

FOIA Exemption in Senate Version of Farm Bill

By Mary Zanoni

October 23, 2007. Today the Senate Agriculture, Nutrition and Forestry Committee released its preliminary drafts of the Chairman's mark for all titles of the Senate's 2007 Farm Bill; the Committee markup of the bill is set for tomorrow, October 24, 2007, at 9:30 A.M.

The draft of the livestock title contains a FOIA exemption for information in the National Animal Identification System (NAIS). (A copy of the livestock title of the draft Chairman's mark from the Senate Agriculture Committee's website is attached; the FOIA exemption appears on pages 40 through 43 of the draft.) This proposed exemption flies in the face of all reasonable standards of open access to government. Since 2005, the Animal and Plant Health Inspection Service of the USDA has been collecting what the USDA itself calls "phone book" information on farms and other premises that hold livestock in the United States. USDA/APHIS is presently maintaining this information in a database called the National Premises Information Repository in Fort Collins, Colorado. For each livestock location, the information consists of nothing more than basic contact information, i.e., the name of a contact person, an address, a telephone number, and in some cases an email address, and the species of livestock kept at that location.

Yet at the behest of industrial farming interests, the Senate Agriculture Committee sees fit to propose that this "phone book" information should receive a new exemption from the Freedom of Information Act. Even more alarming, the proposed exemption purports to override all state freedom of information laws that might pertain to similar records.

This proposed FOIA exemption for the commonplace contact information of livestock facilities flies in the face of the pending FOIA amendments of S. 849; those pending FOIA amendments would, inter alia, require that any legislation containing FOIA exemptions must specifically state that it contains an exemption to the disclosure normally required under the Freedom of Information Act. Yet the livestock title of the Senate Farm Bill sets forth what is in fact an unprecedented and unwarranted exemption to FOIA disclosure without once mentioning FOIA -- in other words, if S. 849 were already law, it would prohibit exactly the type of under-the-radar FOIA exemption being proposed in the Senate Farm Bill livestock title. This is the more distressing for freedom-of-information advocates in that Senator Leahy, the main sponsor of S. 849, is also a member of the Senate Agriculture Committee

All friends of open government should protest the inclusion of Sec. 10305, "Protection of Information in the Animal Identification System," in the draft Senate farm bill and should demand that this provision be abandoned.

(The pertinent section of the draft bill is set forth below in its entirety.)

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Sec. 10305. Protection of Information in the Animal Identification System.

The Animal Health Protection Act (7 U.S.C. 8301 et seq.) is amended --

(1) by redesignating sections 10416 through 10418 as sections 10417 through 10419, respectively; and

(2) by inserting after section 10415 the following:

"Sec. 10416. Disclosure of Information Under a National Animal Identification System.

"(a) Definition of National Animal Identification System. -- In this section, the term 'national animal identification system' means a system for identifying or tracing animals that is established by the Secretary.

"(b) Protection from Disclosure. --

"(1) In general.--Information obtained through a national animal identification system shall not be disclosed except as provided in this section.

"(2) Use. -- Use of information described in paragraph (1) by any individual or entity except as otherwise provided in this section shall be considered a violation of this Act.

"(3) Waiver of Privilege of Protection. -- The provision of information to a national animal identification system under this section or the disclosure of information pursuant to this section shall not constitute a waiver of any applicable privilege or protection under Federal law, including protection of trade secrets.

"(c) Limited Release of Information. -- The Secretary may disclose information obtained through a national animal identification system if --

"(1) the Secretary determines that livestock may be threatened by a disease or pest;

"(2) the release of the information is related to an action the Secretary may take under this subtitle; and

"(3) the Secretary determines that the disclosure of the information to a government entity or person is necessary to assist the Secretary in carrying out this subtitle or a national animal identification system.

"(d) Required Disclosure of Information. -- The Secretary shall disclose information obtained through a national animal identification system regarding particular animals to --

"(1) the person that owns or controls the animals, if the person requests the information in writing;

"(2) the State Department of Agriculture for the purpose of the protection of animal health;

"(3) the Attorney General for the purpose of law enforcement;

"(4) the Secretary of Homeland Security for the purpose of homeland security;

"(5) the Secretary of Health and Human Services for the purpose of protecting public health;

"(6) an entity pursuant to an order of a court of competent jurisdiction;
and

"(7) the government of a foreign country if disclosure of the information is necessary to trace animals that pose a disease or pest threat to livestock or a danger to human health, as determined by the Secretary.

"(e) Disclosure under State or Local Law. -- Any information relating to animal identification that a State or local government obtains from the Secretary shall not be made available by the State or local government pursuant to any State or local law requiring disclosure of information or records to the public.

"(f) Reporting requirement. -- To disclose information under this section, the Secretary shall --

"(1) certify that the disclosure was necessary under this section; and

"(2) submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a copy of the certification."