

Suggestions for getting your county to adopt
a resolution opposing NAIS

1. Get the contact information for your county commissioners and county judge. This is available in the “Government offices—county” section of your phone book and, in many cases, online (use google to find your county’s website).
2. Email or mail the proposed resolution to all of the commissioners and the county judge. Introduce it with a short note saying that you think this is an important issue to many people in the county, and that you would appreciate their consideration.
3. Follow up with a phone call to the commissioner who represents you. If you are not sure which commissioner represents you, you can call the main number for the county and ask.
4. Below is a document that provides support for each and every “whereas” in the proposed resolution. If your commissioner is concerned about any of the issues, go through the support for that issue.
5. Be polite and friendly. Do not assume that your commissioner is “against you” just because he or she does not immediately agree. Talk calmly about your concerns and why you oppose the program.
6. Be prepared to address their concerns. To many people, NAIS sounds good initially, as a way to protect Americans from disease concerns. You may have to explain why NAIS will not actually do that, and what all of its bad side-effects will be. In addition to the document below that goes through each “whereas,” you might want to print out some of the articles of disease issues from our website, www.farmandranchfreedom.org. NAIS will **not** address disease problems.
7. You can also ask for an in-person meeting, and go with a small group. The goal is *not* to intimidate your commissioner, so don’t show up with a large, angry crowd. Be calm, and select someone as your main spokesperson.
8. Accept that the commissioners may want to modify the resolution. They may want to make it stronger, or they may want to delete some of the “whereas” points. The important thing is the conclusion: a statement that the county is against a mandatory animal identification program and that any voluntary program must include full disclosure.
9. Talk with you neighbors, the local feed store and sales barns, and friends. Ask them to email or call the commissioners, supporting the resolution.
10. And, at the same time, have everyone call and write their state and federal legislators. We need to fight this at every level!!

For more information about NAIS, go to our website: www.farmandranchfreedom.org. If you need help tailoring the proposed resolution to your state, please contact Judith McGeary at judith@farmandranchfreedom.org

WHEREAS the United States Department of Agriculture (USDA) is proposing a mandatory National Animal Identification System (NAIS), the stated purpose of which is to safeguard animal health by providing 48-hour traceback of all animal movements;

* The USDA published two key documents on April 25, 2005: the Draft Strategic Plan("Plan") and Draft Program Standards ("Standards") and Draft Strategic Plan("Plan").

* The USDA published additional documents on April 6, 2006. While these documents claim that NAIS is "voluntary," they set the following goals for January 2009: 100% of premises registered, 100% of animals under the age of 1 individually identified, and 60% of animals under the age of 1 with complete tracking information. The USDA has stated that it will consider regulations if participation is not sufficient to meet these goals. In other words, NAIS is "voluntary" only if 100% of people comply with it!

* The plans for this system began long before, in 2002, with a non-government entity. The National Institute for Animal Agriculture (NIAA) developed the initial idea and established a task force. While NIAA may sound like a public interest organization, its membership is dominated by large industrial agriculture and technology companies, including entities such as Cargill Meat, Monsanto, National Pork Producers Council, Global Vet Link, Micro Beef Technologies, and Digital Angel. The list of NIAA members is available at <http://animalagriculture.org/aboutNIAA/members/memberdirectory.asp>.

* The members of NIAA stand to profit from NAIS, whether from increased exports, sale of microchips and radiotags, provision of electronic service (including maintenance of databases), or the increased size and power of state agencies (many of which are also members).

WHEREAS the 79th Legislature of the State of Texas passed HB1361, authorizing (but not mandating) the Texas Animal Health Commission to develop and implement an animal identification program "that is consistent with" the USDA's NAIS,

* HB 1361 is codified at §161.056 of the Texas Agriculture Code. It states that TAHC *may* develop and implement an animal identification system "that is consistent with" the USDA's NAIS. The Texas legislators appear to have believed that that NAIS was a "federal mandate" that they had to comply with. As discussed more below, the USDA does not have statutory authority to implement NAIS, so the statute was adopted based on an incorrect assumption.

WHEREAS the Texas Animal Health Commission (TAHC) has proposed regulations to implement mandatory premises registration, the first stage of NAIS;

* The proposed regulations were published on December 2, 2005. The public comment period ended on February 6, 2006. During that time, the TAHC received almost 700 letters. At the public meeting on February 16, individuals and representatives of organizations gave several hours of comments, almost uniformly opposed to the proposed regulations. The TAHC has tabled the regulations for now, but has not indicated that they intend to change the substance of their plans.

WHEREAS the TAHC's proposed regulations would require every individual who is the "owner, manager, or caretaker of a premises" that has livestock, exotic livestock, domestic poultry, fowl, or exotic fowl to register that premises with the state and pay a biennial fee;

* See 30 Tex. Reg. 8521, 8523 (Dec. 23, 2005) (proposed 4 TAC § 50.1). "Animal" is defined so as to include essentially every animal except dogs, cats, and hamsters. Specifically, "animal" includes "livestock, exotic livestock, domestic fowl, poultry and exotic fowl." Livestock, in turn, includes cattle, horses, mules, asses, sheep, goats, and hogs; exotic livestock means "grass-eating or plant-eating ... mammals that are not indigenous to this state" and include animals from the deer and antelope families; poultry includes chickens, turkeys, and gamebirds; and exotic fowl means any avian species that is not indigenous to this state. The premises registration includes the GPS coordinates.

WHEREAS the next two stages of NAIS would require animal identification and animal tracking;

* In April 2005, the USDA published a draft strategic plan and draft program standards for the NAIS. The USDA has not yet adopted regulations for the NAIS. Based on the published documents, the NAIS is to be implemented in 3 stages:

- (1) Premises registration: every person who owns any livestock animal will have to register their premises, including the owner's name, address, and telephone number, keyed to Global Positioning System coordinates, with the state and be assigned a nationally unique, 7-character premises identification number. (Plan, p.8.).
- (2) Animal identification: *Every animal* will have to be assigned a 15-digit ID number by the government. The form of ID will most likely be a tag or microchip containing a Radio Frequency Identification Device, designed to be read from a distance. (Plan, p. 10; Standards, pp. 6, 12, 20, 27-28.) The plan may also include collecting the DNA of every animal and/or a retinal scan of every animal. (Plan, p.13.) Despite the announcement that a federal mandatory database might be put off, USDA maintains detailed information on the structure of these 15-digit ID numbers as of mid-March 2006, ostensibly so that ID manufacturers could normalize their numbering systems.

Group or lot identification may be used for poultry and swine, but only in very narrow circumstances. Group identification can only be used where groups of animals are managed together from birth to death and not commingled with other animals. (Standards, pp.5-6.) Aside from the large, industrial agricultural facilities, few people manage their animals in ways that would meet the requirements for group identification. If animals do not meet the requirements for group identification, they will have to be individually identified.

- (3) Animal tracking: Every time a tag is applied, an animal is moved onto or off the premises, a tag is lost or replaced, an animal is killed or dies (whether at a slaughterhouse or on the farm/ranch), or an animal is missing, the event will have to be reported to the government within 24 hours. (Standards pp.12-13, 17-21.)

The USDA's draft plan notes that the program would initially be voluntary, but would be transitioned into a mandatory program. (Plan, pp.8-9.) This approach – initially voluntary, but eventually mandatory – was again confirmed in the documents released on April 6, 2006.

WHEREAS neither the USDA nor the TAHC has addressed the many technological and practical barriers to implementing the NAIS;

* Neither agency has addressed the following problems:

- the logistics of tagging every animal;
- the true costs of tagging every animal;
- the likelihood of human error in entering data;
- the vulnerability of microchips to being destroyed, whether by accident or intentionally;
- the susceptibility of radio frequency ID tags to being reprogrammed or infected with viruses;
- the problems inherent in trying to scan tags when handling large numbers of animals, as at sale barns, auctions, or moving animals among private premises;
- the problems of entering all of the data that will result from the identification and tracking;
- the problems of maintaining such a huge database;
- the problems of ensuring privacy against accidental release (as evidenced by USDA's recent release of thousands of farmers' social security numbers);
- the risks from hackers, whether domestic or terrorists.

WHEREAS the effectiveness of the NAIS in safeguarding animal health has not been evaluated and is in question;

* The government has not evaluated whether a new tracking system is even needed. The State Auditor has found that TAHC already has established systems and processes “for the surveillance of livestock and for the prevention, eradication, and control of livestock diseases.” (Minutes of the 356th Commission Meeting, Texas Animal Health Commission at 6 (Aug. 16, 2005)). The TAHC already has enforcement mechanisms as well. It is a Class C misdemeanor for a person to knowingly fail to handle an infected animal in accordance with the TAHC's rules. (TEX. AGRIC. CODE § 161.041.)

* The tracking of animal disease 48 hours later does little to address either the prevention of diseases or the safety of our food supply. For example, with respect to the concerns of BSE (“Mad Cow Disease”), the most effective protection would be a system of testing every slaughtered cow as is currently done in Japan. England and the European Union also test significantly more cattle than the U.S., which tests only about 1% of our slaughtered cattle, and the USDA has stated its intention to reduce that to 1/10 of 1%. Indeed, the USDA is preventing private companies from testing! Moreover, since BSE is caused by feeding animal products to other animals, we know exactly how to prevent it. The USDA has had a feed ban on feeding ruminant protein to ruminants since 1997; efforts should be focused on enforcing that feed ban and, if the science supports such a move, expanding the scope of prohibited feeds. Our limited state resources should be focused on prevention and ensuring the safety of our food supply, not a program that will simply aid in placing the blame after the fact.

*The NAIS fails to recognize the critical issue of different production systems. The susceptibility of animals to disease and the likelihood of transmission differ greatly depending on the conditions

under which the animals are kept; the health problems caused by confinement or industrial management systems have been well documented in the scientific literature. (See, for example, the list of scientific references at <http://www.eatwild.com>.) TAHC's own history provides evidence of this fact. In the 2004 outbreak of avian flu in Gonzales County, the disease was found in a 6,600 bird flock in commercial poultry operation; but despite testing more than 350 nearby non-commercial flocks, no infected birds were found in non-commercial flocks. (News Release, Texas Animal Health Commission (Apr. 1, 2004).) A recent report indicates that the spread of avian flu, including the greatly-feared H5N1 virus, is due to the conditions in confinement poultry operations. (Genetic Resources Action International ("GRAIN"), Fowl Play: The Poultry Industry's Central Role in the Bird Flu Crisis (Feb. 2006) (hereinafter "GRAIN Report").) But the NAIS makes no distinction between the backyard poultry owner with 10 chickens living on pasture and a commercial operation with 10,000 chickens living in a crowded building. The farmer raising a few sheep or cattle on carefully-tended pastures is treated the same as the feedlot with hundreds of animals crowded into small pens. This program is precisely the opposite of what is needed to prevent and control disease.

* The program will increase the risk of disease outbreaks by creating a black market in livestock. Some people will refuse to comply with NAIS, whether for religious reasons, economic reasons, or unwillingness to allow the government intrusion. Third parties, such as veterinarians, will be required to report "sightings" of animals. (Standards, p. 25.) In other words, if a farmer or rancher calls a vet to their property to treat an animal, and the vet finds any animal without the mandatory 15-digit computer-readable ID, the vet may be required to report that non-compliance. So individuals will be far less likely to seek a veterinarian's help should a disease problem arise. The TAHC notes that the "first 24 hours are the most important for stopping a disease of pest" and urges people to contact their veterinarian at the "first sign of animal disease." (See Emergency Management, <http://www.tahc.state.tx.us/emergency/index.shtml> (last checked Mar. 3, 2006).)

* The program fails to address the wide range of vectors of disease transmission. Foot and Mouth is an air-borne disease that is carried by pigs; given the feral hog problem in Texas, if Foot and Mouth were to come to this country (a speculative event), tracking all of our domestic animals would not stop the spread of the disease. Similarly, if the theory that avian flu is spread by wild birds is correct, then tracking everyone's chickens and turkeys will not stop the spread of avian flu (the alternative theory, that avian flu is spread by the conditions in, and practices of, commercial poultry operations also argues against the effectiveness of NAIS).

WHEREAS the NAIS would impose significant costs, in both time and money, on animal owners;

* For premises registration, the TAHC plans to require each person to pay a \$20 biennial fee. Because the TAHC has significantly underestimated the need to hire additional people to handle the hundreds of thousands of premises registrations, that fee will almost certainly increase.

* The next phase, animal identification, will be far costlier. First, there is the cost of the microchip or radiotag. While the chips themselves cost only a few dollars, one must also consider the equipment necessary to apply them (or the need for a veterinarian's help). The cost can range anywhere from \$15 to \$50 per animal. Then there will be the continuing costs of updating computer systems if the owner wishes to file the requests for animal identification numbers

electronically (or the cost in time of filling out the paperwork by hand). The agency has also completely ignored the cost in terms of time and effort to physically tag all of the animals.

* The last phase, animal tracking, will add yet more costs. There will be the costs of reading devices. There will be the lost money and time because the animals will have to be forced to move in single file, so that their tags can be scanned. And there will be the time and expense of actually filing all of the reports.

WHEREAS the NAIS is likely to have many unintended consequences on small farms, related businesses, the companion-animal industry, and thousands of private citizens who own animals for companionship, recreation, and subsistence;

* The financial burden of the program, combined with the government intrusiveness, will undoubtedly result in many animal owners selling their animals. This in turn will have a significant impacts on businesses such as feed stores, livestock supply stores, and local slaughterhouses. The effects could then extend further, as more rural land is placed for sale.

* Over ninety percent of all Texas farms are owned by individuals, families, and sole proprietorships. (*See Texas Industry Profile, Office of the Governor—Economic Development & Tourism (Dec. 2005) (citing the 2002 Census of Agriculture).*) Most of these small and medium-sized operations cannot bear the costs that will be imposed by NAIS.

* The equine industry alone is a significant part of the Texas economy. A 1998 study found that Texas is home to over 1 million horses and there are 288,839 Texas horse owners. (THE TEXAS HORSE INDUSTRY QUALITY AUDIT INITIATIVE, TEXAS AGRICULTURAL EXTENSION SERVICE, REPORT ON THE TEXAS HORSE INDUSTRY at 2 (Jan. 1998).) The majority of participants associate with horses for “quality of life” reasons. (*Id.* at 2 & 5-8.) Government intrusion and burdensome regulations will negatively impact horse owners’ quality of life, causing many to sell their animals. The equine industry contributes \$3.8 billion annually to the Texas economy in direct effects; combined with indirect effects, the 1998 report estimated that the total impact of the horse industry to the Texas economy ranged from \$11 to \$17 billion annually. (*Id.* at 2 & 18-19.)

WHEREAS neither the USDA nor the TAHC has performed a cost-benefit analysis of the NAIS or of mandatory premises registration;

* The benefits of NAIS have not been quantified

* The costs have been almost entirely ignored. Indeed, in its proposed mandatory premises regulations, the TAHC stated that the proposed premises regulations “will not impact local economies.” 30 Tex. Reg. at 8522. There is no supporting discussion as to how TAHC reached this startling conclusion.

* The TAHC has seriously underestimated even those few costs that it has tried to quantify. The TAHC predicts that it will need to hire only 7 full-time employees to handle the premises registrations. Yet the TAHC also estimates that there are over 200,000 premises in Texas. (News Release, Texas Animal Health Commission (Feb. 28, 2006).) Assuming that each employee works a normal 40-hour work week, with two weeks of vacation a year, that translates to approximately 4 minutes per registration. As many animal owners do not have internet access or are not able to

submit forms electronically, that means that those employees will have to input significant amounts of data themselves, as well as deal with any errors or omissions in the registrations. Even without the issue of enforcement, it is clear that the TAHC cannot actually administer this burdensome program without hiring significantly more people than it has budgeted. As a further illustration, Australia established a system to track cattle (notably, the system does not attempt to track horses, sheep, goats, swine, poultry, etc.). The government estimated that the database would require only 3 people to run it; at last report, there were 32 employees on the help desk alone. (See Lester Aldrich, R-Calf Meeting: Australian Cattleman Tells of ID Shortcomings (Jan. 24, 2006) at <http://sg.biz.yahoo.com/060123/15/3y45t.html>.)

WHEREAS the USDA's legal authority to implement the NAIS is in question;

* Although state officials have repeatedly said that NAIS is a "federal mandate," this is simply wrong. The USDA itself lacks statutory authority to adopt an animal identification plan. The USDA has stated that the Animal Health Protection Act is the source of its authority. (Plan, p.9.) But that statute addresses only import and export of animals, interstate travel, quarantines areas, and related programs. (See Animal Health Protection Act, 7 U.S.C. §§ 8301-8320 (Supp. 2005).) The statute contains no provisions that mention registration of every livestock owner's farm or a nationwide or intrastate animal identification and tracking program, nor are there any provisions that would provide authority for such a program.

* There were multiple bills introduced in the 108th Congress to amend the statute to provide for an animal identification system and limit disclosures of the information collected under the Freedom of Information Act, and none were adopted. (See HR 3787, HR 3822, HR 3961, S 2070 & S 2008, 108th Congress (2004-05).) There are three bills that have been introduced during the current Congressional session for the same reasons. (See HR 1254, HR 1256 & HR 3170, 109th Congress (2005-06).) Congress has not given USDA authority to implement NAIS.

WHEREAS the constitutionality of the NAIS is in question;

* First Amendment guarantee of freedom of religion issues: For some groups, such as the Old Order Amish, the program violates their religious beliefs. These groups believe that they are prohibited from registering their farms or animals in the proposed program due to Scriptural prohibitions. The way of life of these groups requires them to use horses for transportation and raise animals for their family's own food. The proposed plan would thus place them in the position of violating one or another of their religious beliefs.

* Fourth Amendment protections against search and seizure issues: Some of the technology being proposed as part of NAIS would allow surveillance of private homes from a distance. For example, some RFID technology would allow animals' tags to be read from the street, allowing government officials to conduct warrantless searches, aided by electronic technology.

* Fifth and Fourteenth Amendments protections of property rights and the right to privacy issues: deprivation of property without due process of law and burdening the fundamental right to raise

food. NAIS would force individuals to provide detailed information on themselves, their property, and their businesses, without protecting the privacy of this information.

WHEREAS House Bill 1361, codified at section 161.056 of the Texas Agricultural Code, is completely permissive and does not require the TAHC to take any action;

* The Legislature repeatedly used the word “may,” and there are no directives to the TAHC to take any actions by any deadline.

WHEREAS the TAHC’s proposed regulations provide for fines and criminal penalties for noncompliance;

* The proposed regulations provide for fines of up to \$1,000 a day. Failing to register one’s premises is also a Class C misdemeanor (or, for a repeat violation, a Class B misdemeanor). (30 Tex. Reg. 8521, 8524 (Dec. 23, 2005).)

WHEREAS the TAHC’s proposed regulations will require each registrant to pay a biennial fee, effectively taxing citizens based on livestock ownership;

* The TAHC’s proposed regulations establish a \$10 annual fee for premises registration, to be paid as a \$20 biennial fee.

* The TAHC has also estimated that premises registration will raise between \$1.2 and \$1.7 million dollars from 2008 forward, to be placed in the general revenue fund. (30 Tex. Reg. at 8522 (estimating that the agency will generate \$2,000,000 per fiscal year starting in 2008, and that costs will be \$764,581 in 2008, reducing to \$336,516 in 2010).)

* The definition of a tax is something that raises revenues above and beyond the costs for the program. (*See County of Harris v. Shepperd*, 291 S.W.2d 721, 723 (Tex. 1956).)

* This is a regressive tax; the person with half a dozen chickens or a milk cow in their backyard is charged the same fee as the multinational company with thousands of animals on its premises.

WHEREAS the TAHC’s proposed regulations will require hundreds of thousands of people and businesses to register their property and homes;

* The TAHC estimates that there are over 200,000 premises in the state (News Release, Texas Animal Health Commission (Feb. 28, 2006).)

* TAHC has significantly underestimated the number of premises. A 1998 study found that there are 288,839 Texas horse owners. (THE TEXAS HORSE INDUSTRY QUALITY AUDIT INITIATIVE, TEXAS AGRICULTURAL EXTENSION SERVICE, REPORT ON THE TEXAS HORSE INDUSTRY at 2 (Jan. 1998).) Even accounting for the fact that some of the horse owners board their animals at common

premises, there are also hundreds of thousands of cattle owners, sheep owners, goat owners, pig owners, poultry owners, etc.

WHEREAS the NAIS and the TAHC's proposed regulations will negatively impact individuals, businesses, rural communities, and the entire state;

* See the points discussed above. In brief, the NAIS will place significant burdens on many people and businesses and have many unintended negative consequences. NAIS will not protect Americans against animal diseases and will not provide any significant benefits to offset the costs of the program.

BE IT RESOLVED that the County of _____ opposes the adoption of the Texas Animal Health Commission's proposed regulations for mandatory premises registration and opposes the implementation of any portion of a mandatory national animal identification system in the State of Texas.