



October 22, 2020

Via e-mail

The Honorable Steve Dickson
Administrator
Federal Aviation Administration
800 Independence Ave., S.W.
Washington, DC 20591

Re: ***Implementation of Section 2209***

Dear Administrator Dickson:

The undersigned organizations urge the Federal Aviation Administration (“FAA”) to expeditiously adopt a process that would allow certain parties to petition the FAA to adopt operational restrictions based upon specific, risk-based operational criteria that would apply to unmanned aircraft systems (“UAS”) in the airspace above or adjacent to certain fixed site facilities. Although the FAA has committed to issuing a Notice of Proposed Rulemaking on this subject by February 2021¹, this is still two years beyond the deadline directed by Congress in Section 2209 of the FAA Extension, Safety, and Security Act of 2016, as amended.²

The tremendous growth of the UAS industry prompted many state and local policymakers to enact legally questionable UAS operating restrictions around many different types of facilities, some of which directly challenge the federal sovereignty of the National Airspace System. In response to those efforts, Congress enacted Section 2209, which directs the Secretary of Transportation to establish a process for applicants to petition the FAA to establish UAS operational restrictions over “fixed site facilities,” such as critical infrastructure.³ The

¹ See 2120-AL33, Spring 2020 Unified Agenda.

² 114 P.L. 190, 130 Stat. 615 (2016) (“FAA Extension Act”); 115 P.L. 254 § 369 (2018).

³ FAA Extension Act, § 2209(b)(1)(C).

statute specifies that petitions would be evaluated based on aviation safety, national/homeland security, and the need to protect persons and property while creating a predictable operating environment for UAS.⁴ Congress mandated that this process be established within six months of enactment.⁵

It has been four years since enactment of Section 2209 and the process for accepting and evaluating petitions to establish these airspace designations has yet to be established. During this period, states and localities have stepped into the void. In fact, since Section 2209 was enacted in 2016, at least 24 states have adopted laws imposing restrictions on UAS operations over critical infrastructure and airports.⁶ Numerous localities also have enacted similar restrictions, impacting the public's right to access navigable airspace and putting operators at risk of local prosecution even when flying in accordance with FAA regulations.⁷ The FAA should explicitly preempt these laws and promptly establish the process mandated by Section 2209 to provide a framework for determining whether operational restrictions should be established and if so, when, where, and under what specific conditions. Some state legislation references the existence of Section 2209, but the years-long delay in implementing a federal framework frustrates those good faith efforts.⁸

Furthermore, many of the proposed state and local UAS airspace restrictions are much broader than what Congress set forth in Section 2209. Section 2209 limits UAS operating restrictions to the airspace above critical infrastructure and similar areas with unique, highly sensitive safety and security concerns. In contrast, many state laws and bills establish UAS no-fly zones over more mundane areas such as airspace above parks,⁹ animal feeding stations,¹⁰ state government buildings,¹¹ mental health facilities,¹² and television stations.¹³ While not only preempted by federal airspace sovereignty, as well as the direct language of 2209, these efforts

⁴ *Id.* § 2209(b)(2)(C).

⁵ *Id.* § 2209(a).

⁶ *See, e.g.*, Ariz. Rev. Stat. § 13-3729 (enacted 2016); 2019 Ark. Acts, Act 508 (enacted 2019); CA Penal Code § 4577 (enacted 2018); C.R.S.A. § 18-8-104 (enacted 2018); C.G.S.A. § 7-149b (enacted 2017); 11 Del.C. § 1334 (enacted 2016); F.S.A. § 330.41 (enacted 2017); 70 ILCS 5/8.14 (enacted 2017); I.C.A. § 719.9 (enacted 2018); KRS § 511.100 (enacted 2018); LSA-R.S. 14:337 (enacted 2016); Minn. Stat. § 243.552 (enacted 2020); R.S.Mo. § 217.850 (enacted 2020); Nev. Rev. Stat. Ann § 493.020 (enacted 2017); N.C. Gen. Stat. § 15A-300.3 (enacted 2017); 3 Okl.St. Ann. § 322 (enacted 2016); O.R.S. § 837.300 (enacted 2016); SC Code 1976 § 24-1-300 (enacted 2018); SDCL § 50-15-2 (enacted 2017); Tenn. Code Ann. § 39-13-903 (enacted 2016); Tex. Gov't Code § 423.0045 (enacted 2017); U.C.A. 1953 § 72-14-102 (enacted 2018); 20 V.S.A. § 4621 (enacted 2018); W.S.A. 114.04 (enacted 2016). Many additional laws have been adopted establishing no-fly zones in other areas, such as parks.

⁷ *See* 49 U.S.C. §40103(a)(2).

⁸ *See, e.g.*, MCLS § 750.45a; N.J. Stat § 2C:40-27c.

⁹ *See, e.g.*, CA A.B. 2148 (2015); HI S.B. 632 (2017); W.VA Code § 20-5-2 (prohibiting UAS operations in parks absent registration with park superintendent); Wis. Admin. Code NR § 45.04..

¹⁰ *See, e.g.*, Tex. Gov't Code § 423.0045(a)(1-a)(A)(xiii).

¹¹ *See, e.g.*, 11 Del. C. § 1334(a)(1).

¹² *See, e.g.*, R.S.Mo. § 632.460.

¹³ *See, e.g.*, 3 Okl. St. § 322(A)(1)(a)(11).

create an unworkable patchwork of prohibitions that impacts UAS operators' access to airspace and thus should be addressed expeditiously.

We respectfully urge the FAA to comply as soon as possible with the requirements set forth in Section 2209 in order to provide clarity for states and localities – as well as drone operators – on a process for addressing flights over critical infrastructure.

Sincerely,

Alliance for Drone Innovation
American Chemistry Council
American Fuel & Petrochemical Manufacturers
Consumer Technology Association
Small UAV Coalition
U.S. Chamber Technology Engagement Center (C_TEC)

cc: Mr. Jay Merkle, Federal Aviation Administration
Ms. Michelle Ferritto, U.S. Department of Transportation