

## CLIENT ALERT

### Concerns Over Chinese Made Drones Continue as Executive Agencies Update their Drone Policies

Oct.19.2020

Lawmakers continue to negotiate the 2021 National Defense Authorization Act (“NDAA”), which could prohibit federal procurement or operation of certain foreign-made drones, including those from China, due to national security concerns. Meanwhile, some executive agencies are moving forward with agency-specific restrictions on use of federal funds for drone operations that rely on Chinese-made aircraft. The most recent updates come from the Department of Interior (“DOI”) and the Department of Justice (“DOJ”).

#### Internal Memorandum Allows Department of Interior Drones to Return to the Skies, with a Catch

Last week, DOI released an internal memorandum (provided in full text below) allowing the Department to purchase certain American-made small unmanned aircraft systems. The memorandum comes almost nine months after the Department grounded its civilian drone program indefinitely in response to growing concerns that Chinese-manufactured UAS or UAS components could pose a security risk. That move saw the DOI halt use of its fleet of nearly 1,000 drones except for approved emergency response operations such as wildland fire response and search and rescue operations.

This week’s memorandum opens the possibility for DOI to resume its full-scale drone program, provided that it uses drones on the Department of Defense’s list of approved drone products. The products, or “Blue sUAS,” come from five US manufacturers: Skydio, Parrot, Altavian, Teal Drones, and Vantage Robotics. The drones reportedly comply with the 2020 National Defense Authorization Act, which prohibits the U.S. military from operating or procuring drones and drone components made in China, and are available for purchase on the GSA Schedule. The memorandum allows DOI to use Blue sUAS to conduct emergency and non-emergency missions without special approval. Drones that are not on the Blue sUAS list may continue to be used for emergency purposes, but only with approval from the Assistant Secretary for Policy, Management, and Budget.



THE SECRETARY OF THE INTERIOR  
WASHINGTON

OCT 06 2020

Memorandum

To: Assistant Secretaries  
Bureau Heads

From: Secretary 

Subject: Important Update on Secretary's Order 3379 and Blue Small Unmanned Aircraft Systems

Secretary's Order 3379 (Order) temporarily grounded the Department of the Interior's (Department) drone or Unmanned Aircraft Systems (UAS) fleet for non-emergency operations in order to "better ensure the cybersecurity and supply of American technology of UAS procured for use and operation." Drone operations for emergency purposes, such as fighting wildland fires, measures to prevent an anticipated wildland fire, response to a national or state emergency involving human safety, and human search and rescue have continued under the Order.

Subsequent implementing guidance from the Assistant Secretary for Policy, Management and Budget (PMB) has offered additional information on what constitutes a Designated UAS, the applicability of the Order to various non-Department entities, and the procedures for obtaining Departmental approval for, or reporting use of, a Designated UAS for an authorized purpose.

While the Order has been in effect, the Department of Defense's Defense Innovation Unit recently finalized its small Unmanned Aircraft Systems (sUAS) initiative, which is called Blue sUAS. This capability provides secure and trusted sUAS for Federal government operations. I invite you and appropriate staff to look at <https://www.diu.mil/autonomy-blue-suas>, to determine whether those solutions may help meet the Department's needs. These Blue sUAS are available on the General Services Administration schedule and Advantage.

Drones serve important functions to missions of the Department. The Blue sUAS availability may help fulfill these emergency and non-emergency missions and training for such missions, which are consistent with the Department's national security interests. Use of Blue sUAS is exempt from the PMB approval and reporting procedures. For additional questions or information on this issue, do not hesitate to reach out to the Assistant Secretary for Policy, Management and Budget.

## DOJ Makes Ban on Chinese Drones Official

In related news, DOJ, recently released an order banning the use of Office of Justice Programs ("OJP") funds for procurement or operation of drones manufactured by a "Covered Foreign Entity," which is defined as any entity that is determined or designated within DOJ to be subject to or vulnerable to extrajudicial direction from a foreign government. The definition is a clear reference to China and to concerns that data collected by Chinese owned manufacturers could be transmitted to servers in China, where it could be accessed by the Chinese government under national security laws passed in 2017.

While the order does permit exceptions for operations related to research, training, criminal investigations, or national security, it remains to be seen whether DOJ will create a streamlined process for agencies to apply for an exception. Without an exception, federal agencies and state, local, and tribal governments relying on OJP funds for their drone programs cannot purchase or operate Chinese-made drones or drones with Chinese-made components. The order does not specify whether the ban applies to existing operations, but a mandatory grounding of OJP-funded operations that use Chinese-made drones that do not qualify for an exception would be consistent with previous Executive Branch approaches. Because the ban applies to use of OJP funds at any level, including subcontracts and lower tier procurement vehicles, law enforcement agencies and their

contractors will need to carefully review the consequences of this order and the effects it may have on existing drone program contracts.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

**Gabriel M. Ramsey**

Partner – San Francisco  
Phone: +1 415.365.7207  
Email: [gramsey@crowell.com](mailto:gramsey@crowell.com)

**Scott L. Winkelman**

Partner – Washington, D.C.  
Phone: +1 202.624.2972  
Email: [swinkelman@crowell.com](mailto:swinkelman@crowell.com)

**Mary-Caitlin Ray**

Counsel – Washington, D.C.  
Phone: +1 202.688.3524  
Email: [mray@crowell.com](mailto:mray@crowell.com)

**Matthew B. Welling**

Counsel – Washington, D.C.  
Phone: +1 202.624.2588  
Email: [mwelling@crowell.com](mailto:mwelling@crowell.com)