



Information Alert

State-Federal Relations Division

FAA Releases Draft Rule for Drone Flights Over People

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On Jan. 14, the Federal Aviation Administration (FAA) [released a draft version of a forthcoming proposed rulemaking](#) that would, if finalized, authorize drone flights over people and at nighttime. Currently, such activities are not permitted unless an operator has specific authorization, in the form of a waiver, from the FAA. Since the end of 2017, FAA has received more than 4,800 applications for night waivers but has only approved about 1,200, while denying about 2,300. It is unclear when the FAA plans to finalize this draft proposal, as it noted in the proposal that it "plans to finalize its policy concerning remote identification of small drones—by way of rulemaking, standards development, or other activities that other federal agencies may propose — prior to finalizing the proposed changes in this rule that would permit operations of small [drones] over people and operations at night," and FAA has not yet issued its proposed rule for remote identification of small drones.

Currently, non-recreational operations of drones weighing less than 55 pounds are regulated under what is commonly referred to as "part 107," of [federal regulations](#). It requires the operator to hold a remote pilot certificate, and the drone to remain within the visual line of sight of the operator or a visual observer, as well as prevents operations from taking place either over people, who are not participating in the operation of the drone, or at nighttime. Nighttime is defined as "between the end of evening civil twilight and the beginning of morning civil twilight, as published in the Air Almanac, converted to local time." The new draft proposed rule would allow nighttime operations if the operator completes new knowledge testing or training related to operating at night and that the drone be equipped with an anti-collision light illuminated and visible for at least three miles.

Additionally, the draft proposal would allow for operations over people under varying conditions, depending upon the weight of the drone. Category one would allow drones weighing less than 0.55 pounds to be eligible for operations over people without any additional requirements. Category two would allow drones weighing more than 0.55 pounds to operate over people, if the drone manufacturer had previously demonstrated to the FAA that if the drone crashed into a person the resulting injury "would be below a certain severity threshold." This severity threshold includes limiting the impact to a person below a certain weight, ensuring the

drone had no exposed rotating parts, and that the drone have no currently FAA-identified safety defect. The FAA does not propose specific ways in which a drone must be designed to meet these requirements. Category three would allow drones to operate over people with a higher injury threshold than category two but would restrict the types of operations a drone could undertake. Specifically, a drone under category three could not operate over any open-air assembly of people, would have to be within or over a closed or restricted-access site and anyone within that site would have to be notified that a small unmanned aircraft may fly over them, and the drone could not hover over people, although it would be allowed to transit over them.

According to the draft rule, the FAA would make a list publicly available of the drones that are compliant with any of the three categories as their manufacturers provide the necessary documentation proving their compliance. Additionally, the FAA would consider any person who purchases a compliant drone and modifies it in certain ways such as changing the drone's computer code or outfitting it with non-compliant blades, to have taken on the role of a manufacturer and therefore would be required to seek FAA approval before that drone could undertake operations over people.

Finally, the draft proposed rule would require that any drone operating under category two or three needs to be labeled and identified as such. Operators would be required to follow any instructions included by the manufacturer for operations over people, while the FAA would also continue the current process it has for issuing waivers to these proposed and the existing requirements on drone operations outlined above.

The draft rule will be formally published in the Federal Register once an FY 2019 appropriation is enacted for the FAA. The agency will accept public comments for 60 days after publication. For additional information on the new proposed rule or existing federal or state drone laws, please contact NCSL staff members: [Ben Husch](#) or [Ann Kitch](#).