

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 (1)(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.”