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Judge: Drone doesn't fit FAA 'aircraft' definition

On March 6, a National Transportation Safety Board administrative law judge ruled against the Federal Aviation Administration and in favor of the respondent in a case seeking $10,000 in fines for unauthorized and unsafe flights of an unmanned aerial system, commonly known as drones.

In the case of *Michael P. Huerta v. Raphael Pirker*, Docket CP-217, the FAA claimed that Pirker violated several aviation regulations on Oct. 17, 2001, when he used an unmanned aerial system (UAS) to shoot commercial video of the University of Virginia campus and medical center.

The FAA contended that Pirker was careless and reckless by flying the UAS "directly toward an individual standing on a UVA sidewalk causing the individual to take immediate evasive maneuvers," flying through a tunnel, under a crane and similar activities.

However, the ALJ held that UAS do not fit within the FAA's definition of "aircraft," and the complaint relied upon the characterization of the UAS as an aircraft. Thus, he dismissed the complaint.

Judge Patrick Geraghty observed that the FAA had previously distinguished model aircraft from traditional aircraft, and the construction that it was urging was inconsistent with its past formulations.

Likewise, if he were to accept the FAA's broad interpretation of "aircraft" as any device intended for flight, then similar penalties could be sought against "operators" of paper airplanes. Because the case was decided on a motion to dismiss, the ALJ accepted the factual allegations as true and his decision was strictly legal in nature.

The FAA wasted no time in issuing a statement the following day that appeal to the full NTSB to review this decision had begun. Further appeals to the U.S. Court of Appeals could certainly follow.

Meanwhile, the industry has been equally quick to respond with Flower Delivery Express announcing that in the wake of Pirker, it would move forward with its "Alternative Delivery Method Beta Program."

Ironically, just one week prior to Pirker, the FAA posted "Busting Myths about the FAA and Unmanned Aircraft" on its website.

LETTER TO THE EDITOR

Alan L. Farkas is a litigator and co-chair of SmithAmundsen's aerospace practice group. He has more than 20 years of experience advising corporations, pilots, airports and municipalities on regulatory and statutory compliance, formation and organization and liability protection.

Among other "myths" addressed by the FAA, the Web page contends that its authority to regulate UAS is no myth, and "There are no shades of gray in FAA regulations. Anyone who wants to fly an aircraft — manned or unmanned — in U.S. airspace needs some level of FAA approval." Perhaps the FAA should add a footnote to its article.

Still, as far as the FAA is concerned, commercial use of UAS is strictly prohibited without a certificate of authority from the FAA, and no such certificates will be issued anytime soon.

The FAA is currently studying how to best integrate UAS into the national airspace and further regulations will follow. In spite of *Pirker,* would-be commercial UAS operators should expect the FAA to continue to assert its jurisdiction with aggressive enforcement.

It's also worth noting that *Pirker* is a victory for the Pilots' Bill of Rights, passed by Congress in 2012.

One of the important features of the Pilots' Bill of Rights was a directive for the NTSB to discontinue its practice of according "special deference" to the FAA's interpretations of its own regulations.

Had *Pirker* been decided under the prior rules, Geraghty's decision might have simply stated, "If the FAA says it's an airplane, then it's an airplane."

As this case illustrates, the FAA's jurisdiction over UAS involves an extension of laws and regulations that were crafted with traditional aircraft in mind. Most likely, the FAA will face continued attacks on its jurisdiction until Congress specifically addresses the refined limits of federal airspace and the FAA comes forward with a comprehensive set of specific UAS regulations.