



April 24, 2015

**Docket Management Facility (M-30)
U. S. Department of Transportation
West Building Ground Floor
Room W12-140
1200 New Jersey Ave.
Washington, DC 20590-0001**

RE: Notice of Proposed Rulemaking, Request for Comments: Operation and Certification of Small Unmanned Aircraft Systems [Docket No. FAA-2015-0150]

The American Chemistry Council (ACC) appreciates this opportunity to provide valuable input on the important issue of the operation and certification of small Unmanned Aircraft Systems (UAS). The ACC represents the leaders engaged in the business of chemistry, which has become an \$812 billion enterprise and a significant driver of our nation's economy. Nearly 800,000 Americans rely on jobs in the chemistry industry. ACC is committed to improved environmental, health, safety and security performance through our Responsible Care® initiative and through common sense advocacy designed to address major public policy issues. ACC and its members work closely with policymakers at all levels of government to enhance the safety and security of our facilities, our workers and neighboring communities. Recognized as a crucial facet of the nation's critical infrastructure, ACC members have invested more than \$14 billion under our Responsible Care® Security Code to enhance physical site, transportation, and cyber security at their facilities.

The Federal Aviation Administration (FAA) has proposed a framework of regulations that would allow for the routine use of certain small unmanned aircraft systems (UAS) in today's aviation system, while maintaining flexibility to accommodate future technological innovations. The FAA proposal offers safety rules for small UAS (under 55 pounds) conducting non-recreational operations. The rule would limit flights to daylight and visual-line-of-sight operations. It also addresses height restrictions, operator certification, optional use of a visual observer, aircraft registration and marking, and operational limits.

While ACC strongly supports this initiative, we do believe some revisions to the proposed rule are warranted to enhance industry's ability to safeguard both the public and our personnel, as well as to enhance our overall operations. The following are examples of beneficial applications of small UAS operations for the chemical industry that we strongly recommend be included in the rule:

- Plant/process equipment monitoring/inspections;
- Power-line/pipeline inspections in arduous terrain;
- Environmental and safety inspections including flare stack monitoring;
- Emergency response operations including incident, disaster and spill response;
- Infrastructure inspections including remote fence lines and property boundaries;
- Security surveillance including perimeter security and access control;
- Research and development;
- Educational/Training uses;
- Aerial photography;

Through the use of remotely controlled small UAS, facility employees and contractors who normally conduct manual inspections of hard-to-reach equipment or in hazardous operating or environmental conditions would be able to conduct such inspections from a safe location.

While the FAA has accommodated the commercial use small UAS through various mechanisms including special airworthiness certificates, exemptions and certificates of waiver or authorization (COA). ACC believes there are some additional measures that could be taken to further streamline their use for commercial/industry operations, while maintaining the safety and security of the NAS.

TRANSPORTATION SECURITY ADMINISTRATION VETTING AND POSITIVE IDENTIFICATION

Proposed § 107.63 specifies that the FAA will issue a certificate to an airman under § 107.61 if the airman submits an application showing that he or she passed the initial aeronautical knowledge test. The FAA notes that all applicants for an airman certificate will be vetted by the Transportation Security Administration (TSA) pursuant to 49 U.S.C. 46111 to determine whether they pose a security threat. An applicant will not be issued an unmanned aircraft operator certificate until the TSA determines that the applicant will not pose a security threat. Congress requires TSA to recover the cost of vetting and credentialing services through user fees. The fees for vetting UAS certificate applicants would cover TSA's cost for enrolling, processing, and

replying to the application, as well as the costs of conducting the intelligence-related checks themselves. TSA is developing a process, through rulemaking, by which TSA's vetting fees can be collected from applicants during the supplication process. Thus, while this rulemaking projects that these costs are currently governmental costs, these costs would be passed on to the individuals in the future.

As a result of the processes that go into the issuance of an airman certificate, the FAA estimates that it could take 6 to 8 weeks after receipt of an application for the FAA to issue an unmanned aircraft operator certificate with a small UAS rating. The FAA invites comments with suggestions for how this period could be reduced. The FAA also notes that the TSA will continue to examine certificate holders after FAA issuance of a certificate.

We fully support the proposed requirements for the vetting of UAS operators. However, many employees and contractors in the chemical industry are currently required by law to undergo background investigations by TSA under the Maritime Transportation Security Act (MTSA) and the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 ("the CFATS Act of 2014"). In addition to TSA security vetting, these same employees and contractors must have completed a criminal background check, legal authorization to work in the United States and verification of identity before they are permitted to have access to restricted areas within regulated chemical facilities. In the case of MTSA regulated facilities, workers are required to have a Transportation Worker Identification Credential (TWIC) which provides assurance they have met and passed all aspects of security vetting. In the case of CFATS workers, the regulated facility is required to maintain records of all vetted and authorized employees.

In those cases where a facility owner/operator would like to have one of his employees or a contractor be certified to operate a small UAS for an industrial application ACC recommends that the FAA recognize other existing U.S. Government credentialing and vetting requirements in lieu of requiring duplicative vetting for those who have already successfully completed such vetting through another program. Examples of such programs include, but may not be limited to, the following:

- Transportation Worker Identification Credential (TWIC)
- CFATS Personnel Surety Program
- DOT Hazardous Materials Endorsement to a Commercial License (DOT HAZMAT Card)
- USCBP Global Entry Card
- TSA Trusted Traveler Program

ACC believes that the recognition of other equivalent U.S. Government credentialing programs would result in substantial savings in costs, both to the Federal Government as well as the owners/operators, and would streamline the amount of time required to issue the aforementioned operators certificate.

ACCIDENT REPORTING

To ensure proper oversight of small UAS operations, this proposed rule, in § 107.9, would require a small UAS operator report to the FAA any small UAS operation that results in: (1) any injury to a person; or (2) damage to property other than the small unmanned aircraft. The report would have to be made within 10 days of the operation. After receiving this report, the FAA may conduct further investigation to determine whether any FAA regulations were violated. The FAA emphasizes that this proposed reporting requirement would be triggered only during operations that result in injury to a person or property damage. The FAA invites comments as to whether small UAS accidents that result in minimal amounts of property damage should be exempted from the reporting requirement. If so, what is the threshold of property damage that should trigger the accident reporting requirement?

For many applications in the chemical industry, the use of small UAS are confined to limited areas within the boundaries of an industrial complex under tightly controlled conditions by qualified and trained operators. ACC believes this type of operation would pose little or no additional risk to users of the NAS, the public or national security. However, ACC recognizes that a workplace accident could occur including and during the use of a small UAS resulting in property damage or personal injury. In such cases, any resulting property damage would most likely be limited to the private property located within and owned by the facility. Likewise, any resulting personal injury would likely be that of facility personnel, workers or contractors at the site. Under current industry practice, property damage less than \$25,000 is typically not required to be reported beyond the internal reporting process at the facility.

Currently, owners and operators are required to report workplace injuries to the Occupational Safety and Health Administration (OSHA) which is the agency then responsible for conducting investigations.

Given existing regulations and requirements, ACC recommends that the FAA defer to the existing reporting and investigating mechanism that involve a small UAS in an industrial setting. Specifically, ACC recommends that no FAA accident report be required for small UAS in an industrial setting which results in a workplace injury that is covered by OSHA 29 CFR 1904, "Reporting and Recording Occupational injury and illness." Likewise, ACC also recommends that no FAA accident report be required that results in less than \$25,000 in private property damage that is owned and operated by the facility owner. In both cases, OSHA reporting and investigations are required. ACC believes this is a suitable compromise, one that considers the minimal risk associated with the use of small UAS while ensuring the safety and security of the public and the NAS. This would also help the FAA prioritize its resources appropriately and focus on higher risk activities.

MODEL USE U.A.S.

As currently written, proposed part 107 would not apply to model aircraft or casual use of UAS in and around critical infrastructure including chemical facilities and operations. While model aircraft operators must continue to satisfy all of the criteria specified in Sec. 336 of Public Law 112-95, including the stipulation they be operated solely for hobby or recreational purposes, the ACC and its members remained concerned that potential nefarious use of small UAS is cause for significant safety and security concerns.

Due to their small size, maneuverability, affordability and load-capacities, small UAS may be used intentionally by criminals and terrorists to commit criminal or terrorist acts, including unauthorized surveillance and the introduction of explosive devices at critical infrastructure facilities. Many of the facilities at risk include sites regulated by the Department of Homeland Security (DHS), the U.S. Coast Guard and the Transportation Security Administration (TSA). Some of our concerns with the criminal and/or terrorist use in this regard include:

- Aerial surveillance, photography and reconnaissance
- Delivery of small arms or explosives
- Chemical/biological/radiological agent delivery or dispersal
- Use as a diversionary device
- Smuggling/theft
- Air traffic disruption

To ensure the safety and security of critical infrastructure regarding the casual or model aircraft use of small UAS, ACC recommends the following regulations be applied and enforced to Model Aircraft. These rules are the baseline rules that apply to all aircraft operated in the United States, and are the appropriate rules to apply when evaluating model aircraft operations. See 14 CFR 91.1. Specifically:

- The FAA should codify rules addressing the operation of model aircraft including the prohibition on careless or reckless operation and dropping objects on or near critical infrastructure so as to create a hazard to persons, facilities or property. See 14 CFR 91.13 through 91.15.
- The FAA should codify right-of-way rules for converging aircraft, such as found in § 91.113. Model aircraft that do not comply with these rules would be subject to FAA enforcement action.
- Rules governing operations in designated airspace are found in §§ 91.126 through 91.135. In general, those rules establish requirements for operating in the various classes of airspace, and near airports in non-designated airspace to minimize risk of collision in higher traffic airspace. These rules should include the airspace over and near critical infrastructure such as chemical facilities, pipelines and fixed transportation routes, such as railways and marine traffic.

If an operator is unable to comply with the regulatory requirements for operating in a particular class of airspace over or near critical infrastructure, the operator would need authorization from the local authorities in consultation with the facility owner/operator. (See 14 CFR 91.127(a), 91.129(a)).

Additionally, the regulations should prohibit the unauthorized use or operation of a small UAS over the following:

- Any facility designated as critical infrastructure by the U.S. Government including but not limited to those regulated under MTSA, CFATS, and TSA.
- Chemical, oil and gas manufacturing/processing facilities, refineries, storage facilities, transmission and distribution terminals
- Liquefied Natural Gas (LNG) facilities
- Electrical power generating facilities, substations, switching stations, electrical control centers and electrical transmission or distribution facilities
- During emergency response operations (spills, etc.) except with the permission of a federal or state authorities or the owner of the property effected

ACC appreciates the opportunity to provide comments on this important rulemaking. For further information please feel free to contact me at your convenience.

Regards,

William J. Erny

Senior Director

American Chemistry Council

700 2nd Street, NE

Washington, DC 20002

202 249 6412