

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.