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D.C. Circuit Strikes Down FAA's Recreational UAS Rule

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The Federal Aviation Administration ("FAA") has long set standards for the operation of aircraft in the United States, including extensive requirements for aircraft registration. Historically, the FAA did not interpret the general aircraft registration requirements to apply to small, recreational model aircraft. In 2007, however, as small unmanned aircraft systems ("UAS") become more popular, the FAA began a new regulatory approach to UASs. The FAA asserted authority over commercial UASs operated in U.S. airspace, but left the voluntary registration standards in place for recreational "model aircraft."

In 2012, Congress passed the FAA Modernization and Reform Act (the "Act"). Section 336(a) of that Act states that the FAA "may not promulgate any rule or regulation regarding a model aircraft." Despite this statutory mandate, in 2015, the FAA announced a Registration Rule, requiring owners of all UASs to register with the FAA.

In *Taylor v. Huerta*, 856 F.3d 1089 (D.C. Cir. 2017), the Court of Appeals for the District of Columbia invalidated the Registration Rule as it applies to "model aircraft." While the FAA argued the Registration Rule was consistent with the Act's statutory directive to "improve aviation safety," the D.C. Circuit held that the rule violated the plain language of Section 336(a) by requiring the registration of all UASs. However, the court's decision only invalidated the Registration Rule to the extent that it applies to recreational "model" UASs, leaving intact the FAA's authority of commercial UAS operations.

While the court's decision in *Taylor* appears very limited, there are several takeaways and broader implications. First, while some may applaud any decrease in UASs regulations (and the Registration Rule certainly appeared to be inconsistent with the Act's statutory mandate), the rule was implemented with the goal of increasing safety and reducing the dangerous use of UASs. Stories already abound regarding incidents with UASs-whether crashing into private property or the incident of a UAS crashing onto the White House lawn. Such incidents may ultimately serve as cautionary tales and set back the easing of restrictions on commercial UAS rules.

Second, while the Act prohibits the FAA from regulating "model aircraft," the definition of model aircraft in the Act only includes UASs that are operated for recreational purposes *and* (amongst other requirements) "flown within visual line of sight of the person operating the aircraft." Given the increasing proliferation of "first person view" technology that allows UASs to be operated outside of the remote pilot's line of sight, the FAA ostensibly retains authority to regulate certain types of recreational UASs to the extent the use, even if for recreational purposes, falls outside of the limited definition of "model aircraft."

Finally, the decision in *Taylor* leaves completely intact the FAA's authority over commercial UAS registration and operations. Commercial UASs are subject a large host of restriction on use,

including remote pilot and UAS registration, and restrictions on the types of airspace in which UASs may be operated. If you are uncertain as to what types of UAS operations are subject to restrictions, or interested in learning more about limitations for commercial UAS operation, you should contact an attorney. In addition to any third-party liability, the FAA may impose fines and penalties for unauthorized UAS use, including violating airspace and operating restrictions.