

National Animal Identification System (NAIS): Part 7: Do you really have a choice?

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Yes, of course! As long as your government keeps asking for your “voluntary participation”, it would appear that you can choose whether or not to participate in the NAIS. Why then is your government going to all this trouble of inviting you to sign up? Would it not be a lot easier, and much more expedient, for your government to enact the appropriate laws and then simply “assign” all those new “premises identification numbers” to your farm, or ranch?

Since your government knows EXACTLY where and who you are, and what you do, either as part of the Public Record, or by way of the many laws and regulations you already have to abide by, it would seem that your government could get that job (assigning numbers) done in no time thereby forcing you into the NAIS. But would this really work as your government wants it to?

Let’s look at one example, the 9-digit “ZIP+4” code, a number that was involuntarily assigned by the U.S. Postal Service to your “postal location”. Does this postal code grant the U.S. Postal Service the right to tell you what you can or cannot do on your farm or ranch? Of course, it does not. Likewise, an INVOLUNTARILY assigned “U.S. Premises Identification Number” (US-PIN), or “U.S. Animal Identification Number” (US-AIN), does NOT grant control over your property to the government because YOUR CONSENT IS MISSING! Absent a clearly defined duty under the law, any such numbers are of no effect without your consent.

According to the government’s pamphlets and web sites, you have two options to offer your “voluntary participation”: by way of the internet (you sign up yourself on-line using the governments’ websites), or by filling out an application form and mailing it to your State’s Department of Agriculture (or a similar authority). However, if you use the application form, you also grant “Power of Representation” to your State employee(s) to represent you before the USDA, or act on your behalf, without restrictions or time limits.

As I have demonstrated to you in Parts 2 – 5 of this series of articles, your “voluntary participation” does in fact come with a lot of contractual “baggage” attached, legal consequences and concerns that are not being discussed anywhere. Understandably, you are left with the impression that joining the NAIS is the thing to do. Since “everybody else is doing it”, why procrastinate as it will become mandatory by 2009? Could it just be that this “get it done and over with” attitude is promoted by design? Consider the following:

- Did the USDA disclose to you that your State, or Tribe, was promised to receive Federal funds in exchange for signing you up, for implementing the NAIS at the local, tribal or State level??
- Did your State, or Tribe, disclose to you that Federal funding was first applied for and then awarded by the USDA in the form of a Federal “grant” to your State, or Tribe, that these funds were in fact “restricted funds”, conditioned upon your State’s, or Tribe’s, “performance”?
- Did your State, or Tribe, disclose to you that, according to the USDA’s very own regulations, YOU CAN OPT NOT TO PARTICIPATE in the NAIS?
- Moreover, did your State, or Tribe, disclose to you that Federal regulations regarding the NAIS in fact PREEMPT any contradictory State, Tribe or Local regulations?

I have my doubts that any of the above was disclosed to you. But don't just take my word for it – you may look it up yourself in the Federal Register, Vol. 69, No. 215, Pages 64644 – 64651, published on November 8, 2004. In particular, the above provisions can be found on page 64648 (bottom of 1st column), or page 64647 (middle of 3rd column), respectively. Note: A copy of this particular USDA regulation is included in Appendix F-2 of my book, the “Farmer’s Field Guide to the NAIS”.

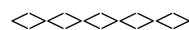
Just to be perfectly clear on this subject: THIS IS NOT the proverbial “silver bullet”, or a “loophole” of sorts, not at all! Keep in mind that whatever is published in the Federal Register always is carefully crafted, worded and reviewed by expert lawyers who do nothing else. Therefore, you can rest assured that the above provisions were written on purpose (notwithstanding the fact that they were published in a rather obscure location and at an inconvenient time). Why was this done? Because NOBODY can coerce you into a contractual arrangement, this type of an “escape clause” is typically provided for. Let me sum this up for you: you can either “opt in” thus making your “voluntary participation” in the NAIS a perfectly legal and rational (business) arrangement, or you can “... opt not to ...” by way of not participating based on a completely legal provision (the USDA’s) and rational decision (yours).

What about those States that already have laws or regulations on the books that compel your participation in the NAIS? Based on the USDA’s own regulations (see “PREEMPT” and “OPT NOT TO” provisions, above), I believe that those States have a legal dilemma to resolve because they, too, cannot enact a law or regulation that would coerce anyone into a contractual arrangement with the USDA.

What about those States that have already “registered” farms, or ranches, in the NAIS without their consent or proper disclosures of the essential facts? Based on the USDA’s own regulations which I discussed above, I believe that those States have an even larger problem on their hands: (A) they, too, cannot enact a law or regulation that would coerce anyone into a contractual arrangement with the USDA, and (B) they also failed to obtain the “consent” of the farms, or ranches, before registering them with the NAIS. A sticky situation, indeed.

Dear Readers: I hope that I have laid out for you, in plain terms, the consequences that are attached to any participation in the NAIS; the lack of disclosures at both the State and Federal levels; the role of the States, or Tribes, in enticing you into the NAIS; the legal and regulatory “vacuum” the NAIS operates in (at present); how contractual arrangements are used by the USDA to circumvent this vacuum and jurisdictional issues as well. Last but not least, I hope that I have explained to you sufficiently enough – without giving advice – the rationale behind the choices you presently have.

Much to my regrets, those farms, or ranches, that were “opted in” by their State without their consent will have the proverbial “tough row to hoe” ahead of them. If they choose to disentangle themselves from the NAIS now, after-the-fact, they will have to embark on a course of action that is virtually uncharted and untried at this time.



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