

Unmanned Aerial Systems: Legislation Trends Nationwide

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THE INFORMATION PROVIDED IS AN OVERVIEW OF CERTAIN LEGISLATION CONSIDERED BY OTHER STATES ON THE ISSUE OF "UAS REGULATION" AND IS NOT MEANT TO ADVOCATE OR OPPOSE ANY SPECIFIC POLICY OR VIEWPOINT.

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Defining UAS

- Unmanned aerial systems (UAS) consist of unmanned aerial vehicles (UAVs) plus their associated ground control stations (GCS).
- They are also referred to as “drones” or “remotely piloted vehicles”.
- Tennessee legislation specifically defines a drone as “a high powered, aerial vehicle that:
 - (A) Does not carry a human operator and is operated without the possibility of direct human intervention from within or on the aircraft;
 - (B) Uses aerodynamic forces to provide vehicle lift;
 - (C) Can fly autonomously or be piloted remotely;
 - (D) Can be expendable or recoverable”.

Recreational Use of UAS

- Basic FAA operating rules:
 - *Vehicle must be flown below 400 feet Above Ground Level (AGL) when in uncontrolled or "Class G" airspace*
 - *Cannot fly in controlled airspace unless authorization is obtained through LAANC (Low Altitude Authorization and Notification Capability) or when operating at a fixed FAA-approved site*
 - *Must be flown within visual line of sight*
 - *Cannot fly over groups of people, public events, or stadiums full of people*
 - *Cannot fly near aircraft*
- Many areas of regulation, specifically penalties for misuse, would likely have implications for hobbyists/recreational users.

Non-Hobbyist Use FAA CFR Part 107

- The first FAA operational rules for “routine non-hobbyist use of small (under 55 lbs) unmanned aircraft systems” took effect on June 21, 2016.
- Operators must obtain a Part 107 Remote Pilot Certificate
- Operators must register their vehicle with the FAA
- Operations are limited to daylight hours and require keeping the aircraft within visual line of sight – waivers can be approved for alternate operations if justified

NM Statute 64-1-5. Must observe air traffic rules.

- The public safety requiring and the advantages of uniform regulation making it desirable, it shall be unlawful for any person to operate any aircraft within this state, in any form of navigation whatsoever, in violation of the air traffic rules adopted by the state corporation commission [public regulation commission] as hereinafter authorized.
- History: Laws 1929, ch. 71, § 5; C.S. 1929, § 12-105; 1941 Comp., § 47-105; 1953 Comp., § 44-1-5.

NM Statute 64-1-7. State corporation commission [public regulation commission] may make rules and regulations.

■ The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress, the state corporation commission [public regulation commission] is hereby authorized to make, from time to time, regulations concerning such common carriers, and air traffic rules applicable to the operation of all aircraft within this state: provided, however, that such regulations and air traffic rules shall conform to and coincide with the provisions of the Air Commerce Act of May 20th, 1926, and all amendments thereto passed by the congress of the United States and the air commerce regulations and the air traffic rules adopted by the secretary of commerce pursuant thereto, as nearly as may be and insofar as the same are applicable: which said regulations and air traffic rules, so to be made by the state corporation commission [public regulation commission], are hereby declared to be necessarily incident to the exercise of its jurisdiction over the common carriers mentioned in Section 6 [[64-1-6](#) NMSA 1978] of this act.

■ **History:** Laws 1929, ch. 71, § 7; C.S. 1929, § 12-107; 1941 Comp., § 47-107; 1953 Comp., § 44-1-7.

NM Statute 64-1-9. Penalties.

- A person who violates any provision of this act [64-1-1 through 64-1-10 NMSA 1978] shall be guilty of a misdemeanor and punishable by a fine of not more than one hundred dollars [(\$100)], or by imprisonment for not more than ninety days, or both; provided, however, that acts or omissions made unlawful by this article [64-1-1 through 64-1-10 NMSA 1978] shall not be deemed to include any act or omission which violates the laws or lawful regulations of the United States; but it shall not be necessary to allege or prove, as part of the case for the state, that the defendant is not amenable, on account of the alleged violation, to prosecution under the laws of the United States. That he is amenable to such prosecution shall be matter of defense, unless it affirmatively appear from the evidence adduced by the state.
- History: Laws 1929, ch. 71, § 10; C.S. 1929, § 12-110; 1941 Comp., § 47-109; 1953 Comp., § 44-1-9

Preemption

- Because U.S. airspace is regulated by the FAA, it would be likely that any state regulation that conflicts with Federal regulation would be preempted.
- The FAA has released a fact sheet outlining which laws the FAA believes to be within the police powers of the states and which they believe are not.
- The FAA recommends consultation on state and local laws that regulate the navigable airspace or require mandatory training and equipment for aviation safety.

Hunting / Fishing / Wildlife

- Prohibition on using UAS to interfere with others who are lawfully hunting and/or fishing.
- New Mexico passed SM 91 and HM 81 in 2015 asking the State Parks Division of the New Mexico Energy, Minerals and Natural Resources Department (EMNRD) to make recommendation for protecting wildlife from drones.

Commercial Use

- NOTE: U.S. Constitutional Interstate/Intrastate Commerce Clause implications may exist for the regulation of commercial use of UAS.
- Florida has considered "exceptions to a prohibition on using drones to capture images when they are being used: by a licensed professional for certain tasks; by a property appraiser assessing property for ad valorem taxation; 'to capture images by or for an electric, water, or natural gas utility' for operations and maintenance, inspection, assessing vegetation growth, utility routing, siting and permitting, and for conducting environmental monitoring; for aerial mapping; and to deliver cargo."
- There may be licensing/registration/training requirements for commercial use, either through departments of agriculture or transportation.

Governmental Use

- Law enforcement use - identifying law enforcement uses of UAS include photographing traffic crash scenes, monitoring correctional facilities, tracking prison escapees, crowd control, evidence collection and surveillance and monitoring dangerous situations.
- Emergency Services - search and rescue operations and missing persons searches.
- Requirement that, before an agency obtains a UAS, it must seek approval from the governing body that oversees the agency.
- Requirement for a warrant before a law enforcement agency may use a UAS.

Governmental Use Con't.

- Prohibition on the use of UAS by law enforcement agencies with enumerated exceptions including, as examples:
 - *countering a high risk of a terrorist attack when there is credible intelligence indicating such risk*
 - *use by a law enforcement agency with a search warrant*
 - *existence of exigent circumstances*
 - *attempt to locate a missing person*
 - *during a disaster or public health emergency.*
- Prohibition on law enforcement agencies from using UAS with attached weapons.
- UAS use must be documented and flight information be retained for a period of years, and any data collected may not be retained for more than a period of months unless it contains evidence of a crime or is relevant to an ongoing investigation or trial.

Insurance

- Model/hobby aircraft are typically excluded under most forms of property insurance.
- Some states have proposed requiring insurance of a UAS.
- Due to recent advances and availability of UAS, underwriting/risk projection may be difficult.

Privacy & Security

- Specific warrant requirements for UAS use by law enforcement.
- Prohibition on private individuals using drones to enter the airspace of others/taking pictures when there is a reasonable expectation of privacy.
- Video voyeurism/"peeping tom" regulations have been proposed.