

ALERT

FAA Committee Releases BVLOS Recommendations

March 14, 2022

The Federal Aviation Administration's (FAA) Beyond Visual Line of Sight (BVLOS) Aviation Rulemaking Committee (ARC) published its final report on March 11, 2022. The report provides recommendations for how to expand on the operations permitted by FAA's Part 107 rules, which were first adopted in 2016 and allow for routine operation of small uncrewed aircraft systems (UAS). Importantly, the Part 107 rules established conditions for UAS operations, including that the aircraft remains within the visual line of sight (VLOS) of the operator. Since Part 107 was adopted, the industry has been awaiting further agency rules that would allow for routine beyond visual line of sight operations and would do away with the need for waivers in order to conduct these flights. The ARC report proposes to expand permissible operations to BVLOS by adopting a new set of rules, codified as Part 108.

The ARC's report represents an important milestone in the development of a regulatory environment that supports BVLOS operations, but the FAA must still conduct a full rulemaking process in order to implement the ARC's recommendations. While the ARC's report thus provides some insight into potential future rules, there is still a long way to go before routine BVLOS flights are a reality.

The ARC report provides five categories of recommendations:

First, the ARC recommends that the FAA set an acceptable level of risk (ALR) for UAS across all types of operations. An established ALR would create clear guidance for industry and regulators and would help the industry develop appropriate standards. The ARC envisions an approach where operators can demonstrate that they meet ALR using qualitative or quantitative methods or a hybrid approach that

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combines the two. The ARC proposes that “Over time, as UAS operations become more common and more data is collected, the acceptable levels of risk can be adjusted, as is done in traditional aviation.”

Second, the ARC proposes a series of modifications to the FAA’s right of way rules. Currently, Part 107 requires UAS operators to yield to all other aircraft, and the FAA’s more general right-of-way rules do not specifically address UAS. The ARC notes that its “recommendations for the [uncrewed aircraft (UA)] industry will make them a more safety conscious and diverse participant, while the recommendations for crewed aircraft operators will not require significant changes in operational procedures because they are confined to airspace where very few [general aviation] operations occur.” Specifically, ARC recommends:

- allowing automatic means for see-and-avoid responsibility;
- giving UA right of way in Shielded Areas (volumes of airspace that are within 100 feet both vertically and laterally of an obstacle or critical infrastructure; the report calls operations taking place in such areas “shielded operations”);
- giving UA right of way over crewed aircraft that are not equipped with Automatic Dependent Surveillance-Broadcasts (ADS-B) or Traffic Awareness Beacon Systems (TABS) in Non-Shielded Low Altitude Areas; and
- giving crewed aircraft that are equipped with ADS-B or TABS (and broadcasting their position) right of way in Non-Shielded Low Altitude Areas.

Third, the ARC recommends expanding the Part 107 operator qualification regime to include limited BVLOS operations, such as extended visual line-of-sight (EVLOS) and shielded UAS operations. The ARC also recommends that the FAA create a new BVLOS rating for the Remote Pilot certificate that would require knowledge specific to BVLOS and one-to-many operations, which would be required for most BVLOS flights. Further, the ARC suggests that the FAA create two new operating certificates: a Remote Air Carrier Certificate and a Remote Operating Certificate, which would be required for most commercial one-to-many operations.

Fourth, the ARC proposes that the FAA establish a new rule part, Part 108, governing BVLOS operations that includes a process for qualification of UA and UAS. This qualification would be based on kinetic energy—applicable to aircraft up to 800,000 ft-lbs—rather than maximum takeoff weight.

Lastly, the ARC recommends that the FAA create a non-mandatory regulatory scheme for the use of third-party services in support of UAS BVLOS operations. The ARC further recommends that FAA and NASA should conduct a study to determine what situations would trigger *mandatory* participation in federated or third-party services. This effort should resemble the Unmanned Air System Traffic Management (UTM) initiative.

For more information about the BVLOS ARC report, UAS regulations, or assistance with compliance, please contact the authors listed on this alert.