

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
115-332 }

PREVENTING EMERGING THREATS
ACT OF 2018

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2836

TO ASSIST THE DEPARTMENT OF HOMELAND SECURITY IN
PREVENTING EMERGING THREATS FROM UNMANNED AIRCRAFT
AND VEHICLES, AND FOR OTHER PURPOSES



SEPTEMBER 4, 2018.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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SEPTEMBER 4, 2018.—Ordered to be printed

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

R E P O R T

[To accompany S. 2836]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2836) to assist the Department of Homeland Security in preventing emerging threats from unmanned aircraft and vehicles, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 2836, the Preventing Emerging Threats Act of 2018, provides authority for the Department of Homeland Security (DHS) and the Department of Justice (DOJ) to protect certain critical facilities and assets when there is a national security risk to public safety posed by an unmanned aircraft system (UAS). Additionally, the bill requires DHS to complete two threat assessments: the first on critical infrastructure and large domestic airports and existing Federal, state, and local authorities to counter the threat of nefarious

drones; the second on how DHS can assist state and local law enforcement in countering the threat of vehicular terrorism.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Extremists and criminals continue to develop and promote the use of drone technology for illicit means.¹ Terrorist groups and criminal organizations can buy commercially-available UAS to carry and drop explosive payloads, deliver harmful and illegal substances, and conduct surveillance.² Terrorist organizations promote the use of UAS to conduct attacks in the U.S. and surveillance on potential targets. For instance, Al-Qaeda in the Arabian Peninsula used their Inspire magazine in May 2016 to encourage individuals to use UAS to collect information about potential assassination attempts and killings.³ In September 2011, Rezwan Ferdaus, a U.S. citizen, was arrested for planning to attach explosives to a UAS and attack the Pentagon and U.S. Capitol.⁴ Another potentially dangerous incident occurred in 2017 when a UAS flew over the San Francisco 49ers and Oakland Raiders National Football League stadiums dropping leaflets and causing panic.⁵

The Federal Aviation Administration (FAA) places flight restrictions in areas like the National Capitol Region, football stadiums, and certain government facilities.⁶ However, neither the Federal Government nor state governments have an enforcement mechanism to pursue those operating UAS unlawfully.

Federal law enforcement agencies, such as DHS and DOJ, are prohibited from taking actions against UAS due to decades-old statutes. Federal laws including the Wiretap Act of 1968⁷ and the Computer Fraud and Abuse Act of 1986⁸ were enacted long before UAS were widely available. These laws make it illegal to intercept any wire, oral, or electronic communication, or to access a computer without authorization, respectively, making it imposing to use the electronic transmission to track down the operator of the drone. Additionally, DHS and DOJ are prevented from taking action against a rogue UAS due to the FAA Modernization and Reform Act of 2012 that defines UAS as aircraft.⁹ Therefore, UAS are subject to aircraft piracy laws which make it illegal to seize or exercise control of an aircraft.¹⁰ There are a number of other laws in Title 18 of the United States Code (Title 18) that prevent law enforcement from taking action against a malicious UAS.¹¹

In the National Defense Authorization Act (NDAA) for Fiscal Year 2017, Public Law 114–328, Congress authorized the Department of Defense (DOD) to counter UAS for specific mission sets related to the nuclear deterrence mission, the missile defense mission, and the national security space mission of DOD.¹² The law

¹ U.S. Dep't of Homeland Sec., *Illicit Threats from Unmanned Aircraft Systems (UAS)* (2018) (on file with S. Comm. on Homeland Sec. & Gov't Affairs).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ 14 C.F.R. §§ 91.141, 91.145, 99.7 (2018).

⁷ Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90–351, title 3.

⁸ 18 U.S.C. § 1030.

⁹ 49 U.S.C. § 331.

¹⁰ 49 U.S.C. § 46502.

¹¹ 18 U.S.C. ch. 199, 206, §§ 32, 1030, 1367.

¹² National Defense Authorization Act, Pub. L. No. 114–328, §§ 1697, 3112, 130 Stat. 2000, 2639–2640, 2756 (2017).

gave DOD a complete waiver from criminal penalties in Title 18 and the Aircraft Piracy Act¹³ to use counter UAS technologies.¹⁴ A waiver of Title 18 provides the ability to operate counter-UAS technology free from unintended consequences. The bill also gave the Department of Energy (DOE) the authority to use counter UAS technology to protect the storage or use of special nuclear material owned by the United States.¹⁵

In the Fiscal Year 2018 NDAA, DOD received expanded authorities to counter UAS.¹⁶ The law included the additional following missions: assistance in protecting the President or the Vice President; air defense of the United States; combat support agencies; special operation activities; and the production, storage, transportation, or de-commissioning of high-yield explosives.¹⁷ However, the expanded authority only extends to DOD personnel and does not afford any other government agencies the ability to utilize counter-UAS technology.

S. 2836 provides DHS and DOJ the authority to protect certain facilities and assets to prevent the threat of a malicious UAS attack. It is modeled after the existing DOD and DOE authorities to ensure the agencies can effectively coordinate and carry out joint mission operations. Like DOD and DOE, the bill provides DHS and DOJ a waiver of Title 18 to detect, track, disrupt, or mitigate a UAS when it poses a security risk to public safety or national security.

The bill also authorizes DHS and DOJ to begin research and development of counter-UAS technology. For DHS and DOJ to use this authority, the Secretary of Homeland Security or the Attorney General must identify and designate covered facilities or assets within the United States that directly relate to specific missions of DHS or DOJ. Those missions include security operations by the United States Coast Guard and U.S. Customs and Border Protection that include facilities, aircraft, and vessels; protective operations by the United States Secret Service; protection of facilities by the Federal Protective Service and deemed to be high-risk or a potential UAS target; personnel protection operations by the Federal Bureau of Investigation; penal, detention, and corrections operations conducted by the Federal Bureau of Prisons considered to be high-risk or a potential target; protection of buildings and grounds owned or operated by the Department of Justice considered high-risk or a potential target; National Special Security Events and Special Event Assessment Rating events; upon the request of a state's governor or attorney general to assist state, local, or tribal law enforcement in protecting mass gatherings of people; active Federal law enforcement investigations, emergency responses, or security operations; and when DHS or DOJ has identified a known national security threat involving UAS.

S. 2836 includes a number of important privacy and civil liberties protections. The bill limits the interception of communications only to what is necessary to mitigate the threat of UAS and any criminal proceedings after the incident. The interception of such data

¹³49 U.S.C. § 46502 (2018).

¹⁴National Defense Authorization Act, Pub. L. No. 114–328, §§ 1697, 3112, 130 Stat. 2000, 2639–2640, 2756.

¹⁵*Id.*

¹⁶National Defense Authorization Act, Pub. L. No. 115–91, § 1692. (2018).

¹⁷*Id.*

must be consistent with the Fourth Amendment and all other laws that are already applicable. Communications and data are only allowed to be retained for as long as necessary, but in no case longer than 180 days, unless the records need to be maintained for safety or security functions of DHS or DOJ, or for law enforcement purposes. Lastly, data and communications intercepted during the mitigation of a UAS cannot be disclosed outside DHS or DOJ unless used for safety or security reasons or to support a criminal investigation.

The bill's authorities to counter UAS sunset after five years so Congress can re-evaluate how the authorities are being implemented. DHS, DOJ, and the Department of Transportation (DOT) are also required to provide semiannual briefings to the Committee on Homeland Security and Governmental Affairs, the Committee on Commerce, Science, and Transportation, and the Committee on the Judiciary in the Senate, and the Committee on Homeland Security, the Committee on Transportation and Infrastructure, the Committee on Energy and Commerce, and the Committee on the Judiciary in the House of Representatives, and to deliver budget related documents to congressional committees at the time of fiscal year budget briefings.

The Committee held a hearing to consider S. 2836 in June 2018.¹⁸ Chairman Ron Johnson showed a video of an ISIS UAS dropping an explosive device on an Iraqi counter-IED unit to demonstrate the reality of how ISIS is currently using UAS to deliver explosives to attack targets and the ease with which it can do so. The Chairman stated, "All too often we pass reactive legislation in the wake of a terrorist attack or other security incident. The purpose of this hearing is to proactively address an emerging threat."¹⁹ In agreement, Ranking Member Claire McCaskill emphasized the need to get ahead of the threat and stated, "Terrorist organizations . . . have used drones overseas, and we expect that terrorists are interested in exploiting those same capabilities here in the United States."²⁰ Witnesses from DHS, DOJ, and FAA testified about the threat to the homeland, ways that agencies would carry out the counter-UAS authority, and the necessity for a legislative fix. In expressing the urgency to provide DHS and DOJ with counter-UAS authority, David Glawe, Under Secretary for Intelligence and Analysis at DHS stated, "[t]he threat is significant, it's imminent, and it is upon us."²¹

In discussing how the authorities will be implemented, Deputy General Counsel for DHS, Hayley Chang, testified, "[t]he Secretary and/or the Attorney General will make the initial designation in consultation with the FAA, under the bill. It will be done through a risk-based assessment. So, it will be a careful process where we see the highest risk . . . connected to one of the missions enumer-

¹⁸*Preventing Emerging Threats Act of 2018: Countering Malicious Drones: Hearing on S. 2836 Before the S. Comm. on Homeland Sec. & Gov't Affairs*, 115th Cong. (2018) (opening statement of Sen. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Gov't Affairs), available at <https://www.hsgac.senate.gov/hearings/s-2836-the-preventing-emerging-threats-act-of-2018-countering-malicious-drones> [hereinafter "*Preventing Emerging Threats Act of 2018: Countering Malicious Drones: Hearing on S. 2836*"].

¹⁹*Id.* (statement of Chairman Johnson).

²⁰*Id.* (statement of Ranking Member McCaskill).

²¹*Id.* (testimony of David Glawe, Under Sec'y for Intelligence & Analysis, Dep't of Homeland Sec.).

ated in the statute, and then the actions will need to be taken, under the bill, necessary to mitigate the threat.”²²

S. 2836 is the first step toward providing authority for the Government to counter the threat of UAS. As Chairman Johnson has stated, “I can’t overstate the fact that this is such an important first step, but it is a minimal first step. This is not going to solve the problem. This just put us on the path to begin to address the problem.”²³ To highlight the work that has yet to be done to address the threat, the St. Louis Cardinals submitted testimony that reviews the challenges that owners and operators of stadiums face in ensuring that the public is secure while attending games. S. 2836 lays the predicate for necessary research, development, operational testing and deployment of counter UAS systems that will eventually help secure large venues and mass gatherings that do not meet the National Special Security Events and Special Event Assessment Rating events.

Finally, the bill also requires DHS to conduct two assessments to further the agencies’ and Congress’ understanding of emerging threats to our national security and public safety. The first is to assess the threat of UAS to critical infrastructure and large hub airports, and if any additional research and development is needed to counter UAS. The second assessment requires DHS to assess vehicular terrorism to fully understand the threat in light of recent attacks involving vehicles. It also requires DHS to look at ways it can support local first responders to mitigate and respond to an attack.

III. LEGISLATIVE HISTORY

Chairman Johnson (R–WI) introduced S. 2836, the Preventing Emerging Threats Act of 2018, on May 14, 2018, with Senators McCaskill (R–MO), John Hoeven (R–ND), Heidi Heitkamp (D–ND), and Tom Cotton (R–AR). The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senator Bill Cassidy (R–LA) and Senator Doug Jones (D–AL) joined as cosponsors on May 16, 2018, and Senator Marco Rubio (R–FL) joined as a cosponsor on May 24, 2018.

The Committee considered S. 2836 at a business meeting on June 13, 2018. During the business meeting, a substitute amendment was offered by Chairman Johnson and accepted by unanimous consent.

Two amendments by Senator Carper were offered and accepted by voice vote. The first amendment added additional privacy and civil liberties language to the bill. The second amendment offered by Senator Carper required DHS and DOJ to consider certain factors when defining a UAS threat. Senators present for the vote on both amendments were Johnson, Portman, Lankford, Enzi, McCaskill, Carper, Peters, Hassan, Harris, and Jones.

The bill, as amended, was ordered reported favorably by voice vote. Senators present for the vote were Johnson, Portman, Lankford, Enzi, McCaskill, Carper, Peters, Hassan, Harris, and Jones. Senator Harris was recorded as voting no for the record.

²²*Id.* (testimony of Hayley Chang, Deputy Gen. Counsel, Dep’t of Homeland Sec.).

²³*Id.* (statement of Chairman Johnson).

Consistent with Committee Rule 11, the Committee reports the bill with a technical amendment by mutual agreement of the Chairman and Ranking Member.

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

Section 1. Short title

Section 1 gives the bill the short title of the “Preventing Emerging Threats Act of 2018.”

Sec. 2. Protection of certain facilities and assets from unmanned aircraft

Subsection (a) lays out the authority for DHS and DOJ to use counter-UAS technology. It authorizes the agencies’ personnel to take action necessary to mitigate the threat of UAS for the safety and security of a “covered facility or asset” (which is defined later in the bill). This section waives liability under Title 18 and section 46502 of title 49, the Aircraft Piracy Act.

Subsection (b) describes the types of action that approved personnel can take against a UAS that poses a security or safety threat. Those actions include the ability to detect, identify, monitor and track UAS, without prior consent; warn the operator of the UAS; disrupt control of the UAS; seize or confiscate the UAS; and use reasonable force to disable, damage, or the destroy it if necessary. This section requires that DHS and DOJ coordinate with the Department of Transportation (DOT). It also authorizes DHS and DOJ to conduct research and development of, and test, counter-UAS technology.

Subsection (c) specifies that UAS seized by DHS or DOJ can be subject to forfeiture.

Subsection (d) requires that DHS and DOJ issue guidance and regulations for their respective Department’s use of this authority. This section also requires that guidance by the agencies be in coordination with DOT and the FAA whenever it impacts aviation security and civilian aviation.

Subsection (e) mandates privacy protections in the guidance and regulations issued by DHS and DOJ. This section reiterates that all interception or acquisition of communications or data be consistent with Fourth Amendment protections and applicable Federal laws. This section also limits the keeping of any records intercepted to no more than 180 days unless there is a law enforcement or criminal nexus. Records may not be disclosed outside of the respective Department unless it would support a safety or security function of the respective Department, or the mission of the Department of Defense or law enforcement.

Subsection (f) requires that DHS and DOJ identify funding sources for the authorities provided in subsection (b) when submitting their annual budget materials to Congress.

Subsection (g) requires DHS and DOJ to brief the appropriate congressional committees of Congress every six months for the five years after enactment of this bill. The brief must include policies and procedures on limiting the impact to the National Airspace System; a description of instances when the given authorities are used; how the departments have worked to inform the public of the given authorities; and how DHS and DOJ have engaged with other

federal, State, and local law enforcement agencies with the given authorities.

Subsection (h) states that this bill does not vest existing authorities of the respective departments to any other department.

Subsection (i) provides a sunset of five years after enactment of the bill. The President may extend the authorities for 180 days for national security reasons. The extension by the President must come 45 days before the sunset.

Subsection (j) limits the counter-UAS authorities provided to DHS and DOJ to those specifically provided for in the legislation.

Subsection (k) provides definitions for a variety of terms throughout the legislation. The appropriate congressional committees in the legislation are defined as the Homeland Security and Governmental Affairs Committee, the Commerce, Science, and Technology Committee, and the Judiciary Committee in the Senate; and the Homeland Security Committee, the Transportation and Infrastructure Committee, the Energy and Commerce Committee, and the Judiciary Committee of the House.

This bill defines a “covered facility or asset” as those (1) within the United States; (2) that are identified by the Secretary of Homeland Security or the Attorney General through a risk-based assessment; and (3) that directly relate to one of the following missions: US Coast Guard and US Border Patrol security operations, including securing facilities, aircraft and vessels; US Secret Service protection operations; Federal Protective Service protection of DHS facilities; US Marshalls and DOJ protection of facilities and court personnel; Bureau of Prisons protection of high-risk facilities; Security for Special Events; National Special Security Events designated by the Secretary of Homeland Security; Special Event Assessment Rating Events; when a state governor or attorney general requests assistance for a mass gathering event that would not otherwise fall into the security for special event category; active Federal law enforcement investigations, emergency responses, or security operations carried out by DHS or DOJ; or reacting to a known national security threat that could involve unlawful use of a UAS.

This bill defines personnel that may use the given authority as officers and employees of DHS and DOJ. It also authorizes contracted employees of DHS to use the authority in accordance with regulations and guidance by DHS.

Subsection (l) requires DHS to issue an assessment on the threat from UAS to critical infrastructure and large domestic airports. The evaluation must include a look at current authorities for Federal, state, local, and tribal law enforcement. Additionally, the assessment will include current resources available to private and state-owned critical infrastructure and large domestic airports, as well as additional authorities the Department may need in the future. DHS is required to submit the assessment as an unclassified report to Congress that may be accompanied by a separate classified annex.

Sec. 3. Department of Homeland Security efforts to help protect individuals from vehicular terrorism

This section requires DHS to perform an assessment on actions DHS is taking to support first responders and the private sector to prevent vehicular terrorist attacks.

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. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 16, 2018.

Hon. RON JOHNSON, *Chairman,*
Committee on Homeland Security and Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2836, the Preventing Emerging Threats Act of 2018.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

KEITH HALL,
Director.

Enclosure.

S. 2836—Preventing Emerging Threats Act of 2018

S. 2836 would authorize the Department of Homeland Security (DHS) and the Department of Justice (DOJ) to take certain actions necessary to mitigate the threat to selected U.S. facilities or assets posed by unmanned aircraft (drones). The authority provided by the bill would expire five years after enactment. S. 2836 also would direct DHS to prepare assessments of the threats presented by unmanned aircraft systems and vehicular terrorism.

Using information provided by DHS and DOJ, CBO estimates that implementing S. 2836 would cost less than \$500,000 annually, assuming the availability of appropriated funds. We expect the departments would use existing resources, as needed, to execute the new authorities provided by the bill. For example, under S. 2836 both DHS and DOJ could monitor or track an unmanned aircraft without the consent of the operators or owners.

Enacting S. 2836 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 2836 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 2836 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

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

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman:

HOMELAND SECURITY ACT OF 2002

* * * * *

**TITLE II—INFORMATION ANALYSIS AND
INFRASTRUCTURE PROTECTION**

* * * * *

**Subtitle A—Information and Analysis and
Infrastructure Protection; Access to Information**

* * * * *

**SEC. 210G. PROTECTION OF CERTAIN FACILITIES AND ASSETS FROM
UNMANNED AIRCRAFT.**(a) *AUTHORITY.*—

(1) *IN GENERAL.*—Notwithstanding section 46502 of title 49, United States Code, or any provision of Title 18, United States Code, the Secretary 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 or the Attorney General, in consultation with the Secretary of Transportation, in accordance with paragraph (3)) that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a covered facility or asset.

(2) *REQUIREMENTS.*—In taking the actions described in subsection (b)(1), the Secretary or the Attorney General, as the case may be, shall—

(A) avoid infringement of the privacy and civil liberties of the people of the United States and the freedom of the press consistent with the Federal law and the Constitution of the United States, including with regard to the testing of any equipment and the interception or acquisition of unmanned aircraft or systems;

(B) limit the geographic reach and duration of the actions to only those areas and timeframes that are reasonably necessary to address a reasonable threat; and

(C) use reasonable care not to interfere with authorized or non-threatening manned or unmanned aircraft, communications, equipment, facilities or services.

(3) *THREAT DEFINED.*—In defining the term “threat” for purposes of carrying out paragraph (1), the Secretary or the Attor-

ney General, as the case may be, shall take into account factors, including, but not limited to, the potential for bodily harm or loss of human life, the potential loss or compromise of sensitive national security information, or the potential severe economic damage resulting from the use of an unauthorized unmanned aerial system in the vicinity of a covered facility or asset.

(b) *ACTIONS DESCRIBED.*—

(1) *IN GENERAL.*—The actions authorized in subsection (a) 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) *REQUIRED COORDINATION.*—The Secretary and the Attorney General shall develop for their respective Departments the actions described in paragraph (1) in coordination with the Secretary of Transportation.

(3) *RESEARCH, TESTING, TRAINING, AND EVALUATION.*—The Secretary and the Attorney General may conduct research, testing, training on, and evaluation of any equipment, including any electronic equipment, to determine its capability and utility to enable any of the actions described in paragraph (1).

(4) *COORDINATION.*—The Secretary shall coordinate with the Administrator of the Federal Aviation Administration when paragraph (3) might affect aviation safety, civilian aviation, use of airspace, aerospace operations, and aircraft airworthiness.

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

(d) *REGULATIONS AND GUIDANCE.*—

(1) *IN GENERAL.*—The Secretary, 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) *COORDINATION.*—

(A) *COORDINATION WITH DEPARTMENT OF TRANSPORTATION.*—The Secretary and the Attorney General shall coordinate the development of their respective guidance under paragraph (1) with the Secretary of Transportation.

(B) *EFFECT ON AVIATION SAFETY.*—The Secretary 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.

(3) *RISK-BASED ASSESSMENT.*—The guidance issued by the Secretary and the Attorney General, respectively, shall include criteria of the risk-based assessment required under subsection (k)(3)(A) that includes an evaluation of the potential impacts on the use of the authorities granted in this section on the safety and efficiency of the national airspace system, including the ability to provide advance notice to aircraft operators as appropriate, and the needs of law enforcement agencies and national security.

(e) *PRIVACY PROTECTION.*—In carrying out actions authorized under subsection (b), the Secretary or the Attorney General, as the case may be, 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 of the United States and applicable provision of Federal law;

(2) communication to or from an unmanned aircraft system are intercepted, acquired, or accessed only to the extent necessary to mitigate the reasonable threat that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a covered facility or asset, or to investigate or prosecute a threat, as defined by the Secretary or the Attorney General, respectively, under subsection (a)(1);

(3) records of such communications are maintained only for as long as necessary, and in no event for more than 180 days, unless the Secretary or the Attorney General determine that maintenance of such records—

(A) is necessary to support one or more safety or security functions of the Department of Homeland Security or the Department of Justice, respectively, or to investigate or prosecute a threat, as defined by the Secretary or the Attorney General, respectively, under subsection (a)(1); or

(B) is required for a longer period to support a civilian law enforcement agency or by any other applicable statute 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 safety or security function of the Department of Homeland Security or the Department of Justice, respectively, or to investigate or prosecute a threat, as

defined by the Secretary or the Attorney General, respectively, under subsection (a)(1);

(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.

(f) **BUDGET.**—The Secretary 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.

(g) **SEMIANNUAL BRIEFINGS.**—

(1) **IN GENERAL.**—On a semiannual basis during the 5-year period beginning 6 months after the date of enactment of this section, the Secretary and the Attorney General shall, respectively, provide a briefing to the appropriate congressional committees on the activities carried out pursuant to this section.

(2) **REQUIREMENT.**—Each briefing required under paragraph (1) shall be conducted jointly with the Secretary of Transportation.

(3) **CONTENT.**—Each briefing required under paragraph (1) 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) a description of efforts to address privacy, civil rights, and civil liberties issues implicated by the actions allowed under this section;

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

(E) a description of actions the Secretary and the Attorney General have taken to inform owners and operators of covered facilities of their status under this section; and

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

(4) **UNCLASSIFIED FORM.**—Each briefing required under paragraph (1) shall be in unclassified form, consistent with the needs of law enforcement agencies and national security, but may be accompanied by an additional classified briefing.

(h) **RULE OF CONSTRUCTION.**—Nothing in this section may be construed to—

(1) vest in the Secretary or the Attorney General any authority of the Secretary of Transportation or the Administrator of the Federal Aviation Administration under title 49, United States Code;

(2) vest in the Secretary of Transportation or the Administrator of the Federal Aviation Administration any authority of the Secretary or the Attorney General under this title or title 14, United States Code;

(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.

(i) **TERMINATION.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the authority to carry out this section with respect to the covered facilities or assets shall terminate on the date that is 5 years after the date of enactment of this section.

(2) **EXTENSION.**—The President may extend by 180 days the termination date described in paragraph (1) if, not later than 45 days before the termination date described in paragraph (1), the President certifies to Congress that such extension is in the national security interest of the United States.

(j) **SCOPE OF AUTHORITY.**—Nothing in this section shall be construed to provide the Secretary or the Attorney General with additional authorities beyond those described in subsections (a), (b)(1), and (k)(3)(C)(iii).

(k) **DEFINITIONS.**—In this section:

(1) The term “appropriate congressional committees” means—

(A) the Committee on Homeland Security and Governmental Affairs, 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, United States Code.

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

(A) is identified by the Secretary 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—

(i) a mission authorized to be performed by the Department, consistent with governing statutes, regulations, and orders issued by the Secretary, relating to—

(I) security operations by the United States Coast Guard and U.S. Customs and Border Protection, including securing facilities, aircraft, and authorized vessels, whether moored or underway;

(II) United States Secret Service protection operations pursuant to section 3056 and 3056A of Title 18, United States Code; or

(III) protection of facilities pursuant to section 1315 of title 40, United States Code, considered to be high-risk or assessed to be a potential target for unlawful unmanned aircraft activity;

(ii) a mission authorized to be performed by the Department of Justice, consistent with governing statutes, regulations, and orders issued by the Attorney General, relating to—

(I) 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, United States Code;

(II) 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

(III) 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, United States Code, considered to be high-risk or assessed to be a potential target for unlawful unmanned aircraft activity; and

(iii) a mission 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, relating to—

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

(II) upon the request of a State's governor or attorney general, providing support to State, local, or tribal law enforcement authorities to ensure protection of people and property at mass gatherings, where appropriate and within available resources;

(III) active Federal law enforcement investigations, emergency responses, or security operations; or

(IV) 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 and the threat could involve unlawful use of an unmanned aircraft, responding to such national security threat.

(4) The terms “electronic communication”, “intercept”, “oral communication”, and “wire communication” have the meanings given those terms in section 2510 of Title 18, United States Code.

(5) The term “homeland security or justice budget materials”, with respect to a fiscal year, means the materials submitted to

Congress by the Secretary and the Attorney General in support of the budget for that fiscal year.

(6) For purposes of subsection (a), the term “personnel” means—

(A) officers and employees of the Department of Homeland Security or the Department of Justice; or

(B) individuals employed by contractors of the Department of Homeland Security who are subject to the supervision, control, or direction of the Department and are assigned by the Department to perform the duties described in subsection (a) in accordance with regulations or guidance established under subsection (d).

(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 (49 U.S.C. 40101 note).

(l) DEPARTMENT OF HOMELAND SECURITY ASSESSMENT.—

(1) REPORT.—Not later than 1 year after the date of the enactment of this section, the Secretary shall conduct, in coordination with the Attorney General and the Secretary of Transportation, and submit an assessment to the appropriate congressional committees, including—

(A) an evaluation of the threat from unmanned aircraft systems to United States critical infrastructure (as defined in this Act) and to domestic large hub airports (as defined in section 40102(a)(29) of title 49, United States Code);

(B) an evaluation of current Federal and State, local, or tribal law enforcement authorities to counter the threat identified in subparagraph (A);

(C) an evaluation of the knowledge of, efficiency of, and effectiveness of current procedures and resources available to owners of critical infrastructure and domestic large hub airports when they believe a threat from unmanned aircraft systems is present and what additional actions, if any, the Department could implement under existing authorities to assist these entities to counter the threat identified in subparagraph (A);

(D) an assessment of what, if any, additional authorities the Department needs to counter the threat identified in subparagraph (A); and

(E) an assessment of what, if any, additional research and development the Department needs to counter the threat identified in subparagraph (A).

(2) UNCLASSIFIED FORM.—The report required under paragraph (1) shall be submitted in unclassified form, but may contain a classified annex.