

U.S. 2007 Census of Agriculture: Who Can You Trust?
No. 30 in a series of articles about the NAIS and related topics

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Author's Note: If you firmly believe that your government is entitled to know everything there is to know about you and your farm, or what you do (or don't do) on or with your land, this article might not sit well with you. On the other hand, those of you that have concerns about this census in general, or find it intrusive or objectionable, either in whole or in part, are certainly entitled to learn more.

About this time last year, at Spokane's 2007 Ag Expo and before a near-full auditorium, I pointedly asked an officer of the USDA about the legal consequences of premises registration. Eventually, he stated that he "... was not authorized to comment on this." This type of evasion was reminiscent of an experience I had a few years earlier when I had submitted some important questions affecting me personally to a certain federal agency. Believing in "open government", I expected a meaningful reply. Much to my surprise, however, this was the written response I got then:

"Neither the Privacy Act nor the Freedom of Information Act (FOIA) requires federal agencies to respond to interrogatories. They (acts) also do not require agencies to conduct research to determine which resolution, decision, or statute you are seeking. Also, neither of the Acts require an agency to respond to statements which appear to be more appropriately addressed in a judicial proceeding."

Is this the kind of a response one would expect from a government that ought to be accountable to the public? The above responses came to mind when I learned that about 2.1 Million farmers across the country recently received the 24-page "U.S. 2007 Census of Agriculture" questionnaire. The USDA demanded that the completed census form be returned by February 4, 2008 because the "Response to this [24-page] Inquiry is required by law (Title 7 U.S. Code)".

Judging from my personal experiences, there appears to be a double standard: whenever you submit questions to an agency, the agency maintains that it does not have to answer, yet when an agency such as the USDA sends you its questionnaire, the force of law is being used to compel you to answer every question. What if you consider the information they want from you

as being personal, private, confidential, market-sensitive, or might put your personal or farm's security, or bio-safety, at risk? What if your answers were to end up in the wrong hands – such as on a "lost" laptop computer, or an unsecured website or database? It seems to me that something is utterly wrong with this picture ...

Since the USDA quotes "the law", Title 7 U.S. Code, let us look there first. As published by the U.S. Government Printing Office (GPO), Title 7 USC weighs in at 1826 pages (!) and a total of 1,780,815 words (!). Does Title 7 USC have the force of "law", though? I found out that Congress' own "Law Revision Counsel" has declared that Title 7 USC has NEVER been enacted as "positive law" (see Title 1 USC, Section 204). Therefore, whenever there is a question of law involved, one must backtrack to the original "Public Law" as enacted by Congress. By comparison, the laws governing the National Census (taken every 10 years) have in fact been enacted into "positive law" (see Title 13 USC; 38 pages; 41,719 words in all) thus we don't need to look any further.

So then, where exactly is the "law" governing the agricultural census? It can be located in Title 7 USC Chapter 55, on page 1222. It was enacted on Nov. 27, 1997, as Public Law 105-113. Duplicated at Section 2204g, the act's text consists of only 909 words (!). It states in very general and vague terms that the USDA is authorized to "take" a census every 5 years, beginning in 1998. In addition to taking a census (an enumeration of sorts), the act also provides for the taking of an optional "survey" or "information collection" of unspecified content. Moreover, the act also provides for "enforcement": a \$100 fine for any refused answer, and a \$500 fine for any fraudulent answer.

You would think that, in light of these threatened penalties, the act would clearly identify who has a duty to respond or participate, who may be held liable for any fines, and if so how such fine(s) would be assessed and collected. Because the act itself says NOTHING at all about these legitimate concerns, Congress evidently

intended for the USDA to work out such details by way of “regulations” (my emphasis) ...

“SEC. 2(g). REGULATIONS-

A regulation necessary to carry out this section may be promulgated by--

(1) the Secretary of Agriculture, to the extent that a matter under the jurisdiction of the Secretary is involved;

and

(2) the Secretary of Commerce, to the extent that a matter under the jurisdiction of the Secretary of Commerce is involved.”

The above confirms that Congress had indeed anticipated that REGULATIONS WERE GOING TO BE NECESSARY, and furthermore limited their scope to those matters UNDER THE JURISDICTION of the Secretaries of the U.S. Agriculture and Commerce Departments, respectively. Because of the act’s overall vagueness and ambiguity, we must therefore look closely at the agencies’ regulations that implement that act of Congress. Were these regulations ever published, and if so, where and when? As near as I can tell – they do not exist: an exhaustive search through all the regulations published by the USDA over the past 11 years shows that no regulations governing the agricultural census have ever been made public.

According to the Federal Register Act (Title 44 USC, Chapter 15, without these regulations first having been offered to the public for comment, then submitted to Congress for approval, and eventually published in final form in the Federal Register, the 2007 U.S. Census of Agriculture is nothing more than an agency-internal, unofficial survey that imposes no duty upon anyone, anywhere. Moreover, in light of the threatened penalties, and the potentially self-incriminating, onerous or intrusive nature of the questions which the census form compels you to answer, what comes to mind are phrases such as “... *you have right to remain silent ...*”, and “... *anything you say can and will be used against you ...*”. Is it any wonder that neither the census form nor the instruction pamphlet mention any of foregoing?

USDA’s “National Agricultural Statistical Service” (NASS) that collects, processes and compiles the agricultural census information, prides itself of achieving 95% participation. On the other hand, USDA’s “National Animal Identification System” (NAIS), barely having reached 30% participation after over 3 years of operation, aims to achieve 90-100% participation by

2009. Since NASS’ census databases operate side-by-side with the NAIS databases, what would keep the very agency that is collecting all this farm-related information from “accidentally” merging these two databases? After all, it is a known fact that many of the participating States have already “accidentally” uploaded their premises into the NAIS. All it would take is just a modestly-skilled database programmer, and who would find out except by chance?

There is a good reason for my above concerns. The NAIS “Usage Agreement” (a typical end-user license agreement, a.k.a. “EULA”) and the NAIS “Privacy Policy” clearly state that the NAIS “owns” the information submitted to the NAIS, and that the NAIS will not be responsible for any errors, or unauthorized acts. It is the same agency that also “owns” the information submitted by you to the NASS yet has NO published regulations or procedures in place to safeguard the census databases and information – merely disclaiming that “YOUR [census] REPORT IS CONFIDENTIAL” does not actually keep it that way! Moreover, if you carefully study all of the provisions of the act and trace its references to other Titles and laws, Congress also gave the USDA permission to tap into the Commerce Department’s 10-year Federal Census, and merge it with the agricultural census information.

Last but not least: one easily overlooked, rarely mentioned but important fact remains: YOUR information is YOUR property for as long as YOU safeguard it – unless, of course, YOU “voluntarily” release it or make it public in some form (such as with this census form). Considering all that, what guarantees do you have that your information will NEVER be used for any “other” purposes, or used against you, or without your consent, or data warehoused, or dossierd, or “profiled”? Can you really trust a government that, in its own words “... *is not required to respond to interrogatories ...*” about how it operates, or conducts itself?

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Bruno & Charlene Schmidt are co-authors of the self-published “Farmer’s Field Guide to the NAIS”.

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