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FAA Relaxes Commercial Use Exemptions

You might be able to benefit from a recent change to FAA policy. Ever since the FAA began issuing commercial use exemptions in February, 2015 pursuant to Section 333 of the FAA Modernization and Reform Act, the agency has included very particular requirements regarding the kind of aircraft to be used and the required distance from “nonparticipating” individuals. This language has changed to allow a broader scope of operations.

Aircraft

Until now, the FAA has restricted its authorization to the make and model of aircraft specifically requested by the user. For example, if you requested permission to fly a DJI Phantom 3, you could not fly a 3DR Solo without first amending your petition. Recent approvals, however, have contained the following language:

The petitioner proposed to use UAS that have previously been approved by the Secretary of Transportation under Section 333 of the FAA Modernization and Reform Act of 2012. UAS that have been previously approved by the Secretary, including the aircraft proposed by the petitioner, are found on the List of Approved Unmanned Aerial Systems (UAS) under Section 333. The list, which is updated monthly, is posted at www.regulations.gov under docket number FAA–2007–3330. The petitioner is also authorized to operate any UAS on that list, when weighing less than 55 pounds including payload while this exemption is valid.

There are currently approximately 1200 aircraft on the list, which is updated monthly and can be accessed via [this link](#).

Distance from “Nonparticipants”

Old Provision

Until now, the FAA required all operations to be at least 500 feet from all nonparticipating persons, vessels, vehicles, and structures

unless barriers or structures protected nonparticipating individuals and the owner of any vessels, vehicles or structures has granted permission for operating closer to those objects.

If the operator was engaging in closed set cinematography, he could conduct operations closer than 500 feet from participating persons “consenting to be involved and necessary for the filming production,” if he had a motion picture and television operations manual and submitted a written Plan of Activities three days prior to operations.

New Provision

Current exemptions allow more leeway in operations near crowds. The FAA is now including the following language:

All flight operations must be conducted at least 500 feet from all persons, vessels, vehicles, and structures unless when operating:

(a) Over or near people directly participating in the operation of the UAS. People directly participating in the operation of the UAS include the PIC, VO, and other consenting personnel that are directly participating in the safe operation of the UA.

(b) Near but not over people directly participating in the intended purpose of the UAS operation. People directly participating in the intended purpose of the UAS must be briefed on the potential risks and acknowledge and consent to those risks. Operators must notify the local Flight Standards District Office (FSDO) with a plan of activities at least 72 hours prior to flight operations.

(c) Near nonparticipating persons. Except as provided in subsections (a) and (b) of this section, a UA may only be operated closer than 500 feet to a person when barriers or structures are present that sufficiently protect that person from the UA and/or debris or hazardous materials such as fuel or chemicals in the event of an accident. Under these conditions, the operator must ensure that the person remains under such protection for the duration of the operation. If a situation arises where the person leaves such protection and is

within 500 feet of the UA, flight operations must cease immediately in a manner that does not cause undue hazard to persons.

(d) Near vessels, vehicles and structures. Prior to conducting operations the operator must obtain permission from a person with the legal authority over any vessels, vehicles, or structures that will be within 500 feet of the UA during operations. The PIC must make a safety assessment of the risk of operating closer to those objects and determined that it does not present an undue hazard.

(e) For operations conducted closer than 500 feet to people directly participating in the intended purpose of the operation, not protected by barriers, the following additional conditions and limitations apply. [This is followed by 10 items, including a plan of activities.]

How This Impacts You

If you currently hold a 333 exemption and want to benefit from the changes described above, you may file a request for amendment with the FAA yourself or through counsel.

According to an FAA representative, if you have already filed a 333 petition, received a docket number and are awaiting approval, your approval will contain the new provisions regarding distance from “nonparticipants.” It will not include the expanded aircraft authorization. If you want this expanded authorization, it is recommended that you wait until your petition is approved and then submit an amendment yourself or through counsel. It is not recommended that you submit an amendment while your petition is pending as that might slow the overall approval.

If you submitted your petition within the past four weeks and have received a tracking number, but not a docket number, it might be worth filing an amendment as soon as you receive your docket number. The risk of slowing the approval process is minimal since you will already be toward the back of the line.

If you are not a 333 holder, but a business or individual that contracts with 333 operators, you need to be aware of these

changes. They allow additional opportunities but also pose an additional challenge in the due diligence process. You will have to ensure that your contractors are operating within the correct limits set by whatever approval version they currently hold.

These changes are an encouraging sign. They suggest that the final rulemaking will be more liberal in permitting flights near crowds than has been allowed during the past year under the old 333 exemptions.

If you have any questions or would like to pursue an amendment, please feel free to contact [James Mackler](#) in Frost Brown Todd's [Regulated Business](#) practice group.

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