

July 7, 2023

Melanie Braverman, Esq.
NYPD Legal Bureau
One Police Plaza, Room 1406
New York, NY 10038

Re: Drone Regulations Proposed by New York City Police Department

Dear Ms. Braverman:

The Consumer Technology Association (“CTA”) respectfully opposes the New York City Police Department’s (“NYPD’s”) proposal to add a new Chapter 24 to Title 38 of the Rules of the City of New York that would regulate the operation of uncrewed aircraft systems (“UAS” or “drones”) in the City. Although CTA generally supports efforts to facilitate commercial drone operations and the proposed rules purport to establish a process for authorizing such operations, the proposed rules do not achieve this objective and effectively prohibit most drone operations, as discussed below. Moreover, the proposed regulations are preempted by Federal law and would curtail industry growth and harm those who benefit from this versatile technology.

CTA is North America’s largest technology trade association. CTA is the tech sector. Our members are the world’s leading innovators—from startups to global brands—helping support more than 18 million American jobs. CTA owns and produces CES®—the largest, most influential tech event on the planet. CTA educates U.S. policymakers to ensure the innovation economy is protected from laws and regulations that delay, restrict, or ban the development of technologies in all consumer technology sectors.

As a champion of innovation, CTA is a long-time advocate of clear rules authorizing UAS in a safe manner within the national airspace. CTA has been continually involved in the Federal Aviation Administration (“FAA”) rulemaking activities concerning the operation and certification of certain UAS. We also are a partner with several other organizations and the FAA in the *Know Before You Fly* campaign, which educates prospective drone users about the safe and responsible operation of UAS.

The explosive growth of the UAS industry has prompted legislators and regulators in many states and localities to propose legislation governing the industry or otherwise trying to address potential concerns related to UAS. Before considering new legislation, however, policymakers should evaluate whether (i) proposed regulations are preempted, (ii) the conduct at issue is already addressed by existing state laws, and (iii) UAS-specific legislation is warranted.

In this case, the proposed rules are preempted to the extent they effectively establish drone no-fly zones in the National Airspace System (“NAS”) by prohibiting virtually all drone take-offs and landings unless authorized by the NYPD. Laws and regulations governing the operation of drones in the NAS may only be adopted by the federal government.

The Supremacy Clause of the U.S. Constitution states that “the Constitution and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land.”¹ As noted by the Supreme Court, this gives Congress the power to preempt state law.² There are three types of preemption: express preemption (when Congress specifically preempts a state law);³ field preemption (when a federal framework of regulation is “so pervasive . . . that Congress left no room for the States to supplement it’ or where a ‘federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject”);⁴ and conflict preemption (when state laws “conflict with federal law, including when they stand ‘as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress”).⁵ Congress has occupied the field with regard to air navigation⁶ and has directed the FAA to integrate UAS into the NAS.

Although the proposed rules purportedly would regulate only drone take-offs and landings, it was drafted to prohibit drone operations in the NAS above New York City. Indeed, the Statement of Basis and Purpose states:

With regard to *the operation of drones*, New York City is a unique location, including three separate airports, the densest population in the United States, and towering skyscrapers. These attributes create hazards that are not present in most jurisdictions, significantly complicating *the use of drones in the city*. As drones have been increasingly used to film stunning cinematic videos, support first responder rescue efforts, aid in research projects, and conduct surveys, it is clear that the City must balance the ever present safety and privacy concerns inherent in widespread *drone use* against the important gains that may result from this new technology.⁷

By prohibiting all drone take-off and landings within the City without NYPD approval, the proposed regulations effectively prohibit UAS operations absent NYPD approval.

¹ U.S. Const., Art. VI, Cl 2.

² See, e.g., *Arizona v. United States*, 132 S. Ct. 2492 (2012).

³ *Id.*

⁴ *Id.* (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

⁵ *Id.* (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

⁶ See *Burbank v. Lockheed Air Terminal*, 411 U.S. 624, 633-34 (1973); accord *Singer v. City of Newton*, 284 F.Supp. 3d 125 (D. Mass. 2017).

⁷ Statement of Basis and Purpose of Proposed Rules, <https://rules.cityofnewyork.us/wp-content/uploads/2023/06/NYPD-Proposed-Rule-Take-Off-and-Landing-of-Unmanned-Aircraft.pdf>.

The FAA has issued numerous letters to localities cautioning against the adoption of UAS operational restrictions and no-fly zones.⁸ Additionally, the FAA has released a UAS Fact Sheet reminding state and local jurisdictions that they lack authority to regulate airspace.⁹ Through these letters and the UAS Fact Sheet, the FAA has made clear that regulations imposing operational bans or otherwise regulating navigable airspace are problematic.¹⁰ It notes that “[s]ubstantial air safety issues are raised when state and local governments attempt to regulate the operation or flight of aircraft” and “[a] navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system.”¹¹ The proposed rules would intrude into this purely federal regulatory system by effectively establishing no-fly zones in the City, except where a drone operator obtains prior approval from NYPD.

Finally, even if the proposed rules were not preempted, they should not be adopted because they are overly restrictive and will prevent consumers from receiving the full benefits associated with UAS operations. For example, the proposed rules require drone operators to apply for permits at least 30 days prior to each operation and, if a permit is granted, the approval is good only for 24 hours.¹² Many drone operators, however, do not know where they will need to operate 30 days in advance, such as with medical delivery services because customers generally do not place orders for prescriptions and other medical supplies 30 days in advance. Similarly, news organizations do not have advance notice about where newsworthy “breaking events” will occur. These examples demonstrate why a 30-day advance notice requirement is unworkable, and the 24-hour duration of the permits exacerbates the problem. Further, the proposed \$150 fee for every permit seeking approval for a take-off and landing location will make it economically infeasible to provide many important UAS services – like medical supply deliveries – to consumers in New York City.

⁸ See, e.g., Letter from Christopher R. Stevenson, FAA Office of the Chief Counsel, Enforcement Division, to Mark A. Winn, Assistant City Attorney, City of Petersburg (Sept. 16, 2016); Letter from Brandon C. Goldberg, FAA Office of the Regional Counsel, Southern Region to Alexander Karden, City Prosecutor, City of Orlando, Florida (Jan. 21, 2016); Brandon C. Goldberg, FAA Office of the Regional Counsel, Southern Region to Austin D. Roberson, Cobb County Attorney’s Office (Jun. 9, 2016); Brandon C. Goldberg, FAA Office of the Regional Counsel, Southern Region to David Wolpin, Esq., Counsel for the City of Aventura, Florida (May 26, 2016).

⁹ State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet, Federal Aviation Administration Office of the Chief Counsel (Dec. 17, 2015) (“UAS Fact Sheet”) https://www.faa.gov/sites/faa.gov/files/uas/resources/policy_library/UAS_Fact_Sheet_Final.pdf.

¹⁰ UAS Fact Sheet at 3.

¹¹ UAS Fact Sheet at 2; *accord* Letter from Reginald C. Govan, Chief Counsel, FAA, to Victoria Mendez, Esq., City Attorney, City of Miami (Dec. 9, 2015).

¹² This is especially problematic because the rules do not contemplate the need to postpone operations due to adverse weather conditions.

For the above reasons, CTA respectfully opposes enactment of the proposed rules.

Sincerely,

/s/ Douglas Johnson _____

Douglas Johnson

Vice President, Emerging Technology Policy

djohnson@cta.tech