

MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN
UNITED STATES DEPARTMENT OF DEFENSE (DoD)
(COOPERATOR)
AND THE
UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)
ANIMAL AND PLANT HEALTH INSPECTION SERVICE (APHIS)
PLANT PROTECTION AND QUARANTINE (PPQ)

ARTICLE 1 – PURPOSE

This Memorandum provides for the implementation of an APHIS-approved program in DoD to ensure that wood packaging materials (WPM) used by DoD are manufactured, treated and marked in conformance with the International Plant Protection Convention (IPPC) International Standards for Phytosanitary Measures – Guidelines for Regulating Wood Packaging Material in International Trade (ISPM 15).

ARTICLE 2 – BACKGROUND

The United States and many foreign countries have adopted measures requiring the treatment and marking of all new, used, remanufactured, repaired, combo, and recycled WPM to prevent the introduction and establishment of pests. WPM used to transport goods internationally is subject to phytosanitary measures. To facilitate export of goods transported using WPM, APHIS is assisting DoD to develop and oversee a DoD-wide program to ensure treatment and marking of WPM that complies with ISPM 15. The program will establish a common basis for uniform, DoD-wide inspection, treatment, and marking procedures for the construction and marking of new WPM, and for the treatment and marking of used, remanufactured, repaired, combo and recycled WPM in compliance with ISPM 15.

ARTICLE 3 – AUTHORITY

Under the Plant Protection Act (PPA), as amended, (7 USC §§ 7701 et. seq.), the Secretary of Agriculture is authorized to issue regulations and orders to prevent, detect, control, eradicate, suppress, or retard the spread of plant pests or noxious weeds into or within the United States and to cooperate with other Federal agencies or entities, States or political subdivisions of States, national governments, local governments of other nations, domestic or international organizations, domestic or international associations, and other persons to carry out the purposes of the PPA.

ARTICLE 4 – MUTUAL RESPONSIBILITIES

The Cooperator and APHIS mutually agree to/understand that:

- a. This MOU instrument in no way restricts APHIS or the Cooperator from participating in similar activities with other public or private agencies, organizations, and individuals.
- b. In collaborative activities and programs, APHIS and the Cooperator will recognize cooperative efforts by displaying each other's logos in a manner that is approved by the principle contacts of each party.
- c. This MOU instrument is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution funds between the parties to this instrument will be handled in accordance with applicable laws, regulations and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. The signature of this instrument does not provide or create such authority.
- d. APHIS shall monitor implementation of this MOU.
- e. WPM marked with the international mark under the DoD program must be treated, or constructed from wood treated, in conformance with ISPM 15.
- f. Employee(s) responsible for this work will be under the oversight of the DoD Enforcement Committee which will periodically review policies, procedures, and program implementation, and issue letters of guidance. Supervision of personnel will be provided by the Military Departments and designated Defense Agencies, and will be subject to their employing organization's rules and regulations.
- g. The Enforcement Committee will be comprised of representatives of the Defense Packaging Policy Group, APHIS PPQ and others as specified in a COMPLIANCE FOR DEFENSE PACKAGING: Phytosanitary Requirements for Solid Wood Packing Material (SWPM) manual. Membership in the Enforcement Committee will be retained by successor organizations.

ARTICLE 5 – COOPERATOR RESPONSIBILITIES

The Cooperator agrees to:

- a. Designate, in writing, an authorized representative who shall be responsible for collaboratively administering the activities conducted under this MOU.

- b. Chair an Enforcement Committee. The Enforcement Committee will review procedures as well as facilities treating and marking WPM for compliance with ISPM 15.
- c. Accredit DoD inspection entities and packaging facilities by providing training and inspection guidelines.
- d. Monitor DoD inspection entities to validate and attest that WPM moving into import/export channels have been treated and marked in accordance with the IPPC and DoD policy requirements as appropriate.
- e. Audit accredited inspection entities and provide reports to the Enforcement Committee on a regular basis.
- f. Provide written interpretations of DoD WPM procedures upon a request from the Enforcement Committee.

ARTICLE 6 – APHIS RESPONSIBILITIES

APHIS agrees to/that:

- a. Designate Mr. John Tyrone Jones, II, Trade Director, Riverdale, MD, 301-734-8860, as its Authorized Departmental Officer's Designated Representative who shall be responsible for collaboratively administering the activities conducted under this MOU.
- b. Provide a representative to serve on the Enforcement Committee. APHIS representative may review the DoD Export Wood Packaging Material Program for conformance by conducting reviews of DoD WPM policies and procedures, periodic reviews of DoD-accredited agencies, and occasional reviews of unit and facility compliance with ISPM 15 requirements.
- c. Take appropriate action for non-compliance pursuant to procedures established at the initiation of this program.

ARTICLE 7 - DATA SHARING AND RESPONSIBILITIES

- a. Data to be Shared: The parties agree to provide plant protection and quarantine data to each other. The data to be provided to each Party by the other Party includes, but is not limited to, plant protection and quarantine surveys, diagnostic information, detection activities, inspection reports, and pest interception data. Each party is responsible for transmitting the provided data to its own authorized employees, cooperators, and contractors as applicable and necessary, in order to carry out responsibilities under their respective plant health authorities.

Each party agrees that it will ensure, to the extent provided by applicable laws and regulations, that data provided by the other party is not released to anyone that is not authorized to receive it.

b. Data Utilization: The parties agree that the provided data will only be used in the administration and enforcement of each party's respective plant health laws and regulations. Data provided by the parties under this Agreement may be used to ensure compliance with their respective plant health laws and regulations; to respond to domestic plant pest and disease emergencies, interceptions, and trace backs; to enhance delivery of pest exclusionary programs and activities; to support pest surveying activities; to develop quarantines and other appropriate measures for pest management and mitigation; to implement or improve international pre-clearance and/or pest eradication programs and activities, pest risk assessments, phytosanitary trade support, and the issuance of plant protection and quarantine permits; and to develop, in cooperation with Federal research agencies, new and improved methods, techniques and procedures for use in cooperative plant protection and quarantine programs and activities. Each party agrees that it will ensure that the provided data is used only for purposes specified in this Agreement and only in a manner consistent with the provisions of the Plant Protection Act.

c. Data Restrictions: The Cooperator agrees and acknowledges that the data provided by APHIS pursuant to this Agreement is solely APHIS data and as such is or may be subject to the confidentiality provisions of Section 1619 of the Food, Conservation, and Energy Act of 2008, 7 USC §8791, (Section 1619) and the Privacy Act of 1974 and also agrees to safeguard such confidentiality and prohibit any unauthorized access to the data provided by APHIS as required by Section 1619. The Cooperator further agrees and acknowledges that if Section 1619 does apply to some or all of the APHIS provided data, that pursuant to Section 1619, the Cooperator is bound to and will comply with Section 1619 (copy attached as Appendix A) and related APHIS guidance. The Cooperator understands that it may not release any of the data provided by APHIS since it is Federal Government data and it agrees to refer any and all requests for the data provided by APHIS, not otherwise authorized to be released under this Agreement and applicable Federal laws and regulations, to:

USDA, APHIS
Legislative and Public Affairs
Freedom of Information and Privacy Act Office
4700 River Rd. Unit 50, Riverdale, MD 20737
Telephone: (301) 734-8296.

Additionally, the Cooperator agrees that it will, if requested by APHIS, enter into a separate written agreement with APHIS to protect from release or disclosure any data provided by APHIS that is subject to Section 1619.

ARTICLE 8 – STATEMENT OF NO FINANCIAL OBLIGATION

Signature of this MOU does not constitute a financial obligation on the part of APHIS. Each signatory party is to use and manage its own funds in carrying out the purpose of this MOU. Transfers of funds or items of value are not authorized under this MOU.

ARTICLE 9 – LIMITATIONS OF COMMITMENT

This MOU and any continuation thereof shall be contingent upon the availability of funds appropriated by the Congress of the United States. It is understood and agreed that any monies allocated for purposes covered by this MOU shall be expended in accordance with its terms and 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 agreement must be developed by the parties.

ARTICLE 10- CONGRESSIONAL RESTRICTION

Under 41 USC 22, no member of, or delegate to, Congress shall be admitted to any share or part of the MOU or to any benefit to arise therefrom.

ARTICLE 11 – NON-DISCRIMINATION CLAUSE

The United States Department of Agriculture prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. Not all prohibited bases apply to all programs.

ARTICLE 12 – LIABILITIES

APHIS assumes no liability for any actions or activities conducted under this agreement except to the extent the recourse or remedies are provided by Congress under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2401(b), 2671-2680).

ARTICLE 13 – DURATION & AMENDMENTS

This Memorandum shall become effective upon the date of final signature, and shall remain in effect for 5 years. This MOU may be amended at any time by mutual agreement of the parties in writing.

ARTICLE 14 - TERMINATION

This MOU may be terminated at any time by mutual agreement of the parties in writing, or by either party with sixty (60) days notice in writing to the other party.

United States Department of Defense
Office of the Under Secretary of Defense
(Acquisition, Technology and Logistics)
Assistant Secretary of Defense (Logistics & Materiel Readiness)

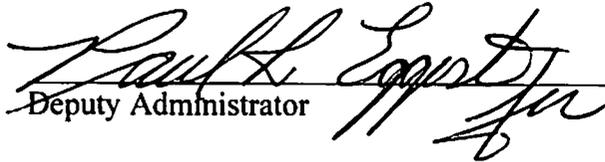


Deputy Assistant Secretary of Defense (Supply Chain Integration)

August 1, 2011

Date

United States Department of Agriculture
Animal and Plant Health Inspection Service
Plant Protection and Quarantine



Deputy Administrator

8-12-2011

Date

APPENDIX A

SEC. 1619. INFORMATION GATHERING.

(a) GEOSPATIAL SYSTEMS.—The Secretary shall ensure that all the geospatial data of the agencies of the Department of Agriculture are portable and standardized.

(b) LIMITATION ON DISCLOSURES.—

(1) DEFINITION OF AGRICULTURAL OPERATION.—In this subsection, the term “agricultural operation” includes the production and marketing of agricultural commodities and livestock.

(2) PROHIBITION.—Except as provided in paragraphs (3) and (4), the Secretary, any officer or employee of the Department of Agriculture, or any contractor or cooperator of the Department, shall not disclose—

(A) information provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself, in order to participate in programs of the Department;
or

(B) geospatial information otherwise maintained by the Secretary about agricultural land or operations for which information described in subparagraph (A) is provided.

(3) AUTHORIZED DISCLOSURES.—

(A) LIMITED RELEASE OF INFORMATION.—If the Secretary determines that the information described in paragraph (2) will not be subsequently disclosed except in accordance with paragraph (4), the Secretary may release or disclose the information to a person or Federal, State, local, or tribal agency working in cooperation with the Secretary in any Department program—

(i) when providing technical or financial assistance with respect to the agricultural operation, agricultural land, or farming or conservation practices; or

(ii) when responding to a disease or pest threat to agricultural operations, if the Secretary determines that a threat to agricultural operations exists and the disclosure of information to a person or cooperating government entity is necessary to assist the Secretary in responding to the disease or pest threat as authorized by law.

(4) EXCEPTIONS.—Nothing in this subsection affects—

(A) the disclosure of payment information (including payment information and the names and addresses of recipients of payments) under any Department program that is otherwise authorized by law;

(B) the disclosure of information described in paragraph (2) if the information has been transformed into a statistical or aggregate form without naming any—
(i) individual owner, operator, or producer; or
(ii) specific data gathering site; or
(C) the disclosure of information described in paragraph (2) pursuant to the consent of the agricultural producer or owner of agricultural land.

(5) CONDITION OF OTHER PROGRAMS.—The participation of the agricultural producer or owner of agricultural land in, or receipt of any benefit under, any program administered by the Secretary may not be conditioned on the consent of the agricultural producer or owner of agricultural land under paragraph (4)(C).

(6) WAIVER OF PRIVILEGE OR PROTECTION.—The disclosure of information under paragraph (2) shall not constitute a waiver of any applicable privilege or protection under Federal law, including trade secret protection.