

COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER

to the

FEDERAL AVIATION ADMINISTRATION

Notice: Petition for Exemption; Summary of Petition Received; Causey Aviation Unmanned, Inc.

[Docket No. FAA-2020-42]

August 4, 2020

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By notice published July 15, 2020, the Federal Aviation Administration (“FAA”) issued a notice of a petition for exemption and summary of the petition received from Causey Aviation Unmanned, Inc.<sup>1</sup> Causey Aviation Unmanned seeks an exemption to allow them to conduct commercial drone deliveries.

The Electronic Privacy Information Center (“EPIC”) submit these comments to the FAA to (1) remind the FAA of the importance of addressing the privacy risks of drones as they are integrated into the national airspace; and (2) urge the FAA to use the exemption granting process to provide more information to the public on drone surveillance capabilities and uses as well as require the implementation of privacy safeguards as a condition of the exemption grant.

EPIC is a public interest research center in Washington, D.C. EPIC was established in 1994 to focus public attention on emerging privacy issues.<sup>2</sup> For well over a decade, EPIC has

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<sup>1</sup> Notice: *Petition for Exemption; Summary of Petition Received; Causey Aviation Unmanned, Inc.*, 85 Fed. Reg. 42973 (July 15, 2020).

<sup>2</sup> EPIC, *About EPIC* (2019), <https://epic.org/epic/about.html>.

maintained expertise on privacy, safety, and security concerns related to drones and has prominently advocated for better regulation of the national airspace since 2005.<sup>3</sup> In 2012, EPIC, joined by more than one hundred experts and organizations, petitioned the FAA to undertake a rulemaking to establish privacy regulations prior to the deployment of commercial drones in the national airspace. In the Petition, EPIC described the many ways in which the deployment of drones would threaten important privacy interests.<sup>4</sup>

EPIC has submitted many comments to the FAA explaining the need to address the privacy risks of drones.<sup>5</sup> In 2015, EPIC stated “[t]he widespread deployment of drones in the United States is one of the greatest privacy challenges facing the Nation.”<sup>6</sup> EPIC also testified to legislative bodies on the “unique threat to privacy” posed by drones<sup>7</sup> because “[t]he technical and economic limitations to aerial surveillance change dramatically with the advancement of drone

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<sup>3</sup> EPIC, *Domestic Unmanned Aerial Vehicles (UAVs) and Drones* (2019), <https://epic.org/privacy/drones/>; EPIC, *Spotlight on Surveillance: Unmanned Planes Offer New Opportunities for Clandestine Government Tracking* (Aug. 2005), <https://epic.org/privacy/surveillance/spotlight/0805/>.

<sup>4</sup> Petition from EPIC, et al., to Michael P. Huerta, Acting Adm’r, Fed. Aviation Admin. (Mar. 8, 2012), <https://epic.org/privacy/drones/FAA-553e-Petition-03-08-12.pdf>.

<sup>5</sup> EPIC, *Comments of the Electronic Privacy Information Center to the Federal Aviation Administration of the Department of Transportation Docket No. FAA-2013-0061: Unmanned Aircraft System Test Site Program* 10 (Apr. 23, 2013), <https://epic.org/apa/comments/EPIC-Drones-Comments-2013.pdf>; EPIC, *Comments on the Clarification of the Applicability of Aircraft Registration Requirements for Unmanned Aircraft Systems (UAS) and Request for Information Regarding Electronic Registration for UAS*, Federal Aviation Admin. Docket No. FAA-2015-4378], 9-11 (Nov. 12, 2016), <https://epic.org/privacy/drones/EPIC-FAA-Drone-Reg-Comments.pdf>.

<sup>6</sup> EPIC, *Comments on the Operation and Certification of Small Unmanned Aircraft Systems*, Federal Aviation Admin. Docket No. FAA-2015-0150, 5 (Apr. 24, 2015), <https://epic.org/privacy/litigation/apa/faa/drones/EPIC-FAA-NPRM.pdf>.

<sup>7</sup> *Use of Unmanned Aerial Vehicles (Drones): Hearing Before the S. Majority Policy Comm. of the General Assembly of Pennsylvania*, 1-2 (2016) (statement of Jeramie D. Scott, EPIC National Security Counsel), <https://epic.org/privacy/drones/EPIC-Drone-Testimony-20160315.pdf>; *Crimes – Unmanned Aircraft Systems – Unauthorized Surveillance: Hearing Before the H. Judiciary Comm. of the General Assembly of Maryland*, 435th 1-2 (2015) (statement of Jeramie D. Scott, EPIC National Security Counsel), <https://epic.org/privacy/testimony/EPIC-Statement-House-Bill-620.pdf>; *Using Unmanned Aerial Systems Within the Homeland: Security Game Changer?: Hearing Before the H. Subcommittee on Oversight, Investigations, and Management of the Comm. on Homeland Sec.*, 112th Cong. 4 (2012) (statement of Amie Stepanovich, EPIC Association Litigation Counsel), <https://epic.org/privacy/testimony/EPIC-Drone-Testimony-7-12.pdf>.

technology.”<sup>8</sup> The privacy risks only become more heightened as the FAA grants exemptions for activities like drone deliveries.

### **I. The FAA Recognizes the Privacy Risks Drones Pose and Must Act**

As recently as July 2018, the FAA continued to emphasize the importance of privacy, stating in the agency's updated Roadmap: “Much work must also be done to develop the standards necessary to support UAS certification processes. In addition to the technological and operational challenges posed by UAS integration, there are additional policy questions raised by UAS use, including security — both physical and cyber — and privacy.”<sup>9</sup>

The FAA is fully aware that privacy is an important issue to address as drones are integrated into the national airspace. In September 2013, the FAA finalized its Comprehensive Plan for drone integration, and stated, “Important non-safety related issues, such as privacy and national security, need to be taken into consideration as UAS [drones] are integrated into the NAS [national airspace].”<sup>10</sup> The Comprehensive Plan also specifically acknowledged, “as the demand for [drones] increases, concerns regarding how drones will impact existing aviation grow stronger, especially in terms of safety, *privacy*, frequency crowding, and airspace congestion.”<sup>11</sup>

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<sup>8</sup> EPIC National Security Counsel Jeramie D. Scott, Statement for the Rec. of the H. Judiciary Committee of the Gen. Assemb. of Md., *In Support of House Bill 620: "Crimes – Unmanned Aircraft Systems – Unauthorized Surveillance"*, 1 (Mar. 17, 2015).

<sup>9</sup> Fed. Aviation Admin., U.S. Dep’t of Transp., *Integration of Civil Unmanned Aircraft Systems (UAS) in the National Airspace System (NAS) Roadmap (Second Edition)*, 4-5 (July 30, 2018), available at [https://www.faa.gov/uas/resources/policy\\_library/media/Second\\_Edition\\_Integration\\_of\\_Civil\\_UAS\\_NAS\\_Roadmap\\_July\\_2018.pdf](https://www.faa.gov/uas/resources/policy_library/media/Second_Edition_Integration_of_Civil_UAS_NAS_Roadmap_July_2018.pdf).

<sup>10</sup> Joint Planning and Dev. Office, *Unmanned Aircraft Systems (UAS) Comprehensive Plan A Report on the Nation’s UAS Path Forward*, 4 (Sept. 2013), available at [https://www.faa.gov/about/plans\\_reports/congress/media/UAS\\_Comprehensive\\_Plan.pdf](https://www.faa.gov/about/plans_reports/congress/media/UAS_Comprehensive_Plan.pdf).

<sup>11</sup> *Id.* at 5 (emphasis added).

In November 2013, the FAA published a roadmap for the integration of drones into the airspace.<sup>12</sup> The Roadmap stated:

The FAA is responsible for developing plans and policy for the safe and efficient use of the United States' navigable airspace. This responsibility includes coordinating efforts with national security and privacy policies so that the integration of [drones] into the NAS is done in a manner that supports and maintains the United States Government's ability to secure the airspace and addresses privacy concerns.<sup>13</sup>

Further, the Roadmap correctly asserted the expanded use of drones “raises questions as to how to accomplish [drone] integration in a manner that is consistent with privacy and civil liberties considerations.”<sup>14</sup>

More recently, in July 2018, the FAA emphasized the importance of privacy, stating in the agency's updated Roadmap: “Much work must also be done to develop the standards necessary to support UAS certification processes. In addition to the technological and operational challenges posed by UAS integration, there are additional policy questions raised by UAS use, including security — both physical and cyber — and privacy.”<sup>15</sup>

From the beginning, the FAA has recognized the privacy risks drones present. The agency must now act on that recognition.<sup>16</sup>

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<sup>12</sup> Fed. Aviation Admin., U.S. Dep't of Transp., *Integration of Civil Unmanned Aircraft Systems (UAS) in the National Airspace System (NAS) Roadmap* (1st ed. 2013), available at [https://www.faa.gov/uas/resources/policy\\_library/media/uas\\_roadmap\\_2013.pdf](https://www.faa.gov/uas/resources/policy_library/media/uas_roadmap_2013.pdf).

<sup>13</sup> *Id.* at 9.

<sup>14</sup> *Id.* at 11.

<sup>15</sup> Fed. Aviation Admin., U.S. Dep't of Transp., *Integration of Civil Unmanned Aircraft Systems (UAS) in the National Airspace System (NAS) Roadmap (Second Edition)*, 4-5 (July 30, 2018), available at [https://www.faa.gov/uas/resources/policy\\_library/media/Second\\_Edition\\_Integration\\_of\\_Civil\\_UAS\\_NAS\\_Roadmap\\_July%202018.pdf](https://www.faa.gov/uas/resources/policy_library/media/Second_Edition_Integration_of_Civil_UAS_NAS_Roadmap_July%202018.pdf).

<sup>16</sup> See Jeramie D. Scott, *Drone Surveillance: The FAA's Obligation to Respond to the Privacy Risks* 44 *Fordham Urb. L.J.* 767 (2017), <https://ir.lawnet.fordham.edu/ulj/vol44/iss3/6>.

## II. The FAA Must Require Privacy Protections and Better Inform the Public of Drone Surveillance Capabilities When Granting Drone Exemptions

The FAA states, “[t]he purpose of this notice is to improve the public’s awareness of, and participation in, the FAA’s exemption process.”<sup>17</sup> Unfortunately, awareness of the “exemption process” does little to provide the public with meaningful information about the drones surveillance capabilities or assurances that drones will not infringe on their privacy during operation. This is particularly true for commercial drones where there is less information about their capabilities. It is clear from consumer drones that the off-the-shelf capabilities of drones make it capable of surreptitious surveillance. For example, the Mavic 2 Pro boast the ability to shoot in 4K and can transmit 1080p video as far as 8 km.<sup>18</sup> Additionally, the Mavic 2 Pro is equipped with low-noise propellers, 2x optical zoom, and the ability to avoid objects in its path and track objects.<sup>19</sup>

It is not far-fetched to think that delivery drones may be doing more than just deliveries. Indeed, Amazon was granted a patent outlining the use of the company’s delivery drones for “surveillance as a service.”<sup>20</sup> The patent contemplates audio and chemical sensors as well as night vision and thermal cameras.<sup>21</sup>

The petition submitted by Causey Aviation Unmanned does not discuss the surveillance capabilities of the drone. The petition does not discuss whether the drone will collect any information while delivering packages, what collected information will be used for, or who that

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<sup>17</sup> Notice: *Petition for Exemption; Summary of Petition Received; Causey Aviation Unmanned, Inc.*, 85 Fed. Reg. 42973 (July 15, 2020).

<sup>18</sup> DJI, *Mavic 2 Specs*, <https://www.dji.com/mavic-2/info#specs> (last visited Aug. 4, 2020).

<sup>19</sup> *Id.*

<sup>20</sup> U.S. Patent No. 10,313,638 (filed June 12, 2015); *See also* Jon Porter, *Amazon patents ‘surveillance as a service’ tech for its delivery drones*, The Verge (June 21, 2019), <https://www.theverge.com/2019/6/21/18700451/amazon-delivery-drone-surveillance-home-security-system-patent-application>.

<sup>21</sup> *Id.*

information will be disclosed to. Additionally, it does not appear the FAA will require any implementation of privacy protections that would limit data collection, use, and disclosure to that which is necessary to perform the drone delivery. Drones have many beneficial uses, but they are essentially aerial surveillance platforms with the ability to conduct surveillance undetected.

Causey Aviation Unmanned may very well have no intention of using the surveillance capabilities of their commercial drones for any type of data collection, but the lack of transparency and privacy safeguards leaves a fog of suspicion. Given the public's general weariness around drones,<sup>22</sup> the FAA should do more to ensure that the exemptions the FAA is granting do not lead to privacy-invasive activities the public would object to.

To better inform the public, Causey Aviation Unmanned's petition and future petitions should contain information on the surveillance capabilities of the drones (e.g. the cameras capabilities should be detailed). Additionally, any petition should detail what if any information is collected by the drone, how that information is used, how long the information is retained, and who the information is disclosed to. The FAA, in granting a petition, should restrict any information collection done by the drone and the subsequent use and disclosure of that information to only what is absolutely necessary to perform the task for which the exemption was granted for.

### **Conclusion**

FAA should do more to inform the public of the surveillance capabilities and uses of drones and implement safeguards to protect privacy. We urge the FAA to incorporate better transparency measures into their review of exemptions in order to better inform the public about

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<sup>22</sup> Pew Research Center, *Slight majority of Americans think drone should not be allowed to fly near private homes* (Dec. 18, 2017), [https://www.pewresearch.org/fact-tank/2017/12/19/8-of-americans-say-they-own-a-drone-while-more-than-half-have-seen-one-in-operation/ft\\_17-12-14\\_drones\\_whereallowed/](https://www.pewresearch.org/fact-tank/2017/12/19/8-of-americans-say-they-own-a-drone-while-more-than-half-have-seen-one-in-operation/ft_17-12-14_drones_whereallowed/).

how drones are being used. Additionally, we urge the FAA to use the granting of exemptions as a means to require some baseline privacy protections. In doing so, the FAA will help set expectations on commercial drone users that they will be responsible for being transparent about drone capabilities and accountable for protecting privacy.

Respectfully submitted,

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