

**Appendix for Memorandum of Agreement (MOA) between the US Department  
of Homeland Security (DHS) and the US Department of Agriculture (USDA)  
Article 7(a), Regulatory Coordination**

### **I. Purpose**

This appendix explains how the Animal and Plant Health Inspection Service (APHIS) and Custom and Border Protection (CBP) will implement the regulatory coordination portion of paragraph (d) of Article 7. Whenever USDA prescribes new regulations, policies, and procedures for administering those agricultural functions transferred to DHS, or proposes changes to relevant existing regulations, policies, and procedures, USDA shall coordinate such actions with DHS. Coordination related to policies and procedures will be addressed in a separate appendix.

### **II. Background**

The Homeland Security Act of 2002 (the Act). Section 421 of the Act transferred to (DHS) functions of (APHIS) relating to agricultural import and entry inspection. Subsection of Paragraph (d)(1) states that the authority transferred to DHS shall be exercised in accordance with regulations, policies, and procedures issued by the Secretary of Agriculture, and subsection of paragraph (d)(2) states that the Secretary of Agriculture shall coordinate with the Secretary of DHS whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the transferred functions. Subsection of Paragraph (e) requires the Secretary of Agriculture and the Secretary of DHS to enter into an agreement to effectuate the transfer of functions.

Memorandum of Agreement. Secretary of USDA, Ann M. Veneman, and Secretary of DHS, Tom Ridge signed the MOA required under section 421(e) of the Act, on February 28, 2003. Article 7 of the MOA pertains to regulations, policies, and procedures.

### **III. Responsibilities**

Procedures for regulatory coordination. The parties agree that the purpose of rule making coordination under subsection (d)(2) is to ensure that CBP has timely notice and opportunity to comment on operational aspects of any APHIS plans to change its regulations related to the agricultural functions transferred to DHS.

The procedures concerning rule making coordination apply to any advance notice of proposed rulemaking, proposed rule, interim rule, direct final rule, final rule, or notice of a change in interpretation or enforcement of regulations that is related to agricultural functions transferred to DHS and intended for publication in the Federal Register. The procedures for rule making coordination do not apply to Federal Register documents other than those identified above. Examples of documents excluded from these procedures include notices of environmental assessments or environmental impact statements, risk assessments, meetings, information collections, and extensions of a comment period.

### APHIS Responsibilities

APHIS will forward regulatory workplans for actions covered by this agreement in electronic format to the Assistant Commissioner, Office of Field Operations, CBP (the Assistant Commissioner), for concurrence. The regulatory workplan will address the potential effect of the intended action on the transferred functions and personnel responsible for carrying out the transferred functions. The regulatory workplan will provide for the Assistant Commissioner to indicate whether CBP would like to review a draft of the document to be published in the Federal Register prior to publication.

Apart from the routine coordination procedures outlined in the preceding paragraph, when APHIS identifies emerging issues or trends that could lead to regulatory changes with the potential to significantly affect the transferred functions or personnel responsible for carrying out the transferred functions, APHIS will bring those to the attention of the Assistant Commissioner, as early as possible, to facilitate coordination and implementation.

### CBP Responsibilities

The Assistant Commissioner will respond to APHIS within 7 calendar days of receipt of the regulatory workplan by signing and returning the regulatory workplan or by providing written comment to the APHIS office indicated in the transmittal message or memorandum from APHIS.

If the Assistant Commissioner requests to review a draft regulation, APHIS will send a draft in electronic format with a requested due date for comments. The due date may vary according to the complexity of the regulation and/or time constraints associated with it, but will normally be 2 weeks from the date the draft regulation is sent. The Assistant Commissioner will provide comments by the due date indicated unless the Deputy Administrator for the applicable APHIS program agrees to an extension. The Assistant Commissioner will provide written comments to the office indicated in the transmittal message from APHIS.



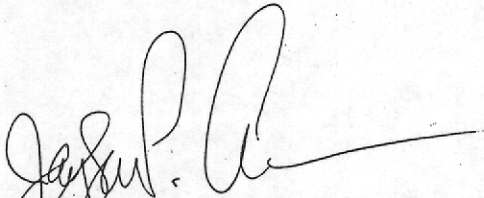
Nothing in this section precludes the Assistant Commissioner from obtaining additional clearances within DHS during the time allotted for the Assistant Commissioner's review.

Emergency Situations

This appendix does not address how APHIS will coordinate with CBP in emergency situations, which present an immediate threat to animal or plant health. Those situations are covered in a separate appendix. If changes in the regulations are also necessary, APHIS will coordinate with CBP as provided in this appendix.

Effective Date and Changes to This Appendix

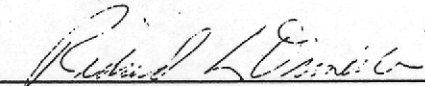
This document will serve as an appendix to Articles 7 of the MOA and can be amended by mutual agreement at any time by agreement of the parties in writing. This agreement will be effective when signed by both designated officials.



\_\_\_\_\_  
Jayson P. Ahern  
Assistant Commissioner, Office of Field Operations  
Customs and Border Protection

7-2-03

\_\_\_\_\_  
DATE



\_\_\_\_\_  
Richard L. Dunkle  
Deputy Administrator, USDA APHIS Plant Protection and Quarantine

2 July 03

\_\_\_\_\_  
DATE