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Opportunity for Utility and Energy Companies to Comment on Proposed UAV Rules

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Reactions to the FAA's proposed rules for the Operation and Certification of Small Unmanned Aircraft Systems have been mixed since their release on February 15, 2015. Some stakeholders have lauded the FAA's action as a long-awaited step in the right direction that will open the door to expanded commercial use of small ***unmanned aerial vehicles (UAV)***, commonly referred to as drones. Others have criticized the proposed rules as being so overly restrictive as to hamstring the use of this technology and all but cede the development of UAVs to various foreign countries that are perceived to be ahead of the United States in the regulation and deployment of small commercial UAVs.

UAV companies and advocacy groups as well as potential small UAV users have 60 days from the February 23, 2015 Federal Register publication of the proposed rules in which to submit comments. As a result, potential UAV users should use this time to carefully study the proposed rules and determine whether they accommodate the beneficial uses of this technology in their respective industries.

For example, aspects of the proposed rules that may be of most concern to electric utilities, energy companies, and infrastructure providers include the requirement that the small UAV remain in visual line of sight (VLOS) of the operator at all times, the prohibition on small UAV operations at night, and the requirement that small UAV operations remain below 500 feet above ground. The VLOS requirement will make it difficult to utilize UAVs for inspection of electric transmission lines and pipelines which frequently span long distances across challenging terrain. The night-time operation prohibition fails to recognize that utility, energy, and civil infrastructure is often located on easements or in areas that generally keep it separated from the public thereby minimizing risks due to reduced visibility at night. Additionally, the inability to operate at night may limit the benefits that can be obtained from thermal sensor equipped UAVs. Finally, while many UAV operations related to utility and energy infrastructure may be accommodated by the 500 foot altitude restriction, this is not always the case. Communication towers, cooling towers, bridge supports and various other structures can frequently extend to greater than 500 feet above the ground.

In addition to commenting on these issues, the proposed rules specifically invite comment on numerous other issues, including:

- technologies and operational capabilities that would allow UAV operations beyond VLOS;
- technologies that would mitigate risks in the event the UAV operator loses positive control of the aircraft;
- whether the rules should include a specific numerical limit on the permissible distance between the UAV and its operator;
- whether to permit UAV operations from a moving ground vehicle;
- the appropriate limit on UAV airspeed, if any;
- the appropriate role of the UAV visual observer and his or her interaction with the UAV operator;
- whether external-load UAV operations or UAV activities involving towing should be permitted;
- requirements for UAV operations in controlled airspace;
- the appropriate extent, costs, and benefits of required UAV maintenance and inspections;
- the appropriate qualification, knowledge, certification and re-certification requirements for UAV operators, and ways to reduce the anticipated six to eight week period for FAA issuance of a UAV operator certificate;
- the nature and extent of information to be submitted to the FAA when registering a UAV;
- the circumstances under which UAV-related accidents should be reported to the FAA and the required information;
- whether the proposed small UAV rules should be further subdivided by size, weight, and operating environment to minimize the regulatory burden on users;
- whether to include a “micro-UAS” classification for UAVs weighing no more than 4.4 pounds, and the design and operating requirements for such a class;
- whether to permit UAVs to transport property for payment; and
- whether there are other more flexible, “performance-oriented,” rather than design-based or prescriptive, UAV regulations that should be considered.

It is likely that the FAA will continue to take a conservative regulatory approach that facilitates the significant potential of UAVs for innumerable applications and balances public and air safety concerns, while allowing both regulators and users to gain more UAV experience. Nevertheless, utility and energy companies, infrastructure providers, and other potential UAV users should take advantage of this opportunity to influence the present rulemaking so that UAVs can be put to the broadest uses as soon as possible. Comments should be filed in Docket Number FAA-2015-0150 by April 24, 2015. At this time, the final small UAV rules are not expected to be issued until late-2016 or possibly some time in 2017.

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