

(G)(i) is an alien (other than an alien lawfully admitted for permanent residence) who is a national of a country as to which the Secretary of State, pursuant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of chapter 1 of part M of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 40(d) of chapter 3 of the Arms Export Control Act (22 U.S.C. 2780(d)), has made a determination (that remains in effect) that such country has repeatedly provided support for acts of international terrorism, or (ii) acts for or on behalf of, or operates subject to the direction or control of, a government or official of a country described in this subparagraph;

(H) has been discharged from the Armed Services of the United States under dishonorable conditions; or

(I) is a member of, acts for or on behalf of, or operates subject to the direction or control of, a terrorist organization as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)).

(3) The term “alien” has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).

(4) The term “lawfully admitted for permanent residence” has the same meaning as in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

(Added Pub. L. 107–56, title VIII, §817(2), Oct. 26, 2001, 115 Stat. 385; amended Pub. L. 107–188, title II, §231(a), (b)(1), (c)(2), June 12, 2002, 116 Stat. 660, 661; Pub. L. 107–273, div. B, title IV, §4005(g), Nov. 2, 2002, 116 Stat. 1813; Pub. L. 108–458, title VI, §6802(c), (d)(1), Dec. 17, 2004, 118 Stat. 3767.)

REFERENCES IN TEXT

Section 351A of the Public Health Service Act, referred to in subsecs. (a)(1), (b)(1), and (c)(1), is classified to section 262a of Title 42, The Public Health and Welfare.

Section 212 of the Agricultural Bioterrorism Protection Act of 2002, referred to in subsecs. (b)(2) and (c)(2), is classified to section 8401 of Title 7, Agriculture.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–458, §6802(d)(1), substituted “as a non-overlap or overlap select biological agent or toxin in sections 73.4 and 73.5 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act, and is not excluded under sections 73.4 and 73.5 or exempted under section 73.6 of title 42, Code of Federal Regulations” for “as a select agent in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act, and is not exempted under subsection (h) of section 72.6, or Appendix A of part 72, of title 42, Code of Federal Regulations”.

Subsec. (d)(2)(G). Pub. L. 108–458, §6802(c)(1), designated existing provisions as cl. (i), added cl. (ii), and struck out “or” at end.

Subsec. (d)(2)(H). Pub. L. 108–458, §6802(c)(2), substituted “; or” for period at end.

Subsec. (d)(2)(I). Pub. L. 108–458, §6802(c)(3), added subpar. (I).

2002—Pub. L. 107–273 substituted “Possession by restricted persons” for “Select agents; certain other agents” in section catchline.

Pub. L. 107–188, §231(b)(1)(B), substituted “Select agents; certain other agents” for “Possession by restricted persons” in section catchline.

Subsec. (a)(1). Pub. L. 107–188, §231(a)(1), (c)(2)(A), designated existing provisions of subsec. (a) as par. (1) and substituted “shall ship or transport in or affecting interstate or foreign commerce, or possess in or affecting interstate or foreign commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a select agent in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act, and is not exempted under subsection (h) of section 72.6, or Appendix A of part 72, of title 42, Code of Federal Regulations” for “described in subsection (b) shall ship or transport interstate or foreign commerce, or possess in or affecting commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a select agent in subsection (j) of section 72.6 of title 42, Code of Federal Regulations, pursuant to section 511(d)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132), and is not exempted under subsection (h) of such section 72.6, or appendix A of part 72 of the Code of Regulations”.

Subsec. (a)(2). Pub. L. 107–188, §231(a)(2), (3), redesignated and transferred subsec. (c) as par. (2) of subsec. (a).

Subsec. (b). Pub. L. 107–188, §231(a)(5), added subsec. (b). Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 107–188, §231(a)(5), added subsec. (c). Former subsec. (c) redesignated (a)(2).

Subsec. (d). Pub. L. 107–188, §231(a)(4), redesignated subsec. (b) as (d).

Subsec. (d)(1). Pub. L. 107–188, §231(b)(1)(A), substituted “The term ‘select agent’ means a biological agent or toxin to which subsection (a) applies. Such term (including for purposes of subsection (a)) does not include” for “The term ‘select agent’ does not include”.

Subsec. (d)(3). Pub. L. 107–188, §231(c)(2)(B), substituted “section 101(a)(3)” for “section 1010(a)(3)”.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–458, title VI, §6802(d)(2), Dec. 17, 2004, 118 Stat. 3767, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect at the same time that sections 73.4, 73.5, and 73.6 of title 42, Code of Federal Regulations, become effective [probably means the effective date of the final rule revising sections 73.4, 73.5, and 73.6 of title 42, C.F.R., which was Apr. 18, 2005, see 70 F.R. 13294].”

§ 175c. Variola virus

(a) UNLAWFUL CONDUCT.—

(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to knowingly produce, engineer, synthesize, acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use, variola virus.

(2) EXCEPTION.—This subsection does not apply to conduct by, or under the authority of, the Secretary of Health and Human Services.

(b) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

(1) the offense occurs in or affects interstate or foreign commerce;

(2) the offense occurs outside of the United States and is committed by a national of the United States;

(3) the offense is committed against a national of the United States while the national is outside the United States;

(4) the offense is committed against any property that is owned, leased, or used by the

United States or by any department or agency of the United States, whether the property is within or outside the United States; or

(5) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

(c) CRIMINAL PENALTIES.—

(1) IN GENERAL.—Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than \$2,000,000 and shall be sentenced to a term of imprisonment not less than 25 years or to imprisonment for life.

(2) OTHER CIRCUMSTANCES.—Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than \$2,000,000 and imprisoned for not less than 30 years or imprisoned for life.

(3) SPECIAL CIRCUMSTANCES.—If the death of another results from a person's violation of subsection (a), the person shall be fined not more than \$2,000,000 and punished by imprisonment for life.

(d) DEFINITION.—As used in this section, the term "variola virus" means a virus that can cause human smallpox or any derivative of the variola major virus that contains more than 85 percent of the gene sequence of the variola major virus or the variola minor virus.

(Added Pub. L. 108-458, title VI, § 6906, Dec. 17, 2004, 118 Stat. 3773.)

FINDINGS AND PURPOSE

Pub. L. 108-458, title VI, § 6902, Dec. 17, 2004, 118 Stat. 3769, provided that:

"(a) FINDINGS.—Congress makes the following findings:

"(1) The criminal use of man-portable air defense systems (referred to in this section as 'MANPADS') presents a serious threat to civil aviation worldwide, especially in the hands of terrorists or foreign states that harbor them.

"(2) Atomic weapons or weapons designed to release radiation (commonly known as 'dirty bombs') could be used by terrorists to inflict enormous loss of life and damage to property and the environment.

"(3) Variola virus is the causative agent of smallpox, an extremely serious, contagious, and sometimes fatal disease. Variola virus is classified as a Category A agent by the Centers for Disease Control and Prevention, meaning that it is believed to pose the greatest potential threat for adverse public health impact and has a moderate to high potential for large-scale dissemination. The last case of smallpox in the United States was in 1949. The last naturally occurring case in the world was in Somalia in 1977. Although smallpox has been officially eradicated after a successful worldwide vaccination program, there remain two official repositories of the variola virus for research purposes. Because it is so dangerous, the variola virus may appeal to terrorists.

"(4) The use, or even the threatened use, of MANPADS, atomic or radiological weapons, or the variola virus, against the United States, its allies, or its people, poses a grave risk to the security, foreign policy, economy, and environment of the United States. Accordingly, the United States has a compelling national security interest in preventing unlawful activities that lead to the proliferation or spread of

such items, including their unauthorized production, construction, acquisition, transfer, possession, import, or export. All of these activities markedly increase the chances that such items will be obtained by terrorist organizations or rogue states, which could use them to attack the United States, its allies, or United States nationals or corporations.

"(5) There is no legitimate reason for a private individual or company, absent explicit government authorization, to produce, construct, otherwise acquire, transfer, receive, possess, import, export, or use MANPADS, atomic or radiological weapons, or the variola virus.

"(b) PURPOSE.—The purpose of this subtitle [subtitle J (§§ 6901-6911) of title VI of Pub. L. 108-458, see Short Title of 2004 Amendment note set out under section 1 of this title] is to combat the potential use of weapons that have the ability to cause widespread harm to United States persons and the United States economy (and that have no legitimate private use) and to threaten or harm the national security or foreign relations of the United States."

§ 176. Seizure, forfeiture, and destruction

(a) IN GENERAL.—(1) Except as provided in paragraph (2), the Attorney General may request the issuance, in the same manner as provided for a search warrant, of a warrant authorizing the seizure of any biological agent, toxin, or delivery system that—

(A) pertains to conduct prohibited under section 175 of this title; or

(B) is of a type or in a quantity that under the circumstances has no apparent justification for prophylactic, protective, or other peaceful purposes.

(2) In exigent circumstances, seizure and destruction of any biological agent, toxin, or delivery system described in subparagraphs (A) and (B) of paragraph (1) may be made upon probable cause without the necessity for a warrant.

(b) PROCEDURE.—Property seized pursuant to subsection (a) shall be forfeited to the United States after notice to potential claimants and an opportunity for a hearing. At such hearing, the Government shall bear the burden of persuasion by a preponderance of the evidence. Except as inconsistent herewith, the same procedures and provisions of law relating to a forfeiture under the customs laws shall extend to a seizure or forfeiture under this section. The Attorney General may provide for the destruction or other appropriate disposition of any biological agent, toxin, or delivery system seized and forfeited pursuant to this section.

(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense against a forfeiture under subsection (a)(1)(B) of this section that—

(1) such biological agent, toxin, or delivery system is for a prophylactic, protective, or other peaceful purpose; and

(2) such biological agent, toxin, or delivery system, is of a type and quantity reasonable for that purpose.

(Added Pub. L. 101-298, § 3(a), May 22, 1990, 104 Stat. 202; amended Pub. L. 103-322, title XXXIII, § 330010(16), Sept. 13, 1994, 108 Stat. 2144; Pub. L. 107-188, title II, § 231(c)(3), June 12, 2002, 116 Stat. 661.)

AMENDMENTS

2002—Subsec. (a)(1)(A). Pub. L. 107-188 substituted "pertains to" for "exists by reason of".