Federal Aviation Administration

Memorandum

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Subject: Media Use of UAS

This memorandum addresses three issues concerning the use of unmanned aircraft for newsgathering: (1) whether members of the media may use unmanned aircraft systems (UAS) for newsgathering; (2) whether the media may use pictures, video, or other information collected by a person using UAS; and (3) whether a person who sells images collected by UAS would need authorization for his or her operations.

I. Use of UAS by the News Media

Commercial media may use a UAS for newsgathering if the FAA authorizes the flights. Until the FAA issues specific regulations for UAS operations in the national airspace system, all unmanned aircraft operations must be authorized by the FAA unless they can be conducted as model aircraft operations under the Special Rule for Model Aircraft of section 336 of the FAA Modernization and Reform Act of 2012. Because the use of an unmanned aircraft by a media entity to gather news would be in furtherance of that entity's business, the operations would fail the "hobby or recreation" test of section 336(a). Accordingly, UAS operations by a media entity for newsgathering purposes could not be conducted as model aircraft and would need to be authorized by the FAA.

A corollary to this question is whether a media entity using a UAS to conduct research and development at a FAA test site or other location could use images obtained during such operations research operations in its news reports. The use of such images in news reports would be permissible provided the flight is authorized and is conducted in accordance with the terms of that authorization and any conditions or limitations of the aircraft's certificate of airworthiness (assuming one has been issued to the aircraft). We also would caution that the use of a UAS to collect the images must be part of the research and development activity.

II. News Gathering by a Person Using a UAS

The news media also may use pictures, video, or other information obtained from a UAS operated by a person not affiliated with that media outlet. The FAA does not regulate whether a third party not involved in the operation of an aircraft – manned or unmanned – can receive pictures, videos, or other information that was gathered using that aircraft, or how that third party can use those pictures, videos, or other information. The focus of the FAA's oversight instead will be on the operator and operation of an aircraft: whether the operation of the UAS to collect the pictures, videos, or other information has been authorized by the FAA (unless the UAS is operated as a model aircraft under section 336); and whether the operation was conducted in accordance with the terms of the authorization. A media entity that does not have operational control of the UAS and is otherwise not involved in its operation falls outside of the FAA's oversight.[1] Whether the media entity pays for or obtains the pictures, videos, or other information for free would not affect this analysis.

A person who wishes to operate a UAS to take pictures or videos or gather other information that then would be sold to media outlets would need an FAA authorization for the operation, just as any other unmanned aircraft operation that does not fall within the section 336 carve-out for model aircraft would require an FAA authorization. Consistent with the discussion above, the use of an unmanned aircraft by a person media entity to take pictures or videos or gather other information for resale would be in furtherance of that person's business. Therefore, the operations would fail the "hobby or recreation" test of section 336(a) and would need to be authorized by the FAA.

III. News Gathering by an Individual Using a Model Aircraft

Whether an individual taking pictures or videos or gathering other information using a model aircraft under the section 336 carve-out could later sell those pictures, videos, or other information would depend on the person's original intentions in conducting the operation. If the individual's takes the pictures or videos or gathers other information as part of a hobby or recreational activity, then a later decision to sell some or all of those pictures, videos, or other information would not change the character of the operation as part of a hobby or recreational activity that falls within the section 336 carve-out for model aircraft. No FAA authorization for that operation would be required.

However, if the individual is conducting the operation with the primary intention of obtaining pictures, videos, or other information to sell, then the operation is commercial in nature and not part of a hobby or recreational activity. As noted above, such operations currently would require an authorization from the FAA. Evidence that may indicate an individual's true intentions in conducting an operation may include the frequency with which pictures, videos, or other information collected using an unmanned aircraft is later resold. Operations that frequently result in pictures, videos, or other information that is sold to a third party may indicate that the operation is in fact commercial in nature notwithstanding the individual's claim of a hobby or recreational purpose. The FAA would have to consider each case on its own merits.

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[1] "Operational control, with respect to a flight, means the exercise of authority over initiating, conducting or terminating a flight." 14 C.F.R. § 1.1.