July 13, 2026

Sean Duffy
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Bryan Bedford
Administrator
Federal Aviation Administration
800 Independence Avenue SW
Washington, DC 20591

*Submitted via Regulations.gov, Docket ID FAA-2026-4558*

**Re: Designation-Restrict the Operation of Unmanned Aircraft in Close Proximity to a Fixed Site Facility**

Dear Secretary Duffy and Administrator Bedford,

On behalf of the undersigned organizations dedicated to transparency in the animal agriculture industry, we write to express our opposition to the Federal Aviation Administration's (FAA) proposed rule as it applies to photojournalism about the food and agriculture industry and to share our concerns about the development of gating criteria for food and agriculture fixed site facilities to obtain unmanned aircraft flight restrictions (UAFRs). We thank the FAA for the opportunity to provide public input on these questions.

The proposed rule threatens to shield food and agriculture fixed site facilities from needed public oversight. If finalized, it would chill First Amendment-protected newsgathering activities, depriving the public of vital information about the nation's food system without furthering any legitimate safety interests.

Photojournalists and animal advocates who collect images and video of food and agriculture fixed site facilities from unmanned aircraft systems (UAS, or drones) engage in newsgathering and speech protected by the First Amendment. Drones are a vital tool that

allow photojournalists to gather compelling and communicative images of large agriculture operations—footage that would be impossible to obtain from a roadside vantage and prohibitively costly to capture with other aerial technology.

These images provide the public with critical information and visual context about large-scale animal farming, furthering public debate on the role and impacts of corporate-controlled concentrated animal feeding operations (CAFOs) in our food system. Photojournalists and advocates use drone-captured images to, for example, educate the public about the scale and natural resource demands of industrial animal farming, monitor and enforce environmental and animal care regulations, protect consumers and ensure fair market competition, and document the impact of natural disasters and disease outbreaks. Such speech and newsgathering on issues of public concern lies at the heart of the First Amendment.

The photojournalists within the undersigned commenters' network of U.S.-based drone operators are experienced, Part 107-certified operators who take care to follow all local, state, and federal drone regulations. There is no evidence that they or any other drone operators pose any legitimate safety or security threat to persons, animals, or property on food and agriculture fixed site facilities. And shielding such facilities from drone-captured imagery and videos is not a valid state interest.

Allowing very large facilities that confine thousands of animals to obtain UAFRs, under the agency's suggested gating criteria for the sector, would shut down an important avenue of public accountability without any attendant benefit to safety or security. Facilities that supply a significant portion of a region's or the country's meat, milk, or eggs should be subject to greater public oversight of their operations—including through aerial photojournalism—not allowed to shut down that oversight.

Furthermore, the FAA's narrow proposed allowance of drone operations within UAFRs would not alleviate the chill on protected speech and newsgathering. Allowing operations in a UAFR only if the drone transits the restricted airspace in the shortest time practicable, and if the operator provides advanced notice to the manager of the fixed site facility, would make effective visual newsgathering impossible.

The undersigned thus urge the agency not to develop gating criteria for or freely grant UAFRs to food and agriculture fixed site facilities.

## I. Interests of Commenters

We Animals is an international organization that advocates for animals through photojournalism. It provides strong visual storytelling tools to help animal advocates communicate effectively. We Animals has an interest in ensuring open access to airspace over food and agriculture fixed site facilities for all means of gathering aerial imagery and recordings of those facilities. We Animals uses the aerial imagery it collects from its protected newsgathering activities in the airspace over food and agriculture fixed site facilities to engage in protected free speech, encouraging public debate about animal farming and animal welfare. Airspace access for newsgathering drone operations is essential to We Animals's visual advocacy.

Animal Outlook is a national animal advocacy organization. It challenges animal agribusiness through undercover investigations, legal advocacy, corporate and food system policy reform, and disseminating information about the many harms of animal agriculture. Animal Outlook uses drone imagery to further its mission to collect and disseminate information about the harms of animal agriculture, and to conduct investigations of animal production facilities. Animal Outlook relies on open airspace access above food and agriculture fixed site facilities to work towards its mission.

FarmSTAND is a nonprofit legal advocacy organization dedicated to dismantling the corporate-controlled industrial animal agriculture system and building a food system that is accountable to communities, workers, independent farmers and ranchers, animals, and the environment. FarmSTAND has a particular interest in promoting transparency in the food system and a history of challenging restrictions that punish or impede journalists and whistleblowers from documenting corporate agriculture's ill effects. FarmSTAND seeks to preserve open airspace over food and agriculture fixed site facilities for drone photojournalists to document conditions at large-scale industrial facilities and to ensure such facilities are held accountable for their social and environmental impacts.

## II. Drones are a vital and unique photojournalistic tool that serves the public good by allowing the safe and timely collection of information of public concern about food and agriculture fixed site facilities.

Farming communities, eaters, and animal advocates around the country are deeply concerned about the environmental and social impacts of large-scale animal agriculture. Animal foods—meat, milk, and eggs—overwhelmingly and increasingly comes from large,

corporate-controlled CAFOs which get larger, more industrial, and more consolidated with each passing year.[1] As illustrated below, aerial and drone photography provides the public with visual context and timely information about the impact of animal agriculture in a way that cannot be replicated by observation, photography from the ground, or non-visual media.

Drone photography and videography are an accessible and affordable means of creating compelling imagery and videos that communicate the vast scale and impact of industrial animal agriculture. Indeed, as legacy media companies reduce budgets and coverage in the face of increasing financial struggles in the digital media age,[2] independent journalists and non-profit news organizations are increasingly taking on important subjects of national interest like food and agriculture.[3] These organizations often lack the resources

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[1] JAMES M. MACDONALD, U.S. DEP'T. OF AGRIC., ECON. RSCH. SERV., ECON. RSCH. REP. NO. 274, CONSOLIDATION IN U.S. DAIRY FARMING 1 (2020) (describing the "long-term structural change toward far fewer but much larger farms" in the U.S. dairy industry); JAMES M. MACDONALD, XIAO DONG & KEITH O. FUGLIE, U.S. DEP'T. OF AGRIC. ECON. RSCH. SERV. ECON. INFO. BULLETIN NO. 256, CONSOLIDATION AND COMPETITION IN U.S. AGRIBUSINESS, 25-38 (2023) (discussing ongoing consolidation and vertical integration in meatpacking industry); Danielle Kaye & Julie Creswell, *Egg Prices Are Soaring. Bird Flu May Not Be the Only Culprit*, N.Y. TIMES (Feb. 25, 2025), https://www.nytimes.com/2025/02/25/business/egg-prices-bird-flu-producers.html (last accessed June 30, 2026) ("The egg production industry has consolidated over the last three decades. Cal-Maine … and four other large producers control roughly half of the egg market in the United States.").

[2] Michael Lipka & Elisa Shearer, *Audiences Are Declining for Traditional News Media in the U.S. – With Some Exceptions*, PEW RSCH. CTR. (Nov. 28, 2023), https://www.pewresearch.org/short-reads/2023/11/28/audiences-are-declining-for-traditional-news-media-in-the-us-with-some-exceptions/ (last accessed June 12, 2026); Susan A. Hughes, *Explainer: What the Downsizing of The Washington Post Means for Traditional Media*, HARVARD KENNEDY SCH. (Feb. 9, 2026), https://www.hks.harvard.edu/faculty-research/policy-topics/media/explainer-what-downsizing-washington-post-means-traditional (last accessed June 12, 2026) (identifying changes in coverage after staff downsizing).

[3] Jan Boehmer, Serena Carpenter & Fred Fico, *Filling the Void: Non-profit News and Factors Affecting Government Conflict Coverage*, 6 DIGIT. JOURNALISM 369, 381 (2018), https://www.tandfonline.com/doi/pdf/10.1080/21670811.2017.1297683?casa_token=B5Vqo7ROx0IAAAAA:jBAprfLtnM3SuRmc8PhpBV2FHoGDHcZqKPGY8yLQCIJBzWLfiLC5_SdvM

to acquire aerial photography through manned flights,[4] but drones are a viable means of securing important information and imagery to support their reporting.[5] Drones are also easier to stabilize than other aerial technology, resulting in clearer images and higher-quality information for the public. The following examples demonstrate the unique and important role drones play in informing the public about the impacts of large-scale industrial animal agriculture.

**a. Drone imagery effectively communicates the vast scale of modern animal agriculture, which is especially important in communities concerned about scarce land and water resources.**

Much of the country's beef and dairy is produced on large CAFOs throughout the West[6]—often in desert environments.[7] The amount of water these facilities require is staggering, and the subject of intense public debate in regions facing aquifer depletion and

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6FBuC5tYO00y4S3xAiJjQ (last accessed June 12, 2026) (finding that non-profit media were more likely than for-profit media to cover public policy debates in a local market).

[4] *Annual Survey Data Reflect a 'Maturing' Nonprofit News Field,* INST. FOR NONPROFIT NEWS (Oct. 8, 2025), https://news.inn.org/2025-index-survey-data-reflect-a-maturing-nonprofit-news-field/ (last accessed June 30, 2026) (stating that the median annual revenue for nonprofit newsrooms in 2024 was only $532,000).

[5] James Estrin, *Democratizing the Sky: Drones in Visual Journalism*, N.Y. TIMES (Mar. 16, 2017), https://archive.nytimes.com/lens.blogs.nytimes.com/2017/03/16/democratizing-the-sky-drones-in-visual-journalism/ (last accessed June 30, 2026) ("One of the first things that attracted me to drone photography and videography was the ability to easily photograph scenes that in the past would have cost us thousands of dollars. It democratized the skies.").

[6] U.S. DEP'T. OF AGRIC., NAT. AGRIC. STAT. SERV., JANUARY 1 CATTLE INVENTORY DOWN SLIGHTLY 5 (2026), https://esmis.nal.usda.gov/sites/default/release-files/795748/catl0126.pdf (last accessed June 30, 2026) (showing over half of all cattle in the U.S. are in just 14 Western and Plains states).

[7] *See, e.g.,* Debbie Weingarten & Tony Davis, *A Mega-Dairy is Transforming Arizona's Aquifer and Farming Lifestyles*, HIGH COUNTRY NEWS (Aug. 1, 2021), https://www.hcn.org/issues/53-8/agriculture-a-mega-dairy-is-transforming-arizonas-aquifer-and-farming-lifestyles/ (last accessed June 30, 2026).

dry wells.[8] Drone imagery from Arizona and California, like the below, has provided important context to and information in this public debate.

*Thousands of cattle live in large, bare dirt corrals on a massive dairy operation stretching across a desert landscape in Arizona. In 2023, roughly 195,000 dairy cows were used for*

[8] *See* Erin Stone, *Can Eating Less Beef and Dairy Help Save the Colorado River?*, NPR (Sep. 11, 2024), https://www.npr.org/2024/09/09/nx-s1-5002090/colorado-river-water-climate-change-beef (last accessed June 30, 2026) (noting "[n]early half — 46% — of all the water drawn from the Colorado River goes to growing feed for beef and dairy cows"); Nina B. Elkadi, *Saudi-Owned Corporate Farms are Draining Arizona's Desert Dry*, FLOODLIGHT (Oct. 10, 2025), https://floodlightnews.org/saudi-owned-corporate-farms-are-draining-arizonas-desert-dry/ (last accessed June 30, 2026) (explaining public debate about groundwater extraction and dry wells in Arizona as a result of foreign-owned farms growing alfalfa for exported cattle feed).

*milking on the state's approximately 100 hundred dairy farms. Coronado Dairy, Willcox, Arizona, USA, 2023. Ram Daya / We Animals*

*More than 1,000 individual wooden calf hutches stretch across the bare dirt property in full exposure to the summer sun. In the background are enclosures for older animals. Tulare County, California, USA, 2023. Ram Daya / Animal Outlook / We Animals*

*Rows of wooden calf hutches and cows in dirt enclosures on a large dairy farm, where temperatures exceeded 100 degrees Fahrenheit on the day this image was captured. Riverside County, California, USA, 2023. Ram Daya / Animal Outlook / We Animals*

**b. Photojournalists use drone imagery to document the environmental impact of industrial animal agriculture facilities.**

Large CAFOs can produce an enormous amount of waste—as much raw sewage as generated by medium-sized cities.[9] Unfortunately, many large CAFOs chronically

[9] U.S. GOV'T ACCOUNTABILITY OFF., GAO-08-944, CONCENTRATED ANIMAL FEEDING OPERATIONS: EPA NEEDS MORE INFORMATION AND A CLEARLY DEFINED STRATEGY TO PROTECT AIR AND WATER QUALITY FROM POLLUTANTS OF CONCERN 20 (2008), https://www.gao.gov/assets/gao-08-944.pdf, (last accessed June 30, 2026).

mismanage this waste in ways that pollute local rivers and streams, and applicable pollution control laws are chronically underenforced as to these facilities. Drone photography and videography can support public monitoring of CAFO waste management and government enforcement of environmental laws—matters of significant public concern.

Indeed, drone photography serves as a critical tool communities can use to monitor the runoff from large-scale CAFOs, slaughterhouses, and other agriculture fixed site facilities, because aerial imagery can more easily show water flow patterns and water quality impact over a relatively large geographic area. This type of information is highly useful to public debate when officials are considering necessary enforcement measures or regulatory changes, and is most easily and affordably produced by drone.[10]

**c. In the aftermath of natural disasters like hurricanes, floods, heatwaves, and wildfires, photojournalists use drones to safely collect and share timely health and safety information about food and agriculture fixed site facilities.**

When a natural disaster strikes, drone imagery has also been critical to understanding the impacts on and of large-scale animal agriculture sites. CAFOs commonly hold liquid animal waste in massive cesspools (euphemistically called "lagoons"), which can overflow or breach during extreme weather events. Lagoon spills are an immediate public health and environmental threat, adding huge amounts of pathogen- and chemical-laden waste to local waterways that provide drinking water to the surrounding community.[11] Manure lagoon spills also cause significant environmental

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[10] *See e.g.*, Aman Azhar, *Video: Aerial Detectives Dive Deep Into North Carolina's Hog and Poultry Waste Problem*, INSIDE CLIMATE NEWS (Jan. 9, 2022), https://insideclimatenews.org/news/09012022/video-aerial-detectives-dive-deep-into-north-carolinas-hog-and-poultry-waste-problem/ (last accessed June 30, 2026) (discussing aerial imagery taken from small planes as part of public debate about increasing manure management requirements for hog and poultry farms in North Carolina, and noting the resource-intensive nature of such investigations).

[11] Emilie Karrick Surrusco, *Hurricane Florence Brings Another Hog Waste Flood to North Carolina*, EARTHJUSTICE (Sep. 21, 2018), https://earthjustice.org/article/hurricane-florence-brings-another-hog-waste-flood-to-north-carolina (last accessed June 30, 2026); JoAnn

damage, for example leading to nutrient overloading that causes algal blooms and fish die-offs.[12]

Drone photography allows the public to safely and affordably monitor the potential for lagoon breaches during extreme weather events, in real time. Even before floodwaters receded, We Animals captured the following aerial images of flooded large-scale animal agriculture sites in Duplin County, North Carolina in the aftermath of Hurricane Florence. Dozens of the state's manure lagoons ultimately flooded as a result of the storm, adding vast amounts of swine and poultry fecal matter and other harmful toxins to local drinking sources.[13]

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Burkholder et al., *Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality*, 115 ENV'T HEALTH PERSPECTIVES 308, 309-10 (2007).

[12] JoAnn Burkholder et al., *Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality*, 115 ENV'T HEALTH PERSPECTIVES 308, 309-10 (2007).

[13] Emilie Karrick Surrusco, *Hurricane Florence Brings Another Hog Waste Flood to North Carolina*, EARTHJUSTICE (Sep. 21, 2018), https://earthjustice.org/article/hurricane-florence-brings-another-hog-waste-flood-to-north-carolina (last accessed June 30, 2026); Dan Charles, *Florence Engulfs Hog Farms And Chicken Houses, Thrashing North Carolina Agriculture*, NPR (Sep. 18, 2018), https://www.npr.org/sections/thesalt/2018/09/18/649132289/florence-engulfs-hog-farms-and-chicken-houses-thrashing-north-carolina-agricultu (last accessed June 30, 2026).

*Aerial view of a CAFO farm surrounded by flood waters in Duplin County. Duplin County, North Carolina, USA, 2018. Jo-Anne McArthur / We Animals*

Although these images were taken from a plane, they demonstrate the type of disaster-response documentation that drones can now make safer, more affordable, and more accessible.

**d. Drone imagery is a crucial tool for time-sensitive public oversight of how industrial animal agriculture sites manage the disposal of thousands of animal carcasses after mass animal mortality events.**

Drones allow photojournalists to safely and quickly capture evidence of animal suffering, mortality, and facility conditions during disease outbreaks or extreme weather events,[14] without needing physical access to the site. For example, aerial imagery was

[14] Unfortunately, natural disaster damage often includes a significant number of animal mortalities. *See e.g., 3.4 Million Chickens, 5,500 Hogs Dead in Florence Flood*, PBS (Sep.

critical for public understanding of the full scope of the mass animal killings in response to the spread of avian influenza (bird flu)[15] and the COVID-19 pandemic slaughterhouse shutdowns, which left farmers with no place to bring animals to slaughter.[16]

During the 2022 avian influenza outbreak, We Animals captured drone footage of thousands of dead chickens being removed from a shed by conveyor belt and loaded into a truck at a large poultry operation in Iowa. This footage provided documentation of the mass culling and disposal of more than five million egg-laying hens at the Iowa factory farm, and provided the public with important context for how the avian flu outbreak was affecting animals on industrial farms around the country.[17] Aerial video was critical because the scale of the mortality event, the movement of bird carcasses, and the prolonged disposal process could not be meaningfully conveyed from ground level.

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19, 2018), https://www.pbs.org/newshour/nation/3-4-million-chickens-5500-hogs-dead-in-florence-flood (last accessed July 2, 2026).

[15] *See, e.g.*, Susanne Rust & Karen Kaplan, *Killing 166 Million Birds Hasn't Helped Poultry Farmers Stop H5N1. Is There a Better Way?*, L.A. TIMES (Feb. 26, 2025), https://www.latimes.com/environment/story/2025-02-26/poultry-culling-hasnt-stopped-h5n1-bird-flu (last accessed June 30, 2026) (explaining the scope of the 2022 avian flu outbreak, with 166 million birds culled across all 50 states as of February 2025); *Carcass Management During Avian Influenza Outbreaks*, U.S. ENV'T PROTECTION AGENCY (Mar. 19, 2026), https://www.epa.gov/disaster-debris/carcass-management-during-avian-influenza-outbreaks (last accessed July 2, 2026) (noting that "[i]mproper carcass management could lead to… public controversy").

[16] *See, e.g.,* Sophie Kevany, *Millions of Farm Animals Culled as US Food Supply Chain Chokes Up*, GUARDIAN (Apr. 29, 2020), https://www.theguardian.com/environment/2020/apr/29/millions-of-farm-animals-culled-as-us-food-supply-chain-chokes-up-coronavirus; Michael E. Ruane, *Two Million Delmarva Chickens Euthanized as Virus Hobbles Processing*, WASH. POST (Apr. 24, 2020), https://www.washingtonpost.com/local/two-million-delmarva-chickens-euthanized-as-virus-hobbles-processing/2020/04/24/82fc93a4-865d-11ea-878a-86477a724bdb_story.html (last accessed June 30, 2026).

[17] The video is available here: https://drive.google.com/drive/folders/1AqSrFUoaxQbelCTUmYpXth3fanwWPAMo?usp=sharing and was also submitted via e-mail as a supplement to this comment.

In another example, during Arizona's record-breaking 2023 heat wave, drone imagery allowed We Animals to document conditions and animal mortalities on a large feedlot—conditions not visible from public roads.

*Vultures circle above and approach the bodies of decomposing cattle discarded in a feedlot yard. This particular facility holds up to 115,000 cattle. McElhaney Feedyard, Wellton, Arizona, USA, 2023. Ram Daya / We Animals*

**e. Drones allow photojournalists to provide compelling imagery depicting living conditions for the cows, pigs, chickens, turkeys, and other animals raised at industrial agriculture facilities.**

The American public is highly interested in the treatment of animals on food and agriculture facilities, with some surveys reporting that nearly 80% of respondents are

concerned about the negative impacts of industrial animal agriculture on animal welfare.[18] However, food and agriculture fixed site facilities are often closed to the public and provide very limited public information about the conditions in which animals are housed and raised.[19] Members of the public cannot easily observe animal care practices at such facilities, which are often located far away from large towns and cities, can span hundreds of acres, and are difficult or impossible to observe from public roads.

Food and agriculture corporations generally prefer this lack of public transparency and oversight, because they are aware that consumer understanding about common—and cruel—animal raising practices, like intensive confinement of animals, could harm their reputation and sales.[20]

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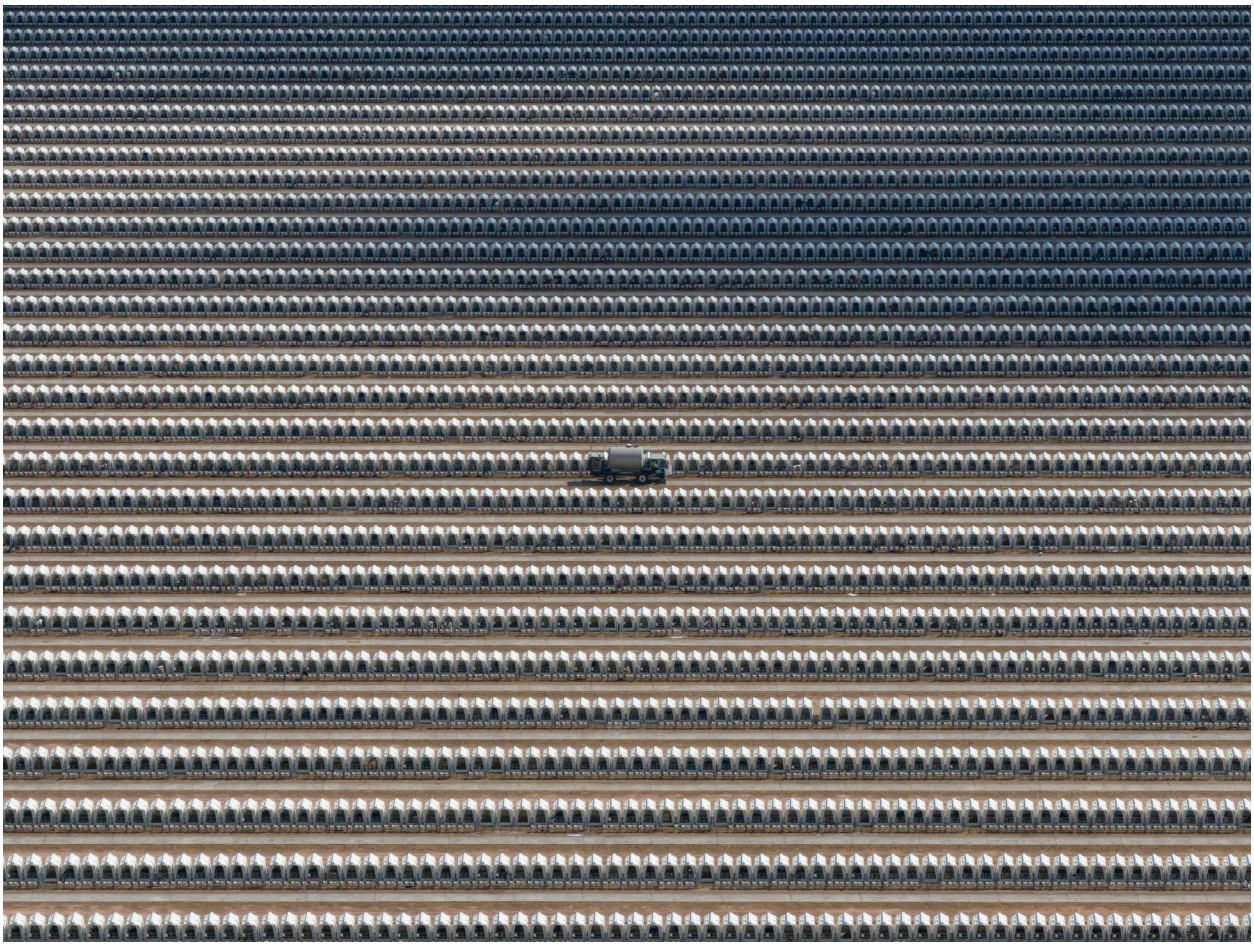
[18] *2023 Industrial Animal Agriculture Survey*, AM. SOC'Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, https://www.aspca.org/sites/default/files/2023_industrial_ag_survey_results_report_052523_1.pdf (last accessed Jun. 11, 2026). The commissioned survey was conducted in March 2023 by Ipsos. *See also*, *Nearly 70% of Americans Say Animal Wellness Plays an Important Role in Purchasing Decisions*, NSF (Feb. 14, 2024), https://www.nsf.org/news/nsf-reveals-americans-say-animal-wellness-important-role-purchasing-decisions (last accessed Jun. 11, 2026) ("67% [of U.S. respondents] state that animal wellness is either very or extremely important to purchasing decisions").

[19] D. LEE MILLER & GREGORY MUREN, CAFOS: WHAT WE DON'T KNOW IS HURTING US 5 (2019), https://www.nrdc.org/sites/default/files/cafos-dont-know-hurting-us-report.pdf (last accessed Jun 30., 2026) (explaining the successful CAFO industry effort to block the release of basic facility data—like size, location, and manure management plans—from being released under any Freedom of Information Act request). *See Am. Farm Bureau Fed'n v. EPA*, 836 F.3d 963, 973–74 (8th Cir. 2016) (holding that basic information about CAFO ownership, including location, is exempt from mandatory FOIA disclosure as personal information that implicates a substantial privacy interest).

[20] *See, e.g.,* Pablo Rosado, *Most People Care About Farm Animals — Our Food System Doesn't Reflect That,* OUR WORLD IN DATA (Apr. 20, 2026), https://ourworldindata.org/most-people-care-about-farm-animals-our-food-system-doesnt-reflect-that (last accessed Jun. 11, 2026) (showing between 70.6 and 84.% of U.S. survey respondents disapproved of ten common animal care practices); Rui Pedro Fonseca & Ruben Sanchez-Sabate, *Consumers' Attitudes Towards Animal Suffering: A Systematic Review on Awareness, Willingness and Dietary Change*, 19 INT'L J. OF ENV'T RSCH. AND PUB. HEALTH 1, 6 (2022) (finding in a systematic review of academic literature on consumer awareness and

To correct this information imbalance, the undersigned and similar organizations use aerial drone imagery to educate the public about animal confinement on CAFOs. For example, We Animals uses drone imagery to educate the public about the extreme confinement of calves raised for beef and dairy, as in the following image showing a sprawling array of the isolated plastic hutches typically used to house calves.



*A milk dispenser truck drives between some of the thousands of calf hutches in a massive dairy farm's yard. Turkey Creek Dairy, Pearce, Arizona, USA, 2023. Ram Daya / We Animals*

In another example, Animal Outlook took drone video of an egg production facility with at least one dozen occupied hen barns that provided virtually no outdoor access to

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attitudes about animal agriculture that "[c]onsumers' attitudes to intensive farming systems tend to be more negative when they are provided with additional information").

the birds—only very narrow alleyways between each barn, in which no chickens were visible outdoors in the video.

*This still from a drone video of an egg production facility in California demonstrates the lack of outdoor access typical of large-scale chicken CAFOs. Fluegge Egg Farm, Valley Center, California, USA, 2026. Scott David / Animal Outlook*

In a third example, photojournalists and advocates have used drone imagery to show how cattle on CAFOs lack access to pasture on which they would naturally graze; the image below shows thousands of cows confined in bare-dirt corrals.

*This still from a drone video of a cattle feedlot in California shows thousands of cows confined in wet, muddy corrals with no access to natural forage, in stark contrast to the green grassy hills beyond the facility. Harris Ranch Beef, Coalinga, California, USA, 2026. Scott David / Animal Outlook*

**f. Drone imagery of food and agriculture fixed site facilities can facilitate legal accountability for CAFOs that mislead consumers, gaining an unfair market advantage.**

Drone images of CAFOs also provide an important check on companies that misrepresent animals' living conditions. An overwhelming majority of consumers are willing to pay more for meat, eggs, and dairy products that advertise higher animal welfare.[21] However, consumers often have no realistic way of verifying that the products for which they are paying extra are genuinely produced in the manner advertised.

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[21] *Nearly 70% of Americans Say Animal Wellness Plays an Important Role in Purchasing Decisions*, NSF (Feb. 14, 2024), https://www.nsf.org/news/nsf-reveals-americans-say-animal-wellness-important-role-purchasing-decisions (last accessed Jun. 11, 2026) (noting that "[o]nly 13% [of respondents] said they would be *unwilling* to pay a higher price

Aerial imagery is an important tool to verify that consumers are not being defrauded and that large-scale farms are not unfairly gaining a market advantage over competitors who incur the higher costs of actually providing better care. For example, in 2025, Animal Outlook commissioned We Animals to obtain aerial photography and videography of an egg farm in Pennsylvania that was falsely claiming its chickens were "free-roaming." Drone photography and video of the barn exteriors on the facility were pivotal in proving that, in reality, the chickens had no meaningful outdoor access.[22] This imagery helped secure a significant class action settlement in a federal consumer protection suit, and helped even the playing field for egg producers who genuinely raise free range hens.[23]

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for products certified for animal wellness") (emphasis added); Alicia Kelso, *Consumers Are Willing to Pay a Premium for Animal Welfare Certifications*, GROCERY DIVE (July 17, 2018), https://www.grocerydive.com/news/grocery--consumers-are-willing-to-pay-a-premium-for-animal-welfare-certifications/533852/ (last accessed June 11, 2026).

[22] Complaint at 6–7, *Spindel v. Alderfer Family Farm LLC*, No. 7:23-cv-10710 (S.D. N.Y. Dec. 8, 2023)

[23] Class Action Settlement Agreement, *Spindel v. Alderfer Family Farm LLC*, No. 7:23-cv-10710 (S.D. N.Y. Mar. 14, 2025)

*The north side of a hen barn on a multi-building industrial egg production farm. This company marketed its eggs as laid by "Free Roaming" hens, but on this warm summer day, no chickens were visible outside, and no outdoor access was apparent. Loganton, Pennsylvania, USA, 2023. Gregory Kemp / Animal Outlook / We Animals*

**g. Drone photojournalism can help ensure market integrity in government certifications of food and agriculture facilities such as the USDA's Certified Organic Program.**

Drone photography can promote market integrity in other ways, such as in the U.S. Department of Agriculture (USDA) National Organic Program. The Program sets practices and criteria that meat, dairy, and egg producers must meet to market their products with

the USDA Organic seal.[24] The USDA Organic label is protected by law; producers who misrepresent their products as organic may be subject to civil or criminal penalties.[25] But while certified organic farms must be inspected annually, inspections are generally planned and paid for by the farm operator.[26] This makes outside accountability important, as "even large, prominent players can fall short of standards without detection," as a *Washington Post* investigation explained.[27]

In that investigation, aerial photojournalism raised questions about whether a large, certified organic Colorado dairy was providing the grazing and outdoor access required by the USDA Organic program. The USDA opened an investigation into the dairy after *Post* journalists used aerial imagery, including drone photography and videography, to show that the 15,000-head operation was not actually providing its cows with the minimum required grazing access during the summer grazing months.[28] After the *Post*'s reporting, the dairy reportedly changed its practices to allow more of its herd access to grazing.[29]

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[24] *USDA Certified Organic: Understanding the Basics*, U.S. DEP'T AGRIC., https://www.ams.usda.gov/services/organic-certification/organic-basics (last accessed June 11, 2026).
[25] *Id.*
[26] Peter Whoriskey, *Why Your 'Organic' Milk May Not Be Organic*, WASH. POST (May 1, 2017), https://www.washingtonpost.com/business/economy/why-your-organic-milk-may-not-be-organic/2017/05/01/708ce5bc-ed76-11e6-9662-6eedf1627882_story.html (last accessed June 11, 2026) (explaining that only 5% of inspections are expected to be unannounced and that farmers hire inspectors from approved lists).
[27] *Id.*
[28] Peter Whoriskey, *USDA Closes Investigation into a Massive Organic Farm — But What Did It Check?*, WASH. POST (Sep. 28, 2017), https://www.washingtonpost.com/news/wonk/wp/2017/09/28/usda-closes-investigation-into-a-massive-organic-farm-but-what-did-it-check/ (last accessed June 11, 2026).
[29] *Id.* (citing an interview with a local resident reporting that the herd had more access to grass than before the Washington Post's article was published).

## III. The FAA should not adopt gating criteria for food and agriculture fixed site facilities because there is no justifiable or demonstrated need for an airspace restriction over such facilities.

As the FAA states in the proposed rule, it considers "restricting airspace [to be] an extraordinary remedy,"[30] "to be applied only when necessary."[31] Thus, "UAFR eligibility" must be "limit[ed] . . . to balance the safety and security concerns Congress identified . . . with the national policy objectives of ensuring the public right of transit, preserving airspace efficiency, and integrating UAS into the [national airspace]."[32] Accordingly, owners and operators of animal food and agriculture fixed site facilities must "demonstrate that there is an important need to justify the remedy of restricting airspace."[33]

They cannot do so. Indeed, drones pose no documented or legitimate security—including biosecurity—risks to animal food and agriculture fixed site facilities. In the U.S., the vast majority of drone use is for news and information-gathering purposes, which does not present any significant safety risk to persons and property on the ground.[34] Professional photojournalists, including those with whom We Animals and Animal Outlook work, typically operate with a Part 107 drone pilot certificate, and already meet the "higher bar for safety and security" that the Agency proposes to use to allow certain excepted operations in a UAFR.[35]

Responsible drone pilots, including those who work with We Animals and Animal Outlook, also conduct their newsgathering activities at heights distant enough to protect

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[30] Designation—Restrict the Operation of Unmanned Aircraft in Close Proximity to a Fixed Site Facility, 91 Fed. Reg. 24650, 24656 (proposed May 6, 2026) (to be codified at 14 C.F.R. pt. 74) ("Proposed Rule").
[31] *Id.* at 24653.
[32] *Id.* at 24651.
[33] *Id.* at 24652.
[34] KYLE MILLER ET AL., THE U.S. AERIAL DRONE MARKET 8-9 (Center for Security and Emerging Technology 2025), https://cset.georgetown.edu/publication/the-u-s-aerial-drone-market/ (last accessed June 12, 2026) (showing that the substantial majority of drones in the United States are marketed for imaging and other information-gathering purposes).
[35] *Id.*

the health and wellbeing of animals on the ground at fixed site facilities.[36] For example, Animal Outlook has captured drone video of thousands of cattle at CAFOs around the country; the videos show clearly that the cows do not notice or react to the drone in any way.[37]

Moreover, the undersigned can find no evidence of any incidents of national food supply safety issues caused by drones. In fact, drones can *support* agricultural biosecurity by identifying diseased plants, signs of pests, and invasive species in real time.[38] Neither could any documented instance of accidental drone damage or interference with infrastructure or other property on food and agriculture fixed site facilities be located.[39] In fact, the undersigned found only one instance of reported—indirect—harm from a drone to a food and agriculture fixed site facility in the U.S.: a farm reported that its equipment was stolen after the perpetrators allegedly use a drone to scout the property.[40]

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[36] Lukas Schad & Julia Fischer, *Opportunities and Risks in the Use of Drones for Studying Animal Behaviour*, 14 METHODS IN ECOLOGY AND EVOLUTION 1864, 1867 (2023), https://besjournals.onlinelibrary.wiley.com/doi/pdf/10.1111/2041-210X.13922 (noting that drone altitude is the factor most closely associated with animal disturbance); Gabriel Abdulai, The Response of Beef Cattle to Disturbances from Unmanned Aerial Vehicles (UAVs) (Dec. 1, 2021) (Ph.D. dissertation, Univ. of Kentucky), https://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1087&context=bae_etds (noting that beef cattle are disturbed by drones flying at 5-9m altitude, substantially lower than newsgathering drones typically operate).

[37] The videos are available here: https://drive.google.com/drive/folders/1AqSrFUoaxQbelCTUmYpXth3fanwWPAMo?usp=sharing and were also submitted via e-mail in a supplement to this comment.

[38] Philip E. Hulme et al., *Emerging Advances in Biosecurity to Underpin Human, Animal, Plant, and Ecosystem Health*, 26 ISCIENCE 1, 3 (2023).

[39] *Drone Attack & Incident Tracker*, D-FEND SOLUTIONS, https://d-fendsolutions.com/drone-incident-tracker/#top (last accessed June 22, 2026) (commercial drone security technology company collecting news reports of drone safety incidents globally, showing that most of the reported agriculture-related drone incidents since 2021 have occurred outside of the U.S. and typically involve drones carrying narcotics crashing into agricultural fields while flying over rural areas).

[40] *Id.* (citing Christine Souza, *Rural Farm Operations Targeted by Drone-Patrolling Thieves*, VEGETABLE GROWER NEWS (Apr. 29, 2021), https://vegetablegrowersnews.com/news/rural-farm-operations-targeted-by-drone-patrolling-thieves/ (last accessed June 22, 2026)).

This single incident of indirect harm is insufficient to justify developing gating criteria that could enable food and agriculture fixed site facilities to effectively ban protected speech and newsgathering about their facilities, when conducted using a drone. To the extent that facility owners claim that drones *could* damage their facilities or introduce biosafety threats, such speculative concerns would not rise to the level of an "important need" that would justify a UAFR, especially when, as documented here, access to airspace over these facilities provides important public benefits like consumer protection, fraud investigation, and accountability for environmental and animal care noncompliance.

**a. Large-scale agriculture operations with an outsized economic impact should not be prioritized for UAFRs**

The undersigned are particularly concerned about the proposed rule's suggestion that large-scale agriculture facilities supplying a disproportionate share of meat, milk, and eggs to various regions or to the country as a whole should be considered for UAFRs. They should not. These facilities need greater scrutiny, including through visual journalism, not less. This is particularly true given past industry attempts to punish journalists who access air space to engage in protected First Amendment activity. For example, National Geographic photojournalist George Steinmetz was arrested in 2013 after photographing a Kansas feedlot from a hang glider.[41] While law enforcement officers disavowed any intent to prevent or punish the journalist's legitimate speech activities, free speech advocates worried that the trespass charges were "an indirect method to obstruct Steinmetz's work" where the "the real motivation for the arrest [was] to frustrate photojournalism."[42]

Given this and other industry-driven efforts to silence or criminalize whistleblowing and investigations of CAFOs and slaughterhouses,[43] the undersigned fear the primary interest of food and agriculture fixed site facilities in UAFRs is limiting public scrutiny of

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[41] *Paragliding Journalist Arrested After Photographing Kansas Feedlot*, REPORTER'S COMM. FOR FREEDOM OF THE PRESS (July 15, 2013), https://www.rcfp.org/paragliding-journalist-arrested-after-photographing-kansas-feedlot/ (last accessed June 10, 2026).
[42] *Id*.
[43] *Ag-Gag Litigation*, FARMSTAND https://farmstand.org/case/ag-gag-litigation/ (last accessed Jun. 30, 2026).

their operations. This background provides context to the proposed rule's questions about developing gating criteria for this sector, which commenters here address.

1. *What types of facilities within this sector should be considered for a UAFR? Specifically, those that could have debilitating regional or national- level consequences.*

Given the importance of drone photojournalism to transparency, accountability, and public debate about the food and agriculture industry, and the lack of any documented drone-related threat to fixed site facilities in this industry, no food and agriculture fixed site facilities should be considered for a UAFR, and the FAA should not develop gating criteria for the sector. Instead, facilities in the sector should be considered for a UAFR on a case-by-case basis only, upon a "demonstrat[ion]" of "an important need" for such restrictions, such as specific, credible threats from drones.

2. *What characteristics should be considered in the development of gating criteria for those facilities?*

Because UAFRs should be granted to fixed site facilities in this sector solely based on demonstrated need, there are no common characteristics that merit developing gating criteria. In particular, as noted below, size and economic output should *not* be considered relevant gating criteria, as the need for transparency and accountability is at its zenith for the largest food production facilities. Very large agriculture operations have outsized environmental and social impacts that make drone-facilitated oversight critical.

3. *Should the population served or regional or national economic impact be considered in the development of gating criteria, and if so, what are appropriate thresholds?*

A great number of people served by a particular facility and the facility's economic impact are factors that should weigh *against* granting a UAFR. The larger a facility's role in our industrial food system, the more important public access to airspace for accountability and transparency is. If any gating criteria are established for this sector, the

FAA should apply a presumption *against* granting a UAFR for facilities that meet the USDA's definition of a medium or large CAFO.[44]

## IV. Enabling large-scale food and agriculture fixed site facilities to freely obtain UAFRs would violate the First Amendment.

The proposed rule has significant constitutional infirmities. Allowing large, economically powerful farms to obtain UAFRs and close off their airspace to virtually all drone operation would bar First Amendment-protected aerial photography that enriches public debate on issues of public interest. And it would do so without furthering any significant governmental interest in safety or security.

### a. Aerial photojournalism about food and agriculture fixed site facilities is protected speech and newsgathering.

Newsgathering via aerial videography and photography is protected under the First Amendment. Multiple federal circuit courts have found a "First Amendment right to film matters of public interest."[45] Indeed, "the act of making an audio or audiovisual recording is necessarily included within the First Amendment's guarantee of speech and press rights as a corollary of the right to disseminate the resulting recording. The right to publish or broadcast an audio or audiovisual recording would be insecure, or largely ineffective, if the antecedent act of *making* the recording is wholly unprotected."[46] As the Supreme Court

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[44] *See* EPA Administered Permit Programs: the National Pollutant Discharge Elimination System, Concentrated Animal Feeding Operations, 40 C.F.R. § 122.23(b) (2026).
[45] *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1203–05 (9th Cir. 2018) (quoting *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995)) (striking down provision of Idaho law banning audio and video recording of an agricultural production facility's operations); *People for the Ethical Treatment of Animals, Inc. v. N.C. Farm Bureau Fed'n, Inc.*, 60 F.4th 815, 829 (4th Cir. 2023) ("*PETA*") ("scores of Supreme Court and circuit cases apply the First Amendment to safeguard the right to gather information as a predicate to speech"); *Fields v. City of Phila.*, 862 F.3d 353, 359–60 (3d Cir. 2017) (affirming the public's right to record police activity under the First Amendment); *Am. Civ. Liberties Union v. Alvarez*, 679 F.3d 583, 607–08 (7th Cir. 2012) (finding Illinois eavesdropping law likely unconstitutional as applied to open audiovisual recording of police activity).
[46] *Alvarez*, 679 F.3d at 595 (emphasis in original).

has stated, "the creation and dissemination of information are speech within the meaning of the First Amendment."[47]

Courts have followed this logic to find a First Amendment interest in using a drone to take images.[48] The FAA appears to agree, recognizing that "some UAS operations," including "first amendment activity, may require non-transitory operations" over fixed site facilities, such as hovering and repositioning to document conditions below.[49] And courts have held that "recording—and even more specifically, recording of animals or the conditions in which they live—is speech-creation" protected under the First Amendment, "not mere conduct."[50]

"Citizens' gathering and disseminating newsworthy information," including taking photographs and video recordings with drones, is also protected First Amendment activity because it "leads to citizen discourse on public issues."[51] The free flow of information supports "uninhibited, robust, and wide-open" debate on public issues, considered the "highest rung of the hierarchy of First Amendment values."[52] Photojournalism promotes such public debate because "[f]irst-hand accounts, buttressed by video evidence, enhance accuracy and credibility in reporting and increase transparency and [audience] trust."[53] This type of reporting allows the public "to appreciate the full scope of the societal issues" covered by the photographs and recordings.[54]

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[47] *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011); s*ee also Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786, 792 n.1 (2011) ("Whether government regulation applies to creating, distributing, or consuming speech makes no difference").
[48] *Nat'l Press Photographers Ass'n v. McCraw*, 90 F.4th 770, 783, 789–90 (5th Cir. 2024) ("*NPPA*"); *Yoder v. Bowen*, 146 F.4th 516, 523–24 (6th Cir. 2025).
[49] Proposed Rule at 24676.
[50] *Animal Legal Def. Fund v. Kelly,* 9 F.4th 1219, 1228 (10th Cir. 2021) (stating holding of *W. Watersheds Project v. Michael*, 869 F.3d 1189, 1194 (10th Cir. 2017)).
[51] *Fields v. City of Phila.*, 862 F.3d 353, 359–60 (3d Cir. 2017).
[52] *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) and *Connick v. Myers*, 461 U.S. 138, 145 (1983)).
[53] *PETA*, 60 F.4th at 829.
[54] *Id.*

Moreover, food and agriculture issues, including "food safety and animal cruelty[,] are of significant public importance."[55] As the Tenth Circuit noted, "[a]n individual who photographs animals or takes notes about habitat conditions is creating speech" that they can later use "to further public debate."[56] As such, photojournalists' right to capture imagery of food and agriculture fixed site facilities, including information about the animal conditions, environmental impact, and public health issues on CAFOs, to foster public engagement on such issues, is protected under the First Amendment.

**b. The suggested UAFR gating criteria and sanctions for unauthorized operations within a UAFR will chill protected speech.**

If finalized as the FAA proposes, the rule would burden and chill the undersigned's and others' protected speech and newsgathering activities. The suggested gating criteria raise the specter of the largest and most economically powerful agriculture operations being granted UAFRs. Once granted, the regulations would impose civil sanctions on any person who conducts unauthorized drone operations in a UAFR. The threat of such sanctions will chill speech by discouraging or preventing drone operators from legitimate newsgathering activity.

For example, We Animals has deferred investigation of specific animal agriculture sites in states that impose restrictions on drone use over private property for fear of criminal consequences, despite having reason to believe that its investigations would produce reliable information about issues of substantial public concern. Photojournalists in a challenge to Texas laws criminalizing drone photojournalism similarly described losing "thousands of dollars" in freelance photography assignments they had cancelled or foregone out of fear of liability.[57] These concerns are not unfounded or speculative: as

[55] *Wasden*, 878 F.3d at 1190.
[56] *W. Watersheds Project*, 869 F.3d at 1196–97 (adding that such photography is "creating speech in the same manner as an individual who records a police encounter," the basis on which the First Amendment right to film matters of public interest was first affirmed).
[57] *NPPA*, 90 F.4th at 779.

detailed above, photojournalists have been arrested for trespass after photographing agricultural sites from the air.[58]

Civil sanctions for unauthorized operations within a UAFR include the suspension or revocation of a pilot's certificate, rating, or authorization—measures that could permanently bar photojournalists from collecting audio or visual recordings by drone in any location, even those without airspace restrictions. Given such steep penalties, granting UAFRs to large, economically powerful farms would thus significantly chill the undersigned's and others' speech.[59]

**c. Granting UAFRs to food and agriculture fixed site facilities, as the proposed rule would enable, would fail First Amendment scrutiny.**

Because granting UAFRs for food and agriculture fixed site facilities would burden and chill protected speech, the FAA's action must survive First Amendment scrutiny. At a minimum, imposing UAFRs over such facilities would impose a time, place, and manner restriction on speech, by defining a place and manner in which photojournalism activities are restricted: over food and agriculture facilities, using a drone.[60] Alternatively, given the fact that in the U.S., drones are overwhelmingly used for photography and videography,[61] imposing UAFRs could be understood as a restriction of a non-expressive activity (the act

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[58] *See, e.g, Paragliding Journalist*, *supra* n. 41. The same journalist received another criminal citation and had his photography drones seized by the New York City Police Department in April 2020 while documenting mass burials on an uninhabited island in New York City during the COVID-19 pandemic. Kara Murphy, *Case Dismissed Against George Steinmetz, Whose Drone Was Confiscated for Documenting Mass Burials*, DIGITAL PHOTOGRAPHY REV. (Aug. 17, 2020), https://www.dpreview.com/news/7618724976/case-dismissed-against-george-steinmetz-drone-confiscated-for-documenting-mass-burials (last accessed Jun. 11, 2026). As this article notes, the criminal case was later dismissed, but the reporter was forced to purchase new equipment to continue working during the several months his equipment was held by the NYPD. *Id*.

[59] *PETA*, 60 F.4th at 831 (holding that a state law with the effect of criminalizing undercover investigations failed even intermediate scrutiny under the First Amendment because "all four challenged provisions chill an alarming amount of speech without any 'actual evidence' in the legislative record that lesser restrictions will not do").

[60] *Turner v. Lieutenant Driver*, 848 F.3d 678, 690 (5th Cir. 2017).

[61] MILLER, *supra* n. 29.

of flying a drone) that nonetheless "has the inevitable effect of singling out those engaged in expressive activity."[62] Precisely *how* the restriction burdens protected speech is less important, however, because regardless of how they are analyzed, adopting gating criteria for food and agriculture fixed site facilities and granting UAFRs based on the criteria would fail to meet even intermediate scrutiny and accordingly violate the First Amendment.

Content-neutral restrictions on speech are permissible only when narrowly tailored to serve a substantial government interest.[63] The government may not "burden substantially more speech than is necessary to further the government's legitimate interests" such that "a substantial portion of the burden on speech does not serve to advance its goals."[64] Regulations allowing large farms to obtain UAFRs fail to meet this standard because they burden substantially more speech than is necessary to ensure the security of these facilities.

As the FAA notes, "restricting airspace is an extraordinary remedy" that should be granted "only in those limited circumstances in which there is a clearly articulated need that justifies the remedy of restricting airspace, and where narrower measures cannot adequately address a clearly documented security risk."[65] There are thus two distinct problems with restricting airspace over food and agriculture fixed site facilities. First, as detailed above, there is no "clearly articulated need" or a "clearly documented security risk" of drones harming people, animals, or property on food and agriculture fixed site facilities, either purposefully or accidentally. Second, to the extent the food and agriculture industry or the FAA fears such security risks could be latent or could develop, the agency cannot show that narrower measures would be inadequate to address them.

If "low barriers to entry" for drone use and some drone operators' "limited aviation knowledge" are, as the FAA states, the root cause of many of the accidental unmanned aircraft incidents giving rise to the need to develop gating criteria for airspace

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[62] *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 706-07 (1986) (citing *Minneapolis Star & Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575 (1983)).
[63] *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 662 (1994) (citing *U.S. v. O'Brien*, 391 U.S. 367, 382 (1968)).
[64] *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989).
[65] Proposed Rule at 24656.

restrictions,[66] those could be addressed by a narrower rule implementing more stringent knowledge or experience requirements for drone operators. We Animals and Animal Outlook already require the drone operators they work with to follow applicable FAA rules and to operate safely and professionally, and the organizations would be prepared to meet reasonable further licensing, certification, safety, and operating requirements.

Moreover, to the extent the concern is intentional harm to agricultural operations—such as introducing biosecurity threats or sabotage—those harms could be addressed with narrower restrictions targeting drone operation for such illicit purposes. The agency has not considered such narrower measures and found them inadequate to address security risks.[67] Adopting gating criteria that would enable large CAFOs to freely obtain UAFRs and shut down aerial photojournalism about their operations would thus burden far more speech than is necessary and would fail intermediate scrutiny.[68]

**d. The proposed regulations could even enable unconstitutional content or viewpoint discrimination.**

While the rule, if finalized, would fail even intermediate scrutiny, aspects of the suggested gating criteria for food and agriculture fixed site facilities, and the agency's explanation of how such facilities could obtain UAFRs, raise the specter of potential content-based discrimination on protected newsgathering. If the regulations facilitated that, they would be subject to—and would necessarily fail—strict scrutiny.[69]

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[66] *Id*.

[67] *PETA*, 60 F.4th at 832 (before restricting speech, government must "produce evidence demonstrating that it seriously undertook to utilize existing laws or attempted to use less intrusive tools readily available to it to achieve the proffered aims") (internal quotation and citation omitted); *McCullen v. Coakley*, 573 U.S. 464, 496 (2014) ("Given the vital First Amendment interests at stake, it is not enough for [the government] simply to say that other approaches have not worked.").

[68] *PETA*, 60 F.4th at 832 (government failed to show that North Carolina Property Protection Act restricted less speech than was actually necessary to meet state interests, and thus Act failed intermediate scrutiny).

[69] *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 471 (2025) ("'Content-based laws — those that target speech based on its communicative content — are presumptively

First, the FAA's questions about gating criteria for food and agriculture facilities, in proposed 14 C.F.R. § 74.90, suggest that only or primarily large-scale food and agriculture fixed site facilities—those whose impairment "could have debilitating regional or national-level consequences," that produce food for a large segment of the population, and/or that have a significant "regional or national economic impact"—could obtain UAFRs.[70] This could have the effect of restricting protected drone photojournalism if the subject is a large, economically powerful dairy or feedlot, while allowing it if the subject is a small family farm. In other words, it would allow aerial photography of small herds of animals grazing outside, while prohibiting aerial photography of the enormous feedlots, manure lagoons, and animal confinements that typify CAFOs.[71]

This concern is exacerbated by the agency's suggestion that agricultural facilities requesting a UAFR could make the requisite showing of vulnerability by identifying "weaknesses or gaps that may be intentionally or unintentionally exploited by unmanned aircraft *to the detriment of the facility's* operation or *mission*."[72] If the FAA granted a UAFR to a food and agriculture fixed site facility based on the facility's showing that drone photography of its operations has generated or could generate negative public opinion or economic consequences for the facility, to the detriment of the facility's mission, the regulatory framework would effect unconstitutional viewpoint discrimination.[73] Courts

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unconstitutional and may be justified only if' they satisfy strict scrutiny" (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)).

[70] Proposed Rule at 24670.

[71] *Wasden*, 878 F.3d at 1204 (provision barring audiovisual recording of "the conduct of an agricultural production facility's operations" was an "obvious example of a content-based regulation of speech because it define[d] regulated speech by particular subject matter," enabling, for example, "a videographer [to] record an after-hours birthday party among co-workers, a farmer's antique car collection, or a historic maple tree but not the animal abuse, feedlot operation, or slaughterhouse conditions") (cleaned up).

[72] *Id*. at 24687.

[73] *Wasden*, 878 F.3d at 1196–97 (Idaho law that meant "to quash investigative reporting on agricultural production facilities" by criminalizing gaining access by means of misrepresentation was a content-based restriction that failed strict scrutiny); *Kelly*, 9 F.4th at 1233 (finding state law "viewpoint discriminatory in operation" when "text of the statute alone show[ed] it is meant to protect animal facilities," by criminalizing one "who lies to acquire or exercise control over an animal facility intending to expose wrongdoing," but not

have struck down restrictions that similarly function to silence or punish critical speech about animal operations while privileging neutral or positive speech, such as drones conducting mapping or academic research.[74]

**e. The narrow allowance for drone operations within UAFRs would not alleviate the unconstitutional chill on drone-facilitated photojournalism about food and agriculture fixed site facilities.**

The FAA is aware that implementing blanket airspace restrictions could impact "first amendment activity, [which] may require non-transitory operations" over fixed site facilities.[75] The agency asks whether its proposed allowance of certain drone operations within UAFRs is broad enough to accommodate legitimate activities, including First Amendment activity.[76] The answer is no. Under the proposed rule, once a fixed site facility has been granted a UAFR, only Part 107-licensed operations that "transit the UAFR in the shortest practicable time" and provide advanced notice to the fixed site facility's manager of the date, time, and identity of the drone operator will be permitted.[77] These conditions will effectively shut down, or at the very least undermine the integrity, utility, and communicative effect of, photojournalism about food and agriculture fixed site facilities.

First, requiring drone operators to transit the UAFR in the shortest practicable time—allowing only uninterrupted, direct fly-overs—will prevent newsgathering. Newsgathering requires more: operators often need to hover, reposition, and record long enough to clearly capture visual documentation of vital information about food and agriculture fixed site facilities. These are necessarily non-transitory operations.

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one "who tells the same lie to gain the same control intending to laud the facility or for neutral reasons").

[74] *See, e.g., Kelly*, 9 F.4th at 1233; *PETA*, 60 F.4th at 830–31 (state law triggered strict scrutiny—but failed even intermediate scrutiny—as applied to PETA's investigative activities, as provisions prohibiting using data to breach employee's duty of loyalty "do not merely target speech, but speech critical of the employer").

[75] Proposed Rule at 24676.

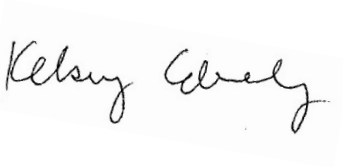
[76] *Id*.

[77] Proposed Rule at 24690–91.

Second, providing advanced notice to the food and agriculture fixed site facility could allow the site operator to obscure or remove any conditions they did not want to be photographed from above, also undermining protected newsgathering. Such a condition would undercut drone photography's utility as a tool for environmental enforcement, consumer protection, and preservation of market integrity. For example, if the egg producer in the *Alderfer Farms* consumer protection case[78] or the dairy operation in the organic certification integrity investigation[79] cited earlier had advanced notice of drone overflights, they could have adjusted the animals' outdoor access temporarily and evaded accountability.

In sum, the language in 14 C.F.R. § 74.250(a)(2) is *not* "broad enough to enable both legitimate transitory and non-transitory operations within a UAFR."[80] While no gating criteria to grant UAFR for food and agriculture fixed site facilities are warranted, if the agency proceeds to develop them, at a minimum, the FAA must clarify that photojournalists and other drone pilots engaged in protected First Amendment speech are not restricted to transitory overflights and need not give advanced notice of their drone activity to facility operators. Further, while the proposed rule specifically states that fixed site facility operators are not permitted to electronically interfere with or intercept drones,[81] the agency should amend § 74.250 to state that facility managers may not harass, interfere with, threaten, or otherwise seek to enforce a UAFR against drone operators engaged in legitimate First Amendment activities.

Respectfully submitted,



[78] *Supra* at sec. II.f.
[79] *Supra* at sect. II.g.
[80] Proposed Rule at 24676.
[81] *Id.* at 24687.

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