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**Appendix for Memorandum of Agreement (MOA) between the US
Department of Homeland Security (DHS) and the US Department of
Agriculture (USDA)
Articles 2 & 3, Separation of Function**

I. Purpose

This appendix is intended to provide guidance to further detail and delineate the current operational tasks and subtasks necessary to carry out the general functions listed in Articles 2 & 3 of the MOA. Within this appendix includes the details of responsibilities, operating procedures, working relationships, communication, and a framework necessary for the Animal and Plant Health Inspection Service (APHIS) and Customs and Border Protection (CBP) to successfully maintain the agricultural inspection mission.

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.

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 2 of the MOA lists those general functions that were transferred to CBP. Article 3 lists those general functions retained by APHIS Plant Protection and Quarantine (PPQ) and APHIS Investigative and Enforcement Services (IES).

III. Responsibilities

International Vessel Inspection

CBP agrees to:

- Inspect foreign and coastwise arrival vessels (commercial & privately owned) per established USDA guidelines, inspect stores – seal if necessary. Monitor compliance (storage on vessel & garbage removal) per USDA regulatory requirements for international garbage.
- Document and issue spot settlements for garbage and notification violations or broken seals.
- Inspect high-risk vessels for Asian gypsy moth; contact PPQ if egg masses/larvae are found.
- Inspect barges for regulated materials and pests (e.g., dunnage, khapra beetle, etc.)

- Inspect vessels for Africanized honeybees and depopulate, if found contact PPQ immediately.
- Supervise cleaning and disinfecting operations.
- Notify APHIS-Veterinary Services when live animals are present.
- Provide training to military personnel.
- Inspect crew and passengers.

PPQ agrees to:

- Inspect domestic vessels transiting from Hawaii or Puerto Rico.

International Aircraft Inspection (passenger, cargo, private)

CBP agrees to:

- Inspect foreign arrival aircraft per established guidelines. Monitor catering and garbage compliance.
- Treat aircraft per USDA guidelines; if live pests or soil are found notify PPQ prior to treatment.
- Properly destroy or dispose of seized and inspected agriculture contraband by grinding or moving to approved facilities under appropriate safeguards for destruction. Initiate and maintain associated compliance agreements.
- Calibrate steam sterilizers used for the destruction of foreign origin garbage from aircraft and agriculture articles seized from passengers.
- Supervise aircraft cleaning and disinfecting.
- Notify APHIS-Veterinary Services when live animals are present.
- Provide cooperators training to military personnel.
- Contact PPQ regarding prosecution of compliance agreement violations.

PPQ agrees to:

- Provide compliance agreement templates for caterers, cleaners, and sterilizers to destroy and dispose foreign garbage and agricultural products.

Air Passenger Inspection

CBP agrees to:

- Select and inspect passenger baggage. Seize and safeguard non-enterable articles (agricultural contraband).
- Inspect articles for pests, pathogens, diseases, and weed seeds. If found, complete PPQ form 309A and provide to PPQ. Document violations, issue spot settlements, and make entry in penalty database.
- Properly destroy or dispose of seized and inspected agriculture contraband by grinding or moving to appropriate facilities under appropriate safeguards.
- Collect and enter monitoring, arrival, new pathway, and accomplishment data.
- Provide documentation for admissible animal trophies and other animal byproducts entering through passenger baggage to APHIS for review. Initiate VS 16-78 and provide notification to APHIS Area Veterinarian In Charge (AVIC).
- Refer propagative articles (plant bulbs or seeds) and associated paperwork to PPQ.
- Disinfect passenger shoes
- Provide training to military personnel.

PPQ agrees to:

- Inspect, treat (if necessary) and release propagative articles referred from CBP passenger baggage inspections and notify CBP when admissible articles have been released.

Cargo Inspection

CBP agrees to:

- Review manifests and hold shipments of agriculture concern. Determine entry requirements.
- Inspect shipments, including fruit cutting, to validate treatment. Determine if shipment meets import requirements.
- Submit pest interceptions to PPQ for identification. Complete Emergency Action Notification (EAN) if an actionable pest is found or mandatory treatment required (if no permit is present with shipment). Safeguard commodity prior to treatment, re-export, or destruction. Monitor destruction or re-export per established guidelines.
- Monitor reconditioning of cargo when repackaging or removal of non-compliant packing material is required.
- Inspect and safeguard dunnage. Monitor destruction if required.
- Notify PPQ If cargo fumigation is required, then transfer custody to PPQ.

- Monitor non-fumigation treatments. Release treated shipments, as appropriate.
- Take necessary actions and recover costs for remedial measures when importer or agent fails to follow EAN.

PPQ agrees to:

- Provide pest identifications and action status; select appropriate treatments
- Safeguard shipment at fumigation sites and monitor fumigations. Release fumigated shipments.
- Certify vessels for cold treatment. Review cold treatment documentation (bulk or containers) and activities.
- Review and approve applications or lists for line release programs to expedite movement of agriculture commodities.

Clearance of Plants, Seeds and Other Propagules

CBP agrees to:

- Review manifests and hold shipments of plants, seeds, and other propagules. Determine if shipments meet regulatory requirements.
- Inspect and release, if appropriate, admissible shipments not requiring clearance through a Plant Inspection Station or admissible without a permit per 7CFR 319.37.
- Refer to PPQ those shipments requiring clearance through a Plant Inspection Station.
- Destroy or re-export prohibited or refused shipments.
- Coordinate and safeguard the movement of live plant pests (permitted) to a Plant Inspection Station.

PPQ agrees to:

- Inspect and treat if appropriate, shipments imported under a permit or admissible without a permit.
- Refer prohibited or refused shipments to CBP for destruction or re-export.

Handling of Animal Products, By-Products

CBP agrees to:

- Review manifests, hold products of concern, and determine entry requirements.
- Inspect shipments, if required, and review documentation (certification, permits, and statements from shippers or producers).
- If ticks, contaminants, or other prohibited or restricted products are found, then take remedial measures per established guidelines.

- Safeguard meat shipments by sealing or allowing movement to approved site and notify Food Safety and Inspection Service regarding disposition of shipment as required.
- If refused entry, oversee destruction or re-export; and document actions, as required.

Enforcing Convention on International Trade in Endangered Species (CITES)-COMMERCIAL SHIPMENTS.

CBP agrees to:

- Review manifests and hold imported CITES materials. Refer CITES regulated live plant shipments to PPQ and regulated non-living CITES articles (e.g., mahogany, ramin wood, ginseng, etc.).
- Review CITES permits accompanying non-living CITES shipments; seize shipments arriving w/o proper documents.
- Process CITES paperwork for released shipments and forward cancelled permits to US Fish and Wildlife Services (USFWS).
- Distribute, and post/publish CITES seizure notices.
- Safeguard seized shipments and arrange for transfer or disposal. Document actions, as required.

PPQ agrees to:

- Review CITES permits accompanying live plant material; seize CITES shipments arriving w/o proper documents.
- Process CITES paperwork for released shipments and forward cancelled permits to USFWS.
- Distribute, post or publish CITES seizure notices.
- Safeguard seized shipments and arrange for transfer or disposal of seized and forfeited property, including Plant Rescue Center placement. Document actions, as required.

Enforcing Convention on International Trade in Endangered Species (CITES) – BAGGAGE

CBP agrees to:

- Identify/regulate CITES materials in passenger baggage; seize CITES plants/materials arriving w/o CITES permits from passenger baggage and send to the Plant Inspection Station; initiate documentation for seizure; safeguard seized CITES materials (esp. live plants).

PPQ agrees to:

- Safeguard seized CITES materials (esp. live plants); initiate Plant Rescue Center request and coordinate with USFWS the movement of seized plants to Plant Rescue Centers.

Commodity/ Military Preclearance

CBP agrees to:

- Determine availability of, and assign CBP employees to participate in select preclearance programs, as provided for in Appendix 6 of the MOA.
- Review utilization and performance of assigned personnel.
- Monitor/inspect precleared commodities at the POE per established guidelines.

PPQ agrees to:

- Approve preclearance programs; schedule assignments and maintain the list of qualified candidates; select participants from respective departments.
- Provide oversight and management of the programs; provide training orientation, and performance monitoring for CBP personnel assigned to preclearance activities.
- Provide formal overseas military training

Transit Movements (plant material only)

CBP agrees to:

- Determine operational feasibility of transit requests (e.g. resources are available to safeguard).
- Refer permit applicants to PPQ Permit Unit.
- Safeguard shipments during transloading and for transit (seal container and verify documentation); notify exit port of shipment and log into Treated/T&E database.
- Monitor transit movements, verify seals and documentation prior to exiting the U.S.
- Audit T&E transit programs.

PPQ agrees to:

- Issue transit permits.
- Audit limited distribution programs (e.g. Mexican avocados, Spanish clementines).

AQI Monitoring

CBP agrees to:

- Provide local port Agricultural Quarantine Inspection Monitoring (AQIM) coordinator and members to the National AQIM team.

- Maintain local port sampling procedures per PPQ guidelines; select and inspect sample from appropriate population; enter data into Epi database and transmit data file.
- Perform primary data quality control.
- Provide PPQ access for AQIM activity reviews.

PPQ agrees to:

- Provide members to National AQIM team.
- Determine AQIM pathways and content; consult with statistical resources; determine sampling protocols and communicate sampling protocols to CBP.
- Provide AQIM procedure training; maintain and provide to CBP the AQIM National Handbook, worksheets and database software/data entry files.
- Provide additional data quality control.
- Coordinate with CBP to perform AQIM port activity/ reviews.

Counter - Agricultural Smuggling Program

CBP agrees to:

- Inspect cargo at ports of entry determined to be high risk for smuggling based upon ongoing investigations and provide information to PPQ SITC.
- Incorporate agricultural violation information into the automatic targeting criteria system for cargo inspections.
- Provide local assistance during counter smuggling operations (e.g. blitz activity) when available.
- Target and inspect cargo at ports of entry determined to be high risk based upon retail market information.

PPQ agrees to:

- Gather information and evidence in domestic markets on prohibited or restricted foreign commodities.
- Collect information to document and trace interstate/intrastate movement of prohibited commodities.
- Provide specific information to CBP regarding prohibited or restricted commodities that had transited through the ports of entry.
- Provide liaison, education and cooperative efforts with the State Departments of Agriculture and other Federal agencies regarding APHIS regulatory compliance programs.
- Contact CBP to coordinate operations such as blitz activities, trade verifications and cargo survey events at ports of entry; provide staff to perform these activities.

- Survey facilities outside of ports of entry for compliance with APHIS regulations.
- Notify CBP Headquarter of emerging trends of prohibited commodities found in markets.

Fines and Penalties

CBP agrees to:

- Document violations and issue spot settlements for baggage, garbage, notification and broken seal violations (Forms 591 and 592); collect voluntary payments for these violations at port cashier.
- Refer unpaid baggage and all agricultural cargo violations (Form 518) to APHIS IES HQ Enforcement Staff.
- Collaborate on investigations that are of importance to the missions of CBP and APHIS.

IES agrees to:

- Investigate agricultural referrals from CBP that require further documentation prior to assessing civil penalties.
- Issue civil penalty stipulations or initiate formal administrative prosecution on all agricultural cases referred by CBP.
- Report to CBP the final administrative disposition of cases referred by CBP to APHIS for prosecution.
- Collaboration on investigations that are of importance to the missions of CBP and APHIS.

Pest Interception Tracking

CBP agrees to:

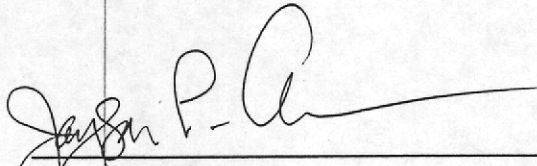
- Collect and prepare pest interceptions, complete form PPQ 309A, and submit both to PPQ for identification.
- Communicate to broker or importer about cargo disposition options.

PPQ agrees to:

- Prepare and analyze interceptions; determine quarantine response and communicate options to CBP.
- Complete identification record in PIN-309 database and make accessible to CBP.
- Provide pest identification training to CBP.

Effective Date and Changes to This Appendix

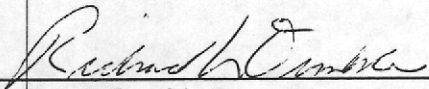
This document will serve as an appendix to Articles 2 & 3 of the MOA and can be amended by mutual agreement at any time by agreement of the parties in writing. This agreement will be effective when signed by both designated officials.



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

Attachment

Policy and Procedures to Separate PPQ and CBP AI employees at the POEs.

Since March 1, 2003, APHIS PPQ and CBP AI employees have continued to share work at Ports of Entry, tours of duty, rotations, and overtime to meet the needs of the agricultural mission. PPQ and CBP management share a mutual goal to separate program personnel along the functional lines prescribed in Articles 2 & 3 of the Memorandum of Agreement (MOA), with the understanding that some degree of mutual assistance will be needed post separation.

The separation will be implemented in phases to allow management additional time to secure staffing, training, and security clearance approvals. Implementation will be with the concurrence of CBP DFOs and PPQ regional management. Management will work with LMR to meet statutory or contracted obligations.

Procedures: This policy will allow for the separation of PPQ and CBP employees and will require employees of each Agency to report to a supervisor in their home Agency. Space and access issues will be managed to provide mutual benefit for both Agencies and to limit any disruption to travel and trade. In order to achieve these goals, the following actions will be taken:

1. PPQ and CBP AI will work jointly to determine the separation dates for Ports of Entry. These dates will vary depending on location and available resources. Upon separation, the employees of each organization will perform work within their employing Agency.
2. The APHIS PPQ OIC and CBP AI Port Director will review and separate the work schedules of employees per function delineated in MOA appendices 2 & 3.
3. As an interim measure or until October 1, 2003, PPQ will continue to provide administrative support for CBP AI at locations where no CBP agricultural IT or administrative personnel are assigned or available.

Procedures to Request Assistance/Support:

If either PPQ or CBP AI has a need for assistance, they will contact the appropriate Port Director (CBP)/PPQ OIC/Supervisor). The contacted supervisor will work with their counterpart to gain the assistance needed. This process will be worked out at the local level to minimize the need for interventions at higher organizational levels.

If requests for local assistance cannot be satisfied, then the requesting party will need to manage the assignment/workload according to resources internally.

Overtime

DHS CBP AI and APHIS PPQ will manage their internal overtime systems to be self-sufficient and will not request assistance from each other to cover any overtime assignments.

ADDENDUM TO
APPENDIX 2 & 3
MOA BETWEEN CBP AND USDA

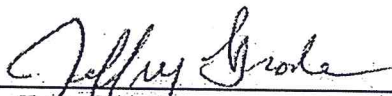
USDA APHIS Plant Protection and Quarantine agreed to assume two additional responsibilities.

Section entitled: "International Aircraft Inspection (passenger, cargo, private)
add:


- Calibrate steam sterilizers used for the destruction of foreign origin garbage from aircraft and agriculture articles seized from passengers
- Initiate and maintain compliance agreements for facilities involved only in the disposal and destruction of foreign garbage (landfills and steam sterilizers) *incinerators AG*

Effective Date and Changes to this Addendum

This document will serve as an addendum to the Appendix to Articles 2 & 3 of the Memorandum of Agreement between the Department of Homeland Security (DHS) and the Department of Agriculture (USDA) dated February 28, 2003, 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.


Jeffrey Grode
Executive Director, Agriculture Programs and Liaison
Office of Field Operations
Customs and Border Protection

09/07/06
Date


Alan Green
Executive Director, Plant Health Programs
Plant Protection and Quarantine
Animal and Plant Health Inspection Service

09/08/06
Date