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October 04, 2018

Congress Passes FAA Reauthorization Bill That Opens Door for Significant Changes to UAS Regulations

On October 3, 2018, the Senate passed a bipartisan bill that will reauthorize the Federal Aviation Administration (FAA) for five years. The bill, which is referred to as the FAA Reauthorization Act of 2018 (H.R. 302), was previously passed by the House of Representatives. It contains significant provisions pertaining to unmanned aircraft. If signed by the President, the bill will help promote unmanned aircraft system (UAS) technology and facilitate the safe and efficient integration of UASs into the national airspace.

Here is an overview of some of the key provisions of the bill related to UAS technology:

UAS Safety Standards for Manufacturers. The bill directs the FAA Administrator to establish a process for accepting risk-based, consensus safety standards related to the design, production and modification of UASs weighing less than 55 pounds (including any attached payloads). The bill also directs the FAA to create a streamlined process for manufacturers of small unmanned aircraft to self-certify that their UASs comply with the new safety standards.

In furtherance of these directives, the bill permits the FAA Administrator to require that manufacturers provide a statement of compliance for small UASs. Should the FAA Administrator require such a manufacturer statement, the bill requires that the following assertions be included:

- The UAS meets the provisions of the new safety standards;
- The UAS conforms with the manufacturer's design data and is consistently manufactured so that each UAS meets the new safety standards; and
- The manufacturer will monitor safety-of-flight issues to ensure that the UAS continues to meet the new safety standards and will report any issues to the FAA.

This approach would differ significantly from the approach taken by the FAA in Part 107, which did not impose any requirements on manufacturers. Requiring manufacturers to self-certify compliance would increase product liability risks because potential plaintiffs may be able to use the self-certifying statements against a manufacturer in litigation, particularly the statements regarding monitoring of safety-of-flight issues.

Privacy Policy for Operators. In the bill, Congress signals a heightened interest in investigating and regulating the privacy effects of UAS operations. Congress directs the Comptroller General to review privacy concerns stemming from UAS operations and to submit a report on any findings within 180 days of passage of the bill. The bill also notes the "sense of Congress" that any person who uses UASs for compensation should have a written privacy policy that is available to the public. While this "sense of Congress" provision is only an opinion of Congress and has no force of law or formal effect on public policy, it is nonetheless significant in expressing to the FAA and UAS operators the importance that Congress attaches to the protection of personal privacy in UAS operations. Further, it may well foreshadow congressional willingness to be more proactive in this area in the future.

Development of UTM. The bill envisions operation of UASs in the national airspace. It instructs the FAA to develop a plan for a UAS traffic management (UTM) system that allows for the integration of UASs into the national airspace system. Such a plan must include an assessment of remote identification of UASs, a delineation of the roles that government and industry must assume in order to create a functioning UTM system and the development of UTM safety standards.

Package Delivery. The bill directs the FAA to, within one year of passage of the bill, update existing regulations to authorize the carriage of property by small unmanned aircraft for commercial purposes. In any rulemaking conducted to update the regulations, Congress requires the FAA to take into account, among other considerations, (1) the use of performance-based requirements, (2) safety assessments, and (3) the opinion of local government officials.

The new bill opens the door for major changes to the UAS industry and the liabilities that drone manufacturers and operators will face. Once the bill goes into effect, we expect to see a flurry of rulemaking from the FAA.

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