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The Developing Law of Drones – Marketing's New Frontier

ANA Webinar

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Agenda

- Overview of Drones
- FAA Regulatory Framework

What Are Drones?

- Unmanned aircraft systems (UAS)
- UAS' come in wide varieties of sizes, shapes and functions, which are controlled either by remote or control systems from the ground.
- Examples:
  - US government unmanned aircrafts
  - A remote controlled helicopter

Why Are Drones Suddenly in The Forefront?

- *Huerta v. Pirker*?
- Technology
- Reduced price
- Access

Pros and Cons of Drones

Pros

- Cheaper
- Safer
- More practical

Cons

- Safety?

Current Commercial Drone Use

- ✓Film and television production
- ✓Real estate
- ✓Inspections
- ✓Agriculture
- ✓Location based advertising
- ✓Delivery services

(Not all are currently authorized)

Possibilities are endless!

Legal and Business Issues

- FAA
- Freedom of speech
- Intellectual property
- Privacy
- Land use
- Insurance
- Export controls

Drones are Aircraft

- Aircraft means a device that is used or intended to be used for flight in the air (14 C.F.R. 1.1)
- Drones under Federal Aviation Administration regulation

Model/Recreational Drones are Less Regulated

- Operations below 400 feet
- Maintain visual line of sight (VLOS)
- Clear of people and stadiums
- < 55 pounds
- 5 miles from airport (unless you notify airport)
- No careless or reckless operation
  - Can still be fined by FAA

Requirements for Commercial Operation

- FAA case by case review
- Section 333 of FAA Modernization and Reform Act of 2012
  - Permits FAA to authorize operation of UAS within NAS if they are safe.
  - FAA may make Equivalent Level of Safety (ELOS) Findings
  - FAA may issue Authorizations and waivers of regulations
- FAA may not waive requirement for a pilot certificate

Four Areas of Inquiry

- The UAS – Certification Requirements
- The pilot in command
- The UAS operating parameters
- Public interest

UAS Certification

- FAR Part 21 requires airworthiness certificate for aircraft
  - Complexity of airworthiness process would take years of testing to accomplish
- FAA routinely waives requirement for airworthiness certificate
  - UAS are smaller
  - UAS are limited in operations to low altitudes
  - UAS have technology to mitigate lost link events
- FAA routinely waives maintenance requirements
  - Preflight checks
  - On condition repairs

UAS Pilot in Command

- FAA does not have authority to waive pilot certificate requirement
  - FAA will waive need for a commercial certificate
  - FAA will waive requirement for 2nd Class medical
- FAA imposes experience and proficiency requirements
  - Certain number of hours UAS experience
  - Certain hours in type
  - Recency of experience
  - Completion of qualification requirements

UAS Operating Parameters

- Altitude limitations
- VLOS limitations
- Limits on proximity to pedestrians
- Limits on operating speeds
- Requirements for Visual Observers
- Preflight inspections of UAS
- Daylight only operations
- Cloud clearance requirements
- Certificate of Waiver from ATC

Public Interest

- Usually no difficulty finding public interest
  - UAS usually safer than manned aircraft operations
  - Offers efficiency and flexibility
  - Limited risks when operated properly

sUAS Notice of Proposed Rulemaking

- New FAR (14 C.F.R) § 107
  - Specifically oriented to UAS
  - Applies to non-recreational uses
  - UAS < 55 lbs.
- No further need for Section 333 exemptions

Operational Limitations

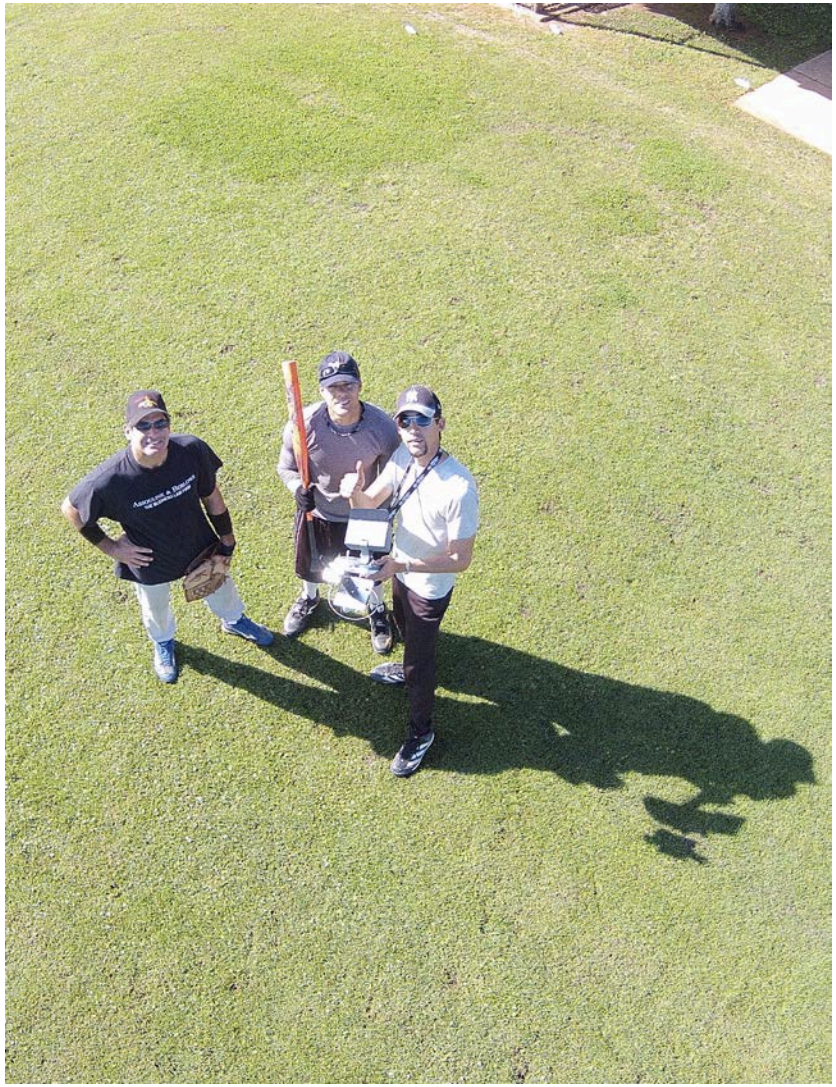
- Visual Line of Sight
- Daylight only
- Environment/airspace/personnel
- Altitude limits
- Operator certification/requirements
- Aircraft certification/requirements

Visual Line of Sight

- Aircraft must be in sight of the operator at all times
  - Cloud separation requirements
- Operator must be able to see with unenhanced vision
  - May still use binoculars
  - Still must be able to see without

Visual Observers

- May use Visual Observer (VO)
- Extra set of eyes
- Operator must still be able to see at all times
- May not use observers to extend VLOS
- “Effective communication” with Operator
  - Radios okay

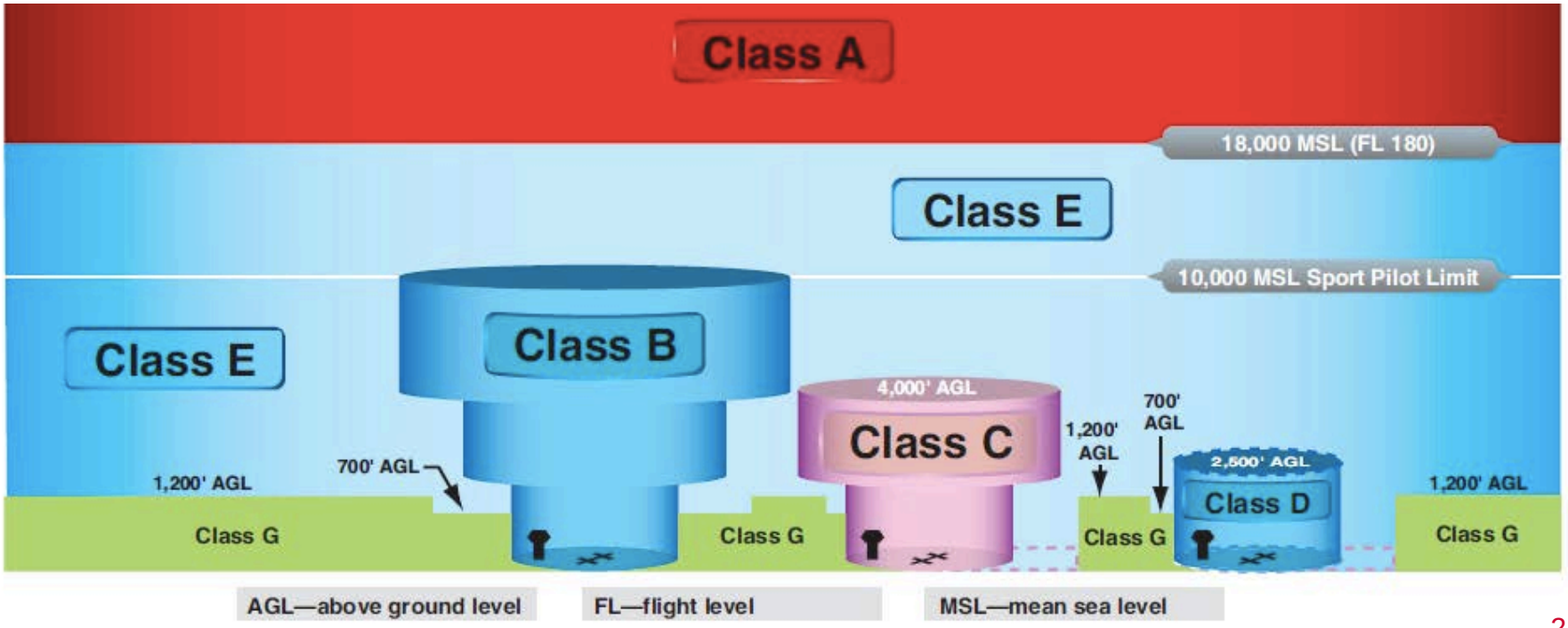


Ground Safety

- Operator must assess the operating environment
  - Evaluate risks to ground personnel and property
- Operator must conduct safety briefing with ground personnel
- May not operate sUAS over persons who are not involved in the operation.
  - Exception for persons under covered structure
- Must limit access to operating area

Collision Avoidance

- See and Avoid (VLOS)
- Limited to class G airspace
- 500 ft. AGL ceiling
- 100 mph
- Must give way to all other aircraft



Operator Certification

- Operator must obtain FAA unmanned aircraft certificate
- sUAS rating
- 17 years old
- Knowledge test
- English proficiency
- Vetted by TSA
- No medical required

Operator Responsibility/Liability

- Operator is “final authority” (legally liable) as to safety.
- Operator assures no undue hazard if loss of control link
- Operator subject to penalties and fines for violations

Airworthiness Certification

- No FAA certificate of airworthiness
- No required inspections by authorized inspectors
- Must perform prefilght inspection
  - Examine all components
  - Check batteries
  - Must test control link

Checklist for Using Drones for Commercial Purposes

- ✓Apply for Section 333 Exemption
- ✓Consider other legal issues that might impact activities
  - Insurance
  - Export controls
  - Privacy
  - Intellectual property

Reference Materials

Visit www.reedsmith.com/blogs and subscribe to one or more of Reed Smith's 20 legal blogs, including:

Global Regulatory Enforcement Law Blog
GlobalRegulatoryEnforcementLawBlog.com

Adlaw by Request
AdLawByRequest.com

Legal Bytes
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Also, look out for our Drone White Paper, coming April 2015!

QUESTIONS?

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