

SEC. XXXX. Protection of certain facilities and assets from unmanned aircraft.

(a) IN GENERAL.—Subtitle ___ of Title ___ is amended by adding at the end the following new section:

“§ XXX. Protection of certain facilities and assets from unmanned aircraft

“(a) AUTHORITY.—Notwithstanding section 46502 of title 49, or any provision of title 18, the Secretary of Homeland Security and the Attorney General may, for their respective Departments, take, and may authorize personnel of the Department of Homeland Security or the Department of Justice with assigned duties that include safety, security, or protection of personnel, facilities, or assets, to take, such actions described in subsection (b)(1) that are necessary to mitigate the threat (as defined by the Secretary of Homeland Security or the Attorney General, in consultation with the Secretary of Transportation) that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a covered facility or asset.

“(b) ACTIONS DESCRIBED.—(1) The actions described in this paragraph are the following:

“(A) Detect, identify, monitor, and track the unmanned aircraft system or unmanned aircraft, without prior consent, including by means of intercept or other access of a wire communication, an oral communication, or an electronic communication used to control the unmanned aircraft system or unmanned aircraft.

“(B) Warn the operator of the unmanned aircraft system or unmanned aircraft, including by passive or active, and direct or indirect physical, electronic, radio, and electromagnetic means.

“(C) Disrupt control of the unmanned aircraft system or unmanned aircraft, without prior consent, including by disabling the unmanned aircraft system or unmanned aircraft by intercepting, interfering, or causing interference with wire, oral, electronic, or radio communications used to control the unmanned aircraft system or unmanned aircraft.

“(D) Seize or exercise control of the unmanned aircraft system or unmanned aircraft.

“(E) Seize or otherwise confiscate the unmanned aircraft system or unmanned aircraft.

“(F) Use reasonable force to disable, damage, or destroy the unmanned aircraft system or unmanned aircraft.

“(2) The Secretary of Homeland Security and the Attorney General shall develop for their respective Departments the actions described in paragraph (1) in coordination with the Secretary of Transportation.

“(c) FORFEITURE.—Any unmanned aircraft system or unmanned aircraft described in subsection (a) that is seized by the Secretary of Homeland Security or the Attorney General is subject to forfeiture to the United States.

“(d) EXEMPTION FROM DISCLOSURE.— Information pertaining to the capabilities, limitations or sensitive details about specific operation of the technology, as well as operational procedures, and protocols used to carry out this section, including any regulations or guidance issued to carry out this section, shall be exempt from disclosure under section 552(b)(3) of title 5 and exempt from disclosure under any State, local, or tribal law requiring the disclosure of information.”

“(e) REGULATIONS AND GUIDANCE.—(1) The Secretary of Homeland Security, the Attorney General, and the Secretary of Transportation may prescribe regulations and shall issue guidance in the respective areas of each Secretary or the Attorney General to carry out this section.

“(2)(A) The Secretary of Homeland Security and the Attorney General shall coordinate the development of their respective guidance under paragraph (1) with the Secretary of Transportation.

“(B) The Secretary of Homeland Security and the Attorney General shall respectively coordinate with the Secretary of Transportation and the Administrator of the Federal Aviation Administration before issuing any guidance or otherwise implementing this section if such guidance or implementation might affect aviation safety, civilian aviation and aerospace operations, aircraft airworthiness, or the use of airspace.

“(f) PRIVACY PROTECTION.—The regulations prescribed or guidance issued under subsection (e) shall ensure that—

“(1) the interception or acquisition of, or access to, communications to or from an unmanned aircraft system under this section is conducted in a manner consistent with the fourth amendment to the Constitution and applicable provisions of Federal law;

“(2) communications to or from an unmanned aircraft system are intercepted, acquired, or accessed only to the extent necessary to support a function of the Department of Homeland Security or the Department of Justice;

“(3) records of such communications are not maintained for more than 180 days unless the Secretary of Homeland Security or the Attorney General determine that maintenance of such records—

“(A) is necessary to support one or more functions of the Department of Homeland Security or the Department of Justice, respectively; or

“(B) is required for a longer period to support a civilian law enforcement agency or by any other applicable law or regulation; and

“(4) such communications are not disclosed outside the Department of Homeland Security or the Department of Justice unless the disclosure—

“(A) would fulfill a function of the Department of Homeland Security or the Department of Justice, respectively;

“(B) would support the Department of Defense, another civilian law enforcement agency, or the activities of a regulatory agency of the Federal Government in connection with a criminal or civil investigation of, or any regulatory, statutory, or other enforcement action arising out of an action described in subsection (b)(1); or

“(C) is otherwise required by law or regulation.

“(g) BUDGET.—The Secretary of Homeland Security and the Attorney General shall submit to Congress, as a part of the homeland security or justice budget materials for each fiscal year after fiscal year 2018, a consolidated funding display that identifies the funding source and funding requirements for the actions described in subsection (b)(1) within the Department of Homeland Security or the Department of Justice. The funding display shall be in unclassified form, but may contain a classified annex.

“(h) SEMIANNUAL BRIEFINGS.—(1) On a semiannual basis during the five-year period beginning March 1, 2018, the Secretary of Homeland Security and the Attorney General shall, respectively, provide a briefing to the appropriate congressional committees on the activities carried out pursuant to this section. Each briefing shall be conducted jointly with the Secretary of Transportation. Such briefings shall include—

“(A) policies, programs, and procedures to mitigate or eliminate impacts of such activities to the National Airspace System;

“(B) a description of instances where actions described in subsection (b)(1) have been taken;

“(C) how the Secretary of Homeland Security and the Attorney General have informed the public as to the possible use of authorities under this section; and

“(D) how the Secretary of Homeland Security and the Attorney General have engaged with Federal, State, and local law enforcement agencies to implement and use such authorities.

“(2) Each briefing under paragraph (1) shall be in unclassified form, consistent with the needs of law enforcement and national security, but may be accompanied by an additional classified briefing.

“(i) RULE OF CONSTRUCTION.—Nothing in this section may be construed to—

“(1) vest in the Secretary of Homeland Security or the Attorney General any authority of the Secretary of Transportation or the Administrator of the Federal Aviation Administration under title 49;

“(2) vest in the Secretary of Transportation or the Administrator of the Federal Aviation Administration any authority of the Secretary of Homeland Security or the Attorney General under this title;

“(3) vest in the Secretary of Homeland Security any authority of the Attorney General under this title; and

“(4) vest in the Attorney General any authority of the Secretary of Homeland Security under this title.

“(j) TERMINATION.—(1) Except as provided by paragraph (2), the authority to carry out this section with respect to the covered facilities or assets specified in subsection (l)(3) shall terminate on December 31, 2023.

“(2) The President may extend by 180 days the termination specified in paragraph (1) if, before November 15, 2023, the President certifies to Congress that such extension is in the national security interest of the United States.

“(k) SCOPE OF AUTHORITY – Nothing in this section shall be construed to provide the Secretary of Homeland Security or the Attorney General with additional authorities beyond those described in subsections (a) and (b)(1).

“(l) DEFINITIONS.—In this section:

“(1) The term ‘appropriate congressional committees’ means—

“(A) the Homeland Security and Governmental Affairs Committee, the Committee on Commerce, Science, and Transportation, and the Committee on the Judiciary of the Senate; and

“(B) the Committee on Homeland Security, the Committee on Transportation and Infrastructure, the Committee on Energy and Commerce, and the Committee on the Judiciary of the House of Representatives.

“(2) The term ‘budget’, with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

“(3) The term ‘covered facility or asset’ means any facility or asset that—

“(A) is identified by the Secretary of Homeland Security or the Attorney General, in consultation with the Secretary of Transportation with respect to potentially impacted airspace, through a risk-based assessment for purposes of this section;

“(B) is located in the United States (including the territories and possessions, territorial seas or navigable waters of the United States); and

“(C) directly relates to one or more of—

“(i) the following missions authorized to be performed by the Department of Homeland Security, consistent with governing statutes, regulations and orders issued by the Secretary:

“(a) securing authorized vessels, whether moored or underway, by the U.S. Coast Guard and U.S. Customs and Border Protection;

“(b) U.S. Secret Service protection operations pursuant to sections 3056 and 3056A of title 18; or

“(c) protection of facilities pursuant to section 1315 of title 40;

“(ii) the following missions authorized to be performed by the Department of Justice, consistent with governing statutes, regulations and orders issued by the Attorney General:

“(a) personnel protection operations by the Federal Bureau of Investigation and the United States Marshals Service, including the protection of Federal jurists, court officers, witnesses and other persons in the interests of justice, as specified in section 566(e) of title 28;

“(b) penal, detention, and correctional operations conducted by the Federal Bureau of Prisons considered to be high-risk or assessed to be a potential target for unlawful unmanned aircraft activity; or

“(c) protection of the buildings and grounds leased, owned, or operated by or for the Department of Justice identified as essential to the function of the Department of Justice, and the provision of security for Federal courts, as specified in section 566(a) of title 28.

“(iii) the following missions authorized to be performed by the Department of Homeland Security or the Department of Justice, acting together or separately, consistent with governing statutes, regulations and orders issued by the Secretary or the Attorney General, respectively:

“(a) National Special Security Events and Special Event Assessment Rating events;

“(b) active federal law enforcement investigations, emergency responses or security operations; or

“(c) in the event that either the Department of Homeland Security or the Department of Justice has identified a national security threat against the United States where there is reason to believe that the threat may involve unlawful use of an unmanned aircraft.

“(4) The term ‘homeland security or justice budget materials’, with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Homeland Security and the Attorney General in support of the budget for that fiscal year.

“(5) The terms ‘electronic communication’, ‘intercept’, ‘oral communication’, and ‘wire communication’ have the meaning given those terms in section 2510 of title 18.

“(6) For purposes of this section, the term ‘personnel’ means (A) officers and employees of the Department of Homeland Security or the Department of Justice, (B) Federal employees of other departments and agencies operating under the supervision, control or direction of the Department of Homeland Security or the Department of Justice, or (C) individuals employed by contractors of the Department of Homeland Security or Department of Justice who are subject to the supervision, control or direction of the respective department and are assigned by that department to perform the duties described in subsection (a) in accordance with regulations or guidance established under subsection (e).

“(7) The terms ‘unmanned aircraft’ and ‘unmanned aircraft system’ have the meanings given those terms in section 331 of the FAA Modernization and Reform Act of 2012 (Public Law 112–95; section 40101 of title 49).”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section XXX the following new item:

“XXX. Protection of certain facilities and assets from unmanned aircraft.”

Counter-UAS Legislation

Executive Summary: The Administration is proposing to Congress legislation that would authorize the Department of Justice (DOJ) and the Department of Homeland Security (DHS) to counter malicious or errant uses of Unmanned Aircraft Systems (UAS) that threaten certain sensitive facilities or assets. The legislation would extend that authority within a framework designed to protect the safety and efficiency of the National Airspace System, to safeguard privacy and civil liberties, and to provide appropriate oversight.

Background: UAS technology offers tremendous benefits to our economy and society, promising to transform the delivery of goods and services. UAS can also improve the safety and efficiency of countless activities, from the provision of medical services to the safe inspection of critical infrastructure. The economic impact of the integration of UAS into the National Airspace System (NAS) is estimated to reach tens of billions of dollars.

- At the same time, the potential misuse or errant use of this technology poses unique safety and security challenges. Overseas, ISIS, other terrorist groups, and criminal organizations use commercially available UAS to drop explosive payloads, deliver harmful substances, and conduct reconnaissance. Domestically, criminals use UAS to deliver narcotics across the southern border, drop contraband inside prisons, conduct illicit surveillance, and interfere with law enforcement operations.
- Due in part to potential conflicts with certain federal laws, the federal government has limited authority to deploy technology to detect and defeat UAS-based threats. The Administration's legislative proposal would close this critical gap, enabling DOJ and DHS to protect certain sensitive facilities and assets from this growing threat.

The Legislation: The proposal would authorize the heads of DOJ and DHS to use technology capable of detecting and, if necessary, mitigating, UAS-based threats to certain sensitive federal facilities and assets in the United States. The legislative proposal reflects the consensus of departments and agencies following an extensive interagency process. By passing this proposal, Congress would reduce risks to public safety and national security, which will help to accelerate the safe integration of UAS into the NAS and ensure that the United States remains a global leader in UAS innovation.

- Following the approach Congress took in the FY2017 and FY2018 National Defense Authorization Act, the proposal ensures authorized activities are not subject to certain federal laws enacted when UAS technology was unforeseen.
- The proposal provides a tailored grant of authority, limiting what DOJ and DHS can protect and who can carry out these activities. Only facilities and assets designated by the heads of DOJ or DHS in consultation with the Department of Transportation with respect to potentially impacted airspace qualify for protection. And only authorized employees, agents, and contractors who are responsible for conducting security operations may take action to detect or mitigate malicious or errant uses of UAS.
- The legislation provides a framework that enables strong and effective oversight and coordination, while protecting privacy, civil liberties, and the safety and efficiency of the national airspace.
 - The legislation contains robust measures designed to protect privacy and civil liberties, and specifically limits the interception of communications. Modeled on a grant of Counter-UAS authority to DOD in the FY18 NDAA, the legislation expressly provides that DOJ and DHS may intercept communications only to the extent *necessary* to support a function of the respective Department. Communications that are lawfully obtained must not be maintained more than 180 days, unless a specific exception applies.

- By taking steps to mitigate risks to public safety and national security, the legislation will help to enable the further integration of UAS into the NAS—ensuring that the United States remains a global leader and benefits from this rapidly developing sector of the economy.
- The legislation requires close coordination between the Federal Aviation Administration (FAA) and DOJ and DHS to ensure that detection and mitigation technologies are developed, tested, and deployed in a manner that minimizes adverse impacts on airspace access, as well as air navigation services, avionics, and other systems that ensure safe and efficient aviation operations.

FAQs

1. Why is it necessary to exempt Counter-UAS activities from the federal criminal laws in Title 18?

Extensive reviews have concluded that the development and use of the most effective technologies for detecting and countering malicious or errant uses of UAS may conflict with federal laws enacted long before advanced UAS technology became readily available for commercial and consumer use. Congress recognized the importance of this concern in the FY17 and FY18 NDAA's, which authorized limited Counter-UAS activities by the Departments of Defense and Energy, "notwithstanding" Title 18 and one provision of Title 49 that would otherwise limit these activities. The Administration's proposal takes the same approach.

2. What checks and balances exist to ensure the authority is not misused?

This legislation provides a carefully tailored grant of authority for DOJ and DHS to protect certain sensitive facilities and assets from the growing threat posed by the errant or malicious use of UAS. The bill applies only to a narrowly defined set of sensitive missions—such as protection operations conducted by the Secret Service, the protection of vessels by the Coast Guard, or the protection of certain federal prisons and correctional operations by the Bureau of Federal Prisons. In order to exercise the authority, the heads of DOJ and DHS must designate specific facilities or assets, in consultation with the Secretary of Transportation, through a risk-based assessment that will examine potential airspace impacts and other considerations.

The legislation further requires DOJ and DHS to issue guidance or regulations addressing their intended use of the authority. The implementation and exercise of any grant of authority will be risk-based and coordinated closely with DOT/FAA and other relevant departments and agencies to ensure that impacts to the safety, efficiency and accessibility of the NAS and the radiofrequency spectrum are mitigated to the maximum extent feasible consistent with national security, public safety, and homeland security requirements.

The bill also ensures regular and robust oversight from Congress by requiring semiannual briefings to the appropriate Congressional committees. Going one step further, the bill contains a sunset clause that will terminate the authorities in five years, unless reauthorized by the Congress or extended for a short time by the President.

3. Will this legislation invade the privacy of recreational and commercial UAS operators or infringe protected civil rights?

No. The legislation contains robust measures designed to protect privacy and civil liberties. Modeled on language in the FY18 NDAA, the legislation makes clear that Counter-UAS activities conducted under the statute will comply with the Fourth Amendment to the Constitution and applicable federal laws. More specifically, the proposal places limits on the interception of communications obtained in the course of lawful and appropriate Counter-UAS operations. Under the proposal, DOJ and DHS may intercept communications to

or from a UAS only to the extent necessary to support a function of their respective Department. Further, records of communications obtained in the course of Counter-UAS operations cannot be maintained more than 180 days, unless a specific exception applies. To ensure continued oversight by Congress, the bill contains a sunset clause that will terminate the authority in five years, unless reauthorized by the Congress or extended for a short time by the President.

4. Will the operation of this new authority impede the growth of commercial UAS operations?

No. The legislation will support American leadership in the commercial drone industry. The United States is leading the way to integrate UAS into the most complex airspace in the world. In order to maintain leadership in UAS innovation and integration, the U.S. must take steps to mitigate risks to public safety and national security posed by errant or malicious UAS operations. As with any new technology, public support will be necessary to fully integrate UAS into the NAS. Malicious or errant UAS operations, such as a terrorist attack or criminal conduct, could undermine public sentiment at a critical time. This legislation will help to ensure that the United States remains a global leader and benefits from this rapidly developing sector of the economy.

5. How does the legislation ensure public safety, homeland security, and national security? What is the threat?

The potential misuse of this technology poses unique security challenges. ISIS, other terrorist groups and criminal organizations use commercially available UAS to drop explosive payloads, deliver harmful substances, and conduct illicit surveillance. Domestically, criminals have employed UAS to deliver narcotics across the southern border, drop contraband inside prisons, conduct illicit surveillance, and interfere with law enforcement operations.

Law enforcement and homeland security professionals are gravely concerned that terrorists and criminals will use the nefarious tactics engineered overseas in the homeland. As the UAS industry continues to expand, it is essential that DOJ and DHS have the authority to protect the public from the misuse of this otherwise beneficial technology.

6. The legislation contains a clause authorizing DOJ and DHS to seize certain drones that present a threat to the safety or security of covered facilities and assets. Why is that clause included and what recourse will individuals have if their property is mistakenly subject to action or seized?

The legislation contains a provision authorizing the government to seize property when necessary under the circumstances. That provision could be used, for instance, to seize a UAS used to ferry drugs across the border. Individuals who believe their property was wrongfully seized may challenge that determination using existing legal mechanisms.

7. How does the legislation ensure that use of Counter-UAS technology in the National Airspace System is consistent with maintaining safe and efficient aviation operations and air commerce?

The legislation contains safeguards to ensure that the use of Counter-UAS authority will be risk-based and coordinated closely among relevant departments and agencies to mitigate impacts to the safety, efficiency and accessibility of the NAS to the maximum extent feasible, consistent with national security, public safety, law enforcement and homeland defense requirements. Should this legislation pass, DOJ and DHS will work closely with FAA to ensure detection and mitigation technologies are developed, tested, and deployed in a manner that

minimizes adverse impacts on airspace access, as well as air navigation services, avionics, and other systems that ensure safe and efficient aviation operations.