

Advocacy Hosts Roundtable, Files Comments on FAA Small Drones Rule

By Bruce Lundegren, Assistant Chief Counsel

The Federal Aviation Administration (FAA) published its long-awaited proposed Small Unmanned Aircraft Systems (small UAS) rule in the Federal Register on February 23, 2015. The proposed rule would allow small UAS operations in the national airspace under certain controlled conditions.

A small UAS is an unmanned aircraft weighing less than 55 pounds. In the past, FAA has authorized non-recreational use of small UAS through various mechanisms, such as special airworthiness certificates, exemptions, and certificates of waiver or authorization.

FAA's proposed rule would be the next step in integrating small UAS into commercial use. Numerous small businesses seek to use these small "drones" in applications such as crop monitoring and inspection, research and development, educational and aca-

demical uses, power-line and pipeline inspection, construction, tower and antenna inspections, search and rescue missions, bridge inspections, aerial surveying and photography, wildlife evaluations and more.

In response to the publication of FAA's proposed rule, the Office of Advocacy hosted a small business aviation roundtable on April 9, 2015 to discuss the proposed rule and obtain feedback from small businesses. Representatives from FAA and the Department of Transportation attended the roundtable to provide an overview of the proposed rule and answer questions about it.

While a few small businesses have expressed safety concerns with UAS interfering with existing uses of the airspace, many or most of the attendees said they would like FAA to issue a final rule as quickly as possible in order to

allow some commercial UAS operations that are currently prohibited.

In addition, many attendees stated that they think the proposed rule is too restrictive and will not allow many beneficial UAS operations. FAA says these operational restrictions (such as a 500-foot elevation limit, line-of-sight-only operation, daytime flight only, 100 mph speed limit, etc.) are necessary because current technology is not reliable enough to overcome the "see and avoid" and "loss of positive con-

Continued on page 3



A quadcopter drone surveys an agricultural field. The FAA has proposed a new rule to govern drones, or small unmanned aircraft systems. (Credit: Thinkstock)

In This Issue

Regulatory News

- Advocacy Submits Regulatory Comment Letters. 4
- Rule Proposed on Employer Wellness Programs. 2
- DHS and DOL Issue Changes to H-2B Visa Program. 2
- Proposal Expands Retirement Advice Covered by Fiduciary Protections. 2

Advocacy News

- Advocacy Welcomes New Graphic Designer. 2
- Requests for Quotations Released. 3

Economic News

- Office of Economic Research Releases Issue Briefs. 3

Regulatory News

EEOC Proposes Rule on Employer Wellness Programs

The Equal Employment Opportunity Commission (EEOC) has proposed a rule that would amend the regulations and guidance documents on employer wellness programs under Title I of the Americans with Disabilities Act (ADA).

The rule amends the ADA regulations to provide guidance on the extent to which employers may use incentives to encourage employees to participate in wellness programs that include disability-related inquiries and/or medical examinations. Title I of the ADA applies to employers with 15 or more employees; this rule will impact 764,233 small firms (entities with 15-500 employees). Advocacy is interested in input on the economic impact of this rule on small businesses. Comments on this rule are due by June 19, 2015.

For more information, contact Janis Reyes at Janis.Reyes@sba.gov or (205) 205-6533 or visit <http://go.usa.gov/38arQ>.

DHS and DOL Issue Changes to H-2B Visa Program

The Department of Homeland Security (DHS) and the Department of Labor (DOL) jointly issued an interim final rule regarding changes to the H-2B visa program, which allows employers to hire temporary non-agricultural guest workers. The rule includes a new employer registration process, increased recruitment and oversight, requirements for guaranteed pay, additional fees, and similar payment for U.S. workers. The agencies jointly issued this rule due to recent court decisions that found that DOL lacked authority to independently issue legislative rules governing the H-2B program. Comments on the interim final rule are due by June 29, 2015.

DHS and DOL also issued a final rule which governs the wage methodology for temporary non-agricultural workers in the H-2B visa program.

For more information, contact Janis Reyes at Janis.Reyes@sba.gov or (205) 205-6533 or visit <http://go.usa.gov/38arw>.

Proposal Expands Retirement Advice Covered by Fiduciary Protections

The Employee Benefits Security Administration (EBSA) of the Department of Labor (DOL) issued a proposed rule intended to protect investors from hidden fees in retirement investment advice.

The proposed rule would expand the scope of the definition regarding when a person providing retirement advice becomes a “fiduciary” under the Employee Retirement Income Security Act (ERISA). It would also subject more types of retirement advice to the fiduciary requirements of ERISA.

The proposal includes several exemptions from the requirements associated with the fiduciary standard that DOL hopes will help streamline compliance. Comments are due by July 6, 2015.

For more information, contact Dillon Taylor at Dillon.Taylor@sba.gov or (202) 401-9787 or visit <http://go.usa.gov/38aYx>.

Advocacy News

Advocacy Welcomes New Graphic Designer

Sarah Dione Coleman joined the Office of Advocacy in April as a graphic and data visualization designer. Prior to her position at Advocacy, Coleman’s role was lead graphic designer with DSPolitical’s network through the 2014 election cycle, developing the company’s presence from concept to execution and managing creative content for clientele.

With more than seven years of experience, Coleman has previously partnered independently with individuals and organizations such as The Constitutional Accountability

Center and the League of Women Voters. Prior to moving to Washington, D.C., she worked as a web designer with the Florida Department of Environmental Protection.

Coleman studied graphic design at Tallahassee Community College, subsequently majoring in mass media and communications with a concentration in video production at the University of the District of Columbia.

Coleman can be reached at Sarah.Coleman@sba.gov.



Sarah Dione Coleman

Regulatory News

Drones, from page 1

rol” concerns that FAA discusses at length in the proposal.

Following the roundtable and discussions with small businesses, Advocacy filed comments on FAA’s proposed rule reflecting small business concerns. First and foremost, Advocacy recommended that FAA articulate the framework or parameters for assessing risk going forward.

Specifically, Advocacy stated that FAA’s approach should be “risk-based” and “technology neutral” so as not to lock in any particular technology. Advocacy also noted that because the pace of innovation is likely to outpace the ability of the regulatory process to respond, FAA should assume that existing technological barriers will be overcome. As such, FAA should define the risk parameters so that innovators know what level of risk is acceptable (or to what level of “safety” they need to design). For example, “sense and avoid” technology is developing at a rapid pace and there is already technology that automatically directs the UAS to safely hover, land or return to base if the data link is lost or disrupted.

Second, Advocacy recommended that FAA reassess the alternatives to the proposed rule to determine whether some of the operational restrictions can be relaxed with-



The Office of Advocacy hosted a regulatory roundtable to discuss FAA’s proposed rulemaking on small unmanned aircraft systems. From left is Acting Chief Counsel for Advocacy Claudia Rodgers, Assistant Chief Counsel Bruce Lundegren, FAA Assistant Chief Counsel Mark Bury, and DOT Attorney Advisor Anne Bechdolt.

out a significant increase in risk. Advocacy noted that UAS operations offer many potential safety benefits, so that impediments to their safe operations constitute costs, particularly costs in terms of the loss of safety and economic benefits that prohibitions impose.

Advocacy noted that while the certification and testing provisions in the proposed rule seem reasonable, small businesses and their representatives stated that some of the operational restrictions seem arbitrary.

Finally, Advocacy suggested that FAA provide timely mechanisms

for approvals, waivers, or exemptions from any final rule where an operator can demonstrate adequate safety. While Advocacy commended FAA for its “first step” in the process of integrating small UAS operations into the national airspace and for the agency’s stated intention to accommodate new technologies, capabilities and procedures in future rulemakings, Advocacy is mindful that the rulemaking process can be lengthy and time-consuming. For that reason, Advocacy recommended that FAA allow small UAS operators to apply for and obtain authorization to deviate from any final rule for operations or classes of operations that the operator can demonstrate are adequately safe.

For more information, contact Assistant Chief Counsel Bruce Lundegren at (202) 205-6144 or Bruce.Lundegren@sba.gov. You can also visit FAA’s Small UAS website at <https://www.faa.gov/uas/> for additional information about this rulemaking.

Office of Economic Research Releases Issue Briefs

- Issue Brief #6: Demographic Characteristics of Business Owners and Employees: 2013, <http://go.usa.gov/38a4d>
- Issue Brief #7: Profile of Veteran Business Owners: 2013, <http://go.usa.gov/38a2T>

Requests for Quotations Released

The Office of Advocacy and the National Women’s Business Council have announced the first in a series of solicitations for small business research. Visit Advocacy’s website at: <https://www.sba.gov/advocacy/requests-quotations> for more information.

Advocacy Submits Regulatory Comment Letters

The Office of Advocacy recently submitted six comment letters to federal agencies regarding proposed rulemakings. They include:

May 13, 2015: Comments to the Food and Drug Administration regarding electronic distribution of prescribing information for human prescription drugs, including biological products. Contact Linwood Rayford, Linwood.Rayford@sba.gov. See <http://go.usa.gov/38x6J>.

May 8, 2015: Comments to the Department of Energy on proposed energy conservation standards for hearth products. Contact Rosalyn Steward, Rosalyn.Steward@sba.gov. See <http://go.usa.gov/38xFY>.

May 8, 2015: Comments to the Environmental Protection Agency on the convening of a panel on federal plan requirements for greenhouse gas emissions from electric utility generating units constructed on or before January 8, 2014. Contact: David Rostker, David.Rostker@sba.gov. See <http://go.usa.gov/38xFB>.

May 4, 2015: Comments to the General Services Administration regarding proposed regulations to create a transactional data reporting clause. Contact: Major Clark, Major.Clark@sba.gov. See <http://go.usa.gov/38xFQ>.

April 24, 2015: Comments to the Federal Aviation Administration on the proposed rule on the operation and certification of small unmanned aircraft systems. Contact: Bruce Lundegren, Bruce.Lundegren@sba.gov. See <http://go.usa.gov/38xFw>.

April 21, 2015: Comments to the Environmental Protection Agency on revisions to the national oil and hazardous substances pollution contingency plan; Subpart J product schedule listing requirements. Contact: David Rostker, David.Rostker@sba.gov. See <http://go.usa.gov/38xFe>.

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