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117TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 117-267

AMERICAN SECURITY DRONE ACT OF 2021

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 73

TO BAN THE FEDERAL PROCUREMENT OF CERTAIN
DRONES AND OTHER UNMANNED AIRCRAFT SYSTEMS
AND FOR OTHER PURPOSES



DECEMBER 19, 2022.—Ordered to be printed

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DECEMBER 19, 2022.—Ordered to be printed

Mr. PETERS, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 73]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 73) to ban the Federal procurement of certain drones and other unmanned aircraft systems, and for other purposes, having considered the same, reports favorably without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 73, the *American Security Drone Act of 2021*, prohibits federal agencies from procuring and operating unmanned aircraft systems (UAS) and associated elements that are manufactured or assembled by “covered foreign entities” that pose a national security risk. The prohibition will begin two years after the enactment of this bill. S. 73 also prohibits entities that receive federal contracts, grants, and cooperative agreements from operating or purchasing covered UAS. The bill contains exemptions for the Departments of Homeland Security (DHS), Justice (DOJ), and Defense (DOD), and other specific agencies or entities for the purposes of training, testing, or analyzing UAS, counter-UAS intelligence gathering, electronic warfare, and information warfare operations.

Additionally, S. 73 requires the Director of the Office of Management and Budget (OMB) to establish a government-wide policy for the procurement of UAS to address the risks associated with processing, transmitting, and storing sensitive information collected from UAS. The bill also requires OMB to contract with a federally funded research center to conduct a study of the current and future UAS global and domestic markets, technological advancements in the industry, and an assessment of the economic impact of banning the use of foreign-made UAS from the federal government. The prohibition on the federal government's procurement of UAS by covered foreign entities terminates five years after the bill's enactment.¹

II. BACKGROUND AND NEED FOR THE LEGISLATION

The market for UAS, popularly called “drones,” has grown substantially in the last decade.² American businesses, governments, and citizens use UAS for a variety of purposes: law enforcement, recreation, assessing property value and damage for insurance purposes, and surveilling and fertilizing crops.³

Federal agencies use UAS for tasks like land-use research, data collection, monitoring the border, and military operations.⁴ DHS, for example, uses UAS for missions along U.S. borders and over territorial waters.⁵ Information security is imperative when data is collected, stored, and transmitted by UAS for these sensitive missions. Reliance on UAS, however, complicates the ability of the federal government to protect the security of this data, in part because, as of March 2020, more than 70 percent of UAS in the United States were manufactured and assembled by foreign-owned entities.⁶

Federal agencies have already begun to limit the procurement of foreign-made UAS to protect national security. In 2017, the U.S. Army issued guidance discontinuing the use of UAS sold by DJI, a major foreign manufacturer of UAS, due to security concerns.⁷ In May 2018, DOD banned all purchases of commercial, off-the-shelf UAS while the Department researched and developed a strategy to deal with the potential cybersecurity risks of using such equipment.⁸ Congress later included a provision in the National Defense Authorization Act for Fiscal Year 2020 prohibiting DOD from using Chinese-made UAS.⁹ In May 2019, DHS' Cybersecurity and Infrastructure Security Agency (CISA) released a bulletin warning pri-

¹ On March 11, 2020, the Committee approved S. 2502, the American Security Drone Act of 2020, with an amendment in the nature of a substitute. That bill is substantially similar to S. 73. Accordingly, this committee report is, in many respects, similar to the committee report for S. 2502. See S. Rept. 116–268.

² *Drone market outlook in 2022: industry growth trends, market stats, and forecast*, Business Insider (Apr. 15, 2022) (<https://www.insiderintelligence.com/insights/drone-industry-analysis-market-trends-growth-forecasts/>).

³ *Id.*

⁴ Cybersecurity and Infrastructure Security Agency, Unmanned Aircraft Systems (UAS)—Critical Infrastructure (<https://www.cisa.gov/unmanned-aircraft-systems>) (accessed Aug. 21, 2022).

⁵ Congressional Research Service, *Unmanned Aircraft Operations in Domestic Airspace: U.S. Policy Perspectives and the Regulatory Landscape* (R44352) (Jan. 27, 2016).

⁶ *The Best Drone Manufacturers in 2021*, Droneii (Nov. 1, 2021) (<https://droneii.com/the-best-drone-manufacturers-in-2021>).

⁷ *U.S. Army calls for units to discontinue use of DJI equipment*, sUAS News (Aug. 4, 2017) (<https://www.suasnews.com/2017/08/us-army-calls-units-discontinue-use-dji-equipment/>).

⁸ *Quads for Squads' grounded over cyber concerns*, Marine Corps Times (June 15, 2018) (<https://www.marinecorpstimes.com/news/your-marine-corps/2018/06/15/quads-for-squads-grounded-over-cyber-concerns/>).

⁹ National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116–92, Sec. 848.

vate industry about the “potential risk[s] to . . . organization[al] information” when acquiring and operating Chinese-made UAS and of risks posed by “certain Chinese-made UAS connected devices capable of collecting and transferring potentially revealing data about their operations and the individuals and entities operating them, as China imposes unusually stringent obligations on its citizens to support national intelligence activities.”¹⁰ In January 2021, the General Services Administration (GSA) largely restricted federal agencies from procuring UAS in response to the cybersecurity threat posed by foreign-made UAS.¹¹

S. 73 further responds to this threat by prohibiting federal agencies from procuring UAS manufactured or assembled by designated foreign entities. This will prevent nation-state adversaries and other hostile actors from utilizing these emerging technologies to obtain sensitive national security information. The prohibition on foreign-made UAS will also allow American UAS manufacturers time to grow and evolve to changing market needs. Increased domestic UAS manufacturing will provide the U.S. with increased safety, security, and economic benefits as the market will rely on a secure domestic supply chain that addresses the needs of UAS users nationwide. Exemptions on procurement prohibitions are included in the bill for security and mission-critical reasons, including DHS and DOJ exemptions for research and testing of existing UAS to develop countermeasures against malicious UAS. Additionally, the bill directs OMB to establish a government-wide policy for technology and data management standards to ensure that all UAS procured meet a minimum threshold of security regardless of their country of origin.

III. LEGISLATIVE HISTORY

Senator Rick Scott (R–FL) introduced S. 73 on January 27, 2021, with Senators Rubio (R–FL), Cotton (R–AR), Blackburn (R–TN), Blumenthal (D–CT), Murphy (D–CT), and Hawley (R–MO). The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs. The Committee considered S. 73 at a business meeting on May 12, 2021. The Committee ordered the bill reported favorably without amendment by voice vote. Senators present for the vote were: Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Johnson, Paul, Lankford, Romney, Scott, and Hawley. Senator Paul was recorded for the record as voting “No.”

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section provides that the bill may be cited as the “American Security Drone Act of 2021.”

Section 2. Definitions

This section defines covered foreign entity and covered unmanned aircraft system.

¹⁰*DHS warns of ‘strong concerns’ that Chinese-made drones are stealing data*, CNN (May 20, 2019) (<https://www.cnn.com/2019/05/20/politics/dhs-chinese-drone-warning/index.html>).

¹¹*US Government to Stop Buying Chinese-made Drones*, Voa News (Feb. 16, 2021) (https://www.voanews.com/a/east-asia-pacific_voa-news-china_us-government-stop-buying-chinese-made-drones/6202125.html).

Section 3. Prohibition on procurement of covered unmanned aircraft systems from covered foreign entities

Subsection (a) establishes that the head of an executive agency may not procure any covered unmanned aircraft system that is manufactured or assembled by a covered foreign entity.

Subsection (b) exempts the Secretary of Homeland Security, the Secretary of Defense, and the Attorney General from the procurement prohibition in subsection (3)(a) for the purpose of researching or testing UAS systems (including for electronic warfare, information warfare, development of UAS or counter-UAS technology, counterterrorism or counterintelligence, and federal criminal or national security investigations) or if procurement of foreign UAS is in the national interest of the United States.

Subsection (c) exempts the Federal Aviation Administration Center of Excellence for Unmanned Aircraft Systems from the procurement prohibition in subsection (3)(a) for the purpose of research and analysis for the Alliance for System Safety of UAS through Research Excellence Center of Excellence for Unmanned Aircraft Systems.

Subsection (d) exempts the National Transportation Safety Board (NTSB) from the procurement prohibition in subsection (3)(a) for the purpose of conducting safety investigations.

Subsection (e) exempts the National Oceanic and Atmospheric Administration (NOAA) from the procurement prohibition in subsection (3)(a) for the purpose of marine or atmospheric science or management.

Subsection (f) authorizes the head of an executive agency to waive the procurement prohibition in subsection (3)(a) on a case-by-case basis with notification to Congress and the approval of either the Secretary of Homeland Security or Secretary of Defense.

Section 4. Prohibition on operation of covered unmanned aircraft systems from covered foreign entities

Subsection (a) prohibits any federal department or agency from operating a covered unmanned aircraft system manufactured or assembled by a covered foreign entity. This section also applies to contracted services. The prohibition takes effect two years after enactment.

Subsection (b) exempts the Secretary of Homeland Security, the Secretary of Defense, and the Attorney General from the operation prohibition in subsection (4)(a) for the purpose of researching or testing UAS systems (including for electronic warfare, information warfare, development of UAS or counter-UAS technology, counterterrorism or counterintelligence, and federal criminal or national security investigations) or if operation of foreign UAS is in the national interest of the United States.

Subsection (c) exempts the Federal Aviation Administration Center of Excellence for Unmanned Aircraft Systems from the operation prohibition in subsection (4)(a) for the purpose of research and analysis for the Alliance for System Safety of UAS through Research Excellence Center of Excellence for Unmanned Aircraft Systems.

Subsection (d) exempts the NTSB from the operation prohibition in subsection (4)(a) for the purpose of conducting safety investigations.

Subsection (e) exempts NOAA from the operation prohibition in subsection (4)(a) for the purpose of marine or atmospheric science or management.

Subsection (f) authorizes the head of an executive agency to waive the operation prohibition in subsection (4)(a) on a case-by-case basis with notification to Congress and the approval of the either the Secretary of Homeland Security or Secretary of Defense.

Subsection (g) requires the Secretary of Homeland Security to prescribe regulations or guidance to implement this section not later than 180 days after enactment.

Section 5. Prohibition on use of federal funds for purchases and operation of covered unmanned aircraft systems from covered foreign entities

Subsection (a) bars the use of federal funds awarded through contracts, grants, or cooperative agreements to purchase or operate covered unmanned aircraft systems manufactured by covered foreign entities. This prohibition takes effect two years after enactment.

Subsection (b) exempts funds from contracts, grants, or cooperative agreements awarded prior to the date of enactment. It also exempts the use of funds if the Secretary of Homeland Security, the Secretary of Defense, and the Attorney General determine that the use of funds for operation or procurement is for the purpose of researching or testing UAS systems (including for electronic warfare, information warfare, development of UAS or counter-UAS technology, counterterrorism or counterintelligence, and federal criminal or national security investigations) or if such operation or procurement is in the national interest of the United States.

Subsection (c) authorizes the head of an executive agency to waive the prohibition under subsection (5)(a) on a case-by-case basis with the approval of the Secretary of Homeland Security or the Secretary of Defense, and upon notification of said waiver to Congress.

Subsection (d) requires the Federal Acquisition Regulatory Council to prescribe regulations or guidance to implement this section not later than 180 days after the date of enactment.

Section 6. Prohibition on use of government-issued purchase cards to purchase covered unmanned aircraft systems from covered foreign entities

This section prohibits the use of government-issued purchase cards to procure any covered unmanned aircraft system from a covered foreign entity.

Section 7. Management of existing inventories of covered unmanned aircraft systems from covered foreign entities

Subsection (a) requires all executive agencies to inventory existing covered unmanned aircraft systems manufactured or assembled by a covered foreign entity upon enactment.

Subsection (b) authorizes tracking under subsection (7)(a) to be conducted at a classified level.

Subsection (c) authorizes DOD and DHS to exclude those UAS deemed expendable from the full inventory process under subsection (7)(a).

Section 8. Comptroller General report

This section requires the Comptroller General of the United States to submit to Congress a report on the amount of commercial off-the-shelf UAS and covered unmanned aircraft systems procured by federal departments and agencies from foreign covered entities not later than 275 days after the date of enactment.

Section 9. Government-wide policy for procurement of unmanned aircraft systems

Subsection (a) requires the Director of OMB to establish a government-wide policy for the procurement of unmanned aircraft systems for non-DOD and non-intelligence operations and those unmanned aircraft systems procured through grants and cooperative agreements entered into with non-federal entities not later than 180 days after the date of enactment.

Subsection (b) requires the policy developed under subsection (9)(a) to include certain specifications regarding the risks associated with processing, storing, and transmitting federal information in UAS.

Subsection (c) requires the policy developed under subsection (9)(a) to reflect an appropriate, risk-based approach to UAS information security.

Subsection (d) requires federal revision of acquisition regulations not later than 180 days after the date on which the policy under subsection (9)(a) is issued.

Subsection (e) instructs the Director of OMB to incorporate an exemption to the policy under subsection (9)(a) for: training or analysis for electronic warfare or information warfare; researching UAS or counter-UAS technology, or by department or agency determination subject to several conditions.

Section 10. Study

Subsection (a) instructs the Director of OMB enter into a contract with a federal funded research and development center to conduct a study of global and domestic UAS markets and manufacturing capacity and capabilities not later than 3 years after the date of enactment.

Subsection (b) requires the study under subsection (10)(a) to be submitted to Director of OMB upon completion.

Subsection (c) requires the Director of OMB to submit the study under subsection (10)(a) to Congress not later than 30 days after receipt.

Section 11. Sunset

This section holds that Sections 3, 4, and 5 shall cease to have effect 5 years after enactment.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector

mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation would make no change in existing law, within the meaning of clauses (a) and (b) of subparagraph 12 of rule XXVI of the Standing Rules of the Senate, because this legislation would not repeal or amend any provision of current law.

