

FARM AND RANCH FREEDOM ALLIANCE

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February 2, 2009

Regulatory Analysis and Development PPD, APHIS
Station 3A-03.8
4700 River Road Unit 118
Riverdale, MD 20737-1238

Re: Docket No. APHIS-2007-0096

Dear USDA-APHIS:

The Farm and Ranch Freedom Alliance urges the USDA to withdraw its proposed rule to implement portions of the National Animal Identification System (NAIS), Docket No. APHIS-2007-0096.

The Farm and Ranch Freedom Alliance (FARFA) is a non-profit organization headquartered in Austin, Texas. Founded in April 2006, FARFA has 600 members in 45 states and more than 2,000 subscribers to its mailing list from across the country. FARFA advocates for farmers, ranchers, and homesteaders through public education and lobbying to assure their independence in the production and marketing of their food, and to prevent the imposition of unnecessary regulatory burdens that are not in the public interest. FARFA also advocates for consumers' access to information and resources to obtain healthy foods of their choice. FARFA promotes connections between rural and urban communities to support diversified, local agricultural systems.

As a preliminary issue, on January 22, FARFA filed a request under the Freedom of Information Act seeking all documents related to the costs and/or benefits of the proposed rule. **We hereby request that the USDA extend the comment period on the draft rule until 60 days after release of the requested documents.**

The proposed rule mandates the NAIS Premises Identification Number (PIN) as the sole means of identifying properties for official USDA purposes. The proposed rule also mandates the use of the NAIS numbering system (i.e. the "840 numbering system") for eartags using official animal identification numbers. Tags using other numbering systems would be required to be linked to a NAIS PIN.

The draft rule is seriously flawed for multiple reasons:

- 1) No analysis or quantification of the alleged benefits to animal health. The preamble to the proposed rule includes general claims about the benefits of identifying locations where

animals are kept. The USDA has never addressed the capacity of existing programs to meet this purpose, nor how the proposed rule actually improves on the current ability to identify locations. USDA claims that uniformity in numbering systems is required in order to ensure program benefits, but its repeated changes in the program rules and guidelines contradicts its own claim.

- 2) No analysis or quantification of the costs. The preamble to the proposed rule states that the USDA has reviewed it under Executive Order 12866, which requires a cost-benefit analysis of federal regulations. But the agency has failed to produce the analysis for this rule, and has also failed to provide the cost-benefit analysis performed by Kansas State University under a grant by the USDA. This stands in stark contrast to the USDA's detailed cost-benefit analysis on Country of Origin Labeling in its recent final rule, in which USDA discussed many different potential costs, including capital investment, equipment, recordkeeping, operational changes, labor and training, software programming, computer hardware, storage, procurement (including transportation and shipping), and the costs of tagging animals. The agency's failure to address many of these same costs for NAIS is particularly striking given that there is no Congressional mandate to implement NAIS.

The proposed rule would substantially increase costs, and add intrusive governmental burdens, to the industry and the taxpayer:

- a. The costs of maintaining a federal database with the PIN information, including regular updates to provide the benefits for "up-to-date" information claimed in the preamble to the proposed rule;
 - b. The costs of 840-numbered tags to farmers and other animal owners;
 - c. The costs to state agencies of implementing changes to existing programs;
 - d. Overriding objections regarding increased federal government intrusion into the lives and daily activities of farmers and other animal owners;
 - e. The costs of changes to existing programs. USDA admits in the proposed rule that it has changed its requirements for official tags at least three times over a short period of time. While the proposed rule allows for phasing in the latest format, repeated regulatory changes inevitably cause waste and greater cost for producers, manufacturers, agriculture service providers, and others having to read and record tag information.
- 3) Violation of individuals' religious beliefs. Amish, Mennonite, and some other individuals have religious objections to the universal numbering system under NAIS and the use of electronic tags, which are the main tags approved for use with the 840 numbering system.
 - 4) Disincentives for people to seek veterinary care for their animals and participate in existing programs. The proposed rule directly impacts four animal disease programs: tuberculosis, brucellosis, scrapie, and Johne's. Given animal owners' objections to NAIS, the proposed rule could create a disincentive for people to participate in the listed programs—this would actually increase rather than decrease the risk to the public and farm operations. Moreover,

the proposed rule comes after several years of objectionable tactics used by USDA and state agencies to enroll people in NAIS, including deceptive registrations, economic coercion, and data mining, as well as repeated, apparently disingenuous, claims by USDA that it had no intention to make NAIS mandatory. The pattern of misleading information and repeated changes in the program has created a situation where animal owners may decide to avoid many other important programs out of fear of being forced into NAIS.

- 5) Confusion over the impact of the rule. The USDA has repeatedly changed its plans for NAIS. The proposed rule is the latest in a series of ambiguous and confusing documents. Under the proposed rule, it appears that tattoos and brands will still be allowed, but the language is confusing and unclear. This will increase the costs, both quantifiable (such as the costs to agencies of education and enforcement under the proposed rule) and qualitative (such as the loss of trust in agencies by animal owners).
- 6) The implementation of a flawed, wasteful program. This proposed rule is a significant step towards implementing the entire NAIS program. Thus, the agency should address the fundamental question of whether it should be implementing NAIS at all. All of the problems identified above apply to the full NAIS program, as well as this specific rule. And there are additional objections:
 - a. No significant benefits: USDA's assertions that NAIS will provide benefits for animal health are not supported, and actually contradict basic scientific principles. USDA has not produced any risk analysis or epidemiology studies, both of which would certainly indicate that the focus of agency regulation should be on high-density confinement operations. NAIS does not address the fundamental risks associated with this production model.
 - b. High costs: USDA has not addressed the wide range of costs that would be incurred by both animal owners and taxpayers. These costs include: (1) the development, maintenance, and update of massive databases; (2) the costs of tags that will be predominately high-tech; (3) the labor burdens for tagging every animal; (4) the paperwork burdens of reporting routine movements; and (5) the costs of enforcement on millions of individuals.
 - c. Impracticality: Under the current plans, approximately 150 millions animals would have to be individually identified (that does not include the billions of poultry or millions of swine who would be group identified on factory farms). The databases to register the properties, identify each animal, and record billions of "events" will dwarf any system currently in existence. How will the program be enforced? How will technical errors even be identified, much less fixed? How will security be maintained? The experiences with existing databases – both current USDA programs and a NAIS-type system in Australia – indicate that the error rates and potential security breaches would be significant.
 - d. Waste of money: The USDA has already spent over \$130 million on NAIS implementation. Yet it still has no workable plan for the program. Even by its own estimates, only about 1/3 of premises have been registered, and this might very well

- be a vast overestimate of its success. The USDA's estimates are based on the 2002 Census, which did not include the hundreds of thousands of horse owners, hobby farmers, homesteaders, and others who would be regulated under NAIS.
- e. Diversion of resources away from more critical needs: The USDA's focus on NAIS has diverted limited resources from other, far more critical needs for addressing animal health. NAIS does nothing to prevent animal diseases from entering our country through uninspected imports, to detect diseases (including Mad Cow), or to prevent animals from becoming ill (such as by improved animal husbandry practices or vaccination). In fact, by replacing the existing disease control programs with one uniform tagging system, NAIS would hamper disease control efforts that currently rely on the ability to quickly identify which animals have already been vaccinated or tested, based on their tags. NAIS has also diverted attention and resources from measures needed to improve food safety, such as increased inspections of slaughterhouses.
 - f. Inconsistent and unachievable promises: While this proposed rule mentions only the alleged (and unsupported) animal health benefits, agency officials and industry proponents have also claimed that NAIS will provide food safety benefits, address horse and cattle theft, help with blizzard responses, or many other promised benefits that appear to depend on the audience being addressed. Yet the agency has not explained how these benefits are to be achieved when NAIS is managed by APHIS (which is not a food safety or law enforcement agency), which has promised that the information collected will be confidential and used only for animal health purposes.
 - g. Ultimately, a disincentive for individuals to be involved in farming or animal husbandry of any kind: Implementing this flawed program would be a significant cost to our entire society because of the impact on our food supply. Because of the costs and government intrusion, some people will choose not to stay in farming or go into farming. With an acknowledged crisis of an aging farming population, the long-term costs imposed by creating disincentives for people to enter or remain in farming could be extremely damaging to our ability to raise food in this country and to rural economies. The result will be decreased competition, and poor quality food at higher prices for livestock-based products.
- 7) Damage to food safety efforts. If NAIS is implemented, the result will be a decrease in our food safety.
- a. The NAIS will not address foodborne illnesses, such as e. coli or salmonella contamination, because the information ends at the time of slaughter. The vast majority of food contamination occurs at the slaughterhouse, food processing and handling facilities, or during food preparation – after NAIS stops doing anything to collect information that would help in a response. NAIS does nothing to address the risks associated with slaughterhouse practices or the failure of USDA to enforce current laws.

- b. The NAIS will heavily burden small and sustainable farmers, which will hurt efforts to develop safer, decentralized, local food systems. As evidenced in the recent peanut butter recalls, having a centralized food processing and distribution system means that contamination in even one plant can lead to deaths and illnesses of thousands all over the country—problems very hard to track and isolate. Consumers clearly support a local, sustainable food supply, which means the agency needs to write rules that work for small independent farmers, instead of rules such as NAIS that are designed for the benefit of vertically integrated CAFO's.
- c. The NAIS will waste limited public and private resources that could be better spent on programs that would help prevent food contamination and foodborne illness outbreaks, including increased testing for bovine spongiform encephalopathy (BSE or "Mad Cow"), improved oversight of slaughterhouses, and increased inspections of imported food. The agency should focus on prevention, not response after problems have occurred.
- d. To the extent that contamination occurs despite efforts at prevention, traceback efforts should focus on tracing the meat, rather than the animals. USDA currently avoids tracing contaminated meat from the processor back to the slaughterhouse, as in the case of the e. coli contaminated ground beef that was found at John Munsell's packing plant. While USDA focused its efforts on shutting down Munsell's family-run packing plant, the agency refused to address whether the contamination had actually occurred at the ConAgra slaughterhouse that supplied meat to Munsell for grinding. Within a few months, one woman died and dozens of others were made sick from beef traced to the ConAgra slaughterhouse, resulting in one of the largest recalls of meat in history. Tracing of the meat from the packing plant to the slaughterhouse might have prevented the illnesses and saved millions of dollars. This sort of tracking program would be far more beneficial, and far cheaper, than NAIS.

For all of these reasons, the Farm and Ranch Freedom Alliance urges the USDA to withdraw the proposed rule to implement portions of the National Animal Identification System, Docket No. APHIS-2007-0096. At a minimum, the agency should publish its cost benefit-analysis and allow for a 60 day comment period after the release of that analysis.

Sincerely,

Judith McGeary

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