



Society of Environmental Journalists

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Dear Senator,

The Society of Environmental Journalists joins other organizations in urging you to remove from the 2007 Farm Bill now before the Senate a provision creating unprecedented and unconstitutional restrictions on press freedom related to the National Animal Identification System (NAIS). We urge the Senate to amend Section 10305 of the bill to eliminate these restrictions or to strike the section in its entirety.

Consumer confidence in the American food supply is essential to the welfare of U.S. farmers. The bill undermines that confidence by criminalizing the publication of food-safety information. Contrary to its intent, the bill could lead the public to think the government and food industry have something to hide, when it comes to the wholesomeness of our food.

By criminalizing the publication, broadcast, or disclosure of information that may have been legally obtained, Section 10305 of the Livestock Title goes way beyond most existing law in imposing disproportionately harsh penalties for press activities protected by the 1st Amendment. It makes publication of the mere location of a feed lot (which may be found by smell from miles away) punishable by fines up to \$500,000 and jail terms up to 10 years.

Not even publication of the identity of an undercover U.S. intelligence officer is punished that harshly.

The secrecy provision, Section 10305, is entirely unnecessary. The Agriculture Department has long assured the public in its fact sheets on NAIS that federal law *already* "protects individuals' private information and confidential business information from disclosure." The existing Privacy Act (5 U.S.C. § 552a) and Freedom of Information Act (FOIA, 5 U.S.C. § 552) provide an adequate legal framework for doing the job.

Moreover, Section 10305 won't work. It will not effectively achieve the desired result because much of the information the bill tries to keep secret is already available from multiple other sources and has already been published or put in the public domain. Disclosure restrictions as rigidly Draconian as those proposed in Section 10305 would hinder or prevent the fast government/industry response and traceability of food-supply contamination that is the main purpose of the NAIS. They would hamstring health officials in an emergency. That could gravely endanger public health.

Improving the Quality, Accuracy and Visibility of Environmental Reporting



Section 10305 legislatively creates a new FOIA exemption without declaring explicitly that it is doing so. That violates the letter and spirit of a bill (S 849, the "OPEN Government Act of 2007") the Senate passed just this year on August 3 -- in which the Senate expressed its intent to transparently declare new exemptions to FOIA in legislation creating them.

But the bill does far more than merely create a new FOIA exemption. It criminalizes constitutionally protected free speech and free press activities. It supersedes and tramples on the open-records laws of the states. Moreover, it undermines the disclosure requirements already on the books in a number of environmental, food-safety, and public health statutes.

Section 10305 hastily offers a blunt instrument to do a job that requires a fine scalpel and a skilled hand. Clumsy legislative draftsmanship virtually guarantees that it will be tied up in court as soon as it is enacted. It makes no provision for resolving its many conflicts with other statutes. By making the provision an amendment to the Animal Health Protection Act (7 USC 8301), it automatically invokes the criminal and civil penalties set up under that Act -- making no provision for graduating the severity of the penalties according to the severity of the violation. Moreover, Section 10305 makes no distinctions between the various *kinds* of information in the NAIS when it comes to disclosure penalties.

As journalists covering the environment, we are especially concerned with the effect Section 10305 will have on disclosure requirements under existing environmental laws. The public has a right to know about sources of water, air, and land pollution -- and a right to know what federal, state, and local governments are doing to protect the public from such pollution. The Clean Water Act, for example, requires many confined animal feeding operations (CAFOs) to have discharge permits (permits typically administered by state environmental agencies). Under current law, information about these permits is required to be publicly disclosed -- including such basic information as the location of a facility or the identity of its owner. But when that same information is gathered into the NAIS, its disclosure or publication becomes a criminal act. Similar issues arise with other environmental laws, such as the Clean Air Act or the Superfund hazardous waste law.

Section 10305 is silent -- and therefore ambiguous -- on how such conflicts are to be resolved. Is it criminal to publish a feedlot's location and the name of its owner if that information has been taken from a public water permit ... or a property tax record? Would the government have to *prove* that the information had been gleaned from the NAIS and *not* from elsewhere in order to prosecute successfully? Unclear law is sure to inspire costly and time-consuming litigation.

Even if further safeguards to NAIS information *were* required (and we don't believe they are), Section 10305 is the wrong tool for accomplishing this. It should be amended or stricken from the current Senate Farm Bill.

CONCLUSION: We urge you to amend Section 10305 of the 2007 Farm Bill, which prohibits disclosure of information under a National Animal Identification System, to address these concerns, or to strike it entirely.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Wheeler". The signature is fluid and cursive, written in a professional style.

Tim Wheeler, President, on behalf of
Society of Environmental Journalists

and on behalf of

Barbara Ciara, President,
National Association Of Black Journalists

Iván Román, Executive Director
National Association of Hispanic Journalists

Alexandra Owens, Executive Director
American Society of Journalists and Authors, Inc.

Thomas Cashman Avila, Deputy Executive Director
National Lesbian & Gay Journalists Association

Bob Meyers, President
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