

Requirements to Qualify as a Model Aircraft under the FAA Modernization and Reform Act of 2012 (P.L. 112-95, Section 336).

On February 14, 2012, the President signed into law the FAA Modernization and Reform Act of 2012 (P.L. 112-95) (the Act), which established, in Section 336, a “**Special Rule for Model Aircraft.**” In Section 336, Congress confirmed the FAA’s long-standing position that model aircraft are aircraft. Under the terms of the Act, a model aircraft is defined 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.

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.*” Congress’ definition of model aircraft is consistent with the FAA’s existing definition of aircraft as “*any contrivance invented, used, or designed to navigate, or fly in, the air.*”

Although model aircraft may take many forms, at a base level model aircraft are clearly “*invented, used, or designed*” to fly in the air. Section 336 also prohibits the FAA from promulgating “*any rule or regulation regarding a model aircraft, or an aircraft being developed as a model aircraft*” if the following statutory requirements are met:

- the aircraft is flown strictly for hobby or recreational use;
- the aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization;
- the aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization;
- the aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft; and
- when flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower ... with prior notice of the operation....

Thus, based on the language of the statute, we conclude that aircraft that meet the statutory definition and operational requirements, as described above, would be exempt from future FAA rulemaking action specifically regarding model aircraft. Model aircraft that do not meet these statutory requirements are nonetheless unmanned aircraft, and as such, are subject to all existing FAA regulations, as well as future rulemaking action, and the FAA intends to apply its regulations to such unmanned aircraft.