



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., SW.
Washington, DC 20591

BY FEDERAL EXPRESS

May 2, 2014

Brendan M. Schulman, Esq.
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036

Dear Mr. Schulman:

This letter is in response to your March 17 and April 18, 2014 letters regarding Texas EquuSearch's use of what you refer to as "model aircraft" for search and rescue activities.

As a preliminary matter, your March 17 letter incorrectly refers to the February 21, 2014 email from Mr. Brunner, an Aviation Safety Inspector in the FAA's Aviation Safety organization, as an FAA order directing your client to cease its operations. Authority to initiate an enforcement action, including issuance of a cease and desist order, is delegated specifically to the FAA's Office of the Chief Counsel by FAA Order 1100.2C. Mr. Brunner's informal email to your client is not an order issued in accordance with 14 C.F.R. § 13.20, 49 U.S.C. § 46105, and the delegation of authority in FAA Order 1100.2C.

You and your client, however, should be aware that Mr. Brunner's email does accurately reflect the FAA's authority to regulate "model aircraft." As you no doubt are aware, the "FAA Modernization and Reform Act of 2012," Pub. L. No. 112-95, at section 336(c), defines "model aircraft" as an unmanned aircraft that is: 1) capable of sustained flight in the atmosphere; 2) flown within visual line of sight of the person operating the aircraft; and 3) flown for hobby or recreational purposes. Section 336(b) of the law expressly provides that "[n]othing in this section shall be construed to limit the authority of the Administrator to pursue enforcement action against persons operating model aircraft who endanger the safety of the national airspace system." To the extent that your client's aircraft is a "model aircraft" as defined by law, and operates in accordance with the criteria specified in section 336(a), its operations will not be subject to future rules regarding model aircraft adopted by the FAA. Nonetheless, its operation must still not endanger the safety of the national airspace system and persons operating it would be subject to enforcement action for the violation of any existing FAA regulations insofar as the operation endangered the safety of the national airspace system.

To the extent that your client's operation of its aircraft does not meet the statutory criteria of section 336(a), even if it meets the definition of "model aircraft" in section 336(c), then the aircraft's operations are subject to the FAA's safety regulations, including all future applicable rules, and your client would be subject to enforcement action for violation of those rules.

Moreover, the ruling you cite in your March 17 letter for the proposition that the agency has not issued enforceable rules pertaining to model aircraft, *Huerta v. Pirker*, has been stayed

because the FAA has appealed the ruling. 49 C.F.R. § 821.43 (“The filing of a timely notice of appeal with the Board shall stay the effectiveness of the law judge’s initial decision or order, unless the basis for the decision or order is that the Board lacks jurisdiction.”). The initial decision in the *Pirker* case therefore has no applicability to your client at this time.

Additionally, we want your client to be aware that under the authority of 49 U.S.C 44701 the FAA approves Certificates of Authorization (COAs) on an emergency basis for operations for such things as natural disaster relief, search and rescue, and other urgent circumstances. We are not aware that any government entity has applied for a COA naming Texas EquuSearch as its contractor. Your client, because it is operating under a current approved COA, albeit in a different location for a different purpose, could be eligible to operate under the terms of a COA granted to a government entity. Please contact us if you have questions about the process to obtain a COA.

With regard to the request you make in your April 18 letter for the FAA to agree to a “stay and expedited briefing” schedule in connection with the petition for review that you filed in the United States Court of Appeals for the District of Columbia Circuit, we do not believe either action that you request is necessary or appropriate as Mr. Brenner’s email does not constitute a final order of the Administrator that is subject to judicial review under 49 U.S.C. § 46110. .

Sincerely,

A handwritten signature in black ink, appearing to read "Jerome M. Mellody", written in a cursive style.

Jerome M. Mellody
Acting Chief Counsel