

LEGAL UPDATES

PUBLISHED: JULY 22, 2014

Industry
Transportation

Public Comment Period to Close Soon on FAA's Interpretation of Model Aircraft/Unmanned Aircraft Systems

On June 18, 2014, the Federal Aviation Administration (FAA) issued a Notice of Interpretation (Notice) regarding the special rule that exempts regulation of model aircraft under the FAA Modernization and Reform Act of 2012 (the Act). **The period for public comment on the FAA's Notice ends this Friday, July 25.**

In view of businesses' increasing interest in using unmanned aircraft systems (UAS) to support their operations and Congress' mandate under the Act that the Department of Transportation accelerate the integration of commercial UAS into the national airspace system (NAS), the Notice provides additional guidance interpreting the special rule regarding model aircraft/UAS.

Perhaps most controversial, and of greatest import to businesses, the Notice interprets the "hobby or recreational purpose" requirement under Section 336(b) of the Act to exclude commercial operations and flights in furtherance of, or incidental to, business. The Notice provides the following examples of flights that would be considered hobby or recreation and those that would not:

Hobby or Recreation	Not Hobby or Recreation
Flying a model aircraft at the local model aircraft club.	Receiving money for demonstrating aerobatics with a model aircraft.
Taking photographs with a model aircraft for personal use.	<p>A realtor using a model aircraft to photograph a property that he is trying to sell and using the photos in the property’s real estate listing.</p> <p>A person photographing a property or event and selling the photos to someone else.</p>
Using a model aircraft to move a box from point to point without any kind of compensation.	Delivering packages to people for a fee.*
Viewing a field to determine whether crops need water when they are grown for personal enjoyment.	Determining whether crops need to be watered that are grown as part of commercial farming operation.

*If an individual offers free shipping in association with a purchase or other offer, FAA would construe the shipping to be in furtherance of a business purpose, and thus, the operation would not fall within the statutory requirement of recreation or hobby purpose.

In the Notice, the FAA also reiterates its enforcement authority by pointing to, among other regulations, the provision under Section 336(b) which states that the FAA may pursue enforcement action against operators of model aircraft that endanger the safety of the NAS.

What This Means to You

Despite Congress' directive under the Act that the integration of commercial UAS to the NAS be accelerated, such use continues to be restricted. While a few businesses have sought and received the FAA's permission to operate UAS through Certificates of Waiver or Authorization (COA) and a number of petitions for exemption under Section 333 of the Act are pending before the FAA, the

HUSCH BLACKWELL

Notice reiterates and reinforces the FAA's current no-fly policy. Most comments to the Notice submitted thus far have opposed the FAA's interpretation of the "hobby or recreational purpose" requirement under Section 336(b) to exclude commercial operations and flights in furtherance of, or incidental to, business when such operations can be shown to pose no risk to the safety of the NAS or persons or property on the ground.

The public comment period for the FAA's Notice ends this Friday, July 25.

Contact Us

For more information, please contact Tom Gemmell, David Agee or Joe Orlet in Husch Blackwell's UAS group.