

Technology in Safety, the Good, The Bad, and the Unknown

Presented to:

2019 CRMCA/CSSGA Annual Conference

November 22, 2019

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TYPES OF EMERGING TECHNOLOGY IN THE SAFETY SPACE

Drones or UAS



Amazon.com

Proximity Detection



Msha.gov

Cameras



Amazon.com

Drones – or Unmanned Aircraft Systems, to be precise.

Types of Drones:



wikipedia.com

Vs.



Amazon.com

Drone Use and Safety is Regulated by the Federal
Aviation Administration (FAA)

FAA Authority is Based in 14 C.F.R. Part 107

FAA Authority is Limited to Certification and Safety

If the FAA only oversees safety, who oversees privacy?

The Fourth Amendment is the primary privacy protection from warrantless government search.

Cases that address privacy specifically in regard to observation:

Oliver v. US

Privacy protection does not apply to the “open field.”

Dow Chemical Company v. US

If regulators have a “lawful vantage point” from which to make regulatory observations, they may not be prohibited even if the company has worked to protect its privacy from aircraft in the past.

Caselaw Specific to Aerial Search and the 4th Amendment

California v. Ciraolo: What good is a fence?

- When police saw a marijuana grow hidden behind 2 fences by flying over it in public airspace, the flyby did not constitute a search.
- The aircraft was 1000 ft. off the ground in navigable airspace that the public could access.

Florida v. Riley: If the public can see it, what can you protect?

- Helicopter flew over a marijuana grow at a house, 400 ft. off the ground.
- Court focused on the fact that the public generally had access to that elevation.
- NOTE: 400 ft. is also the height limit for UAS flight.

OSHA Exceptions to 4th Amendment Requirements

- If surveillance does not violate the 4th amendment, it does not violate Section 8 of the OSH Act.

Exceptions:

- Plain View – Requires inadvertent discovery.
 - Public Right of Way – Action or violation would be visible to a member of the public in the same location.
 - Open Field – Unoccupied or undeveloped area is not private.
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- Summary: Caselaw and exemptions may allow UAS use by OSHA for worksite inspections without a warrant in some cases.

MSHA Inspections and UAS Uses

No warrant requirement for inspections.

- *Donovan v. Dewey*, 452 U.S. 594 (1981).
- Section 103(f) allows a rep to accompany MSHA inspectors for “physical” inspections.

Section 103(a) prohibits anyone having advance notice of an inspection.

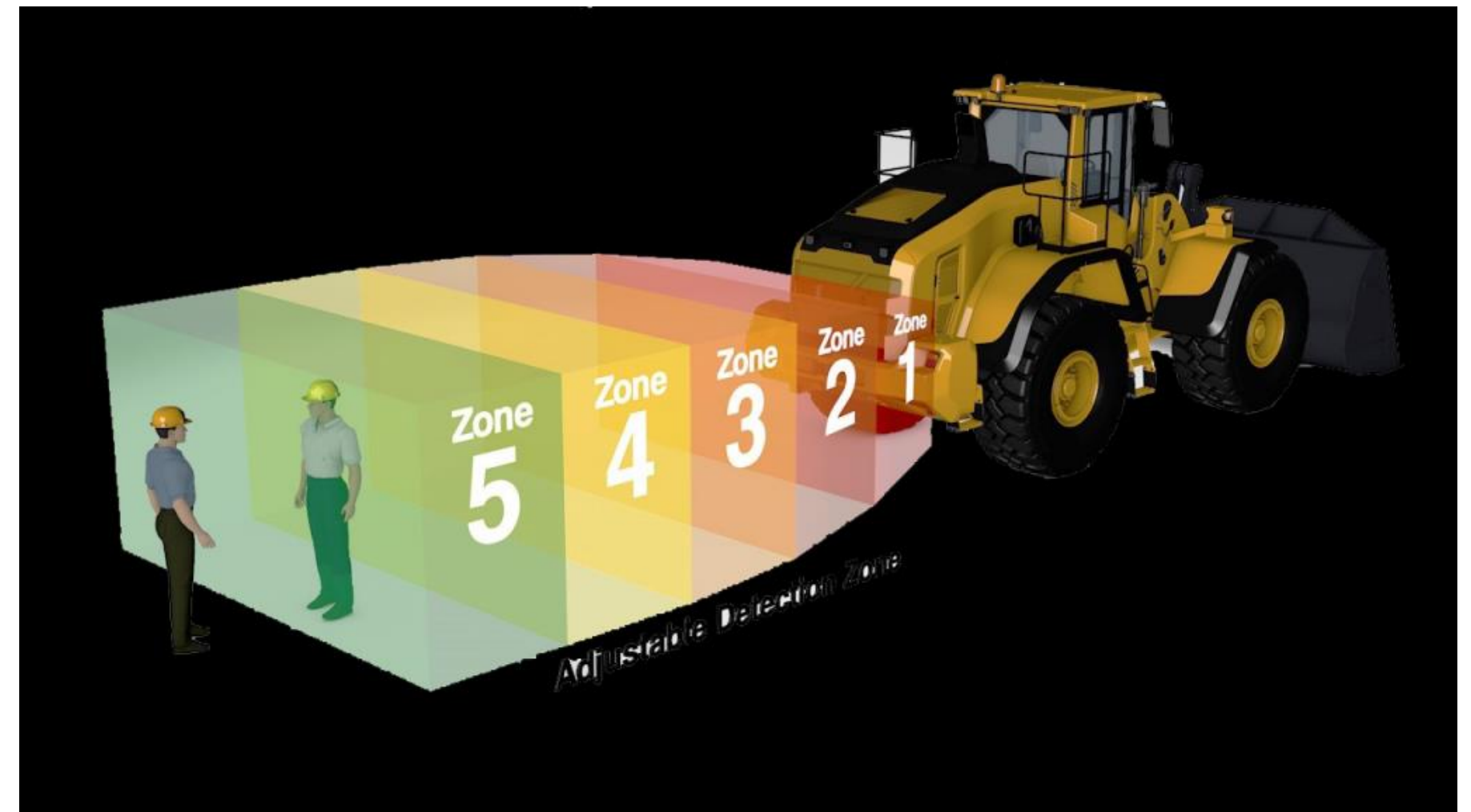
Outstanding Questions:

- Does a UAS flight count as a physical inspection under 103(f)?
- Does the warrant exception and no notice requirement make UAS use more permissible?

Proximity Detection Systems

What Are They?

How do they work?



Cbc.com



Msha.gov

Proximity Detection System Limitations

Multiple Vehicles or Other Equipment.



Cbc.com

Potential for Operator Error.



wikipedia.com

Cameras

Upside:

- Security, training, liability protection.



Gopro.com

Downside

- OSHA Records Subpoena
- MSHA Document Requests



wikipedia.com

Questions?



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