



COMMERCIAL USE OF DRONES SUBJECT TO SHIFTING POLICIES

Mar 30, 2016 | Chris Cotter

FAA issues interim policy for commercial drones that weigh less than 55 pounds

Businesses that operate, or plan to operate, a drone for a commercial purpose must receive a specific grant of permission from the Federal Aviation Administration (FAA). That grant of permission, known as a “Section 333 Exemption,” allows a business to operate a drone in national airspace without meeting all of the regulatory and statutory requirements for manned aircraft, such as airworthiness certifications and certificates of authorization. To date, over 3,400 Section 333 petitions have been granted and the FAA is currently reviewing thousands more. Given the volume in recent petitions for exemption under Section 333, it takes about 8-10 weeks for petitions to appear on the public docket, and about 120 days for the FAA to review petitions.

The FAA recently signaled a useful change to the Section 333 petition process. The agency is giving blanket permission to operate any of the small commercial drones, also known as unmanned aircraft vehicles (UAVs), which have already been approved by the FAA. To date, there are more than 1,100 makes and models on the current list of approved drones, which can be found at www.regulations.gov under docket number FAA-2007-3330. Each month, the FAA will update the list with new UAVs that are eligible for commercial use.

However, there is a lack of clarity as to whether the new approach is retroactive for petitioners who have already obtained exemptions and for those who have applications pending. Here is what we recommend:

Businesses That Already Have An Exemption: All signals point to the new FAA approach not being retroactive, which means an amendment must be filed to receive permission to operate a UAV on the approved list. Petitioners with exemptions may not rely on the FAA’s list of pre-approved drones.

Businesses That Have An Application Pending: For those businesses that have a petition currently pending that contains a UAV on the approved list, they will not be required to file an amendment. The blanket authorization will apply by default.

Businesses That Have Not Yet Applied For An Application: These businesses should determine whether or not the UAV planned for commercial use is on the pre-approved list. If the UAV is on the FAA’s list, the petition process is much simpler, as the business need only indicate that it plans to commercially operate a pre-approved UAV, and does not need to attach manufacturer materials as appendices to the application. If the UAV is not on the list, the same petition process will be required as before the shift in FAA policy.

For now, this is where the regulations stand for small UAVs used for commercial purposes. Legislation has been submitted in both the U.S. Senate and House that could have a serious impact on commercial operations of UAVs. Given the significant differences between the two versions, it is unclear what laws will ultimately emerge. With FAA funding set to expire March 31, it seems unlikely that the House and Senate will reach final legislation before the deadline, increasing the chances that there will be another short-term extension of the current Section 333 Exemption process.

For additional information, please contact either of the listed Roetzel attorneys.

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