

Client Alert

June 2016

Small Drone Rules Announced...Now What?

On June 21, 2016, the Department of Transportation's (DOT) Federal Aviation Administration (FAA) [announced](#) the release of its final rule on the Operation and Certification of Small Unmanned Aircraft Systems (small UAS or small drones), which will authorize the routine commercial use of small drones. [The rule](#) will take effect on August 29, 2016, and will permit the commercial use of drones weighing less than 55 pounds without the need for any individual FAA approval provided that the operation meets certain specified conditions. While this much-anticipated rule is a major step forward for the integration of drones into the national airspace, there are still lingering questions about what the reality will be for many commercial users. The following short Q&A with Hunton & Williams LLP counsel Mike Sievers sorts through some of the implications of the rule.

Question: Does the rule impose any limitations on who can operate a drone for commercial use?

Answer: Yes. A person operating a small UAS must have a remote pilot airman certificate or be under the direct supervision of someone with this certificate. As stated in the FAA [press release](#): "Under the final rule, the person actually flying a drone must be at least 16 years old and have a remote pilot certificate with a small UAS rating or be directly supervised by someone with such a certificate. To obtain a remote pilot certificate, an individual must either pass an initial aeronautical knowledge test at an FAA-approved knowledge testing center or have an existing non-student Part 61 pilot certificate." The Part 61 certificate holders will need to take a UAS training course offered online.

Question: I already have, or am in the process of obtaining, an exemption under Section 333. What does the new rule mean to me?

Answer: Existing Section 333 exemption holders will have the choice to continue to operate in accordance with their exemption or to operate within the limitations of the Part 107.

The FAA has identified a large percentage of pending Section 333 exemption applications for operations that would be covered by the rule and will notify those applicants. The FAA also has identified many pending Section 333 applications for operations that would only be permissible if granted a "waiver" under the rule. The FAA will so notify these applicants and, unless the applicant affirmatively elects to remain under Section 333 consideration for some reason, will automatically convert those Section 333 applications to a 107 waiver application. Any pending Section 333 applications not falling under one of these two categories will continue to be treated as an "exemption" petition (*i.e.*, not a "waiver" under the new rule).

Question: Will the restrictions under the rule continue to create a barrier to the wide-scale adoption of drones for commercial use?

Answer: Yes. But the degree to which a barrier remains depends on the types of use cases that are most important to your industry or business line. As just one example, among the specific operating restrictions is the "visual line of sight" requirement, which limits the efficiency of using drones to inspect linear infrastructure (such as pipelines and transmission lines). While the rule identifies the VLOS restriction as one that can be "waived" by the FAA, the process and requirements to obtain such a waiver

are not well defined by the rule, and it remains to be seen how useful the waiver process will be in practice.

Question: Will the rule impact state and local laws and ordinances that have been adopted or are under consideration?

Answer: UAS operators will need to be aware of any state and local laws or ordinances governing UAS operations in the jurisdictions in which they will operate. The rule itself does not contain an express statement of preemption. Although the FAA has the sole authority to regulate the airspace, states and localities retain wide latitude to regulate the business activities and individual behavior within their jurisdictions.

Question: Does this rule address any privacy issues?

Answer: The rule itself does not touch on privacy issues, which is consistent with the FAA's overall position that privacy matters are beyond the scope of its mandate. At the same time, the FAA's [press release](#) and its [Part 107 Fact Sheet](#) both explain that the FAA intends to play an active role in educating UAS pilots about privacy issues related to UAS operations and, in particular, to the National Telecommunications and Information Administration's recently published privacy "[voluntary best practices](#)."

About the Hunton & Williams LLP UAS Team

The UAS team advises and assists companies in connection with all aspects of integrating UAS technology into their operations, including fostering internal stakeholder support; advising with regard to privacy, intellectual property, land use and real property rights, and insurance issues; tracking, analyzing, and advocating with respect to existing and pending federal and state legislative matters; contracting with UAS test sites and vendors; negotiating UAS fleet acquisition agreements; and obtaining FAA approvals, exemptions and/or waivers. For more information, we invite you to visit www.hunton.com or contact any of the members of the UAS team listed below.

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