

Aviation - USA

Drone update: new COA policy and proposed framework for small unmanned aircraft

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April 22 2015

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Introduction

In recent months the Federal Aviation Administration (FAA) has taken steps to implement a framework within which small unmanned aircraft systems (sUAS) can be safely integrated into the national airspace. On March 23 2015 the FAA announced an interim policy to expedite airspace authorisations for commercial sUAS operators which have obtained Section 333 exemptions. In late February 2015 the FAA issued its notice of proposed rulemaking on the operation and certification of sUAS.

New policy for Section 333 exemptions

Generally speaking, at present the commercial operation of sUAS is prohibited. However, under Section 333 of the FAA Modernisation and Reform Act 2012,⁽¹⁾ the secretary of transportation may grant exemptions from this prohibition and authorise the commercial use of sUAS on a case-by-case basis. To date, the FAA has granted 99 exemptions under Section 333. Hundreds of petitions for Section 333 exemptions are pending at this time.

On March 23 2015 the FAA announced a new policy which affects sUAS operating under Section 333 exemptions. According to the new policy, the FAA will grant a blanket certificate of waiver or authorisation (COA) for flights at or below 200 feet to any sUAS operator holding a Section 333 exemption. Such flights must:

- involve aircraft that weigh less than 55 pounds (lbs);
- operate during daylight and in accordance with applicable Visual Flight Rules conditions;
- be conducted at all times within the visual line of sight of the operator; and
- remain at certain distances away from airports or heliports.

Operators which wish to fly outside the parameters established for the blanket COA must apply for a separate COA specific to the airspace required for such operations.

The new policy will allow operators of sUAS to fly aircraft immediately following receipt of the Section 333 exemption and loosen the previous operational restrictions of COAs. Previously, operators were required to apply separately for the COA, and such applications could not be submitted until the Section 333 exemption was granted. Typically, the FAA would issue COAs up to 60 days following receipt of the application. In addition, COAs would allow an operator to fly aircraft within a specific block of airspace over a confined geographical area. Now the blanket COA allows sUAS operators to fly anywhere in the country except restricted airspace, major cities and other areas where the FAA prohibits sUAS operations. The blanket COAs will be issued automatically to existing Section 333 exemption holders. New exemption holders will receive a COA at the time the exemption is approved by the FAA.

Notice of proposed rulemaking

In February 2015 the FAA issued its long-awaited proposed framework of regulations governing sUAS use in the national airspace. The new regulations cover:

- operational limitations;
- operator certification and responsibilities; and
- aircraft requirements.

The proposed regulations apply to US-registered aircraft weighing less than 55lbs engaged in non-

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recreational operations. The 60-day period for public comments is now open. The comment period is scheduled to close on April 24 2015.

Operational limitations

The proposed regulations place several limitations on the operation of sUAS. As mentioned above, the aircraft must weigh less than 55lbs. The aircraft must remain within the visual line of sight of the operator (unaided by any device other than corrective lenses) at all times. Thus, while permitted to augment the operation of the aircraft, first-person view cameras cannot alone satisfy this requirement. Operators of sUAS may operate aircraft only during daylight hours, with minimum weather visibility of 3 miles from the operator.

The FAA also proposes that sUAS operate at a maximum altitude of 500 feet above ground level. No sUAS operations would be allowed in Class A airspace; operations in Class B, C, D and E airspace are allowed with the prior Air Traffic Control approval. Operations in Class G airspace (ie, uncontrolled airspace) are allowed without prior approval. Further, sUAS could not operate at an airspeed of more than 100 miles per hour.

Other restrictions under the proposed rules would:

- prohibit an operator from flying his or her sUAS over any persons not directly involved in the operation of the aircraft;
- require that an operator yield right-of-way to other aircraft, manned or unmanned; and
- refrain from operating the aircraft in a careless or reckless manner.

As an alternative to the above, the FAA is considering a framework that would apply to micro-UAS sub-classification. This framework would apply to aircraft weighing up to 4.4lbs. The micro-UAS would be limited to operate at a maximum altitude of 400 feet above ground level and no more than 1,500 feet away from the operator. The micro-UAS would be subject to a maximum airspeed of approximately 35 miles per hour and must only operate within Class G airspace. Flying a micro-UAS over persons not directly involved in the operation of the aircraft would be permitted.

Operator certificate and responsibilities

Under the proposed regulations, sUAS operators would be required to obtain an unmanned aircraft operator certificate with a sUAS rating. To obtain this certificate, operators must be at least 17 years old, pass an initial aeronautical knowledge test and successfully undergo vetting by the Transportation Security Administration. While the operator certificate does not expire, the operator must pass a recurrent aeronautical knowledge test every 24 months. The operator certification process for micro-UAS would not require the aeronautical knowledge test, and instead would require a self-certification by the operator in a signed statement to the FAA.

The proposed rules would also require sUAS operators to have certain pre-flight and post-flight responsibilities. For example, sUAS operators would be required to conduct pre-flight inspections to ensure safe operation of the aircraft. An aircraft operator would also have to notify the FAA of an accident resulting in injury or property damage within 10 days of such occurrence.

Aircraft requirements

The FAA proposes to limit the scope of the new sUAS rule to US-registered aircraft. As such, sUAS would be required to satisfy the aircraft registration rules that apply to all other aircraft. This includes the US citizenship requirements identified in 49 USC 44103 and 14 CFR 47.3, which provide that an aircraft can be registered in the United States only if it is not registered in a foreign jurisdiction and meets one of the following ownership criteria:

- The aircraft is owned by a citizen of the United States;
- The aircraft is owned by a permanent resident of the United States;
- The aircraft is owned by a corporation that is not a US citizen, but that is organised and doing business under US federal or state law and the aircraft is based and primarily used in the United States; or
- The aircraft is owned by the United States government or a state or local government entity.

The FAA notes that existing international trade obligations allow foreign registered aircraft to engage in specialty air services whose primary purpose is not the transportation of goods or passengers. Such specialty air services include using aircraft for purposes of aerial mapping, aerial surveying, aerial photography and aerial inspection and surveillance. Many of these uses are shared by those sUAS currently holding Section 333 exemptions. The FAA is seeking comments on whether foreign-registered sUAS should be included in the new sUAS framework.

The FAA will not require aircraft operating under the new sUAS rule to have an airworthiness certificate. However, the operator must maintain the aircraft in a condition for safe operation and, as explained above, conduct a pre-flight inspection to ensure that the aircraft is in a safe operating condition.

Under the new sUAS rule, aircraft markings are also required. The sUAS must display the registration number issued by the FAA in the manner specified in Subpart C of 14 CFR 45. Where the aircraft is too small to display markings in standard size, the aircraft registration number must be displayed in the largest practicable manner.

Model aircraft

The FAA acknowledges that the proposed sUAS rule would not apply to model aircraft that satisfy all of the criteria specified in Section 336 of the act. Section 336 prohibits the FAA from promulgating any rule or regulation regarding model aircraft if the model aircraft meets the following statutory requirements:

- The aircraft is flown strictly for hobby or recreational use;
- The aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organisation;
- The aircraft is limited to not more than 55lbs unless otherwise certified through a design, construction, inspection, flight test and operational safety programme administered by a community-based organisation;
- The aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft; and
- When flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower with prior notice of the operation.⁽²⁾

However, any model aircraft that fails to meet all of these criteria would be subject to the new sUAS framework. In addition, the FAA seeks to codify in the new sUAS regulations its enforcement authority to keep model aircraft operators from endangering the national airspace.

Comment

The proposed sUAS rule is open for public comment. Public comments can be submitted on the FAA's docket for the proposed rulemaking, which can be found on www.regulations.gov by searching for FAA-2015-0150. The comment period is scheduled to close on April 24 2015.

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Endnotes

(1) Pub L No 112-95, 126 Stat 11.

(2) PL 112-95, § 336(a)(1)-(5).

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