To provide for a legal framework for the operation of public unmanned aircraft systems, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

February 13, 2013

Mr. Poe of Texas (for himself and Ms. Lofgren) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for a legal framework for the operation of public unmanned aircraft systems, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Preserving American Privacy Act of 2013”.

SEC. 2. USE OF UNMANNED AIRCRAFT SYSTEMS.

(a) IN GENERAL.—Part II of title 18, United States Code, is amended by inserting after chapter 205 the following:
“CHAPTER 205A—USE OF UNMANNED AIRCRAFT SYSTEMS

§ 3119a. Definitions

“In this Act:

“(1) COURT OF COMPETENT JURISDICTION.— The term ‘court of competent jurisdiction’ includes—

“(A) any district court of the United States (including a magistrate judge of such a court) or any United States court of appeals that—

“(i) has jurisdiction over the offense being investigated;

“(ii) is in a district in which the public unmanned aircraft system is located or where the public unmanned aircraft system is being or sought to be operated; or

“(iii) is acting on a request for foreign assistance pursuant to section 3512 of title 18, United States Code; or
“(B) a court of general criminal jurisdiction of a State authorized by the law of that State to issue search warrants.

“(2) COVERED INFORMATION.—The term ‘covered information’ means—

“(A) information that is reasonably likely to enable identification of an individual; or

“(B) information about an individual’s property that is not in plain view.

“(3) GOVERNMENTAL ENTITY.—The term ‘governmental entity’ means a department or agency of the United States or any State or political subdivision thereof.

“(4) PUBLIC UNMANNED AIRCRAFT SYSTEM.—The term ‘public unmanned aircraft system’ has the meaning given such term in section 331 of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 40101 note).

“(5) STATE.—The term ‘State’ means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

“(6) UNMANNED AIRCRAFT SYSTEM.—The term ‘unmanned aircraft system’ has the meaning given
such term in section 331 of the FAA Modernization

§3119b. Use of public unmanned aircraft systems

(a) APPLICATION.—A governmental entity shall op-
erate any public unmanned aircraft system only in accord-
ance with this Act.

(b) MINIMIZATION.—In operating a public un-
manned aircraft system or disclosing any covered informa-
tion collected by such operation, a governmental entity
shall minimize, to the maximum extent practicable, the
collection or disclosure of such covered information.

(c) DATA COLLECTION STATEMENT REQUIRED.—

(1) Concurrent with an application for a cer-
tificate or license to operate a public unmanned air-
craft system in the national airspace, a govern-
mental entity shall submit to the Attorney General
a data collection statement, in such form and man-
ner as the Attorney General may by rule require,
that describes—

(A) the purpose for which the public un-
manned aircraft system will be used;

(B) whether the public unmanned aircraft
system is capable of collecting covered informa-
tion;
“(C) the length of time for which the collected covered information will be retained;

“(D) an individual point of contact for citizen feedback;

“(E) the particular unit of the governmental entity responsible for safe and appropriate operation of the public unmanned aircraft system;

“(F) the rank and title of the individual who may authorize the operation of the public unmanned aircraft system;

“(G) the applicable data minimization policies barring the collection of covered information unrelated to the investigation of crime and requiring the destruction of covered information that is no longer relevant to the investigation of a crime; and

“(H) the applicable audit and oversight procedures that ensure governmental entities and those acting on their behalf use the unmanned aircraft system only as authorized, within the scope of the data collection statement, and in compliance with data minimization policies.
“(2) The applicant is responsible for submitting to the Attorney General updates to the data collection statement.

“(3) The Attorney General may request that the Secretary of Transportation revoke the certificate or license to operate the public unmanned aircraft system in the national airspace if the operator’s activity contravenes the data collection statement disclosures required in paragraph (1).

“(4) Not later than 6 months after the date of enactment of this Act, the Attorney General shall issue regulations to establish a database, that is publicly accessible via electronic means, indexing the certificates or licenses and the associated data collection statements described in this subsection for public unmanned aircraft systems operated within the national airspace.

“§ 3119c. Use of covered information as evidence

“(a) IN GENERAL.—Covered information that a governmental entity collects by operation of a public unmanned aircraft system, and evidence derived from such covered information, may not be received as evidence against an individual in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or
other authority of the United States, a State, or a political
subdivision thereof, unless such operation and collection,
or disclosure of such covered information is in accordance
with this Act.

“(b) Prohibition on Use for Law Enforcement

Purposes.—Except as provided in subsection (c), a gov-
ernmental entity may not—

“(1) operate a public unmanned aircraft system
for a law enforcement purpose to collect covered in-
formation; or

“(2) disclose covered information so collected.

“(c) Exceptions.—A governmental entity may oper-
ate a public unmanned aircraft system and may collect
or disclose covered information acquired by such operation
for a law enforcement purpose only if such operation, col-
lection, or disclosure is in accordance with any of the fol-
lowing:

“(1) Warrant.—The operation, collection, or
disclosure is—

“(A) pursuant to a warrant issued by a
court of competent jurisdiction; and

“(B) not later than 10 days after the exe-
cution of the warrant, the governmental entity
that sought the warrant serves a copy of the
warrant on each person on whom covered infor-
mation was collected, except, if providing such
notice would seriously jeopardize an ongoing
criminal or national security investigation, the
court may delay such notice on request of the
governmental entity.

“(2) ORDER.—The operation, collection, or dis-
closure is pursuant to an order that may be lawfully
issued by a court of competent jurisdiction—

“(A) based on the allegation by the govern-
mental entity requesting such order of specific
and articulable facts showing a reasonable sus-
picion of criminal activity and a reasonable
probability that the operation of a public un-
manned aircraft system will provide evidence of
such criminal activity;

“(B) authorizing the operation of a public
unmanned aircraft system only in a stipulated
public area for a period of not more than 48
hours;

“(C) which may be renewed at the court’s
discretion for a total period of operation of not
longer than 30 days; and

“(D) notice is provided—

“(i) not later than 10 days after the
termination of which, by serving a copy on
each person on whom covered information was collected; or

“(ii) not less than 48 hours prior to such operation, to the public in the stipulated public area, by prominent placement of a notification—

“(I) in a major publication (with circulation of more than 1,000 in that area);

“(II) on a public Internet Web site of the governmental entity, for the duration of the operation; or

“(III) on public signage in the area, for the duration of the operation.

“(3) U.S. LAND BORDER.—The operation is within a distance of 25 miles from any external land boundary of the United States and is for the purpose of patrolling or securing the border.

“(4) CONSENT.—The covered information that is collected or disclosed pertains to an individual who provides prior written consent to such collection or disclosure.

“(5) EMERGENCY.—The operation is—
“(A) an investigative or law enforcement officer reasonably believes that an emergency situation exists that—

“(i) involves—

“(I) immediate danger of death or serious physical injury to any person;

“(II) conspiratorial activities threatening the national security interest; or

“(III) conspiratorial activities characteristic of organized crime; and

“(ii) requires such operation, collection, or disclosure before a warrant or order authorizing such operation, collection, or disclosure may, with due diligence, be obtained;

“(B) that officer applies for such a warrant or order not later than 48 hours after such operation begins; and

“(C) that operation is terminated immediately on the earlier of when—

“(i) the information necessary to resolve the emergency situation is collected; or
“(ii) the court denies the application for the warrant or order.

“(6) Effect of failure to secure warrant or order.—If a warrant or order described in paragraph (5) is denied, then for purposes of subsection (b), an operation, collection, or disclosure under that paragraph shall not be considered to be an operation, collection, or disclosure authorized under this subsection. Any covered information so collected shall be removed from all databases of the governmental entity.

“§ 3119d. Administrative discipline

“(a) Administrative Discipline.—If a court or appropriate department or agency determines that a governmental entity has violated any provision of this Act, and the court or appropriate department or agency finds that the circumstances surrounding the violation raise serious questions about whether or not an officer or employee of the United States acted intentionally with respect to the violation, the department or agency shall, upon receipt of a true and correct copy of a decision or findings of the court or appropriate department or agency, promptly initiate a proceeding to determine whether disciplinary action against the officer or employee is warranted. If the head of the department or agency involved
determines that disciplinary action is not warranted, such
head shall notify the Inspector General with jurisdiction
over the department or agency concerned and shall provide
the Inspector General with the reasons for such deter-
mination.

“(b) Improper Disclosure Is Violation.—Any
willful disclosure or use by an investigative or law enforce-
ment officer or governmental entity of information beyond
the extent permitted by this Act is a violation of this Act
for purposes of this section.

“§3119e. Reporting

“(a) In January of each year, any Federal judge who
has issued a warrant or order (or an extension thereof)
under section 3 on operation of public unmanned aircr aft
systems that expired during the preceding year, or who
has denied approval of such a warrant or order during
that year, shall report to the Administrative Office of the
United States Courts—

“(1) the fact that an order or extension was ap-
piled for;

“(2) the kind of order or extension applied for;

“(3) the fact that the order or extension was
granted as applied for, was modified, or was denied;
“(4) the period of collections authorized by the order, and the number and duration of any extensions of the order;

“(5) the offense specified in the order or application, or extension of an order; and

“(6) the identity of the applying agency making the application and the rank and title of the person authorizing the application.

“(b) In March of each year the Attorney General, an Assistant Attorney General specially designated by the Attorney General, or the principal prosecuting attorney of a State, or the principal prosecuting attorney for any political subdivision of a State, shall report to the Administrative Office of the United States Courts—

“(1) the information required by paragraphs (1) through (6) of subsection (a) with respect to each application for an order or extension made during the preceding calendar year;

“(2) a general description of all the information collected under such order or extension, including—

“(A) the approximate nature and frequency of incriminating conduct collected;

“(B) the approximate number of persons whose covered information was collected; and
“(C) the approximate nature, amount, and cost of the manpower and other resources used in the collection;

“(3) the number of arrests resulting from covered information collected from such order or extension, and the offenses for which arrests were made;

“(4) the number of trials resulting from such covered information;

“(5) the number of motions to suppress made with respect to such covered information, and the number granted or denied;

“(6) the number of convictions resulting from such covered information, and the offenses for which the convictions were obtained, and a general assessment of the importance of the information collected; and

“(7) the information required by paragraphs (2) through (6) of this subsection with respect to orders or extensions obtained in a preceding calendar year.

“(c) In June of each year the Director of the Administrative Office of the United States Courts shall transmit to the Congress a full and complete report that includes a summary and analysis of all information received under subsection (a) and (b) during the preceding calendar year.
The Director of the Administrative Office of the United States Courts is authorized to issue regulations regarding the content and form of the reports required to be filed by subsections (a) and (b) of this section.

§ 3119f. Private use of unmanned aircraft systems

“It shall be unlawful to intentionally operate a private unmanned aircraft system to capture, in a manner that is highly offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of an individual engaging in a personal or familial activity under circumstances in which the individual had a reasonable expectation of privacy, through the use of a visual or auditory enhancing device, regardless of whether there is a physical trespass, if this image, sound recording, or other physical impression could not have been achieved without a trespass unless the visual or auditory enhancing device was used.

§ 3119g. Application with other Federal laws

“Nothing in this Act may be construed to modify, limit, or supersede the operation of chapter 119 of title 18, United States Code.

§ 3119h. Ban on weaponization

“It shall be unlawful for any investigative or law enforcement officer or private individual to operate an unmanned aircraft system that is armed with a firearm (as
such term is defined in section 921 of title 18, United States Code) within the airspace of the United States.

§ 3119i. Rule of construction regarding State laws on unmanned aircraft system usage

“Nothing in this Act shall be construed to preempt any State law regarding the use of unmanned aircraft systems exclusively within the borders of that State.”

(b) CLERICAL AMENDMENT.—The table of chapters for part II of title 18, United States Code, is amended by inserting after the item relating to chapter 205 the following:

“205A. Use of unmanned aircraft systems .............................................. 3119a”.