

**Meeting with OIRA: Small UAS Rulemaking**  
**June 6, 2016**

The National Association of Broadcasters (NAB) appreciates this opportunity to meet and discuss the FAA's proposed rulemaking on Operation and Certification of Small Unmanned Aircraft Systems (UAS), which will establish a framework for the operation of UAS in the national airspace system (NAS). These rules would address the classification of small unmanned aircraft, certification and qualification of their pilots and visual observers, registration, approval of operations, and operational limits in order to increase the safety and efficiency of the NAS.

NAB is a nonprofit trade association that advocates on behalf of local radio and television broadcast stations and broadcast networks before Congress, the Federal Communications Commission, other federal agencies, and the courts.<sup>1</sup>

The benefits of UAS in the newsgathering industry are significant. UAS will expand the possibilities for capturing informative and engaging images, delivering both vital information and captivating entertainment to millions of Americans. The use of UAS will permit safer, less expensive, and better journalism. UAS will provide television stations in smaller markets otherwise constrained by more limited budgets and resources with an unprecedented opportunity to offer aerial coverage while also allowing stations in larger markets to supplement, or even replace, their current aerial capabilities, better enabling journalists to inform the public and alert government first responders.

NAB's primary concern is that the proposed rule must not unnecessarily restrict or penalize the important and protected newsgathering activities of news organizations. These organizations serve as surrogate eyewitnesses for citizens, and UAS have the potential to enhance the public's access to information through compelling and previously inaccessible photos and video. UAS particularly should improve news coverage of emergency situations to the benefit of the general public and government first responders, who both routinely turn to breaking news accounts for information during emergencies. UAS also will generate a number of other benefits for the newsgathering industry, including enabling smaller news organizations that cannot afford helicopters to utilize aerial newsgathering, by reducing the costs of aerial photography and by eliminating certain safety concerns.

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<sup>1</sup> Additional information on NAB and its members is available at: <http://www.nab.org/>.

While NAB is largely supportive of most aspects of the proposed Part 107, there are a few aspects of the proposed rule that NAB believes could be refined to unleash the full potential and safety benefits of this technology for commercial newsgatherers—while also ensuring safety. In the interest of time, NAB will focus on three important aspects of the proposed rule: (1) flights over people; (2) flights at night, and; (3) air traffic control (ATC) approval to operate in certain airspace.

### **Flights Over People**

Under proposed § 107.39, Operation over people, a person may not operate a UAS “over a human being” who is not directly participating in the operation of the UAS or not located under protective covering. While the text is ambiguous, as currently proposed, the rule as drafted appears to severely restrict the utility of using UAS to inform the public of important developments. For example, it would leave a journalist with UAS unable to cover a breaking news event where just one member of the public stands below the operating UAS, even where sufficient risk mitigation efforts have been taken. Under the rule as currently drafted, journalists would be unable to cover the vast majority of news events with UAS.

One minor change to § 107.39 that would significantly increase the potential of UAS to serve the public interest, particularly with respect to newsgathering, would be to fix the ambiguity and clarify that only flights *directly* over non-participating unsheltered people are barred. This would permit UAS with a camera that is capable of filming—at an angle—an area where people are present. This clarification is warranted in light of the purpose of the rule. The proposed rule is concerned about harm to people standing beneath a UAS in the event that the UAS experiences a loss of positive control and returns to the ground. This risk is greatly minimized if UAS are not operating directly above people. Moreover, any risks associated with operating near, but not *directly* over non-participating people, is mitigated or eliminated by the fact that proposed § 107.19(b) already requires the operator to ensure that the UAS will pose no undue hazard to people or property in the event of a loss of control of the aircraft for any reason.

### **Night Operations**

Proposed rule § 107.29, Daylight operation, would limit UAS to daylight-only operations. This limitation is unduly restrictive and would greatly constrain the ability of newsgatherers to capture breaking news that occurs at night. The proposed rule should provide additional flexibility to permit night flights under conditions that ensure safety. For example, nighttime flights could be permitted if the UAS to be operated met certain equipage standards, such as vehicle lighting, as the FAA determined in a recently granted Section 333 Exemption allowing UAS night time operations.<sup>2</sup> Alternatively, the proposed rule could condition the ability to operate at night upon completion of an operational risk assessment and satisfactory risk mitigation for night flight hazards.

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<sup>2</sup> See Exemption No. 16341 issued to Industrial Skyworks USA on April 18, 2016 (Docket FAA-2014-1060).

### ATC Authorization for Operation in Certain Airspace

Proposed rule § 107.41(b) would prohibit UAS from operating within certain airspace around airports<sup>[1]</sup> unless the operator has prior authorization from the ATC facility having jurisdiction over that airspace. While there are obviously additional safety considerations that need to be addressed in the context of operations in controlled airspace near airports, a blanket-ban on these operations absent ATC *approval* is unnecessary, particularly in the context of newsgathering UAS uses that serve the public interest. Rather than require ATC *approval* to operate in certain airspace, the proposed rule should instead require ATC *notification*, which is the standard currently applied to hobbyists operating within 5 miles of an airport. At the very least, if the rule must require approval for certain operations, operators engaged in UAS uses that serve the public interest, such as newsgatherers, should only be required to notify ATC of the operation. To the extent that ATC permission is ultimately required, the proposed rule should require that permission be granted quickly and without unnecessary delay, to enable UAS operators to cover breaking news and unanticipated events.

NAB appreciates the opportunity to discuss these important issues with OIRA.

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<sup>[1]</sup> Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport.

**ATTENDEES**

**Hogan Lovells US LLP**

**National Association of Broadcasters**

**NBC Universal**

**CBS**

**FOX**

**Univision**

**Tegna**