

**COMMENTS OF THE NATIONAL ASSOCIATION OF AGRICULTURE EMPLOYEES
UPON GAO REPORT ON PROTECTING AGAINST AGROTERRORISM**

I. Staffing Shortages: A Serious Systemic Problem Without a Quick Fix.

The U.S. Government Accountability Office (“GAO”) Report to Congress, dated March 8, 2005, on the state of the nation’s defenses against agroterrorism pinpoints potentially serious “holes” in the country’s system of protection. One identified “hole” in particular -- the gap between the number of Plant Protection and Quarantine (“PPQ”) Officer positions USDA transferred from its Animal and Plant Health Inspection Service (“APHIS”) to DHS in March 2003 to perform agriculture quarantine inspection (“AQI”) services and the number of AQI inspectors currently employed within DHS -- is widening under the aegis of DHS and its U.S. Customs and Border Protection (“CBP”), the agency charged with protecting American agriculture as one of its primary missions.

GAO reports this staffing gap leaves the country even more vulnerable to agroterrorist attacks than before March 2003 (GAO Report at 40); however, GAO makes no effort to quantify this personnel gap or to determine its root causes. It leaves this critical question unanswered and simply observes that CBP hopes to hire an additional 500 Agriculture Specialists and Technicians, the new job title given to the transferred PPQ Officer positions, during the next 12 months to fill this hole.

The National Association of Agriculture Employees (“NAAE”), the federal union designated as the exclusive representative of CBP Agriculture Specialists and Technicians, possesses unique insight into the multifaceted reasons for the AQI inspection staffing short-fall. NAAE does not believe the gap will close or even materially narrow without a top-to-bottom adjustment in the attitude towards and commitment of CBP and its Legacy Customs paramilitary managers to DHS’s agriculture mission, preventing agroterrorism and protecting American agriculture. NAAE traces the gap back to this fundamental lack of Agency commitment. CBP’s misdirected efforts to increase

front-line staffing levels without first implementing these needed adjustments will only serve to jeopardize American agriculture and leave the Nation even more vulnerable to agroterrorist attacks. NAAE questions whether CBP has the necessary resolve to make these adjustments. The responsibility for fighting agroterrorism and protecting American agriculture should be shifted back to where it belongs, with USDA.

A. The Ag Specialist Staffing Shortage Is Large and Growing.

Any analysis of the magnitude of America's vulnerability to agroterrorism must begin with the data defining the scope of the staffing gap for agriculture inspectors, the first line of defense against agroterrorism. CBP closely guards and, NAAE suspects, manipulates the employee statistics. NAAE believes the employee numbers that NAAE reported in its February 10, 2005 testimony before the Senate Subcommittee on Oversight of Government, the Workplace and the District of Columbia, are reasonably accurate.^{1/} According to USDA, USDA transferred approximately 2,100 first-line (non-manager) PPQ Officer and Technician inspection positions to DHS in March 2003. While as many as 300 of these Agriculture inspector positions may have been vacant and unfilled at the time of transfer, USDA informs NAAE the user fees USDA collected during FY 2003 and FY 2004 for performing AQI services and subsequently transferred to CBP were sufficient to fund all 2,100 transferred positions and to cover all costs CBP would incur in maintaining full AQI services.^{2/}

CBP apparently prefers not to disclose the precise number of unfilled Agriculture Specialist and Technician positions currently existing in CBP or even to acknowledge a significant staffing short-fall. Based upon the figures CBP recently provided the Federal Labor Relations Authority ("FLRA"), NAAE

^{1/} NAAE is convinced the employee numbers DHS provided GAO are erroneous and serve to conceal the extent of the gap. See GAO Report at 43, n.68.

^{2/} The Homeland Security Act designates CBP as legally responsible for performing AQI services, but USDA remains responsible for administering the AQI user-fee program, including collecting AQI user fees for the AQI services that CBP's Agriculture Specialists and Technicians perform and remitting those collected fees to DHS/CBP.

estimates CBP has fewer than 1,300 Agriculture Specialists and Technicians remaining in its employ (as of February 1, 2005), despite full-staffing funding available from transferred AQI user fees. That constitutes a loss of an additional 500 Agriculture Specialists and Technicians since March 2003, creating a total unfilled vacancy rate of approximately 800 AQI inspectors and representing a short-fall of almost 40 percent in staffing levels needed to protect the country against agroterrorism attacks.

CBP efforts to hire 500 new CBP Agriculture Specialists during the next 12 months will not, NAAE predicts, materially narrow the gap. On the contrary, without more, it will only serve to mask the real problem, the cause of that gap, a gap that continues to widen every day. Instructors at CBP's training academy for new CBP Officers recently advised their trainees that CBP is losing CBP Agriculture Specialists at the rate of six to eight Specialists per pay-period. That bleed-rate works out to around 200 employees (out of 1,100 Agriculture Specialists today) fleeing the Agency annually. This disturbing personnel trend is the manifestation of and underscores the severity of a systemic problem plaguing CBP. This trend, if not reversed, does not bode well for CBP achieving its hiring goal of 500 CBP Agriculture Specialists in FY 2005.^{3/}

B. The Abandoned Agriculture Mission is at the Heart of the Personnel Problem.

What is driving this flight from CBP? NAAE believes it is a confluence of several different but related forces. The common thread running through the multifaceted impetus to leave CBP is CBP's blatant disregard for the agriculture mission of DHS -- to protect American agriculture from foreign animal and plant pests and disease. The Agency's unconcealed disregard has destroyed the morale of Agriculture Specialists. They are professional

^{3/} Even if CBP succeeds in hiring 500 Ag Specialists during the next 12 months, it will take CBP almost three years to bring its Ag Specialist staffing level up to its full complement of 2,100 employees, given a continuing loss of 200 Legacy Agriculture employees each year.

employees who have earned college degrees in the biological sciences. They are committed to protecting American agriculture. They have, however, seen unmistakable signs that CBP management does not share this same commitment. These signs stem from fundamental financial, operational, and employee relations changes designed to undercut the mission.

1. **Financial Negligence.** CBP refuses financially to support the AQI program, despite the availability of the funds. USDA provides DHS/CBP sufficient AQI user-fee receipts to fully fund CBP's AQI mandate. These funds are designed to cover salaries for all Agriculture Specialist and Technician positions in CBP as well as the administrative costs of supporting all AQI functions transferred to CBP. Indeed, by law, AQI user-fee collections may be used only to offset the cost of providing AQI services. CBP has, however, elected not to fill the vacant positions designated to protect American agriculture, allowing them to grow from 300 vacancies in March 2003 to approximately 800 by March 2005.^{4/} It has made no concerted effort to hire Agriculture Specialists to fill these vacancies until recently, and even these eleventh-hour efforts have proven only marginally successful.

With the magnitude of short-staffing already very high and growing, the only way CBP can perform its protecting-American-agriculture mandate is to provide AQI services with Agriculture Specialists working on overtime. However, CBP compounds its growing manpower deficiencies by curtailing, rather than increasing, the amount of Agriculture Specialist overtime used. CBP cites the legislative "cap" on Agriculture Specialist overtime -- a limit of \$30,000 per year per employee -- as an excuse for not deploying Agriculture Specialists to work overtime. This pretext ignores an ameliorating provision built into the federal law imposing the cap. Congress expressly empowers CBP to lift or increase the \$30,000 cap in order to meet DHS's mission. Instead of exercising this statutory power, CBP, with few exceptions, simply allows high-risk cargo and conveyances to go uninspected for agriculture-based pests and

^{4/} NAAE does not purport to know to what uses CBP may have put the diverted, unspent AQI user-fee funds. CBP declines to acknowledge, much less explain, this diversion.

disease. Importantly, this false frugality also sends a message to all Agriculture Specialists: CBP is not willing to spend available, earmarked funds to protect American agriculture.

2. Operational Neglect. Former U.S. Customs managers now control CBP. Except at the first-line supervisory level, almost all former USDA/APHIS managers transferred to DHS/CBP in March 2003 have since been replaced. With few exceptions, those replacements have been with Legacy Customs managers. These Customs managers know little if anything about the agriculture mission of CBP or its importance and care nothing about fulfilling that mission. Instead, they perceive their mission, and that of those CBP employees who report to them, as interdicting terrorists and carrying out traditional U.S. Customs and Immigration missions without impeding commerce. The daily give-and-take between Agriculture Specialists and their Legacy Custom managers reinforces one clear message: CBP at the field level is not ready, willing, or able to protect American agriculture, the mission for which Agriculture Specialists have been educated, trained, and hired to carry out.

Many facets of the Agency's daily operations manifest the benign neglect of the agriculture mission since March 2003. CBP regularly forgoes or disregards pest-risk analysis, ignores high-risk cargo entries, and curtails overtime work, etc. The result is a decreasing number of cargo inspections, declining number of interceptions and detections, and an unprecedented and increasing number of infected plant-material recalls. This disregard for accomplishing the agriculture mission not only seriously threatens American agriculture, it also destroys the perceived value the Agriculture Specialist brings to the job; it diminishes the Agriculture Specialist's interest in and challenge of performing his/her job; and it eliminates the non-pecuniary reward for performing his/her job well. That pride of accomplishment has been lost.

Given these operational changes since March 2003, CBP can not reasonably expect to entice qualified, motivated CBP Agriculture Specialists to

remain in CBP or to hire 500 qualified, top-performing science-trained college graduates to fill the growing number of Agriculture Specialist vacancies in CBP.

3. Human Relations Fiasco. USDA and FLRA classify CBP Agriculture Specialists as professional employees. They have always enjoyed a significant amount of freedom and discretion as professionals to carry out their traditional agriculture mission. They have been permitted and encouraged to rely upon their education, training, and expertise in lieu of close supervision and rote-task assignments.

Under the auspice of Legacy Customs management, CBP has attacked their professionalism, challenging the “professional employee” status of the Agriculture Specialists in a formal proceeding pending before FLRA. In many ports of entry, the Legacy Customs managers, who lack any training in the science of pest and disease detection, identification, and eradication, have put them on a much tighter leash. CBP has inserted Customs management decision-making between the Agriculture Specialist and the AQI regulatory decisions he or she must make on imported cargo and foreign-arriving baggage, passengers, aircraft, rail, vessels, and other conveyances. The uninformed attempting to manage Agriculture Specialists more closely presents a new management style that is insulting and demeaning to these Legacy Agriculture employees still working for CBP. Better, more fulfilling job opportunities await them back at USDA and in the private sector.

DHS’s new Personnel System regulations scheduled to go into effect in August 2005 exacerbate the demoralization of the CBP Agriculture Specialists and Technicians. These HR regulations lock in place, codify, the ability of Legacy Customs managers to continue to control Legacy Agriculture employees without employee recourse. They deprive Legacy Agriculture employees of their right to collectively bargain or negotiate with management over important changes in their conditions of employment, including the procedures for implementing those changes and their adverse impact upon the employees. The HR regs institute a new pay-for-performance compensation system that is void of details, but clearly fosters unchecked cronyism and bias while offering

top performers no assurances they will receive any meaningful financial reward for their exceptional service to the Agency.

II. The Gravity of the Underlying Problem Warrants Drastic Action: Place Primary Responsibility For the Agriculture Mission With USDA.

The GAO Report confirms the direct correlation between two declining AQI indicators -- the number of AQI inspections and the number of AQI inspectors. GAO Report at 43. It also recognizes the direct correlation between other declining AQI numbers -- AQI inspections and AQI interceptions and between the falling number of AQI interceptions and the increased vulnerability of the country to the intentional or unintentional introduction of destructive foreign animal and plant pests and diseases into American agriculture. GAO Report at 46, 55-56, 57. Whether DHS/CBP is able to hire 500 more Agriculture Specialists, a doubtful proposition, is irrelevant. It will not fix the underlying problem because it will not reverse the alarming trend in inspector departures from CBP. A fundamental change in managing agroterrorism is required.

NAAE believes the only way to stop the erosion of the Nation's agriculture protection system is either to create a science based agriculture management infrastructure within CBP, removing Legacy Customs control over DHS's agriculture mission, or to return responsibility for accomplishing that mission to its source, USDA/APHIS. The former solution is daunting and may prove infeasible given the entrenchment of layer upon layer of Legacy Customs management in and throughout CBP. This management, top to bottom, has no education, training, or experience in the biological sciences or in agriculture management.

The latter approach, returning AQI functions to USDA, is a far more viable, logical solution given the significant role the GAO Report recognizes USDA must continue to play in fighting agroterrorism and protecting American agriculture, even under the current bifurcated scheme: despite DHS's designated role, USDA remains "primarily responsible for protecting the

agriculture sector,” and its Plant Protection and Quarantine program is “responsible for safeguarding crops from pests and diseases.” GAO Report at 11.

USDA received almost \$500,000,000 in FY 2003 for homeland security activities, including addressing agroterrorism. GAO Report at 12. Functions relating to agroterrorism and protecting agriculture not transferred to DHS and thus remaining at USDA are extensive. They include, among others, detecting, containing, and eradicating foreign animal or plant pests or diseases that become established in this country, developing, delivering, and supervising agriculture inspection training, developing AQI policies and procedures, regulating agents and toxins posing a threat to American agriculture, assisting states develop emergency response plans, serving as a technical resource for DHS, states, industry, and other stakeholders, developing and using rapid-response diagnostic tools to identify disease agents in the field and the labs (GAO Report at 4-5), managing APHIS’s Veterinary Services, training and accrediting veterinarians, developing vaccines, and researching agriculture biosecurity (GAO Report at 11-12, 28). USDA administers the AQI user-fee program. The Homeland Security Presidential Directives and the Bioterrorism Act of 2002 assign USDA major responsibilities for implementing their provisions, including developing vulnerability assessments of the agriculture sector. GAO Report at 17-21, 23. GAO recommends that USDA’s current involvement in managing agroterrorism be increased. GAO Report at 9.

NAAE does not suggest Congress should relieve DHS of all responsibility for protecting the country from agroterrorism. It recommends that Congress shift primary responsibility for protecting American agriculture, including performing AQI services, back to USDA. This added responsibility would fit well within the framework of what USDA is now expected to shoulder as a significant player in America’s overall effort to protect American agriculture and to defend against agroterrorism.

Relocating the AQI functions in USDA makes the most sense from the perspective of the stakeholders that DHS’s agriculture mission is intended to

serve. On March 14, 2005, *The Sacramento Bee* reports that, “instead of [CBP Agriculture Specialists] searching 1,200 cargo containers each week at one [unidentified] high-volume port, the [Ag] inspectors were looking at about 500. The inspectors said the unnamed [Legacy Customs] port directors had told them to cut their holds [inspections] on agriculture cargo.” This CBP policy decision and others like it led the head of the California Citrus Mutual, a grower trade association, to comment: “I believe we’re very susceptible to an intentional or accidental infestation.” He went on to call for a return of the AQI service functions to USDA: “I’m to the point where I think the agriculture inspections really need to be transferred back to the Agriculture Department.”

NAAE concurs with this stakeholder assessment and fully supports turning over primary responsibility for the Agriculture Mission to USDA/APHIS, the only agency equipped and motivated to accomplish that mission. Leaving it with DHS/CBP only promises to continue to jeopardize American agriculture and weaken the country’s protection against agroterrorism.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. E. Randall".

Dated April 1, 2005:

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