



Pilot Program for Agriculture Specialists and Other Uniformed, Non-Law Enforcement Personnel to Carry Firearms for Personal Protection

October 6, 2020

Fiscal Year 2020 Report to Congress



**Homeland
Security**

U.S. Customs and Border Protection

Message from the Deputy Commissioner of CBP

October 6, 2020

I am pleased to submit the following report, “Pilot Program for Agriculture Specialists and Other Uniformed, Non-Law Enforcement Personnel to Carry Firearms for Personal Protection,” which has been prepared by U.S. Customs and Border Protection (CBP).

This report was compiled pursuant to direction set forth in Senate Report 116-125 accompanying the Fiscal Year 2020 Department of Homeland Security Appropriations Act (P.L. 116-93). The report provides an update on CBP agriculture quarantine inspections operations, a deployment plan to hire CBP agriculture specialists (CBPAS) at ports of entry (POE), and the potential for a voluntary pilot program for CBPASs and other uniformed, non-law enforcement personnel to carry firearms for personal protective purposes.



Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable Lucille Roybal-Allard
Chairwoman, House Appropriations Subcommittee on Homeland Security

The Honorable Chuck Fleischmann
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore Capito
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jon Tester
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

I would be pleased to respond to any questions you may have. Please do not hesitate to contact my office at (202) 344-2001.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Perez', written over a circular stamp or seal.

Robert E. Perez
Deputy Commissioner
U.S. Customs and Border Protection

Executive Summary

In March 2003, the Homeland Security Act of 2002 transferred responsibility for the Agriculture Quarantine Inspection (AQI) function at POEs from the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) to CBP. Since that time, CBP has worked with APHIS to improve the AQI program at U.S. POEs. Additionally, APHIS and CBP collaborate to facilitate safe trade of agriculture imports, to protect U.S. agriculture and natural resources, and to improve and enhance AQI operations at U.S. POEs and preclearance sites.

The consideration of potentially conducting a pilot program to arm CBPASs and other uniformed, non-law enforcement personnel within CBP has been given serious attention.

CBPASs are subject matter experts in agricultural issues. Although CBPASs enforce agricultural laws and regulations, CBPASs do not arrest individuals and are not expected to do so. CBPASs do not need to use objectively reasonable force in the performance of their duties. The CBPAS's primary purpose is to serve as an expert in the areas of inspection, intelligence, analysis, examination, and activities relating to the importation or exportation of plants, plant products and miscellaneous articles of restricted or prohibited agricultural commodities, and animal byproducts by passengers and their baggage, foreign mail, and all means of conveyances at CBP POEs. To fulfill this purpose, a firearm is neither required nor necessary.

CBP technicians provide support and assistance to CBPASs; CBP officers; import specialists; and fines, penalties, and forfeiture officers. While their work involves moderate risks or discomforts that require safety precautions, and while they are required to wear personal protective equipment, they are not required to have firearms certification or to carry a firearm for the performance of duties. Thus, CBP would not perform a voluntary pilot program for arming CBP technicians to carry firearms for personal protection purposes.



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I. Legislative Language

This document was compiled pursuant to direction set forth in Senate Report 116-125 accompanying the Fiscal Year (FY) 2020 Department of Homeland Security (DHS) Appropriations Act (P.L. 116-93).

Senate Report 116-125 states:

Agricultural Inspections.— Additionally, CBP shall report to the Committee within 120 days of the date of enactment of this act on the potential for a voluntary pilot program for Agriculture Specialists and other uniformed, non-law enforcement personnel to carry firearms for personal protection purposes.

II. Background

In March 2003, Section 402 of the Homeland Security Act of 2002 (HSA) provided the DHS Secretary, acting through the Under Secretary for Border and Transportation Security, with the responsibility for carrying out the immigration enforcement functions vested by statute, or performed by the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service); these functions were transferred to U.S. Customs and Border Protection (CBP). Section 403 of the HSA transferred the functions, personnel, assets, and liabilities of the U.S. Customs Service of the Department of the Treasury to the DHS Secretary. As described below, where these responsibilities and functions have been delegated, the delegation is generally to the CBP officer (CBPO) rather than to the CBP agriculture specialist (CBPAS).

CBPOs are located at various ports of entry (POE) to include land border, airport, seaport, and preclearance locations. A CBPO's primary mission is to detect and prevent terrorists and instruments of terror from entering and exiting the United States; to enforce the laws that protect America's homeland through the detection, interdiction, and apprehension of those who attempt to enter illegally or to smuggle any person or contraband at the POEs; and to facilitate the orderly and efficient flow of legitimate trade and lawful travelers.

The HSA transferred responsibility for the Agriculture Quarantine Inspection (AQI) functions at U.S. POEs from the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) to CBP. Under the HSA, APHIS retained the following functions: processing of live animal and plant importations; pest identification and risk analysis; inspection of passengers, commodity, and conveyances from Hawaii and Puerto Rico destined to mainland United States); preclearance inspection of commodities in foreign countries; trade compliance verification; investigation and adjudication of AQI violations; issuance of phytosanitary or animal byproduct certificates; supervision of AQI training; management of AQI user fees; management of the AQI performance measurement system; and fumigations. The HSA transferred to CBP the responsibility for submitting pests and diseases for analysis and identification; collecting, submitting, and reporting AQI program information; maintaining, monitoring, and enforcing compliance agreements; monitoring transiting shipments and verifying exit; and inspecting passengers, baggage, cargo, and mail entering the country for prohibited agriculture materials.

As of FY 2020, CBP has a workforce of approximately 2,600 CBPAS positions deployed at 186 POEs, with 124 agriculture canine teams.

The CBPASs' primary purpose is to serve as experts in the areas of inspection, intelligence, analysis, examination, and activities relating to the importation of plants, plant products, and miscellaneous articles of restricted or prohibited agricultural commodities, animal byproducts by passengers and their baggage, foreign mail, and all means of conveyances at CBP POEs. While performing the full range of inspection, intelligence, analysis, examination, and regulatory enforcement activities, the CBPAS provides expert guidance and training to CBPOs, import

specialists, and industry; and serves as the agricultural expert on targeting and analysis teams. On a typical day, CBPASs process more than 1 million passengers and 78,000 shipments of truck, rail, and sea cargo. In FY 2019, CBPASs seized a daily average of 4,695 prohibited plants, meats, animal byproducts, and soil, and intercepted 314 insect pests at the POEs.

III. Duties and Responsibilities of Uniformed, Non-Law Enforcement

A. CBPAS Duties and Responsibilities

CBPASs are trained to analyze, detect, identify, and deter hazards associated with imported agricultural commodities. CBPASs examine agriculture-related products offered for entry and interdict prohibited and smuggled items, including biologicals and pharmaceuticals, that have the potential for spreading exotic plant pests (e.g., Asian gypsy moth) and foreign animal diseases (e.g., African and classical swine fever, foot and mouth disease, bovine spongiform encephalopathy). This AQI function occurs principally in the passenger baggage inspection area, in the cargo environment, in expedited courier facilities including U.S. international mail facilities, and in many port analytical units.

CBPASs receive specialized training regarding enforcement of AQI regulations and are a vital component of some analytical, pre-arrival screening units. CBPASs have continued to enhance their targeting capacity and efforts to detect agricultural and biological terrorism-related materials. Additionally, CBPASs target known smugglers and high-risk conveyances and cargo, and inspect shipments containing regulated materials. In concert with USDA employees, CBPASs perform focused special operations that have led to the interdiction of high-profile agriculture pests, such as khapra beetles, Asian gypsy moths, and exotic fruit flies. CBPASs also perform a wide variety of outreach activities including presentations to recruit new CBPASs and to inform travelers and the trade industry of pest exclusion activities.

CBPASs serve as technical consultants to provide guidance to CBP personnel, researchers, brokers, industry participants, travelers, federal/state/local agencies, and others on the interpretative techniques and regulatory requirements pertaining to the processing of all agriculture-related cargo and material. They also routinely interact with carriers, other agencies, and foreign entities to exchange information and to provide guidance on admissibility and compliance of agriculture imports.

B. CBP Technician Duties and Responsibilities

The CBP technician provides a full range of technical and clerical activities in support of functions and programs of the office. Specifically, the CBP technician performs work supportive of or incidental to the CBPO and the CBPAS inspections of conveyances, cargo, passenger, baggage, interdictions, activities, screening packages in mail and express consignment facilities, and miscellaneous articles. The CBP technician supports the inspection of vessels and aircraft for restricted and prohibited commodities, byproducts, contaminants, and pests that are potentially harmful to the Nation's agriculture. They also assist CBPOs and CBPASs with the scanning equipment used to review contents of packages and luggage.

The CBP technician assists entry and import specialists and the Fines, Penalties, and Forfeiture Office by preparing cases for decisions by entry and import specialists. They provide brokers and prospective importers with information for merchandise and cargo routinely received through the POEs. The CBP technician researches information to help specialists to make classification and value determinations, coordinates or enters information into CBP automated systems, and reconciles accounts to resolve errors on collection documents.

The CBP technician performs a variety of clerical services in support of operations at the Centers for Excellence and Expertise. They perform cashier duties, fee collections, timekeeper functions, local property officer duties, and vehicle management.

IV. Potential for a Voluntary Pilot Program for Arming CBPAS and Other Uniformed, Non-Law Enforcement Personnel to Carry Firearms for Personal Protection Purposes

A. The CBPAS

The CBPAS does not perform primary-related inspection functions (preprimary roving, passenger immigration admissibility, and initial customs and agriculture declaration), nor is he or she a member of specialized law enforcement teams or border security teams such as the Special Response Team or Contraband Enforcement Team. CBPAS functions do not include law enforcement activities, nor is the CBPAS authorized to conduct personal searches, detain, or arrest. Therefore, there are no armed CBPASs in CBP. As part of their curriculum at the Federal Law Enforcement Training Centers (FLETC), CBPASs receive 16 hours of basic defensive tactics, with a 4-hour annual refresher training. This training includes situational awareness, proper defensive movement, control tactics, and stabilization techniques. The training enhances the ability of CBPASs to react effectively to, control, and survive a combative encounter that cannot be avoided.

B. The CBP Technician

The position description for the CBP technician includes providing support and assistance to CBPASs; CBPOs; import specialists; and fines, penalties, and forfeiture officers. The CBP technician's work involves moderate risks or discomforts that require safety precautions when working around moving parts, carts, or machines and exposure to contagious diseases or irritant chemicals. The CBP technician is required to wear personal protective equipment. The CBP technicians are required to receive drug testing but do not submit financial statements. Additionally, the CBP technicians are not required to have firearms certification or to carry a firearm for the performance of duties. Thus, CBP would not perform a voluntary pilot program for arming CBP technicians to carry firearms for personal protection purposes.

C. The Major Contrast between CBPASs and CBPOs: Authorities and Training

The education and training requirements for hiring a CBPAS differ from the requirements for hiring a CBPO. The CBPO, GS-1895, has no positive education requirement, whereas the CBPAS, GS-0401, must have completed successfully a full 4-year course of study at an accredited college or university leading to a bachelor's or higher degree that included a major field of study in biological sciences. Additionally, the CBPO has physical fitness, medical, polygraph, and firearm requirements for hiring. The CBPAS has a medical requirement. The

CBPO is a law enforcement-covered position utilizing Title 8 and Title 19 authorities. CBPASs are regulatory officials with authorities principally under Title 7 and Title 9.

CBPOs and CBPASs have the overall mission to protect the public against terrorists and weapons of mass destruction. Although the CBPAS works in the same environment as the CBPO, CBPAS activities are different from CBPO law enforcement activities, as further described below, and the CBPAS does not have arrest authority as does the CBPO. CBPASs have extensive training and experience in agricultural and biological inspections. The CBPO is required to perform law enforcement activities that include apprehension, detention, and arrests, relating to the arrival and departure of persons, conveyances, and merchandise at the POEs.

CBPAS activities are limited in the sense that CBPASs perform their regulatory activities in the secondary environment. Those regulatory activities are conducted to prevent plant pests and foreign animal diseases from entering the United States through passenger baggage processing. However, the CBPAS also encounters other types of commodities that are turned over to the CBPO for adjudication, processing, seizure, etc., when those commodities fall outside the purview of the CBPAS. As such, the CBPAS does not perform law enforcement activities associated with the CBPO's primary functions.

The CBPAS typically also does not perform outbound inspections. The CBPAS domain is inspection of inbound cargo, conveyances, passenger baggage, and international mail and express courier packages. CBPASs provide their expertise in the detection and mitigation of risks associated with intercepted pests, diseases, and biohazardous materials that can affect the U.S. agriculture industry and economy severely.

The emphasis of the basic training curriculum between the CBPO and the CBPAS also is different and independent of each other. The differences in the training are noted below.

D. CBPO – Contrast in Training with the CBPAS

- Candidates must undergo a pre-employment fitness test: 12 or more push-ups in 1 minute; 12” step test - 120 steps per min in 5 minutes; and 20 or more sit-ups in 1 minute.
- Basic training is 89 days in duration.
- Candidates must pass all graded exams with a 70 percent.
- Training is held at FLETC in Glynco, Georgia.
- The following law enforcement tactical training is taken:
 - Firearms training (includes semiautomatic service pistol and M-4) – 71 hours
 - Officer response tactics (includes defensive tactics and arrest techniques) – 86 hours
 - Collapsible straight baton – 8 hours
 - Oleo-resin capsicum spray – 10 hours
 - Electronic control device – 8 hours
 - Physical conditioning – 28 hours
 - Community first-aid and safety – 12 hours

- Three Fitness Graduation Standard (FGS) test blocks – 12 hours
 - To graduate, trainees must pass the final FGS with the following scores: 1.5-mile run in 15 minutes or less; 24 or more push-ups in 1 minute; 220-yard run in 45 seconds or less.

E. The CBPAS – Contrast in Training with the CBPO

- The training consists of 69 days split between two training locations:
 - 36 days at the USDA Professional Development Center, Frederick, Maryland, and 33 days at FLETC, Glynco, Georgia.
- USDA Professional Development Center-graded exams must be passed with a minimum of 80 percent.
- FLETC exams must be passed with a minimum of 70 percent.
- Participation is required for the defensive tactics practical exercise, but there is a graded component and participants must be familiar with terminology; grades are pass or fail.
- 552 total hours of instruction:
 - 273.5 hours by USDA (49.5 percent);
 - 268 hours by CBP (48.5 percent); and
 - 10.5 hours by other agencies (2 percent).

F. Contrasts between CBPAS and CBPO Authorities

There is no question that CBPOs and CBPASs work side by side daily to accomplish CBP's mission. The same could be said for those personnel who perform duties such as CBP technicians, import specialists, and entry specialists. All play various supporting roles toward accomplishing the mission.

The major difference in the CBPO position from the CBPAS position is the arrest authority outlined in the statutory and regulatory authorities below:

- HSA (P.L. 107-296, 116 Stat. 2135), 6 United States Code (U.S.C.) § 101 *et seq.*, which created the new DHS);
- 8 U.S.C. part 1357 – Powers of Immigration Officers and Employees (to include arrest authority); and
- 19 U.S.C. § 1589a – Enforcement Authority of Customs Officers (to include arrest authority).

With the authorities provided for in the statutes noted above, the credential for a CBP officer states:

Who is empowered to exercise the authority and perform the duties provided by law and Department of Homeland Security regulations, including making arrests, conducting searches, making seizures, bearing firearms, or serving any order, warrant or other process.

Alternatively, the credential for a CBPAS states:

Who is empowered to exercise the authority and perform the duties provided by law and Department of Homeland Security regulations.

The CBPAS is a subject matter expert in agricultural issues. Although CBPASs enforce agricultural laws and regulations, CBPASs do not arrest individuals nor are they expected to do so. CBPOs may need to use objectively reasonable force only when it is necessary to carry out their law enforcement duties, whereas CBPASs do not.

V. Conclusion

The CBPAS's primary purpose is to serve as an expert in the areas of inspection, intelligence, analysis, examination, and activities relating to the importation or exportation of plants, plant products and miscellaneous articles of restricted or prohibited agricultural commodities, and animal byproducts by passengers and their baggage, foreign mail, and all means of conveyances at CBP POEs. To fulfill this purpose, a firearm is not required, nor necessary. While performing the full range of duties in the aforementioned areas, the CBPAS provides expert guidance and training to CBPOs, import specialists, and industry, and serves as the agriculture specialist on targeting and analysis teams. The position prerequisites are based on a biological and science-based curriculum, making the position fundamentally different from law enforcement. Requirements for the position, training, expertise, recruitment efforts, and skill set for the position also are distinctly different from the CBPO position. The funding stream for the CBPAS (majority is from the AQI user fee) directly supports the CBPAS's subset mission of preventing plant pests and foreign animal diseases from entering the United States, and never was intended to support law enforcement posture. Although the CBPAS fully participates in CBP's primary mission of preventing the entry of terrorists and weapons while facilitating legitimate trade and travel, it is CBPASs' conspicuous participation in their primary purpose (indicated above) that differentiates their position from any armed and equipped law enforcement position.

Appendix - List of Abbreviations

Abbreviation	Definition
APHIS	Animal and Plant Health Inspection Service (USDA)
AQI	Agriculture Quarantine Inspection
CBP	U.S. Customs and Border Protection (DHS)
CBPAS	U.S. Customs and Border Protection Agriculture Specialist
CBPO	U.S. Customs and Border Protection Officer
DHS	U.S. Department of Homeland Security
FGS	Fitness Graduation Standard
FLETC	Federal Law Enforcement Training Centers
FY	Fiscal Year
HSA	Homeland Security Act of 2002
POE	Port of Entry
U.S.C.	United States Code
USDA	U.S. Department of Agriculture