

Policy Alert

June 20, 2016

Key Points

- The FAA will soon release a final rule governing commercial small UAS operations (“Final Rule”) that will represent a major step forward for both innovation and aviation.
- While the rule is not expected to permit operations beyond the visual line of sight, at night or over people not involved in the operation, it will allow the FAA to recalibrate its resources to focus on developing pathways to expedite the safe integration of UAS into the national airspace, rather than devoting considerable resources to authorize commercial operations on a case-by-case basis.
- The regulatory certainty accompanying this rule will allow businesses of all sizes and in every sector to begin to realize the immense economic potential of UAS, creating efficiencies and maximizing revenue



FAA to Release Final Rule for Commercial Small Unmanned Aerial Systems (UAS) Operations; More Work Will Remain

Unmanned aerial systems (UAS), commonly referred to as “drones,” have the potential to revolutionize the way companies do business. From delivery of goods to inspection of critical infrastructure, supply chain management and precision agriculture, businesses of all sizes are looking to operate UAS to create efficiencies and maximize revenue. While UAS technology has roots in military applications, the largest potential growth area lies in commercial operations.

One recent report estimated that the commercial UAS market will be a \$127 billion industry by 2020, with \$45 billion attributable to applications in infrastructure alone for solutions like investment monitoring, maintenance and asset inventory. Transport, including delivery, and insurance—everything from risk assessment to claims management and fraud prevention—are other major areas of opportunity. Media and entertainment, telecommunications, agriculture, security and mining are just some of the other industries ripe for billions of dollars in commercial UAS solutions¹.

¹ Clarity from above, PwC Global Report on the Commercial Applications of Drone Technology, May 2016. <http://preview.thenewsmarket.com/Previews/PWC/DocumentAssets/433056.pdf>

The Federal Aviation Administration (FAA) is tasked with overseeing the safe integration of UAS into the National Airspace System. On February 15, 2015, the FAA announced a Notice of Proposed Rulemaking (NPRM) outlining a regulatory framework for commercial small UAS (those weighing less than 55 pounds) operations. In the absence of this framework, commercial UAS operations are prohibited by law, unless authorized by the FAA under what is known as the “Section 333 exemption process.” The FAA has been deluged by petitions for exemption; to date, more than 5,200 exemptions have been granted, with more than 7,000 still pending.

The public comment period closed in April 2015, and the rule was due to be finalized in September 2015. The FAA sent the Final Rule to the Office of Information and Regulatory Affairs, the division of the White House Office of Management and Budget tasked with reviewing significant proposed federal regulations, on April 20, 2016. The FAA has maintained that it expects to finalize the rule in late spring.

If adopted as proposed, the rule will permit only daytime operations within the visual line of sight. Operators will have to pass an aeronautical knowledge test at one of more than 600 designated FAA testing sites. Operations over people not involved in the flight and carriage of property will remain prohibited.

While work remains to be done, this initial regulatory framework will substantially broaden opportunities for commercial UAS operations, allowing businesses of all sizes to further embrace UAS technology to create efficiencies and boost revenue. Commercial UAS operators will not have to seek Section 333 exemptions to operate within the parameters of the new regulatory framework, eliminating the need to participate in a lengthy and onerous petition process. Notably, the rule is also expected to remove a requirement that UAS operators have manned aircraft flying experience, an unnecessary and costly burden on businesses.

What to Watch

One key component of the Final Rule will be its effective date. The UAS industry and companies wishing to utilize this technology are hoping for an effective date that coincides with, or closely follows, the rule’s release. Not often the case with new government regulations, industry has been pressing the FAA to develop a regulatory framework for years and would like to see it implemented as soon as possible to begin taking advantage of the technology. International regulators—notably those in Japan, France, Canada and the United Kingdom—are rapidly embracing UAS technology and the United States risks falling behind global competitors. American companies have already been forced to look overseas to conduct research and development in support of commercial operations.

In the meantime, the FAA is in the process of establishing a Drone Advisory Council (DAC), a standing committee of industry representatives that will provide advice on UAS integration issues moving forward. The full DAC membership is expected to be named in the coming days, but it has already been announced that Intel CEO Brian Krzanich will co-chair the panel. It is expected that members will represent the breadth of the industry, including the military industrial complex and manufacturers and operators of UAS of all sizes, and that the DAC will convene for its first meeting in August, 2016. Many

within the industry hope to see the DAC take steps to inform a rulemaking to govern beyond visual line of sight operations—a key component of commercial UAS operations—as one of its first tasks.

The FAA already anticipates releasing an NPRM for regulations governing operations over people by the end of 2016. The NPRM will be informed by recommendations of an Aviation Rulemaking Committee convened earlier this year.

Congress Weighs In

Meanwhile, Congress has taken a strong stance on UAS integration issues through the ongoing FAA reauthorization process. Both the House and Senate reauthorization bills include robust UAS subtitles that direct the FAA to take a more forward-leaning, expeditious approach to a commercial UAS regulatory framework, including directing the agency to develop a pathway for the carriage of goods and to implement an unmanned traffic management system. The bills also promote beyond-visual-line-of-sight operations, authorize operations at night, broaden UAS access to unlicensed spectrum, and create a micro UAS classification to guide commercial operations of the smallest category of UAS.

Current FAA authorities expire on July 15, 2016. The House Transportation and Infrastructure Committee passed its bill in February 2016, largely along party lines, due to a controversial proposal to overhaul Air Traffic Control (ATC). In the absence of enough support to bring the bill to the House floor, it remains stalled. The Senate Commerce, Science, & Transportation Committee sent its bipartisan bill, which does not include a similar ATC provision, to the floor in March 2016; the Senate overwhelmingly passed it in April 2016, by a margin of 95-3. House leaders have resisted calls to take up the Senate bill, and, given the diminishing number of legislative days left before FAA authorities expire on July 15, 2016, it is becoming increasingly likely that Congress will need to pass another short-term extension of current programs to avert a shutdown.

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