

AVIATION

FEBRUARY

2015

A L E R T

## DRONE PROPELLERS AREN'T THE ONLY THING BUZZING AS THE FAA RELEASES PROPOSED REGULATIONS FOR THE COMMERCIAL OPERATION OF UNMANNED AERIAL SYSTEMS

*By Robert J. Williams*

In a surprise move during Presidents' Day weekend, the Federal Aviation Administration released long-awaited proposed regulations for the commercial operation of Unmanned Aerial Systems (UAS). The draft regulations prompted a collective sigh of relief by UAS advocates, as they are significantly less onerous than feared. The sudden disclosure may have been prompted by Saturday's apparently inadvertent posting on [www.regulations.gov](http://www.regulations.gov) of a 79-page report by the FAA's Economic Analysis Division regarding integration of small UAS into the National Airspace System (also known as the Thurston Report). That report almost immediately was removed from the government's website, but was followed quickly on Sunday by a press conference hosted by Transportation Secretary Anthony Foxx and FAA Administrator Michael Huerta.<sup>1</sup>

The FAA is touting the proposed regulations as safe, simple and flexible. They are intended to

ensure separation from all other aircraft, while mitigating risk to people and property on the ground. By making them simple and flexible, the FAA hopes to provide certainty and facilitate compliance by UAS operators. Key features of the proposed regulations include:<sup>2</sup>

- UAS must weigh less than 55 lbs., have a maximum airspeed of 100 mph, and are limited to an altitude of 500 feet above ground level;
- UAS may be operated only during daytime, in weather conditions with at least three miles visibility, and within the direct visual line of sight of the operator and/or visual observer;

<sup>1</sup> A copy of the FAA official press release may be found at [http://www.faa.gov/news/press\\_releases/news\\_story.cfm?newsId=18295](http://www.faa.gov/news/press_releases/news_story.cfm?newsId=18295)

<sup>2</sup> The official FAA Overview of Small UAS Notice of Proposed Rulemaking is set forth at [http://www.faa.gov/regulations\\_policies/rulemaking/media/021515\\_sUAS\\_Summary.pdf](http://www.faa.gov/regulations_policies/rulemaking/media/021515_sUAS_Summary.pdf)

- UAS operations are prohibited above 18,000 feet, and require permission from air traffic controllers to operate in controlled airspace (*e.g.*, airspace near airports and national security areas), including Class B, C, D, E and G;
- UAS operators will not be required to possess pilot's licenses or medical certificates, but must obtain a newly created UAS operator's certificate, by passing an aeronautical knowledge test at an FAA-approved facility (and re-currency examinations every 24 months thereafter), as well as a security check by the Transportation Security Administration; and
- Airworthiness certification will not be required, although UAS will have to be registered with the FAA and display registration markings "in the largest practicable manner."

The FAA recently has been chastised for its "paralysis" with respect to UAS regulation.<sup>3</sup> Its Sunday release of proposed regulations, however, was motivated not only by public pressure over inaction, but also by both the potential economic and safety benefits of UAS. The Thurston Report projects an economic impact of "greater than \$100 million per year." It also references 95 fatalities by individuals servicing cellular and other utility towers, some of which may have been avoided by the use of UAS. During Sunday's press conference, Administrator Huerta identified several additional industries and activities that are likely to benefit from the use of UAS, including bridge inspections, power and pipeline maintenance, academia (education and research and development), wildlife conservation, agriculture, search and rescue, and media/entertainment.

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<sup>3</sup> See, *e.g.*, [http://www.denverpost.com/news/ci\\_27261558/drone-industry-decries-paralysis-delayed-faa-rule-making](http://www.denverpost.com/news/ci_27261558/drone-industry-decries-paralysis-delayed-faa-rule-making)

Industry enthusiasts embraced the proposed regulations, particularly for omitting the economic burdens of commercial pilot and airworthiness certification. They also are largely consistent with the conditions imposed upon recipients of authorizations granted in connection with petitions filed under Section 333 of the FAA Modernization and Reform Act of 2012. That consistency has given current recipients of Certificates of Authorization the confidence to proceed "full steam ahead" with UAS services and development.<sup>4</sup>

The draft regulations, however, are not without potential shortcomings and problems. UAS proponents decry the restriction of flight to daylight hours and visual line of sight, contending that it ignores available technology and the utility of automation. Provisions for enforcement, penalties for violations, and protection of privacy also are conspicuously absent. The FAA has answers for some, but not all of those questions. It believes it is incumbent upon the operators to demonstrate that technology can maintain adequate separation with other aircraft, people and property. To the extent operators demonstrate that technology satisfactorily, the FAA may authorize the use thereof through the Section 333 exemption process, and may revise the proposed rules accordingly during the comment process. No answer is proffered with respect to violations and enforcement, while privacy issues are deflected with a reference to the February 15, 2015 presidential memorandum, "Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems."

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<http://www.forbes.com/sites/gregorymcneal/2015/02/14/the-faa-may-get-drones-right-after-all-9-insights-into-forthcoming-regulations/>

### ***So, where does that leave the aviation industry?***

The public may comment on the proposed regulations for 60 days from the date of publication in the Federal Register. In addition, the FAA intends to hold public meetings at UAS test sites and the Center of Excellence. As a practical matter, however, it may be several years before the regulations are finalized and implemented.

### ***Section 333 Petitions***

Individuals and entities with more immediate needs and desires to operate UAS should continue to petition for exemption, pursuant to Section 333 of the FAA Modernization Act. To date, fewer than 30 Certificates of Authorization have been granted by the FAA, with over 300 additional petitions presently pending. Most of those certificates were granted to entities for filming television and motion pictures on closed sets. A few have been granted for “precision aerial surveying,” including agriculture. Certificates also have been granted to one entity for inspecting oil and gas stack flares, and to a real estate agent in Arizona. The FAA has taken on average between 4-5 months to rule upon these petitions. Certificates of Authorization granted pursuant to Section 333 expire two years from the date of issue.

Certificates of Authorization currently in effect require, *inter alia*, the operator to hold at least a private pilot’s license and a Third Class Medical Certificate. The applicant also must develop a detailed operations manual. While conditions such as these may be more onerous than the proposed regulations, voluntary compliance with them likely will facilitate approval of the petition during this interim period. A petitioner also should be prepared to monitor the Federal Register for comments. The Air Line Pilots Association (ALPA), for example, routinely has commented on pending petitions. While ALPA’s position generally has been that UAS should be operated by commercial pilots, it has included additional comments on the particulars of petitions. Where comments are material or may raise a valid point, the Section 333 petitioner would be wise to file a reply.

### ***State and Local Laws***

UAS operation does not end with federal law. Several states also have passed statutes regulating this activity. Most of the state legislation is directed to privacy concerns, such as those in California and North Carolina. Colorado and Montana statutes prohibit the use of UAS to track and hunt animals. A Michigan bill does the same, but also criminalizes the use of UAS to harass any hunter. The validity of state laws pertaining to UAS presently is unknown, especially with respect to the possibility of federal preemption. Until those issues are determined, Certificate of Authorization holders should be aware and comply with the local laws of the areas in which they operate UAS.

### ***Conclusion***

Whether or not the FAA’s release of proposed UAS regulation was in accordance with a planned timetable, or accelerated by an inadvertent leak of an internal document, it is an important first step toward integration into the national airspace system of an industry that holds tremendous potential for economic growth, utility and safety. UAS stakeholders can forge ahead with confidence, insofar as the FAA has sought, and for the most part succeeded, in minimizing the economic burden of regulation. Questions remain, but the industry now has something more tangible to debate. In the interim, Section 333 petitions for exemption remain available to UAS operators seeking to establish a foothold in this promising field. ♦

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*Schnader's Aviation Group is an experienced, highly regarded and dynamic team of aviation professionals with a demonstrated track record for consistently favorable and cost-effective results in state and federal courts throughout the country. In addition to our aviation product liability, insurance coverage, airline and airport work, we have drafted several petitions for Section 333 Exemptions for the commercial operation of UAS.*

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