

Client Alert

June 4, 2014

Drones: Hollywood's Requests for Regulatory Exemptions from the FAA Could Get UAS for Commercial Use Off the Ground

By William V. O'Connor Jr., Joanna L. Simon and Sara A. Bradley

The lack of certainty regarding the use and regulation of unmanned aircraft systems (UAS) is prompting companies to seek creative ways to get their drones off the ground. This week, seven aerial photo and video production companies asked the Federal Aviation Administration (FAA) for regulatory exemptions that would permit them to use UAS in the film and television industry. Companies from other industries (including precision agriculture, power line and pipeline inspection, and oil and gas flare stack inspection) have stated intentions to file similar exemption requests. These requests represent another tool in industry's battle with the FAA over its ban on commercial use of UAS.¹

Exemptions from What? In their petitions, the aerial filming companies request exemptions from Section 333 of the FAA Modernization and Reform Act of 2012 (the "Act") and from portions of the Federal Aviation Regulations, specifically, the airworthiness certification requirements found in 14 C.F.R. § 91.203(a)(1). They also ask that the FAA grant them exemptions from regulations addressing flight rules and instructions, aircraft markings, flight altitudes, fuel requirements, maintenance inspections, commercial pilot license requirements and flight manuals.

Does the Law Allow Exemptions? Under Section 333 of the Act, the Secretary of Transportation must consider whether certain UAS can operate safely in the national airspace system before completing the rulemaking required under Section 332 of the Act. To make this determination, the Secretary decides which types of UAS will not create a hazard to existing national airspace users or the public after considering the "size, weight, speed, and operational capacity of the UAS; its proximity to airports and populated areas; and operation of the UAS within the visual line of sight of the operator."

Petitioners' requests emphasize that they will use small rotorcraft UAS weighing less than 55 pounds, operated by a licensed pilot within a secured perimeter at no more than 400 feet. Petitioners argue that approving exemptions to allow commercial operations of such small UAS in the film industry will enhance safety by reducing risk. Conventional film operations use 4000 pound jet or piston powered aircraft that operate at low altitudes only feet from the subject filmed and in close proximity to both people and structures. Alternatively, filming companies are moving toward using UAS in an entirely unregulated (and perhaps unsafe) manner and at risk of being subject to civil penalties by the FAA. Providing the exemptions would mitigate the risks associated with both of these practices.

¹ UAS operators have also begun challenging the FAA's regulatory authority over UAS. For more details, see our client alert "Drones: A Bird's-Eye View of the (Non-Privacy) Legal Landscape for UAS" available at <http://www.mofo.com/~media/Files/ClientAlert/140520Drones.pdf>.

Client Alert

What About Other Commercial Operators? Operators should eagerly await the FAA's response. This exemption presents a potential route around the FAA's current onerous requirement that commercial operators must apply for an airworthiness certificate in the experimental category. In a press release on Monday, the FAA said there could be "tangible economic benefits" if it grants the exemptions. Nonetheless, it cautioned that "all associated safety issues must be carefully considered" to make sure hazards are mitigated.

The FAA also acknowledged it has been working for several months to implement Section 333 provisions and to move forward with UAS integration before proposing a rule for small UAS. The FAA is notably behind schedule in promulgating these regulations.

What Does It Mean? Operators are anxious to use UAS for commercial purposes. This has prompted some to seek creative solutions to the problem regarding the current absence of UAS-specific regulations. To date, the FAA has taken a hardline on commercial use of UAS. If the FAA approves these exemption requests, it may be indicative of change on the part of the FAA. A commercial operator who can demonstrate that its use of UAS will be safe, secure and in the public interest, should consider joining these film companies in similar requests for regulatory exemptions.

* * *

Recognized as being among the top aviation litigation practices in the United States, we have more than three decades of complex aviation case experience. Many of our attorneys have military or civil aviation backgrounds, and know and understand the technical aspects of aviation litigation. This firsthand experience helps us devise creative and innovative approaches to extraordinarily complex matters, and deliver winning results. For more information regarding our aviation practice, [click here](#).

Contact:

William O'Connor

(858) 720-7932

woconnor@mofocom

About Morrison & Foerster:

We are Morrison & Foerster—a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We've been included on *The American Lawyer's* A-List for 10 straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofocom.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations. Prior results do not guarantee a similar outcome.