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September 11, 2019

U.S. Department of Transportation  
Docket Operations M-30  
West Building Ground Floor  
Room W12-140  
1200 New Jersey Avenue SE  
Washington, DC 20590

ATTN: Docket Number: FAA-2019-0628  
Petition for Exemption: UPS Flight Forward, Inc.

To Whom it May Concern:

Enclosed here are comments from the Transport Workers Union regarding the above docket. On behalf of 151,000 workers across the transportation sector, including more than 60,000 at U.S. airlines and 102 dispatchers at United Parcel Service, we urge you to deny these requests in their entirety. We welcome the opportunity to address any questions or concerns regarding these comments.

Sincerely,

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The Transport Workers Union (TWU) represents more than 151,000 workers in the Transit, Airline, Railroad, University, Utilities, and Services sectors. Our members include flight dispatchers (including those at United Parcel Service – UPS), airline mechanics, flight attendants, pilot flight instructors, ramp workers, and others in the aviation industry. We write in opposition to UPS Flight Forward Inc.’s (UPS FF) request for exemption from 16 air safety regulations (FAA-2019-0628, published August 22, 2019).

The broad extent of UPS FF’s request seems to be an attempt to create a new, tailor-made regulatory environment for its operation. These requests would be more appropriately handled as part of the rulemaking process. In fact, the FAA already has several relevant rulemakings in the pipeline, including rules for: safe and secure operations of small unmanned aircraft systems (sUAS) (FAA-2018-1086); operating sUA over people (FAA-2018-1087); registration and marking requirements for sUA (RIN 2120-AK82); and expanding unmanned aircraft systems (UAS) operations (RIN 2120-AL01). The petitioner’s request would be more appropriate as a matter of policy directed towards these rulemakings, as they occur, rather than as this long series of exemption requests.

Presumably, the petitioner does not wish to wait on the pace of the rulemaking process before beginning operations. Impatience with public comment and analysis is not a compelling reason to waive 16 safety requirements and establish a new regulatory structure to the sole benefit of one carrier. Additionally, the petitioner’s press release<sup>1</sup> lists several other potential exemption requests that may come in a future petition (e.g., operation of unmanned aircraft at night).

Furthermore, UPS FF fails to pass the statutory test for granting exemptions (49 USC 40101). As detailed below, several individual exemption requests raise serious safety

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<https://www.pressroom.ups.com/pressroom/ContentDetailsViewer.page?ConceptType=PressReleases&id=1563900983559-437>

concerns that the petitioner has not addressed. Ultimately, granting these requests would not be in the public interest and the Administrator should deny this petition.

### **Specific Exemption Requests Pose Significant Air Safety Threats**

Of the 16 different regulations UPS FF is seeking exemptions from, at least 5 pose significant safety risks in the context for which the petitioner would use these exemptions. Many of these requests present additional risks when combined with the petitioners other public statements regarding their intentions for future operations.

#### *91.119(b) and (c) – Minimum Safe Altitudes: General*

In order to implement a minimum level of safety in lieu of this regulation, UPS FF claims that it will utilize visual observers (VOs) in contact with remote pilots to avoid potential hazards in flight. These VOs are unlikely to be able to act effectively in all operational environments that the petitioner plans to use their aircraft in. For instance, VOs would be unable to see hazardous weather phenomenon at night.

If this exemption request were to be granted, we would strongly suggest restricting the airline to daytime, VFR operations only.

#### *91.151(b) – Fuel Requirements for Flight in VFR Conditions*

UPS FF does not state the length of route or limits of battery charge. FTS may be unusable in LLWS or icing conditions. The exemption request does not mention any limits to hazardous weather conditions that do not restrict ceiling or visibility (VFR) such as icing or LLWS conditions, nor does it mention considering any forecasted weather conditions. Current weather conditions at the point of departure and within visual line of sight of the VO are just one small snapshot in a much bigger picture of flight operations, especially at night where a VO is unable to see the weather. Weather conditions that preclude safe continuation could very well preclude a safe return or intermediate landing. Furthermore, weather conditions are very likely to degrade the level of navigation and route performance for these aircraft.

We encourage the FAA to demand more technical details on UPS FF's aircraft design and capabilities, including more information about the aircraft's fuel source's inability

to meet federal minimums, as well as its operational plans for addressing regularly occurring, but unpredictable airspace phenomena, such as weather changes, before granting this request.

*135.161(a) – Communication and Navigation Equipment for Aircraft Operations under VFR over Routes Navigated by Pilotage*

UPS has not specified if they would utilize qualified FAA Weather Observers to determine if VFR conditions exist at departure, enroute and at destination. Operating beyond the visual line of sight, especially at night when most UPS flight operations currently exist to meet its Next-Day Delivery business model, does not offer adequate visual reference to see and avoid certain hazardous weather conditions. Each airport UPS currently operates into is required to have an operational Automated Weather Observation System (AWOS) or be staffed by an FAA certified weather observer. Having access to FAA approved computerized weather sources does not currently meet the required safety and regulatory standard required in UPS air operations.

Per the petitioner's own filing, its aircraft are susceptible to losing their connection with their remote pilot. When that happens, automatically directing the sUA to its intended destination (as is Matternet's current practice) may not always be appropriate. These aircraft must have some capability to communicate with air traffic control at all times, just as all other part 135 operations must.

*135.203(a),(a)1, and (b) – VFR: Minimum Altitudes*

The petitioner's request is dependent on VOs capability to see and help navigate aircraft through congested airspace – including the airspace around takeoff and landing. These individuals are likely to face many scenarios where they will be unable to see hazardous weather and other phenomena during normal operations (including at night, in fog, etc.). In order to address this issue, any UPS FF operations should be limited to VFR operations only.

*135.209 – VFR: Fuel Supply*

As noted above with regard to part 91.151(b), UPS FF does not state length of route or limits of its aircraft's battery charge. For the same reasons, we encourage the FAA to

require significantly more information than is available in the petitioner's filing before considering this request.

### **UPS Flight Forward's Request is Not in the Public Interest**

The petitioner claims its exemption request would be in the public interest largely based on its *existing* Matternet operations in Raleigh, North Carolina. This service, presumably, will continue whether or not the FAA grants this petition. The public benefit enjoyed by quickly transporting medical supplies across WakeMed's campuses is not dependent on these exemption requests.

UPS FF is representing this pilot program in North Carolina as, essentially, a perfect microcosm of the larger airspace it would operate in if granted all of these exemptions and its part 135 AOC. In reality, the airspace is significantly more complicated outside of this IPP. Part 91 and part 135 operations are consequentially held to a higher standard of safety – one that the petitioner cannot achieve (hence the request for 16 exemptions from essential safety regulations).

One of the largest factors in the safety of our airspace is the consistent application of our regulations. Predictability is a necessary factor in safely operating aircraft. For that reason, the FAA has long held to its standards for what constitutes part 135 and part 91 operations and what obligations and benefits such an operation incurs. UPS FF's approach of seeking recognition as a part 135 carrier for the presumed opportunities they might have with such a designation, while simultaneously seeking exemptions from many of the minimum safety standards the FAA has established for such carriers, should give all users of the national airspace pause. Granting these exemptions would effectively create a sub-designation separate from part 135 and part 91. Such a large

deviation from past practice requires significantly more public comment and scrutiny – the kind that the FAA has historically done as part of its rulemaking process.

Approving the petitioner’s request without such a rulemaking process would fail to “best promote safety” (49 USC 40101(d)(2)) or maintain safety as the *highest* priority (49 USC 40101 (d)(1)) of the FAA.

### **Conclusion**

The Administrator of the Federal Aviation Administration (FAA) is empowered to grant exemptions to its safety regulations only when such a request would be in the public interest (49 USC 40109). In making such safety-related public interest decisions, statute requires that “assigning, maintaining, and enhancing safety and security” be “*the highest* priorities in air commerce” (49 USC 40101(d)(1); emphasis added). Taken both in its totality and as constituent parts, the petitioner’s request seems aimed at creating a new standard of safety in our airspace solely for their own commercial benefit. Such a goal is well outside of the public interest. We urge the Administrator to reject this request in its entirety or, failing that, to reject the specific exemption requests listed above.