-01/Regents_Ordinance_July_2020.pdf> [<https://perma.cc/G74P-UT3R>].