

# Client Alert

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## Drones: The FAA Grants Hollywood the First Regulatory Exemptions Permitting the Commercial Use of UAS

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Yesterday the Federal Aviation Administration (FAA) granted six aerial photo and video companies exemptions from FAA regulations that—before now—wholesale banned the use of unmanned aircraft systems (UAS) for commercial purposes in the United States. These companies<sup>1</sup> now have FAA permission to use small drones “for the purpose of scripted, closed-set filming for the motion picture and television industry.”

These “Hollywood Exemptions” are likely to pave the way for other companies seeking to deploy their own drones for use in agriculture, electricity, oil and gas, conservation, logistics, and other sectors. Some of the restrictions and limitations attached to the “Hollywood Exemptions,” intended to mitigate risks from operating drones in urban areas and close to people, would seem inapplicable to many of these other applications. Nonetheless, the FAA’s decision is viewed as a major step for the UAS industry, which is expected to generate billions of dollars in economic activity once the current restrictions on commercial use are lifted.

### HOW DID HOLLYWOOD GET EXEMPTED?

Section 333 of the FAA Modernization and Reform Act of 2012 (the “Act”) permits the Secretary of Transportation to exempt drones from the airworthiness certifications found in 14 C.F.R Part 91 if the Secretary decides that the proposed drone use will not create a hazard to existing national airspace users or the public. The Hollywood Exemption Requests—filed in June of this year—emphasized that they would use small rotorcraft UAS weighing less than 55 pounds, operated by a licensed pilot within a secured perimeter below 400 feet from the ground.

Thus, it was Hollywood’s position that by approving the requested exemptions, the FAA would enhance safety by reducing the risks associated with conventional film operations, which use 4000 pound jet or piston powered aircraft that operate at low altitudes only feet from the subject filmed, in close proximity to both people and structures. Ultimately Hollywood proved persuasive, and the Hollywood petitioners were granted exemptions from several strict regulatory requirements that typically govern aircraft use.

### WHAT DO THE EXEMPTIONS ALLOW?

The Exemptions—while allowing drone use for filming—are still highly restrictive: They only permit use of certain models of drones that must fly at speeds below 50 knots. The flights must be conducted below 400 feet and within the visual line of sight of the pilot in command, who must possess at least a private pilot’s certificate. The Exemptions also incorporate the various UAS operators’ manuals that were submitted to the FAA in support of the Exemption requests. Flight plans of activities are required to be submitted to the local Flight Standards District Offices and the operators must obtain waivers from the relevant Air Traffic Organizations. Notably, the Hollywood petitioners themselves proposed most of the restrictions in their Exemption Requests in order to better the chances that the Exemptions would be granted. The Hollywood strategy worked.

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<sup>1</sup> Astraeus Aerial, Aerial MOB, HeliVideo Productions, Pictorvision Inc., RC Pro Productions Consulting, and Snaproll Media.

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## WHAT DO THE HOLLYWOOD EXEMPTIONS MEAN FOR EVERYONE ELSE?

The Hollywood Exemptions are the first time the FAA has permitted any company to operate UAS for commercial purposes without first obtaining an airworthiness certificate. The FAA's decision represents a shift in the FAA's focus away from preventing drone use and towards successfully integrating drones into the nation's airspace once it is shown that the proposed use is safe and effective. There are two takeaways from the Hollywood Exemptions for companies seeking to use drones in their businesses.

First, a Section 333 Exemption is not impossible to obtain. The FAA has shown that the exemption process is a viable route around the FAA's current onerous requirement that commercial drone operators must apply for an airworthiness certificate. A commercial operator who can demonstrate that its use of UAS will be safe, secure, and in the public interest, should seriously consider following Hollywood's lead and applying for a Section 333 Exemption. This is particularly true for industries where drone use can safely replace the use of more dangerous manned aircraft, or where a flight plan can be developed for the drone far in advance of the actual flight. In fact, the FAA "encourages other industry associations to work with interested parties to develop safety manuals and standard operating procedures that will help facilitate similar petitions."

Second, the restrictions imposed by the FAA on the Hollywood Exemptions may be indicative of the types of restrictions that we will see the FAA propose in UAS-specific regulations. The FAA has yet to propose such regulations, despite a congressional mandate to issue them. Industry insiders believe that the FAA will issue the proposed regulations at the beginning of 2015 at the earliest, and the regulations won't be finalized until at least a year after that. If the Hollywood Exemptions are any indication of what the future holds, we can expect detailed regulations that require significant FAA oversight before drones get off the ground. In the meantime, companies submitting Section 333 Exemption applications should not shrink from identifying the features of their proposed operations that render restrictions designed to mitigate risks of drone use in urban areas inappropriate. Many utility, agriculture, maritime, and other infrastructure uses come to mind.

The FAA says it is already considering 40 requests for exemptions from other commercial entities. These include requests by both UAS manufacturers and operators. Trimble Navigation, for example, is seeking an exemption to permit the commercial use of its UX5 drone for precision aerial surveys. Trimble identifies the agriculture and mining industries as potential beneficiaries of the exemption. On the other end of the spectrum is Clayco, Inc., a design and construction firm and proposed drone operator, which seeks to use small UAS for safety and monitoring of its "controlled environment" construction sites. The pending exemption requests cross various industries and proposed uses, but one thing is clear: whether it is sooner or later, drones will be a normal part of many business functions. We are closely monitoring the FAA's handling of the pending requests in order to best advise clients who may wish to use this exciting technology.

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