

Fighting for the U.S. Cattle Producer!



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July 23, 2008

The Honorable Joseph L. Lieberman
Chairman
U.S. Senate Committee on Homeland
Security and Governmental Affairs
Dirkson Senate Office Building, Rm 340
Washington, D.C. 20510

The Honorable Henry A. Waxman
Chairman
U.S. House of Representatives Committee
on Oversight and Government Reform
Rayburn House Office Building, Rm 2157
Washington, D.C. 20515

The Honorable Susan M. Collins
Ranking Member
U.S. Senate Committee on Homeland
Security and Governmental Affairs
Dirkson Senate Office Building, Rm 344
Washington, D.C. 20510

The Honorable Thomas M. Davis
Ranking Member
U.S. House of Representatives Committee
on Oversight and Government Reform
Rayburn House Office Building, Rm 2157
Washington, D.C. 20515

Dear Chairmen Lieberman and Waxman and Ranking Members Collins and Davis:

On or about April 17, 2008, the Secretary of the U.S. Department of Agriculture (USDA) conveyed to your committees notification required under the Privacy Act, 5 U.S.C. 552a(r), for a purportedly "new" system of records, i.e., the National Animal Identification System (NAIS). You may not be aware that USDA has been collecting these records for several years, without complying with the requirements of the Privacy Act. On June 4, 2008, and as a result of a lawsuit seeking information under the Freedom of Information Act (FOIA) titled "Mary-Louise Zononi v. United States Department of Agriculture, Civil Action No. 08-939 (EGS),"¹ the U.S. District Court District of Columbia ordered USDA to suspend its proposed transfer of NAIS records into a Privacy Act system of records.

This recent court action further substantiates claims that USDA's procedures for advancing and implementing NAIS are improper, if not outright unlawful. Though R-CALF USA and other groups have repeatedly appealed to Congress and USDA to cease any further advancement of NAIS, our requests have gone unheeded. For the reasons stated below, the undersigned organizations respectfully, but strongly, urge Congress to immediately halt any further advancement of NAIS and conduct an oversight hearing on USDA's NAIS activities to carefully and deliberately investigate the full ramifications of USDA's NAIS-related actions and proposals.

¹ Verified Complaint for Injunctive and Declaratory Relief, *Mary-Louise Zononi v. United States Department of Agriculture*, Civil Action No.: 08-939 (EGS), available at www.r-calfusa.com (click on "Animal ID").

1. **USDA Has Misrepresented Privacy Act Protections to U.S. Livestock Producers:** As early as 2006, USDA misrepresented to U.S. farmers and ranchers that information they may provide to the NAIS was protected under the Privacy Act. On Aug. 24, 2006, Secretary of Agriculture Mike Johanns stated with respect to information collected under the NAIS: "Let me assure you that names and addresses are protected under the Privacy Act, so again that information cannot and would not be released."²
 - A. At that time, Secretary Johanns' public representation regarding Privacy Act protection of farmer and rancher information was false, as USDA did not attempt to secure NAIS data under a Privacy Act system of records until April 30, 2008.³
 - B. As evidenced by the court-ordered suspension of the transfer of NAIS records into a Privacy Act system of records, as was stated above, it remains uncertain as to whether such records are entitled to Privacy Act protections.⁴
2. **USDA has Improperly Acquired Premises Registrations by Registering Premises Without Farmer or Rancher Consent:** Media reports provide evidence that there are likely thousands of U.S. citizens whose premises were registered in the NAIS registry against their will or without their knowledge. For example, a Jan. 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."⁵ In addition, reports have circulated that describe improper tactics directed at minor-aged children involved in 4-H in order to secure NAIS registrations.⁶ USDA cannot continue its claim that the NAIS is voluntary when its own cooperators and contractors are mandating NAIS participation.
3. **Several States Have Found it Necessary to Pass Legislation to Protect Citizens from USDA's NAIS-Related Advances:** In response to USDA's NAIS-related advances, several states have enacted laws to provide protections to their respective citizens from government sanctioned animal identification systems.
 - A. Nebraska passed a law that, *inter alia*, provides a formalized procedure for citizens to withdraw their premises registrations should the state establish a NAIS-type animal identification system.⁷

² Transcript of remarks by Agriculture Secretary Mike Johanns to the Animal Identification/Information Exposition 2006 hosted by the National Institute of Animal Agriculture, Kansas City, Missouri, Aug. 24, 2006, available at http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1OB/.cmd/ad/.ar/sa.latestreleases/.c/6_2_1UH/.ce/7_2_5JM/.p/5_2_4TQ/.d/1/_th/J_2_9D/_s.7_0_A/7_0_1OB?PC_7_2_5JM_navtype=RT&PC_7_2_5JM_parentnav=NEWSROOM&PC_7_2_5JM_navid=TRANSCRIPTS_SPEECHES#7_2_5JM.

³ See Federal Register, Vol. 73, No. 84, April 30, 2008, at 23,412-23,414.

⁴ See Federal Register, Vol. 73, No. 112, June 10, 2008, at 32,675.

⁵ See Animal Identification in Idaho, Cathy Roemer, Lee Agri-Media, January 18, 2007, available at www.r-calfusa.com (click on "Animal ID").

⁶ See Lawmakers ride to rescue 4-H kids caught in State Fair beef, Alan Gathright, Live from the Colorado Legislature, January 24, available at www.r-calfusa.com (click on "Animal ID").

⁷ Nebraska Revised Statutes, Chapter 54-702.

- B. Kentucky passed a law to prevent release of its citizens' confidential information for the purpose of the NAIS.⁸
- C. Arizona passed a law to prohibit the state from mandating, or otherwise forcing, participation in the NAIS.⁹
- D. Missouri passed a law in 2008 to prohibit the state from mandating or otherwise forcing citizens to comply with a national animal identification system's (NAIS's) premises registration and to authorize citizens to withdraw from NAIS at any time.¹⁰

4. USDA is Proceeding Without Regard to Stakeholder Cost, Liability, and Confidentiality Concerns: Although USDA in 2005 acknowledged uncertainty regarding the cost of its NAIS proposal, the ability of USDA to maintain confidentiality of farmers' and ranchers' business information, and individual farmer's or rancher's liability arising from NAIS, none of these substantive issues have been addressed by the agency.¹¹

- A. U.S. farmers and ranchers already are operating on extremely tight margins due to the present economic cost/price squeeze, and there have been no studies to determine if NAIS is economically feasible for family farmers and ranchers. For example, the Food and Agricultural Policy Research Institute (FAPRI) predicts that economic returns to farmers and ranchers who own mother cows and who sell calves will fall to a negative \$17.62 per cow in 2009, and returns will continue to remain negative for the ensuing seven years, hitting a low of a negative \$51.87 per cow in 2012.¹² Thus, the imposition of the cost for NAIS may well be financially untenable for U.S. family farmers and ranchers.
- B. Although USDA claims the sole purpose of NAIS is to "have the information necessary to trace all animals associated with an incident of an animal disease within 48 hours,"¹³ the USDA Agricultural Marketing Service ("AMS"), expressly states, in its AMS Business Plan to Advance NAIS, that it intends to assist meatpacking plants "to implement NAIS through existing systems to transfer live animal ID to carcasses."¹⁴ This new purpose for NAIS bears the unmitigated

⁸ Kentucky Revised Statutes, Chapter 257.497(1).

⁹ Arizona Revised Statutes, Title 3-1214.

¹⁰ See Missouri Senate Bill 931, Section 267.168(1), (2).

¹¹ See Draft Strategic Plan 2005-2009, National Animal Identification System, U.S. Department of Agriculture, Animal Plant Health Inspection Service, April 25, 2005.

¹² See U.S. Beef Supply and Utilization, FAPRI 2008 U.S. and World Agricultural Outlook, Food and Agricultural Policy Research Institute, Iowa State University, available at <http://www.fapri.iastate.edu/outlook2008/tables/7USTables.pdf>.

¹³ See Federal Register, Vol. 73, No. 84, April 30, 2008, at 23,412, col. 2.

¹⁴ See AMS Business Plan to Advance National Animal Identification System (NAIS), U.S. Department of Agriculture, Agricultural Marketing Service, at 2, col. 8, available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5068314>.

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, have created.

5. USDA's Ongoing NAIS Activities Usurp Congressional Authority and Potentially Violate Administrative Rules: The lawsuit described above is among only the first wave of many potential lawsuits that have alleged, and will allege, that USDA is usurping Congress' authority to enact new law by, and through, its implementation of NAIS.

- A. A comprehensive Notice of Intent to Sue has been filed by the Farm to Consumer Legal Defense Fund, which additionally alleges that USDA's NAIS-related actions are in violation of the Administrative Procedures Act.¹⁵
- B. Though numerous bills have been introduced in Congress to authorize USDA to establish some form of an animal identification system, Congress has not acted to delegate any such authorization to USDA.¹⁶

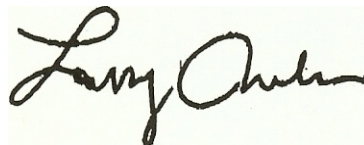
The foregoing discussion demonstrates that many, or all, of USDA's NAIS-related activities are at least improper if not outright unlawful. And yet, Congress continues to appropriate funding for NAIS, thereby subjecting U.S. farmers and ranchers to extraordinary pressure from USDA to assist the agency in its implementation of an unproven, questionable, and potentially cost-prohibitive program that Congress itself has not seen fit to authorize. Moreover, Congress' inaction in defining neither the need nor scope of the NAIS has resulted in state interventions designed to protect citizens from USDA's excessive advances.

Again, we respectfully, but strongly, urge Congress to immediately halt any further advancement of NAIS and conduct an oversight hearing on USDA's NAIS activities to carefully and deliberately investigate the full ramifications of USDA's NAIS-related actions and proposal.

Sincerely,



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



Larry Nelson, President
South Dakota Stockgrowers Association

¹⁵ See Notice of Intent to Sue, National Animal Identification System, Farm to Consumer Legal Defense Fund, May 14, 2008, available at www.r-calfusa.com (click on "Animal ID").

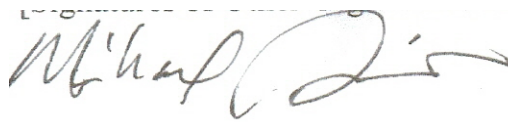
¹⁶ See, e.g., HR 1254, 109th Congress; S.2070, 108th Congress.

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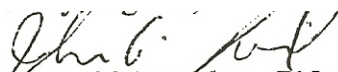
Louis Day, Public Relations Director
Independent Cattlemen of Nebraska



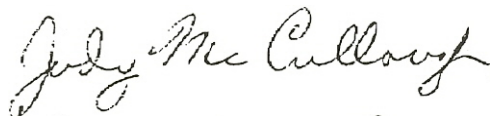
Michael Smith, Chairman
Oregon Livestock Producers Association



Eric Nelson, President
Independent Cattlemen of Iowa



John Reed, President
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Judy McCullough, President
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Patrick L. Becker, President
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Mark A. Kastel, Co-Director
Cornucopia Institute

Cc: Members of Congress