

National Animal Identification System (NAIS): Part 6: “Voluntary Participation” vs. “Show Me The Law”

By Bruno Schmidt
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What, exactly, does the Federal government mean when it promotes your “Voluntary Participation” in the NAIS? Does this somehow suggest that the NAIS is just one more program to “participate” in, or is there more to it than we realize?

According to Webster’s Dictionary, the word “voluntary” means “intentional” (when used in the law) and is synonymous with “deliberate” and “willful”. Because the NAIS is a Federal program, “Intentional Participation” would be an appropriate interpretation of what is actually being said. But there’s more to consider. When we look up Black’s Law Dictionary, the word “voluntary” also means “... *Resulting from free choice, without compulsion or solicitation. The word, especially in statutes, often implies knowledge of essential facts ...*”

In light of these definitions, Webster’s and Black’s, what then does so-called “Voluntary Participation” in the NAIS actually mean? It serves as EVIDENCE of at least two facts, among others: (1) that you had free choice and acted without compulsion or solicitation, and (2) that you acted intentionally based on your knowledge of essential facts. It does not matter whether or not the foregoing is true in your particular situation. From the Federal and your state government’s point of view, your affirmative act (to participate in the NAIS) provides the justification for placing your land, your operation and your animals under “Federal control”.

As I have explained before in Part V of this series of articles, “Federal control” means being subject to those laws and agency regulations that normally operate ONLY within the “Federal zone” (i.e. Washington D.C., territories, possessions, military bases, ports of entry etc.) but not within the states. “Federal control” can result from an act of Congress (a.k.a. “legislative authority”), from a Federal contract (a.k.a. “cooperative agreement”), from a grant of Federal money, from receipt of a Federal benefit, or a combination of the foregoing.

How does all this relate to your (potential) participation in the NAIS? The USDA’s major publications, the “NAIS Draft Program Standards”, “NAIS Draft Strategic Plan”, and the “NAIS Technical Supplement” DO NOT EXPLAIN ANY OF IT. Nothing is mentioned about the laws that supposedly authorize the creation of the NAIS; nothing is mentioned about the agency regulations that supposedly govern how the NAIS operates; nothing is mentioned about the Federal money granted to states, tribes and local jurisdiction for the purpose of bringing you into the NAIS. Why has none of this been discussed openly, even in the pre-NAIS publications?

Since December 2003, I have requested in writing answers to my above concerns. I even went on the USDA’s record both in writing and at a so-called “Listening Session” only to be told that “... we have broad powers ...” without offering any supportive evidence whatsoever. Because I personally disagree with the collateral issues and consequences brought on by the NAIS, I decided to get to the bottom of this on my own. Here is what I found ...

My “Show me the law” question (authorizing the NAIS) has a simple answer: it does not exist. Instead, Congress enacted the “Animal Health Protection Act of 2002” (AHPA, found in Chapter

109 of Title 7, United States Code) granting broad authority to the USDA to REGULATE ANIMALS AND PROPERTY WHEREVER LOCATED. Notwithstanding said broad authority, however, the creation of the NAIS – though well in the planning stage at that time – is not mentioned anywhere, not even by reference in Congress’ findings that justify this Act. One would think that something as far-reaching as the NAIS would be provided for in this Act, but that is not the case. Moreover, Congress expressly gave the USDA authority to CONTRACT with other jurisdictions, entities and persons so that, according to the wording in Section 8310 (b)(1), the AHPA can go into effect in places “... *other than on land and property owned or controlled by the United States ...*”.

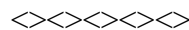
If you still had any doubts about the NAIS so far, and whether or not to participate, the above quote should give you pause especially if you consider that the original AHPA was prompted by the outbreaks of FMD and BSE in Europe. Moreover, this Act was introduced by Congress in the Spring of 2001 – months before the events of Sept. 11, 2001! With this Act, Congress has effectively authorized the USDA to reach beyond constitutional limitations (outside the “Federal zone”) and, by way of “Cooperative Agreements”, to bring non-Federal land and property (namely your farm and animals) under Federal control. Is it any wonder that NONE of this is mentioned anywhere except in my book, the “Farmer’s Field Guide to the NAIS”?

Is Congress unaware of what the USDA is trying to accomplish with the NAIS? A quick look at a portion of this year’s H.R.5384, generally known as the “Agricultural Appropriations Bill for Fiscal 2007” assures us that Congress is properly informed, and I quote:

“... of which \$33,107,000 shall be available for a National Animal Identification program; ... Provided further, That none of the funds appropriated under this heading for the National Animal Identification program may be obligated until the Committee on Appropriations of the House of Representatives receives from the Secretary a complete and detailed plan for the National Animal Identification System, including, but not limited to, proposed legislative changes, cost estimates, and means of program evaluation, and such plan is published as an Advanced Notice of Proposed Rulemaking in the Federal Register for comment by interested parties: ...”

According to this bill, Congress is now at the point where continued funding for the NAIS is on hold until the USDA produces what it has not done these past 3-4 years: proposed changes to the law and the agency’s regulations that would authorize and govern the NAIS.

Do not be mistaken one bit – the NAIS, and its “big brother”, the “National Animal health Surveillance System”, goes to the very heart of your rights to land, property, animals, and the way you farm. Where does this leave you? Can you – somehow – gain or assert control over this “NAIS Juggernaut”?



Bruno Schmidt is co-author of the self-published “Farmer’s Field Guide to the NAIS”. He has spent in excess of 1000 hours over the past three years researching the National Animal Identification System. For more information, please visit www.FarmersFieldGuide.com