

112TH CONGRESS
2D SESSION

H. R. 5961

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

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

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
8 to subsection (b), in exercising any authority under the

1 Federal Water Pollution Control Act (33 U.S.C. 1251 et
2 seq.), the Administrator may not conduct aerial surveil-
3 lance of agricultural land.

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

7 (1) has obtained the voluntary written consent
8 of the owner or operator of the land to be surveilled
9 in accordance with section 3;

10 (2) has given public notice in accordance with
11 section 4; or

12 (3) has obtained a certification of reasonable
13 suspicion in accordance with section 5.

14 **SEC. 3. VOLUNTARY WRITTEN CONSENT.**

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

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

21 (1) specifies the period during which the con-
22 sent is effective, which may not exceed one year;

23 (2) contains a specific description of the geo-
24 graphical area to be surveilled; and

1 (3) if requested by the owner or operator of the
2 land to be surveilled, contains limitations on the
3 days and times during which the surveillance may be
4 conducted.

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

12 **SEC. 4. PUBLIC NOTICE.**

13 (a) DEADLINE FOR NOTIFICATION.—In order to con-
14 duct aerial surveillance under section 2(b)(2), the Admin-
15 istrator shall provide notice to owners or operators of agri-
16 cultural land in the area to be surveilled not more than
17 10 days, nor fewer than 5 days, prior to the commence-
18 ment of such surveillance.

19 (b) PUBLICATION REQUIRED.—The Administrator
20 shall publish any notice required under subsection (a)—

21 (1) on the public Web site of the Administrator;

22 and

23 (2) in a newspaper of general circulation in the
24 area to be surveilled.

1 (c) CONTENTS.—The Administrator shall include in
2 any notice required under subsection (a)—

3 (1) a specific description of the geographical
4 area to be surveilled; and

5 (2) the dates on which such surveillance will
6 occur.

7 (d) SCOPE.—The Administrator may not publish a
8 general or national notice to comply with subsection (a).

9 (e) ACCESS TO IMAGES.—After conducting any aerial
10 surveillance under section 2(b)(2), the Administrator shall
11 make available to the owners or operators of the agricul-
12 tural land surveilled any images of such land obtained as
13 a result of such surveillance.

14 **SEC. 5. CERTIFICATION OF REASONABLE SUSPICION.**

15 (a) IN GENERAL.—In order to conduct aerial surveil-
16 lance under section 2(b)(3), the Administrator shall obtain
17 a certification of reasonable suspicion from the United
18 States District Court for the District of Columbia in ac-
19 cordance with this section.

20 (b) CERTIFICATION REQUIREMENTS.—The court
21 may issue to the Administrator a certification of reason-
22 able suspicion if—

23 (1) the Administrator submits to the court an
24 affidavit setting forth specific and articulable facts
25 that would indicate to a reasonable person that a

1 violation of the Federal Water Pollution Control Act
2 exists in the area to be surveilled; and

3 (2) the court finds that the Administrator has
4 shown reasonable suspicion that an owner or oper-
5 ator of agricultural land in the area to be surveilled
6 has violated the Federal Water Pollution Control
7 Act.

8 **SEC. 6. RULE OF CONSTRUCTION.**

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

14 **SEC. 7. DEFINITIONS.**

15 In this Act:

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

19 (A) surveillance conducted from fixed wing
20 aircraft, helicopters, drones, or remote con-
21 trolled 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 ac-
4 tion taken pursuant to a permit program approved
5 under section 402 of the Federal Water Pollution
6 Control Act (33 U.S.C. 1342), the head of the State
7 agency 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, and land used
13 for agro-forestry or the production of livestock.

14 (4) COURT.—The term “court” means the
15 United States District Court for the District of Co-
16 lumbia.

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