

DRONES

FREQUENTLY ASKED QUESTIONS

NAR LEGAL AFFAIRS DEPARTMENT

June 2016

On June 21, 2016, the Federal Aviation Administration (“FAA”) issued its highly anticipated “Small Unmanned Aircraft Rule” (14 C.F.R. Part 107). In response to NAR members’ growing interest in using this technology in connection with their real estate businesses, we assembled this FAQ to address some of the most frequently asked questions regarding the legal and regulatory landscape pertaining to the use of unmanned aircrafts.

1) **WHERE CAN I FIND A COPY OF THE SMALL UNMANNED AIRCRAFT RULE?**

The full text of the Small Unmanned Aircraft Rule (“sUAS Rule”), along with background information, may be found on the FAA’s website at: https://www.faa.gov/uas/media/RIN_2120-AJ60_Clean_Signed.pdf.

A summary of the sUAS Rule may be found on the FAA’s website at: https://www.faa.gov/uas/media/Part_107_Summary.pdf.

2) **WHEN IS THE sUAS RULE EFFECTIVE?**

The sUAS Rule is effective August 29, 2016.

3) **WHAT IS A SMALL UNMANNED AIRCRAFT SYSTEM?**

A small unmanned aircraft system (“sUAS”) is defined in the sUAS Rule as an unmanned aircraft weighing less than 55 pounds. The weight limitation of a sUAS includes all of the associated elements required to operate the sUAS, and anything onboard or attached to the sUAS.

4) **HOW DOES THE sUAS RULE CHANGE MY ABILITY TO USE AN sUAS?**

Pursuant to a set of operational and safety requirements, as well as a remote pilot certificate requirement (see question 7), the sUAS Rule integrates sUAS into the national airspace, and permits the operation of sUAS for commercial purposes. Once the sUAS Rule becomes effective on August 29, 2016, and provided a person operates the sUAS within the limitations set forth in the rule, an exemption or waiver will no longer be required prior to operating a sUAS (see question 23).

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By way of background, prior to the sUAS Rule, the only way to operate an unmanned aircraft for a commercial purpose was to request a Section 333 exemption from the FAA. Section 333 exemptions authorize certain unmanned aircraft to perform commercial operations on a case-by-case basis.

5) **WHAT HAPPENS TO A CURRENT SECTION 333 EXEMPTION?**

A current Section 333 exemption holder may continue to operate a sUAS pursuant to the terms and conditions of the exemption through its expiration date. In the alternative, however, Section 333 exemption holders may conduct sUAS operations in accordance with the sUAS Rule once it goes into effect August 29, 2016.

6) **IS A PILOT'S LICENSE REQUIRED TO OPERATE A sUAS?**

No. A FAA-issued pilot's license is no longer required to operate a sUAS.

7) **IS ANY LICENSE REQUIRED IN ORDER TO OPERATE A sUAS?**

Yes. In order to operate a sUAS, an individual must obtain a remote pilot certificate with a sUAS rating from the FAA.

8) **ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR A REMOTE PILOT CERTIFICATION?**

To obtain a remote pilot certificate with a sUAS rating, you must meet the following eligibility requirements: 1) be at least 16 years old; 2) be able to read, write, and understand the English language; and 3) be in a physical and mental condition that allows for the safe operation of the sUAS; 4) pass an initial aeronautical knowledge test.

Additional information regarding the eligibility requirements and application process for a remote pilot certification with a sUAS rating is available on the FAA's website at: https://www.faa.gov/uas/getting_started/fly_for_work_business/becoming_a_pilot/.

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9) **WHAT IS THE COST OF A REMOTE PILOT CERTIFICATE WITH A sUAS RATING?**

The FAA estimates that a remote pilot certificate with a sUAS rating will cost approximately \$150.

10) **IS A REMOTE PILOT CERTIFICATE VALID INDEFINITELY?**

No. A remote pilot certificate holder is required to pass a recurrent aeronautical knowledge test every 24 calendar-months.

11) **IF AN INDIVIDUAL HOLDS A PILOT'S LICENSE, IS A REMOTE PILOT CERTIFICATE WITH A sUAS RATING STILL REQUIRED?**

Yes, a remote pilot certificate with an sUAS rating must be obtained. However, an individual with a pilot certificate issued under 14 CFR Part 61, and who has successfully completed a flight review within the previous 24 calendar-months, is not required to pass the required initial aeronautical test. Instead, a part 61 certificate holder may choose to take, and pass, a part 107 online training course.

12) **THE sUAS RULE REQUIRES A sUAS OPERATION TO DESIGNATE A REMOTE PILOT IN COMMAND. WHAT IS A REMOTE PILOT IN COMMAND?**

The remote pilot in command ("RPIC") has direct responsibility for and the final authority over the sUAS operation. The RPIC must have either a current remote pilot certificate holder or a pilot's license with the necessary training courses referenced in question 11.

13) **IS A VISUAL OBSERVER REQUIRED TO CONDUCT A sUAS OPERATION?**

The use of a visual observer ("VO") is optional. If, however, a VO is used, the RPIC and VO must be able to effectively communicate at all times.

14) **DOES THE sUAS HAVE TO BE WITHIN THE VISUAL LINE OF SIGHT OF THE PERSONS PARTICIPATING IN THE sUAS OPERATION?**

Yes. The sUAS must be within the visual line of sight ("VLOS") of the: 1) RPIC; 2) person manipulating the sUAS flight controls; and 3) VO. However,

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for operational necessity, brief breaks in VLOS are permissible as long as the individual who has broken VLOS is able to quickly resume VLOS.

15) CAN A sUAS BE OPERATED ANY TIME OF DAY?

No. The sUAS may only be flown during daylight hours. However, if the sUAS has appropriate anti-collision lighting visible for at least 3 statute miles, the sUAS may operate during civil twilight hours. Civil twilight hours are defined as the period of time that begins 30 minutes before official sunrise and 30 minutes after official sunset.

Please note that the above definition of civil twilight does not apply in Alaska. In Alaska, civil twilight is defined in the Air Almanac.

16) WHAT IS THE PERMISSIBLE ALTITUDE AT WHICH A sUAS MAY BE OPERATED?

In general, a sUAS may be flown no higher than 400 feet above ground level. However, a sUAS may be flown within a 400-foot radius of a structure provided the sUAS does not fly higher than 400 feet above the structure's uppermost limit.

17) WHAT IS THE MAXIMUM SPEED A sUAS CAN BE FLOWN?

A sUAS may be operated at a maximum groundspeed of 100 miles per hour.

18) ARE THERE ANY PREFLIGHT OBLIGATIONS?

Yes. Prior to any sUAS operation, the RPIC must conduct a pre-flight inspection to verify that the sUAS is in safe operating condition, assess the operating environment, including any risks to persons or property, and conduct a crewmember briefing.

19) CAN A sUAS BE OPERATED FROM A MOVING VEHICLE OR AIRCRAFT?

A sUAS cannot be operated from a moving aircraft, and in general, a sUAS may not be operated from a moving vehicle.

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However, a sUAS may be operated from a moving land or water-borne vehicle if the sUAS is: 1) flown over a sparsely populated area; and 2) not transporting another person's property for compensation or hire.

20) **CAN A sUAS BE OPERATED OVER PERSONS NOT INVOLVED IN THE sUAS OPERATION?**

No. A sUAS may not be operated over persons not directly involved in the sUAS operation, unless those persons are located under a covered structure or inside a stationary vehicle that would provide reasonable protection in the event of an accident.

21) **CAN A sUAS BE USED TO TRANSPORT PROPERTY?**

Yes. The sUAS may be used to transport property for compensation or hire provided such operation occurs wholly within the bounds of a state. There are additional restrictions in Hawaii, the District of Columbia, and United States' territories and possessions. In addition, please refer to question 19.

22) **CAN AN INDIVIDUAL SIMULTANEOUSLY OPERATE MORE THAN ONE sUAS?**

No. An individual may only act as the RPIC or VO for one unmanned aircraft at a time.

23) **CAN ANY OF THE OPERATIONAL LIMITATIONS BE WAIVED?**

Yes. The FAA Administrator may issue a certificate of waiver authorizing a deviation from certain of the operational limitations provided the Administrator finds that the sUAS operation can still be safely conducted. Some of the waivable operational limitations include, but are not limited to, daylight operations, operation of multiple sUAS, operation over people and operation in certain airspace.

24) **WOULD A MEDICAL CONDITION PRECLUDE AN INDIVIDUAL FROM PARTICIPATING IN A sUAS OPERATION?**

Yes. A person who knows or has reason to know that they suffer from a physical or mental condition that would interfere with the safe operation of the sUAS would be precluded from participating as a RPIC, VO or direct participant in such operation.

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25) **ARE THERE ANY CIRCUMSTANCES WHERE AN sUAS OPERATION CAN DEVIATE FROM THE OPERATIONAL LIMITATIONS WITHOUT PRIOR APPROVAL?**

In the event of an in-flight emergency, the RPIC can deviate from the operational limitations to the extent necessary to address the emergency. Upon request, the RPIC may be required to submit a written report to the FAA regarding any such deviation.

26) **WHAT HAPPENS IF A sUAS IS INVOLVED IN AN ACCIDENT?**

Within 10 calendar days of an accident, the RPIC must report the accident to the FAA if the accident involved: 1) serious injury to a person or any loss of consciousness; or 2) damage to any property, other than the sUAS, whose fair market value is greater than \$500 and where the accident results in repair or replacement costs in excess of \$500.

27) **DOES A sUAS HAVE TO BE REGISTERED?**

Yes. If the sUAS is over 0.55 pounds (250 grams), the sUAS must be registered. Registration information may be found on the FAA's website at: <https://registermyuas.faa.gov/>.

28) **DOES THE sUAS RULE HAVE ANY PRIVACY-RELATED PROVISIONS?**

No. The FAA's focus is on the safety of the national airspace, and therefore, the sUAS Rule does not have any privacy-related provisions. It is important that sUAS operators be familiar with relevant state and local privacy laws.

In addition to state and local privacy laws, the National Telecommunications and Information Administration ("NTIA") published a set of voluntary best practices for unmanned aircraft systems privacy, transparency and Accountability. A copy of the NTIA voluntary best practices is available here: https://www.ntia.doc.gov/files/ntia/publications/voluntary_best_practices_for_uas_privacy_transparency_and_accountability_0.pdf

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29) **ARE THERE ANY ADDITIONAL LAWS THAT MAY APPLY TO sUAS OPERATIONS?**

Yes. In addition to privacy laws, there is a patchwork of applicable State and local laws, including traffic laws that may impose additional restrictions on sUAS operations.

30) **WHAT SHOULD AN INDIVIDUAL CONSIDER WHEN HIRING A COMPANY TO CONDUCT A sUAS OPERATION?**

Items to consider when selecting a company to conduct a sUAS operation include whether: 1) a sUAS operator has either a current remote pilot certificate with a sUAS rating or a current pilot's license and successfully completed the necessary training courses; 2) the company has insurance coverage in the event of an accident or other related legal issue; and 3) the contract indemnifies you for any claims related to the sUAS operation, including privacy, personal injury, and property damage claims.

31) **CAN sUAS STILL BE OPERATED FOR HOBBY OR RECREATIONAL USE?**

Yes, provided the sUAS operation meets all the conditions for hobby or recreational use. The sUAS Rule prohibits model aircrafts from operating in a manner that endangers national airspace. More information on model aircraft operations is available on the FAA's website at: http://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_91-57A_Ch_1.pdf