

MUNICIPAL EXCESS LIABILITY JOINT INSURANCE FUND

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BULLETIN MEL 19-27

Date: January 1, 2019
To: Fund Commissioners of Member Joint Insurance Funds
From: MEL Underwriting Manager, Conner Strong & Buckelew
Re: Unmanned Aircraft Systems (“Drones”)

Coverage for Unmanned Aircraft Systems (“UASs”) is included in the JIF and MEL Casualty policies. The member entities will receive coverage through the first \$5 million of coverage with the local JIF, MEL and Brit, and Munich will provide up to the excess limit purchased by the member entity, but no more than \$5 million excess \$5 million.

DEFINITIONS

Unmanned Aircraft System – An **unmanned aircraft** and its associated elements, including the control stations, communication links, data links, navigation equipment, launch / recovery equipment, other support equipment and **payload** that are required for the pilot-in-command together with his or her crewmembers and visual observers to operate safely and efficiently in the national airspace system.

Unmanned Aircraft – An aircraft that is designed and manufactured to be operated without the possibility of being controlled directly by a person from within or on-board the aircraft, and that is owned by the insured.

Payload – Any property installed on, carried on-board, or being loaded onto or unloaded from, an **unmanned aircraft**. **Payload** includes, but is not limited to, cameras or other equipment enhancing the utility of the **unmanned aircraft** or products loaded prior to flight to, dispensed during flight from or removed after flight from, an **unmanned aircraft**.

COVERAGE / COMPLIANCE

The willful failure of any **insured**, or any other person or entity authorized by you to operate the **unmanned aircraft system** specifically in your business, to comply with any of the following shall void coverage:

1. Federal Aviation Administration (FAA) regulations, certifications, rules, procedures, policies and standards with respect to an **unmanned aircraft system**, including any amendment or addition to such regulations, certifications, rules, procedures, policies and standards;
2. United States Department of Transportation laws and regulations with respect to an **unmanned aircraft system**, including any amendment or addition to such laws and regulations;
3. Any other applicable federal laws and regulations with respect to an **unmanned aircraft system**, including any amendment or addition to such laws and regulations; or
4. Any state and local laws and regulations with respect to an **unmanned aircraft system**, including any amendment or addition to such laws and regulations.

Special exclusions apply to the UAS exposure:

1. Physical contact with any other aircraft (including hot air balloons and blimps);
2. Existence or use of weapons and ammunition attached to or incorporated within any UAS, including as part of the **payload**;
3. **Unmanned aircraft**, including its **payload**, in excess of 55 pounds;
4. the operator not holding a remote pilot airman certificate or the operator not being under the direct supervision of a person who does hold a remote pilot certificate;

- a. however, this exclusion does not apply to the **Member Entity** if the pilot is an independent contractor; or

5. the transportation of property other than the **Payload**.

ADDITIONAL NOTES

First and foremost, we strongly recommend counsel review of the planned operations of the UAS and the compliance requirements.

Following is the link to the full FAA Rule Part 107:

<http://www.ecfr.gov/cgi-bin/text-idx?SID=6d9c3436a0ff5933d8197519c063133f&mc=true&node=pt14.2.107&rgn=div5>

The following is a summary published by the FAA regarding its final rule on drones:

Summary of Small Unmanned Aircraft Rule (Part 107) – June 21, 2016

Operational Limitations:

- Unmanned aircraft must weigh less than 55 lbs. (25 kg).
- Visual line-of-sight (VLOS) only; the unmanned aircraft must remain within VLOS of the remote pilot in command and the person manipulating the flight controls of the small UAS. Alternatively, the unmanned aircraft must remain within VLOS of the visual observer.
- At all times the small unmanned aircraft must remain close enough to the remote pilot in command and the person manipulating the flight controls of the small UAS for those people to be capable of seeing the aircraft with vision unaided by any device other than corrective lenses.
- Small unmanned aircraft may not operate over any persons not directly participating in the operation, not under a covered structure, and not inside a covered stationary vehicle.
- Daylight-only operations, or civil twilight (30 minutes before official sunrise to 30 minutes after official sunset, local time) with appropriate anti-collision lighting.
- Must yield right of way to other aircraft.
- May use visual observer (VO) but not required.
- First-person view camera cannot satisfy “see-and-avoid” requirement but can be used as long as requirement is satisfied in other ways.
- Maximum groundspeed of 100 mph (87 knots).
- Maximum altitude of 400 feet above ground level (AGL) or, if higher than 400 feet AGL, remain within 400 feet of a structure.
- Minimum weather visibility of 3 miles from control station.
- Operations in Class B, C, D and E airspace are allowed with the required ATC permission.
- Operations in Class G airspace are allowed without ATC permission.
- No person may act as a remote pilot in command or VO for more than one unmanned aircraft operation at one time.
- No operations from a moving aircraft.
- No operations from a moving vehicle unless the operation is over a sparsely populated area.
- No careless or reckless operations.
- No carriage of hazardous materials.
- Requires preflight inspection by the remote pilot in command.
- A person may not operate a small unmanned aircraft if he or she knows or has reason to know of any physical or mental condition that would interfere with the safe operation of a small UAS.

ADDITIONAL NOTES (cont'd)

Summary of Small Unmanned Aircraft Rule (Part 107) (cont'd)

Operational Limitations (cont'd):

- Foreign-registered small unmanned aircraft are allowed to operate under part 107 if they satisfy the requirements of part 375.
- External load operations are allowed if the object being carried by the unmanned aircraft is securely attached and does not adversely affect the flight characteristics or controllability of the aircraft.
- Transportation of property for compensation or hire allowed provided that:
 - The aircraft, including its attached systems, payload and cargo weigh less than 55 pounds total;
 - The flight is conducted within visual line of sight and not from a moving vehicle or aircraft; and
 - The flight occurs wholly within the bounds of a State and does not involve transport between (1) Hawaii and another place in Hawaii through airspace outside Hawaii; (2) the District of Columbia and another place in the District of Columbia; or (3) a territory or possession of the United States and another place in the same territory or possession.
- Most of the restrictions discussed above are waivable if the applicant demonstrates that his or her operation can safely be conducted under the terms of a certificate of waiver.

Remote Pilot in Command Certification and Responsibilities:

- Establishes a remote pilot in command position.
- A person operating a small UAS must either hold a remote pilot airman certificate with a small UAS rating or be under the direct supervision of a person who does hold a remote pilot certificate (remote pilot in command).
- To qualify for a remote pilot certificate, a person must:
 - Demonstrate aeronautical knowledge by either:
 - Passing an initial aeronautical knowledge test at an FAA-approved knowledge testing center; or
 - Hold a part 61 pilot certificate other than student pilot, complete a flight review within the previous 24 months, and complete a small UAS online training course provided by the FAA.
 - Be vetted by the Transportation Security Administration.
 - Be at least 16 years old.
- Part 61 pilot certificate holders may obtain a temporary remote pilot certificate immediately upon submission of their application for a permanent certificate. Other applicants will obtain a temporary remote pilot certificate upon successful completion of TSA security vetting. The FAA anticipates that it will be able to issue a temporary remote pilot certificate within 10 business days after receiving a completed remote pilot certificate application.
- Until international standards are developed, foreign-certificated UAS pilots will be required to obtain an FAA-issued remote pilot certificate with a small UAS rating.

A remote pilot in command must:

- Make available to the FAA, upon request, the small UAS for inspection or testing, and any associated documents/records required to be kept under the rule.
- Report to the FAA within 10 days of any operation that results in at least serious injury, loss of consciousness, or property damage of at least \$500.
- Conduct a preflight inspection, to include specific aircraft and control station systems checks, to ensure the small UAS is in a condition for safe operation.
- Ensure that the small unmanned aircraft complies with the existing registration requirements specified in § 91.203(a)(2).

A remote pilot in command may deviate from the requirements of this rule in response to an in-flight emergency.

ADDITIONAL NOTES (cont'd)

Summary of Small Unmanned Aircraft Rule (Part 107) (cont'd)

Aircraft Requirements:

- FAA airworthiness certification is not required. However, the remote pilot in command must conduct a preflight check of the small UAS to ensure that it is in a condition for safe operation.

Model Aircraft:

- Part 107 does not apply to model aircraft that satisfy all of the criteria specified in section 336 of Public Law 112-95.
- The rule codifies the FAA's enforcement authority in part 101 by prohibiting model aircraft operators from endangering the safety of the NAS.

The following is a fact sheet published by the FAA regarding its final rule on drones:

Fact Sheet – Small Unmanned Aircraft Regulations (Part 107) June 21, 2016

The new rules for non-hobbyist small unmanned aircraft (UAS) operations – Part 107 of the Federal Aviation Regulations (http://www.faa.gov/uas/media/RIN_2120-AJ60_Clean_Signed.pdf) (PDF) – cover a broad spectrum of commercial uses for drones weighing less than 55 pounds. Here are the highlights of the new rule.

Operating Requirements

The small UAS operator manipulating the controls of a drone should always avoid manned aircraft and never operate in a careless or reckless manner. You must keep your drone within sight. Alternatively, if you use First Person View or similar technology, you must have a visual observer always keep your aircraft within unaided sight (for example, no binoculars). However, even if you use a visual observer, you must still keep your unmanned aircraft close enough to be able to see it if something unexpected happens. Neither you nor a visual observer can be responsible for more than one unmanned aircraft operation at a time.

You can fly during daylight or in twilight (30 minutes before official sunrise to 30 minutes after official sunset, local time) with appropriate anticollision lighting. Minimum weather visibility is three miles from your control station. The maximum allowable altitude is 400 feet above the ground, and higher if your drone remains within 400 feet of a structure. The maximum speed is 100 mph (87 knots).

You can't fly a small UAS over anyone who is not directly participating in the operation, not under a covered structure, or not inside a covered stationary vehicle. No operations from a moving vehicle are allowed unless you are flying over a sparsely populated area.

Operations in Class G airspace are allowed without air traffic control permission. Operations in Class B, C, D and E airspace need ATC approval. See Chapter 14 in the Pilot's Handbook
http://www.faa.gov/regulations_policies/handbooks_manuals/aviation/pilot_handbook/media/phak%20-20chapter%2014.pdf

You can carry an external load if it is securely attached and does not adversely affect the flight characteristics or controllability of the aircraft. You also may transport property for compensation or hire within state boundaries provided the drone – including its attached systems, payload and cargo – weighs less than 55 pounds total and you obey the other flight rules. (Some exceptions apply to Hawaii and the District of Columbia. These are spelled out in Part 107.)

You can request a waiver of most operational restrictions if you can show that your proposed operation can be conducted safely under a waiver. The FAA will make an online portal available to apply for such waivers.

ADDITIONAL NOTES (cont'd)

Fact Sheet – Small Unmanned Aircraft Regulations (Part 107) (cont'd)

June 21, 2016

Pilot Certification

To operate the controls of a small UAS under Part 107, you need a remote pilot airman certificate with a small UAS rating, or be under the direct supervision of a person who holds such a certificate.

You must be at least 16 years old to qualify for a remote pilot certificate, and you can obtain it in one of two ways:

- You may pass an initial aeronautical knowledge test at an FAA-approved knowledge testing center.
- If you already have a Part 61 pilot certificate, other than a student pilot certificate, you must have completed a flight review in the previous 24 months and you must take a small UAS online training course provided by the FAA.

If you have a non-student pilot Part 61 certificate, you will immediately receive a temporary remote pilot certificate when you apply for a permanent certificate. Other applicants will obtain a temporary remote pilot certificate upon successful completion of a security background check. We anticipate we will be able to issue temporary certificates within 10 business days after receiving a completed application.

UAS Certification

You are responsible for ensuring a drone is safe before flying, but the FAA does not require small UAS to comply with current agency airworthiness standards or obtain aircraft certification. Instead, the remote pilot will simply have to perform a preflight visual and operational check of the small UAS to ensure that safety-pertinent systems are functioning properly. This includes checking the communications link between the control station and the UAS. The UAS must also be registered.

Respecting Privacy

Although the new rule does not specifically deal with privacy issues in the use of drones, and the FAA does not regulate how UAS gather data on people or property, the FAA is acting to address privacy considerations in this area. The FAA strongly encourages all UAS pilots to check local and state laws before gathering information through remote sensing technology or photography.

As part of a privacy education campaign, the agency will provide all drone users with recommended privacy guidelines as part of the UAS registration process and through the FAA's B4UFLY mobile app. The FAA also will educate all commercial drone pilots on privacy during their pilot certification process; and will issue new guidance to local and state governments on drone privacy issues. The FAA's effort builds on the privacy "best practices" of the National Telecommunications and Information Administration published last month as the result of a year-long outreach initiative with privacy advocates and industry.

https://www.ntia.doc.gov/files/ntia/publications/voluntary_best_practices_for_uas_privacy_transparency_and_accountability_0.pdf

Other Requirements

If you are acting as pilot in command, you have to comply with several other provisions of the rule:

- You must make your drone available to the FAA for inspection or testing on request, and you must provide any associated records required to be kept under the rule.
- You must report to the FAA within 10 days any operation that results in serious injury, loss of consciousness, or property damage (to property other than the UAS) of at least \$500.

This page was originally published at: http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=20516

ADDITIONAL NOTES (cont'd)

Special Provisions for Government Entities

Government entities or organizations (e.g. law enforcement agencies, public universities, state governments, local municipalities) have 2 options for flying UAS:

1. Fly under the [small UAS rule](#) – follow all rules under 14 CFR part 107, including aircraft and pilot requirements; or
2. Obtain a blanket public Certificate of Waiver or Authorization (COA) – permits nationwide flights in Class G airspace at or below 400 feet, self-certification of the UAS pilot, and the option to obtain emergency COAs (e-COAs) under special circumstances.

The above description is a general discussion of the coverage and limits provided by the FUND. Please have counsel review the most recent regulations regarding unmanned aerial systems, as the above may not be the most recent. The actual terms and conditions are defined in the policy document and all issues shall be decided based on the policy document.

If you have any questions concerning this bulletin, please contact your Risk Management Consultant, JIF Executive Director or the Underwriting Manager.

cc: Risk Management Consultants
Fund Professionals
Fund Executive Directors