Priority: Clarify that FAA is the sole regulator of matters pertaining to aviation safety, including the use of the airspace at all altitudes and the categorization of drones as aircraft.

Overview and Problem

AUVSI has long advocated that FAA’s occupation of the fields of air navigation and aviation safety preempts attempts by states and localities to exert control over the airspace and regulate operational aspects of the drone industry. Federal control over flight operations is necessary for aviation safety given that the airspace is a unique resource that demands centralized federal control. This is something that courts have long recognized in the context of manned aviation. It is no less true in the uncrewed context, as FAA explained in its 2015 Fact Sheet:

“Substantial air safety issues are raised when state or local governments attempt to regulate the operation or flight of aircraft. If one or two municipalities enacted ordinances regulating UAS in the navigable airspace and a significant number of municipalities followed suit, fractionalized control of the navigable airspace could result with the potential for conflicting or incompatible requirements for UAS and manned aircraft in low altitudes and/or at the boundaries of a local jurisdiction. Additionally, this ‘patchwork quilt’ of differing restrictions could severely limit the flexibility of FAA in controlling the airspace and flight patterns and ensuring safety and an efficient air traffic flow of all types. A navigable airspace free from overreaching state and local restrictions is essential to the maintenance of a safe and sound air transportation system.”

This is also consistent with the position that FAA has taken elsewhere. For example, when discussing the scope of its authority with the Government Accountability Office (GAO), FAA noted that it “is responsible for air safety ‘from the ground up,’ including with respect to UAS operations,” and that this “authority and responsibility to regulate all aircraft operations down to the ground is based in part on 49 U.S.C. § 40103(b)(1),” which is derived from the original assertion of Congressional authority in 1928. Similarly, in pursuing enforcement against dangerous uses of drones, the agency has consistently viewed its responsibility as covering all UAS operations, no matter the altitude.

While we believe FAA has the requisite authority today to ensure that UAS operations can continue and expand safely under federal regulation without undue intrusion from state and local regulators, courts have expressed some confusion about the proper scope of preemption when it comes to uncrewed aircraft and have reached seemingly inconsistent results. The GAO report itself also highlights that other stakeholders may not always agree about the degree to which FAA’s rules are preemptive. Additional clarity from Congress stating that FAA is the sole authority to regulate UAS at all altitudes will be critical as these debates continue.