



United States
Department of
Agriculture

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Administration

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SUBJECT: PLD Response to 2010 Management Accountability Review

BACKGROUND

During the dates of May 6 through June 30, 2010, a Management Assessment Review Team (MART), and Paradigm Technologies conducted a Management Accountability Review (MAR) of the following operational areas of the Policy and Litigation Division (PLD):

Standard Operating Procedures (SOP)
Strategic Business Plan (SBP) objectives
Packers & Stockyards Automated System (PAS) / Change Control Working Group (CCWG)

The time period covered by the MAR was October 1, 2009, through April 30, 2010.

The MART reviewed 10 areas for which PLD is responsible and provided a report indicating 4 of those areas scored “Yellow.” A “Yellow” score indicates an overall score between 70% and 89% findings, but no serious weaknesses. The other six areas reviewed received “Green” scores. A “Green” score indicates an average score per area of 90% to 100%, with minor improvements recommended. At the P&SP conference call held on September 12, 2010, each regional office and division was asked to respond to those areas rated “Yellow” in their respective MAR reports. Each response was to indicate a clear description of the areas identified and a plan to correct any deficiencies.

SUMMARY RESPONSE

In each of the four areas examined in this response, PLD has identified actions it can take to improve performances. Improved communication within the Division and synchronizing standard operating procedures with the PAS ECM workflows are key elements of PLD’s response plan. Another urgent need is the authority and ability within PAS ECM for the PLD Director to reassign tasks and folders.

The adjustments to the standard operating procedures are critical to PLD’s future success in MAR reviews. The current MAR findings in particular do not adequately reflect PLD’s actual performance in compliance with the SOP for PLD-1, Enforcement. The results in this area were identified as the weakest area for PLD. One reason for the low rating is the discrepancy between SOP’s and the PAS ECM workflows. The numbers of days allowed to do tasks evaluated in the MAR are inconsistent. For example, while PAS ECM allows the Director 5 days to assign a case, the SOP allows only 3 days.

DISCUSSION

I. PLD-1: PLD/OGC-1 Enforcement

The MART identified the results in this area to be the weakest in the SOP Performance Standards.

MAR SCORING

RATING	REVIEW AREA	SCORE
YELLOW	PLD/OGC-1: Enforcement	72%

Findings

- **PLD-1 SOP (1) “PLD Director or designee assigns case to PLD staff within three business days of receipt.”**

The MART recommended determining which date is the more realistic due date and update the SOP and/or PAS ECM workflow as necessary. For this particular SOP, the PAS ECM workflow requires the PLD Director to assign cases to PLD staff within five business days of receipt. PLD will submit a Change Request to modify the SOP to match the timeframes in PAS ECM as suggested.

For this SOP, the MART reviewed 248 tasks completed, and reported that in 57 of those, the PLD Director failed to assign cases to PLD staff within three business days of the receipt of the folder. MART found PLD 77% compliant in this area. If compliance had been measured according to the days provided in PAS ECM, the PLD compliance rate would have improved. In addition, MART scored four ECM folders (41862, 41886, 41887 and 41897) as non-compliant while failing to consider closure of the Federal Government due to inclement weather on February 8, 9, 10, & 11, 2010. If compliance had been based on the 5-day period in PAS ECM, and the weather-related government closures had been taken into account, PLD’s compliance rate for this SOP would have changed from 77% (191 Compliant) to 87% (218 Compliant).

PLD ACTION PLAN:

1. PLD will submit a CCWG change request to adjust the SOP timeframes in accordance with those timeframes established in the PAS ECM workflows. In particular, this will allow the PLD Director five business days to assign cases to PLD staff.

2. The MART noted that PLD staff used numerous variations of file names in PAS and recommend the PAS be modified to build the file names automatically. PLD developed a draft naming convention for the document types commonly used by the Division. This draft plan is ready for review and consideration by the PLD Director. The document will be finalized and provided to the PAS Administrator to upload in PAS, before the end of the calendar year.
 3. In addition, PLD staff members are being encouraged to identify other staff members to act as their proxy in times of absence in order to timely complete priority work assignments.
- **PLD-1 SOP (3): “PLD staff assistant sends stipulation letter with approval signature within three business days of receipt.”**

The MART recommended determining which date is the more realistic due date and update the SOP and/or PAS ECM workflow as necessary. For this particular SOP, the PAS ECM workflow requires the PLD Staff Assistant to send the stipulation letter with approval signature within five business days of receipt. PLD will submit a Change Request to modify the SOP to match the timeframes in PAS ECM as suggested.

The MART reviewed 40 instances for this SOP and reported 11 times when the PLD staff assistant did not send the approved stipulation letter within the allotted timeframe. In one instance, the MART indicated validation could not be made on the mailing of the stipulation agreement for folder 42296. That agreement was in fact mailed on July 30 2010, four days before the due date. If compliance was based on completing this task within five days as provided by PAS ECM, the compliance rate would have been 93% in this area. Of those instances in which the MART found PLD not in compliance, the staff assistant sent stipulation letters within the five day time period 9 times. If the review matched the PAS ECM workflow time periods, PLD’s compliance rate would have been 93% (38 compliant) rather than 73% (29 compliant).

PLD ACTION PLAN:

1. PLD will submit a CCWG change request to adjust the SOP timeframes in accordance with those timeframes established in the PAS ECM workflows. In particular, this will allow the staff assistant five business days to send the stipulation letter with approval signature.
 2. PLD will also submit a CCWG change request to revise PAS ECM to allow the PLD Director the ability to reassign folders or tasks at any time in the event reassignment is necessary in order to meet due dates.
- **PLD-1 SOP (5): “For enforcement, PLD Director approves document and sends to OGC within three business days of receipt.”**

The MART recommended determining which date is the more realistic due date and update the SOP and/or PAS ECM workflow as necessary. For this particular SOP, the PAS ECM workflow requires the PLD Director five business days to send the approved

document to OGC. PLD will submit a Change Request to modify the SOP to match the timeframes in PAS ECM as suggested. .

The MART reviewed 167 instances and reported that in 24 instances, the PLD Director failed to approve documents and send to OGC within three business days of receipt. The MART validated overall compliance based on the timeframe outlined in the SOP and not based on the due date provided in the PAS ECM workflow. If compliance had been based on the five days allowed by PAS ECM, PLD would have been 96% compliant in this area. The PLD Director approved and sent documents to OGC on 17 instances within the five day period provided in PAS ECM, but that were counted as noncompliant by MART. If these 17 instances were counted as compliant, PLD's compliance rate would have changed from 86% (143 compliant) to 96% (160 compliant).

PLD ACTION PLAN

1. PLD will submit a CCWG change request to adjust the SOP timeframes in accordance with those timeframes established in the PAS ECM workflows. In particular, this will allow the PLD Director five days to approve and send documents to OGC.
- **PLD-1 SOP (6): “If the Respondent accepts stipulation, the designated PLD liaison will submit payment to GIPSA lockbox and related paperwork to APHIS within one business day of receipt.”**

The MART did not provide a specific recommendation for improvement in this area. During the review, the MART reviewed 23 cases and reported that 17 instances were found in which the designated PLD liaison did not submit payment to GIPSA lockbox and related paperwork to AHIS within the allotted timeframe. PLD's own research of this activity revealed evidence that 8 of those 17 instances were in fact compliant, in that payment was submitted to GIPSA Lockbox and related paperwork to APHIS within one business day of receipt. Documentation was lacking for the remaining 9 instances; however, PLD believes most, if not all, of those were also in compliance. With those additional 8 instances in compliance, PLD's compliance rate changes from 26% to 61%.

PLD ACTION PLAN:

1. The PLD liaison will indicate in the task section of the folder, the date payment was submitted to the GIPSA Lockbox and related paperwork submitted to APHIS.
2. PLD staff will date stamp the copy the signed agreement and check before adding the document to the “Documents Tab” of the file.
3. PLD staff will identify proxy to complete task when working on priority assignments or not in the office for more than two days.
4. PLD staff will scan the signed copy of the service delivery card and download it in the “Documents Tab” of folder.

5. PLD will submit a CCWG change request to change SOP to send stipulation check by mail to the GIPSA lock box with a delivery confirmation. Once delivery is confirmed, PLD will enter the information into the “Documents Tab” of the folder of PAS ECM.
 6. PLD staff will upload email sent to APHIS acknowledging agreement of stipulation agreement in the “Documents Tab” of the folder of PAS ECM.
- **PLD-1 SOP (7): “If PLD has comments on draft complaint, it will be returned to OGC with corrections and updates within three business days after initial receipt of the folder.”**

In PAS ECM, PLD is allotted three business days to complete this task *each time it occurs*. The MART compared the completion date for the final version of the draft complaint with the receipt date of the first version to determine compliance. This method resulted in one of the four instances being out of compliance even though the task was completed within three business days each time the draft complaint was reviewed. If that case is counted as compliant, the compliance rate for this task changes from 50% to 75%.

PLD ACTION PLAN:

Submit CCWG request to change SOP to agree with the PAS that if PLD has comments on draft complaint, it will be returned to OGC with corrections and updates within three business days after initial receipt of the task.

- **PLD-1 SOP (8): “If PLD has no comments on draft complaint, PLD will inform the attorney assigned to the case within two business days after initial receipt.”**

The MART reviewed 26 instances under this portion of the SOP. Of those 26 instances, eleven were for tasks performed only by OGC and should not have been used in evaluating PLD performance.

PLD ACTION PLAN:

PLD will continue to diligently review draft complaints and respond promptly to OGC. PLD staff will be encouraged to utilize the proxy function when urgent matters arise in order to meet deadlines.

- **PLD-1 SOP (9): “PLD staff assistant will make the appropriate number of hard copies of the approved complaint and file at Hearing Clerk Office within one business day after receipt of signed copy from Deputy Administrator.”**

PLD believes one business day after receipt is the appropriate measure of compliance for this task and will take steps to ensure the one day timeframe is met. In this particular review, the MART examined several cases that were old cases being entered and updated in ECM. The dates examined were not actual dates reflecting when a particular task was actually completed and should not have been considered for this review.

PLD ACTION PLAN:

1. All PLD staff members will be trained in procedures for filing a complaint with the Hearing Clerk, so that complaints can be filed in the event of absence by responsible staff members. PLD also suggests it receive notification from the Office of the Deputy Administrator when a complaint has been signed so that it can be filed as soon as possible. PLD will submit a CCWG change request to build in notification from the Deputy Administrator's office for signed complaints.

II. PLD-2: Posting / Deposting

RATING	REVIEW AREA	SCORE
YELLOW	PLD-2: Posting / Deposting	89%

Among its findings, the MART reported that in 8 out of 8 instances, PLD failed to mail a copy of the *Federal Register* notice to the stockyard owner(s). PLD provides a letter to the owner regarding posting or deposting. A copy of the FR is included in the stockyard file and on the GIPSA webpage. MART recommended changes to the SOP to reflect the current practice.

PLD ACTION PLAN:

1. PLD will suggest change in the SOP to require only that a link to the *Federal Register* notice be included in the Posting or Deposting letter mailed to the stockyard owner.
2. Further, since there is currently no one in PLD identified to serve as a backup person responsible for posting and deposting, a PLD staff member will be named to serve in that role.

III. PLD-6: Notice of Enforcement Actions

RATING	REVIEW AREA	SCORE
YELLOW	PLD-6: Enforcement Actions	81%

The task reviewed in this portion of the MAR was, “*PLD staff develops draft enforcement action within five business days?*” The MART reviewed 52 enforcement actions (press releases) and found that only 6 were identified as drafts. Of those 6, MART reported 3 as not completed in the time allowed. MART recommended that measures be taken to insure correct identification of documents in the system.

PLD Action Plan:

PLD has examined the policy on document naming convention and developed standard document names for the various documents it encounters in its daily activity. These standard names are under review and will be implemented before the close of the calendar year.

Further, PLD will identify a backup person to handle Enforcement Action tasks in the event one is required to meet deadlines.

IV. PLD-7: Regulations

RATING	REVIEW AREA	SCORE
YELLOW	PLD-7: Regulations	79%

The MART reviewed the regulation activities currently listed in the CCWG ECM and found 13 that did not clearly identify who was assigned to work the tasks. MART suggested establishing a mechanism to track assignments and clearly identify the person assigned. MART also suggested maintaining documentation when sending proposed rule to MBS for clearance and FR publication.

Prior to adoption of the CCWG ECM for tracking regulations in progress, PLD maintained an electronic database for that purpose. The TRAP System (Tracking Regulations And Policy) was developed in response to OIG recommendations following a very critical review of GIPSA's administration and enforcement of the Packers and Stockyards Act. TRAP identified the person assigned, background of the assignment, the status of the task, etc. Like the CCWG ECM, it lacked workflows and was merely a place to store information. However, unlike CCWG ECM, the TRAP system was built by GIPSA IT personnel specifically to meet PLD tracking needs.

PLD also maintained a spreadsheet to track all information on rulemaking activity as it passed through MBS and the *Federal Register*. Because this information duplicated data maintained in a similar database by MBS, PLD was informed to close down its spreadsheet. Only one spreadsheet on rulemaking is maintained in GIPSA, and that spreadsheet is maintained by MBS.

PLD ACTION PLAN:

In order to better track pending rulemaking activity, as well as activity on enforcement cases, the PLD Director has implemented weekly 30 minute meetings with each of the PLD staff. During these meetings, the staff and Director review the status of rulemaking activity and cases to ensure that records properly reflect current status. This improved communication benefits the overall performance of PLD.