



Commercial Drone Rules Finally Announced, “Less” Red Tape To Fly

New Rules Still Present Significant Compliance Issues for Businesses

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Nine months after its Congressionally-imposed deadline, the Federal Aviation Administration (FAA) has finally announced its rules for the commercial use of drones. The FAA’s final rules for drones, or small “Unmanned Aircraft Systems” (UAS), will become effective in August of 2016. While the new rules purport to reduce the administrative hassle of flying legally, the FAA’s 624-page rule book still imposes a substantial compliance burden on businesses hoping to take advantage of this emerging trend.

FAA’s Basic Requirements

In short, the FAA’s final drone rules permit the commercial operation of small drones, not weighing more than 55 pounds, during daylight hours and that do not fly higher than 400 feet off the ground. The operator must maintain visual line-of-sight with the UAS at all times, must be at least 16 years old and must possess a remote pilot airman’s certificate issued by the FAA. The certificate must be recertified every two years.

The FAA’s new rules include many other requirements, exceptions, and variations on the basic rules, such as:

Further Operational Limitations	
<ul style="list-style-type: none">• A UAS may be flown higher than 400 feet as long as it remains within 400 feet of a structure.• Maximum groundspeed of a UAS may not exceed 100 mph.• Those without a remote pilot airman’s certificate may operate a UAS but must only do so under the supervision of someone that does have the certificate.	<ul style="list-style-type: none">• Daylight is actually defined in the rules to begin 30 minutes prior to official sunrise and ends 30 minutes following official sunset. Drones may actually be flown at night provided they are equipped with anti-collision lighting capable of being seen for up to 3 miles.• Drones may not be operated from moving vehicles unless the operation is over a sparsely populated area.

The FAA has said it is developing an online portal where pilots may request a waiver of any of the new rules’ requirements upon satisfactory proof that the proposed flight “will be conducted safely.”

But some rules appear to make use of drones outright impractical without such a waiver. For instance, perhaps one of the most restrictive rules is that drones may not “operate over any persons not directly participating in the operation, not under a covered structure, and not inside a covered stationary vehicle.” This rule essentially makes flying above crowded, urban areas impossible without a waiver.

The Drone Pilot's Certificate

The FAA's new drone rules require all commercial operators to possess a remote pilot airman certificate or to be under the direct supervision of a person who has been issued this certificate. To be approved for the certificate, operators will need to complete an FAA application, submit to a background check and take and pass an "initial aeronautical knowledge test" at an FAA-approved knowledge testing center.

Helpful Links

For detailed information on the rules associated with becoming a UAS pilot, see the FAA's advisory circular at:

http://www.faa.gov/uas/getting_started/fly_for_work_business/becoming_a_pilot/

For detailed information on the knowledge standards required of UAS pilots, see the FAA's draft certification standards at:

https://www.faa.gov/training_testing/testing/acs/

The written test for UAS pilot certificates has not been completed yet, however, the FAA has published guides for applying for and obtaining the certificate. Importantly, commercial operators will need to understand that they will be responsible for demonstrating a basic understanding of airspace and flight regulations, safety procedures and flight risk management.

One example of the type of regulations that UAS pilots will need to understand is the classifications and restrictions on the use of controlled airspace. Currently, those commercial operators with a Certificate of Authority (a Section 333 certificate issued by the FAA prior to the enactment of these new rules), must maintain a distance of 2-5 miles from most airports – the exact distance determined by the size and type of airport. The new rules, however, require permission from the control tower to fly within Class B, C, D and E (i.e., controlled) airspace. The dimensions of controlled airspace can vary from airport to airport. Most aircraft pilots rely on FAA maps to navigate these complex designations and UAS pilots will need to be familiar with these maps as well.

The FAA has partnered with trade groups and other private ventures to develop user-friendly websites and mobile apps that will assist pilots in locating controlled airspace and even requesting permission to fly in restricted airspace. The "Know Before You Fly" site (www.knowbeforeyoufly.org) is one such initiative led by the FAA, the Association for Unmanned Vehicle Systems International and the Academy of Model Aeronautics. The site and others like it produce maps showing restricted airspace near the user and provide contact information for control facilities for nearby airports.

Local Laws Still Apply

Due to the delay in the FAA's new drone rules, many states and local municipalities enacted their own restrictions on the use of drones in their jurisdictions. There is federal legislation, already passed by the U.S. Senate that would make drone regulation the exclusive province of the federal government, however, not surprisingly, many states and local governments have voiced their opposition to that effort. In the meantime, users are still subject to their own state's and local government's laws, in addition to these new drone rules.

Like the FAA's rules, some local restrictions can have the practical effect of banning all drone use. In Chicago for instance, the local drone ordinance prohibits all drone flights within 5 miles of the City's airports. After factoring in restricted airspace around special events (i.e., major sporting events), churches, hospitals, government buildings and national parks, entire sections of the City are off limits.

Drone Registration

It is also important that drone users not forget about the FAA's drone registration requirements, which are distinct from the new commercial drone use regulations just announced.

In December 2015, the FAA created a federal drone registry that mandates registration for all drones weighing more than 0.55 pounds. Once registered, each drone will be assigned a unique identification number that must be affixed to the drone before it is flown outside. The registration costs \$5.00 and can be completed at <https://registermyuas.faa.gov/>.

More to Come

While many aspects of the FAA's prior guidance on drone use are still applicable, the new regulations for the commercial use of drones have created a complex system for operators to navigate. Generally speaking, the new rules are intended to enable more expansive use of drones in commercial applications. However, some of the rules are so restrictive that each user will need to carefully analyze the costs of compliance against the potential benefits that may be derived from incorporating their use.

Numerous trade organizations and private groups are creating useful guides for those who are interested in pursuing commercial drone use. Among them, the National Association of REALTORS® has created a useful "Frequently Asked Questions" resource for its members that breaks down some of the key features of the new drone regulations and it is available at <http://www.realtor.org/law-and-ethics/faqs-for-small-unmanned-aircraft-rule>.

The fight between local and federal regulation of drones is far from over and even the new rules themselves are subject to modification, which means drone users will need to remain alerted to local, state and federal measures that may impact this growing practice. The existing regulatory framework is complex, even without the prospect of future changes. Thus it is important that those who wish to explore commercial drone use carefully review and understand all of the steps and processes required to remain compliant.