

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 2d Sess.

S. 2502

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

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. SCOTT of Florida

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Security

5 Drone Act of 2020”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) COVERED FOREIGN ENTITY.—The term

9 “covered foreign entity” means—

10 (A) a covered entity designated by the Sec-

11 retary of Commerce;

1 (B) an entity included on the Consolidated
2 Screening List;

3 (C) any entity that is subject to
4 extrajudicial direction from a foreign govern-
5 ment, as determined by the Secretary of Home-
6 land Security;

7 (D) any entity the Secretary of Homeland
8 Security, in coordination with the Director of
9 National Intelligence and the Secretary of De-
10 fense, determines poses a national security risk;

11 (E) any entity domiciled in the People's
12 Republic of China or subject to influence or
13 control by the Government of the People Re-
14 public of China or the Communist Party of the
15 People's Republic of China, as determined by
16 the Secretary of Homeland Security; or

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

19 (2) COVERED UNMANNED AIRCRAFT SYSTEM.—
20 The term “covered unmanned aircraft system” has
21 the meaning given the term “unmanned aircraft sys-
22 tem” in section 44801 of title 49, United States
23 Code.

1 **SEC. 3. PROHIBITION ON PROCUREMENT OF COVERED UN-**
2 **MANNED AIRCRAFT SYSTEMS FROM COV-**
3 **ERED FOREIGN ENTITIES.**

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 covered unmanned aircraft system that
7 are manufactured or assembled by a covered foreign enti-
8 ty, which includes associated elements (consisting of com-
9 munication links and the components that control the un-
10 manned aircraft) that are required for the operator to op-
11 erate safely and efficiently in the national airspace system.

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

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

18 (A) electronic warfare;

19 (B) information warfare operations;

20 (C) development of UAS or counter-UAS
21 technology;

22 (D) counterterrorism or counterintelligence
23 activities; or

24 (E) Federal criminal investigations, includ-
25 ing forensic examinations; and

1 are exempt from the restriction under subsection (a) if the
2 operation 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 (d) REGULATIONS AND GUIDANCE.—Not later than
21 180 days after the date of the enactment of this Act, the
22 Secretary of Homeland Security shall prescribe regula-
23 tions or guidance to implement this section.

1 **SEC. 5. PROHIBITION ON USE OF FEDERAL FUNDS FOR**
2 **PURCHASES AND OPERATION OF COVERED**
3 **UNMANNED AIRCRAFT SYSTEMS FROM COV-**
4 **ERED FOREIGN ENTITIES.**

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

10 (1) to purchase a covered unmanned aircraft
11 system, or a system to counter unmanned aircraft
12 systems, that is manufactured or assembled by a
13 covered foreign entity; or

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

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

18 (1) the contract, grant or cooperative agree-
19 ment was awarded prior to the date of the enact-
20 ment of the bill; or

21 (2) the operation or procurement is for the sole
22 purposes of research, evaluation, training, testing, or
23 analysis, as determined by the Secretary of Home-
24 land Security, the Secretary of Defense, or the At-
25 torney General, for—

26 (A) electronic warfare;

1 (B) information warfare operations;
2 (C) development of UAS or counter-UAS
3 technology;
4 (D) counterterrorism or counterintelligence
5 activities; or
6 (E) Federal criminal investigations, includ-
7 ing forensic examinations; and
8 (3) is required in the national interest of the
9 United States.

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

15 **SEC. 6. PROHIBITION ON USE OF GOVERNMENT-ISSUED**
16 **PURCHASE CARDS TO PURCHASE COVERED**
17 **UNMANNED AIRCRAFT SYSTEMS FROM COV-**
18 **ERED FOREIGN ENTITIES.**

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

1 **SEC. 7. MANAGEMENT OF EXISTING INVENTORIES OF COV-**
2 **ERED UNMANNED AIRCRAFT SYSTEMS FROM**
3 **COVERED FOREIGN ENTITIES.**

4 (a) **IN GENERAL.**— Effective immediately, all execu-
5 tive agencies must account for existing inventories of cov-
6 ered unmanned aircraft systems manufactured or assem-
7 bled by a covered foreign entity in their personal property
8 accounting systems, regardless of the original procurement
9 cost, or the purpose of procurement due to the special
10 monitoring and accounting measures necessary to track
11 the items' capabilities.

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

18 (c) **EXCEPTIONS.**—The Department of Defense and
19 Department of Homeland Security may exclude from the
20 full inventory process, covered unmanned aircraft systems
21 that are deemed expendable due to mission risk such as
22 recovery issues or that are one-time-use covered unmanned
23 aircraft due to requirements and low cost.

24 **SEC. 8. COMPTROLLER GENERAL REPORT.**

25 Not later than 275 days after the date of the enact-
26 ment of this Act, the Comptroller General of the United

1 States shall submit to Congress a report on the amount
2 of commercial off-the-shelf drones and covered unmanned
3 aircraft systems procured by Federal departments and
4 agencies from covered foreign entities.

5 **SEC. 9. GOVERNMENT-WIDE POLICY FOR PROCUREMENT**
6 **OF UNMANNED AIRCRAFT SYSTEMS.**

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

17 (1) for non-Department of Defense and non-in-
18 telligence community operations; and

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

21 (b) INFORMATION SECURITY.—The policy developed
22 under subsection (a) shall include the following specifica-
23 tions, which to the extent practicable, shall be based on
24 industry standards and technical guidance from the Na-
25 tional Institute of Standards and Technology, to address

1 the risks associated with processing, storing and transmit-
2 ting Federal information in a UAS:

3 (1) Protections to ensure controlled access of
4 UAS.

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

10 (3) Cryptographically securing sensitive col-
11 lected, stored, and transmitted data, including prop-
12 er handling of privacy data and other controlled un-
13 classified information.

14 (4) Appropriate safeguards necessary to protect
15 sensitive information, including during and after use
16 of UAS.

17 (5) Appropriate data security to ensure that
18 data is not transmitted to or stored in non-approved
19 locations.

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

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

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

7 (1) the Federal Acquisition Regulatory Council
8 shall revise the Federal Acquisition Regulation, as
9 necessary, to implement the policy; and

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

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

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

21 (A) electronic warfare; or

22 (B) information warfare operations.

23 (2) In the case of researching UAS technology,
24 including testing, evaluation, research, or develop-
25 ment of technology to counter UAS.

1 (3) In the case of a head of the procuring de-
2 partment or agency determining, in writing, that no
3 product that complies with the information security
4 requirements described in subsection (b) is capable
5 of fulfilling mission critical performance require-
6 ments, and such determination—

7 (A) may not be delegated below the level of
8 the Deputy Secretary of the procuring depart-
9 ment or agency;

10 (B) shall specify—

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

15 (ii) the time period over which the
16 waiver applies, which shall not exceed 3
17 years;

18 (C) shall be reported to the Office of Man-
19 agement and Budget following issuance of such
20 a determination; and

21 (D) not later than 30 days after the date
22 on which the determination is made, shall be
23 provided to the Committee on Homeland Secu-
24 rity and Government Affairs of the Senate and

1 the Committee on Oversight and Reform of the
2 House of Representatives.

3 **SEC. 10. STUDY.**

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

10 (1) the current and future unmanned aircraft
11 system global and domestic market;

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

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

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

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

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

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

9 (1) the Committee on Homeland Security and
10 Governmental Affairs of the Senate; and

11 (2) the Committee on Homeland Security and
12 the Committee on Oversight and Government Re-
13 form of the House of Representatives.

14 **SEC. 11. SUNSET.**

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