

Department of Justice Policy Guidance¹

Domestic Use of Unmanned Aircraft Systems (UAS)

INTRODUCTION

The law enforcement agencies of the Department of Justice (“the Department”) work diligently to protect the American people from national security threats, enforce our nation’s laws, and ensure public safety. In doing so, these agencies use a wide variety of investigative methods. Some of these methods have been in use for decades; others are relatively new and rely on technological innovation. In all cases, investigations and other activities must be conducted consistent with the Constitution and the laws of the United States—and with our commitment to protecting privacy and civil liberties.

In recent years, Unmanned Aircraft Systems (UAS)² have emerged as a viable law enforcement tool. UAS have been used to support kidnapping investigations, search and rescue operations, drug interdictions, and fugitive investigations. While they are, in many ways, similar to the manned aircraft that have been in use for many years, they have the potential to provide law enforcement with additional flexibility and yield life-saving benefits. UAS also have the potential to be cost-effective in a time of shrinking government resources. For these reasons, UAS are likely to come into greater use.

As technology advances and enhances our ability to use these new tools, it is important to continue to assess how we use them. A Departmental working group³ has studied the Department’s use of UAS over the last several years and has considered how the technology is likely to evolve in the near future. This policy guidance flows from the working group’s discussions and sets forth principles that will apply Department-wide. This policy also applies to

¹ This policy guidance is intended only to improve the internal management of the Department of Justice. It is not intended to and does not create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does it create any right of review in an administrative, judicial or any other proceeding.

² “Unmanned Aircraft System” means an unmanned aircraft (an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft) and associated elements (including communication links and components that control the unmanned aircraft) that are required for the pilot or system operator in command to operate safely and efficiently in the National Airspace System. For purposes of this policy, reference to “UAS” includes all onboard sensor equipment.

³ The Department’s working group was led by the Office of Legal Policy and included the Department’s Chief Privacy and Civil Liberties Officer and representatives of the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Criminal Division, the Office of Community Oriented Policing, the Civil Rights Division, the Office of the Deputy Attorney General, the Drug Enforcement Administration, the Federal Bureau of Investigation, the National Security Division, the Executive Office for United States Attorneys, the Office of Justice Programs, the Office of Privacy and Civil Liberties, the United States Marshals Service, and the Office of the Chief Information Officer.

all instances in which Department components use UAS to support Federal agencies and/or State and Local law enforcement agencies.

This guidance will help ensure that the Department continues to carry out its law enforcement and national security missions while respecting individuals' privacy, civil rights, and civil liberties. It will also help ensure an appropriate level of accountability and transparency. This policy guidance does not replace, and is complementary to, the Federal Aviation Administration rules and regulations that control each and every UAS deployment and help ensure the safe operation of all aircraft, including UAS. This policy guidance is also consistent with the Presidential Memorandum, "Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems," issued by President Barack Obama on February 15, 2015.

RESPECT FOR CIVIL RIGHTS AND CIVIL LIBERTIES

Respect for civil rights and civil liberties is a core tenet of our democracy. In executing the Department's law enforcement and national security missions, personnel must rigorously support and defend the Constitution and continue to uphold the laws, regulations and policies that govern our activities and operations.

As with all investigative methods, UAS must be operated consistent with the U.S. Constitution. The Fourth Amendment protects individuals from unreasonable searches and seizures and generally requires law enforcement to seek a warrant in circumstances in which a person has a reasonable expectation of privacy. Moreover, Department personnel may never use UAS solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution and laws of the United States. Department personnel may never use UAS to engage in discrimination that runs counter to the Department's policies on race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity. Department personnel must also be trained to understand and abide by all relevant federal legal standards applicable to the use of UAS, and to seek advice from legal counsel as necessary.

In addition, UAS may only be used in connection with properly authorized investigations and activities. Statutory authorities, the Attorney General's Guidelines, and other relevant agency policies and guidance define the scope of authorized investigations and activities and require regular supervisory review and approval. UAS must continue to be used within the context of these existing safeguards.

Further, even within the context of properly authorized activities, personnel often must choose among different investigative methods that are operationally sound, reasonable, and effective, but may be more or less intrusive relative to individuals' privacy and civil liberties. Prior to using UAS, Department personnel must assess the relative intrusiveness of the

proposed use of UAS, and balance it against the particular investigative need.⁴ This is both a logical process and an exercise in judgment, but the overall principle remains: in deciding whether to use UAS, Department personnel must consider and, if reasonable based on the facts and circumstances of the investigation, use the least intrusive means to accomplish an operational need.

PROTECTION OF PRIVACY

The Department operates under a set of rules, policies, and laws that control the collection, retention, dissemination, and disposition of records that contain personally identifiable information. For example, the Privacy Act contains provisions on unauthorized use and disclosure of information about individuals, and imposes civil penalties on agencies and criminal penalties on agency personnel for violations of applicable requirements. As with personally identifiable information collected in the course of any investigation, these authorities apply to information collected via UAS. Consistent with applicable existing laws and requirements, the Department's use of UAS shall include the practices identified below.

As noted above, the Department shall only collect, use and disseminate information obtained from UAS for an authorized purpose. The Department shall not retain information collected using UAS that may contain personally identifiable information for more than 180 days unless retention of the information is determined to be necessary for an authorized purpose or is maintained in a system of records covered by the Privacy Act.

Data collected by UAS that is retained must be safeguarded in accordance with applicable Federal laws, Executive Orders, directives, policies, regulations, standards, and guidance. These authorities ensure that Department personnel with access to such data follow practices that are consistent with the protection of privacy and civil liberties. Use of all Department information systems may be monitored, recorded, and subject to audit, and unauthorized collection, retention, or dissemination of data is prohibited. Further, the Department has procedures in place to review, investigate, and address privacy and civil liberties complaints.

Senior Component Officials for Privacy in agencies using UAS must conduct annual privacy reviews of their agency's use of UAS to ensure compliance with existing laws, regulations, and Department policy, and to identify potential privacy risks. They must also, where appropriate, make recommendations to ensure that UAS will continue to be used in a manner consistent with the U.S. Constitution and all applicable laws, regulations, and policies, including those protecting privacy and civil liberties.

⁴ In assessing the intrusiveness of UAS and the investigative need, personnel must consider factors such as whether the subject enjoys a reasonable expectation of privacy relative to the proposed use of UAS, the scope of the information sought, the scope of the proposed use of UAS, the risk of disclosure to the subject, the seriousness of the crime or national security threat, the strength and significance of the information to be obtained, the efficiency of the method and alternative means available, the amount of information already known about the subject, and the operational security needs of the investigation.

ACCOUNTABILITY

The Department promotes accountability by requiring its personnel to accept responsibility for the actions they undertake—and to evaluate the potential consequences of their decisions. The Department imposes codes of conduct to guide employees in the use of all investigative methods, including UAS. As with the use of any technology, there must continue to be mechanisms to hold the Department and its employees accountable.

Part of accountability is ensuring that Department personnel are appropriately trained and supervised. Department personnel whose responsibility it is to manage, supervise, maintain, fly, and/or otherwise use UAS must receive training on this policy and the underlying policies incorporated herein.

Moreover, approval authority for the use of UAS will be set at an appropriate and consistent level across the Department. At a minimum, each time UAS are deployed, approval must be granted (1) at the Assistant Special Agent in Charge-or-equivalent level at the relevant field office, and (2) by an executive level supervisor within the agency's aviation support unit or a designated executive level supervisor at the agency's headquarters. Additionally, since the Department may only operationally deploy UAS in connection with authorized investigations or activities, supervisors must ensure that the underlying investigations themselves have been authorized consistent with applicable guidelines and other Department policies.

Finally, federal records must be captured, managed, and retained in a manner consistent with the Federal Records Act and all other applicable authorities. As with federal records collected by other investigative tools, components are obligated to retain UAS-collected data in accordance with applicable records retention schedules.

ONGOING POLICY MANAGEMENT

As UAS technology evolves and improves, it is important that the Department continue to have adequate information about its use to ensure strategic alignment and proper evaluation of the Department's policy. To that end, this policy imposes certain new requirements.

Each component that uses UAS must designate a point of contact through which field offices will report the information outlined below to the component's headquarters and Department leadership on the use of UAS on an ongoing basis.

In addition, Department agencies that use UAS must report annually to the Deputy Attorney General on the use of UAS. The report should incorporate privacy reviews, as well as the number of UAS operational deployments (not including training or research and development flights) conducted during the reporting period and a brief description of types or categories of missions flown along with the number of each type of mission. Additionally, to the extent the agency sought assistance from, or provided assistance to, another federal, state, local, or tribal agency during the relevant time period, the number of these operational deployments and a brief

description of types or categories of missions flown along with the number of each type of mission should also be provided.

Components that have not previously disclosed any UAS operations as part of these annual reporting requirements, or that have discontinued UAS use for the duration of an annual reporting period, must notify the Deputy Attorney General prior to initiating or re-introducing UAS operations.

Department leadership will continue to engage in meaningful review of UAS as the technology advances. To facilitate this review, a standing committee comprised of a broad range of Department components will meet twice a year to evaluate any policy or regulatory changes that may be needed as a result of innovations or developments in UAS technology.

TRANSPARENCY

Rigorous adherence to the requirements set forth in this policy is not enough—to be successful in our law enforcement and national security missions, we must continue to facilitate relationships of trust with the communities we serve. Enhancing our transparency about agency operations, including how we operate UAS, creates an informed citizenry and greater confidence in the Department’s decision-making.

Education of the public can enhance the Department’s ability to fulfill its missions and serve the American people. As appropriate, while not revealing information that might compromise law enforcement or national security needs, the Department will update its website to reflect its current policy on UAS on an ongoing basis, and will provide a general summary of UAS operations conducted by the Department during the previous year, including a brief description of types or categories of missions flown and the number of times the Department provided assistance to other federal, state, local and tribal agencies or entities.