

## **Unmanned Aircraft Systems (UAS) Update** **October 2014**

### Legal Landscape for UAS

The FAA Modernization and Reform Act of 2012 (the “Act”) required the FAA to provide for the safe integration of UAS in the national airspace by no later than September 30, 2015. The FAA has cited the Act in support of its declaration that any commercial use of UAS in the United States is prohibited without FAA authorization. Under the Act the FAA was supposed to issue a rulemaking with respect to small UAS (under 55 pounds) by August 2014, with a rulemaking for all other UAS thereafter, however nothing has been issued yet. The FAA is hoping to issue a notice of proposed rulemaking for small UAS by mid-December.

In the meantime, Section 333 of the Act provides an interim policy until the UAS rule is finalized. Section 333 allows the Secretary of Transportation to determine whether airworthiness certification is required for a UAS to operate in U.S. airspace. The Secretary can determine:

- If certain UAS, if any, as a result of their size, weight, speed, operational capability, proximity to airports and populated areas, and operation within visual line of sight do not create a hazard to users of the national airspace system or the public or pose a threat to national security; and
- Whether a certificate of waiver, certificate of authorization, or airworthiness certification is required for the operation of UAS.

Six aerial photography and video companies in the film industry were recently granted regulatory exemptions under Section 333. The exemptions were granted based on a determination by the Secretary that the proposed operations did not pose a threat to users of national airspace or national security. The exemptions also waived or modified other Federal Aviation Administration regulations that were otherwise applicable to the specific operations described in each exemption.

UAS are already being used overseas in numerous industries, including agriculture, utilities, construction and real estate. US companies interested in using UAS should consider applying for a Section 333 permit because an FAA rule on small UAS will not be in place before the end of 2015. Each Section 333 application must be specific to the company seeking approval, the UAS being used, and the operations being performed. Eckert Seamans has experienced aviation professionals who can assist companies with the application and FAA approval process.

## UAS State Legislation

Currently, twenty states have UAS laws on their books. These states are: Maryland, Virginia, North Carolina, Tennessee, Florida, Ohio, Indiana, Illinois, Wisconsin, Iowa, Louisiana, Texas, North Dakota, Montana, Idaho, Utah, Nevada, Oregon, Hawaii and Alaska. Issues addressed in these laws include defining what a UAS is, how UAS can be used by law enforcement and other governmental arms, how the public can use UAS, regulations for their use in hunting and the FAA UAS test sites. Some municipalities, including Evanston (Illinois), Syracuse (New York), and Charlottesville (Virginia) have banned the use of UAS.

Below are examples of some of the laws that have been passed or are under consideration in various states:

- **New Jersey:** Recently, a New Jersey State Assembly committee advanced a bill which would criminalize installing firearms, or any weapons intended to harm, incapacitate or negatively impact a human being on UAS. Installing such a device would be a fourth degree crime and could mean a fine up to \$10,000 and 18 months imprisonment.
- **North Carolina:** North Carolina's laws on UAS set up a structure for state licensing of UAS operators. The laws also authorize different types of infrared and thermal imaging technology for specific commercial and private purposes including the evaluation of crops, mapping, scientific research and forest management. The laws also curtail the ability of people and entities from conducting surveillance of people, their homes and private property. In addition it is a crime to use UAS to:
  - unlawfully distribute images obtained with a UAS,
  - interfere with manned aircraft,
  - unlawfully fish or to hunt, or harass hunters or fisherman with UAS,
  - operate a UAS commercially without a license, and
  - use an UAS that has a weapon attached.
- **Virginia:** In 2013, Virginia was the first to enact laws relating to UAS. Under the laws, local law enforcement and state agencies that oversee criminal law and enforcement of regulatory violations cannot use UAS until July 1, 2015. Exceptions to the ban include:
  - enabling officials to deploy UAS for Amber Alerts,
  - enabling officials to deploy UAS for Blue Alerts and use by the National Guard,
  - enabling higher education institutions to use UAS, and
  - use of UAS in search and rescue operations.

### Testing of UAS for Air Deliveries

DHL has started delivering medications and other urgently needed goods via UAS to the small island of Juist in Germany as part of its research project. The project was approved by the German Ministry of Transport and the parcelcopter is making these deliveries. DHL has partnered with the island pharmacy and residents of the island will soon be able to place orders. The deliveries are focused on times when other forms of transportation, such as ferries and flights, are not available.

Google has also started testing UAS for air deliveries. Google conducted several delivery tests to farmers outside of Brisbane, Australia. In the U.S., Amazon is also seeking to test its UAS, but is awaiting FAA approval of a Section 333 permit the company has pending.