The FAA Asks Local and State Law Enforcement for Help Enforcing Its Unmanned Aircraft Policies

Aviation Industry Alert

By Martin L. Stern, Edward J. Fishman, James B. Insco II, and Thomas R. DeCesar

The Federal Aviation Administration (FAA) recently released new guidance directed to local and state law enforcement describing how they can help the FAA find and stop the operators of unmanned aircraft systems (UAS) from violating the FAA’s policies and regulations. The FAA believes there has been a recent increase in the unauthorized use of small UAS by individuals and businesses. In an effort to curb such use of these devices, the agency is taking an unusual step in reaching out to law enforcement for assistance. The FAA’s action comes at a time when various industries have been waiting for the FAA to release a long overdue proposed rulemaking on the commercial use of UAS.

The FAA’s guidance to law enforcement explains the FAA’s existing policies and regulations related to UAS; for instance, under FAA policy, the FAA takes the position that UAS may not be used for commercial purposes unless specifically authorized by the FAA. Thus far, the FAA has allowed only 13 companies to use UAS for their businesses, under narrowly constrained circumstances, including the requirement that aircraft be flown by a licensed pilot. In addition, with regard to recreational use, the FAA informs law enforcement that these devices must be operated only for hobby or recreational purposes and flown within the operator’s visual line of sight. Regardless of whether a UAS is used recreationally or otherwise, the FAA states that it has authority to pursue an enforcement action against reckless UAS operators who endanger the life or property of another. (Recently the full National Transportation Safety Board (NTSB) affirmed the FAA’s authority to bring an enforcement action against reckless UAS operation in an appeal of an NTSB Administrative Law Judge (ALJ) decision rejecting such authority. The FAA and the operator ultimately settled the case pending further proceedings before the ALJ on recklessness and other issues, without court review of the NTSB decision on the FAA’s enforcement authority.)

Because FAA safety inspectors are often unable to investigate alleged UAS flight violations, the agency believes local and state law enforcement is in the best position to deter, investigate, and pursue enforcement actions regarding unauthorized UAS operations. While there are a few federal criminal statutes involving UAS operations, the FAA noted that violations of the FAA’s regulations will typically be handled by civil enforcement. Based on the guidance, the FAA indicated that law enforcement can help the FAA by:

- Determining the location and circumstances of unauthorized UAS operations.
- Notifying the FAA of suspected unauthorized UAS operations as soon as possible.
- Collecting evidence related to suspected unauthorized UAS operations, including from public and private third parties.
- Identifying and interviewing witnesses regarding suspected unauthorized UAS flights.
The FAA Asks Local and State Law Enforcement for Help Enforcing Its Unmanned Aircraft Policies

- Identifying UAS operators and other participants in UAS flights. The FAA notes it is helpful for law enforcement to interview operators and determine their purpose for using the UAS.

- Identifying locations and/or events within the law enforcement agency’s jurisdiction that may be sensitive or susceptible to unauthorized UAS flights.

The FAA’s latest guidance signals the agency’s belief that it effectively cannot keep up with the growing number of UAS operators. The FAA’s request for help, however, places it in uncharted territory, since federal agencies do not typically ask state and local entities to investigate potential violations of federal regulations and policies on their behalf. The FAA in fact seems to recognize this by encouraging local law enforcement to also pursue applicable violations of state laws. Moreover, the FAA cautions law enforcement to only use “conventional administrative measures,” such as consensual interviews or examinations of UAS, when conducting investigations on behalf of the FAA. Despite these cautions, the FAA’s attempt to get help from local and state law enforcement is anything but “conventional.” It remains to be seen whether the agency’s appeal to law enforcement will increase the number of FAA enforcement actions or curb the use of UAS in a manner deemed improper by the FAA.

Authors:

Martin L. Stern
marty.stern@klgates.com
+1.202.661.3700

Edward J. Fishman
ed.fishman@klgates.com
+1.202.778.9456

James B. Insco II
james.insco@klgates.com
+1.412.355.6744

Thomas R. DeCesar
tom.decesar@klgates.com
+1.717.231.4563