



Testimony
of the
National Association of Mutual Insurance Companies
to the
United States House of Representatives
Committee on Small Business, Subcommittee on Investigations,
Oversight and Regulations
Hearing on
Opportunity Rising: the FAA's New Regulatory Framework for
Commercial Drone Operations
2360 Rayburn House Office Building
September 27, 2016

The National Association of Mutual Insurance Companies (NAMIC) is pleased to provide testimony designed to address the recent rulemaking of the Federal Aviation Administration (FAA) pertaining to the commercial use of unmanned aircraft systems (UAS). Specifically, whether the rulemaking has adequately addressed the many unanswered questions surrounding safety and privacy that need to be answered in order for the property/casualty insurance industry to effectively use, and write coverages applicable to, the commercial use of UAS.

NAMIC is the largest and most diverse property/casualty trade association in the country, with 1,400 member companies including regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members serve more than 135 million auto, home and business policyholders, with more than \$208 billion in premiums accounting for 48 percent of the automobile/homeowners market and 33 percent of the business insurance market.

This hearing is being held to enable the Subcommittee to better understand the final rule, its implementation, and other issues that must be addressed as the FAA works to safely integrate unmanned aircraft into the national airspace system.

NAMIC has been a leader with respect to UAS safety and privacy issues, submitting comments to the Federal Aviation Administration (FAA) on proposed UAS rules, publishing a white paper, testifying before Congress, and developing a Compendium Of State Laws And Proposed Legislation Related To Unmanned Aerial Systems/Drones for the National Telecommunications and Information Administration (NTIA) Multi-Stakeholder Meeting on Privacy, Transparency, and Accountability Regarding Commercial and Private UAS.

The development of recreational and commercial uses for unmanned aircraft systems is accelerating. More and more individuals and industry sectors – including the property/casualty insurance industry – are now using UAS, but regulations and laws in the U.S. have not kept up with that development. But a regulatory scheme which defines and accommodates commercial or recreational use of UAS has been slow to develop, resulting in a system of regulation-through-

exemptions, and across states and localities, a hodgepodge of restrictions that are still being sorted out.

Insurance companies are a great example of how this innovation can benefit an industry. The property/casualty industry is currently exploring how UAS can help better appraise property, evaluate risk levels, and assess damage more quickly and accurately for policyholders. Before the FAA's recent rulemaking, a number of property/casualty insurance companies were granted Federal Aviation Administration (FAA) Section 333 exemptions, which provided our members the opportunity to better determine how UAS could serve policyholders in the normal course of business, or in disaster situations. Important tasks that formerly required employees to put themselves in precarious positions - such as roof inspection, damage assessment, and disaster recovery - could now be accomplished using UAS to significantly reduce, if not eliminate, dangers to individuals and property.

With the rise of recreational UAS use coinciding with an increasing number of industry sectors employing UAS during their course of business, accidents are unavoidable. Property/casualty insurers, with their ability to pool risk and insure liability stemming from such mishaps, will be critical to the rise of the use of UAS, as auto insurers were critical to rapid growth of the individual use of the automobile. But in order to properly assess risk, the property/casualty industry must first be able to evaluate parameters of safety. Unfortunately, the absence of a regulatory scheme until recently has precluded both users of UAS and the property/casualty insurance industry from being able to properly and adequately gauge the level of safety associated with various applications of UAS. Therefore, insurers, who will be critical in eventually shaping the answers to the unresolved issues of safety and privacy, currently find it very difficult to accurately identify and price risk surrounding their use, hampering their ability to protect policyholders from potential liability.

NAMIC believes that the reasonable, effective, and efficient regulation of UAS is not only possible, but is necessary to clarify the parameters of safety and privacy, expose actual levels of risk, and offer proper protections from liability.

The FAA's New Regulatory Framework for Commercial Drone Operations

The Government Accountability Office proposed in 2008 that the United States develop a clear and common understanding of what is required to safely and routinely operate UAS in the National Airspace System. Congress specifically called for UASs' integration into the NAS by September 2015 when it enacted the FAA Modernization and Reform Act of 2012. The FAA then stitched together patchwork guidelines and interpretations upon which the agency based its jurisdiction and enforcement. All unmanned aircraft, according to the FAA, are aircraft within the definitions found in statute under title 49 of U.S. Code, section 40102(a)(6) and title 14 of the Code of Federal Regulations section 1.1. Section 40102(a)(6) defines an aircraft as "any contrivance invented, used, or designed to navigate or fly in the air" and FAA's regulations (14 C.F.R. § 1.1.) define an aircraft as "a device that is used or intended to be used for flight in the air.

Because an unmanned aircraft is a contrivance or device that is invented, used, and designed to fly in the air, the FAA took the position that an unmanned aircraft is an aircraft based on the unambiguous language in the FAA's statute and regulations. In June 2014, the FAA provided its interpretation that "any operation not conducted strictly for hobby or recreation purposes could not be operated under the special rule for model aircraft. Clearly, commercial operations would not be hobby or recreation flights." The FAA specified that flights in furtherance of a business, or incidental to a person's business, would not be a hobby or recreation flight.

Section 333 of the FAA Modernization and Reform Act of 2012 granted the Secretary of Transportation and, therefore, the FAA authority to determine:

1. If an unmanned aircraft system, as a result of its size, weight, speed, operational capability, proximity to airports and populated areas, and operation within visual line-of-sight does not create a hazard to users of the NAS or the public or pose a threat to national security; and
2. Whether a certificate of waiver, certificate of authorization, or airworthiness certification under 49 USC § 44704 is required for the operation of unmanned aircraft systems identified under paragraph (1).

Section 333 exemptions were then granted after a two-step process. First, the FAA determined that the UAS would not pose a risk to those operating in the NAS, the general public, or national

security, and it could be safely operated without an airworthiness certificate. The FAA then used its existing exemption authority to grant relief from FAA regulations that may apply. Once an exemption was granted, the applicant would then apply for a civil certificate of waiver or authorization permitting the operator to conduct the proposed operation. In petitioning for the relief afforded under Section 333, UAS operators would seek exemption from regulations applicable to the specific circumstances of their operations with which they believe they were unable to comply. The FAA published detailed guidance to people interested in submitting a petition for exemption to the FAA to operate UASs in the NAS.

In considering further regulations, the FAA set up an Unmanned Aircraft Systems Registration Task Force Aviation Rulemaking Committee and a Micro Unmanned Aircraft Systems Aviation Rulemaking Committee. Participants in these advisory groups these groups were selected by the FAA

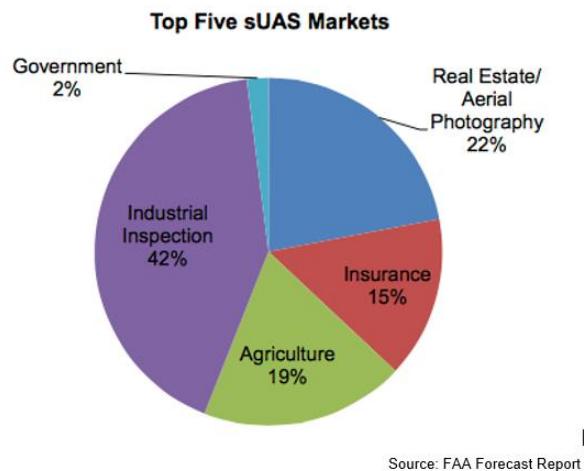
On August 29, new FAA drone rules went into effect that allow for drones to legally be used for commercial purposes without going through the Section 333 approval process, provided that the drones are operated by a certified remote pilot in compliance with safety requirements. The rule does not apply to recreational users. Commercial operators of drones weighting no more than 55 pounds can operate under new Part 107 rules. Part 107 requires remote pilots-in-command to pass exams and be certified by the TSA, and then operate the drone under specific conditions. The drone cannot fly higher than 400 feet, faster than 100 mph, operate after daytime hours, over non-participants, or beyond the visual line of sight of the pilot or observer. These limitations can be waived by the FAA if the operator can prove through a waiver application process that the waived operation is safe.

The FAA's New Regulatory Framework for Commercial Drone Operations – Opportunities Missed

While we are supportive of the commitment and focus of the FAA in most of its development of commercial drone policy and regulation, NAMIC is seriously concerned that the FAA has afforded the users of drones too minimal of a role in the development of the new regulatory framework for commercial drone operations. The commercial users of drones – and particularly

the small business users of drones – will make up a large portion, if not a majority, of commercial users of drones soon and these drone users have not been given an adequate voice in the development of commercial drone policy and regulation.

Who are the commercial drone users? According to the FAA's own forecast, within five years the largest commercial users of drones will be industrial inspectors, realtors and aerial photographers, agriculture, and insurance.



These users have requested and have mostly been denied a voice in the FAA's integration of the public into development of commercial drone policy and regulations. There have been several important steps in which the FAA has looked for public input into the regulatory framework for commercial drone operations and in each case, the FAA generally excluded representatives from these industries, although they had asked to be included.

In each of the FAA's Unmanned Aircraft Systems Registration Task Force Aviation Rulemaking Committee, the Micro Unmanned Aircraft Systems Aviation Rulemaking Committee and in the newly formed Drone Advisory Committee, the representatives selected by the FAA represented industries and interest groups other than these FAA identified drone user groups, almost without exception. Representatives of these user groups had requested – formally and informally – that they be included in the FAA's policy and regulatory development and were denied. At this year's White House Office of Science and Technology Policy workshop on Drones and the Future of Aviation, two speakers did represent these drone groups and both lamented in their

statements the fact that users were generally not included in the FAA's policy and regulatory developments.

To be fair, FAA officials have been available to meet with these user groups and have given a modicum of deference to the comments of these users to formally proposed regulations. But the FAA has missed a tremendous opportunity to provide these user groups – which represent tens of thousands of small businesses – the same level and importance of participation that the FAA has afforded to the largest companies and interests.

NAMIC would encourage members of this committee to urge the FAA to consider more involvement from the commercial users of drones, particularly from those industries which have been identified as the biggest utilizers of this technology in the near future. Thank you for the opportunity to comment and we look forward to working with you on these important issues.