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New Hampshire
Department of Agriculture, Markets & Food

Shawn N. Jasper, Commissioner

December 3, 2020

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Agriculture, Markets and Food to enter into a Memorandum of Understanding (MOU) with United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) for activities relating to Postentry Quarantine. This notice of MOU Award is effective upon Governor and Executive Council approval through October 20, 2025.

EXPLANATION

The purpose of this MOU is to allow New Hampshire Dept. Agriculture, Markets & Food to monitor imported plants which require a postentry quarantine period under the authorities of the USDA.

Under the United States 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 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.

The USDA is the regulatory authority designated to oversee the conditions under which plants may be imported into the country. All plants imported into the US are subject to compliance with plant health protection laws. Imported plants pose different levels of risk dependent upon the plant, stage of development, country of origin, presence of soil, or other factors. Some plants are prohibited from entry due to unacceptable levels of risk, others pose little risk and entry requirements are set accordingly. Some plants, primarily woody-stemmed plants of a defined age, may be required to go through a postentry quarantine period before they are integrated into plant production or introduced into the environment. The plants in postentry quarantine require separation from other plants and monitoring to ensure that any potential plant pests and diseases are not introduced. The Plant Protection Act provides that the USDA is the regulatory agency with the authority to oversee the postentry quarantine program to protect the integrity of US agriculture and the environment. This MOU authorizes the NH Dept. Agriculture, Markets & Food to provide the monitoring and oversight of any postentry quarantine plants imported into New Hampshire.

Office of Commissioner 25 Capitol Street PO Box 2042 Concord, NH 03302-2042
www.agriculture.nh.gov/divisions (603) 271-3551 Fax: (603) 271-1109
TDD Access: Relay NH 1-800-735-2964

The NH Dept. Agriculture, Markets & Food cooperates closely with USDA on pest responses to plant health in the state. Inspectors receive the training needed to assist growers with compliance necessary related to the import and export of plants. The State Entomologist receives regular updates from the plant inspection stations at the ports relative to imported plants destined to the state. The majority of plants currently entering New Hampshire from overseas are low-risk tissue culture and cuttings destined for a small number of plant rooting stations and private collectors. Currently, NH growers are not receiving plants requiring postentry quarantine monitoring. However, should a grower wish to import plants requiring postentry quarantine, this MOU would provide the ability for the grower to receive monitoring and oversight from the state.

Respectfully submitted,

Shawn N. Jasper
Commissioner

United States
Department of
Agriculture

Marketing and
Regulatory
Programs

Animal and
Plant Health
Inspection
Service

Plant Protection
and Quarantine

Field Operations

2150 Centre Ave,
Bldg B-3E10
Fort Collins, CO
80526

(970) 494-7500
FAX: 494-7501

October 27, 2020

Shawn Jasper
Commissioner
New Hampshire Department of Agriculture, Markets and Food

Enclosed for your records is the completed, executed document for the Memorandum of Understanding #20-8233-0139-MU. This Agreement is for activities relating to Postentry Quarantine.

This Notice of Memorandum of Understanding Award is for 5 years and is effective October 20, 2020.

We have appointed Mr. Stephen Lavallee, State Plant Health Director, as the Authorized Departmental Officer's Designated Representative (ADODR) for this Memorandum of Understanding.

If you have any questions or concerns regarding this Memorandum of Understanding, please refer them to Mr. Stephen Lavallee.

Sincerely,

//s //
Clint D. McFarland
Associate Executive Director
PPQ Field Operations

Enclosures

cc:
ABS, Minneapolis, MN
Stephen Lavallee ADODR
File

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Cooperator Agreement #	
Cooperator Tax Id #	
Expiration Date	~~October 19, 2025~~

MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN THE
NEW HAMPSHIRE DEPARTMENT OF AGRICULTURE, MARKETS AND FOOD
(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 MOU outlines the roles and responsibilities of the parties in the inspection and monitoring of postentry quarantine (PEQ) sites and the monitoring and enforcement of importer compliance with postentry quarantine PEQ requirements.

ARTICLE 2 – AUTHORITIES

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 3 - MUTUAL RESPONSIBILITIES

The Cooperator and APHIS mutually agree/understand to/that:

a. Articles required to undergo postentry quarantine in accordance with 7 CFR 319.37, as amended, and destined to *New Hampshire* may only be imported if this MOU has been signed by the USDA, APHIS, PPQ Deputy Administrator, or designee, and by the State Plant Regulatory Official (SPRO), or designee, representing the Cooperator.

b. In accordance with the state laws administered by the Cooperator, inspection and other postentry quarantine services provided by the Cooperator may be subject to charges imposed by the Cooperator.

c. Any article destined to *New Hampshire* and required to be grown under postentry quarantine conditions, as well as any increase (propagation) therefrom, shall be grown in accordance with a postentry quarantine growing agreement signed by the person (the importer) who applied to APHIS-PPQ for a written permit in accordance with 7 CFR 319.37-3 for importation of the article. On each postentry quarantine growing agreement,

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APHIS-PPQ shall obtain the signature of the SPRO, or designee, of the State of *New Hampshire*. The postentry quarantine growing agreement shall specify the kind, number, and origin of plants to be imported, and shall certify to APHIS-PPQ and to the COOPERATOR in the State of *New Hampshire* that the signer of the agreement will comply with the conditions specified on the agreement as described in 7 CFR 319.37-7(d) and any other condition(s) as specified on the permit, as amended.

d. If an inspector representing either the COOPERATOR or APHIS-PPQ determines that:

(1) Any article subject to the postentry quarantine growing requirements specified in 7 CFR 319.37, or any increase therefrom, is being grown at an unauthorized site, the inspector will immediately contact the state's designated representative for PEQ programs and the State Plant Health Director (SPHD), or designee, who will issue an Emergency Action Notification (EAN), PPQ Form 523, to the person who signed the postentry quarantine growing agreement. That person shall be responsible for carrying out all actions specified in the EAN within a specified time frame. The EAN may require that the person named in the notification must destroy, ship to a point outside the United States, move to an authorized postentry quarantine site, and/or apply treatments or other safeguards to the article(s), and any increases thereof as prescribed by an inspector to prevent the introduction or further spread of plant pests into the United States. In choosing which action to order and in setting the time limit for the action, the inspector shall consider the degree of pest risk presented by the plant pest(s) associated with the kind of article (including increase therefrom), the types of other host materials for the pest in or near the growing site, the climate and season at the site in relation to the pest's survival, and the availability of treatment facilities. The SPHD, or designee, with input from the inspector and the state's designated representative for the PEQ program, will complete a Report of Violation, PPQ Form 518.

(2) Any article, or any increase therefrom, grown at a site specified in an authorized postentry quarantine growing agreement is being grown contrary to the provisions of 7 CFR 319.37, including in numbers greater than the number approved by the postentry quarantine growing agreement, or in a manner that otherwise presents a risk of introducing plant pests into the United States, the inspector will immediately contact the state's designated representative for PEQ programs and the SPHD, or his/her designee, who will issue the EAN, PPQ Form 523, to the person who signed the postentry quarantine growing agreement.

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That person shall be responsible for carrying out all actions specified in the EAN. The EAN may extend the time for which the articles and the increase therefrom must be grown under the postentry quarantine conditions specified in the authorized postentry quarantine growing agreement, or may require that the person named in the notification must destroy, ship to a point outside the United States, or apply treatments or other safeguards to the article, the increase therefrom, or any portion of the article or the increase therefrom, within the time specified in the EAN. In choosing which action to order and in setting the time limit for the action, the inspector shall consider the degree of pest risk presented by the plant pests(s) associated with the kind of article (including increase therefrom), the types of other host materials for the pest in or near the growing site, the climate and season at the site in relation to the pest's survival, and the availability of treatment facilities. The SPHD, or designee, will, with input from the inspector and the state's designated representative for the PEQ program, will complete a Report of Violation, PPQ Form 518.

e. All costs pursuant to any action ordered by an inspector representing APHIS-PPQ or the COOPERATOR shall be borne by the person who signed the postentry quarantine growing agreement covering the site where the articles were grown, or if no such agreement was signed, by the owner of the articles at the growing site.

f. Any person who moves an article subject to postentry quarantine growing requirements from the site specified for that article in an authorized postentry quarantine growing agreement, or who otherwise handles such an article contrary to the requirements of 7 CFR 319.37 and any of the postentry permit condition(s) shall be subject to such civil penalties and such criminal liabilities as are provided by 18 USC § 1001, 7 USC §§ 150gg and 163, or other applicable federal statutes.

ARTICLE 4 - COOPERATOR RESPONSIBILITIES

The COOPERATOR agrees:

a. To designate the SPRO, or his/her designee, as the authorized representative for the PEQ program who shall be responsible for collaboratively administering the activities conducted under this MOU. If staffing and/or funding are not available for the State to carry out the activities agreed upon under this MOU, the Cooperator shall not approve the site/facility for importation of plants under the PEQ program.

b. Establish regulations and requirements prior to the effective date of this MOU and enforce such regulations and requirements necessary to inspect sites and plants growing in postentry quarantine and to monitor and enforce compliance with postentry quarantine growing in accordance with 7 CFR 319.37.

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c. Review pending permit applications and growing plans for articles to be grown under postentry quarantine conditions in *New Hampshire* upon request of USDA, APHIS, PPQ, and report to the Plant Permit Services (Riverdale, MD) of APHIS-PPQ and the SPHD, or designee, whether the COOPERATOR would be able to provide inspection and monitoring services for the proposed postentry quarantine. If the Cooperator is not able to carry out the activities in accordance with this MOU, the Cooperator shall not process the permit application until the capacity for honoring these MOU requirements is in place.

d. Provide the services of inspectors in order to inspect sites to be used for postentry quarantine; report to the Plant Permit Services (Riverdale, MD) of APHIS-PPQ and the SPHD, or designee, whether the site/facility is of adequate size to contain the number of plants proposed for importation, including potential increase if increase is allowed; inspect plants for evidence of exotic pests at least once during the first year and once during the second year for plants required to be grown in postentry quarantine for two years, and at least once for plants required to be grown in quarantine for no more than one year; and, monitor and enforce compliance with the requirements of 7 CFR 319.37 during the use of the site(s)/facility(ies) for postentry quarantine.

e. Report to the SPHD, or designee and the Postentry Quarantine National Coordinator (PEQ NC) of APHIS-PPQ, any evidence of plant pests that are not known to occur in the United States and that are found at a postentry quarantine site/facility by the Cooperator; recommend to the permit holder safeguards or mitigation measures to control the pests; and, verify the application of safeguards or mitigation measures approved by APHIS-PPQ.

f. Report to the SPHD, or designee and the PEQ NC of APHIS-PPQ any unauthorized propagation or increase in the number of plants which occurs during postentry quarantine, and any other suspect violation of the provisions in 7 CFR 319.37.

ARTICLE 5 – APHIS RESPONSIBILITIES

The APHIS-PPQ agrees to/that:

a. Designate the SPHD, or designee, as the primary point of contact in the State of *New Hampshire*, as its authorized representative who shall be responsible for collaboratively administering the activities conducted under this MOU.

b. Seek COOPERATOR review of permit applications for postentry quarantine material to be grown in *New Hampshire* and issue permits only after determining that COOPERATOR services are available to monitor the postentry quarantine.

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c. Upon request of the COOPERATOR, provide training, technical advice, and pest identification services to *New Hampshire* officials involved in providing postentry quarantine services.

d. Notify the COOPERATOR, in writing and within ten days of arrival, when plant material destined for postentry quarantine in *New Hampshire* arrives in the United States, and notify the COOPERATOR in writing when materials in postentry quarantine may be released from quarantine in the *New Hampshire, provided that all quarantine conditions are met and the release from quarantine recommendation has been reviewed by the local APHIS PPQ PEQ and received by the PEQ NC. The PEQ NC or designee will issue in writing the final release from quarantine of any plant shipment under the program.*

e. Notify the COOPERATOR, in writing and within ten days of receipt, that the SPHD, or designee, has received a draft copy of the Report of Violation, PPQ Form 518, completed by the State's designated representative for the PEQ program. Timely resolution of all postentry quarantine violations occur with a priority on pest risk mitigation.

ARTICLE 6 – STATEMENT OF NO FINANCIAL OBLIGATION

Signature on this MOU does not constitute a financial obligation on the part of USDA, APHIS-PPQ or on the State of New Hampshire. Each signatory party is to use and manage its own funds in carrying out the purpose of this MOU. Transfer of funds or items of value is not authorized under this MOU.

ARTICLE 7 - 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 8 - CONGRESSIONAL RESTRICTION

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

ARTICLE 9 - LIABILITIES

APHIS will hold the Cooperator 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

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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 Cooperator, its employees, agents or subcontractor, and employees or agents of the subcontractor(s). Such relief shall be provided pursuant to the procedures set forth in the FTCA and applicable regulations.

ARTICLE 10 - AMENDMENTS

This MOU may be amended at any time by mutual agreement of the cooperating parties in writing.

ARTICLE 11 - TERMINATION

This MOU will be terminated 60 days after the date of actual receipt of notice of request to terminate, with regard to future importation into *New Hampshire* of articles requiring postentry quarantine in accordance with 7 CFR 319.37. If this MOU is terminated by either USDA, APHIS, PPQ or the Cooperator, USDA, APHIS, PPQ and the Cooperator shall continue to provide postentry quarantine services in accordance with this MOU, until the time the plant material is eligible to be released from quarantine, for all postentry quarantine material already in the *New Hampshire* and for all postentry quarantine material that arrives in the *New Hampshire* prior to the effective date of termination. Effective the date of termination of this MOU, no further importation of plants under the PEQ program shall be allowed to that State.

ARTICLE 12 - EFFECTIVE DATE AND DURATION

This MOU will be in effect upon date of final signature and will continue for five years from the date of signature.

Shawn N Jasper 9/28/2020

Signature Date

Name (please print) Shawn N Jasper

Title (please print) Commissioner

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

10/20/2020

Clint D. McFarland — Date
Associate Executive Director, Field Operations