

Unmanned Aircraft Systems Receive Lift From New Bill

Two US Senators propose temporary legislation to support UAS commercial development in the US, ensuring the US industry remains competitive.

The US is lagging behind globally in the commercial integration of unmanned aerial systems (UAS), or “drones,” according to two US Senators — Sen. Cory Booker (D-N.J.) and Sen. Hoeven (R-N.D.) — who are proposing new legislation. The Commercial UAS Modernization Act, if enacted, would change that dismal assessment by providing a two to three year bridge for the industry to move forward in its commercial development, while the lengthy rulemaking process now underway concludes. On February 23, 2015, the Federal Aviation Administration (FAA) published its Notice of Proposed Rulemaking Operation and Certification of Small Unmanned Aircraft Systems (the “small UAS rule”)¹ regarding the operation of *small UAS* for commercial purposes. Once finalized, the small UAS rule would allow private individuals to operate small UAS of less than 55 pounds in the National Airspace, subject to restrictions, without a Special Airworthiness Certification. Finalization of that rule, however, is expected to take years.

What is the promising UAS industry in the US to do in the interim while other nations continue to develop? Two Senators of opposite parties offer an answer.

Regulatory Background

For almost a decade, the FAA — which controls “aircraft” and the use of the National Airspace — has prohibited any person from operating a UAS commercially in the National Airspace System without case-by-case specific authority, and in practice that FAA authority has become nearly impossible to obtain.

In 2012, Congress enacted the FAA Modernization and Reform Act to push the FAA to integrate UAS into the national economy. At the time, an individual could legally operate a UAS in one of three ways: (i) public agencies had to obtain a Certificate of Authorization from the FAA; (ii) private entities had to obtain a Special Airworthiness Certificate from the FAA; or (iii) private entities had to operate the UAS consistent with the Model Aircraft Operating Standards.² For all practical purposes, despite the promising potential, commercial usage of UAVs has stalled in the US.

The New Bill

The newly proposed Commercial UAS Modernization Act is designed to change that stalemate by amending the FAA Modernization and Reform Act of 2012³ to allow the commercial use of UASs without an FAA Special Airworthiness Certificate, provided the UAS is insured (in an unspecified amount) and the UAS is registered by the FAA (in a process that is yet to be determined).

If the bill is enacted, commercial UAS operators must pass a written “initial aeronautical knowledge test” (to be developed by the FAA) and an operational “proficiency test” at one of six FAA unmanned research

and test centers (in Alaska, Nevada, New York, North Dakota, Texas and Virginia). The proficiency test also needs to be developed. In turn, these test centers would utilize the testing data obtained from these commercial UAS “pioneers.”

Key provisions of the proposed legislation expire upon FAA approval of its own final small UAV rule. However, until then, commercial UAV flights by certified operators could move forward, if the flights abide by the Model Aircraft Operating Standards,⁴ e.g., a maximum height ceiling of 500 feet, the performance of daytime operations only and the adherence to line-of-sight operations. Separately, the operator must obtain “prior authorization from the air traffic control facility having jurisdiction over that airspace” and yield the right-of-way to “all other uses of the National Airspace.” All accidents (other than to the UAS itself) that cause personal injury or property damage must be reported to the FAA.

The proposed new law would create an entirely new FAA position — the “Deputy Associate Administrator for Unmanned Aircraft” — who would have authority to develop the UAS registration program, the operator written test and proficiency exams, and who would then process all that new data to improve the integration of commercial UAVs. The proposed legislation expressly contemplates that the new Deputy Associate Administrator would — within 90 days — begin to develop further exemptions from the Special Airworthiness Certificate requirement to allow, for example, commercial beyond-line-of-sight operations (e.g., package delivery), UAVs that are heavier than the model aircraft limit of 55 pounds and automated systems. Showing a desire to move beyond 35 years of model aircraft standards, the proposed legislation would create an air traffic management “pilot program” to research and evaluate methods to control UAVs at elevations as high as 1,200 feet above ground surface. Semi-annual progress reports would be submitted to Congress.

Conclusion

Although large parts of the bill are temporary in nature, the proposed UAS legislation stakes out new ground that the FAA cannot ignore. The bill rejects the case-by-case approval approach. Commercial usage would start immediately upon the bill’s passage. Further the bill would actually expand the scope of commercial applications, UAS size and line-of-sight limitations, and even the degree of integration into the National Airspace, regardless of how long the FAA takes to develop its final UAV rule. Congress is effectively pressuring the FAA to keep the momentum moving and is not comfortable with a regulatory timetable that makes US-based commercial developers lag international UAS development.

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Endnotes

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- ¹ 80 Fed. Reg. 9544 (Feb. 23, 2015).
 - ² Since June 9, 1981, the FAA has followed a policy in favor of "recreational use of airspace by model aircraft" through FAA Advisory Circular 91-57, which defined certain "Model Aircraft Operating Standards" — typically aircraft weighing less than 55 pounds and operating at low levels of less than 400 feet above ground surface. Congress formalized these model aircraft standards and provided a recreational "safe harbor" in Section 339 of the FAA Modernization and Reform Act of 2012, Public Law 112-95, which provided that the model aircraft (1) must weigh less than 55 pounds; (2) must not interfere with and must give way to manned aircraft; (3) cannot be flown within five miles of an airport; and (4) must be flown within the line-of-sight of the operator.
 - ³ Pub. L. 112-95.
 - ⁴ FAA Advisory Circular 91-57 (June 9, 1981).