

Comment Period Opens for FAA's Section 2209 Notice of Proposed Rulemaking

In 2016, Congress enacted the FAA Extension, Safety, and Security Act, which included Section 2209, directing FAA to “create a system under which operators or proprietors of certain fixed site facilities could request FAA to restrict unmanned aircraft operations in close proximity to those facilities.”¹ On May 6, 2026, FAA complied with that Congressional direction (which had been subsequently twice amended) and published its Notice of Proposed Rulemaking *Designation-Restrict the Operation of Unmanned Aircraft in Close Proximity to a Fixed Site Facility* (“NPRM”).

Fundamentally, the NPRM designates a new type of airspace restriction, called an Unmanned Aircraft Flight Restriction (“UAFR”), and creates 14 CFR Part 74 to implement these new regulations. In doing so, FAA clearly sought to balance the public’s right of transit with the Congressional mandate to protect critical infrastructure. As a result, the NPRM appears to both create the possibility to drastically curtail UAS use as well as leaving large categories of operations largely unaffected.

The public comment period opened on May 6, 2026, and is open for 60 days until July 6, 2026.

Unmanned Aircraft Flight Restrictions

The NPRM proposes two classes of UAFR—special and standard. A standard UAFR identifies a discrete volume of airspace over and around critical infrastructure in which UAS would not be permitted to operate, except for “narrowly defined exceptions.”² The UAFR would not allow the creation of physical boundaries (e.g., geo-fencing), nor would it authorize counter-UAS activity.

¹ Notice of Proposed Rulemaking, *Designation-Restrict the Operation of Unmanned Aircraft in Close Proximity to a Fixed Site Facility*, 91 Fed. Reg. 24650, 24650 (May 6, 2026) (hereinafter “NPRM”).

² NPRM, at 24656.

Although termed “narrow,” the exceptions to permitted UAS operations in a standard UAFR are actually quite broad and allow UAS operations conducted under Parts 91, 107, 108, 135, and 137 provided they (1) provide notice to the facility of their operations in the UAFR, (2) broadcast Remote ID in accordance with 14 CFR part 89, and (3) transit the UAFR in the “shortest amount of time practicable.”³ Moreover, the NPRM is clear that the facility does not grant authorization to enter or access the UAFR; instead, “[a]ny operator that meets the requirements” of the proposed rule “may access a UAFR upon providing” the required notice to the facility.⁴ In other words, the UAFR would seemingly permit nearly all commercial operations while restricting nearly all recreational uses.

Similar to a standard UAFR, a special UAFR would restrict UAS operations within a discrete volume of airspace. However, a special UAFR would be limited to the airspace over and around sites with a “credible safety or security threat” operated by or under the control of FAA, Federal security and intelligence agencies, and military departments.⁵ And, unlike the expansive operations permitted with a standard UAFR, no UAS operations would be permitted within a special UAFR unless they are conducted by the agency operating the site or have the permission of both the operating agency and FAA to do so.

Both standard and special UAFR would be issued for a maximum of five years, subject to renewal, and could be effective year-round (continuous) or up to 290 days of the year to accommodate seasonal or intermittent cases (part-time).⁶

Establishing a UAFR

The NPRM proposes that UAFRs would not be independently created by FAA. Instead, owners or operators of fixed-site facilities considered “critical infrastructure” may apply to FAA for a UAFR. FAA then considers the request according to enumerated (but not all-inclusive) factors and either approves or denies the request.⁷ Perhaps nowhere is the tension between preserving the public right of transit and complying with its Congressional directive to create a system that could restrict UAS access more apparent than in the NPRM’s discussion of who may request a UAFR.

³ *Id.* at 24652.

⁴ *Id.* at 24678.

⁵ *Id.* at 24658.

⁶ *Id.* at 24685.

⁷ *Id.* at 24673.

Only operators of fixed-site critical infrastructure may apply for a UAFR. To define critical infrastructure, the NPRM uses the 16 “critical infrastructure sectors” outlined in the National Security Memorandum on Critical Infrastructure Security and Resilience (“NSM-22”):

- chemical;
- commercial facilities;
- communications;
- critical manufacturing;
- dams;
- defense industrial base;
- emergency services;
- energy;
- financial services;
- food and agriculture;
- government services and facilities;
- healthcare and public health;
- information technology;
- nuclear reactors, materials, and waste;
- transportation systems; and
- water and wastewater

The proposed rule then establishes “certain eligibility criteria related to their operations” that each class of critical infrastructure must meet to be eligible to request a UAFR, as well as a showing that it already has “protective security measures in place” to protect against threats, including UAS.⁸ However, even if a facility meets these criteria, the facility must then demonstrate a safety or security need for the UAFR. In particular, the applicant must describe the (1) existing unmanned aircraft traffic in close proximity to the fixed site facility; (2) the facility's specific vulnerabilities to unmanned aircraft traffic; (3) what would happen if an unmanned aircraft were to exploit a vulnerability; and (4) how a UAFR would be integrated into a facility's security plans to supplement existing security measures.⁹

Moreover, applicants must submit certain information to FAA in order to allow FAA to comply with the National Environmental Policy act of 1969 and other environmental laws,

⁸ *Id.* at 24661-62.

⁹ *Id.* at 24664.

and may require applicant to prepare a site-specific environmental analysis or even assist with the preparation of an Environmental Assessment.¹⁰

While this robust review and eligibility process helps show that “FAA does not enter into airspace restrictions lightly,”¹¹ the actual eligibility criteria the NPRM establishes for each of the 16 sectors can be viewed as broad and potentially permissive.

For example, the eligibility criteria for financial services critical infrastructure are any one of the following: corporate headquarters and regional operations centers, cash vaults, currency processing, ATM support facilities, trading floors, financial exchanges, and third-party service provider facilities. Even where the eligibility contains limiting caveats, they are often vague, such as a “data center underpinning interconnected services where disruption could result in regional or nation-level debilitating impact to multiple downstream sectors,”¹² “cellular towers, base stations, or nodes of which disruption could result in debilitating impact to regional or national, public health, financial systems, or national security”¹³ and “exposed long-haul fiber-optic cables at data centers where a loss, degradation, or compromise of such networking infrastructure could have an debilitating impact on national security, defense, or continuity of critical government operations.”¹⁴

As written, the NPRM appears to allow the potential for large numbers of fixed sites to be eligible to apply for a UAFR and relies on the discretion of FAA to issue them only to applicants that can establish actual need.

Conclusion

In Section 2209, Congress has forced FAA to balance the competing interests of users of the National Airspace System with the mandate to create a process for fixed-site critical infrastructure to apply to restrict UAS operations over their facilities. As a result, the NPRM simultaneously creates UAFR to restrict UAS access while, in many cases, seemingly allowing nearly all approved commercial operations to continue without additional authorizations, and also creates broad categories of eligibility for applicants while then requiring a strict and ongoing showing of need.

¹⁰ *Id.* at 24665.

¹¹ *Id.* at 24673.

¹² *Id.* at 24671.

¹³ *Id.* at 24666.

¹⁴ *Id.* at 24671.



However, the NPRM recognizes this tension and, in many cases, has asked for public comment on the proposed eligibility criteria and other proposals. The comment period closes on July 6, 2026.

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