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FAA Releases Small "Drone" Rule

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In a historic step for the aviation industry, the FAA on June 21 adopted codified standards, the first for small unmanned aerial systems ("sUAS"). The standards themselves, however, permit little liberalization in the operational conditions that the FAA has, so far, been willing to allow in case-by-case commercial exemptions.

The new Part 107 rule will become effective later this summer, likely in mid- to late August. It covers most operations by sUAS that weigh less than 55 pounds (25 kilograms) and sets basic requirements for such aircraft, qualifications for pilots, and operational parameters. The FAA also provided guidance on pending applications for exemptions for commercial operating authority under Section 333 of the FAA Modernization and Reform Act and on future waiver requests.

Aircraft Requirements. As expected, the new provisions, which are part of a 600+ page decision, eliminate the need for an airworthiness certificate and permit sUAS operations that comply with the new standards without the need to obtain a Section 333 exemption from the airworthiness requirement. The rule does require a pre-flight check of the sUAS by the pilot in command ("PIC") to ensure that the craft can be operated safely.

PIC Certification. Also, as expected, the FAA has created a new remote pilot certificate. Anyone operating sUAS must either hold a certificate with a sUAS rating or be under the direct supervision of a person who holds such certificate. To qualify for the remote pilot certificate, an individual must be at least 16 years of age (the FAA had originally proposed 17 years), pass an initial knowledge test, and clear TSA review. (Individuals who hold Part 61 pilot certificates for manned aircraft as well as a current flight review may obtain a remote pilot certificate by completing an online training course available through the FAA's website.) The new certificates will be valid for two years and will be renewable after the holder passes a recurrent knowledge test. An operator will not need to have an airman medical certificate; instead, the operator will be able to certify that he or she does not have a medical condition that could create an unsafe situation during sUAS flights. In a briefing at the time the FAA released the decision, the agency made clear that, while training materials may be available this summer, new pilot certificates will not be available until the new standards go into effect.

Operations. The new standards set specific limits on sUAS operations, many of which are similar to the conditions in Section 333 exemptions for commercial operations that the agency has been issuing on a case-by-case basis since the fall of 2014. Under the new rule, flights must still be within visual line-of-sight ("VLOS") of the PIC or a visual observer ("VO"), although VOs are no longer mandatory except when the PIC is utilizing First Person View technology or otherwise not in a position to observe the sUAS. Flights must take place during daylight hours or, if the sUAS has appropriate anti-collision lighting, during "civil twilight" – up to 30 minutes before sunrise and 30 minutes after sunset. The maximum ground speed for operations remains at 100 mph (87 knots); the maximum allowable altitude will be 400 feet above ground level or within 400 feet of a structure, such as a building or tower. (The FAA had originally proposed a 500-foot altitude limit.) Operators are still limited to flying one sUAS at a time.

The new standards permit use of sUAS to transport non-hazardous property, but within narrow limits. The sUAS with payload must weigh less than 55 pounds; the flight must be within VLOS of the operator, who is not on a moving vehicle or aircraft; and the flight must not be interstate. (The FAA staff is working on a rulemaking to address flying sUAS beyond VLOS, but that rulemaking proposal is not expected this year.) At this time, the new rule still does not allow operations over individuals not participating in the sUAS flight operations, but the FAA is considering liberalizations in its ongoing "micro UAS" proceeding.

The new rule will become effective 60 days after publication in the *Federal Register* – likely in mid- to late August. Until then, Section 333 exemptions are required for commercial operations of sUAS. Once the new rule is effective, if the conditions in an already issued Section 333 exemption differ from the new sUAS rule, the FAA will permit exemption holders to continue operating under the conditions outlined in the exemption until its expiration or under the new rule, as long as those operations are compliant with the new rule. At the time that Section 333 grants come up for renewal, the FAA will consider whether renewal is necessary for those exemptions that are within the scope of Part 107.

In its briefing on June 21, the FAA said that it will divide *pending* 333 exemption requests into three tiers. "Tier 1," which covers more than 90 percent of the pending Section 333 exemption requests, includes those that propose operations consistent with the new sUAS rule. "Tier 2" includes requests that are not consistent with the new sUAS rule but may be eligible for a waiver pursuant to a new process outlined in the rule. These will be evaluated through that waiver process. "Tier 3" includes those that would not comply with the new rule and would not be eligible for waivers. The FAA will continue to review these Tier 3 requests under Section 333 on a case-by-case basis.

In the coming weeks, the FAA will complete its internal review and classification of the pending Section 333 requests. The FAA will notify applicants after it classifies their exemption requests. Unless an applicant in Tier 1 wants its request to continue to be processed, the FAA will dismiss it.

Once the rule is effective, exemptions may be issued to provisions of the new rule that do not allow for a waiver. These exemptions may also be issued pursuant to the Section 333 process.

Privacy. The FAA decision does not deal specifically with privacy issues, acknowledging that the FAA does not have regulatory authority in this area. In issuing the new rule, the FAA encouraged UAS pilots and operators to consult state laws as well as the privacy "best practices" recently issued by the National Telecommunications & Information Administration. The FAA did note that, as part of the PIC certification process, it will educate commercial sUAS pilots on privacy and that it will be issuing new guidance to state and local governments on sUAS privacy issues.

As noted, the new rule is likely to become effective in mid- to late August. In the interim, please contact us with any questions that you may have about the new rule.

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Key Contacts

J.G. Harrington Washington, DC	jgharrington@cooley.com +1 202 776 2818
Henry Wendel Washington, DC	hwendel@cooley.com +1 202 776 2943

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