

**§ 136a. Collection of fees for inspection services**

**(a) Quarantine and inspection fees**

**(1) Fees authorized**

The Secretary of Agriculture may prescribe and collect fees sufficient—

(A) to cover the cost of providing agricultural quarantine and inspection services in connection with the arrival at a port in the customs territory of the United States, or the preclearance or preinspection at a site outside the customs territory of the United States, of an international passenger, commercial vessel, commercial aircraft, commercial truck, or railroad car;

(B) to cover the cost of administering this subsection; and

(C) through fiscal year 2002, to maintain a reasonable balance in the Agricultural Quarantine Inspection User Fee Account established under paragraph (5).

**(2) Limitation**

In setting the fees under paragraph (1), the Secretary shall ensure that the amount of the fees is commensurate with the costs of agricultural quarantine and inspection services with respect to the class of persons or entities paying the fees. The costs of the services with respect to passengers as a class includes the costs of related inspections of the aircraft or other vehicle.

**(3) Status of fees**

Fees collected under this subsection by any person on behalf of the Secretary are held in trust for the United States and shall be remitted to the Secretary in such manner and at such times as the Secretary may prescribe.

**(4) Late payment penalties**

If a person subject to a fee under this subsection fails to pay the fee when due, the Secretary shall assess a late payment penalty, and the overdue fees shall accrue interest, as required by section 3717 of title 31.

**(5) Agricultural quarantine inspection user fee account**

**(A) Establishment**

There is established in the Treasury of the United States a fund, to be known as the "Agricultural Quarantine Inspection User Fee Account", which shall contain all of the fees collected under this subsection and late payment penalties and interest charges collected under paragraph (4) through fiscal year 2002.

**(B) Use of account**

For each of fiscal years 1996 through 2002, funds in the Agricultural Quarantine Inspection User Fee Account shall be available, in such amounts as are provided in advance in appropriations Acts, to cover the costs associated with the provision of agricultural quarantine and inspection services and the administration of this subsection. Amounts made available under this subparagraph shall be available until expended.

**(C) Excess fees**

Fees and other amounts collected under this subsection in any of fiscal years 1996

through 2002 in excess of \$100,000,000 shall be available for the purposes specified in subparagraph (B) until expended, without further appropriation.

**(6) Use of amounts collected after fiscal year 2002**

After September 30, 2002, the unobligated balance in the Agricultural Quarantine Inspection User Fee Account and fees and other amounts collected under this subsection shall be credited to the Department of Agriculture accounts that incur the costs associated with the provision of agricultural quarantine and inspection services and the administration of this subsection. The fees and other amounts shall remain available to the Secretary until expended without fiscal year limitation.

**(7) Staff years**

The number of full-time equivalent positions in the Department of Agriculture attributable to the provision of agricultural quarantine and inspection services and the administration of this subsection shall not be counted toward the limitation on the total number of full-time equivalent positions in all agencies specified in section 5(b) of the Federal Workforce Restructuring Act of 1994 (Public Law 103-226; 5 U.S.C. 3101 note) or other limitation on the total number of full-time equivalent positions.

**(b) Omitted**

**(c) Animal inspection and veterinary diagnostics**

**(1) Animal inspection**

The Secretary may prescribe and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal Animal Quarantine Laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance.

**(2) Veterinary diagnostics**

The Secretary may prescribe and collect fees to recover the costs of carrying out the provisions of the Animal Health Protection Act [7 U.S.C. 8301 et seq.] that relate to veterinary diagnostics.

**(3) Fees**

All fees collected pursuant to this subsection and any late payment penalties or accrued interest collected pursuant to this subsection shall be credited to the accounts that incur the cost and shall remain available until expended without fiscal year limitation.

**(4) Liability**

Any person for whom an activity related to the importation, entry, or exportation of an animal, article, or means of conveyance or relating to veterinary diagnostics, is performed pursuant to the section, shall be liable for payment of fees assessed. Upon failure to pay such fees when due, the Secretary 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.

**(5) Leins<sup>1</sup>****(A) In general**

The Secretary shall have a lien against the animal, article, means of conveyance, or facility for which services have been provided under this section for the fees, any late payment penalty, and any accrued interest assessed under this subsection.

**(B) Other animals, etc.**

In the case of any person who fails to make payment when due under this subsection, the Secretary shall have a lien against any animal, article, or means of conveyance thereafter imported, moved in interstate commerce, or attempted to be exported by the person after the date of such failure until the date on which such owner or operator make<sup>2</sup> full payment to the Secretary under this subsection.

**(C) Sales of animals, etc.****(i) Authority**

The Secretary may, if a person does not pay fees, late payment penalties, or accrued interest on such, after providing reasonable notice of default to such person, sell at public sale after reasonable public notice, or otherwise dispose of, any such animal, article, means of conveyance or facility on which the Secretary has a lien under this paragraph.

**(ii) Excess proceeds**

If the sale proceeds under clause (i) exceed the fees due, any late payment penalty assessed, any accrued interest on such, and the expenses associated with the sale, such excess shall be paid to the owner of the animal, article, means of conveyance, or facility if such owner submits an application for such excess together with proof of ownership not later than 6 months after the date of such sale. If no such application is made, such excess shall be credited to accounts that incur the costs associated with the fees collected and shall remain available until expended, without fiscal year limitation. The Secretary shall suspend performance of services to persons who have failed to pay fees, late payment penalty, or accrued interest under this section.

**(d) Regulations**

The Secretary may prescribe such regulations as the Secretary determines necessary to carry out the provisions of this section.

**(e) Recovery of amounts owed**

An action may be brought for the recovery of fees, late payment penalties, and accrued interest which have not been paid in accordance with this section against any person obligated for payment of such assessments under this section in any United States district court or other United States court for any territory or possession in any jurisdiction in which such person is found or resides or transacts business, and such

court shall have jurisdiction to hear and decide such action.

**(f) Definitions****(1) Animal quarantine laws**

For purposes of this section, the term “animal quarantine laws” means—

(A) section 306 of the Tariff Act of 1930<sup>3</sup> (19 U.S.C. 1306);

(B) section 9 of the Act of August 30, 1890 (21 U.S.C. 101);

(C) the Animal Health Protection Act [7 U.S.C. 8301 et seq.]; or

(D) any other Act administered by the Secretary relating to plant or animal diseases or pests.

**(2) Customs territory**

For the purposes of subsection (a) of this section, the term “customs territory of the United States” means the 50 States, the District of Columbia, and Puerto Rico.

**(3) Person**

For the purposes of this section, the term “person” means an individual, corporation, partnership, trust, association, or any other public or private entity, or any officer, employee, or agent thereof.

**(4) United States**

For the purposes of subsection (b) of this section, the term “United States” means the several States of the United States, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

**(5) Vessel**

For the purposes of subsection (a) of this section, the term “vessel” does not include any ferry.

(Pub. L. 101-624, title XXV, § 2509, Nov. 28, 1990, 104 Stat. 4069; Pub. L. 101-508, title I, § 1203, Nov. 5, 1990, 104 Stat. 1388-11; Pub. L. 102-237, title X, § 1015, Dec. 13, 1991, 105 Stat. 1902; Pub. L. 104-127, title IX, § 917, Apr. 4, 1996, 110 Stat. 1187; Pub. L. 107-171, title X, § 10418(b)(5), May 13, 2002, 116 Stat. 509.)

## REFERENCES IN TEXT

The Animal Health Protection Act, referred to in subsecs. (c)(2), (f)(1)(C), is subtitle E (§§ 10401-10418) of title X of Pub. L. 107-171, May 13, 2002, 116 Stat. 494, which is classified principally to chapter 109 (§ 8301 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of Title 7 and Tables.

Section 306 of the Tariff Act of 1930 (19 U.S.C. 1306), referred to in subsec. (f)(1)(A), was repealed by Pub. L. 107-171, title X, § 10418(a)(5), May 13, 2002, 116 Stat. 507.

## CODIFICATION

Section is comprised of section 2509 of Pub. L. 101-624. Subsec. (b) and another subsec. (c)(2) of section 2509 of Pub. L. 101-624 amended section 7759(f) of Title 7, Agriculture, and section 114a of this title, respectively.

## AMENDMENTS

2002—Subsec. (c)(2). Pub. L. 107-171, § 10418(b)(5)(A), added par. (2) relating to veterinary diagnostics.

<sup>1</sup> So in original. Probably should be “Liens”.

<sup>2</sup> So in original. Probably should be “makes”.

<sup>3</sup> See References in Text note below.

Subsec. (f)(1)(B) to (O). Pub. L. 107-171, §10418(b)(5)(B), added subpars. (B) to (D) and struck out former subpars. (B) to (O), which read as follows:

“(B) sections 6 through 10 of the Act of August 30, 1890 (26 Stat. 416, chapter 839; 21 U.S.C. 101-105);

“(C) section 2 of the Act of February 2, 1903 (32 Stat. 792, chapter 349; 21 U.S.C. 111);

“(D) the Act of May 29, 1884 (23 Stat. 32, chapter 60; 21 U.S.C. 112 to 114a-1, 115, 117-119, and 130) (commonly known as the ‘Animal Industry Act’);

“(E) the Act of February 28, 1947 (61 Stat. 7, chapter 8; 21 U.S.C. 114b, 114c, and 114d-1);

“(F) the Act of June 16, 1948 (62 Stat. 458, chapter 477; 21 U.S.C. 114e and 114f);

“(G) Public Law 87-209 (21 U.S.C. 114g and 114h);

“(H) the Act of May 31, 1920 (41 Stat. 699, chapter 217; 21 U.S.C. 116);

“(I) the Act of February 2, 1903 (32 Stat. 791, chapter 349; 21 U.S.C. 112 and 120-122) (commonly known as the ‘Cattle Contagious Diseases Act of 1903’);

“(J) the Act of March 3, 1905 (33 Stat. 1264, chapter 1496; 21 U.S.C. 123-127) (commonly known as the ‘Cattle Contagious Diseases Act of 1905’);

“(K) the matter under the heading ‘Bureau of Animal Industry’ of the Act of June 30, 1914 (38 Stat. 419, chapter 131; 21 U.S.C. 128);

“(L) section 101 of Public Law 92-73 (21 U.S.C. 129);

“(M) the matter under the heading ‘Miscellaneous’ of the Act of May 26, 1910 (36 Stat. 440, chapter 256; 21 U.S.C. 131);

“(N) sections 1 through 6 and 11 through 13 of Public Law 87-518 (21 U.S.C. 134-134h); or

“(O) any other Act administered by the Secretary relating to plant or animal diseases or pests, other than the first section of Public Law 91-239 (21 U.S.C. 135).”

1996—Subsec. (a). Pub. L. 104-127 added subsec. (a) and struck out heading and text of former subsec. (a) which consisted of pars. (1) to (4) relating to quarantine, inspection, and transportation fees.

1991—Subsec. (a)(1). Pub. L. 102-237, §1015(1), designated existing provisions as subpar. (A), realigned margin, added heading, and added subpars. (B) to (D).

Subsec. (a)(3)(B)(ii). Pub. L. 102-237, §1015(2), added cl. (ii) and struck out former cl. (ii) which read as follows: “The Secretary of Treasury shall use the Account to provide reimbursements to any appropriations accounts that incur the costs associated with the services authorized in paragraph (1). Any such reimbursement shall be subject to appropriations under clause (v).”

Subsec. (a)(4). Pub. L. 102-237, §1015(3), substituted “Subject to the limits set forth in paragraph (1), the” for “The”.

1990—Subsec. (a)(1). Pub. L. 101-508, §1203(1), substituted “an international passenger, commercial vessel, commercial aircraft, commercial truck, or railroad car.” for “a commercial vessel, commercial aircraft, commercial truck, or railroad car.”

Subsec. (a)(3)(B)(ii). Pub. L. 101-508, §1203(2)(A), inserted at end “Any such reimbursement shall be subject to appropriations under clause (v).”

Subsec. (a)(3)(B)(v). Pub. L. 101-508, §1203(2)(B), added cl. (v).

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective Nov. 29, 1990, see section 1301 of Pub. L. 101-508, set out as an Effective Date note under section 940d of Title 7, Agriculture.

#### REPORT ON AGRICULTURAL QUARANTINE INSPECTION FUND

Pub. L. 104-66, title I, §1012(c), Dec. 21, 1995, 109 Stat. 712, provided that: “The Secretary of Agriculture shall not be required to submit a report to the appropriate committees of Congress on the status of the Agricultural Quarantine Inspection fund more frequently than annually.”

## SUBCHAPTER IV—IMPORTATION OF MILK AND CREAM

### FEDERAL FOOD, DRUG, AND COSMETIC ACT

Nothing contained in chapter 9 (§301 et seq.) of this title shall be construed as in any way affecting, modifying, repealing, or superseding the provisions of this subchapter, see section 392(b) of this title.

#### § 141. Prohibition of importation without permit

On and after May 16, 1927, the importation into the United States of milk and cream is prohibited unless the person by whom such milk or cream is shipped or transported into the United States holds a valid permit from the Secretary of Health and Human Services.

(Feb. 15, 1927, ch. 155, §1, 44 Stat. 1101; 1940 Reorg. Plan No. IV, §12, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1237; 1953 Reorg. Plan No. 1, §5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

#### CHANGE OF NAME

“Secretary of Health and Human Services” substituted in text for “Secretary of Health, Education, and Welfare” pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

#### SHORT TITLE

Act July 12, 1943, ch. 221, title II, 57 Stat. 499, provided in part that act Feb. 15, 1927, which is classified to this subchapter, may be cited as “Import Milk Act”.

#### TRANSFER OF FUNCTIONS

For transfer of functions of Federal Security Administrator to Secretary of Health, Education, and Welfare [now Health and Human Services], and of Food and Drug Administration to Federal Security Agency, see notes set out under section 321 of this title.

#### § 142. Milk or cream when unfit for importation

Milk or cream shall be considered unfit for importation (1) when all cows producing such milk or cream are not healthy and a physical examination of all such cows has not been made within one year previous to such milk being offered for importation; (2) when such milk or cream, if raw, is not produced from cows which have passed a tuberculin test applied by a duly authorized official veterinarian of the United States, or of the country in which such milk or cream is produced, within one year previous to the time of the importation, showing that such cows are free from tuberculosis; (3) when the sanitary conditions of the dairy farm or plant in which such milk or cream is produced or handled do not score at least fifty points out of one hundred points according to the methods for scoring as provided by the score cards used by the Bureau of Dairy Industry of the United States Department of Agriculture at the time such dairy farms or plants are scored; (4) in the case of raw milk if the number of bacteria per cubic centimeter exceeds three hundred thousand and in the case of raw cream seven hundred and fifty thousand, in the case of pasteurized milk if the number of bacteria per cubic centimeter exceeds one hundred thousand, and in the case of pasteurized cream five hundred thousand; (5) when the temperature of milk or cream at the time of importation exceeds fifty degrees Fahrenheit.