



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 21, 43, and 107

[Docket No. FAA-2018-1087]

RIN 2120-AK85

Operation of Small Unmanned Aircraft Systems Over People; Delay; Withdrawal; Correction

AGENCY: Federal Aviation Administration (FAA) and Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Final rule; delay of effective and compliance dates; withdrawal; correction.

SUMMARY: In accordance with the memorandum of January 20, 2021, from the Assistant to the President and Chief of Staff, titled “Regulatory Freeze Pending Review,” the Agency delays the effective date of the final rule, “Operation of Small Unmanned Aircraft Systems Over People”, until April 21, 2021, except for certain provisions pertaining to remote pilot certification and qualification, which are delayed until April 6, 2021. As a result of the delay in the effective dates, several compliance dates are also delayed by correcting the regulatory text.

DATES: As of [insert date of publication in the FEDERAL REGISTER], the March 1, 2021 effective date for the amendments to §§ 107.61, 107.63, 107.65, 107.73, and 107.74 in the final rule published at 86 FR 4314 (January 15, 2021), which was delayed at 86 FR 11623 (February 26, 2021), is further delayed to April 6, 2021.

As of [insert date of publication in the FEDERAL REGISTER], the March 16, 2021 effective date of the final rule published at 86 FR 4314 (January 15, 2021) is delayed to April 21, 2021.

The corrections published at 86 FR 11623 (February 26, 2021) are withdrawn as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

The correction to § 107.65 is effective April 6, 2021.

The corrections to §§ 107.29 and 107.140 are effective April 21, 2021.

FOR FURTHER INFORMATION CONTACT: Michael Machnik, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 55 M Street SE, 8th Floor, Washington, DC 20003; telephone 1-844-FLY-MYUA; email: *UASHelp@faa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of the notice of proposed rulemaking (NPRM) (84 FR 3856, Feb. 13, 2019), all comments received, the Final Rule, and all background material may be viewed online at <http://www.regulations.gov> using the docket number listed above. A copy of this final rule will also be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at www.federalregister.gov and the Government Publishing Office's Web site at www.govinfo.gov.

Background

On January 15, 2021, the "Operation of Small Unmanned Aircraft Systems Over People" final rule (RIN 2120-AK85) published in the Federal Register at 86 FR 4314. The final rule permits routine operations of small unmanned aircraft over people, moving vehicles, and at night under certain conditions. The final rule also makes changes to the recurrent testing framework and expands the list of persons who may request the presentation of a remote pilot certificate.

On January 20, 2021, the Assistant to the President and Chief of Staff issued a memorandum titled, “Regulatory Freeze Pending Review.” The memorandum requested that the heads of executive departments and agencies (agencies) take steps to ensure that the President’s appointees or designees have the opportunity to review any new or pending rules. With respect to rules published in the Federal Register, but not yet effective, the memorandum asked that agencies consider postponing the rules’ effective dates for 60 days from the date of the memorandum for the purpose of reviewing any questions of fact, law, and policy the rules may raise.

In accordance with this direction, the Agency previously decided to delay the effective dates of the amendments to §§ 107.61, 107.63, 107.65, 107.73 and 107.74 of the final rule, “Operation of Small Unmanned Aircraft Systems Over People” (RIN 2120-AK85), until March 16, 2021 (FR Doc. 2021-04093, 86 FR 11623, published on February 26, 2021). Given that the “Operation of Small Unmanned Aircraft Systems Over People” final rule is a complex and lengthy rulemaking, the Agency decided to further delay the effective dates of the amendments to §§ 107.61, 107.63, 107.65, 107.73 and 107.74 until April, 6, 2021, and to delay until April 21, 2021, the effective date for the remainder of this final rule. The delay in the rule’s effective dates will afford the President’s appointees or designees an opportunity to review the rule and will allow for consideration of any questions of fact, law, or policy that the rule may raise before it becomes effective.

On the same day that FAA published the “Operation of Small Unmanned Aircraft Systems Over People” final rule, FAA also published a final rule concerning remote identification of small unmanned aircraft. The adoption of these two rules is inextricably connected. By separate action published elsewhere in this issue of the Federal Register, FAA is also delaying the effective date of the remote identification final rule.

Additionally, as a result of the delay in the effective dates, several corrections are necessary. Some of the compliance dates for § 107.29(a)(1) and (d) regarding the operation of a small unmanned aircraft system at night must be corrected so that they do not precede the new effective date. Similarly, a correction to § 107.65(d) regarding the timing of passing the recurrent aeronautical knowledge test or satisfying training requirements must also be made to conform to the delayed effective date.

Lastly, this document corrects a drafting error in § 107.140(d). Section 107.140(d) should refer to paragraph (b)(3) of § 107.140, rather than paragraph (b)(4). Paragraph (b)(4) does not exist.

Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Agency generally offers interested parties the opportunity to comment on proposed regulations and publish rules not less than 30 days before their effective dates. However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking or delay effective dates when the agency, for good cause, finds that the requirement is impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B) and (d)(3)). There is good cause to waive both of these requirements here as they are impracticable and unnecessary. A delay in the effective dates of the final rule, “Operation of Small Unmanned Aircraft Systems Over People”, is essential for the President’s appointees and designees to have adequate time to review the rule before it takes effect, and neither the notice and comment process nor the delayed effective date could be implemented in time to allow for this review, thereby making notice and comment impracticable. In addition, notice and comment on this delay is unnecessary because the delay is short, the effective dates remain aligned with the “Remote Identification of Unmanned Aircraft” final rule, and there is no change to the policy effectuated by the “Operation of Small Unmanned Aircraft Systems over People” final rule. This delay is

insignificant in its nature and impact, and inconsequential to the regulated community and to the public.

Corrections

In FR Doc. 2020-28947 (86 FR 4314) published on January 15, 2021, the following corrections are made:

§ 107.29 [Corrected]

1. As of April 21, 2021, on page 4382, in the second column, in § 107.29, in paragraph (a)(1), the date “March 1, 2021” is corrected to read “April 6, 2021”, and in paragraph (d), the date “March 16, 2021” is corrected to read “April 21, 2021” everywhere it appears.

§ 107.65 [Corrected]

2. As of April 6, 2021, on page 4383, in the first column, in § 107.65, in paragraph (d), the date “March 1, 2021” is corrected to read “April 6, 2021”.

§ 107.140 [Corrected]

3. As of April 21, 2021, on page 4385, in the second column, in § 107.140, in paragraph (d), remove “(b)(4)” and add in its place “(b)(3)”.

Issued in Washington, DC, under the authority provided by 49 U.S.C. 106(f), 40101 note and 44807, dated on or about March 4, 2021.

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Secretary, Department of Transportation

Steve Dickson
Administrator, Federal Aviation Administration