

FARMER'S PRIVACY ACT OF 2012

SEPTEMBER 20, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MICA, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 5961]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 5961) to provide reasonable limits, control, and oversight over the Environmental Protection Agency's use of aerial surveillance of America's farmers, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be referred to as the “Farmer’s Privacy Act of 2012”.

SEC. 2. LIMITATION ON USE OF AERIAL SURVEILLANCE.

(a) **AERIAL SURVEILLANCE RESTRICTED.**—Subject to subsection (b), in exercising any authority under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Administrator may not conduct aerial surveillance of agricultural land.

(b) **EXCEPTIONS.**—The Administrator may conduct aerial surveillance of agricultural land under the Federal Water Pollution Control Act if the Administrator—

- (1) has obtained the voluntary written consent of the owner or operator of the land to be surveilled in accordance with section 3; or
- (2) has obtained a certification of reasonable suspicion in accordance with section 4.

SEC. 3. VOLUNTARY WRITTEN CONSENT.

(a) **CONSENT REQUIRED.**—In order to conduct aerial surveillance under section 2(b)(1), the Administrator shall obtain from the owner or operator of the land to be surveilled written consent to such surveillance.

(b) **CONTENTS.**—The Administrator shall ensure that any written consent required under subsection (a)—

- (1) specifies the period during which the consent is effective, which may not exceed one year;
- (2) contains a specific description of the geographical area to be surveilled; and
- (3) if requested by the owner or operator of the land to be surveilled, contains limitations on the days and times during which the surveillance may be conducted.

(c) **ASSURANCE OF VOLUNTARY CONSENT.**—The Administrator shall ensure that any written consent required under subsection (a) is granted voluntarily by the owner or operator of the land to be surveilled, and the Administrator may not threaten additional, more detailed, or more thorough inspections, or otherwise coerce or entice such owner or operator, in order to obtain such consent.

SEC. 4. CERTIFICATION OF REASONABLE SUSPICION.

(a) **IN GENERAL.**—In order to conduct aerial surveillance under section 2(b)(2), the Administrator shall obtain a certification of reasonable suspicion from the United States District Court for the District of Columbia in accordance with this section.

(b) **CERTIFICATION REQUIREMENTS.**—The court may issue to the Administrator a certification of reasonable suspicion if—

- (1) the Administrator submits to the court an affidavit setting forth specific and articulable facts that would indicate to a reasonable person that a violation of the Federal Water Pollution Control Act exists in the area to be surveilled; and
- (2) the court finds that the Administrator has shown reasonable suspicion that an owner or operator of agricultural land in the area to be surveilled has violated the Federal Water Pollution Control Act.

SEC. 5. DISCLOSURE OF INFORMATION.

(a) **IN GENERAL.**—Except as provided in subsection (c), or for the purposes of an investigation or prosecution by the Administrator as described in section 6, the Administrator may not disclose information collected through aerial surveillance conducted under section 2(b).

(b) **APPLICABILITY OF FOIA.**—Section 552 of title 5, United States Code, shall not apply to any information collected through aerial surveillance conducted under section 2(b) of this Act.

(c) **RIGHT TO PETITION.**—The owner or operator of land surveilled under this Act has the right to petition for copies of the information collected through such surveillance.

SEC. 6. DESTRUCTION OF INFORMATION.

The Administrator shall destroy information collected through aerial surveillance conducted under section 2(b) not later than 30 days after collection, unless the information is pertinent to an active investigation or prosecution by the Administrator.

SEC. 7. RULE OF CONSTRUCTION.

Nothing in this Act shall be interpreted as expanding the power of the Administrator to inspect, monitor, or conduct surveillance of agricultural lands pursuant to

the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) or any other Federal law.

SEC. 8. DEFINITIONS.

In this Act:

(1) **AERIAL SURVEILLANCE.**—The term “aerial surveillance” means any surveillance from the air, including—

(A) surveillance conducted from manned or unmanned aircraft; or

(B) the use of aerial or satellite images, regardless of whether the images are publicly available.

(2) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the Environmental Protection Agency, or in the case of an action taken pursuant to a permit program approved under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342), the head of the State agency administering the program.

(3) **AGRICULTURAL LAND.**—The term “agricultural land” means land used primarily for agricultural production, including cropland, grassland, prairie land, improved pastureland, rangeland, cropped woodland, marshes, reclaimed land, fish or other aquatic species habitat, and land used for agro-forestry or the production of livestock.

(4) **COURT.**—The term “court” means the United States District Court for the District of Columbia.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 5961 is to provide reasonable limits, control, and oversight over the Environmental Protection Agency’s use of aerial surveillance of agricultural land.

BACKGROUND AND NEED FOR LEGISLATION

In 1972, Congress passed the Federal Water Pollution Control Act Amendments of 1972 (commonly known as the Clean Water Act or the CWA; 33 USC § 1251 et seq.). The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. The primary mechanism for achieving this objective is the CWA’s prohibition on the discharge into a jurisdictional waterbody of a pollutant without a National Pollutant Discharge Elimination System (NPDES) permit. (See CWA §§ 301, 402.) NPDES permits are a basic regulatory tool of the CWA. Under the CWA, 46 states have been authorized to implement NPDES permits and enforce permits. The Environmental Protection Agency (EPA) manages the Clean Water Act program in the remaining states and territories.

EPA has the basic responsibility for administering and enforcing most of the CWA, including the NPDES permit program. The EPA or an authorized state may conduct compliance inspections of facilities, issue compliance orders, or file civil suits against those who violate the terms of a permit or other CWA requirements. Facility inspections typically have involved the use of on-the-ground personal visits by enforcement personnel, but in recent years, EPA has increasingly used aircraft to conduct aerial over-flights to determine activities at targeted facilities and facilities’ compliance with the CWA. The EPA also sometimes reviews aerial photographs and geographic and mapping information that are available on the Internet or from other sources.

In the past couple of years, the EPA has targeted the agriculture industry, and especially concentrated animal feeding operations (CAFOs), for compliance inspections and enforcement, particularly in high priority geographical areas such as the Chesapeake Bay watershed. The EPA is using aerial surveillance, aerial photo-

graphs, and geographic and mapping information as an integral part of its enforcement strategy in the Chesapeake Bay region and elsewhere.

Local farmers, ranchers, and others in the regulated community are concerned about their privacy and what the EPA is doing with the information it collects. Many stakeholders are concerned that the EPA is abusing its use of aerial surveillance and of aerial photographs and geographic and mapping information. Many believe it constitutes an invasion of privacy, and question the legality of using modern technology like this for these purposes. There is the issue of the EPA's interpretation of the Agency's authority under the CWA to use such inspection and enforcement approaches. There is also a concern that there has been a dramatic shift in the EPA's compliance and enforcement strategy, from the approach of compliance assistance through partnering with the regulated community to achieve compliance with environmental, health, and safety laws, to one of a heavy-handed, top-down Federally-dominated enforcement approach. Stakeholders feel this should not be the way the Federal government works with its farmers and other small businesses.

As a result of the many concerns voiced by stakeholders about the EPA's use of aerial surveillance, aerial photographs, and geographic and mapping information for inspections and enforcement under the CWA, on June 19, 2012, Representative Capito introduced H.R. 5961, the Farmer's Privacy Act of 2012, to provide reasonable limits, control, and oversight over the EPA's use of aerial surveillance of agricultural land. H.R. 5961 aims to provide reasonable protections by setting up guidelines to ensure that the EPA has legal authority and reasonable suspicion to fly over agricultural land and conduct aerial surveillance.

HEARINGS

No hearings were held on H.R. 5961.

LEGISLATIVE HISTORY AND CONSIDERATION

On June 19, 2012, Representative Shelley Moore Capito of West Virginia introduced H.R. 5961, the Farmer's Privacy Act of 2012, a bill to provide reasonable limits, control, and oversight over EPA's use of aerial surveillance of agricultural land. On August 1, 2012, the Committee on Transportation and Infrastructure met in open session to consider H.R. 5961, and ordered the bill reported favorably to the House by voice vote with a quorum present.

An amendment was offered in Committee by Representative Capito, which was adopted by voice vote. The amendment made a clarifying change to the bill. The amendment aimed to clarify that the type of aircraft referred to in the bill is both manned and unmanned aircraft.

Representative Landry also offered an amendment which was adopted by voice vote. The amendment would remove public notice as one of the options available to the EPA before conducting an aerial surveillance. The amendment would also add fish and other aquatic species habitat to the definition of "agricultural land" in the bill, and provide additional protections for landowners by excluding the Freedom of Information Act from applying to information collected through aerial surveillance conducted under this bill.

In addition the amendment would prohibit the EPA from disclosing information collected through aerial surveillance conducted under this bill, and require the EPA to destroy information collected through aerial surveillance conducted under this bill unless the information is pertinent to an active investigation or prosecution.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each Committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes during consideration of H.R. 5961. A motion to order H.R. 5961 reported favorably to the House was agreed to by voice vote with a quorum present.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 5961 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 12, 2012.

Hon. JOHN L. MICA,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5961, the Farmer's Privacy Act of 2012.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 5961—Farmer's Privacy Act of 2012

H.R. 5961 would prohibit the Environmental Protection Agency (EPA) from conducting aerial surveillance of agricultural land

when enforcing the Clean Water Act (CWA) unless EPA receives voluntary written consent from the owner or operator of the land or obtains a certification of reasonable suspicion from a district court that a violation of the CWA is occurring. In addition, this bill would prohibit EPA from disclosing information collected through aerial surveillance unless that information is needed for purposes of an investigation or prosecution. Finally, the bill would exempt the information collected from the Freedom of Information Act and would require EPA to destroy the information collected within 30 days unless it is pertinent to an investigation or prosecution.

According to EPA, the use of aerial surveillance provides an efficient and cost-effective tool for investigating CWA issues, especially those related to animal feeding operations. Such over-flights generally cost between \$1,000 and \$2,500 per flight and allow several animal feeding operations to be inspected at one time.¹ The cost of on-site inspections, on the other hand, varies depending on the location, time in field, and time needed to analyze any samples taken during the inspection. On-site inspections at a livestock or poultry operation, for example, can cost as much as \$10,000 or more per inspection, depending on the extent of the inspection required.

Because H.R. 5961 would preclude EPA from conducting aerial surveillance of farms, except under certain circumstances, the agency would rely more heavily on individual on-site inspections and other information-gathering tools, such as sending written requests for information to individual farmers, to identify activities that may affect water quality. We expect that the agency would need to conduct more than 60 on-site inspections per year if surveillance flights were precluded. As a result, CBO estimates that enacting H.R. 5961 would increase spending by about \$1 million annually over the next five years.

Pay-as-you-go procedures do not apply to H.R. 5961 because enacting the bill would not affect direct spending or revenues.

H.R. 5961 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Susanne S. Mehlman. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to provide reasonable limits, control, and oversight over EPA's use of aerial surveillance of agricultural land.

ADVISORY OF EARMARKS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of con-

¹ EPA's Region 7 office, which covers areas where many animal feeding operations exist (i.e., the states of Iowa, Kansas, Missouri, and Nebraska and nine tribal nations), has conducted 16 over-flights since 2010. Such flights usually involve inspections of multiple sites per flight. As a result of those flights, the EPA initiated more than 50 enforcement actions against animal feeding operations. The agency also notes that it has found that the vast majority of the operations they inspect comply with the Clean Water Act. EPA has no records of the number of aerial inspection flights conducted by other regional offices.

gressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. No provision in the bill includes an earmark, limited tax benefit, or limited tariff benefit under clause 9(e), 9(f), or 9(g) of rule XXI.

FEDERAL MANDATE STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the “Unfunded Mandates Reform Act” (P.L. 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 5961 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY OF LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (P.L. 104–1).

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

Section 1. Short title

Section 1 states that the Act may be referred to as the “Farmer’s Privacy Act of 2012.”

Section 2. Limitation on use of aerial surveillance

Section 2(a) of H.R. 5961 provides that, subject to exceptions specified in subsection (b), the Administrator of the Environmental Protection Agency may not conduct aerial surveillance of agricultural land when exercising any authority under the Clean Water Act.

Section 2(b) of the bill provides exceptions to the prohibition on the use of aerial surveillance of agricultural land in Subsection (a). These exceptions are intended to ensure that EPA has the flexibility it needs to conduct inspections under the CWA. The exceptions to the prohibition on aerial surveillance provided by the bill are when the Administrator has:

- (1) Obtained the voluntary written consent of the owner or operator of the land to be surveilled in accordance with Section 3; and
- (2) Obtained a certification of reasonable suspicion in accordance with Section 4.

The Committee adopted an amendment in a Committee meeting held on August 1, 2012, that, among other things, amended Subsection (b) by striking a third exception to the prohibition on the use of aerial surveillance of agricultural land. That third exception

would have permitted EPA to conduct aerial surveillance if the EPA Administrator has given public notice. (The amendment also struck a section of the bill that would have described the conditions under which the public notice exception would apply.)

Section 3. Voluntary written consent

Section 3(a) of the bill provides that, in order to conduct aerial surveillance under Section 2(b)(1), the EPA Administrator is required to obtain, from the owner or operator of the land to be surveilled, written consent to such surveillance. The consent must be express and in writing. Oral or implied consent is not acceptable.

Section 3(b) states that the EPA Administrator shall ensure that any written consent required under Subsection (a):

- (1) Specifies the period during which the consent is effective, which may not exceed one year;
- (2) Contains a specific description of the geographical area to be surveilled; and
- (3) If requested by the owner or operator of the land to be surveilled, contains limitations on the days and times during which the surveillance may be conducted.

Section 3(c) provides that the EPA Administrator shall ensure that any written consent required under Subsection (a) is granted voluntarily by the owner or operator of the land to be surveilled. In addition, the Administrator may not threaten additional, more detailed, or more thorough inspections, or otherwise coerce or entice such owner or operator, in order to obtain such consent.

Section 4. Certification of reasonable suspicion

Section 4(a) of the bill provides that, if EPA has “reasonable suspicion” that a violation of the Clean Water Act is occurring, then EPA may conduct aerial surveillance if the Administrator obtains permission in the form of a certification of reasonable suspicion from the United States District Court for the District of Columbia.

Section 4(b) specifies the conditions where the United States District Court for the District of Columbia may issue to the Administrator a certification of reasonable suspicion. In order for the court to issue to the Administrator such a certification:

- (1) The Administrator must submit, to the court, an affidavit setting forth specific and articulable facts that would indicate to a reasonable person that a violation of the CWA exists in the area to be surveilled; and
- (2) The court must find that the Administrator has shown reasonable suspicion that an owner or operator of agricultural land in the area to be surveilled has violated the CWA.

Section 5. Disclosure of information

The Committee adopted an amendment in a Committee meeting held on August 1, 2012, that, among other things, amended H.R. 5961 by adding a new Section 5, entitled “Disclosure of Information.” New Section 5(a) of the bill provides that the Administrator may not disclose information collected through aerial surveillance conducted under Section 2(b), except as provided in Subsection (c) of this section or for the purposes of an investigation or prosecution by the Administrator as described in Section 6 of the bill.

New Section 5(b) provides that the Freedom of Information Act (Section 552 of Title 5, United States Code) shall not apply to any information collected through aerial surveillance conducted under Section 2(b) of the bill.

Amended Section 5(c) provides the owner or operator of land surveilled under this bill the right to petition for copies of the information collected through such surveillance. The EPA Administrator cannot use Subsection (a) as a basis for refusing to disclose such information to the owner or operator of land surveilled under this bill, if such owner or operator has petitioned EPA for such information.

Section 6. Destruction of information

The Committee adopted an amendment in a Committee meeting held on August 1, 2012, that, among other things, amended H.R. 5961 by adding a new Section 6, entitled “Destruction of Information.” Amended Section 6 requires the EPA Administrator to destroy information collected through aerial surveillance conducted under Section 2(b) not later than 30 days after collection, unless the information is pertinent to an active investigation or prosecution by the Administrator.

Section 7. Rule of construction

Section 7 of the bill provides that nothing in this bill shall be interpreted as expanding the power of the EPA Administrator to inspect, monitor, or conduct surveillance of agricultural lands pursuant to the CWA or any other Federal law.

Section 8. Definitions

Section 8 of the bill defines the following terms: aerial surveillance, Administrator, agricultural land, and court. The Committee adopted an amendment in a Committee meeting held on August 1, 2012, that amended the definition of aerial surveillance. The term “aerial surveillance,” as amended, is defined as including any surveillance conducted from the air, including surveillance conducted from manned or unmanned aircraft, or the use of aerial or satellite images, regardless of whether the images are publicly available. Manned or unmanned aircraft may include fixed wing aircraft, helicopters, drones, or remote controlled aircraft.

The term “Administrator” means the Administrator of the Environmental Protection Agency, or in the case of an action taken pursuant to a permit program approved under Section 402 of the CWA, the head of the state agency administering the program.

The Committee adopted an amendment in a Committee meeting held on August 1, 2012, that, among other things, amended the definition of agricultural land. The term “agricultural land,” as amended, includes land used primarily for agricultural production, including cropland, grassland, prairie land, improved pastureland, rangeland, cropped woodland, marshes, reclaimed land, fish or other aquatic species habitat, and land used for agro-forestry or the production of livestock.

The term “court” means the United States District Court for the District of Columbia.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Clause 3(e) of rule XIII of the Rules of the House of Representatives (the Ramseyer Rule) requires that changes in existing law made by a bill, as reported, be shown. If enacted, H.R. 5961 would not repeal or amend any statute or part thereof.

ADDITIONAL VIEWS

We have significant concerns with this legislation that, contrary to supporters' claims, will do nothing to protect farmers' privacy or save the taxpayers' money. Instead, it is nothing more than a less-than-subtle attempt to prevent the Environmental Protection Agency (EPA) from enforcing the Clean Water Act (CWA).

Although supporters of the bill claim the use of aerial surveillance by EPA to conduct CWA enforcement is a new enforcement tool employed by the current Administration in just the last two years, that claim is not accurate. Aerial surveillance by EPA was initiated during the Bush Administration and has been employed as a cost-saving approach for at least a decade to identify potential air, water, and land pollution. Aircraft may be used to locate regulated facilities, identify discharges, learn about water connections and pathways, and gather information, such as photographs and exact locations. The EPA and other agencies also use aircraft for emergency response.

EPA and many other Federal, state, and local agencies have turned to aerial surveillance as a way to save money and better target routine inspections and enforcement efforts. For example, in the case of agricultural operations, on-the-ground inspections at livestock and poultry operations by EPA can cost up to \$10,000 per inspection, while overflight inspections generally cost between \$1,000 and \$2,500 and allow several animal feeding operations to be inspected at one time. These overflight inspections allow EPA to identify possible compliance issues at regulated animal feedlots and other operations and then focus on-the-ground inspections on cases where pollution problems are identified. According to the non-partisan Congressional Budget Office (CBO), EPA will need to conduct more than 60 on-site inspections if the bill is enacted. As a result, CBO estimates that "enacting H.R. 5961 would increase spending by about \$1 million annually over the next five years."

It was not until this past spring, however, when certain media outlets, several blogs, and even some Members of Congress started speculating that EPA was using aerial drones to spy on unsuspecting farmers in the Midwest, that the use of aerial surveillance came under the microscope. As was quickly revealed, however, EPA does not use drones, also known as unmanned aircraft, for enforcement or compliance surveillance—in the Midwest or anywhere else.

Ironically, many other Federal, state, and local agencies do use drones. In fact, there are currently 107 active certificates of authorization that have been issued by the Federal Aviation Administration (FAA) to a range of Federal, state, and local agencies to use drones. In addition, there are 18 private companies with active permits to fly drones right now in the U.S. This bill, however, does nothing to address that widespread use of unmanned aircraft and

the privacy issues that have been raised. Despite the concerns expressed by the bill's sponsors that aerial surveillance by this one agency constitutes "spying", the Majority does not seem terribly concerned about it. Not only has the Committee never held a hearing about the privacy implications of using drones or other aircraft for aerial surveillance, but it has actually encouraged, not discouraged, the use of drones around the United States.

Specifically, the Republican-led Committee and Congress passed FAA reauthorization legislation (H.R. 658) last year that not only allowed, but actually promoted, the use of drones. Then, in July of this year, the Republican-led House passed legislation (H.R. 2578) to expand the use of Department of Homeland Security drones in the border region, with virtually no restrictions. Thus, if Congress enacts H.R. 5961, farmers may be assured that EPA will never use drones to spy on them, but they will not be free of all the other agencies that are using them around the country every day. Moreover, given this newfound concern with drones, we wonder whether the Majority plans to repeal their drone-promoting provisions enacted in the FAA reauthorization legislation and preclude other agencies from using these aircraft as well.

The bill also prohibits EPA from using manned aircraft for overflight inspections. Like hundreds, if not thousands, of other Federal, state, and local agencies, EPA does use manned aircraft for overflight inspections. The bill does nothing to prohibit any agencies other than EPA from using such aircraft, and overflight inspections of other agencies will continue to fly over farmland and other lands around the United States every single day. For example—

- The United States Department of Agriculture (USDA) conducts routine aerial surveillance over much of the nation's agricultural lands. Photos are used for a variety of purposes, including inspections to determine compliance with USDA programs. USDA has also awarded Rural Development grants to communities for the purchase of unmanned aerial aircraft for the prevention of "agricultural-related crimes"
- The Fish and Wildlife Service conducts aerial surveillance for Federal fish and wildlife law enforcement purposes and for population assessments.
- The Bureau of Reclamation conducts manned and unmanned flights to assess irrigated acreage and look for illegal water users, monitor river/reservoir conditions, evaluate riparian vegetation and assess sediment transport.

Although the Supreme Court has upheld the use of aerial surveillance (with manned aircraft) for enforcement purposes on three separate occasions, privacy concerns in this area still arise every day. Despite these concerns, the Committee has not held one hearing on the privacy implications of aerial surveillance, and the bill would do nothing to prohibit USDA or any other Federal or state agency—other than EPA—from flying over farmers' land. Apparently, only EPA overflights are a violation of farmers' privacy.

Moreover, H.R. 5961 also prohibits EPA from using aerial or satellite images from other agencies, or that are publicly available on the internet. Does the Committee plan to prohibit other Federal and state agencies from using the images available on Google Earth and elsewhere for enforcement purposes?

Of further concern, the Committee-reported bill, as amended, expands the definition of agricultural lands that cannot be subject to surveillance to include “fish and other aquatic species habitat”, and contrary to assertions made by the bill’s supporters, this definition, and therefore this limitation, is not limited to private lands. Thus, the bill, as amended, precludes EPA from using aerial surveillance to look for pollution violations along the nation’s coasts and wetlands. The potential impacts of this amendment are difficult to assess and of significant concern.

In short, if this bill becomes law, EPA will be precluded from using cost-effective and efficient enforcement tools that save taxpayers’ money and that hundreds of other agencies have been using for years and will continue to use. Instead, EPA will be forced to conduct on-the-ground inspections, which are more intrusive and cost three or four times the cost of overflight inspections. This is not a good use of our resources during these difficult economic times. In addition, EPA will be precluded from using this tool to look for pollution violations along any of our coasts and wetlands. The goal of this bill is simply to make it more difficult for EPA to enforce the law on both private and public lands, not to protect privacy.

PETER A. DEFAZIO.
DONNA F. EDWARDS.
JERROLD NADLER.

