

MEMORANDUM OF UNDERSTANDING

AMONG

THE UNITED STATES POSTAL SERVICE

AND

**THE UNITED STATES DEPARTMENT OF AGRICULTURE,
ANIMAL AND PLANT HEALTH INSPECTION SERVICE**

AND

THE CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

AND

**THE CALIFORNIA AGRICULTURAL COMMISSIONERS
AND SEALERS ASSOCIATION**

I. INTRODUCTION

A. PARTIES

The parties to this agreement are the United States Postal Service (USPS) and the United States Postal Inspection Service, (collectively the United States Postal Service), the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS), the California Department of Food and Agriculture (CDFA), and the California Agricultural Commissioners and Sealers Association (CACASA).

B. RECOGNITION OF NEED

Accidental and intentional introduction of exotic and invasive pests pose a threat to California's environment and food production. Invasive species can decrease food production by affecting quality and yield, increase production costs by requiring more pesticide use, and are a threat to biological diversity. The risk of pests entering California poses a risk to the nation's food supply, and threatens sensitive ecosystems.

Plants and other agricultural items are commonly transported in parcels using the United States Postal Service.

C. AUTHORITY

1. Federal and State Regulations

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) is responsible for preventing the introduction into, and the dissemination within the United States of plant pests. The Plant Protection Act, 7 U.S.C. §§ 7701-7786 (Public Law 106-580), the Terminal Inspection Act (7 U.S.C. § 7660), 39 U.S.C. § 3014, Nonmailable plants and 39 U.S.C. § 3015, Nonmailable plant pests and injurious animals, make it unlawful for anyone to mail a package through the USPS containing plants, plant products or plant pests unless the mailing conforms to APHIS regulations on the movement of such articles. The APHIS regulations governing movement of plant, plant products and plant pests are administered by the Plant Protection and Quarantine (PPQ) Programs of APHIS. Individual states may also impose restrictions consistent with federal restrictions. The California quarantine regulations are administered by the California Department of Food and Agriculture (CDFA) and enforced by both CDFA and County Agricultural Commissioners and Sealers Association (CACASA).

II. PURPOSE

This Memorandum of Understanding ("Memorandum") among the parties is entered into in order to implement an inspection and interdiction program in California, to be known as the California Mail Interdiction Program, and to establish guidelines by which the program will operate.

III. RESPONSIBILITIES AND SCOPE OF WORK

A. GENERAL

The parties agree to implement a program for the interdiction of U.S. Mail destined for delivery in the State of California which may contain plants, plant products or plant pests (hereinafter referred to as plant material), subject to federal and state quarantine laws and agricultural pests of concern. The interdiction program will be conducted in addition to the terminal inspections currently done by state or county agriculture inspectors.

1. USPS Roles and Responsibilities

The USPS will provide designated USDA/CDFA/CACASA employees access to all USPS facilities involved in the program. A list of approved facilities where California Mail Interdiction Program activities may be conducted by eligible dog teams is attached as Attachment A-Approved Locations. Facilities involved in the program may be added to or removed from the program during the period this Memorandum is in effect when agreed upon by all parties to this Memorandum. Based upon availability, USPS will provide office space for the detention and screening of parcels and parking at these facilities. Screening of mail by USDA/CDFA/CACASA employees will be restricted to those mail processing areas designated by the USPS. USPS will allow USDA/CDFA/CACASA staff to conduct package screening based on criteria outlined in Section B(2), California Mail Interdiction Program-Parcel Screening. Designated Postal employees may be present during the screening process.

2. CACASA Roles and Responsibilities

CACASA staff will be designated as unpaid employees and cooperators of APHIS and will be trained by APHIS to screen parcels that may contain prohibited plant material. The packages selected by USDA/CDFFA/CACASA employees will be subjected to detection canines trained to alert to plant material. USDA/CDFFA/CACASA employees will open, examine, and handle parcels only in accordance with the terms and conditions outlined in Section B, California Mail Interdiction Program.

3. CDFA Roles and Responsibilities

CDFA staff will provide program oversight and guidance to qualified dog teams at designated USPS facilities. Qualification of each team operating in the program will be based on:

- (a) The ability of the team to correctly identify unmarked parcels containing agricultural product with at least 90% accuracy
- (b) The team having successfully completed at least one Agricultural Canine Team Certification conducted by the USDA/NDDTC

Program results will be analyzed on a quarterly, semiannual and annual basis to evaluate program effectiveness. Results of USPS inspection activities will be shared with APHIS. CDFA will provide USPS information for parcels found to be in violation of the Terminal Inspection Act, 7 U.S.C. § 7760 on a quarterly basis.

4. APHIS Roles and Responsibilities

APHIS staff will provide technical assistance and training to screen parcels that may contain prohibited material to designated USDA/CDFFA/CACASA employees as needed. APHIS will provide designation as unpaid employees and cooperators of USDA to qualified CACASA staff. APHIS will be provided results of USPS inspection activities.

B. CALIFORNIA MAIL INTERDICTION PROGRAM

1. USPS Rules and Regulations

USPS rules and regulations governing the inspection of mail and mailing requirements for perishable goods, including plants and animals, are published in Publication 14, *Prohibitions and Restrictions on Mailing Animals, Plants and Related Matter*, August 2003.

2. General Inspection and Screening of Parcels

Parcels clearly identified as containing plant material will be segregated by USPS employees and placed in designated areas for agriculture inspection pursuant to

the provisions of the Terminal Inspection Act, 7 U.S.C. § 7760, based on the following criteria:

- (a) Markings on the outside of the parcel that indicate the contents are plants or plant products;
- (b) Observing plant material contents not concealed from view by their original undamaged wrappings, i.e., contents which can be seen through the wrapping;
- (c) Leakage, odor, or other visual evidence which indicate the contents are plants or plant products.

3. Permissible Detention of Parcels

- (a) Parcels identified as containing plant material will be detained for agriculture inspections until the last dispatch time that will allow it to meet its service standard. Parcels that have not been inspected within this detention period will be dispatched for delivery by the USPS. A Postal Service manager or designee will ensure USDA/CDFR/CACASA personnel have current and updated information with respect to dispatch times.
- (b) Parcels inspected by USDA/CDFR/CACASA personnel that are determined not to contain plant material which is not subject to quarantine will be returned immediately to the mail processing operation to facilitate transportation to the next available dispatch.

4. Opening of Parcels

Parcels that are set aside for agriculture inspection may be opened under the following circumstances:

- (a) Standard B mail parcels may be opened without a search warrant or the consent of the sender or addressee.
- (b) First Class, Express Mail, and Priority Mail parcels may only be opened with the consent of the sender or the addressee, or incident to the issuance of a Federal Search Warrant issued pursuant to Rule 41 of the Federal Rules of Criminal Procedure. Consent to open by the sender or addressee may be obtained by:
 - (1) Telephonic authorization. Such oral authorization shall be documented on an agreed upon format which contains, at a minimum, the individual granting permission; the date and time; and the USDA/CDFR/CACASA employee.
 - (2) A written statement provided by the sender or addressee.

(3) A stamp, endorsement, or other marking on the parcel that expressly authorizes its opening for inspection (e.g., "Open for Inspection"). Any correspondence found therein may not be read unless specifically authorized by the Federal Search Warrant or expressly permitted by the consent of the sender or addressee.

5. Detention of Parcels

(a) Parcels inspected by agriculture inspectors that are reasonably suspected of containing plant material subject to quarantine may be detained for an additional period of time reasonably necessary to resolve the quarantine issue. Generally, this period will be no longer than twenty-four (24) hours to allow agriculture inspectors time to obtain consent to open and inspect the mail or to obtain and execute a Federal search warrant, and to conduct an analysis of the contents.

(b) When an agriculture inspector finds prohibited plant material, the prohibited material must be confiscated and destroyed. The parcel will be forwarded to the addressee with a copy of the Notice of Rejection letter. A Notice of Rejection or Violation will be sent to the sender of the parcel. Copies of the letters will be provided to the Postal supervisor in charge of the operation.

6. Parcel Screening/Interdiction

(a) USDA/CDFCA/CACASA employees will be given access to approved mail processing operations for the sole purpose of conducting a physical inspection of parcels. Based upon the established profile criteria outlined in 6(b) below, mail suspected of containing plant material may be subjected to a certified detection canine trained to identify plant material contents. If the canine alerts to a Standard B mail parcel, or any parcel marked with an "Open for Inspection" endorsement, the article may be opened and its contents inspected in accordance with the procedures prescribed by 4(a) and 4(b)(3) above. All other parcel mail (i.e., First Class, Express Mail, and Priority Mail) identified by the detection canine as containing plant material may be detained by the procedures prescribed by 4(b) above for the purpose of obtaining consent or a Federal search warrant. The time limits for detaining a parcel for the purpose of obtaining a Federal search warrant are contained in Section 7, below.

(b) USDA/CDFCA/CACASA employees will identify parcels reasonably suspected of containing plant materials by applying several profile criteria. These criteria include, but are not limited to, the following:

(1) Areas designated by USDA/CDFCA/CACASA as high risk for the mailing, delivery, or importation of plant materials, subject to quarantine inspection.

(2) Physical characteristics such as weight distribution of contents, smell or other physical factors indicative of plant material contents.

(3) Markings indicating the contents may be plant material such as "perishable" or "rush."

7. Federal Warrant Procedures

(a) USDA/CDFFA/CACASA employees will first attempt to contact the sender or addressee of any parcel described in 4(b) for consent to open the parcel. If the sender or addressee cannot be contacted within a reasonable time, or after being contacted, refuses to consent to the opening and examination of the parcel, a Federal search warrant pursuant to Rule 41 of the Federal Rules of Criminal Procedure will be obtained by USDA/CDFFA/CACASA employees. In the event a sender or addressee refuses to give consent for the opening and inspection of the parcel, the contacting USDA/CDFFA/CACASA employee will advise the sender or addressee that the parcel will be seized and a Federal warrant will be sought to search the contents.

(b) The subject mail will be detained in the area reserved for agriculture inspection until consent is obtained or the search warrant is obtained and executed.

(c) If a search warrant is needed, USDA/CDFFA/CACASA employees will prepare an Application and Affidavit for Search Warrant which includes the description of the parcel and the qualifications of the canine and handler. The Application and Affidavit for Search Warrant will be presented to an Assistant United States Attorney (AUSA) for review and clearance. After clearance by the AUSA, the USDA/CDFFA/CACASA employee or AUSA, depending upon local U.S. District Court procedures will present the Application and Affidavit to the U.S. Magistrate. The warrant will be executed immediately after it is obtained. A copy of the warrant and inventory will be provided to the postal manager in charge of the facility. A return of the warrant will be made to the issuing magistrate.

(d) If an application is to be made for a search warrant, the application through the AUSA will be made within twenty four hours from the time the mail is detained. If the application cannot be made within this period for reasons outside of the control of the USDA/CDFFA/CACASA agent, i.e., unavailability of a Magistrate, seizure made on a day/time when USDC closed on subsequent days, etc., a Postal Inspector will be notified. Other than instances of this type, it is understood and agreed that U.S. mail for which a search warrant is to be sought, cannot be detained for more than forty eight (48) hours.

(e) Contents of inspected parcels found to be in violation of quarantine laws will be disposed of in accordance with the procedures outlined in 5(b). Inspected parcels that do not contain prohibited material or other contraband will be handled in accordance with 3(b).

8. Controlled Substances/Other Contraband

Controlled substances or other contraband discovered by USDA/CDFR/CACASA employees during the inspection of contents will be returned over to Postal Inspectors for disposition.

C. GENERAL PROVISIONS

1. 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 is not authorized under this MOU.

2. Limitations of Commitment

This MOU and any continuation thereof shall be contingent upon the availability of funds appropriated to APHIS 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

3. Liabilities

APHIS will hold the CDFA, CACASA and USPS harmless from any liability arising from the negligent act or omission of the APHIS officer or employee acting within the scope of his or her employment to the extent compensation is available pursuant to the Federal Tort Claims Act (FTCA), 28 USC 2671 et. seq., except to the extent that aforesaid liability arises from the negligent acts or omissions of the CDFA and CACASA, its employees, agents or subcontractor, and employees or agents of the subcontractor(s). Such relief shall be provided pursuant to the procedures set for in the FTCA and applicable regulations.

This Memorandum may be modified with supplemental written agreements signed by the parties and can be terminated in writing, in whole or in part, by any of the parties.

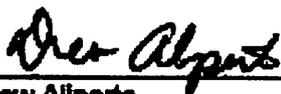
This memorandum will become effective on the date the final signature is affixed hereto and is entered into with the limits of the statutory authority of the parties to the Memorandum. This memorandum may be terminated by any party by serving written notice upon the other parties, in writing, at least 30 days in advance of the date of termination.



Gregory G. Campbell
Deputy Chief Postal Inspector
Western Field Operations
USPS

3/11/11

Date



Drew Alperto
Vice President - Area Operations
Pacific Area
USPS

3-11-11

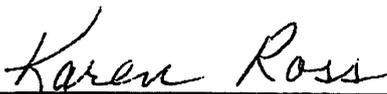
Date

for 

Gregory Parham
Administrator
USDA-APHIS

6-8-11

Date



Karen Ross
Secretary
CDFA

4-18-11

Date



Robert G. Atkins
President
OACASA

4-22-11

Date

Attachment A- Approved Locations

The following is a list of locations where eligible dog teams may conduct activities as outlined in the MOU:

LA P&DC

7001 S. Central Ave
Los Angeles, CA 90001

Oakland P&DC

1675 7th St
Oakland, CA 94615

Sacramento P&DC

3775 Industrial Blvd
West Sacramento, CA 95799

San Bernardino P&DC

1900 W. Redlands Blvd
Redlands, CA 92373

San Jose P&DC

1750 Lundy Ave
San Jose, CA 95101

Sellers P&DC

11251 Rancho Carmel Dr
San Diego, CA 92128