

ALERT

NTSB Reverses ALJ Decision in Pirker; Finds that Unmanned Aircraft are “Aircraft” and Governed by FAA Rules

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Today, the U.S. National Transportation Safety Board (NTSB) reversed an Administrative Law Judge (ALJ) decision in the Raphael Pirker enforcement case and held that the regulatory definition of “aircraft” includes unmanned aircraft. [1] As a result, the NTSB concluded that the Federal Aviation Administration (FAA) regulation prohibiting the careless or reckless operation of aircraft also applies to unmanned aircraft.

The FAA originally brought an enforcement action against Pirker for flying a remotely piloted, unmanned aircraft – a Ritewing Zephyr – over the campus of the University of Virginia in June 2013, in what the FAA asserted was a violation of 14 C.F.R. § 91.13(a). [2] That regulation states that “no person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.” [3] Pirker challenged the FAA’s enforcement action, and an ALJ held that Pirker’s aircraft was a “model aircraft,” and therefore it was excluded from the definition of “aircraft” subject to regulation under FAA rules. [4]

In its decision to reverse the ALJ and remand for further proceedings, the NTSB held, first, that unmanned aircraft meet the plain language definition of “aircraft” contained in a statute and regulation on point. [5] Title 49 U.S.C. § 40102(a)(6) defines an “aircraft” as “any contrivance invented, used, or designed to navigate, or fly, in the air.” [6] Further, 14 C.F.R. § 1.1 defines an aircraft as “a device that is used or intended to be used for flight in the air.” [7] The NTSB said these definitions encompassed the kind of unmanned aircraft flown by Pirker because “the definitions on their face do not exclude even a

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'model aircraft' from the meaning of 'aircraft.'" [8] The NTSB also said that "the definitions draw no distinction between whether a device is manned or unmanned." [9] Simply put, "an aircraft is 'any' 'device' that is 'used for flight.' We acknowledge the definitions are as broad as they are clear, but they are clear nonetheless." [10]

Second, the NTSB held that because an unmanned aircraft is encompassed in the definition of "aircraft," FAA regulations pertaining to aircraft – including Section 91.13(a) – apply to unmanned aircraft. [11] The NTSB acknowledged that the FAA has excluded certain types of aircraft, such as unmanned free balloons and kites, from the reach of Part 91 and gave them specific operating rules in a separate section of the C.F.R. [12] However, the NTSB held that the FAA is not excluding those items from the definition of "aircraft" by giving them separate rules, but instead "specifically refers to the devices as a subset of the term 'aircraft.'" [13] In light of this regulatory approach, the FAA Administrator's interpretation of the unmanned aircraft as an "aircraft" was reasonable.

The NTSB decision is subject to appeal in federal court. We will keep you advised of developments if and when an appeal is filed by Pirker.

[1] *Administrator v. Pirker*, NTSB Order No. EA-5730 at 1 (2014).

[2] *Id.* at 2.

[3] 14 C.F.R. § 91.13(a).

[4] *Administrator v. Pirker*, NTSB Order No. EA-5730 at 3 (2014).

[5] *Id.* at 5.

[6] 49 U.S.C. § 40102(a)(6).

[7] 14 C.F.R. § 1.1

[8] *Administrator v. Pirker*, NTSB Order No. EA-5730 at 5 (2014).

[9] *Id.* at 5-6.

[10] *Id.* at 6.

[11] *Id.* at 12.

[12] *Id.* at 10.

[13] *Id.* at 9.