

Comments – Section I

The Interpretive Rule states: “Historically, the FAA has considered model aircraft to be aircraft that fall within the statutory and regulatory definitions of an aircraft.”

In fact the opposite is the case. Advisory Circular 91-57, issued in 1981, clearly establishes FAA’s expectations in terms of a voluntary level of compliance for model aircraft operations and makes no mention of any portion of the US Code or existing Code of Federal Regulations that are applicable to model aircraft. This was reinforced in the agency’s unmanned aircraft policy statement in February 2007 concerning recreational use and was most recently stated in the agency’s internal guidance document, N JO 7210.873, effective July 11, 2014, two weeks after the Interpretive Rule was published in the Federal Register.

Additionally, FAA’s guidance document regarding the compliance criteria for federally obligated airports, AC 150/5190-6, lists model aircraft as an example of an activity that is not an aeronautical activity, aeronautics being the “design, construction and operation of aircraft.” Other documents issued by the FAA over the past several decades confirm that the FAA has historically not considered model aircraft to fall within the statutory or regulatory definitions of “aircraft.”

As was concluded by National Transportation Safety Board Administrative Law Judge Patrick Geraghty in the FAA v. Pirker case (currently on appeal), the FAA “has not issued an enforceable FAR regulatory rule governing model aircraft operation; has historically exempted model aircraft from the statutory FAR definitions of ‘aircraft’ by relegating model aircraft operations to voluntary compliance with the guidance expressed in AC 91-57.” Although Mr. Pirker was apparently not operating his model aircraft pursuant to AMA guidelines or those of any community-based organization, the underlying principle contained in the decision about the nonregulation of model aircraft is correct in light of the history of model aviation in this country. This is a viewpoint that AMA shares.

Comments – Section II

The Interpretive Rule states: “Congress’ intention to define model aircraft as aircraft is further established by section 331(8) of the Act, which defines an unmanned aircraft as ‘an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.’”

This statement erroneously interprets the text and Congress’ intention and does so without regard to the historical context upon which the Special Rule was developed.

In developing the Special Rule for Model Aircraft, Congress recognized the long-standing history and exceptional safety record achieved by model aviation and specifically the activity conducted within the safety programming of a community-based organization such as AMA. It was Congress’ intent to protect the ongoing modeling activity conducted within a community-based organization from unnecessary, onerous, and overreaching regulation.

Section 336 of the Act entitled “Special Rule for Model Aircraft” is clearly intended to separate model aircraft from other Unmanned Aircraft Systems (UAS) and to establish a freestanding definition for the recreational and hobby use of unmanned aircraft. In this regard, the definition of model aircraft is intentionally detailed within the Special Rule for purposes of that section alone, and not within Section

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331 of the Act, “Definitions” of Unmanned Aircraft Systems. Congress provided a complete standalone definition that does not refer to any other definition or reference, and quite frankly needs no interpretation. Though the descriptive term “unmanned aircraft” is used in the definition, it is simply descriptive, and is used to clarify that there are no human beings onboard the model aircraft directing its operation.

Section 336(a)(2) of the Special Rule clearly states that the provisions of this rule apply only to model aircraft that are “operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization.” Both the text and clear intent of the statute is that the aeromodeling activity that occurs in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization be managed by the community-based organization such as AMA.

The Interpretive Rule states: “Congress directed that the FAA may not ‘promulgate any rule or regulation regarding a model aircraft ...’”

The Interpretive Rule fails to recognize that Congress prohibited the promulgation of two clear and distinct items: “any rule - or - regulation.” In clear language, this means any rule of any kind. By definition, FAA’s Interpretation of the Special Rule for Model Aircraft purports to be just that, an Interpretive ‘Rule.’ In its intent and context, the Interpretive Rule is both a rule by definition and de facto regulation.

The Interpretive Rule states: “... the rulemaking prohibition would not apply in the case of general rules that the FAA may issue or modify that apply to all aircraft.”

This again misstates Congress’ intent and implies that the freestanding definition of “model aircraft” provided in Section 336 is intended to reference the definition of aircraft in 49 U.S.C. 40102; 14 CFR 1.1. It also twists the meaning of the word “regarding” so as to purportedly allow the FAA to actually regulate model aircraft as long as the words “model aircraft” do not appear specifically in new rules and regulations. That contradicts the clear intent of Congress, which passed Section 336 specifically to exempt aeromodeling from new rules and regulations.

The Act does allow that, “nothing in (the Act) shall be construed to limit the authority of the (FAA) to pursue enforcement action against persons operating model aircraft who endanger the safety of the national airspace system (NAS).”

The Academy of Model Aeronautics does not condone the operation of a model aircraft in a manner that endangers persons or property. The AMA further believes that current statutory provisions are adequate to address aberrant activity that endangers the safety of the NAS. Congress by no means intended to grant a free pass for individuals who operate their model aircraft in a manner that intentionally places manned aircraft in imminent peril. However, it clearly intended to leave risk mitigation and the development of appropriate safety guidelines for the operation of model aircraft devices themselves to the nationwide community-based organization.

The Interpretive Rule states: “...a model aircraft must be ‘flown within visual line of sight of the person operating the aircraft.’ P.L. 112-95, section 336(c)(2). Based on the plain language of the statute, the FAA interprets this requirement to mean that: (1) the aircraft must be visible at all times to

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the operator; (2) that the operator must use his or her own natural vision (which includes vision corrected by standard eyeglasses or contact lenses) to observe the aircraft; and (3) people other than the operator may not be used in lieu of the operator for maintaining visual line of sight.”

Throughout the Interpretive Rule, the agency takes great latitude in determining Congress’ intentions and in placing tightly worded restrictions through its “plain-language” interpretation of the text. In this case the definition of model aircraft in the Act requires that, “model aircraft be flown within visual line of sight of the person operating the aircraft.” From a safety perspective this means that the model aircraft must remain in visual range of the operating station so that the operator can maintain situational awareness, control the aircraft, and “see & avoid” other aircraft and obstacles. Congress did not intend this as a prescribed means of operating the aircraft, but rather the manner in which model aircraft are to be flown. It limits the distance from the operator that the model aircraft can be flown “within visual line of sight.” There is no ambiguity in the language provided by Congress and no need for interpretation.

The Interpretive Rule 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 “An operator could not rely on another person to satisfy the visual line of sight requirement.” This is well outside of the congressional intent and is inconsistent with current and acceptable two-pilot manned aircraft operations. Under a number of circumstances, two-pilot operations are recognized where one pilot is allowed to monitor the external environment in compliance with 14 CFR 91.113, while the second pilot operates the aircraft and/or manages the aircraft systems. In the case of instrument training and airmen proficiency manned aircraft are flown in virtual instrument conditions through the use of a device that completely obstructs the pilot’s view of the external environment while a second pilot is relied upon to maintain situational awareness and fulfill the requirement to see & avoid other aircraft. The FAA’s extremely stringent interpretation of the law again overrides Congress’ intent that the modeling activities be managed by the community-based organization, and appears to target and prohibit a specific type of modeling activity and technology.

The Interpretive Rule states: “The statute requires model aircraft to be flown strictly for hobby or recreational purposes. Because the statute and its legislative history do not elaborate on the intended meaning of ‘hobby or recreational purposes,’ we look to their ordinary meaning and also the FAA’s previous interpretations to understand the direction provided by Congress.”

The Interpretive Rule’s overreaching interpretation of the language in the Congressional Act is also evident in the 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 Interpretive Rule.

Although the Interpretive Rule acknowledges that manned aviation flights that are incidental to a business are not considered commercial under the regulations, the Interpretive Rule contends 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 is inconsistent with current regulatory premise and the assertions of other regulatory agencies such as the Internal Revenue Service. For instance, an individual who owns and operates a full-scale aircraft for personal pleasure and recreation is allowed to conduct aerial photography as a private civil operator whether or not he/she intends it as a business pursuit or intends to sell the photographs for personal

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gain. However, under the Interpretive Rule, a model aircraft enthusiast who uses his/her 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.

There are many other examples of hobby interests and individual avocational talents that are employed in conjunction with an unrelated profession and that are very much incidental to the business pursuit. There are also many hobbies that involve bartering, trading, or monetary transactions that would not be considered or otherwise regarded as a business enterprise.

The language in the Interpretive Rule is unnecessarily restrictive, overreaching, and totally unrelated to the safety aspects of operating model aircraft.

The Interpretive Rule also overlooks the Congress' clear intention to encompass the supporting aeromodeling industry within the provision of the Special Rule, "aircraft being developed as a model aircraft." The Interpretive Rule's strict interpretation of hobby versus business puts in question the endeavors of the principals, employees, and advocates of the billion dollar industry that supplies and supports the activity, an industry that is integral to the success and future wellbeing of the hobby.

The language in the Rule goes to great lengths and has the clear intent to minimize and restrict the hobbyists' use of unmanned aircraft to the extent the examples given are ridiculous in nature. For instance, a grower could use his/her model aircraft to monitor the condition of his/her crops provided he or she personally consumes the entirety of the harvest. However, that same hobbyist would not be allowed to use the hobby rules to operate the identical device for the same purpose should he/she trade, barter, or sell any portion of the produce to his or her neighbor.

Again, the language in the Rule is unnecessarily restrictive, overreaching, and totally unrelated to the safety aspects of operating model aircraft.

The Interpretive Rule states: "... the statute sets a requirement for model aircraft operating within 5 miles of an airport to notify the airport operator and control tower, where applicable, prior to operating. If the model aircraft operator provides notice of forthcoming operations which are then not authorized by air traffic or objected to by the airport operator, the FAA expects the model aircraft operator will not conduct the proposed flights. The FAA would consider flying model aircraft over the objections of FAA air traffic or airport operators to be endangering the safety of the NAS."

The Special Rule states that when model aircraft are "flown within 5 miles of an airport, the operator of the aircraft (is to) provide 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 making notification to the airport and/or air traffic control could open a dialog as to whether the planned activity poses an objectionable risk or interferes with manned aircraft, and may open a discussion regarding employing specific procedures to

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ensure the safety of the operation, there is no indication in the statute of any requirement to secure prior permission when an operator is operating a model aircraft pursuant to community-based standards. Such approval has never historically been required, and the statute does not require it either. This is a new rule or regulation regarding model aircraft—which is impermissible under the statute.

The Interpretive Rule is again overreaching and attempts to rewrite 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 a potentially intolerant or indifferent controller or airport authority would ostensibly trigger enforcement action, whether or not there was a true safety issue involved. The Interpretive Rule’s requirement to seek permission opens the door to a less-than-constructive response from FAA field personnel who are often unfamiliar with model aircraft operations.

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

Comments – Section III

The Interpretive Rule concluded: “Congress intended for the FAA to be able to rely on a range of ... existing regulations to protect users of the airspace and people and property on the ground. Therefore, regardless of whether a model aircraft satisfies the statutory definition and operational requirements described [in the Interpretive Rule] ..., if the model aircraft is operated in such a manner that endangers the safety of the NAS, the FAA may take enforcement action consistent with Congress’ mandate.”

Comments – Section IV

The Interpretive Rule further states: “The FAA could apply several regulations in part 91 when determining whether to take enforcement action against a model aircraft operator for endangering the NAS ... other parts of the regulations, may apply to model aircraft operations, depending on the particular circumstances of the operation. The regulations cited ... are not intended to be an exhaustive list of rules that could apply to model aircraft operations.”

In Sections III and IV, the Interpretive Rule establishes new restrictions and prohibitions that are clearly outside of the scope and intent of the Special Rule and to which model aircraft have never been subject to in the past, i.e. “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 Act, current policy, or FAA’s operating standards for model aircraft, AC 91-57, makes such a requirement. The application of this “interpretation” would effectively prohibit model aircraft from operating in airspace where there are requirements intended for manned aircraft that are impractical if not impossible for model aircraft and model aircraft operators to meet.

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

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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 for decades thousands of AMA members have operated their model aircraft safely and responsibly in Class B airspace under AMA's Safety Program and FAA Advisory Circular 91-57. These operations have occurred without the requirement for authorization and without incidents, and have done so since before there *was* Class B airspace. Many AMA designated flying sites were established before the FAA came into existence in 1958.

Finally, the Interpretive Rule as a whole negates the entire Special Rule for Model Aircraft. The provisions within Sections III and IV in themselves make model aircraft enthusiasts ages 6 to 96 accountable to the entire litany of federal aviation regulations found in the Code of Federal Regulations, something that was never intended by Congress and heretofore never required by the FAA.

Moreover, the AMA believes the Interpretive Rule is, in essence, a backdoor approach to enacting new regulatory requirements without complying with the congressionally mandated Administrative Procedure Act. It is an abuse of the provision for Interpretive Rule under 5 U.S. Code § 553, and is contrary to the congressional prohibition in 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."

By specifically addressing the Special Rule and model aircraft operated within the safety programming of a nationwide community-based organization such as AMA, the Interpretive Rule rebukes and curtails the activity of the one community that, as Congress itself recognized, has been operating safely and responsibly for decades and does little to affect the aberrant behavior reportedly occurring outside of AMA's community-based program.