

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ELECTRONIC PRIVACY INFORMATION CENTER,

Plaintiff,

v.

DRONE ADVISORY COMMITTEE, et al.,

Defendants.

Civ. Action No. 18-833 (RC)

NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff Electronic Privacy Information Center (“EPIC”) respectfully submits this Notice to inform the Court of the FAA Reauthorization Act of 2018, Pub. L. No. 115–254, 132 Stat. 3,186 (“FAA Act”), which was enacted by Congress and signed into law by the President on October 5, 2018. In support of EPIC’s Opposition to the Motion to Dismiss now pending before this Court, ECF No. 18, the FAA Act further establishes that the Task Groups of Defendant Drone Advisory Committee (“DAC”) are advisory committees in their own right, subject to all of the transparency requirements of the Federal Advisory Committee Act (“FACA”).

Section 360 of the FAA Act charges the Comptroller General of the United States with “initiat[ing] a study on appropriate fee mechanisms to recover the costs of— (1) the regulation and safety oversight of unmanned aircraft and unmanned aircraft systems; and (2) the provision of air navigation services to unmanned aircraft and unmanned aircraft systems.” § 360(a). In carrying out this required study, “the Comptroller General shall consider, at a minimum— (1) **any recommendations of Task Group 3 of the Drone Advisory Committee** chartered by the Federal Aviation Administration on August 31, 2016[.]” § 360(b) (emphasis added).

Congress, through the text of Section 360(b) of the FAA Act, has made it doubly clear that Task Group 3 reports “directly to a Federal officer or agency.” 41 C.F.R. § 102-3.145; *accord* 41 C.F.R. § 102-3.35. Under the FAA Act, it is the “recommendations of Task Group 3” that the Comptroller General must consider. § 360(b). No “adopt[ion]” or “deliberations by [a] parent advisory committee” stand between the Task Group and the Comptroller, 41 C.F.R. § 102-3.145, who is a federal officer. 5 U.S.C. § 2104(a) (defining “officer,” for the purposes of Title 5, as an individual who is “required by law to be appointed in the civil service by . . . the President” or who is “engaged in the performance of a Federal function under authority of law”); *see also* 31 U.S.C. § 703(a)(1) (“The Comptroller General and Deputy Comptroller General are appointed by the President, by and with the advice and consent of the Senate.”).

Task Group 3, like Task Groups 1 and 2, is thus a full-fledged advisory committee under the FACA. 5 U.S.C. app. 2 § 3(2). As the Government acknowledges, a subcommittee is fully subject to the FACA if—as here—it ““makes recommendations directly to a Federal officer or agency[.]”” Defs.’ Mem. Supp. Mot. Dismiss 24 (quoting 41 C.F.R. § 102-3.145), ECF No. 16-1; *see also* 41 C.F.R. § 102-3.35.

EPIC has already highlighted multiple instances in which the Task Groups acted as advisory committees and delivered recommendations straight to senior FAA officials. Compl. ¶¶ 62–93, ECF No. 1. The FAA Act now gives an FAA Task Group open-ended, prospective authority to influence the work of the Comptroller General. The Act thus removes any doubt: the Task Groups are direct conduits of advice to the federal government and must adhere to the transparency requirements of the FACA in their entirety. *See* U.S.C. app. 2 § 10(a)(1), (b).

EPIC brings this matter now before the Court as the FAA Act was only recently signed into law.

Respectfully Submitted,

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