

June 28, 2021

The Honorable Steve Dickson
Administrator
Federal Aviation Administration
Washington, DC 20591

Dear Administrator Dickson:

The undersigned business and trade associations write regarding the development of the Federal Aviation Administration's (FAA) proposed action to implement Section 2209 of the FAA Extension, Safety, and Security Act of 2016 (FESSA).

According to the FAA, more than 875,000 commercial and recreational unmanned aircraft systems (UAS) are registered in the United States. This number is likely to grow as new use cases emerge and as the United States further develops a regulatory framework for UAS. While we support the safe integration of UAS into the national airspace, we also want to ensure that critical infrastructure facilities and other sensitive sites are protected, as Congress intended, from any potential safety or security risk posed by a UAS operating in the airspace near such facility or site. These risks include espionage, safety hazards to ground operations, and other criminal and illicit activities.

Section 2209 requires the FAA to create a process enabling operators and proprietors of fixed site facilities to apply for airspace restrictions or prohibitions to prevent UAS from operating in close proximity to their facilities. In the FAA Reauthorization Act of 2018, Congress directed the FAA to implement Section 2209 through a notice of proposed rulemaking (NPRM) by March 31, 2019 and issue a final rule within 12 months of publication of the proposed rule. To date, the FAA has not issued an NPRM implementing Section 2209. In the absence of the required rulemaking, many states have enacted legislation to protect critical infrastructure sites, resulting in a patchwork of state laws that is confusing for critical infrastructure stakeholders and the UAS industry.

To address the current situation, the undersigned industry stakeholders request that the FAA, in conjunction with the Department of Homeland Security and other relevant agencies, expeditiously move forward with the rulemaking requirement contained in the FAA Reauthorization Act of 2018. As part of the agency's rulemaking approach, we recommend that the FAA include the framework laid out in the attachment hereto. The framework represents areas of consensus between key industry stakeholders focused on implementation of Section 2209. The undersigned agree that the framework establishes an important starting point for implementing Section 2209 and demonstrates the business community's commitment to finding a path forward on this critical rule.

We urge the FAA to adopt this framework in its proposed rule to protect critical infrastructure and facilities through the timely implementation of Section 2209. This will further the safe and secure integration of UAS into the national airspace. We would be pleased to discuss the rulemaking and proposed framework further with your staff and answer any questions.

Sincerely,

Alliance for Drone Innovation
American Chemistry Council
American Fuel & Petrochemical Manufacturers
American Gas Association
American Petroleum Institute
Association of American Railroads
Consumer Technology Association
International Association of Amusement Parks and Attractions
Interstate Natural Gas Association of America
Nuclear Energy Institute
U.S. Chamber of Commerce

cc: The Honorable Pete Buttigieg, Secretary, U.S. Department of Transportation
The Honorable Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security
The Honorable Jennifer M. Granholm, Secretary, U.S. Department of Energy
The Honorable Merrick B. Garland, Attorney General, U.S. Department of Justice

Framework to Protect Critical Infrastructure from UAS

Clearly Define Critical Infrastructure and Prioritize Fixed Site Facilities

Section 2209(b)(1)(C) enumerates the types of fixed site facilities to be protected. Some types of fixed site facilities, such as railroad, energy production, and chemical facilities, are explicitly included, but critical infrastructure is undefined in FESSA. The FAA should define critical infrastructure to identify those fixed-site facilities that are included under that term, but that are not explicitly identified in the statute.

To define critical infrastructure, the FAA should utilize the sectors identified in Presidential Policy Directive 21 (PPD-21), which is currently used to establish a government-wide approach to critical infrastructure protection. The FAA should ensure that fixed site facilities that are explicitly identified in section 2209(b)(1)(C)(i)-(iii) are considered separately from the “other locations that warrant such restrictions,” identified in clause (iv). Locations falling under clause (iv) should be given a higher degree of scrutiny to ensure that the FAA is not overwhelmed with applications.

Collaborate with the Private Sector on Designations

Section 2209 would cover fixed site facilities that span multiple industry sectors, and the private sector has substantial expertise in understanding the risk profiles of facilities in their respective sectors. In fact, there are standards and regulations in place today that provide a consistent risk framework for many of the industry sectors covered by 2209 that could be adopted by FAA in making 2209 designations. As part of the application for designation process, the FAA should allow eligible fixed site facility operators and proprietors to submit any industry-developed standards, frameworks, and other relevant policies that reflect the unique risk profiles of their particular sector. Also, for any sectors that lack such policies, the FAA should encourage the creation of new policies by eligible fixed site facility operators and proprietors in tandem with the Section 2209 rulemaking process. These submissions will provide clarity on specific fixed site facilities eligible for designation and any other information relevant to implementing Section 2209.

Support Phased Implementation and Prioritize Named Fixed Site Facilities

Given the complexity of Section 2209 and resource constraints at the FAA, the FAA should consider a phased implementation of the rule. Phase 1 should encompass fixed site facilities explicitly specified by Section 2209 and subsequent Acts. These would include: energy production, transmission, and distribution facilities and equipment; oil refineries; chemical facilities; amusement parks; and railroad facilities. Phase 2 should include other critical infrastructure locations that are not explicitly specified in Section 2209 as well as other locations eligible under clause (iv).

Establish an Effective Process for Designations

All fixed site facilities determinations should consider the following factors: aviation safety; protection of persons and property on the ground; national security; and homeland security. The FAA should ensure the boundary restrictions protect the fixed site facility from the risks posed by a UAS operating adjacent to

that facility. The FAA also must ensure that the process developed is consistent and allows for prompt adjudication of requests.

Enable Operations within Fixed Site Facilities

Under any adopted Section 2209 rule, the FAA should specify that operators and proprietors of fixed site facilities may use UAS themselves to enhance safety and security and unlock efficiency improvements. The FAA should state that operators and proprietors of a fixed site facility can operate and permit others to operate (e.g. contracted UAS pilots) a UAS within the boundaries of their facility.

Ensure that Section 2209 Protects Eligible Fixed-Site Facilities and Furthers UAS Integration

The first priority of Section 2209 is to restrict the operation of an unmanned aircraft in close proximity to eligible fixed-site facilities. Over the last few years, the FAA has made significant strides to facilitate greater UAS integration through rulemakings, pilot programs, and other important initiatives. As designations are made pursuant to Section 2209, the FAA should integrate such fixed site facilities restrictions and authorizations in the implementation of current regulations, like the Final Rule on Remote Identification of Unmanned Aircraft (Part 89), and any other future activities involving UAS integration, including the future development of Unmanned Aircraft Systems Traffic Management (UTM).

Establish Operator Awareness

As more UAS users operate in the national airspace and as additional regulations are promulgated, compliance is maximized when operators are made aware of those regulations. The FAA should publish and maintain a comprehensive, machine-readable database of all UAS airspace restrictions and prohibitions established under Section 2209, as well as airspace restrictions/special use airspace, sensitive security sites, and any other existing restrictions (i.e. airports, sports stadiums). In compliance with subsection (c), agencies and fixed site facility operators and proprietors may request that sensitive information regarding a protected site be redacted from public view. In addition, the FAA should educate UAS operators to ensure that operators are aware of fixed site facility restrictions to maximize compliance with the rule.