

Municipal Use and Regulation of Drones

CML Webinar
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Municipal Interest in UAS

- City use
 - Police, fire and emergency management
 - Property management
 - Resource management
 - Code enforcement
 - Utilities
- Liability and risk
- Regulation of drone use
 - General safety
 - Airport safety
 - Privacy
 - Protection of critical operations
 - Proprietary interests



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FAA Regulation Has Focused on Use and User

Public



COA – Certificate of Waiver or Authorization

Commercial (Civil)



Section 333 Exemption or Special Airworthiness Certificate and COA

Private/Model



Registration for craft; generally applicable rules; statutory exemption



New Rules: 14 C.F.R. Part 107

- Operation and Certification of Small Unmanned Aircraft Systems, 81 Fed. Reg. 42,064 (June 28, 2016)
- Two threshold requirements:
 - Remote Pilot Certificate
 - Registered Aircraft



FAA's Four Categories for UAS

Framework	Types of Operations	Operating Parameters
Model Aircraft	Only model aircraft used for hobby or recreational purposes.	FAA Modernization and Reform Act of 2012, Pub. L. 112-95, § 336 (Feb. 14, 2012) (to be codified at 14 C.F.R. § 101.41-43).
Public Aircraft	Only public aircraft meeting specific tests for governmental operation and purpose. See 49 U.S.C. §§ 40102(a)(41) and 40125.	Terms of the public COA, and Federal Aviation Regulations (FARs) applicable to "public aircraft," as applicable.
Civil Aircraft (Section 333)	Existing Section 333 exemption holders, or operations outside the parameters of Part 107	Terms of the Section 333 exemption, and the terms of the blanket or individual COA, as applicable.
Civil Aircraft (Part 107)	Anyone	New Part 107



Part 107 Critical Operating Parameters

- Parameters:
 - Less than 55lbs
 - Visual line of sight (VLOS)
 - Daylight hours or civil twilight with lighting
 - Yield right of way to other aircraft
 - Below 100mph
 - Below 400 AGL or 400 feet of structure
- Waiver process available





Part 107 Pilot Requirements

- "Remote pilot in command"
 - Pass aeronautical knowledge test for remote pilot certificate with a small UAS rating
- Person at controls need not hold a remote pilot certificate, if under direct supervision of remote pilot in command
- Remote pilot:
 - Be at least 16 years of age
 - Able to read, speak, write and understand English
 - No physical or mental condition
 - Pass initial aeronautical knowledge test and recurrent test every 24 months

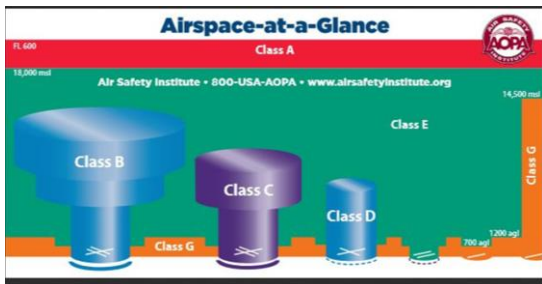


Events/Overflights

- Observe restricted and prohibited flight areas
- Flight restrictions that are designated by Notice to Airmen (NOTAM)
- May be prohibited for major sporting events
- Prohibited over people who are not "directly participating"
 - unless under covered structure or stationary vehicle that provides "reasonable protection"



FAA Airspace Classes



Airport/Air Traffic Notification Requirements

	Class B	Class C	Class D	Class E	Class G
Model Aircraft	Notify airport and ATC facility if operations are within five miles				
Public Aircraft	As provided by Public COA				
Blanket COA (Section 333 exemption holders)	Operations not permitted within: 5 Nautical Miles (NM) of airports with Operational Control Tower, 3 NM of airports with published instrument procedures, 2 NM of airports without published instrument procedure, and 2 NM of heliports				
Part 107	ATC Authorization Required				No Auth. Required



New Rules: Accident Reports

- Accident Reporting
 - Serious Injuries
 - Loss of Consciousness
 - Damage to Property Other than the UAS (> \$500)



July 2016 FAA Reauthorization

- Rulemaking for remote ID of UAS (2 years)
- Civil penalties for interference with firefighting
- New rules for emergency response procedures (90 days)



2016 FAA Reauthorization (continued)

- Designation of protected facilities (180 days)
 - Critical infrastructure, including water, power, transportation, medical, police fire, financial
 - Amusement parks
 - Other localities that warrant protection
- Operations associated with critical infrastructure (90 days)
 - Allow flexibility for operations
 - At night
 - Beyond visual line of sight

The contents of this presentation reflect the view of the presenter, not of CML. 

Some Risk Management Considerations for Municipal Ops

- Own and operate or lease services?
- Scope of insurance
- Mutual aid agreement provisions
- Internal policies regarding use
 - Safety
 - Data retention
 - Use of video/images
- Training and compliance
 - Consider tools like Airmap
- 4th Amendment considerations
 - See *Florida v. Riley*, 488 U.S. 445 (1989); *Henderson v. People*, 879 P.2d 383 (Colo. 1994); *People v. Pollack*, 796 P.2d 63 (Colo. App. 1990)
- Trespass?

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Local/State UAS Ordinances

- Variety of local ordinances/resolutions passed or introduced
- +/- 20 states to date – focus primarily on limiting UAS use by law enforcement
 - Also, firefighting, weaponization, hunting
- Little experience with enforcement
- Scope of preemption not tested by courts



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Possible Local Regulations -- Types

- Bans or moratoria
- Safety
 - Use regulation (traffic, law enforcement, code enforcement)
 - Location regulation (airports, sensitive locations, height)
 - Weaponizing
 - Interference with civic functions (firefighting, police, etc.)
- Protection of privacy from government
 - Ban
 - Requirement for warrant
 - Limits on use
 - Data retention
- Protection of privacy/property rights (private parties) from private parties
 - Height limits
 - Use of images
 - Trespass
 - Prior permission

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FAA Position on Preemption

- FAA declined to include an express statement on preemption in Part 107
- FAA Fact Sheet on State and Local Regulation of Unmanned Aircraft Systems, published December 17, 2015
 - Some provisions preempted
 - State law and other legal protections may be appropriate for:
 - Privacy
 - Trespass/property rights
 - Intellectual property

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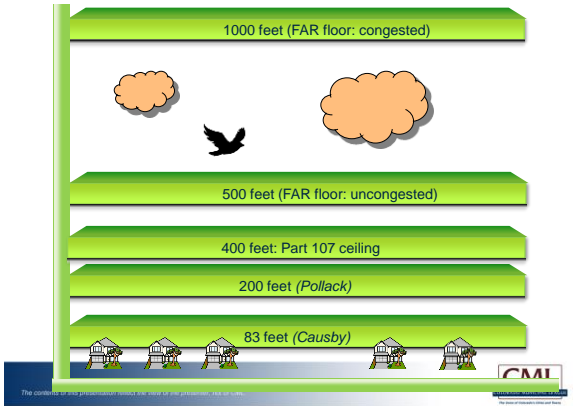


Preemption Considerations

- **Pervasive federal control of aircraft and flight**
 - See *Banner Towing v. People of the City of Boulder* (Colo. 1984)
- **Airspace**
 - Potential airspace “gap”
 - See *Causby v. U.S.*

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Preemption (continued)

- Land use and protection from trespass not preempted
- Non-aviation-specific provisions
 - E.g., remote control use of weapons
- Self-restrictions
 - Privacy controls for city departments
 - Avoidance of private property



FAA Law Enforcement Guidance

FAA Law Enforcement Guidance for Suspected Unauthorized UAS Operations, Jan. 8, 2015

- Seeks assistance of local law enforcement agencies to prevent unlawful UAS operations: deter, detect and investigate – report to FAA
- Reduce reckless operations:
 - Model aircraft
 - UAS



Questions?

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