

NEW COMMERCIAL DRONE RULES TAKE FLIGHT: UNDERSTANDING IMPLICATIONS, OPPORTUNITIES, AND WHAT'S NEXT

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America's skies will be open for business as a result of new rules released by the Federal Aviation Administration ("FAA") regarding the commercial operation of small unmanned aircraft systems ("sUAS"), or "drones." (See our overview [here](#).) Slated to take effect on August 29, 2016, the new rules open up a variety of opportunities for businesses to harness the potential of unmanned aircraft, and also debut in the midst of an evolving policy debate in Washington about the future regulation of unmanned aircraft. Interested stakeholders should evaluate how the new rules may affect their business and should pay close attention to areas for further legislative and regulatory engagement. Our Unmanned Aircraft Systems team and the authors of this alert are available to answer any specific questions you may have about the FAA's sUAS rules and are prepared to assist clients on UAS issues.

WHAT DOES THE RULEMAKING MEAN FOR MY BUSINESS?

The new rules establish a more **streamlined path to beginning flight operations with fewer restrictions**. Previously, businesses generally needed a Section 333 exemption to conduct commercial unmanned aircraft operations. These exemptions often took months to obtain and imposed restrictions on unmanned aircraft flights that are not included in the new sUAS rules under Part 107 of the Federal Aviation Regulations. For many basic unmanned aircraft operations, Part 107 will remove the need for companies to go through any additional exemption or waiver process. In addition, Part 107 does not include restrictions included in some Section 333 exemptions, including, for example, requirements that operations must be conducted (1) by a certified aircraft pilot of manned aircraft, (2) pursuant to a Certificate of Authorization ("COA"), and (3) 500 feet from vehicles and structures (with some exceptions). Consequently, Part 107 removes significant procedural roadblocks that previously hindered companies in a variety of industries from using unmanned aircraft.

Despite representing a major step forward for the unmanned aircraft industry, the new rules still include a number of significant operational limitations. As a result, **further legislative and regulatory action may be needed to permit a wider scope of unmanned aircraft operations**. For example, the new rules do not cover a variety of operations that have been envisioned by the unmanned aircraft community, such as flights beyond the pilot's visual line of sight, at higher altitudes, and over people uninvolved in the operation. Although Part 107 provides a pathway for operators to seek waivers that might accommodate some of these operations, the development of a more standardized framework will likely form the next phase of the FAA's work to integrate unmanned aircraft into the national airspace.

WHAT ABOUT SECTION 333 EXEMPTIONS AND OPERATIONS OUTSIDE OF PART 107?

Currently almost all commercial operators legally flying unmanned aircraft are doing so under a Section 333 exemption. As mentioned previously, a majority of operations permitted under Section 333 exemptions will be permitted with fewer restrictions under Part 107. Going forward, Section 333 will no longer be the mechanism through which most routine commercial sUAS operations take place. Instead, Section 333 and the new waiver process described above will likely be used to allow more innovative unmanned aircraft operations that go beyond the boundaries of Part 107. The FAA is planning to create an online portal through which such exemptions can be requested.^[1]

Companies currently operating under Section 333 exemptions will be able to continue operations under their exemption until it expires. This may be helpful if their Section 333 exemption permits an activity not allowed under Part 107. In those situations, however, Section 333 exemption holders should be careful to comply with all requirements of their Section 333 exemption, even if Part 107 does not include such requirements, like obtaining a COA. Prior to any flight, operators should understand the authority under which they are operating for that particular flight.

WHAT'S NEXT?

FAA Reauthorization: The FAA has unveiled the final rules at a critical policy juncture. The agency's current operating authority expires on July 15, 2016, and the House of Representatives and Senate have proposed [separate reauthorization bills](#) that diverge in some respects, but both include sUAS provisions that would interact with the FAA's new regulations in many ways. It currently appears likely that Congress will pass an extension of the FAA's operating authority and defer work on a comprehensive policy bill to a later date, although there is the potential that drone policy provisions could be attached to such an extension. Regardless of when a comprehensive reauthorization bill moves forward, it will represent an opportunity to address critical issues such as privacy, safety standards, pilot testing, beyond-line-of-sight and nighttime operations, microUAS, penalties and enforcement for improper unmanned aircraft operations, and federal preemption, as well as to address perceived statutory constraints on the FAA's rulemaking process and deficiencies of its regulatory activities to date, including the new rules.

Flights over people/MicroUAS: In its proposed rulemaking, the FAA suggested that it might create separate rules addressing MicroUAS, or unmanned aircraft weighing 4.4 lbs. or less, which would allow for some operations over uninvolved people. However, the agency opted to leave this out of the current rulemaking and instead plans to pursue a separate rulemaking specifically on the topic of allowable flights over uninvolved people. The FAA recently convened a [task force to promulgate recommendations on the topic](#), which the agency is reviewing. In addition, the FAA made the Part 107 restrictions regarding flights over uninvolved people subject to possible waiver by the agency.

Beyond-Line-of-Sight Operations: Although many companies in a variety of industries see significant benefits to using unmanned aircraft outside pilot's line of sight, the FAA declined to permit or address these operations in Part 107. In the coming years, as unmanned aircraft technology progresses even further, pressure will likely

mount for the FAA to begin allowing some beyond-line-of-sight operations. Before allowing such operations, however, the FAA will likely look at permitting some extended-line-of-sight operations, in which an unmanned aircraft is outside of the pilot's sight but visual observers are used to maintain sight of the unmanned aircraft and communicate with the pilot. In addition, the FAA made the Part 107 restrictions regarding flights over uninjured people and beyond-line-of-sight operations subject to possible waiver by the agency (however, no waivers will be permitted for the carriage of property sUAS for compensation or hire).

Privacy: In connection with the release of the final rules, the Obama Administration announced a national call for "new, specific, and measurable steps" that unmanned aircraft stakeholders will take to protect privacy. The comment solicitation is intended to complement the initiatives undertaken pursuant to the February 2015 presidential memorandum "Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems." Comments are due by July 15, 2016.

NOTES:

[1] FAA, [Beyond the Basics](#) (last visited June 21, 2016).

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