

FAARA Section 2124: Jeopardizing Innovation in a Nascent Industry

Section 2124 is an industry-killer, particularly for small business. It requires development of what will become mandatory “risk-based consensus industry airworthiness standards.” For categories of higher-risk operation, a risk-based consensus standard approach is welcome and preferable to the slow pace of agency rulemaking. However, the breadth and severity of Section 2124 as drafted is destructive to the pace of innovation in the field, regressively pushing the nascent UAS industry into a framework that echoes legacy airframe certification:

1. There are no exceptions or carve-outs. 2124 seemingly applies to all UAS regardless of, size, use, or operational rules (including Section 333, future Part 107, public agency aircraft, model aircraft, toys, etc.)
2. The list of standards that are to be developed within one year from FAARA’s enactment include things that do not exist today or are not widely deployed such that a standard could be articulated: geofencing, altitude limitation, sense and avoid, lost-link, detection and identification, tamper-proofing, and remote identification. § 44803(b)
3. Section 2124 contemplates retroactive application for small UAS that have already been distributed, thus a potential “recall” type requirement for all of today’s manufacturers. § 44803(b)(7)
4. The provision requires the FAA to create a process for it to approve “the make and models” based on the standards. Currently, even a cookie-cutter Section 333 application takes over four months for FAA to process, even though everyone gets the same form-letter approval. How long will FAA take to examine and approve each “make and model” of hundreds of UAS manufacturers? § 44803(d)
5. A “sample aircraft” must be inspected by FAA for it to approve. This will disrupt product launch plans, requiring a complete and finished aircraft to be provided, perhaps months ahead of release. §44803 (e)(2)
6. Section 2124 requires that “every unit produced meets the applicable standard” i.e. 100% rate of conformity. This level of manufacturing is unheard of, and inappropriate for devices that do not carry people. §44803(f)(3)
7. Access must be provided to FAA of manufacturing facilities. § 44803(f)(6)
8. It will be unlawful to introduce or deliver for sale any UA that has not received FAA approval for each make and model – in other words, **this provision will impose a sales ban** on any UA that does not comply with all of the above. § 44803(g)