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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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FOR THE D.C. CIRCUIT
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TECHFREEDOM,

Petitioner,

v.

FEDERAL AVIATION ADMINISTRATION,

Respondent.

Case No. 16-1062

PETITION FOR REVIEW

Pursuant to 49 U.S.C. § 46110, 5 U.S.C. § 706, and Rule 15(a) of the Federal Rules of Appellate Procedure, TechFreedom respectfully petitions this Court for review of an interim final rule of the Federal Aviation Administration (“FAA”) setting forth registration and marking requirements for small unmanned aircraft, 80 Fed. Reg. 78593 (Dec. 16, 2015). A copy of the interim final rule is attached as Exhibit 1 (the “IFR”).

This Petition is being timely filed with the Court within sixty days of the issuance of the IFR, pursuant to 49 U.S.C. § 46110(a) and calculated in accordance with Federal Rule of Appellate Procedure 26(a)(1).

Venue is proper in this Court pursuant to 49 U.S.C. § 46110(a).

Founded in 2010, TechFreedom is a non-profit, non-partisan 501(c)(3) tax-exempt think tank dedicated to educating policymakers, the media and the public about Internet policy. We defend the freedom to tinker and innovate, as well as the freedom of expression using new technologies — such as “drones,” i.e., small unmanned aircraft systems.

TechFreedom has purchased a drone that it wishes to operate in the national airspace system. However, because this drone weighs more than 250 grams, TechFreedom is prohibited from operating this drone unless it abides by the IFR’s registration requirement and pays a \$5.00 fee. *See* 80 Fed. Reg. 78593, 78645–648 (to be codified at 14 C.F.R. §§ 48.1–.205).

The IFR is contrary to law, as Section 336 of the FAA Modernization and Reform Act of 2012 prohibits the agency from “promulgat[ing] any rule or regulation regarding a model aircraft ... notwithstanding any other provision of law relating to the incorporation of unmanned aircraft systems into Federal Aviation Administration plans and policies.” Pub. L. No. 112-95, § 336(c), 126 Stat. 11.

Moreover, even if Congress had not enacted this provision, the IFR exceeds the FAA’s authority to require the registration of aircraft under 49 U.S.C. §§ 44101–106, as it purports to require the registration of

persons who own model aircraft—not of the aircraft themselves. *See* 80 Fed. Reg. 78593, 78647 (to be codified at 14 C.F.R. § 48.115).

Finally, the agency promulgated the IFR without observance of procedure required by law, as the FAA failed to show good cause for dispensing with the Administrative Procedure Act’s notice-and-comment rulemaking process. *See* 5 U.S.C. § 553(b)(3)(B). Thus, the FAA’s actions are unlawful, as they were “arbitrary, capricious, an abuse of discretion, ... [and done] without observance of procedure required by law[.]” 5 U.S.C. § 706.

Accordingly, TechFreedom respectfully requests that this Court hold unlawful, vacate, enjoin, and set aside the IFR, and that it provide such additional relief as may be appropriate.

Dated: February 16, 2016

Respectfully submitted,



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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, TechFreedom has no parent corporation and no publicly-held corporation owns 10 percent or more of its stock.

Dated: February 16, 2016

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that, on February 16, 2016, I caused one copy of the foregoing Petition for Review to be served on the following by U.S. mail:

Michael P. Huerta, Administrator
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

Respondent



Raymond B. Sperry
Counsel for Petitioner