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March 26, 2014

Via PDF email to:

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Re: Request to the FAA to Honor FAA Values/Vision Statements on
Current Lack of Actual Law/Regulations for use of Model UAVs.

Dear FAA Administrators,

This letter is a respectful request and challenge to you, our Federal Aviation Administration ["FAA"] leaders, to honor posted FAA Values and FAA Vision Statements on the lack of current law/regulation for the use of civilian Model Aircraft/Unmanned Aerial Vehicles/Drones ["Model Aircraft/UAVs"] for recreational and commercial uses, and for classifying Model Aircraft/UAVs as Unmanned Aerial Systems. ["UAS"]

By way of brief background, I am both a practicing civil trial and aviation attorney as well as professional pilot/instructor who proudly holds a valid and current FAA single and multi-engine Airline Transport Pilot certificate and a Certified Flight/Instrument Instructor Certificate. I am also type certificated and for years held pilot in command ["PIC"] operating authority in various turbo jet aircraft including Cessna Citation C500/C550, flying Citation I/II, Cessna 525/525s flying CJ/CJ1/CJ2/CJ3 and the Aero Delfin L-29/39. I have flown these turbo jets and other aircrafts as PIC operationally both nationally and internationally. I have owned several single and multi-engine aircraft over my 24 year aviation career. I divide my professional time between legal/trial work and providing legal consulting/aviation related expertise to clients and other attorneys on aviation related cases and the FARs. I also continue to provide Flight Instruction/BFRs to a variety of pilots and am a Model Airplane/UAV and aerial photography ["AP"] enthusiast. I have often been paid by clients for using UAVs to take aerial photos/video. In over 4000 hours of operating actual aircraft without accident/incident and years of safe Model Aircraft/UAV flying, I have prided myself on following all applicable FARs, complete preparation, using good conservative judgment and being safe in all my professional and recreational aviation related activities.

This letter is also a sincere offer of assistance to consult with the FAA as tasked by Congress, to come up with policies and actual, enforceable Federal Aviation Regulations ["FARs"] to safely integrate Model Aircraft/UAVs to the extent required and actual UAS, into the National Airspace System ["NAS"].

FAA posted Values/Core Values on their website indicates;

"...Integrity is our touchstone. We perform our duties honestly, with moral soundness, and with the highest level of ethics."

"...Integrity is our character. We do the right thing, even if no one is looking. People are our strength. We treat each other as we want to be treated."

The FAA Vision statement indicates;

"We strive to reach the next level of safety, efficiency, environmental responsibility and global leadership. We are accountable to the American public and our stakeholders."

It is long past time the FAA honored these fine words respecting and accurately accounting to the American public the current lack of actual law/regulations for Model Aircraft/UAVs. It is very troubling that for years, the FAA has seemingly bullied, propagandized and promulgated total fallacies, namely that the FAA has any regulatory authority over Model Aircraft/UAV's and that Model Aircraft/UAVs are classified as military type, UASs.

In fact, until the "FAA Modernization and Reform Act of 2012," the FAA and Congress had never even addressed Model Aircraft/UAVs. In the FAA Modernization legislation, Congress told the FAA to come up with a plan for "safe integration" of UAS by September 30, 2015. Congress would not have "told the FAA to come up with a plan" if regulations already existed. The FAA would not have indicated they are currently "developing regulations" if regulations already existed. The FAA would not "expect to publish a proposed rule" for UAVs, if one already existed.

As you know, most recently in the only case on record/history where the FAA has actually sought an Order of Assessment against a Model Aircraft/UAV operator, NTSB Judge Patrick G. Geraghty in the *FAA v. PIRKER*, Docket No. CP-217, in a perfectly legally reasoned and well supported legal opinion, which can only be described as scathing against the FAA's misconstruing law and errant Order of Assessment, ruled;

"1. Neither the Part 1, Section. 1.1, or the 49 U.S.C. Section 40102(a)(6) definitions of "aircraft" are applicable to, or include a model aircraft within their respective definition.

2. Model aircraft operation by Respondent (Pirker) was subject only to the FAA's

requested voluntary compliance with, the Safety Guidelines stated in AC 91-57.

3. As Policy Notices 05-01 and 08-01 were issued and intended for internal guidance for FAA personnel, they are not a jurisdictional basis for asserting Part 91 FAR enforcement authority on model aircraft operations.

4. Policy Notice 07-01 does not establish a jurisdictional basis for asserting Part 91, Section 91.13(a) enforcement on Respondent's model aircraft operation, as the Notice is either (a) as it states, a Policy Notice/Statement and hence non-binding, or (b) an invalid attempt of legislative rulemaking, which fails for non-compliance with the requirement of 5 U.S.C, Section. 553, Rulemaking.

5. Specifically, at the time of Respondent's model aircraft operation, as alleged herein, there was no enforceable FAA rule or FAR Regulation, applicable to model aircraft or for classifying model aircraft as a UAS."

The FAA's attempted prosecution of this case and now Appeal of this opinion is in my legal opinion at least negligent, if not a frivolous further waste of FAA officials' time/taxpayer dollars. NTSB Judge Garaghty was absolutely centered on localizer/glideslope in his legal analysis and critique of the FAA and their errant and misleading definition of "aircraft" and negligent claims of alleged regulatory law, concerning Model Aircraft/UAVs.

Consistent with NTSB Judge Garaghty's Order, in the absence of any FAR, statute, regulation, or case law that prohibits a particular activity, that activity is completely legal. Contrary to FAA assertions, the reverse, meaning the absence of an FAR makes it "illegal," is preposterous and false. Model Aircraft/UAVs are and always have been completely unregulated federally, and anyone is free to operate them in any safe manner they wish, for pleasure or profit, regardless of alleged FAA's internal policies and provided they do not infringe on navigable airspace/airport traffic areas.

Despite the lack of any actual FAR/statute, or case law over the past several years, the FAA has admittedly and knowingly threatened numerous American citizens/businesses with alleged violations of FARs and unenforceable fines of \$10,000 for using Model Aircraft/UAV's in "commercial activities." The FAA has sent numerous letters to American citizens/businesses falsely claiming that commercial operations are using "UAS without proper authorization" and are therefore "in violation of FAA guidance for UAS," or "in violation of FAA mandates for UAS." Nonsense, just not true.

The FAA has also warned Model Aircraft/UAV operators that "operations of this kind may be in violation of the FARs and result in legal enforcement action." The FAA has warned Model Aircraft/UAV operators of alleged "devastating liability" in the event of an accident, and concluded with a command either requiring or "advising" the subject to cease "UAS" operations. These misguided letters have had the intended result of intimidating the American public and their clients from developing, producing and using UAVs for numerous lawful purposes like aerial photography, movies, TV, sports, search and rescue, aerial mapping, law enforcement, and countless others, over the past

several years. This at least negligent misconduct by the FAA, has stunted the industry causing tremendous losses in development, uses and income across the country.

For whatever misguided reasons, the FAA continues to rely on their own illogical interpretation of a dated 1981 advisory circular (“AC 91-57”) and various self-serving “policy” statements (like the 2005 AFS-400 UAS Policy and the 2007 Unmanned Aircraft Operations in the National Airspace System, Docket No. FAA-2006-25714; Notice No. 07-01, 72 Fed. Reg. 29 at 6689) which are nothing more than internal FAA policies binding only on the FAA, as a substitute for actual enforceable FARs or other actual enforceable law which has followed rulemaking processes pursuant to the Administrative Procedures Act [“APA”].

As you know, on February 26, 2014, to try to buttress its’ negligent and unsupportable positions concerning Model Aircraft/UAVs, the FAA published on its’ website a document entitled, “Busting Myths about the FAA and Unmanned Aircraft.” It purports to dispel “common myths” and provide “corresponding facts.” In fact, it is nothing more than a negligent self-serving rehash of errant/misleading information, FAA policies and opinions posing as regulations, which has been promoted by the FAA since 2007. As Judge Garaghty has ruled, the FAA’s alleged “Busting Myths” document cites no actual relevant FAR, or case law to support its claims, because none currently exist.

For example, in the most recent alleged “Busting Myths” version, the FAA continues to misrepresent that Model Airplanes/UAV are “aircraft” within the meaning of the FARs. In fact, this negligent misrepresentation has already been adjudicated as untrue by the NTSB Judge Garaghty. His decision clearly states that, “neither the Part 1, Section. 1.1, or the 49 U.S.C. Section 40102(a)(6) definitions of “aircraft” are applicable to, or include a model aircraft within their respective definition.” With respect to the FAA misrepresenting their own internal policies as regulatory authority, Judge Garaghty ruled;

“As Policy Notices 05-01 and 08-01 were issued and intended for internal guidance for FAA personnel, they are not a jurisdictional basis for asserting Part 91 FAR enforcement authority on model aircraft operations.” and;

“Policy Notice 07-01 does not establish a jurisdictional basis for asserting Part 91, Section 91.13(a) enforcement on Respondent’s model aircraft operation, as the Notice is either (a) as it states, a Policy Notice/Statement and hence non-binding, or (b) an invalid attempt of legislative rulemaking, which fails for non-compliance with the requirement of 5 U.S.C, Section. 553, Rulemaking.”

In addition the FAA sites to “Public Law 112-95” to claim some regulatory authority over Model Aircraft/UAVs. However, the FAA fails to mention that “Public Law 112-95,” Sections 331(6), (8), (9) and Section 336(c) apply to the FAA only and not to the public, and that it is a prospective law, the terms of which will take effect on a future date, when regulations are adopted. Even more deceptively, the FAA refers to this law throughout its revamped page, as “Public Law 112-95,” instead of its more common name, the “FAA Modernization and Reform Act of 2012.” The FAA has clearly promoted these misrepresentations and falsities, in an attempt to mislead the American public into

thinking there exists some other law that gives the FAA authority over Model Aircraft/UAVs. In fact, "Public Law 112-95" and the "FAA Modernization and Reform Act of 2012" are one in the same.

As each of you know, despite overwhelming legal authority, or lack thereof, the FAA currently has negligently appealed Judge Garaghty's decision and is continuing to try to mislead the American public by directing them from the FAA press release regarding the *Pirker* decision, back to the FAA's misleading and errant "Myth Busting" post which even after two revisions on March 8, 2012 inexplicably continues to negligently misrepresent Model Aircraft/UAVs are "Airplanes" for regulatory purposes and the FAA has the current authority to regulate Model Aircraft/UAVs and that authority is "stayed pending appeal." In other words, the FAA currently is still trying to mislead the American public into believing that alleged FAA regulatory authority, which never actually existed concerning Model Aircraft/UAVs... is now "stayed pending appeal." Did you hear the screech of brakes and roar of thrust reversers...please repeat, FAA?

For an excellent factual/legal analysis written by Connecticut Attorney Peter Sachs in his "Drone Law Journal," please see his most recent versions of "Busting the FAA's Myths Busting Document," most recent because the FAA has modified the site several times, in particular after Judge Garaghty's Order, causing Mr. Sachs to again respond to the FAA's new misstatements and propoganda. (See, <http://dronelawjournal.com/drone-law-news/>)

Despite all of this, the FAA has been and is still suggesting to the American public that the FAA has the ability to regulate/enforce Model Aircraft/UAV's for recreational/commercial uses. These threats, misconceptions/misinformation are at least negligent, if not unconscionable and must be immediately corrected. The FAA has promoted these various fallacies quoting the objective of public safety, which we can all agree should be the primary concern. However, negligently misrepresenting the actual applicable law/regulation because the FAA is behind on congressional mandate to develop regulations, policies and standards for Model Aircraft/UAVs, or for whatever commercial/financial reasons, is at least negligent, if not intentional and reprehensible.

As a final observation, it defies logic and undermines actual FAA mandates of NAS safety, that apparently the FAA's current position is that a non-FAA rated Model Aircraft/UAS "pilot" or just a kid with no training can fly his/her 55 pound or less Model Aircraft/UAS for recreational purposes subject only to AC 91-57 voluntary guidance and yet an experienced FAA ATP/Commercial or other rated pilot familiar with existing FARs and the NAS, allegedly cannot fly his/her 5 pound Model Aircraft/UAV for a "commercial" purpose to assist in Search and Rescue, take an aerial photo, work on a movie shoot or provide aerial mapping. Obviously "safety" is not the actual motivator/political concern. We suspect that there is far more behind the FAA's motivations. Perhaps it is application fees for currently un-required Certificates of Operating Authority ["COA"], perhaps it is the millions, if not billions, in profits for Department of Defense contractors and other large aviation companies in this rapidly developing industry, currently in its relative infancy.

Whatever the actual motivation, it is long past time misguided FAA administrators honestly, follow FAA stated values and with “moral soundness and the highest level of ethics” report and account to the American public and their stakeholders about the lack of current Model Aircraft/UAV law/regulation, and their progress on the same. The FAA should at long last correct themselves so that until there is actual law/regulation that has followed APA procedures, the American public should not continue to be stunted, intimidated, threatened and financially damaged by the FAA and prevented from pursuing safe, legal recreational/commercial development/uses of Model Aircraft/UAVs.

I am also concerned that the FAA is exposed to a variety of public lawsuits from already filed FOIA requests, Complaints for Injunctions, to Federal Government Tort Claims for negligence and negligent misrepresentations made by FAA Administrators and spokespersons to the American public causing them lost income and other damages. As well, the continuing negligence and negligent misrepresentations contained on the FAA website in the above referenced “Busting Myths about the FAA and Unmanned Aircraft,” inter alia, which currently perpetuate false/misleading information causing numerous individuals/companies to lose income on a daily basis.

I respectfully provide the above facts and information, NTSB Judge Garaghty’s Order and the excellent briefs written by Mr. Pirker’s counsel Brendan Schulman, Esq. in the *FAA v. Pirker* case, as well as the various excellent legal analysis in Peter Sachs, Esq. “Drone Law Journal,” in the hope that the FAA honor their Value and Vision statements with the American public concerning the current lack of actual law/regulations for the use of Model Aircraft/UAVs for recreational/commercial uses.

We can all agree that Model Aircraft/UAVs have advanced such that appropriate safety guidance/regulations are needed. By this letter, I also offer my assistance as an experienced attorney, ATP rated professional pilot and flight instructor to assist the FAA as tasked by Congress to come up with policies and actual, enforceable FARs to safely integrate both actual UAS and Model Aircraft/UAVs to the actually extent required, into the NAS.

If I can be of any further assistance, or you have any other questions or concerns, please do not hesitate to contact me directly, in writing.

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Michael D. Curran, Esq./ATP

cc: AOPA, All National UAV Associations & Organizations, Model Aircraft/UAV Developers/Operators and All Concerned American Citizens, et al.

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