

NTSB *Pirker* Ruling: FAA Can Regulate Commercial & Recreational Small Drone Operations

A full panel of National Transportation Safety Board (NTSB) members overturned and remanded a ruling by an NTSB administrative law judge (ALJ) that the Federal Aviation Administration (FAA) could not bring an enforcement action against Raphael Pirker, a drone operator, because the drone at issue was a model airplane and did not qualify as “aircraft” under applicable law and regulation. After reviewing the Federal Aviation Act’s legislative history and amended provisions, the panel reached the opposite conclusion, ruling instead that drones, commonly referred to under the law as unmanned aircraft systems (UAS), do in fact qualify as aircraft under the law, since that term is defined to mean “any contrivance invented, used, or designed to navigate, or fly in, the air.” The FAA’s regulations also define aircraft as “a device that is used or intended to be used for flight in the air.” The NTSB panel ruled that “[t]he definitions are clear on their face,” and further stated that even if it accepted the ALJ’s characterization of the aircraft, a Ritewing Zephyr weighing only a few pounds, as a “model aircraft,” the definitions on their face do not exclude even a “model aircraft from the meaning of ‘aircraft.’” Finding that Pirker’s operation of the Zephyr was subject to FAA regulation, the NTSB remanded the case to the ALJ to determine whether a violation of FAA regulation occurred.

The FAA had appealed the ALJ’s ruling, arguing that the ALJ erred in concluding first that Pirker’s Zephyr was not an aircraft under pertinent aviation law, and second that Pirker’s UAS operations were not subject to the FAA’s safety regulations. The case began when the FAA brought an enforcement action against Pirker for remotely piloting the Zephyr around the University of Virginia (UVA) campus in

Charlottesville, Virginia, at altitudes ranging from extremely low – 10 feet above ground level (AGL) – to 1,500 feet AGL. Pirker was operating the UAS as part of a commercial undertaking, having been paid by another party to film a video using the UAS. Such operations are unlawful without authorization from the FAA. The FAA also complained that Pirker flew the UAS directly toward a pedestrian on a sidewalk, who had to move to avoid being struck, through a tunnel with moving vehicles, under a crane and under an elevated pedestrian walkway. The FAA fined Pirker \$10,000 for careless and reckless operation of an aircraft in violation of its safety regulations. Now the matter is back before the ALJ for a full factual hearing to determine whether Pirker really operated the aircraft in such a manner.

The NTSB’s decision is important because it holds that even a small UAS weighing only a couple of pounds qualifies as an aircraft under the Federal Aviation Act. It also says that the FAA can bring an enforcement action even if it has not yet issued regulations pertaining to small UAS operations. Since Pirker was operating the drone in connection with a commercial undertaking – i.e., filming a video of the UVA campus and getting paid to do so – the ruling primarily covers commercial UAS operations. The FAA issued guidelines for recreational operations long ago, which this decision does not alter. However, if a hobbyist does not adhere to the guidelines and operates a UAS in a reckless manner that endangers the safety of others, the FAA likely would bring an enforcement action against the hobbyist based on this ruling.

FOR MORE INFORMATION

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