



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION**: Policy and
Implementation Guidance on Use of
Federal Highway Administration Funds
and Activities “In Connection With”
Covered Unmanned Aircraft Systems
(Policy No. FHWA-HIF-26-011)

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In Reply Refer To:
HIF

To: Division Administrators
Director of Field Services
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Division Directors

1. Authority and Purpose

This document establishes the official Federal Highway Administration (FHWA) Policy on Covered Unmanned Aircraft Systems (UAS), as implemented through the administrative guidance set forth below.

This Policy implements Section 1825 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2024, Pub. L. 118-31 (Section 1825 of the FY 2024 NDAA)¹ and incorporates the direction provided in the Office of Management and Budget (OMB) Memorandum M-26-02 (OMB M-26-02), Ensuring Government Use of Secure UAS’s and Supporting United States Producers.²

Except for the statutes and regulations cited, the contents of this document do not have the force and effect of law and are not meant to bind the States or the public in any way. This document is intended only to provide information regarding existing requirements under the law or Agency policies.

2. Effective Date

¹ Section 1821 of the FY 2024 NDAA provides that Subtitle B of Title XVIII (Sections 1821–1833) may be cited as the “American Security Drone Act of 2023”.

² <https://www.whitehouse.gov/wp-content/uploads/2025/11/M-26-02-Ensuring-Government-Use-of-Secure-Unmanned-Aircraft-Systems-and-Supporting-United-States-Producers.pdf>

This guidance is effective immediately. The statutory requirements in Section 1825 of the FY 2024 NDAA are binding as of the statutory effective date for all applicable actions. As such, recipients of FHWA funds must ensure compliance with Section 1825 of the FY 2024 NDAA (Effective December 22, 2025) and with OMB M-26-02 (Effective May 20, 2026). Recipients are responsible for ensuring that subrecipients comply with Section 1825 of the FY 2024 NDAA. See 23 U.S.C. 106(g) and Title 2, Code of Federal Regulations (CFR), Part 200.332.

3. Definitions

For the purposes of this guidance, the following definitions apply:

- *Covered Foreign Entity* Section 1822 of the FY 2024 NDAA directs the Federal Acquisition Security Council (FASC) develop and maintain the list of covered foreign entities in the System for Award Management (SAM) at <https://www.sam.gov>. See also 48 CFR 40.201.
- In accordance with Section 1822 of the FY 2024 NDAA, the FASC list includes entities in the following categories:
 - (A) An entity included on the Consolidated Screening List.
 - (B) Any entity that is subject to extrajudicial direction from a foreign government, as determined by the Secretary of Homeland Security.
 - (C) Any entity determined by the Secretary of Homeland Security, in coordination with the Attorney General, Director of National Intelligence, and the Secretary of Defense, poses a national security risk.
 - (D) Any entity domiciled in the People's Republic of China or subject to the influence or control by the Government of the People's Republic of China or the Communist Party of the People's Republic of China, as determined by the Secretary of Homeland Security.
 - (E) Any subsidiary or affiliate of an entity described in subparagraphs (A) through (D).
- *Covered UAS* means a UAS manufactured or assembled by a covered foreign entity (see *FASC-prohibited unmanned aircraft system* at 48 CFR 40.201).
- *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)) (see 48 CFR 40.201).

- *UAS* means an unmanned aircraft and associated elements, including communication links and the components that control the unmanned aircraft, required for the operator to operate safely and efficiently in the national airspace system. Consistent with 48 CFR 40.201, this includes all hardware, software, and firmware components essential for flight, data transmission, or mission performance.
- *Recipient* means an entity that receives a Federal award directly from a Federal Agency to carry out an activity under a Federal program (see 2 CFR 200.1).

4. Scope and Applicability

- In accordance with Section 1825 of the FY 2024 NDAA, this guidance applies to the use of Federal financial assistance administered by FHWA, including funds provided through grants, cooperative agreements, loans, and contracts that include the use of Federal funds in the procurement of a UAS or in connection with the operation of an unmanned aircraft or UAS.
- This Policy implements the statutory prohibitions of Section 1825(a) of the FY 2024 NDAA, which mandates that Federal funds may not be used to procure a covered UAS or operate such a system in connection with a Federal project. Accordingly, this guidance governs activities including, but not limited to:
 - a) The procurement or acquisition of UAS hardware, software, firmware, and related services using FHWA funds.
 - b) The operation of any UAS procured with FHWA funds.
 - c) UAS operations performed “in connection with” a FHWA funded project, which includes any activity used to support, inspect, document, monitor, or verify the performance of FHWA funded work, regardless of whether the specific UAS operation is funded with Federal or non-Federal funds.

5. Guidance for Recipients of FHWA Funds for the Procurement of UAS and Use “In Connection With” FHWA Funded Work

In accordance with Section 1825 of the FY 2024 NDAA and OMB M-26-02, recipients may not use Federal funds to procure a covered UAS or operate or in connection with the operation of a covered UAS. Procurement includes the purchase of covered UAS by any recipients or subrecipients with Federal funds. Operation “in connection with” Federal funds (including Federal funds used by both recipients and subrecipients) includes any project or activity that is funded with Federal funds.

This guidance does not apply to exclusively State-funded covered UAS activities that are not used in connection with any federally funded project or activity. To ensure compliance, recipients should maintain internal policies and operational records sufficient to distinguish between State-funded UAS activities and those performed “in connection with” FHWA-funded work. Examples of these distinctions appear in Appendix A. In accordance with 23 U.S.C. 106(g) and 2 CFR 200.332, recipients are responsible for ensuring the compliance of subrecipients.

During acquisition planning and solicitation development, recipients should ensure that UAS procurement and operations requirements are described with sufficient detail to ensure vendors provide offers that are responsive to information security requirements. Prior to a UAS being acquired, operated, or maintained in connection with FHWA funds, the recipient should obtain and retain comprehensive documentation to verify compliance with this guidance, pursuant to the information security and acquisition guidance found in OMB M-26-02.

Pursuant to the oversight requirements of Section 1825 of the FY 2024 NDAA (American Security Drone Act of 2023) and the information security mandates of OMB M-26-02, the recipient shall obtain and retain comprehensive documentation on file and made available for inspection by FHWA upon request to ensure that no covered UAS is procured or utilized in connection with FHWA funded work. Furthermore, recipients should include contractual remedies and audit rights within their agreements to effectively enforce these certifications. In accordance with 2 CFR 200.334, recipients and subrecipients must retain these certifications and provenance records for a period of 3 years from the date of submission of the final expenditure report, or as otherwise required for equipment disposition.

Where UAS will process, store, or transmit information into FHWA systems, recipients should implement technical and procedural safeguards consistent with OMB M-26-02, including access controls (such as multifactor authentication where appropriate), integrity checks for firmware and software updates, encryption of sensitive data in transit and at rest, isolation of update procedures from enterprise networks, and, where practicable, remote security controls (e.g., remote wipe capabilities). Recipients should preserve control over the destination and storage of Federal data and retain the ability to opt out of forced uploads to third-party systems.

If a recipient discovers that a covered UAS has been purchased or used in connection with FHWA funds, the recipient should investigate and notify the appropriate FHWA Division Office. In accordance with 23 CFR 1.36 and the reporting standards in OMB M-26-02, the recipient should provide a corrective action plan that includes divestiture, replacement, or other remedial measures acceptable to the appropriate FHWA Division Office to restore project compliance. The exemptions in subsections (b), (c), and (d) of Section 1825 the FY 2024 NDAA are not applicable to Federal funding made available by FHWA.

6. Responsibilities Regarding UAS Oversight

Consistent with the Stewardship and Oversight Agreements established between FHWA and each State DOT, FHWA Division Offices should incorporate UAS guidance compliance into their ongoing risk-based oversight activities. As a preliminary step in the oversight process, FHWA Division Offices may request State DOTs provide documentation concerning their compliance with Section 1825 of the FY 2024 NDAA, such as supplier traceability records, firmware and software provenance, or other supporting documentation to verify the status of any UAS equipment or service.

For recipients other than State DOTs, FHWA Divisions Offices should work with the Office of Administration to ensure compliance with Section 1825 of the FY 2024 NDAA.

7. Illustrative Examples

Appendix A provides illustrative examples clarifying which activities are considered “in connection with” FHWA funded work (and thereby covered by the prohibition) versus those that are stand-alone recipient activities not subject to this guidance. These examples are non-exhaustive and intended to assist recipients in applying the guidance to common operational scenarios.

8. Model Language and Sample Templates

Appendix B contains model procurement and contract clauses. These documents are intended to be resources that recipients and contracting officers may adopt or adapt to ensure compliance with this guidance and with the expectations laid forth in OMB M-26-02.

9. Points of Contact

Recipients with questions about this guidance, the content of Appendix A or B, or about specific planned procurements or operations should contact the FHWA UAS Program Manager at FHWAUASOperations@dot.gov, or their local FHWA Division Office in their State.

10. Records and Retention

Recipients shall retain all records, including certifications, vendor attestations, procurement records, supply chain and impact assessments, and documentation of corrective actions, in accordance with the record retention requirements established in 2 CFR 200.334 and applicable FHWA and State DOT records policies. Recipients shall make such records available to FHWA upon request in accordance with 23 CFR 1.5 and 2 CFR 200.337.

Attachments

- Appendix A: Illustrative Examples and Interpretive Guidance (Non-Exhaustive)
- Appendix B: Model Language and Sample Templates (Illustrative)

Appendix A—Illustrative Examples and Interpretive Guidance (Non-Exhaustive)

Examples considered “in connection with” the Federal Highway Administration (FHWA) funded work (prohibited if Unmanned Aircraft Systems (UAS) is covered):

- A State contract that is funded only with State funds that provides for aerial construction inspection flights to verify progress on a Federal-aid highway project; the flights document FHWA funded work and are necessary for contractor payment determinations.
- A contractor hired through a contract funded only with State funds to perform damage assessments on a FHWA funded Emergency Relief bridge project uses a covered UAS to document damage and produce deliverables required by the Federal project agreement.
- A State Department of Transportation staff member uses a covered UAS (purchased with State funds) to perform aerial surveys that directly inform the acceptance or payment of FHWA funded construction work.

Examples not covered by this guidance (not “in connection with” FHWA funded work), provided no Federal program or activity is supported or aided:

- A State funded research flight unrelated to any FHWA funded project and not used to inspect, monitor, or otherwise support FHWA funded work (e.g., independent environmental survey for non-Federal program purposes).
- Standalone State bridge inspection activity that is fully State-funded and not associated with a specific FHWA-funded project agreement. However, such use is subject to 23 U.S.C. 144 and 151, which mandate that data used to satisfy National Bridge Inspection Standards reporting requirements into FHWA systems, or as the basis for Federal-aid project authorization, must meet Federal information integrity and supply chain standards. Therefore, any UAS utilized for these purposes must comply with the requirements of Section 1825 of the FY 2024 National Defense Authorization Act and Office of Management and Budget Memorandum M-26-02 to ensure the security of Federal-aid data and systems.

Appendix B—Model Language and Sample Templates (Illustrative)

B.1 Contract Clause—National Defense Authorization Act (NDAA)/Office of Management and Budget Compliance (Illustrative)

Recipients and subrecipients may consider utilizing the following language, which is based on the Federal standard at Title 48, Code of Federal Regulations (CFR), Part 52.240-1:

“The Contractor is prohibited from procuring or operating a covered unmanned aircraft system (UAS) manufactured or assembled by a covered foreign entity in the performance of this contract, as defined by Section 1825 of the FY 2024 NDAA and 48 CFR 40.201. The Contractor shall provide, upon request, documentation of the manufacturer and supply chain provenance for any UAS utilized in connection with this project. Material misrepresentation of UAS origin shall be grounds for contract termination and other remedies under applicable law.”