



Updated FAA Fact Sheet (2023) on State and Local Regulation of Unmanned Aircraft Systems (UAS)

August 31, 2023

In July 2023, the Federal Aviation Administration (FAA) Office of the Chief Counsel, in conjunction with the U.S. Department of Transportation (DOT) Office of the General Counsel, issued a new document outlining the legal considerations for state and local governments when regulating UAS.

The updated Fact Sheet summarizes well-established legal principles regarding federal authority for regulating the efficiency of the airspace, including the operation or flight of aircraft, which includes, as a matter of law, UAS.

The updated Fact Sheet aligns with the pillars of AUVSI's 50-state campaign, [Drone Prepared](#), which supports leaving air navigation and safety to the FAA and leveraging existing law. Both of these pillars are upheld in the Fact Sheet. The campaign also focuses on deterring the notion of aviation easements as good policy, which the updated Fact Sheet expressly calls out as a federally preempted policy.

Discussion on Federal Preemption

Federal statutes give the FAA comprehensive and exclusive authority to regulate aviation safety and the efficient use of the airspace. State and Local laws that attempt to interfere with this structure are not only likely preempted, but also can reduce the safety of our National Airspace System (NAS).

These laws are often preempted either through field preemption, as a direct intrusion into the field of airspace regulation and efficiency, or through conflict preemption, as an obstacle to the FAA's exercise of its airspace authority.

Additionally, due to the Airline Deregulation Act of 1978, state or local laws affecting commercial UAS operators are more likely to be preempted than those just affecting recreational users.

State or local laws that would be preempted include:

- Regulate UAS operations or restrict flight altitude or paths
- Designate "highways" or "routes" for UAS
- Regulate UAS markings
- Require air safety training
- Sell or lease UAS-related air rights above roadways
- Mandate safety-related equipment
- Establish a licensing scheme for UAS pilots
- Implement UAS traffic control systems

Laws that are aimed at other objectives, but impair the reasonable use by UAS of the airspace – such as a privacy-related ban over an entire city or a security-related ban limited to lower altitudes – would also be federally preempted.

Further, the FAA has exclusive regulatory authority over the airspace at all altitudes, not just in navigable airspace, with the Fact Sheet stating:

“The FAA has exclusive authority to regulate airspace efficiency for UAS at low altitudes as it does for manned aircraft at higher altitudes. The FAA has not set minimum altitudes for UAS and in fact, requires UAS to operate only at low altitudes.”

State or local laws that are aimed at objectives other than aviation safety or airspace efficiency and that are sufficiently tailored as to not impact the reasonable use by UAS of the airspace would likely pass muster. This would include laws aimed at wildfire suppression, the use of UAS for hunting or fishing, or the exercise of police powers.

It is important to note that many of these state and local concerns are already addressed by laws that regulate ground-based conduct not involving UAS, and such laws often can be applied to UAS.

[Enforcement and Contact Information](#)

The updated Fact Sheet concludes with a discussion of Enforcement Matters, pointing to the FAA’s Drone Response Playbook for Public Safety (September 2020) as a resource for public officials. The Fact sheet provides the contact information to direct questions to the FAA’s Office of the Chief Counsel, Aviation Litigation Division.

[AUVSI Reaction and Next Steps](#)

AUVSI is pleased with the update to the Fact Sheet, but there are some gray areas and oversimplification throughout the guidance document that could pose problems down the road.

While a great step in the right direction, our Advocacy Team will continue to engage both Congress and the FAA to help cut down on the gray area we reference above.

We will further work to ensure that any opportunities for states to undermine federal preemption of the NAS is avoided and to prevent a state-by-state patchwork that makes scaled UAS operations more difficult.

See also [here](#) a more in-depth analysis of the Fact Sheet written by Wiley Rein, AUVSI’s outside counsel.