Unmanned Aircraft Systems and Beyond Visual Line of Sight Operations: Regulatory Trajectory, Potential Tort Exposure, and Insurance Implications

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Summary

- New FAA rules, proposed Part 108 would allow routine BVLOS drone operations for commercial use.
- Practitioners should expect negligence, product liability, and other fault allocation issues in drone cases.

It is increasingly difficult to read the news without encountering stories about unmanned aircraft systems (UAS), commonly referred to as drones. From their prominent role on the battlefield in the war between Russia and Ukraine to high-profile commercial initiatives, such as Amazon's efforts to develop its drone delivery services, drones have rapidly moved into the public consciousness. Beyond these headlines, drone technology continues to evolve well past its early roots in consumer recreation, with expanding applications across numerous industries. Today, drones are routinely used in aerial surveying, agricultural operations, photography, and package delivery, to name a few.

As drone use becomes more commonplace and more sophisticated, so, too, do the legal risks arising from their operation. For insurers, insureds, regulators, litigators, and risk managers, recent developments in the drone industry present a growing and increasingly complex set of liability, regulatory, and coverage challenges.

One of the most consequential developments is the Federal Aviation Administration's (FAA) push toward regulating routine b eyond v isual l ine of sight (BVLOS) operations. Historically, most commercial drone flights were limited to the operator's visual line of sight or required individualized waivers. Proposed FAA rulemaking would replace this waiver-based model, permitting scalable operations such as long-distance infrastructure inspections and delivery routes.

Background

The first drone-specific operating rules, known as Part 107, took effect in August 2016. Part 107 allowed routine commercial operations of unmanned aircraft without an airworthiness certificate. Instead of requiring a practical flying test, the FAA established a written exam to evaluate a remote pilot's basic aeronautical knowledge. 14 C.F.R. § 107.63. Even though a pilot is not on board the unmanned aircraft, Part 107 maintained the requirement for remote pilots to maintain visual line of sight with their unmanned aircraft to see and avoid other aircraft during flight. 14 C.F.R. § 107.31.

With the advancements in drone technology and uses, it became evident that a different regulatory framework may be necessary. The proposed rulemaking centers on a new Part 108 for operators, which is "intended to provide a predictable and clear pathway for safe, routine, and scalable UAS operations that include package delivery, agriculture, aerial surveying, civic interest, operations training, demonstration, recreation, and flight testing." NPRM, Docket No. FAA-2025-1908, at p. 1. (Proposed rulemaking related to BVLOS can also be found in Part 146, which relates to automated data service providers that support UAS Traffic Management (UTM) at scale.) Congress set this course in the FAA

Reauthorization Act of 2024, now at 49 U.S.C. § 44811, to replace piecemeal exemptions with clearer rules that enable real-world use while keeping the National Airspace System (NAS) safe. See 90 Fed. Reg. 38212 (Aug. 7, 2025) (NPRM, Docket No. FAA-2025-1908).

The FAA's BVLOS proposal includes detailed requirements governing operations, aircraft manufacturing, safe separation from other aircraft, operational authorization and responsibility, security, and information reporting and recordkeeping. With respect to operations, proposed Part 108 would require operators to obtain FAA approval for the geographic area in which they intend to conduct BVLOS flights. In addition, operations generally would be limited to altitudes at or below 400 feet above ground level (AGL). Operators also would be required to demonstrate familiarity with applicable airspace and flight restrictions along their intended route of flight, including by reviewing Notices to Airmen (NOTAMs).

Under proposed Part 108, operators would rely on entities known as Automated Data Service Providers (ADSPs) to maintain safe separation between BVLOS drones and other aircraft, including manned aircraft. Drones would be required to yield to all manned aircraft broadcasting their position via Automatic Dependent Surveillance–Broadcast (ADS-B). As for the aircraft themselves, eligible drones could weigh up to 1,320 pounds, including any onboard payload. As noted above, these drones would not be required to obtain traditional FAA airworthiness certificates. Instead, the approval process is intended to be streamlined and would allow for certification based on industry consensus standards. The proposal spans more than 700 pages and includes additional provisions governing operations over people as well as reporting and recordkeeping requirements.

Possible Tort Exposure in a BVLOS Environment

The regulatory framework and movement to BVLOS raises many issues from a litigation and exposure standpoint. From a litigation perspective, the shift to BVLOS and Part 108 is significant because it reframes drones as ordinary commercial aircraft rather than novel recreational devices. As drones become more widely accepted and routinely deployed, courts are increasingly likely to evaluate incidents under traditional negligence frameworks, with an emphasis on operator training, maintenance practices, and regulatory compliance.

At the same time, manufacturers have begun to reduce or eliminate so-called "hard" geofencing features that previously prevented drones from entering restricted airspace. In their place, manufacturers are moving toward warning-based systems that rely on operators to assess airspace authorization and operational safety, which will be required if Part 108 is enacted.

This transition has meaningful implications for liability allocation. Plaintiffs may argue that manufacturers knowingly shifted safety responsibilities to operators without providing adequate warnings or training materials. Manufacturers, in turn, may contend that liability rests with operators who disregarded clear warnings or applicable regulations. As these systems continue to evolve, courts are likely to confront new failure-to-warn and negligent-training theories.

Drone delivery programs operating under Part 135 certifications are also expanding, pushing drones into residential neighborhoods at altitudes under 400 feet. These operations introduce distinct exposure risks that differ from traditional aviation activity. Potential claims include nuisance, trespass, invasion of privacy, and premises liability—particularly where drones repeatedly fly over private property or operate near people. Delivery operations also raise questions regarding duty allocation among manufacturers, operators, and retailers. As delivery corridors expand, litigation will increasingly test the boundaries of airspace rights and property interests.

Advances in AI-assisted navigation, obstacle-avoidance technology, and automated flight planning have further complicated fault analysis. While these systems reduce operator workload, many drone incidents now involve a combination of human decision-making and automated system behavior. As a result, litigators should expect disputes over whether an accident stemmed from operator negligence, a software defect, inadequate training, or foreseeable misuse of autonomous features. These cases often resemble early autonomous-vehicle litigation, requiring courts to grapple with "human-on-the-loop" responsibility, where a human supervises automated systems and intervenes when necessary, and shared fault between operator and machine.

Further, parties will likely raise preemption issues. Although Part 108 has not yet been promulgated, at least one federal circuit has discussed field preemption and drone regulations. In *Nat'l Press Photographers Ass'n v. McCraw*, 90 F.4th 770 (5th Cir. 2024), the court recognized room for state privacy and sensitive-site rules, rejecting broad preemption arguments and citing the FAA's own guidance. As to field preemption, the Fifth Circuit held that p laintiffs did not show "that Congress or the relevant agency, the Federal Aviation Administration, intended to occupy the entire field of drone regulation." *McCraw*, 90 F. 4th at 796. By contrast, attempts by localities to impose duplicative registration, blanket operational bans in navigable airspace, or rigid local VLOS rules are vulnerable to preemption, as illustrated in *Singer v. City of Newton*, 284 F. Supp. 3d 125 (D. Mass. 2017), where local registration and VLOS/airspace restrictions were invalidated for conflict with federal objectives and the Part 107 waiver regime.

Insurance Implications of Increased BVLOS Operations

From an insurer perspective, should Part 108 be promulgated, underwriting likely should start with Part 108 compliance. Insurers will need to become intimately familiar with the contours of the r ule. For instance, insurers may require proof of the right operating authority, airworthiness acceptance, and equipage (lighting, Remote ID with BVLOS status), plus the use of strategic deconfliction/conformance services in controlled airspace or denser areas.

Even before the promulgation of Part 108, insurance markets have begun responding with drone-specific endorsements and policies, but coverage disputes remain common. Insurers and insureds continue to clash over the application of aircraft exclusions, professional-services exclusions, and cyber-risk provisions. As drone-related claims increase, courts will continue to define how traditional coverage language applies to modern UAS operations.

Conclusion

Drones are no longer novel. They are becoming embedded in everyday life, and the legal system is adjusting accordingly. For practitioners in tort, insurance, and risk management, staying ahead of regulatory developments and emerging litigation trends is essential. As drone operations continue to scale, so, too, will the disputes and the demand for informed, practical legal guidance.

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