

ALERT

What You Need to Know About FAA's Three New Rulemakings

February 13, 2019

On February 13, 2019, the Federal Aviation Administration (FAA) published (1) a Notice of Proposed Rulemaking (NPRM) on the Operation of Small Unmanned Aircraft Systems (UAS) over People; (2) an advanced NPRM (ANPRM) on the Safe and Secure Operations of Small Unmanned Aircraft Systems; and (3) an Interim Final Rule (IFR) on an External Marking Requirement for Small Unmanned Aircraft. Comments are due for the NPRM and the ANPRM in 60 days. Comments are due for the IFR in 30 days, and the IFR becomes effective in 10 days.

The major points of the NPRM and the ANPRM are discussed in Wiley Rein's brief summary of earlier drafts of these documents, which is available [here](#). There have not been any substantial changes in the documents since those drafts were released. In short, the NPRM proposes rules that expand current regulations to enable commercial UAS operations:

- (i) over people, with increasingly strict requirements depending on the risk of harm posed by the aircraft; and
- (ii) at night, subject to pilot training and aircraft lighting requirements.

Importantly, the FAA explicitly stated that it will not finalize any rules that allow commercial operations over people and at night without before finalizing its remote ID policy—and it has yet to either commence a rulemaking on remote ID or publicly announce a different regulatory vehicle to develop a remote ID policy. Wiley Rein has prepared a more in-depth summary and analysis of the NPRM, which may be ordered [here](#).

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The ANPRM seeks input on a variety of issues aimed at “reducing risks to public safety and national security” associated with increased UAS operations in the national airspace.

The IFR simply requires that a UAS’ FAA-issued registration number be marked on the exterior of the aircraft. This rule revises the FAA’s 2015 registration rule, which allowed registration numbers to be placed in enclosed compartments.[1] Although the FAA’s 2015 rule was invalidated by the DC Circuit as applied to hobbyist UAS because of a provision in the 2012 FAA Modernization and Reform Act which divested the FAA of jurisdiction to regulate hobbyist UAS operators, the registration rules were reinstated for hobbyists in the National Defense Authorization Act for Fiscal Year 2018. The hobbyist exemption, Section 332, was later repealed by the 2018 FAA Reauthorization Act and replaced with a narrower exemption that expressly authorizes the FAA to promulgate rules applicable to hobbyists relating to registration and marking (and, importantly for the remote ID policy issue discussed above, “the standards for remotely identifying owners and operators of [UAS]”).

The FAA found it necessary to revise the registration rule because members of law enforcement raised concerns that allowing registration numbers to be enclosed within a UAS would create security risks because first responders would have to physically handle a UAS to identify its operator, and doing so could potentially trigger hidden explosives on the aircraft.

On an interesting procedural note, the FAA invoked its authority under the Administrative Procedure Act (APA) to dispense with notice and comment procedures and speed up the effective date of the IFR. The APA allows agencies to do so when an agency finds “good cause.” Here, the FAA found that the security risks to first responders constituted such good cause.

For further information on these issues, please contact any of the following authors listed on this alert.

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[1] The FAA adopted the previous rule “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.”