



**U.S. Department of Homeland Security**

**Status Report  
As Directed in the**

**Presidential Memorandum:  
*Promoting Economic Competitiveness While Safeguarding  
Privacy, Civil Rights, and Civil Liberties in Domestic Use of  
Unmanned Aircraft Systems (February 15, 2015)***

**Submitted by:**

**Office for Civil Rights and Civil Liberties**

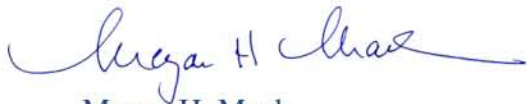
**Privacy Office**

**August 6, 2015**

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## Forward

The U.S. Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL) and the DHS Privacy Office (Privacy Office) are pleased to provide this status report on its implementation of privacy, civil rights, and civil liberties protections in the collection, use, retention, and dissemination of information captured by unmanned aircraft systems, as required by Section 1(e) of the Presidential Memorandum, *Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems (February 15, 2015)* (Presidential Memorandum).



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## Presidential Memorandum

### Section 1 Language

Section 1 sets forth the following requirements for unmanned aircraft systems (UAS):

*UAS Policies and Procedures for Federal Government Use.* The Federal Government currently operates UAS in the United States for several purposes, including to manage Federal lands, monitor wildfires, conduct scientific research, monitor our borders, support law enforcement, and effectively train our military. As with information collected by the Federal Government using any technology, where UAS is the platform for collection, information must be collected, used, retained, and disseminated consistent with the Constitution, Federal law, and other applicable regulations and policies. Agencies must, for example, comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the "Privacy Act"), which, among other things, restricts the collection and dissemination of individuals' information that is maintained in systems of records, including personally identifiable information (PII), and permits individuals to seek access to and amendment of records.

(a) *Privacy Protections* Particularly in light of the diverse potential uses of UAS in the NAS [National Airspace System], expected advancements in UAS technologies, and the anticipated increase in UAS use in the future, the Federal Government shall take steps to ensure that privacy protections and policies relative to UAS continue to keep pace with these developments. Accordingly, agencies shall, prior to deployment of new UAS technology and at least every 3 years, examine their existing UAS policies and procedures relating to the collection, use, retention, and dissemination of information obtained by UAS, to ensure that privacy, civil rights, and civil liberties are protected. Agencies shall update their policies and procedures, or issue new policies and procedures, as necessary. In addition to requiring compliance with the Privacy Act in applicable circumstances, agencies that collect information through UAS in the NAS shall ensure that their policies and procedures with respect to such information incorporate the following requirements:

(i) *Collection and Use.* Agencies shall only collect information using UAS, or use UAS-collected information, to the extent that such collection or use is consistent with and relevant to an authorized purpose.

(ii) *Retention.* Information collected using UAS that may contain PII shall not be retained for more than 180 days unless retention of the information is determined to be necessary to an authorized mission of the retaining agency, is maintained in a system of records covered by the Privacy Act, or is required to be retained for a longer period by any other applicable law or regulation.

(iii) *Dissemination.* UAS-collected information that is not maintained in a system of records covered by the Privacy Act shall not be disseminated outside of the agency unless dissemination is required by law, or fulfills an authorized purpose and complies with agency requirements.

(b) *Civil Rights and Civil Liberties Protections.* To protect civil rights and civil liberties, agencies shall:

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- (i) ensure that policies are in place to prohibit the collection, use, retention, or dissemination of data in any manner that would violate the First Amendment or in any manner that would discriminate against persons based upon their ethnicity, race, gender, national origin, religion, sexual orientation, or gender identity, in violation of law;*
- (ii) ensure that UAS activities are performed in a manner consistent with the Constitution and applicable laws, Executive Orders, and other Presidential directives; and*
- (iii) ensure that adequate procedures are in place to receive, investigate, and address, as appropriate, privacy, civil rights, and civil liberties complaints.*

*(c) Accountability. To provide for effective oversight, agencies shall:*

- (i) ensure that oversight procedures for agencies' UAS use, including audits or assessments, comply with existing agency policies and regulations;*
- (ii) verify the existence of rules of conduct and training for Federal Government personnel and contractors who work on UAS programs, and procedures for reporting suspected cases of misuse or abuse of UAS technologies;*
- (iii) establish policies and procedures, or confirm that policies and procedures are in place, that provide meaningful oversight of individuals who have access to sensitive information (including any PII) collected using UAS;*
- (iv) ensure that any data-sharing agreements or policies, data use policies, and record management policies applicable to UAS conform to applicable laws, regulations, and policies;*
- (v) establish policies and procedures, or confirm that policies and procedures are in place, to authorize the use of UAS in response to a request for UAS assistance in support of Federal, State, local, tribal, or territorial government operations; and*
- (vi) require that State, local, tribal, and territorial government recipients of Federal grant funding for the purchase or use of UAS for their own operations have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds.*

*(d) Transparency. To promote transparency about their UAS activities within the NAS, agencies that use UAS shall, while not revealing information that could reasonably be expected to compromise law enforcement or national security:*

- (i) provide notice to the public regarding where the agency's UAS are authorized to operate in the NAS;*
- (ii) keep the public informed about the agency's UAS program as well as changes that would significantly affect privacy, civil rights, or civil liberties; and*
- (iii) make available to the public, on an annual basis, a general summary of the agency's UAS operations during the previous fiscal year, to include a brief description of types or categories of missions flown, and the number of times the agency provided assistance to other agencies, or to State, local, tribal, or territorial governments.*

*(e) Reports. Within 180 days of the date of this memorandum, agencies shall provide the President with a status report on the implementation of this section. Within 1 year of the date of this memorandum, agencies shall publish information on how to access their publicly available policies and procedures implementing this section.*

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## Background

### *U.S. Customs and Border Protection's Use of Unmanned Aircraft Systems*

DHS's U.S. Customs and Border Protection (CBP), Office of Air and Marine, is the only component in the Department with an operational unmanned aircraft system (UAS) program.<sup>1</sup> With a decade of experience operating UAS, CBP has established policies and procedures concerning proper data use, minimization, retention, data quality and integrity, and data security, as well as a decision-making process for determining when it is appropriate to use a DHS UAS in support of other requesting agencies.

CBP is responsible for protecting nearly 7,000 miles of land border the United States shares with Canada and Mexico and 2,000 miles of coastal waters surrounding the Florida peninsula and off the coast of Southern California. The agency also protects 95,000 miles of maritime border in partnership with the United States Coast Guard (USCG). To achieve these missions, CBP employs several types of aircraft, including manned helicopters and manned fixed-wing aircraft. These aircraft assist CBP in patrolling the border. Surveillance aircraft may be used to: (1) patrol the border; (2) conduct surveillance for investigative operations; (3) conduct damage assessment and consequence management in disaster situations; and (4) respond to emergencies. Although infrequent, CBP also flies its unmanned aircraft in response to disaster situations as they are equipped with (b)(7)(E) unmanned aircraft can also map critical infrastructure before and after hurricanes, which allows the Federal Emergency Management Agency (FEMA) to track storm damage and note changes to the topography.

CBP owns and operates (b)(7)(E) that allow it to conduct missions in areas that are remote, too rugged for ground access, or otherwise considered too high-risk for manned aircraft or ground personnel. The aircraft are stationed and principally controlled at (b)(7)(E)

(b)(7)(E)

CBP's UAS operate in the National Airspace in accordance with Federal Aviation Administration (FAA) regulations and within designated special use airspace as published and/or authorized through the FAA Certificate of Authorization process.

In order to collect data and to assist the pilot during take-off and landing, (b)(7)(E)

(b)(7)(E)

<sup>1</sup> Although CBP, Office of Air and Marine, is the focus of this Status Report, other DHS entities, such as the Science and Technology Directorate, U.S. Border Patrol, U.S. Coast Guard, and U.S. Secret Service are involved in testing UAS capabilities or countermeasures.

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CBP conducts its UAS missions at altitudes (b)(7)(E)

(b)(7)(E)

*DHS Privacy Office and Office for Civil Rights and Civil Liberties*

The Homeland Security Act of 2002, Section 222, provides the Chief Privacy Officer with primary responsibility for assuring that “the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information.” Based on this authority, in June, 2010, the Privacy Office requested CBP complete a Privacy Threshold Analysis on its use of aerial surveillance systems, including UAS.

Following submission of the Privacy Threshold Analysis, and in consultation with CBP, the Privacy Office determined that CBP’s use of sensors onboard its aircraft—manned and unmanned—could implicate the privacy of persons with whom CBP encounters. With CBP’s agreement, the Privacy Office directed CBP to prepare a Privacy Impact Assessment of all aircraft sensors. This Aircraft Systems Privacy Impact Assessment (September 9, 2013) and may be found at <http://www.dhs.gov/publication/dhscbppia-018-aircraft-systems>. Consistent with DHS policy, the Aircraft Systems Privacy Impact Assessment will be reviewed every three (3) years and updated as necessary. However, if CBP employs new, different, or updated technologies, or if operating environments change, or the Federal Government or DHS create new policies before three years have passed, CBP and the Privacy Office will update and amend the Privacy Impact Assessment to reflect these changes.

Although individuals cannot participate in the initial decision by CBP to collect information on them, they may contest or seek redress through any resulting proceedings brought against them by contacting CBP, CRCL, and/or the Privacy Office.

*DHS Unmanned Aircraft Systems Privacy, Civil Rights, and Civil Liberties Working Group*

In recognizing the increased public and congressional concern over the government’s use of UAS, CRCL and the Privacy Office jointly established a Department-wide working group in September 2012.

The *DHS Unmanned Aircraft Systems Privacy, Civil Rights, and Civil Liberties Working Group* (the Unmanned Aircraft Systems Working Group), chaired by CRCL, Privacy, and CBP’s Office of Air and Marine (OAM) is responsible for “provid[ing] leadership to the homeland security enterprise by clarifying the privacy, civil rights, and civil liberties legal and policy issues surrounding government use of unmanned aircraft systems.”<sup>2</sup> The goal for this body is to serve

<sup>2</sup> *Working Group to Safeguard Privacy, Civil Rights, and Civil Liberties in the Department’s Use and Support of Unmanned Aerial Systems (UAS), Memorandum for the Secretary*, from Tamara J. Kessler, Acting Officer, Office for Civil Rights and Civil Liberties; and Jonathan R. Cantor, Acting Chief Privacy Officer (*Working Group Memo*)

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as a collaborative forum for components and offices to identify, discuss, and address unmanned aircraft system issues potentially impacting privacy, civil rights, and civil liberties.

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(September 12, 2012). [Http://www.dhs.gov/sites/default/files/publications/foia/working-group-to-safeguard-privacy-civil-rights-and-civil-liberties-in-the-departments-use-and-support-of-unmanned-aerial-systems-uas-si-information-memorandum-09142012.pdf](http://www.dhs.gov/sites/default/files/publications/foia/working-group-to-safeguard-privacy-civil-rights-and-civil-liberties-in-the-departments-use-and-support-of-unmanned-aerial-systems-uas-si-information-memorandum-09142012.pdf).

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**DHS Status Report on Section 1 Implementation**

- I. Privacy Protections (Section 1(a)(i-iii)):** *In addition to requiring compliance with the Privacy Act in applicable circumstances, agencies that collect information through UAS in the NAS shall ensure that their policies and procedures with respect to such information incorporate the following requirements:*

*(i) Collection and Use. Agencies shall only collect information using UAS, or use UAS-collected information, to the extent that such collection or use is consistent with and relevant to an authorized purpose.*

*(ii) Retention. Information collected using UAS that may contain PII shall not be retained for more than 180 days unless retention of the information is determined to be necessary to an authorized mission of the retaining agency, is maintained in a system of records covered by the Privacy Act, or is required to be retained for a longer period by any other applicable law or regulation.*

*(iii) Dissemination. UAS-collected information that is not maintained in a system of records covered by the Privacy Act shall not be disseminated outside of the agency unless dissemination is required by law, or fulfills an authorized purpose and complies with agency requirements.*

**Status:****Privacy Protections:**

**Collection and Use (Section 1(a)(i)):** *Agencies shall only collect information using UAS, or use UAS-collected information, to the extent that such collection or use is consistent with and relevant to an authorized purpose.*

CBP's UAS only collect video and/or radar images pursuant to its law enforcement authority, as part of its border security mission, or when flying a mission in support of another agency when that other agency's authority covers the mission either through delegation of authority or direct control of the information collected. CBP has a broad mandate to determine the admissibility of persons and to ensure goods brought into the country comply with United States law.<sup>3</sup>

CBP's OAM is authorized under current and past appropriations to provide UAS support to other Federal, State, and local agencies. Reflecting similar language in past appropriations, in 2015 Congress directed OAM to use appropriated funds, in part,

<sup>3</sup> 8 USC §§ 1225, 1357, other pertinent provisions of the immigration laws and regulations; 19 U.S.C. §§ 482, 507, 1461, 1496, 1581, 1582, 1595a(d), and other pertinent provisions of customs laws and regulations.



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[f]or . . . necessary expenses for the operations, maintenance, and procurement of marine vessels, aircraft, unmanned aircraft systems, the Air and Marine Operations Center, and other related equipment of the air and marine program . . . the operations of which include the following: the interdiction of narcotics and other goods; the provision of support to Federal, State, and local agencies in the enforcement or administration of laws enforced by the Department of Homeland Security; and, at the discretion of the Secretary of Homeland Security, the provision of assistance to Federal, State, and local agencies in other law enforcement and emergency humanitarian efforts.<sup>4</sup>

Together, these authorities allow CBP to obtain information in support of border interdiction of narcotics and other contraband, the prevention of the illegal entry of aliens into the United States, the security of airspace for high-risk areas or National Special Security Events, and in support of Federal, State, and local law enforcement, counterterrorism, and emergency humanitarian efforts.

CBP may use video, still images, and/or radar images, obtained from aircraft, to apprehend individuals and to provide evidence of an illegal border crossing or other violation of law. Consistent with applicable laws and System of Record Notices, the information may be shared with other State, local, Federal, tribal, and foreign law enforcement agencies in furtherance of enforcement of their laws.<sup>5</sup>

Although CBP's use of UAS is not limited to areas along the border, CBP is currently limited to operations consistent with Federal law and is limited by Certificates of Authorization and internally by CBP's own policies and procedures. In response to exigent circumstances, UAS may be used outside existing Certificates of Authorization, with authorization by the FAA, to assist in natural disasters and in support of State, local, and other Federal law enforcement operations. CBP's UAS are always operated by CBP FAA-certified pilots and CBP-contracted FAA-certified pilots. In a joint program with the USCG, some USCG pilots and sensor operators serve as crewmembers in the operation of CBP UAS. In addition, the FAA has granted CBP Certificates of Authorization to ferry UAS between the different operational areas and airfields. Should the FAA change the requirement for Certificates of Authorization, CBP will operate its UAS in accordance with the same policies and procedures that apply to CBP manned aircraft.

CBP's 2013 Privacy Impact Assessment on Aircraft Systems found that it remained true to its mission when using UAS. While the information obtained by UAS sensors alone are insufficient to identify a person, the images or information may be associated with an individual from context within the image, circumstances surrounding the activity occurring in the image, or additional information obtained directly from the person by an officer or agent. Importantly, images or information are only associated with an individual if the individual is apprehended or if the images are taken as part of an ongoing law enforcement investigation.

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<sup>4</sup> *Department of Homeland Security Appropriations Act, 2015*, Public Law 114-4, 129 STAT. 39, 42.

<sup>5</sup> *Id.*

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There are also internal controls in place to ensure UAS are not used for unauthorized purposes. Any changes or expansion to the program that might impact individual rights will be reviewed by CRCL and the Privacy Office in close consultation with CBP’s operations personnel and component privacy personnel.

**Retention** (Section 1(a)(ii)). *Information collected using UAS that may contain PII shall not be retained for more than 180 days unless retention of the information is determined to be necessary to an authorized mission of the retaining agency, is maintained in a system of records covered by the Privacy Act, or is required to be retained for a longer period by any other applicable law or regulation.*

CBP seeks to minimize the collection and retention of video and radar to that which is necessary and relevant to carry out CBP’s mission. Accordingly, when aircraft are flown to patrol the border, they are authorized to fly within the designated border surveillance mission area to ensure they are only capturing images and information necessary to detect, identify, apprehend, and remove persons and their possessions illegally entering the United States at and between Ports of Entry.

When aircraft are flown for investigative operations, officer safety incidents, or natural disasters, CBP approves and defines the specific mission that is authorized and works with the FAA to construct a Certificate of Authority to establish airspace for that specific operation. Video not associated with a case (b)(7)(E)

(b)(7)(E)

Live video captured by the (b)(7)(E) on UAS is transmitted through the DHS firewall to (b)(7)(E)

(b)(7)(E)

If an individual is apprehended by CBP as a result of observation by aircraft or subsequent association from the presence of CBP assets, CBP may have video of that individual’s apprehension associated with his or her enforcement case file. That video is retained according to the retention schedule of the System of Records Notice of the corresponding case management system.

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Video and radar images obtained from UAS border patrols are also provided to (b)(7)(E)

(b)(7)(E)

Therefore, video not associated with a case remains on the digital video recorder until it is

(b)(7)(E)

**Dissemination** (Section 1(a)(iii)). *UAS-collected information that is not maintained in a system of records covered by the Privacy Act shall not be disseminated outside of the agency unless dissemination is required by law, or fulfills an authorized purpose and complies with agency requirements.*

The data collected by DHS's UAS is not subject to the Privacy Act unless it is retrieved by using an individual's name or other unique identifier. As stated above, data collected that are not associated with a case reside on a digital video recorder until it is over-written by new data, after (b)(7)(E) consequently this unassociated data is not maintained in a system of records. However, persons who are apprehended and who were recorded by an unmanned aircraft may have video of their crossing and/or apprehension associated with a case file that contains their personally identifiable information.

CBP has procedures and processes in place for sharing any data collected by aircraft, including when that information becomes associated with a case and is used as evidence against an apprehended individual. In addition, all requests for aerial surveillance for intelligence gathering purposes must receive prior approval by the Executive Director or Deputy of CBP National Air Security Operations, before the air asset can conduct the flight. Similarly, requests for analytical products incorporating historical analysis of the border topography must also be approved by the Executive Director or Deputy of CBP National Air Security Operations.

Once the images or videos are cross-referenced with, and included within records relating to an ongoing investigation or case, they become covered by the system of records for that particular case file system and subject to the Privacy Act requirements of that system.

**II. Civil Rights and Civil Liberties Protections** (Section 1(b)(i-iii)). *To protect civil rights and civil liberties, agencies shall:*

*(i) ensure that policies are in place to prohibit the collection, use, retention, or dissemination of data in any manner that would violate the First Amendment or in any manner that would discriminate against persons based upon their ethnicity, race, gender, national origin, religion, sexual orientation, or gender identity, in violation of law;*

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*(ii) ensure that UAS activities are performed in a manner consistent with the Constitution and applicable laws, Executive Orders, and other Presidential directives; and*

*(iii) ensure that adequate procedures are in place to receive, investigate, and address, as appropriate, privacy, civil rights, and civil liberties complaints.*

**Status:**

*(i) ensure that policies are in place to prohibit the collection, use, retention, or dissemination of data in any manner that would violate the First Amendment or in any manner that would discriminate against persons based upon their ethnicity, race, gender, national origin, religion, sexual orientation, or gender identity, in violation of law;*

CBP's UAS, pursuant to the Certificate of Authorization approved by the FAA, operate primarily at an altitude (b)(7)(E) from that height. CBP's Certificates of Authorization also place limits on its UAS operations, such as from flying over major cities.

The UAS do not physically intrude upon or interfere with the use of private property. The cameras on the UAS are not intended, nor do they have the capability, (b)(7)(E)

(b)(7)(E)

*(ii) ensure that UAS activities are performed in a manner consistent with the Constitution and applicable laws, Executive Orders, and other Presidential directives;*

CBP's UAS are flown by sworn Federal law enforcement officers, who are guided by the Constitution, applicable US Code, DHS policy, and CBP OAM's evidence collection/retention policy.

In addition to CRCL and the Privacy Office's Department-wide oversight functions, CBP also has its own privacy officer and staff, which was reorganized in 2013 into the Privacy and Diversity Office under the CBP Commissioner to strengthen its ability to provide immediate on-site guidance and oversight of all CBP systems and programs.

As technology improves, operating environments change, laws evolve, and policies adapt, the Privacy Office and CBP staff will update or amend the Privacy Impact Assessment to refresh the analysis of these changes on the privacy of persons. CBP remains committed to involving legal, privacy, civil rights, and civil liberties experts throughout the life cycle of future projects involving sensor technologies used on UAS. In addition, CRCL and the Privacy Office's statutory authorities provide the means by which privacy and civil rights and civil liberties experts will remain involved from conception through deployment and thereafter.

The Privacy Office also conducts Privacy Compliance Reviews, which are designed to improve a program's ability to comply with assurances made in privacy compliance documentation

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including Privacy Impact Assessments, System of Records Notices, and/or formal agreements such as Memoranda of Understanding or Memoranda of Agreement. Privacy Compliance Reviews are performed at the discretion of the Chief Privacy Officer at any time during a program's life cycle.

*(iii) ensure that adequate procedures are in place to receive, investigate, and address, as appropriate, privacy, civil rights, and civil liberties complaints.*

CRCL's Compliance Branch investigates and resolves civil rights and civil liberties complaints filed by the public regarding DHS policies or activities. Complaints may be initiated by members of the public, Federal agencies or agency personnel, non-governmental organizations, media reports, and other sources through submissions to CRCL via mail, e-mail, fax, or telephone. Once a complaint is opened, CRCL staff determines whether to refer the complaint to the appropriate component for fact-investigating or to retain the complaint for investigation by CRCL (unless the Department's Office of Inspector General decides to investigate the allegations). If referred, the component is required to report its findings to CRCL. If the complaint is retained, CRCL staff conducts an investigation to determine if the factual allegations in the complaint can be verified. Whether a fact investigation is conducted by CRCL or a component, CRCL may recommend steps to be taken by the component to address policy issues of concern.

The Privacy Office is responsible for ensuring that the Department has procedures in place to receive, investigate, respond to, and provide redress for complaints from individuals who allege that the DHS has violated their privacy, or that DHS has not complied with privacy compliance requirements. U.S. citizens, Lawful Permanent Residents, visitors to the United States, and aliens may submit privacy complaints to the Privacy Office. Between June 1, 2013 and May 31, 2014, the DHS received 3,627 privacy complaints and closed 3,714.

As of the writing of this report, no correspondence or formal complaints regarding CBP's use of unmanned aircraft systems have been received by CBP, CRCL, or the Privacy Office.

**III. Accountability (Section 1(c)(i-vi).** *To provide for effective oversight, agencies shall:*

*(i) ensure that oversight procedures for agencies' UAS use, including audits or assessments, comply with existing agency policies and regulations;*

*(ii) verify the existence of rules of conduct and training for Federal Government personnel and contractors who work on UAS programs, and procedures for reporting suspected cases of misuse or abuse of UAS technologies;*

*(iii) establish policies and procedures, or confirm that policies and procedures are in place, that provide meaningful oversight of individuals who have access to sensitive information (including any PII) collected using UAS;*

*(iv) ensure that any data-sharing agreements or policies, data use policies, and record management policies applicable to UAS conform to applicable laws, regulations, and policies;*

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*(v) establish policies and procedures, or confirm that policies and procedures are in place, to authorize the use of UAS in response to a request for UAS assistance in support of Federal, State, local, tribal, or territorial government operations; and*

*(vi) require that State, local, tribal, and territorial government recipients of Federal grant funding for the purchase or use of UAS for their own operations have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds.*

**Status:**

*(i) ensure that oversight procedures for agencies' UAS use, including audits or assessments, comply with existing agency policies and regulations;*

In order to hold personnel accountable for their use of data obtained by UAS, CBP has an established process for restricting the dissemination of video, still images, and radar images and keeps a log of disclosures. CBP complies with established privacy policies, practices, and procedures for associated recording systems. All Aviation Support Requests and chain of custody with regard to evidence are kept by OAM. Requests for Information are kept by OI; discrepancies discovered in the logs initially are addressed by holding component. Incidents involving inappropriate use, disclosures, or breaches involving data acquired by UAS are covered by the DHS *Privacy Incident Handling Guide*, which includes a process for assessing responsibility for incidents as well as mitigation strategies. CBP is also held accountable for redacting law enforcement sensitive information, personally identifiable information, and other sensitive related data unless the requestor has a valid need to know.

CRCL and the Privacy Office are granted broad oversight authority over all DHS components to ensure accountability. For instance, the Officer for Civil Rights and Civil Liberties is charged with “oversee[ing] compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs and activities of the Department.”<sup>6</sup> Both officers for CRCL and the Privacy Office are required to coordinate efforts to ensure that “programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner.”<sup>7</sup> In the context of UAS, this coordination is clearly exhibited by the two offices’ joint creation of the Unmanned Aircraft Systems Working Group, and close collaboration in drafting UAS best practices to protect privacy, civil rights, and civil liberties.

CRCL and the Privacy Office both have statutory authority to investigate DHS components. As previously discussed, CRCL is empowered to “investigate complaints and information indicating possible abuses of civil rights or civil liberties, unless the Inspector General of the Department determines that any such complaint or information should be investigated by the Inspector

<sup>6</sup> 6 U.S.C. §345(a)(4).

<sup>7</sup> 6 U.S.C. §345(a)(5); *see also* 6 U.S.C. §142(a)(5)(A) (parallel responsibility for the DHS Chief Privacy Officer).

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General.”<sup>8</sup> This authority empowers CRCL to investigate complaints related to CBP’s use of UAS.

Similarly, the Privacy Office is authorized to “make such investigations and reports relating to the administration of the programs and operations of the Department as are, in the senior official’s judgment, necessary or desirable;”<sup>9</sup> and, subject to coordination with the Inspector General for investigations of possible violations or abuse, subpoena necessary documentary evidence and administer to, or take from any person, an oath, affirmation, or affidavit. The Unmanned Aircraft Systems Working Group also provides a forum where issues of concern may be brought to the attention of the members, which in turn can be raised to the Secretary for resolution, if necessary.

Finally, as previously mentioned, the DHS Chief Privacy Officer has the discretion to direct a Privacy Compliance Review of a program to ensure compliance with assurances made in privacy compliance documentation and formal agreements.

*(ii) verify the existence of rules of conduct and training for Federal Government personnel and contractors who work on UAS programs, and procedures for reporting suspected cases of misuse or abuse of UAS technologies;*

All CBP employees are required to complete annual privacy awareness in addition to ethics and CBP Code of Conduct training. Access controls, both physical and technological, are in place to ensure only authorized access to the aircraft systems and the collected data/images. CBP also requires its employees to successfully complete training on techniques to copy recorded evidence to portable digital media, which requires them to follow procedures to ensure that such evidence is not co-mingled with data from other investigations. Employees are also trained to follow procedures to maintain an adequate chain of custody in the event that the information is used as evidence.

*(iii) establish policies and procedures, or confirm that policies and procedures are in place, that provide meaningful oversight of individuals who have access to sensitive information (including any PII) collected using UAS;*

The Privacy Office Privacy Compliance Reviews, as discussed, provide meaningful oversight of Departmental projects as the discretion of the Chief Privacy Officer. CBP’s OI also has a process for restricting the dissemination of video, still images, and radar images and keeps a log of the disclosures. OI redacts law enforcement sensitive information, personally identifiable information, and other sensitive related data unless the requestor has a valid need-to-know. Separately, CBP periodically reviews the logs or disclosure records to ensure compliance with established privacy policies, practices, and procedures for associated systems.

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<sup>8</sup> 6 U.S.C. §345(a)(6).

<sup>9</sup> 6 U.S.C. §142(b).

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*(iv) ensure that any data-sharing agreements or policies, data use policies, and record management policies applicable to UAS conform to applicable laws, regulations, and policies;*

As discussed earlier, the Privacy Office and CBP privacy staff will update or amend the Privacy Impact Assessment to reflect changes that may impact individual privacy. CBP remains committed to involving legal, privacy, and civil rights and civil liberties experts throughout the life cycle of future projects involving sensor technologies used on unmanned aircraft. In addition, the statutory authorities for CRCL and the Privacy Office provide both offices with the means to ensure individual rights are sustained throughout a UAS program's life cycle.

The DHS Unmanned Aircraft Systems Working Group may also serve as a forum for learning about UAS initiatives and identifying potential issues.

*(v) establish policies and procedures, or confirm that policies and procedures are in place, to authorize the use of UAS in response to a request for UAS assistance in support of Federal, State, local, tribal, or territorial government operations;*

CBP has existing policies and procedures for handling requests for UAS support. All requests for CBP UAS support must be coordinated through the National Command Duty Officer. Prior to a mission launch, requests for CBP UAS support must be coordinated in accordance with the current OAM *Aviation Support Request Policy*, through the Executive Director or Deputy of CBP National Air Security Operations. Each request for information follows a standard process that is reviewed and considered based on the requesting agencies' authorities to receive the sought after information, CBP's own authority to lend assistance, and CBP's ability to integrate the information collection into its mission.

OAM determines the availability of aircraft type and the integration of the requested activity into its flight operations. Typical support missions include overhead observation of persons, specified locations, and particular conveyances for enhanced situational awareness and increased officer safety. For example, a UAS could conduct surveillance over a building to inform ground units of the general external layout of the building or provide the location of vehicles or individuals outside the building. When flying a UAS in support of another component or government agency for an investigative operation, CBP may provide the other agency (b)(7)(E) (b)(7)(E) in whole or in part, based on the request.

The deployment of a CBP UAS must be conducted on a priority basis; however, this commitment will not preclude the use of other CBP aviation resources in support of additional authorized CBP mission and/or investigation. The following mission sets are listed in order of priority: 1. National CBP Missions; 2. CBP Missions; and 3. Other Federal/State/Local Missions (Resources Permitting)

Specific missions listed in order of priority include: 1. CBP law enforcement officer needs assistance; 2. Any other persons need assistance in life-threatening situations; 3. Reported crimes



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in progress; 4. Investigative or other air support missions; 5. Routine mission support; and 6. Maintenance test flights.

*(vi) require that State, local, tribal, and territorial government recipients of Federal grant funding for the purchase or use of UAS for their own operations have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds.*

DHS's Federal Emergency Management Agency (FEMA) is responsible for reviewing and approving grants to State, local, tribal, and territorial governments. As a condition of accepting an award under the various preparedness grant programs, all recipients are required to execute and submit a fully completed Standard Form 424B ("SF-424B"), titled "Assurances for Non-Construction Programs." Assurance Number 6 in the SF-424B requires recipients to affirm that they will comply with all Federal non-discrimination statutes, including Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin. This assurance serves as a prohibition of the use of grant funds for any illegal discriminatory practices. Assurance Number 18 places a blanket requirement on recipients to comply with all Federal laws, executive orders, and regulations and policies governing the program. So by accepting an award, the recipients is acknowledging and certifying that any equipment purchased with grant funds, including UAS, will be employed and operated in compliance with all applicable laws and regulations.

Beyond these legal assurances, FEMA is currently working on an Information Bulletin/FEMA Policy to inform recipients that any requests to use grant funds for the purchase of a UAS must be accompanied by the recipients' civil rights, civil liberties, and privacy policies. In addition, the *Recommendations Pursuant to Executive Order 13688 Federal Support for Local Law Enforcement Equipment Acquisition Law* ( May 2015), listed UAS under the controlled equipment category and placed additional requirements on the purchase thereof. These requirements must also be incorporated into the Information Bulletin/FEMA Policy, as well as future Notices of Funding Opportunity. In the meantime, FEMA is not approving any requests for purchase of UAS with grant funding until such time as these requirements are finalized, which is anticipated to be for the FY 2016 grant funding cycle.

**IV. Transparency (Section 1(d)(i-iii).** *To promote transparency about their UAS activities within the NAS, agencies that use UAS shall, while not revealing information that could reasonably be expected to compromise law enforcement or national security:*

*(i) provide notice to the public regarding where the agency's UAS are authorized to operate in the NAS;*

*(ii) keep the public informed about the agency's UAS program as well as changes that would significantly affect privacy, civil rights, or civil liberties; and*

*(iii) make available to the public, on an annual basis, a general summary of the agency's UAS operations during the previous fiscal year, to include a brief description of types or categories of missions flown, and the number of times the agency provided assistance to other agencies, or to State, local, tribal, or territorial governments.*

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**Status:**

*(i) provide notice to the public regarding where the agency's UAS are authorized to operate in the NAS;*

The privacy impact assessment published in September 2013 on CBP's aircraft systems provides transparency to the public about the current surveillance programs undertaken by CBP. Also, the video images associated with an individual's case file are covered by the appropriate law enforcement case management's system of records notice, which maintains the case file. All DHS privacy impact assessments, which are posted on DHS's website, are reviewed and updated, as necessary, every three (3) years. CBP will periodically re-assess the means by which the images from the aircraft are retrieved to determine whether the requirement for a system of records notice is triggered.

*(ii) keep the public informed about the agency's UAS program as well as changes that would significantly affect privacy, civil rights, or civil liberties;*

CBP provides a UAS Fact Sheet accessible on its website

[http://www.cbp.gov/sites/default/files/documents/FS\\_2014\\_UAS.pdf](http://www.cbp.gov/sites/default/files/documents/FS_2014_UAS.pdf) describing the Predator B UAS, its capabilities and its area of operations. In addition, periodic briefings by CBP, CRCL, and the Privacy Office to Members of Congress and their staffs, regular meetings with advocacy groups, and publication of privacy documentation on DHS's website provide a measure of transparency. Documents have already been released to the public under the Freedom of Information Act. The Privacy Office and CBP privacy staff will continue to update or amend the currently posted aircraft privacy impact assessment to reflect changes that may impact individual privacy.

*(iii) make available to the public, on an annual basis, a general summary of the agency's UAS operations during the previous fiscal year, to include a brief description of types or categories of missions flown, and the number of times the agency provided assistance to other agencies, or to State, local, tribal, or territorial governments.*

CBP's website currently provides public access to summaries of its significant UAS accomplishments for Fiscal Years 2011- 2014, which includes flight hours, types and amount of drug seizures, and general locations flown. <http://www.cbp.gov/border-security/air-sea/milestones-and-achievements/fiscal-year-2014-unmanned-aircraft-systems-highlights>. CBP also provides aggregate statistics for UAS supported activities and hours flown for FY 2006-2014. [http://www.cbp.gov/sites/default/files/documents/Aggregate%20Stats\\_UAS%20Supported%20Results%20and%20Hours\\_022515\\_FINAL\\_0.pdf](http://www.cbp.gov/sites/default/files/documents/Aggregate%20Stats_UAS%20Supported%20Results%20and%20Hours_022515_FINAL_0.pdf). Summaries for FY 15 will be posted after the end of the fiscal year and once statistics are compiled.