

# Report for Congress

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## **Homeland Security Department: U.S. Department of Agriculture Issues**

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# Homeland Security Department: U.S. Department of Agriculture Issues

## Summary

On November 25, 2002, President Bush signed into law a bill establishing a U.S. Department of Homeland Security (DHS), which officially will come into being on January 23, 2003. The President originally proposed (in June 2002) that all of the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) – including the Plum Island Foreign Animal Disease Diagnostics Laboratory – be transferred into the new Department's Office of Border and Transportation Security to support its counter-terrorism mission.

APHIS is responsible for protecting U.S. agriculture from foreign pests and diseases and posts inspectors at about 125 ports of entry around the country. Border inspection activities account for an estimated 60% of APHIS's staff and 30% of its budget. The remaining resources are devoted to a wide range of domestic activities, e.g., coordinating animal disease and plant pest control and eradication programs in the states, providing technical trade dispute advice and resolution, and enforcing animal welfare laws, to name just a few.

The House Agriculture Committee recommended changes to the President's proposal (H.Res. 449) that reflected the concerns of a wide spectrum of the U.S. agriculture community, which feared that transferring all of APHIS out of USDA would seriously hamper the agency's considerable domestic, non-border activities. The House Select Committee on Homeland Security incorporated these changes into an amended version of the President's proposal, which it reported out and the full House passed in July 2002 (H.R. 5005). The amended proposal specified that only the APHIS border inspection employees would be transferred to DHS, and that the USDA Secretary would retain considerable authority over their activities and funding. The bill also included the transfer of the Plum Island lab to DHS. The Senate homeland security bill, S. 2452, originally would have transferred border inspection *and* quarantine functions, authorities, employees, and assets to the new department, but not the Plum Island facility. However, the Senate acceded to the House language on the APHIS provisions before the full Senate passed its version of H.R. 5005 on November 19.

Section 421 of P.L. 107-296 authorizes the transfer of no more than 3,200 APHIS border inspection personnel to DHS, along with the Plum Island lab. Plant and animal quarantine functions, as well as all other APHIS program activities, are to remain in USDA. Some differences of opinion still exist concerning the Plum Island lab transfer. Supporters maintain that the new department needs the lab's foreign animal disease diagnostic capabilities to detect potential bioterrorism, while opponents argue that the lab's research on behalf of the U.S. livestock sector may be hampered by its top-secret designation.

This report covers the background and policy issues related to the Act establishing the DHS and its implementation and will be updated as necessary.

## **Contents**

Background .....	1
Recent USDA and Congressional Actions Related to APHIS	
Mission and Security .....	3
Discussion .....	5
Border Protection, Homeland Security, and APHIS .....	5
Interest Group Positions .....	5

## **List of Tables**

APHIS Program Areas, Staff Years, and FY2001 Funding .....	2
------------------------------------------------------------	---

# Homeland Security Department: U.S. Department of Agriculture Issues

## Background

As part of its initial proposal for a Cabinet-level Department of Homeland Security (DHS), the Bush Administration recommended that all federal agencies having inspection or security responsibilities at U.S. borders and ports of entry be unified into the Office of Border and Transportation Security within the new department. The border security division would be comprised of the U.S. Customs Service (from the Treasury Department), the Immigration and Naturalization Service and Border Patrol (from the Justice Department), the U.S. Coast Guard and the Transportation Security Administration (from the Transportation Department), the Federal Protective Service (from the General Services Administration), and the Animal and Plant Health Inspection Service (from the U.S. Department of Agriculture). Legislation introduced in both chambers on May 2, 2002, predating the President's proposal, would have transferred a somewhat different list of border security agencies to a new homeland security department, and the Senate measure, S. 2452, would have transferred only APHIS's user-fee supported border inspection activities (Agricultural Quarantine Inspection, or AQI), not the entire agency.

In FY2001 approximately \$355.4 million (in appropriations and user fees) and 3,500 staff supported APHIS AQI activities at U.S. borders and ports of entry. This represents about 30% of the agency's total budget for that year (\$1.168 billion, including user fees and transfers from the Commodity Credit Corporation (CCC) for funding of emergency pest and disease management programs), and 60% of the agency's staff. The majority of the agency's funding was used by the other 40% of the staff to conduct APHIS's non-border programs. The following table shows the agency's staffing and funding for its border inspection activities (under the Pest and Disease Exclusion program area), and for its responsibilities under four other program areas.

## APHIS Program Areas, Staff Years, and FY2001 Funding

Program Area	Staff Years	FY2001 Funding
<b>Pest and Disease Exclusion</b>		
<i>(In \$ million)</i>		
Inspection of passengers and cargo at ports, airports, and borders (AQI)	2,943	48.1 appropriated + 222.7 from user fees
Overseas monitoring of foreign animal diseases	9	4.2
Border protection through pest control programs in Mexico & Central America <sup>1</sup>	415	63.3
Trade regulation/import-export inspection	140	7.8
SPS <sup>2</sup> dispute resolution	37	8.9
	<u>3,544</u>	<u>355.4</u>
<b>Plant and Animal Health Monitoring</b>		
Domestic surveillance, detection and prevention of domestic and foreign plant and animal diseases	844	90.4
Emergency management – overseas and domestic animal disease prevention, preparedness and response	15	5.6
	<u>859</u>	<u>96.0</u>
<b>Pest and Disease Management</b>		
Cooperative federal-state detection and control programs for specified harmful pests and diseases <sup>3</sup>	389	160.1
Predator and wildlife damage control and methods development	498	51.9
	<u>887</u>	<u>212.0</u>
<b>Animal Care</b>		
Regulation of certain facilities that handle research and exhibition animals and pets; protection of show horses	<b>147</b>	<b>13.7</b>
<b>Scientific and Technical Services</b>		
Information technology infrastructure	n/a	3.0
Regulation of releases of genetically engineered organisms into the environment	115	11.3
Methods development for controlling problem plants and plant pests	79	6.7
Regulation and licensing of animal drugs	152	11.8

Program Area	Staff Years	FY2001 Funding
Foreign and domestic animal disease diagnostic testing; and diagnostic assistance to U.S. livestock and poultry industries at the Plum Island and Ames laboratories	187 <hr/> 533	19.2 <hr/> 51.9
<b>Contingency Funds for response to plant and animal pest and disease outbreaks</b>	17	2.9 appropriated + 335.0 transferred from Commodity Credit Corporation (CCC) <hr/> 336.0

**Source:** FY2003 USDA Budget Explanatory Notes.

- <sup>1</sup> This includes cattle ticks, fruit flies, screwworm, and tropical bont tick.
- <sup>2</sup> Sanitary and phytosanitary disputes. These involve countries using concerns about plant pests or animal diseases as cause to bar imports from another country.
- <sup>3</sup> This includes aquaculture protection, biocontrol, boll weevil, brucellosis, chronic wasting disease, emerging plant pests, golden nematode, grasshopper, gypsy moth, fire ant, Johne's disease, noxious weeds, pink bollworm, plum pox, pseudorabies, scrapie, tuberculosis, and witchweed.

## Recent USDA and Congressional Actions Related to APHIS Mission and Security

By the end of 2001, in response to heightened security concerns after September 11, 2001, APHIS had increased inspection staff at U.S. ports of entry by 153 (toward a goal of 250 new inspectors) and added 20 veterinarians to imported and domestic disease surveillance and control programs. In addition, according to budget documents, the agency hired 46 smuggling interdiction and trade compliance officers and 10 investigative and enforcement officers in 2001. These officers conduct investigatory inspections to detect the various ways that prohibited items may be entering the country, and work with other federal agencies, state departments of agriculture, and state and local police to provide coordinated enforcement and prepare certain cases for criminal investigation.

In January 2002, APHIS received an additional \$119 million under the supplemental defense appropriation (P.L. 107-117), of which \$105 million is to enhance pest and disease exclusion (at the borders) and detection and monitoring (domestically and overseas). The Secretary's office announced on May 30, 2002, that \$43 million of that money was being released in grants to states, and through cooperative agreements with states, to implement local emergency preparedness plans. P.L. 107-117 also provided \$14 million for increased security measures at the APHIS National Veterinary Services Lab in Ames, Iowa. In addition, through the Agricultural Research Service (ARS), USDA's in-house research agency, which shares animal disease research facilities with APHIS, the Ames lab received \$50 million for construction of a bio-containment facility to secure dangerous pathogens, and \$23 million for security upgrades at the Plum Island Animal Disease Diagnostics Lab.

The Administration's FY2003 budget request proposed a \$767.1 million appropriation for APHIS. Included in this was an additional \$4.3 million (\$3 million is appropriated for FY2002) for APHIS to further develop and maintain a computer link with the U.S. Customs Service, with which it shares initial import inspection responsibilities (Customs does not release APHIS-regulated plant or animal imports until the agency has cleared them), and with federal food safety agencies. Both the House and Senate Appropriations Committees' respective FY2003 funding bills (H.R. 5263, S. 2801) would provide roughly \$749 million for APHIS, an amount \$2.4 million above FY2002, but \$26.2 million below the President's request. Most of this difference can be attributed to the Administration's request for a one-time \$26.7 million shift in funds to cover GSA rental costs; the Committees' proposals do not include this. They do include an increase in funds for stepped-up border inspections and for animal health monitoring and surveillance activities. APHIS has continued to operate on an FY2002 budget level provided by the series of continuing resolutions that Congress has passed since October 1, 2002; the House and Senate have stated their intent to pass FY2003 funding bills early in January 2003.

The FY2002 emergency supplemental appropriations act for antiterrorism activities (P.L. 107-206) appropriated an additional \$18 million for the Office of the Secretary to transfer to APHIS and three other USDA agencies for counter-terrorism activities, and an additional \$33 million for APHIS to use for: (1) cooperative agreements with states to prevent a number of 'mad cow'-like diseases (\$15 million); (2) emergency preparedness (\$10 million); (3) physical and operational security (\$4 million); and (4) equipment needs and smuggling interdiction (\$4 million). However, the Administration declared that this money would become available only upon an emergency request from the President, which has not been made. However, an emergency appropriation of \$25 million for upgrading the APHIS/ARS animal disease research lab in Ames, Iowa, is being provided, since this provision is not contingent upon an emergency request from the President.

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (P.L. 107-188, H.R. 3448/S. 1765), which the President signed on June 12, 2002, authorized appropriations of \$30 million in FY2002 and such sums as necessary in future years for: (1) increasing and improving APHIS's border inspection capacity; (2) increasing cooperation with state animal and human health agencies; and (3) fully implementing the computerized, integrated tracking and record-keeping system. The Act also authorized FY2002 appropriations for further upgrading of the Plum Island (\$100 million) and Ames (\$80 million) animal health research laboratories, and such sums as necessary for that purpose in subsequent years. Finally, the Act authorized \$190 million in FY2002 appropriations, and such sums as necessary in subsequent years, for APHIS, ARS, and university research on enhancing U.S. agricultural biosecurity and food safety.<sup>1</sup> Providing additional funds

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<sup>1</sup>Although APHIS border inspection is intended to protect U.S. agriculture overall from incoming foreign plant and animal pests and diseases, it also has a responsibility in protecting the safety of the Nation's food supply – e.g., preventing meat imports from countries where animal diseases of threat to human health, such as mad cow disease, occur. Within USDA, APHIS and FSIS currently coordinate their food-related biosecurity preparedness and response activities under the aegis of the Protection of the Food Supply (continued...)

in the FY2003 USDA appropriations bill for APHIS counter-terrorism activities under these authorities will be at the discretion of the House and Senate appropriators when the 108<sup>th</sup> Congress convenes.

## Discussion

**Border Protection, Homeland Security, and APHIS.** The Bush Administration stated initially that its intent in consolidating APHIS's inspection force with that of other agencies having border protection responsibilities was to create an unified, expert, interdisciplinary inspection presence along all of the Nation's land, air, and sea borders. Supporters of the initial proposal maintained that although APHIS has an excellent record at keeping out known animal and plant threats, the agency is not as well prepared to counter terrorists' attempts to breach border security or to thwart an internal attack involving harmful pests or diseases of domestic origin. Thus, supporters said, not only would U.S. border protection benefit from the presence of APHIS inspectors, but U.S. agriculture also would benefit from having APHIS's expertise with plant pests and animal diseases as part of a more comprehensive inspection and surveillance network.

Opponents of the original proposal argued that, in light of the administrative and legislative steps that have already been taken to strengthen APHIS programs and information technology, leaving the agency in place – or perhaps leaving its non-border functions in place – would best serve both border protection and homeland security missions. Improvement in both missions arguably could be accomplished by building upon the current information technology infrastructure to create a seamless computerized network that would allow consistent tracking of imports and instant alert capability among the several relevant agencies. APHIS's role as the first point of inspection for FSIS- and FDA-regulated food imports, and how that role might change now that the agency's border inspection function is no longer part of the food and agriculture mission of USDA, remains an issue of interest as P.L. 107-296 begins to be implemented. Some observers have expressed concern that the security of both agriculture and the food supply could be weakened during the transition of APHIS personnel, equipment, operating procedures, and information channels to a new department.

**Interest Group Positions.** The National Association of State Departments of Agriculture (NASDA) went on record in opposition to the original DHS proposal in a letter delivered to the White House and House and Senate Agriculture Committees on June 7, 2002. NASDA officials voiced concern that agricultural health protection could get low priority in a department whose mission is anti-

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<sup>1</sup>(...continued)

and Agriculture Production subcouncil of the USDA Homeland Security Council. Although federal food safety agencies are not included in the President's reorganization proposal, Homeland Security Director Tom Ridge testified on June 20, 2002, that consolidating these agencies into a single unit may be proposed later on. For further discussion of this policy issue, see CRS Issue Brief IB10082, *Meat and Poultry Inspection Issues in the 107<sup>th</sup> Congress*, or CRS Issue Brief IB10099, *Food Safety and Protection Issues in the 107<sup>th</sup> Congress*.



terrorism. The June 7 edition of the Webster Agricultural Letter, a Washington-based policy newsletter, stated, “While most agricultural interests...will support the idea of improving government’s organization to deter terrorists, they also should argue that moving or splitting up APHIS would weaken its ability to protect agriculture from disease and pest threats. Much of what APHIS does has no ‘homeland security’ function anyway....” On June 20, 2002, more than 40 U.S. farm groups sent a letter to the White House and to Congress expressing specific concerns about how APHIS’s non-border functions would be handled were they part of a new department of homeland security. The same day, the Humane Society of the United States issued a statement saying that although it supported the idea of a consolidated homeland security department, “We believe...that transferring animal welfare programs to the Department is an obvious misfit and would relegate important programs to the margins of a department focused on matters entirely unrelated to the well-being of animals.”

**Priority Concerns.** Many farm organizations expressed concern that APHIS’s mission to protect agriculture could lose priority in a department whose first mission was security. The President’s initial proposal would have transferred to DHS the agency’s entire foreign animal disease (FAD) prevention program, which has relied on research from the Plum Island Foreign Animal Disease Diagnostics Laboratory to keep the United States free of foot-and-mouth disease (FMD) and bovine spongiform encephalopathy (BSE, or mad cow disease). Instead of transferring the whole FAD program, the Homeland Security Act of 2002 transfers only the Plum Island facility into the Science and Technology mission area of the new Department. The Act stipulates that the Secretaries of DHS and USDA are to make an agreement under which USDA scientists (of USDA’s Agricultural Research Service) and APHIS scientists at Plum Island will be able to continue their ongoing research investigations – e.g. on vaccines against foreign animal diseases – for other APHIS programs. The Secretary of Agriculture will continue to have jurisdiction over that research agenda.

Some agricultural scientists and U.S. livestock industry groups oppose the Plum Island transfer. They fear that the lab’s likely designation as a top-secret facility will hamper the free flow of information necessary for research progress and slow the availability of new technologies to the livestock sector. On the other hand, the science community and other observers have noted that renovation of the lab’s physical structure and security has been slow, and it could be argued that locating the lab in an agency whose overall mission is security could greatly enhance progress.

In another priority area, agricultural trade groups were concerned that APHIS border inspection, which facilitates the movement of \$93.5 billion annually in agricultural imports and exports, would take on a more rigid security function if it were moved out of USDA, possibly disrupting trade. Trade groups also noted that APHIS negotiations with trading partners on sanitary and phytosanitary (SPS) concerns are important to the success of USDA’s export development programs. Under the final Act, USDA/APHIS retains the SPS dispute resolution function. It remains to be seen whether DHS jurisdiction over APHIS border inspection will have any effects on the speed of commodity movement at ports-of-entry.

**Funding Concerns.** Agriculture groups were concerned earlier over which department would have jurisdiction over funding for the transferred inspection function and over the availability of Commodity Credit Corporation (CCC) funds to support APHIS's emergency pest management programs. These issues were addressed in the House-passed H.R. 5005, which specified that USDA was to retain control over the user fee account and periodically transfer funds to the Department of Homeland Security to cover only the costs of the border inspection duties incurred under the DHS mission. The USDA Secretary would retain discretion over the use of the remaining funds in the account. The Senate incorporated this language into its version of the bill before passage, and no further changes were made before enactment. During the annual appropriations process, Congress provides funds for APHIS to hire additional inspectors, train more dogs for cargo inspection (the "beagle brigade"), and purchase more X-ray machines. The authorization for funds to be appropriated for these purposes is contained in the Animal Health Protection Act of 2002 (subtitle E of title X of P.L. 107-171; 7 U.S.C. 8301 et seq.), and these activities will remain under USDA jurisdiction.

Since P.L. 107-296 provides for all of APHIS's non-border activities to remain in USDA, the question of the availability of CCC funds for emergency domestic activities is no longer an issue. Since 1948, the Secretary has had the authority (now extended under 7 U.S.C. 7772 and Section 10417 of the 2002 farm act, P.L. 107-171) to make transfers to APHIS of CCC funds for emergency response to plant and animal health threats (such as Karnal bunt of wheat, citrus canker, and avian influenza). Use of this authority has increased significantly in recent years. CCC transfers averaged \$22 million annually in the period from 1990 to 1998, and addressed one or two emergencies per year. In FY2001, the Secretary transferred \$335 million to respond to more than a dozen emergencies.