

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
THE DEPARTMENT OF HOMELAND SECURITY**

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) between the Department of Health and Human Services (HHS) and the Department of Homeland Security (DHS) (the "parties") is to establish specific cooperation mechanisms as part of a broad framework for cooperation to enhance the Nation's preparedness against the introduction, transmission, and spread of quarantinable and serious communicable diseases from foreign countries into the States, territories, and possessions of the United States.

II. BACKGROUND

The HHS Secretary has statutory responsibility to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States. The Centers for Disease Control and Prevention (CDC), a component of HHS, is responsible for preventing and controlling disease and promoting health and education activities designed to improve the health of the people of the United States. CDC has statutory authority to detain, isolate, quarantine, or conditionally release persons arriving into the United States reasonably believed to be infected with quarantinable diseases. Some of the activities CDC undertakes to meet its legal and regulatory responsibilities include: overseeing the screening of arriving international travelers for symptoms of illness that could be of public health significance; providing travelers with essential health information; performing inspections of carriers, maritime vessels, and cargos for infectious disease threats; enforcing entry requirements for certain animals, etiologic agents, and vectors deemed to be of public health significance; and promulgating and implementing quarantine regulations.

DHS is responsible for preventing and protecting the Nation against terrorist attacks, major disasters, and other emergencies. Component agencies of DHS analyze threats and intelligence, secure the borders and the transportation system, protect the critical infrastructure, and plan the coordinated response. Three agencies within DHS, U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and the United States Coast Guard (USCG), consistent with their legal authorities, are statutorily permitted, pursuant to 42 U.S.C. § 268(b), to aid CDC "in the enforcement of quarantine rules and regulations." They may also detain, pending a determination of inadmissibility, aliens arriving into the United States.

Collaboration under the auspices of this MOU will be carried out primarily between the following entities within HHS and DHS:

For HHS: CDC

For DHS: CBP
 ICE
 USCG

III. DEFINITIONS

The following definitions will govern this MOU:

“Communicable disease” means, unless otherwise defined in 42 C.F.R. Part 71, an illness due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from an infected person or animal or a reservoir to a susceptible host, either directly or indirectly through an intermediate animal host, vector, or the inanimate environment.

“International traveler” means any international traveler, regardless of nationality or citizenship status including, but not limited to, returning residents, arriving immigrants, illegal immigrants, and citizens of the United States.

“Quarantinable disease” means any of the communicable diseases listed in an Executive Order of the President, as provided under section 361 of the Public Health Service Act (42 U.S.C. 264). The current list of quarantinable diseases as set forth in Executive Order 13295 of April 4, 2003, as amended, includes: cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers, Severe Acute Respiratory Syndrome (“SARS”), and influenza caused by novel or reemerging influenza viruses that are causing, or have the potential to cause, a pandemic.

IV. AUTHORITY

Pursuant to 42 U.S.C. §§ 264-71, the Secretary of HHS may make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States, territories, or possessions, or from one State, territory, or possession into any other State, territory, or possession. Those regulations may provide for the apprehension, detention, or conditional release of individuals only for the purpose of preventing the introduction, transmission, or spread of such communicable diseases as may be specified from time to time in executive orders of the President (“quarantinable diseases”) upon the recommendation of HHS. The President has specified SARS and influenza viruses that cause or may cause a pandemic, among others, in the list of communicable diseases subject to HHS regulations regarding quarantine and inspection. See Executive Order 13295 (Apr. 4, 2003), as amended; 42 C.F.R. Parts 70 & 71.

CDC enters into this MOU under the authority provided by sections 361 and 365 of the Public Health Service Act (42 U.S.C. §§ 264 and 268).

DHS enters into this MOU under the authority of the Homeland Security Act of 2002, § 102(b)(2) (6 U.S.C. § 112(b)(2)).

CBP and ICE have the authority to carry out obligations set forth in this MOU pursuant to 42 U.S.C. § 268(b), and pursuant to their inherent authority relating to agreements necessary to perform their functions.

The USCG has the authority to carry out obligations set forth in this MOU pursuant to 14 U.S.C. §§ 141 and 147a, and 42 U.S.C. § 268(b).

Pursuant to the Aviation and Transportation Security Act, Pub. L. No. 107-71 (Nov. 19, 2001), DHS has additional authorities to regulate the security of air and other transportation, and it is prepared to exercise those authorities to require necessary precautions and measures in the event of an H5N1 pandemic, including requiring the medical screening of international travelers prior to flights to the United States. At this time, HHS and CDC do not foresee a need to rely on these transportation security authorities with respect to an H5N1 influenza pandemic; they will notify DHS and agree on appropriate measures under these authorities in the event that circumstances change.

V. FORMS OF COOPERATION

The parties agree to cooperate in the following areas:

A. Information Sharing and Collection

The parties agree that the sharing of certain information may be useful in preventing the introduction, transmission, and spread of quarantinable and serious communicable diseases into the U.S. and within the U.S. As such, the parties, acting through their respective component agencies, agree to the following:

1. DHS/CBP

CBP will provide relevant information, if available and pursuant to paragraph A.4.a. of this article, to HHS/CDC from the following data sources for contact tracing purposes:

- a. CBP agrees to share information collected through CBP Form 6059B, "Customs Declaration,"
- b. CBP agrees to share information collected through the Advance Passenger Information System (APIS) in response to a specific request by CDC, as permitted in 19 C.F.R. § 122.49a(e);

- c. CBP agrees to provide Passenger Name Record (PNR) data to HHS/CDC, in accordance with all applicable rules and conditions provided in the EU Undertakings (69 Fed. Reg. 41543)(which apply equally to PNR data derived from flights between the U.S. and Iceland) and the Swiss Undertakings, subject to the following requirements:
- 1) that HHS/CDC submit all requests for data in writing, providing the purposes for making such a request;
 - 2) that HHS/CDC agrees that any data requests submitted to CBP will be necessary for the protection of the vital health interests of the data subject or of other persons, in regard to significant health risks;
 - 3) that every transfer of data under this paragraph will be treated by HHS/CDC as set forth in Appendix A of this MOU;
 - 4) Receipt of such data by HHS/CDC, along with the cover sheet of information provided in Appendix A of this MOU, constitutes acknowledgement and acceptance by HHS/CDC of the conditions of the transfer as outlined in Appendix A;
 - 5) that HHS/CDC agree that any further transfer of such data will only be to a state or local government authority directly involved in contact tracing associated with the incident ("relevant government authority") and will remain consistent with the purposes it outlined in its original request for the data from CBP;
 - 6) that HHS/CDC will provide a copy of Appendix A along with any data transferred to relevant government authorities and, as a means of documenting the acceptance of the conditions and requirements of the transfer to these relevant government authorities, HHS/CDC will obtain an acknowledgement from those parties that the subsequent transfer is also governed by all conditions contained in Appendix A;
 - 7) that HHS/CDC document any transfer of the data to a relevant government authority and provide that information, along with the corresponding acknowledgement, along with the information transferred, to CBP upon request; and
 - 8) that HHS/CDC and all relevant government authorities receiving PNR information will ensure the orderly disposal of such information consistent with their own applicable record retention procedures.
- d. CBP information shared with CDC may be subject to other restrictions that CDC will be required to observe, including the Privacy Act. With the exception of PNR as described in this MOU, such information may only be shared, without prior written

consent of CBP, with necessary State and local government health related agencies for contact tracing purposes as long as the transfer remains in furtherance of, and related to, the original purpose for the transfer from CBP to HHS/CDC.

- e. Pursuant to consultations described in paragraph A.4.f. of this article, CBP will share with CDC additional data elements as agreed between the parties.

2. USCG

- a. USCG agrees to assist CDC by sharing its extensive network of maritime contacts;
- b. USCG agrees to issue Marine Safety Information Broadcasts (MSIB) that contain a list of questions that CDC requests be answered in connection with the required radio reports of illness from vessel masters;
- c. USCG agrees to question the master of all vessels it boards prior to entry into port to obtain the same information as required for an MSIB; and
- d. USCG agrees to advise immediately the cognizant quarantine station having jurisdiction over the relevant port regarding a positive response indicating the presence of a suspect ill person.

3. ICE

- a. ICE will provide CDC, in response to a specific request from CDC, with information, as permitted by law and other agreements;
- b. ICE information shared with CDC may be subject to the Privacy Act and is not to be shared further with any party, agency, or individual without the express, written consent of ICE (*i.e.*, subject to the Third Agency Rule); and
- c. ICE reserves the right to implement strict restrictions regarding the use, storage, protection, and dissemination of any information it may share.

4. HHS/CDC

- a. The decision to request passenger manifest information will be based on a determination by the CDC Director that identification and notification of passengers, crewmembers, or their contacts potentially exposed to a serious communicable disease are reasonably necessary to prevent the introduction, transmission, or spread of disease from a foreign country into the United States or from one state or possession into another;
- b. CDC will share with DHS and/or its component agencies, on its own initiative or upon request:
 - (1) public health information concerning potential communicable disease threats;
 - (2) appropriate infection control practices; and
 - (3) safety measures for the protection of officers, employees, and contractors of DHS and its component agencies;
- c. CDC will protect all information it receives from DHS and/or its component agencies from dissemination and disclosure as requested by the owner agency, and in accordance with applicable laws and regulations;
- d. In carrying out its responsibilities described in this MOU, CDC may share information with DHS that may be subject to the Privacy Act, such as the names of international travelers. Such information is not to be shared further with any party, agency, or individual without the express, written consent of CDC (*i.e.*, subject to the Third Agency Rule);
- e. It is understood by all parties that CDC, in fulfilling its role in facilitating the identification, evaluation, and treatment of persons exposed to communicable disease during travel, may disclose information obtained from DHS to health departments and other public health or cooperating medical authorities. Such disclosures are governed under CDC Privacy Act System Notice 09-20-0136, entitled Epidemiologic Studies and Surveillance of Disease Problems, which also outlines the policies and procedures that will be used by CDC to safeguard all protected information received from DHS, subject to the provisions of Article V, paragraph A(1) of this MOU; and

- f. HHS will provide to DHS a list of additional data elements HHS deems necessary to identify passengers who may be infected with a quarantinable or serious communicable disease, as well as to facilitate contact tracing in the United States. HHS will consult further with DHS to arrive at a mutually agreed-upon list of such data elements and to outline further steps as necessary to obtain such information expeditiously when either party believes there is a public health emergency.

B. Travelers' Health and Medical Surveillance

The parties agree to assist one another in informing the traveling public of potential disease threats, including assisting in the distribution and dissemination of CDC Travel Notices or Health Alert Notices if necessary and as resources permit.

In addition, DHS personnel will assist with passive and, as provided in paragraph 2 of this section, active surveillance for quarantinable or serious communicable diseases of public health significance among persons arriving in the U.S. from foreign countries. It is understood between the parties that DHS personnel may not have medical training and therefore are not expected to physically examine or diagnose illness among arriving travelers.

1. Passive surveillance by DHS personnel would generally consist of the recognition and reporting of overt visible signs of illness or information about possible illness provided to them in the course of their routine interactions with arriving passengers. Passive surveillance does not involve the eliciting of a medical history or performance of a medical examination.
2. In situations where a significant outbreak of a quarantinable disease is detected abroad, CDC may request that DHS personnel assist with active surveillance in order to prevent the spread of disease to the United States. Active surveillance by DHS personnel will be contingent on approval by the Secretary of DHS, or his delegee, of a formal request by the Secretary of HHS, or his delegee.

3. Active surveillance may consist of a number of methods to assess risk that individual passengers, arriving from affected countries or regions, are carrying a quarantinable disease. CDC will ensure that a quarantine officer or designated official with public health training will be on site at the port of entry to evaluate any individual identified through active surveillance.
4. CDC will consult with DHS on the scope and the nature of the surveillance method(s) used to ensure that impact on DHS
With respect to active surveillance, CDC will further provide explicit guidance to DHS as to what response or combination of responses to surveillance questions or measures should prompt immediate communication with the quarantine officer or public health designee.

C. Disease Reporting, Inspection, and Entry Requirements

CDC has statutory authority to require reporting of ill travelers, conduct certain public health inspections of carriers and cargo, and impose certain entry requirements for carriers and cargo that may pose a communicable disease threat. DHS will aid CDC in the enforcement of its statutory authority regarding quarantine rules and regulations pursuant to operational guidelines to be developed by mutual agreement of the parties. Such guidelines will include emergency measures to be taken when a carrier or vessel is determined, after leaving a foreign port, to be carrying a passenger or passengers with a quarantinable or serious communicable disease.

D. Quarantine Enforcement and Detention

As part of CDC's authority to prevent the introduction, transmission, and spread of communicable diseases into the United States, its possessions, and territories, CDC is authorized to isolate and/or quarantine arriving persons reasonably believed to be infected with or exposed to specified quarantinable diseases and to detain carriers and cargo infected with a communicable disease.

DHS has agreed to assist CDC in the execution and enforcement of these authorities, primarily in the enforcement of CDC-issued quarantine orders, and through collaboration with other Federal, State, and local law enforcement entities, as necessary. The manner in which CDC and DHS will coordinate detention efforts will be set forth in detail in operational guidelines agreed upon by the parties, including in specific operational guidelines agreed between CDC and DHS for pandemic H5N1 influenza.

E. Transportation

Once a determination has been made to quarantine an individual, appropriate means of transportation must be secured for movement from ports of entry or between the ports of entry to an appropriate facility for quarantine. DHS will assist CDC pursuant to operational guidelines as agreed upon by the parties, including in specific operational guidelines agreed between CDC and DHS for pandemic H5N1 influenza.

F. Employee Health and Worker Protection and Countermeasures

The parties agree that the safety and health of officers, agents, employees, and contractors of DHS and its component agencies during their participation in the various activities described in this MOU to assist CDC in the enforcement of quarantine rules and regulations is of primary importance. As such, the parties agree to the following:

1. DHS component agencies

- a. DHS component agencies will keep track of and notify CDC of all agency officers, employees, and/or contractors participating in the detention of, or otherwise have become exposed to, reportedly ill persons; and
- b. For each case in which personnel from DHS component agencies assist in a manner that causes potential exposure to a reportedly ill person, DHS component agencies will provide participating CDC personnel with supervisory contact names and telephone numbers so that CDC may advise them appropriately.

2. CDC

- a. CDC will provide DHS personnel assisting HHS pursuant to this MOU with training consistent with standard practices applicable to health care workers;
- b. Where CDC or other medical personnel are on hand to evaluate a potentially ill traveler, the medical personnel will also evaluate and provide appropriate treatment guidelines for DHS personnel who have been potentially exposed during the provision of assistance to that person or persons;

- c. With regard to each specific case where DHS component agency officers, employees, and/or contractors potentially have been exposed to a potentially ill person during their provision of assistance to that person, CDC will immediately advise appropriate DHS component agencies throughout the course of the investigation and after the final medical determination concerning the diagnosis of a particular communicable disease;
- d. CDC will provide recommendations to DHS regarding the appropriate immunizations required by any DHS personnel who may be potentially exposed to ill persons or quarantinable diseases;
- e. CDC will immediately advise DHS component agencies of specific and appropriate precautions and medical treatment that any potentially exposed officers, employees, and/or contractors of DHS and/or its component agencies should undertake;
- f. CDC will provide the training necessary to enable DHS staff to fulfill their obligations to assist with medical surveillance as described in this agreement. CDC will continue to contribute to the curriculum of the Customs and Border Protection Integrated Officers' Course, which is provided to new staff at the Federal Law Enforcement Training Center in Glynco, GA. In addition, follow-up, onsite training seminars will be conducted, at a minimum, at the major ports of entry or Border Patrol stations where CDC Quarantine Stations are located and can be arranged at other locations upon request by the CBP Port Director or CBP Border Patrol Sector Chief. Finally, CDC Quarantine Station staff, including the lead public health officer and Quarantine Medical Officer or their designee will be available by phone to respond to specific questions related to medical surveillance that may arise. CDC anticipates that the training curriculum and materials will undergo significant revision and refinement coincident with the Quarantine Station expansion and enhancement initiative currently underway. CDC will include DHS staff in this process so that staff training needs may be assessed and adequately addressed;
- g. CDC will provide to DHS guidelines on determining those personnel most likely to be affected in the event of a public health emergency;

- h. CDC and DHS will consult further on the appropriate allocation of countermeasures for personnel exposed or potentially exposed to quarantinable or serious communicable diseases in the event of a public health emergency; and
- i. CDC will promptly provide specific guidance on recommended measures to protect mass transit from the spread of pandemic influenza.

G. Prevention

- 1. DHS and HHS will consult further on potential means of containing quarantinable or serious communicable disease overseas. Such consultations shall include:
 - a. Discussions with the Department of State, as appropriate, to develop guidance on the circumstances under which the issuance of visas in an affected area may be restricted in the event of a public health emergency.
 - b. Development of guidelines and, as appropriate, authority to station officials overseas and to screen conveyances overseas for health reasons in order to prevent the spread of quarantinable and serious communicable diseases into the United States.
- 2. HHS commits to amend promptly its regulations defining diseases of public health significance rendering an alien inadmissible under U.S. immigration law to include quarantinable diseases.

V. FUNDING

This MOU is not an obligation nor a commitment of funds, nor a basis for a transfer of funds, but rather a statement of understanding between the parties. Expenditures by each party are subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies.

VI. SETTLEMENT OF DISPUTES

Disagreements between the parties arising under or relating to this MOU will be resolved only by consultation between the parties and will not be referred to any State or Federal court, or to an international tribunal.

VII. POINTS OF CONTACT

The review, request for changes, and interpretation of the general provisions of this MOU will be coordinated through the senior point of contact designated below:

For CDC: Martin Cetron, Director
 Division of Global Migration and Quarantine
 Centers for Disease Control and Prevention
 Executive Park, Bldg. 57, 5th Floor, MS-E03
 Atlanta, GA 30333
 (404) 498-1600
 mcetron@cdc.gov

For DHS: Office of the Chief Medical Officer
 Department of Homeland Security

The parties will consult further as to the necessity of designating emergency or other points of contact in order to carry out particular operational duties described in this MOU or to be developed by the parties.

VIII. AMENDMENT, TERMINATION, ENTRY INTO FORCE, AND DURATION

- A. Except as otherwise provided, this MOU may be amended by the mutual written consent of the authorized representatives for DHS and HHS.
- B. Either party may unilaterally request renegotiation of this MOU. Such renegotiations shall commence not later than 30 days after such request is made.
- C. This MOU may be terminated at any time upon the mutual written consent of the parties. In the event both parties consent to terminate this MOU, the parties will consult prior to the date of termination to ensure termination of the most economical and equitable terms.
- D. Either party may terminate this MOU upon 30 days written notification to the other party. Such notice will be the subject of immediate consultation by the parties to decide upon the appropriate course of action.
- E. This MOU will enter into effect upon signature of both parties and will remain in effect until terminated.

IX. EFFECT ON PROCEDURES AND LAWS

- A. All assistance provided under this MOU must comply with applicable law, regulations, and agency policies.
- B. In the event of a public health emergency, nothing in this agreement shall be construed so as to prohibit or restrict either party from taking necessary actions, either on its own, in conjunction with the other party, or in coordination with other agencies, to respond to the emergency.

X. NO PRIVATE RIGHT CREATED


This document is an internal Agreement between DHS and HHS, including their components, and does not create or confer any right or benefit on any other person or party, private or public. Nothing in this Agreement or its addenda is intended to restrict the authority of either signatory to act as provided by law or regulation, or to restrict any agency from enforcing any laws within its authority or jurisdiction.

None of the obligations undertaken in this Agreement are intended to conflict with or override any preexisting statutory or regulatory obligation of either Department, including each of their components. Where such a conflict exists, the Departments agree that the statutory, regulatory, or other requirement imposed by law will supersede the agreement term.

XI. APPROVING SIGNATURES

The foregoing represents the understandings reached between the HHS and DHS upon the matters referred to therein.

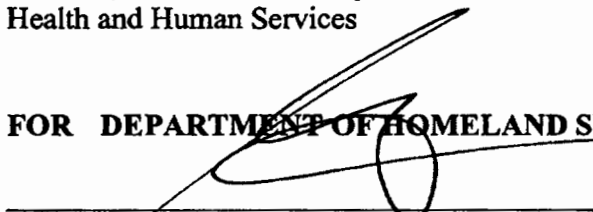
FOR DEPARTMENT OF HEALTH AND HUMAN SERVICES



Michael O. Leavitt
Secretary, United States Department of
Health and Human Services

OCT 19 2005
Date

FOR DEPARTMENT OF HOMELAND SECURITY



Michael Chertoff
Secretary, United States Department of
Homeland Security

10/7/05
Date

APPENDIX A

SAMPLE DATA SHARING PROVISION TO ACCOMPANY TRANSMISSION OF PASSENGER INFORMATION FROM DHS TO CDC

[INSERT ADDRESSEE NAME & AGENCY]

[INSERT EXPLANATION REGARDING WHAT THE DATA IS AND WHY IT IS BEING PROVIDED..."pursuant to your request received on (GIVE DATE OF REQUEST)"]

The information transferred to the receiver of this data is the **Property of U.S. Customs and Border Protection (CBP)**. It will be transferred to your agency for your **official use only** and remains the property of CBP.

CBP generally considers Passenger Name Record (PNR) information, which it accesses from an air carrier's reservation and departure control system, to be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. §§ 552. The attached data may also be protected under the Privacy Act if the subject of the record is a U.S. citizen or lawful permanent resident. 5 U.S.C. § 552a. Furthermore, the Trade Secrets Act (18 U.S.C. § 1905) prohibits federal employees from disclosing protected information without authorization and imposes personal sanctions on employees who do so. However, CBP permits access to PNR information by other federal, state, local and foreign agencies, strictly for specific purposes, one of which is where such disclosure is necessary for the protection of the vital interests of the data subject or of other persons, particularly with regards to significant health risks.

The requested data will be provided to [INSERT AGENCY/DEPARTMENT NAME] for health-related contact tracing purposes involving any and all passenger(s) who are referenced in this data and/or may be affected by the incident/event specified in the above-mentioned request. Your agency represents that this disclosure is necessary for the protection of the vital interests of the data subject or another individual, particularly with regards to significant health risks. The data received pursuant to the execution of this document and the acceptance of these conditions cannot be used for any purpose that is inconsistent with said request. Your agency must ensure the orderly disposal of this information, consistent with your own record retention procedures. Any subsequent transfer of this information (or any portion thereof) by your agency to state and local "relevant government authorities" must be in furtherance of, and consistent with, the same purposes contained in the original request submitted to CBP by HHS/CDC.

FOR HHS/CDC:

Acceptance of the requested information from CBP constitutes your agency's acknowledgement of the requirements and conditions of the disclosure, as set forth in this cover page.

FOR ALL OTHER RECIPIENTS:

A representative of your agency/organization must provide his/her signature as your agency's acknowledgement of the conditions of the transfer, as set forth in this letter. Please fax this acknowledgement to HHS/CDC immediately.

FOR ALL RECIPIENTS, including HHS/CDC:

Your agency agrees to forward this cover page along with any further disclosures of the requested information to state and/or local "relevant government authorities" directly involved in contract tracing efforts associated with the above-mentioned incident. All further disclosures and the purposes of those transfers must be documented by HHS/CDC and the collection of the acknowledgement that accompanies said transfers, and provided to CBP upon request. In addition, all such transfers are also subject to the same conditions imposed upon your agency with regards to the original transfer from CBP to HHS/CDC, as outlined in this letter.

Please be advised that any unauthorized release of PNR data may jeopardize CBP's ability to obtain this critically important data from air carriers, thereby also jeopardizing the ability of HHS/CDC and all other relevant state and local governments to obtain the information from CBP in the future.

Acknowledgement of conditions:

_____ date
on behalf of Agency receiving data

(Please identify Agency receiving data & contact information below)

If this office may be of further assistance, please contact [INSERT CONTACT NAME AND PHONE].

Sincerely,