

**Appendix for Memorandum of Agreement (MOA) between the US Department of  
Homeland Security (DHS) and the US Department of Agriculture (USDA)  
Article 7(b), (d) & (e) Coordination on Regulation, Policies and Procedures**

**I. Purpose**

This Appendix provides guidance to establish and enhance coordination of policies and procedures between USDA Animal and Plant Health Inspection Service (APHIS) and DHS Customs and Border Protection (CBP) as specified in Article 7 paragraphs (b), (d) & (e) of the Memorandum of Agreement (MOA). The parties agree that the purpose of coordination in developing policies and procedures under Article 7 is to ensure that CBP has timely notice and opportunity to comment on operational aspects of any APHIS plans to change policies and procedures related to agricultural inspection functions transferred to CBP, and that APHIS has timely notice and opportunity to comment on any significant operational changes planned by CBP that may impact the effective implementation of policies or procedures to carry out the agricultural 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. Paragraph (d)(1) of this section of the Act states that the authority transferred to DHS shall be exercised in accordance with regulations, policies, and procedures issued by the Secretary of Agriculture. 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. Paragraph (d)(3) states that the Secretary of DHS, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of DHS to carry out transferred functions.

Memorandum of Agreement (MOA). The Secretary of USDA and Secretary of DHS signed the MOA required under Section 421(e) of the Act, on February 28, 2003. Article 7 of the MOA pertains to agricultural regulations, policies, and procedures. Procedures for coordinating on regulations are addressed in a separate Appendix 7 (a).

Paragraph (b) of Article 7 of the MOA provides:

USDA shall provide DHS with copies of all relevant agricultural regulations, policies, and procedures; and train DHS employees as necessary in their application.

Paragraph (d) of Article 7 of the MOA provides:

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.

Paragraph (e) of that Article states:

Whenever DHS issues such directives or guidelines as may be necessary to ensure the effective use of DHS personnel carrying out the agricultural functions transferred to DHS, it shall do so in consultation with USDA.

### **III. Definitions**

The following definitions are adopted for the purposes of this Appendix:

Agriculture Inspection Alert - A communication to personnel carrying out the agricultural inspection function for a policy or procedure based on new information for which immediate action must be taken to address an imminent risk or threat.

Policy - A defined course or method of action with prescribed goals and objectives to guide and determine present and future procedures or actions.

Procedure - A series of steps or broader actions prescribed to perform a task.

### **IV. Responsibilities**

#### **A. APHIS Responsibilities**

1. Cooperation in emerging issues and trends - When APHIS identifies emerging issues or trends that may require significant actions within the agricultural inspection function transferred to CBP, APHIS will bring those needs to the attention of the Executive Director for Agricultural Inspection Policy and Programs (AIPP), CBP. Both Agencies will then discuss program actions proposed for consideration prior to making specific plans to address the emerging issue or trend.

2. Coordination on routine policy changes. APHIS will initiate changes to current agricultural inspection policies, or the development of new agricultural inspection policies. APHIS will initiate contact early in the process of developing agricultural inspection policies by USDA. APHIS will clear policies with the USDA Office of General Counsel when there are potential issues of statutory authority or legal procedure. Final policy changes to current agricultural inspection policies will be provided to CBP. Likewise, CBP will consult with the Office of Chief Counsel concerning any legal issues relating to agricultural inspection policies.

If CBP determines that its policies and objectives as well as operations and resources are impacted by the final policy, it will return the policy to USDA with comments, and consultation will continue until a mutual agreement is reached. CBP will coordinate input from other offices within CBP, as necessary.

Plant Health Programs, PPQ, will ensure that policies are identified with unique numbers, and version control designations. Each policy statement will have a statement of policy objective or purpose, a description section (with appropriate subheadings), and a section that describes performance measures.

3. Agriculture Inspection Alerts. When new information becomes available that requires immediate action to address an imminent risk or threat, USDA will issue an Agriculture Inspection Alert that establishes a new policy or procedure for Agricultural Inspection. Agriculture Inspection Alerts will be first discussed with CBP AIPP and then sent to CBP AIPP electronically by USDA/APHIS/Quarantine Policy, Analysis and Support (QPAS) or USDA/APHIS/Veterinary Regulatory Services (VRS).

Agriculture Inspection Alerts will primarily focus on regulatory policy changes on imported commodities, and will fall into several categories:

- **“Alert: Immediate Action Required”**

These alerts convey policies or procedures that must be implemented immediately because of a significant increase in the commodity’s risk level.

Example: “Effective immediately, the importation of all Manzano peppers from Mexico is prohibited due to the high infestation rates of Mexican fruit fly.” Or, “Effective immediately, the importation of all meat products from ruminants from a certain country is prohibited because of an outbreak of BSE.”

- **“Alert: New Policy/Procedure or Change to Current Policy/Procedure**

The alerts are utilized when a new policy is developed or new procedures are devised that should be implemented immediately or in the near future.

Example: “Effective February 4, 2002, all shipments of green asparagus imported from Peru must be fumigated.”

4. Agricultural Request for Action. When new information becomes available to USDA from targeting systems or inspection findings, requiring that actions be taken to address imminent risk posed by incoming shipments, APHIS will issue a request for action to CBP AIPP. Agricultural requests for action will provide guidance to CBP Ports of Entry (POE) to focus their inspections and paperwork reviews on potentially high risk areas and provide feedback to the extent possible. Agriculture requests will be first drafted by USDA/APHIS/QPAS or USDA/APHIS/VRS. The draft will be sent to CBP AIPP who will put it in final format and will ensure this information is communicated to Port Directors, Office of Field Operations.

Requests for action can also be used to ensure clarity and consistency in enforcing an existing policy. They fall into several categories:

- **“Agricultural request for action: Be on the Look-Out”**

Notifies POE’s to be especially aware (1) of imminent risks, such as a prohibited commodity that is entering the US, either smuggled or mismanifested; or (2) when a commodity shows up for the first time at a port of entry. These bulletins are also used when a company, (importer or shipper) has been caught smuggling or mismanifesting.

Example: “Work units should be on the look out for shipments of mixed foodstuffs imported by ABC Trading Company. This company has been importing dried citrus peel.”

- **“Agricultural request for action: Targeted Cargo Shipments to be Inspected”**

Notifies specific ports to target specific commodities because of a history of remedial actions required on previous shipments. These bulletins describe the shipments targeted for inspection, including a Bill Number, Container Number, or both, along with the reason that the action was undertaken. These requests for action are specific to listed shipments and are to be terminated once inspections have been made. This type of request does not reflect any permanent changes in inspection policy.

Example: “The port of San Juan has issued an Emergency Action Notification (EAN) on a shipment of Italian tile infested with a frequently intercepted actionable snail. A thirty-day query of the supplier in the Automated Targeting System disclosed that similar additional shipments are arriving at several ports (list would be provided). The affected ports would be advised to hold and inspect these shipments.”

- **“Agricultural request for action: Policy/Procedure Clarification”**

These requests will be distributed when policy or procedures need clarification or are not being interpreted uniformly.

Example: “This is a reminder that agricultural inspectors must fill out an (EAN), form PPQ 523, a violation form PPQ 518, and make an electronic entry in the EAN Database to process an agricultural cargo violation.”

5. **Establishing Agricultural Inspection Procedures and Communicating Procedures through Manuals Development and Deployment.** Once USDA approves the final version, a copy of the draft manual will be provided to CBP AIPP for review and comment. CBP AIPP will provide comments within a time period commensurate with the complexity of the procedures.

The policy will then be provided to the Manuals Unit to be included as procedure in the appropriate manual. The Manuals Unit will update the on-line manual and transmit it to Executive Director, AIPP. APHIS will continue to elicit feedback from agricultural inspection officers on language used in operational manuals and for developing and revising training programs.

### CBP Responsibilities

1. Coordination on routine policy changes originating in APHIS. CBP AIPP staff will serve as the point of contact for communication with APHIS/PPQ/PHP/QPAS regarding related to the entry of plants or plant products, and APHIS/PPQ/PHP/VRS on issues regarding agriculture inspection policies related to the entry of animal products. Staffs from both agencies will initiate contact early in the process of developing agricultural inspection policies. Complex policy changes proposed by APHIS may require wider distribution in CBP and a longer comment period.

The Executive Director, AIPP, will receive the second (if revised) draft of the policy from APHIS if it has been revised, in electronic format, and set a due date in accordance with the complexity of the draft policy or procedure for comments.

The Executive Director, AIPP, will receive final policy statements for implementation from the APHIS/PPQ liaison. Policy statements will be provided to CBP personnel at all appropriate ports.

2. CBP communication of Agriculture Inspection Alerts: CBP will ensure Agriculture Inspection Alerts and Agriculture Requests for Action are communicated in a timely fashion to all appropriate ports and employees.

3. CBP consultation with APHIS in relation to DHS Directives and Guidelines  
Consistent with Section 421(d)(3) of the Act, the Executive Director, AIPP, or the CBP liaison to APHIS will consult with the Deputy Administrator or the APHIS/PPQ liaison to CBP, regarding proposed CBP significant directives and guidelines to the field that have an impact on the agricultural mission. CBP AIPP will inform PPQ of any significant operational changes involving staff coverage having an impact on pest risk (i.e. new staffing practices relating to coverage and inspection on private aircraft or cruise ships). PPQ will be given an opportunity to discuss these proposed changes with CBP, if necessary, prior to final implementation of such a directive.

The Executive Director, AIPP, or CBP liaison will inform the Deputy Administrator or the APHIS/PPQ liaison to CBP, of any significant changes in operational resources that would impact the effective administration of procedures as established in official PPQ manuals which have an impact on pest risk. The Executive Director, AIPP, or CBP liaison to APHIS will authorize regular working contacts and access by officers with

APHIS/PPQ manual writers, to allow direct feedback on the development and revision of the manuals.

## V. Emergency Situations

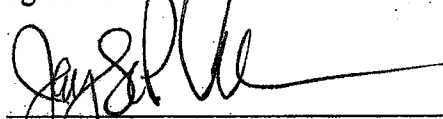
In some emergency situations, action will need to be taken prior to APHIS sharing a draft policy or procedure. Examples of such situations are an outbreak of an animal disease in a foreign region (e.g., foot-and-mouth disease in the United Kingdom) or finding a plant pest or disease on an imported commodity (e.g., identification of a medfly larva in Clementines). In these emergency situations, APHIS will communicate in writing, the necessary policies and procedures to the Executive Director AIPP for implementing immediate emergency restrictions on affected imports and will work with AIPP to establish a clearly documented policy. Those communications will be in accordance with the procedures agreed upon above for Agriculture Inspection Alerts.

Changes in the Threat Conditions or emergency situations may require changes in operations or deployment of agricultural inspection personnel before consultation can occur between the delegated representatives of the Secretary for DHS and the Secretary of Agriculture. To the extent consistent with the nature of the emergency and the need for security, notification will be provided to the Deputy Administrator, Plant Protection and Quarantine or APHIS Liaison when changes in operation occur due to Threat Conditions or emergency situations. Consultation will occur as soon as practicable.

## VI. Terms of Agreement

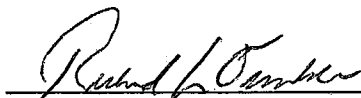
### Effective Date and Changes to This Appendix

This document will serve as an Appendix to Article 7(b), (d), & (e) 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

2/28/05  
DATE



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

2/28/05  
DATE