

About the National Animal Identification System (NAIS) Part 17: No Protection From Inspection

By Bruno Schmidt

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Olympia, Washington, Feb. 18, 2007. At the time this article goes to print, a quiet struggle is unfolding. While small farmers and livestock owners seek support for House Bill 1151, a bill that would stop the NAIS in this state, the state's Department of Agriculture (WSDA) wants the passage of Senate Bill 5204, a bill which would grant sweeping rule-making and new enforcement powers to the WSDA. In order to understand what this struggle is about, we need to back track a bit.

Last November, the USDA announced that participation in the NAIS would be "voluntary at the Federal level". Largely ignored by the media, however, was the fact that every state's Department of Agriculture (or an equivalent agency) is contractually required to "aggressively" REGISTER PREMISES in the NAIS. Because the states know that participation in a "voluntary" program cannot be legislated outright, many states are looking at ways to "encourage" farmers to register their premises. One approach suggested by the USDA would have the states begin implementing an "animal movement infrastructure" in 2007. Here is a direct quote (my emphasis added) from page 6 of the USDA's \$14.4 Million funding offer, published last November:

"Support for animal movement infrastructure will be limited to livestock markets and dealers and for NAIS integration with established State/Federal cooperative animal health programs within a State / Tribe / Territory. It is anticipated that allowances for animal movement infrastructure support may enhance premises registration efforts."

Put in practical terms, the foregoing "suggestion" targets a state's livestock markets and dealers with Federal funding for the purpose of recording and reporting animal movements. Since this reporting presumes the use of "official animal identification numbers" (AINs) for animals, and "official premises registration numbers" (PINs) assigned to the places the animals have come from or are being moved to (see discussion of SB 5204 Sec. 2, below), "voluntary" participation in the NAIS thus

could become a necessity for many livestock owners. What would it take to "motivate" these livestock markets and dealers to demand NAIS-compliant AINs and PINs even though they are voluntary? All it would take is the pronouncement and the enforcement of these sweeping new rules, regulations and laws governing how livestock is being moved.

This is precisely what is now underway in Washington state: On January 12, 2007, and with no publicity whatsoever, two bills came before the State Assembly that pave the way for the above "animal movement infrastructure". Senate Bill 5204, introduced on Jan. 12, and its identical companion House Bill 1310, introduced on Jan. 16, require that:

- *"Livestock dealers must also maintain individual animal identification and disposition records as may be required by law, or rule adopted by the director." (SB5294 Sec. 7; amended clause in RCW 20.01.280)*
- *"Livestock dealers must carry animal identification and animal health documents as required by chapters 16.36 and 16.57 RCW and rules adopted by the director under those chapters." (SB5204 Sec 7; new clause added to RCW 20.01.280)*

You can see how these proposed changes in the law play right along with what the USDA has suggested. But there is more. According to the ONLY rules published by the USDA about the NAIS to date, the act of removing or altering an "official" animal identification tag or device is deemed unlawful, and every "official" AIN tag or device must display the phrase "Unlawful To Remove". With that in mind, consider the following new provision:

- *"It is unlawful for any person to: (4) Intentionally falsely apply, alter, or remove an official animal health or official animal identification tag, permanent mark, or other device;" (SB5204 Sec. 2; new clause added to RCW 16.36.050)*

Because the phrase "official animal identification" does not appear anywhere in Washington state's

laws, regulations, or agency rules published to date – it only appears in the Federal Register – I would say that this particular, new provision is designed to accommodate the NAIS, specifically, to ensure that the Federal AIN attaches to an animal for life, from birth to death. How does the WSDA plan to enforce all these requirements?

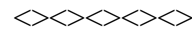
- “The director may establish points of inspection for vehicles transporting animals on the public roads of this state to determine if the animals being transported are accompanied by valid health certificates, permits, or other documents required by this chapter or its rules.” (SB5204 Sec. 1; first clause of new section added to RCW 16.36)
- “Vehicles transporting animals on the public roads of this state are subject to inspection and must stop at any posted inspection point established by the director.” (SB5204 Sec. 1; second clause of new section added to RCW 16.36)
- “The director or appointed officers are authorized to stop a vehicle transporting animals upon the public roads of this state at a place other than an inspection point if there is reasonable cause to believe the animals are being transported in violation of this chapter or its rules.” (SB5204 Sec. 1; third clause of new section added to RCW 16.36)

POINTS OF INSPECTION? POSTED INSPECTION POINTS? RANDOM STOPS? By its very (legal) definition, the term “inspection” allows for a lot more than just the checking of papers: it provides for searches of your vehicle and animals without a warrant! In the event that you happen to overlook an inspection point, or an “appointed officer” thinks that you are not cooperating, or something is found amiss with a health certificate, animal tag, or “other documents”, here are the consequences you might expect:

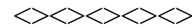
- “Any person found transporting animals on the public roads of this state that are not accompanied by valid health certificates, permits, or other documents as required by this chapter or its rules has committed a class 1 civil infraction.” (SB5204 Sec. 3; first clause of new section added to RCW 16.36)
- “Any person in violation of this chapter or its rules may be subject to a civil penalty in an amount of not more than one thousand dollars for each violation. Each violation is a separate and distinct offense.” (SB5204 Sec. 4; first clause of new section added to RCW 16.36)

- “Each violation is a separate and distinct offense.” (SB5204 Sec. 4; second clause of new section added to RCW 16.36)
- “Every person who, through an act of commission or omission, procures, aids, or abets in the violation is in violation of this chapter or its rules and may be subject to the civil penalty provided in this section.” SB5204 Sec. 4; third clause of new section added to RCW 16.36)

As you saw from the above discussion, WSDA wants all these new powers over and above what it is already authorized to do. While the small farmers’ no-NAIS bill has been stalled, SB5204 and its House companion bill, HB1310, are now being rushed through the Assembly’s committees (see the chart, below). Did you know that public hearings were already held on Jan. 18, and Feb. 1, 2007, respectively? Were you in Olympia on those days? Did you have a chance to appear and get your opinion into the committees’ Record? If not, there is still time: tell your district’s Representative and Senator, preferably in writing, how you feel about these new inspection laws. Absent any opposition, these bills are likely to become law soon. If that happens, you will have NO PROTECTION FROM INSPECTION whenever you take an animal anywhere. (Note: the full text of these bills can be accessed on the “Legislation” page at www.FreeToFarm.com).



Bruno Schmidt is co-author of the self-published “Farmer’s Field Guide to the NAIS”. He has spent in excess of 1500 hours over the past four years researching the National Animal Identification System including applicable laws, regulations and rules. For more information and latest updates, please visit www.FarmersFieldGuide.com



Wash. State Legislation	“pro-Farmer” (no-NAIS) in House Ag Committee		“pro-WSDA” (Inspections) in Senate Ag Committee	
	HB 1151	SB 5753	HB 1310	SB 5204
Sponsors	7	1	6	6
Proposed by	Farmers	Farmers	WSDA	WSDA
Introduced	Jan. 11	Jan. 31	Jan 16.	Jan. 12
Bill Analyzed	No	No	Yes	Yes
Hearing Notice	Feb. 15	No Date	Jan. 19	Jan. 16
Public Hearing	Feb. 21	No Date	Feb. 1	Jan. 18
Exec. Session	No Date		Feb. 6	
Final Action	No Date		Feb. 7: Passed by majority; bill passed to “Rules Committee”	