

# Basis for FAA ban on commercial drone operations

The FAA takes the position that it is illegal to fly a drone commercially without special authorization from the FAA under a section 333 exemption or otherwise. One affected by this ban would look in vain for any express statutory prohibition on commercial drone operation.

This paper explains how the ban arises.

49 U.S.C. § 44711 prohibits "a person" from:

operating a "civil aircraft in air commerce" without an airworthiness certificate or in violation of such a certificate;

operating such an aircraft as a pilot without an appropriate airman certification or in violation of regulations

employing an airman such as a pilot without an appropriate certificate

49 U.S.C. § 40102(a) defines:

"air commerce" as "foreign air commerce, interstate air commerce, the transportation of mail by aircraft, the operation of aircraft within the limits of a Federal airway, or the operation of aircraft that directly affects, or may endanger safety in, foreign or interstate air commerce"

"aircraft" as "any contrivance invented, used, or designed to navigate, or fly in, the air"

"civil aircraft" as "an aircraft except a public aircraft"

"public aircraft" as an aircraft owned or operated for a federal, state, or local governmental entity

49 U.S.C. § 44701 authorizes the FAA Administrator to prescribe regulations and standards for "civil aircraft in air commerce," and other matters to promote safety. Section 44702 authorizes the Administrator to issue airman (pilot), aircraft airworthiness and type, and operator certificates.

Drones are "contrivance[s] used and designed to "navigate, or fly in, the air."

Thus to operate one that does not have an airworthiness certificate, to operate one without a pilot certificate, or to operate one in violation of air traffic regulations is illegal.

The FAA has the power, however, to establish special rules for drones and to exempt them from regulations generally applicable to air commerce.

Section 332 of FAA Modernization and Reform Act of 2012, Pub. L. 112-95, commands the Secretary of Transportation to issue a final rule for operation of sUAS in the national airspace system.

Until such a rule becomes final, Section 333 of the 2012 Act authorizes the Secretary of Transportation to allow operation of certain unmanned aircraft systems "notwithstanding any other requirement of this subtitle." "This subtitle" refers to Subtitle VII of title 49 of the United States Code, which includes sections 40101 to 50105--all of the provisions relating to aviation.

That is the FAA's statutory authority for the so-called "Section 333 exemptions."

The FAA also has other authority for issuing exemptions:

49 U.S.C. § 40109(b) authorizes the FAA Administrator to grant exemptions from any regulation promulgated under sections 40103 (b)(1) and (2) (air traffic regulations and management of U.S. airspace), 40119 (security R&D), 44901 (passenger and freight screening), 44903 (air transportation security), 44906 (foreign air carrier security), and 44935–44937 (security training of personnel, including air carrier pilots) when he decides that the "exemption is in the public interest."

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