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FAA Proposes Part 108: A New Framework for “Beyond Visual Line of Sight” Drone Operations

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Companies that manufacture, deploy, or rely on commercial drone technology should take note: the FAA has proposed Part 108, a new rule that would establish a dedicated regulatory framework for routine “beyond visual line of sight” (“BVLOS”) operations. If finalized, this could be the most significant development in U.S. drone regulation since the adoption of Part 107. Currently, BVLOS operations—critical for applications like package delivery, infrastructure inspection, energy operations, and agriculture—are governed by a case-by-case waiver process that has limited scalability. Part 108 seeks to change that.

The proposal is now undergoing review by the White House Office of Information and Regulatory Affairs (“OIRA”), one of the final steps before publication of the rule. While Part 108 remains subject to revision, businesses that manufacture, deploy, or rely on drone technology should begin evaluating how the proposed framework may affect future operations.

Part 108 functions to replace the per-flight waivers by allowing operators to proceed with either an operational permit or operational certificate, as described below:

(1) Operational Permit. A streamlined pathway permitting qualifying operators to conduct lower-risk BVLOS operations without obtaining individualized FAA approval. The operational permit option is intended for smaller footprint package delivery, agricultural, aerial surveying, and other commercial operations.

(2) Operational Certificate. Operators will have to apply to the FAA for a certificate before conducting operations. This applies to higher-risk operations based on aircraft size, weight, speed, or fleet size.

Critically, Part 108 is designed to enable routine BVLOS operations through a standardized regulatory framework that:

- Enables scalable commercial BVLOS operations.
- Requires operator approval for designated operating areas and compliance with airspace restrictions and Notice to Airmen (“NOTAMs”).
- Establishes FAA-certified Automated Data Service Providers to support operations and aircraft separation.

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- Imposes cybersecurity requirements and TSA background checks for operators.
- Requires detect-and-avoid capabilities and establishes new right-of-way rules for interactions with manned aircraft.
- Authorizes certain drones weighing up to 1,320 pounds under a non-traditional airworthiness framework.
- Creates new operational roles, including Operations Supervisors and Flight Coordinators, responsible for safety and operational oversight.

Part 108 is facing significant public debate about the right-of-way and detect-and-avoid provisions.

(1) Right-of-Way. One of the NPRM's most debated provisions would grant, in certain circumstances, BVLOS operators presumptive right-of-way over manned aircraft. The proposed rule includes several exceptions, such as when a manned aircraft is broadcasting its location through ADS-B Out or another approved EC device, operating in Class B or C airspace, taking off or landing at an airport or heliport, or operating in highly dense areas. Critics argue the proposal could create operational complexity and practical concerns regarding manned aircraft yielding to unmanned aircraft, while proponents contend it is essential for enabling safe, scalable autonomous operations.

(2) Detect and Avoid. FAA seeks to require unmanned aircraft operating in Class B and Class C airspace or high-density population areas be equipped with the ability to detect and avoid aircraft, mainly those not broadcasting location via ADS-B Out or an EC device.

The proposed Part 108 rule could fundamentally reshape commercial drone operations in the United States. By replacing the current waiver-based system with a scalable regulatory framework, the FAA is signaling a commitment to broader integration of advanced drone operations into the National Airspace System.

If adopted largely as proposed, Part 108 would represent a substantial expansion of commercial drone operating authority. Although the final rule remains undecided, stakeholders should monitor the Part 108 rulemaking process and evaluate the potential operational and business implications of a broader regulatory framework for advanced drone operations.

For questions about how these developments may affect your operations or regulatory strategy, please contact Shalem Massey or anyone on the Autonomous Vehicles team.

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