
Drone Use and Privacy

Presidential Memorandum on Domestic Use of Unmanned Aircraft Systems

Unmanned Aircraft Systems (UAS) technology continues to improve rapidly, and increasingly UAS are able to perform a variety of missions with greater operational flexibility and at a lower cost than comparable manned aircraft. A wide spectrum of domestic users — including industry, private citizens, and Federal, State, local, tribal, and territorial governments — are using or expect to use these systems, which may play a transformative role in fields as diverse as urban infrastructure management, farming, public safety, coastal security, military training, search and rescue, and disaster response.

The Congress recognized the potential wide-ranging benefits of UAS operations within the United States in the FAA Modernization and Reform Act of 2012, which requires a plan to safely integrate civil UAS into the National Airspace System (NAS) by September 30, 2015. As compared to manned aircraft, UAS may provide lower-cost operation and augment existing capabilities while reducing risks to human life. Estimates suggest the positive economic impact to U.S. industry of the integration of UAS into the NAS could be substantial and likely will grow for the foreseeable future.

As UAS are integrated into the NAS, the Federal Government will take steps to ensure that the integration takes into account not only our economic competitiveness and public safety, but also the privacy, civil rights, and civil liberties concerns these systems may raise.

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish transparent principles that govern the Federal Government's use of UAS in the NAS, and to promote the responsible use of this technology in the private and commercial sectors, it is hereby ordered as follows:

From the Presidential Memorandum: Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems, issued February 15, 2015. See <https://www.whitehouse.gov/the-press-office/2015/02/15/presidential-memorandum-promoting-economic-competitiveness-while-safegua>.

■ 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, which, among other things, restricts the collection and dissemination of individuals' information that is maintained in systems of records, including personally identifiable information (PPI), and permits individuals to seek access to and amendment of records.

Privacy Protections. Particularly in light of the diverse potential uses of UAS in the NAS, 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 three 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:

- **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.

- **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.
- **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.

Civil Rights and Civil Liberties Protections. To protect civil rights and civil liberties, agencies shall:

- 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;
- ensure that UAS activities are performed in a manner consistent with the Constitution and applicable laws, Executive orders, and other Presidential directives; and
- ensure that adequate procedures are in place to receive, investigate, and address, as appropriate, privacy, civil rights, and civil liberties complaints.

Accountability. To provide for effective oversight, agencies shall:

- ensure that oversight procedures for agencies' UAS use, including audits or assessments, comply with existing agency policies and regulations;
- 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;
- 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 collected by using UAS;

- 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;
- 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
- 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.

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:

- provide notice to the public regarding where the agency's UAS are authorized to operate in the NAS;
- 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
- 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.

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 one year of the date of this memorandum, agencies shall publish information on how to access their publicly available policies and procedures implementing this section.

■ Multi-stakeholder Engagement Process

In addition to the Federal uses of UAS described in Section 1 of this memorandum, the combination of greater opera-

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to daylight hours and visual-line-of-sight operations. FAA also proposes to require a single operator for each drone, which could limit the commercial viability of some potential uses of UAS. The notice also specifies height restrictions, operator certification requirements, optional use of a visual observer, aircraft registration and marking, and operational limits. Final rules may not be issued by FAA until late 2016 or early 2017.

The Government Accountability Office has found that a number of other countries are moving ahead with final regulations pertaining to commercial use of UAS, including Australia, Canada, France, and the United Kingdom. This has introduced a competitive dimension that is luring some U.S. companies to conduct research abroad. Amazon, for example, tested a package delivery drone in Canada, while Google is doing something similar in Australia.

Privacy Concerns. Although several bills addressing privacy have been introduced in Congress, the FAA Modernization and Reform Act included no language concerning the privacy implications of UAS flights, and Congress has subsequently enacted no new laws on the subject. FAA did not include privacy principles in its proposed rule on small UAS. President Obama has issued a memorandum directing Federal agencies to look at privacy guidelines with regard to UAS. There are two principal privacy issues associated with commercial use of UAS: defining what privacy means in the context of aerial systems, and selecting a government entity to oversee such issues. Progress in addressing these issues may affect the rate at which the commercial UAS industry develops.

Sense-and-Avoid and Airspace Management Technology. FAA is understandably concerned about UAS that may crash into buildings, other aircraft, or people and objects below a flying drone. To address those concerns, proposed rules would require the operator to maintain a line of sight with the aircraft. This “sense-and-avoid” restriction — cited in FAA’s proposed UAS regulations as “one of the fundamental principles for collision avoidance” — would limit the range of UAS and prevent the deployment of more sophisticated UAS that could operate over longer distances.

“Sense-and-avoid” technologies under development could overcome the current limitations through use of radar and electronic systems. A technology called automatic dependent surveillance-broadcast (or ADS-B), to be required on airliners by 2020, offers sense-and-avoid capa-

bilities, but it is currently too large and expensive for UAS. Google and a Bellevue, Washington, company are separately working on small, lightweight versions of ADS-B and radar scanning, two sense-and-avoid technologies that would be more appropriate for drone use. Such technologies could allow UAVs to fly in congested airspace, potentially broadening their commercial applications.

As part of the overall integration of UAS into the national airspace, it will be necessary to establish the technology and infrastructure for a UAS traffic management system for low-altitude airspace. The National Aeronautics and Space Administration is leading research, development, testing, and implementation of the system. ■

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tional flexibility, lower capital requirements, and lower operating costs could allow UAS to be a transformative technology in the commercial and private sectors for fields as diverse as urban infrastructure management, farming, and disaster response.

Although these opportunities will enhance American economic competitiveness, our Nation must be mindful of the potential implications for privacy, civil rights, and civil liberties. The Federal Government is committed to promoting the responsible use of this technology in a way that does not diminish rights and freedoms.

There is hereby established a multi-stakeholder engagement process to develop and communicate best practices for privacy, accountability, and transparency issues regarding commercial and private UAS use in the NAS. The process will include stakeholders from the private sector.

Within 90 days of the date of this memorandum, the Department of Commerce, through the National Telecommunications and Information Administration, and in consultation with other interested agencies, will initiate this multi-stakeholder engagement process to develop a framework regarding privacy, accountability, and transparency for commercial and private UAS use. For this process, commercial and private use includes the use of UAS for commercial purposes as civil aircraft, even if the use would qualify a UAS as a public. The process shall not focus on law enforcement or other noncommercial governmental use.

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