

Implementation Action Plan

Regulatory Enforcement

Issue:

Maintenance of an effective, efficient, joint effort for consistent enforcement of the Plant Protection Act and the Animal Health Protection Act.

Recommended Response:

- Reinvigorate the Civil Penalties action Team (CPAT) to develop and modify guidelines and policies regarding consistent agriculture enforcement by using the best available tools in both agencies.
- Analyze and utilize enforcement data resources to enhance our targeting capabilities to interdict potential violators.
- Establish effective, ongoing joint training program to support enforcement guidelines and policies.
- Develop, define, and incorporate measures of success into the Joint Agency Quality Assurance Program (JQAP).
- Monitor and evaluate consistent application of guidelines and policies.
- Make improvements and amend guidelines and policies as needed

Correlation to Report Recommendation or Other Feedback:

The OIG and GAO reports recommended streamlining the flow of information and data to strengthen safeguarding activities. In addition, the Specialty Crops Coalition and the American Farm Bureau Federation expressed concern about whether “bad actors” are being effectively identified and addressed. These two stakeholder groups expressed concern about whether APHIS and CBP are adequately tracking violations and encouraged CBP to share information across ports to ensure the consistent application of import regulations.

Findings:

There have been some significant steps forward in the area of violations and enforcement since the transfer of agriculture inspections to CBP from APHIS. The reorganization has enhanced the capability to use new and existing databases that provide the opportunity to target known violators to better enforce agriculture laws and regulations. It has also increased the available enforcement tools as CBP has used its authorities to address certain egregious violations—those authorities include anti-smuggling statutes and seizures and forfeiture procedures.

The transition of CBP occurred only 6 months after APHIS introduced revised guidelines on civil penalties and trained the entire workforce in their use. The

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new guidelines were based on statutory changes to the penalty authority under the Plant Protection Act, which significantly increased civil and criminal penalty authority. The new guidelines increased the spot settlement for air passenger violations to \$100 for first-time violators who were not carrying regulated product for commercial use. Cargo violations were to be documented and turned over to APHIS Investigative and Enforcement Services (IES) for development of a civil case with a base penalty of \$10,000 per violation with aggravating and mitigating circumstances that are applied to increase or decrease the penalty depending upon the facts in the case.

Because the program had been completely revamped just prior to the reorganization, it was not fully entrenched when the transition occurred. This may have resulted in uneven guidance and a lack of clear commitment to the new system.

The original concept for the penalty guidelines was to review the implementation effort after 1 year, then every 3 years thereafter. PPQ had a standing group, the Civil Penalties Action Team (CPAT) responsible for conducting the periodic program reviews and updating the guidelines, training, policies, and systems as needed. In 2003, the CPAT invited CBP to participate in the first program review. A meeting was held that included CBP participants and preliminary plans were made for the review, but the reorganization was too new and positions and roles still too unsettled for the effort to take root. PPQ has spent the past 2 years focusing on strengthening the non-AQI portions of the guidelines and recently invited CBP to appoint members to the CPAT once again.

In the meantime, CBP, because of the threat of Highly Pathogenic Avian Influenza (H5N1), sought to increase the passenger spot settlement to \$500 per violation in 2006. APHIS believed this amount would be a disincentive to settlement and would result in a significant number of cases going to hearing, defeating the purpose of the spot settlement. The agencies agreed to try a \$300 settlement offer, maintain data on number of non-payment cases, and review the new level after a year. The APHIS-CBP Joint Task Force effort provides a timely opportunity to tie all the pieces together in a comprehensive joint approach to an effective enforcement program.

The other critical factor for a successful program is the collection and use of data. Passenger and other violation data was initially being maintained in a temporary Lotus Notes-based APHIS system that did not meet the standards that would allow for certification and accreditation. It was to have been succeeded by an APHIS IES database that was under development, but that effort was terminated for a variety of reasons. CBP uses existing databases for inputting violations and recording seizure data, including passenger seizures. These systems provide officers with the capability to target known violators for secondary referral to enforce compliance with agriculture quarantine and inspection laws and

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regulations. The system requires that a supervisor approve the data entry to ensure accuracy of the assessed penalty, which has made the effort

time-consuming and created a disincentive to appropriate use of penalty and seizure authorities. The lack of an integrated system for entering violation data that can easily be used by CBP, PPQ, and IES for tracking, enforcement, trend analysis, and case documentation hampers the system and diminishes its effectiveness. In addition, APHIS and CBP rely upon different forms for inputting data.

An effective and efficient system that encourages compliance will require:

- Jointly developed guidelines commensurate with the nature of the violation.
- Use of all available tools to address violations and achieve compliance.
- A well-designed training program with mandatory periodic refresher training.
- Appropriate representation on CPAT from both agencies and reliance by both agencies on CPAT as the primary source of expertise for updating the guidelines and planning and coordinating joint efforts related to violations and enforcement such as training, manual updates, trend analysis, and communications.
- Incorporation into JQAP.
- An increase in consistent application of penalty authority.

Expected Outcome:

An effective enforcement program would increase the rate of compliance and result in a greater deterrent effect. The system would be monitored through efficient collection of data. Data would periodically be analyzed and adjustments made to the guidelines as needed. Employees would be encouraged to use all available tools and would understand how to use them effectively.

Documentation of violations would be sufficient to withstand legal challenge. The effort would be supported by an effective joint training program. Evaluation through the JQAP would reveal the level of employee awareness, training, supervisory support, and documentation. Changes in compliance levels would be reflected in collected data and IES and the Office of the General Counsel would serve as both points of validation and early warning that there may be problems in the system.

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Implementation Plan:

Tasks

- Convene the CPAT, with CBP representatives to:
 - Develop a charter for the group's operation that includes agreement on how to effect mutually supported changes in the penalty program.
 - Evaluate current AQL penalty guidelines.
 - Analyze existing data.
 - Discuss authorities, in addition to the Plant Protection Act and Animal Health Protection Act, that can be brought to bear in an effective enforcement program and build them into the penalty guidelines.
 - Develop a revised training package and plan for delivery.
 - Harmonize use of forms and revise forms as necessary.
 - Identify and address the barriers to effective enforcement throughout the system for processing penalties.
 - Evaluate existing data collection systems and identify needs. Hand preliminary programmatic needs assessment off to IT group. (see Task 2)
 - Identify and establish any needed links to other analytic groups such as the DATER group or Trend Analysis Group.
 - Review and adjust current documentation requirements and handoff procedures to APHIS Investigative and Enforcement Services.
 - Develop quality assurance elements for JQAP.
 - Develop a schedule for periodic program reviews.

- Utilize the Information Technology Task Force and include one representative from each Agency's CPAT membership. [See Information Management action plan] The IT Task Force will:
 - Evaluate and complete the preliminary needs assessment provided by the CPAT.
 - Develop a plan for integration of systems for data collection and information sharing. This will not necessarily mean developing a new system, but finding ways to integrate and effectively use existing systems.
 - Develop alternative means of sharing data and information pending changes to existing systems or development of new systems.

Communications Needs

- Review and approval by Agency/Department leadership with concurrence on establishment of identified groups
- Create a clear charge for the CPAT and the IT Task Force [Information Management action plan].
- Messages to employees about the action plan, the roles and responsibilities of each group, progress made by the groups, and training or other expectations resulting from the work of the group.

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- Reemphasize to all levels the need for consistent application of the regulatory enforcement guidelines.
- Communication to the public for education and outreach.

Accountable Individual/Group

- Approval of CPAT and membership and charge to the group: PPQ Deputy Administrator and CBP Assistant Commissioner for Office of Field Operations (OFO).
- Approval of IT Task Force, identification of membership, and charge to the group: PPQ Deputy Administrator and CBP Assistant Commissioner for OFO.
- Development of new guidelines, training plan, and other needs in support of an effective penalty/enforcement program: CPAT.
- Implementation of new guidelines and training plan: management for both Agencies.
- Communication to the public: CBP Office of Public Affairs and APHIS Legislative and Public Affairs.
- Development of plan for integration of data and information-sharing systems: IT Task Force.

Resources

- Successful implementation will need the support of PPQ's Professional Development Center, CBP's Office of Training and Development, and IT staff in both Agencies.
- Commitment to provide and empower the resources needed to complete the action plan.

Sequencing / Linkage

Information Management Action Plan

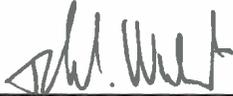
Challenges to Implementation

- Time-consuming nature of existing administrative and legal processes
- IT challenges

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Review Block -- for the use of Agency/Department leadership in adopting, modifying, or rejecting the plan.

Regulatory Enforcement Implementation Action Plan adopted by both agencies on June 26, 2007, by:



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