



Legal Alert



BOUSQUET HOLSTEIN PLLC

Unmanned Aircraft Systems (UAS)/Unmanned Aerial Vehicles (UAV) Practice Group

Unmanned Aerial Vehicles (Drones): New York State's New Major Capital Investment

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The drone industry has proliferated recently and is expected to see continued exponential growth in the next several years. Experts estimate that close to 1 million drone units, also known as small, unmanned aerial vehicles (or UAVs for short), were purchased during the 2015 holiday season alone. This expansion has led to creative, expanded use of UAVs beyond military and recreational purposes and a focus towards commercial applications to bring significant value to businesses. Several of the more prominent applications include:

- Precision agricultural uses;
- Construction and development;
- News, media and telecommunications;
- Insurance estimates and appraisals;
- Real estate evaluations and inspections;
- Aerial video and photography;
- Search and rescue; and
- Law enforcement and emergency services.

Recognizing the exponential growth within this new, emerging technology and market, Bousquet Holstein has formed a new UAS/UAV practice group to address future challenges and help individuals and businesses navigate the developing legal landscape.

Local Impact

Geographically, the Central New York region is strategically positioned to lead the effort in creating a viable environment for full commercial use of UAVs. Both private companies and government agencies in this region are in the early stages of working to establish a research and development center for unmanned aerial and ground systems, with a specific emphasis on the commercial use of such vehicles. In addition, the FAA has designated the Central New York region as one of six UAV testing sites in the country, with Griffiss Air Force Base in Rome, New York as the designated test site.

The region also holds tremendous potential for capital investment in the industry. In December 2015, Governor Cuomo announced that the Central New York region was selected as a winner of \$500 million in economic development resources through the Upstate Revitalization Initiative and the Regional Economic Development Counsel competition. Under the proposal, approximately \$250 million would be allocated to provide support to develop the UAV industry in the region.



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Regulatory Landscape

Technology and development, however, have clearly outpaced government regulation in the industry. Despite a slow start, the FAA, in an attempt to keep up with the expansion of this industry, has applied a process to help govern both personal and commercial use of UAVs. More detailed, UAV-specific federal regulations are expected to be released by the FAA in late 2016 or early 2017. Some states have also taken their own measures and enacted legislation affecting commercial UAV use and New York is working on its own rules for this industry. Many state regulations closely follow the FAA's pending regulations, however, there are some cases where state rules differ significantly which could lead to future issues involving enforcement.

Commercial Use

For commercial users, the FAA regulations treat all UAVs as commercial aircraft. By law, any aircraft operating in national airspace requires the aircraft to be certified airworthy, registered, have a licensed pilot, and receive operational approval. As a short-term fix to address UAVs specifically, Congress enacted Section 333 of the FAA Modernization and Reform Act of 2012. Section 333 allows the agency to grant specific exemptions from FAA regulations for commercial UAVs. A "Section 333 Exemption" is determined on a case-by-case basis and provides commercial UAV operators with a way to enter the National Airspace System (NAS) under specific UAV rules. Over 5,100 petitions for Section 333 Exemptions have already been granted to date and applications are continually submitted at a very high rate.

Obtaining a Section 333 Exemption requires a special application process explaining the specific use and purpose of the UAV. The FAA then evaluates the application for specific commercial purposes and, if approved, sets conditions and limitations on the applicable use of UAVs with what is called a Certificate of Authority (COA). Many common COA restrictions are:

- UAVs, plus payload, must weigh 55 pounds or less;
- UAVs may not operate at a speed over 87 knots (100 MPH);
- Blanket restrictions set maximum altitudes at 400 feet (unless otherwise authorized above this limit);
- UAVs must be operated by a certified pilot; and
- UAVs must be operated within the visual line of sight of the pilot at all times, and during daylight hours.

In addition, there are a number of other common restrictions prohibiting use within certain proximities of airports, structures, vehicles, people, etc.

As previously mentioned, the Section 333 Exemption process is only a temporary solution created by the FAA for commercial operators. The FAA may finalize new rules and regulations within the next year specifically focused on UAV commercial use by implementing Part 107 to the FAA Modernization and Reform Act of 2012 (FMRA). However, the actual date when these new rules will become applicable still remains unknown. Until these new rules are fully implemented, Section 333 Exemptions remain necessary for commercial use of UAVs in all cases in the United States. The purpose of the new regulations will be to set a separate set of specific rules to govern the safe use and operation of UAVs in conjunction with the current FAA regulations.

The details of applying and obtaining an exemption and navigation of FAA rules and regulations can be complex. Further, businesses and individuals should evaluate and analyze additional risks involving liability, issues of privacy, trespass and other potential torts, as well as how to insure against these risks.



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Personal Use

For hobbyists and recreational users, the FAA still requires compliance to specific rules regarding altitude, location, proximity to specific landmarks and airports, and registration of UAV units. All current UAV owners operating units weighing between 1/2 and 55 pounds were required to register as users on a national registry by February 21, 2016. New recreational users must register under the same circumstances. The registry bears a minimal registration fee of \$5 and only one registration is required per user. The user must mark all UAVs he or she operates with his or her registration number.

Several general FAA safety guidelines for hobbyists include:

- Flying under a 400-foot ceiling and remaining clear of surrounding obstacles;
- Keeping the UAV within a visual line of sight;
- Remaining clear of and not interfering with any manned aircraft operations;
- Flying outside of a 5-mile radius of any airport unless prior contact with the control tower is made;
- Prohibiting flights over crowds of people, stadiums, and other public areas;
- Flying aircraft only weighing 55 lbs. or less; and
- Avoiding being careless or reckless with a UAV which could lead to significant fines.

The Bousquet Holstein UAS/UAV Practice Group

Over the next several years, **UAS/UAV** (*more commonly known as "drone"*) technology will play a significant role in the growth and evolution of commerce in our region, as well as nationally, and globally. Bousquet Holstein's UAS/UAV practice group was formed to work alongside our clients to help them successfully navigate the legal and regulatory environment while seeking out opportunities for commercial use of unmanned aircraft systems and UAVs. Our UAS/UAV practice group will support our clients with FAA registration, compliance, contract negotiation, and risk assessment relating to the commercial use of UAVs.

The **Upstate Revitalization Initiative (URI)** funding will soon become available to applicants seeking to start or grow businesses in the UAS industry. However, state and local incentives received by private sector businesses can have unanticipated tax consequences that should be carefully considered early in the application process. For applicants seeking URI funding and other incentives, the business and tax attorneys in this practice group will be available to assist with tax planning, entity structuring and capitalization, and ongoing operations tailored to the unique aspects of the UAS/UAV industry.

If you would like to discuss the exciting and fast-paced UAS industry, and better understand how the commercial use of UAVs may create opportunities for your business – or even if you own a personal UAV and want to learn about your registration requirements – please do not hesitate to contact one of our UAS/UAV practice group members. Their information is below and on our web site at www.bhlawpllc.com

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