

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.

Parent topic: [40.202 Prohibition on the procurement and operation of unmanned aircraft systems manufactured or assembled by American Security Drone Act-covered foreign entities.](#) s.