

Drone Advisory Group Raising Regulation Questions

The *Washington Post* recently reported that an advisory group has been conducting meetings and operational tests with a view toward formulating recommendations to the Federal Aviation Administration (FAA) regarding drone regulation. “A U.S. drone advisory group has been meeting in secret for months. It hasn’t gone well.” *Washington Post*, October 23, 2017. Among those participating on the advisory group are representatives of some of the most significant drone manufacturers and operators including DJI and Amazon. The article highlights the controversy over the confidential nature of the group’s work and notes that the group is focused on the question of whether the federal government’s authority over airspace should extend below 400 feet, the provisional ceiling for operating a drone. Among the proposals under consideration is permitting regulation to occur on the local level, something that the Trump administration currently supports.

The existence of this group and the confidential nature of its proceedings highlight the absence of clear regulatory direction when it comes to the future of drone operations. There is obvious tension between safe drone operations and the operational necessities of retail and commercial drone operations. What is less clear is the appropriate balance between those interests.

The benchmark principle of federal aviation regulation has traditionally been that such regulations need to be uniform and we cannot subject manufacturers and operators to multiple and potentially contradictory sets of rules. It is interesting, therefore, to see a group led by manufacturers and operators considering regulatory proposals that could include localized rulemaking. That may have a lot to do with the differing operating environments and ranges of the aircraft in question. When flights are international or interstate, it makes sense to have uniform rules because the aircraft are operating in different geographical areas day to day. A drone operation, however, is highly localized and the risks of those operations can vary.

As such, the benefit of local drone regulation is that each locality can adapt regulations to the climate, terrain, population, and public concerns of its own region. The argument is that there is no “one size fits all” set of rules that can apply to New York City and rural Kansas. Drone manufacturers and operators may be reasonably concerned that being subject to rules that make sense in one location are completely arbitrary in another. As the Post article makes clear, this is clearly something on the minds of some of the group’s participants.

The counterargument among all regions and communities is that one common denominator — the paramount concern for safety. At the heart of this advisory group’s work is an assessment of the risk of drone operations to human beings. The FAA’s overarching mandate has been to make aircraft operations safe and when it comes to that objective, the argument is that there should be only one standard: the highest possible. In addition, localized rulemaking increases the opportunity for special interests or other considerations to interfere with the supreme priority of air safety.

Given what is at stake, it is understandable that the FAA is seeking guidance from various stakeholders. Looking forward, the debate between federal versus localized rulemaking is certain to become a hot topic of discussion.



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