

**COMMENTS OF OFFICES OF ATTORNEYS GENERAL OF NEW YORK,
ARIZONA, CALIFORNIA, COLORADO, DELAWARE, ILLINOIS,
MINNESOTA, NEW JERSEY, NORTH CAROLINA, AND VERMONT**

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via www.regulations.gov

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Re: Designation—Restrict the Operation of Unmanned Aircraft in Close
Proximity to a Fixed Site Facility, 91 Fed. Reg. 24,650 (May 6, 2026)
Docket No. FAA-2026-4558

Dear Liam McKenna and Michelle Ferritto:

The Offices of the Attorneys General of New York, Arizona, California, Colorado, Delaware, Illinois, Minnesota, New Jersey, North Carolina, and Vermont (the AGs) respectfully submit these public comments on the Federal Aviation Administration (“Administration” or “FAA”)’s notice of proposed rulemaking titled *Designation—Restrict the Operation of Unmanned Aircraft in Close Proximity to a Fixed Site Facility* (the “Proposed Rule” or the “Rule”), which the Administration published in the Federal Register on May 6, 2026.¹ The Proposed Rule would “establish[] a process for operators and proprietors of certain fixed site facilities to request and maintain an unmanned aircraft flight restriction” (“UAFR”) and also “identifies the types of operations that are allowed in the [UAFR].”²

The AGs have six principal suggestions for critical revisions to the Proposed Rule.

First, the FAA should clarify that the Rule would not have the effect of preempting current or future state laws or regulations that restrict operation of drones in low-altitude airspace in the proximity of state-defined critical

¹ *Designation—Restrict the Operation of Unmanned Aircraft in Close Proximity to a Fixed Site Facility*, 91 Fed. Reg. 24,650 (May 6, 2026). On June 30, 2026, the FAA published a notice in the Federal Register granting the Office of the New York State Attorney General’s request to extend the deadline for public comments on the Proposed Rule through August 5, 2026. 91 Fed. Reg. 39,568 (June 30, 2026).

² *Proposed Rule*, 91 Fed. Reg. at 24,650.

infrastructure sites, even where a State’s definition of “critical infrastructure” in this context includes site categories not covered by the FAA proposal.

Second, the FAA should clarify how it will provide a secure channel for facilities to submit sensitive information in support of their applications for a UAFR, and for FAA to receive public comment on those applications, in order to avoid the risk that bad actors will exploit such information if it is publicly disclosed by FAA.

Third, the FAA should provide broader carve-outs to State and local government agencies that operate unmanned aircraft for various legitimate government purposes, often on highly confidential or time-sensitive missions, such as for emergency response actions, active law enforcement operations and authorized investigative activities, and environmental and wildlife monitoring.

Fourth, the FAA should provide a mechanism in the Rule for State corrections agencies, which face a heightened need to restrict their airspace from drones to prevent contraband-related interference, to submit a single application under proposed 14 C.F.R. § 74.251 that would allow all correctional facilities operated by that State agency to be protected by a “Special UAFR” under the Rule, without the need for multiple applications for a UAFR by each individual prison facility.

Fifth, the FAA should clarify the interplay between State and local agency implementation of Standard UAFR and Special UAFR designations for certain facilities, and the requirements of the July 6, 2026 Interim Final Rule under the Safer Skies Act issued by the U.S. Department of Homeland Security and U.S. Department of Justice, which “authorizes State, local, Tribal, and territorial law enforcement or correctional agencies to conduct counter-unmanned aircraft system (“C–UAS”) operations.”³

Finally, the FAA should clarify that, once the Rule is implemented, the FAA will make relevant UAFR data available in machine readable format to drone operators, including to State and local agencies, by integrating the data into the most common FAA and commercial software products for drone pilots.

³ See *Counter-UAS Authority for State, Local, Tribal, and Territorial Law Enforcement and Correctional Agencies*, 91 Fed. Reg. 41,466 (July 6, 2026).

I. FAA Should Further Clarify That the Proposed Rule Does Not Preempt State Laws That Restrict Drone Operations in Order to Protect Critical Infrastructure Facilities or Other Sensitive Sites Within a State’s Boundaries.

In the decade since Congress in 2016 directed the Administration to “establish a process to allow applicants to petition the [FAA] to prohibit or restrict the operation of an unmanned aircraft in close proximity to a fixed site facility,”⁴ multiple states have adopted laws that criminalize or otherwise restrict knowing operation of drones in the vicinity of certain kinds of critical infrastructure or other sensitive sites within the state.⁵ Other states may adopt similar laws in the future. These state laws are an exercise of traditional state police power, intended to protect sites on the ground from improper encroachments or interference by drones. Congress did not intend the FAA’s regulations implementing section 2209 to preempt such state laws. The AGs urge the FAA to further clarify that state laws and regulations—including state laws imposing restrictions on drone operations in the airspace of categories of sensitive sites beyond those covered by the Rule—are not preempted under any theory of preemption.

As courts have recognized, “the Federal Aviation Act [of 1958], which . . . remains the foundation of federal aviation law today, contains no express preemption provision.” *Sikkelee v. Precision Airmotive Corp.*, 822 F.3d 680, 692 (3d Cir. 2016). In 2024, the Fifth Circuit Court of Appeals held that a law enacted by the State of Texas that made it “illegal to fly a drone above sensitive sites like critical infrastructure facilities, prisons, and large sports venues” was not field preempted by the Federal Aviation Act or any FAA regulations thereunder. *See Nat’l Press Photographers Assoc. v. McCraw*, 90 F.4th 770, 795-98 (5th Cir. 2024). The Fifth Circuit reasoned that “the FAA has expressly declined to preempt all state regulation of drones. In promulgating a final agency rule on drone regulation, the agency stated, ‘The FAA . . . reviewed the comments and . . . decided that specific regulatory text addressing preemption is not required in the final rule.’” *McCraw*, 90 F.4th at 796.⁶

⁴ FAA Extension, Safety, and Security Act of 2016, Pub. L. No. 114-190, § 2209, 130 Stat. 615, 635 (2016).

⁵ See <https://www.dronelaws.us/federal-preemption#state-ci> (“Roughly fourteen states have enacted drone-specific critical infrastructure statutes that we have been able to verify against authoritative sources.”).

⁶ The Fifth Circuit was quoting the FAA’s statement in its 2016 final rule, *Operation and Certification of Small Unmanned Aircraft Systems*, 81 Fed. Reg. 42,064-01, 42,194 (June 28, 2016).

The Fifth Circuit in *McGraw* discussed the FAA’s *State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet*, which was last issued by FAA’s Office of Chief Counsel and the U.S. Department of Transportation’s Office of General Counsel in July 2023 (the “2023 FAA Fact Sheet”).⁷ *Id.* at 797. The court emphasized that based on the 2023 FAA Fact Sheet, “security-related restrictions over open-air water treatment facilities or certain types of critical infrastructure’ are likely not to be preempted, particularly if the restrictions are ‘limited to the lower altitudes.’” *Id.* (quoting 2023 FAA Fact Sheet at p.6). The court concluded that given that discussion in the 2023 FAA Fact Sheet, the challenged Texas provisions, “which prohibit drone flights less than 400 feet over critical infrastructure, are thus expressly permitted, not preempted.” *Id.*⁸

Congress, in enacting section 2209 of the FAA Extension, Safety, and Security Act of 2016, did not in any way indicate that the UAFR procedures that it was directing the FAA to establish would have the effect of preempting existing or future state laws. In fact, in providing a statutory definition of “fixed site facilities” eligible to submit a petition for drone restrictions, Congress included a catch-all by including “other locations that warrant such restrictions,” in addition to listing specific categories of fixed facilities, i.e., “critical infrastructure, such as energy production, transmission, and distribution facilities and equipment; oil refineries and chemical facilities; and amusement parks.”⁹ This indicates that congressional intent was not to insist upon an exclusive or static definition of “fixed site facilities.”

The Proposed Rule itself includes a paragraph asserting that the Rule “would resolve some of the regulatory uncertainty regarding airspace access for unmanned aircraft”:¹⁰

⁷ See FAA, Updated Fact Sheet (2023) on State and Local Regulation of Unmanned Aircraft Systems (UAS) (July 14, 2023), available at <https://www.faa.gov/sites/faa.gov/files/State-Local-Regulation-of-Unmanned-Aircraft-Systems-Fact-Sheet.pdf>.

⁸ The 2023 FAA Fact Sheet cites *Singer v. City of Newton*, 284 F. Supp. 3d 125 (D. Mass. 2017). See 2023 FAA Fact Sheet, p.6 n.7. In *Singer*, a federal district court recognized, based in part on an earlier FAA Fact Sheet, that “the FAA explicitly contemplates state or local regulation of pilotless aircraft, defeating Singer’s argument that the whole field is exclusive to the federal government.” 284 F. Supp. 3d at 130. However, the court in *Singer* concluded that a municipal ordinance in Newtown, Massachusetts was preempted under conflict preemption principles because its requirements conflicted with certain FAA regulations concerning registration and would amount to a “wholesale ban on drone use in Newton.” *Id.* at 131-33. The federal district court in *McGraw* expressly distinguished *Singer* in its analysis of conflict preemption. See *Singer v. McGraw*, 504 F.Supp.3d 568, 590-91 (W.D. Tex. Nov. 30, 2020), *rev’d on other grounds* 90 F.4th 770 (5th Cir. 2024).

⁹ FAA Extension, Safety, and Security Act of 2016, Pub. L. No. 114-190, § 2209, 130 Stat. 615, 635 (2016).

¹⁰ *Proposed Rule*, 91 Fed. Reg. at 24,656.

FAA has the exclusive authority to regulate aviation safety and the efficient use of the airspace by aircraft; the public relies on FAA regulations for direction and clarity. Attempts by State and local governments to regulate in the fields of aviation safety and the efficient use of the airspace by aircraft are preempted. Outside those fields, the States are generally free to regulate—even by enacting laws that affect aviation—as long as their laws do not conflict with FAA regulations, are not aimed at regulating aviation safety or airspace efficiency, and do not relate to the prices, routes, or services of commercial air carriers. FAA anticipates this proposed rule would reduce regulatory confusion in the national airspace for unmanned aircraft access.¹¹

This provision of the Proposed Rule cites to the 2023 FAA Fact Sheet, paraphrasing the Fact Sheet as stating that “laws aimed at objectives other than aviation safety or airspace efficiency—such as privacy—that do not impair the reasonable use by UAS of the airspace would likely not be subject to preemption.”¹²

The AGs are concerned that the Rule’s reference to hypothetical conflicts between state laws and FAA regulations—reflected in the clause “as long as their laws do not conflict with FAA regulations”—is vague without additional context or examples, and could contribute to, rather than reduce, “regulatory confusion in the national airspace for unmanned aircraft access.” 91 Fed. Reg. at 24,656.

State laws that impose restrictions on the operation of drones in the vicinity of critical infrastructure sites, like the Texas law at issue in *McGraw*, may incorporate definitions of “critical infrastructure” that differ from those to be codified in the FAA Rule. Additionally, such state laws may include protections for other sensitive sites that do not strictly qualify as “critical infrastructure” under a state’s own statutory or regulatory definition of that term. The lack of a perfect overlap between the FAA’s delineation of “critical infrastructure” site categories in the Rule and a state’s delineation of “critical infrastructure” in its state drone restrictions law should not be a basis for a finding that such a state law is preempted by FAA regulations.

Additionally, the absence of any conflict between the Rule and a state law like that at issue in the *McGraw* case is illustrated by the fact that a drone operator would be able to comply with any flight restrictions under the Rule and with such a state drone law. The Rule itself does not, upon promulgation, automatically

¹¹ *Proposed Rule*, 91 Fed. Reg. at 24,656.

¹² *Id.* n.33 (citing 2023 FAA Fact Sheet).

establish any UAFR designations for specific sites. The Rule only provides a procedure allowing sites qualifying under specified “critical infrastructure” categories to *request* that FAA make a determination on whether such UAFR designations are appropriate. Nor does the Rule itself operate to provide blanket authorization for drone pilots to operate their drones in any manner they please, wherever they please, so long as the flight is outside of designated UAFR zones. Were the Proposed Rule to be implemented and UAFR designations to be announced by the FAA, a drone pilot operating in a state with a state drone law would need to take heed of several legal sources of applicable drone flight restrictions:

(1) any airspace up to 400 feet of altitude that FAA has already designated and publicized as Standard UAFRs. In these zones, under the Rule, a lawful drone may transit through in the shortest practicable time, while broadcasting Remote ID (14 C.F.R. § 74.250);

(2) any airspace that FAA has already designated and publicized as Special UAFRs (which are 5-year designations). In these zones, standard commercial or recreational drones may not transit, as the Rule would generally restrict drone traffic in this airspace to drones operated by “federal security agencies, military departments, and designated fixed-site facilities supported by verified security assessments demonstrating credible threats”¹³ (14 C.F.R. §§ 74.251 and 74.6); and

(3) additional categories of sites, not falling into categories (1) and (2) above, identified in the state drone law. Similar to complying with FAA-designated Special UAFRs under the Rule, the lawful drone pilot would avoid navigating through these additional zones to be in compliance with the relevant state drone law.

Thus, there is no question that it is readily workable, with basic navigational planning, for a lawful drone operator to comply fully with a state drone law that lists categories of protected sites beyond those in the Rule, and also to comply in every respect with UAFRs established under the Rule once it is implemented.

The AGs urge the FAA to clarify in a final rule that existing or future state laws should not be understood to conflict with FAA regulations if the state laws, without intending to regulate aviation safety or efficient use of airspace, incorporate definitions of “critical infrastructure” or “prohibited spaces” broader than the site categories in the Rule in order to protect sensitive locations in the state that the

¹³ *Proposed Rule*, 91 Fed. Reg. at 24,657.

FAA's Rule does not otherwise address. Such a clarification by FAA would be consistent with the prevailing federal appellate precedent on this issue. *See McCraw*, 90 F.4th 770, 795-98 (5th Cir. 2024).¹⁴

II. FAA Should Revise Its Proposal to Clearly Describe a Secure Channel for the Submission of Sensitive Information as Part of Applications for a Standard UAFR, and to Clarify the Information FAA Will Disclose in Seeking Public Comments.

The AGs recognize that the Proposed Rule attempts to accomplish the dual interests of eliciting from UAFR applicants the most compelling justifications qualifying a particular site's airspace for a UAFR, while allowing interested stakeholders (such as government agencies, commercial drone operators, or neighboring facilities) to share feedback on the appropriateness of the requested UAFR. The AGs are concerned, however, that the Proposed Rule fails to make clear whether sensitive security information submitted in support of a Standard UAFR request will be shielded from disclosure to the public when the FAA publishes the requested UAFR details for public comment.

The Rule proposes that an applicant seeking a Standard UAFR for its airspace:

would be required to demonstrate a safety or security need for the UAFR. During this step, the applicant would describe the problems unmanned aircraft pose to the facility and how the UAFR would help address those problems. For example, proposed § 74.66 would require the applicant to submit information describing existing unmanned aircraft traffic in close proximity to the facility, the facility's specific vulnerabilities to unmanned aircraft, what could happen if these vulnerabilities were exploited, and how the UAFR would provide relief.¹⁵

¹⁴ Some state laws may establish restrictions on drones flying over large gatherings of people (numbering in the hundreds or thousands), in addition to restricting drones in the airspace of defined critical infrastructure and other sensitive sites. In the Proposed Rule, "FAA proposes that a fixed site facility within the commercial facilities sector may apply for a UAFR designation if the facility had a "minimum annual attendance of 2.5 million [visitors] in the previous year," "is open to the public for at least 120 days a year," "is primarily outdoors and not enclosed," and has "ticketing or entry controls procedures in place and is not a stadium or venue where the events may be covered by temporary flight restrictions." *Proposed Rule*, 91 Fed. Reg. at 24,666. The State AGs agree with commenters on the Proposed Rule who urge the FAA to loosen these criteria to allow for stadiums, official state agricultural fairs, and similar outdoor venues (even if they operate primarily on a seasonal basis) to be eligible to apply to the FAA for a Standard UAFR.

¹⁵ *Proposed Rule*, 91 Fed. Reg. at 24,659-60.

In the Proposed Rule, “FAA recognizes that some applicants may have confidential business information, including security-related materials. Therefore, FAA developed a system where applicants can provide security-related materials with the appropriate security protections.”¹⁶ A Draft “Advisory Circular” document referenced in the Proposed Rule and available on the rulemaking docket states that “[a]ll sensitive information provided by the sites would be subject to the Protected Critical Infrastructure Information (PCII) Program.”¹⁷ However, neither the Rule itself nor the Advisory Circular elaborates on how this program will work.

For a Standard UAFR, the Rule proposes that following the FAA’s issuance of a conditional approval on a requested UAFR, “FAA would publish the proposal in the Federal Register for notice and comment. The comment period would last at least 30 days.” FAA explains that “[p]ublishing in the Federal Register provides broad public visibility, conforms to established administrative practice, and creates a clear, durable record for notice and comment rulemaking. For these reasons FAA proposes the Federal Register as the primary vehicle for formal notice and comment on UAFRs.”¹⁸ Further, “[i]f FAA approves of the UAFR designation airspace request . . . FAA would publish the UAFR in the Federal Register as a Final Rule.”¹⁹

For a Special UAFR, which is intended to safeguard military facilities and other national security sites from most drone overflight, FAA acknowledges the risk that sensitive security information could be compromised in the process of soliciting public input on a requested “Special UAFR.” FAA expressly recognizes in the Proposed Rule “that notice and comment on the proposed special UAFR could increase the risk of revealing threat assessments, security vulnerabilities, or operational timing considerations and thus FAA may limit the type of information provided in the NPRM in the interest of national or homeland security.”²⁰ The AGs believe that similar concerns around security-related information apply to FAA’s process of publishing a notice of proposed rulemaking for a Standard UAFR.

Accordingly, the AGs recommend that the FAA clarify in the Rule the process by which sites will be able to utilize a secure, non-public channel of communication to request Standard UAFRs that would include confidential or sensitive security information. The AGs also urge the FAA to clarify that it will not publish sensitive information about the potential vulnerabilities of critical infrastructure sites in the Federal Register when soliciting public comment on a request for a Standard UAFR. At a minimum, the FAA should provide UAFR applicants with notice and an

¹⁶ *Proposed Rule*, 91 Fed. Reg. at 24,661.

¹⁷ Draft Advisory Circular, p.12, *available at* <https://www.regulations.gov/document/FAA-2026-4558-0006>

¹⁸ *Proposed Rule*, 91 Fed. Reg. at 24,673.

¹⁹ *Proposed Rule*, 91 Fed. Reg. at 24,674.

²⁰ *Proposed Rule*, 91 Fed. Reg. at 24,659.

opportunity to object before materials submitted in support of an application for a Standard UAFR, or FAA summaries of such materials, are publicly released. Finally, any sensitive security information about the vulnerabilities of critical infrastructure sites that FAA has approved for a Standard UAFR should be shared by FAA through secure channels with State police and State security agencies to enhance federal and state collaboration related to maintaining the security of such sites.

III. FAA Should Provide Broader Exemptions from the Proposed Standard UAFR and Special UAFR Protocols to State and Local Government Agencies Conducting Time-Sensitive or Confidential Drone Missions.

The AGs urge the FAA to provide operational exemptions for State and local government entities within both the Standard UAFR and Special UAFR frameworks.

State and local agencies frequently deploy drones for time-sensitive, emergency, or highly confidential missions—such as immediate disaster response, search and rescue missions, active law enforcement operations, inspections of critical infrastructure sites, or environmental and wildlife monitoring.

While the Standard UAFR access notification requirements to Site managers and the FAA under proposed § 74.255 are fairly onerous, the Proposed Rule includes a somewhat more streamlined notification protocol for government agencies transiting a Standard UAFR: “For those [drone] operations that are conducted by a government agency or law enforcement, FAA acknowledges that certain operations may require operational security due to national security or other law enforcement sensitive reasons such as criminal investigations. FAA proposes that the operator must notify the fixed site facility manager in accordance with § 74.255 as soon as reasonably possible in advance of the operation. Alternatively, the unmanned aircraft operator would notify the fixed site facility site manager verbally as soon as reasonably possible then provide written notice in accordance with § 74.255 within seven calendar days.”²¹ With respect to any final version of this provision that takes into account these comments, the AGs recommend that FAA clarify that included within the term “government agency” in this provision of the Rule are local fire departments, local Emergency Medical Services (EMS) and local emergency managers.²²

²¹ *Proposed Rule*, 91 Fed. Reg. at 24,678.

²² The FAA should also clarify what kinds of drone missions by State or local government agencies are regarded as Public Aircraft Operations under 49 U.S.C. §§ 40102(a)(41) and

For State and local agencies conducting time-sensitive drone missions, a requirement to provide even verbal-only advance notification to each fixed site facility with a Standard UAFR that may be along a flight route may add substantial delay to these time-critical government missions, as agencies attempt to identify relevant personnel at fixed site facilities and establish contact with them.²³ And for confidential law enforcement or investigatory drone operations, such advance verbal-only notifications may compromise these missions. The AGs recommend that compliance with any advance notification requirements be made through a secure government channel, and private facility managers should receive only the information necessary to identify the operation as authorized. The AGs further recommend that the Rule be revised to include confidentiality, cybersecurity, retention, use, and deletion requirements for any information supplied to facility managers by law enforcement agencies as part of UAFR compliance.²⁴

Additionally, the Proposed Rule provides at § 74.250(a)(2) that an unmanned aircraft transiting through a Standard UAFR must transit the UAFR “in the shortest amount of time practicable.” The Proposed Rule explains that “[i]n such sensitive environments, specific behaviors such as hovering, orbiting, landing, or loitering, may present security challenges that are distinct from conventional aviation safety issues. These types of behaviors, when conducted over sensitive sites, draw heightened concern from security personnel.”²⁵

State and local agencies operating drone missions may have a need to take photographs or record video of sites, bridges, tunnels, wooded areas, or natural terrain, and potentially to do so from different altitudes. It will thus often be incompatible with the nature of such government drone missions to transit the

40125, and what kinds of State and local government agency drone missions, if any, the FAA regards as operating only under 14 C.F.R. Part 107, which is more restrictive compared with Public Aircraft Operations.

²³ Additionally, in the context of recurring site inspection cycles for which State and local government agency drones may be deployed, the requirement to submit successive notifications to the relevant Site managers prior to attempting to transit through a Standard UAFR would likely be burdensome to many agencies in the AGs’ respective states. More broadly, the establishment of UAFRs associated with private sector facilities may hinder State and local agency drone-assisted inspections of transportation infrastructure such as bridges and tunnels without an exemption for such inspections.

²⁴ Additionally, because Remote ID information can be received by the public, the FAA should provide a standing exception or secure alternative for confidential law enforcement and public safety operations rather than requiring State and local law enforcement agencies to request mission-specific relief from Remote ID broadcasting requirements associated with Standard UAFRs.

²⁵ *Proposed Rule*, 91 Fed. Reg. at 24,676.

Standard UAFR “in the shortest time practicable” and State and local agencies transiting through a Standard UAFR should be relieved of this requirement in the Proposed Rule. FAA should thus expressly permit State and local agency drone operations to hover, orbit, search, monitor, document, or remain on station for as long as reasonably necessary to complete an authorized mission. As for transiting through a Special UAFR, the Proposed Rule asserts that this will be rare and will require a State or local agency drone operator, like all other operators, “to seek both using agency permission and approval from FAA Administrator in a form and manner acceptable to the Administrator.”²⁶

Under the proposed framework, State and local public safety agencies must secure approval from both the “using agency” (the federal entity sponsoring the Special UAFR) and the FAA prior to launch. Subjecting time-sensitive State and local agency drone missions to the rigid “using agency” coordination workflows proposed under 14 C.F.R. § 74.251 may cause highly problematic delays. This multi-layered notification structure introduces critical latency into the decision-making loop, failing to account for the rapid drone deployment requirements of emergencies like structural collapses, flash floods, or active threat environments. Forcing State or local emergency management commanders to navigate an external, federal bureaucratic approval chain during an unfolding crisis in order for drones to lawfully transit through a Special UAFR introduces the possibility that critical law enforcement and emergency response resources, such as life-saving search-and-rescue assets, could be effectively grounded when they are needed most.

To preserve operational readiness for State and local emergency response and law enforcement agencies, the AGs urge the FAA to explicitly include a streamlined, blanket exemption to the operational requirements under proposed 14 C.F.R. §§ 74.250 and 74.251 for authorized State and local government agencies conducting active law enforcement operations and authorized investigative activities and the most time-sensitive drone deployments,²⁷ such as emergency response, search-and-

²⁶ *Proposed Rule*, 91 Fed. Reg. at 24,677.

²⁷ While the AGs do not offer a uniform definition for State and local drone missions qualifying as “time-sensitive” such as to warrant exemption from the Proposed Rule’s notification requirements before transiting through a Standard UAFR, it is useful to look to jurisprudence on “exigent circumstances” in the Fourth Amendment context. *See United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir. 1984) (en banc). (“We define exigent circumstances as those circumstances that would cause a reasonable person to believe that entry [i.e., by law enforcement officers into a constitutionally-protected space without a warrant] (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.”); *United States v. MacDonald*, 916 F.2d 766, 769-70 (2d Cir. 1990) (en banc); *United States v.*

rescue, and emergent or confidential law enforcement actions. Under the expanded operational flexibilities, the FAA should permit verbal notification to Standard UAFR Site managers as soon as practicable, including after transit through the UAFR. For transit through Special UAFR zones, the FAA should allow verbal notification of transit to the federal “using agency” to mitigate the risk of the “using agency” initiating any counter-UAS measures against the State or local drone assets. State and local agency decision-makers and drone pilots should not face criminal penalties under 49 U.S.C. § 46307 absent evidence of rogue intent. This streamlined mechanism should grant immediate, trusted airspace access for public safety and governmental missions, ensuring that federal airspace protections do not inadvertently paralyze local emergency response and law enforcement capabilities.

IV. FAA Should Expressly Allow State Correctional Agencies to Submit a Single Application for a Special UAFR That Would Cover All State Prison Facilities’ Airspace and Would Prohibit Any Transiting Drone Traffic.

In 2016, when Congress enacted section 2209 of the FAA Extension, Safety and Security Act, the statute directed FAA to establish “procedures [that] shall allow operators or proprietors of fixed site facilities to apply for designation individually *or collectively*.”²⁸ In the FAA Reauthorization Act of 2024, Congress amended section 2209 to include State prisons in addition to the initial list of critical infrastructure site categories that could seek a UAFR.²⁹

The Proposed Rule highlights the need to protect State prisons from the risks of drone-introduced contraband and related concerns:

Unmanned aircraft pose a significant challenge for State prisons. Many incidents of unmanned aircraft being used to infiltrate State prisons to deliver contraband such as cellphones, drugs, and weapons have been reported. Unmanned aircraft threaten existing security protocols and perimeter control, and they can also be used to conduct surveillance.³⁰

Richardson, 208 F.3d 626, 629 (7th Cir. 2000). The AGs’ understanding is that “time-sensitive” drone missions will include those to prevent harm to persons or protected natural resources, to prevent the destruction of relevant evidence or the escape of a suspect, or to prevent some other consequence improperly frustrating legitimate law enforcement efforts.

²⁸ FAA Extension, Safety, and Security Act of 2016, Pub. L. No. 114-190, § 2209, 130 Stat. 615, 635 (2016) (emphasis added).

²⁹ FAA Reauthorization Act of 2024, Pub. L. No. 118-63, § 929, 138 Stat. 1025, 1332 (2024).

³⁰ *Proposed Rule*, 91 Fed. Reg. at 24,655-56.

However, the Rule states that “proposed § 74.52(b) would . . . clarify that each UAFR application applies to only one fixed site facility even if the operator or proprietor owns multiple eligible sites.”³¹ This restriction appears to contravene the congressional directive that FAA’s procedures implementing section 2209 should allow “operators or proprietors of fixed site facilities” to apply “for designation individually or collectively.” FAA interprets the term “collectively request” in the statute as meaning “a request by more than one operator or proprietor for a particular fixed site facility where more than one operator has an interest or exercises control.”³² But that reading by FAA would be more fitting had the key word been “jointly” rather than “collectively.”

It is burdensome for State corrections agencies to submit a separate UAFR application for each State prison. For example, the New York State Department of Corrections and Community Supervision (“DOCCS”) presently administers 41 prisons within the State of New York.³³ The UAFR applications are likely to be similar to each other for each of the DOCCS prisons, and it is unlikely that any public comments concerning a Standard UAFR for State prisons would be enhanced were the comments to be addressed to a particular prison as opposed to all DOCCS-administered prisons via a collective application.

Additionally, a Special UAFR—where transit through the zone by external drones is entirely prohibited—is a more appropriate form of drone restriction for State prisons than is a Standard UAFR that would allow drones to transit through the prison’s airspace.

Accordingly, representing the interests of our respective states’ corrections agencies, the AGs respectfully recommend that FAA should provide a mechanism in the Rule for state corrections agencies, which face a heightened need to restrict their airspace from drones to prevent contraband-related interference, to submit a single application under 14 C.F.R. § 74.251 that would allow all correctional facilities operated by that state agency to be protected by a “Special UAFR” under the Rule, without the need for multiple applications for a UAFR by each individual prison facility.

³¹ *Proposed Rule*, 91 Fed. Reg. at 24,661.

³² *Proposed Rule*, 91 Fed. Reg. at 24,661.

³³ <https://doccs.ny.gov/facilities>

V. FAA Should Confirm That State and Local Agencies That Have Obtained “Mitigation Certification” Under the Safer Skies Interim Final Rule Have Lawful Independent Authority to Conduct Counter-UAS Operations Within Any Standard UAFR.

Counter-UAS measures are the strategic, operational, and technical actions used to detect, track, identify, mitigate, and neutralize unauthorized or hostile drones.

The Proposed Rule clarifies that the establishment of a UAFR “does not authorize the use of detection or mitigation technologies to interfere with unmanned aircraft” and that “the UAFR alone does not create a physical or electromagnetic boundary to prevent unauthorized access. However, facilities with independent authority to operate such systems may continue to do so lawfully, and manufacturers may leverage the publicly available UAFR database.”³⁴ Further, as to Special UAFRs, “[f]acility operators with separate statutory authority to deploy counter-UAS technologies may continue existing practices; however, this proposed rule does not grant or expand such authorities.”³⁵

The AGs recommend that the FAA explicitly confirm that State, local, Tribal, and territorial (SLTT) agencies holding a “Mitigation Certification” under the Safer Skies Interim Final Rule (IFR) possess lawful, independent authority to conduct counter-UAS operations within at least Standard UAFR-designated airspace. The joint DOJ and DHS Safer Skies framework—which went into effect on July 1, 2026—provides vetted State, local, Tribal, and territorial law enforcement agencies with the active electronic and kinetic tools needed to legally disrupt, disable, or seize threat drones. Without explicit alignment in the FAA’s Rule’s final text, State and local agencies potentially risk facing regulatory ambiguity or conflicting federal enforcement actions when looking to actively neutralize a drone threat inside an FAA-approved UAFR.

VI. FAA Should Clarify That, Once the Rule Is Implemented, FAA Will Make Relevant UAFR Data Available to Drone Operators in Machine Readable Format and Through Integration in Commonly-Used Software.

Finally, the FAA should clarify that it will make Standard UAFR and Special UAFR data, including boundaries, available in machine readable format to relevant State and local agencies that operate drones under Part 107 or Public Aircraft

³⁴ *Proposed Rule*, 91 Fed. Reg. at 24,657.

³⁵ *Id.*

Operations authority. This would allow for integration of this data into existing GIS systems and other emergency service platforms.

The FAA should integrate the UAFR data into the commercial software applications that drone pilots commonly use. This would save pilots from having to check multiple sites and would reduce the risk of pilots overlooking a UAFR restriction. For example, FAA should integrate updated UAFR restrictions into its Low Altitude Authorization and Notification Capability (LAANC) and B4UFLY services, which are FAA resources that support integration of drones in the airspace and make information about where pilots can fly available to commercial Part 107 users as well as to recreational flyers.³⁶

CONCLUSION

In conclusion, the AGs thank the FAA for the opportunity to submit comments (as well as for the 30-day extension of the public comment deadline) and recommend revisions to the Proposed Rule in line with the comments above.

Respectfully submitted,

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³⁶ https://www.faa.gov/uas/getting_started/laanc;
https://www.faa.gov/uas/getting_started/b4ufly.

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