

Drones gather news legally

Operators move ahead as rules take shape

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By Henry H. Perritt, Jr.

Four thousand comments filed on the FAA's proposed rule for microdrones, one thousand petitions for section 333 exemptions, four hundred FAA grants of exemption, and the activities of some eight-thousand attendees at the AUVSI 2015 trade show in early May provide a rich source of data for understanding the likely near-term structure of the market for ENG drones.

The proposed rule would permit anyone completing an FAA-prescribed written test to fly drones weighing less than 55 pounds commercially, so long as they keep the drones within sight, and do not fly them above 500 feet above the ground. They must avoid airports, other aircraft, and people.

The comment period closed on April 24. Some 4,000 comments were filed, 30 to 40 percent of them from model aircraft enthusiasts who merely copied and pasted a form opposing any restrictions on model aircraft. The RTDNA and NAB comments applauded the NPRM's basic approach, while urging the FAA to allow operations beyond line of sight ("BLOS"), over people, at night, from moving vehicles, at low levels near airports.

While it finalizes the general rule, the FAA is using its authority under section 333 of the 2012 FAA Reauthorization and Reform Act to permit commercial drone flight. The 400 section 333 exemptions granted so far impose standard limitations in the grant and in an accompanying standard “Certificate of Authority” (“COA”). The limitations permit flight only up to 400 feet above ground level, over property “owned or controlled” by the operator. [They require notice to](#) — but not permission from — the FAA at least 24 hours but not more than 72 hours before flight.

At AUVSI, CNN showed off the compelling drone imagery it broadcast as part of its coverage of the fiftieth anniversary of the Selma march. CNN and others joined the FAA in announcing a major cooperative research effort with the FAA, called “Pathfinder,” to explore techniques for mitigating risks associated with operations beyond line of sight (BLOS). CNN will demonstrate safe operations in congested urban areas, and the use of a drone tethered to an ENG truck, drawing power from the ground. This would increase endurance from minutes to hours.

Much remains to be learned, but some basics are becoming pretty clear.

First, decisionmakers in news organizations are learning that drones can collect news legally. All a network or a station has to do is to find someone with the requisite equipment and skills that has been granted a section 333 exemption, and nearly 400 of these now exist.

Second, most television networks and stations want to partner with operators that understand television news workflow. That gives a significant advantage to section 333 exemption holders who have experience in photojournalism.

Third, the insurance industry is beginning to wrap itself around the microdrone phenomenon. Large aviation insurers and insurance brokers promoted their drone coverage at booths at AUVSI 2015.

Fourth, some of the early entrants to the journalism market have demonstrated the feasibility of using Dejero, LiveU and competing cellular bonding products to broadcast drone imagery live. Photojournalist Colin Hinkle’s recent live broadcast through Chicago’s ABC Channel 7 used a Dejero to feed live imagery to the station, which became part of reporter Paul Meincke’s package on a new recreational trail.

Fifth, the limitations imposed in the section 333 exemptions are not blocking news operations, although realization of the potential would be greater if they were eliminated or modified. A labor market is developing in which individuals already possessing pilots’ licenses are willing to work as pilots in command (PICs) for holders of section 333 exemptions, eliminating the fear that a drone operator must obtain his own pilot’s license if

he does not already have one.

Concern over the limitation that drone flight occur only over property owned or controlled by the operator is yielding to an appreciation by lawyers practicing in the field that traditional property law provides a wide array of tools to transfer control or small slices of partial ownership within the context of a business deal. While not involving drone flights, the slicing and dicing of copyright interests in the entertainment field provide obvious examples.

The 24 hour notice requirement, on the other hand, is more inhibiting. It means that ENG drone cannot be useful to cover breaking news, but only for B-roll or imagery to be incorporated into preplanned packages.

The first movers taking advantage of the new regulatory flexibility are showing an interest in ENG. Most of them are small operators specializing in drones. Many of them have connections to the news industry because they work as staff photographers or freelancers using ground-based cameras. ArrowData in Las Vegas, has launched an "AeroJournalism" project, through which it will collect HD video for television stations, networks, and print media under its section 333 exemption while it trains their journalists to fly ENG drones for themselves and assists customers in obtaining exemptions. Ron Futrell, a photojournalist with 30 years' experience is ArrowData's Director of Sales and Marketing. He envisions a nationwide community of "aerojournalists," who will combine the traditional journalism skills with mastery of the new drone technology.

The attitude of established news helicopter operators toward this new market is yet to be revealed. Neither they nor major TV stations or networks have filed for section 333 exemptions, unless they have done it under other names.

Congress is pressing the FAA to speed up. Cory Booker, (D-NJ) and John Hoeven's (R-ND) have proposed a "Commercial UAS Modernization Act" The bill, intended to fill the gap until the FAA finalizes its sUAS rule, would allow issue drone operators to obtain training and type certification through the FAA's sUAS the test sites. The fact that the bill has not yet been introduced may be a signal that it's intended more as a source of leverage over the FAA than meant to become law. Alternatively, it may be a marker for a section of new FAA reauthorization legislation, needed before 1 October 2015, when the current 2012 authorization expires.

The FAA may change the criteria used to review section 333 applications and the limitations it imposes on the exemptions granted. As data becomes available from the CNN Pathfinder project, and as section 333 exemption holders demonstrate safe operations, the owned-or-controlled property requirement, and the 24 hour notice requirement are prime candidates for modification. The line of sight restrictions and daytime only restrictions may take longer, despite the compelling argument that night line-of-sight operations may be safer than daytime operations because it is easier to determine a lighted drone's orientation and

position in the dark than it is in bright sunshine.

Regardless of further regulatory action, the door is now open to explore the potential of this revolutionary newsgathering technology. And it can be done in a real-world commercial environment where drones actually cover the news.

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