



Understanding the Need and Importance of  
**Implementing a Drone Program**

# Agenda

- Federal & State Law
- Preparing for an Accident/Incident
- Insurance
- After an Accident



# Federal & State Law

# Federal Law 14 CFR 107 – Definitions

- **Small Unmanned Aircraft** – Aircraft weighing less than 55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft
- **Small Unmanned Aircraft System (“sUAS”)** – Includes the small unmanned aircraft and the associated elements like the controller and communication devices
- **Visual Observer** – A person who is designated by the remote pilot in command to assist the remote pilot in command and the person manipulating the flight controls of the sUAS to see and avoid other air traffic or objects aloft or on the ground

# Federal Law – Feds can test/investigate

- The remote pilot in command, visual observer, owner, operator, or person manipulating the flight controls of an sUAS must, upon request, allow the Administrator to make any test or inspection of the sUAS, the remote pilot in command, the person manipulating the flight controls of the sUAS and, if applicable, the visual observer, to determine compliance with the drone law.

# Federal Law

- Must have a remote pilot certificate with sUAS rating to manipulate the flight controls or be under the direct supervision of a remote pilot in command where the remote pilot in command has the ability to immediately take direct control of the flight of the sUAS
- The sUAS must be in a safe condition for operation. Prior to each flight, the remote pilot in command must check the condition of the sUAS.
- Pilot must not have any physical or mental conditions that would interfere with safe operation.

# Federal Law – Remote Pilot in Command

- Must be designated before or during the flight
- Is the Final Authority as to the operation
- Must ensure that the sUAS will pose no undue hazard to other people, other aircraft, or other property in the event of a loss of control of the aircraft for any reason
- May deviate from any rule in an emergency to the extent necessary to meet that emergency
  - May have to report the deviation if asked by the FAA

# Federal Law – Hazardous Operation

- May not operate in a careless or reckless manner so as to endanger the life or property of another
- May not allow an object to be dropped from an sUAS in a manner that creates an undue hazard to persons or property

# Federal Law – Operation from a moving vehicle or aircraft

- Cannot use an sUAS from a moving aircraft
- Cannot use an sUAS from a land or water-borne vehicle, unless:
  - It is being flown over a sparsely populated area; AND
  - It is not transporting another person's property for compensation or hire.

# Federal Law – Time of Operation

- Cannot be operated during the night
- Cannot operate during twilight, unless using lighted anti-collision lighting that is visible for at least 3 statute miles
  - Twilight is 30 minutes before official sunrise and 30 minutes after official sunset.

# Federal Law – Visual Line of Sight

- Must be operated within the visual line of sight (with only corrective lenses – no binoculars) of the remote pilot in command, and the person manipulating the flight controls through the entire flight so that they can:
  - Know the aircraft's location;
  - Determine the attitude, altitude, and direction of flight;
  - Observe the airspace for other air traffic or hazards; and
  - Determine that the sUAS does not endanger life or property of another
- Can use a visual observer to do some of these tasks as long as the remote pilot in command, person manipulating the flight controls, and visual observer are in effective communication with each other at all times

# Federal Law – Other limitations

- Cannot carry Hazardous Materials
- Must yield the right of way to all aircraft, airborne vehicles, and reentry vehicles
- The same pilot cannot operate more than one drone at a time.
- May not operate a drone over a human being unless that human being is:
  - Directly participating in the operation of the sUAS; or
  - Located under a covered structure or inside a stationary vehicle that can provide reasonable protection from a falling sUAS
- May not exceed 100 mph
- May not go higher than 400 feet, unless it is flown within 400 feet of a structure and does not fly more than 400 feet over the structure
- Must be 500 feet below the clouds and 2,000 feet horizontally from any clouds

# State Law

- At least 41 states have their own drone laws. There was state drone legislation in 2013, 2014, 2015, 2016, and 2017.
- Expect new laws and refinement of pre-existing laws on an on-going basis.
- Stay informed in the jurisdictions in which you operate.

# State Law

- Texas Law

- Restrictions – Texas Government Code Section 423
- “Use of Unmanned Aircraft”
- Found in a section titled “Law Enforcement and Public Protection”

# State Law

- It is lawful to capture an image using an unmanned aircraft in this state:
  - 1) for the purpose of professional or scholarly research and development, or for another academic purpose;
  - 2) in airspace designated as a test site or range;
  - 3) as part of an operation, exercise, or mission of any branch of the United States military;
  - 4) if the image is captured by a satellite for the purposes of mapping;
  - 5) if the image is captured by or for an electric or natural gas utility or a telecommunications provider... for operations and maintenance... inspecting... assessing vegetation growth... routing and siting for the purpose of providing utility or telecommunications service;
  - 6) with the consent of the individual who owns or lawfully occupies the real property captured in the image;
  - 7) pursuant to a valid search or arrest warrant;
  - 8) if the image is captured by a law enforcement authority;

# State Law

- It is lawful to capture an image using an unmanned aircraft in this state:

...

- 13) if the image is captured by a Texas licensed real estate broker in connection with the marketing, sale, or financing of real property, provided that no individual is identifiable in the image;
- 14) from a height no more than eight feet above ground level in a public place, if the image was captured without using any electronic, mechanical, or other means to amplify the image beyond normal human perception;
- 15) of public real property or a person on that property;
- 16) if the image is captured by the owner or operator of an oil, gas, water, or other pipeline for the purpose of inspecting, maintaining, or repairing pipelines or other related facilities, and is captured without the intent to conduct surveillance on an individual or real property located in this state;
- 17) in connection with oil pipeline safety and rig protection;
- 18) in connection with port authority surveillance and security;

# State Law

- It is lawful to capture an image using an unmanned aircraft in this state:
  - 19) if the image is captured by a registered professional land surveyor in connection with the practice of professional surveying, as those terms are defined by Section 1071.002, Occupations Code, provided that no individual is identifiable in the image;
  - 20) if the image is captured by a professional engineer licensed under Subchapter G, Chapter 1001, Occupations Code, in connection with the practice of engineering, as defined by Section 1001.003, Occupations Code, provided that no individual is identifiable in the image; or
  - 21) if:
    - a) the image is captured by an employee of an insurance company or of an affiliate of the company in connection with the underwriting of an insurance policy, or the rating or adjusting of an insurance claim, regarding real property or a structure on real property; and
    - b) the operator of the unmanned aircraft is authorized by the Federal Aviation Administration to conduct operations within the airspace from which the image is captured.

# State Law

- Sec. 423.003. OFFENSE: ILLEGAL USE OF UNMANNED AIRCRAFT TO CAPTURE IMAGE.
  - a) A person commits an offense if the person uses an unmanned aircraft to capture an image of an individual or privately owned real property in this state with the intent to conduct surveillance on the individual or property captured in the image.
  - b) An offense under this section is a Class C misdemeanor.
  - c) It is a defense to prosecution under this section that the person destroyed the image:
    - i. as soon as the person had knowledge that the image was captured in violation of this section; and
    - ii. without disclosing, displaying, or distributing the image to a third party.

# State Law

- Sec. 423.004. OFFENSE: POSSESSION, DISCLOSURE, DISPLAY, DISTRIBUTION, OR USE OF IMAGE.
  - a) A person commits an offense if the person:
    - i. captures an image in violation of Section 423.003; and
    - ii. possesses, discloses, displays, distributes, or otherwise uses that image.
- Each image a person possesses, discloses, displays, distributes, or otherwise uses in violation of this section is a separate offense.
- It is a defense to prosecution...if...the person destroyed the image as soon as the person had knowledge that the image was captured in violation...or stopped disclosing, displaying, distributing, or otherwise using the image as soon as the person had knowledge that the image was captured in violation of Section 423.003.

# State Law

- A person commits an offense if the person intentionally or knowingly:
  - 1) operates an unmanned aircraft over a correctional facility, detention facility, or critical infrastructure facility and the unmanned aircraft is not higher than 400 feet above ground level;
  - 2) allows an unmanned aircraft to make contact with a correctional facility, detention facility, or critical infrastructure facility, including any person or object on the premises of or within the facility; or
  - 3) allows an unmanned aircraft to come within a distance of a correctional facility, detention facility, or critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

# State Law

## "Critical infrastructure facility" means:

- a) one of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs...indicating that entry is forbidden:
  - i. a petroleum or alumina refinery;
  - ii. an electrical power generating facility, substation, switching station, or electrical control center;
  - iii. a chemical, polymer, or rubber manufacturing facility;
  - iv. a water intake structure, water treatment facility, wastewater treatment plant, or pump station;
  - v. a natural gas compressor station;
  - vi. a liquid natural gas terminal or storage facility;
  - vii. a telecommunications central switching office or any structure used as part of a system to provide wired or wireless telecommunications services;
  - viii. a port, railroad switching yard, trucking terminal, or other freight transportation facility;
  - ix. a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas;

# State Law

- x. a transmission facility used by a federally licensed radio or television station;
  - xi. a steelmaking facility that uses an electric arc furnace to make steel;
  - xii. a dam that is classified as a high hazard by the Texas Commission on Environmental Quality; or
  - xiii. a concentrated animal feeding operation, as defined by Section 26.048, Water Code; or
- b) if enclosed by a fence or other physical barrier obviously designed to exclude intruders:
- i. any portion of an aboveground oil, gas, or chemical pipeline;
  - ii. an oil or gas drilling site;
  - iii. a group of tanks used to store crude oil, such as a tank battery;
  - iv. an oil, gas, or chemical production facility;
  - v. an oil or gas wellhead; or
  - vi. any oil and gas facility that has an active flare.

# State Law

- It is not a violation if it is committed by:
  - a) an owner or operator of the critical infrastructure facility;
  - b) a person **under contract** with or otherwise acting under the direction or on behalf of an owner or operator of the critical infrastructure facility;
  - c) a person who has the **prior written consent** of the owner or operator of the critical infrastructure facility; or
  - d) the owner or occupant of the property on which the critical infrastructure facility is located or a person who has the **prior written consent** of the owner or occupant of that property.

# State Law

- **Sec. 423.005. ILLEGALLY OR INCIDENTALLY CAPTURED IMAGES NOT SUBJECT TO DISCLOSURE.**
  - a) Except as otherwise provided by Subsection (b), an image captured in violation of Section 423.003, or an image captured by an unmanned aircraft that was incidental to the lawful capturing of an image:
    - i. may not be used as evidence in any criminal or juvenile proceeding, civil action, or administrative proceeding;
    - ii. is not subject to disclosure, inspection, or copying under Chapter 552; and
    - iii. is not subject to discovery, subpoena, or other means of legal compulsion for its release.
  - b) An image described by Subsection (a) may be disclosed and used as evidence to prove a violation of this chapter and is subject to discovery, subpoena, or other means of legal compulsion for that purpose.

# State Law

## ■ Sec. 423.006. CIVIL ACTION.

- a) An owner or tenant of privately owned real property located in this state may bring against a person who, in violation of Section 423.003, captured an image of the property or the owner or tenant while on the property an action to:
  - i. enjoin a violation or imminent violation of Section 423.003 or 423.004;
  - ii. recover a civil penalty of:
    - a. \$5,000 for all images captured in a single episode in violation of Section 423.003; or
    - b. \$10,000 for disclosure, display, distribution, or other use of any images captured in a single episode in violation of Section 423.004; or
  - iii. recover actual damages if the person who captured the image in violation of Section 423.003 discloses, displays, or distributes the image with malice.
- b) For purposes of recovering the civil penalty or actual damages under Subsection (a), all owners of a parcel of real property are considered to be a single owner and all tenants of a parcel of real property are considered to be a single tenant.
- c) In addition to any civil penalties authorized under this section, the court shall award court costs and reasonable attorney's fees to the prevailing party.
- d) An action brought under this section must be commenced within two years from the date the image was:
  - i. captured in violation of Section 423.003; or
  - ii. initially disclosed, displayed, distributed, or otherwise used in violation of Section 423.004.

# State Law

- Sec. 423.009. REGULATION OF UNMANNED AIRCRAFT BY POLITICAL SUBDIVISION.
  - a) In this section:
    - i. "Political subdivision" includes a county, a joint board created under Section 22.074, Transportation Code, and a municipality.
  - b) Except as provided by Subsection (c), a political subdivision may not adopt or enforce any ordinance, order, or other similar measure regarding the operation of an unmanned aircraft.
  - c) A political subdivision may adopt and enforce an ordinance, order, or other similar measure regarding:
    - i. the use of an unmanned aircraft during a special event;
    - ii. the political subdivision's use of an unmanned aircraft; or
    - iii. the use of an unmanned aircraft near a facility or infrastructure owned by the political subdivision, if the political subdivision:
      - a. applies for and receives authorization from the Federal Aviation Administration to adopt the regulation; and
      - b. after providing reasonable notice, holds a public hearing on the political subdivision's intent to apply for the authorization.
  - d) An ordinance, order, or other similar measure that violates Subsection (b) is void and unenforceable.

# Federal vs. State Law – Pre-Emption

- Pre-emption is the concept that if the federal government regulates something, then the states are not able to create their own regulations that contravene the federal regulations.
  - The FAA regulations appear to affect operation.
  - The Texas regulations appear to affect privacy concerns.
  - States that regulate privacy and other issues probably do not conflict.
  - Any conflicting state regulations may be unenforceable.
    - Example: A state law that allows a drone to operate faster and be heavier than federal law will be pre-empted by federal law and therefore you must be in compliance with the federal law.

# *Respondeat Superior*

- Fancy Latin Legal Phrase Meaning:

- Your company is responsible for the actions of its employees while acting in the course and scope of their employment.
- Accordingly, it is essential that drone operating employees are skilled, trained, and aware of the applicable State AND Federal law.
- In Texas, a drone operating employee flying a drone around a neighborhood while waiting for people to arrive on the job site opens you up to potential exposure.

# Privacy Issues

- Unauthorized Recording – Texas Penal Code 21.15 “Invasive Visual Recording”
  - A person commits an offense if, without the other person’s consent and with intent to invade the privacy of the other person, the person:
    - Photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of an intimate area (included clothed and unclothed) of another person if the other person has a reasonable expectation that the intimate area is not subject to public view.

# Other contractual issues

- Contractual requirements
  - Who owns the recording?
  - Do you need a camera permit?
- Is video permitted?
- Are pictures permitted?
- Do you have to provide a copy to the Owner?
- If you are a contractor, do you want to require a copy be provided to you if drone footage is taken by a subcontractor?

# Spoliation of Evidence – Texas

- Parties have a duty to reasonably preserve evidence when a party knows or reasonably should know that there is a substantial chance that a claim will be filed and that evidence in its possession or control will be material and relevant to that claim.
- The "substantial chance of litigation" arises when "litigation is more than merely an abstract possibility or unwarranted fear."
- This could apply to drone video footage.



# Preparing for an Accident/Incident

# Preparing for an Accident/Incident

- Typical Legal Theory
  - Negligence – duty, breach of that duty, cause and damages
  - Based on violating the ordinary standard of care
  - In an auto accident, not looking for oncoming traffic before pulling out into the street would be a violation of the ordinary standard of care.
- The FAA regulations dictate certain restrictions on the operation of drones. In the event of an accident/incident, you want to be able to demonstrate that you complied with the regulations to do your best to defend against a claim.
- Logging all drone related activity is advised.

# Preparing for an Accident/Incident

- Being able to prove compliance with the FAA regulations will be easier if you:
  - Keep logs of the operators and their qualifications.
  - Keep a log of the visual observers and their locations.
  - Have a flight plan that shows when and where the drone was supposed to operate, location of the operator, and location of the visual observer.
  - Log the who, what, when, where of someone physically viewing the intended overflight area and insure that there are no people in the flight path prior to the drone flight.
  - Implement barricades and/or spotters to insure people do not enter the overflight area during the drone use.
  - Hold a pre-flight safety meeting with onsite personnel to explain where the drone will be and the importance of staying out from under the drone flight path.
  - Have the proper insurance to guard against injuries to people, property, and the drone itself.



# Insurance

# Drone Insurance

- New area
- Different approaches
- Not typically covered by CGL
- Several manuscript endorsements?

# Drone Insurance Issues

- This is a new area of risk to companies and to their insurance carriers.
- Insurance companies are endorsing policies with new endorsements excluding coverage for “unmanned aircraft” claims; both Insurance Service Office forms and manuscript forms.
- To obtain coverage for accidents involving “unmanned aircraft,” companies will need a separate endorsement adding coverage under the general liability policy.

# Drone Insurance Issues

- Liability policies have two separate, but related, coverage forms:
  - Coverage A applies to bodily injury and property damage;
  - Coverage B applies to personal and advertising injury.
- Companies using drones need to make sure that their policies contain the appropriate coverage for both Coverage A and Coverage B, depending upon the use of the drones.

# Unmanned Aircraft Endorsements Currently In Use

Current ISO Drone Endorsements			
Form	Name	Coverage A	Coverage B
CG 2109	Exclusion – Unmanned Aircraft	Excluded	Excluded
CG 2110	Exclusion – Unmanned Aircraft (Coverage A Only)	Excluded	No affect
CG 2111	Exclusion – Unmanned Aircraft (Coverage B Only)	No affect	Excluded
CG 2450	Limited Coverage for Designated aircraft	Excluded except for scheduled unmanned aircraft and scheduled operations	Excluded except for scheduled unmanned aircraft and scheduled operations
CG 2451	Limited Coverage for Designated Unmanned Aircraft (Coverage A Only)	Excluded except for scheduled unmanned aircraft and scheduled operations	No affect
CG 2452	Limited Coverage for Designated Aircraft (Coverage B Only)	No affect	Excluded except for scheduled unmanned aircraft and scheduled operations
CG 2960	Exclusion – Unmanned Aircraft	Excluded	No affect

# Examples of Drone Incidents

- Drone being used to record a wedding went out of control, striking a guest in the eye and causing the guest to lose the eye.
- Drone smashed into a display window of a Manhattan department store.
- Drone crashed in central California, causing a small wildfire.
- Drone struck a power line in California, causing a power outage for several hours, affecting 1,600 customers.
- Drone crashed through a 23rd floor window in Buffalo.
- Drone crashed outside a New York hospital, almost striking a person.
- Drone crashed through a 27th story apartment window in Manhattan.

# Examples of Drone Incidents

- UPS drone being tested went out of control, crashing into the side of the recovery vehicle.
- Drone crashed into the roof of the Space Needle in Seattle, nearly hitting two workers
- Drone flew into the head of a band member at a concert.
- Drone crashed into two guests at a party in New Hampshire, causing one to sustain a concussion and the other to require 20 stitches.
- Drone racing in Hawaii crashed, starting a wildfire.
- Drone crashed into a dining room window in Washington.

# Examples of Drone Incidents

- Drone crashed into a riverside light pole, causing a man to fall into the river and require rescue by firefighters.
- Drone crashed into shoppers at a California farmer's market.
- Drone filming a Thanksgiving race in Pennsylvania crashed into the runners, cutting two of them.
- Drone crashed into a truck near a New Jersey refinery.
- Drone crashed into the Great Ferris Wheel in Washington, falling and breaking a plastic table at a restaurant.
- Drone crashed on a runway at Batten International Airport in Wisconsin.
- Drone in New York crashed and burst into fire, injuring a small boy.

# Examples of Drone Incidents

- Drone crashed in California, causing debris that injured an 11 month old baby in a stroller.
- Drone crashed into the side of the Great American Tower in Cincinnati, breaking a window.
- Drone crashed onto the street in downtown Glens Falls, New York.
- Drone hit woman in the heat in Seattle, knocking her unconscious.
- Drone crashed into the roof of an occupied car while it was moving.



# After an Accident

# After the Accident/Incident

- In the event an sUAS (drone) operation causes
  - Serious injury to any person or loss of consciousness; or
  - Damage to any property, other than the sUAS, unless:
    - The cost of repair (including materials and labor) does not exceed \$500; or
    - The fair market value of the property does not exceed \$500 in the event of a total loss,
- The remote pilot in command **MUST** report the accident to the FAA within 10 days.
- Some accidents will also have to be reported to the NTSB (National Transportation Safety Board).

# After the Accident/Incident

- Report must contain the following:
  - Remote Pilot in Command's name and contact information;
  - Remote Pilot in Command's Airmen certificate number;
  - Registration number issued to the aircraft involved;
  - Location of the accident;
  - Date of the accident;
  - Time of the accident;
  - Person(s) injured and the extent of any injuries, if any or known;
  - Property damages and extent of damage, if any or known; and
  - Description of what happened.

# Checklist

- Is my use legal? (TX Law)
- Does the operator understand the federal AND state legal limits of the drone usage?
- Written consent of property Owner/Contractual Limitations are known
- Licensed Operator
- Visual Observer/Spotter
- Overflight area clear – and will remain so

# Checklist

- Pre-Flight checks are done
  - Drone condition
  - Weather
  - Airspace restrictions
  - Location of people on the ground
  - Other ground hazards
  
- Ensure all persons participating are informed of:
  - Operating Conditions
  - Emergency Procedures
  - Contingency Procedures
  - Roles and Responsibilities
  - Potential Hazards

# Checklist

- Proper Insurance
- 10 days to report certain accidents

# Contact Us



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## Locations

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