

**Before the
Federal Aviation Administration
Washington, D.C. 20590**

In the Matter of

Designation — Restricting the Operation of
Unmanned Aircraft in Close Proximity to a
Fixed Site Facility

Docket No. FAA–2026–4558

Notice No. 26–03

**COMMENTS OF THE AMERICAN CIVIL LIBERTIES UNION, CENTER FOR
DEMOCRACY & TECHNOLOGY, ELECTRONIC FRONTIER FOUNDATION AND
ELECTRONIC PRIVACY INFORMATION CENTER**

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**Comments of the American Civil Liberties Union, Center for Democracy and Technology,
Electronic Frontier Foundation, and Electronic Privacy Information Center
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The American Civil Liberties Union, Center for Democracy and Technology, Electronic Frontier Foundation, and Electronic Privacy Information Center submit these comments in response to the Federal Aviation Administration’s advance Notice of Proposed Rulemaking (“NPRM”) on restrictions on the operation of drones near certain fixed site facilities.¹

We appreciate the FAA’s recognition that it is important not to allow overbroad restrictions on drone flights. We believe that the threat that Unmanned or Uncrewed Aerial Vehicles (“UAVs” or “drones”) pose to certain highly vulnerable facilities is very real, and it was appropriate for Congress to direct the FAA to create a process for issuing flight restrictions for uncrewed/unmanned aircraft (“UAFRs”) near such facilities.² At the same time, however, restrictions on drones have implications for the exercise of First Amendment-protected rights to engage in newsgathering and still or video photography that must be taken account of in setting the criteria for restrictions. There remains a significant danger under the proposed rule that those rights won’t be sufficiently protected. There is also a danger that the sheer number of restrictions may combine to create widespread confusion and obstacles to those wishing to use drones for newsgathering and other purposes.

For more than 100 years, the American Civil Liberties Union (“ACLU”) has been our nation’s guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. The ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual’s rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, disability, or national origin.

The Center for Democracy & Technology (“CDT”) is a non-profit, non-partisan, public interest organization that, for over 30 years, has worked to promote the constitutional and democratic values of privacy, equality, free expression, and individual liberty in the digital age.

The Electronic Frontier Foundation (“EFF”) is the leading nonprofit organization defending civil liberties in the digital world. Founded in 1990, EFF champions user privacy, free expression, and innovation through impact litigation, policy analysis, grassroots activism, and technology development. With over 32,000 individual dues-paying members and well over 1 million followers on social networks, we focus on promoting policies that benefit users of technology. EFF defends freedom of speech, freedom of association, personal privacy, and personal control over privacy against threats arising from governments and the private sector.

¹ Designation-Restrict the Operation of Unmanned Aircraft in Close Proximity to a Fixed Site Facility, 91 Fed. Reg. 24650 (proposed May 6, 2026) (to be codified at 14 C.F.R. pts. 1, 74, 91, 107).

² FAA Extension, Safety and Security Act of 2016, Pub. L. No. 114–90, § 2209 (b)(1)(C)(iv), 130 Stat. 615 (2016) (“FESSA”).

The Electronic Privacy Information Center (“EPIC”) is a public interest research center in Washington, D.C. EPIC was established in 1994 to focus public attention on emerging privacy and related human rights issues, and to protect privacy, the First Amendment, and constitutional values.

While the security risks that drones can pose to some facilities are very real, attempts to reduce such risks must take account of the role of drones in journalism and newsgathering. One of the promises of drones is not just that they will prove helpful for public safety or add to the efficiency of commerce, but that they will democratize the ability to engage in aerial photography. Restrictions must also be strictly confined to the most serious risks lest they create a dense patchwork of restrictions that together create confusion and significantly restrict, burden, and impose barriers on drone operations by journalists, ordinary people, and ordinary people engaging in journalism.

1. The restriction of aerial photography has implications for democracy

Aerial photography is a form of power. It can reveal information that can’t be obtained from any other vantage point, and such information can be critical for the public interest. Already in the relatively short history of this technology, we have seen drones used by journalists and activists around the world and in the United States. An amateur drone photographer in Texas discovered a river of pig’s blood from a slaughterhouse flowing into a waterway, [violations](#) that led to the filing of criminal environmental charges. During the Standing Rock pipeline protests of 2016, journalist [Myron Dewey](#) captured aerial [video](#) of the authorities spraying protesters with fire hoses in sub-zero conditions and other police activities. (Dewey and other drone operators were subject to [repeated attempts to curb their drone journalism](#) at the protests, including having their drones shot at, being arrested, and being hit with criminal charges. The authorities also sought and obtained a controversial temporary [flight restriction](#) from the FAA.)

Drones can also be used for [data journalism](#) through such techniques as heat mapping, 3-D terrain mapping, pollution detection, or the 3D modeling of buildings.

Many of the kinds of facilities that would qualify for UAFRs under this rule—such as data centers, chemical plants, meatpacking facilities, private prisons and detention centers—are for-profit private enterprises that nonetheless can have enormous impact on the public good. Publicly traded and other companies face enormous pressure to increase profits, which can create pressure for safety or environmental shortcuts or other violations that can harm neighboring communities and the nation as a whole.

For example, after a giant 2019 fire at a chemical storage facility in Texas resulted in toxic contamination of the air and water, an investigation by the Texas Tribune and Public Health Watch [revealed](#) that the company and regulators had ignored warnings and overlooked illegal chemical emissions for almost two decades. Similar disasters have resulted from corporate negligence and cost-cutting, such as the [Texas City Refinery explosion](#), which killed 15 people and injured 180, and the [West Fertilizer](#) explosion that damaged community buildings, including a middle school

and a nursing home, killed 15 people, and injured over 160 after the company actively deceived regulators.

Journalists in general, and drone journalists in particular, will not always be able to uncover the kind of wrongdoing that can lead to such disasters, but such events are a reminder of the national interest in preserving space for journalism, which has always been a vital means by which malfeasance and threats to the public good have been uncovered in the United States—especially when regulators have been captured or otherwise fall down on the job. Facilities with something to hide have an even stronger incentive to apply for a UAFR than others. The public has a compelling interest in democratized aerial journalism by independent parties other than facility operators and the authorities. That interest must be part of the equation in granting flight restrictions.

Some facilities are squarely at the center of important public policy debates, such as ICE detention facilities. Journalists have [used drones](#) to [document](#) aerial views of such facilities, including the infamous Florida “[Alligator Alcatraz](#).” In April 2025, a Reuters drone captured detainees in red jumpsuits [spelling out “SOS”](#) with their bodies in the yard of the Bluebonnet detention facility in Texas—just the kind of thing that facility operators are likely to not want photographed by journalists. Such photography takes place in a context where the authorities are trying to restrict public visibility into detention facilities, extending at times to the [exclusion](#) of members of Congress attempting to exercise their constitutional oversight functions. Aerial footage has also provided a crucial public window into the authorities’ reactions to [protests outside](#) detention centers—providing, at a time when the authorities are themselves using drones to aerially surveil protests (such as [anti-ICE protests](#) and “[No Kings](#)” [rallies](#)), an important independent source of data on what is happening.

Many ICE detention centers and many other facilities that would be eligible for flight restrictions are operated by private, for-profit companies. Private corporations are not subject to open records requests or other checks and balances that apply to public facilities, and yet often have an incentive to take shortcuts and violate laws and regulations in ways that increase their profits, yet harm the public.

2. The FAA should weigh press freedom interests against security claims

For many years, newsgathering organizations have been one of the primary users of helicopters, which allows them to quickly roam across a city or county to gather news, and to provide an aerial perspective on what’s happening. As companies and government agencies turn to drones as a more cost-effective replacement for crewed aviation, media organizations, citizen journalists, activists and others can be expected to want to do the same—together serving as important checks and balances on corporate and government power.

Given the central importance of journalism and newsgathering in a free society, and how our Constitution has enshrined protections for such activities, we urge the FAA to more explicitly recognize and incorporate into its evaluation criteria these uses of drones. The words “journalist,”

“reporter,” “journalism,” and “newsgathering” do not appear in the proposed rule or in the agency’s discussion in the preamble to the rule.

The FAA seeks feedback on its proposed rules for granting exemptions from UAFRs, and on “what additional types of unmanned aircraft operations should FAA allow through a UAFR.”³ Without conscious efforts to preserve space for journalism, a UAFR will create an unequal playing field where site owners and operators may carry out photography of their facilities but independent journalists and other members of the public are restricted from doing so, giving owners a monopoly on aerial photography.

The FAA states in the preamble that it seeks to balance Congress’s direction to create a process for UAFR issuance “with FAA’s other statutory obligations to ensure right of public transit, safety, efficiency, and unmanned aircraft integration in the NAS [National Air Space].”⁴ The FAA here is focused on its statutory mandates, but as a government agency its paramount duty is to the Constitution. Given the demonstrated importance of drone technology for journalism, the agency must make First Amendment values and protections an important consideration in governing the issuance of UAFRs.

Part of ensuring compliance with the First Amendment is requiring that rules are content and viewpoint neutral. That would protect against particular drone operators or messengers being singled out for their message or how they make use of information they collect via a drone.

One way of including First Amendment activity in evaluations of UAFR applications would be to include a restriction on newsgathering activities as an “externality” that the rule says must be considered as part of a UAFR application. Currently the rule defines externalities as “costs, disruptions, or other negative effects to manned and unmanned users of the airspace, including re-routing known traffic, or displacement of existing or planned commercial unmanned aircraft routes.”⁵ The first part of the sentence could be read broadly to include “negative effects” on newsgathering, but the examples given suggest the FAA sees externalities far more narrowly. Explicitly including newsgathering would ensure that it is considered.

Another way First Amendment activities could be incorporated would be to explicitly recognize that the ability to carry out journalism is part of what is meant by the “public right of transit” within the national air space. The proposed rule, however, would limit transit exemptions to flights where the exempted drone “transitions the UAFR in the shortest amount of time practicable.”⁶ This is an exemption that would work for commerce but not for journalism, which can require more than a passing photograph of a facility to investigate activities therein. The FAA itself recognizes in the preamble that “some UAS operations, such as . . . First Amendment activity, may require non-transitory operations within a UAFR,”⁷ and indeed that is very much the case.

³ 91 Fed. Reg. at 24653.

⁴ *Id.* at 24664, § 74.66.

⁵ 91 Fed. Reg. at 24687, § 74.68.

⁶ *Id.* at 24690, § 74.250 (a)(2).

⁷ *Id.* at 24676, § 74.250.

Similarly, the proposed requirement to provide a covered facility with notice of transitory flights “as soon as reasonably possible in advance of the operation” does not work for journalism. It significantly defeats the ability of professional, citizen, or activist journalists to carry out aerial photography of facilities for oversight and reporting purposes. A facility that is polluting, violating safety standards, abusing prisoners or detainees, or otherwise breaking laws and/or endangering the public can hide or temporarily discontinue problematic behavior if it knows in advance when it will be subject to independent aerial scrutiny. In addition, this requirement could seriously impede the ability of journalists to respond to breaking news by delaying their ability to document unexpected events as they are unfolding.

Overall, the FAA's review process isn't designed to weigh press freedom interests against security claims. Under the rule, the “FAA will review and evaluate the information submitted to determine whether the applicant demonstrated a need that justifies an unmanned aircraft flight restriction based on the totality of the circumstances.” The FAA says it may consider various factors including the degree of risk, externalities, environmental impact, aviation safety, and national security. Conspicuously absent are the considerations we have been discussing, and to this list should be added “the impact on the public’s interest in newsgathering and other First Amendment activities.”

3. The FAA should specifically exclude aerial photography as a security risk

Under the proposed rule, applicants would need to describe the security vulnerabilities of their facility, showing that they are vulnerable to an attack that would have a “debilitating effect” on a region or the nation. It has been amply demonstrated, however, that many government agencies and private companies view public visibility into their activities as essentially identical to a “security risk,” and when applying for a UAFR, some will inevitably cite the harm of independent aerial photography to their profits or reputation as a risk to be addressed.

Some will also likely claim that photography is itself a security risk. For a number of years after the 9/11 attacks, security agencies pushed out misinformation about the supposed role of photography in preparing for terrorist attacks, with the result that security personnel challenged and harassed photographers around the nation.⁸ The evidence for use of photography as a precursor to a terrorist attack is limited to non-existent, however, and outside of an extremely narrow set of circumstances involving classified activities within national security facilities, perhaps, these supposed threats from photography in no way counterbalance the societal value of democratized aerial journalism, and the FAA should make clear that it will discount desires for such secrecy in evaluating applications.

⁸ *More About Suspicious Activity Reporting*, ACLU (June 29, 2010), <https://www.aclu.org/documents/more-about-suspicious-activity-reporting>; Jay Stanley, *You Have Every Right to Photograph That Cop*, ACLU (Sep. 7, 2011), <https://www.aclu.org/press-releases/you-have-every-right-photograph-cop#:~:text=Precursor>; Bruce Schneier, *Are Photographers Really a Threat?*, Guardian (June 4, 2008), <https://www.theguardian.com/technology/2008/jun/05/news.terrorism>.

Of course, even those facilities that don't explicitly cite an aversion to independent aerial photography may be motivated by such an aversion, and seek to use security rationales as a cover to prevent such photography. Facilities that have something to hide because they are polluting or otherwise engaged in anti-social behavior may be the facilities most likely to apply for a UAFR.

4. There is a risk that the number of restrictions will grow larger than is reasonable and erode the usefulness of drones, especially for journalists

We commend the FAA for recognizing in its proposal the importance of limiting the prevalence of flight restrictions, and for including a number of rules that promise to impose limits on such restrictions. We approve of such limitations under the proposed rule, including:

- A requirement that applicants demonstrate that “damage or disruption to, or destruction of, the facility” would have a national or regional “debilitating impact” on “security, national economic security, national public health or safety, or any combination of those matters.”⁹
- Applicants for a UAFR must make a case by spelling out an existing vulnerability, the magnitude of the consequences of an exploit of that vulnerability, how the UAFR would be effective, and the costs, disruptions, and other externalities that a UAFR would impose.¹⁰
- No UAFRs are issued for sites that don't already have protective security measures including restricted access control, designated security staff, and security monitoring.¹¹ These criteria, while broad, still establish a boundary to the potential expansion of standards for which sites qualify.
- UAFRs must be narrowly tailored and cannot extend beyond the actual property boundaries of a site.¹²
- If a site does not need a full-time UAFR, it may be granted a part-time restriction for only part of the year.¹³
- UAFRs are granted for limited terms not more than 5 years, after which they must be renewed.¹⁴
- The potentially vastly broad term “commercial facility” is cabined to those that are open air, access-controlled, and have an attendance over 2.5 million people per year.¹⁵
- UAFRs that are initially approved by the FAA will be published in the Federal Register for at least 30 days of public notice and comment (“Except in limited cases where the FAA determines that good-cause exists to forgo notice and comment.”)¹⁶

⁹ 91 Fed. Reg. at 24651, 24686, § 74.54.

¹⁰ 91 Fed. Reg. at 24687, §§ 74.66–74.68.

¹¹ *Id.* at 24686, §§ 74.52–74.56.

¹² *Id.* at 24687, § 74.58.

¹³ *Id.*, § 74.62.

¹⁴ *Id.* at 24690, § 74.200.

¹⁵ *Id.* at 24688, § 74.82.

¹⁶ *Id.* at 24686, § 74.30.

Despite the limitations the FAA proposes to build into the UAFR application process, however, we remain concerned that over time the number of restrictions will accumulate, imposing significant barriers to the use of drones by ordinary people and for journalism.

The FAA proposes to grant restrictions to facilities in 16 sectors:

- 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
- Water and wastewater.

This is a broad, wide-ranging list that on its face appears to cover much of American business and utility services. It includes such facilities as broadcast antennas, cell towers, data centers, transportation equipment manufacturing facilities, aircraft assembly plants, electrical substations, financial services regional operations centers, trauma centers, and hydraulic pump and electrical stations.¹⁷ While there may be examples within each sector where flight restrictions are warranted, the sheer number of facilities within each sector threatens to lead to a significant patchwork of UAFRs throughout the country.

The criteria that the FAA does propose to impose on applications such as those listed above should greatly reduce the number of flight restrictions from a raw list of the above facilities, but many criteria are subjective and many might only be loosely applied by current or future FAA implementers.

Under the proposed rule, applicants must show that a drone attack on their facility would have a “debilitating effect” on a region or the nation. As a result, much will hinge on how strictly the FAA interprets the word “debilitating.” The likelihood and disruption level of an attack on any facility must be closely scrutinized and carefully balanced against countervailing values, including the openness of our skies and more broadly the openness of our society. We recommend that the FAA lay out more detailed criteria for what, exactly, it will treat as a debilitating disruption in order to reduce the chances that the meaning of the term broadens over time or under political pressure, including from those focused on their own local security without concern for the

¹⁷ 91 Fed. Reg. at 24688–89, §§ 74.81–74.96.

debilitation criterion or the need for balance against other values. We suggest that the term be fleshed out and specified to include only incidents that would lead to widespread stoppages in trade, transportation, or the provision of vital private or government services.

5. Applying facilities should have to prove the effectiveness of a flight restriction

The FAA should clarify that applicants for a flight restriction must not only demonstrate that they face vulnerabilities to drone attacks, but also that flight restrictions will actually be effective in ameliorating those vulnerabilities.

The NPRM requires UAFR applicants to describe to the FAA “the weaknesses or gaps” that could be exploited by drones as well as the consequences that would result from exploitation of those vulnerabilities. It then goes on to require that applicants “describe how the unmanned aircraft flight restriction would be integrated into a facility’s security plans to supplement existing security measures.”¹⁸

What the rule does not explicitly state is that, as the FAA says more clearly in its preamble, applicants should have to establish not only what could happen if a facility were attacked, but also “how the UAFR would provide relief.”¹⁹

It is important that the FAA establish this as a clear, explicit criterion in granting UAFRs because otherwise there is a danger that implementers will accept the fact that a) there is a vulnerability and b) its exploitation would be really bad, and grant a flight restriction on that basis. But that should not be enough. Sites should have to show that restricting all drones actually helps against a security threat.

A facility’s threat model might be, for example, that a drone could attack it by flying over its perimeter and dive bombing the facility with explosives. But if compliant drones are all banned from a facility’s airspace for this reason, would that do anything at all to help defeat a rapid and unexpected attack by a non-compliant drone?

Attacks such as car bombs, backpack bombs, and suicide bombs can happen anywhere in an open society, but we do not generally ban backpacks and cars from public spaces where an attack could do harm; we generally depend on the fact that such attacks are (fortunately) very rare. At a minimum, when we ban backpacks and cars it is because banning all of them will prevent an attack by any of them. With efforts to stop a drone attack, the effect may be to ban ordinary uses of airspace, including journalism, while doing nothing to stop an actual attacker. This is especially the case given the limitations and uncertain state of counter-drone technology.

6. Required incident reports should be made public

¹⁸ 91 Fed. Reg. at 24687, § 74.66.

¹⁹ *Id.* at 24659–60.

Under the proposed rule the FAA would require yearly reports of lawful transits as well as any unauthorized incursions or violations of the airspace covered by a UAFR. This information should be made public. That will allow independent experts, policymakers, and other members of the public to evaluate the effects of these flight restrictions, how they are operating, and who they are including and excluding from drone operations. That is especially true of unauthorized incursions, where that information would be directly relevant to what are likely to be ongoing public discussions about the balance between security and the freedom to operate drones in the national airspace.

If the FAA declines to make this information public, for example out of a (misplaced, in our view) deference to the desire for secret drone operations on the part of commercial or first responder operators, then it should release as much data as possible—for example, in aggregate form—to inform public understanding of the fast-evolving world of drones and counter-drone rules and technology.

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Respectfully Submitted,

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