

The Plant Protection Act

After 17 years in the making, the Plant Protection Act (PPA) became law in June 2000 as part of the Agricultural Risk Protection Act. The PPA consolidates all or part of 10 existing 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 Plant Quarantine Act, the Federal Pest Act, and the Federal Noxious Weed Act are among the 10 statutes the new Act replaces. The PPA is necessary because of the major impact plant pests currently have and could have on the agriculture, environment, economy, and commerce of the United States.

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.

This factsheet highlights some of the most important changes the PPA will have on the way APHIS conducts business.

Action Areas

The PPA grants significant new regulatory authority for noxious weeds and clarifies APHIS' existing regulatory authority for beneficial organisms used in biological control.

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 timeframes to ensure that new authorities are fully incorporated into program activities. These action items are:

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 that will 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 at U.S. ports of entry;

7. Soliciting public comment at regional public meetings on a concept paper prior to publication of a proposed rule for noxious weeds; and

8. Publishing regulations for the movement of biological control organisms.

Any new regulations or guidelines issued under the PPA can be found in the Federal Register and the APHIS website, which can be viewed at www.aphis.usda.gov.

Civil Penalties and Subpoena Power

One of the PPA's most significant changes is the harsher civil penalties it allows the USDA to impose. 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 U.S. 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. Smugglers also face criminal penalties when the violation is intentional. These increased penalties allow APHIS to get tougher on those who threaten American agriculture.

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.

The PPA also gives the Secretary of Agriculture the power to issue subpoenas for documents and witnesses to aid in the prosecution of violators. When an APHIS inspection leads to suspicion that prohibited materials are being housed in a facility, a thorough investigation will begin. APHIS will request a subpoena to be issued based on an active investigation, evidence that previous attempts to gain access to documents has been refused, and that the request for documents that pertain to the investigation is reasonable. The subpoena will set a date and time for APHIS to obtain the documents.

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

Warrantless Inspections

Currently, APHIS conducts inspections without warrants every day on passenger baggage and cargo at all of this country's international airports and most border crossings. 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 comprised of PPQ staff and APHIS' Investigative and Enforcement Services staff, with guidance 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.

Cost Recovery Measures

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.

Quality Assurance Programs

The PPA 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 is that APHIS can publish industry-developed 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.

Noxious Weeds

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 now 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, noxious weeds are regulated similarly to plant pests.

The PPA allows the Secretary of Agriculture to develop a classification system to describe the status and action levels for noxious weeds. 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.

The PPA gives authority to the Secretary of Agriculture and APHIS 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.

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

Biological Control

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 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 fea-

sible. 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.

Additional Information

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 or call APHIS' PPQ program at (301) 734-8295.

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