

## Union Calendar No. 493

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5961

[Report No. 112-682]

To provide reasonable limits, control, and oversight over the Environmental Protection Agency's use of aerial surveillance of America's farmers.

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### IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2012

Mrs. CAPITO (for herself, Mr. AKIN, Mr. ROSS of Florida, Mr. HARRIS, Mr. SMITH of Nebraska, Mr. JOHNSON of Ohio, Mr. HOLDEN, Mr. GRIFFITH of Virginia, Mr. GOODLATTE, Mr. THOMPSON of Pennsylvania, Mr. TERRY, and Mrs. NOEM) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

SEPTEMBER 20, 2012

Additional sponsors: Mr. REHBERG, Mr. HASTINGS of Washington, and Mr. JONES

SEPTEMBER 20, 2012

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on June 19, 2012]

# **A BILL**

To provide reasonable limits, control, and oversight over the Environmental Protection Agency's use of aerial surveillance of America's farmers.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. LIMITATION ON USE OF AERIAL SURVEILLANCE.**

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

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

15                (1) *has obtained the voluntary written consent of*  
16 *the owner or operator of the land to be surveilled in*  
17 *accordance with section 3; or*

18                (2) *has obtained a certification of reasonable sus-*  
19 *picion in accordance with section 4.*

20 **SEC. 3. VOLUNTARY WRITTEN CONSENT.**

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

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

3           (1) *specifies the period during which the consent*  
4 *is effective, which may not exceed one year;*

5           (2) *contains a specific description of the geo-*  
6 *graphical area to be surveilled; and*

7           (3) *if requested by the owner or operator of the*  
8 *land to be surveilled, contains limitations on the days*  
9 *and times during which the surveillance may be con-*  
10 *ducted.*

11       (c) *ASSURANCE OF VOLUNTARY CONSENT.*—*The Ad-*  
12 *ministrator shall ensure that any written consent required*  
13 *under subsection (a) is granted voluntarily by the owner*  
14 *or operator of the land to be surveilled, and the Adminis-*  
15 *trator may not threaten additional, more detailed, or more*  
16 *thorough inspections, or otherwise coerce or entice such*  
17 *owner or operator, in order to obtain such consent.*

18 **SEC. 4. CERTIFICATION OF REASONABLE SUSPICION.**

19       (a) *IN GENERAL.*—*In order to conduct aerial surveil-*  
20 *lance under section 2(b)(2), the Administrator shall obtain*  
21 *a certification of reasonable suspicion from the United*  
22 *States District Court for the District of Columbia in accord-*  
23 *ance with this section.*

1       (b) *CERTIFICATION REQUIREMENTS.*—*The court may*  
2 *issue to the Administrator a certification of reasonable sus-*  
3 *picion if—*

4           (1) *the Administrator submits to the court an af-*  
5 *fidavit setting forth specific and articulable facts that*  
6 *would indicate to a reasonable person that a violation*  
7 *of the Federal Water Pollution Control Act exists in*  
8 *the area to be surveilled; and*

9           (2) *the court finds that the Administrator has*  
10 *shown reasonable suspicion that an owner or operator*  
11 *of agricultural land in the area to be surveilled has*  
12 *violated the Federal Water Pollution Control Act.*

13 **SEC. 5. DISCLOSURE OF INFORMATION.**

14       (a) *IN GENERAL.*—*Except as provided in subsection*  
15 *(c), or for the purposes of an investigation or prosecution*  
16 *by the Administrator as described in section 6, the Admin-*  
17 *istrator may not disclose information collected through aer-*  
18 *ial surveillance conducted under section 2(b).*

19       (b) *APPLICABILITY OF FOIA.*—*Section 552 of title 5,*  
20 *United States Code, shall not apply to any information col-*  
21 *lected through aerial surveillance conducted under section*  
22 *2(b) of this Act.*

23       (c) *RIGHT TO PETITION.*—*The owner or operator of*  
24 *land surveilled under this Act has the right to petition for*

1 *copies of the information collected through such surveil-*  
2 *lance.*

3 **SEC. 6. DESTRUCTION OF INFORMATION.**

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

9 **SEC. 7. RULE OF CONSTRUCTION.**

10 *Nothing in this Act shall be interpreted as expanding*  
11 *the power of the Administrator to inspect, monitor, or con-*  
12 *duct surveillance of agricultural lands pursuant to the Fed-*  
13 *eral Water Pollution Control Act (33 U.S.C. 1251 et seq.)*  
14 *or any other Federal law.*

15 **SEC. 8. DEFINITIONS.**

16 *In this Act:*

17 (1) *AERIAL SURVEILLANCE.*—*The term “aerial*  
18 *surveillance” means any surveillance from the air, in-*  
19 *cluding—*

20 (A) *surveillance conducted from manned or*  
21 *unmanned aircraft; or*

22 (B) *the use of aerial or satellite images, re-*  
23 *gardless of whether the images are publicly*  
24 *available.*

1           (2) *ADMINISTRATOR.*—*The term “Adminis-*  
2           *trator” means the Administrator of the Environ-*  
3           *mental Protection Agency, or in the case of an action*  
4           *taken pursuant to a permit program approved under*  
5           *section 402 of the Federal Water Pollution Control*  
6           *Act (33 U.S.C. 1342), the head of the State agency*  
7           *administering the program.*

8           (3) *AGRICULTURAL LAND.*—*The term “agricul-*  
9           *tural land” means land used primarily for agricul-*  
10          *tural production, including cropland, grassland, prai-*  
11          *rie land, improved pastureland, rangeland, cropped*  
12          *woodland, marshes, reclaimed land, fish or other*  
13          *aquatic species habitat, and land used for agro-for-*  
14          *estry or the production of livestock.*

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

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