

## **Is Relief on the Way for the FAA's Outdated Drone Rules?**

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The word "drone" usually conjures up images of large unmanned planes hammering terrorists in their redoubts in Afghanistan. However, most drones are much smaller (and more benign) than that; in fact many are lighter than a goose and could be mistaken for a child's toy.

Despite their diminutive size, drones are receiving a huge amount of press right now. Why? Because businesses from Amazon to your local utility see a variety of commercial uses for them. Amazon, for example, is interested in a drone's near instantaneous delivery capabilities. Energy companies are interested in using them to inspect their miles of pipelines and transmission lines. In addition, law enforcement is one of the larger potential applications. The FBI and local police would like to use them to pursue criminals, gather evidence or obtain a better vantage point during active police actions.

There's only one small (or big depending on the way you look at it) problem; flying these small drones for commercial purposes is not allowed by the Federal Aviation Administration (FAA) unless they are flown in an enclosed building or you have gone through the laborious process of applying for (and obtaining) one of the very limited exemptions from the FAA.

Manufacturers of drones (or unmanned aircraft systems [UAS] as the FAA likes to call them) who want to fly them outside as part of their testing or marketing efforts can request an exemption (called a "special airworthiness certificate") but the hurdles (which are outlined in FAA order 8130.34C) are daunting. To secure such a certificate, the manufacturer must do all of the following:

- Receive a registration number (an "N" number) from the FAA;
- Submit an Affidavit of Ownership and Aircraft Registration Form 8030-1; and
- Submit the following technical documents to the FAA at the same time:
  - \* A map identifying a proposed flight test area (in latitude and longitude on an aeronautical chart.)
  - \* A Program Letter; and
  - \* A Safety Checklist

Although examples of the Program Letter and Safety Checklist are attached to Order 8130.34C, a technical background and experience in drafting such technical documents is helpful. The FAA takes about 30 days to review these documents.

While the FAA is performing its review, a Flight Test Plan must be developed. Such a Plan is not elaborate and there are a number of FAA Advisories they can be consulted for guidance. In addition, a safety and maintenance program manual must be prepared to ensure the continued airworthiness of the aircraft and the data link.

After the FAA reviews the documents above, the FAA schedules a safety evaluation which must be presented before a panel in Washington D.C. and an on-site inspection. The safety evaluation must provide the FAA with a complete understanding of how the drone is designed, the software it uses, propulsion, etc. Within 30 to 60 days of the safety evaluation, the FAA schedules an on-site inspection where the capabilities of the drone will be demonstrated in a test flight.

Here's the catch though: currently the person responsible for flying the drone must have a commercial airline pilot's license. Yes, that's correct: commercial airline pilots (the ones who fly paying customers in jumbo jets) are the only ones who can test fly a drone that looks like a child's toy. As if the process wasn't already complex, imagine a small start-up company trying to overcome a hurdle like that.

However, a possible solution is on the distant horizon. On February 15, 2015, the FAA released proposed rules that would allow routine commercial use of UAS under 55 pounds, and the FAA hinted at possibly issuing even more relaxed rules for UAS lighter than 4.4 pounds.

While the proposed rules do not require the drone pilot to have a commercial pilot's license, the pilot would have to meet certain basic requirements: be at least 17 years old, pass an aeronautical test and obtain a UAS operator certificate. Most notably, the proposed rules would not allow the drones to be flown out of the operator's line of sight (or autonomously). In addition, drones could not be flown over people, would have a maximum ceiling of 500 feet and could not fly faster than 100 miles per hour. Further, the proposed rules prohibit the dropping packages, which all but eliminates their use for Amazon or pizza delivery.

The FAA is seeking comments on the rules for the next 60 days. After the comment period closes, the FAA will make changes to the rules and there will undoubtedly be another round of public comment. In other words, the regulated community should not expect to see anything final soon. In the meantime, commercial drone use will continue to be restricted and manufacturers desiring to test fly their devices legally will have to follow the steps outlined above.

Dawda Mann attorneys will continue to monitor the FAA's development of its small drone rules and, in the meantime, are available to assist any companies interested in obtaining an exemption from the FAA.