

Drone Détente: Administration Signals Movement on Key Rules

IN SHORT

The Situation: Based on a pair of recent actions relating to unmanned aircraft systems, the U.S. Federal Aviation Administration appears to be making progress toward publishing long-awaited rules of interest to potential users of this technology.

The Development: A plan released by the Office of Management and Budget lists two specific FAA priorities relating to unmanned aircraft systems for 2018, and an FAA rulemaking committee made policy recommendations for identification and tracking to the Agency.

Looking Ahead: Publication of final rules may not occur before 2019 or 2020, but the recent developments indicate that the Administration is serious about moving the regulatory framework forward.

Two recent events signal that the U.S. Federal Aviation Administration ("FAA") may be moving closer to publishing long-awaited rules addressing flight over people and drone identification—two pieces critical to the continued integration, and commercial utility, of unmanned aircraft systems ("UAS"). This should come as welcome news to companies interested in starting or expanding their use of drones for applications where people are present, such as inspection of construction sites, rail yards, energy facilities, and other critical infrastructure.

Fall 2017 Regulatory Plan

The Office of Management and Budget recently released its Fall 2017 Regulatory Plan detailing the Administration's regulatory priorities for the 2018 fiscal year. FAA priorities include publishing the Operations of Small Unmanned Aircraft Over People Notice of Proposed Rulemaking ("NPRM") and an Advance Notice of Proposed Rulemaking ("ANPRM") on Safe and Secure Operations of Small UAS "seeking comment on UAS security-related issues." These two proposals are intrinsically linked, as the federal government has not liberalized the use of drones since the initial August 2016 baseline rule for small UAS operations because of security concerns raised about drone proliferation. Department of Transportation ("DOT") rulemaking status reports show that the FAA initially intended to publish the Operations of Small Unmanned Aircraft Over People NPRM in December 2016.



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UAS Identification and Tracking Aviation Rulemaking Committee Report

Second, the FAA released the UAS Identification and Tracking ("UAS-ID") Aviation Rulemaking Committee ("ARC") report. The FAA convenes ARCs to obtain consensus stakeholder recommendations for rulemaking on specific topics; the UAS-ID ARC's recommendations will likely serve as the basis of questions asked in the FAA's drone security ANPRM.

The FAA charged the UAS-ID ARC with three objectives: (i) recommend remote identification and tracking of UAS technology requirements; (ii) identify security and public safety need requirements; and (iii) evaluate potential technical solutions to implement UAS requirements.

The UAS-ID ARC Report recommended two options for remote identification and tracking requirements. The first option exempts a number of UAS from remote identification and tracking requirements, including those operating within visual line of sight and not designed to have capability of flying beyond 400 feet, and model aircraft flown by hobbyists. The second option requires UAS remote identification and tracking requirements based on UAS capabilities, i.e., where the aircraft can navigate between more than one point without control of the pilot and has a range from the control station greater than 400 feet. In order to provide the remote identification and tracking information, the ARC recommended a tiered approach via a mix of direct broadcast and network publishing requirements.

A number of ARC members dissented from the Report. The primary sources of disagreement were whether all UAS operators should have to comply with the remote identification and tracking requirements and the ARC's decision to not impose a weight-based threshold for remote identification. Certain ARC members, for instance, noted that the Report should have included a third option—no

exemptions for operations of model aircraft by hobbyists and operations flown outdoors with vehicles weighing over 250 grams because they represent a significant amount of drone operations. Other ARC members sought more comprehensive UAS regulations that encompass all but the smallest and unsophisticated drones and a weight-based threshold (as opposed to capabilities-based approach) to allow for simpler and easier enforcement of the regulations.

Looking Ahead

While these are welcome developments, the need to get a waiver to fly over people or beyond visual line of sight won't be obsolete anytime soon. According to the DOT's October 2017 rulemaking status report, the Operations of Small Unmanned Aircraft Over People NPRM is scheduled to be published May 23, 2018, with its comment period extending to August 21, 2018. Under statute, the FAA has 16 months from the close of the comment period to publish a final rule, likely pushing final rule publication to late 2019, assuming no delays or a concerted effort to accelerate the schedule.

For an ANPRM, the FAA is required to issue a final rule 24 months after publication, meaning the security-related rule will not likely be published until fiscal year 2020. Moreover, the fact that the FAA is not moving directly to publish an NPRM based on the UAS-ID ARC report indicates it is still in fact-finding mode and not yet ready to lock into a proposal. As the ARC report demonstrates, the FAA still has fundamental questions to resolve.

A notable exception to the Fall 2017 Plan is a proposed rule allowing drones to be flown Beyond the Visual Line of Sight ("BVLOS") of the operator, another key to significantly increasing the utility of drones in business. BVLOS flights are currently allowed only after obtaining a waiver from the FAA, a time-consuming process. The FAA has initiated another rulemaking project aimed at expanding permitted drone operations; however, its contents have not been disclosed.

Nevertheless, the fact that the Operations of Small Unmanned Aircraft Over People and the Safe and Secure Operations of SUAS projects are included in the DOT's regulatory agenda indicates that the Administration is committed to moving these critical pieces forward.

TWO KEY TAKEAWAYS

1. The FAA is making progress in developing rules regarding the use of drone technology in areas where the devices would fly over people, including construction sites, rail yards, and other critical infrastructure.
2. The FAA committee convened to obtain consensus stakeholder recommendations on rulemaking relating to drone identification and tracking provided its recommendations to the Agency.

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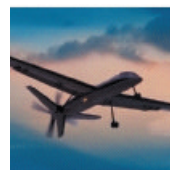
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