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FAA Grants Exemptions and Releases Guidance for Operation of Small Unmanned Aircraft Systems

By Kenneth P. Quinn, Jennifer Trock and Graham C. Keithley

On September 25, 2014, the Federal Aviation Administration (FAA) approved six exemption requests for the use of small unmanned aircraft systems (sUAS) for television and movie filmmaking under strict conditions. Simultaneously, the FAA released guidelines for petitioners seeking FAA exemption approval to operate sUAS in the National Airspace System (NAS). The FAA's exemptions and guidance serve as useful relief valves to address pent-up demand for commercial UAS, with 40 exemption requests in the pipeline, many of which are now likely to be granted in modified forms in the coming months, especially in the agricultural, chemical, university research, and utilities sectors. These latest exemptions are highly restrictive, and do not represent a comprehensive regulatory framework to address the many safety, privacy, and security issues raised by the widespread use of UAS. FAA, which has neither expertise nor authority regarding privacy, is expected to issue a more comprehensive, proposed rulemaking for sUAS before the end of the year.

Exemption Approvals for Film Industry Operators

While most of the media attention focused on the remarks of Secretary of Transportation Foxx, FAA Administrator Michael Huerta signaled a willingness to revisit some of the restrictions, including its ban on nighttime flights, and to entertain further exemption requests. While promising, the film industry's exemption approvals do not "open the floodgates" for widespread commercial sUAS operations. Each exemption petition must be reviewed and approved on an operator-by-operator basis, with a host of new exemption requests expected to join the 40 pending petitions.

Although FAA has general exemption authority, these sUAS exemptions were granted under Section 333 of the FAA Modernization and Reform Act of 2012, which also mandates that the FAA provide for the orderly and safe introduction of UAS into the NAS in 2015—a deadline most expect FAA to miss by a wide margin. The exemptions contain significant operating limitations, and they required several specific FAA findings.

First, the film industry's sUAS are exempt from an FAA-issued certificate of airworthiness after a finding that the sUAS does not pose a threat to NAS users, the public, or national security. Second, the FAA found (as it is required to do) that the film industry operators had shown the sUAS operations would not adversely affect safety, or would provide at least an equal level of safety to the rules from which they seek the exemptions. Finally, the approved operations are significantly restricted (i.e., operating in a "sterile area" on closed sets, during the day, below 400 feet) and require significant operational safety controls (i.e., FAA-licensed pilots, aircraft inspections, operations briefings, and compliance with a proprietary safety manual developed by the industry).

Notwithstanding these parameters, the FAA encouraged additional petitioners to apply for exemptions.

Public Guidance for Petitions for Exemption Filed under Section 333

In line with the film industry operators' exemption approvals, the FAA's guidance sets forth the expected information that will assist FAA's determinations of whether to grant exemptions.

To start, potential sUAS operators must petition for exemption from regulations applicable to the specific circumstances of their operations with which they believe they are unable to comply. Upon receiving a petition for exemption, the FAA will analyze the petitioner's proposed sUAS operations with regard to safety, considering the following information:

Unmanned Aircraft System

- How the proposed sUAS operation will be safely conducted to minimize risk to the NAS and persons and property on the ground, including the design and operational characteristics for the type of sUAS intended to be operated;
- Procedures to be implemented, such as pre-flight inspections, maintenance, and repair, to ensure the sUAS is in a safe condition for flight;
- The radio frequency spectrum used for control of the sUAS and associated equipment and whether it complies with Federal Communications Commission or other agency requirements;

Pilots

- Qualifications (including medical standards/certificates) of any pilots who will be directly responsible for the operation of the sUAS;

sUAS Operations

- Intended sUAS operations and how they would not adversely affect safety, or would provide a level of safety at least equivalent to that provided by FAA rules, including operational borders and procedures to ensure public safety;
- Proposed maximum operating speed and altitude, minimum flight visibility and distance from clouds;
- Characteristics of the areas of operation and associated potential hazards;
- How the operations will comply with the visual line-of-sight requirement;
- Procedures to be implemented for conducting a preflight safety risk assessment;

- Intended notification of the FAA Flight Standards District Offices; and
- Recognition that the operator must obtain a Certificate of Waiver or Authorization from the FAA Air Traffic Organization prior to conducting operations.

The guidance also sets forth a list of regulations from which petitioners may require exemptions, including regulations on preflight actions, flight crewmember stations, flight instructions, minimum safe altitudes, altimeter settings, fuel requirements, maintenance, inspection and maintenance records.

In addition, the FAA has provided online guidance on the method and submission process to assist petitions.

While the FAA's guidance and the film industry approvals will undoubtedly help petitioners meet the FAA's expectations and requirements, the FAA will expect that each petition will be precisely tailored to each operator and operation. Left unaddressed are the host of privacy and security issues that the administration has been struggling with, along with state legislatures that are increasingly passing UAS legislation to prevent the use of UAS for law enforcement without a warrant, and to protect citizens from privacy intrusions. The White House has talked about issuing an executive order to address associated privacy concerns with UAS, but this step would only bind the executive branch, not private company or individual use and operation of UAS.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

Kenneth P. Quinn (bio)
Washington, DC
+1.202.663.8898
kquinn@pillsburylaw.com

Jennifer Trock (bio)
Washington, DC
+1.212.663.9179
jennifer.trock@pillsburylaw.com

Graham C. Keithley (bio)
Washington, DC
+1.212.663.8768
graham.keithley@pillsburylaw.com

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Kenneth P. Quinn of Pillsbury will be moderating a panel with the Honorable Kathryn Thomson, General Counsel, U.S. Department of Transportation.

The conference panels will discuss important business, legal and regulatory issues and changes, including the investment climate, privacy considerations, technology trends and intellectual property, and navigating regulatory change.

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