

FARM AND RANCH FREEDOM ALLIANCE

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NAIS Program Staff
Attn: NAIS Draft User Guide
Animal and Plant Health Inspection Service, USDA
Unit 200, 4700 River Road
Riverdale, Maryland 20737
VIA EMAIL: animalidcomments@aphis.usda.gov

Re: NAIS Draft User Guide

Dear NAIS Program Staff:

The Farm and Ranch Freedom Alliance (FARFA) is a non-profit organization headquartered in Austin, Texas. Founded in April 2006, FARFA has over 150 members and over 900 subscribers to its mailing list from across the country. FARFA is dedicated to protecting the interests of independent farmers, ranchers, homesteaders, and other livestock owners.

These comments will address three main issues:

- (1) the failure to limit NAIS to a truly voluntary program;
- (2) the lack of support for the claims of both the costs and the benefits of NAIS;
- (3) the ambiguity in the new provisions for reportable events.

Other issues, which still pose significant concerns, are addressed briefly in the final, miscellaneous section. FARFA urges the USDA to halt implementation of the NAIS, including funding of State programs, and address the problems with the foundation of the program.

I. The User Guide fails to limit NAIS to a truly voluntary program

FARFA strongly opposes any mandatory or coercive version of the NAIS. The User Guide's statement that NAIS will be voluntary at the federal level contains an implicit acknowledgement of the significant opposition to a mandatory program, which is a positive step. But while stating that NAIS is voluntary at the federal level and repeatedly claiming the individuals have a choice, the User Guide does *not* limit NAIS to a truly voluntary program. To the contrary, the User Guide and other USDA documents continue to endorse mandatory and coercive implementation of NAIS by the States. We have already seen coercive programs established in several states, and on December 15, 2006, the Kentucky Department of Agriculture proposed regulations to make NAIS mandatory, presumably due at least in part to the influence of federal funding.

NAIS is not truly voluntary if people are required to participate to conduct normal activities related to their ownership of animals. Yet the User Guide encourages States to tie NAIS to their existing State programs: "For example, in order for producers to obtain official identification devices, they first need to register for a premises identification number. Accordingly, the

success of the premises registration component would be achieved through the participation of producers in longstanding disease management programs and compliance with interstate movement regulations.” (User Guide, p.8) In other words, the States can force people to register into the federal NAIS database in order to obtain identification devices that they must have under already existing programs. FARFA has seen numerous examples of similar abuses across the country, such as people being told that they had to enroll in order to participate in 4-H, or take their animal to a county fair, or use certain sales barns.

NAIS is not truly voluntary if people are enrolled in the program without their knowledge or consent. The User Guide does not address this issue directly, but USDA’s Announcement of the availability of federal funds for 2007, issued the same day as the User Guide, explicitly states that USDA “WILL provide funding for ... the integration of existing State systems” with the federal NAIS database. (USDA, Initial Announcement, Cooperative Agreements for Implementation of the National Animal Identification System (NAIS), 11/22/06, p.11). In plain terms, USDA has agreed to fund data mining that may occur without individuals’ knowledge or consent. Data mining has already occurred in several states through the scrapie and tuberculosis programs, yet the User Guide ignores these non-voluntary tactics.

NAIS is not truly voluntary if the participants cannot withdraw freely. The USDA has not made any provisions for individuals to withdraw from the NAIS once they are in. Once registered, a premises can only be listed as “inactive,” with all of the information remaining part of the federal database. Moreover, as noted in the User Guide, individuals are not allowed to remove the individual identification tags from their animals. (User Guide, p.29) Thus, if someone “chooses” to be part of NAIS for a period of time, he or she is then forced to remain part of the system for as long as s/he owns the identified animals. Indeed, even people who have not chosen to be part of NAIS at any time may be forced into maintaining individual identification if they purchase already-identified animals.

While claiming that NAIS is voluntary, the User Guide contains multiple provisions whose clear effect is to encourage mandatory and coercive State programs, using federal funds. FARFA urges USDA to clearly and unambiguously reject mandatory or coercive implementation of NAIS at all levels and to cease funding of state programs that are mandatory or coercive and which do not allow persons to withdraw from the program.

II. The User Guide fails to provide analytical or factual support for its discussion of the alleged costs and benefits of NAIS

After spending four years and over \$84 million on the program, USDA admits in the User Guide that it still has not done a cost-benefit analysis. (User Guide, p.12) This represents an inexcusable waste of taxpayer dollars. Moreover, the USDA’s general statements about costs and benefits show that the agency has failed to even consider the issues seriously.

A. The alleged benefits

The User Guide repeatedly states that NAIS is important for animal health reasons. Yet there is no support for this claim. USDA fails to offer any analysis of how NAIS is an improvement over existing animal identification and disease control systems and processes.

FARFA has filed a Freedom of Information Act Request for all studies, including epidemiological studies and mathematical models, relating to the design, development, or implementation of the NAIS. To date, USDA has responded only that it is attempting to locate these documents. Conversations with officials indicate that the USDA has not done any studies to support several key elements of the disease-control claims. Studies should be performed to evaluate: (1) high-risk versus low-risk animal management scenarios; (2) the effectiveness of tracking domestic animals for diseases with wild animal or insect transmission vectors, air-borne diseases, and non-contagious diseases (such as BSE); (3) the benefits from tracking within specified time periods (such as 24 or 48-hours versus one week) for diseases with differing incubation periods and contagion; (4) the risks associated with different types of movements; and (5) the effectiveness of existing identification systems. Without such studies, the disease-control claims made in the User Guide are effectively meaningless.

Further, the User Guide's statements on the benefits of NAIS are based on unrealistic assumptions. For example, the Guide claims that NAIS will make it unnecessary for investigators to "drive up and down rural roads to look for animals and identify premises." (User Guide, p.12) Yet, if the authorities truly needed information on every single premises with animals, NAIS would not obviate the need to conduct such an investigation because there will never be 100% compliance, even if the program is mandated by law. Rather, the adoption of yet more regulations on animal ownership will create a new black market that will actually increase disease threats and make it harder to contain outbreaks. To understand the potential problem, one has only to look at the outbreak of Exotic Newcastle Disease that occurred in Los Angeles in 2002, a situation that the proponents of NAIS have repeatedly referenced. That outbreak was started and spread by cockfighting flocks. (R. Scott Nolen, *Exotic Newcastle Disease Strikes Game Birds in California*, JOURNAL OF THE AMERICAN VETERINARY MEDICAL ASSOCIATION NEWS (Nov. 15, 2002)) Cockfighting is illegal in California and the roosters were smuggled in from Mexico. (Congressman Elton Gallegly, *Smuggling Cockfighting Roosters a Conduit to Bird Flu*, SANTA BARBARA NEWS-PRESS (Dec. 11, 2005)) Obviously, people who use their animals for illegal activities will not comply with NAIS. Further, if NAIS is implemented, it is inevitable that yet more people – whether for religious reasons, economic reasons, or unwillingness to allow the government intrusion – will raise animals illegally without registering their premises. Since they will be acting illegally, they will be far less likely to seek a veterinarian's help should a disease problem arise and to try to avoid attracting the notice of government agents who are trying to address a disease outbreak. The User Guide simply ignores this reality in claiming that NAIS will provide health benefits.

The User Guide also repeatedly claims the export market benefits all producers. (User Guide, p. 11, for example). Yet USDA's own statistics show that the U.S. imports 3 to 8 times more beef than it exports. (<http://www.ers.usda.gov/Data/MeatTrade/Data/AnnualLivestockTable.xls>) While international markets obviously affect prices, the benefits potentially gained from a

tracking system to aid in the export of meat are not self-evident and require careful calculation, not vague claims. Moreover, the USDA already has a Process Verified Program that provides government certification for suppliers of agricultural products or services that meet the applicable standards. The program allows the suppliers to market themselves as “USDA Process Verified” for both age and source, thereby addressing the export market issue through a voluntary program. The User Guide fails to address why NAIS is necessary for the export market.

In summary, the User Guide’s claims of the benefits that would result from NAIS have no foundation in science, economics, or practical realities.

B. The alleged costs

The User Guide makes several claims related to the costs of the program that are also wholly unsupported. As an initial matter, the User Guide entirely ignores the costs of the program that are not directly paid by animal owners. For example, it states that “premises registration is free in all States and participating Tribes.” (User Guide, NAIS at a Glance.) While it is true that registrants are not charged a fee (at this point in time), premises registration is *not* free. Millions of federal and state tax dollars have been, and continue to be, spent on premises registration. Costs include labor, hardware and software, and outreach programs. USDA needs to assess the true costs of implementing NAIS for both animal owners and taxpayers.

Moreover, USDA’s estimates of the costs to animal owners appear to have been simply made up. According to USDA, “horse owners are paying \$20 to have a horse implanted with injectable transponders. If the owner has the expertise to implant the transponder him/herself, the cost of the transponder would be a few dollars.” (User Guide, p. 10) Even for those implanting the chips themselves, just the microchip and syringe costs around \$18. (See, for example, www.netposse.com/microchips.htm) With a vet’s assistance, the cost can be anywhere from \$35 to \$100. Those quotes do not include the cost of hauling the horse to the vet or paying the barn-visit fee.

USDA also fails to include the costs of RFID readers, computers or other means required for reporting to the NAIS database, and the untold hours of labor involved with tagging animals, record keeping, and reporting. Estimates from the Australian Beef Association place the total cost of tagging at \$37 to \$40 per animal, on average. Since people who own one or just a few animals usually pay more than large producers, since they can’t buy large quantities of the supplies, these averages understate the probable cost for most individuals.

USDA repeatedly says that competition in the market will keep reporting fees down for animal owners. (User Guide, p.44, for example) However, the User Guide does not say how these costs will be controlled or minimized. Given the already highly consolidated nature of both the agricultural and technology industries, the more logical outcome is that competition will be quite limited and will not be effective in keeping costs down. Moreover, those entities who stand to profit from running the databases have played key roles in developing the program. Several of the largest organizations have already joined together to form the U.S. Animal Identification

Organization with the intention of managing the entire system. There is absolutely no indication that there will be significant competition in this arena.

USDA has failed to do an analysis of the full costs of the program, supported by verifiable data rather than mere hopes. USDA has also failed to do a rigorous analysis of what benefits could actually be expected from NAIS. The entire discussion of costs and benefits in the User Guide lacks the factual support that is necessary for a massive program that will impact millions of Americans.

III. The User Guide creates problematic ambiguities in its provisions for reportable events

The previous comments apply to all three stages of NAIS: premises registration, animal identification, and tracking. The User Guide raises additional concerns on the final stage, tracking. The User Guide states that it replaces the previous documents, including the 2005 Draft Plan and Draft Program Standards. (User Guide, Preface). Yet it lacks the detailed guidance of those documents and leaves many things unclear, particularly the issue of what movements will have to be reported.

For example, the User Guide divides events into “high importance” and “low importance,” but does not specify the precise impact of these categories. It states that USDA will “focus” on high importance events, but does not specify what such a focus will mean for either category. (User Guide, pp.46-48.) The User Guide also uses vague terms in its examples of events in each category. “Local shows” are listed as low importance. Yet what constitutes “local” versus “regional”? If a show takes place on the border of two states and draws contestants from a 20-mile radius that includes both states, is that local or regional? If a show draws contestants from a 250-mile radius, all within one state, is that local or regional?

Further, the categories do not appear to be supported by animal disease considerations. Private sales are listed as being “high importance.” What support is there for categorizing a sale of animals between neighbors, for example, as a high-risk event? The categorization of regional versus local shows crops up yet again. What if a show draws 500 contestants from within one county? Presumably that would be a local show. Yet a show that draws only 100 animals from a 10-county region might be considered a “high importance” event under the User Guide. The terminology and lack of science interact to create a confusing and illogical system.

Moreover, the ambiguity in the User Guide is likely to lead to a patchwork of conflicting state provisions, making it even harder for individuals. For example, after the issuance of the User Guide, the Kentucky Department of Agriculture proposed regulations to implement NAIS. The proposed regulations provide that a Certificate of Veterinary Inspection “or appropriate permit shall be required for movement or exhibition of all animal(s),” except as specifically exempted by species. (proposed 302 KAR 20:020(3)(a), proposed Dec. 15, 2006). While the User Guide has divided movements into “high importance” and “low importance,” the proposed Kentucky regulations make no such distinction. Rather, they would require a CVI for all movements for sale or any “exhibition” “where commingling of animals from different origins occurs.” (proposed 302 KAR 20:065, Section 1(1) and (2)). Thus, the Kentucky regulation would require reporting of the local shows that the User Guide classifies as “low importance.” USDA is

encouraging States to implement NAIS through federal funding, and yet the User Guide does not limit the reporting requirements to be imposed by the States.

IV. Miscellaneous issues

A. The definition of the term “producer”

The User Guide defines “producer” to include “all individuals engaged in the ownership, management or marketing of livestock.” (User Guide, Preface, fn. 2.) This use of terminology reflects an underlying problem with the NAIS, namely the lack of understanding of critical differences within this broad category. The NAIS treats pet owners, homesteaders, small farmers, ranchers, factory farms, feedlots, slaughterhouses, and many other individuals and entities as if they pose the same risk of disease and have the same interests. To the contrary, individuals in these diverse groups have actively conflicting interests, which have not been considered by the USDA or the working groups.

B. The impact of the User Guide

The User Guide states that it replaces “all previously published program documents.” (User Guide, Preface). Yet the User Guide does not provide many of the technical details that were contained in the previous documents. The User Guide does not contain technical information such as the requirements for Animal Identification Number (AIN) tags or the databases. Working under the earlier documents, the USDA has already approved AIN Manufacturers and database managers. USDA also has cooperative agreements in place with state agencies that include specific targets for participation, which create pressure for states to implement mandatory or coercive programs. The USDA needs to clarify precisely which portions of which documents are still valid.

C. Privacy of the data

The User Guide states that one of the key points of the NAIS is that “federal law protects individuals’ private information and confidential business information from disclosure.” (User Guide, p.1) Yet USDA recently publicized that it had released premises registration information during the Colorado blizzards. This information was used to contact individuals by phone to determine if they wanted assistance in feeding their animals. While this may have been a well-intentioned decision, the use of the premises registration data was not within the scope of disease control. Indeed, one can assume that individuals whose phone lines were still working were fully capable of deciding for themselves if they wanted government assistance and contacting local officials. The USDA is already using the premises registration data for purposes beyond those provided for in the NAIS plans. Given the lack of any clear statutory guidance for this program, and the USDA’s violation of its own guidance documents, animal owners do not appear to have any real protection for the privacy of their information.

D. The permanency of premises registration

The User Guide continues the earlier plans' provisions for a permanent premises registration number that attaches to the land itself. (User Guide, p.22) While the government has assigned premises registration numbers under other programs, the NAIS premises registration has unique qualities. It attaches to the land permanently and can never be removed, only "inactivated." It provides information about activities on the land, namely that the land has or had livestock animals on it. And it provides a permanent link to all of the animals that have been on that land, under the NAIS plans for animal identification and tracking. Thus, it raises potential liability issues that are unclear at this point in time. Further, because this sort of registration of real estate has not been done previously, the effects on the property interests in the land are also unclear. These concerns apply to both mandatory and voluntary programs, and the USDA continues to fail to address them.

V. Conclusion

There are many more effective, less expensive, and less intrusive means for addressing animal health in this country. The User Guide, like the USDA's previous plans for NAIS, continues to avoid the critical issues of the scientific basis for NAIS and a true cost-benefit analysis. While claiming that NAIS is voluntary and animal owners will have a choice, the User Guide and the concomitant Announcement of federal funding create a significant probability that animal owners will be forced to participate through either mandatory or coercive programs. The revisions to earlier NAIS plans with respect to the reporting provisions have merely created greater ambiguity and uncertainty, rather than providing any real progress.

FARFA urges the USDA to halt implementation of the NAIS, including funding of State programs, and address the problems with the foundation of the program.