

SAFETY Act Web Site Notice Regarding Counter-Unmanned Aircraft Systems (C-UAS)

This policy explains how the Department of Homeland Security (“DHS”) Science and Technology Directorate (“S&T”) evaluates Support Anti-terrorism by Fostering Effective Technologies Act (“SAFETY Act”) applications for Counter-Unmanned Aircraft System (“C-UAS”) technologies.¹ S&T will evaluate SAFETY Act applications for C-UAS that can be legally operated within the United States and its territories, including those that have been approved by a federal agency with statutory relief to operate controlled C-UAS, for the specific use case for which the agency has evaluated the controlled C-UAS. SAFETY Act evaluation of C-UAS will be only for use within the United States and its territories for protection against small Unmanned Aircraft Systems (“sUAS”). The following provides information about the type of C-UAS that DHS S&T will evaluate, and the key factors that S&T will consider.

The deployment and use of C-UAS detection and mitigation capabilities may be implicated by: (1) various provisions of the U.S. criminal code enforced by the Department of Justice (“DOJ”); (2) federal laws and regulations administered by and/or applicable to the Federal Aviation Administration (“FAA”), DHS, and the Federal Communications Commission (“FCC”); and, (3) state and local laws. DHS S&T will evaluate SAFETY Act applications for C-UAS that are approved for legal operation by authorized users in the United States and its territories. Congress has exclusively authorized the Departments of Defense, Energy, Justice and Homeland Security to engage in limited UAS detection and mitigation activities to counter UAS presenting a credible threat to covered facilities and assets, notwithstanding certain otherwise potentially applicable federal criminal laws, including various laws relating to surveillance.² In addition, the FAA has been statutorily authorized to engage in limited testing activities notwithstanding certain federal criminal surveillance laws.³

With respect to C-UAS technologies that implicate Titles 18 and 49 of the U.S. Code, DHS S&T will evaluate SAFETY Act applications for C-UAS that have been specifically approved by one of the four authorized federal agencies, for their specific use according to their individual legal authorizations and in accordance with their respective policy implementation guidance thereof, and for deployment in the individual agency’s specifically evaluated and approved use case(s).

¹ This policy is in compliance with the Regulations Implementing the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act) codified at 6 C.F.R. Part 25. It is also in compliance with Federal agencies’ C-UAS statutory authorities: 6 U.S.C. § 124n (DHS’s and DOJ’s CUAS statutory authorities); 10 U.S.C. § 130i (DoD’s C-UAS statutory authority); and 50 U.S.C. § 2661 (DOE’s C-UAS statutory authority). The FAA has also been authorized to test and evaluate UAS detection and mitigation systems on a limited basis (*see* 49 U.S.C. § 44810(g)).

² Department of Homeland Security, Advisory on the Application of Federal Laws to the Acquisition and Use of Technology to Detect and Mitigate Unmanned Aircraft Systems, <https://www.dhs.gov/publication/interagency-legal-advisory-uas-detection-and-mitigation-technologies>, August 2020, Accessed May 5, 2021. *See also* 10 U.S.C. § 130i, 50 U.S.C. § 2661, and 6 U.S.C. § 124n.

³ *See* 49 U.S.C. § 44810(g).

For SAFETY Act purposes, C-UAS will fall into one of two general categories:

- 1) C-UAS that do not implicate federal criminal laws relating to surveillance, recording or decoding signaling information, accessing or damaging computers, or interference with an aircraft for use within the United States or its territories. Such systems must comply with laws and regulations administered by the Federal Communications Commission (“FCC”) and the Federal Aviation Administration (“FAA”), including federal criminal laws related to aviation and the Radio Frequency (“RF”) spectrum. Further such C-UAS may not implicate aviation security laws and regulations administered by the Transportation Security Administration (“TSA”).
- 2) C-UAS that are used operationally by the Departments of Defense, Energy, Justice, or Homeland Security and that have been evaluated and approved for use at specific locations and use cases within the United States or its territories in accordance with the agencies’ policy implementation of their C-UAS statutory authorities. Such systems must be evaluated, approved and operationally used by the authorized agency for its specific use case. SAFETY Act protections for this group of C-UAS will be limited to deployments of the subject C-UAS to a specifically identified authorized federal agency for the specific use case(s) for which the C-UAS has been approved by the individual agency.

In evaluating SAFETY Act application for C-UAS, DHS S&T will consider the following factors:

- Is a C-UAS legally authorized for deployment and use within the United States and its territories (6 U.S.C. § 441(b)(2); 6 C.F.R. §§ 25.4(b)(1)(ii) and 25.4(b)(1)(ix))
 - For C-UAS which an applicant claims may be legally used by any customer without specific prior authorization, S&T will request and evaluate information specifically proving that the C-UAS does not implicate any applicable laws. This will include a review of the applicant’s design documentation and software code for all functions, and information provided by the applicant which may include a court ruling or legal opinion from a federally authorized user of C-UAS regarding whether the CUAS technology implicates Titles 18 and 49 of the U.S. Code.
 - For C-UAS which implicate federal or other laws and may only be used by an authorized federal agency, the applicant will provide verification, and S&T will also verify, that the technology is currently being used by the authorized federal agency, how the C-UAS was evaluated, where it is being used, and what the use case for deployment entails. Any SAFETY Act protections provided for such C-UAS will be limited to the federal agency deployments identified by the applicant in its SAFETY Act application.
- S&T will evaluate C-UAS that are designed to operate against sUAS as defined by either the FAA⁴ or by DOD for Groups 1, 2, and 3.⁵ Due to limitations on abilities to evaluate C-UAS used against larger UAS as they might be used in the United States and its territories, any SAFETY Act protections that may be provided for C-UAS will be limited to use against sUAS.

⁴ Department of Homeland Security, Advisory on the Application of Federal Laws to the Acquisition and Use of Technology to Detect and Mitigate Unmanned Aircraft Systems, <https://www.dhs.gov/publication/interagency-legal-advisory-uas-detection-and-mitigation-technologies>, August 2020, Accessed May 5, 2021.

⁵ Department of Defense, Counter-Small Unmanned Aircraft Systems Strategy, <https://media.defense.gov/2021/Jan/07/2002561080/-1/-1/1/DEPARTMENT-OF-DEFENSE-COUNTER-SMALL-UNMANNED-AIRCRAFT-SYSTEMS-STRATEGY.PDF>, January 2021. Accessed May 5, 2021.

- S&T will consider providing either Developmental Testing and Evaluation (“DT&E”) Designation or Designation for C-UAS.
 - SAFETY Act evaluation for DT&E Designation will consider all available information supporting the capability of the C-UAS as tested in laboratory and test range settings. The evaluation will also consider the applicant’s test plan for collection of operational data on the effectiveness of the C-UAS as it will be operationally deployed by customers. S&T will contact all customer POCs provided by the applicant, that have agreed to have operational effectiveness data collected during use of the C-UAS under live operational conditions. (Only completely developed C-UAS that are being used by customers for operational purposes and still require the collection of effectiveness data, will be considered for DT&E Designation.) Any DT&E Designation provided to an applicant will be restricted to deployment to the specific customers listed in the application, for the test purposes identified in the applicant’s provided test plan. (6 C.F.R. §25.4(f)).
 - SAFETY Act evaluation for Designation will consider all available data on operational deployment of the C-UAS in the United States or its territories, to validate the effectiveness of the C-UAS in performing its identified functions. The evaluation will also consider all available information supporting the capability of the C-UAS as tested in laboratory and test range settings. Any SAFETY Act Designation provided for a C-UAS that requires legal authorization for use, will be limited to use by the authorized federal agencies identified in the application materials, for the specific use cases for which the applicable federal agency has approved use of the C-UAS. (6 U.S.C. §441(b)(6)-(7); 6 C.F.R. §25.4(b)(1)(vi)-(ix))
 - Due to limited data on the long-term performance of C-UAS⁶ and the constantly changing landscape of UAS operational parameters, C-UAS will not be considered for SAFETY Act Certification at this time. (6 U.S.C. §442(d); 6 U.S.C. §§ 25.2; 25.8-25.9)

SAFETY Act applicants are encouraged to become familiar with all federal, state, and local laws and regulations applicable to the deployment and use of C-UAS before submitting a SAFETY Act application, including the specific congressional authorizations to federal agencies, e.g.:

- Department of Defense 10 U.S.C. § 130i
Protection of certain facilities and assets from unmanned aircraft
- Department of Energy 50 U.S.C. § 2661
Protection of certain nuclear facilities and assets from unmanned aircraft
- Department of Justice 6 U.S.C. § 124n

⁶ Pursuant to 6 U.S.C. § 442(d)(2) and 6 C.F.R. §25.8, DHS S&T evaluates whether the technology will perform as intended, conforms to Seller’s specifications, and is safe for use as intended. To evaluate whether the technology will perform as intended, S&T requests applicants to provide data that shows effectiveness data for several years of deployments.

Protection of certain facilities and assets from unmanned aircraft

- Department of Homeland Security

6 U.S.C. § 124n

Protection of certain facilities and assets from unmanned aircraft

- Federal Aviation Administration

49 U.S.C. § 44810g

Activities authorized by the Administrator pursuant to the Airspace Hazard Mitigation Program and risks to aviation safety

Information regarding submitting a SAFETY Act application is available on the SAFETY Act web site (www.SAFETYAct.gov). Additionally, potential Applicants may schedule a teleconference with the S&T Office of SAFETY Act Implementation (“OSAI”) to discuss specific information needed to support the SAFETY Act evaluation of a C-UAS, by calling the SAFETY Act Help Desk at 866-788-9318.