



FAA warns states, cities against drone regulations

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• **By Henry H. Perritt, Jr.**

On 17 December 2015, the FAA issued its first [public statement](#) on federal preemption of state and local drone regulation. A "fact sheet" issued by the FAA Chief Counsel reviews statutory and case law on federal aviation preemption, and includes an appendix citing specific Supreme Court and court of appeals cases.

The fact sheet makes it clear that most state and local drone registration requirements are preempted and that regulations imposing drone operator ("DROP") qualification requirements, vehicle design requirements and operating rules are likely preempted as well: "[N]o state or local government may impose an additional registration requirement...."

It offers examples of state and municipal regulations that are preempted: "A city ordinance banning anyone from operating UAS within city limits... or within certain distances of landmarks."

This section of the fact sheet, however, invites consultation with the FAA, suggesting some flexibility. It summarizes the limited preemption exception for traditional state and local regulation of facilities owned by units of state or local government and for traditional matters of state concern, such as prohibitions against voyeurism, requirements for warrants to authorize police use, hunting regulations, and prohibitions against attaching weapons to drones.

The fact sheet expresses concern that state and local regulation of drones is proliferating, and that the contents of such proposals often are poorly thought out and do not reflect an understanding of well-established principles of federal preemption. It encourages state and local decision-makers to consult with the FAA before adopting drone regulations.

The statement is a welcome step by the FAA to forestall what it called a "patchwork" of inconsistent regulation. It will benefit news organizations who are trying to figure out how to navigate around FAA limitations in section 333 exemptions, only to be confronted by more restrictive municipal or state proposals.

While it may be controversial, its analysis reflects mainstream legal doctrine. Before the relationship among federal, state, and local regulation of drones is settled, litigation is likely; the FAA Chief Counsel is not the final authority on constitutional federal-state relations. Nevertheless, the statement serves as a shot across the bow of state and municipal legislators who are in a rush to respond to overblown and ill-informed public concerns. It also should provide important guidance to state and federal courts confronted with challenges to state or municipal regulation.

Timidity is not a virtue moving forward. Journalists must be willing to take the risks of challenging drone restrictions, now that they are armed with an FAA pronouncement.

For more extensive analysis of federal aviation pre-preemption in the drone context, see Henry H. Perritt, Jr. & Albert J. Plawinski, *One Centimeter Over My Back Yard: Where Does Federal Preemption of State Drone Regulation Start?*, 17 N.C.J.L. & Tech. 307 (2015).

Henry Perritt, Jr. is a law professor and former dean at Chicago-Kent College of Law. He has written and co-written several articles about the potential use of drones in newsgathering, and co-owns a company, Modovolate Aviation, LLC; which was formed to conduct drone research, experimentation, demonstration, and education. - See more at:

http://rtdna.org/article/faa_warns_states_cities_against_drone_regulations#sthash.ciu42otn.dpuf