

Questions and Answers About the Plant Protection Act

Q: What is the Plant Protection Act?

A: The Plant Protection Act (PPA) became law in June 2000 as part of the Agricultural Risk Protection Act. This law consolidates all or part of 10 existing U.S. Department of Agriculture (USDA) plant health laws into one comprehensive law, including the authority to regulate plants, plant products, certain biological control organisms, noxious weeds, and plant pests.

The PPA gives the Secretary of Agriculture, and through delegated authority, USDA's Animal and Plant Health Inspection Service (APHIS), the ability to prohibit or restrict the importation, exportation, and the interstate movement of plants, plant products, certain biological control organisms, noxious weeds, and plant pests.

Under the PPA, violators face harsher civil penalties than ever before for smuggling illegal plants or produce that could harbor plant pests or diseases.

The PPA gives the Secretary of Agriculture the authority to subpoena documentary evidence and witnesses to prosecute violators. The Act also provides APHIS with a cost recovery mechanism for expenses related to the disposal of abandoned shipments at U.S. ports of entry.

Q: How does the PPA impact APHIS' regulatory authority?

A: The PPA grants significant new regulatory authority for controlling noxious weeds and clarifies APHIS' existing regulatory authority for beneficial organisms used in biocontrol.

Q: What are the PPA's specific directives?

A: The PPA specifically directs APHIS to publish a public notice describing procedures and standards for import requests and to conduct a study outlining the role and application of systems approaches designed to guard against the introduction of plant pathogens into the United States. Systems approaches are a series of overlapping measures that are applied to agricultural imports. These measures are designed to mitigate the risk of plant pests or diseases entering the United States and may include specific treatments, inspections, or certifications.

Q: How is APHIS incorporating new PPA authorities into regulatory activities?

A: Currently, APHIS' Plant Protection and Quarantine (PPQ) program is developing plans and procedures to incorporate new PPA authorities. PPQ has identified eight PPA action areas and established implementation time frames to ensure new authorities are fully incorporated into program activities. These action areas include:

1. Publishing a public notice describing procedures and standards for import requests;
2. Conducting a study outlining the role and application of systems approaches associated with proposals to import plants and plant products;
3. Establishing uniform procedures for conducting warrantless inspections;
4. Developing guidelines for the issuance of subpoenas;
5. Creating guidelines for the standardization of civil penalties to be applied consistently nationwide for specific violations;
6. Establishing internal procedures for cost recovery of expenses related to the disposal of smuggled or illegal agricultural products that are abandoned after APHIS takes regulatory action;
7. Soliciting public comment on a concept paper at regional public meetings prior to the publication of a proposed rule for noxious weeds; and
8. Developing regulations for the movement of biological control organisms.

Q: What are the PPA's harsher civil penalties for the smuggling of illegal agricultural products?

A: The PPA increases civil penalties to a maximum of \$50,000 for any individual who violates the law. However, the maximum of \$1,000 remains for first-time offenders carrying an agricultural product through ports of entry for personal use only. Any business or group violating the PPA can now be fined a maximum of \$250,000 and no more than \$500,000 per adjudication.

Under the PPA, anyone causing harm to or interfering with an animal used in official inspections, such as one of the animals in USDA's Beagle Brigade, can be fined up to \$10,000. The Beagle Brigade is made up of detector dogs that work at international airports and borders to sniff passenger luggage and packages for hidden fruits, vegetables, meats, and other agricultural products that may contain invasive animal or plant pests or diseases.

PPQ is currently developing uniform standards for the enforcement of these new civil penalties.

Q: When will APHIS use its subpoena power?

A: When an APHIS inspection leads to suspicion that possible prohibited materials are being housed in a facility, a thorough investigation will begin. APHIS will request a subpoena based on an active investigation, evidence that previous attempts to gain access to documents has been refused, and a reasonable request for documents pertaining to the investigation. The subpoena will set a date and time for APHIS to obtain the documents or for a person to provide testimony at a hearing.

A notice regarding APHIS' subpoena authority and procedures will be published in the Federal Register in the near future.

Q: Can APHIS conduct inspections without a warrant?

A: Yes. Currently, APHIS conducts these types of inspections on passenger luggage and cargo every day at all U.S. international airports and most border crossings. APHIS inspectors look for prohibited agricultural products that could harm American agriculture by bringing in plant pests and diseases.

Under the PPA, APHIS also has the authority to conduct inspections without warrants on interstate commerce, based on probable cause, as well as intrastate commerce as part of an extraordinary emergency.

A working group of PPQ staffs and APHIS' Investigative and Enforcement Services, with advice from USDA's Office of General Counsel, is developing written guidelines for warrantless inspections. These guidelines will follow the U.S. Attorney General's guidelines for warrantless inspections and will include search criteria and procedures that ensure that warrantless inspections do not violate the legal or constitutional rights of citizens.

Q: What are the PPA's new cost recovery measures?

A: Previously, when APHIS required regulatory action for infested or prohibited agricultural products and the importer abandoned the shipment, APHIS covered the cost of disposing of the cargo. With the PPA, if the importer fails to take the required remedial measures, APHIS will take the necessary action and bill the importer for all associated costs.

Q: What are the PPA's new quality assurance measures?

A: The Act allows APHIS-PPQ to work with industry and other cooperators to establish programs to improve the health and pest and disease-free status of specific commodities. One outcome of this cooperation would be that APHIS can publish industry-devel-

oped standards under its regulatory authority. If industry members wish to voluntarily comply with these best practices or higher standards, APHIS can authorize them to put a predetermined quality sticker or seal on their product.

Q: What is APHIS' expanded authority on noxious weeds?

A: The PPA expands the definition of noxious weed from the definition in the Federal Noxious Weed Act, which included only weeds that were of foreign origin, new to, or not widely prevalent, in the United States.

The PPA defines a noxious weed as a weed that could bring harm to agriculture, the public health, navigation, irrigation, natural resources, or the environment. Under the PPA, regulations for noxious weeds are similar to those for plant pests.

Under the PPA, the Secretary of Agriculture and APHIS will have the authority for the first time to declare an extraordinary emergency when a newly introduced or not widely prevalent noxious weed poses a significant threat and to declare an emergency that would enable the transfer of money from other agencies or corporations of the Department, including the Commodity Credit Corporation, to cover the cost of eradicating the weed. An extraordinary emergency declaration gives APHIS the authority to hold, seize, quarantine, treat, or destroy any plant or plant product being moved within a State that is believed to be infested with a plant pest or noxious weed. This authority is used when a State is unable to take the necessary measures itself.

The PPA allows the Secretary of Agriculture to develop a classification system to describe the status and action level for a specific noxious weed. In conjunction with the classification system, the Secretary may develop integrated management plans for noxious weeds for the specific geographic region or ecological range where the noxious weed is found in the United States.

A list of noxious weeds that are prohibited from entering the United States or moving among States, except under a permit with restricted conditions, is currently available on the APHIS website at www.aphis.usda.gov. Any person may petition the Secretary of Agriculture to add or remove a plant species from this list.

Currently, PPQ is developing a concept paper on noxious weeds, which will be presented at public meetings in Spring 2001. At the conclusion of the public meetings, PPQ will draft a proposed rule on noxious weeds for the Federal Register.

Q: How does the PPA impact biological control?

A: The PPA separates biological control organisms, which were formerly grouped with plant pests, and defines them as any enemy, antagonist, or competitor used to control plant pests or noxious weeds. This recognizes that not all organisms in need of permits are plant pests and that some are actually beneficial to U.S. agriculture and the environment.

APHIS has developed proposed new regulations for the movement of plant pests and release of biological control agents of weeds, which should be published in the Federal Register in the near future.

The PPA reaffirms APHIS authority to regulate biological control to prevent the introduction or dissemination of plant pests or noxious weeds and encourages the USDA, other Federal agencies, and the States to facilitate biological control whenever feasible. The Act also provides APHIS with guidance on how to regulate the movement of biological control organisms and authorizes APHIS' participation in activities that enable the effective transfer of biological control techniques.

The PPA broadens the scope of APHIS' authority and clarifies existing authorities to enable APHIS to continue its mission of protecting America's plants and animals. For more information on the PPA, or to read the Act in its entirety, please visit the APHIS website at www.aphis.usda.gov.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotope, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.