

National Defense Authorization Act for Fiscal Year 2022

SEC. 6445. REQUIREMENTS RELATING TO UNMANNED AIRCRAFT SYSTEMS.

(a) Definitions.--In this section:

(1) Appropriate congressional committees.--The term ``appropriate congressional committees'' means--

- (A) the congressional defense committees;
- (B) the Committee on Science, Space, and Technology, and the Committee on Transportation and Infrastructure of the House of Representatives; and
- (C) the Committee on Commerce, Science, and Transportation of the Senate.

(2) Covered foreign entity.--The term ``covered foreign entity'' means an entity included on a list developed and maintained by the Federal Acquisition Security Council that includes entities in the following categories:

- (A) An entity included on the Consolidated Screening List.
- (B) Any entity that is subject to extrajudicial direction from a foreign government, as determined by the Secretary of Homeland Security.
- (C) Any entity the Secretary of Homeland Security, in coordination with the Director of National Intelligence and the Secretary of Defense, determines poses a national security risk.
- (D) Any entity domiciled in the People's Republic of China or subject to influence or control by the Government of the People's Republic of China or the Communist Party of the People's Republic of China, as determined by the Secretary of Homeland Security.

(E) Any subsidiary or affiliate of an entity described in subparagraphs (A) through (D).

(3) Executive agency.--The term ``executive agency'' has the meaning given that term in section 133 of title 41, United States Code.

(4) Unmanned aircraft system; uas.--Except as otherwise provided, the terms ``unmanned aircraft system'' and ``UAS'' mean an unmanned aircraft and associated elements (consisting of communication links and the components that control the unmanned aircraft) that are required for the operator to operate safely and efficiently in the national airspace system.

(b) Prohibition on Procurement of Unmanned Aircraft Systems From Covered Foreign Entities.--

(1) In general.--Except as provided under paragraphs (2) and (3), the head of an executive agency may not procure any unmanned aircraft system that is manufactured, assembled, designed, or patented by a covered foreign entity that are required for the operator to operate safely and efficiently in the national airspace system. The Federal Acquisition Security Council, in coordination with the Secretary of Transportation, shall develop and update a list of associated elements.

(2) Exemption.--The Secretary of Homeland Security, the Secretary of Defense, and the Attorney General are exempt from the restriction under paragraph (1) if the operation or procurement--

- (A) is for the sole purposes of research, evaluation, training, testing, or analysis for--
 - (i) electronic warfare;
 - (ii) information warfare operations;
 - (iii) development of UAS or counter-UAS

technology;

(iv) counterterrorism or counterintelligence activities; or
(v) Federal criminal investigations, including forensic examinations; and

(B) is required in the national interest of the United States.

(3) Waiver.--The head of an executive agency may waive the prohibition under paragraph (1)--

(A) with the approval of the Secretary of Homeland Security or the Secretary of Defense; and

(B) upon notification to Congress.

(c) Prohibition on Operation of Unmanned Aircraft Systems From Covered Foreign Entities.--

(1) Prohibition.--

(A) In general.--Beginning on the date that is 2 years after the date of the enactment of this Act, an executive agency may not operate an unmanned aircraft system manufactured, assembled, designed, or patented by a covered foreign entity.

(B) Applicability to contracted services.--The prohibition under subparagraph (A) applies to any unmanned aircraft systems that are being used by any executive agency through the method of contracting for the services of unmanned aircraft systems.

(2) Exemption.--The Secretary of Homeland Security, the Secretary of Defense, and the Attorney General are exempt from the restriction under paragraph (1) if the operation or procurement--

(A) is for the sole purposes of research, evaluation, training, testing, or analysis for--

(i) electronic warfare;

(ii) information warfare operations;

(iii) development of UAS or counter-UAS technology;

(iv) counterterrorism or counterintelligence activities; or

(v) Federal criminal investigations, including forensic examinations; and

(B) is required in the national interest of the United States.

(3) Waiver.--The head of an executive agency may waive the prohibition under paragraph (1) on a case-by-case basis--

(A) with the approval of the Secretary of Homeland Security or the Secretary of Defense; and

(B) upon notification to Congress.

(4) Regulations and guidance.--Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall prescribe regulations or guidance to implement this section.

(d) Prohibition on Use of Federal Funds for Purchases and Operation of Unmanned Aircraft Systems From Covered Foreign Entities.--

(1) In general.--Beginning on the date that is 2 years after the date of the enactment of this Act, except as provided in paragraphs (2) and (3), Federal funds awarded through a contract, grant, or cooperative agreement entered into on or after such effective date, or otherwise made available, may not be used--

(A) to purchase a unmanned aircraft system, or a system to counter unmanned aircraft systems, that is manufactured, assembled, designed, or patented by a covered foreign entity; or

(B) in connection with the operation of such a

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drone or unmanned aircraft system.

(2) Exemption.--An executive agency is exempt from the restriction under paragraph (1) if the operation or procurement is for the sole purposes of research, evaluation, training, testing, or analysis, as determined by the Secretary of Homeland Security, the Secretary of Defense, or the Attorney General, for--

- (A) electronic warfare;
- (B) information warfare operations;
- (C) development of UAS or counter-UAS technology;
- (D) counterterrorism or counterintelligence activities;
- (E) Federal criminal investigations, including forensic examinations; or
- (F) the safe integration of UAS in the national airspace (as determined in consultation with the Secretary of Transportation); and
- (G) is required in the national interest of the United States.

(3) Waiver.--The head of an executive agency may waive the prohibition under paragraph (1) on a case-by-case basis--

- (A) with the approval of the Secretary of Homeland Security or the Secretary of Defense; and
- (B) upon notification to Congress.

(4) Regulations.--Not later than 180 days after the date of the enactment of this Act, the Federal Acquisition Regulatory Council shall prescribe regulations or guidance, as necessary, to implement the requirements of this section relating to Federal contracts.

(e) Prohibition on Use of Government-issued Purchase Cards to Purchase Unmanned Aircraft Systems From Covered Foreign Entities.--Effective immediately, Government-issued Purchase Cards may not be used to procure any unmanned aircraft system from a covered foreign entity.

(f) Management of Existing Inventories of Unmanned Aircraft Systems From Covered Foreign Entities.--

(1) In general.--Effective immediately, all executive agencies must account for existing inventories of unmanned aircraft systems manufactured, assembled, designed, or patented by a covered foreign entity in their personal property accounting systems, regardless of the original procurement cost, or the purpose of procurement due to the special monitoring and accounting measures necessary to track the items' capabilities.

(2) Classified tracking.--Due to the sensitive nature of missions and operations conducted by the United States Government, inventory data related to unmanned aircraft systems manufactured, assembled, designed, or patented by a covered foreign entity may be tracked at a classified level.

(3) Exceptions.--The Department of Defense and Department of Homeland Security may exclude from the full inventory process, unmanned aircraft systems that are deemed expendable due to mission risk such as recovery issues or that are one-time-use unmanned aircraft system due to requirements and low cost.

(g) Comptroller General Report.--Not later than 275 days after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the amount of commercial off-the-shelf drones and unmanned aircraft systems procured by Federal departments and agencies from covered foreign entities.

(h) Government-wide Policy for Procurement of Unmanned Aircraft Systems.--

(1) In general.--Not later than 180 days after the date of the enactment of this Act, the Director of the Office of

Management and Budget, in coordination with the Department of Homeland Security, Department of Transportation, the Department of Justice, and other Departments as determined by the Director of the Office of Management and Budget, and in consultation with the National Institute of Standards and Technology, shall establish a government-wide policy for the procurement of UAS--

(A) for non-Department of Defense and non-intelligence community operations; and

(B) through grants and cooperative agreements entered into with non-Federal entities.

(2) Information security.--The policy developed under paragraph (1) shall include the following specifications, which to the extent practicable, shall be based on industry standards and technical guidance from the National Institute of Standards and Technology, to address the risks associated with processing, storing and transmitting Federal information in a UAS:

(A) Protections to ensure controlled access of UAS.

(B) Protecting software, firmware, and hardware by ensuring changes to UAS are properly managed, including by ensuring UAS can be updated using a secure, controlled, and configurable mechanism.

(C) Cryptographically securing sensitive collected, stored, and transmitted data, including proper handling of privacy data and other controlled unclassified information.

(D) Appropriate safeguards necessary to protect sensitive information, including during and after use of UAS.

(E) Appropriate data security to ensure that data is not transmitted to or stored in non-approved locations.

(F) The ability to opt out of the uploading, downloading, or transmitting of data that is not required by law or regulation and an ability to choose with whom and where information is shared when it is required.

(3) Requirement.--The policy developed under paragraph (1) shall reflect an appropriate risk-based approach to information security related to use of UAS.

(4) Revision of acquisition regulations.--Not later than 180 days after the date on which the policy required under paragraph (1) is issued--

(A) the Federal Acquisition Regulatory Council shall revise the Federal Acquisition Regulation, as necessary, to implement the policy; and

(B) any executive agency or other Federal entity not subject to, or not subject solely to, the Federal Acquisition Regulation shall revise applicable policy, guidance, or regulations, as necessary, to implement the policy.

(5) Exemption.--In developing the policy required under paragraph (1), the Director of the Office of Management and Budget shall incorporate an exemption to the policy for the following reasons:

(A) In the case of procurement for the purposes of training, testing, or analysis for--

(i) electronic warfare; or

(ii) information warfare operations.

(B) In the case of researching UAS technology, including testing, evaluation, research, or development of technology to counter UAS.

(C) In the case of a head of the procuring

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executive agency determining, in writing, that no product that complies with the information security requirements described in paragraph (2) is capable of fulfilling mission critical performance requirements, and such determination--

(i) may not be delegated below the level of the Deputy Secretary of the procuring executive agency;

(ii) shall specify--

(I) the quantity of end items to which the waiver applies, the procurement value of which may not exceed \$50,000 per waiver; and

(II) the time period over which the waiver applies, which shall not exceed 3 years;

(iii) shall be reported to the Office of Management and Budget following issuance of such a determination; and

(iv) not later than 30 days after the date on which the determination is made, shall be provided to the Committee on Homeland Security and Government Affairs of the Senate and the Committee on Oversight and Reform of the House of Representatives.

(i) Study on the Supply Chain for Unmanned Aircraft Systems and Components.--

(1) Report required.--Not later than 180 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition and Sustainment, in consultation with the Administrator of the National Aeronautics and Space Administration, shall provide to the appropriate congressional committees a report on the supply chain for covered unmanned aircraft systems, including a discussion of current and projected future demand for covered unmanned aircraft systems.

(2) Elements.--The report under paragraph (1) shall include the following:

(A) A description of the current and future global and domestic market for covered unmanned aircraft systems that are not widely commercially available except from a covered foreign entity.

(B) A description of the sustainability, availability, cost, and quality of secure sources of covered unmanned aircraft systems domestically and from sources in allied and partner countries.

(C) The plan of the Secretary of Defense to address any gaps or deficiencies identified in subparagraph (B), including through the use of funds available under the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.) and partnerships with the National Aeronautics and Space Administration and other interested persons.

(D) Such other information as the Under Secretary of Defense for Acquisition and Sustainment determines to be appropriate.

(3) Covered unmanned aircraft system defined.--In this subsection, the term ``covered unmanned aircraft system'' means an unmanned aircraft system (as defined in subsection (a)) and any components of such a system.