

Senators Booker and Hoeven Introduce the Commercial UAS Modernization Act to Streamline Drone Integration

Article By:

Michael Weller

Today, Senator **Cory Booker** (D-NJ) and **John Hoeven** (R-ND) introduced the **Commercial UAS Modernization Act**, legislation designed to streamline the integration of commercial unmanned aircraft systems (UAS) in the United States. The legislation would establish an interim rule governing small UAS operations, provide the Federal Aviation Administration (FAA) with some flexibility on issues like visual-line-of-sight (VLOS), reduce the regulatory burden for commercial operators, create a new deputy administrator position at the FAA focused on UAS and encourage maximum use of current FAA UAS test sites.

The FAA has already taken several steps in 2015 to expedite commercial use of UAS, including releasing the Notice of Proposed Rulemaking focused on the Operation and Certification of small UAS (UAS NPRM), approving blanket Certificate of Waiver Authorizations (COAs) and altering the Section 333 exemption process to reduce the burden on operators. While the Section 333 exemption process has resulted in nearly 300 approvals for UAS operations to date, the FAA's proposed regulatory program may not be finalized until 2016 or even 2017. The Commercial UAS Modernization Act would put a regulatory program in place before that time period, allowing the U.S. to take advantage sooner of what is expected to be \$82 billion in expected economic impact over the next decade.

Commercial UAS Modernization Act

In general, the Commercial UAS Modernization Act:

- Creates an interim rule for commercial use and testing of small UAS while the FAA finalizes rules covering commercial UAS.
- Builds a framework for the registration and use of UAS for commercial purposes.
- Strengthens the FAA's oversight authority by creating a new position, the Deputy Associate Administrator for Unmanned Aircraft and by streamlining regulations.
- Ensures that FAA test sites are being used to the maximum extent to facilitate research into new technologies, in partnership with industry and other relevant government entities.

The primary goal of the Commercial UAS Modernization Act is to create a regulatory gap filler until the FAA's UAS NPRM is finalized. The legislation would allow small UAS operations without an airworthiness certificate. Many of the conditions set forth in the legislation are the same as what is found in the FAA's UAS NPRM, including registration, certification and operator testing requirements. As for operations, the VLOS standard is still in place as well as the flight ceiling of 500 feet. Small UAS operators would also be required to obtain liability insurance covering operations and provide proof of that insurance to the FAA.

Interestingly, Section 338(e) of the legislation includes a requirement that the FAA "expedite and expand exemptions from the interim operating restrictions." This appears to be the flexibility that many stakeholders had hoped for with the UAS NPRM. Under Section 338(e), the FAA may consider exemptions relating to (1) beyond VLOS operations; (2) programmatic exemptions based on previous analysis; (3) extension of VLOS and marginal visual flight rules weather conditions; (4) heavier unmanned vehicles.

The Commercial UAS Modernization Act would also create a new position, the Deputy Associate Administrator for Unmanned Aircraft. The new Deputy Administrator would be tasked with addressing some of the more challenging issues facing commercial UAS operations, including (1) aircraft spectrum issues; (2) barriers to beyond VLOS operations; (3) barriers to payload carriage; and (4) barriers to utilizing automated unmanned aircraft systems. The legislation also makes research a priority, including identifying safety standards for detect and avoid, command and control, autonomous aircraft systems, and air traffic management for beyond VLOS operations.

What has the FAA Done in 2015 to Expedite Integration

Small UAS Proposal

Earlier this year, the FAA released its Notice of Proposed Rulemaking focused on the Operation and Certification of small UAS within the United States. The UAS NPRM applies to small UAS defined as UAS weighing less than 55 pounds. The UAS NPRM proposes to add a new Part 107 to Title 14, which would prescribe "rules governing the registration, airman certification, and operation of civil small UAS within the United States." The public comment period for the NPRM ended on April 24, 2015. Now, the FAA will consider input from stakeholders while developing a final rule. That final rule may not arrive until 2016-2017. In the interim, commercial operators are left with the Section 333 exemption process.

Summary Grant Process

Speaking of the Section 333 exemption process, as of May 2015, the FAA has approved nearly 300 petitions for exemption. The pace of the FAA's Section 333 approvals has increased as the agency tweaks the process. Recently, the FAA introduced a "summary grant" process. With the summary grant process, the FAA looks to see if a new Section 333 petition request is similar to a previously approved petition request. If the new request is similar to an already approved Section 333 petition, the FAA will rely on its prior analysis and issue a summary grant. The FAA has indicated that most of the Section 333 petitions that it has received are either for film and television production or for the collection of aerial data and that future similar petitions will be handled via the summary grant process. The FAA will still perform a detailed analysis for unique Section 333 petitions. Unique Section 333 petitions will also be subject to public comment.

The FAA has modified other pieces of the Section 333 approval process to reduce the barriers to approval. For example, in most Section 333 approvals to date, the FAA required operators to at least have a private pilot certificate. The FAA recently modified this requirement and now may approve operations by people who hold a recreational or sport pilot certificate. Recreational and sport pilot certificates are generally easier to obtain than a private pilot certificate. Also, the FAA previously required UAS operators to have a third class medical certificate. The FAA eliminated that requirement as well. Now, an operator will only need a valid driver's license to satisfy the medical requirement.

"Blanket" COA

Finally, one other streamlining tool the FAA adopted in the first part of 2015 is the concept of a "blanket COA". In the past, once the FAA granted a Section 333 Exemption, the exemption holder would also have to file for a separate COA to fly the UAS in a particular block of airspace. The COA approval process can take 60-days. To cut down on that time, the FAA announced in March that companies with current Section 333 approvals and all future such approvals would be covered by a "blanket" COA as long as operations were at or below 200 feet.

The "blanket" COA applies to any UAS operator that has been granted a Section 333 exemption for aircraft that weigh less than 55 pounds, that operate below 200 feet, during daytime Visual Flight Rules (VFR) conditions, within VLOS of the pilots, and that stay certain distances away from airports or heliports. UAS operations outside of these parameters still require the standard COA.

- See more at: <http://www.energylegalblog.com/archives/2015/05/12/6207#sthash.pQ7OIP0K.dpuf>

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