

AMENDMENTS

2008—Subsec. (d). Pub. L. 110-246, § 11010(c), added subsec. (d).

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.

TRICHINAE CERTIFICATION PROGRAM

Pub. L. 110-234, title XI, § 11010(a), (b), May 22, 2008, 122 Stat. 1359, and Pub. L. 110-246, § 4(a), title XI, § 11010(a), (b), June 18, 2008, 122 Stat. 1664, 2121, provided that:

“(a) VOLUNTARY TRICHINAE CERTIFICATION.—

“(1) ESTABLISHMENT.—Not later than 90 days after the date of the enactment of this Act [June 18, 2008], the Secretary of Agriculture shall establish a voluntary trichinae certification program. Such program shall include the facilitation of the export of pork products and certification services related to such products.

“(2) REGULATIONS.—The Secretary shall issue final regulations to implement the program under paragraph (1) not later than 90 days after the date of the enactment of this Act.

“(3) REPORT.—If final regulations are not published in accordance with paragraph (2) within 90 days of the date of the enactment of this Act, 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 containing—

“(A) an explanation of why the final regulations have not been issued in accordance with paragraph (2); and

“(B) the date on which the Secretary expects to issue such final regulations.

“(b) FUNDING.—Subject to the availability of appropriations under subsection (d)(1)(A) of section 10405 of the Animal Health Protection Act (7 U.S.C. 8304), as added by subsection (c), the Secretary shall use not less than \$6,200,000 of the funds made available under such subsection to carry out subsection (a).”

[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 L. 110-234 was repealed by section 4(a) of Pub.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.]

§ 8305. Interstate movement

The Secretary may prohibit or restrict—

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

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

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

§ 8306. Seizure, quarantine, and disposal

(a) In general

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

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

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

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

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

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

(4) any animal or progeny of any animal, article, or means of conveyance that the Secretary finds is not being maintained, or has not been maintained, in accordance with any post-importation quarantine, post-importation condition, post-movement quarantine, or post-movement condition in accordance with this chapter.

(b) Extraordinary emergencies

(1) In general

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

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

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

(2) State action

(A) In general

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

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

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

(B) Notice

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

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

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

(iii) publish in the Federal Register—

(I) the findings of the Secretary;

(II) a description of the proposed action; and

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

(C) Notice after action

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

(c) Quarantine, disposal, or other remedial action

(1) In general

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

(2) Failure to comply with orders

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

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

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

(d) Compensation

(1) In general

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

(2) Amount

(A) In general

Subject to subparagraphs (B) and (C), the compensation shall be based on the fair mar-

ket value, as determined by the Secretary, of the destroyed animal, article, facility, or means of conveyance.

(B) Limitation

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

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

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

(C) Reviewability

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

(3) Exceptions

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

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

(B) any progeny of any animal or article, which animal or article has been moved or handled by the owner of the animal or article in violation of this chapter;

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

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

(Pub. L. 107-171, title X, § 10407, May 13, 2002, 116 Stat. 498; Pub. L. 110-234, title XI, § 11011(1), May 22, 2008, 122 Stat. 1360; Pub. L. 110-246, § 4(a), title XI, § 11011(1), June 18, 2008, 122 Stat. 1664, 2121.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (d)(3), was in the original “this subtitle”, meaning subtitle E (§§ 10401-10418) of title X of Pub. L. 107-171, May 13, 2002, 116 Stat. 494, which is classified principally to this chapter. For complete classification of subtitle E to the Code, see Short Title note set out under section 8301 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. (d)(2)(C). Pub. L. 110-246, § 11011(1), struck out “of longer than 60 days” after “or review”.

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

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

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.

§ 8307. Inspections, seizures, and warrants

(a) Guidelines

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

(b) Warrantless inspections

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

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

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

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

(c) Inspections with warrants

(1) In general

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

(2) Application and issuance of warrants

(A) In general

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

(B) Execution

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

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

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), was in the original “this subtitle”, meaning subtitle E (§§10401-10418) of title X of Pub. L. 107-171, May 13, 2002, 116 Stat. 494, which is classified principally to this

chapter. For complete classification of subtitle E to the Code, see Short Title note set out under section 8301 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.

PRECLEARANCE QUARANTINE INSPECTIONS

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

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

“(1) The continental United States.

“(2) Guam.

“(3) Puerto Rico.

“(4) The United States Virgin Islands.

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

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

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

(a) In general

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

(b) Compensation

(1) In general

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

(2) Specific cooperative programs

The Secretary shall compensate industry participants and State agencies that cooperate with the Secretary in carrying out operations and measures under subsection (a) for 100 percent of eligible costs relating to cooperative programs involving Federal, State, and industry participants to control diseases of low pathogenicity in accordance with regulations issued by the Secretary.

(3) Reviewability

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

(Pub. L. 107-171, title X, §10409, May 13, 2002, 116 Stat. 501; Pub. L. 110-234, title XI, §11011(2), May