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ALERT

UAS Hot Topics

March 30, 2016

A number of important activities related to the integration of unmanned aircraft systems (UAS) into the national airspace are underway. These activities are being pursued by federal agencies including the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), National Telecommunications and Information Administration (NTIA), and the National Aeronautics and Space Administration (NASA). Below are brief updates of the various items:

- ***FAA Symposium.*** The FAA will host its first UAS Symposium in conjunction with Embry-Riddle Aeronautical University on April 19-20, 2016 in Daytona Beach, Florida. This event is a forum for the UAS industry and stakeholder community to provide feedback directly to FAA decision-makers on topics related to UAS integration. Mike Lewis of Wiley Rein will be speaking at the Technological Enablers and Restrictors discussions. We encourage interested parties to register early here.
- ***Section 333 Exemptions.*** The FAA continues to grant exemptions to authorize commercial UAS operations pursuant to Section 333 of the FAA Modernization and Reform Act of 2012. As of March 25, 2016, the FAA had granted 4,223 Section 333 petitions. In addition, the FAA has made several recent policy changes that impact Section 333 exemption holders:
  - On March 29, 2016 the FAA announced that it raised the UAS "blanket" altitude authorization for Section 333 exemption holders to 400 feet. Previously, the agency had had put in place a nationwide Certificate of Waiver or Authorization (COA) for such flights only up to 200 feet.
  - Although the FAA continues to grant "summary" exemptions that impose a standard set of conditions on

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operators, the agency recently relaxed two of its conditions. First, instead of listing all of the aircraft for which entities are seeking exemption, entities may now apply to operate any aircraft included on the FAA's list of approved UAS, which currently includes 1,120 UAS models. Second, the FAA has revised its previously standard grant language regarding operations near people to allow flights "near but not over" persons participating in the "intended purpose of the UAS operations," such as actors being filmed by UAS and personnel collecting and analyzing aerial data. Previously, the conditions permitted operations over only "essential persons," such as the UAS pilot and visual observers.

- ***FAA Reauthorization Legislation.*** The FAA Reauthorization Act of 2016 is working its way through Congress. Both the U.S. Senate and the U.S. House of Representatives bills have passed out of their respective committees and the U.S. Senate bill is expected to be sent to the Senate floor for consideration next week. We expect both bills to clear their floors this spring. The two bills do have some significant differences, which will need to be resolved by a conference committee. The FAA authorization extension runs through July 15, 2016.
- ***FCC Technical Advisory Council (TAC) Aeronautical and Space Transmitter Working Group.*** The FCC formed a new TAC Working Group composed of technology and telecommunications companies. The group plans to examine the implications of new types of aeronautical and space transmitters, such as UAS, balloons, and high altitude/long endurance platforms (HALE) relative to FCC rules and policies, including identifying any spectrum issues and recommending how the FCC might address them. Wiley Rein will be briefing the TAC in April on UAS spectrum considerations.
- ***Small UAS Notice of Proposed Rulemaking (NPRM).*** The FAA is still working to produce final rules in its small UAS rulemaking proceeding. The agency issued an NPRM on February 23, 2015, and received approximately 4,500 public comments in response. The proposed rules would replace the Section 333 exemption process and authorize commercial small UAS operations on a widespread basis pursuant to certain conditions and limitations. Once the FAA finalizes the rules, they will need to be reviewed by the Office of Management and Budget (OMB) within the Executive Office of the President. The FAA has stated it expects to have final rules in place by summer 2016.
- ***Federal/State Issues.*** States and localities across the country are showing increasing interest in regulating UAS, in ways that could impinge on federal authority or create compliance challenges for UAS operators. For example, California's state legislature has a range of bills before it, one of which would establish geographic limitations on the operation of UAS and require UAS operators to procure liability insurance. Wiley Rein has been working as counsel to AUVSI and with its other clients to help track these types of legislative activities and navigate the complex issue of where federal regulation of UAS ends and state authority begins.
- ***Micro-UAS Advisory Rulemaking Committee.*** In February of this year, the FAA established an aviation rulemaking committee (ARC) to develop a performance-based standard that would allow certain UAS to be operated over people not directly involved in the operation of the aircraft or protected by a covered structure. The FAA first raised the possibility of more flexible rules for micro UAS, which it defined as weighing less than 4.4 pounds, in the small UAS NPRM. The micro UAS ARC, which consists

of government officials and twenty-six invited industry stakeholders and interest groups, is modeled after the FAA's UAS registration task force that was established and concluded last fall. The ARC began its work this month and is tasked with providing a final report to the FAA on April 1. The FAA will use the ARC's recommendations to create proposed rules on micro UAS.

- ***NASA UAS Traffic Management (UTM).*** NASA is developing a UTM system that would safely enable UAS operations in low-altitude airspace. NASA is leading the research, development, and testing that is taking place in a series of activities called "Technology Capability Levels (TCL)," each increasing in complexity. The second stage of testing, scheduled for October 2016, will leverage results from TCL1 and focus on beyond-visual line-of-sight operations in sparsely populated areas. Researchers will test technologies that allow dynamic adjustments to availability of airspace and contingency management. NASA has also posted a Special Notice seeking parties interested in collaborating to conduct UAS and UTM research and development, with the goal of safely enabling these operations at lower altitudes by the UTM system. Wiley Rein's Mike Senkowski, Mike Lewis, and Anna Gomez have joined the stakeholders involved in this research and development project.
- ***NTIA Multistakeholder Process.*** In February 2015, the President tasked NTIA with convening a multistakeholder process to develop best practices for privacy, transparency, and accountability regarding UAS operations in the national airspace. NTIA has held several meetings during which stakeholders have developed two drafts of best practices. Wiley Rein also chaired a group that established Guiding Principles for the development of the best practices. NTIA will hold its next multistakeholder meeting on April 8.

Please do not hesitate to reach out to us with any questions about the foregoing activities or other issues related to UAS.