

Communications and Information Technology Alert

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New “Draft” Drone Rulemakings Released During Government Shutdown—Remote ID Still Priority #1

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During the Transportation Research Board’s annual meeting in Washington, D.C., Secretary of Transportation Elaine Chao announced the initiation of two long-awaited rulemakings related to the operation of small unmanned aircraft systems (UAS): (1) a draft notice of proposed rulemaking (NPRM) that addresses small UAS operations over people and operations at night, and (2) a draft advance notice of proposed rulemaking (ANPRM) to address safe and secure operations of small UAS.

These draft rulemakings represent the Federal Aviation Administration’s (FAA) first significant UAS rulemaking steps since Part 107 was finalized in 2016. Although the “operations over people” NPRM has been held up for years because of concerns from the security community that there are no requirements for remote identification and tracking of UAS, both draft items released by Secretary Chao note that the requirements for UAS remote identification are expected to be finalized prior to adopting rules that will allow UAS operations over people and UAS operations at night (absent a Part 107 waiver).

The NPRM to advance operations over people goes beyond its official title to include additional credentialing and training requirements for UAS pilots: “This rulemaking would allow operations of small unmanned aircraft over people in certain conditions and operations of small UAS at night without obtaining a waiver. It would also require remote pilots in command to present their remote pilot in command certificate as well as identification to certain federal, state, or local officials, upon request, and proposes to amend the knowledge testing requirements in the rules that apply to small UAS operations to require training every 24 calendar months.” The requirement for additional testing is rooted in the FAA’s “performance-based regulatory philosophy established in [Part 107]” and will help the FAA to “achieve the agency’s safety objectives while simultaneously encouraging the development of solutions in this dynamic environment.”

The proposed framework for operations over people includes categorization (Categories 1, 2 and 3) of “permissible operations ... based on the risk of injury they present.” It also outlines “manufacturer and operator requirements for each category.” This proposed methodology emanates from the 2016 final report of the “Micro UAS Aviation Rulemaking Committee (ARC).” That report “recommended the FAA establish

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four categories for operations over people with small UAS. Specifically, the ARC suggested the establishment of risk thresholds based on the probability that direct impact with a person on the ground from a small unmanned aircraft would cause an injury that qualified as level 3 or higher on the Abbreviated Injury Scale (AIS).”

To advance safe night operation, the FAA proposes a combination of new “knowledge testing or training” and specific performance for anticollision lights (i.e., visible for at least three miles). In the FAA’s view, these two factors are most critical for ensuring safe night operation, a conclusion reached by the FAA after analyzing the contents of 4,837 Part 107 night operations waivers. As of the date of publication of the NPRM, the FAA has “not received any reports of small UAS accidents operating under a night waiver.”

Turning to the draft “**Safe and Secure Operations of Small Unmanned Aircraft Systems**” ANPRM, the FAA’s objective is “to gather information from the public to help inform the FAA’s efforts to assess options for reducing risks to public safety and national security associated with further integration of UAS into the NAS, including options for additional rulemaking.”

Topics upon which the FAA requests comment include:

- Stand-off distances for different types of UAS operations *vis-à-vis* people, property on the ground, other aircraft, etc.
- Limiting altitude, airspeed and other performance factors of UAS types and operations.
- Considerations for UAS Traffic Management to apply “more structure to the airspace and operations.”
- Payload restrictions in light of how UAS could be used for nefarious purposes.
- Small UAS critical system design requirements, especially as it relates to redundancy requirements of those critical systems.

The FAA recognizes that, as it considers safe and secure UAS operations, “[s]ome proposals for addressing national security and other concerns may exceed the FAA’s authority to regulate independently and may necessitate a broader Federal Executive or Legislative action. Comments, including proposals for rulemaking, will be considered within the context of the FAA’s existing statutory authority.”

In view of the government shutdown, the NPRM and ANPRM released by Secretary Chao in “draft” form will not be finalized and published in the Federal Register for official comment until after the government reopens. We will keep you informed.