

117TH CONGRESS
1ST SESSION

H. R. 5640

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 2021

Mr. GOODEN of Texas introduced the following bill; which was referred to the Committee on Oversight and Reform

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 “Stop Acquiring For-
5 eign Espionage Act of 2021” or the “SAFE Drones Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) COVERED UNMANNED AIRCRAFT SYSTEM.—

9 The term “covered unmanned aircraft system” has
10 the meaning given the term “unmanned aircraft sys-

1 tem” in section 44801 of title 49, United States
2 Code.

3 (2) FOREIGN ADVERSARY.—The term “foreign
4 adversary” has the meaning given such term in sec-
5 tion 8(c) of the Secure and Trusted Communications
6 Networks Act of 2019 (47 U.S.C. 1607(c)).

7 **SEC. 3. PROHIBITION ON PROCUREMENT OF COVERED UN-**
8 **MANNED AIRCRAFT SYSTEMS FROM FOREIGN**
9 **ADVERSARIES.**

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

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

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

3 (A) electronic warfare;

4 (B) information warfare operations;

5 (C) development of UAS or counter-UAS
6 technology;

7 (D) counterterrorism or counterintelligence
8 activities; or

9 (E) Federal criminal or national security
10 investigations, including forensic examinations;
11 and

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

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

24 (d) NATIONAL TRANSPORTATION SAFETY BOARD
25 EXEMPTION.—The National Transportation Safety Board

1 (NTSB), in consultation with the Secretary of Homeland
 2 Security, is exempt from the restriction under subsection
 3 (a) if the operation or procurement is necessary for the
 4 sole purpose of conducting safety investigations.

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

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

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

17 (2) upon notification to Congress.

18 **SEC. 4. PROHIBITION ON OPERATION OF COVERED UN-**
 19 **MANNED AIRCRAFT SYSTEMS FROM FOREIGN**
 20 **ADVERSARIES.**

21 (a) PROHIBITION.—

22 (1) IN GENERAL.—Beginning on the date that
 23 is 2 years after the date of the enactment of this
 24 Act, no Federal department or agency may operate

1 a covered unmanned aircraft system manufactured
2 or assembled by a foreign adversary.

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

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

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

15 (A) electronic warfare;

16 (B) information warfare operations;

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

19 (D) counterterrorism or counterintelligence
20 activities; or

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

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

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

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

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

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

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

6 (2) upon notification to Congress.

7 (g) REGULATIONS AND GUIDANCE.—Not later than
 8 180 days after the date of the enactment of this Act, the
 9 Secretary of Homeland Security shall prescribe regula-
 10 tions or guidance to implement this section.

11 **SEC. 5. PROHIBITION ON USE OF FEDERAL FUNDS FOR**
 12 **PURCHASES AND OPERATION OF COVERED**
 13 **UNMANNED AIRCRAFT SYSTEMS FROM FOR-**
 14 **EIGN ADVERSARIES.**

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

20 (1) to purchase a covered unmanned aircraft
 21 system, or a system to counter unmanned aircraft
 22 systems, that is manufactured or assembled by a
 23 foreign adversary; or

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

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

3 (1) the contract, grant, or cooperative agree-
4 ment was awarded prior to the date of the enact-
5 ment of this Act; 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 Home-
9 land Security, the Secretary of Defense, or the At-
10 torney 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 or national security
18 investigations, including forensic examinations;
19 or

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

23 (3) is required in the national interest of the
24 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—

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

6 (2) upon notification to Congress.

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

12 **SEC. 6. PROHIBITION ON USE OF GOVERNMENT-ISSUED**
 13 **PURCHASE CARDS TO PURCHASE COVERED**
 14 **UNMANNED AIRCRAFT SYSTEMS FROM FOR-**
 15 **EIGN ADVERSARIES.**

16 Effective immediately, Government-issued Purchase
 17 Cards may not be used to procure any covered unmanned
 18 aircraft system from a foreign adversary.

19 **SEC. 7. MANAGEMENT OF EXISTING INVENTORIES OF COV-**
 20 **ERED UNMANNED AIRCRAFT SYSTEMS FROM**
 21 **FOREIGN ADVERSARIES.**

22 (a) IN GENERAL.—Effective immediately, all execu-
 23 tive agencies must account for existing inventories of cov-
 24 ered unmanned aircraft systems manufactured or assem-
 25 bled by a foreign adversary in their personal property ac-

1 counting systems, regardless of the original procurement
2 cost, or the purpose of procurement due to the special
3 monitoring and accounting measures necessary to track
4 the items' capabilities.

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

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

16 **SEC. 8. COMPTROLLER GENERAL REPORT.**

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

1 **SEC. 9. GOVERNMENT-WIDE POLICY FOR PROCUREMENT**
2 **OF UNMANNED AIRCRAFT SYSTEMS.**

3 (a) IN GENERAL.—Not later than 180 days after the
4 date of the enactment of this Act, the Director of the Of-
5 fice of Management and Budget, in coordination with the
6 Department of Homeland Security, Department of Trans-
7 portation, the Department of Justice, and other Depart-
8 ments as determined by the Director of the Office of Man-
9 agement and Budget, and in consultation with the Na-
10 tional Institute of Standards and Technology, shall estab-
11 lish a government-wide policy for the procurement of
12 UAS—

13 (1) for non-Department of Defense and non-in-
14 telligence community operations; and

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

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

24 (1) Protections to ensure controlled access of
25 UAS.

1 (2) Protecting software, firmware, and hard-
2 ware by ensuring changes to UAS are properly man-
3 aged, including by ensuring UAS can be updated
4 using a secure, controlled, and configurable mecha-
5 nism.

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

10 (4) Appropriate safeguards necessary to protect
11 sensitive information, including during and after use
12 of UAS.

13 (5) Appropriate data security to ensure that
14 data is not transmitted to or stored in non-approved
15 locations.

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

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

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

4 (1) the Federal Acquisition Regulatory Council
5 shall revise the Federal Acquisition Regulation, as
6 necessary, to implement the policy; and

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

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

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

18 (A) electronic warfare; or

19 (B) information warfare operations.

20 (2) In the case of researching UAS technology,
21 including testing, evaluation, research, or develop-
22 ment of technology to counter UAS.

23 (3) In the case of a head of the procuring de-
24 partment or agency determining, in writing, that no
25 product that complies with the information security

1 requirements described in subsection (b) is capable
2 of fulfilling mission critical performance require-
3 ments, and such determination—

4 (A) may not be delegated below the level of
5 the Deputy Secretary of the procuring depart-
6 ment or agency;

7 (B) shall specify—

8 (i) the quantity of end items to which
9 the waiver applies, the procurement value
10 of which may not exceed \$50,000 per waiv-
11 er; and

12 (ii) the time period over which the
13 waiver applies, which shall not exceed 3
14 years;

15 (C) shall be reported to the Office of Man-
16 agement and Budget following issuance of such
17 a determination; and

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

1 **SEC. 10. STUDY.**

2 (a) INDEPENDENT STUDY.—Not later than 3 years
3 after the date of the enactment of this Act, the Director
4 of the Office of Management and Budget shall seek to
5 enter into a contract with a federally funded research and
6 development center under which the center will conduct
7 a study of—

8 (1) the current and future unmanned aircraft
9 system global and domestic market;

10 (2) the ability of the unmanned aircraft system
11 domestic market to keep pace with technological ad-
12 vancements across the industry;

13 (3) the ability of domestically made unmanned
14 aircraft systems to meet the network security and
15 data protection requirements of the national security
16 enterprise;

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

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

23 (b) SUBMISSION TO OMB.—Upon completion of the
24 study in subsection (a), the federally funded research and
25 development center shall submit the study to the Director
26 of the Office of Management and Budget.

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

5 (1) the Committee on Homeland Security and
6 Governmental Affairs and the Select Committee on
7 Intelligence of the Senate; and

8 (2) the Committee on Homeland Security and
9 the Committee on Oversight and Reform and the
10 Permanent Select Committee on Intelligence of the
11 House of Representatives.

12 **SEC. 11. SUNSET.**

13 Sections 3, 4, and 5 shall cease to have effect on the
14 date that is 5 years after the date of the enactment of
15 this Act.

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