



Enforcement Issues Committee Report/Minutes

August 13, 2013

11:00 AM

St. Pete Beach, Florida

COMMITTEE RECOMMENDATIONS:

1. **Move Draft Civil Penalty Language as accepted by the Enforcement Issues Committee to Model Bill and Regulations Committee**

BOARD RECOMMENDATIONS:

1. **None**

ASSOCIATION ACTIONS:

1. **None**

Committee Member Participants:

PRESENT IN FLORIDA: Ben Jones (TX); Kristen Green (KY); Liz Higgins (NM); Judy Thompson (CAN); Eric Nelson (FDA); Dan Danielson (TN); Dan King (MN); Meagan Davis (LA); Tim Darden (NM); Ali Kashani (WA)

ON CALL: Johanna Phillips (ID); Donna DiCesare (NY); Dragan Momcilovic (FDA); Paul Bachman (FDA)

OTHER ATTENDEES: Linda Morrison (CAN); Dave Reed (MN)

ADVISORS: Kurt Gallagher; Jill Franks; Jan Campbell; Dave Fairfield

Committee Report:

Committee Activities

ACTION: Accept the Civil Penalties language from the Working Group

MOTION: Johanna Phillips (ID)/Liz Higgins (NM); Motion Passed

ACTION: Accept the Civil Penalties language from the Working Group and move to the Model Bill and Regulations Committee

MOTION: Johanna Phillips (ID)/Liz Higgins (NM); 9 in favor, 1 opposed

ACTION: Accept the minutes as presented, subject to addition of full names and formatting edits

MOTION: Liz Higgins (NM)/Judy Thompson (CAN); Motion Passed

Action Item Table:

Responsible	Item	Action	Timing / Status
Meagan Davis	Draft Civil Penalty Language	Provide language to Model Bill & Regulations	October 1, 2013

Civil Penalties

Subdivision 1(a). General penalty. A person who violates any of the provision of this chapter or an order, standard, stipulation, agreement, citation, or schedule of compliance of the commissioner/secretary or impedes, hinders, or otherwise prevents or attempts to performance of a duty by the commissioner/secretary in connection with this chapter may be subject to a civil penalty of up to \$_____ per violation, per day as determined by _____.

Subdivision 2. Actions to Compel Performance. In an action to compel performance of an order of the commissioner/secretary to enforce this chapter, the court must require a defendant adjudged responsible to perform the acts within the person's power that are reasonably necessary to accomplish the purposes of the order.

Subdivision 3. Recovery of penalties by Civil Action. The civil penalties and payments provided for in this section may be recovered by a civil action brought by the county attorney or the attorney general in the name of the state.

COMMENT: Johanna Phillips from Idaho requested this language be reflective of other language in the Model Bill

RESPONSE: If passed, MBRC review the language for consistency with the Model Bill format



Appendix

**Statement by David Fairfield on Behalf of the National Grain and Feed Association, Pet Food Institute and American Feed Industry Association
Concerning Adding Civil Penalties to AAFCO Model Bill
August 13, 2013
AAFCO Annual Meeting – St. Pete Beach, Florida**

My name is David Fairfield, and I am the vice president of feed services for the National Grain and Feed Association (NGFA). This morning, I have the opportunity to speak on behalf of the collective interests of members of the NGFA, Pet Food Institute (PFI), and American Feed Industry Association (AFIA). Together, the industry members of our organizations produce over three-fourths of the animal feed and over 98 percent of the pet food that is distributed in the United States.

On behalf of the NGFA, PFI and AFIA, I want to thank members of the Enforcement Issues Committee for this opportunity to express our views on adding civil penalties as one of the enforcement options within the AAFCO Model Bill. We truly value this chance to make comments on what is a very important topic for our industry.

When the email was sent informing industry of the opportunity to make comments during this meeting, it alluded to the significance of this issue. Within the email, this issue was described as being “passionate” in nature. We completely agree with that description. Our members are extremely passionate about this issue. Our members view it as being very important to their businesses. And our members strongly oppose adding civil penalty language to the Model Bill.

Fundamentally, we oppose adding civil penalties because we are not aware of any serious enforcement concerns that warrant such penalties. There has been very limited open discussion about this topic during recent AAFCO meetings. And it is our view that during this limited discussion, AAFCO members have not explained why civil penalties are now needed, and specifically what current enforcement issues now exist for which civil penalties are warranted.

As industry previously has noted, this topic was discussed at length within AAFCO during 1999 and 2000; and due to industry opposition, it was decided not to include civil penalties in the Model Bill.

But, as some members of the Enforcement Issues Committee have indicated, civil penalties are mentioned in three locations within the current AAFCO Official Publication

(OP). The most prominent mention is within the AAFCO Enforcement Guidelines. Page 284 of the 2013 OP states, “Civil penalties are sometimes seen as valuable tools by control officials, while industry may sometimes find them objectionable for a host of reasons. Looking back at the “AAFCO Philosophy” one might ask when use of a civil penalty becomes a vested interest. When the penalty is automatic or used to finance a regulatory program, it may approach a conflict of interest situation. Since civil penalties can be reasonably applied and since several control officials have them in their current regulations, they are included here as an enforcement tool.”

As we have stated before, the limited references to civil penalties within the OP do not indicate industry endorsement. As the Enforcement Guidelines clearly explain, civil penalties were included within that section of the OP because some states already had that authority. We strongly hold the position that the mention of civil penalties within the AAFCO OP does not constitute a reasonable basis for including civil penalties into the Model Bill.

Again, we simply are not aware of serious enforcement concerns that warrant adding civil penalty authority into the Model Bill. The compliance rate of our members has not faltered since that last discussion took place in 1999 and 2000. In contrast, our industry has worked diligently to enhance compliance rates on the range of requirements important to the safety of animal feed and pet food and to customer protection.

We are very concerned that some states want civil penalty authority to provide administrative ease from some of their states’ existing provisions. We do not believe that is sound public policy and we do not support this proposed change for the sake of providing streamlined enforcement action against industry.

We believe the AAFCO Model Bill already has an abundance of enforcement/penalty provisions that offer a variety of opportunities to secure compliance. In fact, the civil penalty language being considered is essentially identical to one for county prosecutor enforcement, except that it does not provide the opportunity for the court to decide and hear evidence; which again raises serious concerns within industry about streamlined enforcement actions.

As mentioned within the AAFCO Enforcement Guidelines, there also is serious concern among industry that civil penalties will be used as a means for revenue enhancement. In fact, we believe that some states have abused the process in the past and used the penalties for that purpose. In the current environment of tight state budgets, we believe

that the application of civil penalties can result in conflict of interest situations.

As this topic is considered, we believe it is important to remember the long history of AAFCO and industry working together for a consensus Model Bill. The industries represented in this room today are the strongest supporters of the Model Bill in state houses. We strongly believe in the importance of uniform feed laws within the states. This fosters a better system of national commerce. This fosters a better system for the safety of animal feed and pet food and consumer protection.

However, this approach of adding civil penalties to the Model Bill goes against that sense and history of consensus. Our industries have supported and endorsed the Model Bill, but the addition of civil penalties would cause serious concern regarding our respective endorsements.

Our hope is that members of the committee will choose to honor the long history that AAFCO and industry have had in cooperating to achieve mutual goals. Our hope is that members of the committee will vote no on this civil penalty initiative. Again, the NGFA, PFI and AFIA want to thank the committee for the opportunity to provide comments on this very important issue.