

**USDA Sneaks in a Change to Its 2006 NAIS Implementation Plan:
“Forced Voluntary” Programs, the Subversion of Democracy, and the Big Lie Behind the
Talent/Emerson Bills**

by

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Since August 2006, Agriculture Secretary Mike Johanns has been promising us a new “comprehensive document” on the National Animal Identification System (NAIS). On October 30, 2006, a new “Implementation Plan” was released, but it can hardly be called a “comprehensive” document. Its only notable change from the April 2006 Implementation Plan is the deletion of a paragraph (from p. 3 of the April 2006 IP) calling for Federal rulemaking to create a mandatory system if a “voluntary” system does not achieve “full participation.”

Prior to further discussion of the “new” USDA abandonment of possible rulemaking, let’s look at what the USDA considers to be a “voluntary” program.

In the states of New York, Pennsylvania, and Massachusetts, the USDA has enlisted the aid of its puppets in the state agriculture departments to force livestock owners into the “voluntary” USDA Premises ID Program. Here’s how this trick works. The state bureaucrats datamine their existing state programs, such as milk-producer licensing, calfhood vaccination, voluntary disease-testing, scrapie control, and the like, to compile a list of livestock owners. The bureaucrats then thumb their noses at the their state legislators in particular, and at the rule of law in general, by shipping all this information to the **USDA Premises ID Database**, without even notifying the livestock owners, let alone getting their permission. Then the USDA assigns its **Federal 7-digit Premises IDs** to these livestock owners, and the state bureaucrats mail the IDs to the owners with a letter “congratulating” them on their **Federal Premises Registration**. Needless to say, this

dishonest tactic is creating a rising tide of infuriated livestock owners throughout the Northeast.

Why do we call this dishonest tactic an affront to legislators and to the rule of law? It's simple -- to create a new government program, first the government agency (a part of the executive branch) has to ask the legislature (the people's representatives) for a statute authorizing the program. Then the agency has to conduct a public rulemaking for the program. As of now (October 2006), the USDA has no statute authorizing NAIS, no rules authorizing NAIS, and most states have no statutes or rules authorizing NAIS. When executive agencies create programs without those authorizations, that is an affront to the rule of law and a deliberate evasion of democracy.

One other point before we return to the USDA's sneak alteration of its Implementation Plan. The USDA is also the intended beneficiary of a dishonest attempt to get NAIS authorized by an under-the-radar statute. This attempt is embodied in a tricky, underhanded bill introduced in the U.S. Senate by Jim Talent of Missouri (S. 3862) and in the U.S. House of Representatives by Jo Ann Emerson of Missouri (H.R. 6042). Talent and Emerson are in close re-election races and Missourians hate NAIS. The USDA desperately wants: (1) some statute, any statute, authorizing NAIS; and (2) a way to construct the NAIS program in secret by getting NAIS exempted from the Freedom of Information Act. The Talent/Emerson bills fulfill that USDA wish list, while deliberately misleading Missouri citizens into thinking that the bills are "good for farmers." Section 1 of both bills says that the USDA shall not carry out any "mandatory" National Animal Identification System. But simultaneously, the bills for the first time establish the existence of a National Animal Identification System in Federal law, thus creating an implied Congressional approval for the strong-arm tactics the USDA is presently using to force farmers into the "voluntary" program. And Section 2 of the bills authorizes the USDA to create the NAIS program in total secrecy, not only exempting NAIS from the Federal Freedom of Information Act, but also ordering all 50 states to exempt all information about NAIS from all state freedom of information laws.

To return to the USDA's new modifications to its Implementation Plan -- the NAIS homepage, www.usda.gov/nais, now repudiates the position taken just a few months ago:

"The NAIS is a voluntary program and the USDA has no intention of considering regulations at the federal level. The April 2006 Implementation Plan that referenced a contingency option for regulations if participation levels did not reach adequate levels has been discarded to reflect the policy and positions of the USDA."

The “new” October 2006 Implementation Plan is nearly identical to the April 2006 Implementation Plan, except that the October IP deletes a paragraph (at p. 3 of the April IP) warning that a lack of “full participation” in the “voluntary” program might result in Federal rulemaking.

What a relief. Without Federal rulemaking, all the USDA will be able to do is what it’s already doing in, for example, **New York** and **Pennsylvania** -- **forcing farmers into USDA Premises ID without their knowledge or consent**. And in case you were wondering when the next phase of the “voluntary” program is due -- the states of **Michigan** and **Wisconsin** are already moving toward **mandatory distance-readable radio-frequency ID tagging of individual animals**.