

8

Agricultural
Clearance

Violations

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Introduction

This chapter includes information on assessing civil penalties. See **Appendix A** for instructions on completing forms pertaining to violations.

Cargo Violations

When regulated cargo which was held is moved without the proper treatment or inspection and CBP release, PPQ regulations (7 CFR 330.105) have been violated by the individual or party responsible for the movement. The violator (whomever moved the cargo) has moved cargo which has **not** met the requirements of a PPQ regulation. Document cargo violations by completing PPQ Form 518, Report of Violation, and research the incident. Make sure you include the Specialist's statement with all the facts of the violation. See **PPQ Form 518, Report of Violation on page A-1-97** and **Sample of CBP Agriculture Specialist's Statement on page C-1-5**.

Document evidence of any **previous** violations. Immediately after detecting the violation, eliminate the pest risk. You may have to call the CBP office at destination, State regulatory official, agents, shippers, and Headquarters PPQ and VRS as necessary to take action to eliminate the pest risk.

Tell the person or party the nature of the violation. If requested, give the person a copy of the regulation(s) and make note of when the regulation(s) was given to that person.

You can also require that cargo be returned to the port of arrival if doing so does not increase the risk of pest escape. The importer is then required to return the cargo to the first port of arrival. If you need to subpoena documents, see **Subpoenas Under the Plant Protection Act on page N-1-1**.



APHIS Form 7060, Official Warning, is not issued at the port level. IES will issue APHIS Form 7060 if appropriate.

Collecting Evidence to Assemble a Case File

The purpose of collecting evidence is to substantiate that a violation took place. OGC will decide whether or not to prosecute a violation based upon the results of the investigation and how well you prepared the case file. Only a sound investigation and well prepared case file will result in a successful prosecution.

Once you apply safeguards, investigate and report the violation. Reporting consists of completing and mailing *PPQ Form 518, Report of Violation on page A-1-97* (see *Table A-1-28 on page-A-1-98* for instructions on completing this form.

Conduct your investigation in a fair and impartial manner making every effort to obtain a complete, factual record. Do not prejudge a case or discuss any phase of the investigation with unauthorized persons (non-APHIS/CBP personnel). If you are unsure of whom you may speak with, contact your supervisor.

If you need advice or assistance with a complex or difficult investigation, or have questions about violations, you may contact your Investigative and Enforcement Services (IES) investigator. IES investigators are available to investigate violations that require additional inquiry, documentation, and case preparation. For a list of IES contacts, see *Appendix L*.

Try to get a written statement from any person who has knowledge of the violation. Statements may be handwritten or use the sample format in *Appendix C*. Ask witnesses to be specific in writing their statement, specifying all known facts, dates, names, titles, amounts, and descriptions. Ask the witness to sign and date the statement as soon as it is completed. If a witness refuses to sign the statement, make note of the refusal on the statement.

Collect evidence to corroborate the violation. If germane to your case, take photographs or video tapes. Photographs or videos make forceful evidence. If the incident represents a garbage violation, then if appropriate, collect samples from the garbage container, a General Declaration, compliance agreement, warning letters, or statements from employees at the catering firm. If the incident represents a cargo violation, then collect evidence that shows how the article(s) entered the United States and was held, where the article was grown or the animal slaughtered, the carrier who moved the cargo, the owner of the cargo and its quantity, and what the article's destination is. More specifically, collect copies of air waybills, CBP entry papers, invoices, packing lists, and manifest entries. Also collect permits, phytosanitary certificates, photographs, and if appropriate, other physical evidence.

Give each piece of evidence an exhibit number. List the exhibits on a separate piece of paper with the heading "List of Exhibits."

EXAMPLE

List of Exhibits

- Exhibit 1—Agriculture Specialist's Statement
- Exhibit 2—Witness' Statement of Customs Inspector Carlos Colon
- Exhibit 3—Copy of the General Declaration
- Exhibit 4—Any additional documentation with the foreign carrier's logo

Violations:

Seizure of Agricultural Merchandise

Label and assemble your evidence in the following order:

1. Statement from the Agriculture Specialist initiating the action and from any contributive officer, violator’s statement, and witness’ statement.
2. Other documentary evidence related to the **current** violation such as the compliance agreement, air waybill, General Declaration, **PPQ Form 309A, Pest Interception Record on page A-1-90** and dates and methods of notifying the violator of APHIS regulations.
3. Physical evidence such as a piece from an empty carton that is labeled, napkins with the airline logo, and photographs. When submitting photographs, write the date, description, and photographer’s name on the back of the photograph or on a piece of paper onto which the photograph is mounted. If the physical evidence presents a risk, then submit it so as to prevent leakage or disease dissemination—put it in tightly closed plastic bags.
4. Documentary evidence of any **previous** violations.

After you complete **PPQ Form 518, Report of Violation on page A-1-97**, the Port Director writes a warning letter (see **Sample Letters and Statements on page C-1-1** for directions).

Submit the case file to USDA-APHIS-IES, 4700 River Road, Unit 85, Riverdale, MD 20737; phone 301/734-8684, requesting an investigation.

Seizure of Agricultural Merchandise

See *Seizure of Agricultural Importations* on CBP.net.

Assessing Civil Penalties for Breaking Seals

Assess a civil penalty whenever seals are broken without the authorization of CBP. Use **CBP Form AI-592, Notice of Violation on page A-1-56** to document such a violation. If possible, collect the broken seal as evidence and submit it with your report of violation.

Refer to **Table 8-1-1** to determine whether to assess a spot settlement.

TABLE 8-1-1: Determine if You Should Assess a Spot Settlement for Breaking Seals

If the violation is the:	Then:
First	Fill in \$1,000.00 in Section II of CBP Form AI-592
Second or beyond	Leave Section II of PPQ Form 592 blank and forward the complete case file to USDA-APHIS-IES, 4700 River Road, Unit 85, Riverdale, MD 20737; phone 301/734-8684



You must record all agricultural violations on the appropriate form. Failure to do this makes documenting the violation difficult. You must inform alleged violators that they have an opportunity for a hearing and that by signing Section II they agree to waive the hearing and pay the penalty.

If the violation is the first, refer to these points for further guidance:

- ◆ Give the violator the opportunity to pay the spot settlement. Explain to the violator that he or she has a right to a hearing. Further explain that, should the violator be found in violation at the hearing, the penalty is often more than what is offered as a spot settlement at the port.
- ◆ Have the violator carefully read section II of the form before signing
- ◆ Inform the violator that failure to pay the spot settlement will result in the violation being forwarded to IES Headquarters
- ◆ Inform the violator that the spot settlement now being assessed has no bearing on the amount assessed in the future. The future penalty and penalties for repeat offenders could be significantly higher.
- ◆ Have the violator sign section IV if the violator elects not to pay the spot settlement
- ◆ If the penalty is not paid on the carrier, send or fax a copy to the carrier's agent. Notify the agent that the penalty must be paid within 3 working days.



Funds received from civil penalties assessed for violation of the Plant Protection Act and/or the Animal Health Protection Act are deposited into the account of the Treasury of the United States. These funds are not controlled by any part of the CBP fines and forfeitures collection process. Therefore it is critical that civil penalty funds received for violations of agricultural laws and regulations be properly coded and deposited into the appropriate account. Make all checks and money orders payable to "Treasury of the United States." If you have any questions, contact QPAS at 301-734-8295.

Garbage Violations

This section details what you are to do when you detect a violation of the garbage regulations or a compliance agreement.



The decision to revoke an establishment's compliance agreement is made at the APHIS-PPQ-VRS Headquarters level.

When you detect a violation, take the following action:

Violations:

Garbage Violations

1. Eliminate the pest risk immediately.
2. Issue a letter stating the alleged violation of the regulation and/or compliance agreement. This letter is used to notify the firm that it is acting in a way that needs to be corrected. Include a copy of this letter in the notification package. Follow the sample letter in *Sample Letters and Statements* on page C-1-1.
3. Report the violation to Headquarters VRS through the Port Director within 1 work day of discovery.
4. Document violations by completing CBP Form AI-592 and conduct an investigation of the incident. Make sure you include the Specialist's Statement with **all** the facts of the violation. See *CBP Form AI-592, Notice of Violation* on page A-1-56, and *Sample of CBP Agriculture Specialist's Statement* on page C-1-5. Send the AI-592 to IES.

If you detect a deliberate and flagrant violation of the garbage handling procedures or other safeguard requirements, then make a full report through appropriate channels to Headquarters CBP-AI. Follow up by writing a Specialist's Statement of incident.

Assessing Civil Penalties

This section is further broken into the following subsections:

- ◆ *Aircraft Garbage Violations* on page 8-1-6
- ◆ *Ocean Vessel Garbage Violations* on page 8-1-8
- ◆ *Firms Garbage Violations* on page 8-1-8
- ◆ *Compliance Agreement Violations* on page 8-1-9

Aircraft Garbage Violations

Using CBP Form AI-592, you may assess a civil penalty (spot settlement) when you discover the following violations of 7 CFR 330.400 and 9 CFR 94.5 involving foreign, regulated garbage:

- ◆ Foreign, regulated garbage that is found in open, torn, spilled or leaking containers (any regulated garbage or meals that are exposed) and located at an approved facility in the following areas:
 - ❖ Outside, on dock areas where no loading or unloading activity is occurring
 - ❖ On or around a secure compactor or dumpster that is inside a perimeter fence or controlled by a guard on duty
- ◆ Foreign, regulated garbage that is found in open, torn, spilled or leaking containers (any regulated garbage or meals that are exposed) and located on open, unattended commissary trucks, cleaner trucks, loading bridges, service vehicles, portable stands or similar devices

- ◆ Foreign, regulated garbage that is neither sterilized nor incinerated and being hauled from a quarantine dumpster to a landfill



Important

Use the stipulation (spot settlement) authority **only** for violations of the Plant Protection Act or the Animal Health Protection Act. **Never** use the spot settlement authority for violations of compliance agreements. When a violation of the Plant Protection Act or the Animal Health Protection Act occurs which is a provision of the compliance agreement, then assess a spot settlement for the violation of the Act and **not** the compliance agreement.

To determine if you should assess a spot settlement for a garbage violation, refer to **Table 8-1-2**.

TABLE 8-1-2: Determine if You Should Assess a Spot Settlement for a Garbage Violation on an Aircraft

If the violation is:	And the violation is:	And:	Then:
Unauthorized removal or handling of garbage (without a compliance agreement)	First	→	FILL in \$1,000
	Second, or committed while operating with a suspended compliance agreement	→	FORWARD the complete case file to IES ¹ with Section II blank
Improper removal or handling of regulated garbage (under compliance agreement)	First	The violator promptly corrects the situation	FILL in \$500
		The violator does not correct the situation and does not adequately explain why	FILL in \$1,000
	Second	→	FILL in \$1,500
	Third	→	FILL in \$2,000
	Fourth or beyond	→	FORWARD the complete case file to IES ¹ with Section II blank

¹ USDA-APHIS-IES, 4700 River Road, Unit 85, Riverdale, MD 20737.



Important

You must record all agricultural violations on the appropriate form. Failure to do this makes documenting the violation difficult. You must inform alleged violators that they have an opportunity for a hearing and that by signing Section II they agree to waive the hearing and pay the penalty.

If you decide to assess a spot settlement, refer to **Spot Settlements on page 8-1-10**.

**Ocean Vessel
Garbage
Violations**

To determine if you should assess a spot settlement for a garbage violation, refer to **Table 8-1-3**.

TABLE 8-1-3: Determine if You Should Assess a Spot Settlement for a Garbage Violation on a Vessel

If the violation is:	And the violation is:	And:	Then:
Unauthorized removal or handling of garbage (without a compliance agreement)	First	→	FILL in \$1,000
	Second, or committed while operating with a suspended compliance agreement	→	FORWARD the complete case file to IES ¹ with Section II blank
Improper removal or handling of regulated garbage (under compliance agreement)	First	The violator promptly corrects the situation	FILL in \$500
		The violator does not correct the situation and does not adequately explain why	FILL in \$1,000
	Second	→	FILL in \$1,500
	Third	→	FILL in \$2,000
	Fourth or beyond	→	FORWARD the complete case file to IES ¹ with Section II blank
Improperly maintaining regulated garbage outside rails, leaking, uncovered containers, or loose on deck	First	→	FILL in \$1,000
	Second or beyond	→	1. FORWARD the complete case file to IES ¹ with Section II blank 2. COMPLETE CBP Form AI-592

1 USDA-APHIS-IES, 4700 River Road, Unit 85, Riverdale, MD 20737.



You must record all agricultural violations on the appropriate form. Failure to do this makes documenting the violation difficult. You must inform alleged violators that they have an opportunity for a hearing and that by signing Section II they agree to waive the hearing and pay the penalty.

For spot settlements, refer to **Spot Settlements on page 8-1-10**.

**Firms Garbage
Violations**

The Port Director (or designee) and PPQ, VRS determine the seriousness of the violation as listed in **Table 8-1-4**.

TABLE 8-1-4: Determine if Violation Is Considered Serious

If the violation:	And it is the firm's:	Then the Port Director:
Presents an imminent risk (for example, untreated garbage is dumped in a landfill or a caterer removes meat from the aircraft to take home)	→	Classifies the violation as serious
Does not present an imminent risk (for example, a container holding foreign garbage leaks or garbage is held too long before disposal)	Second violation	Classifies the violation as noncritical
	First violation	

If the violation is noncritical, conclude your activities with the forwarding of the Report of Violation.



If the violation is serious, the Port Director must report the violation to the local HQ PPQ VRS within 1 work day of when the violation occurred.

Compliance Agreement Violations

Details of what you are to do when you detect a violation of the compliance agreement are listed below.



The decision to revoke an establishment's compliance agreement is made at the Headquarters level.

Safeguards

If a serious violation of the garbage regulations or a compliance agreement occurs, only HQ PPQ, VRS decides whether to revoke a firm's approval to handle regulated garbage. A serious violation is one that involves an imminent risk or a second, documented violation by a firm within 6 months. The port reports the serious violation to HQ PPQ, VRS who then confers with the Office of the General Counsel (OGC), Investigative and Enforcement Services (IES). PPQ, VRS then decides whether to revoke the firm's approval to handle regulated garbage. If the violation is considered to present an imminent risk to the public health, interest, or safety, the firm's approval is immediately revoked. Otherwise, the firm is notified of the intent to revoke their approval.

Likewise, only HQ PPQ, VRS may approve reinstatement of a firm's compliance agreement to handle regulated garbage. Reinstatement occurs only when the firm found in violation meets all the terms of settlement detailed in the consent agreement or as a result of a hearing.



CBP personnel are **never** to revoke or reinstate a firm's compliance agreement independently. CBP personnel must follow protocol. That protocol is described in the next sections.

Take the following action when you detect a violation:

1. Eliminate the pest risk immediately.
2. Issue a *CBP Form AI-592, Notice of Violation*. See **Table A-1-13 on page-A-1-58** for instructions on how to complete the form.
3. Report the violation to HQ PPQ, VRS through the Port Director within one work day of discovery.

Spot Settlements

If you decide to assess a spot settlement, refer to these points for further guidance:

- ◆ Give the violator the opportunity to pay the spot settlement. Explain to the violator that he or she has a right to a hearing. Further explain that, should the violator be found in violation at the hearing, the penalty is often more than what is offered as a spot settlement at the port.
- ◆ Have the violator carefully read section II of the form before signing
- ◆ Inform the violator that failure to pay the spot settlement will result in the violation being forwarded to IES Headquarters
- ◆ Inform the violator that the spot settlement now being assessed has no bearing on the amount assessed in the future. The future penalty and penalties for repeat offenders could be significantly higher.
- ◆ Have the violator sign section IV if the violator elects not to pay the spot settlement
- ◆ If the penalty is not paid on the carrier, send or fax a copy to the carrier's agent. Notify the agent that the penalty must be paid within 3 working days.



Funds received from civil penalties assessed for violation of the Plant Protection Act and/or the Animal Health Protection Act are deposited into the account of the Treasury of the United States. These funds are not controlled by any part of the CBP fines and forfeitures collection process. Therefore it is critical that civil penalty funds received for violations of agricultural laws and regulations be properly coded and deposited into the appropriate account. Make all checks and money orders payable to "Treasury of the United States." If you have any questions, contact QPAS at 301-734-8295.

Collecting Evidence to Support a Spot Settlement

In addition to discovering the violation, you must have the following supporting evidence:

- ◆ Proof that the garbage came off a particular flight; you might have to go through the garbage to get this proof
 - ❖ Get this evidence from the smallest, contained unit that identifies where the garbage came from
 - ❖ If the evidence was a milk container in a plastic bag—the bag being in a garbage can—the evidence would have to be from the plastic bag and **not** the garbage can that held the bag
 - ❖ As evidence, you need any document that identifies the airline and flight, like discarded boarding passes (a mere napkin will **not** do)
- ◆ If you cannot get the definitive proof required, then document the violation using *CBP Form AI-592, Notice of Violation* on page A-1-56, but **do not** assess a spot settlement
- ◆ Proof that the caterer, cleaner, or cartage firm was contracted by the carrier to handle regulated garbage; do **either** of the following:
 - ❖ Get evidence from the written contract that provides these services to the airline in question
 - ❖ Have management of the airline holding the contract either tell you or write out which approved caterer, cleaner, or cartage firm serviced the airline in question
 - Document the conversation if you are only given the information orally
 - Make sure you write down the date, the name, and the title of the person giving you the statement

Collecting Evidence to Assemble a Case File

The purpose of collecting evidence is to substantiate that a violation took place. OGC will decide whether or **not** to prosecute a violation based upon the results of the investigation and how well you prepared the case file. Only a sound investigation and well prepared case file will result in a successful prosecution.

Once you apply safeguards, investigate and report the violation. Reporting consists of completing and mailing *CBP Form AI-592, Notice of Violation on page A-1-56* (see *Table A-1-13 on page-A-1-58* for instructions on completing this form).

Conduct your investigation in a fair and impartial manner making every effort to obtain a complete, factual record. **Do not** prejudice a case or discuss any phase of the investigation with unauthorized persons (non-APHIS/CBP personnel). If you are unsure of whom you may speak with, contact your supervisor.

If you need advice or assistance with a complex or difficult investigation, or have questions about violations, you may contact your Investigative and Enforcement Services (IES) investigator. IES investigators are available to investigate violations that require additional inquiry, documentation, and case preparation. For a list of IES contacts, see *Appendix L*.

Try to get a written statement from any person who has knowledge of the violation. Statements may be handwritten or use the sample format in *Appendix C*. Ask witnesses to be specific in writing their statement, specifying all known facts, dates, names, titles, amounts, and descriptions. Ask the witness to sign and date the statement as soon as it is completed. If a witness refuses to sign the statement, make note of the refusal on the statement.

Collect evidence to corroborate the violation. If germane to your case, take photographs or video tapes. Photographs or videos make forceful evidence. If the incident represents a garbage violation, then if appropriate, collect samples from the garbage container, a General Declaration, compliance agreement, warning letters, or statements from employees at the catering firm. If the incident represents a cargo violation, then collect evidence that shows how the article(s) entered the United States and was held, where the article was grown or the animal slaughtered, the carrier who moved the cargo, the owner of the cargo and its quantity, and what the article's destination is. More specifically, collect copies of air waybills, CBP entry papers, invoices, packing lists, and manifest entries. Also collect permits, phytosanitary certificates, photographs, and if appropriate, other physical evidence.

Give each piece of evidence an exhibit number. List the exhibits on a separate piece of paper with the heading "List of Exhibits."

EXAMPLE

List of Exhibits

- Exhibit 1—Agriculture Specialist's Statement
- Exhibit 2—Witness' Statement of Customs Inspector Carlos Colon
- Exhibit 3—Copy of the General Declaration
- Exhibit 4—Any additional documentation with the foreign carrier's logo

Label and assemble your evidence in the following order:

1. Statement from the Agriculture Specialist initiating the action and from any contributive officer, violator's statement, and witness' statement.
2. Other documentary evidence related to the **current** violation such as the compliance agreement, air waybill, General Declaration, *PPQ Form 309A, Pest Interception Record on page A-1-90*, and dates and methods of notifying the violator of APHIS regulations.
3. Physical evidence such as a piece from an empty carton that is labeled, napkins with the airline logo, and photographs. When submitting photographs, write the date, description, and photographer's name on the back of the photograph or on a piece of paper onto which the photograph is mounted. If the physical evidence presents a risk, then submit it so as to prevent leakage or disease dissemination—put it in tightly closed plastic bags.
4. Documentary evidence of any **previous** violations.

After you complete *CBP Form AI-592, Notice of Violation on page A-1-56*, the Port Director writes a warning letter (see *Sample Letters and Statements on page C-1-1* for directions).

Advance Notification of Arrival Violations

Assessing Civil Penalties for Aircraft

If the operator of the aircraft does not provide advance notification of arrival as specified above, assess a civil penalty and complete *CBP Form AI-592, Notice of Violation on page A-1-56*.

To determine if you should assess a spot settlement for failure to provide advance notification, refer to **Table 8-1-5**.

TABLE 8-1-5: Determine Whether You Should Assess a Spot Settlement for Failure to Provide Advance Notification

If the violation is the:	Then:
First, second, third, or fourth	Fill in \$1,000.00 in Section II of PPQ Form 592
Fifth or beyond	Leave Section II of PPQ Form 592 blank and forward the complete case file to USDA-APHIS-IES, 4700 River Road, Unit 85, Riverdale, MD 20737; phone 301/734-8684 (see Collecting Evidence to Assemble a Case File on page 8-1-2)



You must record all agricultural violations on the appropriate form. Failure to do this makes documenting the violation difficult. You must inform alleged violators that they have an opportunity for a hearing and that by signing Section II they agree to waive the hearing and pay the penalty.

Violations:

Advance Notification of Arrival Violations

If you decide to assess a spot settlement, refer to these points for further guidance:

- ◆ Give the violator the opportunity to pay the spot settlement. Explain to the violator that he or she has a right to a hearing. Further explain that, should the violator be found in violation at the hearing, the penalty is often more than what is offered as a spot settlement at the port.
- ◆ Have the violator carefully read section II of the form before signing
- ◆ Inform the violator that failure to pay the spot settlement will result in the violation being forwarded to IES Headquarters
- ◆ Inform the violator that the spot settlement now being assessed has no bearing on the amount assessed in the future. The future penalty and penalties for repeat offenders could be significantly higher
- ◆ Have the violator sign section IV if the violator elects not to pay the spot settlement
- ◆ If the penalty is not paid on the carrier, send or fax a copy to the carrier's agent. Notify the agent that the penalty must be paid within 3 working days.



Funds received from civil penalties assessed for violation of the Plant Protection Act and/or the Animal Health Protection Act are deposited into the account of the Treasury of the United States. These funds are not controlled by any part of the CBP fines and forfeitures collection process. Therefore it is critical that civil penalty funds received for violations of agricultural laws and regulations be properly coded and deposited into the appropriate account. Make all checks and money orders payable to "Treasury of the United States." If you have any questions, contact QPAS at 301-734-8295.

Assessing Civil Penalties for Vessels

If the operator of the vessel does not provide advance notification of arrival as specified above, assess a civil penalty and complete **CBP Form AI-592, Notice of Violation on page A-1-56**.

To determine if you should assess a spot settlement for failure to provide advance notification, refer to **Table 8-1-6 on page-8-1-15**.

TABLE 8-1-6: Determine Whether You Should Assess a Spot Settlement for Failure to Provide Advance Notification

If the violation is the:	Then:
First	Fill in \$500.00 in Section II of PPQ Form 592
Second	Fill in \$1,000.00 in Section II of PPQ Form 592
Third or beyond	Leave Section II of PPQ Form 592 blank and forward the complete case file to USDA-APHIS-IES, 4700 River Road, Unit 85, Riverdale, MD 20737; phone 301/734-8684 (see Collecting Evidence to Assemble a Case File on page 8-1-2)



You must record all agricultural violations on the appropriate form. Failure to do this makes documenting the violation difficult. You must inform alleged violators that they have an opportunity for a hearing and that by signing Section II they agree to waive the hearing and pay the penalty.

If you decide to assess a spot settlement, refer to these points for further guidance:

- ◆ Give the violator the opportunity to pay the spot settlement. Explain to the violator that he or she has a right to a hearing. Further explain that, should the violator be found in violation at the hearing, the penalty is often more than what is offered as a spot settlement at the port.
- ◆ Have the violator carefully read section II of the form before signing
- ◆ Inform the violator that failure to pay the spot settlement will result in the violation being forwarded to IES Headquarters
- ◆ Inform the violator that the spot settlement now being assessed has no bearing on the amount assessed in the future. The future penalty and penalties for repeat offenders could be significantly higher
- ◆ Have the violator sign section IV if the violator elects not to pay the spot settlement
- ◆ If the penalty is not paid on the carrier, send or fax a copy to the carrier's agent. Notify the agent that the penalty must be paid within 3 working days.



Funds received from civil penalties assessed for violation of the Plant Protection Act and/or the Animal Health Protection Act are deposited into the account of the Treasury of the United States. These funds are not controlled by any part of the CBP fines and forfeitures collection process. Therefore it is critical that civil penalty funds received for violations of agricultural laws and regulations be properly coded and deposited into the appropriate account. Make all checks and money orders payable to "Treasury of the United States." If you have any questions, contact QPAS at 301-734-8295.

Passenger and Crew Violations

Assessing Civil Penalties

Refer to Table 8-1-7.

TABLE 8-1-7: Criteria That Must Be Met to Issue a Civil Penalty

If the person is:	Then the following criteria must be met to assess a civil penalty:
Illegally smuggling contraband into the United States through an unauthorized port of entry, thus eluding making a declaration	<ul style="list-style-type: none"> ◆ You must have the legal authority to assess the civil penalty
Entering through an authorized port of entry	<ul style="list-style-type: none"> ◆ The person must have failed to declare a prohibited or regulated agricultural article ◆ You must have given the person an opportunity to amend his or her declaration orally ◆ You must have the legal authority to assess the civil penalty

Determining Legal Authority for Assessing a Civil Penalty

If you have the authority to refuse entry of an article, then you have the legal authority to assess a civil penalty. Refer to the appropriate import manual (*Animal Product Manual*, *Nursery Stock Restrictions*, *Cut Flowers and Greenery Manual*, *Fresh Fruits and Vegetables Manual*, *Miscellaneous and Processed Products Manual*, or *Unprocessed Seeds Manual*, and determine the regulation that gives you the authority to refuse entry to the smuggled item. You have authority to issue a civil penalty for articles that meet any of the following conditions:

- ◆ Are outright prohibited
- ◆ Require treatment as a condition of entry
- ◆ Require postentry growing
- ◆ Require foreign certification but lack that certification
- ◆ Require a written permit but lack such a permit

You **cannot** issue a civil penalty for the following articles since legislation regulating their entry **lacks** provisions for civil penalties:

- ◆ Live honeybees or honeybee semen
- ◆ Plant or plant products regulated by CITES or ESA that can **not** be refused entry under Title 7CFR



You must record all agricultural violations on the appropriate form. Failure to do this makes documenting the violation difficult. You must inform alleged violators that they have an opportunity for a hearing and that by signing Section II they agree to waive the hearing and pay the penalty.

Assessing Civil Penalties to Crew Members

Since crew members are aware of our regulations and have gained knowledge of Plant Protection and Quarantine through training and frequent travel, they are assessed a higher civil penalty than passengers. Check the crew member’s violation history in TECS. If a second violation occurs, the crew member is given **no** opportunity for a spot settlement. Use **Table 8-1-8** to determine the civil penalty to assess to a crew member.

TABLE 8-1-8: Determine Civil Penalties to Assess to Crew Members

If this is a:	Then:
First violation	1. ASSESS a \$500 spot settlement 2. FORWARD a standardized violation letter ¹ to the crew member’s employer
Repeat violation	1. DOCUMENT the violation 2. RECOMMEND that the crew member be assessed \$2,000 for the repeat violation 3. FORWARD the case file to IES for review and evaluation

¹ This letter to the employer provides the opportunity to educate employees and, if necessary, provide additional training.

Assessing Civil Penalties to Passengers

Passengers are exempt from civil penalties if **either** of the following apply:

- ◆ Violator is under 18 years old and **not** accompanied by an adult
- ◆ Violator is a foreign diplomat¹ holding an A-1 or A-2 visa or a G-1 or G-2 visa then waive the civil penalty, but still complete CBP Form AI-591

If the foreign diplomat refuses to surrender the contraband, complete a CBP Form AI-591 (see **Table A-1-11 on page-A-1-53** for instructions on completing the form). Release the diplomat; however, you may have to detain the baggage.



If you cannot communicate with passengers, then you cannot question them. Therefore, you would be unable to issue a civil penalty. If you encounter a passenger who cannot communicate in English, then get another officer or someone from another Agency or airlines, or Port Authority to assist with translating.

¹ U.S. diplomats are subject to civil penalties.

Determining Whether a Civil Penalty is Appropriate and Determining the Amount of the Civil Penalty

TABLE 8-1-9: Determine Whether a Civil Penalty is Appropriate and the Amount of Civil Penalty to Assess

If the individual failed to declare and there is:	And the importation represents a:	And it is a:	Then assess Civil Penalty:
Some evidence of concealment or misrepresentation	Commercial activity ¹ as evidenced by the size of the shipment or an intent to distribute or sell	First violation	ASSESS a \$1,000 spot settlement ²
		Repeat violation	1. DOCUMENT the violation 2. RECOMMEND that a fine of \$5,000 be assessed for the repeat violation 3. FORWARD the case file to IES for review and evaluation
	Noncommercial activity	First violation: commuter lane	ASSESS a \$500 spot settlement ²
		First violation: other than commuter lane	ASSESS a \$300 spot settlement ²
		Second violation	ASSESS a \$500 spot settlement ²
		Third violation or beyond	1. DOCUMENT the violation 2. RECOMMEND that a fine of \$1,000 be assessed for the repeat violation 3. FORWARD the case file to IES for review and evaluation
No evidence of concealment or misrepresentation	Commercial activity ¹ as evidenced by the size of the shipment or an intent to distribute or sell	First violation	ASSESS a \$300 spot settlement ²
		Repeat violation	1. DOCUMENT the violation 2. RECOMMEND that a fine of \$1,000 be assessed for the repeat violation 3. FORWARD the case file to IES for review and evaluation
	Noncommercial activity	First violation: commuter lane	ASSESS a \$500 spot settlement ²
		First violation: other than commuter lane	ASSESS a \$300 spot settlement ^{2, 3}
		Second violation	ASSESS a \$500 spot settlement ²
		Third violation or beyond	1. DOCUMENT the violation 2. RECOMMEND that a fine of \$1,000 be assessed for the repeat violation 3. FORWARD the case file to IES for review and evaluation

- 1 If there is a case where you can **clearly** identify a linkage to a commercial enterprise, then contact SITC or IES for action.
- 2 If the violator refuses to pay the spot settlement, then immediately complete CBP Form AI-591 and forward all documents to your supervisor who will then forward the case to IES. Go to **Refusal to Pay the Civil Penalty on page 8-1-22.**
- 3 You may mitigate to \$175; for land border pedestrians only, you may mitigate to \$75. Mitigate **only** in cases where the individual demonstrates inability to pay or where paying the full amount would cause undue hardship.



If there is a case of potential **bioterrorism**, refer immediately to your supervisor.

Initiating Seizure Case into SEACATS

Once a determination is made that a civil penalty is appropriate and the amount has been determined, initiate a case into SEACATS using short form option A. The system generates a Fines, Penalties, and Forfeitures (FP&F) case number.

If the violator refuses to pay the civil penalty, the SEACATS incident type for seizure only is "SZ".

If the violator pays the civil penalty, the SEACATS incident type for seizure and penalty is "SP".

Record the FP&F case number in the remarks section of CBP Form AI-591.

Encouraging Violators to Pay

If violators pay civil penalties before leaving the port, administrative costs are lower. This is an advantage because the Department spends no additional time or effort in collection. Therefore, you may give the violator the opportunity to pay the civil penalty on the spot (spot settlement). However, **never** coerce the violator into paying. Explain to the violator that he or she has a right to a hearing. Further explain that, should the violator be found in violation at the hearing, the penalty is often more than what you are offering as a settlement at the port. Follow these steps:

- 1.** Show the violator the back of the Customs Declaration that they signed.
- 2.** Have the violator carefully read Section II of the form.
- 3.** Inform the violator that failure to pay the spot settlement will result in the violation being forwarded to IES Headquarters.
- 4.** Inform the violator that the spot settlement now being assessed has no bearing on the amount assessed in the future. The future penalty could be as high as \$1,000 for a first-time violator and significantly higher for a repeat offender.
- 5.** If the violator agrees to pay, have the violator sign the CBP Form AI-591.

Violations:

Passenger and Crew Violations

6. If the violator **does not** have U.S. currency on hand but wants to pay the settlement at the port, then offer the following alternative methods of payment:
 - ❖ Ask if the passenger could get the money from someone waiting outside for them
 - ❖ If the passenger has only foreign currency, then allow him or her to exchange the currency for U.S. dollars
 - ❖ Pay immediately with a money order, traveler's check, or a check drawn on a U. S. bank, made payable to Treasury of the United States
 - ❖ Pay immediately with a credit card; inform the violator that CBP may accept major credit cards for payment of the fine
7. If the violator **does not** have U.S. currency on hand to pay the settlement at the port, but has indicated their willingness to pay after leaving the port, give these instructions:
 - ❖ Encourage the violator to sign the CBP Form AI-591, but the signature is not mandatory
 - ❖ Tell the violator to submit payment with a money order or certified cashiers check drawn on a U. S. bank and made payable to Treasury of the United States
 - ❖ Give the violator the prepared instructions (see *Appendix P, APHIS Prepared Letters of Instruction for Mail-in Payment of Civil Penalty on page P-1-1*)
 - ❖ Give the violator a self-addressed envelope so that payment may be mailed to USDA-APHIS-IES, 4700 River Road, Unit 85, Riverdale, MD 20737; phone 301/734-8684



Forward the case to IES for non-collection within 24 hours of violation.

Collecting the Spot Settlement

Once the violator agrees to pay the civil penalty and has signed the CBP Form AI-591, do as follows:

1. Tell the violator that the penalty must be paid to the CBP cashier. In most instances, CBP will accept money orders, traveler's checks, U.S. currency, or checks drawn on U.S. banks. At some locations CBP will accept credit cards.
2. Direct the violator to the CBP cashier. Your port may require you to accompany the violator to the cashier and wait until the penalty is paid.

3. The CBP cashier will complete Section III of the CBP Form AI-591. The money collected will be deposited in the Treasury of the United States.
4. Provide the passenger with a copy of the Form AI-591 and cashier's receipt (from the cash register).



Ports that do not have cash registers must collect penalty payments using CBP Form 368 (Collection Receipt or Informal Entry). Write the SEACATS case number on the 368 form in the remarks section. Enter acct. class code 050. In this case, provide a copy of CBP Form 368 and AI-591 to the passenger.

5. Record the incident type as "SP" in SEACATS.



Funds received from civil penalties assessed for violation of the Plant Protection Act and/or the Animal Health Protection Act are deposited into the account of the Treasury of the United States. These funds are not controlled by any part of the CBP fines and forfeitures collection process. Therefore it is critical that civil penalty funds received for violations of agricultural laws and regulations be properly coded and deposited into the appropriate account. If you have any questions, contact QPAS at 301-734-8295.

Mitigating the Spot Settlement

Only mitigate the amount of the civil penalty for first time violators who are **not** crew members, where there is no evidence of concealment or misrepresentation, and the importation represents a noncommercial activity. If the passenger claims financial hardship in paying a spot settlement, but wishes to settle the penalty immediately and the circumstances warrant, then you may reduce a \$300 spot settlement to \$175. You may further reduce the \$175 spot settlement to \$75 for land border pedestrians only. Mitigate as a last resort since payment by mail is allowed.

If the violator can pay the mitigated amount, cross out the original amount and write in the mitigated amount. Write the words "mitigated penalty" next to the new amount. **Never** put the mitigated amount on the form until you are sure that the violator is willing and able to pay that amount.



Never mitigate the amount of the civil penalty for repeat violators, crew members, mailed in penalties, commercial importations accompanying passengers, or where there was some evidence of concealment or misrepresentation.

Violations:

Passenger and Crew Violations

**Inability to Pay
the Civil Penalty**

If the violator wants to pay, then note on the signed form in the Remarks section, the violator's willingness to pay. If all previous opportunities to pay are exhausted, then give the passenger the opportunity to remit the spot settlement by mail within 3 business days. Provide directions on how to pay by mail, and provide a self-addressed envelope.

**Refusal to Pay
the Civil Penalty**

When a violator refuses to pay the civil penalty, do as follows:

1. Allow the violator to write a statement.
2. Collect all supporting evidence including a copy of the Customs Declaration.
3. Write the following on the back of the Customs Declaration form:
 - ❖ Amount and kind of material seized
 - ❖ Amount assessed
 - ❖ Serial number of CBP Form AI-591
4. Give the violator Copy 2 of CBP Form AI-591 and dismiss the violator.
5. Write a CBP Agriculture Specialist's statement relating all the facts of the incident on a separate piece of paper. See **Sample of CBP Agriculture Specialist's Statement on page C-1-5** for directions for writing the Officer's Statement.
6. Record the incident type as "SZ" (seizure only) in SEACATS since the violator refused to pay the penalty.

**Procedures for
Collecting
Delinquent
Payment for
Civil Penalties**

Keep a copy of CBP Form AI-591 for every case sent to IES. Set up a suspense file for the cases sent to IES. Never accept a late payment at the port after CBP has sent CBP Form AI-591 to IES for collection. Explain to the violator how to forward the settlement to IES.

- ◆ Indicate to the violator that a check must be drawn on a US bank (a certified cashier's check or money order)
- ◆ Give the violator the prepared instructions (see **Appendix P, APHIS Prepared Letters of Instruction for Mail-in Payment of Civil Penalty on page P-1-1**)
- ◆ Give the violator a self-addressed envelope so that payment may be mailed in

Emphasize that the envelope containing the check or money order must be posted within 3 days. If the port does not receive the payment within 5 business days or the passenger is unwilling to pay the violation, forward the unmitigated penalty to USDA-APHIS-IES, 4700 River Road, Unit 85, Riverdale, MD 20737.

Procedures for Refunding Overpayment of Civil Penalties

Upon noticing that an overpayment of civil penalty has been made, immediately contact USDA-APHIS-IES at 301-734-8684 and USDA-APHIS-PPQ-QPAS at 301-734-8295.

Collect all documentation, including the original violation form and supporting evidence (statement from officer who originally assessed the civil penalty and statement from violator who overpaid). Record the violator’s current address and phone number. Forward the documentation to IES Headquarters, 4700 River Road, Unit 85, Riverdale, MD 20737. If an overpayment was made, IES Headquarters will coordinate refund of the overpaid amount.

Documents and Evidence

Give your supervisor any receipts, labels, or other papers that can be used as evidence, including a copy of the Customs Declaration and CBP Form AI-591 with the amount, type of seizure, and the amount being assessed written in the appropriate blocks.

Forward all documents to your supervisor as soon as the case is complete. Supervisors must forward the case to IES within 2 weeks of receipt from the officer.

Follow your CBP port policy and procedure on entering violations into the appropriate database.

See **Table A-1-11 on page-A-1-53** for instructions on completing the form.

Mail Violations

Determining Whether to Issue a Civil Penalty

To determine if you can issue a civil penalty, see **Table 8-1-10**.

TABLE 8-1-10: Determine if You May Issue a Civil Penalty

If the parcel is:	Then:
From U.S. Military Mail	CONTINUE to <i>Applying a Civil Penalty on page 8-1-24</i>
Other than U.S. Military Mail	SKIP to <i>Documenting Action Taken and Submitting Intercepted Pests on page 5-1-10</i> . You do not have the authority to issue a civil penalty

Issuing a Civil Penalty

TABLE 8-1-11: Criteria to Issue a Civil Penalty

If:	Then:
<p>All three of the following criteria are met:</p> <ul style="list-style-type: none"> ◆ Sender made a false declaration about the parcel's contents ◆ You have the legal authority to access the civil penalty for the illicit item ◆ Parcel was U.S. Military Mail (APO) 	CONTINUE to the steps that follow
<p>If one or more of the above bulleted criteria are unmet</p>	<p>SKIP to Documenting Action Taken and Submitting Intercepted Pests on page 5-1-10. You do not have the authority to issue a civil penalty</p>



You must record all agricultural violations on the appropriate form. Failure to do this makes documenting the violation difficult. You must inform alleged violators that they have an opportunity for a hearing and that by signing Section II they agree to waive the hearing and pay the penalty.

Applying a Civil Penalty

Follow the steps below to apply a civil penalty:

- ◆ Photocopy the applicable PPQ Form 287, Mail Interception Notice
- ◆ Complete PPQ Form 518, Notice of Violation
- ◆ Complete an Agriculture Specialist's Statement. If the intercepted material was meat or a meat product, enter the following additional information:
 - ❖ Specify whether the product is canned, vacuum packed, cured, or dried
 - ❖ State why you determined that the product is **not** shelf stable
 - ❖ State whether there is a certificate present
 - ❖ Identify whether the meat is of poultry, ruminant, or swine origin
- ◆ Include the actual label from the package, the green declaration form from the package, and a copy of the addressee's name and return address (if unable to provide originals, send photocopies)
- ◆ Send the complete case file to Investigative and Enforcement Services

For additional information on civil penalties, see *Handling Pet Birds in Baggage* on page 4-1-10 in the chapter *Clearing Passengers, Crew, and Baggage*.