

<b>7 USC Ch. 104: PLANT PROTECTION</b> <b>From Title 7—AGRICULTURE</b>
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**CHAPTER 104—PLANT PROTECTION**

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## §7701. Findings

Congress finds that—

(1) the detection, control, eradication, suppression, prevention, or retardation of the spread of plant pests or noxious weeds is necessary for the protection of the agriculture, environment, and economy of the United States;

(2) biological control is often a desirable, low-risk means of ridding crops and other plants of plant pests and noxious weeds, and its use should be facilitated by the Department of Agriculture, other Federal agencies, and States whenever feasible;

(3) it is the responsibility of the Secretary to facilitate exports, imports, and interstate commerce in agricultural products and other commodities that pose a risk of harboring plant pests or noxious weeds in ways that will reduce, to the extent practicable, as determined by the Secretary, the risk of dissemination of plant pests or noxious weeds;

(4) decisions affecting imports, exports, and interstate movement of products regulated under this chapter shall be based on sound science;

(5) the smooth movement of enterable plants, plant products, biological control organisms, or other articles into, out of, or within the United States is vital to the United State's <sup>1</sup> economy and should be facilitated to the extent possible;

(6) export markets could be severely impacted by the introduction or spread of plant pests or noxious weeds into or within the United States;

(7) the unregulated movement of plant pests, noxious weeds, plants, certain biological control organisms, plant products, and articles capable of harboring plant pests or noxious weeds could present an unacceptable risk of introducing or spreading plant pests or noxious weeds;

(8) the existence on any premises in the United States of a plant pest or noxious weed new to or not known to be widely prevalent in or distributed within and throughout the United States could constitute a threat to crops and other plants or plant products of the United States and burden interstate commerce or foreign commerce; and

(9) all plant pests, noxious weeds, plants, plant products, articles capable of harboring plant pests or noxious weeds regulated under this chapter are in or affect interstate commerce or foreign commerce.

(Pub. L. 106–224, title IV, §402, June 20, 2000, 114 Stat. 438.)

### REFERENCES IN TEXT

This chapter, referred to in pars. (4) and (9), was in the original "this title", meaning title IV of Pub. L. 106–224, June 20, 2000, 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out below and Tables.

### SHORT TITLE

Pub. L. 106–224, title IV, §401, June 20, 2000, 114 Stat. 438, provided that: "This title [enacting this chapter, amending section 7759 of this title and section 129a of Title 21, Food and Drugs, and repealing sections 148, 148a, 148c to 148f, 149, 150, 150a to 150g, 150aa to 150jj, 151 to 154, 156 to 164, 164a, 167, 1651 to 1656, and 2801 to 2813 of this title, and provisions set out as notes under sections 147a, 150, 150aa, 151, and 1651 of this title] may be cited as the 'Plant Protection Act'."

Pub. L. 106–224, title IV, §451, as added by Pub. L. 108–412, §1, Oct. 30, 2004, 118 Stat. 2320, provided that: "This subtitle [subtitle E (§§451–457) of title IV of Pub. L. 106–224, enacting subchapter V of this chapter] may be cited as the 'Noxious Weed Control and Eradication Act of 2004'."

### 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.

### REGULATIONS TO IMPROVE MANAGEMENT AND OVERSIGHT OF CERTAIN REGULATED ARTICLES

Pub. L. 110–234, title X, §10204, May 22, 2008, 122 Stat. 1343, and Pub. L. 110–246, §4(a), title X, §10204, June 18, 2008, 122 Stat. 1664, 2105, provided that:

"(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act [June 18, 2008], the Secretary [of Agriculture] shall—

"(1) take action on each issue identified in the document entitled 'Lessons Learned and Revisions under Consideration for APHIS' Biotechnology Framework', dated October 4, 2007; and

"(2) as the Secretary considers appropriate, promulgate regulations to improve the management and oversight of articles regulated under the Plant Protection Act (7 U.S.C. 7701 et seq.).

"(b) INCLUSIONS.—In carrying out subsection (a), the Secretary shall take actions that are designed to enhance—

"(1) the quality and completeness of records;

"(2) the availability of representative samples;

"(3) the maintenance of identity and control in the event of an unauthorized release;

"(4) corrective actions in the event of an unauthorized release;

"(5) protocols for conducting molecular forensics;

"(6) clarity in contractual agreements;

"(7) the use of the latest scientific techniques for isolation and confinement distances;

"(8) standards for quality management systems and effective research; and

"(9) the design of electronic permits to store documents and other information relating to the permit and notification processes.

"(c) CONSIDERATION.—In carrying out subsection (a), the Secretary shall consider—

"(1) establishing—

"(A) a system of risk-based categories to classify each regulated article;

"(B) a means to identify regulated articles (including the retention of seed samples); and

"(C) standards for isolation and containment distances; and

"(2) requiring permit holders—

"(A) to maintain a positive chain of custody;

"(B) to provide for the maintenance of records;

"(C) to provide for the accounting of material;

"(D) to conduct periodic audits;

"(E) to establish an appropriate training program;

"(F) to provide contingency and corrective action plans; and

"(G) to submit reports as the Secretary considers to be appropriate."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of this title.]

<sup>1</sup> *So in original.*

## §7702. Definitions

In this chapter:

### (1) Article

The term "article" means any material or tangible object that could harbor plant pests or noxious weeds.

### (2) Biological control organism

The term "biological control organism" means any enemy, antagonist, or competitor used to control a plant pest or noxious weed.

### (3) Enter and entry

The terms "enter" and "entry" mean to move into, or the act of movement into, the commerce of the United States.

### (4) Export and exportation

The terms "export" and "exportation" mean to move from, or the act of movement from, the United States to any place outside the United States.

### (5) Import and importation

The terms "import" and "importation" mean to move into, or the act of movement into, the territorial limits of the United States.

### (6) Interstate

The term "interstate" means—

(A) from one State into or through any other State; or

(B) within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

### (7) Interstate commerce

The term "interstate commerce" means trade, traffic, or other commerce—

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

(B) within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

**(8) 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.

**(9) Move and related terms**

The terms "move", "moving", and "movement" mean—

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

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

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

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

(E) to release into the environment; or

(F) to allow any of the activities described in a preceding subparagraph.

**(10) Noxious weed**

The term "noxious weed" means any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.

**(11) Permit**

The term "permit" means a written or oral authorization, including by electronic methods, by the Secretary to move plants, plant products, biological control organisms, plant pests, noxious weeds, or articles under conditions prescribed by the Secretary.

**(12) Person**

The term "person" means any individual, partnership, corporation, association, joint venture, or other legal entity.

**(13) Plant**

The term "plant" means any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

**(14) Plant pest**

The term "plant pest" means any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product:

(A) A protozoan.

(B) A nonhuman animal.

(C) A parasitic plant.

(D) A bacterium.

(E) A fungus.

(F) A virus or viroid.

(G) An infectious agent or other pathogen.

(H) Any article similar to or allied with any of the articles specified in the preceding subparagraphs.

**(15) Plant product**

The term "plant product" means—

(A) any flower, fruit, vegetable, root, bulb, seed, or other plant part that is not included in the definition of plant;

or

(B) any manufactured or processed plant or plant part.

**(16) Secretary**

The term "Secretary" means the Secretary of Agriculture.

**(17) State**

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

**(18) Systems approach**

For the purposes of section 7712(e) of this title, the term "systems approach" means a defined set of phytosanitary procedures, at least two of which have an independent effect in mitigating pest risk associated with the movement of commodities.

**(19) 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.

**(20) United States**

The term "United States" means all of the States.

(Pub. L. 106–224, title IV, §403, June 20, 2000, 114 Stat. 438.)

**REFERENCES IN TEXT**

This chapter, referred to in text, was in the original "this title", meaning title IV of Pub. L. 106–224, June 20, 2000, 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and Tables.

**SUBCHAPTER I—PLANT PROTECTION****§7711. Regulation of movement of plant pests****(a) Prohibition of unauthorized movement of plant pests**

Except as provided in subsection (c), no person shall import, enter, export, or move in interstate commerce any plant pest, unless the importation, entry, exportation, or movement is authorized under general or specific permit and is in accordance with such regulations as the Secretary may issue to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the United States.

**(b) Requirements for processes**

The Secretary shall ensure that the processes used in developing regulations under subsection (a) governing consideration of import requests are based on sound science and are transparent and accessible.

**(c) Authorization of movement of plant pests by regulation****(1) Exception to permit requirement**

The Secretary may issue regulations to allow the importation, entry, exportation, or movement in interstate commerce of specified plant pests without further restriction if the Secretary finds that a permit under subsection (a) is not necessary.

**(2) Petition to add or remove plant pests from regulation**

Any person may petition the Secretary to add a plant pest to, or remove a plant pest from, the regulations issued by the Secretary under paragraph (1).

**(3) Response to petition by the Secretary**

In the case of a petition submitted under paragraph (2), the Secretary shall act on the petition within a reasonable time and notify the petitioner of the final action the Secretary takes on the petition. The Secretary's determination on the petition shall be based on sound science.

**(d) Prohibition of unauthorized mailing of plant pests****(1) In general**

Any letter, parcel, box, or other package containing any plant pest, whether sealed as letter-rate postal matter or not, is nonmailable and shall not knowingly be conveyed in the mail or delivered from any post office or by any mail carrier, unless the letter, parcel, box, or other package is mailed in compliance with such regulations as the Secretary may issue to prevent the dissemination of plant pests into the United States or interstate.

**(2) Application of postal laws and regulations**

Nothing in this subsection authorizes any person to open any mailed letter or other mailed sealed matter except in accordance with the postal laws and regulations.

**(e) Regulations**

Regulations issued by the Secretary to implement subsections (a), (c), and (d) may include provisions requiring that any plant pest imported, entered, to be exported, moved in interstate commerce, mailed, or delivered from any post office—

(1) be accompanied by a permit issued by the Secretary prior to the importation, entry, exportation, movement in interstate commerce, mailing, or delivery of the plant pest;

(2) be accompanied by a certificate of inspection issued (in a manner and form required by the Secretary) by appropriate officials of the country or State from which the plant pest is to be moved;

(3) be raised under post-entry quarantine conditions by or under the supervision of the Secretary for the purposes of determining whether the plant pest—

(A) may be infested with other plant pests;

- (B) may pose a significant risk of causing injury to, damage to, or disease in any plant or plant product; or
- (C) may be a noxious weed; and

(4) be subject to remedial measures the Secretary determines to be necessary to prevent the spread of plant pests.

(Pub. L. 106–224, title IV, §411, June 20, 2000, 114 Stat. 440.)

## **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.

## **§7712. Regulation of movement of plants, plant products, biological control organisms, noxious weeds, articles, and means of conveyance**

### **(a) In general**

The Secretary may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination of a plant pest or noxious weed within the United States.

### **(b) Policy**

The Secretary shall ensure that processes used in developing regulations under this section governing consideration of import requests are based on sound science and are transparent and accessible.

### **(c) Regulations**

The Secretary may issue regulations to implement subsection (a), including regulations requiring that any plant, plant product, biological control organism, noxious weed, article, or means of conveyance imported, entered, to be exported, or moved in interstate commerce—

- (1) be accompanied by a permit issued by the Secretary prior to the importation, entry, exportation, or movement in interstate commerce;
- (2) be accompanied by a certificate of inspection issued (in a manner and form required by the Secretary) by appropriate officials of the country or State from which the plant, plant product, biological control organism, noxious weed, article, or means of conveyance is to be moved;
- (3) be subject to remedial measures the Secretary determines to be necessary to prevent the spread of plant pests or noxious weeds; and
- (4) with respect to plants or biological control organisms, be grown or handled under post-entry quarantine conditions by or under the supervision of the Secretary for the purposes of determining whether the plant or biological control organism may be infested with plant pests or may be a plant pest or noxious weed.

### **(d) Notice**

Not later than 1 year after June 20, 2000, the Secretary shall publish for public comment a notice describing the procedures and standards that govern the consideration of import requests. The notice shall—

- (1) specify how public input will be sought in advance of and during the process of promulgating regulations necessitating a risk assessment in order to ensure a fully transparent and publicly accessible process; and
- (2) include consideration of the following:
  - (A) Public announcement of import requests that will necessitate a risk assessment.
  - (B) A process for assigning major/nonroutine or minor/routine status to such requests based on current state of supporting scientific information.
  - (C) A process for assigning priority to requests.
  - (D) Guidelines for seeking relevant scientific and economic information in advance of initiating informal rulemaking.
  - (E) Guidelines for ensuring availability and transparency of assumptions and uncertainties in the risk assessment process including applicable risk mitigation measures relied upon individually or as components of a system of mitigative measures proposed consistent with the purposes of this chapter.

### **(e) Study and report on systems approach**

#### **(1) Study**

The Secretary shall conduct a study of the role for and application of systems approaches designed to guard against the introduction of plant pathogens into the United States associated with proposals to import plants or plant products into the United States.

**(2) Participation by scientists**

In conducting the study the Secretary shall ensure participation by scientists from State departments of agriculture, colleges and universities, the private sector, and the Agricultural Research Service.

**(3) Report**

Not later than 2 years after June 20, 2000, the Secretary shall submit a report on the results of the study conducted under this section to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives.

**(f) Noxious weeds****(1) Regulations**

In the case of noxious weeds, the Secretary may publish, by regulation, a list of noxious weeds that are prohibited or restricted from entering the United States or that are subject to restrictions on interstate movement within the United States.

**(2) Petition to add or remove plants from regulation**

Any person may petition the Secretary to add a plant species to, or remove a plant species from, the regulations issued by the Secretary under this subsection.

**(3) Duties of the Secretary**

In the case of a petition submitted under paragraph (2), the Secretary shall act on the petition within a reasonable time and notify the petitioner of the final action the Secretary takes on the petition. The Secretary's determination on the petition shall be based on sound science.

**(g) Biological control organisms****(1) Regulations**

In the case of biological control organisms, the Secretary may publish, by regulation, a list of organisms whose movement in interstate commerce is not prohibited or restricted. Any listing may take into account distinctions between organisms such as indigenous, nonindigenous, newly introduced, or commercially raised.

**(2) Petition to add or remove biological control organisms from the regulations**

Any person may petition the Secretary to add a biological control organism to, or remove a biological control organism from, the regulations issued by the Secretary under this subsection.

**(3) Duties of the Secretary**

In the case of a petition submitted under paragraph (2), the Secretary shall act on the petition within a reasonable time and notify the petitioner of the final action the Secretary takes on the petition. The Secretary's determination on the petition shall be based on sound science.

(Pub. L. 106–224, title IV, §412, June 20, 2000, 114 Stat. 441.)

**REFERENCES IN TEXT**

This chapter, referred to in subsec. (d)(2)(E), was in the original "this title", meaning title IV of Pub. L. 106–224, June 20, 2000, 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and 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.

**§7712a. Reduction in backlog of agricultural export petitions****(a) Reduction efforts**

To the maximum extent practicable, the Secretary of Agriculture shall endeavor to reduce the backlog in the number of applications for permits for the export of United States agricultural commodities. In achieving such reduction, the Secretary shall not dilute or diminish existing personnel resources that are currently managing sanitary and phytosanitary issues for—

- (1) United States agricultural commodities for which exportation is sought; and
- (2) interdiction and control of pests and diseases, including for the evaluation of pest and disease concerns of foreign agricultural commodities for which importation is sought.

**(b) Report**

The Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an annual report specifying, for the year covered by the report—

- (1) the total number of applications processed to completion;
- (2) the number of backlog applications processed to completion;
- (3) the percentage of backlog applications processed to completion; and
- (4) the number of backlog applications remaining.

(Pub. L. 108–465, title II, §202, Dec. 21, 2004, 118 Stat. 3884.)

**CODIFICATION**

Section was enacted as part of the Specialty Crops Competitiveness Act of 2004, and not as part of the Plant Protection Act which comprises this chapter.

**§7713. Notification and holding requirements upon arrival****(a) Duty of Secretary of the Treasury****(1) Notification**

The Secretary of the Treasury shall promptly notify the Secretary of Agriculture of the arrival of any plant, plant product, biological control organism, plant pest, or noxious weed at a port of entry.

**(2) Holding**

The Secretary of the Treasury shall hold a plant, plant product, biological control organism, plant pest, or noxious weed for which notification is made under paragraph (1) at the port of entry until the plant, plant product, biological control organism, plant pest, or noxious weed—

- (A) is inspected and authorized for entry into or transit movement through the United States; or
- (B) is otherwise released by the Secretary of Agriculture.

**(3) Exceptions**

Paragraphs (1) and (2) shall not apply to any plant, plant product, biological control organism, plant pest, or noxious weed that is imported from a country or region of a country designated by the Secretary of Agriculture, pursuant to regulations, as exempt from the requirements of such paragraphs.

**(b) Duty of responsible parties****(1) Notification**

The person responsible for any plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance required to have a permit under section 7711 or 7712 of this title shall provide the notification described in paragraph (3) as soon as possible after the arrival of the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance at a port of entry and before the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance is moved from the port of entry.

**(2) Submission**

The notification shall be provided to the Secretary, or, at the Secretary's direction, to the proper official of the State to which the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance is destined, or both, as the Secretary may prescribe.

**(3) Elements of notification**

The notification shall consist of the following:

- (A) The name and address of the consignee.
- (B) The nature and quantity of the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance proposed to be moved.
- (C) The country and locality where the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance was grown, produced, or located.

**(c) Prohibition on movement of items without authorization**

No person shall move from a port of entry or interstate any imported plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance unless the imported plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance—

- (1) is inspected and authorized for entry into or transit movement through the United States; or
- (2) is otherwise released by the Secretary.

(Pub. L. 106–224, title IV, §413, June 20, 2000, 114 Stat. 443.)

## 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.

### §7714. General remedial measures for new plant pests and noxious weeds

#### (a) Authority to hold, treat, or destroy items

If the Secretary considers it necessary in order to prevent the dissemination of a plant pest or noxious weed that is new to or not known to be widely prevalent or distributed within and throughout the United States, the Secretary may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of any plant, plant pest, noxious weed, biological control organism, plant product, article, or means of conveyance that—

(1) is moving into or through the United States or interstate, or has moved into or through the United States or interstate, and—

(A) the Secretary has reason to believe is a plant pest or noxious weed or is infested with a plant pest or noxious weed at the time of the movement; or

(B) is or has been otherwise in violation of this chapter;

(2) has not been maintained in compliance with a post-entry quarantine requirement; or

(3) is the progeny of any plant, biological control organism, plant product, plant pest, or noxious weed that is moving into or through the United States or interstate, or has moved into the United States or interstate, in violation of this chapter.

#### (b) Authority to order an owner to treat or destroy

##### (1) In general

The Secretary may order the owner of any plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance subject to action under subsection (a) to treat, apply other remedial measures to, destroy, or otherwise dispose of the plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance, without cost to the Federal Government and in the manner the Secretary considers appropriate.

##### (2) Failure to comply

If the owner fails to comply with the Secretary's order under this subsection, the Secretary may take an action authorized by subsection (a) and recover from the owner the costs of any care, handling, application of remedial measures, or disposal incurred by the Secretary in connection with actions taken under subsection (a).

#### (c) Classification system

##### (1) Development required

To facilitate control of noxious weeds, the Secretary may develop a classification system to describe the status and action levels for noxious weeds. The classification system may include the current geographic distribution, relative threat, and actions initiated to prevent introduction or distribution.

##### (2) Management plans

In conjunction with the classification system, the Secretary may develop integrated management plans for noxious weeds for the geographic region or ecological range where the noxious weed is found in the United States.

#### (d) Application of least drastic action

No plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance shall be destroyed, exported, or returned to the shipping point of origin, or ordered to be destroyed, exported, or returned to the shipping point of origin under this section unless, in the opinion of the Secretary, there is no less drastic action that is feasible and that would be adequate to prevent the dissemination of any plant pest or noxious weed new to or not known to be widely prevalent or distributed within and throughout the United States.

(Pub. L. 106–224, title IV, §414, June 20, 2000, 114 Stat. 444; Pub. L. 107–171, title X, §10418(b)(1), May 13, 2002, 116 Stat. 508.)

## REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1)(B), (3), was in the original "this title", meaning title IV of Pub. L. 106–224, [June 20, 2000](#), 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and Tables.

## AMENDMENTS

**2002**—Subsec. (b)(1). Pub. L. 107–171, §10418(b)(1)(A), struck out ", or the owner's agent," after "subsection (a)".

Subsec. (b)(2). Pub. L. 107–171, §10418(b)(1)(B), struck out "or agent of the owner" after "the owner" in two places.

## 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.

## §7715. Declaration of extraordinary emergency and resulting authorities

### (a) Authority to declare

If the Secretary determines that an extraordinary emergency exists because of the presence of a plant pest or noxious weed that is new to or not known to be widely prevalent in or distributed within and throughout the United States and that the presence of the plant pest or noxious weed threatens plants or plant products of the United States, the Secretary may—

- (1) hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, any plant, biological control organism, plant product, article, or means of conveyance that the Secretary has reason to believe is infested with the plant pest or noxious weed;
- (2) quarantine, treat, or apply other remedial measures to any premises, including any plants, biological control organisms, plant products, articles, or means of conveyance on the premises, that the Secretary has reason to believe is infested with the plant pest or noxious weed;
- (3) quarantine any State or portion of a State in which the Secretary finds the plant pest or noxious weed or any plant, biological control organism, plant product, article, or means of conveyance that the Secretary has reason to believe is infested with the plant pest or noxious weed; and
- (4) prohibit or restrict the movement within a State of any plant, biological control organism, plant product, article, or means of conveyance when the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of the plant pest or noxious weed or to eradicate the plant pest or noxious weed.

### (b) Required finding of emergency

The Secretary may take action under this section only upon finding, after review and consultation with the Governor or other appropriate official of the State affected, that the measures being taken by the State are inadequate to eradicate the plant pest or noxious weed.

### (c) Notification procedures

#### (1) In general

Except as provided in paragraph (2), before any action is taken in any State under this section, the Secretary shall notify the Governor or other appropriate official of the State affected, issue a public announcement, and file for publication in the Federal Register a statement of—

- (A) the Secretary's findings;
- (B) the action the Secretary intends to take;
- (C) the reasons for the intended action; and
- (D) where practicable, an estimate of the anticipated duration of the extraordinary emergency.

#### (2) Time sensitive actions

If it is not possible to file for publication in the Federal Register prior to taking action, the filing shall be made within a reasonable time, not to exceed 10 business days, after commencement of the action.

### (d) Application of least drastic action

No plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance shall be destroyed, exported, or returned to the shipping point of origin, or ordered to be destroyed, exported, or returned to the shipping point of origin under this section unless, in the opinion of the Secretary, there is no less drastic action that is feasible and that would be adequate to prevent the dissemination of any plant pest or noxious weed new to or not known to be widely prevalent or distributed within and throughout the United States.

### (e) Payment of compensation

The Secretary may pay compensation to any person for economic losses incurred by the person as a result of action taken by the Secretary under this section. The determination by the Secretary of the amount of any compensation to

be paid under this subsection shall be final and shall not be subject to judicial review or a review by any officer or employee of the Federal Government other than the Secretary or the designee of the Secretary.

(Pub. L. 106–224, title IV, §415, June 20, 2000, 114 Stat. 445; Pub. L. 107–171, title VII, §7504(a), May 13, 2002, 116 Stat. 465; Pub. L. 110–234, title X, §10203(a), May 22, 2008, 122 Stat. 1342; Pub. L. 110–246, §4(a), title X, §10203(a), June 18, 2008, 122 Stat. 1664, 2104.)

### **CODIFICATION**

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

### **AMENDMENTS**

**2008**—Subsec. (e). Pub. L. 110–246, §10203(a), struck out "of longer than 60 days" after "or a review".

**2002**—Subsec. (e). Pub. L. 107–171 inserted before period at end "or a 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".

### **EFFECTIVE DATE OF 2008 AMENDMENT**

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

### **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.

## **§7716. Recovery of compensation for unauthorized activities**

### **(a) Recovery action**

The owner of any plant, plant biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance destroyed or otherwise disposed of by the Secretary under section 7714 or 7715 of this title may bring an action against the United States to recover just compensation for the destruction or disposal of the plant, plant biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance (not including compensation for loss due to delays incident to determining eligibility for importation, entry, exportation, movement in interstate commerce, or release into the environment), but only if the owner establishes that the destruction or disposal was not authorized under this chapter.

### **(b) Time for action; location**

An action under this section shall be brought not later than 1 year after the destruction or disposal of the plant, plant biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance involved. The action may be brought in any United States district court where the owner is found, resides, transacts business, is licensed to do business, or is incorporated.

(Pub. L. 106–224, title IV, §416, June 20, 2000, 114 Stat. 447.)

### **REFERENCES IN TEXT**

This chapter, referred to in subsec. (a), was in the original "this title", meaning title IV of Pub. L. 106–224, June 20, 2000, 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and Tables.

## **§7717. Control of grasshoppers and Mormon crickets**

### **(a) In general**

Subject to the availability of funds pursuant to this section, the Secretary shall carry out a program to control grasshoppers and Mormon crickets on all Federal lands to protect rangeland.

### **(b) Transfer authority**

**(1) In general**

Subject to paragraph (3), upon the request of the Secretary of Agriculture, the Secretary of the Interior shall transfer to the Secretary of Agriculture, from any no-year appropriations, funds for the prevention, suppression, and control of actual or potential grasshopper and Mormon cricket outbreaks on Federal lands under the jurisdiction of the Secretary of the Interior. The transferred funds shall be available only for the payment of obligations incurred on such Federal lands.

**(2) Transfer requests**

Requests for the transfer of funds pursuant to this subsection shall be made as promptly as possible by the Secretary.

**(3) Limitation**

Funds transferred pursuant to this subsection may not be used by the Secretary until funds specifically appropriated to the Secretary for grasshopper control have been exhausted.

**(4) Replenishment of transferred funds**

Funds transferred pursuant to this subsection shall be replenished by supplemental or regular appropriations, which shall be requested as promptly as possible.

**(c) Treatment for grasshoppers and Mormon crickets****(1) In general**

Subject to the availability of funds pursuant to this section, on request of the administering agency or the agriculture department of an affected State, the Secretary, to protect rangeland, shall immediately treat Federal, State, or private lands that are infested with grasshoppers or Mormon crickets at levels of economic infestation, unless the Secretary determines that delaying treatment will not cause greater economic damage to adjacent owners of rangeland.

**(2) Other programs**

In carrying out this section, the Secretary shall work in conjunction with other Federal, State, and private prevention, control, or suppression efforts to protect rangeland.

**(d) Federal cost share of treatment****(1) Control on Federal lands**

Out of funds made available or transferred under this section, the Secretary shall pay 100 percent of the cost of grasshopper or Mormon cricket control on Federal lands to protect rangeland.

**(2) Control on State lands**

Out of funds made available under this section, the Secretary shall pay 50 percent of the cost of grasshopper or Mormon cricket control on State lands.

**(3) Control on private lands**

Out of funds made available under this section, the Secretary shall pay 33.3 percent of the cost of grasshopper or Mormon cricket control on private lands.

**(e) Training**

From appropriated funds made available or transferred by the Secretary of the Interior to the Secretary of Agriculture for such purposes, the Secretary of Agriculture shall provide adequate funding for a program to train personnel to accomplish effectively the objective of this section.

(Pub. L. 106–224, title IV, §417, June 20, 2000, 114 Stat. 447.)

**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.

**§7718. Certification for exports**

The Secretary may certify as to the freedom of plants, plant products, or biological control organisms from plant pests or noxious weeds, or the exposure of plants, plant products, or biological control organisms to plant pests or noxious weeds, according to the phytosanitary or other requirements of the countries to which the plants, plant products, or biological control organisms may be exported.

(Pub. L. 106–224, title IV, §418, June 20, 2000, 114 Stat. 448.)

## 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.

### §7719. Methyl bromide

#### (a) In general

The Secretary, upon request of State, local, or tribal authorities, shall determine whether methyl bromide treatments or applications required by State, local, or tribal authorities to prevent the introduction, establishment, or spread of plant pests (including diseases) or noxious weeds should be authorized as an official control or official requirement. The Secretary shall not authorize such treatments or applications unless the Secretary finds there is no other registered, effective, and economically feasible alternative available.

#### (b) Methyl bromide alternative

The Secretary, in consultation with State, local and tribal authorities, shall establish a program to identify alternatives to methyl bromide for treatment and control of plant pests and weeds. For uses where no registered, effective, economically feasible alternatives available can currently be identified, the Secretary shall initiate research programs to develop alternative methods of control and treatment.

#### (c) Registry

Not later than 180 days after May 13, 2002, the Secretary shall publish, and thereafter maintain, a registry of State, local, and tribal requirements authorized by the Secretary under this section.

#### (d) Administration

##### (1) Timeline for determination

Upon the promulgation of regulations to carry out this section, the Secretary shall make the determination required by subsection (a) not later than 90 days after receiving the request for such a determination.

##### (2) Construction

Nothing in this section shall be construed to alter or modify the authority of the Administrator of the Environmental Protection Agency or to provide any authority to the Secretary of Agriculture under the Clean Air Act [42 U.S.C. 7401 et seq.] or regulations promulgated under the Clean Air Act.

(Pub. L. 106–224, title IV, §419, as added Pub. L. 107–171, title VII, §7504(c), May 13, 2002, 116 Stat. 466.)

## REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (d)(2), is act [July 14, 1955, ch. 360](#), 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

### §7720. National plan for control and management of Sudden Oak Death

#### (a) Development of national plan

Subject to the availability of appropriated funds for this purpose, the Secretary of Agriculture, acting through the Animal Plant and Health Inspection Service, shall develop a national plan for the control and management of Sudden Oak Death, a forest disease caused by the fungus-like pathogen *Phytophthora ramorum*.

#### (b) Plan elements

In developing the plan, the Secretary shall specifically address the following:

- (1) Information derived by the Department of Agriculture from ongoing efforts to identify hosts of *Phytophthora ramorum* and survey the extent to which Sudden Oak Death exists in the United States.
- (2) Past and current efforts to understand the risk posed by *Phytophthora ramorum* and the results of control and management efforts regarding Sudden Oak Death, including efforts related to research, control, quarantine, and hazardous fuel reduction.
- (3) Such future efforts as the Secretary considers necessary to control and manage Sudden Oak Death, including cost estimates for the implementation of such efforts.

#### (c) Consultation

The Secretary shall develop the plan in consultation with other Federal agencies that have appropriate expertise regarding the control and management of Sudden Oak Death.

**(d) Implementation of plan**

The Secretary shall complete the plan and commence implementation as soon as practicable after the date on which funds are first appropriated pursuant to the authorization of appropriations in subsection (e) to carry out this section.

**(e) Authorization of appropriations**

There is authorized to be appropriated to the Secretary such sums as may be necessary to carry out this section. (Pub. L. 108–488, §1, Dec. 23, 2004, 118 Stat. 3964.)

**CODIFICATION**

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

**§7721. Plant pest and disease management and disaster prevention**

**(a) Definitions**

In this section:

**(1) Early plant pest detection and surveillance**

The term "early plant pest detection and surveillance" means the full range of activities undertaken to find newly introduced plant pests, whether the plant pests are new to the United States or new to certain areas of the United States, before—

- (A) the plant pests become established; or
- (B) the plant pest infestations become too large and costly to eradicate or control.

**(2) Specialty crop**

The term "specialty crop" has the meaning given the term in section 3 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note; Public Law 108–465).

**(3) State department of agriculture**

The term "State department of agriculture" means an agency of a State that has a legal responsibility to perform early plant pest detection and surveillance activities.

**(b) Early plant pest detection and surveillance improvement program**

**(1) Cooperative agreements**

The Secretary shall enter into a cooperative agreement with each State department of agriculture that agrees to conduct early plant pest detection and surveillance activities.

**(2) Consultation**

In carrying out this subsection, the Secretary shall consult with—

- (A) the National Plant Board; and
- (B) other interested parties.

**(3) Federal Advisory Committee Act**

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to consultations under this subsection.

**(4) Application**

**(A) In general**

A State department of agriculture seeking to enter into a cooperative agreement under this subsection shall submit to the Secretary an application containing such information as the Secretary may require.

**(B) Notification**

The Secretary shall notify applicants of—

- (i) the requirements to be imposed on a State department of agriculture for auditing of, and reporting on, the use of any funds provided by the Secretary under the cooperative agreement;
- (ii) the criteria to be used to ensure that early pest detection and surveillance activities supported under the cooperative agreement are based on sound scientific data or thorough risk assessments; and
- (iii) the means of identifying pathways of pest introductions.

**(5) Use of funds**

**(A) Plant pest detection and surveillance activities**

A State department of agriculture that receives funds under this subsection shall use the funds to carry out early plant pest detection and surveillance activities approved by the Secretary to prevent the introduction or spread of a plant pest.

**(B) Subagreements**

Nothing in this subsection prevents a State department of agriculture from using funds received under paragraph (4) to enter into subagreements with political subdivisions of the State that have legal responsibilities relating to agricultural plant pest and disease surveillance.

**(C) Non-Federal share**

The non-Federal share of the cost of carrying out a cooperative agreement under this section may be provided in-kind, including through provision of such indirect costs of the cooperative agreement as the Secretary considers to be appropriate.

**(D) Ability to provide funds**

The Secretary shall not take the ability to provide non-Federal costs to carry out a cooperative agreement entered into under subparagraph (A) into consideration when deciding whether to enter into a cooperative agreement with a State department of agriculture.

**(6) Special funding considerations**

The Secretary shall provide funds to a State department of agriculture if the Secretary determines that—

(A) the State department of agriculture is in a State that has a high risk of being affected by 1 or more plant pests or diseases, taking into consideration—

- (i) the number of international ports of entry in the State;
- (ii) the volume of international passenger and cargo entry into the State;
- (iii) the geographic location of the State and if the location or types of agricultural commodities produced in the State are conducive to agricultural pest and disease establishment due to the climate, crop diversity, or natural resources (including unique plant species) of the State; and
- (iv) whether the Secretary has determined that an agricultural pest or disease in the State is a Federal concern; and

(B) the early plant pest detection and surveillance activities supported with the funds will likely—

- (i) prevent the introduction and establishment of plant pests; and
- (ii) provide a comprehensive approach to compliment Federal detection efforts.

**(7) Reporting requirement**

Not later than 90 days after the date of completion of an early plant pest detection and surveillance activity conducted by a State department of agriculture using funds provided under this section, the State department of agriculture shall submit to the Secretary a report that describes the purposes and results of the activities.

**(c) Threat identification and mitigation program****(1) Establishment**

The Secretary shall establish a threat identification and mitigation program to determine and address threats to the domestic production of crops.

**(2) Requirements**

In conducting the program established under paragraph (1), the Secretary shall—

- (A) develop risk assessments of the potential threat to the agricultural industry of the United States from foreign sources;
- (B) collaborate with the National Plant Board; and
- (C) implement action plans for high consequence plant pest and diseases to assist in preventing the introduction and widespread dissemination of new plant pest and disease threats in the United States.

**(3) Reports**

Not later than 1 year after the date of enactment of this paragraph, and annually thereafter, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the action plans described in paragraph (2), including an accounting of funds expended on the action plans.

**(d) Specialty crop certification and risk management systems**

The Secretary shall provide funds and technical assistance to specialty crop growers, organizations representing specialty crop growers, and State and local agencies working with specialty crop growers and organizations for the development and implementation of—

(1) audit-based certification systems, such as best management practices—

- (A) to address plant pests; and
- (B) to mitigate the risk of plant pests in the movement of plants and plant products; and

(2) nursery plant pest risk management systems, in collaboration with the nursery industry, research institutions, and other appropriate entities—

- (A) to enable growers to identify and prioritize nursery plant pests and diseases of regulatory significance;

- (B) to prevent the introduction, establishment, and spread of those plant pests and diseases; and
- (C) to reduce the risk of and mitigate those plant pests and diseases.

**(e) National Clean Plant Network**

**(1) In general**

The Secretary shall establish a program to be known as the "National Clean Plant Network" (referred to in this subsection as the "Program").

**(2) Requirements**

Under the Program, the Secretary shall establish a network of clean plant centers for diagnostic and pathogen elimination services—

- (A) to produce clean propagative plant material; and
- (B) to maintain blocks of pathogen-tested plant material in sites located throughout the United States.

**(3) Availability of clean plant source material**

Clean plant source material may be made available to—

- (A) a State for a certified plant program of the State; and
- (B) private nurseries and producers.

**(4) Consultation and collaboration**

In carrying out the Program, the Secretary shall—

- (A) consult with—
  - (i) State departments of agriculture; and
  - (ii) land-grant colleges and universities and NLGCA Institutions (as those terms are defined in section 3103 of this title); and

(B) to the extent practicable and with input from the appropriate State officials and industry representatives, use existing Federal or State facilities to serve as clean plant centers.

**(5) Funding for fiscal year 2013**

There is authorized to be appropriated to carry out the Program \$5,000,000 for fiscal year 2013.

**(f) Funding**

Of the funds of the Commodity Credit Corporation, the Secretary shall make available to carry out this section—

- (1) \$12,000,000 for fiscal year 2009;
- (2) \$45,000,000 for fiscal year 2010;
- (3) \$50,000,000 for fiscal year 2011;
- (4) \$50,000,000 for fiscal year 2012;
- (5) \$62,500,000 for each of fiscal years 2014 through 2017; and
- (6) \$75,000,000 for fiscal year 2018 and each fiscal year thereafter.

**(g) Use of funds for clean plant network**

Of the funds made available under subsection (f) to carry out this section for a fiscal year, not less than \$5,000,000 shall be available to carry out the National Clean Plant Network under subsection (e).

**(h) Limitation on indirect costs for the consolidation of plant pest and disease management and disaster prevention programs**

Indirect costs charged against a cooperative agreement under this section shall not exceed the lesser of—

- (1) 15 percent of the total Federal funds provided under the cooperative agreement, as determined by the Secretary; and
- (2) the indirect cost rate applicable to the recipient as otherwise established by law.

(Pub. L. 106–224, title IV, §420, as added Pub. L. 110–234, title X, §10201(a), May 22, 2008, 122 Stat. 1339, and Pub. L. 110–246, §4(a), title X, §10201(a), June 18, 2008, 122 Stat. 1664, 2101; Pub. L. 113–79, title X, §10007(a), (b), (d), Feb. 7, 2014, 128 Stat. 947, 948.)

## REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b)(3), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

The date of enactment of this paragraph, referred to in subsec. (c)(3), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

## CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

## AMENDMENTS

**2014**—Subsecs. (e), (f). Pub. L. 113–79, §10007(a), added subsec. (e) and redesignated former subsec. (e) as (f).

Subsec. (f)(4) to (6). Pub. L. 113–79, §10007(b), substituted semicolon at end for "and each fiscal year thereafter." in par. (4), and added pars. (5) and (6).

Subsecs. (g), (h). Pub. L. 113–79, §10007(d), added subsecs. (g) and (h).

## **EFFECTIVE DATE**

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of this title.

## **SUBCHAPTER II—INSPECTION AND ENFORCEMENT**

### **§7731. Inspections, seizures, and warrants**

#### **(a) Role of Attorney General**

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 plant, plant product, biological control organism, plant pest, noxious weed, or article subject to this chapter;

(2) in interstate commerce, upon probable cause to believe that the person or means of conveyance is carrying any plant, plant product, biological control organism, plant pest, noxious weed, or article subject to this chapter; and

(3) in intrastate commerce from or within any State, portion of a State, or premises quarantined as part of a extraordinary emergency declared under section 7715 of this title upon probable cause to believe that the person or means of conveyance is carrying any plant, plant product, biological control organism, plant pest, noxious weed, or article regulated under that section or is moving subject to that section.

#### **(c) Inspections with a warrant**

##### **(1) General authority**

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

##### **(2) Application and issuance of a warrant**

Upon proper oath or affirmation showing probable cause to believe that there is on certain premises any plant, plant product, biological control organism, plant pest, noxious weed, 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, within the judge's or magistrate's <sup>1</sup> jurisdiction, issue a warrant for the entry upon the premises to conduct any investigation or make any inspection or seizure under this chapter. The warrant may be applied for and executed by the Secretary or any United States Marshal.

(Pub. L. 106–224, title IV, §421, June 20, 2000, 114 Stat. 448.)

## **REFERENCES IN TEXT**

This chapter, referred to in subsecs. (b)(1), (2) and (c), was in the original "this title", meaning title IV of Pub. L. 106–224, June 20, 2000, 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and 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.

<sup>1</sup> *So in original. Probably should be "magistrate judges's".*

## §7732. Collection of information

The Secretary may gather and compile information and conduct any investigations the Secretary considers necessary for the administration and enforcement of this chapter.

(Pub. L. 106–224, title IV, §422, June 20, 2000, 114 Stat. 449.)

### REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title IV of Pub. L. 106–224, June 20, 2000, 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and 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.

## §7733. Subpoena authority

### (a) Authority to issue

The Secretary shall have the power to subpoena the attendance and testimony of any witness, the production of all evidence (including books, papers, documents, electronically stored information, and other tangible things that constitute or contain evidence), or to require the person to whom the subpoena is directed to permit the inspection of premises 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 evidence relevant to the inquiry may be required from any place in the United States.

### (c) Enforcement of Subpoena

In the 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, in requiring the attendance and testimony of any witness, the production of evidence, or the inspection of premises. 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, produce evidence, or permit the inspection of premises. Any failure to obey the court's order may be punished by the court as a contempt of the court.

### (d) Compensation

Witnesses summoned by the Secretary shall be paid the same fees and mileage that are paid to witnesses in courts of the United States, and witnesses whose depositions are taken and the persons taking the depositions shall be entitled to the same fees that are paid for similar services in the courts of the United States.

### (e) Procedures

The Secretary shall publish procedures for the issuance of subpoenas under this section. Such procedures shall include a requirement that subpoenas be reviewed for legal sufficiency and signed by the Secretary. 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 for legal sufficiency outside that agency.

(Pub. L. 106–224, title IV, §423, June 20, 2000, 114 Stat. 449; Pub. L. 107–171, title X, §10418(b)(2), May 13, 2002, 116 Stat. 508; Pub. L. 110–234, title X, §10203(c), May 22, 2008, 122 Stat. 1343; Pub. L. 110–246, §4(a), title X, §10203(c), June 18, 2008, 122 Stat. 1664, 2104.)

### REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title", meaning title IV of Pub. L. 106–224, June 20, 2000, 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and Tables.

## CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

## AMENDMENTS

**2008**—Subsec. (a). Pub. L. 110–246, §10203(c)(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "The Secretary shall have power to subpoena the attendance and testimony of any witness, and the production of all documentary evidence relating to the administration or enforcement of this chapter or any matter under investigation in connection with this chapter."

Subsec. (b). Pub. L. 110–246, §10203(c)(2), struck out "documentary" before "evidence".

Subsec. (c). Pub. L. 110–246, §10203(c)(3), in first sentence substituted "testimony of any witness, the production of evidence, or the inspection of premises" for "testimony of any witness and the production of documentary evidence" and in second sentence substituted "question, produce evidence, or permit the inspection of premises" for "question or to produce documentary evidence".

**2002**—Subsec. (b). Pub. L. 107–171, §10418(b)(2)(A), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: "The attendance of any witness and production of documentary evidence may be required from any place in the United States at any designated place of hearing."

Subsec. (e). Pub. L. 107–171, §10418(b)(2)(B), inserted "to an agency other than the Office of Administrative Law Judges" after "subpoena is delegated".

Subsec. (f). Pub. L. 107–171, §10418(b)(2)(C), struck out heading and text of subsec. (f). Text read as follows: "Subpoenas for witnesses to attend court in any judicial district or to testify or produce evidence at an administrative hearing in any judicial district in any action or proceeding arising under this chapter may run to any other judicial district."

## EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

## 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.

## §7734. Penalties for violation

### (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) Movement

A person that knowingly imports, enters, exports, or moves any plant, plant product, biological control organism, plant pest, noxious weed, 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

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 for in 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) \$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), \$250,000 in the case of any other person for each violation, \$500,000 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and \$1,000,000 for all violations adjudicated in a single proceeding if the violations include a willful violation; or

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

## **(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) ability to pay;
- (B) effect on ability to continue to do business;
- (C) any history of prior violations;
- (D) the degree of culpability; and
- (E) any other factors the Secretary considers 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**

The order of the Secretary assessing a civil penalty shall be treated as a final order reviewable under chapter 158 of title 28. The validity of the Secretary's order may not be reviewed in an action to collect the civil penalty. 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 an agent**

When construing and enforcing 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 his or her employment or office, shall be deemed also to be the act, omission, or failure of the other person.

## **(d) Guidelines for civil penalties**

The Secretary shall coordinate with the Attorney General to 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. 106–224, title IV, §424, June 20, 2000, 114 Stat. 450; Pub. L. 107–171, title X, §10810, May 13, 2002, 116 Stat. 531; Pub. L. 110–234, title X, §10203(d), May 22, 2008, 122 Stat. 1343; Pub. L. 110–246, §4(a), title X, §10203(d), June 18, 2008, 122 Stat. 1664, 2105.)

## **REFERENCES IN TEXT**

This chapter, referred to in text, was in the original "this title", meaning title IV of Pub. L. 106–224, June 20, 2000, 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and Tables.

## **CODIFICATION**

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

## **AMENDMENTS**

**2008**—Subsec. (b)(1)(A). Pub. L. 110–246, §10203(d), substituted "\$500,000 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and \$1,000,000 for all violations adjudicated in a single proceeding if the violations include a willful violation" for "and \$500,000 for all violations adjudicated in a single proceeding".

**2002**—Subsec. (a). Pub. L. 107–171 added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: "Any person that knowingly violates this chapter, or that 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 guilty of a misdemeanor, and, upon conviction, shall be fined in accordance with title 18, imprisoned for a period not exceeding 1 year, or both."

## EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

## 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.

### §7735. Enforcement actions 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, whenever 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 Secretary; and

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

(Pub. L. 106–224, title IV, §425, June 20, 2000, 114 Stat. 451.)

## REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title IV of Pub. L. 106–224, [June 20, 2000](#), 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and 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.

### §7736. Court jurisdiction

#### (a) In general

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

#### (b) Exception

This section does not apply to the imposition of civil penalties under section 7734(b) of this title.

(Pub. L. 106–224, title IV, §426, June 20, 2000, 114 Stat. 451.)

## REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title", meaning title IV of Pub. L. 106–224, [June 20, 2000](#), 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and Tables.

## SUBCHAPTER III—MISCELLANEOUS PROVISIONS

**§7751. Cooperation****(a) In general**

The Secretary may cooperate with other Federal agencies or entities, States or political subdivisions of States, national governments, local governments of other nations, domestic or international organizations, domestic or international associations, and other persons to carry out this chapter.

**(b) Responsibility**

The individual or entity cooperating with the Secretary under subsection (a) shall be responsible for—

- (1) the authority necessary to conduct the operations or take measures on all land and properties within the foreign country or State, other than those owned or controlled by the United States; and
- (2) other facilities and means as the Secretary determines necessary.

**(c) Transfer of biological control methods**

The Secretary may transfer to a State, Federal agency, or other person biological control methods using biological control organisms against plant pests or noxious weeds.

**(d) Cooperation in program administration**

The Secretary may cooperate with State authorities or other persons in the administration of programs for the improvement of plants, plant products, and biological control organisms.

**(e) Phytosanitary issues**

The Secretary shall ensure that phytosanitary issues involving imports and exports are addressed based on sound science and consistent with applicable international agreements. To accomplish these goals, the Secretary may—

- (1) conduct direct negotiations with plant health officials or other appropriate officials of other countries;
- (2) provide technical assistance, training, and guidance to any country requesting such assistance in the development of agricultural health protection systems and import/export systems; and
- (3) maintain plant health and quarantine expertise in other countries—
  - (A) to facilitate the establishment of phytosanitary systems and the resolution of phytosanitary issues;
  - (B) to assist those countries with agricultural health protection activities; and
  - (C) to provide general liaison on agricultural health issues with the plant health or other appropriate officials of the country.

**(f) Transfer of cooperative agreement fund****(1) In general**

A State may provide to a unit of local government in the State described in paragraph (2) any cost-sharing assistance or financing mechanism provided to the State under a cooperative agreement entered into under this Act between the Secretary and the State relating to the eradication, prevention, control, or suppression of plant pests.

**(2) Requirements**

To be eligible for assistance or financing under paragraph (1), a unit of local government shall be—

- (A) engaged in any activity relating to the eradication, prevention, control, or suppression of the plant pest infestation covered under the cooperative agreement between the Secretary and the State; and
- (B) capable of documenting each plant pest infestation eradication, prevention, control, or suppression activity generally carried out by—
  - (i) the Department of Agriculture; or
  - (ii) the State department of agriculture that has jurisdiction over the unit of local government.

(Pub. L. 106–224, title IV, §431, June 20, 2000, 114 Stat. 451; Pub. L. 110–234, title X, §10206, May 22, 2008, 122 Stat. 1346; Pub. L. 110–246, §4(a), title X, §10206, June 18, 2008, 122 Stat. 1664, 2107.)

**REFERENCES IN TEXT**

This chapter, referred to in subsec. (a), was in the original "this title", meaning title IV of Pub. L. 106–224, June 20, 2000, 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and Tables.

This Act, referred to in subsec. (f)(1), is Pub. L. 106–224, June 20, 2000, 114 Stat. 358, known as the Agricultural Risk Protection Act of 2000. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1501 of this title and Tables.

**CODIFICATION**

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

## **AMENDMENTS**

**2008**—Subsec. (f). Pub. L. 110–246, §10206, added subsec. (f).

## **EFFECTIVE DATE OF 2008 AMENDMENT**

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

## **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.

## **§7752. Buildings, land, people, claims, and agreements**

### **(a) In general**

To the extent necessary to carry out this chapter, the Secretary may acquire and maintain all real or personal property for special purposes and employ any persons, make grants, and enter into any contracts, cooperative agreements, memoranda of understanding, or other agreements.

### **(b) Tort claims**

#### **(1) In general**

Except as provided in paragraph (2), the Secretary may pay tort claims in the manner authorized in the first paragraph of section 2672 of title 28, when the claims arise outside the United States in connection with activities that are authorized under this chapter.

#### **(2) Requirements of claim**

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

(Pub. L. 106–224, title IV, §432, June 20, 2000, 114 Stat. 452.)

## **REFERENCES IN TEXT**

This chapter, referred to in subsecs. (a) and (b)(1), was in the original "this title", meaning title IV of Pub. L. 106–224, [June 20, 2000](#), 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and 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.

## **§7753. Reimbursable agreements**

### **(a) Authority to enter into agreements**

The Secretary may enter into reimbursable fee agreements with persons for preclearance of plants, plant products, biological control organisms, and articles at locations outside the United States for movement into the United States.

### **(b) Funds collected for preclearance**

Funds collected for preclearance shall be credited to accounts which may be established by the Secretary for this purpose and shall 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 employees of the Department of Agriculture performing services relating to imports into and exports from the United States, for all overtime, night, or holiday work performed by them, at rates of pay established by the Secretary.

**(2) Reimbursement of the Secretary****(A) In general**

The Secretary may require persons for whom the services are performed to reimburse the Secretary for any sums of money paid by the Secretary for the services.

**(B) Use of funds**

All funds collected under this paragraph shall be credited to the account that incurs the costs and shall remain available until expended without fiscal year limitation.

**(d) Late payment penalties****(1) Collection**

Upon failure to reimburse the Secretary in accordance with this section, the Secretary may assess a late payment penalty, and the overdue funds shall accrue interest, as required by section 3717 of title 31.

**(2) Use of funds**

Any late payment penalty and any accrued interest shall be credited to the account that incurs the costs and shall remain available until expended without fiscal year limitation.

(Pub. L. 106–224, title IV, §433, June 20, 2000, 114 Stat. 452.)

**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.

**§7754. Regulations and orders**

The Secretary may issue such regulations and orders as the Secretary considers necessary to carry out this chapter. (Pub. L. 106–224, title IV, §434, June 20, 2000, 114 Stat. 453.)

**REFERENCES IN TEXT**

This chapter, referred to in text, was in the original "this title", meaning title IV of Pub. L. 106–224, June 20, 2000, 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and 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.

**§7755. Protection for mail handlers**

This chapter shall not apply to any employee of the United States in the performance of the duties of the employee in handling the mail.

(Pub. L. 106–224, title IV, §435, June 20, 2000, 114 Stat. 453.)

**REFERENCES IN TEXT**

This chapter, referred to in text, was in the original "this title", meaning title IV of Pub. L. 106–224, June 20, 2000, 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and Tables.

## §7756. Preemption

### (a) Regulation of foreign commerce

No State or political subdivision of a State may regulate in foreign commerce any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order—

- (1) to control a plant pest or noxious weed;
- (2) to eradicate a plant pest or noxious weed; or
- (3) prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed.

### (b) Regulation of interstate commerce

#### (1) In general

Except as provided in paragraph (2), no State or political subdivision of a State may regulate the movement in interstate commerce of any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order to control a plant pest or noxious weed, eradicate a plant pest or noxious weed, or prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed, if the Secretary has issued a regulation or order to prevent the dissemination of the biological control organism, plant pest, or noxious weed within the United States.

#### (2) Exceptions

##### (A) Regulations consistent with Federal regulations

A State or a political subdivision of a State may impose prohibitions or restrictions upon the movement in interstate commerce of articles, means of conveyance, plants, biological control organisms, plant pests, noxious weeds, or plant products that are consistent with and do not exceed the regulations or orders issued by the Secretary.

##### (B) Special need

A State or political subdivision of a State may impose prohibitions or restrictions upon the movement in interstate commerce of articles, means of conveyance, plants, plant products, biological control organisms, plant pests, or noxious weeds that are in addition to the prohibitions or restrictions imposed by the Secretary, if the State or political subdivision of a State demonstrates to the Secretary and the Secretary finds that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.

(Pub. L. 106–224, title IV, §436, June 20, 2000, 114 Stat. 453.)

## 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.

## §7757. Severability

If any provision of this chapter or application of any provision of this chapter to any person or circumstances is held invalid, the remainder of this chapter and the application of the provision to other persons and circumstances shall not be affected by the invalidity.

(Pub. L. 106–224, title IV, §437, June 20, 2000, 114 Stat. 454.)

## REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title IV of Pub. L. 106–224, June 20, 2000, 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and Tables.

## §7758. Repeal of superseded laws

(a), (b) Omitted

(c) Effect on regulations

Regulations issued under the authority of a provision of law repealed by subsection (a) <sup>1</sup> shall remain in effect until such time as the Secretary issues a regulation under section 7754 of this title that supersedes the earlier regulation. (Pub. L. 106–224, title IV, §438, June 20, 2000, 114 Stat. 454.)

## CODIFICATION

Section is comprised of section 438 of Pub. L. 106–224. Subsec. (a) of section 438 of Pub. L. 106–224 amended section 7759 of this title and repealed sections 148, 148a, 148c to 148f, 149, 150, 150a to 150g, 150aa to 150jj, 151 to 154, 156 to 164, 164a, 167, 1651 to 1656, and 2801 to 2813 of this title, and provisions set out as notes under sections 147a, 150, 150aa, 151, and 1651 of this title. Subsec. (b) of section 438 amended section 129a of Title 21, Food and Drugs.

## 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.

<sup>1</sup> See Codification note below.

## §7759. Fees for inspection of plants for exporting or transiting

(a) to (e) Repealed. Pub. L. 106–224, title IV, §438(a)(3), June 20, 2000, 114 Stat. 454

(f) **Authorization of appropriations; fees, late payment penalties, and accrued interest**

(1) Notwithstanding paragraph (2), there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. Unless otherwise specifically authorized or provided for in appropriations Acts, no part of such sums shall be used to pay the cost or value of property injured or destroyed.

(2) The Secretary of Agriculture is authorized to prescribe and collect fees to recover the costs of providing for the inspection of plants and plant products offered for export or transiting the United States and certifying to shippers and interested parties as to the freedom of such plants and plant products from plant pests according to the phytosanitary requirements of the foreign countries to which such plants and plant products may be exported, or to the freedom from exposure to plant pests while in transit through the United States. Any person for whom such an activity is performed shall be liable for payment of fees assessed. Upon failure to pay such fees when due, the Secretary of Agriculture shall assess a late payment penalty, and such overdue fees shall accrue interest, as required by section 3717 of title 31. All fees, late payment penalties, and accrued interest collected shall be credited to such accounts that incur the costs and shall remain available until expended without fiscal year limitation. The Secretary of Agriculture shall have a lien for the fees, any late payment penalty, and any accrued interest assessed against the plant or plant product for which services have been provided. In the case of any person who fails to make payment when due, the Secretary of Agriculture shall also have a lien against any plant or plant product thereafter attempted to be exported by such person. The Secretary of Agriculture may, in case of nonpayment of the fees, late payment penalty, or accrued interest, after giving reasonable notice of default to the person liable for payment of such assessments, sell at public sale after reasonable public notice, or otherwise dispose of, any such plant or plant product upon which the Secretary of Agriculture has a lien pursuant to this section. If the sale proceeds exceed the fees due, any late payment penalty assessed, any accrued interest and the expenses of the sale, the excess shall be paid, in accordance with regulations of the Secretary of Agriculture, to the owner of the plant or plant product sold upon the owner making application therefore with proof of ownership, within six months after such sale, and otherwise the excess shall be credited to accounts that incur the costs and shall remain available until expended. The Secretary of Agriculture shall, pursuant to regulations as prescribed by the Secretary of Agriculture, suspend performance of services to persons who have failed to pay such fees, late payment penalty and accrued interest.

(Sept. 21, 1944, ch. 412, title I, §102, 58 Stat. 735; June 17, 1949, ch. 220, 63 Stat. 200; Pub. L. 85–36, title II, §201, May 23, 1957, 71 Stat. 35; Pub. L. 94–231, §1, Mar. 15, 1976, 90 Stat. 215; Pub. L. 101–624, title XXV, §§2504, 2509(b), Nov. 28, 1990, 104 Stat. 4068, 4070; Pub. L. 106–224, title IV, §438(a)(3), June 20, 2000, 114 Stat. 454.)

## CODIFICATION

Section was formerly classified to section 147a of this title.

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

## AMENDMENTS

**2000**—Subsecs. (a) to (e). Pub. L. 106–224 struck out subsecs. (a) to (e), which authorized measures for control and eradication of plant pests, set forth provisions relating to intergovernmental cooperation and

responsibility of cooperating foreign agencies, defined terms as used in this section, and authorized rules and regulations to provide for inspection and certification of plants and plant products offered for export or transiting the United States.

**1990**—Subsec. (b). Pub. L. 101–624, §2504, substituted "foreign countries" for "all countries of the Western Hemisphere" and inserted "foreign or" before "international".

Subsec. (f). Pub. L. 101–624, §2509(b), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "There are hereby authorized to be appropriated such sums as the Congress may annually determine to be necessary to enable the Secretary of Agriculture to carry out the provisions of this section. Unless otherwise specifically authorized, or provided for in appropriations, no part of such sums shall be used to pay the cost or value of property injured or destroyed."

**1976**—Subsecs. (a) to (d). Pub. L. 94–231 redesignated existing provisions of subsec. (a) as subsecs. (a) to (d) and broadened Secretary's authority to control and eradicate plant pests and animal diseases, extended Secretary's authority to cooperate with foreign governments, and inserted definitions for "plant pest" and "living stage". Former subsecs. (b) and (c) redesignated (e) and (f), respectively.

Subsec. (e). Pub. L. 94–231 redesignated subsec. (b) as (e) and made discretionary the Secretary's authority to provide phytosanitary inspection and certification service for domestic plants and plant products offered for export or transit in the United States.

Subsec. (f). Pub. L. 94–231 redesignated subsec. (c) as (f) and substituted provisions authorizing appropriations on a Congressional finding of necessity made "annually" for provisions authorizing appropriations on a Congressional finding of necessity made "from time to time".

**1957**—Subsec. (a). Pub. L. 85–36 inserted "insect pests, plant diseases, and nematodes, such as imported fire ant, soybean cyst nematode, witchweed, spotted alfalfa aphid," after "or to prevent or retard the spread of".

**1949**—Subsec. (a). Act June 17, 1949, authorized the Secretary to carry out operations to combat the citrus blackfly, white-fringed beetle, and the Hall scale.

## **§7760. State terminal inspection; transmission of mailed packages for State inspection; nonmailable matter; punishment for violations; rules and regulations by United States Postal Service**

When any State shall provide for terminal inspection of plants and plant products, and shall establish and maintain, at the sole expense of the State, such inspection at one or more places therein, the proper officials of said State may submit to the Secretary of Agriculture a list of plants and plant products and the plant pests transmitted thereby, that in the opinion of said officials should be subject to terminal inspection in order to prevent the introduction or dissemination in said State of pests injurious to agriculture. Upon his approval of said list, in whole or in part, the Secretary of Agriculture shall transmit the same to the United States Postal Service, and thereafter all packages containing any plants or plant products named in said approved lists shall, upon payment of postage therefor, be forwarded by the postmaster at the destination of said package to the proper State official at the nearest place where inspection is maintained. If the plants or plant products (including seed) are found upon inspection to be free from injurious pests and not in violation of a plant-quarantine law or plant-quarantine regulation of the United States Department of Agriculture or of the State of destination pertaining to such injurious pests, or if infected shall be disinfected by said official, they shall upon payment of postage therefor be returned to the postmaster at the place of inspection to be forward<sup>1</sup> to the person to whom they are addressed; but if found to be infected with injurious pests and incapable of satisfactory disinfection or in violation of a plant-quarantine law or plant-quarantine regulation of the United States Department of Agriculture or of the State of destination pertaining to such injurious pests, the State inspector shall so notify the postmaster at the place of inspection who shall promptly notify the sender of said plants or plant products that they will be returned to him upon his request and at his expense, or in default of such request that they will be turned over to the State authorities for destruction.

It shall be unlawful for any person, firm, or corporation to deposit in the United States mails any package containing any plant or plant product addressed to any place within a State maintaining inspection thereof, as herein defined, without plainly marking the package so that its contents may be readily ascertained by an inspection of the outside thereof. Whoever shall fail to so mark said packages shall be punished by a fine of not more than \$100.

The United States Postal Service is authorized and directed to make all needful rules and regulations for carrying out the purposes hereof.

(Mar. 4, 1915, ch. 144, 38 Stat. 1113; June 4, 1936, ch. 495, 49 Stat. 1461; Pub. L. 91–375, §4(a), Aug. 12, 1970, 84 Stat. 773.)

### **CODIFICATION**

Section was formerly classified to section 166 of this title.

Section was enacted as part of the Agricultural Appropriation Act, 1916, and not as part of the Plant Protection Act which comprises this chapter.

### AMENDMENTS

**1936**—Act June 4, 1936, amended last sentence of first par. by changing introductory word "plant" to "plants", inserting "(including seed)", "and not in violation of a plant-quarantine law or plant-quarantine regulation of the United States Department of Agriculture or of the State of destination pertaining to such injurious pests", "or in violation of a plant-quarantine law or plant-quarantine regulation of the United States Department of Agriculture or of the State of destination pertaining to such injurious pests," and striking out the comma after "place of inspection".

### SHORT TITLE

This section is popularly known as the "Terminal Inspection Act."

### TRANSFER OF FUNCTIONS

In first and third pars., "United States Postal Service" substituted for "Postmaster General" pursuant to Pub. L. 91-375, §4(a), Aug. 12, 1970, 84 Stat. 773, set out as a note under section 201 of Title 39, Postal Service, which abolished office of Postmaster General of Post Office Department and transferred its functions to United States Postal Service.

Functions of all officers, agencies, and employees of Department of Agriculture transferred, with certain exceptions, to Secretary of Agriculture by 1953 Reorg. Plan No. 2, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out as a note under section 2201 of this title.

<sup>1</sup> *So in original.*

### **§7761. Repealed. Pub. L. 113-79, title X, §10007(c), Feb. 7, 2014, 128 Stat. 947**

Section, Pub. L. 110-234, title X, §10202, May 22, 2008, 122 Stat. 1342; Pub. L. 110-246, §4(a), title X, §10202, June 18, 2008, 122 Stat. 1664, 2104; Pub. L. 112-240, title VII, §701(g)(2), Jan. 2, 2013, 126 Stat. 2366, related to the National Clean Plant Network. See section 7721(e) of this title.

## SUBCHAPTER IV—AUTHORIZATION OF APPROPRIATIONS

### **§7771. Authorization of appropriations**

There are authorized to be appropriated such amounts as may be necessary to carry out this chapter. Except as specifically authorized by law, no part of the money appropriated under this section shall be used to pay indemnities for property injured or destroyed by or at the direction of the Secretary.

(Pub. L. 106-224, title IV, §441, June 20, 2000, 114 Stat. 455.)

### REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title IV of Pub. L. 106-224, June 20, 2000, 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and 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.

### **§7772. Transfer authority**

**(a) Authority to transfer certain funds**

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

**(b) Availability**

Any funds transferred under this section shall remain available for such purposes without fiscal year limitation.

**(c) Secretarial discretion**

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

(Pub. L. 106–224, title IV, §442, June 20, 2000, 114 Stat. 455; Pub. L. 107–171, title VII, §7504(b), May 13, 2002, 116 Stat. 466; Pub. L. 110–234, title X, §10203(b), May 22, 2008, 122 Stat. 1342; Pub. L. 110–246, §4(a), title X, §10203(b), June 18, 2008, 122 Stat. 1664, 2104.)

**REFERENCES IN TEXT**

This Act, referred to in subsec. (c), is Pub. L. 106–224, June 20, 2000, 114 Stat. 358, known as the Agricultural Risk Protection Act of 2000. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1501 of this title and Tables.

This chapter, referred to in subsec. (c), was in the original "this title", meaning title IV of Pub. L. 106–224, June 20, 2000, 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and Tables.

**CODIFICATION**

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Similar provisions relating to authority to transfer funds for emergency arrest of animal, poultry, or plant diseases or pests were contained in section 129 of Title 21, Food and Drugs, prior to its omission from the Code, and similar provisions relating to authority to transfer funds for emergency arrest of animal or poultry diseases were contained in section 129a of Title 21, prior to repeal by Pub. L. 107–171, title X, §10418(a)(1), May 13, 2002, 116 Stat. 507.

**AMENDMENTS**

**2008**—Subsec. (c). Pub. L. 110–246, §10203(b), struck out "of longer than 60 days" after "review".

**2002**—Subsec. (c). Pub. L. 107–171 added subsec. (c).

**EFFECTIVE DATE OF 2008 AMENDMENT**

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

**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.

**SUBCHAPTER V—NOXIOUS WEED CONTROL AND ERADICATION****§7781. Definitions**

In this subchapter:

**(1) Indian tribe**

The term "Indian Tribe" has the meaning given that term in section 5304 of title 25.

## **(2) Weed management entity**

The term "weed management entity" means an entity that—

- (A) is recognized by the State in which it is established;
- (B) is established for the purpose of or has demonstrable expertise and significant experience in controlling or eradicating noxious weeds and increasing public knowledge and education concerning the need to control or eradicate noxious weeds;
- (C) may be multijurisdictional and multidisciplinary in nature;
- (D) may include representatives from Federal, State, local, or, where applicable, Indian Tribe governments, private organizations, individuals, and State-recognized conservation districts or State-recognized weed management districts; and
- (E) has existing authority to perform land management activities on Federal land if the proposed project or activity is on Federal lands.

## **(3) Federal lands**

The term "Federal lands" means those lands owned and managed by the United States Forest Service or the Bureau of Land Management.

(Pub. L. 106–224, title IV, §452, as added Pub. L. 108–412, §1, Oct. 30, 2004, 118 Stat. 2320.)

## **SHORT TITLE**

For short title of this subchapter as the "Noxious Weed Control and Eradication Act of 2004", see section 451 of Pub. L. 106–224, set out as a note under section 7701 of this title.

## **SALT CEDAR AND RUSSIAN OLIVE CONTROL**

Pub. L. 109–320, Oct. 11, 2006, 120 Stat. 1748, provided that:

### **"SECTION 1. SHORT TITLE.**

"This Act may be cited as the 'Salt Cedar and Russian Olive Control Demonstration Act'.

### **"SEC. 2. SALT CEDAR AND RUSSIAN OLIVE CONTROL DEMONSTRATION PROGRAM.**

"(a) ESTABLISHMENT.—The Secretary of the Interior (referred to in this Act as the 'Secretary'), acting through the Commissioner of Reclamation and the Director of the United States Geological Survey and in cooperation with the Secretary of Agriculture and the Secretary of Defense, shall carry out a salt cedar (*Tamarix* spp) and Russian olive (*Elaeagnus angustifolia*) assessment and demonstration program—

"(1) to assess the extent of the infestation by salt cedar and Russian olive trees in the western United States;

"(2) to demonstrate strategic solutions for—

"(A) the long-term management of salt cedar and Russian olive trees; and

"(B) the reestablishment of native vegetation; and

"(3) to assess economic means to dispose of biomass created as a result of removal of salt cedar and Russian olive trees.

"(b) MEMORANDUM OF UNDERSTANDING.—As soon as practicable after the date of enactment of this Act [Oct. 11, 2006], the Secretary and the Secretary of Agriculture shall enter into a memorandum of understanding providing for the administration of the program established under subsection (a).

"(c) ASSESSMENT.—

"(1) IN GENERAL.—Not later than 1 year after the date on which funds are made available to carry out this Act, the Secretary shall complete an assessment of the extent of salt cedar and Russian olive infestation on public and private land in the western United States.

"(2) REQUIREMENTS.—In addition to describing the acreage of and severity of infestation by salt cedar and Russian olive trees in the western United States, the assessment shall—

"(A) consider existing research on methods to control salt cedar and Russian olive trees;

"(B) consider the feasibility of reducing water consumption by salt cedar and Russian olive trees;

"(C) consider methods of and challenges associated with the revegetation or restoration of infested land; and

"(D) estimate the costs of destruction of salt cedar and Russian olive trees, related biomass removal, and revegetation or restoration and maintenance of the infested land.

"(3) REPORT.—

"(A) IN GENERAL.—The Secretary shall submit to the Committee on Energy and Natural Resources and the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Resources [now Committee on Natural Resources] and the Committee on Agriculture

of the House of Representatives a report that includes the results of the assessment conducted under paragraph (1).

"(B) CONTENTS.—The report submitted under subparagraph (A) shall identify—

"(i) long-term management and funding strategies identified under subsection (d) that could be implemented by Federal, State, tribal, and private land managers and owners to address the infestation by salt cedar and Russian olive;

"(ii) any deficiencies in the assessment or areas for additional study; and

"(iii) any field demonstrations that would be useful in the effort to control salt cedar and Russian olive.

"(d) LONG-TERM MANAGEMENT STRATEGIES.—

"(1) IN GENERAL.—The Secretary shall identify and document long-term management and funding strategies that—

"(A) could be implemented by Federal, State, tribal, and private land managers in addressing infestation by salt cedar and Russian olive trees; and

"(B) should be tested as components of demonstration projects under subsection (e).

"(2) GRANTS.—

"(A) IN GENERAL.—The Secretary may provide grants to eligible entities to provide technical experience, support, and recommendations relating to the identification and documentation of long-term management and funding strategies under paragraph (1).

"(B) ELIGIBLE ENTITIES.—Institutions of higher education and nonprofit organizations with an established background and expertise in the public policy issues associated with the control of salt cedar and Russian olive trees shall be eligible for a grant under subparagraph (A).

"(C) MINIMUM AMOUNT.—The amount of a grant provided under subparagraph (A) shall be not less than \$250,000.

"(e) DEMONSTRATION PROJECTS.—

"(1) IN GENERAL.—Not later than 180 days after the date on which funds are made available to carry out this Act, the Secretary shall establish a program that selects and funds not less than 5 projects proposed by and implemented in collaboration with Federal agencies, units of State and local government, national laboratories, Indian tribes, institutions of higher education, individuals, organizations, or soil and water conservation districts to demonstrate and evaluate the most effective methods of controlling salt cedar and Russian olive trees.

"(2) PROJECT REQUIREMENTS.—The demonstration projects under paragraph (1) shall—

"(A) be carried out over a time period and to a scale designed to fully assess long-term management strategies;

"(B) implement salt cedar or Russian olive tree control using 1 or more methods for each project in order to assess the full range of control methods, including—

"(i) airborne application of herbicides;

"(ii) mechanical removal; and

"(iii) biocontrol methods, such as the use of goats or insects;

"(C) individually or in conjunction with other demonstration projects, assess the effects of and obstacles to combining multiple control methods and determine optimal combinations of control methods;

"(D) assess soil conditions resulting from salt cedar and Russian olive tree infestation and means to revitalize soils;

"(E) define and implement appropriate final vegetative states and optimal revegetation methods, with preference for self-maintaining vegetative states and native vegetation, and taking into consideration downstream impacts, wildfire potential, and water savings;

"(F) identify methods for preventing the regrowth and reintroduction of salt cedar and Russian olive trees;

"(G) monitor and document any water savings from the control of salt cedar and Russian olive trees, including impacts to both groundwater and surface water;

"(H) assess wildfire activity and management strategies;

"(I) assess changes in wildlife habitat;

"(J) determine conditions under which removal of biomass is appropriate (including optimal methods for the disposal or use of biomass); and

"(K) assess economic and other impacts associated with control methods and the restoration and maintenance of land.

"(f) DISPOSITION OF BIOMASS.—

"(1) IN GENERAL.—Not later than 1 year after the date on which funds are made available to carry out this Act, the Secretary, in cooperation with the Secretary of Agriculture, shall complete an analysis

of economic means to use or dispose of biomass created as a result of removal of salt cedar and Russian olive trees.

"(2) REQUIREMENTS.—The analysis shall—

"(A) determine conditions under which removal of biomass is economically viable;

"(B) consider and build upon existing research by the Department of Agriculture and other agencies on beneficial uses of salt cedar and Russian olive tree fiber; and

"(C) consider economic development opportunities, including manufacture of wood products using biomass resulting from demonstration projects under subsection (e) as a means of defraying costs of control.

"(g) COSTS.—

"(1) IN GENERAL.—With respect to projects and activities carried out under this Act—

"(A) the assessment under subsection (c) shall be carried out at a cost of not more than \$4,000,000;

"(B) the identification and documentation of long-term management strategies under subsection (d)(1) and the provision of grants under subsection (d)(2) shall be carried out at a cost of not more than \$2,000,000;

"(C) each demonstration project under subsection (e) shall be carried out at a Federal cost of not more than \$7,000,000 (including costs of planning, design, implementation, maintenance, and monitoring); and

"(D) the analysis under subsection (f) shall be carried out at a cost of not more than \$3,000,000.

"(2) COST-SHARING.—

"(A) IN GENERAL.—The assessment under subsection (c), the identification and documentation of long-term management strategies under subsection (d), a demonstration project or portion of a demonstration project under subsection (e) that is carried out on Federal land, and the analysis under subsection (f) shall be carried out at full Federal expense.

"(B) DEMONSTRATION PROJECTS CARRIED OUT ON NON-FEDERAL LAND.—

"(i) IN GENERAL.—The Federal share of the costs of any demonstration project funded under subsection (e) that is not carried out on Federal land shall not exceed 75 percent.

"(ii) FORM OF NON-FEDERAL SHARE.—The non-Federal share of the costs of a demonstration project that is not carried out on Federal land may be provided in the form of in-kind contributions, including services provided by a State agency or any other public or private partner.

"(h) COOPERATION.—In carrying out the assessment under subsection (c), the demonstration projects under subsection (e), and the analysis under subsection (f), the Secretary shall cooperate with and use the expertise of Federal agencies and the other entities specified in subsection (e)(1) that are actively conducting research on or implementing salt cedar and Russian olive tree control activities.

"(i) INDEPENDENT REVIEW.—The Secretary shall subject to independent review—

"(1) the assessment under subsection (c);

"(2) the identification and documentation of long-term management strategies under subsection (d);

"(3) the demonstration projects under subsection (e); and

"(4) the analysis under subsection (f).

"(j) REPORTING.—

"(1) IN GENERAL.—The Secretary shall submit to Congress an annual report that describes the results of carrying out this Act, including a synopsis of any independent review under subsection (i) [sic] and details of the manner and purposes for which funds are expended.

"(2) PUBLIC ACCESS.—The Secretary shall facilitate public access to all information that results from carrying out this Act.

"(k) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated to carry out this Act—

"(A) \$20,000,000 for fiscal year 2006; and

"(B) \$15,000,000 for each of fiscal years 2007 through 2010.

"(2) ADMINISTRATIVE COSTS.—Not more than 15 percent of amounts made available under paragraph (1) shall be used to pay the administrative costs of carrying out the program established under subsection (a).

"(l) TERMINATION OF AUTHORITY.—This Act and the authority provided by this Act terminate on the date that is 5 years after the date of the enactment of this Act [Oct. 11, 2006]."

## §7782. Establishment of program

**(a) In general**

The Secretary shall establish a program to provide financial and technical assistance to control or eradicate noxious weeds.

**(b) Grants**

Subject to the availability of appropriations under section 7786(a) of this title, the Secretary shall make grants under section 7783 of this title to weed management entities for the control or eradication of noxious weeds.

**(c) Agreements**

Subject to the availability of appropriations under section 7786(b) of this title, the Secretary shall enter into agreements under section 7784 of this title with weed management entities to provide financial and technical assistance for the control or eradication of noxious weeds.

(Pub. L. 106–224, title IV, §453, as added Pub. L. 108–412, §1, Oct. 30, 2004, 118 Stat. 2321.)

**§7783. Grants to weed management entities****(a) Consultation and consent**

In carrying out a grant under this subchapter, the weed management entity and the Secretary shall—

- (1) if the activities funded under the grant will take place on Federal land, consult with the heads of the Federal agencies having jurisdiction over the land; or
- (2) obtain the written consent of the non-Federal landowner.

**(b) Grant considerations**

In determining the amount of a grant to a weed management entity, the Secretary shall consider—

- (1) the severity or potential severity of the noxious weed problem;
- (2) the extent to which the Federal funds will be used to leverage non-Federal funds to address the noxious weed problem;
- (3) the extent to which the weed management entity has made progress in addressing the noxious weeds problem; and
- (4) other factors that the Secretary determines to be relevant.

**(c) Use of grant funds; cost shares****(1) Use of grants**

A weed management entity that receives a grant under subsection (a) shall use the grant funds to carry out a project authorized by subsection (d) for the control or eradication of a noxious weed.

**(2) Cost shares****(A) Federal cost share**

The Federal share of the cost of carrying out an authorized project under this section exclusively on non-Federal land shall not exceed 50 percent.

**(B) Form of non-Federal cost share**

The non-Federal share of the cost of carrying out an authorized project under this section may be provided in cash or in kind.

**(d) Authorized projects**

Projects funded by grants under this section include the following:

- (1) Education, inventories and mapping, management, monitoring, methods development, and other capacity building activities, including the payment of the cost of personnel and equipment that promote control or eradication of noxious weeds.
- (2) Other activities to control or eradicate noxious weeds or promote control or eradication of noxious weeds.

**(e) Application**

To be eligible to receive assistance under this section, a weed management entity shall prepare and submit to the Secretary an application containing such information as the Secretary shall by regulation require.

**(f) Selection of projects**

Projects funded under this section shall be selected by the Secretary on a competitive basis, taking into consideration the following:

- (1) The severity of the noxious weed problem or potential problem addressed by the project.
- (2) The likelihood that the project will prevent or resolve the problem, or increase knowledge about resolving similar problems.
- (3) The extent to which the Federal funds will leverage non-Federal funds to address the noxious weed problem addressed by the project.

(4) The extent to which the program will improve the overall capacity of the United States to address noxious weed control and management.

(5) The extent to which the weed management entity has made progress in addressing noxious weed problems.

(6) The extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds.

(7) The extent to which the project will reduce the total population of noxious weeds.

(8) The extent to which the project promotes cooperation and participation between States that have common interests in controlling and eradicating noxious weeds.

(9) Other factors that the Secretary determines to be relevant.

**(g) Regional, State, and local involvement**

In determining which projects receive funding under this section, the Secretary shall, to the maximum extent practicable—

(1) rely on technical and merit reviews provided by regional, State, or local weed management experts; and

(2) give priority to projects that maximize the involvement of State, local and, where applicable, Indian Tribe governments.

**(h) Special consideration**

The Secretary shall give special consideration to States with approved weed management entities established by Indian Tribes and may provide an additional allocation to a State to meet the particular needs and projects that the weed management entity plans to address.

(Pub. L. 106–224, title IV, §454, as added Pub. L. 108–412, §1, Oct. 30, 2004, 118 Stat. 2321.)

## §7784. Agreements

**(a) Consultation and consent**

In carrying out an agreement under this section, the Secretary shall—

(1) if the activities funded under the agreement will take place on Federal land, consult with the heads of the Federal agencies having jurisdiction over the land; or

(2) obtain the written consent of the non-Federal landowner.

**(b) Application of other laws**

The Secretary may enter into agreements under this section with weed management entities notwithstanding sections 6301 through 6309 of title 31 and other laws relating to the procurement of goods and services for the Federal Government.

**(c) Eligible activities**

Activities carried out under an agreement under this section may include the following:

(1) Education, inventories and mapping, management, monitoring, methods development, and other capacity building activities, including the payment of the cost of personnel and equipment that promote control or eradication of noxious weeds.

(2) Other activities to control or eradicate noxious weeds.

**(d) Selection of activities**

Activities funded under this section shall be selected by the Secretary taking into consideration the following:

(1) The severity of the noxious weeds problem or potential problem addressed by the activities.

(2) The likelihood that the activity will prevent or resolve the problem, or increase knowledge about resolving similar problems.

(3) The extent to which the activity will provide a comprehensive approach to the control or eradication of noxious weeds.

(4) The extent to which the program will improve the overall capacity of the United States to address noxious weed control and management.

(5) The extent to which the project promotes cooperation and participation between States that have common interests in controlling and eradicating noxious weeds.

(6) Other factors that the Secretary determines to be relevant.

**(e) Regional, State, and local involvement**

In determining which activities receive funding under this section, the Secretary shall, to the maximum extent practicable—

(1) rely on technical and merit reviews provided by regional, State, or local weed management experts; and

(2) give priority to activities that maximize the involvement of State, local, and, where applicable, representatives of Indian Tribe governments.

**(f) Rapid response program**

At the request of the Governor of a State, the Secretary may enter into a cooperative agreement with a weed management entity in that State to enable rapid response to outbreaks of noxious weeds at a stage which rapid eradication and control is possible and to ensure eradication or immediate control of the noxious weeds if—

- (1) there is a demonstrated need for the assistance;
- (2) the noxious weed is considered to be a significant threat to native fish, wildlife, or their habitats, as determined by the Secretary;
- (3) the economic impact of delaying action is considered by the Secretary to be substantial; and
- (4) the proposed response to such threat—
  - (A) is technically feasible;
  - (B) economically responsible; and
  - (C) minimizes adverse impacts to the structure and function of an ecosystem and adverse effects on nontarget species and ecosystems.

(Pub. L. 106–224, title IV, §455, as added Pub. L. 108–412, §1, Oct. 30, 2004, 118 Stat. 2322.)

## **§7785. Relationship to other programs**

Funds under this Act (other than those made available for section 7784(f) of this title) are intended to supplement, not replace, assistance available to weed management entities, areas, and districts for control or eradication of noxious weeds on Federal lands and non-Federal lands. The provision of funds to a weed management entity under this Act (other than those made available for section 7784(f) of this title) shall have no effect on the amount of any payment received by a county from the Federal Government under chapter 69 of title 31.

(Pub. L. 106–224, title IV, §456, as added Pub. L. 108–412, §1, Oct. 30, 2004, 118 Stat. 2324.)

### **REFERENCES IN TEXT**

This Act, referred to in text, probably means the Noxious Weed Control and Eradication Act of 2004, subtitle E (§§451–457) of title IV of Pub. L. 106–224, as added by Pub. L. 108–412, §1, Oct. 30, 2004, 118 Stat. 2320, which enacted this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

## **§7786. Authorization of appropriations**

### **(a) Grants**

To carry out section 7783 of this title, there are authorized to be appropriated to the Secretary \$7,500,000 for each of fiscal years 2005 through 2009, of which not more than 5 percent of the funds made available for a fiscal year may be used by the Secretary for administrative costs.

### **(b) Agreements**

To carry out section 7784 of this title, there are authorized to be appropriated to the Secretary \$7,500,000 for each of fiscal years 2005 through 2009, of which not more than 5 percent of the funds made available for a fiscal year may be used by the Secretary for administrative costs of Federal agencies.

(Pub. L. 106–224, title IV, §457, as added Pub. L. 108–412, §1, Oct. 30, 2004, 118 Stat. 2324.)