DHS Agreement Number: BTS-03-0001
USDA-APHIS Agreement Number: 03-1001-0382-MU

MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY (DHS) AND THE UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)

Article 1 - Purpose and Authorities

Section 421(a) of the Homeland Security Act of 2002 (hereafter the "Act") transfers certain agricultural import and entry inspection functions to the Secretary of Homeland Security from the Secretary of Agriculture (singly the "Party" or jointly the "Parties").

This document serves as the "Transfer Agreement" (hereafter the "Agreement") required by Section 421(e) of the Act. It specifies functions transferred to DHS and those retained by USDA and establishes mechanisms between the Parties regarding the exercise of the following functions: training of employees, transfer of funds, use of employees, and additional measures provided by the Act. Further, it identifies other areas of mutual interest and responsibilities which the Parties will cooperatively address through subsequent actions and documents. This Agreement emphasizes the importance of continuing and enhancing the agricultural import and entry inspection functions transferred to DHS so as to strengthen border security and thereby better protect American agriculture.

Historically, the USDA Animal and Plant Health Inspection Service (APHIS) Agricultural Quarantine Inspection (AQI) program has focused mainly on preventing the introduction of harmful agricultural pests and diseases into the United States. Now, the threat of intentional introductions of these pests or pathogens as a means of biological warfare or terrorism is an emerging concern that the United States must be prepared to deal with effectively. Guarding against such an eventuality is important to the security of the Nation. Failure to do so could disrupt American agricultural production, erode confidence in the U.S. food supply, and destabilize the U.S. economy. The transfer of USDA agricultural inspectors, with their extensive training and experience in biology and agricultural inspection, provides DHS the capability to recognize and prevent the entry of organisms that might be used for biological warfare or terrorism.

The Parties, through this Agreement and by other means, are committed to working cooperatively now and in the future to implement the relevant provisions of the Act and to ensure necessary support for and coordination of the AQI program components that reside in each Department following the transfer of functions and employees.

As required by the Act, in this Agreement the Parties shall address the following:

Transferred Functions and Employees (Article 2):
USDA agricultural import and entry inspection functions and associated employees to be transferred to DHS [Section 421(a) and (g)]

Excluded Quarantine Activities and Other Retained USDA Activities (Article 3):
Quarantine and associated activities excluded from the transfer [Section 421(c)] and remaining in USDA

Training (Article 4):
USDA supervision of training [Section 421(e) (2)(A)]

Transfer of Funds (Article 5):
[Section 421(e) (2) (B) and (f) (1 and 2)]

Cooperation and Reciprocity (Article 6):
DHS authority to perform functions delegated to USDA-APHIS [Section 421(e) (3) (A)] and USDA authority to use DHS employees to carry out authorities delegated to USDA-APHIS [Section 421(e) (3) (B)]

Regulations, Policies, and Procedures (Article 7):
[Section 421(d) (1), (d) (2), and (d) (3)]

Agreement Revisions, Amendments, and Appendices (Article 10):
[Section 421(e) (1) (a)]

Article 8 establishes the basis for collaboration between DHS and USDA on other issues and areas of mutual interest that the Parties recognize as necessary for the administration and maintenance of relations between the Parties in carrying out the provisions of the Act and the respective missions of the Parties.

The Parties agree to designate, in writing, an Authorized Representative who shall be responsible for administering the terms and conditions within this Agreement.

Article 2 – USDA Functions Transferred to DHS

The USDA AQI program will be divided, with some functions transferred to DHS as reflected in this Article, and others retained by USDA as reflected in Article 3.

The agricultural import and entry inspection functions transferred to DHS shall include:

a) Reviewing passenger declarations and/or cargo manifests and, utilizing USDA pest and risk data, targeting for inspection high risk agricultural passenger/cargo shipments
b) Inspecting international passengers, luggage, cargo, mail, and means of conveyance
c) Holding cargo and articles of suspected agricultural quarantine significance where

appropriate for evaluation of plant and animal health risk in accordance with USDA regulations, policies, and guidelines

d) Referring propagative and other designated materials to USDA for inspection, control, and disposition
e) Seizing articles in violation of USDA regulations, safeguarding to prevent pest escape, and destroying or re-exporting them
f) Referring all live animals, embryos, semen, and other viable animal products to USDA
g) Collecting and preparing or preserving pest and disease samples for analysis
h) Submitting intercepted pest and disease specimens via Pest Identification Form 309a
i) Assessing and collecting spot settlements in accordance with USDA guidelines, documenting suspected violations, and referring suspected violations to USDA for further investigation and appropriate action
j) Collecting, submitting, and reporting program information (e.g., Workload Accomplishment Data System (WADS) Form 280, AQIM)
k) Performing specific risk information collection activities for use in USDA risk analysis (e.g., Agricultural Quarantine Inspection Monitoring (AQIM) systems) and promptly notifying USDA upon detections of new or unusual infested or contaminated cargo
l) Maintaining, monitoring, and enforcing existing compliance agreements for functions conducted by DHS
m) Monitoring transit shipments and verifying exit
n) Reviewing import permits and certificates for validity and compliance
o) Preparing and forwarding documentation for reimbursable overtime services to USDA.

In accordance with Section 421(g) of the Act, USDA shall transfer not more than 3,200 full-time equivalent positions to DHS.

Article 3 - Quarantine and Other Relevant Functions Retained by USDA

The agricultural import and entry inspection and associated functions remaining in USDA shall include:

a) Providing risk analysis guidance, including, in consultation with DHS, the setting of inspection protocols
b) Applying remedial measures other than destruction and re-exportation, such as fumigation, to commodities, conveyances, and passengers
c) Providing specialized inspection of propagative plant material and pest identification services at plant inspection stations and other facilities
d) Conducting inter- and intra-state inspection of passenger, commodity, and conveyance movements, including the preclearance of passengers in Hawaii and Puerto Rico destined for the mainland United States
e) Performing inspection and related activities, such as compliance with requirements of agricultural protocols and systems, in connection with the preclearance of commodities in foreign countries
f) Verifying compliance with trade protocols, including but not limited to conducting domestic

market and transit surveys and outreach to the private sector as part of the APHIS Smuggling Interdiction and Trade Compliance Program

g) Investigating and adjudicating AQI violations, either civilly or through referral for criminal prosecution, in accordance with USDA's administrative procedures and applicable statutes
h) Issuing phytosanitary (plant health) and animal byproduct certificates for U.S. agricultural exports
i) Supervising training relating to agricultural inspection functions, as described in Article 4
j) Managing AQI user fee funds, including auditing of user accounts, as described in Article 5
k) Developing regulations, policy, and procedures as described in Article 7
l) Managing the AQI performance measurement system in consultation with DHS.

Article 4 - Training

In accordance with Section 421(e) (2) (A) of the Act, USDA shall supervise training of DHS employees to carry out functions transferred. The Parties agree that USDA will supervise and provide educational support and systems to ensure that DHS employees receive the training necessary to carry out the USDA functions transferred to DHS. This includes, but is not limited to the following:

a) New Officer Training for Agricultural Specialists

b) Basic Canine Officer Training for Agricultural Canine Teams

c) Regulatory Pesticide Applicator and Fumigation Training

d) Biological Security Training for Agricultural Specialists

The Parties will, subject to any necessary OMB approval, jointly develop an annual work plan and budget for agricultural training provided by USDA for DHS.

Article 5 - Transfer of Funds

The Parties understand that agricultural inspection activities as defined in Articles 2 and 3 of this Agreement will be funded, in part, out of funds collected by fees authorized under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a). The fees will continue to be paid to a dedicated account in the Treasury and be administered by USDA.

In accordance with Section 421 Subsections (e)(2)(B) and (f)(1-2) of the Act, USDA shall, from time to time, transfer funds to DHS for agricultural inspection functions carried out by DHS for which funds are collected.

Subject to any necessary OMB approval, the Parties agree to cooperate in the development of annual plans and budgets, user fee rates, and funds control and financial reporting procedures for the agricultural inspection functions in Articles 2 and 3. The Parties will develop specific methods and

execute appropriate instruments to transfer funds from USDA to DHS in accordance with the previous paragraph.

Article 6 – Cooperation and Reciprocity

Section 421(e) (3) (A) of the Act provides authority for an agreement between DHS and USDA for DHS to perform functions delegated to USDA-APHIS regarding the protection of domestic livestock and plants not transferred to DHS. This includes but is not limited to the performance of those functions listed in Article 3.

Section 421(e) (3) (B) of the Act provides for an agreement between DHS and USDA for USDA to use DHS employees to carry out authorities delegated to USDA-APHIS regarding the protection of domestic livestock and plants. This includes but is not limited to the use of DHS employees in the management of agricultural pests and diseases throughout the United States.

DHS and USDA agree to develop procedures for USDA use of DHS employees and/or DHS performance of functions that recognize the importance of the homeland security mission while addressing the need for a skilled workforce to carry out USDA functions. These procedures will be incorporated into a subsequent amendment to this Agreement. Pending the completion of these procedures, the Parties are free to enter into agreements for reciprocity consistent with section 421 of the Act. Neither this Article, nor any appendix to this Agreement, shall obligate either Party to take action inconsistent with the fulfillment of its mission.

Article 7 - Regulations, Policies, and Procedures

In accordance with Section 421(d) of the Act, the Parties understand and agree that:

a) USDA retains responsibility for developing and issuing regulations, policies, and procedures covering the agricultural functions transferred to DHS

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

c) USDA functions transferred to DHS shall be exercised and enforced by DHS in accordance with USDA regulations, policies, and procedures

d) 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

e) 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

Article 8 –Communication and Liaison

The Parties will facilitate an orderly transition and develop the best possible safeguards to protect the nation's agricultural infrastructure. To this end, the Parties agree to coordinate actions and communicate changes in operations and other important information. Whenever credible threats are identified, the Parties shall, as soon as possible, provide to each other all relevant threat and vulnerability information relating to agricultural terrorism, consistent with national security interests. This may include, for example, intelligence for inspection of specific pest and disease threats to allow adjusting operations to changing risk levels.

The Parties agree that DHS will provide USDA with access to, subject to national security considerations and agreed upon information sharing protocols, port environs and port information/databases necessary to fulfill USDA's responsibilities, including but not limited to the functions listed in Article 3 of this Agreement.

The Parties will establish, to the extent and at the level(s) mutually deemed necessary, liaisons or points of contact to facilitate the execution of this article.

Article 9 - Limitation of Commitment

Any financial commitment made by either Party shall be contingent upon the availability of funds appropriated by the Congress of the United States or otherwise provided to the Parties through Congressional authorization. It is understood and agreed that any monies allocated for purposes covered by this Agreement shall be expended in accordance with its terms and in the manner prescribed by the fiscal regulations and/or administrative policies of the Party making the funds available.

If fiscal resources are to transfer, a separate interagency agreement, or other such instrument, as appropriate, must be developed by the Parties.

Article 10 - Revisions, Amendments, and Appendices

In accordance with Section 421(e) (1), the Parties understand and agree that:

a) This Agreement shall be reviewed periodically by the Parties when jointly deemed appropriate to determine if amendments or appendices are necessary. The Parties agree that the first such review will be completed by September 30, 2003.

b) This Agreement may be amended or supplemented at any time by agreement of the Parties in writing.

Article 11 - Effective Date

This Agreement will become effective upon date of final signature.

Article 12 – No Private Right Created

This Agreement is an internal policy statement of the undersigned agencies and does not create any rights, privileges, or benefits for any person or party.

Tom Ridge

TOM RIDGE
SECRETARY OF HOMELAND SECURITY

Feb. 28, 2003
DATE

Ann Veneman

ANN M. VENEMAN
SECRETARY OF AGRICULTURE

Feb 28, 2003
DATE