February 25, 2015

To: CSU Presidents

From: G. Andrew Jones
Associate Vice Chancellor and Deputy General Counsel

Re: Unmanned Aerial Vehicles (aka Drones) - Update No. 1

In our December 17, 2014 memorandum, we noted that the use of UAV (aka UAS, drones) by public universities such as CSU was subject to various FAA rules and regulations. In particular, we noted that to operate a UAV, a Certificate of Authorization ("COA") had to be applied for and obtained from the FAA. There have been two significant developments since we sent our December memorandum.

- First, for “public aircraft/governmental entity” authorizations, the OGC has reached agreement with the FAA regarding an issue which was preventing applications from being considered by the FAA.

- Second, the FAA has announced proposed regulations which may streamline and simplify FAA certifications for certain users.

This update will explain the FAA’s threshold requirement that stood in the way of CSU applications and the agreement we reached to clear a path forward. It also will explain the recommended process for obtaining a “Public Declaration Letter” from the OGC. Finally, it will summarize potential solutions in the event an applicant doesn’t qualify for a public use COA.

**The Obstacle to Submitting FAA Applications Has Been Cleared**

One of the FAA’s requirements is that public entities who wish to submit a COA application must provide a public declaration letter certifying that the entity and its proposed UAV operation are eligible to apply for a public use COA. This is an FAA threshold requirement. Unless the entity provides a public declaration letter, the FAA will not review the COA application or decide whether the issuance of a public use COA is warranted.

The FAA has been adamant that public entities may not self-certify, and that a letter provided by a public entity’s in-house legal department is not sufficient. In the case of CSU, the FAA has required that the public declaration letter be issued by the Office of the California State Attorney General. Unfortunately, the Attorney General was unable to take on that responsibility which effectively prevented our campuses from submitting COA applications.
After the December 17 memorandum, our office made the case to the FAA that CSU’s Office of General Counsel should be the issuer of the public declaration letter and that the letter should properly originate from OGC rather than the State Attorney General. We are pleased to inform you that the FAA will now accept a public declaration letter issued by OGC in lieu of one issued by the State Attorney General.

**The Public Declaration Letter**

The public declaration letter will require OGC to certify that: (1) the applicant is a part of the State government; (2) the UAV is a "public aircraft"; (3) the UAV will be used for a "governmental function"; and, (4) the UAV will not be used for "commercial purposes."

The terms "public aircraft," "governmental function" and "commercial purposes" are each defined by statute and governed by FAA interpretation. The fact that CSU is a non-profit, educational entity does not, by itself, qualify a UAV operated by the CSU as a public aircraft or render its use a governmental function or non-commercial in nature. In particular, the term "commercial purposes" has been interpreted very broadly by the FAA to include any operation which, directly or indirectly, involves any form of compensation, reimbursement, remuneration or monetization.

**Recommended Steps Before Requesting a Public Declaration Letter**

OGC strongly recommends that before submitting a request for a public declaration letter to OGC, an applicant and the campus undertake two steps.

**STEP ONE**: The applicant should review the COA application form and confirm that they have all of the information necessary to complete the application. The application for a public use COA can be found online. It requires specific information. For example, it requires detailed information about the UAV's performance characteristics, the geographic area in which it will be flown, and confirmation that it will be operated by a licensed/trained pilot. A sample COA application is provided on the FAA's homepage.

**STEP TWO**: UAVs must be used in a manner consistent with the legal, public safety, and ethical responsibilities of CSU and the campuses. To promote that objective, each campus should consider implementing an internal process for reviewing and approving any proposed COA application. We strongly recommend that the review process, at a minimum, involve the Provost or delegate, Dean of the relevant college, Risk Management and for UAVs to be used on campus, the campus Police Department.

The Office of General Counsel, the Office for Systemwide Risk Management and the Office for Research Initiatives and Partnerships are in the process of developing recommended approval guidelines and a schedule of best practices which they will share with campuses in the very near future.
How To Request a Public Declaration Letter

A request for a public declaration letter should be made to the University Counsel assigned to your campus. In order for the OGC to determine if it is able to issue a public declaration letter confirming an applicant's eligibility to apply for a public use COA, the OGC will need the following information.

- The identity of the entity or entities that actually own or will be operating the UAV.
- A detailed description of the activity the UAV will be used for and the purpose of that activity.
- A detailed description of any direct or indirect funding, compensation, reimbursement or payment associated with or related to the use of the UAV.

In some cases, OGC may need additional information to make a determination.

The Public Declaration Letter Does Not Suggest Eventual Approval

The public declaration letter from OGC simply confirms that the applicant and the proposed UAV use are eligible to apply for a public use COA. It does not guarantee or suggest that the FAA will approve the COA application or that approval is likely or probable. Any decision reached by the FAA will ultimately depend and be based on the substantive contents of each particular COA application.

What if OGC Is Unable to Issue a Public Declaration Letter?

If an applicant or proposed UAV use is not eligible for a public use COA, the applicant could try to obtain from the FAA what is colloquially referred to as a Section 333 exemption. The Section 333 exemption is part of the process for obtaining a non-governmental, commercial use COA. Essentially, the Section 333 exemption excuses the applicant from complying with some of the FAA's regulations concerning the commercial use of UAVs. To date, the number of Section 333 exemptions granted by the FAA has been extremely limited, totaling less than 30 nationwide. OGC can provide guidance to applicants who wish to explore this option.

New Proposed Regulations

On February 15, 2015, the FAA announced proposed regulations regarding the use of small UAVs weighing less than 55 lbs. The proposed regulations would allow for the routine use of small UAVs under certain specified conditions without the need to obtain formal FAA approval. If adopted, the proposed regulations will permit campuses to more easily engage in projects and operations involving small UAVs. Unfortunately, these regulations are just a proposal at this point, and it will likely be a year or longer before they are enacted and available to our campus users.
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