



FAA Releases New Commercial Drone Regulations, Section 333 Exemption Holders Get “Grandfathered” Compliance Status

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Today, the Federal Aviation Administration (“FAA”) announced the finalization of its long-awaited Final Rule governing routine commercial operation of unmanned aircraft systems weighing 55 lbs. or less. The new 14 C.F.R. Part 107 will become effective 60 days from the date of its publication in the Federal Register, which is likely to happen this week or next.

Below is an explanation of how the new Part 107 will affect entities that have already received a Section 333 exemption, followed by a summary of the new operational requirements and restrictions:

Section 333 Exemption Holders Get Best of Both Worlds: “Grandfathered” Compliance Status and the Option to Take Advantage of the New Rules

In the Final Rule, the FAA was careful to protect Section 333 exempt entities from the burden of complying with an additional layer of regulations. Instead, Section 333 exemption holders will be “grandfathered” into compliance, as explained by the FAA below:

“The FAA clarifies that current section 333 exemptions that apply to small UAS are excluded from part 107. The FAA has already considered each of these individual operations when it considered their section 333 exemption requests and concluded that these operations do not pose a safety or national security risk.

The FAA recognizes, however, that there may be certain instances where part 107 is less restrictive than a section 333 exemption. Therefore, under this rule, a section 333 exemption holder may choose to operate in accordance with part 107 instead of operating under the section 333 exemption. This approach will provide section 333 exemption holders time to obtain a remote pilot certificate and transition to part 107. Operations that would not otherwise fall under part 107 may not take advantage of this option. For example, an operation with a section 333 exemption that does not fall under part 107, such as an operation of a UAS weighing more than 55 pounds, would not have the option of operating in accordance with part 107 rather than with its section 333 exemption.

Additionally, when section 333 exemptions come up for renewal, the FAA will consider whether renewal is necessary for those exemptions whose operations are within the operational scope of part 107, which also includes those operations that qualify for a waiver under part 107. The purpose of part 107 is to continue the FAA’s process of integrating UAS into the NAS. If a section 333 exemption is within the operational scope of part 107, there may be no need for the agency to renew an exemption under section 333. Because the FAA’s renewal considerations will be tied to the outstanding section 333 exemptions’ expiration dates, a 3-year transition period is not necessary. This will not affect those section 333 exemptions that are outside of the operational scope of part 107 or where a part 107 waiver would not be considered.” (Final Rule, Pages 83-84.)

Thus, for Section 333 exemption holders, the result is the best of both worlds. On the one hand, Section 333 exempt entities are not *required* to modify their current commercial drone operations to comply with the new regulations. On the other hand, if a Section 333 exempt entity identifies an opportunity to perform certain operations under less stringent restrictions promulgated in the new Part 107, it may “*choose to operate in accordance with part 107 instead of operating under the section 333 exemption.*”

Here is the FAA’s Summary of the new operational limitations, Pilot in Command and certification responsibilities, and aircraft requirements:

New Operational Limitations under Part 107:

- Unmanned aircraft must weigh less than 55 lbs. (25 kg).
- Visual line-of-sight (VLOS) only; the unmanned aircraft must remain within VLOS of the remote pilot in command and the person manipulating the flight controls of the small UAS. Alternatively, the unmanned aircraft must remain within VLOS of the visual observer.
- At all times the small unmanned aircraft must remain close enough to the remote pilot in command and the person manipulating the flight controls of the small UAS for those people to be capable of seeing the aircraft with vision unaided by any device other than corrective lenses.



- Small unmanned aircraft may not operate over any persons not directly participating in the operation, not under a covered structure, and not inside a covered stationary vehicle.
- Daylight-only operations, or civil twilight (30 minutes before official sunrise to 30 minutes after official sunset, local time) with appropriate anti-collision lighting.
- Must yield right of way to other aircraft.
- May use visual observer (VO) but not required.
- First-person view camera cannot satisfy “see-and-avoid” requirement but can be used as long as requirement is satisfied in other ways.
- Maximum groundspeed of 100 mph (87 knots).
- Maximum altitude of 400 feet above ground level (AGL) or, if higher than 400 feet AGL, remain within 400 feet of a structure.
- Minimum weather visibility of 3 miles from control station.
- Operations in Class B, C, D and E airspace are allowed with the required ATC permission.
- Operations in Class G airspace are allowed without ATC permission.
- No person may act as a remote pilot in command or VO for more than one unmanned aircraft operation at one time.
- No operations from a moving aircraft.
- No operations from a moving vehicle unless the operation is over a sparsely populated area.
- No careless or reckless operations.
- No carriage of hazardous materials.
- Requires preflight inspection by the remote pilot in command.
- A person may not operate a small unmanned aircraft if he or she knows or has reason to know of any physical or mental condition that would interfere with the safe operation of a small UAS.
- Foreign-registered small unmanned aircraft are allowed to operate under part 107 if they satisfy the requirements of part 375.
- External load operations are allowed if the object being carried by the unmanned aircraft is securely attached and does not adversely affect the flight characteristics or controllability of the aircraft.
- Transportation of property for compensation or hire allowed provided that:
 - o The aircraft, including its attached systems, payload and cargo weigh less than 55 pounds total;
 - The flight is conducted within visual line of sight and not from a moving vehicle or aircraft; and
 - The flight occurs wholly within the bounds of a State and does not involve transport between (1) Hawaii and another place in Hawaii through airspace outside Hawaii; (2) the District of Columbia and another place in the District of Columbia; or (3) a territory or possession of the United States and another place in the same territory or possession.
- Most of the restrictions discussed above are waivable if the applicant demonstrates that his or her operation can safely be conducted under the terms of a certificate of waiver.

New Remote Pilot in Command Certification and Responsibilities under Part 107

- Establishes a remote pilot in command position.
- A person operating a small UAS must either hold a remote pilot airman certificate with a small UAS rating or be under the direct supervision of a person who does hold a remote pilot certificate (remote pilot in command).
- To qualify for a remote pilot certificate, a person must:
 - Demonstrate aeronautical knowledge by either:
 - o Passing an initial aeronautical knowledge test at an FAA-approved knowledge testing center; or
 - o Hold a part 61 pilot certificate other than student pilot, complete a flight review within the previous 24 months, and complete a small UAS online training course provided by the FAA.
 - Be vetted by the Transportation Security Administration.
 - Be at least 16 years old.
- Part 61 pilot certificate holders may obtain a temporary remote pilot certificate immediately upon submission of their application for a permanent certificate. Other applicants will obtain a temporary remote pilot certificate upon successful completion of TSA security vetting. The FAA anticipates that it will be able to issue a temporary remote pilot certificate within 10 business days after receiving a completed remote pilot certificate application.



- Until international standards are developed, foreign-certificated UAS pilots will be required to obtain an FAA-issued remote pilot certificate with a small UAS rating.

A remote pilot in command must:

- Make available to the FAA, upon request, the small UAS for inspection or testing, and any associated documents/records required to be kept under the rule.
- Report to the FAA within 10 days of any operation that results in at least serious injury, loss of consciousness, or property damage of at least \$500.
- Conduct a preflight inspection, to include specific aircraft and control station systems checks, to ensure the small UAS is in a condition for safe operation.
- Ensure that the small unmanned aircraft complies with the existing registration requirements specified in § 91.203(a)(2).

A remote pilot in command may deviate from the requirements of this rule in response to an in-flight emergency.

Aircraft Requirements under the New Part 107

FAA airworthiness certification is not required. However, the remote pilot in command must conduct a preflight check of the small UAS to ensure that it is in a condition for safe operation.

The finalization of the new rule marks the most significant step to date toward the implementation of the federal government's plan to integrate safe commercial drone operations into the national airspace system. Check in [here](#) for updates on the implementation of Part 107 in the coming months.



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