

Questions and Answers: APHIS Enforcement Process Streamlining

The U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) is responsible for setting and enforcing regulations that protect the health and safety of American agriculture and natural resources. APHIS investigates and enforces penalties for violations involving animal welfare and horse protection issues; agricultural import and export rules, and quarantine rules. The Agency also targets unauthorized releases of genetically engineered organisms and enforces standards concerning accredited veterinarians and veterinary biological products. APHIS is very serious about taking enforcement action against those who jeopardize its mission by violating its regulations.

In recent years, however, the number of open enforcement investigations has increased to well over 2,000, a volume that has proven to be too large to enable APHIS to swiftly address and deter serious violations. Consequently, APHIS is in the process of streamlining its processes by reducing the number of open investigations in the backlog and drastically decreasing the time it takes to resolve an investigation. We believe that more timely enforcement action will better deter future violations of APHIS regulatory requirements. In addition, we realize that the length of time it currently takes to resolve investigations is frustrating for our stakeholders and not an effective or efficient use of our resources.

Q. Why does APHIS conduct investigations?

A. APHIS' Investigative and Enforcement Services (IES) unit investigates alleged violations of the statutes and regulations administered by Agency programs. These violations can have serious and costly impacts to American agriculture, the welfare of animals, and the public. Information gathered through investigations enables the Agency to pursue enforcement action against persons who do not comply with APHIS' regulatory requirements.

Q. How does the enforcement process work?

A. When APHIS program personnel discover apparent violations of our regulations, they may—depending on the seriousness of the issue—request that IES initiate a formal investigation, which includes gathering documentary and photographic evidence, interviewing witnesses, and other actions. After the investigation is complete, APHIS evaluates the evidence and determines whether to take one of a number of enforcement actions to address the alleged violations.

The action taken depends on the seriousness of the issues, the number of alleged violations, and other criteria. APHIS can decide to issue an official warning or a settlement agreement, which could include a monetary penalty or other sanction and is quicker and less costly than litigation. The Agency can also decide to pursue formal, legal prosecution through the administrative law process. Lastly, APHIS also refers some cases, such as those involving animal fighting or other serious matters, to USDA's Office of the Inspector General for possible criminal prosecution.

Q. How will APHIS improve the enforcement process?

A. There are two parts to this effort. First, APHIS is working to significantly reduce the current investigation backlog. By reducing the number of investigations in process at any given time, the Agency will be able to focus its resources on moving the investigations that involve the most serious violations through the enforcement process more expeditiously.

Second, APHIS is implementing improvements to the enforcement process identified during a successful Lean Six Sigma business process review and recent pilot test. These steps should improve internal communications and case management and thereby reduce the time it takes to process investigations.

Q. How many enforcement cases are currently pending?

A. At the end of fiscal year 2011, APHIS had approximately 2,050 investigated cases ongoing in the field or pending review and action in headquarters. Since then we have reduced that number to about 1,500. It is estimated that IES' maximum capacity for processing investigations is up to 1,000 cases per year.

Q. How will APHIS reduce the backlog of cases?

A. APHIS is working to identify, within the existing backlog of open investigations, those that are the highest priority for investigation and those that are

lower priority and should be withdrawn or closed out. To determine the highest priority cases, the Agency is using an analytical tool called Decision Lens that helps decision-makers weigh specific criteria. These criteria include: each investigation's significance with respect to protecting plant health, animal health, and the welfare of animals; APHIS' ability to effectively pursue the alleged violation(s); the age and potential impact of the alleged violation(s); and whether the investigation involves a person who has a history of not complying with APHIS regulatory requirements.

Q. When will APHIS start its backlog reduction efforts?

A. APHIS is already engaged in prioritizing cases.

Q. What will happen to the potential cases that are deemed lower priority? Will these cases simply be closed without further action?

A. As we sort through the investigations, we are identifying those that may not warrant potential judicial proceedings. Those investigations that we believe lack adequate supporting evidence will be closed. In general, for investigations that we believe contain substantiated violations, we will issue official warning letters. Although official warning letters do not include a monetary penalty, they are official enforcement actions and will be considered as part of a person's enforcement history if additional action is deemed necessary in the future.

We will also be using a compliance tool called "letters of information." Program personnel may send letters of information in response to non-egregious violations, with the aim of educating an individual on the correct way to remedy a lack of compliance with the Agency's regulations. Letters of information are an educational tool to help bring individuals into compliance with the law and build their relationship with our Agency. They will not be considered official enforcement action.

Q. Will APHIS add new cases while it deals with the backlog of cases? If so, how many new cases per year does APHIS intend to initiate?

A. APHIS will strive to maintain roughly 600-800 investigations in its system at any given time. We will also use the criteria developed to prioritize and evaluate current investigations to determine whether new investigations should be opened. This volume should enable us to pursue investigations effectively and meet our goals for issuing timely enforcement actions.

Q. How will it be determined in the future whether to open a case for investigation?

A. As APHIS officials are sorting through the current backlog of open investigations, they are collecting

information about the characteristics of those cases deemed to be of higher and lower priority. Based on this information, along with the factors mentioned above, each Agency program will then develop specific criteria to assist officials in determining whether to refer or accept new potential cases for investigation.

Q. Does this new approach mean that APHIS will be less aggressive in its enforcement efforts?

A. Absolutely not. APHIS is better utilizing resources currently available to meet its regulatory mission. By prioritizing potential enforcement investigations, the Agency can ensure that more serious violations receive the attention necessary to bring about justice quicker. Faster processing of investigations should also stop further violations from occurring while waiting for a lengthy investigative process to conclude.

Q. What other steps is APHIS taking to streamline the enforcement process?

A. The process streamlining effort includes, among other things: creating templates to standardize communication and reduce errors; pursuing action on the most serious and best substantiated violations in any given investigation rather than delaying to collect evidence to support additional violations; and taking a more national, rather than regional or local, approach to enforcement and policy decisions. These changes will improve investigation management, internal communication, and decision-making.

Q. How will these efforts improve the time it takes to process a case?

A. At present, it takes an average of about 600 days to resolve an investigation of alleged violations and to pursue informal enforcement action, such as an official warning or stipulated monetary penalty. (Cases that are referred to the Department's Office of the General Counsel or Office of the Inspector General can take considerably longer.) Through our streamlining efforts, we expect to reduce the average time it takes to resolve an investigation to 365 days. This would amount to a time savings of about approximately 40 percent.

Q. Where does the penalty money go when fines are paid? Will APHIS use this to increase the investigator workforce?

A. Penalties paid in connection with alleged violations are paid to the general fund of the U.S. Treasury, like penalties paid in connection with violations of nearly all Federal statutes. APHIS, like other Federal agencies, is not authorized to keep or utilize any portion of the penalties assessed.

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