

(Pub. L. 107-171, title X, §10201, May 13, 2002, 116 Stat. 490.)

§ 8202. Eligibility

(a) Loss

Subject to subsection (b) of this section, the Secretary shall provide assistance under section 8203 of this title to eligible orchardists that planted trees for commercial purposes but lost the trees as a result of a natural disaster, as determined by the Secretary.

(b) Limitation

An eligible orchardist shall qualify for assistance under subsection (a) of this title only if the tree mortality of the eligible orchardist, as a result of damaging weather or related condition, exceeds 15 percent (adjusted for normal mortality).

(Pub. L. 107-171, title X, §10202, May 13, 2002, 116 Stat. 490.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8203 of this title.

§ 8203. Assistance

Subject to section 8204 of this title, the assistance provided by the Secretary to eligible orchardists for losses described in section 8202 of this title shall consist of—

- (1) reimbursement of 75 percent of the cost of replanting trees lost due to a natural disaster, as determined by the Secretary, in excess of 15 percent mortality (adjusted for normal mortality); or
- (2) at the option of the Secretary, sufficient seedlings to reestablish a stand.

(Pub. L. 107-171, title X, §10203, May 13, 2002, 116 Stat. 491.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8202 of this title.

§ 8204. Limitations on assistance

(a) Amount

The total amount of payments that a person shall be entitled to receive under this chapter may not exceed \$75,000, or an equivalent value in tree seedlings.

(b) Acres

The total quantity of acres planted to trees or tree seedlings for which a person shall be entitled to receive payments under this chapter may not exceed 500 acres.

(c) Regulations

The Secretary shall promulgate regulations—

- (1) defining the term “person” for the purposes of this chapter, which shall conform, to the maximum extent practicable, to the regulations defining the term “person” promulgated under section 1308 of this title; and
- (2) promulgating such regulations as the Secretary determines necessary to ensure a fair and reasonable application of the limitation established under this section.

(Pub. L. 107-171, title X, §10204, May 13, 2002, 116 Stat. 491.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8203 of this title.

§ 8205. Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this chapter.

(Pub. L. 107-171, title X, §10205, May 13, 2002, 116 Stat. 491.)

CHAPTER 109—ANIMAL HEALTH PROTECTION

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1907 of this title; title 6 section 231.

§ 8301. Findings

Congress finds that—

(1) the prevention, detection, control, and eradication of diseases and pests of animals are essential to protect—

- (A) animal health;
- (B) the health and welfare of the people of the United States;
- (C) the economic interests of the livestock and related industries of the United States;
- (D) the environment of the United States; and
- (E) interstate commerce and foreign commerce of the United States in animals and other articles;

(2) animal diseases and pests are primarily transmitted by animals and articles regulated under this chapter;

(3) the health of animals is affected by the methods by which animals and articles are transported in interstate commerce and foreign commerce;

(4) the Secretary must continue to conduct research on animal diseases and pests that constitute a threat to the livestock of the United States; and

(5)(A) all animals and articles regulated under this chapter are in or affect interstate commerce or foreign commerce; and

(B) regulation by the Secretary and cooperation by the Secretary with foreign countries, States or other jurisdictions, or persons are necessary—

- (i) to prevent and eliminate burdens on interstate commerce and foreign commerce;
- (ii) to regulate effectively interstate commerce and foreign commerce; and
- (iii) to protect the agriculture, environment, economy, and health and welfare of the people of the United States.

(Pub. L. 107–171, title X, §10402, May 13, 2002, 116 Stat. 494.)

REFERENCES IN TEXT

This chapter, referred to in pars. (2) and (5)(A), was in the original “this subtitle”, meaning subtitle E (§§10401–10418) of title X of Pub. L. 107–171, May 13, 2002, 116 Stat. 494, which is classified principally to this chapter. For complete classification of subtitle E to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Pub. L. 107–171, title X, §10401, May 13, 2002, 116 Stat. 494, provided that: “This subtitle [subtitle E (§§10401–10418) of title X of Pub. L. 107–171, enacting this chapter, amending sections 7714 and 7733 of this title, section 1540 of Title 16, Conservation, and sections 136a and 618 of Title 21, Food and Drugs, and repealing sections 429, 2260, 2260a of this title, section 1306 of Title 19, Customs Duties, sections 102 to 105, 111, 112, 113, 114 to 114d–1, 114e to 114h, 115 to 131, 134 to 135b, 612 to 614 of Title 21, sections 3901 and 3902 of Title 46, Shipping, and provisions set out as a note under section 129a of

Title 21] may be cited as the ‘Animal Health Protection Act.’”

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 8302. Definitions

In this chapter:

(1) Animal

The term “animal” means any member of the animal kingdom (except a human).

(2) Article

The term “article” means any pest or disease or any material or tangible object that could harbor a pest or disease.

(3) Disease

The term “disease” has the meaning given the term by the Secretary.

(4) Enter

The term “enter” means to move into the commerce of the United States.

(5) Export

The term “export” means to move from a place within the territorial limits of the United States to a place outside the territorial limits of the United States.

(6) Facility

The term “facility” means any structure.

(7) Import

The term “import” means to move from a place outside the territorial limits of the United States to a place within the territorial limits of the United States.

(8) Indian tribe

The term “Indian tribe” has the meaning given the term in section 450b of title 25.

(9) Interstate commerce

The term “interstate commerce” means trade, traffic, or other commerce—

(A) between a place in a State and a place in another State, or between places within the same State but through any place outside that State; or

(B) within the District of Columbia or any territory or possession of the United States.

(10) Livestock

The term “livestock” means all farm-raised animals.

(11) Means of conveyance

The term “means of conveyance” means any personal property used for or intended for use for the movement of any other personal property.

(12) Move

The term “move” means—

(A) to carry, enter, import, mail, ship, or transport;

(B) to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting;

(C) to offer to carry, enter, import, mail, ship, or transport;

(D) to receive in order to carry, enter, import, mail, ship, or transport;

(E) to release into the environment; or

(F) to allow any of the activities described in this paragraph.

(13) Pest

The term “pest” means any of the following that can directly or indirectly injure, cause damage to, or cause disease in livestock:

(A) A protozoan.

(B) A plant.

(C) A bacteria.

(D) A fungus.

(E) A virus or viroid.

(F) An infectious agent or other pathogen.

(G) An arthropod.

(H) A parasite.

(I) A prion.

(J) A vector.

(K) Any organism similar to or allied with any of the organisms described in this paragraph.

(14) Secretary

The term “Secretary” means the Secretary of Agriculture.

(15) State

The term “State” means any of the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands of the United States, or any territory or possession of the United States.

(16) This chapter

Except when used in this section, the term “this chapter” includes any regulation or order issued by the Secretary under the authority of this chapter.

(17) United States

The term “United States” means all of the States.

(Pub. L. 107–171, title X, §10403, May 13, 2002, 116 Stat. 494.)

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 8303. Restriction on importation or entry

(a) In general

With notice to the Secretary of the Treasury and public notice as soon as practicable, the Secretary may prohibit or restrict—

(1) the importation or entry of any animal, article, or means of conveyance, or use of any means of conveyance or facility, if the Secretary determines that the prohibition or re-

striction is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock;

(2) the further movement of any animal that has strayed into the United States if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock; and

(3) the use of any means of conveyance in connection with the importation or entry of livestock if the Secretary determines that the prohibition or restriction is necessary because the means of conveyance has not been maintained in a clean and sanitary condition or does not have accommodations for the safe and proper movement of livestock.

(b) Regulations

(1) Restrictions on import and entry

The Secretary may issue such orders and promulgate such regulations as are necessary to carry out subsection (a) of this section.

(2) Post importation quarantine

The Secretary may promulgate regulations requiring that any animal imported or entered be raised or handled under post-importation quarantine conditions by or under the supervision of the Secretary for the purpose of determining whether the animal is or may be affected by any pest or disease of livestock.

(c) Destruction or removal

(1) In general

The Secretary may order the destruction or removal from the United States of—

(A) any animal, article, or means of conveyance that has been imported but has not entered the United States if the Secretary determines that destruction or removal from the United States is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock;

(B) any animal or progeny of any animal, article, or means of conveyance that has been imported or entered in violation of this chapter; or

(C) any animal that has strayed into the United States if the Secretary determines that destruction or removal from the United States is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock.

(2) Requirements of owners

(A) Orders to disinfect

The Secretary may require the disinfection of—

(i) a means of conveyance used in connection with the importation of an animal;

(ii) an individual involved in the importation of an animal and personal articles of the individual; and

(iii) any article used in the importation of an animal.

(B) Failure to comply with orders

If an owner fails to comply with an order of the Secretary under this section, the Secretary may—

(i) take remedial action, destroy, or remove from the United States the animal or progeny of any animal, article, or means of conveyance as authorized under paragraph (1); and

(ii) recover from the owner the costs of any care, handling, disposal, or other action incurred by the Secretary in connection with the remedial action, destruction, or removal.

(Pub. L. 107–171, title X, §10404, May 13, 2002, 116 Stat. 496.)

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8317 of this title.

§ 8304. Exportation

(a) In general

The Secretary may prohibit or restrict—

(1) the exportation of any animal, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination from or within the United States of any pest or disease of livestock;

(2) the exportation of any livestock if the Secretary determines that the livestock is unfit to be moved;

(3) the use of any means of conveyance or facility in connection with the exportation of any animal or article if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination from or within the United States of any pest or disease of livestock; or

(4) the use of any means of conveyance in connection with the exportation of livestock if the Secretary determines that the prohibition or restriction is necessary because the means of conveyance has not been maintained in a clean and sanitary condition or does not have accommodations for the safe and proper movement and humane treatment of livestock.

(b) Requirements of owners

(1) Orders to disinfect

The Secretary may require the disinfection of—

(A) a means of conveyance used in connection with the exportation of an animal;

(B) an individual involved in the exportation of an animal and personal articles of the individual; and

(C) any article used in the exportation of an animal.

(2) Failure to comply with orders

If an owner fails to comply with an order of the Secretary under this section, the Secretary may—

(A) take remedial action with respect to the animal, article, or means of conveyance referred to in paragraph (1); and

(B) recover from the owner the costs of any care, handling, disposal, or other action incurred by the Secretary in connection with the remedial action.

(c) Certification

The Secretary may certify the classification, quality, quantity, condition, processing, handling, or storage of any animal or article intended for export.

(Pub. L. 107–171, title X, §10405, May 13, 2002, 116 Stat. 497.)

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 8305. Interstate movement

The Secretary may prohibit or restrict—

(1) the movement in interstate commerce of any animal, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or dissemination of any pest or disease of livestock; and

(2) the use of any means of conveyance or facility in connection with the movement in interstate commerce of any animal or article if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or dissemination of any pest or disease of livestock.

(Pub. L. 107–171, title X, §10406, May 13, 2002, 116 Stat. 498.)

§ 8306. Seizure, quarantine, and disposal

(a) In general

The Secretary may hold, seize, quarantine, treat, destroy, dispose of, or take other remedial action with respect to—

(1) any animal or progeny of any animal, article, or means of conveyance that—

(A) is moving or has been moved in interstate commerce or has been imported and entered; and

(B) the Secretary has reason to believe may carry, may have carried, or may have been affected with or exposed to any pest or disease of livestock at the time of movement or that is otherwise in violation of this chapter;

(2) any animal or progeny of any animal, article, or means of conveyance that is moving or is being handled, or has moved or has been handled, in interstate commerce in violation of this chapter;

(3) any animal or progeny of any animal, article, or means of conveyance that has been imported, and is moving or is being handled or has moved or has been handled, in violation of this chapter; or

(4) any animal or progeny of any animal, article, or means of conveyance that the Secretary finds is not being maintained, or has

not been maintained, in accordance with any post-importation quarantine, post-importation condition, post-movement quarantine, or post-movement condition in accordance with this chapter.

(b) Extraordinary emergencies

(1) In general

Subject to paragraph (2), if the Secretary determines that an extraordinary emergency exists because of the presence in the United States of a pest or disease of livestock and that the presence of the pest or disease threatens the livestock of the United States, the Secretary may—

(A) hold, seize, treat, apply other remedial actions to, destroy (including preventative slaughter), or otherwise dispose of, any animal, article, facility, or means of conveyance if the Secretary determines the action is necessary to prevent the dissemination of the pest or disease; and

(B) prohibit or restrict the movement or use within a State, or any portion of a State of any animal or article, means of conveyance, or facility if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of the pest or disease.

(2) State action

(A) In general

The Secretary may take action in a State under this subsection only on finding that measures being taken by the State are inadequate to control or eradicate the pest or disease, after review and consultation with—

“(i)¹ the Governor or an appropriate animal health official of the State; or

“(ii)¹ in the case of any animal, article, facility, or means of conveyance under the jurisdiction of an Indian tribe, the head of the Indian tribe.

(B) Notice

Subject to subparagraph (C), before any action is taken in a State under subparagraph (A), the Secretary shall—

(i) notify the Governor, an appropriate animal health official of the State, or head of the Indian tribe of the proposed action;

(ii) issue a public announcement of the proposed action; and

(iii) publish in the Federal Register—

(I) the findings of the Secretary;

(II) a description of the proposed action; and

(III) a statement of the reasons for the proposed action.

(C) Notice after action

If it is not practicable to publish in the Federal Register the information required under subparagraph (B)(iii) before taking action under subparagraph (A), the Secretary shall publish the information as soon as practicable, but not later than 10 business days, after commencement of the action.

(c) Quarantine, disposal, or other remedial action

(1) In general

The Secretary, in writing, may order the owner of any animal, article, facility, or means of conveyance referred to in subsection (a) or (b) of this section to maintain in quarantine, dispose of, or take other remedial action with respect to the animal, article, facility, or means of conveyance, in a manner determined by the Secretary.

(2) Failure to comply with orders

If the owner fails to comply with the order of the Secretary, the Secretary may—

(A) seize, quarantine, dispose of, or take other remedial action with respect to the animal, article, facility, or means of conveyance under subsection (a) or (b) of this section; and

(B) recover from the owner the costs of any care, handling, disposal, or other remedial action incurred by the Secretary in connection with the seizure, quarantine, disposal, or other remedial action.

(d) Compensation

(1) In general

Except as provided in paragraph (3), the Secretary shall compensate the owner of any animal, article, facility, or means of conveyance that the Secretary requires to be destroyed under this section.

(2) Amount

(A) In general

Subject to subparagraphs (B) and (C), the compensation shall be based on the fair market value, as determined by the Secretary, of the destroyed animal, article, facility, or means of conveyance.

(B) Limitation

Compensation paid any owner under this subsection shall not exceed the difference between—

(i) the fair market value of the destroyed animal, article, facility, or means of conveyance; and

(ii) any compensation received by the owner from a State or other source for the destroyed animal, article, facility, or means of conveyance.

(C) Reviewability

The determination by the Secretary of the amount to be paid under this subsection shall be final and not subject to judicial review or review of longer than 60 days by any officer or employee of the Federal Government other than the Secretary or the designee of the Secretary.

(3) Exceptions

No payment shall be made by the Secretary under this subsection for—

(A) any animal, article, facility, or means of conveyance that has been moved or handled by the owner in violation of an agreement for the control and eradication of diseases or pests or in violation of this chapter;

(B) any progeny of any animal or article, which animal or article has been moved or

¹ So in original. Opening quotation marks probably should not appear.

handled by the owner of the animal or article in violation of this chapter;

(C) any animal, article, or means of conveyance that is refused entry under this chapter; or

(D) any animal, article, facility, or means of conveyance that becomes or has become affected with or exposed to any pest or disease of livestock because of a violation of an agreement for the control and eradication of diseases or pests or a violation of this chapter by the owner.

(Pub. L. 107–171, title X, §10407, May 13, 2002, 116 Stat. 498.)

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8307 of this title.

§ 8307. Inspections, seizures, and warrants

(a) Guidelines

The activities authorized by this section shall be carried out consistent with guidelines approved by the Attorney General.

(b) Warrantless inspections

The Secretary may stop and inspect, without a warrant, any person or means of conveyance moving—

(1) into the United States, to determine whether the person or means of conveyance is carrying any animal or article regulated under this chapter;

(2) in interstate commerce, on probable cause to believe that the person or means of conveyance is carrying any animal or article regulated under this chapter; or

(3) in intrastate commerce from any State, or any portion of a State, quarantined under section 8306(b) of this title, on probable cause to believe that the person or means of conveyance is carrying any animal or article quarantined under section 8306(b) of this title.

(c) Inspections with warrants

(1) In general

The Secretary may enter, with a warrant, any premises in the United States for the purpose of making inspections and seizures under this chapter.

(2) Application and issuance of warrants

(A) In general

On proper oath or affirmation showing probable cause to believe that there is on certain premises any animal, article, facility, or means of conveyance regulated under this chapter, a United States judge, a judge of a court of record in the United States, or a United States magistrate judge may issue a warrant for the entry on premises within the jurisdiction of the judge or magistrate

to make any inspection or seizure under this chapter.

(B) Execution

The warrant may be applied for and executed by the Secretary or any United States marshal.

(Pub. L. 107–171, title X, §10408, May 13, 2002, 116 Stat. 500.)

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PRECLEARANCE QUARANTINE INSPECTIONS

Pub. L. 107–171, title X, §10811, May 13, 2002, 116 Stat. 531, provided that:

“(a) PRECLEARANCE INSPECTIONS REQUIRED.—The Secretary of Agriculture, acting through the Administrator of the Animal and Plant Health Inspection Service, shall conduct preclearance quarantine inspections of persons, baggage, cargo, and any other articles destined for movement from the State of Hawaii to any of the following—

“(1) The continental United States.

“(2) Guam.

“(3) Puerto Rico.

“(4) The United States Virgin Islands.

“(b) INSPECTION LOCATIONS.—The preclearance quarantine inspections required by subsection (a) shall be conducted at all direct departure and interline airports in the State of Hawaii.

“(c) LIMITATION.—The Secretary shall not implement this section unless appropriations for necessary expenses of the Animal and Plant Health Inspection Service for inspection, quarantine, and regulatory activities are increased by an amount not less than \$3,000,000 in an Act making appropriations for fiscal year 2003.”

§ 8308. Detection, control, and eradication of diseases and pests

(a) In general

The Secretary may carry out operations and measures to detect, control, or eradicate any pest or disease of livestock (including the drawing of blood and diagnostic testing of animals), including animals at a slaughterhouse, stockyard, or other point of concentration.

(b) Compensation

(1) In general

The Secretary may pay a claim arising out of the destruction of any animal, article, or means of conveyance consistent with the purposes of this chapter.

(2) Reviewability

The action of the Secretary in carrying out paragraph (1) shall not be subject to review of longer than 60 days by any officer or employee of the Federal Government other than the Secretary or the designee of the Secretary.

(Pub. L. 107–171, title X, §10409, May 13, 2002, 116 Stat. 501.)

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry in-

spection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 8309. Veterinary accreditation program

(a) In general

The Secretary may establish a veterinary accreditation program that is consistent with this chapter, including the establishment of standards of conduct for accredited veterinarians.

(b) Consultation

The Secretary shall consult with State animal health officials and veterinary professionals regarding the establishment of the veterinary accreditation program.

(c) Suspension or revocation of accreditation

(1) In general

The Secretary may, after notice and opportunity for a hearing on the record, suspend or revoke the accreditation of any veterinarian accredited under this title¹ who violates this chapter.

(2) Final order

The order of the Secretary suspending or revoking accreditation shall be treated as a final order reviewable under chapter 158 of title 28.

(3) Summary suspension

(A) In general

The Secretary may summarily suspend the accreditation of a veterinarian whom the Secretary has reason to believe knowingly violated this chapter.

(B) Hearings

The Secretary shall provide the veterinarian with a subsequent notice and an opportunity for a prompt post-suspension hearing on the record.

(d) Application of penalty provisions

The criminal and civil penalties described in section 8313 of this title shall not apply to a violation of this section that is not a violation of any other provision of this chapter.

(Pub. L. 107-171, title X, §10410, May 13, 2002, 116 Stat. 501.)

REFERENCES IN TEXT

This title, referred to in subsec. (c)(1), is title X of Pub. L. 107-171, May 13, 2002, 116 Stat. 486. For complete classification of title X to the Code, see Tables.

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8313, 8314 of this title.

¹ See References in Text note below.

§ 8310. Cooperation

(a) In general

To carry out this chapter, the Secretary may cooperate with other Federal agencies, States or political subdivisions of States, national governments of foreign countries, local governments of foreign countries, domestic or international organizations, domestic or international associations, Indian tribes, and other persons.

(b) Responsibility

The person or other entity cooperating with the Secretary shall be responsible for the authority necessary to carry out operations or measures—

(1) on all land and property within a foreign country or State, or under the jurisdiction of an Indian tribe, other than on land and property owned or controlled by the United States; and

(2) using other facilities and means, as determined by the Secretary.

(c) Screwworms

(1) In general

The Secretary may, independently or in cooperation with national governments of foreign countries or international organizations or associations, produce and sell sterile screwworms to any national government of a foreign country or international organization or association, if the Secretary determines that the livestock industry and related industries of the United States will not be adversely affected by the production and sale.

(2) Proceeds

(A) Independent production and sale

If the Secretary independently produces and sells sterile screwworms under paragraph (1), the proceeds of the sale shall be—

(i) deposited into the Treasury of the United States; and

(ii) credited to the account from which the operating expenses of the facility producing the sterile screwworms have been paid.

(B) Cooperative production and sale

(i) In general

If the Secretary cooperates to produce and sell sterile screwworms under paragraph (1), the proceeds of the sale shall be divided between the United States and the cooperating national government or international organization or association in a manner determined by the Secretary.

(ii) Account

The United States portion of the proceeds shall be—

(I) deposited into the Treasury of the United States; and

(II) credited to the account from which the operating expenses of the facility producing the sterile screwworms have been paid.

(d) Cooperation in program administration

The Secretary may cooperate with State authorities, Indian tribe authorities, or other per-

sons in the administration of regulations for the improvement of livestock and livestock products.

(e) Consultation and coordination with other Federal agencies

(1) In general

The Secretary shall consult and coordinate with the head of a Federal agency with respect to any activity that is under the jurisdiction of the Federal agency.

(2) Lead agency

Subject to the consultation and coordination requirement in paragraph (1), the Department of Agriculture shall be the lead agency with respect to issues related to pests and diseases of livestock.

(Pub. L. 107-171, title X, §10411, May 13, 2002, 116 Stat. 502.)

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 8311. Reimbursable agreements

(a) Authority to enter into agreements

The Secretary may enter into reimbursable fee agreements with persons for preclearance of animals or articles at locations outside the United States for movement into the United States.

(b) Funds collected for preclearance

Funds collected for preclearance activities shall—

(1) be credited to accounts that may be established by the Secretary for carrying out this section; and

(2) remain available until expended for the preclearance activities, without fiscal year limitation.

(c) Payment of employees

(1) In general

Notwithstanding any other law, the Secretary may pay an officer or employee of the Department of Agriculture performing services under this chapter relating to imports into and exports from the United States for all overtime, night, or holiday work performed by the officer or employee at a rate of pay determined by the Secretary.

(2) Reimbursement

(A) In general

The Secretary may require a person for whom the services are performed to reimburse the Secretary for any expenses paid by the Secretary for the services under this subsection.

(B) Use of funds

All funds collected under this subsection shall—

(i) be credited to the account that incurs the costs; and

(ii) remain available until expended, without fiscal year limitation.

(d) Late payment penalties

(1) Collection

On failure by a person to reimburse the Secretary in accordance with this section, the Secretary may assess a late payment penalty against the person, including interest on overdue funds, as required by section 3717 of title 31.

(2) Use of funds

Any late payment penalty and any accrued interest shall—

(A) be credited to the account that incurs the costs; and

(B) remain available until expended, without fiscal year limitation.

(Pub. L. 107-171, title X, §10412, May 13, 2002, 116 Stat. 503.)

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 8312. Administration and claims

(a) Administration

To carry out this chapter, the Secretary may—

(1) acquire and maintain real or personal property;

(2) employ a person;

(3) make a grant; and

(4) notwithstanding chapter 63 of title 31, enter into a contract, cooperative agreement, memorandum of understanding, or other agreement.

(b) Tort claims

(1) In general

Except as provided in paragraph (2), the Secretary may pay a tort claim, in the manner authorized by the first paragraph of section 2672 of title 28, if the claim arises outside the United States in connection with an activity authorized under this chapter.

(2) Requirements

A claim may not be allowed under this subsection unless the claim is presented in writing to the Secretary not later than 2 years after the date on which the claim arises.

(Pub. L. 107-171, title X, §10413, May 13, 2002, 116 Stat. 503.)

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 8313. Penalties**(a) Criminal penalties****(1) Offenses****(A) In general**

A person that knowingly violates this chapter, or knowingly forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in this chapter shall be fined under title 18, imprisoned not more than 1 year, or both.

(B) Distribution or sale

A person that knowingly imports, enters, exports, or moves any animal or article, for distribution or sale, in violation of this chapter, shall be fined under title 18, imprisoned not more than 5 years, or both.

(2) Multiple violations

On the second and any subsequent conviction of a person of a violation of this chapter under paragraph (1), the person shall be fined under title 18, imprisoned not more than 10 years, or both.

(b) Civil penalties**(1) In general**

Except as provided in section 8309(d) of this title, any person that violates this chapter, or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided under this chapter may, after notice and opportunity for a hearing on the record, be assessed a civil penalty by the Secretary that does not exceed the greater of—

(A)(i) \$50,000 in the case of any individual, except that the civil penalty may not exceed \$1,000 in the case of an initial violation of this chapter by an individual moving regulated articles not for monetary gain;

(ii) \$250,000 in the case of any other person for each violation; and

(iii) \$500,000 for all violations adjudicated in a single proceeding; or

(B) twice the gross gain or gross loss for any violation or forgery, counterfeiting, or unauthorized use, alteration, defacing or destruction of a certificate, permit, or other document provided under this chapter that results in the person's deriving pecuniary gain or causing pecuniary loss to another person.

(2) Factors in determining civil penalty

In determining the amount of a civil penalty, the Secretary shall take into account the nature, circumstance, extent, and gravity of the violation or violations and the Secretary may consider, with respect to the violator—

(A) the ability to pay;

(B) the effect on ability to continue to do business;

(C) any history of prior violations;

(D) the degree of culpability; and

(E) such other factors as the Secretary considers to be appropriate.

(3) Settlement of civil penalties

The Secretary may compromise, modify, or remit, with or without conditions, any civil

penalty that may be assessed under this subsection.

(4) Finality of orders**(A) Final order**

The order of the Secretary assessing a civil penalty shall be treated as a final order reviewable under chapter 158 of title 28.

(B) Review

The validity of the order of the Secretary may not be reviewed in an action to collect the civil penalty.

(C) Interest

Any civil penalty not paid in full when due under an order assessing the civil penalty shall thereafter accrue interest until paid at the rate of interest applicable to civil judgments of the courts of the United States.

(c) Liability for acts of agents

In the construction and enforcement of this chapter, the act, omission, or failure of any officer, agent, or person acting for or employed by any other person within the scope of the employment or office of the officer, agent, or person, shall be deemed also to be the act, omission, or failure of the other person.

(d) Guidelines for civil penalties

Subject to the approval of the Attorney General, the Secretary shall establish guidelines to determine under what circumstances the Secretary may issue a civil penalty or suitable notice of warning in lieu of prosecution by the Attorney General of a violation of this chapter.

(Pub. L. 107-171, title X, § 10414, May 13, 2002, 116 Stat. 504.)

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1907, 8309, 8314 of this title.

§ 8314. Enforcement**(a) Collection of information****(1) In general**

The Secretary may gather and compile information and conduct any inspection or investigation that the Secretary considers to be necessary for the administration or enforcement of this chapter.

(2) Subpoenas**(A) In general**

The Secretary shall have power to issue a subpoena to compel the attendance and testimony of any witness and the production of any documentary evidence relating to the administration or enforcement of this chapter or any matter under investigation in connection with this chapter.

(B) Location of production

The attendance of any witness and production of documentary evidence relevant to the inquiry may be required from any place in the United States.

(C) Enforcement**(i) In general**

In case of disobedience to a subpoena by any person, the Secretary may request the Attorney General to invoke the aid of any court of the United States within the jurisdiction in which the investigation is conducted, or where the person resides, is found, transacts business, is licensed to do business, or is incorporated, to require the attendance and testimony of any witness and the production of documentary evidence.

(ii) Noncompliance

In case of a refusal to obey a subpoena issued to any person, a court may order the person to appear before the Secretary and give evidence concerning the matter in question or to produce documentary evidence.

(iii) Contempt

Any failure to obey the order of the court may be punished by the court as contempt of the court.

(D) Compensation**(i) Witnesses**

A witness summoned by the Secretary under this chapter shall be paid the same fees and mileage that are paid to a witness in a court of the United States.

(ii) Depositions

A witness whose deposition is taken, and the person taking the deposition, shall be entitled to the same fees that are paid for similar services in a court of the United States.

(E) Procedures**(i) Publication**

The Secretary shall publish procedures for the issuance of subpoenas under this section.

(ii) Review

The procedures shall include a requirement that subpoenas be reviewed for legal sufficiency and, to be effective, be signed by the Secretary.

(iii) Delegation

If the authority to sign a subpoena is delegated to an agency other than the Office of Administrative Law Judges, the agency receiving the delegation shall seek review of the subpoena for legal sufficiency outside that agency.

(b) Authority of Attorney General

The Attorney General may—

(1) prosecute, in the name of the United States, all criminal violations of this chapter that are referred to the Attorney General by the Secretary or are brought to the notice of the Attorney General by any person;

(2) bring an action to enjoin the violation of or to compel compliance with this chapter, or to enjoin any interference by any person with the Secretary in carrying out this chapter, in any case in which the Secretary has reason to believe that the person has violated, or is about to violate this chapter or has interfered, or is about to interfere, with the actions of the Secretary; or

(3) bring an action for the recovery of any unpaid civil penalty, funds under a reimbursable agreement, late payment penalty, or interest assessed under this chapter.

(c) Court jurisdiction**(1) In general**

The United States district courts, the District Court of Guam, the District Court of the Northern Mariana Islands, the District Court of the Virgin Islands, the highest court of American Samoa, and the United States courts of the other territories and possessions are vested with jurisdiction in all cases arising under this chapter.

(2) Venue

Any action arising under this chapter may be brought, and process may be served, in the judicial district where a violation or interference occurred or is about to occur, or where the person charged with the violation, interference, impending violation, impending interference, or failure to pay resides, is found, transacts business, is licensed to do business, or is incorporated.

(3) Exception

Paragraphs (1) and (2) do not apply to sections 8309(c) and 8313(b) of this title.

(Pub. L. 107–171, title X, § 10415, May 13, 2002, 116 Stat. 505.)

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1907 of this title.

§ 8315. Regulations and orders

The Secretary may promulgate such regulations, and issue such orders, as the Secretary determines necessary to carry out this chapter.

(Pub. L. 107–171, title X, § 10416, May 13, 2002, 116 Stat. 507.)

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8317 of this title.

§ 8316. Authorization of appropriations**(a) In general**

There are authorized to be appropriated such sums as are necessary to carry out this chapter.

(b) Transfer of funds**(1) In general**

In connection with an emergency under which a pest or disease of livestock threatens any segment of agricultural production in the United States, the Secretary may transfer from other appropriations or funds available to the agencies or corporations of the Department of Agriculture such funds as the Secretary determines are necessary for the arrest, control, eradication, or prevention of the spread of the pest or disease of livestock and for related expenses.

(2) Availability

Any funds transferred under this subsection shall remain available until expended, without fiscal year limitation.

(3) Reviewability

The action of any officer, employee, or agent of the Secretary in carrying out this section (including determining the amount of and making any payment authorized to be made under this chapter) shall not be subject to review of longer than 60 days by any officer or employee of the Federal Government other than the Secretary or the designee of the Secretary.

(c) Use of funds

In carrying out this chapter, the Secretary may use funds made available to carry out this chapter for—

- (1) the employment of civilian nationals in foreign countries; and
- (2) the construction and operation of research laboratories, quarantine stations, and other buildings and facilities for special purposes.

(Pub. L. 107–171, title X, §10417, May 13, 2002, 116 Stat. 507.)

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 8317. Effect on regulations

A regulation issued under a provision of law repealed by subsection (a) shall remain in effect until the Secretary issues a regulation under section 8303(b) or 8315 of this title that supersedes the earlier regulation.

(Pub. L. 107–171, title X, §10418(c), May 13, 2002, 116 Stat. 509.)

REFERENCES IN TEXT

Subsection (a), referred to in text, means section 10418(a) of title X of Pub. L. 107–171, May 13, 2002, 116 Stat. 507, which repealed sections 429, 2260, and 2260a of

this title, section 1306 of Title 19, Customs Duties, sections 102 to 105, 111, 112, 113, 114 to 114d–1, 114e to 114h, 115 to 131, 134 to 135b, and 612 to 614 of Title 21, Food and Drugs, sections 3901 and 3902 of Title 46, Shipping, and provisions set out as a note under section 129a of Title 21.

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 8318. Veterinary training

The Secretary of Agriculture may develop a program to maintain in all regions of the United States a sufficient number of Federal and State veterinarians who are well trained in recognition and diagnosis of exotic and endemic animal diseases.

(Pub. L. 107–171, title X, §10504, May 13, 2002, 116 Stat. 510.)

CODIFICATION

Section was not enacted as part of the Animal Health Protection Act which comprises this chapter.

§ 8319. Surveillance of zoonotic diseases

The Secretary of Health and Human Services, through the Commissioner of Food and Drugs and the Director of the Centers for Disease Control and Prevention, and the Secretary of Agriculture shall coordinate the surveillance of zoonotic diseases.

(Pub. L. 107–188, title III, §313, June 12, 2002, 116 Stat. 674.)

CODIFICATION

Section was enacted as part of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, and not as part of the Animal Health Protection Act which comprises this chapter.

§ 8320. Expansion of Animal and Plant Health Inspection Service activities**(a) In general**

The Secretary of Agriculture (referred to in this section as the “Secretary”) may utilize existing authorities to give high priority to enhancing and expanding the capacity of the Animal and Plant Health Inspection Service to conduct activities to—

- (1) increase the inspection capacity of the Service at international points of origin;
- (2) improve surveillance at ports of entry and customs;
- (3) enhance methods of protecting against the introduction of plant and animal disease organisms by terrorists;
- (4) develop new and improve existing strategies and technologies for dealing with intentional outbreaks of plant and animal disease arising from acts of terrorism or from unintentional introduction, including—

(A) establishing cooperative agreements among Veterinary Services of the Animal and Plant Health Inspection Service, State

animal health commissions and regulatory agencies for livestock and poultry health, and private veterinary practitioners to enhance the preparedness and ability of Veterinary Services and the commissions and agencies to respond to outbreaks of such animal diseases; and

(B) strengthening planning and coordination with State and local agencies, including—

(i) State animal health commissions and regulatory agencies for livestock and poultry health; and

(ii) State agriculture departments; and

(5) otherwise improve the capacity of the Service to protect against the threat of bioterrorism.

(b) Automated recordkeeping system

The Administrator of the Animal and Plant Health Inspection Service may implement a central automated recordkeeping system to provide for the reliable tracking of the status of animal and plant shipments, including those shipments on hold at ports of entry and customs. The Secretary shall ensure that such a system shall be fully accessible to or fully integrated with the Food Safety Inspection Service.

(c) Authorization of appropriations

There is authorized to be appropriated to carry out this section, \$30,000,000 for fiscal year 2002, and such sums as may be necessary for each subsequent fiscal year.

(Pub. L. 107-188, title III, §331, June 12, 2002, 116 Stat. 678.)

CODIFICATION

Section was enacted as part of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, and not as part of the Animal Health Protection Act which comprises this chapter.

CHAPTER 110—ENHANCING CONTROLS ON DANGEROUS BIOLOGICAL AGENTS AND TOXINS

SUBCHAPTER I—DEPARTMENT OF AGRICULTURE

Sec.

8401. Regulation of certain biological agents and toxins.

(a) Regulatory control of certain biological agents and toxins.

(b) Regulation of transfers of listed agents and toxins.

(c) Possession and use of listed agents and toxins.

(d) Registration; identification; database.

(e) Safeguard and security requirements for registered persons.

(f) Inspections.

(g) Exemptions.

(h) Disclosure of information.

(i) Civil money penalty.

(j) Notification in event of release.

(k) Reports.

(l) Definitions.

(m) Authorization of appropriations.

SUBCHAPTER II—INTERAGENCY COORDINATION REGARDING OVERLAP AGENTS AND TOXINS

8411. Interagency coordination.

(a) In general.

(b) Certain matters.

Sec.

(c) Memorandum of understanding.

(d) Joint regulations.

SUBCHAPTER I—DEPARTMENT OF AGRICULTURE

§ 8401. Regulation of certain biological agents and toxins

(a) Regulatory control of certain biological agents and toxins

(1) List of biological agents and toxins

(A) In general

The Secretary of Agriculture shall by regulation establish and maintain a list of each biological agent and each toxin that the Secretary determines has the potential to pose a severe threat to animal or plant health, or to animal or plant products.

(B) Criteria

In determining whether to include an agent or toxin on the list under subparagraph (A), the Secretary shall—

(i) consider—

(I) the effect of exposure to the agent or toxin on animal or plant health, and on the production and marketability of animal or plant products;

(II) the pathogenicity of the agent or the toxicity of the toxin and the methods by which the agent or toxin is transferred to animals or plants;

(III) the availability and effectiveness of pharmacotherapies and prophylaxis to treat and prevent any illness caused by the agent or toxin; and

(IV) any other criteria that the Secretary considers appropriate to protect animal or plant health, or animal or plant products; and

(ii) consult with appropriate Federal departments and agencies and with scientific experts representing appropriate professional groups.

(2) Biennial review

The Secretary shall review and republish the list under paragraph (1) biennially, or more often as needed, and shall by regulation revise the list as necessary in accordance with such paragraph.

(b) Regulation of transfers of listed agents and toxins

The Secretary shall by regulation provide for—

(1) the establishment and enforcement of safety procedures for the transfer of listed agents and toxins, including measures to ensure—

(A) proper training and appropriate skills to handle such agents and toxins; and

(B) proper laboratory facilities to contain and dispose of such agents and toxins;

(2) the establishment and enforcement of safeguard and security measures to prevent access to such agents and toxins for use in domestic or international terrorism or for any other criminal purpose;