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Drone Law: Legal Research Basics and Sources

By Kincaid C. Brown

Drones, legally called “unmanned aircraft systems”¹ (UAS), are primarily governed by federal law with some aspects overseen by state and local law. The system includes the aircraft itself and its associated elements for communication and operation. This article discusses the basic framework of federal and Michigan law governing UAS.

Federal law

Federal law has set requirements that differentiate between recreational use and commercial or work use. Recreational use is governed by a 2018 statute,² while commercial and work use must abide by the general statutory requirements³ and the more specific regulations promulgated by the Federal Aviation Administration (FAA).⁴ The FAA regulations are the default for drones weighing under 55 pounds while the statutory carve-out for recreational use is purely an exception.

Recreational UAS pilots must adhere to several requirements. These include mandates that the drone stay within the visual line of sight of the pilot,⁵ the UAS does not interfere and does give way to any manned aircraft,⁶ and the pilot has passed a safety test.⁷ Drones flown for recreation largely must fly under 400 feet above ground level and stay out of certain types of airspace or receive prior authorization to do so; the FAA has a handy diagram outlining these height restrictions and restricted areas on its website.⁸ Pilots must also register UAS that weigh more than .55 pounds (250 grams); registration for drones weighing less than 55 pounds may be done on the FAA website.⁹ Recreational drone pilots must also adhere to safety guidelines as set by “community-based organizations” (CBOs) in consultation with the FAA.¹⁰ CBOs are defined in the statute as non-profit organizations in further-

ance of model aviation that provide programming and support for pilots of model aircraft.¹¹ The FAA has not yet begun to officially recognize CBOs for this purpose.¹²

Pilots flying drones for commercial or business purposes must adhere to the relevant FAA regulations; a new set of regulations became effective in April.¹³ Commercial UAS pilots must obtain a remote pilot certificate requiring passage of an aeronautical knowledge test.¹⁴ Convictions related to alcohol or drug offenses are grounds for denial of applications for a remote pilot certificate or suspension or revocation of granted certificates.¹⁵ Drones may not be operated from a moving aircraft at any time, or from a moving vehicle unless the flight is over a sparsely populated area and the drone is not transporting another person’s property for compensation or hire.¹⁶

The original regulations did not allow for drones to be flown over people or at night. The new regulations that took effect in April allow these flights as long as some requirements are met. The original rule was that no drones could be flown over human beings unless the person was participating in the operation of the drone or was in a structure or stationary vehicle that would provide protection from a falling drone.¹⁷

To fly UAS at night, pilots must meet two conditions: the pilot must take the updated aeronautical knowledge test for night

drone piloting and the drone must have anti-collision lighting that is visible for at least three miles with a flash rate sufficient to avoid a collision.¹⁸ The same lighting requirement is mandated for the period of civil twilight, which, except for Alaska, is defined as the 30 minutes before sunrise and after sunset.¹⁹ This rule has been revised to allow for additional operations over people based on the size of the drone. The most freedom is given to pilots of the smallest UAS as they would cause the least amount of harm landing on a person; these are category 1 drones which weigh .55 pounds or less and have no rotating parts that could cause lacerations.²⁰ These drones are permitted to fly over people.²¹ Even so, category 1 UAS may not be flown over open-air assemblies unless they are equipped with remote identification equipment.²² The ability to fly over people becomes more restrictive as the drones are larger — classified in categories 2 to 4.

Michigan law

Michigan passed its Unmanned Aircraft Systems Act²³ in 2016. The statutes specify that operation of an unmanned aircraft system, defined in a manner similar to the federal definition,²⁴ must be done pursuant to federal law for both commercial²⁵ and recreational²⁶ purposes. Michigan law specifies

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that drones may not interfere with public safety personnel performing their duties²⁷ and largely protects state-licensed facilities from surveillance or inspection by state of Michigan bodies without consent, a search warrant, or a belief of imminent threat to the public.²⁸ Michigan law expressly prohibits political subdivisions in the state, with the exception of Mackinac Island, from enacting ordinances or resolutions regulating the ownership or operation of unmanned aircraft.²⁹ The Unmanned Aircraft Systems Act also prohibits the use of drones to subject an individual to harassment as defined in the Michigan Penal Code; the operation of a drone in a way that would violate a restraining order or other judicial order; using a drone to record or photograph an individual in invasion of a reasonable expectation of privacy; and a sex offender operating UAS in proximity to another person if the offender's sentence would prohibit that proximity without the operation of the drone.³⁰

In 2015, Michigan passed a law regarding the use of drones in relation to hunting and fishing.³¹ This act specifically prohibits the taking of game or fish using UAS.³² This act also specifically prohibits using a drone to hinder or prevent the lawful taking of a fish or animal.³³ The Michigan Penal Code was also amended, effective in 2019, to prohibit knowingly and intentionally using UAS to interfere with the operations of a correctional facility, other law enforcement facility, or a key facility.³⁴ A key facility is defined by statute and includes large critical infrastructure facilities such as chemical manufacturing plants, refineries, electric utilities, water treatment plants, ports, telecommunications facilities, and hazardous waste storage sites.³⁵

Safe flying! ■



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ENDNOTES

- 49 USC 44801(12).
- 49 USC 44809.
- 49 USC 44801 *et seq.*
- 14 CFR 107.
- 49 USC 44809(a)(3).
- 49 USC 44809(a)(4).
- 49 USC 44809(a)(7).
- Airspace 101 — Rules of the Sky*, Fed Aviation Admin (October 30, 2018) <https://www.faa.gov/uas/recreational_fliers/where_can_i_fly/airspace_101/> [<https://perma.cc/HN34-5KK7>]. All websites cited in this article were accessed July 8, 2021.
- FAADroneZone*, Fed Aviation Admin <<https://faadronezone.faa.gov/#/>> [<https://perma.cc/9NUL-B2PS>].
- 49 USC 44809(a)(2).
- 49 USC 44809(h).
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- 14 CFR 107 *et seq.*
- 14 CFR 107.12.
- 14 CFR 107.57.
- 14 CFR 107.25.
- 14 CFR 107.39.
- 14 CFR 107.29.
- Id.*
- 14 CFR 107.110.
- 14 CFR 107.105.
- 14 CFR 107.110(c).
- MCL 259.301 *et seq.*
- MCL 259.303(f).
- MCL 259.311.
- MCL 259.313.
- MCL 259.321.
- MCL 259.307.
- MCL 259.305.
- MCL 259.322.
- MCL 324.4011(c).
- MCL 324.4011(c)(2).
- MCL 324.4011(c)(2)(c).
- MCL 750.45a.
- MCL 750.552c.

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