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## FAA Proposes Rules For Commercial Small Unmanned Aircraft Systems (sUAS) Operations (14 C.F.R. Part 107); White House Issues UAS Privacy Memorandum

By Kenneth P. Quinn, Jennifer E. Trock, Benjamin M. Berlin, and Graham C. Keithley

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*On February 15, 2015, the U.S. Federal Aviation Administration (FAA) proposed rules for the commercial operation of small unmanned aircraft systems (sUAS) weighing less than 55 pounds—a long-awaited step towards integrating commercial UAS flights such as precision agriculture, surveying, real estate photography, and utility and infrastructure inspections (e.g., electrical wires, pipelines, and bridges) into U.S. airspace. But the proposed rules leave prohibited other desired commercial uses (e.g., package delivery, spray operations and nighttime flights) and unanswered key safety, privacy, security, liability, and spectrum questions. Comments to the FAA’s rules are due mid-April and all affected parties, including businesses and industries hoping to use any-sized UAS, should take advantage of this opportunity to offer their views, concerns, and suggestions to shape the incipient regulatory framework for UAS.*

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Responding to a 2012 Congressional mandate to establish requirements for the safe commercial operation of sUAS, the FAA released a Notice of Proposed Rulemaking (“NPRM”) that would lay the groundwork for the introduction of commercial sUAS into U.S. airspace. The public has 60-days to comment, but an extension is likely considering the novelty and scope of the proposed rules. After the public comment period has closed, the FAA likely will take several months to issue a final rule. Until the final rule is published, the FAA will continue to process [Part 333 exemption requests](#) to permit commercial flights. As the first regulation in this area, the NPRM provides an important opportunity for commercial applicants—including those with pending exemption requests—to shape this important rule for years to come. Two key

NPRM areas that are likely to be of concern are the FAA's proposal to address (1) the ability to "see-and-avoid" other aircraft and (2) loss of positive control of the sUAS.

### Aircraft and Operations Limitations and Requirements

Similar to the conditions for Part 333 exempted flights, the proposed rules would impose the following limitations and requirements:

- The sUAS must weigh less than 55 pounds and operations cannot exceed 500 feet above ground level (AGL) or 100 mph.
- The operator must conduct a preflight inspection before the operation, including inspection of the operating environment.
- No FAA airworthiness certification is required, but the operator must maintain the sUAS in a safe condition. The sUAS must be registered with the FAA.
- The sUAS must remain in visual line-of-sight (VLOS) of the operator with unaided vision, other than corrective lenses. A first-person camera can be used during the flight, but the camera cannot be used to satisfy the pilot's "see-and-avoid" requirements.
- Flights are only permitted in daylight with a minimum weather visibility of 3 miles and distance from clouds of no less than 500 feet below and 2,000 feet horizontally.
- 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 or 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 a safe operation of the sUAS.
- Operators must report accidents/incidents to the FAA within 10 days.

On the other hand, the proposed rules also demonstrate the FAA's willingness to deviate from the conditions imposed on Part 333 exemptions—not requiring a second observer and permitting operations within 5 nautical miles of an airport (with FAA air traffic control approval). The FAA is also willing to consider other reduced flight limitations when the risks are reduced—seeking comments on a "micro" UAS classification (under 4.4 pounds) that would permit flights with fewer limits in airspace below 400 feet AGL and over people on the ground.

Comments from stakeholders will be critical to the FAA's consideration of further liberalized sUAS flight integration, including rules applicable to "micro" UAS.

### Reduced Qualifications and New Certification System for sUAS Pilots

The most notable difference between the FAA's proposed rule and the Part 333 exemption requirements is that individuals could operate sUAS after obtaining an unmanned aircraft airman certificate, a new category of airman certificate with less onerous requirements created specifically to address the skills and knowledge required to operate sUAS safely. To obtain and maintain the new certificate, the operator would, among other requirements, be required to pass an initial test at an FAA-approved testing center and pass a recurrent aeronautical knowledge test every 24 months. Current and former military UAS

operators would only have to pass a recurrent knowledge test and show additional credentials to obtain the certificate. As with traditional pilot certificates, unmanned aircraft certificate holders would be subject to FAA drug and alcohol testing requirements.

The FAA's decision to create a new unmanned aircraft airman certificate is a big win for the burgeoning UAS industry and companies seeking to optimize their businesses with sUAS, especially because it demonstrates that the FAA is taking a sensible approach to integrating these "low risk operations" into the airspace.

### **Prohibited Commercial sUAS Flights and Unsafe Model Aircraft Flights**

The proposed regulations would not permit the transportation of property (air carrier) and flights that tow or jettison a payload, such as package delivery flights and spray operations. However, the FAA has requested comments on these prohibitions for the FAA's consideration.

The FAA is also taking this opportunity to reassert its enforcement authority over model aircraft flights that endanger the safety of NAS, in effect codifying the [FAA's win over Raphael Pirker](#).

### **Privacy, Civil Rights, and Civil Liberties**

To address the many privacy and civil rights issues raised by the government's increased use of UAS, 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. The President's memorandum is binding only on executive departments and agencies. However, the President did one important thing for non-governmental operators of UAS. He created a multi-stakeholder engagement process to develop and communicate best practices for privacy, accountability, and transparency issues regarding commercial and private use of UAS. The President tasked the Department of Commerce, through the National Telecommunications and Information Administration, with setting up the multi-stakeholder engagement process within 90 days. Although it is unclear whether the multi-stakeholder engagement process will result in legally binding rules or merely best practices, commercial UAS operators interested in shaping the future UAS landscape should plan on participating. Pillsbury will post further details on this process as they become available and would be happy to assist any interested parties in participating.

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While the FAA maintains close control over commercial sUAS operations, the proposed rules are an encouraging signal that the FAA is looking to integrate commercial flights into the U.S. airspace while taking into account the amount of risk involved in the permitted flights. In light of the FAA's recognition that future integration will entail operations well beyond the proposed rules, the public comment period is a critical opportunity for the UAS industry and current, future, and potential commercial UAS users to voice their opinions about FAA's proposed rule and offer constructive recommendations for the expansion of commercial flights. We recommend that any business contemplating the use of UAS operations consider commenting on the proposed regulatory framework in which it wishes to operate. For further information and clarification on the NPRM comment process, as well as the 60-day comment period, contact [Pillsbury's UAS Focus Team](#).

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

Kenneth P. Quinn [\(bio\)](#)  
Washington, DC  
+1.202.663.8898  
kenneth.quinn@pillsburylaw.com

Jennifer E. Trock [\(bio\)](#)  
Washington, DC  
+1.202.663.9179  
jennifer.trock@pillsburylaw.com

Benjamin M. Berlin [\(bio\)](#)  
Washington, DC  
+1.202.663.8558  
benjamin.berlin@pillsburylaw.com

Graham C. Keithley [\(bio\)](#)  
Washington, DC  
+1.202.663.8768  
graham.keithley@pillsburylaw.com

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