

January 15, 2016

Mr. Earl Lawrence
Director, UAS Integration Office
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591

**RE: Registration and Marking Requirements for Small Unmanned Aircraft
Interim Rulemaking; Docket No. FAA-2015-7396-0001**

Dear Director Lawrence:

The Retail Industry Leaders Association (RILA) appreciates the opportunity to respond to the Federal Aviation Administration's (FAA's or Agency's) Interim Final Rulemaking (IFR), "Registration and Marking Requirements for Small Unmanned Aircraft." 80 Fed. Reg. 78594 (Dec. 16, 2015). Prior to the issuance of this IFR, RILA responded to the Department of Transportation's and the FAA's solicitation of public comment regarding the design and implementation of a new registration process for unmanned aircraft systems (UAS) operated by recreational and hobbyist users.¹ While the IFR incorporated some of the recommendations RILA put forth within our previous comments, RILA believes a number of issues still need to be considered and addressed by the Agency prior to issuance of the Final Rule.

RILA is the trade association of the world's largest and most innovative retail companies. RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Its members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad. RILA members dedicate significant time, effort and resources to ensuring that all of the products they sell, including UAS products, meet the highest safety standards.

Retailers remain committed to the FAA's goal of enhancing safe UAS practices and promoting consumer education. We believe that these goals can best be accomplished by FAA's frequent collaboration with government agencies, manufacturers, retailers and safety advocates. It is again in this spirit of collaboration that RILA offers the following comments regarding the registration process and suggestions to be incorporated into the Final Rule. As discussed in more detail below our comments cover two major issues: 1) the FAA should maintain the current prior-to-operation registration requirement as it avoids the data privacy, customer service, and technology issues, as well as questions regarding the FAA's statutory authority to regulate the sale of UAS

¹ Retail Industry Leaders Association, "Comments on Clarification of the Applicability of Aircraft Registration Requirements for Unmanned Aircraft Systems (UAS) and Request for Information Regarding Electronic Registration for UAS" (November 6, 2015).

products raised by a potential point-of-sale registration requirement; and 2) the need for additional FAA collaboration with all stakeholders on a comprehensive public education campaign.

I. FAA Should Continue to Require UAS Registration to Occur Prior-to-Operation

RILA applauds the FAA for incorporating the recommendations of the working group and RILA's suggestions and establishing a prior-to-operation and not a point-of-sale UAS product registration in the IFR. While RILA understands that the decision to move forward with a prior-to-operation registration requirement may have been the most expedient given the announcement and implementation of the IFR only days before Christmas, RILA urges the FAA to "stay the course" and solidify the prior-to-operation registration system in the Final Rule. Even during the few short weeks since the announcement of the new registration requirements, the prior-to-operation method of registration has already proven to be successful. As the Secretary of Transportation recently noted, to date over 181,000 UAS operators have registered on FAA's registration website.² RILA believes that any significant changes made to the current registration system process would negate its preliminary success and create consumer confusion. Additionally, as the Agency explicitly acknowledged within the IFR, the technical, administrative and other pragmatic concerns outlined in RILA's prior comments are still applicable to a potential UAS point-of-sale registration process.

A. Consumers' Data Privacy Issues are Best Addressed by a Prior-to-Operation Registration Requirement

Retailers are deeply committed to protecting customer privacy, and data security and minimization are key tenets of a dynamic privacy policy. In most instances, point-of-sale registration will require checkout clerks to ask customers to reveal personally identifiable information while standing in the checkout line in order to input the information into a registration system. This creates privacy concerns for consumers reticent about revealing personal information in such a public forum.

Even if customers are willing to share their personal information, a point-of-sale registration requirement would mandate that retailers not only capture and transfer information to the FAA but also assume the burden of storing and securing all registration data. This raises unanswered privacy policy and record retention questions such as: which privacy security standards are appropriate for the data; how retailers would securely transfer that data to the FAA; how long retailers would need to retain registration information; and the timing and process of purging registration information. RILA believes that customers personal information will be better protected by ensuring retailers are not unnecessary middlemen in the process. Therefore, we again recommend that FAA maintain the current prior-to-operation registration requirements set forth in the IFR and continue to ensure customers are accountable for their drone use by

² <http://bits.blogs.nytimes.com/2016/01/06/more-than-180000-drone-users-registered-in-f-a-a-database/>

providing the necessary information directly to the FAA through its web-based application that is then stored on systems owned and operated by the Agency itself.

Additionally, this information should be available only to government employees engaged in enforcement activities and stored securely with sufficient cybersecurity measures to prevent unauthorized access. The registration process should also clearly define the registrant's privacy protections and provide relevant legal disclosures regarding the limited use of registration information (*i.e.*, for enforcement purposes only). Lastly, we note the three pieces of data the FAA currently requires to register UAS products prior-to-operation (*e.g.*, name, physical home address and email address), and urge that the FAA continue to tailor the data required as part of the registration process only to that specific data necessary for enforcement purposes.

B. A Prior-to-Operation Registration Requirement Ensures the Integrity, Validity and Utility of Registration Data

As the agency acknowledged in the IFR, an inherent problem with a point-of-sale registration system is the issue of gifts and the ability to distinguish between the purchasers of UAS products and their ultimate owners/operators. Many UAS products, particularly lower cost products, are purchased as gifts for the ultimate user/operator. A customer who is purchasing a UAS product as a gift should not be placed in the position of trying to provide registration information on behalf of the intended gift recipient – the ultimate user/operator. If the purchaser provides his or her information in order to register the product at point-of-sale, this will undermine the validity and the utility of the data for FAA's enforcement purposes as the purchaser is not the ultimate operator of the UAS product. To ensure that FAA has the necessary information it needs for enforcement purposes, it is critical that a prior-to-operation registration process is retained.

C. A Prior-to-Operation Registration Requirement Eliminates Potential Customer Service Concerns

RILA also reiterates its concern that a point-of-sale registration requirement will create customer service issues for retailers and adversely impact consumers' retail shopping experiences. Retailers strive to provide their customers with a positive shopping experience with outstanding customer service and efficient sales checkout. A point-of-sale registration requirement would undermine retailers' current efficient retail operations. Instead, cashiers and checkout clerks would be required to explain the new UAS registration requirements, obtain the required information and registration fee and complete the UAS registration process while the customer is standing in the checkout line or during the online checkout process. All of these actions will create delays in processing customers' purchases, resulting in longer checkout lines and customer service complaints. A point-of-sale registration requirement would negatively impact consumers' shopping experiences without meeting the FAA's goal of establishing an efficient and simple customer-friendly UAS registration process.

D. A Point-of-Sale Registration Requirement would Impose Unnecessary Burdens and Costs on Retailers

Although the peak retail holiday season is over, implementing a point-of-sale registration process would still necessitate that RILA members construct entirely new IT systems designed to connect directly with the FAA's current web-based registration platform. Retailers would be forced to add personnel and IT resources and incur costs necessary to research, design, test, and implement new point-of-sale registration systems. All of this would take time to implement and delay the transmission of information needed for enforcement purposes. With hundreds, if not thousands, of retailers selling UAS products, a point-of-sale registration requirement will impose tremendous burdens on the retail industry without enhancing safety. Given the success of the current prior-to-operation registration program, such delay and cost burden is unnecessary.

RILA takes no official position regarding the five dollar registration fee requirement set forth by the IFR. However, it must be noted that the technical and cost burdens on retailers will only increase if retailers are also burdened with collecting and processing UAS registration fees. Retailers would need to establish separate mechanisms for identifying specific payments received from customers as UAS registration fees and a new method of transmitting those fees to FAA. RILA believes that the current FAA-hosted platform and point-of-operation requirements have eliminated these concerns. Therefore, RILA urges the FAA to maintain its prior-to-operation registration web-based platform and not take a step backwards and position retailers as middlemen between the customer and the FAA by moving to a point-of-sale registration system.

E. FAA's Statutory Authority Supports a Prior-to-Operation Registration Requirement

A final argument against the FAA imposing registration requirements at the point-of-sale rather than prior-to-operation is that the FAA lacks the statutory authority to regulate the sale of UASs. A point-of-sale requirement coupled with the burden of collecting the registration fee would have the practical effect of regulating the retail sale of UAS products. For example, a point-of-sale registration requirement could prohibit a retailer from selling the product to the customer if a customer is unable or unwilling to provide registration information or pay the required registration fee.

Title 49 U.S.C. 40103 explicitly details the FAA's scope of authority to pertain to any and all matters of airspace use, aviation safety, management and efficiency, and air traffic control. Specifically, Congress has required the FAA to "develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace." 49 U.S.C. § 40103(b)(1). Furthermore, the FAA must "prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for navigating, protecting, and identifying aircraft; protecting individuals and property on the ground; using the navigable airspace efficiently; and preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects." 49 U.S.C. § 40103(b)(2).

The FAA’s authority to regulate also extends to the registration and certification of aircraft as detailed within 49 U.S.C. § 44101. The FAA “shall register the aircraft; and issue a certificate of registration to its owner” once the specific requirements set forth within 49 U.S.C. § 44102 are met. To this point, RILA also notes that imposing registration at the point-of-sale would also be a significant departure from the longstanding practice, under existing authority, where the ultimate owner must apply for a Certificate of Aircraft Registration from the FAA Aircraft Registry before the product in question can be operated and is also subsequently responsible for de-registering upon transfer of ownership. Finally, the FAA has been given preemptive authority to regulate air safety and require registration of aircraft to provide for uniform requirements and to eliminate potential confusion if states were allowed to issue flight safety regulations.³

RILA supports the FAA’s establishment of one federal standard for UAS product registration and flight safety regulation. RILA believes that the FAA should maintain this position of preemption in order to preserve both the clarity and simplicity of the current registration system in place, as well as the Agency’s overall enforcement ability regarding UAS products. However, despite the considerable amount of authority provided to the Agency, the FAA lacks the legal authority to regulate the sale of UAS products. A move by the FAA to a point-of-sale registration process could be subject to potential legal challenges and is unnecessary in light of the current legally sound and successful prior-to-operation registration process.

For the reasons discussed above, RILA believes that FAA should not make any changes within its Final Rule. The FAA has already established a well-functioning prior-to-operation registration system where the Agency itself is responsible for the system’s performance, as well as the collection and retention of the relevant data amassed as a result of the hundreds of thousands of UAS products that have been and will continue to be sold. As we have already seen, requiring UAS users to register directly through the FAA’s web-based application has proven successful as both an accessible means of registration and a valuable platform for the FAA to educate UAS users on flight safety practices and guidelines.

II. FAA Needs to Collaborate with All Stakeholders to Develop a Comprehensive Consumer Education Campaign to Promote Consumer Awareness of UAS Safety Practices and Registration Requirements

RILA believes the FAA needs to play a more prominent and active role in promoting a comprehensive consumer education campaign regarding UAS safe practices and UAS product registration requirements. RILA applauds the FAA for its recently released “B4U Fly” mobile application that “tells users about current or upcoming requirements and restrictions in areas of the National Airspace System (NAS) where they may want to operate their unmanned aircraft system (UAS).”⁴ But while FAA has also made a large amount of UAS safety and registration resources available on its website, we urge the FAA to collaborate with manufacturers, retailers, safety experts and consumer advocates to develop a more comprehensive and dynamic

³ 49 U.S.C. §§ 44101, 44102 (2016).

⁴ FAA Press Release: <http://www.faa.gov/news/updates/?newsId=84508>.

educational program that provides the necessary flight safety information to UAS users and explains the requirement for registration of qualifying UAS products.

The retail industry has already begun to take some steps to support FAA's efforts. For example, RILA has become an official supporter of the "Know Before You Fly" campaign established by the Association for Unmanned Vehicle Systems International (AUVSI), the Academy of Model Aeronautics (AMA), and the Small UAV Coalition. Information about the "Know Before You Fly" campaign and flight safety guidelines have been made available to members and posted on RILA's website. Additionally, a number of RILA members currently distribute "Know Before You Fly" and flight safety educational materials to their customers or have plans to do so in the future.

Manufacturers also can play an important role in educating consumers on the new registration requirements and flight safety practices. Today, consumers are often confused about the take-off weight of a particular UAS product, which is critical to determining if the product must be registered. Manufacturers have this technical information. We urge the FAA to work collaboratively with manufacturers identify and label UAS products that fall under the new registration requirement and include FAA's UAS safety guidelines as well as information about registration requirements within the product packaging. In addition, as a resource for consumers, manufacturers could work with FAA to develop a comprehensive list of products subject to the new registration requirements that could be posted on FAA's website. Finally, to encourage consumers to register their products prior to operation, the FAA could work with manufacturers to explore the use of software technology that prevents operation of high-risk UAS products until after registration with the FAA. A prior-to-operation registration requirement coupled with a software operation lock will most efficiently and effectively result in the registration of high-risk UAS by consumers prior to operation.

FAA's meaningful collaboration and cooperation with all stakeholders is essential in developing an effective consumer awareness and education campaign to promote safe and responsible UAS usage and registration. RILA welcomes the opportunity to work with the FAA on this important issue.

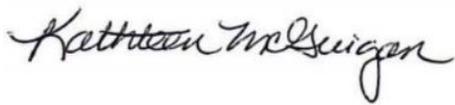
Conclusion

RILA understands that crafting an effective and efficient UAS safety and product registration system is an ambitious task, and fully supports the FAA's goals of enhancing UAS user accountability and increasing safe and responsible UAS practices by implementing an easy-to-use registration system for UAS products. We believe that the most effective and efficient system to accomplish these goals is the current prior-to-operation process set forth in the IFR – a FAA owned and operated web-based registration process that obviates the need for retailers to act as middlemen in the registration process and fee collection. Any other type of registration process, including point-of-sale registration, would impose heavy and costly administrative burdens on retailers and raise serious consumer privacy and legal concerns. Finally, for the

reasons stated above, we urge the FAA to clearly state the preemptive federal standard for UAS registration to provide for uniformity, consistency and alleviate potential burdens on both retailers and consumers if states are left to legislate potentially inconsistent UAS safety requirements.

We thank the agency again for the opportunity to provide comments and look forward to working with FAA further on this issue.

Sincerely,



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Retail Industry Leaders Association (RILA)