

An Overview of the FAA's New Part 107 Waiver Process

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The Federal Aviation Administration (FAA) has begun granting waivers of its recently-adopted small unmanned aircraft system (UAS) rules (Part 107) pursuant to a new waiver process rolled out when the rules became effective in August of this year. The majority of the waivers granted thus far authorize night time UAS flights, and set forth common conditions that will be applicable to all waiver recipients.

The Waiver Process

When the FAA adopted the Part 107 rules, it established a mechanism for waiver of specific provisions to allow for “additional operating flexibility” and provide “a bridging mechanism for new and emerging technologies” between FAA rulemakings on UAS operations. The FAA explained that the issuance of a waiver would require a finding by the Administrator that the proposed operations “can safely be conducted under the terms of a certificate of waiver.” The agency’s intention was that the waiver process would be more streamlined and quicker than the legacy Section 333 exemption process used to authorize commercial UAS operations prior to the adoption of Part 107.

Thus far, the agency appears to be meeting its goal of offering a streamlined process. The application form itself is a key example. The agency has established a simple online form for waiver applications, which went live upon adoption of the rules on August 29, 2016. The form requires the applicant to designate a person responsible for the safety of operations conducted under the waiver, and requests information about the pilot, aircraft, waiver duration, and location, if the request is site-specific. The form provides a box for a narrative description of the purpose of the operation and method by which the

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proposed operation can be conducted safely.

The First Series of Granted Waivers

The FAA has issued more than three dozen certificates of waiver or authorization (COA) through the new online waiver process, the vast majority of which provide relief from Section 107.29 to enable night time operations. The agency appears to be imposing a standard set of conditions for night time flights:

1. All operations under the waiver must use one or more visual observer (VO);
2. Prior to conducting operations covered by the waiver, the Responsible Person listed on the waiver must ensure the remote pilot-in-command (PIC) and VO are trained, as described in the waiver application, to recognize and overcome visual illusions caused by darkness, and understand physiological conditions which may degrade night vision. This training must be documented and must be presented for inspection upon request from the Administrator or an authorized representative;
3. The remote PIC and VO must ensure the area of operation is sufficiently illuminated to allow both the remote PIC and VO to identify people or obstacles on the ground, or the remote PIC and VO must conduct a daytime site assessment prior to conducting operations covered by the waiver, noting any hazards or obstructions;
4. The UAS must be equipped with lighted anti-collision lighting visible from a distance of no less than three statute miles. The remote PIC may reduce the intensity of the anti-collision lighting if he or she determines that, because of operating conditions, it would be in the interest of safety to do so; and
5. In addition to the requirements of § 107.51(b), the UAS must not fly higher than 200 feet above any structure's immediate uppermost limit.

In addition, the new COAs list a series of "common provisions" that will be applicable to all waiver recipients regardless of the rule waived:

1. The waiver may not be combined with any other waiver(s), authorization(s), or exemption(s) without specific authorization from the FAA;
2. The FAA has the authority to cancel or delay any or all flight operations if the safety of persons or property on the ground or in the air, are in jeopardy or there is a violation of the terms of the waiver;
3. Operations under the waiver are to be conducted in Class G airspace only unless specific airspace authorization or waiver is received from the FAA in accordance with § 107.41;
4. A copy of the waiver must be available during UAS operations conducted pursuant to the waiver;
5. The Responsible Person listed on the waiver must maintain a current list of pilots by name and remote pilot certificate number used in the Waiver holder's operations. This list must be presented for inspection upon request from the Administrator or an authorized representative; and
6. The Responsible Person listed on the waiver must maintain a current list of small UAS by registration number(s) used in the Waiver holder's operations. This list must be presented for inspection upon request from the Administrator or an authorized representative.

Looking Ahead

Entities looking to operate UAS beyond the bounds of the Part 107 rules should monitor the FAA's list of granted waivers to determine if other applicants have received the desired relief. Although the FAA does not publish the applications submitted by waiver recipients, the FAA does publish the resulting COAs, which can provide guidance about the types of safety measures and precautions that should be included in a waiver application to enable the agency to make the requisite safety findings. In addition, the FAA's website indicates that the agency will provide a list of standard conditions for waivers from specific Part 107 rules, though this guidance has not yet been posted.

To the extent an entity seeks authorization from a provision the agency has not yet waived, the entity should endeavor to identify appropriate safety measures and fully describe them in the application. The FAA's waiver instructions provide that request for waiver from a given rule should address all of the performance standards the FAA has identified for that rule. The agency may ask for additional information in response to a waiver request, and the FAA has indicated that a failure to respond to such a request within 30 days will result in a withdrawal of the application. Waiver processing times will vary depending on the complexity of the request, but the FAA has said it will "strive to respond" to all requests within 90 days.

The following Part 107 provisions are waivable:

1. Operation from a moving vehicle or aircraft (§ 107.25)
2. Daylight operation (§ 107.29)
3. Visual line of sight aircraft operation (§ 107.31)
4. Visual observer (§ 107.33)
5. Operation of multiple small UAS (§ 107.35)
6. Yielding the right of way (§ 107.37(a))
7. Operation over people (§ 107.39)
8. Operation in certain airspace (§ 107.41)
9. Operating limitations for small UAS (§ 107.51)

Other Forms of Relief

In addition to waivers, the online waiver application form enables entities to request authorization to operate in classes of airspace not permitted by Part 107. This section of the application is designed to provide a simplified mechanism for Section 107.41, which provides that "[n]o person may operate a small unmanned aircraft in Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport unless that person has prior authorization from Air Traffic Control (ATC)."

The FAA also will continue to work through remaining Section 333 petitions that were pending as of effective date of the Part 107 rules. Where a pending petition's proposed operations could be conducted under Part 107, the FAA closed the docket and took no further action. Where the operations required a waiver of Part

107, the FAA planned to process the petition as if it were a waiver request submitted pursuant to the new waiver process. The FAA has processed several dozen Section 333 petitions as waiver requests since the Part 107 rules became effective, many of which requested authorization for night time flight.

Entities looking to perform UAS operations that cannot be conducted under a Part 107 waiver can still seek authorization pursuant to the legacy Section 333 exemption process. Any pending Section 333 petitions that fall into this category will continue to be processed as Section 333 petitions.