

FAA Issues Performance-Based Standards for Applicants Seeking a Waiver of the Small Unmanned Aircraft Rules

The Federal Aviation Administration (FAA) recently issued its [Performance-Based Standards](#) highlighting information that an applicant must include in order to seek a waiver of Part 107, the rules that apply to the operation of a small unmanned aircraft system (small UAS or drones). (See previous Babst Calland pipeline safety alerts for more information on the [Small UAS Final Rule](#) and the [waiver process](#).)

Applicants may seek a waiver from many of the Part 107 regulations. However, the line-of-sight restriction (14 C.F.R. § 107.31) is of particular interest to the energy industry who may want to use a small UAS to conduct inspections of linear infrastructure. Applicants seeking a waiver of the line-of-sight requirement must demonstrate the method or means by which it will be able to:

- continuously know and determine the position, altitude, attitude, and movement of the small UAS to ensure the aircraft remains in the area of intended operation;
- avoid other aircraft, people on the ground, and ground-based structures and obstacles at all times;
- increase the visibility of the small UAS in order to be seen at a distance of three statute miles unless a system is in place that can avoid all non-participating aircraft;
- be alerted of any malfunction affecting the operation of the small UAS; and
- ensure that all persons participating in the operation have relevant knowledge of all aspects of operating a small UAS that is not within the visual line of sight of the remote pilot.

Since the effective date of the small UAS Final Rule, the FAA has granted 76 waivers of various sections of Part 107. The majority of these applications sought a waiver of the daytime operation limitation but at least two waivers were focused on line of sight. The FAA [granted](#) an application from a railroad company allowing a waiver of the line-of-sight requirements as long as the company does not fly the drone higher than 200 feet above ground (or within 400 feet of the radius of a structure) and uses a visual observer at all times.¹ A visual observer is a person who assists the remote pilot with maintaining visual line of sight. The visual observer must be in constant contact with the remote pilot.

The FAA also [granted](#) a line-of-sight waiver to a company that is currently conducting research for the agency on small UAS operations.² The FAA permitted this applicant to conduct small



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1. This waiver application originated as a petition for exemption from Section 333 of the FAA Modernization and Reform Act of 2012 because at the time the applicant filed the petition, the FAA had yet to finalize its small UAS rule. FAA converted this petition to a waiver application upon releasing a process to obtain a waiver from Part 107. See FAA-2014-0704.

2. See FAA-2016-0363.

UAS operations outside of the visual line of sight of the remote pilot and the visual observer as long as the operation occurs in a pre-planned area free of structures and non-participating human beings. In addition, the altitude of the aircraft cannot exceed 400 feet above ground, and the small UAS must be semi-autonomous. The applicant must use a visual observer if the operations extend beyond the range by which the remote pilot can see intruding traffic.

Finally, the FAA has created a Drone Advisory Committee. It consists of a chairman and 34 members and will meet three times a year starting on [September 16, 2016](#). The committee will discuss challenges associated with integrating unmanned aircraft into the National Airspace System.

Babst Calland is assisting energy industry clients with rule implementation and strategy involving the use of a small UAS. Please contact Brianne Kurdock at (202) 853-3462 or bkurdock@babstcalland.com, James Curry at (202) 853-3461 or jcurry@babstcalland.com, or Keith Coyle at (202) 853-3460 or kcoyle@babstcalland.com for more information.



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Led by three former Pipeline and Hazardous Materials Safety Administration (PHMSA) attorneys, our Pipeline and Hazardous Materials Safety practice group counsels pipeline and midstream companies, gas utilities, terminal operators, investors, trade associations, and other stakeholders, throughout the United States. James Curry, Keith Coyle and Brianne Kurdock together have more than 25 years of experience with a multitude of pipeline safety issues. They partner with client engineering and legal personnel to address day-to-day compliance questions and develop business and regulatory strategies.