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Appellate Court Vacates Federal Aviation Administration (FAA) Rule Requiring Recreational Drone Owners to Register with the FAA

Transportation Legal Update

On May 19, the United States Court of Appeals for the District of Columbia vacated the Federal Aviation Administration's (FAA) Registration Rule as it pertains to model aircraft. The Panel's opinion defined model aircraft as an unmanned aircraft utilized for recreational purposes only. In *John A. Taylor v. Michael P. Huerta, As Administrator, Federal Aviation Administration*, -F.3d —, WL 2192935 (D. C. Cir. 2017), plaintiff, a model aircraft hobbyist living in Washington D.C., challenged the FAA's Registration Rule. The Court held that the FAA was expressly prohibited by statute from promulgating any rule or regulation impacting model aircraft.

The FAA issued the Registration Rule in 2015. Registration Rule created an online database that required model aircraft owners to register the model aircraft online and provide the owner's name and physical address. Rule also required a small registration payment, and the model aircraft had to

display a unique identifying number issued by the FAA. Further, the Rule provided that owners of recreational model aircraft who failed to register with the FAA were in jeopardy of criminal prosecution with a maximum penalty of three years imprisonment as well as the imposition of civil penalties.

Since 2007, the FAA has required the registration of unmanned aircraft used for commercial purposes. The FAA had also previously recommended voluntary registration for model aircraft. In 2012, Congress passed and President Obama signed into law the *FAA Modernization and Reform Act* (Act). This Act specifically prohibited the FAA from creating any rule or regulation regarding model aircraft. See 49 U.S.C. § 40101 note. The FAA argued that the 2015 Registration Rule did not violate the 2012 Act because it simply modified the prior 2007 rule on registration of commercial unmanned aircraft by interpreting that it applied to model aircraft as well. The Court disagreed and held that the FAA overreached its authority and created a rule that the statute expressly prohibited.

This is a significant victory for model aircraft owners. Model aircraft owners will no longer have to register their drones with the FAA or be subject to criminal or civil fines or imprisonment. However, given the increased popularity of model aircraft, it will be interesting to see if Congress responds to this decision by providing the FAA with more authority to regulate model aircraft.