

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 9087
OFFERED BY MR. MILLER OF OHIO**

At the appropriate place, insert the following:

1 **SEC. ____ . MITIGATING CREDIBLE THREATS.**

2 (a) IN GENERAL.—Notwithstanding section 46502 of
3 title 49, sections 32, 1030, 1367, and chapters 119 and
4 206 of title 18, or section 705 of the Communications Act
5 of 1934 (47 U.S.C. 605), the Secretary of State may take,
6 and may authorize appropriate personnel, including Bu-
7 reau of Diplomatic Security personnel and contractors,
8 with assigned duties that include safety, security, or pro-
9 tection of personnel, facilities, or assets, to take, such ac-
10 tions described in subsection (b)(1) that are necessary to
11 mitigate a credible threat (as defined by the Secretary of
12 State, in consultation with the Federal Aviation Adminis-
13 tration) that an unmanned aircraft system or unmanned
14 aircraft poses to the safety or security of a covered facility
15 or asset or to mitigate a credible threat against a person
16 authorized to receive protection by the Department of
17 State.

18 (b) ACTIONS DESCRIBED.—

1 (1) IN GENERAL.—The actions described in this
2 paragraph are the following:

3 (A) During the operation of the unmanned
4 aircraft system, detect, identify, monitor, and
5 track the unmanned aircraft system or un-
6 manned aircraft, without prior consent, includ-
7 ing by means of intercept or other access of a
8 wire communication, an oral communication, or
9 an electronic communication used to control the
10 unmanned aircraft system or unmanned air-
11 craft.

12 (B) Warn the operator of the unmanned
13 aircraft system or unmanned aircraft, including
14 by passive or active, and direct or indirect phys-
15 ical, electronic, radio, and electromagnetic
16 means.

17 (C) Disrupt control of the unmanned air-
18 craft system or unmanned aircraft, without
19 prior consent, including by disabling the un-
20 manned aircraft system or unmanned aircraft
21 by intercepting, interfering, or causing inter-
22 ference with wire, oral, electronic, or radio com-
23 munications used to control the unmanned air-
24 craft system or unmanned aircraft.

1 (D) Seize or exercise control of the un-
2 manned aircraft system or unmanned aircraft.

3 (E) Seize or otherwise confiscate the un-
4 manned aircraft system or unmanned aircraft.

5 6. Use reasonable force to disable, damage, or
6 destroy the unmanned aircraft system or un-
7 manned aircraft. 2.

8 (2) RESEARCH, TESTING, TRAINING, AND EVAL-
9 UATION.— Notwithstanding section 46502 of title
10 49, sections 32, 1030, 1367, and chapters 119 and
11 206 of title 18, or section 705 of the Communica-
12 tions Act of 1934 (47 U.S.C. 605), the Secretary of
13 State shall conduct research, testing, training on,
14 and evaluation of any equipment, including any elec-
15 tronic equipment, to determine its capability and
16 utility prior to the use of any such technology for
17 any action described in subsection (b)(1). Personnel,
18 including contractors, who do not have duties that
19 include the safety, security, or protection of people,
20 facilities, or assets may engage in research, testing,
21 training, and evaluation activities pursuant to this
22 section. The Secretary shall coordinate procedures
23 governing research, testing, training, and evaluation
24 for carrying out any provision in this section with
25 the Administrator of the Federal Aviation Adminis-

1 tration before initiating such activities so the Admin-
2 istrator may ensure the activities do not adversely
3 impact or interfere with safe airport operations,
4 navigation, air traffic services, or the safe and effi-
5 cient operation of the national airspace system.

6 (c) FORFEITURE.—Any unmanned aircraft system or
7 unmanned aircraft described in subsection (a) that is
8 seized by the Secretary of State is subject to forfeiture
9 to the United States pursuant to the provisions of chapter
10 46 of title 18.

11 (d) REGULATIONS AND GUIDANCE.— The Secretary
12 of State and the Secretary of Transportation, in consulta-
13 tion with the Assistant Secretary of Commerce for Com-
14 munications and Information of the National Tele-
15 communications and Information Administration, may
16 prescribe regulations and shall issue guidance in the re-
17 spective areas of each Secretary to carry out this section.

18 (e) COORDINATION.—The Secretary of State shall de-
19 velop the actions described in subsection (b)(1) in coordi-
20 nation with the Secretary of Transportation (through the
21 Administrator of the Federal Aviation Administration),
22 and the Assistant Secretary of Commerce for Communica-
23 tions and Information of the National Telecommuni-
24 cations and Information Administration. The Secretary of
25 State shall coordinate with the Administrator of the Fed-

1 eral Aviation Administration prior to any action author-
2 ized by this section so the Administrator may ensure the
3 action does not adversely impact or interfere with safe air-
4 port operations, navigation, air traffic services, or the safe
5 and efficient operation of the national airspace system.
6 The Secretary of State shall coordinate the development
7 of guidance and regulations under subsection (d) with the
8 Federal Aviation Administration, the Federal Communica-
9 tions Commission, and the National Telecommunications
10 and Information Administration. Before issuing any guid-
11 ance under subsection (d), or otherwise implementing this
12 section, the Secretary of State shall coordinate with the
13 Administrator of the Federal Aviation Administration to
14 ensure such guidance or implementation is designed to
15 preserve safe airport operations, navigation, air traffic
16 services, and the safe and efficient operation of the na-
17 tional airspace system.

18 (f) **PRIVACY PROTECTION.**—The regulations pre-
19 scribed or guidance issued under subsection (d) shall en-
20 sure that—

21 (1) the interception or acquisition of, access to,
22 or maintenance or use of communications to or from
23 an unmanned aircraft system under this section is
24 conducted in a manner consistent with the First and

1 Fourth Amendments to the Constitution and appli-
2 cable provisions of Federal law;

3 (2) communications to or from an unmanned
4 aircraft system are intercepted, acquired, or accessed
5 only to the extent necessary to support the actions
6 described in subsection (b);

7 (3) records of such communications are main-
8 tained only for as long as necessary, and in no event
9 more than 180 days, unless the Secretary of State
10 determines that maintenance of such records—

11 (A) is necessary to investigate or assist in
12 the prosecution of a violation of law;

13 (B) is necessary to directly support an on-
14 going security, law enforcement, or national de-
15 fense operations; or

16 (C) is required under Federal statute, regu-
17 lation, or for the purpose of litigation; and 4.
18 such communications are not disclosed outside
19 the Department of State unless the disclosure—

20 (i) is necessary to investigate or assist
21 in the prosecution of a violation of law;

22 (ii) would support the Department of
23 Defense, a Federal law enforcement, intel-
24 ligence, or security agency, or a State,

1 local, tribal, or territorial law enforcement
2 agency;

3 (iii) would support the enforcement
4 activities of a regulatory agency of the
5 Federal Government in connection with a
6 criminal or civil investigation of, or any
7 regulatory, statutory, or other enforcement
8 action relating to, an action described in
9 subsection (b);

10 (iv) is between the Department of
11 State and a Federal, state, local, tribal, or
12 territorial law enforcement agency in the
13 course of a security or protection operation
14 of either agency or a joint operations of
15 such agencies; or

16 (v) is otherwise required by law.

17 (g) BUDGET.—The Secretary of State shall submit
18 to Congress, as a part of the budget presentation docu-
19 ments for each fiscal year following the enactment of this
20 provision, a consolidated funding display that identifies
21 the funding source for the actions described in subsection
22 (b)(1) within the Department of State. The funding dis-
23 play shall be in unclassified form but may contain a classi-
24 fied annex.

25 (h) ASSISTANCE AND SUPPORT.—

1 (1) FACILITIES AND SERVICES OF OTHER
2 AGENCIES AND NON-FEDERAL ENTITIES.— The Sec-
3 retary of State is authorized to use, solicit, or accept
4 from any other federal agency, or any other public
5 or private entity, supplies, services, or funds to fa-
6 cilitate or take the actions provided for in subsection
7 (b). Such Secretary may use, solicit, or accept such
8 supplies, services, or funds with or without reim-
9 bursement and notwithstanding any provision of law
10 that would prevent such use or acceptance. Such
11 Secretary in implementing (1)(3)(C) may enter into
12 agreements with other executive agencies and with
13 appropriate officials of other non-Federal public or
14 private agencies or entities, as may be necessary and
15 proper to carry out their responsibilities under this
16 section.

17 (2) MUTUAL SUPPORT.—The Secretary of State
18 is authorized to provide support or assistance, upon
19 the request of an agency or department conducting
20 a mission specified in section 124n of title 6, United
21 States Code, section 130i of title 10, United States
22 Code, or section 4510 of the Atomic Energy Defense
23 Act (50 U.S.C. 2661), in fulfilling the requesting
24 agency's or department's roles and responsibilities
25 for that mission, when exigent circumstances exist,

1 limited to a specified timeframe and location, within
2 available resources, on a reimbursable or non-reim-
3 bursable basis, in coordination with the Federal
4 Aviation Administration.

5 (i) SEMIANNUAL BRIEFINGS.—

6 (1) IN GENERAL.—On a semiannual basis be-
7 ginning six months following the enactment of this
8 provision during the seven-year period beginning
9 upon enactment of this provision, the Secretary of
10 State and the Secretary of Transportation shall
11 jointly provide a briefing to the appropriate congres-
12 sional committees on the activities carried out pursu-
13 ant to this section. Such briefings shall include a de-
14 scription of—

15 (A) policies, programs, and procedures to
16 mitigate or eliminate impacts of such activities
17 to the National Airspace System;

18 (B) instances where actions described in
19 subsection (b)(1) have been taken;

20 (C) the guidance, policies, or procedures
21 established to address privacy, civil rights, and
22 civil liberties issues implicated by the actions
23 authorized under this section and any changes
24 or subsequent efforts that would significantly
25 affect privacy, civil rights, or civil liberties;

1 (D) how the Secretaries have informed the
2 public as to the possible use of authorities
3 under this section;

4 (E) how the Secretaries have engaged with
5 Federal, State, and local law enforcement agen-
6 cies to implement and use such authorities; and

7 (F) a description of the impact of the au-
8 thorities granted under this section on lawful
9 operator access to national airspace and UAS
10 integration into the national airspace system.

11 (2) FORM.—Each briefing under paragraph (1)
12 shall be in unclassified form but may be accom-
13 panied by an additional classified briefing.

14 (j) RULE OF CONSTRUCTION.—Nothing in this sec-
15 tion may be construed to vest—

16 (1) any authority of the Secretary of Transpor-
17 tation or the Administrator of the Federal Aviation
18 Administration under title 49, United States Code,
19 in the Secretary of State; and

20 (2) any authority of the Secretary of State in
21 the Secretary of Transportation or the Adminis-
22 trator of the Federal Aviation Administration.

23 (k) TERMINATION.—The authority provided by sub-
24 section (a) shall terminate on the date that is 7 years after
25 the enactment of this section.

1 (l) DEFINITIONS.—In this section:

2 (1) APPROPRIATE CONGRESSIONAL COMMIT-
3 TEES.—The term “appropriate congressional com-
4 mittees” means—

5 (A) the Committee on Foreign Affairs, the
6 Permanent Select Committee on Intelligence,
7 the Committee on the Judiciary, and the Com-
8 mittee on Transportation and Infrastructure of
9 the House of Representatives; and

10 (B) the Committee on Foreign Relations,
11 the Select Committee on Intelligence, the Com-
12 mittee on the Judiciary, and the Committee on
13 Commerce, Science, and Transportation of the
14 Senate.

15 (2) BUDGET.—The term “budget”, with respect
16 to a fiscal year, means the budget for that fiscal
17 year that is submitted to Congress by the President
18 under section 1105(a) of title 31.

19 (3) COVERED FACILITY OR ASSET.—The term
20 “covered facility or asset” means any facility or
21 asset that—

22 (A) is identified as high-risk and a poten-
23 tial target for unlawful unmanned aircraft ac-
24 tivity by the Secretary of State, in coordination
25 with the Federal Aviation Administration, with

1 respect to potentially impacted airspace,
2 through a risk-based assessment for purposes of
3 this section;

4 (B) is located in the United States (includ-
5 ing the territories and possessions of the United
6 States);

7 (C) directly relates to the security and pro-
8 tective missions of the Department of State, in-
9 cluding those consistent with—

10 (i) the Omnibus Diplomatic Security
11 and Antiterrorism Act of 1986 (22 U.S.C.
12 § 4801, et seq.); or

13 (ii) Section 37 of the State Depart-
14 ment Basic Authorities Act of 1956 (22
15 U.S.C. § 2709).

16 (4) ELECTRONIC COMMUNICATION; INTERCEPT;
17 ORAL COMMUNICATION; WIRE COMMUNICATION.—4.
18 The terms “electronic communication”, “intercept”,
19 “oral communication”, and “wire communication”
20 have the meanings given those terms in section 2510
21 of title 18, United States Code.

22 (5) PERSONNEL.—

23 (A) IN GENERAL.—Except as provided
24 under subparagraph (B), the term “personnel”
25 means officers, employees, and contractors of

1 the Department of State with assigned duties
2 that include safety, security, or protection of
3 personnel, facilities, or assets and who are
4 trained and certified to perform such duties, in-
5 cluding training specific to countering un-
6 manned aircraft threats and mitigating risks in
7 the national airspace.

8 (B) QUALIFICATIONS.—To qualify as “per-
9 sonnel” under this definition contractors con-
10 ducting operations under sections (a) and (b)
11 must—

12 (i) be directly contracted by the De-
13 partment of State;

14 (ii) operate at a government owned or
15 government leased facility;

16 (iii) not conduct inherently govern-
17 mental functions; and

18 (iv) be trained and certified by the
19 Department of State as meeting estab-
20 lished Department guidance and regula-
21 tions.

22 (6) RISK-BASED ASSESSMENT.—The term
23 “risk-based assessment” includes an evaluation of
24 threat information specific to a covered facility or
25 asset and, with respect to potential impacts on the

1 safety and efficiency of the national airspace system
2 and the needs of law enforcement and national secu-
3 rity at each covered facility or asset identified by the
4 Secretary, of each of the following factors:

5 (A) Potential impacts to safety, efficiency,
6 and use of the national airspace system, includ-
7 ing potential effects on manned aircraft and un-
8 manned aircraft systems, aviation safety, air-
9 port operations, infrastructure, and air naviga-
10 tion services related to the use of any system or
11 technology for carrying out the actions de-
12 scribed in subsection (b)(1).

13 (B) Options for mitigating any identified
14 impacts to the national airspace system related
15 to the use of any system or technology, includ-
16 ing minimizing when possible the use of any
17 technology which disrupts the transmission of
18 radio or electronic signals, for carrying out the
19 actions described in subsection (b)(1).

20 (C) Potential consequences of the impacts
21 of any actions taken under subsection (b)(1) to
22 the national airspace system and infrastructure
23 if not mitigated.

24 (D) The ability to provide reasonable ad-
25 vance notice to aircraft operators consistent

1 with the safety of the national airspace system
2 and the needs of law enforcement and national
3 security.

4 (E) The setting and character of any cov-
5 ered facility or asset, including whether it is lo-
6 cated in a populated area or near other struc-
7 tures, whether the facility is open to the public,
8 whether the facility is also used for nongovern-
9 mental functions, and any potential for inter-
10 ference with wireless communications or for in-
11 jury or damage to persons or property.

12 (F) Potential consequences to national se-
13 curity, public safety, or law enforcement if
14 threats posed by unmanned aircraft systems are
15 not mitigated or resolved.

16 (7) UNMANNED AIRCRAFT; UNMANNED AIR-
17 CRAFT SYSTEM.—The terms “unmanned aircraft”
18 and “unmanned aircraft system” have the meanings
19 given those terms in section 44801 of title 49,
20 United States Code.

