

## Client Alert

### A Day for Drones: FAA Releases Drafts of Long-Awaited Enabling Rules

January 22, 2019

Last week, the FAA moved forward with rulemaking on expanded drone operations with the release of several key documents: (1) a Draft Notice of Proposed Rulemaking (NPRM) for Operation of Small Unmanned Aircraft Systems over People, (2) a Draft Advanced Notice of Proposed Rulemaking (ANPRM) for Safe and Secure Operations of Small Unmanned Aircraft Systems, and (3) the announcement of the Unmanned Traffic Management (UTM) Pilot Program. This alert, the first of two, addresses the Draft NPRM for operations over people.

The Draft NPRM would allow routine nighttime operations and operations over people under the Small UAS Rule (14 C.F.R. §107) without a waiver or exemption. In a nod to advancing technology, the proposed rule seeks to balance the interests of safety-risk mitigation with rapid industrial innovation.

Current FAA regulations do not permit small drone operations at nighttime or over people. The existing waiver process for such operations can add substantial delays to important commercial operations. The proposed rule will provide significant relief from the cumbersome waiver process for both types of operations, subject to certain design and operational requirements.

#### **Flying at Night and Over People**

Under the proposed rule, operators may conduct nighttime operations without obtaining a waiver so long as they complete updated knowledge training and comply with anti-collision lighting requirements as specified in the Draft NPRM. Operators who do not meet these conditions may still request a waiver for nighttime operations using the traditional waiver process.

Operators would also be free to conduct operations over people, subject to important manufacturing and operational constraints. Recognizing that the risk associated with operations over people is higher than the risk of mere nighttime operations, the FAA proposes three categories of permissible operations over people, each keyed to the associated risk of injury. The draft rule increases manufacturing and operational obligations based on the risk category, with higher-risk operations being subject to greater operational limitations and responsibilities. The lowest-risk category, light-weight drones, imposes no manufacturing requirements, and drone operations in this category can begin immediately after the final rule goes into effect. Higher-risk categories come with complex design requirements necessitating FAA acceptance, operating limitations, record-keeping requirements, and other obligations. Manufacturers should note that the proposed rule sets desired design outcomes without mandating a specific solution.

The manufacturing requirements for higher-risk operations over people will also apply retroactively to drones currently on the market. Thus, manufacturers of existing drones will need to comply with the proposed design

requirements in order to market their drones for operations under the rule. Once the rule takes effect, compliance with and understanding of the design outcome requirements, and the process for FAA acceptance, will be crucial to manufacturers' ability to market new and existing drones.

### **The Small UAS Rule is Still in Effect**

While the Draft NPRM signals an effort by FAA to relax operational restrictions for small, commercial drone operations, it does not change the overall regulatory structure for small drones. Remote pilots should note that the proposed rule **does not**:

- Cancel operator requirements to comply with existing provisions of the Small UAS Rule.
- Alter the enforcement regime currently in place.
- Change the existing waiver process.

And, notably, the proposed rule applies only to operations conducted under the Small UAS Rule. Therefore, the following categories of operations would remain unaffected:

- Operations of drones weighing greater than 55 pounds.
- Air carriers.
- Operations under an exemption.
- Recreational drone operators.

The FAA will not seek or solicit comments until the final NPRM is published in the Federal Register. However, interested parties should consider reviewing the draft now to identify concerns and cause for comment.

The FAA's movement toward meeting its Congressional mandate to accelerate integration of drones into our national airspace system is encouraging for commercial drone operators. Robust industry participation in the rulemaking process is crucial to creating opportunities in the commercial drone space.

Watch our website for the second of two alerts, addressing the Draft Advanced Notice of Proposed Rulemaking and the announcement of the UTM Pilot Program, and for updates on deadlines for comments to the Notices.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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