

## **The Academy of Model Aeronautics' Areas of Concern FAA Interpretive Rule Regarding the Special Rule for Model Aircraft**

In the Academy of Model Aeronautics' (AMA) review of the document we found a number of areas objectionable. Moreover, we believe the Interpretive Rule as a whole is in essence a backdoor approach to enacting new regulatory requirements without complying with the congressionally mandated Administrative Procedures Act. It is an abuse of the provision for Interpretive Rule under 5 U.S. Code § 553, and is contrary to Public Law 112-95, Sec. 336 which states, "the Federal Aviation Administration may not promulgate any rule or regulation regarding a model aircraft or an aircraft being developed as a model aircraft, if... the aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization." The Interpretive Rule specifically addresses model aircraft operated within the safety programming of a nationwide community-based organization, AMA, and it effectively establishes new rules to which model aircraft were not previously subjected, i.e. model aircraft must meet the regulatory requirements for operating in particular classes of airspace.

More specifically:

1 – Throughout the rule the FAA takes great latitude in determining Congress' intentions and in placing tightly worded restrictions through its "plain-language" interpretation of the text. For instance, the definition of model aircraft in the Public Law requires that a model aircraft be flown within visual line of sight of the person operating the aircraft. From a safety perspective this would mean that the model aircraft must remain in sight so that the operator can maintain situational awareness, control the aircraft and see and avoid other aircraft and obstacles. There appears to be no ambiguity in the language provided by Congress, and no need for interpretation.

However, in the rule the FAA uses the plain language doctrine to create a regulatory prohibition of the use of a specific type of technology, first-person view goggles. In this regard the rule states, "The aircraft must be visible at all times to the operator;" and that, "An operator could not rely on another person to satisfy the visual line of sight requirement." This is inconsistent with current two-pilot manned aircraft operations where one pilot is allowed to monitor the environment in compliance with 14 CFR 91.113, while the second pilot is allowed to operate the aircraft under virtual instrument conditions by wearing a device that completely obstructs the second pilot's view of the external environment. The rule's very stringent interpretation of the law overrides Congress' intent that the modeling activities be managed by the community-based organization, AMA, and appears to target and prohibit a specific type of modeling activity and technology.

2 – FAA's overreaching interpretation of the language in the Public Law is also evident in the rule's interpretation of the requirement that model aircraft be "flown strictly for hobby or recreational use." The application of this requirement is drastically narrowed by the examples provided in the Rule.

Although the FAA acknowledges that manned aviation flights that are incidental to a business are not considered commercial under the regulations, the rule states that model aircraft flights

flown incidental to a business are not hobby or recreational due to the nexus between the flight and the business.

This again is inconsistent with FAA's current regulatory premise and the assertions of other regulatory agencies such as the Internal Revenue Service. For instance, an individual who owns and operates his own full-scale aircraft for his personal pleasure and recreation is allowed to conduct aerial photography as a private civil operator whether or not he/she intends to sell the photographs. However, under the Interpretive Rule, a model aircraft enthusiast who uses his model aircraft for aerial photography and subsequently sells the photograph to an interested party is no longer considered a hobbyist. Moreover, the IRS would not allow the deduction of the operating expense and aircraft acquisition cost based merely on the sale of a photograph. The IRS will also tell you that a business that is recreational in nature and does not turn a profit over time is in fact a hobby.

Here again the language in the law is unambiguous and requires no interpretation. However, the language in the rule is unnecessarily restrictive, overreaching, and totally unrelated to the safety aspects of operating model aircraft.

The rule also overlooks the law's clear intention to encompass the supporting Aeromodeling industry under the provision of the Special Rule, "aircraft being developed as a model aircraft." The rule's strict interpretation of hobby versus business puts in question the activities of the principals and employees of the billion dollar industry that supplies and supports the hobby.

3 – The Public Law states that when model aircraft are, "flown within 5 miles of an airport, the operator of the aircraft (must) provide(s) the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport) with prior notice of the operation. Model aircraft operators flying from a permanent location within 5 miles of an airport should establish a mutually-agreed upon operating procedure with the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport)."

Again, the congressional language is unambiguous. Although it is understood that making notification to the airport and/or ATC will open a dialog as to whether the planned activity is safe to proceed and perhaps open a discussion regarding employing specific procedures to ensure the safety of the operation, there is no intent that this be a request for permission on the part of the model aircraft pilot.

The Interpretive Rule is again overreaching and effectively rewrites the law by saying, "The FAA would consider flying model aircraft over the objection of FAA air traffic or airport operators to be endangering the safety of the NAS." In other words, the model aircraft operator must gain permission before flying. The mere act of flying the model aircraft over the objections of an overbearing controller or airport authority would be viewed as endangerment and would warrant enforcement action, whether or not there was a true safety issue involved. The Rule's requirement to seek permission opens the door to a less than constructive response from FAA field personnel who are quite often unfamiliar with model aircraft operations.

The intent of the Public Law is abundantly clear in that the model aircraft pilot must provide “prior notice” and that the means and decision to operate be “mutually agreed upon.”

4 – The Interpretive Rule again establishes new restrictions and prohibitions to which model aircraft have never been subject to in the past by saying, “if an operator is unable to comply with the regulatory requirements for operating in a particular class of airspace, the operator would need authorization from air traffic control to operate in that area.” Nothing in the Public Law or FAA’s current guidance for model aircraft, AC 91-57, makes such a requirement. And, the application of this “interpretation” would effectively prohibit model aircraft from operating in airspace where there are requirements specifically intended for manned aircraft operations.

For example, under 14 CFR 91-131, “No person may operate an aircraft within a Class B airspace area (unless) the operator... receive(s) an ATC clearance. No person may... operate a civil aircraft within a Class B airspace area unless – the pilot in command holds a... pilot certificate.” These are requirements to which model aircraft operators cannot reasonably comply, and it is doubtful that any authorization and/or clearance will be forthcoming despite the Interpretive Rule’s suggestion that, “modelers... obtain authorization from air traffic control prior to operating” in such airspace.

It should be noted that thousands of AMA members currently operate their model aircraft safely and responsibly in Class B airspace under AMA’s Safety Program and FAA Advisory Circular 91-57 without the requirement for authorization and without incidents, and have done so since before there was Class B airspace.

5 – Finally, the Interpretive Rule attempts to negate the entire Public Law by stating, “Other rules in part 91, or other parts of the regulations, may apply to model aircraft operations, depending on the particular circumstances of the operation. The regulations cited above are not intended to be an exhaustive list of rules that could apply to model aircraft operations.” This in and of itself makes model aircraft enthusiasts ages 6 to 96 accountable to the entire litany of federal aviation regulations found in Title 14 of the Code of Federal Regulations, something that was never intended by Congress and heretofore never required by the FAA.

Academy of Model Aeronautics  
June 27, 2014