

What does the USDA's Switch from NAIS to Disease Traceability Mean for Horse Owners?

By Karen Nowak

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As many of you read, on February 5, 2010, the USDA announced that "it will revise the prior animal identification policy and **offer a new approach to achieving animal disease traceability**". Articles and postings on the internet immediately proclaimed "NAIS is dead!" But is it or is it NAIS with a new name? I urge everyone to take a moment and review the USDA's Fact Sheet titled "**Questions and Answers: New Animal Disease Traceability Framework**":

http://www.aphis.usda.gov/publications/animal_health/content/printable_version/faq_traceability.pdf

The new program website is: <http://www.aphis.usda.gov/traceability>

On page 1 of this document, the USDA states "Animal disease traceability, or knowing where diseased and at-risk animals are, where they've been, and when, is very important to make sure that there can be a rapid response when animal disease events take place." Is that not the same rationale they used for NAIS? What has changed is the "framework" or approach to meet this objective. They state they "will partner with States and Tribal Nations to create the framework for the new approach and plan to re-establish a Secretary's Advisory Committee on Animal Health with representatives from States, Tribal Nations, industry groups, local farms, organic farmers, and underserved communities to assist us in evaluating commodity-based animal disease traceability approaches, along with State-by-State and Tribe-by-Tribe animal disease traceability efforts."

On page 2, the USDA states "Everyone will need to play an important role in developing the animal disease traceability framework. **USDA will take the initial steps to create a basic framework and publish a new animal disease traceability section in the Code of Federal Regulations that includes clear criteria and performance measures.** However, the framework ultimately will be led and administered by the States and Tribal Nations, with Federal support."

To avoid the problems we had in the past, we must get involved and not leave this to the racing industry and American Horse Council to decide, as was done with NAIS, which is more than a bit like expecting Dean Foods to represent the small dairy farmer. This time the information is NOT being deliberately withheld from the average horse owner as was done by the American Horse Council and the Equine Species Working Group. We must not allow history to repeat itself! This time we have the opportunity to provide actual input.

While the USDA will create the basic framework, the program will be administered by the states. That means contacting your state Dept of Agriculture and offering to get involved.

The USDA further states that they "will not mandate a one-size-fits-all approach to animal disease traceability. **The system will not be mandatory in the sense that all producers are required to participate or that all States and Tribal Nations must implement one approach. What is certain is that animal disease traceability will be required for animals moving in interstate commerce.**" This plus other statements regarding "normal marketing" and statements about programs for cattle have lulled many horse owners into believing that this program will not apply to horses. Nothing could be further from the truth!

What is "interstate commerce"? I am NOT an attorney but the legal dictionary defines it as "commercial trade, business, movement of goods or money, **or transportation from one state to another**, regulated by the federal government according to powers spelled out in Article I of the Constitution. The federal government can also regulate commerce within a state when it may impact interstate movement of goods and services, and may strike down state actions which are barriers to such movement under Chief Justice John Marshall's decision in Gibbons v. Ogden (1824)." I have gone back through some of the Supreme Court decisions related to agriculture and interstate commerce have found several cases where the actions above have been upheld. An additional case worth looking at is the 1942 US Supreme Court decision in Wickard v. Filburn, 317 U.S. 111, 121 (1942) (describing

development of Commerce Clause jurisprudence). This will prove to you just how much power they have to regulate inter and intrastate commerce.

The term “commerce” can, and is, often more loosely defined as “involved in a commercial venture” or the “**intent**” to make a profit, as we have seen with DOT issues regarding horse trailers. It is important to remember that **this does not mean actually making a profit** – all that is required is the “intent” to make a profit! Running a boarding, breeding or training stable; hauling horses for show, racing, sales, training, or for any other compensation are examples of what can be considered commercial enterprises. Prize money and showing to increase the value of the horse can also be interpreted as profit. Shipping semen or embryos is also “interstate commerce”. Short of presenting this to the US Supreme Court for a decision, it is safe to assume that most of us will, in fact, be participating in “interstate commerce” at some point with our horses. The result is that the USDA’s Animal Disease Traceability Program DOES apply to horses.

If you live in a state that passed legislation prohibiting a mandatory NAIS, the USDA states:

“It’s important to remember that the new animal disease traceability framework the USDA is announcing is not NAIS. This framework will set forth **criteria that States and Tribal Nations must meet for their animals to be able to move interstate**. States and Tribal Nations will have the flexibility to decide what methods they will use.” By changing the name, they have effectively prevented this new program from being prohibited under that legislation.

While their focus in this document is primarily cattle, we must not forget that the original NAIS plans required microchipping our horses and purchasing scanners to enter their movement information into the NAIS database. We now have the power to change this, **IF** we get involved! Microchipping one’s horse should be a personal decision, not a state or federal mandate. All of us who own registered horses have our horses identified by a variety of measures per our breed registry requirements. Current coggins testing and electronic CVI’s utilize digital photos to identify horses, which should suffice for those who enter interstate commerce.

Our system for disease traceback in horses has worked for decades. With the advent of the electronic CVI (health certificate), it is even more efficient. The recent outbreaks of CEM, piroplasmiasis and EHV-1 have proven that our current system works. We must now get involved and remind our state Dept of Agriculture and the USDA officials that the current system works!

Karen Nowak owns, breeds and shows Hackney horses in upstate NY. She has been following the inclusion of horses into NAIS since late 2005 and has published several articles on this subject.

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