

## Subpart 40.2 - Security Prohibitions and Exclusions

**Parent topic:** [Part 40 - Information Security and Supply Chain Security](#)

### 40.200 Scope of subpart.

(a) This subpart provides policies and procedures to implement security prohibitions and exclusions that restrict Federal agencies from procuring, obtaining, or using certain products, services, or sources.

(b) The following prohibitions and exclusions are implemented in this subpart:

(1) The American Security Drone Act of 2023, of the National Defense Authorization Act for Fiscal Year 2024 (Pub. L. 118-31, [41 U.S.C. 3901](#) note prec.), which provides a prohibition on the procurement and operation of unmanned aircraft systems.

(2) [Reserved]

(c) Additional security prohibitions and exclusions are found at subparts [4.20](#) through [4.23](#) and [25.7](#).

### 40.201 Definitions.

As used in this subpart-

*American Security Drone Act-covered foreign entity* means an entity included on a list developed and maintained by the Federal Acquisition Security Council (FASC) and published in the System for Award Management (SAM) at <https://www.sam.gov> (section 1822 of Pub. L. 118-31, [41 U.S.C. 3901](#) note prec.).

*FASC-prohibited unmanned aircraft system* means an unmanned aircraft system manufactured or assembled by an American Security Drone Act-covered foreign entity.

*Unmanned aircraft* means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft ([49 U.S.C. 44801\(11\)](#)).

*Unmanned aircraft system* means an unmanned aircraft and associated elements (including communication links and the components that control the unmanned aircraft) that are required for the operator to operate safely and efficiently in the national airspace system ([49 U.S.C. 44801\(12\)](#)).

### 40.202 Prohibition on the procurement and operation of

## **unmanned aircraft systems manufactured or assembled by American Security Drone Act-covered foreign entities. s.**

(a) Section [40.202](#) prescribes policies and procedures regarding the procurement and operation of unmanned aircraft systems, which includes unmanned aircraft (i.e., drones) and associated elements.

(b) The authorities in [40.202](#) expire on December 22, 2028 (section 1833 of Pub. L. 118-31, [41 U.S.C. 3901](#) note prec.).

### **40.202-1 Scope.**

(a) Section [40.202](#) prescribes policies and procedures regarding the procurement and operation of unmanned aircraft systems, which includes unmanned aircraft (i.e., drones) and associated elements.

(b) The authorities in [40.203](#) expire on December 22, 2028 (section 1833 of Pub. L. 118-31, [41 U.S.C. 3901](#) note prec.).

### **40.202-2 Applicability.**

Section [40.202](#) applies to all acquisitions, including contracts at or below the micro-purchase threshold and to contracts for commercial products or for commercial services.

### **40.202-3 Prohibition.**

Unless an exemption, exception, or waiver applies (see [40.202-4](#), [40.202-5](#), and [40.202-6](#), respectively), executive agencies are prohibited from-

(a) Procuring a FASC-prohibited unmanned aircraft system (section 1823 and 1826 of Pub. L. 118-31, [41 U.S.C. 3901](#) note prec.). The prohibition includes extending or renewing a contract (*e.g.*, exercising an option);

(b) On or after December 22, 2025, procuring services for the operation of a FASC-prohibited unmanned aircraft system (section 1824 of Pub. L. 118-31, [41 U.S.C. 3901](#) note prec.). The prohibition includes extending or renewing a contract (*e.g.*, exercising an option); and

(c) On or after December 22, 2025, using Federal funds for the procurement or operation of a FASC-prohibited unmanned aircraft system (section 1825 of Pub. L. 118-31, [41 U.S.C. 3901](#) note prec.).

### **40.202-4 Exemptions.**

The prohibitions in [40.202](#) do not apply to the following (see sections 1823, 1824, and 1825 of Pub. L. 118-31, [41 U.S.C. 3901](#) note prec.):

(a) *Department of Homeland Security, Department of Defense, Department of State, and the Department of Justice exemptions.* The Secretary of Homeland Security, the Secretary of Defense, the Secretary of State, and the Attorney General are exempt from the prohibitions in [40.202](#) if the procurement or operation is required in the national interest of the United States and-

(1) Is for the sole purposes of research, evaluation, training, testing, or analysis for electronic warfare, information warfare operations, cybersecurity, or development of unmanned aircraft system or counter-unmanned aircraft system technology;

(2) Is for the sole purposes of conducting counterterrorism or counterintelligence activities, protective missions, or Federal criminal or national security investigations, including forensic examinations, or for electronic warfare, information warfare operations, cybersecurity, or development of an unmanned aircraft system or counter-unmanned aircraft system technology; or

(3) Is an unmanned aircraft system that, as procured or as modified after procurement but before operational use, can no longer transfer to, or download data from, an American Security Drone Act-covered foreign entity and otherwise poses no national security cybersecurity risks as determined by the exempting official, as described in agency procedures.

(b) *Department of Transportation exemption.* The Secretary of Transportation is exempt from the prohibitions in [40.202](#) if the operation or procurement is deemed to support the safe, secure, or efficient operation of the National Air Space System or maintenance of public safety.

(c) *National Transportation Safety Board exemption.* The National Transportation Safety Board, in consultation with the Secretary of Homeland Security, is exempt from the prohibitions, in [40.202](#) if the operation or procurement is necessary for the sole purpose of conducting safety investigations.

(d) *National Oceanic and Atmospheric Administration (NOAA) exemption.* The Administrator of NOAA, in consultation with the Secretary of Homeland Security, is exempt from the prohibitions of [40.202](#), if the operation or procurement for the purposes of meeting NOAA's science or management objectives or operational mission.

## **40.202-5 Exceptions.**

The prohibitions in this section do not apply to the following (section 1832 of Pub. L. 118-31, [41 U.S.C. 3901](#) note prec.):

(a) *Wildfire management operations and search and rescue operations exception.* The prohibitions in section [40.202](#) do not apply to an appropriate Federal agency to the extent that an authorized official at the agency, in consultation with the Secretary of Homeland Security, determines that the procurement or operation is necessary for the purposes of supporting the full range of wildfire management operations or search and rescue operations.

(b) *Intelligence activities exception.* The prohibitions of [40.202](#) do not apply to any activity subject to the reporting requirements under title V of the National Security Act of 1947 ([50 U.S.C. 3091](#) et seq.), any authorized intelligence activities of the United States, or any activity or procurement that supports an authorized intelligence activity.

(c) *Tribal law enforcement or emergency service agency exception.* The prohibitions in [40.202](#) do not apply to Tribal law enforcement or Tribal emergency service agencies to the extent that an authorized official at the agency, in consultation with the Secretary of Homeland Security,

determines that the procurement or operation is necessary for the purposes of supporting the full range of law enforcement operations or search and rescue operations on Indian lands.

#### **40.202-6 Waivers.**

The head of the agency may waive the prohibitions under [40.202](#) on a case-by-case basis in accordance with agency procedures and based on the statutory waiver provisions (sections 1823, 1824, and 1825 of Pub. L. 118-31, 41 U.S.C. 3901 note prec.)—

(a) With the approval of the Director of the Office of Management and Budget, after consultation with the FASC; and

(b) Upon notification to-

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

(2) The Committee on Oversight and Accountability in the House of Representatives; and

(3) Other appropriate congressional committees of jurisdiction.

#### **40.202-7 Procedures.**

(a) *Documenting exemptions, exceptions, or waivers.* The contracting officer shall document the file with any exemption, exception, or waiver provided by the program office or requiring activity. Additionally, the contracting officer shall work with the program office or requiring activity to ensure the presence and scoping of any such exemptions, exceptions, or waivers are identified in the solicitation and resultant contract.

(b) *Assessment of unmanned aircraft systems.* Except where an exemption, exception, or waiver applies, the contracting officer shall work with the program office or requiring activity to review proposals to ensure they are not proposing delivery of a FASC-prohibited unmanned aircraft system. On or after December 22, 2025, this assessment shall expand to include review for not only proposed delivery, but also operation, of a FASC-prohibited unmanned aircraft system.

#### **40.202-8 Contract clause.**

Insert the clause at [52.240-1](#), Prohibition on Unmanned Aircraft Systems Manufactured or Assembled by American Security Drone Act-Covered Foreign Entities, in all solicitations and contracts.