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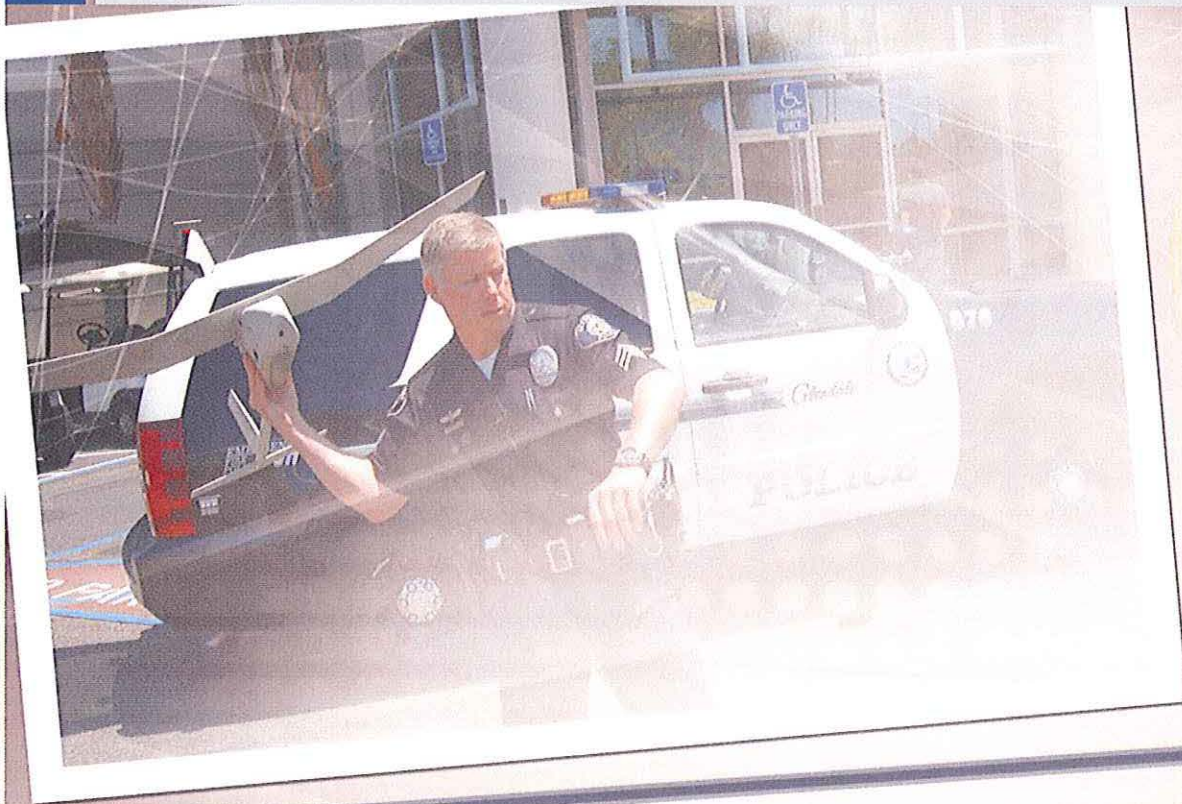
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DOES FAA HAVE THE AUTHORITY TO GOVERN UAS OPERATIONS?

By Alan Frazier, Deputy Sheriff, Grand Forks (ND) County Sheriff's Office, Assistant Professor, University of North Dakota's John D. Odegard School of Aerospace Sciences

I have had the opportunity to speak on the topic of unmanned aircraft systems (UAS) at many venues throughout the country. During these presentations, the most common question I hear is, "Does the Federal Aviation Administration have the authority to govern UAS operations?" The answer to this question differs greatly depending on whom you ask. FAA maintains UAS are "aircraft" and fall within the jurisdiction of their agency. However, the assertion is based on FAA guidance documents (05-01, 07-01, 08-01 and the latest, 7210.846), rather than regulations.

The matter is further clouded by FAA's

1981 issuance of *Advisory Circular 91-57*, which requests model aircraft operator's voluntary compliance with a maximum altitude of 400 feet AGL, avoidance of overflight of people and noise-sensitive areas, and notification to the airport operator or affected ATC facility when operating within three miles of an airport. Additionally, FAA requires government agencies operating UAS to declare the devices "public aircraft," which should exempt them and their operators from most FAA regulations.

FAA vs. Raphael Pirker

On Oct. 17, 2011, Raphael Pirker flew a Ritewing Zephyr over the University of Virginia

(UVA) in Charlottesville, VA. The purpose of the flight was to collect airborne video for Lewis Communications, which intended to use the video in a promotional piece for the university. Pirker was compensated for the flights. The video was subsequently posted on YouTube, causing FAA to initiate an investigation. The administration's findings were communicated to Pirker in an April 2012 notice of proposed assessment and again in a June 2013 order of assessment.

FAA alleged Pirker had operated the Zephyr in a careless and reckless manner in violation of FAR 91.13(a) and cited 13 actions, including operating the aircraft "within approximately 15

feet of a UVA statue" and "within approximately 50 feet of railway tracks." FAA assessed Pirker a \$10,000 civil penalty. Pirker appealed the civil assessment. On March 6, the Honorable Patrick Geraghty, a National Transportation Safety Board administrative judge, granted Pirker's motion to dismiss and vacated FAA's \$10,000 civil penalty. Geraghty's ruling did not address the allegation of careless and reckless operation. Instead, it simply addressed the content of Pirker's appeal, which maintained that, in the absence of pertinent law, FAA does not have jurisdiction over model aircraft.

On March 7, 2014, FAA appealed Geraghty's ruling to the full NTSB Board. The appeal has the effect of staying Geraghty's ruling until the full board review is completed. If the NTSB Board affirms Geraghty's ruling, the answer to the question regarding FAA jurisdiction over small UAS is a fairly clear "no."

Debriefing the Decision

The real losers in this decision are the less than one dozen law enforcement agencies that have jumped through every hoop and hurdle FAA has imposed on small UAS operations. Requirements for letters from state attorney generals, filling out lengthy FAA certificates of authorization (COA) applications, FAA on-site inspections, night opera-

"Does FAA have the authority to govern small UAS? More importantly, is it appropriate for FAA to have a role in governing small UAS?"

tions restrictions, and second class medicals will have all been for naught.

Now, don't get me wrong. Even though my agency has jumped through all the FAA hoops, I am a strong proponent of a rule that would allow unrestricted line-of-sight VFR operations of small UAS in Class E and G airspace below 400 feet AGL. A 12-year-old model aircraft operator possessing no FAA pilot certificate,

medical or COA can do all of that and more pursuant to *Advisory Circular 91-57*. Why should a law enforcement agency operating a similar model aircraft not be extended the same privileges?

FAA currently contends its interpretation of small UAS as being "aircraft" vs. "model aircraft" is solely based on the desire to ensure safety within the national airspace system. However, why does FAA differentiate between hobby and commercial/public safety missions? Why is it "safe" for a 12-year-old hobbyist to operate a small UAS in a public park, but it is "unsafe" for a law enforcement agency to operate a similar model aircraft in the same park? This is the type of non-sequitur that makes FAA's current position on small UAS untenable to law enforcement.

What then is the answer? Does FAA have the authority to govern small UAS? More importantly, is it appropriate for FAA to have a role in governing small UAS? The answer to the first question hinges on NTSB Board review of the Pirker decision. However, even if the NTSB affirms the decision, it is likely the effect on FAA will merely be to accelerate their issuance of a notice of proposed rule making (NPRM) addressing small UAS.

The answer to the second question is more subjective. FAA should have a role in

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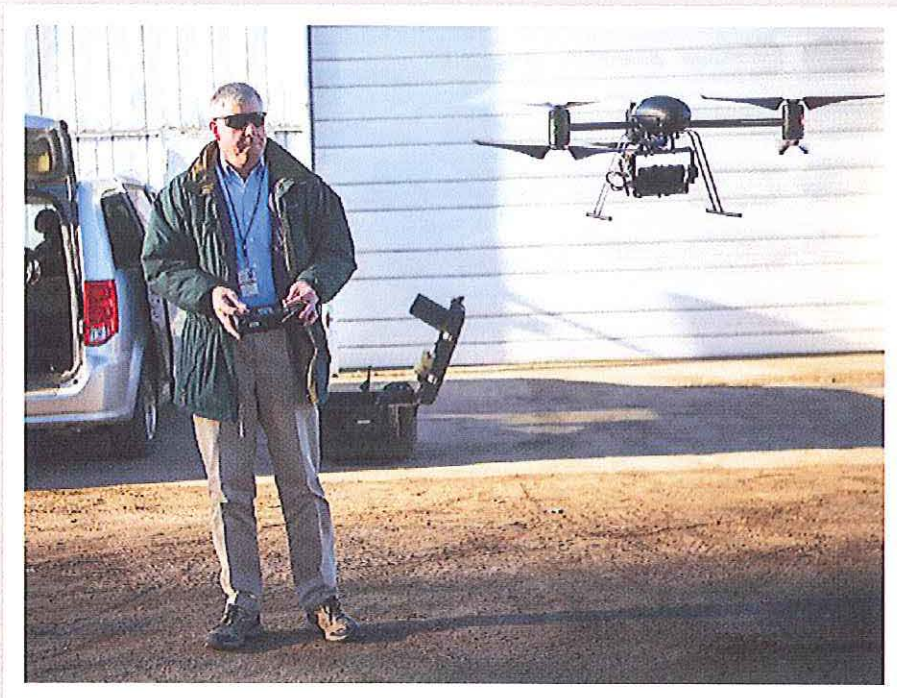
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governing small UAS access to the National Airspace System. However, the administration needs to be more pragmatic and realistic. An important element of such an

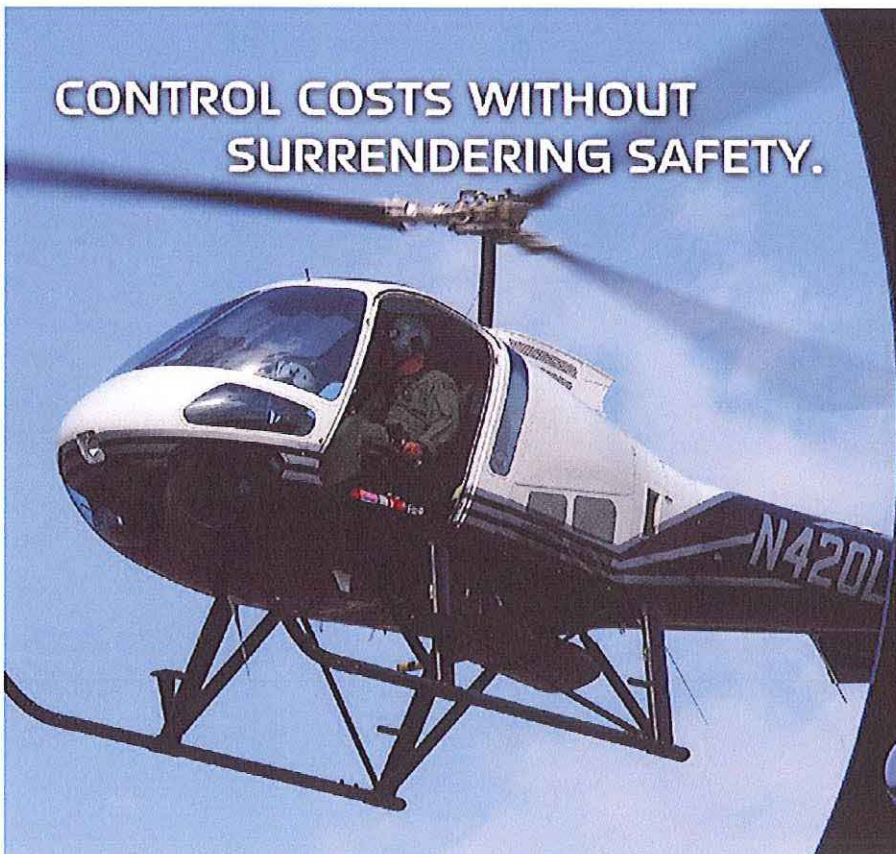
approach would be to allow public safety agencies open access to Class E and G airspace, below 400 feet AGL, during VFR conditions. In turn, the public safety agency


would be required to operate the UAS only over a defined incident perimeter in which it can ensure the aircraft does not overfly people. In addition, agencies should be granted access to Class D, C and B airspace with the additional requirement that all flights must be coordinated with the affected air traffic control tower and/or radar facility.

The current system of COAs is unnecessary. A simple letter of agreement between FAA and a public safety agency should suffice. This would allow a reduction in paperwork of approximately 24 pages, as the average COA is 27 pages, and a letter of agreement could likely cover all required topics in three pages or less.

It is likely the NTSB will issue a ruling on the Pirker case in the very near future. Regardless of the ruling, it is important that public safety agencies closely watch for FAA's issuance of an NPRM addressing small UAS. Once the notice is issued, it is extremely important that public safety agencies thoroughly review and comment on the proposed regulations. If we remain silent, we forfeit our right to complain later about enacted regulations. 

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