

**TESTIMONY OF MR. KIM MANN
ON BEHALF OF
THE NATIONAL ASSOCIATION OF AGRICULTURE EMPLOYEES
BEFORE THE SUBCOMMITTEE ON OVERSIGHT OF
GOVERNMENT MANAGEMENT, FEDERAL WORKFORCE AND
THE DISTRICT OF COLUMBIA OF THE U.S. SENATE COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENT AFFAIRS**

The National Association of Agriculture Employees (“NAAE”) appreciates the opportunity to testify before this Subcommittee regarding the new personnel system regulations (“HR Regs”) of the U.S. Department of Homeland Security (“DHS”), published in the *Federal Register* of February 1, 2005.

NAAE is a federal union that, until March 2003, represented approximately 3,000 Plant Protection and Quarantine (“PPQ”) Officers and Technicians within the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (“APHIS”). Roughly 2,100 of these PPQ Officers and Technicians performed what is referred to as Agriculture Quarantine Inspection (“AQI”) functions. They inspected foreign-arriving passengers, baggage, and cargo, denying entry to, destroying, or treating potentially harmful or prohibited animals, fruits, vegetables, and plant materials. Their mission was to safeguard American agriculture against plant and animal pests and diseases entering the United States on foreign-arriving vessels, airplanes, trains, and automobiles.

When DHS came into existence two years ago, Congress in the Homeland Security Act of 2002 transferred most but not all of the APHIS AQI functions and that part of the APHIS mission to DHS, assigning these functions to the newly formed DHS component, U.S. Customs and Border Protection (“CBP”). Along with the transfer of functions, Congress transferred the approximately 2,100 positions previously held by the 2,100 PPQ Officers and Technicians who

were performing the AQI functions within APHIS. These 2,100 PPQ Officers and Technicians also were, in effect, forcibly “transferred” to DHS/CBP and relegated to carrying out their old AQI duties under the DHS/CBP mantle. NAAE continued and continues today to represent these “Legacy Agriculture” employees, denominated “CBP Agriculture Specialists” and “CBP Agriculture Technicians” within the CBP nomenclature.

NAAE’s testimony today is limited to informing the Subcommittee about the impact of DHS’s HR Regs upon CBP’s Legacy Agriculture employees, a unique, important, but largely ignored step-child of the multi-agency amalgamation that gave birth to DHS. NAAE is, by far, the smallest of the three principal unions representing bargaining unit employees within CBP. NAAE, along with AFGE and NTEU, participated on or in the DHS/OPM Design Team, “town hall” meetings, focus groups, Senior Review Committee, and “Meet-and-Confer” sessions with DHS and CBP management, culminating in the HR Regs. NAAE leaves to AFGE and NTEU the task of addressing in their testimony the details of the common concerns of the major unions representing CBP employees about the new DHS personnel system. NAAE adopts by reference and fully endorses their remarks before this Committee.

The CBP Legacy Agriculture employees who NAAE represents are unique. They have distinct mission obligations and concerns and unique employee needs that must be addressed in order for them to work as productive professionals tasked with safeguarding American agriculture. Section 101(b)(1) of the Homeland Security Act states that,

The primary mission of the Department is to . . . (D) carry out all functions of entities transferred to the Department [and] . . . (E) ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress.

Despite the clear, unequivocal Congressional mandate, CBP has consciously ignored this dual “primary” mission, and the DHS HR Regs ensure it will be able to continue to do so with impunity.

The Agriculture Specialists and Technicians who moved over to CBP from APHIS have sole responsibility for performing the AQI functions transferred from USDA/APHIS. No one else in CBP or DHS has the training, experience, or expertise necessary to protect American agriculture. That is their mission. Unlike their CBP co-workers, the CBP Agriculture Specialists are professional employees: they are college graduates with degrees in the biological sciences, many earning graduate degrees; they bring to CBP many years of on-the-job experience in detecting harmful pests and diseases and thwarting infestations that could severely harm American agriculture and our food supply; and they work independently, routinely making regulatory decisions necessary to carry out their unique mission without express supervisory knowledge or approval. CBP inherited from USDA/APHIS a mission-driven cadre of dedicated, highly educated, self-motivated employees.

Regrettably, under the auspices of CBP, primarily former U.S. Customs managers who now dominate and control CBP, the mission of Legacy Agriculture employees, safeguarding American agriculture, has been given short shrift. It has become only a secondary concern at best in many ports of entry, and of zero importance in others. Agriculture Specialists’ principal tool, agriculture risk analysis, on which the success of the AQI mission depends has been shelved in favor of a U.S. Customs computer-driven model focusing on detecting drug-smugglers and potential terrorists. CBP Agriculture Specialists have been deprived of their independent decision-making powers. High-risk cargo today routinely enters the U.S. without inspection under the supervision

and tacit approval of CBP managers (former U.S. Customs supervisors and managers). When such serious mission “omissions” are brought to the attention of CBP management, the Legacy Agriculture employees are told the CBP anti-terrorism mission, not the agriculture mission, is paramount, and the limited CBP resources are not sufficient to carry out full “agriculture” inspections, particularly on overtime.

Faced with overt neglect of the CBP mission to protect American agriculture, the morale of Legacy Agriculture employees has rapidly deteriorated. Exacerbating this deterioration has been the loss of employee “rights” and the respect formerly accorded these valued professional employees. CBP routinely announces changes in conditions of their employment on very short notice and then implements without according NAAE the opportunity to negotiate, not even the procedures for implementation, a clear violation of the collective bargaining agreement to which CBP is legally bound. Even NAAE’s contract-based demands to negotiate post-implementation are routinely ignored. CBP management simply does not care about the legal consequences, knowing it can always claim “national security” entitling the Agency to a free “get-out-of-jail” card. They thumb their collective noses at the Legacy Agriculture employees, their union, NAAE, and even the Federal Labor Relations Authority when it takes steps to reign in the contract-flaunting actions of CBP through filing of unfair labor practice charges.

Agriculture Specialists and, to some extent, Agriculture Technicians can not take it any longer. They have been leaving the CBP in droves, and CBP management has not filled and probably can not fill these rapidly increasing vacancies. Of the approximately 2,100 AQI positions transferred to CBP, today only about 1,300 Legacy Agriculture positions are filled. Hundreds and hundreds of the best and brightest have simply quit and taken other jobs,

many moving back to USDA/APHIS, where the remaining agriculture mission is still alive and well, as jobs open up in their former agency.

NAAE understands that CBP has not attempted to fill these growing vacancies in Agriculture Specialist positions, at least not until very recently, leaving the Agency seriously under-staffed. CBP has declined to release exact staffing shortage figures, but NAAE believes the number of vacancies in Agriculture Specialist/Technician staffing is now well in excess of 400 agencywide and increasing daily.^{1/} Recent Agency efforts to fill these vacancies have been largely unsuccessful. For example, CBP announced 35 Agriculture positions ostensibly intended to fill some vacancies at JFK International Airport in New York, but could find only four qualified applicants willing to accept the job. NAAE believes the worsening morale problems within the Legacy Agriculture rank-and-file and the unprofessional treatment to which this distinct segment of CBP has been subjected have become well known inside and outside the Agency and have helped create this barrier to recruitment. NAAE is convinced the new DHS HR Regs, unless substantially revised, will prove to be a major additional disincentive for highly educated professionals with degrees in the sciences to apply for Agriculture Specialist positions within CBP.

Because of the Agency's total disregard for the terms and conditions of the extant collective bargaining agreement with NAAE, CBP, including its cadre of Legacy Agriculture employees, has been transformed into a paramilitary organization where employees rights are routinely trampled on and selectively

^{1/} Ports throughout the country, large and small, have experienced major staffing shortages. By way of example, at Los Angeles, of the 95 PPQ Officer positions at LAX transferred to CBP, 14 are now unfilled. (There would have been 18 vacancies except that four Agriculture Technician converted to Agriculture Specialists.) At Seattle airport, of the 15 PPQ Officer and nine Technician positions transferred, only six Agriculture Specialist and two Technician positions are now filled. At the Tacoma seaport, the same pattern: six Officer positions transferred, but only three are now occupied.

ignored and where dissent and even constructive criticism are not tolerated. An effective science-based pest exclusion program depends upon the free flow of accurate, timely feedback from the field, detailing findings, results, and conditions. Perpetuating an atmosphere of fear induced silence among intimidated Legacy Agriculture employees, afraid to speak out, is a recipe for a pest-outbreak disaster.

The HR Regs codify and strengthen the paramilitary structure of CBP. The removal of any legal authority for MSPB or any independent third-party to mitigate unwarranted penalties, including suspensions and removals, leaves Agriculture Specialists and Technicians exposed to arbitrary and excessive discipline. They will be at the mercy of their CBP managers (formerly U.S. Customs supervisors) who know little or nothing about the jobs these employees perform. Ignorance, personal bias, cronyism, and discrimination at the management level will be left unchecked and thus indirectly fostered.

Negotiations at the national level will be available only to address the most benign matters. There will be none at the local level where Agriculture Specialists' unique issues have, in the past, been addressed through local negotiations. Fair and equitable distribution of overtime assignments for qualified employees, procedures for selection to lengthy temporary duty assignments away from home that take into account considerations of family and health, and shift rotations structured to meet the unique family obligations and other personal needs of each individual without jeopardizing the Agency's mission are just examples of the many operational issues NAAE has successfully negotiated at the local level with APHIS on behalf of its PPQ Officer bargaining unit, now Agriculture Specialists and Technicians. The HR Regs preclude these negotiations at any level. Decisions in these areas will be left to the unilateral actions of CBP managers who neither understand the Agriculture

mission nor care about it and who have no incentive or ability to learn about it. The Legacy Agriculture employee is shut out.

Present and future Agriculture Specialists expect to be highly compensated for their special expertise and training when they perform outstanding work. The ability to attract and retain qualified, motivated Agriculture Specialists is dependent upon this “carrot.” The HR Regs, as amorphous as they are in sketching out the pay-for-performance component of the new system, provide no assurances the top performers will be appropriately rewarded. The pool of money available to pay top performers will be totally dependent upon two factors bearing no relationship to the marketplace -- the Congressional budget process and the decisions of a management dominated DHS Compensation Committee. Moreover, at the end of the day, the more top performers there are in the employee pool, the smaller each employee’s share of the performance-based pool of money will be. This counter-intuitive byproduct dooms the system to become the very antithesis of “teamwork” oriented, one principal objective of the new HR Regs.

The adage, the “devil is in the detail,” aptly fits the HR Regs’ pay-for-performance scheme. The HR Regs offer only a faint outline of how the new pay system will work. The heart and soul of the system does not yet exist and has been left to an outside consulting firm and the whim of DHS management to create. It will emerge through unchallengeable “DHS Directives” in which employees will have little or no meaningful say. For Agriculture Specialists and Technicians, it will be 2008 before they will know whether the new pay system is fair and how it impacts them. Why would any skilled, competent scientist in the private sector want to risk employment with CBP under such a speculative pay system, one offering no guarantee of meaningful compensation for excellent performance?

The convergence of these interrelated factors -- conscious disregard of CBP's agriculture mission, chronic mounting shortages in Agriculture Specialist staffing, declining morale of Legacy Agriculture employees, and the imminent implementation of the ill-conceived DHS Regs -- will lock in place a readily accessible pathway for serious infestations to enter the United States potentially crippling American agriculture. During the past year under the aegis of CBP, CBP and USDA/APHIS have had to institute four major national emergency recalls of foreign imported commodities subsequently found infested with agriculture-threatening disease or pests not detected upon entry into the country: (1) November 2004, a nationwide recall of holiday pine cones from India found to contain long-horned beetles (*Cerambycidae*), a serious threat to our forests and urban trees; (2) December 2004, a nationwide recall of Ya pears from China found to contain *Alternaria* spp. Disease, a serious threat to our domestic fruit tree industry; (3) June 2004, a nationwide recall of "rustic twig towers," trellises made of natural branches, from China found to contain two *Cerambycid* species of exotic long-horned beetle, a serious threat to hardwood and softwood trees; and (4) November 2004, a nationwide recall of artificial Christmas trees with natural wood trunks from China also found to contain long-horned beetle, feared tree-eating pests.

Four nationwide recalls within one six-month period is unprecedented and a cause for concern if Congress continues to place a priority upon protecting American agriculture.^{2/} NAAE Agriculture Specialists and PPQ Officers strongly suspect most of these pests were able to go undetected at entry because CBP currently relies upon automatic ship-manifest reviews by computers rather than visual reviews of the manifests by trained Agriculture

^{2/} In addition to the four major nationwide infestation-dictated recalls, CBP and APHIS had to institute several smaller, targeted recalls in 2004, such as of Manzano peppers and guavas from Mexico.

Specialists as in the past, followed by visual inspection of the suspect commodity. Given these demonstrated failings and the likely chilling effect of the new HR Regs upon communications from rank-and-file Legacy Agriculture employees, it is far more likely this country will experience a serious outbreak of disease and massive infestation resulting from undetected foreign pests and disease entering the United States and establishing themselves within our agriculture environment than it is we will experience another “9/11” style terrorist attack.

These proven “holes” in the country’s defenses against potential devastation of our agriculture are not going to be easily fixed under the new DHS HR Regs and may, in fact, widen. Chronic staffing shortages will continue unabated under a personnel system that promotes a paramilitary environment, that insulates management from accountability when dealing with professional employees, and holds out only an elusive hope, a leap of faith, of appropriate compensation for top performance. The architects of the HR Regs will undoubtedly counter that the pay-for-performance scheme contemplates paying retention bonuses for hard-to-fill positions such as Agriculture Specialists. The false premise of this response is that CBP management will expend such funds, if available, to fill these positions. NAAE seriously questions whether CBP has any such assumed intention if its past conduct is a reliable predictor of its future actions.

In the face of a growing number of unfilled positions within CBP for Agriculture Specialists and Technicians, NAAE queried USDA/APHIS as to the suspected reason for or source of this short-staffing. APHIS continues to fund all AQI positions at CBP through collection of AQI user fees, transferring its fee collections to DHS/CBP to cover virtually all costs of carrying out the AQI functions, including the salaries of all employees performing AQI duties.

APHIS advises that its transferred user fees are and have been sufficient for CBP to fully fund the 2,100+ APHIS-transferred positions. Clearly, then, CBP has elected not to fill a significant percentage of these CBP "Agriculture" vacant positions, choosing instead to spend these available user-fee funds to finance other Agency activities.

NAAE calls upon Congress to restore the protection of American agriculture to the forefront of the "primary mission" DHS is expected to accomplish and to do whatever is necessary to recruit, train, deploy, and retain the full complement of Agriculture Specialists and Technicians necessary to succeed. Without a significant, selective revision of DHS's February 1, 2005 HR Regs, a high vacancy level coupled with an even higher departure rate will continue to plague CBP and prevent DHS from succeeding in safeguarding American agriculture.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
AGRICULTURE EMPLOYEES**

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