# Client Alert

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# *Huerta v. Pirker*: NTSB Rules that UAS Are "Aircraft" and Subject to FAA Prohibition on Careless and Reckless Operations

By Kenneth P. Quinn, Jennifer E. Trock, Benjamin M. Berlin, and Graham C. Keithley

*On November 18, 2014, in a unanimous decision, the National Transportation Safety Board (NTSB) concluded that unmanned aircraft systems (UAS) are: (1) "aircraft" within the Federal Aviation Administration's (FAA) statutory and regulatory definitions; and (2) prohibited from operation in a careless and reckless manner under FAA regulations. The decision represents a significant win for the FAA in its attempts to prohibit unlawful UAS operations, and a setback for commercial interests that were hoping to turn the* Pirker *battle into a broader war against the FAA's ban on commercial use of UAS. The opinion reverses an NTSB Administrative Law Judge's (ALJ) decision earlier this year that the UAS Pirker commercially operated was a "model aircraft" beyond the FAA's authority.*

The full Board decision affirms the FAA's ability to regulate both manned and unmanned aircraft operations and seek civil penalties from UAS operators in violation of FAA regulations, but explicitly refused to address whether the actual operation was careless and reckless, remanding the case to the ALJ. The Board also refused to address numerous UAS issues raised in amici briefs, including a challenge to the FAA's ban on commercial UAS operations, absent an exemption. Ultimately, the decision puts both private-use and commercial operators on notice that UAS are clearly under the FAA's jurisdiction as many commercial operators seek regulatory exemptions before beginning their operations.

### *Huerta v. Pirker*

In June 2013, the FAA sought to assess Raphael Pirker a civil penalty of $10,000 for operating a UAS in a reckless and careless manner. On appeal of the FAA's $10,000 civil penalty order, the NTSB ALJ vacated the FAA's order, reasoning that the FAA could not take action for the UAS operations because UAS, being

"model aircraft" under FAA policy, are not "aircraft" under statutory and regulatory definitions, removing them from the FAA's jurisdiction and applicability of the FAA's operating regulations. The FAA appealed the ALJ's decision to the NTSB, and today the full Board issued its opinion, discussed in detail below.

The NTSB left unanswered many issues raised by amici, including the legality of the FAA's decision to prohibit commercial UAS operations without an exemption, privacy concerns, and various constitutional issues. The Board noted it lacks the authority to decide constitutional issues, and rightfully limited the scope of its opinion to deciding whether UAS are "aircraft" and whether the operation of UAS are subject to the FAA's regulation on careless and reckless operations. [1]

## UAS Are "Aircraft"

First, in a cogent and concise discussion, the full Board found that the statutory (49 U.S.C. § 40102(a)(6)) and regulatory definition (14 C.F.R. § 1.1) of "aircraft" are broad and clear on their face to include UAS. Even accepting the ALJ's characterization of UAS as "model aircraft," the NTSB found UAS squarely within the broad definitions of "aircraft."

The NTSB rejected Pirker's argument that the definition only included manned aircraft as evidenced by the passive language of the definitions and legislative history of the Federal Aviation Act of 1958. The NTSB characterized Congress' aircraft definition as "prescient," as including "any airborne contrivance 'now known *or hereafter* invented, used, or designed for navigation or for flight in the air." The NTSB found no distinction between manned or unmanned aircraft in the statutory or regulatory definitions, or FAA's policy for "model aircraft." Recognizing that the FAA may exclude certain aircraft from its regulations, the FAA had not done so for UAS.

## Prohibition Against Careless and Reckless UAS Operations, 14 C.F.R. § 91.13(a)

Second, the NTSB held that the FAA's interpretation that §91.13(a), which prohibits the careless and reckless operation of an aircraft, applied to unmanned aircraft as reasonable, given the broad language of the regulation. The NTSB reasoned that neither the plain language of §91.13(a) nor the definition of aircraft applicable to Part 91 regulations exclude unmanned aircraft, rejecting Pirker's arguments that (1) Advisory Circular 91-57 reflected any intent on the part of the FAA to exclude operators of unmanned or "model aircraft" from §91.13(a)'s prohibitions and (2) FAA letters and a memorandum constituted a "new" interpretation of §91.13(a). The NTSB also re-affirmed the application of §91.13(a) as an independent violation where no other regulation explicitly prohibits the alleged conduct.

## Conclusion

The NTSB's decision firmly establishes that both recreational and commercial UAS operators must abide by §91.13(a)'s safety mandate. The NTSB's decision will not come as a surprise to those who have followed UAS developments closely, as the FAA maintains a tight grip on UAS expansion into the National Air Space (NAS) as it develops rules to safely integrate them into the NAS.

[1] The amici's arguments seem better suited for a case directly challenging the ban on commercial operations, or at least in a case where the underlying UAS operations, which the FAA alleged reached as high as 1,500 feet, targeted an individual, went into a tunnel, and were in close proximity to an active heliport, were not on their face careless and reckless.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

Kenneth P. Quinn (bio)
Washington, DC
+1.202.663.8898
kenneth.quinn@pillsburylaw.com

Jennifer E. Trock (bio)
Washington, DC
+1.202.663.9179
jennifer.trock@pillsburylaw.com

Benjamin M. Berlin (bio)
Washington, DC
+1.202.663.8558
benjamin.berlin@pillsburylaw.com

Graham C. Keithley (bio)
Washington, DC
+1.202.663.8768
graham.keithley@pillsburylaw.com

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