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## Aviation

### FAA Proposes Rules for Small Commercial Unmanned Aircraft Systems or Drones

**Action Item: As a step towards integrating commercial Unmanned Aircraft Systems (“UAS”) flights into U.S. airspace, the Federal Aviation Administration (“FAA”) has released its long-awaited Notice of Proposed Rulemaking (“NPRM”) concerning commercial use of small UAS (“sUAS”)—popularly known as drones. 14 C.F.R. Part 107.**

The rules were published in the Federal Register on February 23, 2015, with a 60-day public comment period ending on April 24, 2015. Extensive comments are expected on the proposal, which has already elicited public controversy and therefore, we expect the FAA will likely take two to three years to issue final rules. Until the final rule is published, the FAA will continue to process Part 333 exemption requests to permit otherwise prohibited commercial UAS flights. Further, these sUAS rules do not apply to model aircraft used for hobby or recreational purposes.

#### Highlights of the Proposed Rule

Some of the key elements of the proposed rules include:

- The sUAS must weigh less than 55 pounds.
- Operations cannot exceed 500 feet above ground level (“AGL”) or 100 mph.
- The sUAS must be registered with the FAA, and although no FAA airworthiness certification is required, the operator must maintain the sUAS in a safe condition.

- Flights are only permitted in daylight with a minimum weather visibility of three miles and distance from clouds of no fewer than 500 feet below and 2,000 feet horizontally.
- The sUAS must remain in visual line-of-sight of the operator, with unaided vision except for corrective lenses
- The operator must conduct a preflight inspection before the operation, including inspection of the operating environment. The sUAS would not have to meet the same airworthiness requirements as manned aircraft, nor be certified by the FAA. However, if FAA-certified components are used, the sUAS could be subject to FAA airworthiness directives addressing those component parts.
- The sUAS cannot operate over persons not directly involved in the operation or under a covered protective structure, and the operation must yield the right-of-way to other aircraft (manned and unmanned).
- Careless and reckless operations are prohibited, and a person may not operate a sUAS if he or she knows, or has reason to know, of any physical or mental condition that would interfere with safe operation of the sUAS.
- Operators must report accidents or incidents to the FAA within 10 days.

The proposed rules differ from Part 333 exemption requirements (which currently govern commercial UAS exemptions) in certain respects. The FAA has granted exemptions but only on a limited basis. For example:

- The sUAS operations are permitted within five nautical miles of an airport (with FAA air traffic control approval).
- A second observer is not required.
- Individuals can operate a sUAS by obtaining an unmanned aircraft airman certificate—a new category of airman certificate with less stringent requirements. Some of the requirements include passing an initial test at an FAA-approved testing center, must be at least 17 years old, pass a background check, and pass a recurrent aeronautical knowledge test every two years. The sUAS pilot license requirements are less stringent than those for a full pilot license, and with no medical check. As with traditional pilot certificate, unmanned aircraft certificate holders would be subject to FAA drug and alcohol testing requirements.

The FAA is also considering whether separate, relaxed requirements should exist for “micro” UAS (under 4.4 pounds), including permitting flights in airspace below 400 feet AGL and over people on the ground with fewer limits.

Despite this seeming willingness to have more lenient restrictions on sUAS, the commercial transportation of property is still prohibited, as well as flights that tow or jettison a payload (such as package delivery flights and spray operations). The FAA is, however, requesting comments on those prohibitions. Significant comments are anticipated on these prohibitions from commercial transportation companies.

### Presidential Memorandum to Agencies on Drones and Privacy

In conjunction with the NPRM, the President issued a memorandum outlining the Executive Branch’s plan to promote the use of sUAS while safeguarding privacy, civil rights, and civil liberties. <http://www.whitehouse.gov/the-press-office/2015/02/15/presidential-memorandum-promoting-economic-competitiveness-while-safegua>.

To that end, the President created a multi-stakeholder engagement process to develop and disseminate best practices for privacy, accountability, and transparency issues regarding commercial and private use of UAS. The Department of Commerce was tasked with setting up this engagement process within 90 days.

### Congress Responds to the Proposed Rule

Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) released the following statement regarding the FAA’s proposed rule on UAS:

“The FAA’s proposed regulation on small UAS is a positive first step. We need to properly balance safety, privacy, and access while ensuring the United States remains at the forefront of aviation technology. As we continue to review this proposal and as the FAA finalizes the rule, I look forward to hearing reactions and input from all stakeholders.”

On March 3, 2015, the House Subcommittee on Aviation of the House Transportation and Infrastructure Committee held a hearing on FAA reauthorization, taking testimony from FAA Administrator Michael Huerta. Members of the Subcommittee pressed Administrator Huerta on the proposed drone rule demonstrating strong Congressional interest in this subject. FAA authorization expires in September 2015.

### Opportunity for Comment and Public Participation

Any business thinking about participating in UAS operations in some fashion should consider commenting on the newly proposed rules, or participating in the multi-stakeholder engagement process. The FAA intends to hold public meetings on drones and innovation, which will be announced in a later Federal Register notice.

To comment on the proposal, contact a member of the Blank Rome aviation team or follow the directions in the proposed rule at: <http://www.gpo.gov/fdsys/pkg/FR-2015-02-23/pdf/2015-03544.pdf>

**For additional information, please contact:**

**Elaine D. Solomon**  
215.569.5448 | [Solomon@BlankRome.com](mailto:Solomon@BlankRome.com)

**Arthur W. Hankin**  
215.569.5446 | [Hankin@BlankRome.com](mailto:Hankin@BlankRome.com)

**Joan M. Bondareff**  
202.772.5911 | [Bondareff@BlankRome.com](mailto:Bondareff@BlankRome.com)

**Stephen C. Peranich**  
202.772.5924 | [Peranich@BlankRome.com](mailto:Peranich@BlankRome.com)