



New FAA waiver issued to CNN will help expand commercial drone operations over people

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Drones are the future of transportation and information technology. Recent innovations have transformed what used to be considered toys into powerful tools that provide substantial safety and efficiency benefits to the commercial industry, educational institutions, humanitarian NGOs, and the public. Once properly enabled, the integration of drones into our nation's National Airspace System will save countless lives and have a significant economic impact here in the United States.

However, many of the safety and efficiency benefits of drones require the ability to operate over people. To respond to disasters, or deliver packages, or gather the news, companies need to be able to fly in urban and suburban environments, where people are. The current regulatory framework does not allow for flights over people without a Part 107 Waiver from the Federal Aviation Administration (FAA). But according to one [recent study](#) of FAA Part 107 Waivers granted and denied to-date, a waiver to operate over people is the most difficult waiver to receive from the FAA. This makes the new and precedent-setting [FAA Part 107 Waiver issued to CNN](#) for operations over people all the more important.

The FAA recently issued the first ever Part 107 Waiver authorizing drone operations over people for closed-set filming to CNN. This is a significant success for not just film and media companies, but for large swaths of the commercial drone industry.

To understand the significance of the new operations over people waiver issued to CNN, some background on Part 107, the rule broadly authorizing commercial operations with small UAS (drones), and the FAA's history of approving closed-set filming drone operations under the "Section 333" process is necessary.

Background: History of closed-set filming under Section 333 exemptions

Building off its historical practice of issuing waivers to authorize helicopter operations at low altitudes over people for closed-set motion picture and television filming, in September 2014 the FAA issued the first "Section 333" exemptions to six different Hollywood film companies to allow drone flights over people on a movie set. As part of its review process, the FAA correctly recognized that operations over people who are involved with and have consented to an operation should be treated differently than operations over members of the public, and that different policy frameworks should govern each. Notably, "participants" in the Section 333 closed-set filming

context were defined as people associated with the filming production who acknowledged and accepted the risks associated with the drone operations. This definition was broader than the flight crew only.

By the time Part 107 became effective in August 2016, the FAA had issued over 500 of these closed-set filming exemptions. There were no known safety incidents. These exemptions had a limited duration of two years.

Part 107 Waiver process

Implemented in August 2016, Part 107 was an important step forward for the commercial UAS industry. However, Part 107 limited operations in critical ways. Significantly, the rule prohibited flights directly over people other than the flight crew. “Participants” was defined narrowly under Part 107, and unlike the Section 333 context, did not include people who acknowledged and accepted the risks associated with the drone operations. Under this narrow definition of a “participant,” personnel engaged in activities related to what the drone is being used for are nonparticipants, just as if they were any other member of the general public. This prohibition has created significant obstacles for commercial drone operators that want to use drones near, around, and over people, as a waiver would therefore be necessary to fly a drone over participants other than the flight crew.

Meanwhile, as Part 107 took effect, the FAA phased out Section 333 exemptions. So the question then became whether the Part 107 Waiver process would provide companies with a viable path forward for conducting operations over participants other than the flight crew.

Until now, there did not appear to be a viable path forward. In reviewing waiver applications, the FAA for months utilized only very conservative thresholds for assessing the risks associated with drone operations over people. Consistent with the [framework proposed](#) by the Micro-UAS Aviation Rulemaking Committee (Micro-UAS ARC) for flights over people, the FAA’s review process focused solely (or almost entirely) on kinetic energy at impact. In other words, the FAA asked only: How hard will a drone hit someone if it falls from the sky? While this kinetic injury-based approach to assessing risk has value in simplicity, it fails to account for the full scope of operational and technical mitigations adopted by many applicants to help ensure safety. Moreover, a kinetic injury-based approach will only work if the thresholds adopted are reasonable. As we previously blogged about [here](#), even the FAA’s own commissioned [report](#) on UAS human collision hazards suggests that previously considered thresholds were too conservative and did not accurately reflect the risks to a person of being struck by a falling drone.

The significance of the new Part 107 Waiver process

The FAA took a critical step forward with its issuance of CNN’s new Part 107 Waiver. On the surface, the waiver is important for the commercial drone industry because it is the first waiver authorizing drone operations over people for closed-set filming. But its real significance goes deeper: with this new waiver, the FAA has once again recognized (correctly) that different policy frameworks should govern operations over people who are involved with the work being performed and have consented to the risks of drone overflight, versus operations over general members of the public. Unlike prior FAA waivers issued for operations over people, the FAA did not look solely to

the kinetic energy of a falling drone for its risk assessment. The waiver authorizes CNN to operate any drone weighing less than 55 pounds over people with no altitude restrictions (beyond those that apply generally to all Part 107 operations).

Importantly as well, the category of people over whom CNN is authorized to fly drones under the new Part 107 Waiver is *broader* than what used to be permitted in the Section 333 closed-set filming context. In the Section 333 context, the ability to fly over people only applied to operations conducted for the purpose of closed-set motion picture and television filming and production. In this new precedent-setting waiver, the authority to fly over people is *not* tied to any specific type of operation. Under the CNN waiver, authorized persons whom the drone can fly over include people “*necessary to accomplish the work activity directly associated with the operation...*”

This is a big deal because it sets a precedent for not just film and media companies, but for other industries that also need to operate over people. The authority that CNN has to fly over news broadcasters on a film set could apply just as equally to flights over workers on a construction site or plant personnel at a critical infrastructure facility.

The new CNN waiver marks a common sense step forward as the FAA seeks to allow safe and expanded drone operations over people. We anticipate that broad authorization in the form of a reasonably-crafted “operations over people” rulemaking will come next.

Hogan Lovells represented CNN in this matter. For additional information, see our press release on CNN’s new waiver [here](#).

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