

## Energy Companies and Utilities Are Well Advised to Engage in Drone Privacy Discussions

Article By:

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The ***Federal Aviation Administration (FAA)*** reports that, as of July 9, 2015, it has granted 746 Petitions for Exemption under Section 333 of the FAA Modernization and Reform Act of 2012 authorizing commercial operations with small unmanned aircraft systems (UAS). These Exemptions have been granted to a variety of users in industries ranging from agriculture to telecommunications. Energy companies and electric utilities have been among the early adopters of this technology and are beginning to deploy small UAS for various infrastructure monitoring and inspection applications. More than a dozen electric utilities and energy companies have already obtained Section 333 Exemptions and several others have Petitions pending.

The FAA has taken several steps to streamline and expedite the Section 333 Exemption process and is on pace to grant the 1,000th Exemption sometime this summer. While these developments have generated significant interest in the beneficial applications of small UAS for energy companies, utilities, and many other commercial users, there is a parallel discussion underway related to the privacy concerns associated with small UAS operations.

On February 15, 2015, the FAA announced its *for the Operation and Certification of Small Unmanned Aircraft Systems* which, when finally enacted, will replace the Section 333 Exemption process. On the same day, President Obama issued a *entitled "Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems."* In addition to establishing certain policies and procedures for federal government domestic use of UAS, the Presidential Memorandum directed the National Telecommunications and Information Administration (NTIA) to undertake a multi-stakeholder engagement process to develop and communicate best practices related to privacy, accountability, and transparency issues associated with commercial and private use of small UAS in the United States. The NTIA stakeholder process represents the primary federal government initiative focused on UAS and privacy concerns.

NTIA began the multi-stakeholder process on March 5, 2015 with a Request for Comments on privacy issues related to UAS operations. By the close of the comment period on April 20, 2015, from a wide range of UAS users and advocates as well as from organizations and individuals raising privacy concerns. At the risk of oversimplifying a very important discussion, the public comments generally fell into two categories: (1) privacy concerns are legitimate and need to be addressed,

however, these concerns are not unique to UAS and existing privacy laws can and should be applied on a technology-neutral basis; and (2) UAS represent the latest technological evolution creating concerns related to surveillance and private information, and more needs to be done to address government and private collection, retention, and use of such information.

On July 13, 2015, NTIA announced the next step in the multi-stakeholder process will be a series of beginning on August 3, 2015 and continuing into the fall. NTIA describes its role as the “neutral convener” of these stakeholder discussions intended to craft best practices to guide commercial and private UAS operations with respect to privacy issues. The meetings will be webcast and there will be an opportunity for viewers to participate remotely.

The discussion related to UAS and privacy issues is not limited to the NTIA multi-stakeholder process. This issue is also being debated and addressed at the state level. The National Conference of State Legislators reports in 2015 45 state legislatures have considered . A review of the 2015 state legislation as well as prior legislation enacted or considered indicates that many of these bills focused on various privacy concerns such as voyeurism, surveillance, trespass, and unauthorized gathering of information related to critical infrastructure. Given that the FAA has generally indicated that privacy issues are beyond the scope of at least its present rulemaking, many states are moving forward with their own laws in this area.

So, why is this relevant to energy companies, utilities, and other commercial users? How does the use of a small UAS to inspect an electric transmission line, oil or gas pipeline, or flare stack raise privacy concerns? The answer is both objective and subjective.

Objectively, depending on the nature of the UAS operation it is possible that the UAS will gather information concerning persons, properties, structures, and activities in the area surrounding the infrastructure being inspected. While the gathering of such information is not the purpose of the UAS operation, it may be unavoidable and, as such, raises questions concerning access to, retention and use of such “extraneous” or “background” information.

Subjectively, the reality is UAS technology and its rapid proliferation are new and unfamiliar to many people. This fact, together with public perceptions of drones that have been shaped by the entertainment industry and news media reports of armed drones in counterterrorism operations, as well as general public concerns related to personal privacy, confidential commercial information, property rights, and perceived government surveillance, all combine to create a certain degree of public wariness or apprehension. This attitude can lead to state laws and regulations that impair the legitimate use of small UAS for a variety of beneficial energy and utility purposes. It can also lead to landowner challenges to energy companies’ and utilities’ abilities to use UAS under existing easements and licenses.

When it comes to UAS and privacy issues, this may well be a case of “perception is reality.” Accordingly, energy companies, utilities, and other commercial users of small UAS are well advised to engage in the ongoing privacy discussion so as to help shape the best practices that will promote public confidence and enable the continued and expanded use of this promising technology.

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