



AAPA PORT ADMINISTRATION AND LEGAL CONFERENCE

DRONE LAW AND PORTS

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WHY DOES THIS MATTER?



Overview

- Federal Regulatory Scheme
- Report from California
- Port's Regulation of Drone Use by Others
- Port's Own Use of Drones

Federal Law

- The FAA Modernization and Reform Act charges the FAA with developing a plan to integrate drones into the national airspace.
- On August 29, 2016, the FAA's Small Unmanned Aircraft Rule went into effect. 14 CFR Part 107
 - Pilot Requirements
 - Drone Requirements
 - Operational Requirements—many are waivable

FAA Regulations: 14 CFR Part 107

- Pilot Requirements
 - Over 16
 - Licensed
- Drone Requirements
 - Less than 55 pounds
 - Must be registered
- Operational Restrictions
 - daylight hours
 - below 400 feet
 - within the line of sight of the operator
 - Not over people

Update From California

- Mixed Bag
- Governor has vetoed all but three measures over the last two years

Unsuccessful Measures

- Report Accidents
- Digital Identification of Drones
- Restrict use by Law Enforcement
- Regulate use by Department of Fish and Wildlife and the Department of Parks and Recreation
- Limit Use by anyone subject to a stay away order—also limit use by sex offenders
- Critical infrastructure
- Include FAA Regs in box
- Require Geofencing
- No flight over Schools
- No flight over jails
- Regulate use for pest control
- Require Insurance
- Require Warrant

California Enacted Laws

- Misdemeanor to interfere with first responders or emergency personnel at the scene of an emergency
- Protects emergency first responders from liability for damage to a drone that is interfering with the responder's ability to provide emergency service
- Paparazzi law—Constructive Invasion of Privacy



Constructive Invasion of Privacy

- New California Civil Code 1708.8.
- Expanding existing doctrine of invasion of privacy to encompass use of drones.
- Definition goes beyond physical trespass, and includes that which, but for a drone, could not be accomplished without a physical trespass.



Drones and Ports

Regulation of Use by Others

Use By Ports

Port Regulation of Drone Use by Others

- Threshold Legal Issue of Enforceability—Field Preemption

Field Preemption

- No caselaw regarding FAA Drone Regulation's Preemptive Effect
- FAA and Congress resisted establishing preemptive effect of Part 107
- The FAA recommends that its Office of Chief Counsel should be consulted before adopting an ordinance addressing the following: operational restrictions on flight altitude, flight paths etc., operational bans, any regulation of the navigable airspace, and regulations on training and equipment.
- In contrast, the FAA considers that regulations within traditional police powers are likely not preempted (ports may not have police power).

Port regulation of drone use by others

Field Preemption

- Local Ordinance may be preempted when implicates safety
 - Cases mostly focus on safety of passengers
- Local Ordinance may be preempted if implicates management of air traffic control “crazyquilt effect”
 - Local Ordinance governing seaplane operation NOT preempted in 6th Circuit
 - Local Ordinance regulating aerial advertising NOT preempted in 9th Circuit
 - Local ordinance regulating noise impacts IS preempted in 9th Circuit
- Local Ordinance focused on Privacy likely NOT preempted

Port Regulation of Drone Use by Others

Field Preemption

- Practical Tips
 - Focus on Purpose
 - Coordinate with other agencies—Airports/Parks/USCG
 - May be able to achieve purpose through informal means
 - Establish Permit Process



Port's Use of Drones

- Delivery to vessels
- Hull inspections
- Interior inspections—cargo or fuel tank
- Monitor vessel activities in sea lanes
- Monitor condition of container stacks
- Drones equipped with emission sensors
- Security
- Environmental Inspections
- Marketing

Port Use of Drone

- Comply with Part 107
- Insurance
- Practice Tip—adopt policy
 - Public Input
 - Employee Outreach—meet and confer

Port Use of Drone

- Contract with others—Key Contract Terms
 - Drone-specific Reps and Warranties
 - Compliance with Operational Requirements
 - IP/Privacy—similar to other filming permits
 - Drone Liability Insurance
 - Indemnities

THANK YOU!

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