



NOAA Unmanned Aircraft Systems Privacy Policy

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Summary

In carrying out its scientific mission and in protecting citizens' life and safety, NOAA utilizes many technologies, including Unmanned Aircraft Systems (UAS). Because NOAA's use of UAS may unintentionally collect Personally Identifiable Information (PII), the protections of NOAA's Unmanned Aircraft Systems Privacy Policy are necessary. This policy serves as an application of existing law and policy, and also includes new constraints unique to UAS operations contained in a February 15, 2015 Presidential Memorandum¹, for example, limitations on UAS-gathered data storage durations. NOAA users must ensure that all UAS activities adhere to the existing laws and policies regarding PII collection, use, storage, and transmission, as well as to verify that the additional duties outlined in the Presidential Memorandum which have been set forth in this policy, are effectuated.

I. Background

NOAA is committed to ensuring that collection, use, retention, or dissemination of information about individuals through the use of any technology, including UAS, complies with the Constitution, and Federal law, regulations, and policies. The Presidential Memorandum, dated February 15, 2015, sets forth the privacy policy requirements of Federal UAS Programs. To that end, agencies must, "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."² This Policy satisfies the

¹ Presidential Memorandum: Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems (Feb. 15, 2015).

² Id.

requirements set forth in that memorandum.

To carry out this obligation, NOAA has established this Unmanned Aircraft Systems Privacy Policy (UAS Privacy Policy), which outlines the collection, use, retention, and dissemination of information obtained by UAS operation and use to ensure that in carrying out NOAA's mission, UAS operation by NOAA, on behalf of NOAA (e.g., by contractors), or with NOAA sponsorship (e.g., by grantees), does not violate the privacy rights of the of the individuals whose PII may be collected or observed through NOAA's UAS activities. The UAS Privacy Policy provides specific restrictions with respect to any UAS operations conducted by or on behalf of NOAA to ensure transparency regarding its activities and that UAS activities do not create undue privacy risks for members of the public. This UAS Privacy Policy is the result of consideration of Federal legislation and policy, Departmental policy, and industry best practices. Nothing in this policy removes or limits any other existing provision or obligation imposed by statute, regulation, or Department of Commerce Policy.

This policy's objective is to enable NOAA's mission effectiveness, including critical research within the Office of Marine and Aviation Operations (OMAO) and all the line offices whose operations will depend on the technology UAS capability provides. In utilizing this capability, each office is responsible for preventing inappropriate surveillance and collection of data of or about individuals and ensuring that the appropriate privacy risk analysis is conducted prior to the authorization and commencement of any UAS program or activity.

II. Purpose

This policy establishes NOAA's approach to ensuring that any use of UAS in support of operations balances programmatic requirements with the need to respect personal privacy. The U.S. Department of Commerce IT Privacy Policy, as well as the Electronic Transmission of PII Policy, combined with the obligations of the Office of Management and Budget (OMB) M-06-15 and M-07-16 outlines the responsibilities for the proper collection and transmission of PII, and protecting sensitive agency information.³ The UAS Privacy Policy constitutes a specific set of requirements for UAS operations which must be executed in order to abide by these Departmental policies, or NOAA Policy, and comply with the governing Presidential Memorandum: Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems (Feb. 15, 2015).

III. Scope

This policy applies to all NOAA activities that include the operation of UAS, whether conducted by NOAA, a grantee, or a contractor.

IV. References

1. DOC list of privacy-related governance:

³ This policy incorporates by reference the governing Fair Information Practice Principles (FIPPs), the Privacy Act of 1974, 15 Code of Federal Regulations (CFR) Part 4, and all applicable DOC Privacy Policies, <http://go.wh.gov/rLh9AV>.

2. DOC policy, Electronic Transmission of Personally Identifiable Information:
http://osec.doc.gov/opog/privacy/laws_and_regs.html
3. DOC Privacy Policy:
http://osec.doc.gov/opog/privacy/Privacy_Brochure_2016.pdf
3. DOC Privacy Policy:
<https://www.commerce.gov/page/privacy-policy>
4. Presidential Memorandum: Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems (Feb. 15, 2015).
5. 15 Code of Federal Regulations Part 4.
6. The Privacy Act of 1974, as amended.
7. OMB M-06-15: <https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2006/m-06-15.pdf>
8. OMB M-07-16: <https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf>

V. Policy

Compliance with this policy is mandatory. NOAA will enforce the following obligations to achieve the objectives above:

The use of UAS significantly expands NOAA's ability to collect data critical to NOAA's mission. As with information collected by NOAA 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, use, and dissemination of individuals' information that is maintained in a system of records, including personally identifiable information (PII), and permits individuals to seek access to and amendment of records.

[01] Privacy

In light of the diverse potential uses of UAS technologies within NOAA, expected advancements in UAS technologies, and the anticipated increase in UAS use in NOAA in the future, it is imperative that NOAA take appropriate steps to implement UAS policy that addresses privacy protections, procedures, and standards to ensure compliance with the Privacy Act of 1974, NOAA Privacy Act regulations, NOAA privacy policies, and other applicable laws, regulations and policies. Accordingly, NOAA Line Offices and programs utilizing UAS or UAS-collected information shall ensure the following privacy protections are accomplished:

- a. Collection and Use: NOAA 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.
- b. Retention: Information collected by or on behalf of NOAA 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. Eradication of the information should ensure the information is sanitized from the media storage.

- c. Dissemination: NOAA Line Offices and programs shall take appropriate steps to ensure that UAS-collected information that is not maintained in a system of records covered by the Privacy Act shall not be disseminated outside of NOAA, unless dissemination is required by law, or fulfills an authorized purpose and complies with agency requirements. No use, collection, or dissemination is allowed that violates existing law or DOC Policy.
- d. Notice: Consistent with DOC Policy, no PII will be collected utilizing UAS without prior notice covering the purpose of the collection and the use of identifiable information will be provided⁴.

These privacy protections will apply to all UAS Operations within and on behalf of NOAA. Any deviation from this Policy would require approval by the Department's Senior Agency Official for Privacy (SAOP) in consultation with the Office of General Counsel. NOAA Privacy must conduct a Privacy Threshold Analysis (PTA) of any proposed UAS activity and provide approval prior to the issuance of an authorization to operate (ATO) for any Federal Information Security Management Act (FISMA) system collecting or storing data obtained from UAS operations. Any PII collected through UAS activities will also require a Privacy Impact Assessment (PIA) be completed prior to the issuance of an ATO. In carrying out this obligation, the following conditions apply:

- a. Any PIA will be documented and made available to the public as appropriate. In addition, any significant or material changes to existing UAS operations mandate an additional analysis or assessment as necessary.
 - o Examples of significant or material changes in operations include, but are not limited to, the introduction of new data collection techniques (e.g., radar to camera), and changes in operating areas (e.g., sea to land). NOAA will include appropriate privacy protections, including compliance with this UAS Privacy Policy, in all NOAA contracts and financial assistance awards involving the use of UAS.
- b. The issuance of any ATO for a system that collects any information from UAS operation is required to be reviewed consistent with the Department's Memorandum governing Privacy reviews prior to the issuance of an ATO.⁵ Additionally, the Department SAOP ensures that any modification or new collection, processing, sharing, or storage of PII is legally authorized, compliant, and necessary.
- c. Per the Department of Commerce's Nov. 18, 2014 Memorandum⁶, the SAOP may direct the NOAA Chief Privacy Officer to conduct and document any necessary analysis to ensure the proper control of PII, and that collection activities are consistent with the Department's mission and business needs, and risk tolerance.
- d. To the extent practicable NOAA will ensure that UAS operations do not intentionally collect PII which includes imagery, phone, wireless, residential address, and any other electronic

⁴ DOC IT Privacy Policy, http://ocio.os.doc.gov/ITPolicyandPrograms/IT_Privacy/DEV01_002682.

⁵ Nov. 14, 2014 Memorandum from Catrina Purvis, Frederick Stephens, and Steven Cooper to CIO Officers, Privacy Officers, and I.T. Security Officers, "Commerce Policy Regarding (1) Implementing National Institute of Standards and Technology (NIST) Special Publication (SP) 80-53 Revision 4, Appendix J Controls, and (2) Senior Agency Official for Privacy (SAOP) Approval as a Precondition for the Issuance of an Authorization to Operate (ATO)."

⁶ Id.

- emissions that might contain PII⁷. In the event that PII is collected unintentionally, NOAA will notify the Bureau Chief Privacy Officer (BCPO) in writing and obscure or remove identifying data to the extent practicable immediately upon discovery of the PII, but sanitizing no later than 180 days after the collection unless retention is necessary to fulfill an authorized mission of the Department or is required to be retained for a longer period in order to comply with existing law or regulation.
- e. All individuals involved in the operations of UAS must be appropriately trained and supervised to ensure compliance with this policy and any privacy training or obligation established by the SAOP for approved UAS operations.
 - f. Where appropriate, the BCPO will make recommendations to ensure that NOAA's use of UAS is consistent with its authorities and applicable law, regulations, and policies. The outcomes of this review will be made publicly available in a forum that provides an opportunity for public feedback.
 - g. The transmission, storage, and use of the PII shall specifically be in accordance with the existing obligations for the NIST SP 800-53 Rev. 4 Appendix J Control Allocations, in compliance with the DOC Electronic Transmission of PII, and shall abide by OMB M-06-16 governing the encryption of data on mobile devices, access controls, and use restrictions.
 - h. This policy will remain in effect until superseded by an authorized update.

[02] Civil Rights and Civil Liberties Protections

To protect civil rights and civil liberties, Line Offices shall:

- a. 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.
- b. Ensure that UAS activities are performed in a manner consistent with applicable United States laws, Executive Orders, regulations, policies, and directives.
- c. Ensure that adequate procedures are in place to receive, investigate, and address, as appropriate, privacy, civil rights, and civil liberties complaints.

[03] Line Office Accountability

To provide for effective accountability, the NOAA Line Offices, in conjunction with the Office of the Chief Information Officer, will provide oversight of NOAA UAS programs compliance within their respective areas of expertise and responsibility. They shall ensure that oversight procedures are implemented for UAS use, including audits or assessments, in compliance with NOAA policies and regulations.

NOAA LOs using UAS or UAS-collected data shall cooperate and comply with NOAA oversight activities, and take appropriate steps with respect to their respective LO UAS programs to ensure compliance with the policies and procedures provided herein.

⁷ For a definition of PII, see the U.S. Department of Commerce page on Safeguarding Information: http://www.osec.doc.gov/opog/privacy/pii_bii.html

Specifically, NOAA LOs shall:

- a. Establish rules of conduct and provide training for NOAA personnel and contractors who work on UAS programs, and establish procedures for reporting suspected cases of misuse or abuse of UAS technologies.
- b. Provide meaningful oversight of individuals who have access to sensitive data (including any PII) collected using UAS.
- c. Ensure that any data-sharing agreements or policies, data use policies, and records management policies applicable to UAS conform to applicable laws, regulations, and policies.
- d. Establish policies and procedures 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. Any approved use or agreements must include how the non-NOAA entity intends to meet the requirements of this policy.
- e. Require that NOAA Cooperative Institutes, academic institutions, State, local, tribal, and territorial government that are 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. Any approved financial assistance awards and agreements must include how the sponsored entity intends to meet the requirements of this policy.

[04] Transparency

In collaboration with NOAA LOs, OMAO will promote transparency about NOAA UAS operations within the National Airspace System (NAS), while not revealing data that could reasonably be expected to compromise law enforcement or national security. OMAO shall:

- a. Provide notice to the public regarding where NOAA's UAS are authorized to operate in the NAS.
- b. Keep the public informed about the NOAA's UAS programs and operations, as well as changes that would significantly affect privacy, civil rights, or civil liberties.
- c. Make available to the public, on an annual basis, a general summary of NOAA'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.

VI. Responsibilities

This Policy requires that all NOAA UAS operations are conducted in a manner that is consistent with a respect for privacy, civil rights, and civil liberties. In carrying out this objective, the following Staff and Line Offices have the following responsibilities:

[01] The Associate Administrator for each Line Office shall:

Ensure individual privacy, civil rights, and civil liberties protections in compliance with applicable laws, regulations, and policies.

[02] The NOAA Office of the Chief Information Officer (OCIO) has:

Overall responsibility for promulgation and oversight of NOAA-wide information management policies, guidelines and procedures to Line Offices for their implementation to ensure compliance with relevant Federal laws, regulations and policies. Such policies, guidelines and procedures include, but are not limited to, addressing requirements associated with privacy, IT security, and records management.

[03] The NOAA Civil Rights Office shall:

- a. Develop, direct, and coordinate agency programs, policies, and activities to ensure the accomplishment of EEO and civil rights responsibilities.

- b. Develop policies, guidelines, and procedures for implementing and monitoring the requirements of applicable civil rights, diversity, and equal employment statutes, regulations, Executive Orders and management directives.

[04] The NOAA Line Offices are:

Responsible for implementing and executing NOAA policies, procedures, and protections consistent with applicable Federal laws, Executive Orders, regulations, policies and standards.

VII. Management and Ownership:

The Director of the Office of Marine and Aviation Operations is the principal subject matter expert, who establishes the objectives and terms of use regarding the operation of all UAS systems.

VIII. Intended Audience

This policy is to provide guidance for NOAA employees and affiliates operating UAS systems, or using, receiving, collecting, or storing information obtained through the use of UAS systems.

IX. Implementation Date:

This policy is effective immediately upon of the NOAA CIO.

X. Grandfather Exemption and Waiver Option:

None.

XI. Performance Objectives and Measurements:

[01] Compliance with the terms and conditions of the Presidential Memorandum.⁸

Prior to the final promulgation of any System of Records Notice (SORN) covering UAS PII collection, the CIO will seek legal review from the NOAA Office of General Counsel (NOAA GC). NOAA GC will review the policy for completeness and adherence to existing applicable federal laws, regulations, Executive Orders, and this policy.

⁸ Presidential Memorandum: Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems, February 15, 2015. <https://goo.gl/KZiDZw>.

[02] Training curriculum and objectives

Within one year of the adoption of this policy, NOAA shall promulgate a training manual to train prospective users of UAS systems for role-based privacy training.

[03] Review of the UAS Privacy Policy

This policy shall be reviewed, once every three years. The review shall include assessment of current UAS technologies, laws, and policies governing UAS system use.

XII. Definitions

Personally Identifiable Information (PII) – Information that can be used to distinguish or trace an individual’s identity, such as name, Social Security number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc. [OMB M-07-16]. For purposes of this NOAA UAS Privacy Policy, PII is assumed to incorporate Business Identifiable Information (BII), when applicable. BII is to be afforded the same protections under this policy and any applicable laws and regulations. PII that could potentially be collected utilizing UAS may include, but is not limited to, residential address locations, video or photographic images identifying individuals, vessel identification numbers, and images of residential locations and current tenancy.

Sensitive Personally Identifiable Information (Sensitive PII) – Sensitive PII is defined as PII which, when disclosed, could result in harm to the individual whose name or identity is linked to the information. Further, in determining what PII is sensitive, the context in which the PII is used must be considered. For example, a generic image of an individual captured during coastal surveys is not sensitive PII; but an image identifying an individual on a fishing vessel as a subject in a law enforcement investigation is sensitive PII. As well as context, the association of two or more non-sensitive PII elements may result in sensitive PII. For instance, the name of an individual would be sensitive when grouped with place and date of birth and/or mother’s maiden name, but each of these elements would not be sensitive independent of one another. [DOC Electronic Transmission of PII Policy].

Unmanned Aircraft System (UAS) – Any operational vehicle capable of unmanned flight as defined by the Federal Aviation Administration (FAA).

Aircraft – “Aircraft” refers to both manned and unmanned aircraft, unless specifically stated otherwise. UAS are aircraft that can both be classified as NOAA capital asset that are operated for all of NOAA by the Office of Marine and Aviation Operations (OMAO), owned by OMAO, and allocated through the Fleet or as a system which falls below the capital asset threshold and meet OMAO criteria for being owned and operated by individual line offices (LOs) in compliance with the Aircraft Operations Center (AOC) Policy 220-1-5 Unmanned Aircraft Systems Operations.

Senior Agency Official For Privacy (SAOP) - The designated Senior Agency Official for Privacy currently serving as the Chief Privacy Officer for the Department of Commerce.

XIII. Approval

Zachary Goldstein, NOAA Chief Information
Officer and Director, High Performance Computing

Date