



BOUSQUET HOLSTEIN PLLC

Legal Alert

Unmanned Aircraft Systems (UAS)/Unmanned Aerial Vehicles (UAV) Practice Group

New FAA Rules Serve as the Foundation for Governing Commercial Use of UAS/UAVs (Drones)

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On June 21, 2016, the Federal Aviation Administration ("FAA") released its highly anticipated new rules set to serve as the foundation for governing commercial use of small, Unmanned Aircraft Systems ("UAS") and Unmanned Aerial Vehicles ("UAVs") in the United States. These new rules, more specifically, Part 107 of the Federal Aviation Regulations, provide a clear and consistent foundation for businesses and individuals to more easily operate small UAVs on a commercial basis. Most importantly, these rules will serve to take the place of the current FAA regulatory process – the application of full FAA rules modified by an exemption process under Section 333 of the FAA Modernization and Reform Act of 2012.

Summary of New Rules

The new rules will apply solely to small UAVs which constitute units between one-half pounds and 55 pounds, including their payload, if any. One of the most significant changes is that these UAVs are no longer subject to meet FAA airworthiness certification and operators do not need to obtain an exemption from such certification either. Operators are however, required to conduct a detailed pre-flight check of the small UAV unit to ensure that it is safe for operation prior to each and every use. In addition, "remote pilots in command" ("RPIC"), who are the only individuals authorized to operate a small UAV commercially under the rules, will no longer be required to have a full pilot's license. Instead, individuals will have to obtain a remote pilot certificate by demonstrating certain aeronautical knowledge after taking and passing an FAA-approved exam in one of numerous FAA testing centers across the country. In addition to passing this test, remote pilots in command must be at least 16-years-old and must undergo a vetting process through the Transportation Security Administration. This process, although appearing initially onerous, will allow many more individuals to become certified to commercially operate small UAVs. Individuals who already have a full pilot's license will be able to obtain a temporary certificate and will only have to submit an application for a permanent certificate and complete an online training course through the FAA. Of course, recreational users of small UAVs will not require any certificate for operation.

The regulations further outline the responsibilities of remote pilots in command. RPICs are required to ensure that small UAVs meet FAA registration requirements and RPICs are required to maintain certain records and be able to produce them for the FAA upon request. Pilots are mandated to report within 10 days any operation that results in property damage exceeding \$500, serious injury to another person and/or loss of consciousness. They are also required to perform pre-flight inspections as previously mentioned to ensure that the small UAV is in safe operating condition. The rules again however, imply some flexibility and allow for RPICs to deviate from many of the requirements in emergency situations.

Part 107 also provides more concise operational rules and guidelines for RPICs and commercial users. Although the evolution of technology has already far exceeded the need to maintain visual line of sight ("VLOS") operation of UAVs, such rules will remain in place and visual line of sight by RPICs will be required at all times. Further, operations of small UAVs must be conducted only during daylight hours, with the exception of 30 minutes before sunrise and 30 minutes after sunset, provided that the unit maintains proper anti-collision lighting.



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Commercial use is limited to altitudes of 400 feet and speeds of up to 100 mph (87 knots). However, the 400 foot altitude limitation does not apply to UAVs when operating within 400 feet of a structure. Again, this flexibility will allow for much greater use of UAVs around buildings and towers that exceed 400 feet in height. In general, an RPIC may not operate a unit from a moving vehicle, especially moving aircraft, or over a populated area, unless the individuals are involved in the commercial operation of the UAV.

There are a number of other limitations and restrictions including, but not limited to proximity to airports, yield requirements to other aircraft, and avoidance of careless or reckless operations by which operators must abide. However, many of the operational restrictions imposed under the new rules can be waived by the FAA upon application provided that the applicant can demonstrate that the proposed operations can be safely conducted under the terms of an FAA certificate of waiver. The FAA is currently in the process of outlining the procedure to apply for and obtain a certificate of waiver for such purposes, but this option clearly indicates that the agency has recognized the need for flexibility within its own rules.

Part 107 rules are set to go into effect on August 29, 2016. Until that date, the original rules – standard FAA regulatory requirements for all aircraft and Section 333 exemptions – are still the applicable standard for companies to commercially operate small UAVs. Some companies who already have Section 333 exemptions may be experiencing some buyer's remorse with the new rules having just been released making 333 exemptions eventually obsolete. However, each exemption and certificate of authority are only effective for two years after issuance so the older method of FAA regulation was not by any means permanent.

This Alert is intended to address many of the key restrictions imposed by the new Part 107 rules. However, there are many more details within the regulations that businesses should study prior to using small UAVs after August 29th. For businesses that wish to continue to use small UAVs or are considering entering the market in the near future, it is important to ensure that full FAA compliance is met and that each individual or company has a full understanding of the rules.

The UAS/UAV team at Bousquet Holstein PLLC is available to help interpret the Part 107 rules and assist businesses with compliance, applications for waivers, and establishing formal commercial operations using small UAVs. We are well versed in the industry and can ensure that other key ancillary matters such as proper business structures, financial resources, insurance, and contractual agreements are in place so clients can develop a smooth entry into the industry with limited exposure. In sum, our firm is poised to help businesses thrive and navigate the numerous issues in this emerging, state of the art technology. For help in the UAS industry, please contact a member of our UAS/UAV practice group. Their information is below and on our web site at www.bhrlawpllc.com. Follow the practice group on Twitter at [@bhdronepractice](https://twitter.com/bhdronepractice)

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