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FAA Releases Proposed Rules for Commercial Drones; White House Launches Drone Privacy Policy

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On February 15, 2015, the Federal Aviation Administration published its highly anticipated [Notice of Proposed Rulemaking \(NPRM\)](#) on the Operation and Certification of Small Unmanned Aircraft Systems (applicable to UAS weighing 55 lbs. and less). The proposed rules would add a new Part 107 to Title 14 Code of Federal Regulations to allow for routine civil operation of small UAS in the National Airspace System (NAS). Although a lengthy comment and revision period is expected to delay finalization of the regulations for another 18-24 months, Section 333 of the FAA Modernization and Reform Act of 2012 will continue to provide a procedure for expedited authorization of commercial small UAS operations in the interim. The final Part 107 will serve as the foundation for a multi-billion dollar UAS industry in the United States.

Highlights of the New UAS Rules

UAS Operator Certification—No Pilot’s License Required.

Unlike commercial UAS operations conducted today under Section 333, manned aircraft pilots will no longer enjoy a regulatory monopoly under the proposed rules. Instead, the FAA has announced an Operator Certification program that would require operators to pass an initial aeronautical knowledge test at an FAA-approved testing center, be over the age of 17, be vetted by TSA, and obtain an unmanned aircraft operator certificate with a small UAS rating. Similar to existing pilot airman certificates, this certification would never expire so long as the operator passes a recurrent aeronautical knowledge test every 24 months. Although this significant policy shift was expected, it is a welcome sigh of relief for the UAS community, which has broadcasted a consistent message to the FAA that the skills required to pilot manned aircraft are not the same skills needed for the safe operation of UAS. The FAA expressly agreed, stating that the existing operator restrictions “impose an unnecessary burden for many small UAS operations.”

Operational Parameters—No Preapproval for Operations in Class G Airspace. Under the proposed rule, small UAS would be prohibited from operating in Class A airspace and would

require prior approval from Air Traffic Control to operate in Class B, C, or D airspace, or within the lateral boundaries of the surface area of Class E airspace designated for an airport. Significantly, no preapproval would be required for operations in uncontrolled (Class G) airspace. Additionally, operations will be limited to a maximum airspeed of 87 knots (100 mph) at a maximum altitude of 500 feet above ground level, and within the visual line of sight of the operator.

Commercial Package Delivery and Amazon Prime Air.

The FAA is well-aware of Amazon’s plans to use UAS to deliver packages to the consumer’s doorstep within 30 minutes of receiving an online order. The knee-jerk analysts of the proposed Part 107 widely perceived the new rules as a serious blow to Amazon’s Prime Air program because it prohibits the use of UAS to transport people or property “for compensation.” However, a more careful analysis of the FAA’s 195 page NPRM reveals that Amazon is inching closer to its goal. Specifically, the NPRM states that it would not prohibit “operations by corporations transporting their own property within their business under the other provisions of this proposed rule,” and requests comments on “whether UAS should be permitted to transport property for payment within the other proposed constraints of the rule, e.g., the ban on flights over uninvolved persons, the requirements for line of sight, and the intent to limit operations to a constrained area.” This means that a factory, for example, could be fully-automated with UAS lifting packages off of conveyor belts and loading them onto trucks. It also begs the question: what if Amazon takes an end-run around the prohibition on delivering packages “for compensation” by offering free delivery? Look for a more thorough exploration of this issue during the 60 day rulemaking comment period.

No Airworthiness Certification. In a victory for UAS manufacturers, the FAA will not require preapproval of the UAS design prior to the use of the aircraft in flight operations. This will promote innovation in the industry and



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remove what might have become a significant barrier to entry for small/startup UAS manufacturers.

Micro UAS Classification. The FAA is considering adopting a separate set of operational parameters for a “Micro UAS,” class of aircraft, which the FAA has preliminarily defined as aircraft weighing no more than 4.4 lbs., composed of frangible materials that yield on impact so as to present a minimal hazard to any person or object that the aircraft collides with, that will not exceed a speed of 30 knots, and that will be limited entirely to class G airspace away from an airport. According to the FAA, “No knowledge test would be required in order to obtain an unmanned aircraft operator certificate with a micro UAS rating; instead, the applicant would simply submit a signed statement to the FAA stating that he or she has familiarized him or herself with all of the areas of knowledge that are tested on the initial aeronautical knowledge test.” Significantly, the Micro UAS would be permitted to fly directly over people not involved in the flight operation.

No Visual Observer Required. The proposed rules would allow the UAS operator to conduct solo operations without the aid of a Visual Observer (VO). This is a welcome departure from the FAA’s previous requirement of including a VO in operations conducted under Section 333 exemptions.

International Operations Excluded to Reduce Operational Limitations. The International Civil Aviation Organization (ICAO) has issued strict standards and recommended practices (SARPS) directed at UAS operations. The FAA has limited the scope of Part 107 to apply only to UAS operations conducted entirely within the United States as a way to avoid the imposition of ICAO’s strict standards on domestic UAS operations. “While we embrace the basic principle that UAS operations should minimize hazards to persons, property or other aircraft, we believe that it is possible to achieve this goal with respect to certain small UAS operations in a much less restrictive manner than current ICAO standards require,” states the FAA’s summary of the proposed rule. Look for the FAA to address international UAS operations in a future rulemaking.

White House Launches Drone Privacy Policy

No sooner did the FAA announce its proposed Part 107 than the White House’s issuance of a [Presidential Memorandum](#) titled, “Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems.” The memorandum announces a new federal privacy initiative aimed at taking steps to ensure that the integration of UAS into the NAS is completed with an eye toward limiting and protecting the information gathered by federal agencies using UAS technology.

Continuing Importance of Section 333

As drone technology continues to disrupt new industries, the importance of Section 333 petitions as the sole avenue for conducting commercial operations has become increasingly clear. Though the FAA’s release of its comprehensive set of regulations is a significant landmark for the industry, the rules are not expected to be finalized before 2016 (and more likely 2017). Until then, Section 333 will remain the holy grail for drone operators who plan to conduct commercial operations in the foreseeable future.



Paul Fraidenburgh has gained a national reputation for his representation of clients in the unmanned aircraft systems industry. The Wall Street Journal, Los Angeles Times, and several other publications have quoted Mr. Fraidenburgh on the topic of unmanned aircraft systems, and his clients are among the most cutting-edge aerial filmmakers and aviation companies in the world. He can be reached at (949) 224-6247 or pfraidenburgh@buchalter.com.