



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Greensboro Flight Standards District Office, EA39  
1301 South Terminal Service Road  
Greensboro, NC 27409  
P: 336-369-3900  
F: 336-369-3980

January 28, 2015

Ms. Janet B. Thoren  
Director of Regulatory Affairs  
PO Box 17100  
Raleigh, NC 27619



Dear Ms. Thoren:

Due to an overwhelming amount of UAS/UAV complaints from realtors and reality companies received at this office, regarding the use of UAS/UAV's for "commercial use", we would like to provide the information that we currently have regarding what can and cannot be done with a UAS/UAV.

The purpose of this letter is to provide you with information about the laws and regulations regarding Unmanned Aircraft System (UAS) operations conducted within the National Airspace System (NAS). The NAS is "the common network of U.S. airspace; air navigation facilities, equipment and services, airports or landing areas . . . . Included are system components shared jointly with the military". The FAA's safety mandate under 49 U.S.C. § 40103 requires it to regulate aircraft operations conducted in the NAS, which include UAS operations, to protect persons and property on the ground and to prevent collisions between aircraft and other aircraft or objects.

### **A UAS is an Aircraft**

A UAS is an "aircraft" as defined in the FAA's authorizing statutes and is therefore subject to regulation by the FAA. 49 U.S.C. § 40102(a)(6) defines an "aircraft" as "any contrivance invented, used, or designed to navigate or fly in the air". The FAA's regulations (14 C.F.R. § 1.1) similarly define an "aircraft" as "a device that is used or intended to be used for flight in the air". Because an unmanned aircraft is a contrivance/device that is invented, used, and designed to fly in the air, it meets the definition of "aircraft". The FAA has promulgated regulations that apply to the operation of all aircraft, whether manned or unmanned, and irrespective of the altitude at which the aircraft is operating. For example, 14 C.F.R. § 91.13 prohibits any person from operating an aircraft in a careless or reckless manner so as to endanger the life or property of another.

An important distinction for UAS operators to be aware of is whether the UAS is being operated for hobby or recreational purposes or for some other purpose. This distinction is important because there are specific requirements in the FAA Modernization and Reform Act of 2012, Public Law 112-95, (the Act) that pertain to “Model Aircraft” operations, which are conducted solely for hobby or recreational purposes.

### **Model Aircraft Operations**

Section 336(c) of the law defines “Model Aircraft” as “. . . an unmanned aircraft that is –

- (1) capable of sustained flight in the atmosphere;
- (2) flown within visual line of sight of the person operating the aircraft; and
- (3) flown for hobby or recreational purposes.

Each element of this definition must be met for a UAS to be considered a Model Aircraft under the Act. Under Section 336(a) of the Act the FAA is restricted from conducting further rulemaking specific to Model Aircraft as defined in section 336(c) so long as the Model Aircraft operations are conducted in accordance with the requirement of section 336(a). Section 336(a) requires that—

- (1) the aircraft is flown strictly for hobby or recreational use;
- (2) the aircraft is operated in accordance with a community based set of safety guidelines and within the programming of a nationwide community-based organization;
- (3) the aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization;
- (4) the aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft; and
- (5) when flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport) with prior notice of the operation (model aircraft operators flying from a permanent location within 5 miles of an airport should establish a mutually-agreed upon operating procedure with the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport)).

Section 336(b) of the law, however, makes clear that the FAA has the authority under its existing regulations to pursue legal enforcement action against persons operating Model Aircraft in accordance with section 336(a) and 336(c) when the operations endanger the safety of the NAS. Nothing in section 336 otherwise alters or restricts the FAA’s statutory authority to pursue enforcement action against any UAS operator, even those whose operations are conducted in accordance with sections 336(a) and (c) that endanger the safety of the NAS. So, for example, a model aircraft operation conducted in accordance with section 336(a) and (c) may be subject to an enforcement action for violation of 14 C.F.R. § 91.13 if the operation is conducted in a careless or reckless manner so as to endanger the life or property of another.

## UAS Operations that are not Model Aircraft Operations

Operations of UASs that are not Model Aircraft operations as defined in section 336(c) of the law and conducted in accordance with section 336(a) of the law, may only be operated with specific authorization from the FAA. The FAA currently authorizes UAS operations that are not for hobby or recreational purposes through one of two avenues: (1) the issuance of Certificates of Waiver or Authorization; and (2) the issuance of special airworthiness certificates. The FAA also has a third avenue with which to potentially authorize UAS operations through its exemption process when it determines that such operations are in the public interest.

- 1. Certificate of Waiver or Authorization (COA).** In accordance with 14 C.F.R. § 91.903 the FAA grants Certificates of Waiver or Authorization to applicants waiving compliance with certain regulatory requirements listed in 14 C.F.R. § 91.905. The applicants must be able to show that they are able to safely conduct operations in the national airspace system. The COA contains terms with which the applicant must comply in order to conduct operations. The FAA generally has restricted the issuance of these certificates to government entities that operate UASs as it implements the provisions in its “Integration of Civil Unmanned Aircraft Systems in the National Airspace System Roadmap”. The entire Roadmap is available on our website at:

[http://www.faa.gov/uas/legislative\\_programs/uas\\_roadmap/media/UAS\\_Roadmap\\_2013.pdf](http://www.faa.gov/uas/legislative_programs/uas_roadmap/media/UAS_Roadmap_2013.pdf)

The FAA also issues COAs on an emergency basis when: 1) a situation exists in which there is distress or urgency and there is an extreme possibility of a loss of life; 2) the proponent has determined that manned flight operations cannot be conducted efficiently; and 3) the proposed UAS is operating under a current approved COA for a different purpose or location. The FAA is also using the COA process to expand the use of civil UASs in the arctic region as required under section 332 of the law.

- 2. Airworthiness Certification.** For civil operators, you can apply for a special airworthiness certificate under 14 C.F.R. Part 21. See FAA Order 8130.34B - Airworthiness Certification of Unmanned Aircraft Systems and Optionally Piloted Aircraft. The full civil type certification process allows for production and commercial operation of UAS and is a lengthy process typically undertaken by aircraft manufacturers.
- 3. Issuance of Exemptions.** In accordance with 14 C.F.R. §§ 11.15 and 11.61-11.103 and the FAA’s authority in 49 U.S.C. § 44701(f), the FAA may grant exemptions from regulatory requirements. The exemption process allows for the submission of a petition to the FAA outlining why the granting of an exemption would be in the public interest, the need for the exemption, and the reasons why granting the petition would not adversely affect safety or would provide a level of safety equal to

the rules from which the exemption is sought. The FAA has indicated its willingness to review petitions for exemption by civil UAS operators that want to operate for other than hobby or recreational purposes. Under section 333 of the Act, operators in appropriate circumstances can be exempted from airworthiness certification and other related regulatory provisions.

Finally, UAS operators must understand that all UAS operations that are not operated as Model Aircraft under section 336 of the Act are subject to current and future FAA regulation. At a minimum, any such flights are currently required under the FAA's regulations to be operated with a certificated aircraft, with a certificated pilot, and with specific FAA authorization.

### **For all UAS Operators**

More information regarding UAS operations is available at the FAA Unmanned Aircraft Program Office's website:

<http://www.faa.gov/uas>

Should you require additional information, please contact me at (336) 369-3909.

In conclusion, we hope the information provided will help those brokers understand the new and ever changing world of UAV/UAS operations in the NAS. Please distribute this information to the licensed brokers/members of the North Carolina Real Estate Commission in the most convenient and expeditious manner available.

Sincerely,



William R. Newby  
Front Line Manager