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2322 Rayburn HOB

**Analysis of the US and Canadian  
Unmanned Aircraft Systems  
Regulatory Environment**

Presented by Greg Cirillo, HCH Legal:

1. Legally speaking, US law and policy on UAS operation reached a turning point with the passage of the FAA Modernization and Reform Act of 2012. With the 2012 Act, we have three important eras: **Pre-Reform Era, Interim Era, and Post Reform Era**. Culturally, the turning point was December 2013 when Amazon announced Amazon Prime Air.
2. The Pre-Reform Era (pre-2012 Act):
  - a. Civilian use of UAS was only recognized under the Model Aircraft Operating Standards of 1981 (a one-page, FAA Memoranda AC -91-57).
    - i. Deferred to the operator's good judgment.
    - ii. 400 foot ceiling.
    - iii. No distinction made re commercial or noncommercial, but later interpreted as applying only to noncommercial uses.
    - iv. Model Aircraft memo was clarified in a 2007 policy statement 72 Fed. Reg 6689 (Feb. 13, 2007).



- b. Otherwise, a UAS is treated as an aircraft and subject to all requirements as to airworthiness and operations.
- c. The Public Aircraft / COA Process.
  - i. FAA has jurisdiction over airspace and aircraft airworthiness.
  - ii. FAA has limited jurisdiction over the airworthiness of aircraft operated by state and federal government instrumentalities (aka “public aircraft”). 14 CRF 1.1. These instrumentalities “self-certify” their equipment and operators. The FAA retains jurisdiction over the airspace used by public aircraft.
  - iii. This separates the military from FAA airworthiness oversight. It also applies to aircraft operated by state instrumentalities, which includes state-chartered universities.
  - iv. For many years, UAS research and development was (and continues to be) done by state universities using the public aircraft exemption. A large portion of current UAS capability today (aeronautics, command and communications) is attributable to the work of state universities, often working with support from public and private interests.
  - v. The FAA remains very involved with public aircraft in its capacity as regulator of US airspace. Certificates of Waiver or Authorization (“COAs”) grant very specific permission for UAS operations based on time, place and equipment.
  - vi. In 2012-14 it became apparent that COAs and public aircraft were starting to engage in quasi-commercial activities, leading the FAA to restrict COA issuances.
  - vii. The replacement of the public aircraft COA structure with other paths to R&D activities needs to be examined because in that process, public-private partnerships have been lost.



3. Interim Era (present).

- a. The 2012 Act instructed the FAA “establish requirement for safe operation of [certain UAS] in the national airspace system.” The FAA was to “provide for the safe integration of civil unmanned aircraft systems into the national airspace system as soon as practicable, but not later than September 30, 2015.” (2012 Act, Sec. 332(a)(3)). Final rules are not likely to be forthcoming until 2016. An interim fix was needed.
- b. The interim fix: Section 333 (permitting interim FAA approvals) exemptions opened the door to commercial uses. Filings became fairly routine, and exemptions (with related COAs) are issued in 60-90 days.
  - i. Recently the FAA established a “blanket COA” allowing any Section 333 exemption holder to operate small UAS under 200 feet during daytime, visual flight rules, within visual line-of-sight of the operator (and subject to airspace restrictions).  
<https://www.faa.gov/news/updates/?newsId=82245>
  - ii. A parallel blanket COA was granted to the FAA test site operators.  
[http://www.faa.gov/news/updates/?newsId=82947&omniRss=news\\_updatesAoc&cid=101\\_N\\_U](http://www.faa.gov/news/updates/?newsId=82947&omniRss=news_updatesAoc&cid=101_N_U)
- c. Experimental and restricted airworthiness certificates are available for R&D uses (noncommercial).
- d. **The Test Sites. The 2012 Act (and the National Defense Authorization Act of 2012) called for test sites. Six awards (among 25 applicants) were granted May 5, 2014. The first operational site was North Dakota.**
  - i. **Test sites were to provide or procure their own funding (none was appropriated by Congress).**



