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September 30, 2014

The Honorable Mary Landrieu
Chairman
The Honorable Dan Coats
Ranking Member
Subcommittee on Homeland Security
Committee on Appropriations
United States Senate

The Honorable John Carter
Chairman
The Honorable David Price
Ranking Member
Subcommittee on Homeland Security
Committee on Appropriations
House of Representatives

Unmanned Aerial Systems: Department of Homeland Security’s Review of U.S. Customs and Border Protection’s Use and Compliance with Privacy and Civil Liberty Laws and Standards

This letter formally transmits briefing slides we provided your offices on August 28, 2014, in response to a mandate in the House Committee Report¹ (113-91) accompanying the Department of Homeland Security (DHS) Appropriations Act, 2014. This mandate required us to review DHS’s Privacy Office (Privacy Office) and Office of Civil Rights and Civil Liberties (CRCL) joint review (DHS’s review) of U.S. Customs and Border Protection’s (CBP) unmanned aerial systems (UAS) program. House Committee Report 113-91 accompanying the fiscal year 2014 DHS Appropriations Act mandated CRCL and the Privacy Office to conduct a review of CBP’s efforts to ensure that CBP’s UAS use (1) complies with existing law and applicable privacy and civil liberty standards and (2) is limited to operation along the border and coastal areas of the United States. CRCL and the Privacy Office completed their review and provided it to us on June 12, 2014.

CBP, within DHS, is responsible for securing U.S. borders to prevent acts of terrorism and the unlawful movement of people, illegal drugs, and other contraband toward or across U.S. borders. Within CBP, the Office of Air and Marine (OAM) helps CBP fulfill its mission by providing aviation and marine assets—which include nine UAS—to support border security operations.² The Privacy Office, within DHS, is responsible for embedding and enforcing privacy protections and transparency in DHS activities, and ensuring that privacy considerations are addressed when planning or updating any program, system, or initiative. CRCL, within DHS,

¹H. R. Rep. No. 113-91, at 11 (2013).

²CBP refers to UAS as “unmanned aircraft systems.”

helps to integrate civil rights and civil liberties into agency activities by providing policy advice and training, assessing the impact of DHS policies and activities, and engaging with the public to provide information on DHS policies and avenues of redress. The use of UAS has raised privacy concerns, including questions regarding the scope of CBP's authorities to collect and use aerial surveillance.

House Committee Report 113-91 mandated us to review DHS's review of CBP's UAS program. This report examines the extent to which DHS's review of CBP's UAS addressed CBP efforts to (1) ensure compliance with existing privacy and civil liberty laws and standards and (2) ensure its UAS usage is limited to border and coastal areas of the United States.

To address both objectives, we reviewed applicable privacy and civil liberty laws and standards and CBP authorities to use UAS; examined DHS's review, as well as CBP policies regarding use of UAS and UAS data; interviewed CBP officials responsible for managing UAS operations and analyzing UAS data; and interviewed CRCL and Privacy Office officials responsible for developing DHS's review on CBP's UAS use. To determine the extent to which DHS's review addressed CBP efforts to ensure compliance with privacy and civil liberty laws and standards, we also examined DHS's review to identify key procedures to protect privacy and civil liberties, and determined the extent to which CBP had institutionalized these procedures in written policies. To determine the extent to which DHS's review addressed CBP's efforts to ensure UAS usage is limited to border and coastal areas of the United States, we also reviewed Federal Aviation Administration (FAA) requirements, analyzed CBP reports on compliance with these FAA requirements, and analyzed UAS flight hours reports CBP submitted to FAA from fiscal year 2011 through April 30, 2014, covering the time period when all four of CBP's UAS centers became operational. To assess the reliability of UAS flight hour data, we reviewed guidance for reporting UAS flight hours, interviewed CBP officials about their policies and procedures related to tracking UAS flight hours, and compared monthly report data with data from other CBP flight hour reports. We found the data were sufficiently reliable for the purposes of reporting how CBP allocates its UAS flight hours.

We conducted this performance audit from April 2014 to September 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In summary, we found the following:

- DHS reported that CBP has an oversight framework and procedures that help ensure compliance with privacy and civil liberty laws and standards. DHS's review contains information on CBP procedures on collecting, retaining, storing, and disseminating images from UAS, among others, to help ensure compliance with privacy and civil liberty laws and standards. DHS's review did not address the extent to which CBP had institutionalized these procedures in written policies. However, we found that CBP has taken steps to document these procedures and has issued or plans to issue policies to institutionalize the procedures that help protect privacy and civil liberties.
- DHS's review reported that CBP operates UAS in accordance with its authorities, which do not limit use to border and coastal areas. The location of UAS operations is limited by FAA requirements and CBP policies and procedures. DHS's review did not address the extent to which CBP's use of UAS is within border and coastal areas. However, we

found that over 80 percent of CBP's UAS flight hours were associated with airspace encompassing border and coastal areas of the United States.

For additional information on the results of our work, please see the briefing slides provided in the enclosure. We are not making any recommendations in this report.

Agency Comments

We provided a draft of this report to DHS for its review and comment. DHS provided technical comments on the briefing slides, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees and the Secretary of Homeland Security. This report is also available at no charge on the GAO website at <http://www.gao.gov>. Should you or your staff have questions concerning this report, please contact me at (202) 512-8777 or GamblerR@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Kirk Kiester (Assistant Director), David Alexander, Frances Cook, Eric Hauswirth, Heather May, David Plocher, Carl Potenzieri, and Christopher Robinson.



Rebecca Gambler
Director, Homeland Security and Justice

Enclosure



Unmanned Aerial Systems: DHS's Review of U.S. Customs and Border Protection's Use and Compliance with Privacy and Civil Liberty Laws and Standards

**Briefing for Staff of the Subcommittees on
Homeland Security, U.S. Senate and House
Committees on Appropriations**

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Introduction

- U.S. Customs and Border Protection (CBP), within the Department of Homeland Security (DHS), is responsible for securing U.S. borders to prevent acts of terrorism and the unlawful movement of people, illegal drugs, and other contraband toward or across U.S. borders.
- Within CBP, the Office of Air and Marine (OAM) helps CBP fulfill its mission by providing aviation and marine assets—which include nine unmanned aerial systems (UAS)¹—to patrol the border.
- CBP also uses UAS in support of other federal, state, or local law enforcement activities and for emergency humanitarian efforts, such as flood and wildfire monitoring.
- The use of UAS has raised privacy concerns, including questions regarding the scope of CBP’s authorities to collect and use aerial surveillance.

¹CBP uses the term “unmanned aircraft systems” for these assets. A UAS is composed of a remotely piloted aircraft, a ground control station, a digital network, and other ground support equipment and personnel required to operate and maintain the system.

Introduction (cont'd)

- The Office of Civil Rights and Civil Liberties (CRCL), within DHS, helps to integrate civil rights and civil liberties into agency activities by providing policy advice and training, assessing the impact of DHS policies and activities, and engaging with the public to provide information on DHS policies and avenues of redress.
- The Privacy Office, within DHS, is responsible for embedding and enforcing privacy protections and transparency in DHS activities, and ensuring that privacy considerations are addressed when planning or updating any program, system, or initiative.
- House Committee Report 113-91 accompanying the fiscal year 2014 DHS Appropriations Act mandated CRCL and the Privacy Office to conduct a review of CBP efforts to ensure that CBP's UAS use (1) complies with existing law and applicable privacy and civil liberty standards and (2) is limited to operation along the border and coastal areas.² The report also mandated GAO evaluate the review.
- CRCL and the Privacy Office completed their review (referred to as DHS's review) and provided it to us on June 12, 2014.

²H. R. Rep. No. 113-91, at 11 (2013).

Objectives

- House Committee Report 113-91 accompanying the fiscal year 2014 DHS Appropriations Act mandated that GAO submit a report evaluating CRCL and the Privacy Office's review.³
- This briefing examines the extent to which DHS's review of CBP's UAS addressed CBP efforts to (1) ensure compliance with existing privacy and civil liberty laws and standards and (2) ensure its UAS usage is limited to border and coastal areas of the United States.

³ H.R. Rep. No 113-91, at 11 (2013).

Scope and Methodology

- To address both objectives, we
 - reviewed applicable privacy and civil liberty laws and standards and CBP authorities to use UAS, as noted later in the slides;
 - examined DHS's review, as well as CBP policies regarding use of UAS and UAS data;
 - interviewed CBP officials responsible for managing UAS operations and analyzing UAS data; and
 - interviewed CRCL and Privacy Office officials responsible for developing DHS's review on CBP's UAS use.
- For the first objective, regarding the extent to which DHS's review addressed CBP efforts to ensure compliance with privacy and civil liberty laws and standards, we also
 - examined DHS's review to identify key procedures to protect privacy and civil liberties, and
 - determined the extent to which CBP had institutionalized these procedures in written policies.

Scope and Methodology (cont'd)

- To address the second objective, regarding the extent to which CBP's UAS use is limited to border and coastal areas, we also
 - reviewed Federal Aviation Administration (FAA) requirements for CBP's use of UAS in the National Airspace System;⁴
 - analyzed CBP reports on compliance with these FAA requirements from fiscal year 2011 through April 2014, covering the time period when all four current CBP UAS centers were in operation; and
 - analyzed UAS flight hour data from monthly reports CBP submitted to FAA from fiscal year 2011 through April 2014.
- To assess the reliability of UAS flight hour data, we reviewed guidance for reporting UAS flight hours, interviewed CBP officials about their policies and procedures related to tracking UAS flight hours, and compared monthly report data with data from other CBP flight hour reports. We found the data were sufficiently reliable for the purposes of reporting how CBP allocates its UAS flight hours.
- DHS provided technical comments for this briefing, which we have incorporated as appropriate.

⁴See Federal Aviation Administration, Interim Operational Approval Guidance 08-01: Unmanned Aircraft Systems Operations in the U.S. National Airspace System (March 13, 2008). The National Airspace System is the network of United States airspace that includes the interconnected and interdependent network of systems, procedures, facilities, aircraft, and people.

Summary

- In its review, DHS reported that CBP has an oversight framework and procedures that help ensure compliance with privacy and civil liberty laws and standards. DHS's review contains information on CBP procedures on collecting, retaining, storing, and disseminating images from UAS, among others, to help ensure compliance with privacy and civil liberty laws and standards. DHS's review did not address the extent to which CBP had institutionalized these procedures in written policies. However, we found that CBP has taken steps to document these procedures and has issued or plans to issue policies to institutionalize the procedures that help protect privacy and civil liberties.
- DHS's review reported that CBP operates UAS in accordance with its authorities, which do not limit use to border and coastal areas. The location of UAS operations is limited by FAA requirements and CBP policies and procedures. DHS's review did not address the extent to which CBP's use of UAS is within border and coastal areas. However, we found that over 80 percent of CBP's UAS flight hours were associated with airspace encompassing border and coastal areas.

Background: CBP's UAS program

- OAM is responsible for administering CBP's UAS program.
- CBP operates nine UAS from four OAM National Air Security Operation Centers (NASOC):
 - Sierra Vista, AZ (3 aircraft)
 - Grand Forks, ND (3 aircraft)
 - Corpus Christi, TX (3 aircraft)
 - Jacksonville, FL (remotely operates aircraft launched from other NASOCs)
- CBP's UAS operations began in fiscal year 2006; all four NASOCs became operational starting in fiscal year 2011.

Background: CBP's Operation of UAS in National Airspace

- CBP operates UAS in accordance with FAA requirements for authorizing all UAS operations in national airspace.
- CBP must apply for a certificate of waiver or authorization (COA) from the FAA to operate UAS in national airspace.
 - Each COA defines airspace and location where UAS can operate.
 - COAs are valid for 2 years.
 - COAs are divided into four types: disaster, operational, transit, and training.
 - CBP is required to report to FAA monthly on the number of flight hours in each COA.
- CBP also operates UAS in restricted airspace in accordance with agreements with the Department of Defense (DOD).

Background: UAS Operations

- UAS are operated by OAM primarily to support other CBP components, such as the Office of Border Patrol, and federal, state, and local agencies, as shown in table 1.
- Federal, state, and local agencies make requests for OAM support. CBP’s Office of Intelligence and Investigative Liaison (OIIL) is responsible for facilitating and reviewing requests for air support from outside agencies.

Table 1: Unmanned Aerial System (UAS) Operations

Type of mission	Purpose	Examples of entities supported	Type of certificate of waiver or authorization (COA)
Patrol	Detect illegal entry of goods and people at and between points of entry	Border Patrol	Operational
Investigative	Provide aerial support for law enforcement activities and investigations	Multiple agencies, such as U.S. Immigration and Customs Enforcement, Federal Bureau of Investigation, and multi-agency task forces.	Operational
Disaster	Provide aerial support for monitoring natural disasters such as wildfires and floods	State, local, and federal agencies	Disaster and operational
Transit	Move UAS between National Air Security Operations Centers	Office of Air and Marine	Transit
Training	Train UAS pilots	Office of Air and Marine	Training

Source: GAO analysis of Department of Homeland Security information.

Background: UAS Sensors

- CBP’s UAS may be equipped with sensors, as shown in table 2.

Table 2: Sensors Used by U.S. Customs and Border Protection on Unmanned Aerial Systems

Sensor	Types of data collected
Electro-optical and infrared camera	Full-motion video
Vehicle and Dismount Exploitation Radar	Radar images that show the movement of objects
Synthetic-aperture radar	Radar images that show terrain and structures and allow for analysis to detect change over time
SeaVue radar	Radar images of maritime vessels

Source: GAO analysis of Department of Homeland Security information.



Background: Privacy and Civil Liberty Laws and Standards

- DHS's review identified the following privacy laws and standards as applicable to CBP's use of UAS:
 - the Privacy Act of 1974;⁵
 - the E-Government Act of 2002;⁶
 - the Homeland Security Act of 2002, as amended;⁷
 - universally recognized Fair Information Practice Principles;⁸ and
 - relevant DHS guidelines⁹ and policy memorandums.¹⁰

⁵ U.S.C. § 552a. See also *Privacy Policy Guidance Memorandum 2007-01* (as amended January 12, 2007) (requiring DHS components to handle non-U.S. person data held in mixed systems, which contain data on U.S. persons and non-U.S. persons, in accordance with the Fair Information Practice Principles and administrative protections as set forth in the Privacy Act).

⁶ Pub. L. No. 107-347, 116 Stat. 2899. See 44 U.S.C. §§ 3501 note, 3541-3549.

⁷ U.S.C. § 142.

⁸ DHS, *Privacy Policy Guidance Memorandum 2008-1* (Washington, D.C.: December 29, 2008). The DHS Privacy Office developed the Fair Information Practice Principles from the underlying concepts of the Privacy Act to account for the nature and purpose of the information being collected in relation to DHS's mission to preserve, protect, and secure. The Fair Information Practice Principles are transparency, individual participation, purpose specification, data minimization, use limitation, data quality and integrity, security, and accountability and auditing.

⁹ DHS, *Privacy Policy and Compliance, Directive 047-01* (July 7, 2011), and *Privacy and Compliance, Instruction 047-01-001* (July 25, 2011).

¹⁰ DHS, *Privacy Policy Guidance Memorandum 2008-02* (Washington, D.C.: Dec. 30, 2008); and *Privacy Policy Guidance Memorandum 2007-01* (as amended January 12, 2007) (Washington, D.C.: January 7, 2009).

Background: Privacy and Civil Liberty Laws and Standards (cont'd)

- DHS's review states that the E-Government Act and the Privacy Act do not apply to CBP's UAS because they are not information technology systems, they do not collect information in an identifiable form, and they are not systems of records in which information can be retrieved by personally identifiable information, such as a name.
- The review notes, however, that if CBP were to obtain personally identifiable information through the sensor on a UAS, that information would have to be treated in accordance with these standards.
- DHS's review also states that CBP and the DHS Privacy Office concurred that the use of sensors on aircraft—including unmanned aircraft systems—could erode privacy protections if not appropriately managed. As a result, they conducted a privacy impact assessment (PIA), issued in September 2013, of CBP's use of UAS in relation to the Fair Information Practice Principles.¹¹

¹¹DHS, *Privacy Impact Assessment for the Aircraft Systems*, DHS/CBP/PIA-019 (Washington, D.C.: September 9, 2013).

Background: Privacy and Civil Liberty Laws and Standards (cont'd)

- DHS's review does not specifically identify applicable civil liberty laws or standards; however, it does address whether CBP's use of UAS avoids capturing constitutionally protected activities, such as the First Amendment right to free assembly (demonstrations or protests), or results in an unreasonable search under the Fourth Amendment.
- CRCL officials stated that the constitutional rights to equal protection and due process are potentially applicable, which would prohibit using UAS to target a group based on race, ethnicity, or another constitutionally protected characteristic, and would require a redress process for individuals to correct or object to information collected using UAS. Redress is also addressed in the Fair Information Practices Principles.



Objective 1: DHS Reported That CBP Has an Oversight Framework and Procedures That Help Ensure Compliance with Privacy and Civil Liberty Laws and Standards

- DHS's review discusses the oversight framework provided by the DHS Privacy Office, CRCL, and a DHS UAS Working Group that helps to ensure CBP's use of UAS complies with privacy and civil liberty laws and standards. The oversight framework described in DHS's review includes the following:
 - The DHS Privacy Office, in coordination with the CBP Privacy Officer, is to ensure that DHS's operation of UAS is in compliance with the applicable privacy laws and standards through oversight processes, such as conducting a PIA.
 - In September 2013, the Privacy Office issued the PIA on Aircraft Systems, which examines the privacy impact of aircraft systems operations as it relates to the Fair Information Practice Principles. Privacy Office officials stated that CBP's use of UAS was consistent with the Fair Information Practice Principles.
 - CRCL is to investigate and resolve civil rights and civil liberties complaints filed by the public regarding DHS policies or activities.¹² The Privacy Office also is to review and respond to privacy complaints. As of June 2014, DHS reports that no formal complaints regarding CBP's use of UAS had been received by CBP, CRCL, or the Privacy Office.

¹² Complaints may be initiated by members of the public, federal agencies or agency personnel, nongovernmental organizations, media reports, and other sources through submissions to CRCL via mail, e-mail, fax, or telephone.



Objective 1: DHS Reported That CBP Has an Oversight Framework and Procedures That Help Ensure Compliance with Privacy and Civil Liberty Laws and Standards (cont'd)

- DHS's review also states that DHS has established a UAS Working Group that is charged with
 - establishing a forum to discuss privacy, civil rights, and civil liberties issues;
 - ensuring Privacy Office and CRCL guidance and policies are reflected in the concept of operations for UAS uses;
 - identifying potential privacy, civil rights, and civil liberties concerns with current or planned UAS uses; and
 - promoting best practices for safeguarding privacy, civil rights, and civil liberties by DHS partners and grant recipients.



Objective 1: DHS Reported That CBP Has an Oversight Framework and Procedures That Help Ensure Compliance with Privacy and Civil Liberty Laws and Standards (cont'd)

- DHS's review discusses CBP procedures that are designed to help ensure compliance with privacy and civil liberty laws and standards. These procedures include those related to
 - collecting video and radar images;
 - minimizing retention of such images;
 - securing, storing, and dissemination of data;
 - training; and
 - ensuring transparency.



Objective 1: DHS Reported That CBP Has an Oversight Framework and Procedures That Help Ensure Compliance with Privacy and Civil Liberty Laws and Standards (cont'd)

- DHS's review identified the following CBP procedures that minimize the collection of video and radar images and avoid capture of constitutionally protected activities:
 - authorizing UAS to fly only within a designated mission area to help ensure UAS only capture images and information necessary for the authorized mission and
 - operating UAS primarily at an altitude between 19,000 and 28,000 feet, where the video images do not permit identification of individuals or license plates.
- The DHS review also reports that the cameras on the UAS do not have the capability to collect images from nonpublic areas, such as the interior of homes or businesses, or otherwise perform observations that would be considered a search under the Fourth Amendment of the Constitution.



Objective 1: DHS Reported That CBP Has an Oversight Framework and Procedures That Help Ensure Compliance with Privacy and Civil Liberty Laws and Standards (cont'd)

- CBP procedures identified in DHS's review as helping to minimize the retention of video and radar images that are collected by UAS include
 - overwriting the UAS video and radar images that are recorded on the digital video recorder at the NASOC about every 30 days and
 - retaining UAS video and radar images at the Air and Marine Operations Center for a maximum of 5 years to use in analysis and intelligence products.
- The review states that if CBP associates UAS video with an individual as part of an investigation, the information becomes part of a case management system that is subject to the requirements of the Privacy Act, which include publishing a system of records notice in the *Federal Register* that is to describe the retention schedule, nature, purpose, maintenance, use, and sharing of the information.

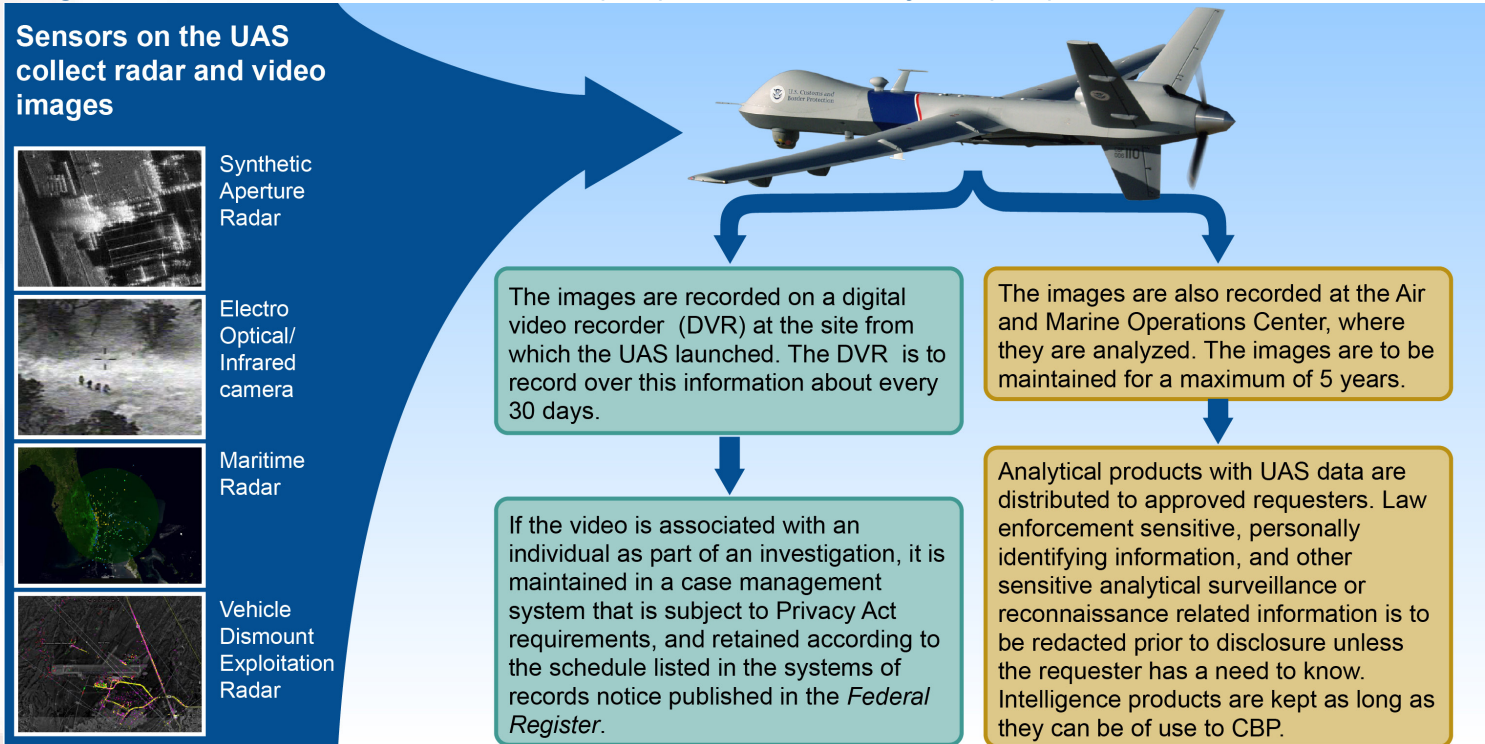


Objective 1: DHS Reported That CBP Has an Oversight Framework and Procedures That Help Ensure Compliance with Privacy and Civil Liberty Laws and Standards (cont'd)

- CBP procedures identified in DHS's review as helping to ensure data are properly secured, stored, and disseminated include
 - encrypting the transmission of UAS video;
 - restricting access to real-time video to authorized users with a need to know;
 - restricting disclosure of analytical products that contain UAS-obtained images to approved requesters and redacting law enforcement sensitive, personally identifying information, and other sensitive information prior to disclosure, unless the requester has a need to know;
 - maintaining a log to track the dissemination of all analytical products that contain UAS-obtained images; and
 - handling UAS-obtained images that are to be used as evidence in accordance with rules of evidence, such as ensuring they are not co-mingled with information from other investigations and maintaining an adequate chain of custody.
- Figure 1 on the following slide illustrates CBP UAS data collection and retention procedures.

Objective 1: DHS Reported That CBP Has an Oversight Framework and Procedures That Help Ensure Compliance with Privacy and Civil Liberty Laws and Standards (cont'd)

Figure 1: U.S. Customs and Border Protection (CBP) Unmanned Aerial System (UAS) Data Collection and Retention



Source: GAO analysis of Department of Homeland Security information; U.S. Customs and Border Protection (photographs). | GAO-14-849R



Objective 1: DHS Reported That CBP Has an Oversight Framework and Procedures That Help Ensure Compliance with Privacy and Civil Liberty Laws and Standards (cont'd)

- CBP training procedures identified in DHS's review include
 - requiring all CBP employees to complete annual privacy awareness, civil rights and civil liberties, ethics, and CBP Code of Conduct training and
 - requiring OAM law enforcement officers to take additional training focused on privacy, civil rights, and civil liberties issues related to the collection, processing, and safeguarding of evidence.
- Procedures identified in DHS's review as helping to ensure transparency include
 - making privacy documentation, such as the Privacy Impact Assessment, available on the Internet and
 - releasing information to the public on the UAS program in response to Freedom of Information Act requests.



Objective 1: DHS's Review Did Not Address the Extent to Which CBP Had Written Policies to Institutionalize the Procedures That Protect Privacy and Civil Liberties

- DHS's review did not address the extent to which CBP had institutionalized the procedures reported as helping to protect privacy and civil liberties through written policies.
- We found that CBP has taken steps to document these procedures and has issued or plans to issue policies to institutionalize these procedures. Table 3 on the following slide shows the policies CBP has issued and the key procedures documented in each policy.



Objective 1: CBP Has Taken Steps to Document Key Procedures That Help Protect Privacy and Civil Liberties

Table 3: U.S. Customs and Border Protection Unmanned Aerial Systems (UAS) Policies and Key Procedures

Policy	Key procedures documented
Office of Air and Marine (OAM), <i>Unmanned Aircraft System Operations and Privacy</i> , September 9, 2013.	<ul style="list-style-type: none">•Flight authorization requirements•National Air Security Operations Center UAS video retention schedule•Access restriction requirements for UAS video•Requirement to follow previously established evidence-handling policies
OAM, <i>Aviation Support Request for National Air Security Office Intelligence, Surveillance, and Reconnaissance (ISR) and Aviation Support</i> , March 28, 2014.	<ul style="list-style-type: none">•Flight authorization requirements, including the process to submit, vet, prioritize, schedule, and archive requests to use UAS, among other air assets, to collect ISR
Office of Intelligence and Investigative Liaison (OIIL), <i>Procedures for the Review and Dissemination of CBP Information Containing ISR Data</i> , May 2013.	<ul style="list-style-type: none">•Requirement to restrict disclosure of analytical products with ISR to approved requesters with a need to know•Requirement to redact sensitive information prior to disclosure unless the requester has a valid need to know•Requirement to log disclosure requests
OIIL, <i>Collection Operations Procedures and Collection Operations Managers</i> , last updated July 18, 2012.	<ul style="list-style-type: none">•Flight authorization requirements, including the requirement for OIIL managers to review, verify, and validate all ISR requests for other agencies, including UAS aviation support requests.

Source: GAO analysis of U.S. Customs and Border Protection information.



Objective 1: CBP Has Taken Steps to Document Key Procedures That Help Protect Privacy and Civil Liberties (cont'd)

- Although CBP has documented key procedures in those areas identified in table 3, CBP has not yet issued a written policy on retaining UAS data at the Air and Marine Operations Center that is used by OIIL for data analysis for a maximum of 5 years. An OIIL official noted that OIIL has been conducting analysis on UAS data since 2010, so it has not yet retained data for more than 5 years.
- According to OIIL officials, OIIL has developed a draft policy on retaining UAS data that it plans to have signed once an Assistant Commissioner for OIIL is in place.



Objective 2: DHS Reported That CBP Operates UAS in Accordance with Its Authorities, Which Do Not Limit Use Exclusively to Border and Coastal Areas

- DHS’s review stated that CBP’s use of UAS is not limited to areas along the border, as CBP’s authorities allow the agency to use UAS in other areas.
- According to DHS’s review, CBP operates UAS in accordance with federal law, which includes a broad mandate to determine the admissibility of persons and ensure that goods are not introduced into the United States contrary to law, as well as appropriations language authorizing support for federal, state, and local law enforcement operations.
 - DHS’s review cited laws governing immigration and customs enforcement, including inspection and arrest of aliens attempting to enter or present in the United States illegally, and search and seizure of items subject to duty or imported or exported contrary to law.¹³
 - DHS’s review also cited the Consolidated Appropriations Act, 2014, which provides funding for air and marine operations, including “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.”¹⁴

¹³ 8 USC §§ 1225, 1357; 19 U.S.C. §§ 482, 507, 1461, 1496, 1581, 1582, 1595a(d).

¹⁴ Pub. L. No. 113-76, 128 Stat. 5, 249-30.

Objective 2: DHS Reported That CBP Operates UAS in Accordance with Its Authorities, Which Do Not Limit Use Exclusively to Border and Coastal Areas (cont'd)

- According to DHS's review, CBP's mission is focused on border security, but its use of UAS is not limited by law exclusively to border and coastal areas.
- CBP's OAM has authority under its fiscal year 2014 appropriation to support federal, state, and local agencies in enforcing homeland security laws, and the Secretary of Homeland Security has the discretion to authorize OAM to assist law enforcement and emergency humanitarian efforts.
- DHS's review provides examples of CBP's use of UAS in support of its border security mission, such as collecting video and other images to assist in enforcement of laws pertaining to drug and alien smuggling, and in support of other agencies, such as providing video or radar images of flooding in disaster situations.

Objective 2: Location of UAS Operations Is Limited by COAs and CBP Policies and Procedures

- According to DHS's review, CBP's UAS operations are limited geographically via COAs.
 - DHS's review stated that COAs for CBP's use of UAS defines airspace and establishes operational corridors for unmanned aircraft. Specifically, the review cited the following operational corridors:
 - northern border: along and within 100 miles of border and
 - southern border: along and within 25 to 60 miles of border
- CBP operates UAS in airspace outside existing COAs by working with FAA to create a new COA or by requesting an addendum to an existing COA.
 - Specifically, CBP worked with FAA to construct new COAs defining airspace where CBP can operate for natural disaster missions.
 - According to CBP officials, addendums to existing COAs were requested in order to meet operational needs or during emergency situations.
 - Addendums approved by FAA for CBP's UAS operations are temporary and limited to a specific time period.
 - We reviewed all COA addendums CBP received from fiscal year 2011 through April 2014 and found that CBP received nine addendums expanding existing COA-designated airspace.

Objective 2: Location of UAS Operations Is Limited by COAs and CBP Policies and Procedures (cont'd)

- According to DHS's review, CBP conducts UAS operations at altitudes between 19,000 and 28,000 feet pursuant to COAs approved by FAA, which, as previously discussed, limits the detail of images collected.
 - Our analysis of operational, transit, and disaster COAs confirmed UAS operations were authorized at altitudes of operation between 19,000 and 28,000 feet.
 - In addition, CBP officials told us UAS training missions occur from ground level to 2,500 feet, limited to the immediate area around the airport where the NASOC is located.
 - Our analysis of training COAs confirmed UAS training operations were authorized at altitudes of operation between ground level and 2,500 feet around the relevant NASOC.

Objective 2: Location of UAS Operations Is Limited by COAs and CBP Policies and Procedures (cont'd)

- According to CBP officials, UAS flights outside COA-designated or restricted airspace without FAA approval are typically in response to emergency situations.
 - For example, immediate emergency situations include those caused by equipment malfunction or weather.
 - CBP must submit an incident report to FAA for each instance it flies outside COA-designated or restricted airspace without permission.
 - We reviewed incident reports submitted by CBP from fiscal year 2011 through April 2014 and found that CBP reported deviations from COA-designated and restricted airspace eight times for reasons such as pilot error, equipment malfunctions, and weather.

Objective 2: Location of UAS Operations Is Limited by COAs and CBP Policies and Procedures (cont'd)

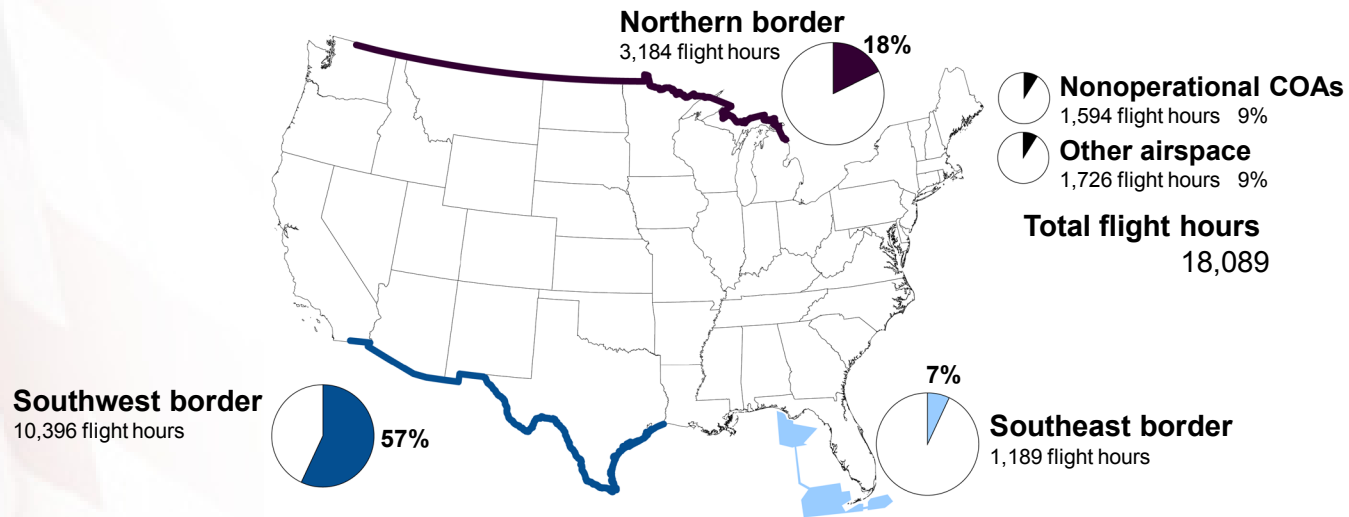
- According to DHS's review, CBP's UAS operations are limited internally by CBP's own policies and procedures.
 - DHS's review stated that UAS are assigned to missions in accordance with CBP's nationwide policy regarding the tasking of CBP air assets.
- OAM policies call for all requests for UAS support to be reviewed and approved by OAM.
 - Requests for UAS support are tiered and prioritized against resources.
 - Tier levels and examples include
 - Tier I nationally directed: international disaster response;
 - Tier II CBP directed: operations to support Border Patrol; and
 - Tier III local operations: support for local law enforcement agencies.

Objective 2: DHS's Review Did Not Address the Extent to Which CBP's Use of UAS Is in Border and Coastal Areas

- DHS's review did not provide information on the extent to which CBP's use of UAS is in border and coastal areas of the United States.
- As shown in figure 2, we found that over 80 percent of UAS flight hours from fiscal year 2011 through April 2014 were in border and coastal areas.

Objective 2: Over 80 Percent of CBP UAS Flight Hours Were Associated with Airspace Encompassing Border and Coastal Areas

Figure 2: U.S. Customs and Border Protection’s (CBP) Unmanned Aerial System (UAS) Flight Hours in Operational Certificates of Waiver or Authorization (COA) Airspace Encompassing Border and Coastal Areas, Fiscal Year 2011 through April 2014



Source: GAO analysis of U.S. Customs and Border Protection data. | GAO-14-849R

Note: Operational COAs were associated with the southwest, southeast, and northern borders. Airspace locations shown above are approximate and reflect COA-designated operational airspace active as of April 30, 2014. Nonoperational COAs include training, transit, and disaster COAs. See table 4 for additional information on nonoperational COA flight hours. Other airspace includes UAS operations in restricted and foreign airspace.

Objective 2: UAS Flight Hours in Nonoperational COAs Were Limited

- As shown in table 4, the proportion of flight hours CBP’s UAS flew in airspace designated in nonoperational COAs, which include training, transit, and disaster COAs, was relatively low.

Table 4: U.S. Customs and Border Protection (CBP) Unmanned Aerial System (UAS) Flight Hours in Nonoperational Certificate of Waiver or Authorization (COA)-Designated Airspace, Fiscal Year 2011 through April 2014

Type of COA	UAS flight hours	Percentage of total flight hours
Training	1,377	7.6
Transit	40	0.2
Disaster	178	1.0
Total nonoperational COA flight hours	1,594^a	9
Total UAS flight hours	18,089	100^b

Source: GAO analysis of CBP data

^aNumbers do not add because of rounding.

^bEighty-two and 9 percent of UAS flight hours were associated with operational COAs and other airspace, respectively (see fig. 2).



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