



FAA Issues Guidance On Part 107 Waiver Requests

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The Federal Aviation Administration (FAA) recently issued useful guidance (the "Guidance") for businesses who wish to operate small unmanned aircraft systems ("sUAS") outside the parameters of Part 107 of the Federal Aviation Regulations ("Part 107"). According to the Guidance, the FAA has issued 36 waivers under Part 107, and 81 authorizations for flights in Class D and E airspace. However, it also has rejected 71 waiver requests and 854 airspace applications. Although requests are denied for a number of reasons, according to the FAA, many applications were rejected for requesting too many waivers or waiver requests for flights in types of airspace for which the FAA is not yet granting approvals. (The FAA will not begin to consider requests for sUAS flights in Class C airspace until after October 31 and for Class B airspace until after December 5.)

Part 107, published by the FAA in August, sets forth the requirements that businesses must satisfy in order to operate sUAS for commercial purposes. Part 107 includes the requirements for piloting sUAS, size limitations of UAS as well as a number of operating limitations. However, Part 107 also states that businesses can request a waiver from several of the operating restrictions (collectively, the "Waiverable Restrictions?"). These include:

- No operation from a moving vehicle or aircraft
- No nighttime operation
- Aircraft must be in visual line of sight ("VLOS") of pilot at all times
- Requirements on visual observer, if used
- No operation of multiple sUAS
- UAS must yield the right of way to other aircraft
- No operations over people
- Restricted operation in certain airspace
- Operating limitations on ground speed, altitude, visibility and cloud clearance

The FAA developed an online process for businesses to submit their Part 107 waiver requests. The Guidance provides that "[i]t's important for applicants to understand the information needed to make a successful safety case for granting a waiver." As a result, businesses must include in the waiver request a description of what safety measures they will take in order to address the FAA's safety concerns associated with each of the Waiverable Restrictions. Fortunately, the FAA has published a list of these concerns for each such Waiverable Restriction. For example, the FAA has stated that, for nighttime operations, an applicant must:

- Provide a method for the remote pilot to maintain VLOS during darkness
- Provide a method for the remote pilot to see and avoid other aircraft, people on the ground and ground-based structures and obstacles during darkness
- Provide a method by which the remote pilot will be able to continuously know and determine the position, altitude, attitude and movement of its sUAS
- Assure that all required persons participating in the sUAS operation have knowledge to recognize and overcome visual illusions caused by darkness, and understand physiological conditions that may degrade night vision
- Provide a method to increase visibility of the sUAS to be seen at a distance of 3 miles unless a system is in place that can avoid all non-participating aircraft

The FAA also publishes the waivers that it has granted under Part 107. These grants include a list of safety conditions that the business receiving a grant must follow both before and during operations. As a result, these grants can serve as a useful roadmap for companies that are considering applying for a waiver.

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