

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 8 – I
DATE: August 7-9, 2018

SUBJECT

BOR Policy 1:30 – Unmanned Aircraft Systems Policy Revisions (First and Final Reading)

CONTROLLING STATUTE, RULE, OR POLICY

BOR Policy 1:30 – Unmanned Aircraft Systems

BACKGROUND / DISCUSSION

The Board of Regents initially approved the system’s Unmanned Aircraft Systems (UAS) Policy (BOR Policy 1:30) at its April 2015 meeting, which policy was subsequently revised at its March 2017 meeting to address a number of changes brought about by the rules issued by the Federal Aviation Administration on August 29, 2016, for non-hobbyist small unmanned aircraft operations – Part 107 of the Federal Aviation Regulations – which covered a broad range of commercial uses for drones weighing less than 55 pounds.

The current version of BOR Policy 1:30 classifies all UAS use as either “institutional UAS use” or “private UAS use”. Institutional UAS use is defined as, “any UAS use by university employees or students as part of their university employment or as part of a university program” with private UAS use defined as, “all UAS operation that is not institutional UAS use, which includes model aircraft.” Section C.7 of BOR Policy 1:30 goes on to set forth a number of restrictions applicable to private UAS use. The issue that brought about the proposed revisions is when universities contract with third parties for services that require the operation of UAS. This scenario does not fit squarely into the definition of institutional UAS use, but it was also not intended to be subject to the limitations imposed on private UAS use contained in the policy. As such, the revisions to BOR Policy 1:30 set forth in Attachment I are intended to address this issue by creating a new definition for “contracted UAS use” which is then excluded from the definition of private UAS use. Additionally, a new section C.8 imposes certain insurance requirement for all contractors or third parties conducting contracted UAS use.

(Continued)

DRAFT MOTION 20180807_8-I:

I move to (1) waive the two-reading requirement of By-Laws Section 5.5.1, and (2) approve the first and final reading of BOR Policy 1:30 with the revisions as shown in Attachment I.

IMPACT AND RECOMMENDATION

The proposed revisions to BOR Policy set forth in Attachment I clarify the intent and remove the ambiguity regarding the treatment of contractors or third parties conducting contracted UAS use for institutional purposes. First and final reading is sought to rectify the uncertainty in an expedited manner.

Staff recommends approval.

ATTACHMENTS

Attachment I – BOR Policy 1:30 – Unmanned Aircraft Systems Policy Revisions

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Unmanned Aircraft Systems Policy

NUMBER: 1:30

A. PURPOSE

To provide for the requisite oversight and authority for the operation of UAS, guidance concerning the appropriate operation of and uses for UAS, and to protect them from abuse and from unlawful or other misuse.

B. DEFINITIONS

1. Certificate of Authorization (COA): Pursuant to Federal Aviation Administration (“FAA”) regulations, the COA is an authorization issued by the Air Traffic Organization to a public operator for a specific UAS activity.

2. Civil Operations: Any UAS operations that are not “public operations” are civil operations. All UAS operations for commercial purposes, including university business, teaching and research, unless otherwise noted herein, are civil operations.

2.3. Contracted UAS Use: All UAS use conducted by contractors or third parties for institutional purposes pursuant to a contract with the university.

3.4. Institutional Airspace: Includes that portion of the air space between the surface of the ground and 300 feet above the ground or above a building or structure erected on the university property.

4.5. Institutional UAS Use: Any UAS operation by university employees or students as part of their university employment or as part of a university program.

5.6. Model Aircraft: UAS that is (1) flown for hobby or recreational purposes, per section 336(c) of the FAA Modernization and Reform Act of 2012 and any amendments thereto; (2) capable of sustained flight in the atmosphere; and (3) flown within visual line of sight of the aircraft operator. Model aircraft must not exceed 55 pounds and require FAA registration and appropriate marking prior to any flight operation.

6.7. Part 107: FAA final rule on Operation and Certification of Small Unmanned Aircraft Systems, 49 CFR Part 107 and any amendments thereto. This rule governs civil operations of small UAS weighing less than 55 pounds by a Remote Pilot in Command or under the direct supervision of a certified Remote Pilot. Part 107 does not apply to model aircraft.

7.8. Private UAS Use: All UAS operation that is not institutional UAS use or contracted UAS use, which includes model aircraft.

8.9. Public Operations: Include those aircraft owned and operated by government or public entities for governmental purposes and which are not operated under Part 107.

9.10. Section 333 Exemption: FAA exemption from certain approval requirements based on Section 333 of the FAA Modernization and Reform Act of 2012 and any amendments thereto, which grants the Secretary of Transportation the authority to determine whether an airworthiness certificate is required for a UAS to operate safely in the National Airspace System.

10.11. Unmanned Aircraft Systems (“UAS”): Unmanned aircraft and their associated elements (including communication links and the components that control the unmanned aircraft) that are required for the pilot in command to safely and efficiently operate the unmanned aircraft.

C. POLICY

1. Compliance with Federal Aviation Administration Regulations

The FAA has jurisdiction over all navigable airspace in the United States. All aircraft, whether manned or unmanned, are subject to FAA rules and regulations. All university employees, contractors, third parties, students and visitors operating UAS governed by this policy are responsible for complying with FAA regulations, state and federal laws, and university policies ~~with respect to private UAS use in institutional airspace or institutional UAS use.~~

2. Establishment of Institutional Administration

Each institution that intends to operate UAS shall develop, implement and administer specific policies and procedures as necessary to comply with this policy and the requirements of state and federal law and designate an institutional office to assume responsibility for overseeing ~~institutional~~-UAS compliance. The designated institutional office’s responsibilities shall include, but are not limited to, providing oversight and approval of institutional UAS use under Part 107, administering requests to pursue a COA or Section 333 exemption on behalf of an institutional unit, and ensuring compliance of institutional UAS use operating under a COA or Section 333 exemption.

3. Institutional UAS Use

Institutional UAS use must be conducted under Part 107 or by obtaining a Section 333 exemption or COA from the FAA. Any institutional UAS use permissible under Part 107 shall be considered a Civil Operation and governed by Part 107 unless the designated institutional office determines that a COA or Section 333 exemption is necessary and appropriate. Prior to granting approval for any institutional UAS use the designated institutional office must: (1) ensure the UAS operation is authorized under Part 107, a Section 333 exemption, or a COA; (2) obtain adequate insurance coverage; (3) ensure each person controlling the UAS has received the requisite training, certification or licensure; and (4) establish and document such additional training, maintenance, logging and control procedures as may be required under FAA policy and guidance.

4. Institutional UAS Use Pursuant to Part 107

Any institutional UAS use permissible under Part 107 may be declared a Civil Operation and conducted in accordance with Part 107. Authorization to fly may be given by the

designated institutional office upon completion of the documentation necessary to demonstrate compliance with the provisions of this policy and with the Part 107 pre-flight requirements. Operators must comply with all Part 107 requirements and restrictions, except to the extent that a waiver has been granted by the FAA and approved by the designated institutional office. The FAA summary of the Part 107 parameters is set forth in Appendix A.

5. Institutional UAS Use Pursuant to a COA

The FAA may grant permission to institutions to operate UAS, so long as their use qualifies as a government function under 49 USC §40125 and any amendments thereto. If an institution intends to operate UAS for a government function that cannot be conducted under Part 107, the institution must apply for and be granted a COA from the FAA. *Government uses for purposes of the COA include research in furtherance of core governmental functions, institutional security, facilities maintenance, institutional relations and activities provided to the public at no cost incidental to an institution's public service mission.*

The designated institutional office shall be responsible for determining if institutional UAS use conducted outside of Part 107 is necessary and appropriate, and if so, for pursuing a COA for such activity. COAs are only available to government agencies or public entities for operations that are considered public operations. *COAs cannot be granted to public institutions for education or training since these applications are considered commercial in nature.* A COA is granted to the institution, not to individuals. Data acquired through the use of the UAS belongs to the institution and not to the individual.

Due to the potential legal and risk management issues involved in managing a COA, the designated institution office must conduct due diligence, considering the need, any available alternative(s) and the pros and cons associated therewith, prior seeking a COA.

6. Institutional UAS Use pursuant to a Section 333 Exemption

Any institution wishing to engage in civil operations that are not permissible under Part 107 must pursue a Section 333 exemption. The designated institutional office shall be responsible for determining if institutional UAS use conducted outside of Part 107 is necessary and appropriate, and if so, for pursuing a Section 333 exemption for such activity.

7. Private UAS Use within institutional airspace

All private UAS use in institutional airspace requires prior approval and may not interfere with the use of institutional grounds. If an institution has not designated an institutional office to oversee UAS compliance, permission for private UAS use within institutional airspace shall be requested through the institutional office that administer requests for private use of institutional facilities.

The following restrictions apply to the time, place, and manner of private UAS use:

- 7.1.** Only with prior permission;
- 7.2.** Only during daylight hours;
- 7.3.** Within full view and control of operator;

- 7.4. Not during outdoor institutional events;
- 7.5. Not over outdoor athletic facilities or any portion of the campus grounds within a 1,320-foot radius of the facility;
- 7.6. Not within 300 feet of buildings;
- 7.7. Not within 150 feet of persons or animals; and
- 7.8. Not in a manner which interferes with ground vehicles or traffic.

8. Contracted UAS Use

All contractors or third parties conducting contracted UAS use must provide the university with proper proof of insurance evidencing insurance coverage. The default coverage limit shall be \$1,000,000 minimum coverage per occurrence, but the institution may approve a different coverage limit in writing and include such limit in the contract.

8.9. UAS Compliance with Other Policies

This policy is to be read in conjunction with institutional policies regarding conduct while on institutional grounds and utilizing institutional resources.

FORMS / APPENDICES:

Appendix A (FAA News – June 21, 2016)

SOURCE:

BOR March-April 2015; BOR March 2017; BOR August 2018.