



**SMALL UAV
COALITION**
*A Partnership for
Safety & Innovation*

November 14, 2016

Honorable Molly Moran
Acting General Counsel
U.S. Department of Transportation

Honorable Reggie Govan
Chief Counsel
Federal Aviation Administration

Re: Section 2209 of FAA Extension, Safety, and Security Act of 2016

Dear Ms. Moran and Mr. Govan:

In this letter the Small UAV Coalition presents its initial thoughts on how the Department of Transportation (DOT) and the Federal Aviation Administration (FAA) should implement the above-captioned legislative provision, which directs the Secretary of Transportation, by middle of January 2017, to set up a process by which the FAA Administrator may designate certain airspace above fixed site facilities as no-fly zones. Our comments follow a thoughtful piece by Diana Cooper of PrecisionHawk entitled, "Protecting infrastructure and innovation, under Section 2209 of the FAA extension" published in the online journal Robohub.

We recognize that the DOT and FAA are inclined to seek stakeholder input before deciding upon the process it will follow, and we will respond to such request for comments when received. Given the short time remaining before the congressional deadline, we respectfully offer some guidance as you develop a proposal process.

While we generally support the intended purpose of this provision, to protect critical infrastructure from unauthorized UAS operations that may through intent or neglect harm persons, property, or pose a risk to national or homeland security, we are concerned that a broad construction of this provision will unreasonably limit safe and responsible UAS operations. Indeed, even a literal construction of this provision that is unmoored to its purpose should be resisted.

1. Section 2209 sets up a discretionary process.

Once the Secretary has established the process to consider applications, the decision whether to grant an application is up to the discretion of the Administrator. The Administrator is not required to approve any application for a designation. Instead, Congress directed the FAA only to consider the following in respect of any applications it receives for designation: aviation safety, protection of persons and people on the ground, national security, and homeland security.

We believe if these considerations are satisfied by the limitations in Part 107, or by existing or future Temporary Flight Restrictions (TFRs) and Notices to Airmen (NOTAMs), a section 2209 designation may be obviated.

2. Only certain kinds of fixed site facilities may be designated.

Section 2209 provides that only the following facilities may be eligible for designation:

- (i) Critical infrastructure, such as energy production, transmission, and distribution facilities and equipment;
- (ii) Oil refineries and chemical facilities;
- (iii) Amusement parks; and
- (iv) Other locations that warrant such restrictions.

We believe the first two categories are reasonable, as the relevance of these facilities to safety and national and homeland security is readily apparent. However, the term “critical infrastructure” is not sufficiently defined, as only one example is provided in the provision. One approach is to use the definition of “critical infrastructure” in 18 U.S.C. 2339D. Section 2210 of the short-term FAA extension legislation uses that definition in delineating the “covered facilities” for which FAA is authorized to grant authority to such a facility to operate a UAS at night and beyond visual line of sight for various purposes. However, the list of critical infrastructure facilities in section 2339D includes some categories for which UAS operations would not seem to pose the nature and degree of risk warranting a no-fly zone, such as banks and banking systems and telecommunications networks. We recommend that the FAA use that definition only as a general guide, and specifically identify which types of facilities are eligible for designation under section 2209.

The third category does not neatly fit with the first two categories. Amusement parks do not appear to raise special concerns from an aviation safety, national security, or homeland security perspective. Nor do they appear to need special protection from the risk to persons and property on the ground. Part 107 prohibits operations over people, unless conducted pursuant to a waiver, which may include conditions and limitations obviating a designation under section 2209. We expect the FAA’s forthcoming rule to authorize operations over people will contain sufficient protections for amusement park facilities and persons on the ground of such facilities.

The fourth category is broad and limited only by the requirement that the location “warrants” a no-fly zone. We believe this category should be construed *in pari materia* with the first two categories and be limited to facilities where special safety or security concerns are present and where such concerns are not adequately addressed by Part 107 or by an existing TFR or NOTAM.

3. Authorizing UAS operations over, under, or within a designated no-fly zone.

Section 2209 includes a saving clause: "Nothing in this section may be construed as prohibiting the Administrator from authorizing operation of an aircraft, including an unmanned aircraft system, over, under, or within a specified distance from that fixed site facility designated under subsection (b)." We expect that many critical infrastructure facilities will employ UAS for their own purposes of inspection and surveillance. In addition, there may be UAS operations close to or over a fixed site facility that may not pose an unreasonable risk, and the terms of any designation granted under this section should allow a UAS operator to obtain permission from the FAA or the fixed site facility to operate over that facility.

In this regard, we urge the FAA to limit both spatial and temporal contours of a designated no-fly zone to address the unique concerns set forth in section 2209 only as necessary and only if the facility is not adequately protected by Part 107. Any no-fly zone shall be reasonable in time, place, and manner.

4. A designation should be transparent and subject to public comment.

Given the potential that a designation may significantly interfere with safe and reasonable UAS operations, we urge the FAA to provide a process by which an application (the identity of the applicant and the scope of airspace sought to be protected) is published in the Federal Register and the public is given a set time (e.g., 20 days) to provide comments. We do not believe that the FAA need publish any application it intends to deny, for whatever reason. Any designation granted by the FAA would also be published in the Federal Register along with an explanation of the reason(s) supporting the designation, the terms of such designation, and a response to public comments.

* * * *

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in blue ink that reads "Gregory S. Walden". The signature is written in a cursive style with a large, looped initial "G".

Gregory S. Walden
Aviation Counsel
Small UAV Coalition