

April 12, 2019

Ben Walsh  
Flight Technologies and Procedures Division  
Federal Aviation Administration  
470 L'Enfant Plaza SW, Suite 4102  
Washington, DC 20024

Via Electronic Filing at <http://www.regulations.gov>

**RE: Safe and Secure Operations of Small Unmanned Aircraft Systems, Advance Notice of Proposed Rulemaking (ANPRM), Docket No. 2018-1086; Notice No. 18-08**

Dear Mr. Walsh:

The National Association of Chemical Distributors (NACD) submits the following comments in response to the Federal Aviation Administration (FAA) request for public comment regarding Docket No. 2018-1086, Notice No. 18-08, Safe and Secure Operations of Small Unmanned Aircraft Systems.

#### About NACD

NACD is an international association of nearly 450 chemical distributors and their supply-chain partners. NACD members represent more than 85 percent of the chemical distribution capacity in the nation and generate 93 percent of the industry's gross revenue. NACD members, operating in all 50 states through more than 3,000 facilities, are responsible for nearly 75,000 direct and indirect jobs in the United States. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

#### NACD Commends FAA For Providing Needed Additional Regulation Around Unmanned Aircraft Systems

NACD supports policies on unmanned aircraft systems (UAS), commonly known as drones, that prioritize national security and safety. We acknowledge the technological value of safe and responsible drone use, and we must also recognize and anticipate the inverse. Regulations need to keep pace with the new challenges accompanying the increase in drone use, especially when it comes to protecting the security of our nation's chemical facilities and the communities that foster them.

In the ANPRM, FAA seeks comment regarding proposals for FAA rulemaking to reduce risks to public safety and national security as UAS are integrated into the National Airspace System (NAS).

### FAA Should Include Chemical Facilities In the Definition of Critical Infrastructure

The FAA is currently developing a rule “UAS Flight Restrictions Near Critical Infrastructure Facilities,” RIN 2120-AL33, that would establish the criteria and procedures for the operator or proprietor of eligible fixed-site facilities to apply to the FAA for a UAS-specific flight restriction. Although the rule has not yet been published, it is understood that the FAA will limit the fixed-site facilities that can apply for flight restrictions by including them in the definition of “critical infrastructure.”

Under Section 2209 of the FAA Extension, Safety and Security Act of 2016, FAA may consider the following as fixed-site facilities: “critical infrastructure, such as energy production, transmission and distribution facilities and equipment,” “oil refineries and chemical facilities,” and “other locations that warrant such restrictions.” NACD believes chemical facilities must be included in this definition for national security.

Chemical facilities that possess certain chemicals above screening thresholds are regulated by the Department of Homeland Security’s Chemical Facility Anti-Terrorism Standards (CFATS). CFATS was established in 2007 using a multi-tiered risk assessment process to identify high-risk chemical facilities. After being assigned a tier, facilities are required to meet and maintain security standards appropriate to the facilities and risk they pose. One DHS requirement is for CFATS-regulated facilities to report suspicious activities – including drones flying around chemical facilities. NACD members have seen more and more incidents involving drones near their facilities, resulting in additional reporting to DHS and to local law enforcement.

It is critical that FAA include chemical facilities in the definition of critical infrastructure, so that all chemical facilities, and especially facilities covered by CFATS, can apply for restricted airspace. Currently, law enforcement can take a report down about incidents involving drones but legally cannot take further action. Ultimately, it is frustrating for NACD members to have to report these incidents continually to DHS and law enforcement without there being any way to address those responsible, not to mention the security and safety concerns involved in unidentified drones flying near facilities storing hazardous chemicals.

However, some of our members use their own drones for safety and operations reviews. Chemical facilities can be large operations composed of multiple warehouses and administrative buildings. Therefore, these facilities should be allowed to apply for restricted airspace, while also being able to operate their own drones to verify the safety and security of their own facilities provided they follow all other UAS regulations.

Further, the operation of drones for site security review by chemical facilities should be excluded from any future rulemakings requiring reporting of planned and actual flight paths, deconflictions capability, etc., otherwise known as UAS Traffic Management. In its internal analysis, the FAA determined that a certificated remote pilot can operate a small UAS safely without the need to coordinate its flight path with other operators.

In short, chemical facilities are critical national security sites and must be allowed to petition the FAA for prohibited or restricted airspace – while being allowed to use drones responsibly for their own security programs.

The FAA Should Continue to Prohibit Drone Carriage of Hazardous Materials

FAA currently prohibits the carriage of hazardous materials by unmanned aircraft systems. The movement of hazardous materials by drones could pose a threat to public safety or national security and should remain prohibited. However, the FAA currently does allow for the transportation of private property by drone if the aircraft and cargo weigh less than 55 pounds total, among other restrictions. Given that the FAA is aware of “situations where small UAS have been used to conduct illegal surveillance and industrial espionage” and “deliver incendiary, explosive, chemical and radiological payloads,” it is critical that this loophole is closed. It should be illegal to transport hazardous materials by UAS irrespective of the weight or property status of the cargo.

Conclusion

NACD appreciates FAA’s efforts to provide additional regulation for small unmanned aircraft systems. We believe the recommendations outlined above would significantly improve the safety and security of chemical facilities.

Thank you for the opportunity to comment on the ANPRM. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,



Jennifer C. Gibson  
Vice President, Regulatory Affairs