



FAA Issues New Proposed Rules for Unmanned Aerial Systems (Drones)

The FAA Modernization and Reform Act of 2012 addressed the integration of civil unmanned aircraft systems, also known as UAS or drones, into the national airspace system. The Act requires the Secretary of Transportation to develop, among other things, a comprehensive integration plan and rules governing the operation of small UAS. On Feb. 15, 2015, the Federal Aviation Administration (FAA) issued its proposed rules. According to the Secretary of Transportation, UAS “technology is advancing at an unprecedented pace and this milestone allows federal regulations and the use of our national airspace to evolve to safely accommodate innovation.”

The Notice of Proposed Rulemaking will be available for public comment for 60 days following its publication in the Federal Register. Interested and affected companies have the opportunity to provide comments on the FAA proposal and shape the final UAS rule. This client *Alert* provides an overview of what the FAA has proposed.

Permitted Vehicles

The proposed rules would permit the operation of UAS weighing less than 55 pounds. The UAS would not be required to have an airworthiness certificate, such as that required for an airplane, but they would have to display aircraft markings similar to other aircraft, and operators would be required to conduct a pre-flight safety check. The FAA is also soliciting public comment on further exemptions for “micro” UAS, weighing 4.4 pounds or less. The proposed rules do not apply to model aircraft and do not apply to private, recreational use of drones.

Operational Limits

The UAS could operate at speeds up to 100 mph, and at altitudes below 500 feet above ground level. Operations would be limited to daylight hours with visibility of at least 3 miles. The UAS would have to remain within the unaided visual line-of-sight of the operator; binoculars or an onboard camera would not satisfy this requirement. Operators could also use an observer to assist in maintaining visual contact, but would have to retain the ability to see the UAS themselves.

Licensed Operators

Operators would have to be licensed by the FAA, but they would not need a pilot's license. Under existing regulations, operators can request an exemption from FAA regulations, but such exemptions are usually conditioned on possession of a pilot's license by the operator. Under the proposed rules, operators would have to be at least 17 years old and be vetted by the Transportation Security Administration. They would be required to pass an initial aeronautical test at an FAA test site, with an update test every 2 years. The anticipated costs for the license are small, in the range of a few hundred dollars.

Flights over People and Property

The UAS would be prohibited from operating over any persons "not directly participating in the operation" or "not located under a covered structure that can provide reasonable protection." This is a significant limitation, which would preclude flights over most public locations such as schools, beaches and parks, and might be read to limit flights over residential areas. Given the number of drone videos already posted online, this rule is likely to be broken, which, as noted below, may result in potential liability. The limitation on overflight of other persons also highlights privacy concerns. Although not directly addressed in the proposed rules, privacy issues will continue to be a point of friction between drone operators and those potentially affected, such as drone-operating photo-journalists and their news subjects.

Delivery Systems and Remote Monitoring

The line-of-sight requirement would likely preclude the type of remotely-piloted delivery systems envisioned by certain major sales and fulfillment services. This requirement may also limit the use of the proposed rules for authorizing remote monitoring of agricultural sites, pipelines and other areas that are out of the line-of-sight of the operator. However, in these situations, the FAA grants limited exemptions to existing FAA regulations for qualified operators, and the proposed rules do not preclude further development of rules for remote operation.

Liability and Insurance

A UAS weighing 50 pounds and traveling at 100 mph could represent a significant potential danger to persons and property. The proposed rules would require a report within 10 days of any accident involving injury to persons or property. Companies operating drones are cautioned that existing liability policies may not provide coverage for drones, particularly for those that are not operated in compliance with existing FAA regulations and exemptions. Some carriers are writing coverage specific to drones, and operators, as well as the companies that hire such operators, should consult with their insurance agents prior to commencing operations.

Ongoing Legal Issues and Interim Operations

The FAA rules are proposed rules, not authorizations for immediate operations. Therefore, companies that plan to use drones before the rules are finalized are cautioned that, unless they hold an existing FAA exemption, they may risk liability for the commercial use of drones. In addition to the FAA, state and local governments are currently exploring further restrictions on drone flights, including restrictions related to privacy, which are not directly addressed in the FAA proposed rules.

In addition to regulatory limitations, drone operations can create significant risks of liability for personal injury, property damage and other claims. These legal issues are likely to present risks even for companies that do not directly operate drones, but instead contract with drone operators.

Given the rapid development in both the technology and the rules and regulations, companies that plan to operate or hire drones should consult with counsel to get an up-to-date assessment of the regulatory environment and other legal risks pertaining to their particular location.

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Unmanned Aerial Vehicle Regulatory and Compliance Practice

Greenberg Traurig's team is well positioned to provide focused civil and governmental representation to the UAV industry nationwide. Greenberg Traurig has offices in four of the six states that are designated UAV testing sites (Nevada, New York, Texas and Virginia), as well as in states that have begun to create alliances with those test states. Companies that make and use UAVs will need experienced counsel to help shape these laws and to assist them in navigating through this emerging field. Greenberg Traurig attorneys and lobbying professionals are well equipped to handle all UAV/UAS legal and regulatory issues, including: obtaining patents and protecting UAV/UAS technology and trade secrets; monitoring, opposing, and drafting legislation and shaping regulations; assisting with regulatory interpretation and enforcement issues; defending companies in litigation; and assisting in obtaining government export and re-export authorizations for hardware, software, technology and services.

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