



April 23, 2013

Michael Huerta, Administrator
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**Re: Comment on “Unmanned Aircraft System Test Site Program”
NPRM Docket No: FAA-2013-0061**

Dear Administrator Huerta:

On behalf of the American Civil Liberties Union (“ACLU”), America’s oldest and largest civil liberties organization, and its more than half a million members, countless additional supporters and activists, and 53 affiliates across the country, we write to express our position regarding the privacy policies required by the Federal Aviation Administration’s (FAA) proposed rule and made necessary by the FAA Modernization and Reform Act of 2012 (FMRA). Introduction of unmanned aircraft systems (UAS) by the FAA into the National Airspace System (NAS) creates unavoidable privacy concerns that the FAA must address head on. We applaud the FAA for considering the privacy problems raised by UAS and initiating this rulemaking to ensure that the test site selection process does not result in privacy violations.

The FMRA sets up a number of required way stations on the road to broader introduction of UAS into the NAS. The FAA has satisfied the first requirement of the FMRA by streamlining the process by which state and local government entities obtain FAA Certificates of Waiver or Authorization (COAs), which are necessary to operate UAS in the NAS.¹ Now, the FAA is seeking to implement the first project required by the FMRA—the establishment of six test sites, each for five years, for UAS research.² These test sites are “defined geographic area[s] where research and development are conducted.”³

the utmost respect to individuals' privacy ... Ultimately, public confidence is needed in fielding these systems."¹⁶

Responding to widespread concern over UAS, Congress and state legislatures have begun to consider legislation to regulate UAS privacy, showing the concern of the American people over the privacy risks of UAS. On April 11, 2013, Idaho became the first state to pass comprehensive UAS regulation.¹⁷ By our latest count, UAS legislation is active in 29 states¹⁸ and the House of Representatives, where two UAS privacy bills were recently introduced.¹⁹

The wide outpouring of concern over the introduction of UAS into America's skies necessitates a comprehensive and forward-looking approach to privacy in every step of the integration process. Without meaningful and effective regulation, the availability and low cost of UAS threatens to turn America into a surveillance state. In the past, law enforcement agencies have been eager to make full use of new surveillance technologies, such as networks of surveillance cameras,²⁰ hidden GPS tracking devices, and automated license plate readers.²¹ While UAS can certainly be used in beneficial ways that do not violate privacy, comprehensive privacy oversight by the FAA at this preliminary stage is necessary to ensure that notions of privacy govern the way surveillance technology is used, and not the other way around.

II. The FAA Should Require Strict Compliance with FIPPs in Test Site Selection

The FAA's NPRM contains the following text related to the privacy precautions to be taken by test site operators:

- (1) The Site Operator must ensure that there are privacy policies governing all activities conducted under the OTA, including the operation and relevant activities of the UASs authorized by the Site Operator. Such privacy policies must be available publically, and the Site Operator must have a mechanism to receive and consider comments on its privacy policies. In addition, these policies should
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be informed by Fair Information Practice Principles. The privacy policies should be updated as necessary to remain operationally current and effective. The Site Operator must ensure the requirements of this paragraph are applied to all operations conducted under the OTA.²²

The proposed requirement is promising, but not meaningful enough to provide adequate privacy protection to those who live within the range of the test sites. In this context, privacy policies must be read to mean detailed guidance on the handling of personal information,

To prevent unwarranted privacy harms, the BPP should ensure that each test carried out follows a strict data collection policy. In brief, the BPP should directly reference the eight FIPPs:

- **Transparency:** The Operator should create and make publicly available a data collection policy that explains the data that is being collected. Following their tests, they should prepare a public report on the type of data collected and catalog any privacy incidents that occurred during the test. In addition, the FAA should explore whether technological solutions exist that would allow the public to track the location of UAS during flights.
- **Individual Participation:** The Operator should consult with the community living within the test area through community meetings and online consultations. Residents in the test area who object should be given an opportunity to opt their property out of the test area.

- **Security:** Data collection statements and test plans should detail the security used for communication between ground stations and UAS. All communications should be encrypted when audiovisual content is being transmitted.
- **Accountability and Auditing:** All employees should be familiar with the privacy policy and the Site Operator should ensure that employee and contractor behavior is in line with the policy. The Site Operator should audit employee performance on a randomized basis to ensure that the privacy policy is being strictly followed. The FAA also has significant oversight re-2.5365(1)(8) and 2.5365 in 9431.717(.)2505789

Operator has been involved in. The FAA should also conduct its own due diligence to determine

FAA oversight regime requiring test site operators to keep detailed records and make them accessible when necessary to comply with the BPP.

FAA regulation will not supplant the need for congressional action to augment the currently scant privacy protections surrounding UAS, especially with respect to protecting privacy agtaeiodvc,cangtau53658(t)-2.5365.47943789(c)3.15789(t)-2.53536(i)-2..5365.04(S)]TJ 254.767 0 Td [