

117TH CONGRESS
2D SESSION

H. R. 8949

To amend the Homeland Security Act of 2002 to extend counter-unmanned aircraft systems authorities, to improve transparency, safety, and accountability related to such authorities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2022

Mr. NADLER (for himself, Mr. THOMPSON of Mississippi, Mr. DEFazio, Mr. GRAVES of Missouri, and Mr. KATKO) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Transportation and Infrastructure, and Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Homeland Security Act of 2002 to extend counter-unmanned aircraft systems authorities, to improve transparency, safety, and accountability related to such authorities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Counter-UAS Author-
5 ity Extension and Transparency Enhancement Act of
6 2022”.

1 **SEC. 2. PROTECTION OF CERTAIN FACILITIES AND ASSETS**
2 **FROM UNMANNED AIRCRAFT SYSTEMS.**

3 Section 210G of the Homeland Security Act of 2002
4 (6 U.S.C. 124n) is amended—

5 (1) in subsection (a)—

6 (A) by striking “sections 32, 1030, 1367
7 and chapters 119 and 206 of title 18, United
8 States Code, the Secretary and the Attorney
9 General” and inserting “section 32 of title 18,
10 United States Code, the Secretary and the At-
11 torney General”; and

12 (B) by striking “(as defined by the Sec-
13 retary or the Attorney General, in consultation
14 with the Secretary of Transportation)” and in-
15 serting “(as defined by the Secretary of Home-
16 land Security, in coordination with the Sec-
17 retary of Transportation and the Attorney Gen-
18 eral)”;

19 (2) in subsection (b)—

20 (A) in paragraph (1)—

21 (i) in subparagraph (A), by inserting
22 “or unmanned aircraft” after “During the
23 operation of the unmanned aircraft sys-
24 tem”;

25 (ii) in subparagraph (D), by striking
26 “Seize or exercise control of” and inserting

1 “Seize, exercise control of, or otherwise
2 confiscate”;

3 (iii) by striking subparagraph (E);

4 and

5 (iv) by redesignating subparagraph
6 (F) as subparagraph (E);

7 (B) by amending paragraph (2) to read as
8 follows:

9 “(2) COORDINATION.—

10 “(A) IN GENERAL.—The Secretary and the
11 Attorney General shall coordinate with the Sec-
12 retary of Transportation regarding carrying out
13 the actions described in paragraph (1).

14 “(B) AVIATION SAFETY.—The Secretary
15 and the Attorney General shall coordinate with
16 the Administrator of the Federal Aviation Ad-
17 ministration when any action authorized by this
18 section might affect aviation safety, civilian
19 aviation and aerospace operations, aircraft air-
20 worthiness, or the use of the National Airspace
21 System. If the Administrator determines any
22 such action would adversely impact any such
23 matters, such action shall be delayed until the
24 Administrator determines such action does not

1 present an adverse impact or that such adverse
2 impact can be sufficiently mitigated.”;

3 (C) by amending paragraph (3) to read as
4 follows:

5 “(3) RESEARCH, TESTING, TRAINING, AND
6 EVALUATION.—The Secretary, the Secretary of
7 Transportation, and the Attorney General may con-
8 duct research on, testing on, training on, and eval-
9 uation of equipment, including electronic equipment,
10 and technology to determine the capability and util-
11 ity of such equipment or technology for any action
12 described in subsection (b)(1) prior to the use of
13 such equipment or technology.”; and

14 (D) by amending paragraph (4) to read as
15 follows:

16 “(4) LIST OF AUTHORIZED EQUIPMENT AND
17 TECHNOLOGIES.—

18 “(A) LIST.—Not later than one year after
19 the date of enactment of the Counter-UAS Au-
20 thority Extension and Transparency Enhance-
21 ment Act of 2022, the Secretary shall, subject
22 to subparagraph (B), maintain a list of ap-
23 proved equipment and technology, including a
24 description of the specific functions and envi-
25 ronments for which such equipment or tech-

1 nology has capability and utility for any action
2 described in subsection (b)(1), and whether
3 such equipment or technology is authorized for
4 an action described in subparagraph (A), (B),
5 (C), or (D) of such subsection.

6 “(B) IMPACT DETERMINATION BY ADMIN-
7 ISTRATOR.—Prior to the inclusion of equipment
8 or technology on the list maintained under sub-
9 subparagraph (A), the Administrator of the Fed-
10 eral Aviation Administration must make a de-
11 termination that the use of such equipment or
12 technology does not present an adverse impact
13 on aviation safety, civilian aviation and aero-
14 space operations, aircraft airworthiness, or the
15 use of the National Airspace System, or in the
16 event that the Administrator identifies an ad-
17 verse impact, that such impact can be suffi-
18 ciently mitigated.

19 “(C) AUTHORIZED UTILIZATION.—Upon
20 the inclusion of a technology or equipment on
21 the list maintained under subparagraph (A),
22 the Secretary and the Attorney General may
23 utilize such equipment or technology for any de-
24 scribed action in subsection (b)(1).”;

1 (3) in subsection (d), by amending paragraph
2 (2) to read as follows:

3 “(2) COORDINATION.—The Secretary, the Sec-
4 retary of Transportation, and the Attorney General
5 shall coordinate to develop their respective regula-
6 tions and guidance under paragraph (1) before
7 issuing any such regulation or guidance.”;

8 (4) in subsection (e)—

9 (A) by amending paragraph (3) to read as
10 follows:

11 “(3) records of such communications are main-
12 tained for not more than 90 days, except that if the
13 Secretary of Homeland Security or the Attorney
14 General determines that maintenance of such
15 records is necessary to investigate or prosecute a
16 violation of law, is required under Federal law, or
17 for the purpose of any litigation, the records of such
18 communications may be maintained for not more
19 than one year;” and

20 (B) in paragraph (4)—

21 (i) in the matter preceding subpara-
22 graph (A), by striking “are not disclosed
23 outside the Department of Homeland Se-
24 curity or the Department of Justice un-
25 less” and inserting “are not shared outside

1 of personnel of the department in posses-
2 sion of such communications, except if”;
3 and

4 (ii) in subparagraph (B), by striking
5 “, or any regulatory, statutory, or other
6 enforcement action relating to”;

7 (5) in subsection (f), by striking “within the
8 Department of Homeland Security or the Depart-
9 ment of Justice”;

10 (6) in subsection (g)—

11 (A) in paragraph (1), by striking “the Sec-
12 retary and the Attorney General shall, respec-
13 tively,” and inserting “the Secretary, the Attor-
14 ney General, and the Secretary of Transpor-
15 tation shall jointly”;

16 (B) by striking paragraph (2);

17 (C) by redesignating paragraphs (3)
18 through (5) as paragraphs (2) through (4), re-
19 spectively;

20 (D) by amending paragraph (2), as so re-
21 designated, to read as follows:

22 “(2) CONTENT.—Each briefing required under
23 paragraph (1) shall include—

24 “(A) the number of instances and a de-
25 scription of each instance in which actions de-

1 scribed in subsection (b)(1) have been taken, in-
2 cluding all such instances that—

3 “(i) equipment or technology dis-
4 rupted the transmission of radio or elec-
5 tronic signals, including and
6 disaggregated by whether any such dis-
7 ruption was minimized;

8 “(ii) may have resulted in harm, dam-
9 age, or loss to a person or to private prop-
10 erty, including and disaggregated by
11 whether any such harm, damage, or loss
12 was minimized;

13 “(iii) resulted in the successful sei-
14 zure, exercise of control, or confiscation
15 under subsection (b)(1)(D); or

16 “(iv) required the use of reasonable
17 force under subsection (b)(1)(E);

18 “(B) the frequency and nature of instances
19 in which communications were intercepted or
20 acquired during the course of actions described
21 in subsection (b)(1), including—

22 “(i) the approximate number and na-
23 ture of incriminating communications
24 intercepted; and

1 “(ii) the approximate number and na-
2 ture of other communications intercepted;

3 “(C) the total number of instances in
4 which records of communications intercepted or
5 acquired during the course of actions described
6 in subsection (b)(1) were—

7 “(i) shared with the Department of
8 Justice or another Federal law enforce-
9 ment agency, including a list of receiving
10 Federal law enforcement agencies; or

11 “(ii) maintained for more than 90
12 days;

13 “(D) the number of instances and a de-
14 scription of each instance in which the Sec-
15 retary, Secretary of Transportation, or the At-
16 torney General have engaged with Federal,
17 State, or local law enforcement agencies to im-
18 plement the authority under this section, in-
19 cluding the number of instances that resulted in
20 a criminal investigation or litigation; and

21 “(E) information on the actions carried
22 out under subsections (b)(3) and (b)(4)(A), in-
23 cluding equipment or technology to address
24 emerging trends and changes in unmanned air-

1 craft system or unmanned aircraft system-re-
2 lated security threats.”; and

3 (E) in paragraph (4), as so redesignated—

4 (i) by inserting “approved under sub-
5 section (b)(4)” after “new technology”;

6 (ii) by striking “the Secretary and the
7 Attorney General shall, respectively,” and
8 inserting “the Secretary, in coordination
9 with the Secretary of Transportation and
10 the Attorney General, shall”; and

11 (iii) by striking “to the national air-
12 space system” and inserting “to the safety
13 and operation of the National Airspace
14 System”;

15 (7) in subsection (h)(2), by inserting “of Home-
16 land Security” after “any authority of the Sec-
17 retary”;

18 (8) by amending subsection (i) to read as fol-
19 lows:

20 “(i) TERMINATION.—The authority under this sec-
21 tion shall terminate on October 1, 2023.”;

22 (9) in subsection (k)—

23 (A) in paragraph (1)(B), by striking “the
24 Committee on Energy and Commerce,”;

25 (B) in paragraph (3)—

1 (i) in subparagraph (A), by striking
2 “the Secretary or the Attorney General, in
3 coordination with the Secretary of Trans-
4 portation” and inserting “the Secretary, in
5 coordination with the Secretary of Trans-
6 portation and the Attorney General,”; and

7 (ii) in subparagraph (C)(ii)—

8 (I) in subclause (I)(aa), by strik-
9 ing “section 533 of title 28, United
10 States Code” and inserting “para-
11 graph (2) or (3) of section 533 of title
12 28, United States Code, and that is
13 limited to a specified period of time
14 and location”;

15 (II) in subclause (I)(bb), by in-
16 serting before the semicolon at the
17 end the following: “, and that is lim-
18 ited to a specified period of time and
19 location”; and

20 (III) in subclause (III), by strik-
21 ing “, as specified in” and inserting
22 “pursuant to”;

23 (C) in paragraph (6), by striking “pur-
24 poses of subsection (a)” and inserting “pur-
25 poses of subsections (a) and (e)(4)”;

1 (D) in paragraph (8)—

2 (i) in the matter preceding subpara-
3 graph (A)—

4 (I) by striking “and efficiency of
5 the national airspace system” and in-
6 serting “, efficiency, and operation of
7 the National Airspace System”; and

8 (II) by striking “the Secretary or
9 the Attorney General, respectively,”
10 and inserting “the Secretary, in co-
11 ordination with the Secretary of
12 Transportation and the Attorney Gen-
13 eral,”; and

14 (ii) by striking “national airspace sys-
15 tem” each place it appears and inserting
16 “National Airspace System”; and

17 (10) by amending subsection (l) to read as fol-
18 lows:

19 “(l) ANNUAL REPORT.—Not later than one year after
20 the date of enactment of the Counter-UAS Authority Ex-
21 tension and Transparency Enhancement Act of 2022, the
22 Secretary shall submit, in coordination with the Secretary
23 of Transportation and the Attorney General, a report to
24 the appropriate congressional committees that contains

1 the information required under subsection (g)(2) and the
2 following—

3 “(1) copies of guidance, policies, programs, and
4 procedures to mitigate or eliminate any adverse im-
5 pact of the activities carried out pursuant to this
6 section, or the use of any equipment or technology,
7 on aviation safety, civilian aviation and aerospace
8 operations, aircraft airworthiness, or the use of the
9 National Airspace System; and

10 “(2) copies of the guidance, policies, or proce-
11 dures established to address privacy, civil rights, and
12 civil liberties issues implicated by the activities car-
13 ried out pursuant to this section.”.

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