

Fighting for the U.S. Cattle Producer!



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Mr. Vince Chapman
Program Analyst
National Animal Identification System
U.S. Department of Agriculture, VS, APHIS
4700 River Road, Unit 200
Riverdale, MD 20737

Via Federal eRulemaking Portal

Re: R-CALF USA Comments on Privacy Act Systems of Records; APHIS National Animal Identification System (NAIS): Docket No. APHIS-2007-0015

Dear Mr. Chapman:

The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA) appreciates this opportunity to submit comments regarding the Privacy Act Systems of Records; APHIS National Animal Identification System (NAIS). R-CALF USA is a non-profit cattle-producer association that represents thousands of U.S. cattle producers in 47 states. Its mission is to ensure the continued profitability and viability of independent U.S. cattle producers. The demographics of R-CALF USA's membership are reflective of the demographics of the entire U.S. cattle industry, with membership ranging from the largest of U.S. cattle producers to the smallest. R-CALF USA's membership consists primarily of cow-calf operators, cattle backgrounders, and feedlot owners. Various main street businesses are associate members of R-CALF USA.

R-CALF USA opposes the U.S. Department of Agriculture (hereafter "USDA"), Animal and Plant Health Inspection Service's proposed new system of records for the following reasons:

A. USDA has Misrepresented the Purpose, Scope, and Nature of Its Proposed New System of Records.

The USDA, Animal and Plant Health Inspection Service (hereafter "APHIS") has misrepresent the purpose, scope, and nature of its proposed new system of records in its notice of a proposed new system of records (hereafter "Notice"). *See* 73 Fed. Reg. at 23412 *et seq.* In its Notice, APHIS states the purpose of the proposed new system of records is to "maintain a record of activities conducted by the agency pursuant to its mission and responsibilities authorized by the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)" (73 Fed. Reg. at 23412, col. 2); that "participation [in the NAIS program] at the Federal level is voluntary" (*id.*); and that the "NAIS

is an information system that will help producers and animal health officials respond quickly and effectively to animal disease events in the United States.” *Id.* at 23413, col. 2.

1. The actual purpose of the proposed new system of records is to develop a national registry of real, personal, and private property.

However, the actual purpose of the proposed new system of records is not to “maintain a record of activities conducted by the agency,” but rather, it is to develop a national registry of privately held property. First, the proposed new system of records constitutes a national registry of privately held real property – premises registration. Second, the proposed new system of records constitutes a national registry of privately held chattels – livestock. And, third, the proposed new system of records constitutes a national surveillance of the movement of private property, both intrastate and interstate – animal tracing.

In return for this unprecedented and intrusive national registry for their real, personal, and private property by APHIS, U.S. citizens are accorded no entitlements or benefits; but they would be subjected to widespread disclosure of their personal and private information, not just to and among federal and state agencies, courts, and undisclosed “entities and persons” (*id.*, at 23413, col. 3), but also to private “contractors and other parties” (*id.*) that may well be business competitors or political or philosophical rivals.

2. The actual scope of the NAIS registry is anything but voluntary.

Media reports provide evidence showing there are likely thousands of U.S. citizens whose real, personal, and private property has been added to APHIS’ NAIS registry against their will or without their knowledge. For example, a January 18, 2007 article reported that among the 16,000 or so NAIS premises registrants in Idaho were citizens whose information was obtained by “tap[ping] into the state’s brand database and summarily assign[ing] ID numbers to brand owners.” *See* Exhibit 1. In addition, reports have circulated that describe tactics directed at minor-aged children involved in 4-H in order to secure NAIS information. *See, e.g.,* Exhibit 2. APHIS cannot claim the NAIS is voluntary when its own cooperators and contractors are mandating NAIS participation.

3. The nature of the NAIS’ effectiveness in achieving APHIS’ goals is purely theoretical.

APHIS has provided no evidence to demonstrate that its national NAIS registry is even feasible. It has not conducted a cost/benefit analysis to determine if the cost of NAIS to food animal owners can be recovered in the food animal marketplace. Nor has it provided evidence to show that known system failures, e.g., naturally occurring loss of ear tags or other animal identifiers, inadvertent data entry errors, and known and expected computer hardware malfunctions, would not effectively thwart national trace-back efforts. As a result of this lack of information, APHIS cannot justify the need for its NAIS system or its related proposal for a new system of records.

B. APHIS has No Express or Implied Statutory Authority to Develop a National Registry of Real, Personal, or Private Property.

APHIS makes the unsupported assertion that its authority to implement a proposed new system of records for NAIS is derived from the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*) (hereafter “Act”). However, the Act confers no such authority on APHIS to implement a NAIS system in the private sector. The Act limits APHIS’ authority to prohibiting or restricting importation (*see* 7 U.S.C. 8303); prohibiting or restricting exports (*see* 7 U.S.C. 8304); prohibiting or restricting interstate movement (*see* 7 U.S.C. 8305); seizing, quarantining, and disposing of animals (*see* 7 U.S.C. 8306); inspecting and seizing animals (*see* 7 U.S.C. 8307); and detecting, controlling, and eradicating diseases and pests (*see* 7 U.S.C. 8308). Nowhere does the Act confer authority on APHIS to implement a non-disease or non-pest specific national registry program for in-state livestock operations as is contemplated in APHIS’ Notice.

1. Congress has specifically prohibited USDA from using a mandatory animal identification system for certain federal programs.

APHIS’ lack of authority to implement a NAIS system and a related new system of records is reinforced by Congress’ 2002 mandate to prohibit the use of a mandatory identification system to verify origins of commodities for purposes of labeling commodities with their country-of-origin. *See* Subtitle D, Sec. 282 (f) of 2002 Farm Bill. Moreover, Congress rejected statutory language that would, like the instant Notice, regulate the disclosure of information obtained through a NAIS system in the 2008 Farm Bill (Sec. 10305 contained in the Senate version of the 2008 Farm Bill was rejected).

2. APHIS’ intent to transfer pre-existing NAIS records into the “Privacy Act System of Records” is in conflict with the Privacy Act of 1974 (5 U.S.C. 552a).

The NAIS registry records that APHIS intends to transfer into the “Privacy Act Systems of Records” are pre-existing records that were not properly obtained in accordance with the Privacy Act of 1974 (5 U.S.C. 552a). The Privacy Act of 1974 requires, *inter alia*, that agencies inform each individual, on the form used to collect information or on a separate form that can be retained by the individual, to whom it asks to supply information:

- (a) of the authority (whether by statute, or by Executive order of the President) that authorizes the solicitation of information;
- (b) the principle purpose for the information solicited;
- (c) the routine uses applicable to the information solicited.

See 5 U.S.C. 552a(e)(3). The pre-existing registry information collected under the NAIS fails to comply with this statutory mandate. For example, the State of Montana Premises Registration System form does not state the statutory authority or any other authority that authorizes the solicitation of registry information. *See* Exhibit 3. Nor does the form provide a list of the nine separate routine uses of the information solicited. *See* 73 Fed. Reg. at 23413, 414. The form conspicuously fails to inform individuals that the information may be routinely used before a

court or adjudicative body, presumably for the purpose of investigating and prosecuting alleged wrongdoing on the part of the individual. *See id.*

Due to APHIS' failure to provide proper notice prior to soliciting individuals' registry information for NAIS – information that may have been obtained without the knowledge of the individual as stated above – it would be improper for APHIS to transfer any pre-existing NAIS records into the “Privacy Act Systems of Records” as contemplated in its Notice.

3. Contrary to limitations contained in the Privacy Act of 1974, the USDA intends to use NAIS information for purposes other than to accomplish the stated purpose of NAIS.

The USDA, through APHIS, expressly stated that the purpose of NAIS is to “have the information necessary to trace all animals associated with an incident of an animal disease within 48 hours . . .” 73 Fed. Reg. at 23412, col. 2. However, the USDA Agricultural Marketing Service (hereafter “AMS”), in its AMS Business Plan to Advance NAIS expressly stated that it intends to assist meatpacking plants “to implement NAIS through existing systems to transfer live animal ID to carcasses.” *See* Exhibit 3, at 2. This USDA intent violates the Privacy Act of 1974 in a number of ways. First, as stated above, this purpose was not properly communicated to individuals from whom APHIS has solicited NAIS information. Second, this purpose is not among the stated purposes for NAIS that APHIS is espousing in support of its proposal to transfer its records into the “Privacy Act Systems of Records.” *See* 5 U.S.C. 552a(e)(1).

Moreover, this new purpose, as described by AMS, bears potential to expose individual livestock producers to liability for problems that occur after an individual's livestock leaves his or her farm or ranch. This potential exposure to liability, arising directly from the implementation of NAIS, could prove financially devastating to independent livestock producers should meatpackers or other downstream entities attempt to share fault along the entire chain-of-custody for problems that they, themselves, had created.

C. Conclusion

R-CALF USA appreciates the opportunity to submit comments regarding APHIS' proposed new system of records and, for the foregoing reasons, urges APHIS to withdraw its Notice.

Sincerely,

A handwritten signature in cursive script that reads "R. M. Thornsberry DVM".

R.M. Thornsberry, D.V.M.
President, R-CALF USA Board of Directors

Attachments: Exhibits 1-4