



# Virginia Association of Broadcasters Legal Review



Brooks, Pierce, McLendon, Humphrey & Leonard, LLP  
Counsel to VAB • (919) 839-0300

250 West Main Street, Suite 100  
Charlottesville, VA 22902 • (434) 977-3716

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## FAA PROPOSES RULES FOR COMMERCIAL OPERATION OF DRONES

On Sunday, February 15, 2015, [the FAA announced](#) the release of its long-awaited rules to govern commercial sUAS (small unmanned aircraft systems) operations in the United States. This announcement is welcome news for broadcasters who have been eager to incorporate sUAS into their operations to use for a variety of purposes from newsgathering to tower inspections to marketing. At this point, of course, the rules are merely a *proposed* regulatory regime (as embodied in a document called a “[Notice of Proposed Rulemaking](#)” or “Notice”), and it will surely take many months—probably a couple of years—for the rules to be finalized and adopted, and to go into effect. It is important to understand that, for now, the [FAA’s current prohibition](#) on the commercial UAS operations remains in effect, except for operators that have obtained a [Section 333 Exemption](#) from the FAA. (To date, nearly 30 entities—including several television and movie production companies—have [received exemption grants](#) from the FAA.)

The proposed regulatory regime was described by the FAA on a February 15 press conference call as a “very flexible framework” that will “accommodate future innovation in the industry.” While industry stakeholders may ultimately disagree over just how flexible the proposed rules are or should be, stakeholders do generally agree that the FAA’s release of the Notice is an important step forward.

*Proposed sUAS Rules.* Among the various requirements and limitations that the FAA has proposed for commercial sUAS operations are the following:

- Vehicles subject to the sUAS rules will be defined as unmanned aircraft that weigh less than 55 pounds (25 kg)
- Only visual line-of-sight (“VLOS”) operations will be allowed; i.e., the small unmanned aircraft must remain within VLOS of the operator or visual observer (“VO”) (i.e., if a VO is used; the proposed rules allow—but do not require—the use of a VO)
- No person may act as an operator or VO for more than one unmanned aircraft operation at one time

- Pilots of sUAS will be considered “operators.” Operators will be required to:
  - Pass an initial aeronautical knowledge test at an FAA-approved knowledge testing center;
  - Be vetted by TSA (Transportation Security Administration);
  - Obtain an unmanned aircraft operator certificate with an sUAS rating;
  - Pass a recurrent aeronautical knowledge test every 24 months;
  - Be at least 17 years old;
  - Make available to the FAA, upon request, the sUAS for inspection or testing, and any associated documents/records required to be kept under FAA rules;
  - Report an accident to the FAA within 10 days of any operation that results in injury or property damage;
  - Conduct preflight inspections to ensure the sUAS is safe for operation.
- At all times the small unmanned aircraft must remain close enough to the operator for the operator to be capable of seeing the aircraft with vision unaided by any device other than corrective lenses (the use of binoculars would not satisfy this restriction)
- sUAS operations may not occur over any persons not directly involved in the operation
- sUAS operations must occur during daylight hours only (official sunrise to official sunset, local time)
- Small unmanned aircraft will be required to yield right-of-way to other aircraft, manned or unmanned
- Small unmanned aircraft will be allowed to operate with a maximum airspeed of 100 mph (87 knots)
- Small unmanned aircraft will be allowed to operate at a maximum altitude of 500 feet above ground level
- sUAS operations will be permitted to occur only when conditions allow minimum weather visibility of 3 miles from the control station
- Limitations in airspace classes:
  - No sUAS operations will be allowed in Class A (18,000 feet & above) airspace
  - sUAS operations will be allowed in Class B, C, D and E airspace only with ATC (air traffic control) permission
  - sUAS operations in Class G airspace will be allowed without ATC permission

*Proposed Rules Are Similar to Authorized Commercial Operations.* Many of these requirements are similar to the limitations, requirements, and restrictions that have been imposed by the FAA in its various Section 333 Exemption decisions. In fact, some of the rules proposed in the Notice would be *less restrictive* and *more flexible* than those imposed on operators in certain Section 333 Exemption decisions.

*Proposed Class of “Micro” UAS.* The Notice proposes a “micro” UAS classification that would allow operations of small unmanned aircraft that weigh up to 4.4 pounds (2 kg; on the smaller end of all sUAS and hence “micro”), only in a certain type (Class G) of airspace, only during daylight hours, at altitudes no higher than 400 feet AGL. Micro UAS operations would be permissible over people not involved in the operation of the unmanned aircraft, provided the operator certifies he or she has the requisite aeronautical knowledge to perform the operation. (As such, the micro UAS class may ultimately be appealing to broadcasters and other news

organizations that wish to operate UAS in locations where people are present.) Other, additional restrictions, as set forth in the Notice, would apply to the proposed micro UAS classification.

*Hobbyist, Recreational Use of UAS Unchanged.* With respect to hobbyists who fly model unmanned aircraft for recreational purposes, the Notice does not propose to change the rules of the road for hobbyists whose operation of model UAS satisfies all of the criteria applicable to model unmanned aircraft. Broadcasters must be mindful, however, that the FAA generally considers the use of drones for newsgathering to be a commercial operation.

*Presidential Memorandum: UAS Privacy Framework.* February 15, 2015, also saw the release of a [Presidential Memorandum](#) aptly titled “Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems” (“UAS Privacy Memorandum”). The UAS Privacy Memorandum is intended to create a framework to begin to address some of the privacy concerns that are implicated by the operation of drones.

Among other things, the UAS Privacy Memorandum tasks NTIA (the National Telecommunications and Information Administration) to initiate, by mid-May 2015, a “multi-stakeholder engagement process to develop a framework regarding privacy, accountability, and transparency for commercial and private UAS use.” As such, the UAS Privacy Memorandum provides a formal structure in which various aspects of privacy that will be implicated by commercial and private UAS operations can and will be debated and addressed. In addition, according to the UAS Privacy Memorandum, federal agencies must “establish policies and procedures, or confirm that policies and procedures are in place, that provide meaningful oversight of individuals who have access to sensitive information (including any PII [personally identifiable information]) collected using UAS . . . [and] require that State, local, tribal, and territorial government recipients of Federal grant funding for the purchase or use of UAS for their own operations have in place policies and procedures to safeguard individuals’ privacy, civil rights, and civil liberties prior to expending such funds.”

*State and Local Laws May Still Apply to Commercial Drone Use.* State and local jurisdictions continue to contemplate—and in some cases enact—legislation to govern the use of UAS by individuals, commercial entities, and law enforcement. And even in the wake of the FAA’s Notice, broadcasters should expect such state and local efforts to continue. Of course, until the FAA’s rulemaking results in final rules, many state and local laws governing the commercial use of drones are of little practical significance. Nevertheless, broadcasters who wish to ultimately incorporate drone operations into their business models must remain mindful of these state-specific laws.

We will keep you apprised of significant UAS developments.

*by Stephen Hartzell*

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## COMMENT DATES ESTABLISHED IN RADIO ONLINE PUBLIC FILE PROCEEDING

As we have previously reported, late last year the Commission released a [Notice of Proposed Rulemaking](#) (the “*Notice*”) seeking comment on the proposal to require radio stations to transition from the current local public inspection file regime to an online public file regime. (The *Notice* also proposes that cable systems, satellite television providers, and satellite radio providers be required to post certain materials to an online public inspection file.)

On Friday, February 13, 2015, the *Notice* was published in the Federal Register, which means that the comment deadlines have now been established: Comments are due March 16, 2015, and reply comments are due April 14, 2015.

Some of the key issues under consideration in this proceeding for radio stations include the following:

- \* The FCC proposes to initially transition only commercial stations in the top 50 Nielsen Audio (formerly Arbitron) markets that have five or more full-time employees to the online public file regime, while exempting other radio stations from the online public file regime for a two-year period. Nonetheless, during the two-year exemption period, the FCC plans to allow stations in smaller markets to commence uploading material to the online public file on a *voluntary* basis so as to lessen the impact on these stations when/if the requirement is extended to all radio stations. The FCC seeks comment on these proposals, as well as comment on whether certain categories of radio stations—e.g., noncommercial educational stations and stations with fewer than five full-time employees—should be *permanently* exempt from all online public file requirements.
- \* The FCC proposes to upload certain documents to each radio online public file, including authorizations, certain applications, contour maps, ownership reports, certain EEO records, the “*Public and Broadcasting*” manual, and certain Letters of Inquiry issued by the FCC’s Enforcement Bureau. The *Notice* also proposes to exempt *existing* political file materials from the online filing requirement such that only political file documents created after implementation of the rule would need to be uploaded on a going-forward basis. (*Existing* political files would still need to be maintained in hardcopy for the two-year retention period.) The FCC seeks comment on each of these proposals, and has specifically asked whether any other components of the public file should be excluded from the online public file system and, if so, why?
- \* Expanding the online public file requirements to radio stations and other entities will likely create a significant increase in demand for access to the online FCC database, especially around quarterly filing deadlines and during the peak of political campaign seasons. Therefore, the FCC seeks comment on how to address these issues. Proposals in the *Notice* include extending the current 10-day filing window for various quarterly reports (e.g., Issues/Programs Lists) to a 30-

day filing window and staggering filings for various types of entities in order to relieve network congestion.

- \* The FCC proposes to create its own contour maps to put in radio station online public files (just as it did for television stations) based upon existing data. However, the *Notice* suggests that the FCC might have difficulty creating contour maps for all stations, especially AM stations: “Given the complexities of AM contour mapping, we may not be able to use the same tools that we used to map TV contours and that we anticipate using to map FM contours.” The FCC seeks comment on whether AM stations should be required to upload their own contour maps or if there are other ways in which this issue should be addressed.
- \* The FCC has proposed not to include NCE radio stations in the initial phase of broadcasters who will have to comply with the online public file requirements. Nonetheless, the FCC seeks comment on whether NCE donor lists should be exempt from the online public file requirement for the same reason that public emails and letters are proposed to be exempt. NCE television stations donor lists are not exempt from the television online public file requirements, but the FCC is seeking comment on whether there may be a reason to treat NCE radio stations differently from NCE television stations in that regard.
- \* While the FCC is not proposing that broadcasters maintain “backup” copies of all public file materials uploaded to the online public file system, it does propose that radio broadcasters be required to maintain local backup files for the online political file to ensure compliance with statutory obligations to make such information available to requesting parties as soon as possible. Just as is the case with television political files, the FCC proposes to require radio stations to make their backup political files available to the public “if and during such rare times” as the FCC online public file system is unavailable.

There are other issues on which the Commission seeks comment in this proceeding. For more information about the proposals in the *Notice* and the questions posed for comment, please see our Legal Memorandum dated January 15, 2015.

*by Will Quick*

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If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

*Stephen Hartzell, Editor*

BROOKS, PIERCE, McLENDON,  
HUMPHREY & LEONARD, L.L.P.

Wade H. Hargrove  
Mark J. Prak  
Marcus W. Trathen  
David Kushner  
Coe W. Ramsey  
Charles E. Coble  
Charles F. Marshall  
Stephen Hartzell  
J. Benjamin Davis  
Julia C. Ambrose  
Elizabeth E. Spainhour  
Eric M. David  
Timothy G. Nelson  
Will Quick

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