

Calendar No. 547

116TH CONGRESS
2D SESSION

S. 2502

[Report No. 116–268]

To ban the Federal procurement of certain drones and other unmanned aircraft systems, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 2019

Mr. SCOTT of Florida (for himself, Mr. COTTON, Mr. HAWLEY, Mr. RUBIO, Mr. MURPHY, Mr. BLUMENTHAL, and Mrs. BLACKBURN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

SEPTEMBER 15, 2020

Reported by Mr. JOHNSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To ban the Federal procurement of certain drones and other unmanned aircraft systems, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “~~American Security~~
5 ~~Drone Act of 2019~~”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) COVERED FOREIGN ENTITY.—the term
4 “covered foreign entity” means—

5 (A) a covered entity (as determined by the
6 Secretary of Commerce);

7 (B) any entity that is subject to
8 extrajudicial direction from a foreign govern-
9 ment, as determined by the Director of Na-
10 tional Intelligence;

11 (C) any entity the Secretary of Homeland
12 Security, in coordination with the Director of
13 National Intelligence, the Secretary of Defense,
14 and the Secretary of State, determines poses a
15 national security risk;

16 (D) any entity subject to influence or con-
17 trol by the Government of the People Republic
18 of China or the Communist Party of the Peo-
19 ple’s Republic of China, as determined by the
20 Secretary of Homeland Security; and

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

23 (2) COVERED UNMANNED AIRCRAFT.—The
24 term “covered unmanned aircraft” means an un-
25 manned aircraft system and any related services and
26 equipment.

1 **SEC. 3. BAN ON PROCUREMENT OF FOREIGN OFF-THE-**
2 **SHELF DRONES AND UNMANNED AIRCRAFT**
3 **SYSTEMS.**

4 (a) **IN GENERAL.**—Except as provided under sub-
5 sections (b) and (c), the head of an executive agency may
6 not procure any commercial off-the-shelf drone or covered
7 unmanned aircraft system manufactured or assembled by
8 a covered foreign entity, including any Original Equip-
9 ment Manufacturer flight controllers, radios, data trans-
10 mission devices, cameras, or gimbals manufactured in a
11 covered foreign country or by an entity domiciled in a cov-
12 ered foreign country.

13 (b) **EXEMPTION.**—The Secretary of Homeland Secu-
14 rity and the Secretary of Defense are exempt from the
15 restriction under subsection (a) if the operation or pro-
16 curement—

17 (1) is for the purposes of training, testing, or
18 analysis for—

19 (A) Counter-UAS surrogate intelligence;

20 (B) electronic warfare; or

21 (C) information warfare operations; and

22 (2) is required in the national interest of the
23 United States.

24 (c) **WAIVER.**—The head of an executive agency may
25 waive the prohibition under subsection (a) on a case-by-
26 case basis with the approval of the Secretary of Homeland

1 Security or the Secretary of Defense and notification to
2 Congress.

3 **SEC. 4. PROHIBITION ON OPERATION OF FOREIGN COM-**
4 **MERCIAL OFF-THE-SHELF DRONES AND**
5 **SMALL UNMANNED AIRCRAFT SYSTEMS.**

6 (a) PROHIBITION.—

7 (1) IN GENERAL.—Beginning not later than
8 180 days after the date of the enactment of this Act,
9 no Federal department or agency may operate a
10 commercial off-the-shelf drone or covered unmanned
11 aircraft system manufactured or assembled by a cov-
12 ered foreign entity.

13 (2) PHASE-IN PERIOD FOR EXISTING CON-
14 TRACTS.—The prohibition under paragraph (1) shall
15 not apply, during the 1-year period beginning on the
16 date of the enactment of this Act, to commercial off-
17 the-shelf drones and covered unmanned aircraft sys-
18 tems procured through a contract entered into be-
19 fore the date of the enactment of this Act.

20 (b) EXEMPTION.—The Secretary of Homeland Secu-
21 rity and the Secretary of Defense are exempt from the
22 restriction under subsection (a) if the operation or pro-
23 curement—

24 (1) is for the purposes of training, testing, or
25 analysis for—

1 (A) Counter-UAS surrogate intelligence;

2 (B) electronic warfare; or

3 (C) information warfare operations; and

4 (2) is required in the national interest of the
5 United States.

6 (c) ~~WAIVER.~~—The head of an executive agency may
7 waive the prohibition under subsection (a) on a case-by-
8 case basis with the approval of the Secretary of Homeland
9 Security or the Secretary of Defense and notification to
10 Congress.

11 (d) ~~REGULATIONS.~~—Not later than 180 days after
12 the date of the enactment of this Act, the Secretary of
13 Homeland Security shall prescribe regulations to imple-
14 ment this section.

15 **SEC. 5. PROHIBITION ON USE OF FEDERAL FUNDS FOR**
16 **PURCHASES AND OPERATION OF COMMER-**
17 **CIAL OFF-THE-SHELF DRONES AND UN-**
18 **MANNED AIRCRAFT SYSTEMS FROM CHINA.**

19 No Federal funds awarded through a contract, grant,
20 or cooperative agreement or otherwise made available may
21 be used to purchase a commercial off-the-shelf drone or
22 covered unmanned aircraft system, or a system to counter
23 unmanned aircraft systems, that is manufactured or as-
24 sembled by a covered foreign entity or in connection with
25 the operation of such a drone or system.

1 **SEC. 6. COMPTROLLER GENERAL REPORT.**

2 Not later than 90 days after the date of the enact-
3 ment of this Act, the Comptroller General of the United
4 States shall submit to Congress a report on the amount
5 of commercial off-the-shelf drones and covered unmanned
6 aircraft systems procured by Federal departments and
7 agencies from covered foreign entities.

8 **SECTION 1. SHORT TITLE.**

9 *This Act may be cited as the “American Security*
10 *Drone Act of 2020”.*

11 **SEC. 2. DEFINITIONS.**

12 *In this Act:*

13 (1) *COVERED FOREIGN ENTITY.*—*The term “cov-*
14 *ered foreign entity” means—*

15 (A) *a covered entity designated by the Sec-*
16 *retary of Commerce;*

17 (B) *an entity included on the Consolidated*
18 *Screening List;*

19 (C) *any entity that is subject to*
20 *extrajudicial direction from a foreign govern-*
21 *ment, as determined by the Secretary of Home-*
22 *land Security;*

23 (D) *any entity the Secretary of Homeland*
24 *Security, in coordination with the Director of*
25 *National Intelligence and the Secretary of De-*
26 *fense, determines poses a national security risk;*

1 (E) any entity domiciled in the People’s Re-
2 public of China or subject to influence or control
3 by the Government of the People Republic of
4 China or the Communist Party of the People’s
5 Republic of China, as determined by the Sec-
6 retary of Homeland Security; or

7 (F) any subsidiary or affiliate of an entity
8 described in subparagraphs (A) through (D).

9 (2) COVERED UNMANNED AIRCRAFT SYSTEM.—

10 The term “covered unmanned aircraft system” has the
11 meaning given the term “unmanned aircraft system”
12 in section 44801 of title 49, United States Code.

13 **SEC. 3. PROHIBITION ON PROCUREMENT OF COVERED UN-**
14 **MANNED AIRCRAFT SYSTEMS FROM COVERED**
15 **FOREIGN ENTITIES.**

16 (a) IN GENERAL.—Except as provided under sub-
17 sections (b) and (c), the head of an executive agency may
18 not procure any covered unmanned aircraft system that are
19 manufactured or assembled by a covered foreign entity,
20 which includes associated elements (consisting of commu-
21 nication links and the components that control the un-
22 manned aircraft) that are required for the operator to oper-
23 ate safely and efficiently in the national airspace system.

24 (b) EXEMPTION.—The Secretary of Homeland Secu-
25 rity, the Secretary of Defense, and the Attorney General are

1 *exempt from the restriction under subsection (a) if the oper-*
 2 *ation or procurement—*

3 *(1) is for the sole purposes of research, evalua-*
 4 *tion, training, testing, or analysis for—*

5 *(A) electronic warfare;*

6 *(B) information warfare operations;*

7 *(C) development of UAS or counter-UAS*
 8 *technology;*

9 *(D) counterterrorism or counterintelligence*
 10 *activities; or*

11 *(E) Federal criminal investigations, includ-*
 12 *ing forensic examinations; and*

13 *(2) is required in the national interest of the*
 14 *United States.*

15 *(c) WAIVER.—The head of an executive agency may*
 16 *waive the prohibition under subsection (a) on a case-by-*
 17 *case basis with the approval of the Secretary of Homeland*
 18 *Security or the Secretary of Defense and notification to*
 19 *Congress.*

20 **SEC. 4. PROHIBITION ON OPERATION OF COVERED UN-**
 21 **MANNED AIRCRAFT SYSTEMS FROM COVERED**
 22 **FOREIGN ENTITIES.**

23 *(a) PROHIBITION.—*

24 *(1) IN GENERAL.—Beginning on the date that is*
 25 *2 years after the date of the enactment of this Act, no*

1 *Federal department or agency may operate a covered*
2 *unmanned aircraft system manufactured or assembled*
3 *by a covered foreign entity.*

4 (2) *APPLICABILITY TO CONTRACTED SERVICES.—*
5 *The prohibition under paragraph (1) applies to any*
6 *covered unmanned aircraft systems that are being*
7 *used by any executive agency through the method of*
8 *contracting for the services of covered unmanned air-*
9 *craft systems.*

10 (b) *EXEMPTION.—The Secretary of Homeland Secu-*
11 *rity, the Secretary of Defense, and the Attorney General are*
12 *exempt from the restriction under subsection (a) if the oper-*
13 *ation or procurement—*

14 (1) *is for the sole purposes of research, evalua-*
15 *tion, training, testing, or analysis for—*

16 (A) *electronic warfare;*

17 (B) *information warfare operations;*

18 (C) *development of UAS or counter-UAS*
19 *technology;*

20 (D) *counterterrorism or counterintelligence*
21 *activities; or*

22 (E) *Federal criminal investigations, includ-*
23 *ing forensic examinations; and*

24 (2) *is required in the national interest of the*
25 *United States.*

1 (c) *WAIVER.*—*The head of an executive agency may*
 2 *waive the prohibition under subsection (a) on a case-by-*
 3 *case basis with the approval of the Secretary of Homeland*
 4 *Security or the Secretary of Defense and notification to*
 5 *Congress.*

6 (d) *REGULATIONS AND GUIDANCE.*—*Not later than*
 7 *180 days after the date of the enactment of this Act, the*
 8 *Secretary of Homeland Security shall prescribe regulations*
 9 *or guidance to implement this section.*

10 **SEC. 5. PROHIBITION ON USE OF FEDERAL FUNDS FOR**
 11 **PURCHASES AND OPERATION OF COVERED**
 12 **UNMANNED AIRCRAFT SYSTEMS FROM COV-**
 13 **ERED FOREIGN ENTITIES.**

14 (a) *IN GENERAL.*—*Beginning on the date that is 2*
 15 *years after the date of the enactment of this Act, except as*
 16 *provided in subsection (b), no Federal funds awarded*
 17 *through a contract, grant, or cooperative agreement, or oth-*
 18 *erwise made available may be used—*

19 (1) *to purchase a covered unmanned aircraft sys-*
 20 *tem, or a system to counter unmanned aircraft sys-*
 21 *tems, that is manufactured or assembled by a covered*
 22 *foreign entity; or*

23 (2) *in connection with the operation of such a*
 24 *drone or unmanned aircraft system.*

1 (b) *EXEMPTION.*—A Federal department or agency is
2 exempt from the restriction under subsection (a) if—

3 (1) the contract, grant or cooperative agreement
4 was awarded prior to the date of the enactment of the
5 bill; or

6 (2) the operation or procurement is for the sole
7 purposes of research, evaluation, training, testing, or
8 analysis, as determined by the Secretary of Homeland
9 Security, the Secretary of Defense, or the Attorney
10 General, for—

11 (A) electronic warfare;

12 (B) information warfare operations;

13 (C) development of UAS or counter-UAS
14 technology;

15 (D) counterterrorism or counterintelligence
16 activities; or

17 (E) Federal criminal investigations, includ-
18 ing forensic examinations; and

19 (3) is required in the national interest of the
20 United States.

21 (c) *REGULATIONS.*—Not later than 180 days after the
22 date of the enactment of this Act, the Federal Acquisition
23 Regulatory Council shall prescribe regulations or guidance,
24 as necessary, to implement the requirements of this section
25 pertaining to Federal contracts.

1 **SEC. 6. PROHIBITION ON USE OF GOVERNMENT-ISSUED**
2 **PURCHASE CARDS TO PURCHASE COVERED**
3 **UNMANNED AIRCRAFT SYSTEMS FROM COV-**
4 **ERED FOREIGN ENTITIES.**

5 *Effective immediately, Government-issued Purchase*
6 *Cards may not be used to procure any covered unmanned*
7 *aircraft system from a covered foreign entity.*

8 **SEC. 7. MANAGEMENT OF EXISTING INVENTORIES OF COV-**
9 **ERED UNMANNED AIRCRAFT SYSTEMS FROM**
10 **COVERED FOREIGN ENTITIES.**

11 *(a) IN GENERAL.— Effective immediately, all execu-*
12 *tive agencies must account for existing inventories of cov-*
13 *ered unmanned aircraft systems manufactured or assembled*
14 *by a covered foreign entity in their personal property ac-*
15 *counting systems, regardless of the original procurement*
16 *cost, or the purpose of procurement due to the special moni-*
17 *toring and accounting measures necessary to track the*
18 *items' capabilities.*

19 *(b) CLASSIFIED TRACKING.— Due to the sensitive na-*
20 *ture of missions and operations conducted by the United*
21 *States Government, inventory data related to covered un-*
22 *manned aircraft systems manufactured or assembled by a*
23 *covered foreign entity may be tracked at a classified level.*

24 *(c) EXCEPTIONS.— The Department of Defense and De-*
25 *partment of Homeland Security may exclude from the full*
26 *inventory process, covered unmanned aircraft systems that*

1 *are deemed expendable due to mission risk such as recovery*
2 *issues or that are one-time-use covered unmanned aircraft*
3 *due to requirements and low cost.*

4 **SEC. 8. COMPTROLLER GENERAL REPORT.**

5 *Not later than 275 days after the date of the enactment*
6 *of this Act, the Comptroller General of the United States*
7 *shall submit to Congress a report on the amount of commer-*
8 *cial off-the-shelf drones and covered unmanned aircraft sys-*
9 *tems procured by Federal departments and agencies from*
10 *covered foreign entities.*

11 **SEC. 9. GOVERNMENT-WIDE POLICY FOR PROCUREMENT OF**
12 **UNMANNED AIRCRAFT SYSTEMS.**

13 *(a) IN GENERAL.—Not later than 180 days after the*
14 *date of the enactment of this Act, the Director of the Office*
15 *of Management and Budget, in coordination with the De-*
16 *partment of Homeland Security, Department of Transpor-*
17 *tation, the Department of Justice, and other Departments*
18 *as determined by the Director of the Office of Management*
19 *and Budget, and in consultation with the National Insti-*
20 *tute of Standards and Technology, shall establish a govern-*
21 *ment-wide policy for the procurement of UAS—*

22 *(1) for non-Department of Defense and non-in-*
23 *telligence community operations; and*

24 *(2) through grants and cooperative agreements*
25 *entered into with non-Federal entities.*

1 (b) *INFORMATION SECURITY.*—*The policy developed*
2 *under subsection (a) shall include the following specifica-*
3 *tions, which to the extent practicable, shall be based on in-*
4 *dustry standards and technical guidance from the National*
5 *Institute of Standards and Technology, to address the risks*
6 *associated with processing, storing and transmitting Fed-*
7 *eral information in a UAS:*

8 (1) *Protections to ensure controlled access of*
9 *UAS.*

10 (2) *Protecting software, firmware, and hardware*
11 *by ensuring changes to UAS are properly managed,*
12 *including by ensuring UAS can be updated using a*
13 *secure, controlled, and configurable mechanism.*

14 (3) *Cryptographically securing sensitive col-*
15 *lected, stored, and transmitted data, including proper*
16 *handling of privacy data and other controlled unclas-*
17 *sified information.*

18 (4) *Appropriate safeguards necessary to protect*
19 *sensitive information, including during and after use*
20 *of UAS.*

21 (5) *Appropriate data security to ensure that*
22 *data is not transmitted to or stored in non-approved*
23 *locations.*

24 (6) *The ability to opt out of the uploading,*
25 *downloading, or transmitting of data that is not re-*

1 *quired by law or regulation and an ability to choose*
2 *with whom and where information is shared when it*
3 *is required.*

4 *(c) REQUIREMENT.—The policy developed under sub-*
5 *section (a) shall reflect an appropriate risk-based approach*
6 *to information security related to use of UAS.*

7 *(d) REVISION OF ACQUISITION REGULATIONS.—Not*
8 *later than 180 days after the date on which the policy re-*
9 *quired under subsection (a) is issued—*

10 *(1) the Federal Acquisition Regulatory Council*
11 *shall revise the Federal Acquisition Regulation, as*
12 *necessary, to implement the policy; and*

13 *(2) any Federal department or agency or other*
14 *Federal entity not subject to, or not subject solely to,*
15 *the Federal Acquisition Regulation shall revise appli-*
16 *cable policy, guidance, or regulations, as necessary, to*
17 *implement the policy.*

18 *(e) EXEMPTION.—In developing the policy required*
19 *under subsection (a), the Director of the Office of Manage-*
20 *ment and Budget shall incorporate an exemption to the pol-*
21 *icy for the following reasons:*

22 *(1) In the case of procurement for the purposes*
23 *of training, testing or analysis for—*

24 *(A) electronic warfare; or*

25 *(B) information warfare operations.*

1 (2) *In the case of researching UAS technology,*
2 *including testing, evaluation, research, or develop-*
3 *ment of technology to counter UAS.*

4 (3) *In the case of a head of the procuring depart-*
5 *ment or agency determining, in writing, that no*
6 *product that complies with the information security*
7 *requirements described in subsection (b) is capable of*
8 *fulfilling mission critical performance requirements,*
9 *and such determination—*

10 (A) *may not be delegated below the level of*
11 *the Deputy Secretary of the procuring depart-*
12 *ment or agency;*

13 (B) *shall specify—*

14 (i) *the quantity of end items to which*
15 *the waiver applies, the procurement value of*
16 *which may not exceed \$50,000 per waiver;*
17 *and*

18 (ii) *the time period over which the*
19 *waiver applies, which shall not exceed 3*
20 *years;*

21 (C) *shall be reported to the Office of Man-*
22 *agement and Budget following issuance of such a*
23 *determination; and*

24 (D) *not later than 30 days after the date on*
25 *which the determination is made, shall be pro-*

1 *vided to the Committee on Homeland Security*
2 *and Government Affairs of the Senate and the*
3 *Committee on Oversight and Reform of the*
4 *House of Representatives.*

5 **SEC. 10. STUDY.**

6 *(a) INDEPENDENT STUDY.—Not later than 3 years*
7 *after the date of the enactment of this Act, the Director of*
8 *the Office of Management and Budget shall seek to enter*
9 *into a contract with a federally funded research and devel-*
10 *opment center under which the center will conduct a study*
11 *of—*

12 *(1) the current and future unmanned aircraft*
13 *system global and domestic market;*

14 *(2) the ability of the unmanned aircraft system*
15 *domestic market to keep pace with technological ad-*
16 *vancements across the industry;*

17 *(3) the ability of domestically made unmanned*
18 *aircraft systems to meet the network security and*
19 *data protection requirements of the national security*
20 *enterprise;*

21 *(4) the extent to which unmanned aircraft sys-*
22 *tem component parts, such as the parts described in*
23 *section 3(a), are made domestically; and*

1 (5) *an assessment of the economic impact, in-*
2 *cluding cost, of excluding the use of foreign-made*
3 *UAS for use across the Federal Government.*

4 (b) *SUBMISSION TO OMB.*—*Upon completion of the*
5 *study in subsection (a), the federally funded research and*
6 *development center shall submit the study to the Director*
7 *of the Office of Management and Budget.*

8 (c) *SUBMISSION TO CONGRESS.*—*Not later than 30*
9 *days after the date on which the Director of the Office of*
10 *Management and Budget receives the study under sub-*
11 *section (b), the Director shall submit the study to—*

12 (1) *the Committee on Homeland Security and*
13 *Governmental Affairs of the Senate; and*

14 (2) *the Committee on Homeland Security and*
15 *the Committee on Oversight and Government Reform*
16 *of the House of Representatives.*

17 **SEC. 11. SUNSET.**

18 *Sections 3, 4, and 5 shall cease to have effect on the*
19 *date that is 5 years after the date of the enactment of this*
20 *Act.*

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