

CRS Report for Congress

The National Bio- and Agro-Defense Facility: Issues for Congress

September 4, 2007

Dana A. Shea
Specialist in Science and Technology Policy
Resources, Science and Industry Division

Jim Monke
Analyst in Agricultural Policy
Resources, Science and Industry Division

Frank Gottron
Specialist in Science and Technology Policy
Resources, Science and Industry Division



**Prepared for Members and
Committees of Congress**

Report Documentation Page

*Form Approved
OMB No. 0704-0188*

Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

1. REPORT DATE 04 SEP 2007	2. REPORT TYPE N/A	3. DATES COVERED -		
4. TITLE AND SUBTITLE The National Bio- and Agro-Defense Facility: Issues for Congress		5a. CONTRACT NUMBER		
		5b. GRANT NUMBER		
		5c. PROGRAM ELEMENT NUMBER		
6. AUTHOR(S)		5d. PROJECT NUMBER		
		5e. TASK NUMBER		
		5f. WORK UNIT NUMBER		
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Congressional Research Service Library of Congress, 101 Independence Avenue, SE, Washington, D.C. 20540-7500		8. PERFORMING ORGANIZATION REPORT NUMBER		
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)		10. SPONSOR/MONITOR'S ACRONYM(S)		
		11. SPONSOR/MONITOR'S REPORT NUMBER(S)		
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release, distribution unlimited				
13. SUPPLEMENTARY NOTES The original document contains color images.				
14. ABSTRACT				
15. SUBJECT TERMS				
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT SAR	
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified		18. NUMBER OF PAGES 16
				19a. NAME OF RESPONSIBLE PERSON

The National Bio- and Agro-Defense Facility: Issues for Congress

Summary

The agricultural and food infrastructure of the United States is potentially susceptible to terrorist attack using biological pathogens. In addition to the impacts of such an attack on the economy, some animal diseases could potentially be transmitted to humans. (These diseases are known as zoonotic diseases.) Scientific and medical research on plant and animal diseases may lead to the discovery and development of new diagnostics and countermeasures, reducing the risk and impact of a successful terrorist attack.

To safeguard the United States against animal disease, the U.S. Department of Agriculture (USDA) engages in foreign animal disease research at the Plum Island Animal Disease Center (PIADC). With the formation of the Department of Homeland Security (DHS) in 2003, the PIADC facility was transferred from USDA to DHS, though USDA continues its research program at the facility. The DHS has identified the PIADC facility as too old and limited to continue to be the primary facility performing this research.

Homeland Security Presidential Directive 9 tasks the Secretaries of Agriculture and Homeland Security to develop a plan to provide safe, secure, and state-of-the-art agriculture biocontainment laboratories for research and development of diagnostic capabilities and medical countermeasures for foreign animal and zoonotic diseases. To meet these obligations, DHS has announced plans to construct a new facility, the National Bio- and Agro-Defense Facility (NBAF). This facility would house high-containment laboratories able to handle the pathogens currently under investigation at PIADC, as well as other pathogens of interest. The DHS plans to select the site in 2008 and commission the new laboratories in 2014. The final construction costs would depend on the site location and actual construction time lines, but are projected to exceed \$460 million.

The plans announced by DHS to establish the NBAF have raised several issues that may interest Congress. Community concerns about safety and security, previously raised about PIADC and other laboratories being built to study dangerous pathogens, may also be raised about the NBAF. Construction of the new facility may create a need to reexamine how DHS and USDA coordinate and set research priorities.

By law, research on foot and mouth disease is not permitted on the U.S. mainland. This policy would need to be changed before DHS could proceed with its plans to conduct such research at NBAF if it were sited on the U.S. mainland. Two bills introduced in the 110th Congress would modify this policy (H.R. 1717 and H.R. 2419). These bills take different approaches to addressing this policy concern.

Although the PIADC laboratories are currently undergoing renovation and expansion, DHS plans to decontaminate and decommission them following opening of the proposed NBAF. The fate of the PIADC laboratories following transfer of its current research activities to the proposed NBAF remains uncertain.

Contents

Introduction	1
NBAF Research Goals	2
NBAF Funding and Site Selection	3
Funding	3
Facility Site Selection	4
Policy Issues	6
Coordination of Research Activities with Other Agencies	6
Permission to Work with Foot and Mouth Disease	7
H.R. 1717	8
USDA's Proposal	9
H.R. 2419	9
Analysis	9
Timeliness of Construction Activities	10
Future Use of PIADC	11
Community Concerns	11

List of Tables

Table 1. NBAF Funding	3
Table 2. Changing NBAF Funding	4
Table 3. Consortia Selected by DHS after Expression of Interest	5
Table 4. Finalists for NBAF Site	6

The National Bio- and Agro-Defense Facility: Issues for Congress

Introduction

The agricultural and food infrastructure of the United States is a key component of economic productivity and growth. A terrorist attack on this infrastructure could damage the public trust in agricultural safety and quality and the national ability to provide food and other agricultural products.¹ Additionally, many animal diseases can infect humans.² These types of diseases are termed *zoonotic*. Scientific and medical understanding of such zoonotic diseases in their animal hosts may protect the animals themselves and could also lead to the discovery and development of new medical countermeasures for humans.

To safeguard the United States against animal disease, the U.S. Department of Agriculture (USDA) engages in animal disease research, including research into highly contagious animal pathogens and animal diseases not native to the United States.³ Such research activities have historically been performed at the Plum Island Animal Disease Center (PIADC), located on an island near Long Island, NY.

With the formation of the Department of Homeland Security (DHS) in 2003, the PIADC facility was transferred from USDA to DHS, though USDA still maintains an active research program at PIADC. As the federal government undertakes new efforts in human biodefense and defense against agroterrorism, DHS has identified the PIADC facility as too old and limited to continue to be the primary facility performing this research.

Homeland Security Presidential Directive 9 (HSPD-9) tasks the Secretaries of Agriculture and Homeland Security to develop “a plan to provide safe, secure, and state-of-the-art agriculture biocontainment laboratories that research and develop

¹ For more background on the potential of terrorism against agriculture and food, see CRS Report RL32521, *Agroterrorism: Threats and Preparedness*, by Jim Monke.

² Examples include influenza, plague, West Nile Virus, and Rift Valley Fever.

³ These diseases are sometimes referred to as foreign animal diseases (FAD).

diagnostic capabilities for foreign animal and zoonotic diseases.”⁴ The Secretary of Homeland Security is to coordinate an acceleration and expansion of animal, plant, and zoonotic disease countermeasure development, including “countermeasure research and development of new methods for detection, prevention technologies, agent characterization, and dose response relationships for high-consequence agents in the food and the water supply.”⁵

The Department of Homeland Security has announced that, to meet the obligations of HSPD-9, it will establish a new facility, the National Bio- and Agro-Defense Facility (NBAF). This facility would house high-containment laboratories able to handle the pathogens currently under investigation at PIADC as well as other pathogens of interest. The plans announced by DHS to establish the NBAF have raised concerns regarding its safety, and security and policy questions about coordination between DHS and USDA regarding the research to be conducted at NBAF.

This report outlines current progress towards establishment of the NBAF, presents current and projected funding levels and timelines, and describes policy issues of potential interest to Congress, such as agency coordination, possession of viruses, construction timelines, and community safety concerns.

NBAF Research Goals

The DHS intends the new NBAF to be more than just a replacement facility; DHS intends it to exceed both the capacity and capabilities of the Plum Island laboratories. The highest level of biocontainment available at PIADC is Biosafety Level 3 Agricultural (BSL-3Ag).⁶ Because DHS plans to perform some experiments with some pathogens for which this level of protection is inadequate, approximately 10% of the NBAF’s net square footage would be BSL-4 laboratories.⁷

The DHS foresees multiple uses and goals for the new facility:

- serving as a unique BSL-3 and BSL-4 livestock laboratory capable of developing countermeasures for foreign animal diseases;

⁴ Executive Office of the President, The White House, “Subject: Defense of United States Agriculture and Food,” *Homeland Security Presidential Directive/HSPD-9*, January 30, 2004.

⁵ *Ibid.*

⁶ Biosafety levels for pathogens and the recommended protective measures at each biosafety level are presented by the Department of Health and Human Services. Department of Health and Human Services, Centers for Disease Control and Prevention and National Institutes of Health, *Biosafety in Microbiological and Biomedical Laboratories*, 5th Edition, February 2007, online at [<http://www.cdc.gov/OD/ohs/biosfty/bmb15/bmb15toc.htm>].

⁷ For example, research on Nipah virus must be performed in a BSL-4 laboratory.

- providing advanced test and evaluation capability for threat detection, vulnerability assessment, and countermeasure assessment for animal and zoonotic diseases; and
- supporting countermeasure licensure.⁸

The research agenda for NBAF is to be at least partially based on current risk assessments and is subject to change as the risk assessments change. The DHS predicts that the facility will focus on foot and mouth disease, classical swine fever, African swine fever, Rift Valley fever, Nipah virus, Hendra virus, contagious bovine pleuropneumonia, and Japanese encephalitis.⁹ The DHS plans to use NBAF to study how these pathogens enter the animal, what types of cell the disease affects, what effects the disease has on cells and animals, and how newly developed countermeasures help the animal develop protection against the disease.

NBAF Funding and Site Selection

Funding

Funding for the NBAF began in FY2005, when \$3 million was provided by the DHS Science and Technology Directorate to perform a planning and feasibility study.¹⁰ In FY2006, Congress appropriated \$23 million to select a site and conduct other pre-construction activities. In FY2007, an additional \$23 million was provided for site selection and other pre-construction activities.¹¹ The DHS has awarded a contract to an architect-engineering firm to begin work on a non site-specific, preliminary NBAF design. According to DHS, the negotiated cost of the conceptual design work is \$2.4 million, with the total estimated cost of all other design services approximately \$45 million. According to DHS, the conceptual study was expected to be completed in 2007.¹² For FY2008, the President's budget requests \$11 million to continue progress on the NBAF. See **Table 1**.

⁸ 71 *Federal Register* 3107-3109.

⁹ Department of Homeland Security, *Facility Research & Staffing for the National Bio and Agro-Defense Facility*, June 12, 2007. Available at [http://www.dhs.gov/xres/labs/gc_1181073261627.shtm].

¹⁰ This funding was not specifically appropriated for this purpose, but instead allocated as part of funds generally directed towards the Biological Countermeasures portfolio of the Science and Technology Directorate.

¹¹ See online at [http://www.dhs.gov/xres/labs/gc_1181072257904.shtm].

¹² In FY2005 through FY2007, NBAF funding was requested as part of the Biological Countermeasures portfolio of the Science and Technology Directorate. In FY2008, following a reorganization, it will be part of the Directorate's Chemical and Biological Division.

Table 1. NBAF Funding
(\$ in millions)

FY2005 (Actual)	FY2006 (Actual)	FY2007 (Estimate)	FY2008 (Request)
3	23	23	11

Source: DHS Science and Technology Directorate, FY2006 and FY2008 congressional budget justifications, H.Rept. 109-699, and H.Rept. 109-241.

This level of funding is less than that DHS originally projected. In 2005, DHS projected that \$73 million would be necessary in FY2007 and \$129 million in FY2008 (see **Table 2**). In that early projection, the facility was to be completed by FY2010 at a total cost of \$451 million.¹³ In 2007, DHS predicted that construction will not begin until 2010 and will be completed by 2014.¹⁴ Since subsequent DHS budget requests have not updated the projected overall funding requirements, it remains unclear how this delay will affect the future annual appropriations requests and the total cost of the project. However, DHS stated in its S&T Directorate *Five Year Research Plan FY2007-2011* that the overall cost of the construction will depend on final site selection. The *Five Year Research Plan* projected NBAF costs to be \$462.5 million through FY2011 (see **Table 2**). Since DHS predicts the NBAF construction will be completed in 2014, it is likely that the total cost will therefore exceed \$462.5 million. Additional delays to the current construction schedule may further increase the final cost of the facility.

Table 2. Changing NBAF Funding
(\$ in millions)

Projection Year	FY05	FY06	FY07	FY08	FY09	FY10	FY11	Total
2005	3	23	73	<i>129</i>	<i>129</i>	94	0	451.0
2007	3	23	23	<i>11</i>	<i>45.6</i>	<i>184.9</i>	<i>172</i>	462.5 ^a

Source: Department of Homeland Security, FY2006 congressional budget justification; Department of Homeland Security, Science and Technology Directorate, *Five-Year Research and Development Plan, Fiscal Years 2007-2011*, May 2007.

Note: Plain text indicates actual dollars, italics indicate estimated dollars

a. DHS did not include costs beyond FY2011 in this five year projection, although they predict construction to continue until 2014.

Facility Site Selection

¹³ Department of Homeland Security, FY2006 congressional budget justification.

¹⁴ Department of Homeland Security, Science and Technology Directorate, *Five-Year Research and Development Plan, Fiscal Years 2007-2011*, May 2007.

The DHS has stated that the establishment of the NBAF would be a multi-stage process. This process involves:

- obtaining expressions of interest to be the site of the NBAF;
- from these expressions of interest, selecting prospective sites and requesting further information;
- assessing the information provided and visiting these prospective sites;
- narrowing the number of prospective sites to a list of final sites;
- requiring environmental impact studies of the final sites;
- choosing a site for the NBAF; and
- constructing the facility.

The DHS is now at the stage of requiring environmental impact studies of the final potential sites.

In January 2006, DHS issued a Request for Expressions of Interest from consortia interested in hosting NBAF. In its request, DHS described four criteria that the agency would use when considering the expressions of interest:

- research capabilities,
- workforce,
- acquisition/construction/operating expertise, and
- community acceptance.¹⁵

In August 2006, DHS selected, from the 29 expressions of interest, 18 sites to submit more information with respect to the four criteria. One site was later removed from consideration by its sponsoring consortium. Although 17 sites were under consideration, only 12 consortia were involved. Some consortia submitted multiple possible sites that were selected by DHS.¹⁶ See **Table 3**. An intergovernmental review group, which included DHS, USDA, the Department of Health and Human Services, and the Department of Defense, assessed the additional information. DHS then visited each site to validate the information provided and to observe the sites.

Table 3. Consortia Selected by DHS after Expression of Interest

Consortium	Site Location
University of California/Lawrence Livermore National Laboratory	CA
Georgia Consortium for Health and Agro-Security (2 sites)	GA
Heartland BioAgro Consortium (2 sites)	KS
Kentucky and Tennessee NBAF Consortium	KY
Mid-Atlantic Bio-Ag Defense Consortium	MD
Gulf States Bio and Agro-Defense Consortium (3 sites) ^a	MS
University of Missouri at Columbia NBAF Consortium	MO

¹⁵ 71 *Federal Register* 3107-3109.

¹⁶ See online at [http://www.dhs.gov/xres/labs/gc_1170798884583.shtm].

North Carolina Consortium for the NBAF	NC
Oklahoma State University Consortium	OK
Texas A&M University and the NBAF Consortium	TX
Texas Biological and Agro-Defense Consortium (3 sites)	TX
Wisconsin Consortium	WI

Source: DHS, online at [http://www.dhs.gov/xres/labs/gc_1170798884583.shtm].

a. One site was withdrawn from consideration in April 2007.

Following the site visits, DHS selected five sites in July 2007 to complete an Environmental Impact Statement (EIS). See **Table 4**. Additional information on the potential sites and dates for public meetings about the EIS are available at *72 Federal Register* 41764-41765. Following completion of the EIS, DHS expects to choose a site by October 2008.

Table 4. Finalists for NBAF Site

Consortium	State
Georgia Consortium for Health and Agro-Security	GA
Heartland BioAgro Consortium	KS
Gulf States Bio and Agro-Defense Consortium	MS
North Carolina Consortium for the NBAF	NC
Texas A&M University and the NBAF Consortium	TX
Department of Homeland Security ^a	NY

Source: DHS, online at [http://www.dhs.gov/xres/labs/gc_1184180641312.shtm] and *72 Fed. Reg.* 41764 — 41765 (July 31, 2007).

a. According to DHS, although not included in the competitive selection process described above, the DHS-owned PIADC will also be considered as a potential NBAF site.

Policy Issues

Issues relating to NBAF include coordination among agencies, limits on possession of certain pathogens, the NBAF construction schedule, and community concerns. Legislation has been introduced in two committees in Congress (H.R. 1717 in the House Homeland Security Committee and H.R. 2419 in the House Agriculture Committee). The Administration, through USDA, also has proposed legislation.

Coordination of Research Activities with Other Agencies

Since the NBAF would replace PIADC, research at NBAF is expected to be collaborative between USDA and DHS. At PIADC, DHS and USDA cooperatively set research priorities, based on risk assessment and other information. Generally, USDA performs basic research activities while DHS develops and prototypes the

results of USDA research. However, since NBAF also represents an expansion in capacity and capabilities over PIADC, this relationship may change. Establishment of the new facility provides an opportunity to evaluate previous agreements and make adjustments. Assignment of lab space to the Department of Health and Human Services or other agencies may require reevaluation and updates to these procedures.¹⁷

The USDA and DHS have testified that their current agreements have served them well at PIADC, with respect to both daily operation and transfer of technical information regarding research results and priorities.¹⁸ Such interagency coordination may be essential in case of a crisis or in dealing with an outbreak of animal disease. The extent to which all agencies engaged in the NBAF agree on how to coordinate roles and responsibilities may prove to be a key factor in maintaining clear lines of authority and information.

The 110th Congress is considering these issues. Under H.R. 1717 (ordered to be reported by the House Homeland Security Committee on August 1, 2007), the NBAF would be run by a director appointed by DHS in consultation with USDA. The director's role would be limited to operating and maintaining the facility, including ensuring security and emergency response plans. This role is less comprehensive than in a previous version of the bill, which would have given the DHS-appointed director authority over all research programming at the facility, including USDA research. In the committee-amended bill, in addition to the director, separate directors of research would be appointed from DHS and USDA to oversee the research programs of each department. USDA and DHS would develop a "joint strategy" defining the roles of USDA and DHS at the NBAF.¹⁹

Permission to Work with Foot and Mouth Disease

Some animal diseases, such as foot and mouth disease (FMD), are considered highly contagious and have the potential to seriously harm the national economy if livestock or other domestic animals are infected. To lessen the likelihood that an accidental laboratory release of FMD might reach domestic animals, importation of FMD virus is prohibited, and research on FMD is limited to locations outside of the mainland of the United States. By statute, the Secretary of Agriculture must

¹⁷ For further discussion of how USDA and DHS cooperate at PIADC, see Government Accountability Office, *Plum Island Animal Disease Center: DHS and USDA Are Successfully Coordinating Current Work, but Long-Term Plans Are Being Assessed*, GAO-06-132, December 2005.

¹⁸ House Committee on Homeland Security, Subcommittee on Emerging Threats, Cybersecurity, and Science and Technology, "Reducing Threats to our Nation's Agriculture: Authorizing a National Bio and Agro-Defense Facility," *Hearing Transcript*, May 23, 2007.

¹⁹ In 2004, the USDA and DHS developed "A Joint DHS and USDA Strategy for Foreign Animal Disease Research and Diagnostic Programs" to coordinate their activities with respect to activities at PIADC. See Testimony by Edward Knipling, Administrator, Agricultural Research Service, Department of Agriculture, before the House Committee on Homeland Security, Subcommittee on Emerging Threats, Cybersecurity, and Science and Technology, on May 23, 2007.

explicitly permit research on FMD virus to be performed on the mainland of the United States.²⁰ Currently, the USDA performs FMD research only at PIADC.

The PIADC must also conform to the regulations of the Agricultural Select Agent Program promulgated by USDA.²¹ Under these regulations, biological agents, such as pathogens and toxins, that pose a severe threat to public, animal, or plant health have been identified and listed as “select agents.” The FMD virus is a select agent. Entities that possess, use, or transfer these select agents are required to develop security plans for protecting the select agents, register with the USDA Animal and Plant Health Inspection Service (APHIS), and become certified as eligible to possess select agents. Researchers handling select agents must pass a security review by the Department of Justice.

When PIADC was transferred to DHS, the Secretary of Agriculture retained the authority to prevent FMD research from being performed on the mainland of the United States. If the NBAF is located on the mainland of the United States and is to perform high-value foreign animal disease research, researchers at the facility will likely need to receive such permission from the Secretary of Agriculture to perform FMD research.²²

While some experts might construe this permission as a formality, since, under HSPD-9, DHS and USDA are to coordinate their activities in food and animal disease research, others might see it as a potential barrier to effective and efficient use of the NBAF. They might seek to provide the Secretary of DHS with independent authority to perform FMD research.

H.R. 1717. As amended by the House Homeland Security Committee, H.R. 1717 would instruct USDA to issue a permit to DHS for FMD research at the NBAF. Other existing requirements under the agricultural select agent regulations would continue to apply, and DHS would have to meet them for the permit to remain valid. Although this provision would compel USDA to issue a permit allowing DHS to

²⁰ Because of concerns about the economic damage that might arise from the release of the pathogen that causes foot and mouth disease into domestic animal stocks, Congress enacted prohibitions in 1948 against performing research within the mainland of the United States. 21 U.S.C. 113a prohibits the Secretary of Agriculture from introducing live foot and mouth disease virus to the mainland of the United States unless the Secretary determines it is necessary and in the public interest.

²¹ The agricultural select agent regulations are codified at 9 C.F.R. 121 and 7 C.F.R. 331. A comparable program exists for select agents that might infect humans. It is overseen by the Centers for Disease Control and Prevention on behalf of the Department of Health and Human Services. These select agent regulations are codified at 42 C.F.R. 73.

²² The Administrator, of the Agricultural Research Service, Department of Agriculture, has testified that, “It is our expectation that the Secretary of Agriculture will authorize FMD work to be done on the mainland in NBAF, and that would be for all agencies. The USDA programs now at Plum Island will be a component of the NBAF facility. So yes, the secretary of agriculture intends to do that.” See Testimony by Edward Knipling, Administrator, Agricultural Research Service, Department of Agriculture, before the House Committee on Homeland Security, Subcommittee on Emerging Threats, Cybersecurity, and Science and Technology, on May 23, 2007.

possess the virus, it would continue to vest authority for determining who may possess the virus with USDA. H.R. 1717, as introduced, would have given DHS independent authority to possess FMD virus, notwithstanding 21 U.S.C. 113a.²³

USDA's Proposal. USDA's comprehensive proposal for the 2007 farm bill includes a provision to revise 21 U.S.C. 113a.²⁴ The USDA provision would allow USDA to conduct research on foot and mouth disease on the U.S. mainland. It would prohibit anyone else from importing, transporting or maintaining viruses that would be on a USDA-prescribed list, unless the Secretary issues a permit. The USDA provision would not apply to select agents. This last section of USDA's proposal appears to negate the previous two provisions with respect to FMD virus, since FMD virus is an agricultural select agent.

The USDA proposal appears to be inherently contradictory, as it establishes a prohibition against entities other than the Secretary of Agriculture possessing FMD virus without the permission of the Secretary of Agriculture, but then exempts FMD virus from these prohibitions. The net effect of the USDA provision may be removal of any permitting restrictions for FMD virus, thus allowing research to be performed by those compliant with the agricultural select agent regulations.

H.R. 2419. The House-passed version of the 2007 farm bill, H.R. 2419, contains most of the USDA proposal, including the apparently contradictory language that exempts select agents from the permit requirements established in the bill. Unlike the USDA proposal, H.R. 2419 does not explicitly state that this provision replaces 21 U.S.C. 113a.²⁵

Analysis. H.R. 1717 and H.R. 2419, Section 7108, have different ramifications for DHS's possession of FMD and other high-consequence animal disease viruses. H.R. 1717 would make DHS eligible through a USDA permit under 21 U.S.C. 113a to possess and conduct research with FMD and other high consequence animal viruses. This eligibility would be still subject to USDA's authority to revoke its mandated permit, as well as its authority under the agricultural select agent regulations.

Under H.R. 2419, Section 7108, the situation is more complex. The apparent inherent contradiction in establishing a permitting process for FMD virus possession — while excluding select agents, including FMD virus, from this permitting process — challenges unambiguous interpretation of the regulatory effect of this language. This apparent inherent contradiction could be abrogated if USDA chose to no longer regulate FMD virus as a select agent, a decision within its authority. However, this action might be viewed as weakening other important security controls on FMD virus. Additionally, depending on legislative intent, Section 7108 might be interpreted as revising 21 U.S.C. 113a or as retaining 21 U.S.C. 113a and instead

²³ See footnote 20.

²⁴ See USDA's 2007 farm bill proposal, sec. 7303, online at [http://www.usda.gov/documents/fbresearch0507_1.pdf].

²⁵ This language is found in section 7108.

establishing a parallel permitting process. Finally, a plain text reading of Section 7108 might even lead to the interpretation that FMD virus research is not allowed, as this section authorizes the establishment of research laboratories working on “animal diseases in the United States,” something that FMD arguably is not, rather than the establishment of research laboratories in the United States working on animal diseases.²⁶

Timeliness of Construction Activities

When complete, NBAF would eventually house all the research activities underway at PIADC. The DHS considers PIADC to be approaching the end of its design lifetime. Finishing construction of the NBAF and achieving operational status before down-sizing or decommissioning PIADC is dependent on timely construction activity. Because of the unique research currently performed at PIADC, the smooth transition of this capacity may be an issue of congressional concern. Beyond the transition of research projects, programs, and supplies, transfer of personnel and retention of an experienced workforce may also pose a challenge to DHS and USDA.

The original schedule for the NBAF, as presented to Congress, proposed finishing construction and commissioning the NBAF in FY2010. Since then, the proposed schedule has been extended twice, first having operations begin in FY2013,²⁷ and most recently having operations begin in FY2013 to FY2014.²⁸

The extension of the NBAF construction schedule increases the time that PIADC will be in operation. The PIADC has historically had security, coordination, and other issues.²⁹ The DHS has developed and implemented a multi-year *Corrective Action Plan* to address these issues and maintain the operation of PIADC.³⁰ Since PIADC has been identified as approaching the end of its design lifetime, extended operation and maintenance of these facilities may not be as cost effective or as efficient for the research endeavor as completing and transitioning research to the NBAF. The DHS, in FY2007, spent approximately \$24 million to upgrade the facilities at PIADC, and requested approximately \$17 million more for FY2008. The DHS estimates no additional funds beyond that which will be required to complete the upgrades. These upgrades include designing a new animal wing and continuing

²⁶ H.R. 2419, Section 7108 (b) (2).

²⁷ See online at [http://www.dhs.gov/xlibrary/assets/NBAF_Timeline.pdf].

²⁸ See online at [http://www.dhs.gov/xres/labs/gc_1170798884583.shtm].

²⁹ See General Accounting Office, *Combating Bioterrorism: Actions Needed to Improve Security at Plum Island Animal Disease Center*, GAO-03-847, September 2003; and Government Accountability Office, *Plum Island Animal Disease Center: DHS and USDA Are Successfully Coordinating Current Work, but Long-Term Plans Are Being Assessed*, GAO-06-132, December 2005.

³⁰ According to DHS, the total cost of the *Corrective Action Plan* is approximately \$56 million. The *Corrective Action Plan* was reported to Congress by DHS in FY2005. Department of Homeland Security, Office of Inspector General, *Additional Physical, System, and Management Controls Can Enhance Security at Plum Island (Redacted)*, OIG-07-43, May 2007.

activities described in the *Corrective Action Plan*. The DHS expects completion of these upgrades in FY2010.³¹ Further NBAF construction delays may require additional funds to be used to support PIADC's corrective maintenance.

Future Use of PIADC

With the completion of the proposed NBAF, DHS would have to determine what actions to take with the PIADC. The DHS has stated that one of the main goals of the NBAF is to expand upon the existing PIADC research. According to DHS, once NBAF is operational, PIADC research activities will transfer to it.³²

The fate of the PIADC, once current research activities are transferred from it, remains unclear. The DHS has identified that "proper decontamination and decommissioning (D&D) of the facility after the transition will be critical to meet regulatory compliance and eventual disposal of the site."³³ The DHS has not stated when or how this process might occur. In discussing the development and construction of the NBAF, DHS has stated, with regards to PIADC, that "no decision has been made as to the future of Plum Island."³⁴

The DHS is currently investing money to improve and upgrade the laboratory facilities. Continued use of PIADC either by DHS in some other capacity or under the control of some other entity remains an option. Alternatively, following decommissioning, the laboratories might be removed and the site used for a different purpose. Although many local officials have opposed expanding the number or type of pathogens researched at PIADC, some have expressed support for the continued operation and existence of the facility, because of its economic value to the surrounding area.³⁵

Community Concerns

Operation of PIADC has engendered some controversy among nongovernmental organizations and others, who have expressed concerns about the potential for pathogen release, illicit research, and unintended consequences.³⁶ Local opposition also increased following suggestions of upgrading the biocontainment facilities from

³¹ Department of Homeland Security, Science and Technology Directorate, *Five-Year Research and Development Plan, Fiscal Years 2007-2011*, May 2007.

³² *Ibid.*

³³ *Ibid.*

³⁴ Bleyer, Bill, "Homeland Security Seeks Input on Plum Island Disease Lab," *Newsday*, August 21, 2007.

³⁵ *Ibid.*

³⁶ Rather, John, "Heaping More Dirt On Plum I.," *New York Times*, February 15, 2004 and Daley, Beth, "Danger Island," *Boston Globe*, September 11, 2001.

BSL-3Ag to BSL-4 to allow work on more dangerous pathogens. Those suggestions were not acted upon.³⁷

The expansion of other biodefense laboratories has sometimes been met with similar community opposition. For example, construction of high-containment laboratories funded by the National Institutes of Health has been confronted with protests, legal challenges, and passage of local laws constraining the laboratory's activities.³⁸ Activists point to the occupational exposure of laboratory workers to pathogens and the potential of environmental release from high-containment laboratories as evidence of the risk posed by these labs.³⁹ Other experts point to a long history of safe operation by other, comparable laboratories and suggest that activist concerns are overstated.

The danger of accidental release of FMD virus is difficult to quantify. While such a release has not occurred in the United States, accidental release from a research laboratory has occurred in other countries.⁴⁰ The consequences of an FMD outbreak could be high.⁴¹ The likelihood of a such an outbreak, given modern biocontainment equipment and the security required under the agricultural select agent regulations and DHS facility guidance, could be very small. Such concerns might be addressed by DHS through the EIS process.⁴²

³⁷ Rather, John, "East End Germ Lab Getting an Upgrade," *New York Times*, November 25, 2001.

³⁸ For examples, see Schulman, Daniel, and Smith, Adam, "When Bioterror Moves Next Door," *Boston Globe*, August 8, 2004; Heuser, Stephen, "City Cuts Back on Plan to Regulate Biolabs," *The Boston Globe*, August 23, 2006; and Martineau, Pamela "Forum Opposing UCD's Plan for Biolab Draws Vocal Crowd," *Sacramento Bee*, April 2, 2003.

³⁹ Occupational exposure to dangerous, federally regulated pathogens in a laboratory at Boston University and Texas A&M University are cited as examples of such events. (M. Anita Barry, *Report of Pneumonic Tularemia in Three Boston University Researchers, November 2004 — March 2005*, Boston Public Health Commission, March 28, 2005 and Emily Ramshaw, "CDC Suspends A&M Research on Infectious Diseases; CDC Suspends Bioagent Work after Exposures Not Reported Promptly," *The Dallas Morning News*, July 2, 2007.)

⁴⁰ The July/August FMD outbreak in the United Kingdom has been preliminarily associated with a possible release from a nearby research facility. (Health and Safety Executive, *Initial Report on Potential Breaches of Biosecurity at the Pirbright Site 2007*, August 7, 2007. See also Enserink, Martin, Travis, John, and Kaiser, Jocelyn, "Labs Suspected in Foot-and-Mouth Crisis," *ScienceNOW Daily News*, August 6, 2007.)

⁴¹ In 1999, it was estimated that the potential impacts of an FMD outbreak in California would be between \$8.5 and \$13.5 billion. (Ekboir, Javier M., *Potential Impact of Foot-and-mouth Disease in California: the Role and Contribution of Animal Health Surveillance and Monitoring Services*, Agricultural Issues Center, Division of Agriculture and Natural Resources, University of California, Davis, 1999, as cited in 70 *Fed. Reg.* 13242 — 13292, March 18, 2005).

⁴² The DHS has preliminarily identified human health and safety and socioeconomic effects possibly related to facility operations as areas for analysis in the EIS process. (72 *Fed. Reg.* 41764 — 41765, July 31, 2007).

Community acceptance, or at least minimal community resistance, was identified as one of the NBAF site criteria. However, continued community outreach may be a key factor in determining whether NBAF will suffer delays that have threatened construction of other high-containment laboratories.⁴³

⁴³ Goodson, Barbara, "Judge Hits BU Biolab; Ruling Calls for Safety Review, May Stall Plan," *The Boston Herald*, August 4, 2006.