

## Premises Registration Revisited: Collateral Tactics at Work

No. 26 in a series of articles about the NAIS and related topics

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On July 18, 2007 (see Federal Register, Vol. 72, No. 137, Pages 31301-39307, also posted at [www.FarmersFieldGuide.com](http://www.FarmersFieldGuide.com)), the USDA published its “final” rules for the general use of its Federal “Premises Identification Number” and Federal “Animal Identification Numbers”, integral components of the “National Animal Identification System” (NAIS). These “final” rules replace the agency’s temporary rules published on November 8, 2004, with only a few, minor changes:

- The Federal “Animal Identification Number” (AIN) has now been redefined as ...  
*“A numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. The AIN contains 15 digits, with the first 3 being the country code (840 for the United States) ...”* (Emphasis added)
- The Federal “Premises Identification Number” (PIN) has now been redefined as ...  
*“A nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority, a geographically distinct location from other premises.”* (Emphasis added)

With these rule changes, both of these numbering systems have thus become the exclusive, “official” way of identifying premises (farms) and farm animals in USDA’s “National Animal Identification System” (NAIS). According to this recent announcement, the USDA plans to publish new rules to phase out any of the previously used, officially recognized animal identification numbers / tags (for example livestock tags with “USA” or a manufacturer’s prefix) over the next few years, by 2011.

Although not specifically addressed by these “final” rules, any of the previously used, officially recognized premises identification numbers eventually will have to be phased out and replaced with a new, “nationally unique [premises identification] number”: In order to qualify for buying or using any of the new, “nationally unique” AIN tags (or forthcoming implants), your farm / ranch / operation must first be registered with the NAIS, and the new Federal PIN must be given to the AIN provider / reseller BEFORE those new tags get sold / shipped / provided to you.

Summarily, this “final” rule of the USDA means that the NAIS is now the exclusive, Federally-approved, -controlled and -overseen, “official” method of permanently identifying farm animals and all those places where farm animals are located. Moreover, this means that the NAIS is here to stay for good (at least, for a very long time!) and that anyone opposing it – sooner or later – will have to give in and sign up.

Are America’s farmers getting the “official” message, that participation in the NAIS isn’t really an option? The USDA openly admits that for the NAIS to be of any benefit to anybody, “premises registration” is the 1<sup>st</sup> step and key to making it all work. Therefore, we must pay close attention to what is happening to this make-or-brake component of the NAIS. Here are some of USDA’s own statistics:

- Total number of premises: 1,438,280
- Premises registered as of Aug. 8, 2007: 409,791
- 30-week average of registrations: 2,267 per Week

This would indicate that, at the current weekly registration rate, it might take as long as 453 weeks (nearly 9 years) to “register” all of the remaining premises across the country. For a project as expensive as the NAIS – in excess of \$100 Million spent so far – and supposedly being a rather urgent project to complete (remember that 48-hour traceback requirement), does it make any sense to have the NAIS fully operational by 2016? By comparison, let us take a look at our own state, Washington:

- Wash.-State total number of premises: 22,155
- Wash.-State premises registered as of Aug. 8, 2007: 1,421
- Wash.-State 30-week average: 1.1 per week

This would indicate that it might take another 362 years (!) to register all of the premises in Washington state, by the year 2369, at the current (weekly) registration rates! Before commenting, here are the numbers for our neighbor to the East, Idaho:

- Idaho total number of premises: 18,754
- Idaho premises registered as of Aug. 8, 2007: 18,062
- Idaho 30-week average: 4.7 per week

While these numbers would mean that Idaho might have all premises registered by 2010, we must keep in mind that the vast majority of that state’s premises registrations were done without the consent of the premises’ owners and, if challenged on that questionable practice, would fail USDA’s “voluntary” requirements. What about our neighbor to the South, Oregon:

- Oregon total number of premises: 28,634
- Oregon premises registered as of Aug. 8, 2007: 2,534
- Oregon 30-week average: 5.5 per week

This would mean that it might take another 91 years (!) to complete premises registration in Oregon, by 2098, at the current (weekly) registration rate. Obviously, none of the foregoing projections make much sense unless and until we take into account one common observation about the USDA’s registration statistics: Those states that – in general – are trying to comply with USDA’s official rules (promoting premises registration as being “voluntary”) appear to be way behind in terms of registrations, while states that compel registration (for example Wisconsin and Indiana) are in the lead.

The above analysis does not bode well for property and animal owners alike: States and Tribes are likely to exploit collateral issues to “motivate” participation in the NAIS, or in a NAIS-type, state- or tribe-run “NAIS-look-alike” system which, according to the underlying State/Tribe/Federal “Cooperative Agreement”, is required to upload premises information weekly into the NAIS. Thus far, ongoing research has identified the following, state- / tribal-level “collateral” approaches to improve upon premises registration:

- “Involuntary-Conversion Method” ... The states have extracted premises information from existing disease-control databases (for example Scrapies) and have turned over (uploaded) the gleaned information to the NAIS whole-sale style. This a practice frowned-upon, but tacitly allowed-for, by the USDA under the terms of its ‘Cooperative Agreement’.

- “Wisconsin Method” ... The state has effectively expired or attempted to lapse existing farm or market licenses (for example Dairy Producers’) of those farmers that have not yet registered their premises in the NAIS or its state-run registration system, then subsequently requires renewal applications with an attached premises registration in order for the farmer / producer to continue farming / production, or having to go out of business.
- “Pennsylvania Method” ... The state has combined a farmer’s / producer’s participation in an existing disease-control program (for example Asian-flu monitoring) with mandatory registration of premises in the NAIS, and has made such combined participation a prerequisite for selling products out-of-state, or having to discontinue such sales.
- “Michigan Method” ... The state has mandated USDA’s “official” AINs (bearing the “840” country code) embedded in RFID chips, thus implicitly requiring premises registration in the NAIS, in order to continue participation in the state’s Bovine-TB surveillance programs, or risking being quarantined (or prosecuted) by the state’s veterinarian.
- Last but not least, the “Indiana Method” ... The state has deputized its licensed veterinarians to require from farmers / producers a Federal premises identification number and to enter it on every “Certificate of Veterinary Inspection” (CVI) issued, and in those situations where a farm / premises has not yet been registered with the NAIS, to effect prompt registration.

It is plain to see that “the NAIS will be voluntary forever at the Federal level” has no bearing at what happens in one’s backyard. States, and Tribes, can be expected to employ any of the foregoing methods, separately or in combination. Probably the most insidious to watch for is the “Indiana Method” which deputizes and conscripts your veterinarian.

It is a known fact that veterinarians are subject to numerous animal-health laws and regulations. They are also the impartial witness and signatory when it comes to issuing a “Certificate of Veterinary Inspection” (CVI), or its interstate-companion, the ICVI. Your ability to take animals to market, or across state lines, or to any venue where a CVI is required, depends on your relationship with your veterinarian.

When you thoroughly review Washington state’s recently enacted laws and regulations regarding animal health documents, animal movements and inspections, animal identification and importation, you will find that there is a strong requirement for obtaining a CVI expressed everywhere. As CVIs go, among the many reasonable information items asked-for, the latest version of the state’s CVI also provides for the vet’s recording of a “USDA-approved official animal identification number” (read: the NAIS) ... It is but a small leap to imagine that this “official”, USDA-approved AIN may just be – sooner or later – the one and only AIN “officially” recognized by the state.

Boiled to its essence, the above “Indiana Method” (note: also based on Indiana law) was cleverly devised to get farmers / producers into the NAIS with little or no opposition: (No Federal premises ID) = (no Federal animal ID) = (no USDA-approved, “official” animal ID) = (state-required CVI cannot be obtained) = (no animal movement off your farm).

In conjunction with Washington state’s recent enactment of its ESB 5204 statute (the proverbial “Road-Block” bill), and in light of the state’s recently adopted regulations affecting animal importation, identification, health papers, inspection and transportation, the state appears to be well

positioned to follow the “Indiana Method”. With a just few minor amendments, these foregoing regulations will coerce participation in the NAIS without ever mentioning it by name or requiring ANY changes in the state’s statutes. The big question remains: will the state’s Ag department use this latest angle and try to cut down the above 362 years (to register ALL premises in the state) to just a few, and perhaps take the lead in premises registration?

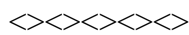
As providence will have it, in its Nov. 8, 2004 rule announcement, the USDA has provided America’s farmers with two perfectly logical and reasonable defenses to the foregoing onslaught:

*“It is important to note that participation in the NAIS is voluntary. Producers can opt not to participate in the NAIS if they anticipate that the costs they will incur will exceed the benefits they receive from participation.”*

And

*“This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.”*

Because the USDA’s recently published “final” rule did not amend or rescind in any way the foregoing provisions, farmers / producers opposed to participation in the NAIS thus can raise these very provisions in their defense shifting the burden of proof to the state / tribe, which has, under the terms of the Federal/Tribal/State “Cooperative Agreement” accepted the superiority of Federal laws and regulations.



*Bruno & Charlene Schmidt are co-authors of the self-published “Farmer’s Field Guide to the NAIS”. Since December 2003, they have spent in excess of 2000 hours researching the National Animal Identification System including applicable laws, regulations and rules. For more information and latest updates, please visit*

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