



National Animal Identification and Tracing Scheme: regulations to implement an infringement scheme, and establish a data access panel

Regulatory Impact Statement

ISBN No: 978-0-478-40499-9 (online)

November 2012

Contents

Page

Regulatory Impact statement: National Animal Identification and Tracing Scheme; regulations to implement an infringement scheme, and establish a data access panel	1
Agency disclosure Statement	1
Executive Summary	2
Infringement offences	2
Data access panel for the NAIT information system	2
Status Quo and Problem	3
The purpose of the NAIT scheme	3
Legislation passed to implement the NAIT scheme	3
Problem Definition	4
Infringement offences	4
Data access panel	5
Objective	5
Options	6
Infringement offences	6
Preferred option	7
Data access panel	7
Impacts and Benefits	9
Impacts of the proposed regulations for infringement offences and fees	9
Cost impacts of the proposed regulations for establishing the NAIT information system access panel	10
Consultation	11
Conclusion and Recommendation	11
Implementation	12
Monitoring, Evaluation, and Review	12

Regulatory Impact statement: National Animal Identification and Tracing Scheme; regulations to implement an infringement scheme, and establish a data access panel

AGENCY DISCLOSURE STATEMENT

This RIS has been prepared by the Ministry for Primary Industries (MPI). It provides an analysis of options for regulations to implement an infringement regime and associated fees for breaches of the National Animal Identification and Tracing (NAIT) Act 2012 and regulations. It also covers proposals to establish a data access panel to consider applications for access to data held in the NAIT information system, and to prescribe a small fee for such applications.

The NAIT scheme aims to enhance New Zealand's animal identification and tracing systems, beginning with cattle and deer. The policy content of these regulations has been drafted in accordance with the NAIT Act, and the National Animal Identification and Tracing (NAIT) Obligations and Exemptions Regulations. The regulations specify the details of what participants in the NAIT scheme are required to do; for instance what information needs to be supplied when people register on the NAIT information system as set out in the Act.

A key dependency associated with the infringement scheme regulations is the implementation of an effectively functioning compliance model, and effective communication and education components enabling compliance operations to be delivered jointly by NAIT Limited and MPI. Both MPI compliance management and NAIT Limited have been developing and refining their approaches prior to the NAIT scheme becoming mandatory, and will be able to provide the integrated approach necessary to operate an education campaign and an information sharing and guidance role to support NAIT scheme participants and encourage them to comply with their requirements.

The preferred option of setting a range of infringement offences aimed at low-level offending against the NAIT Act and its regulations has been discussed with NAIT partner organisations in the beef, dairy and deer industries, which have agreed on behalf of their stakeholders to the proposals.

The proposals do not over-ride any fundamental common law principles, and will not impose additional costs on businesses complying with the regulations. A small fee of \$150 is proposed for applications to access data on a cost recovery basis, to help offset the cost burden that currently falls on participants in the NAIT scheme through tag and slaughter levies. MPI considers that the policy for these regulations aligns with the commitments in the *Government Statement on Regulation*.

Julie Collins,
Director Biosecurity, Food and Animal Welfare Policy
Ministry for Primary Industries
/ /2012

Executive Summary

1. This Regulatory Impact Statement (RIS) has been prepared by the Ministry for Primary Industries (MPI) to provide an analysis of options for two sets of proposed regulations under the National Animal Identification and Tracing Act 2012 (the NAIT Act):
 - setting infringement offences and fees; and
 - establishing a panel to consider applications for access to the NAIT information system.

INFRINGEMENT OFFENCES

2. The proposed infringement offences regulations in this paper are designed to:
 - address minor breaches of the law;
 - provide an efficient way of encouraging compliance with the law;
 - reinforce a compliance operating model that has a tight focus on education, assistance and direction;
 - have in all but three cases a relatively low infringement fee; and
 - come into force by the end of 2012.
3. Following public submissions, three further infringement offences are proposed when the regulations around setting up the data access panel come into effect. The administrator of the NAIT information system or the panel may set conditions when granting an applicant access to data. A breach of data security is considered serious enough that the maximum allowable \$1000 fee should apply in cases where an applicant fails to comply with specified conditions:
 - restricting the use to which the data may be put;
 - prohibiting further disclosure of the data; and
 - made by the administrator or panel on any other basis.

DATA ACCESS PANEL FOR THE NAIT INFORMATION SYSTEM

4. The NAIT Act sets the expectation that a panel will be established to assess applications for access to data held in the NAIT information system. The panel will provide an objective and transparent process to assess applications and decide them on their merits.
5. The rationale for the panel is that some applications for access to NAIT data may be quite complex in terms of judging and balancing the “industry good” benefit of the application against the possible harm to privacy rights in releasing the data. In such cases, it will be more appropriate for the determination to be made by a panel with wide and expert knowledge rather than the administrator of the NAIT information system.

6. It is also proposed, following public submissions, to prescribe a fee of \$150 for applications to access data on a cost recovery basis to partially offset some of the panel's operational costs, as provided for in the Act.

Status Quo and Problem

THE PURPOSE OF THE NAIT SCHEME

7. The NAIT scheme is an industry-government partnership which provides a national framework for animal identification and tracing, starting with cattle. The key industry parties involved in developing the NAIT scheme have been DairyNZ, Dairy Companies Association of New Zealand, Beef + Lamb New Zealand (previously Meat and Wool New Zealand), Meat Industry Association of New Zealand, Federated Farmers of New Zealand, and Deer Industry New Zealand.
8. The NAIT scheme aims to establish an animal identification and tracing system that:
 - provides for the rapid and accurate tracing of individual or groups of NAIT animals from birth to death or live export;
 - provides information on the current location and movement history of individual, or groups of, NAIT animals;
 - improves biosecurity management;
 - manages risks to human health arising from residues in food, food-borne diseases, and diseases that are transmissible between animals and humans; and
 - supports improved animal productivity, market assurances, and trading requirements.
9. The NAIT scheme will provide a tool for New Zealand to quickly and efficiently establish the health status of our livestock population. It will provide a national framework that will enable animals to be traced quickly and reliably from birth through to death or live export. This information can help in limiting the consequences of an outbreak of an animal disease or a problem with food residues, as well as supporting New Zealand's market share in premium markets.

LEGISLATION PASSED TO IMPLEMENT THE NAIT SCHEME

10. The NAIT scheme's basic legislative framework is provided through the NAIT Act 2012 and NAIT Obligations and Exemptions Regulations 2012. The Act sets out the basic requirements that people must follow, and regulations describe in more detail how the requirements of the Act are to be met (for example, the information that must be supplied when someone registers as a person in charge of animals).
11. The NAIT Act and regulations on obligations and exemptions, levies, and fees and forms came into force on 1 July 2012 to coincide with the start-date for

cattle requirements under the NAIT scheme. Requirements for deer under the scheme will start from 1 March 2013.

12. These proposed regulations for infringement offences apply primarily to people in charge of NAIT animals (PICAs), who can include farmers, farm managers, sharemilkers, staff members of livestock companies operating at saleyards, and staff members of meat processing facilities. The regulations will also apply to organisers of events, such as agricultural shows and rodeos, and owners of places where animals may be temporarily held during transport or droving between two NAIT locations.
13. The five main obligations for a PICA under the NAIT Act are to:
 - register as the PICA at a NAIT location;
 - identify and register the NAIT animals they are in charge of at the location;
 - report when a NAIT animal is moved off the location, or received onto the location;
 - report when a NAIT animal exits from the scheme – either slaughtered, dead on the farm, lost, or exported live; and
 - provide information that is accurate, up to date, and within set time limits.

Problem Definition

INFRINGEMENT OFFENCES

14. There are a range of obligations under the NAIT Act and regulations that are essential to its working effectively, such as the requirement to fit animals with the correct device, and register the animal on the NAIT information system. Both NAIT Limited and MPI compliance operations will follow an integrated compliance model to deal with offending, beginning with education and assistance.
15. While the vast majority of people are expected to comply voluntarily, the compliance regime must be able to focus effort on achieving compliance from a small group who do not care, or don't want to comply.
16. The Ministry of Justice's Guidelines for New Infringement Schemes state that infringement offence schemes are suitable for addressing comparatively minor breaches of the law, which warrant more than a warning, but less than the full sanctions of the criminal law.
17. Section 69 of the NAIT Act allows regulations to be set prescribing:
 - infringement offences for not complying with regulations made under the Act; and
 - an infringement fee no greater than \$1000 for each infringement offence.
18. The problem is that if an infringement scheme is not established, then there will be no intermediate stage between warnings and criminal sanctions.

DATA ACCESS PANEL

19. The NAIT Act establishes purposes for holding data in the NAIT information system, including productivity, market assurance, statistical data for policy development and industry-good advice. It also provides for the establishment of a NAIT information system administrator and access panel to make decisions on access to data, depending on the significance of the data requested.
20. The administrator provides access to data that people need to carry out their day-to-day roles and responsibilities under the Act, such as reporting an animal movement. The panel becomes involved on non-standard issues of significance to the industry sectors.
21. A mechanism such as an expert panel is needed to consider the merits of non-standard applications for access to data which are not part of the day-to-day running of the system, but which are consistent in expert opinion with the purposes for holding data including research and development, industry-good or market-oriented commercial products aimed at improving productivity.
22. Therefore the problem is that without a data access panel, there is no process in place to deal with non-standard applications.
23. At present there are no administrative rules to guide the operation of the panel. Section 69 of the NAIT Act provides that regulations can be made under the Act to provide for:
 - the establishment of the NAIT information system access panel;
 - the appointment and removal of members of the panel; and
 - the panel's remuneration, functions, duties, powers, procedures, employees, administration, operation, and reporting requirements.

Objective

24. The objective of these proposed regulations is to fully implement the NAIT scheme by:
 - setting infringement offences and fees to provide an incentive to comply with the NAIT legislation, deal effectively with low-level offending, and provide an integrated approach to compliance; and
 - establishing a panel with the expertise to properly consider the implications of non-standard applications for access to data of significance to the livestock industry held in the NAIT information system.
25. No time constraint is provided in the NAIT Act to enact the proposed regulations.

Options

INFRINGEMENT OFFENCES

Maintain status quo

26. It is not the preferred option to “do nothing” because the NAIT Act does not in itself provide the means to deal effectively with low-level offending. Without regulations to create infringement offences, the Act provides only for prosecutions to be sought for specified high-level offences. The Act prescribes maximum penalties for the specified offences across a range of levels. Several of the maximum penalties are \$10,000 for an individual and \$20,000 for a body corporate. The other maximum penalties are prescribed at higher and lower levels.
27. As the NAIT information system is an electronic database, there is a high likelihood of detecting non-compliance. The key to ensuring high levels of compliance with the law is to have an integrated compliance strategy aiming to change the behaviour of low-level offenders rather than directly seeking criminal prosecutions, unless the offending becomes entrenched.

Establish non-regulatory compliance measures

28. Establishing non-regulatory compliance measures such as a “name and shame” system would have a similar effect as maintaining the status quo, in perpetuating the difficulty of responding effectively to low-level offending. The compliance regime needs an effective measure to enforce compliance among the group of people who have informed of their obligations, but either do not care about complying, or deliberately do not comply. Entrenching non-compliant behaviour among participants in the NAIT scheme may take some time to turn around.
29. The effectiveness of individual animal tracing schemes relies on accurate, timely information. The inability to achieve a high level of compliance would call the basis of the NAIT scheme into question, jeopardise its cost-effectiveness and risk negative reaction from trade partners.

Introduce infringement fees higher than \$150

30. The introduction of higher infringement fees was not considered suitable, because the NAIT scheme compliance strategy has been designed as an escalating series of interventions from education, guidance and issuing warnings, through to low-level infringement notices. Should a person receive one or more low-level infringement notices, then the person may be issued with a formal direction under the NAIT Act to comply with his or her responsibilities.

31. Setting higher-level infringement offences would leave a gap following the first intervention steps of education and assistance and double up on mid-level options for more actively directing behaviour and enforcing compliance.

Introduce higher-level infringement offences for breach of conditions set by NAIT information system administrator or access panel

32. The proposal to set higher level infringement fees of \$1000 for breaching conditions set on the access to data was not part of the proposals put forward in the public discussion document, but has been put forward following comment made in several submissions.
33. The submissions pointed out that while the administrator of the NAIT information system or access panel may set conditions when granting an applicant access to data, no sanctions are provided in the Act if the applicant breaches any of the conditions, which may:
 - restrict the use to which the data may be put;
 - prohibit further disclosure of the data; and
 - be made by the administrator or panel on any other basis.
34. Strong emphasis has been given to the protection of personal information and commercially sensitive data during the development of the NAIT scheme, and through the establishment of higher-level offences and penalties in the Act. MPI and NAIT partner organisations agree that, to be consistent with the treatment of other breaches of data access, a breach of these conditions should be an offence, and the maximum allowable \$1000 infringement fee should apply to provide a significant disincentive to offend.

Preferred option

35. The preferred option is to set a range of infringement offences aimed at:
 - low-level offending against the obligations for NAIT participants set out in the NAIT Act and its regulations, with a correspondingly low infringement fee of \$150 for 12 offences, and \$300 for offending against one fundamental requirement of the NAIT scheme; and
 - the breach of any conditions set by the administrator of the NAIT information system or access panel when granting an applicant access to data, with the maximum allowable infringement fee of \$1000 for each breach.

DATA ACCESS PANEL

Maintain status quo

36. It was not the preferred option to “do nothing” because under the NAIT Act, an important part of the NAIT organisation’s responsibilities as a data custodian is to ensure that the data is accessed and used solely for the purposes specified

in the Act. The Act provides for the establishment of an expert panel with industry knowledge to assess such applications and make a decision.

37. Protection of personal and commercially sensitive data has been a focus of discussions around the development of the NAIT Act. Without formal establishment of the panel and requiring it to report on its activities and decisions, the operation of the NAIT scheme will not meet the participants' concerns for transparency in how sensitive applications are dealt with.

Rely on the NAIT information system administrator to make decisions

38. The NAIT Act gives the NAIT system administrator the discretion to provide access to applications to data which are consistent, in the administrator's opinion, with the purposes listed in section 40 of the NAIT Act. The NAIT scheme has only been mandatory since July 2012, and so there is at present little collected data that might be useful for an individual or group seeking information for an industry good or commercial focus.
39. As a result, the administrator is likely to be responsible for making all decisions on access to the information system for some time. However, the Act clearly states that the administrator must make his or her decision whether or not to provide data based on the significance of the request to the industry concerned.
40. This factor leads to the requirement to have industry experts available to assess applications on the basis of their knowledge, which the administrator cannot be expected to have, and so this option is not preferred.

Preferred option - Create regulations establishing the data access panel and setting administrative rules

41. The preferred option was to create regulations as soon as possible after the NAIT information system was established, formally establishing the membership of the access panel, setting requirements for its administration, prescribing fees for applications to partially offset its operational costs, and requiring it to report publicly on its activities for transparency.

Impacts and Benefits

IMPACTS OF THE PROPOSED REGULATIONS FOR INFRINGEMENT OFFENCES AND FEES

42. The proposed regulations for infringement offences and fees are not expected to have a high impact on participants in the NAIT scheme, as they will affect only people who offend against the NAIT Act and its regulations. The regulations will be administered through a compliance strategy which will focus initially on education and guidance, and the potential to issue a warning notice before an infringement notice is issued.
43. Experience has shown that, in general, people fail to comply during the initial implementation of a new scheme because they are unfamiliar with their new obligations. It is expected that in most cases people can be encouraged to comply before receiving an infringement notice, given the emphasis on education and guidance for NAIT scheme participants, the expectation of a high detection rate for non-compliance, and the range of possible interventions available before an infringement offence notice is issued.

Cost impacts

44. The amount of revenue received from infringement fees is likely to be negligible, given that notices are expected to be issued infrequently. Although the infringement notices are to be issued by NAIT officers and NAIT authorised persons, the fees are to be paid to MPI and from there into the Crown accounts. The NAIT organisation will not receive funding through the collection of infringement fees.
45. There will be a small, not quantified, cost impact on the operations of the NAIT scheme to prepare for managing the issuing of infringement notices. Funding of \$388,000 per year has been estimated for MPI to accommodate issuing infringement notices and collecting infringement fees.
46. There may also be a cost to the Crown if infringement notices are challenged in a district court. Few challenges are expected, however, given that the proposed infringement fee is relatively low for all but three of the offences.

Benefits of the proposed regulations for infringement offences and fees

47. The benefits of the proposed regulations will relate primarily to the effective implementation of the NAIT scheme, and help to achieve its identified benefits:
 - improved customer and consumer confidence, with verifiable animal tracing to international standards;
 - greater accuracy and reliability, and faster response in the case of a biosecurity or food safety event, or natural disaster; and

- faster resumption of market access following any adverse biosecurity or food safety event.

COST IMPACTS OF THE PROPOSED REGULATIONS FOR ESTABLISHING THE NAIT INFORMATION SYSTEM ACCESS PANEL

48. There will be a cost impact on the operations of the NAIT organisation following the establishment of the NAIT information system access panel, primarily for remuneration of the panel members, travel and any administrative costs. It is expected this may cost in the region of \$8,000 to \$11,000 per year if three meetings are held annually.
49. For comparison, the Dairy Core Database Access panel carries out a similar role to that proposed for the NAIT scheme data access panel in relation to the information held from dairy herd testing. Operations of the Dairy Core Database Access panel cost some \$16,000 for three meetings per year, of which some \$11,000 relates to independent fees (legal, audit and accountancy) and administrative overheads. While audit and accountancy fees are relevant to the Dairy Core Database Access panel because a levy funds its activities and therefore requires financial reporting, fees for independent reporting are not expected to be relevant to the NAIT access panel.
50. The NAIT access panel is expected to include a member or Chair experienced in privacy issues, meaning that independent legal advice will not be necessary. Administration and overheads for the panel also should not require a separate category, considering the NAIT information system administrator is established to carry out the same functions.
51. The estimated costs for running the NAIT information system access panel each financial year will be identified as a line item in the annual budget prepared by the NAIT organisation (currently NAIT Ltd) when setting annual levies for cost recovery from industry under the National Animal Identification and Tracing (Levies) Regulations 2012.
52. It is not expected that the \$150 fee for each application to access data in the NAIT information system will provide any significant income to offset the costs of the access panel. A higher fee is likely to act as a disincentive to applicants, and act in contradiction to one of the purposes set out in section 40 of the Act, to “...provide data supporting productivity, market assurance and trading requirements”. It is uncertain how many applications will be received, but the Dairy Core Database Access panel receives between two and eight applications per year.

Benefits of the proposed regulations for establishing the NAIT information system access panel

53. The benefits of the proposed NAIT information system access panel regulations are expected to be the same as those identified for the infringement offences, in terms of the effective implementation of the NAIT scheme, and helping to achieve its identified benefits.

Other costs and benefits

54. It is not expected that the proposed regulations for infringement offences and data access will have significant costs or benefits in terms of social, environmental and cultural values.

Consultation

55. MPI consulted on the proposals through the release of a public discussion document in August 2012, and received 31 submissions. Of these, 14 were from industry stakeholder organisations, including NAIT Limited, and 15 from individual participants in the NAIT scheme. Two submitters identified themselves as NAIT scheme information providers accredited by NAIT Limited.
56. A range of views were expressed, ranging from support to opposition to the NAIT scheme itself, and by implication its costs. NAIT limited and industry experts were consulted through a joint policy workshop held on 30 August 2012, and were consulted further on refined proposals following public consultation and prior to the final analysis of submissions.
57. The following government agencies have been consulted on the proposals set out in these regulations: Treasury, State Services Commission, Ministry of Foreign Affairs and Trade, Department of Internal Affairs, Ministry of Justice, Ministry of Economic Development, Te Puni Kokiri, Department of Prime Minister and Cabinet, Ministry for the Environment, and the Department of Conservation. The Department of Prime Minister and Cabinet has been informed of the paper. The Officials Group of EGI (OEGI) has also been consulted.

Conclusion and Recommendation

58. The options analysis indicates that regulations should be made to set infringement offences and fees, to provide an incentive to comply with the NAIT legislation and deal effectively with low-level offending.
59. To provide an integrated approach to compliance, the fees should be set at the relatively low level of \$150 for the most part, at \$300 for offending against one fundamental requirement of the NAIT scheme; and for the more serious offence of an applicant breaching any conditions set on his or her access to data, the maximum allowable infringement fee of \$1000 for each breach.
60. The options analysis also indicates that separate regulations should be made establishing a panel with the expertise to properly consider the implications of non-standard applications for access to data of significance to the livestock industry held in the NAIT information system.

Implementation

61. A key dependency in an integrated compliance regime is to provide steps which escalate in engagement and seriousness from low-level offending. The agreed initial approach for the establishment of a new regulatory regime is to ensure that people understand their new requirements, and encourage them to comply.
62. The education and assistance part of the NAIT compliance regime has been underway since early 2012, six months before the requirements became mandatory. Events of low-level offending can first be assessed to ensure that non-compliance did not occur through misunderstanding or lack of knowledge.
63. It is now timely to establish the infringement regime for the beginning of 2013, in order to have suitable deterrence measures in place, which can also be publicised and help to communicate the new requirements.
64. It is also timely to establish the NAIT information system access panel early in 2013 so that organisational arrangements can be made to accept nominations, establish operational procedures and reporting responsibilities for an effective start-up, avoiding any delay in receiving and considering applications for data.

Monitoring, Evaluation, and Review

Once the NAIT infringement regulations come into effect, MPI compliance management and the NAIT Board will be responsible for overseeing an ongoing programme of monitoring feedback, evaluation and a review of the regulations. The programme will ensure that the regulations continue to be pragmatic, fit for purpose, supportive of current farming practice and effective management of the NAIT scheme, and can be adapted to take account of biosecurity and other risks.