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[Report No. 117–267]

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

IN THE SENATE OF THE UNITED STATES

JANUARY 27, 2021

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

DECEMBER 19, 2022

Reported by Mr. PETERS, without amendment

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 2021”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) COVERED FOREIGN ENTITY.—The term
4 “covered foreign entity” means an entity included on
5 a list developed and maintained by the Federal Ac-
6 quisition Security Council. This list will include enti-
7 ties in the following categories:

8 (A) An entity included on the Consolidated
9 Screening List.

10 (B) Any entity that is subject to
11 extrajudicial direction from a foreign govern-
12 ment, as determined by the Secretary of Home-
13 land Security.

14 (C) Any entity the Secretary of Homeland
15 Security, in coordination with the Director of
16 National Intelligence and the Secretary of De-
17 fense, determines poses a national security risk.

18 (D) Any entity domiciled in the People’s
19 Republic of China or subject to influence or
20 control by the Government of the People Re-
21 public of China or the Communist Party of the
22 People’s Republic of China, as determined by
23 the Secretary of Homeland Security.

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

1 (2) COVERED UNMANNED AIRCRAFT SYSTEM.—

2 The term “covered unmanned aircraft system” has
 3 the meaning given the term “unmanned aircraft sys-
 4 tem” in section 44801 of title 49, United States
 5 Code.

6 **SEC. 3. PROHIBITION ON PROCUREMENT OF COVERED UN-**
 7 **MANNED AIRCRAFT SYSTEMS FROM COV-**
 8 **ERED FOREIGN ENTITIES.**

9 (a) IN GENERAL.—Except as provided under sub-
 10 sections (b) through (f), the head of an executive agency
 11 may not procure any covered unmanned aircraft system
 12 that are manufactured or assembled by a covered foreign
 13 entity, which includes associated elements (consisting of
 14 communication links and the components that control the
 15 unmanned aircraft) that are required for the operator to
 16 operate safely and efficiently in the national airspace sys-
 17 tem. The Federal Acquisition Security Council, in coordi-
 18 nation with the Secretary of Transportation, shall develop
 19 and update a list of associated elements.

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

24 (1) is for the sole purposes of research, evalua-
 25 tion, training, testing, or analysis for—

- 1 (A) electronic warfare;
- 2 (B) information warfare operations;
- 3 (C) development of UAS or counter-UAS
- 4 technology;
- 5 (D) counterterrorism or counterintelligence
- 6 activities; or
- 7 (E) Federal criminal or national security
- 8 investigations, including forensic examinations;
- 9 and

10 (2) is required in the national interest of the
11 United States.

12 (c) FEDERAL AVIATION ADMINISTRATION CENTER
13 OF EXCELLENCE FOR UNMANNED AIRCRAFT SYSTEMS
14 EXEMPTION.—The Secretary of Transportation, in con-
15 sultation with the Secretary of Homeland Security, is ex-
16 empt from the restriction under subsection (a) if the oper-
17 ation or procurement is for the sole purposes of research,
18 evaluation, training, testing, or analysis for the Federal
19 Aviation Administration’s Alliance for System Safety of
20 UAS through Research Excellence (ASSURE) Center of
21 Excellence (COE) for Unmanned Aircraft Systems.

22 (d) NATIONAL TRANSPORTATION SAFETY BOARD
23 EXEMPTION.—The National Transportation Safety Board
24 (NTSB), in consultation with the Secretary of Homeland
25 Security, is exempt from the restriction under subsection

1 (a) if the operation or procurement is necessary for the
 2 sole purpose of conducting safety investigations.

3 (e) NATIONAL OCEANIC ATMOSPHERIC ADMINISTRA-
 4 TION EXEMPTION.—The Administrator of the National
 5 Oceanic Atmospheric Administration (NOAA), in con-
 6 sultation with the Secretary of Homeland Security, is ex-
 7 empt from the restriction under subsection (a) if the oper-
 8 ation or procurement is necessary for the sole purpose of
 9 marine or atmospheric science or management.

10 (f) WAIVER.—The head of an executive agency may
 11 waive the prohibition under subsection (a) on a case-by-
 12 case basis—

13 (1) with the approval of the Secretary of Home-
 14 land Security or the Secretary of Defense; and

15 (2) upon notification to Congress.

16 **SEC. 4. PROHIBITION ON OPERATION OF COVERED UN-**
 17 **MANNED AIRCRAFT SYSTEMS FROM COV-**
 18 **ERED FOREIGN ENTITIES.**

19 (a) PROHIBITION.—

20 (1) IN GENERAL.—Beginning on the date that
 21 is 2 years after the date of the enactment of this
 22 Act, no Federal department or agency may operate
 23 a covered unmanned aircraft system manufactured
 24 or assembled by a covered foreign entity.

1 (2) APPLICABILITY TO CONTRACTED SERV-
2 ICES.—The prohibition under paragraph (1) applies
3 to any covered unmanned aircraft systems that are
4 being used by any executive agency through the
5 method of contracting for the services of covered un-
6 manned aircraft systems.

7 (b) EXEMPTION.—The Secretary of Homeland Secu-
8 rity, the Secretary of Defense, and the Attorney General
9 are exempt from the restriction under subsection (a) if the
10 operation or procurement—

11 (1) is for the sole purposes of research, evalua-
12 tion, training, testing, or analysis for—

13 (A) electronic warfare;

14 (B) information warfare operations;

15 (C) development of UAS or counter-UAS
16 technology;

17 (D) counterterrorism or counterintelligence
18 activities; or

19 (E) Federal criminal or national security
20 investigations, including forensic examinations;
21 and

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

24 (c) FEDERAL AVIATION ADMINISTRATION CENTER
25 OF EXCELLENCE FOR UNMANNED AIRCRAFT SYSTEMS

1 EXEMPTION.—The Secretary of Transportation, in con-
 2 sultation with the Secretary of Homeland Security, is ex-
 3 empt from the restriction under subsection (a) if the oper-
 4 ation or procurement is for the sole purposes of research,
 5 evaluation, training, testing, or analysis for the Federal
 6 Aviation Administration’s Alliance for System Safety of
 7 UAE through Research Excellence (ASSURE) Center of
 8 Excellence (COE) for Unmanned Aircraft Systems.

9 (d) NATIONAL TRANSPORTATION SAFETY BOARD
 10 EXEMPTION.—The National Transportation Safety Board
 11 (NTSB), in consultation with the Secretary of Homeland
 12 Security, is exempt from the restriction under subsection
 13 (a) if the operation or procurement is necessary for the
 14 sole purpose of conducting safety investigations.

15 (e) NATIONAL OCEANIC ATMOSPHERIC ADMINISTRA-
 16 TION EXEMPTION.—The Administrator of the National
 17 Oceanic Atmospheric Administration (NOAA), in con-
 18 sultation with the Secretary of Homeland Security, is ex-
 19 empt from the restriction under subsection (a) if the oper-
 20 ation or procurement is necessary for the sole purpose of
 21 marine or atmospheric science or management.

22 (f) WAIVER.—The head of an executive agency may
 23 waive the prohibition under subsection (a) on a case-by-
 24 case basis—

1 (1) with the approval of the Secretary of Home-
 2 land Security or the Secretary of Defense; and

3 (2) upon notification to Congress.

4 (g) REGULATIONS AND GUIDANCE.—Not later than
 5 180 days after the date of the enactment of this Act, the
 6 Secretary of Homeland Security shall prescribe regula-
 7 tions or guidance to implement this section.

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

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

17 (1) to purchase a covered unmanned aircraft
 18 system, or a system to counter unmanned aircraft
 19 systems, that is manufactured or assembled by a
 20 covered foreign entity; or

21 (2) in connection with the operation of such a
 22 drone or unmanned aircraft system.

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

1 (1) the contract, grant, or cooperative agree-
2 ment was awarded prior to the date of the enact-
3 ment of this Act; or

4 (2) the operation or procurement is for the sole
5 purposes of research, evaluation, training, testing, or
6 analysis, as determined by the Secretary of Home-
7 land Security, the Secretary of Defense, or the At-
8 torney General, for—

9 (A) electronic warfare;

10 (B) information warfare operations;

11 (C) development of UAS or counter-UAS
12 technology;

13 (D) counterterrorism or counterintelligence
14 activities; or

15 (E) Federal criminal or national security
16 investigations, including forensic examinations;
17 or

18 (F) the safe integration of UAS in the na-
19 tional airspace (as determined in consultation
20 with the Secretary of Transportation); and

21 (3) is required in the national interest of the
22 United States.

23 (c) WAIVER.—The head of an executive agency may
24 waive the prohibition under subsection (a) on a case-by-
25 case basis—

1 (1) with the approval of the Secretary of Home-
2 land Security or the Secretary of Defense; and

3 (2) upon notification to Congress.

4 (d) REGULATIONS.—Not later than 180 days after
5 the date of the enactment of this Act, the Federal Acquisi-
6 tion Regulatory Council shall prescribe regulations or
7 guidance, as necessary, to implement the requirements of
8 this section pertaining to Federal contracts.

9 **SEC. 6. PROHIBITION ON USE OF GOVERNMENT-ISSUED**
10 **PURCHASE CARDS TO PURCHASE COVERED**
11 **UNMANNED AIRCRAFT SYSTEMS FROM COV-**
12 **ERED FOREIGN ENTITIES.**

13 Effective immediately, Government-issued Purchase
14 Cards may not be used to procure any covered unmanned
15 aircraft system from a covered foreign entity.

16 **SEC. 7. MANAGEMENT OF EXISTING INVENTORIES OF COV-**
17 **ERED UNMANNED AIRCRAFT SYSTEMS FROM**
18 **COVERED FOREIGN ENTITIES.**

19 (a) IN GENERAL.—Effective immediately, all execu-
20 tive agencies must account for existing inventories of cov-
21 ered unmanned aircraft systems manufactured or assem-
22 bled by a covered foreign entity in their personal property
23 accounting systems, regardless of the original procurement
24 cost, or the purpose of procurement due to the special

1 monitoring and accounting measures necessary to track
2 the items' capabilities.

3 (b) CLASSIFIED TRACKING.—Due to the sensitive na-
4 ture of missions and operations conducted by the United
5 States Government, inventory data related to covered un-
6 manned aircraft systems manufactured or assembled by
7 a covered foreign entity may be tracked at a classified
8 level.

9 (c) EXCEPTIONS.—The Department of Defense and
10 Department of Homeland Security may exclude from the
11 full inventory process, covered unmanned aircraft systems
12 that are deemed expendable due to mission risk such as
13 recovery issues or that are one-time-use covered unmanned
14 aircraft due to requirements and low cost.

15 **SEC. 8. COMPTROLLER GENERAL REPORT.**

16 Not later than 275 days after the date of the enact-
17 ment of this Act, the Comptroller General of the United
18 States shall submit to Congress a report on the amount
19 of commercial off-the-shelf drones and covered unmanned
20 aircraft systems procured by Federal departments and
21 agencies from covered foreign entities.

22 **SEC. 9. GOVERNMENT-WIDE POLICY FOR PROCUREMENT**
23 **OF UNMANNED AIRCRAFT SYSTEMS.**

24 (a) IN GENERAL.—Not later than 180 days after the
25 date of the enactment of this Act, the Director of the Of-

1 fice of Management and Budget, in coordination with the
2 Department of Homeland Security, Department of Trans-
3 portation, the Department of Justice, and other Depart-
4 ments as determined by the Director of the Office of Man-
5 agement and Budget, and in consultation with the Na-
6 tional Institute of Standards and Technology, shall estab-
7 lish a government-wide policy for the procurement of
8 UAS—

9 (1) for non-Department of Defense and non-in-
10 telligence community operations; and

11 (2) through grants and cooperative agreements
12 entered into with non-Federal entities.

13 (b) INFORMATION SECURITY.—The policy developed
14 under subsection (a) shall include the following specifica-
15 tions, which to the extent practicable, shall be based on
16 industry standards and technical guidance from the Na-
17 tional Institute of Standards and Technology, to address
18 the risks associated with processing, storing and transmit-
19 ting Federal information in a UAS:

20 (1) Protections to ensure controlled access of
21 UAS.

22 (2) Protecting software, firmware, and hard-
23 ware by ensuring changes to UAS are properly man-
24 aged, including by ensuring UAS can be updated

1 using a secure, controlled, and configurable mecha-
2 nism.

3 (3) Cryptographically securing sensitive col-
4 lected, stored, and transmitted data, including prop-
5 er handling of privacy data and other controlled un-
6 classified information.

7 (4) Appropriate safeguards necessary to protect
8 sensitive information, including during and after use
9 of UAS.

10 (5) Appropriate data security to ensure that
11 data is not transmitted to or stored in non-approved
12 locations.

13 (6) The ability to opt out of the uploading,
14 downloading, or transmitting of data that is not re-
15 quired by law or regulation and an ability to choose
16 with whom and where information is shared when it
17 is required.

18 (c) REQUIREMENT.—The policy developed under sub-
19 section (a) shall reflect an appropriate risk-based ap-
20 proach to information security related to use of UAS.

21 (d) REVISION OF ACQUISITION REGULATIONS.—Not
22 later than 180 days after the date on which the policy
23 required under subsection (a) is issued—

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

4 (2) any Federal department or agency or other
5 Federal entity not subject to, or not subject solely
6 to, the Federal Acquisition Regulation shall revise
7 applicable policy, guidance, or regulations, as nec-
8 essary, to implement the policy.

9 (e) EXEMPTION.—In developing the policy required
10 under subsection (a), the Director of the Office of Man-
11 agement and Budget shall incorporate an exemption to the
12 policy for the following reasons:

13 (1) In the case of procurement for the purposes
14 of training, testing, or analysis for—

15 (A) electronic warfare; or

16 (B) information warfare operations.

17 (2) In the case of researching UAS technology,
18 including testing, evaluation, research, or develop-
19 ment of technology to counter UAS.

20 (3) In the case of a head of the procuring de-
21 partment or agency determining, in writing, that no
22 product that complies with the information security
23 requirements described in subsection (b) is capable
24 of fulfilling mission critical performance require-
25 ments, and such determination—

1 (A) may not be delegated below the level of
2 the Deputy Secretary of the procuring depart-
3 ment or agency;

4 (B) shall specify—

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

9 (ii) the time period over which the
10 waiver applies, which shall not exceed 3
11 years;

12 (C) shall be reported to the Office of Man-
13 agement and Budget following issuance of such
14 a determination; and

15 (D) not later than 30 days after the date
16 on which the determination is made, shall be
17 provided to the Committee on Homeland Secu-
18 rity and Governmental Affairs of the Senate
19 and the Committee on Oversight and Reform of
20 the House of Representatives.

21 **SEC. 10. STUDY.**

22 (a) INDEPENDENT STUDY.—Not later than 3 years
23 after the date of the enactment of this Act, the Director
24 of the Office of Management and Budget shall seek to
25 enter into a contract with a federally funded research and

1 development center under which the center will conduct
2 a study of—

3 (1) the current and future unmanned aircraft
4 system global and domestic market;

5 (2) the ability of the unmanned aircraft system
6 domestic market to keep pace with technological ad-
7 vancements across the industry;

8 (3) the ability of domestically made unmanned
9 aircraft systems to meet the network security and
10 data protection requirements of the national security
11 enterprise;

12 (4) the extent to which unmanned aircraft sys-
13 tem component parts, such as the parts described in
14 section 3, are made domestically; and

15 (5) an assessment of the economic impact, in-
16 cluding cost, of excluding the use of foreign-made
17 UAS for use across the Federal Government.

18 (b) SUBMISSION TO OMB.—Upon completion of the
19 study in subsection (a), the federally funded research and
20 development center shall submit the study to the Director
21 of the Office of Management and Budget.

22 (c) SUBMISSION TO CONGRESS.—Not later than 30
23 days after the date on which the Director of the Office
24 of Management and Budget receives the study under sub-
25 section (b), the Director shall submit the study to—

1 (1) the Committee on Homeland Security and
2 Governmental Affairs and the Select Committee on
3 Intelligence of the Senate; and

4 (2) the Committee on Homeland Security and
5 the Committee on Oversight and Reform and the
6 Permanent Select Committee on Intelligence of the
7 House of Representatives.

8 **SEC. 11. SUNSET.**

9 Sections 3, 4, and 5 shall cease to have effect on the
10 date that is 5 years after the date of the enactment of
11 this Act.

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