

FAA Releases Final Rules on Unmanned Aircraft Systems

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SUMMARY

On Tuesday, June 21, 2016, the FAA released its Final Rule for the Operation and Certification of Small Unmanned Aircraft Systems (“sUAS”) in the National Airspace (“NAS”), Title 14 of the Code of Federal Regulations (14 CFR) part 107 (“Final Rules”). The Final Rules place certain operational restrictions on commercial sUAS operations, provide a path toward obtaining a remote pilot certificate for the commercial operation of sUAS, and offer a process for obtaining a waiver from some of the restrictions for safe operations of sUAS.

After almost 16 months since the FAA notified hobbyist and commercial operators that regulations were forthcoming, the Agency has issued specific guidelines for the commercial operation of unmanned aircraft weighing less than 55 pounds. The Final Rules replace the “operation by exemption” process set forth under Section 333 of the FAA Modernization and Reform Act of 2012 (Public Law 112-95)(“FMRA”).

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Although the majority of the Final Rules were expected, the notable changes from the proposed rules (circulated in February 2015) include (1) the elimination of an airworthiness certification for sUAS operations, and (2) a general relaxation of sUAS operator requirements, including the elimination of a pilot certification requirement. The much awaited Final Rules are intended to boost the growth of the UAS-industry in the U.S. by promoting innovation, job growth, workforce development, and scientific research, while achieving economic efficiencies, increased safety, and in some cases, saving human lives.

It is important to note that *the Final Rules do not apply to model aircraft and sUAS used for hobby/recreational purposes*; such operations remain subject to Section 336 of the FMRA.

A summary of the Final Rules for the operation of commercial sUAS is described below.

Flight Limitations

A majority of the Final Rule discusses the safety of flying a small UAS. Notable regulations include:

- Flying must occur during daylight (defined as the time between sunrise and sunset, local time)
- If a small UAS is equipped with proper collision prevention equipment, flying can occur 30 minutes before sunrise and 30 minutes after sunset

- Maximum altitude of 400 feet above ground level or, if higher than 400 feet, remain within 400 feet of a structure
- Must yield right of way to other aircraft
- Visual line of sight (“VLOS”) must be maintained by the pilot in command or a separate visual observer; but a visual observer is only required if first-person view (“FPV”) technology is utilized
- If the pilot in command utilizes a visual observer, the observer is only required to maintain communication with the pilot; the parties are free to use any device or method that will allow the parties to maintain effective communication
- FPV does not satisfy the VLOS requirement; such operation would require the use of a visual observer
- Minimum weather visibility must allow for a line of sight within three miles from control station
- Operation of a sUAS over individual human beings that are not directly participating in the operation is prohibited
- Filming, at an angle, of non-participating individual human beings is allowed as long as the sUAS does not fly over the non-participants

Operators

The FAA will now issue remote pilot certificates for authorized operators of sUAS. This certification permits an individual (an “operator”) to control a sUAS for non-recreational use. The certification is obtained through two methods:

- Operators who have not received pilot certification must pass an aeronautical knowledge test at an FAA-approved knowledge testing center
- Current operators possessing a non-student pilot certificate under 14 CFR part 61 must complete an online training course offered by the FAA

Additionally, an uncertified operator can control a small UAS so long as he/she is under the direct supervision of a certified operator.

Waivers

In its Final Rule, the FAA declared that most of the new regulations are waivable so long as the applicant can demonstrate that the operation of the sUAS can be conducted safely under the terms of the certificate of waiver. The FAA explicitly stated that the following regulations can be subject to a waiver:

- Visual line of sight requirements
- The operation of a sUAS over non-participating individual people

As this overview demonstrates, the new FAA rules provide an extensive regulatory landscape to the sUAS industry. The FAA hopes the new regulations will strike a balance between spurring innovation while protecting the public. The rules take effect August 20, 2016.

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