

## **NAIS--Coming to a Boil**

The National Animal Identification System (NAIS) started back in the 1980s with the informal plans of industrial agriculture groups and technology companies. For newcomers to this issue, NAIS is a plan to require anyone who owns even one livestock or poultry animal—even just a single chicken or a pet horse—to register their property, tag each animal (in most cases with electronic identification, such as microchips or RFID tags) and report their movements to the government within twenty-four hours. Most people started to become aware of this issue back in 2005, when the USDA released its formal plan to implement NAIS.

In the four years since then, the grassroots has mounted a growing opposition to the program. Five states—Arizona, Kentucky, Missouri, Nebraska, and Utah—have passed state laws barring mandatory implementation, while more than a dozen other bills have been introduced in other states and gained significant support. Yet it seems that, as the grassroots opposition has grown, so has the push to implement this intrusive and expensive program. Both sides have turned up the heat, and the issue may come to a head soon.

### **Farm-To-Consumer Legal Defense Fund's Lawsuit to Stop NAIS**

The Farm-to-Consumer Legal Defense Fund is challenging NAIS in the federal district court of DC. The Michigan Department of Agriculture (MDA) has implemented the first two stages of NAIS—property registration and animal identification - for all cattle and farmers across the State under the guise of its bovine tuberculosis disease control program. MDA's implementation of the first two steps of NAIS was required, in part, in exchange for a grant of money from the USDA. The Fund's suit asks the court to issue an injunction to stop the implementation of NAIS at both the state and federal levels by any state or federal agency. If successful, the suit would halt the program nationwide.

The lawsuit is still in the early stages, but the Fund has won a couple of initial skirmishes. In January, in response to the agencies' motion to dismiss the case, the Fund sought to file an amended complaint to add another plaintiff, a Fund member from Pennsylvania, and to expand on the allegations in its original complaint. The agencies opposed the filing, but the Court granted the Fund leave to file the amended complaint. Shortly afterwards, the Fund objected to the incomplete and skewed record filed by the USDA, which did not truly reflect the agencies' actions on NAIS. The Fund filed a motion supplement the record which was opposed by the agencies. The Court partly ruled in the Fund's favor, granting the Fund's request to add more than a hundred additional government documents into the formal record, while denying its request to include non-governmental documents which the Fund contends are relevant.

Neither of these rulings has addressed the merits of the case. The USDA and MDA have filed new motions to dismiss the amended complaint and both sides have filed extensive briefs. In essence, both agencies argue that Michigan is not really implementing NAIS and that, since NAIS is “voluntary,” the government does not have to go through any of the regular procedures, such as analyzing the impacts on small businesses or the environment. The Fund contends that, in practical terms, both MDA and USDA have made NAIS mandatory for thousands of people already. It is not clear when the Court will make a decision on these motions, so stay tuned.

## **Congressional Hearing**

The NAIS is heating up in Congress as well. After years of allowing the USDA to implement NAIS with federal funding, but no Congressional oversight, the House Subcommittee on Livestock, Dairy and Poultry has held two hearing about NAIS this spring. The first hearing featured a line-up of Big Ag groups speaking in favor of a mandatory program, sometimes using the latest euphemism, namely “an effective program.” But R-CALF USA, an independent cattlemen’s group, gave strong testimony about why NAIS is not needed and some of the harms it would cause.

The second hearing, done in cooperation with the Homeland Security’s Subcommittee on Emerging Threats, Cybersecurity, and Science and Technology, featured an even more biased set of panelists uniformly testifying in favor of a mandatory NAIS. A few Congressmen raised concerns about the program that were not welladdressed by the panelists.

## **Cost-Benefit Analysis**

At the first hearing, several Congressmen asked about the cost-benefit analysis of NAIS that USDA had commissioned almost two years ago. Just before the second hearing, USDA finally released the study. The study acknowledges that the costs for small farms with cattle would, on average, be almost three times higher per animal than for large operations. And the cost-benefit analysis grossly underestimates the true costs for small farms because of the numerous gaps, false assumptions and misleading tactics used in the study. I’ll touch briefly on a few of the most egregious flaws.

First, the study manipulates the categorizations to disguise the costs to small farmers, homesteaders and other individuals with a few animals. For example, in estimating the costs for beef cattle, the study uses six categories based on the number of cattle on the farm, and

estimates the costs for producers in each category.<sup>1</sup> The first category includes operations that have anywhere from 1 to 49 head of cattle and encompasses 585,050 operations or 77 percent of the total number of operations. There is no valid statistical reason to create a single category with that many operations while dividing the remaining 23 percent of operations among six different categories. Moreover, this approach is not consistent with the USDA Census, which separately counts operations with 1-9 head, operations with 10-19 head and operations with 20-49 head. In other words, the research team had the data available to estimate costs for smaller categories and simply chose not to. The study uses similarly skewed categories for pigs and sheep. Given the USDA's own finding that costs increase as herd size decreases,

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the study's choice of categories obscures the real costs to small operations.

Second, the study incorrectly discounts costs for technological infrastructure. The study acknowledges that NAIS will require extensive technological infrastructure by individuals, including computers, software and internet access. The study also acknowledges that many small farms do not own computers or have internet access.<sup>3</sup> Yet the study then assumes that the hundreds of thousands of people who will be forced to buy additional technology would have "other uses" for those computers, software and internet access, and therefore only counts 50 percent of those costs! While many farms and individuals may have use for such technology, that is obviously not true for everyone, and the entire computerization costs should be allocated to NAIS.

Third, the study makes assumptions about the use of group identification for sheep and poultry that contradict the USDA's own documents. The study states that poultry operations "would utilize exclusively lot identification systems"<sup>4</sup> and assumed that lambs moving direct to slaughter would be identified by group or lots.<sup>5</sup>

But this assumption does not reflect the government's plans. Hundreds of thousands of poultry and sheep owners would not be able to use group identification for their animals.

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The USDA documents state that group or lot identification is available where groups of animals are managed together from birth to death and not commingled with other animals. In practice, this only occurs in the vertically integrated confinement operations, not on small farms. Many pastured poultry and grass-fed lamb farms would not qualify for group identification, yet USDA did not even try to quantify the costs to these farms or to the many people raising a few poultry or lambs for their own food or as pets.

Fourth, the study makes unsupported assumptions about many of the costs that will be

imposed. For example, the study recognizes that the cost of RFID readers will not be economical for small producers, so it advances the premise that a new business will spring up to do custom reading.<sup>7</sup> It then assumes that there will be custom tag reader businesses within twenty-five miles of each small farm, even though ranches in the West and Southwest may encompass more than twenty-five miles of territory each. It also assumes that the cost of RFID reading will be comparable to the cost of brand inspections, even though brand inspections do not require expensive equipment, unlike RFID tagging and reading. Based on those fundamentally flawed assumptions, the study claims that someone with five head of cattle would pay only \$9.35 (\$1.87 per head) to have someone drive out to their farm and electronically read the tags.

Another flaw of the study, which has been a recurring issue in many debates about NAIS, is the massive underestimation of the number of “premises” affected by NAIS, and as a result, the underestimate of the total costs of the program. All of the cost estimates are based on data from the USDA Census. Yet the USDA Census, by definition, covers only those operations that have \$1,000 or more of agricultural product for sale in the census year. Not only do many people fail to respond to the Census, but hundreds of thousands of hobby animal owners, homesteaders and micro-farmers are not covered. Yet these people would be covered by NAIS. The USDA’s own premises registration statistics reveal the severe undercounting of affected people. While the Census lists only 3,555 “premises” in Massachusetts, the USDA has registered 8,066 premises in that state—227 percent of the estimate!<sup>8</sup> And since the cost-benefit analysis relies on the Census estimates, the estimates of the total costs of NAIS—to both individuals and the government - are fundamentally flawed.

This was a cost-benefit analysis, so what about the benefit portion? The main benefits discussed by the study are related to the export market. Indeed, in identifying the “three key points” from the study, USDA lists the value to the export market and the global marketplace as the key benefits.<sup>9</sup> Not only are the alleged benefits based on speculation rather than fact, this approach is entirely improper. The majority of the costs of NAIS will be borne by individual animal owners ranging from pet owners to large ranchers. But the export market benefits will accrue almost entirely to a handful of large companies who participate in the export market. In essence, individual rural Americans’ version of Main Street will be taxed for the benefits of Big Ag’s version of Wall Street.

In summary, the USDA cost-benefit analysis is rife with improper statistical manipulations, unsupported and illogical assumptions, and a cavalier disregard for the people who will actually bear the costs.

## **USDA Listening Sessions**

It's an important time for people to speak out about the costs of NAIS, as well as the myriad other problems with the program. In April, Secretary Vilsack held a roundtable in DC and invited several of the groups opposing NAIS to participate, including the Farm and Ranch Freedom Alliance. The DC roundtable kicked off a series of thirteen listening sessions around the country scheduled for May and June.

At the time this article goes to print, USDA has held five of the listening sessions. The participants at all the meetings have been overwhelmingly anti-NAIS. The Farm and Ranch Freedom Alliance, the Weston A. Price Foundation, and the Farm-to-Consumer Legal Defense Fund have worked with many other organizations nationwide to help publicize the meetings and encourage people to attend. The individuals opposing NAIS at each meeting included not only farmers and ranchers but also auction barn owners, technology experts, consumers, homesteaders and horse owners.

The people opposing NAIS come from all walks of life and every part of the political spectrum. As a fifth-generation rancher stated at the Austin meeting: "I find it kinda ironic that I'm on the same side of this issue as a bunch of these old hippies. But I am." In contrast, those supporting NAIS come from a very small handful of Big Ag and Technology interests. The USDA listening sessions are bringing this truth to light, and we must keep fighting. People across the country have given strong statements opposing NAIS at these meetings. Some have spoken about their personal situations—whether as farmers, homesteaders, or consumers—while others have provided detailed critiques of the NAIS and USDA's plans. All have spoken with passion and dedication. The remarks of Kim Alexander (see sidebar below) of Austin, Texas capture the spirit of the fight.

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## **SIDEBAR**

### **NO NAIS, NO WAY, NOT NOW, NOT EVER!**

I find it quite disingenuous that the USDA calls today a "listening session" when they have already made up their minds they are going to implement NAIS whether we want it or not. By their own admission in today's agenda, these sessions are to "overcome existing and new

obstacles to implementing the NAIS.” Furthermore, the USDA “seeks ... to create a program producers can feel ‘comfortable’ supporting.” i.e. “may your chains set lightly upon you.”

Their discussion sessions this afternoon will allow us “producers to provide ... input on ‘ways to make the program into something we can support.’” How thoughtful and kind of you as you attempt to “erect a multitude of New Offices, and send hither swarms of Officers to harass our people, and eat out their substance.”

Make no mistake; we know what you and the NIAA1 are up to. You are out to deny us the basic, God-given human right to produce food free of government interference. To paraphrase James Madison: “it is proper to take alarm at the first experiment on our liberty. We hold this prudent jealousy to be the first duty of citizens. ...” The free men and women of America will not wait as your usurped power strengthens itself by exercise and you entangle the question in precedents. We see the consequences in the principle and we will avoid the consequences by denying you the principle.

Friends and neighbors, sons and daughters of the South, we will win this fight. We are the majority and we are in the right! The millions of farms, ranches, and backyard barnyards we represent provide real homeland security and food safety. We may have occasional, temporary setbacks, but we will win. We do not even need to be the majority. As Samuel Adams stated, “It does not require a majority to prevail, but rather a tireless minority keen to set fires in people’s minds.” Let the fire of liberty that scorches this tyranny once and for all start here in Austin, Texas and spread throughout this great land until freedom once again reigns.

USDA are you listening? Take this message back to Tom Vilsack and the rest of your minions: NO NAIS, NO WAY, NOT NOW, NOT EVER!

Kim Alexander, Austin, TX, 5/20/09. You can view the video of this statement, as well as the dozens of other statements made opposing NAIS, at <http://www.youtube.com/user/somervellcountysalon>

**Sidebar reference**

1. National Institute for Animal Agriculture, the industry trade group that created NAIS in the 1980s and 1990s.

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## REFERENCES

1. Benefit-Cost Analysis of the National Animal Identification System, NAIS Benefit-Cost Research Team (Jan. 14, 2009)(hereinafter "Cost-Benefit Analysis") at Table 4.2 & 4.3, page 30.
2. Cost Benefit-Analysis, pages 28-29.
3. Cost Benefit-Analysis, pages 24-27.
4. Cost Benefit-Analysis, pages vi, 8, & 123-124.
5. Cost Benefit-Analysis, page 102.
6. User Guide at 30. See also Draft Program Standards, United States Department of Agriculture, Animal and Plant Health Inspection Service (published Apr. 25, 2005)(hereinafter "Draft Program Standards") at 5-6.
7. Cost Benefit-Analysis, page 23.
8. Cost Benefit-Analysis, pages 169 & 171.
9. USDA-APHIS Fact Sheet, National Animal Identification System Benefit-Cost Analysis: Three Key Points (Apr. 2009)("Three Key Points from the Benefit-Cost Analysis:1. A traceability system like NAIS is essential to timely recovery of export markets after a disease outbreak. 2. Traceability is becoming increasingly important, even necessary, for successful participation in the global marketplace. 3. For the major livestock industries, the costs of NAIS vary depending on the industry's production practices, which in turn determine the type of traceability methods used.").

This article appeared in *Wise Traditions in Food, Farming and the Healing Arts*, the quarterly journal of the Weston A. Price Foundation,

[Summer 2009](#)

## About the Author

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