

USDA, APHIS Agreement #	19-8100-0395-MU
Cooperator Agreement #	18-0633-000-MU
Cooperator Tax Id #	68-0325104
Expiration Date	5/2024

MEMORANDUM OF UNDERSTANDING  
 BETWEEN  
 THE UNITED STATES DEPARTMENT OF AGRICULTURE  
 ANIMAL AND PLANT HEALTH INSPECTION SERVICE  
 PLANT PROTECTION AND QUARANTINE (APHIS-PPQ)  
 AND THE  
 CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)

ARTICLE 1 - PURPOSE AND SCOPE

The purpose of this Memorandum is to provide for effective cooperation between the Parties to protect the Nations' agricultural, horticultural, timber, plant, and other resources from damage caused by plant pests or noxious weeds. The scope of this Memorandum encompasses cooperative plant protection and quarantine programs and activities directed at plant pests and noxious weeds of mutual concern. The Parties believe that effective cooperation between them in planning and implementing plant protection and quarantine programs will help attain the Parties' mutual objective of protecting the Nation's plant health.

ARTICLE 2 - AUTHORITIES

This Memorandum is entered into by APHIS under the Plant Protection Act, as amended (7 USC 7701 et seq.) (PPA) which, in part, authorizes the Secretary of the United States Department of Agriculture (USDA) to cooperate with States or political subdivisions thereof, domestic or international organizations or associations, and individuals to carry out the PPA. In addition, pursuant to 7 USC 2279g, the Federal and State Parties may cooperate to carry out programs to protect the nation's plant resources and pursuant to 7 USC 2814, the Parties can cooperate on the management of undesirable plants on Federal lands.

This Memorandum is entered into by the CDFA pursuant to California Food and Agriculture Code (Section 482 (a)) Statutes that authorizes CDFA to cooperate with APHIS to conduct plant protection and quarantine programs and activities to accomplish the purpose of this Memorandum, including the phytosanitary inspection of plants and plant parts and the products thereof, and to contribute a just proportionate share of the resources necessary to carry out mutually agreed upon cooperation programs and activities.

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### ARTICLE 3 - MUTUAL RESPONSIBILITIES OF THE PARTIES

The Parties agree that:

a. This Memorandum supersedes all existing Memoranda of Understanding, and supplements and/or amendments thereto, between APHIS-PPQ and CDFA relating to the Parties' cooperative activities to protect the Nation's agricultural, horticultural, timber, plant, and other resources from damage caused by plant pests and noxious weeds within the State of California, with the understanding that the Parties' cooperative plant protection and quarantine programs now in progress pursuant to existing Memoranda of Understanding shall continue under this Memorandum of Understanding, if consistent herewith.

b. Any things of value that a Party contributes to cooperative plant protection and quarantine programs, such as funds, personnel, facilities, supplies, and equipment, shall be specified and agreed to by execution of a separate and distinct written agreement, apart from this Memorandum, that is in compliance with all applicable Federal and State laws and regulations.

c. Cooperative programs and activities initiated to carry out the purposes of this Memorandum shall be planned, agreed upon, and implemented jointly by the Parties. Likewise, cooperative work plans and methods of procedure shall be prepared jointly, and shall be subject to revision by agreement of the Parties as progress of the work justifies.

d. Copies of cooperative work plans will be filed with each of the cooperating Parties.

e. Periodic progress reports of cooperative programs and activities shall be prepared and furnished by each of the cooperating Parties, as required and/or mutually agreed upon by the Parties.

f. The Parties will collaborate to identify components of the agricultural quarantine inspection program at CDFA ports of entry where additional personnel and resources are needed to ensure appropriate program delivery of pest exclusionary efforts.

### ARTICLE 4 - RESPONSIBILITIES OF APHIS

APHIS agrees to:

a. Provide leadership in planning and implementing cooperative plant protection and quarantine programs through APHIS regional, state, and work unit organizations.

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b. Collaborate in the planning and implementation of cooperative plant protection and quarantine programs in the State of California.

c. Provide the acronym of state agency with pertinent information relating to the cooperative plant protection and quarantine programs within the State.

d. 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.

#### ARTICLE 5 - RESPONSIBILITIES OF CDFA

The CDFA agrees to:

a. Furnish the services of a mutually acceptable State official, whose duties shall include the direction of the State's personnel who are engaged in cooperative plant protection and quarantine programs, as well as to all matters related to the enforcement of State laws and the effective utilization of personnel and facilities of its organizations conducting the cooperative work. This State official will participate in joint planning, direction, and execution of cooperative work programs pursuant to this Memorandum.

b. Provide APHIS with pertinent information relating to the cooperative plant protection and quarantine programs within the State.

c. Undertake directly, or in cooperation with the State agencies having the appropriate jurisdiction, such enforcement and compliance measures as may be necessary for the effective enforcement of the State's plant protection and quarantine laws and regulations, including State regulations governing the intrastate movement of regulated articles.

d. In accordance with the applicable State laws and regulations, authorize specified APHIS plant protection and quarantine personnel to enter upon private property pursuant to the authority of State law when necessary for the purposes of conducting inspections or surveillance work regarding plant protection and quarantine programs and ensuring compliance with plant protection and quarantine laws.

e. Revise State regulations, or promulgate new regulations, when such action is necessary or advisable, to ensure the effective implementation of plant protection and quarantine programs and activities.

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f. Solicit, as appropriate and applicable, the cooperation of State Universities, Agricultural Experiment Stations, Agricultural Extension Service, and similar State organizations to provide, among other things, their facilities, personnel, and assistance to accomplish the cooperative plant protection and quarantine programs and activities.

g. Submit plant pests that are suspected new introductions into the United States to the USDA, National Identification Services recognized authority as applicable with collection data for final identification.

h. If applicable, when connected to the USDA-APHIS network or hosting APHIS information and/or information systems, comply with the federal, USDA, and APHIS security and privacy requirements to protect APHIS information and information systems against cyber threats and unauthorized intrusions as required by the Federal Information Security Management Acts of 2002 and 2014 (FISMA), the National Cybersecurity Protection Act of 2014, and the Privacy Act of 1974. Specific USDA/APHIS control guidelines are outlined in the most current version of the USDA/APHIS Information System Security Handbook. In accordance with USDA and APHIS regulations and policies on email, the Recipient will not download any material (i.e., pictures, movies, or music files) bearing a copyright, nor access any material defined as inappropriate in these regulations and directives. Additionally, the Recipient agrees that any of its personnel that are given access to the APHIS network, any systems on the APHIS network, or any personnel using APHIS-owned or funded computer equipment will take all APHIS required security and privacy training. Furthermore, the Recipient will not disseminate, post, or publish in any capacity official government information or data unless authorized to do so by this Agreement.

Current APHIS security and privacy requirements, policies, and guidelines can be obtained through the APHIS Information System Security Program Manager. APHIS follows USDA's processes which are based on the most current National Institute of Standards and Technology (NIST) special publications such as NIST Special Publications (SP) 800-37 and SP 800-53 and -53A.

i. If applicable, work with the appropriate APHIS Program Unit's Information Systems Security Manager and the APHIS Information Systems Security Program Manager to ensure compliance with the FISMA assessment and authorization (A&A) requirements for APHIS information and information systems. The Recipient must follow USDA/APHIS A&A guidelines and standards described in the USDA six step risk management framework process guide located at: Departmental Regulation: Security Assessment and Authorization. The regulation is based on applicable National Institute of Standards and Technology (NIST)

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publications such as, NIST SP 800 – 37, *Guide for Applying the Risk Management Framework to Federal Information Systems*; and, NIST SP 800 – 53, *Recommended Security Controls for Federal Information Systems*.

#### ARTICLE 6 - 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 Memorandum 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 Memorandum and only in a manner consistent with the provisions of the PPA.

c. Data Restrictions: The CDFA agrees and acknowledges that the data provided by APHIS-PPQ pursuant to this Memorandum is solely APHIS-PPQ data and as such is or may be subject to the confidentiality provisions of 7 USC §8791 of the Food, Conservation, and Energy Act of 2008 (formerly Section 1619 of the 2008 Farm Bill) 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 7 USC §8791. The CDFA further agrees and acknowledges that if 7 USC §8791 does apply to some or all of the APHIS provided data, that pursuant to 7 USC §8791, the CDFA is bound to and will comply with 7 USC §8791 (copy attached as

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Appendix A) and related APHIS-PPQ guidance. The CDFA understands that it may not release any of the data provided by APHIS-PPQ 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 Memorandum and applicable Federal laws and regulations, to the APHIS-PPQ Legislative and Public Affairs, Freedom of Information and Privacy Act Office, 4700 River Rd. Unit 50, Riverdale, MD 20737, (301) 851-4102. Additionally, the CDFA agrees that it will, if requested by APHIS, enter into a separate written agreement with APHIS-PPQ to protect from release or disclosure any data provided by APHIS-PPQ that is subject to 7 USC §8791.

#### ARTICLE 7 - ENVIRONMENTAL

Consistent with the provisions of the Council on Environmental Quality regulations (40 CFR 1500 – 1508) implementing the National Environmental Policy Act (NEPA), the Parties to this Memorandum agree to cooperate in the preparation and completion of all NEPA environmental analyses and documentation requirements (including mitigation requirements) for any project for which APHIS prepares any NEPA documentation and analysis related to any cooperative program created or initiated to carry out or accomplish the purposes of this Memorandum.

#### ARTICLE 8 - PROGRAM PERSONNEL

a. APHIS personnel are solely APHIS employees and are solely under APHIS' control and direction.

b. Personnel of the CDFA are solely CDFA employees and are solely under CDFA control and direction.

#### ARTICLE 9 - PUBLICATIONS

Subject to the limitations of Article 6, each of the Parties to this Memorandum shall be free to use in its official correspondence and publications any of the results obtained in cooperative plant protection and quarantine programs conducted under this Memorandum, giving due acknowledgment and credit to the other Party. Publication may be joint or independent, as may be agreed upon by the Parties, always giving due credit to the other cooperating Parties, and recognizing within proper limits the rights of the individuals doing the work. In case of failure to agree as to the manner of publication or interpretation of results, either Party may publish such material after due notice and submission of the proposed manuscripts to the other Party. In such

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instances, the Party publishing the material will give due credit to the other cooperating parties, but will assume full responsibility for any statements on which there is a difference of opinion.

The CDFA may assert copyright in any aforesaid material developed by the CDFA that is subject to copyright. The Federal Government shall reserve a worldwide, royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the material for Federal Government purposes, and to authorize others to do so.

#### ARTICLE 10 - FINANCING AND FUNDS MANAGEMENT

a. This Memorandum defines the basis on which the Parties will cooperate, and does not constitute a financial obligation or serve as a basis for incurring expenditures. Each Party will handle and expend its own funds. Any and all expenditures from Federal funds by APHIS made in conformity with cooperative programs and activities conducted under this Memorandum must be in compliance with USDA rules and regulations, and in each instance based upon appropriate financial documentation. Expenditures made by the CDFA will be in accord with its laws and regulations.

b. The responsibilities assumed by each of the cooperating Parties are contingent upon funds being available from which the expenditures legally may be made.

c. State funds for cooperative programs and activities conducted under this Memorandum shall not be expended by a Federal employee, even if the CDFA does not have a representative stationed in the locality of the cooperative activities. Federal employees may handle the CDFA's accounts for cooperative activities, but shall forward all vouchers to the disbursing agent of the State for payment. The CDFA shall not send checks payable to Federal employees or send checks payable to "Cash" or "Bearer" to Federal employees for payment of local expenses.

d. Cooperative program activities that may result in exchange, transfer, reimbursement, off-setting, or any other means of moving funds from one Party to the other are not authorized under the terms of this Memorandum. All such activities shall be documented and supported by separate financial documentation in compliance with all applicable Federal and State laws and regulations.

#### ARTICLE 11 - INTELLECTUAL PROPERTY

Any invention made in the performance of this cooperative work jointly by an employee or

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employees of the USDA and the CDFA shall be fully disclosed, either by publication or by patenting in the United States, and any such United States patent shall either be dedicated to the free use of the people in the United States or be assigned or licensed to the United States of America (Government) or be assigned or licensed to the CDFA, or jointly owned by the Government and CDFA, as may be mutually agreed upon by the Parties hereto, provided, that in the event of assignment or license to the CDFA, the Government shall retain an irrevocable, nonexclusive, royalty-free license under the patent, throughout the world, to practice the invention or have the invention practiced for or on behalf of the Government, and provided further, that in the event of assignment or license to the Government, it shall be of the domestic patent rights.

Where the domestic patent rights are assigned or licensed to the Government, the Government shall have an option to acquire the foreign patent rights in the invention on which an application for a United States patent is filed, for any particular foreign country, said option to expire in the event that the Government fails to cause an application to be filed in any such country on behalf of the Government or determines not to seek a patent in such country within eight months after the filing of the application for a United States patent on the invention. Where the domestic patent rights are assigned or licensed to the Government, but the foreign patent rights are retained by an employee, the employee shall grant to the Government a nonexclusive, irrevocable, royalty-free license in any patent that may issue thereon in any foreign country, including the power to issue sublicenses for use on behalf of the Government and/or in furtherance of the foreign policies of the Government, and said license shall also include the power to sublicense licensees under the Government-owned or licensed United States patent to practice the invention without payment of royalty or other restriction in any foreign country wherein a corresponding patent may issue to the employee or this foreign assignee.

Any invention made in the performance of this cooperative work solely by an employee or employees of the USDA or solely by an employee or employees of the CDFA shall be disposed of in accordance with the policy of the USDA or CDFA, respectively, provided, that in the event the invention is made solely by an employee or employees of the CDFA, the CDFA shall grant or shall obtain from the assignee of any patent issued on said invention an irrevocable, nonexclusive, world-wide, royalty-free license for the Government, to practice the invention or have the invention practiced for or on behalf of the Government, and provided further, in the event the invention is made solely by an employee or employees of the CDFA, that unless the CDFA or his assignee has taken effective steps within three years after a patent issues on the invention to bring the invention to the point of practical application or has made the invention available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why he should retain the principal or exclusive rights for a further period of time, the Government shall have the right to require the granting of a license to an applicant on a



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nonexclusive, royalty-free basis.

Inventions made in the performance of this cooperative work may be subject to the applicable statutes and regulations governing inventions, patents and licensing, at 35 U.S.C. §200-210 and 37 C.F.R. Part 401 and 404 (the Bayh-Dole Act). When applicable, the provisions of the Bayh-Dole Act and its regulations shall be determinative, anything in this Article to the contrary notwithstanding.

Further details regarding intellectual property shall be included in working plans as appropriate per Article 3 of this agreement.

#### ARTICLE 12 - MISCELLANEOUS

a. The Parties to this Memorandum shall comply with all Federal statutes, regulations and directives relating to nondiscrimination and that may apply to the cooperative activities conducted under the auspices of this Memorandum.

b. No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Memorandum or to any benefit to arise there from, unless it be made with a corporation for its general benefit.

#### ARTICLE 13 - DURATION, AMENDMENTS, AND TERMINATION

This Memorandum shall become effective upon the date of final signature, and shall remain in effect for 5 years. This Memorandum may be modified or renewed upon mutual agreement of the Parties in writing, and may be terminated at the request of either Party. Requests for any major modification or termination shall be submitted, in writing, to the other Party for consideration not less than 60 days in advance of the desired effective date.

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CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

*Crystal Myers* 4/24/19  
 \_\_\_\_\_  
 Crystal Myers, Branch Chief Date

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

*Nick Condos* 4-4-19  
 \_\_\_\_\_  
 Nick Condos, Director, PHPPS Date

UNITED STATES DEPARTMENT OF AGRICULTURE  
 ANIMAL AND PLANT HEALTH INSPECTION SERVICE  
 PLANT PROTECTION AND QUARANTINE

*Osama El-Lissy* 5/6/19  
 \_\_\_\_\_  
 Osama El-Lissy Date  
 Deputy Administrator

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## APPENDIX A

### 7 U.S.C.

United States Code, 2011 Edition

Title 7 - AGRICULTURE

CHAPTER 113 - AGRICULTURAL COMMODITY SUPPORT PROGRAMS

SUBCHAPTER V - ADMINISTRATION

Sec. 8791 - Information gathering

From the U.S. Government Printing Office, [www.gpo.gov](http://www.gpo.gov)

## §8791. 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—

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- (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.

(Pub. L. 110–234, title I, §1619, May 22, 2008, 122 Stat. 1022; Pub. L. 110–246, §4(a), title I, §1619, June 18, 2008, 122 Stat. 1664, 1750.)

**CODIFICATION**

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.