

TWO VISIONS FOR UAS POLICY, TWO OPPORTUNITIES TO SHAPE THE FUTURE REGULATORY LANDSCAPE

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The explosive growth of the unmanned aircraft systems (UAS) category has challenged the aviation industry's existing regulatory paradigms. The Federal Aviation Administration (FAA) reauthorization bills advanced by the House and Senate take rather different approaches to UAS issues, underscoring the delicate balancing act inherent in the regulation of an emerging technology. The approach that prevails in the current reauthorization debate will define the limits of the potential consumer and commercial applications of UAS for years to come.

At a high level, the UAS title of the Aviation Innovation, Reform, and Reauthorization Act of 2016 (H.R. 4441; the "AIRR Act"), reported by the House Transportation and Infrastructure Committee on February 11, largely represents an evolution of the corresponding title in the FAA Modernization and Reform Act of 2012 (P.L. 112-095; the "2012 Act") – which included the first significant civil UAS provisions enacted by Congress. Both the 2012 Act and the AIRR Act sketch the broad outlines of a framework for the integration of UAS into the national airspace, largely deferring to the FAA to fill in the details through its regulatory process. The AIRR Act also appears to start from the position that the civil UAS industry is still very much in its infancy, calling for studies and pilot programs to evaluate emerging areas of concern rather than providing more directed legislative and regulatory responses.

In contrast, the FAA Reauthorization Act of 2016 (H.R. 636; "FAARA"), passed by the Senate on April 19, would move the UAS category toward a regulatory framework that in some ways broadly parallels the rules for manned aircraft. Similar to how commercial aircraft and their pilots are subject to rigorous FAA certification and testing requirements, FAARA would create similar approval pathways for UAS and their operators. While this approach works well for the manned aircraft industry, some stakeholders have raised concerns that it could be challenging for the UAS industry, with its low barriers to entry and resulting multiplicity of manufacturers and operators. On the whole, the Senate bill takes a more prescriptive approach than the AIRR Act with respect to UAS issues, particularly in its privacy and enforcement provisions.

Both the House and Senate bills would take significant steps toward realizing the potential that UAS hold to transform industries across the U.S. economy. As an example, both bills include provisions to require the FAA to develop regulations for the operation of UAS package delivery services within the coming years. However, it is important for stakeholders to understand the significant policy differences between the two pieces of legislation. While it remains uncertain which provisions of the AIRR Act and FAARA — if any — will ultimately become law, the bills provide the best indication of the current congressional thinking with respect to UAS. The summary of

key points of divergence between the two bills below can help guide stakeholders in the UAS industry to possible areas for legislative advocacy and engagement.

PRIVACY

As an example of the policy divergence described above, the House bill directs the Secretary of Transportation to carry out a consultation with government and private sector stakeholders to "identify any potential reduction of privacy specifically caused by integration of unmanned aircraft systems into the national airspace system." The Senate bill, by contrast, directs the multistakeholder forum on UAS privacy directed by the National Telecommunications and Information Administration to develop legislative and regulatory recommendations to address the issue. In the interim, the Senate bill would establish a database of identifying information on all operators of UAS. FAARA also includes extensive provisions governing the collection and use of personal information by UAS operated for government purposes.

SAFETY STANDARDS & DISCLOSURE

FAARA would require the FAA to develop mandatory safety standards for all UAS products. The bill would require every make and model of UAS to be submitted to the FAA for evaluation and approval; the sale of unapproved products would be prohibited. The safety standards would consider whether to require products to incorporate technologies relating to geographic limitations, altitude limitations, and sense and avoid capabilities, among other items. In addition, manufacturers would be obligated to provide purchasers with extensive information about the safe operation of UAS. The House bill does not include a similar certification provision, and largely places the burden on the FAA to distribute safety information to consumers. It would, however, encourage "manufacturers and retail sellers of small UAS . . . to educate consumers about the safe and lawful operation of such systems."

USER TESTING

Subject to certain exceptions, the Senate bill would require every UAS operator to pass an aeronautical knowledge and safety test developed by the FAA. While operator testing requirements are also an element of the FAA's proposed rule for the commercial operation of small UAS, the Senate proposal represents an expansion of the concept to other operations. The House bill does not include a provision on user testing.

UAS INTEGRATION & RULEMAKING

FAARA states that the FAA "should take every necessary action to expedite final action" on the FAA's proposed rule for commercial operation of small UAS. In addition, the Senate bill would call on the FAA to go beyond the contemplated rules to pursue full integration of UAS into the national airspace, including routine beyond-visual-line-of-sight and nighttime operations. It would also provide the FAA with expanded rulemaking authority in pursuit of these goals. The House version would codify the 2012 Act's provisions calling for the FAA to develop rules for the safe integration of UAS.

MICRO UAS

The House bill would create a new statutory category for "micro" UAS weighing 4.4 pounds or less, to streamline the operation of the smallest UAS products under certain conditions. The Senate bill also calls for a risk-based regulatory framework for micro UAS, but would achieve it through the FAA's regulatory process.

ENFORCEMENT

The House bill would largely leave the FAA's existing enforcement approach with respect to UAS untouched. The Senate bill, by contrast, calls for the FAA to utilize remote detection and identification technologies to pursue enforcement actions against UAS operators, and would provide significant financial resources to assist in this effort. The Senate bill also incorporates a modified version of Senator Sheldon Whitehouse's Drone Operator Safety Act, which would provide authority for the imposition of criminal penalties against UAS operators who interfere with manned aircraft.

FEDERAL PREEMPTION

The FAA has warned that the growing "patchwork" of inconsistent federal, state, and local regulation of UAS poses significant safety concerns. FAARA includes a provision to provide limited federal preemption of inconsistent state or local laws with respect to the "design, manufacture, testing, licensing, registration, certification, operation, or maintenance" of UAS.

OTHER PROVISIONS

The UAS provisions of FAARA and the AIRR Act are detailed and comprehensive. For further information on provisions that would affect your business specifically, please contact the authors of this alert or your usual K&L Gates contact.

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