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FAA Proposes Generally Favorable Rules for Unmanned Aircraft; Seeks Comment on Need for Flexibility and MicroUAS Rules

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On February 15, 2015, the Federal Aviation Administration (FAA) released its long-awaited notice of [proposed rulemaking \(NPRM\) for small unmanned aircraft](#) weighing up to 55 lbs. The proposed rule would create a new Part 107 of the Federal Aviation Regulations devoted to the operation of unmanned aircraft systems (UAS). As a whole, the proposed rule is more helpful to the burgeoning UAS industry than many expected, though it includes a number of limitations, particularly restricting operations to line-of-site over unpopulated areas, that [have drawn criticism](#), and raise concerns for more expansive UAS operations. Comments on the proposed rule from interested parties are due by April 24, 2015.

President Barack Obama issued a [Presidential Memorandum](#) on February 15 in tandem with the FAA's NPRM. The memorandum directed the Commerce Department's National Telecommunications and Information Administration (NTIA) to launch a multi-stakeholder process among private sector stakeholders and interested agencies to develop and communicate best practices for privacy, accountability and transparency issues regarding commercial and private unmanned aircraft operations. The NTIA was tasked with launching this process within the next 90 days. It is unclear if the FAA will wait for the development of this framework through the multi-stakeholder process before adopting its final rule. In addition to the multi-stakeholder process involving commercial and private UAS use, the Presidential Memorandum also called on federal agencies using unmanned aircraft to develop and publish internal rules on the use of these devices, and the collection of information through unmanned aircraft.

General Operational Requirements: The FAA's proposed rulemaking would allow the commercial use of small unmanned aircraft during the day, within the operator's visual line of sight, and at altitudes up to 500 feet. These aircraft may be operated in Class G airspace (generally, airspace away from airports and between 0 and 1,200 feet above ground level) without permission, but will require air traffic control permission before operations are conducted in Class B, C, D, or E airspace (generally, airspace close to airports and/or between 1,200 feet and 18,000 feet above ground level). As a practical matter, this means operators will need air traffic control clearance to operate near airports. Small unmanned aircraft may be operated near structures, although not over individuals uninvolved with the flight. Rules providing for the operation of larger unmanned aircraft, or at higher altitudes and above people, will be addressed in future rulemakings. The limited scope of this rulemaking, the expected time to completion, and the decision to defer issues that when resolved would allow for wider and more robust commercial deployments, has been a significant concern among UAS proponents. The FAA's proposed rule does not regulate model aircraft, with one exception: the FAA expressly prohibits the careless or reckless operation of any unmanned aircraft in a way that would endanger the life or property of

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another (notably, the [NTSB recently determined](#) that this requirement already applies to these devices).

The FAA's proposed rule fails to deal with privacy concerns (noting that the agency will engage in the NTIA process) or to require unmanned aircraft operators to maintain minimum levels of insurance. The FAA also chose not to include requirements from its [Section 333 Exemption grants](#), such as requiring permission from property owners, or filing a flight plan/Notice to Airman before conducting unmanned aircraft operations. In addition, while an operator must always be present and have the ability to control the device, the FAA's proposal does permit autonomous flights.

Visual Line of Sight Operations: As expected, the NPRM requires that all small unmanned aircraft operations are conducted within the operator's visual line of sight (VLOS). Even where a visual observer is used to monitor the aircraft, the FAA's proposed rule requires the operator to be able to see the aircraft as well. And, while the use of first-person view technology is not prohibited, this technology cannot be used as a substitute for VLOS operations. The VLOS requirements appear to be the most significant hindrance to potential commercial operations in the NPRM, as businesses will be effectively "tethered" to their unmanned aircraft. Comments are requested on the inclusion of a process through which the FAA could deviate from its rules, using a waiver or letter of authorization provision, where technological advances adequately address safety concerns.

Unmanned Aircraft Operators: The FAA's proposed rule strikes a middle-ground approach for unmanned aircraft operators, requiring that they pass an FAA aeronautical knowledge test every two years, and obtain Transportation Security Administration clearance. The proposed rule does not require the operator to maintain a private or commercial pilot's license, as the agency had thus far required in its Section 333 exemption grants.

The Unmanned Aircraft: The FAA's proposed rules are relaxed regarding the certification of small unmanned aircraft designs—a certificate of airworthiness, typically needed for larger aircraft, is not required for small unmanned devices. The FAA's proposed rule would require, however, that aircraft are registered and marked with a registration number. Much like a license plate, the registration and marking requirement will help determine the aircraft's owner. Current foreign aircraft ownership rules will also be enforced. These rules generally require that an aircraft is owned by a United States citizen, resident, corporation operating in the United States, or a federal, state, or local government unit. In addition, unmanned aircraft must be kept in working order and inspected by the operator before each flight. The inspection requirement could potentially affect liability, since an operator must verify that the aircraft is in proper working order before flying the device.

MicroUAS: The NPRM requests comment on whether the FAA should provide separate rules for MicroUAS, or unmanned aircraft weighing up to 4.4 lbs (2 kg). The FAA did not include these provisions in its proposed rule, but noted that it may add them to the final rule after reviewing comments. The FAA envisions the MicroUAS rules allowing the operation of these devices in Class G airspace only, up to 400 feet, and above people. The FAA is also considering a requirement that MicroUAS must be built from "frangible" materials (i.e., foam, breakable plastic, or wood) that break or yield on impact.

Moving Forward: Companies analyzing the proposed rule might consider how unmanned aircraft could currently be used in their business, and how these devices may be used in the future. The most obvious examples are for infrastructure inspection applications, project

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monitoring through video feed or topographic/chemical sensors, area siting and surveying, as well as film and media applications. Businesses may also consider how increased operational flexibility, such as through relaxation of line of sight restrictions, would affect their ability to use unmanned aircraft, for example in connection with infrastructure inspection applications that might require flight over longer distances. Companies might also think about whether they would benefit from the inclusion of a waiver or exception provision that would allow the FAA to approve operations utilizing new technology, without waiting for the FAA to undertake a new rulemaking. Similarly, there may be room for increased flexibility of operations above people, by, for instance, allowing individuals to consent to the use of a device above them, instead of requiring their involvement in the device's operation.

As noted, comments on the NPRM are due by April 24, 2015. In addition, the NTIA multi-stakeholder process on UAS privacy issues is expected to be launched by mid-May.

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