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House of Representatives

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2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
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<http://oversight.house.gov>

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LAWRENCE J. BRADY
STAFF DIRECTOR

November 15, 2013

The Honorable Frank D. Lucas
Chairman
Committee on Agriculture
U.S. House of Representatives
Washington, DC 20515

The Honorable Collin C. Peterson
Ranking Member
Committee on Agriculture
U.S. House of Representatives
Washington, DC 20515

The Honorable Debbie Stabenow
Chairman
Committee on Agriculture, Nutrition & Forestry
U.S. Senate
Washington, DC 20510

The Honorable Thad Cochran
Ranking Member
Committee on Agriculture, Nutrition & Forestry
U.S. Senate
Washington, DC 20510

Dear Conferees:

We are writing to request that you exclude a dangerous and unnecessary provision from the final conference agreement for the Federal Agriculture Reform and Risk Management Act of 2013. Section 11325 of the House-passed version of the legislation, H.R. 2642, would prohibit the Environmental Protection Agency (EPA) from disclosing information that is critical to public health and safety, even information gathered for the express purpose of informing the public.

Section 11325 would prohibit every EPA employee, including the Administrator, as well as any EPA contractor, from disclosing publicly information about any owner, operator, or employee of an agricultural operation that has been provided to EPA under any law.

Section 11325 is purported to be a response to an incident in which EPA released personal information about some operators and employees of concentrated animal feeding operations in response to a FOIA request. EPA acknowledged that some information was disclosed inappropriately and should have been withheld under FOIA exemption 6.¹ Exemption 6 protects from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."² EPA revised its response to the requesters and took steps to avoid public disclosure of the information.

¹ Letter from Acting Assistant Administrator Nancy K. Stoner to Ryan Bennett (Apr. 4, 2013).

² 5 U.S.C. § 552(b)(6).

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The language in section 11325 is an overreaction to this discrete incident that goes far beyond protecting personally identifiable information, such as email addresses, which can already be protected under FOIA. This section would prohibit the disclosure of virtually all information EPA receives about farms and livestock operations under federal law.

EPA's Toxics Release Inventory provides the public with information about toxic chemical releases in their communities. The Emergency Planning and Community Right to Know Act of 1986, which created the Inventory, requires companies in covered industries that release dangerous chemicals above set thresholds to report those releases to EPA and state and local emergency response officials. Under section 11325, EPA would be prevented from disclosing publicly information about toxic releases from agricultural operations.

Local communities also would be denied access to information that is currently available during the public notice and comment period for Clean Water Act permit applications. Specifically, EPA would be prohibited from disclosing the location of an agricultural operation applying for a permit to discharge pollution into a waterway.

Statutory exemptions from FOIA and other disclosure requirements should be enacted only in rare circumstances when the information at issue cannot be protected from disclosure by existing FOIA exemptions and the public's right to the information is outweighed by the potential harm from disclosure. This provision meets neither of these criteria. FOIA already protects the information the amendment is aimed at protecting, and the public has a right to know about pollution in their communities.

A coalition of more than 40 open government organizations wrote a letter to conferees opposing section 11325 and raising significant concerns with the precedent of extending FOIA's personal privacy exemption to corporations. They wrote:

Beyond being unnecessary to protect the information of individuals and small family farms, the language included in the House-passed bill is exceedingly broad and vague. The provision does not define 'owners' or 'operators,' and thus permits the information of large corporate operations to be kept from public view alongside the information of individuals and small family operations. As the Supreme Court reaffirmed in *FCC v. AT&T, Inc.*, Congress never intended to extend the FOIA's protections for personal privacy to corporations and Congress must not do so now.³

³ Letter from American Association of Law Libraries, American Library Association et al. to Conferees of the Federal Agriculture Reform and Risk Management Act of 2013 (Nov. 6, 2013).

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We urge you not to include the language of section 11325 in the final conference agreement. Thank you for your consideration.

Sincerely,



Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform



Henry A. Waxman
Ranking Member
Committee on Energy and
Commerce