

“(2) protect the United States against the threat of biological terrorism.

“(b) INTENT OF ACT.—Nothing in this Act is intended to restrain or restrict peaceful scientific research or development.”

§ 175a. Requests for military assistance to enforce prohibition in certain emergencies

The Attorney General may request the Secretary of Defense to provide assistance under section 382 of title 10 in support of Department of Justice activities relating to the enforcement of section 175 of this title in an emergency situation involving a biological weapon of mass destruction. The authority to make such a request may be exercised by another official of the Department of Justice in accordance with section 382(f)(2) of title 10.

(Added Pub. L. 104-201, div. A, title XIV, § 1416(c)(1)(A), Sept. 23, 1996, 110 Stat. 2723.)

§ 175b. Possession by restricted persons

(a)(1) No restricted person 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 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.

(2) Whoever knowingly violates this section shall be fined as provided in this title, imprisoned not more than 10 years, or both, but the prohibition contained in this section shall not apply with respect to any duly authorized United States governmental activity.

(b) TRANSFER TO UNREGISTERED PERSON.—

(1) SELECT AGENTS.—Whoever transfers a select agent to a person who the transferor knows or has reasonable cause to believe is not registered as required by regulations under subsection (b) or (c) of section 351A of the Public Health Service Act shall be fined under this title, or imprisoned for not more than 5 years, or both.

(2) CERTAIN OTHER BIOLOGICAL AGENTS AND TOXINS.—Whoever transfers a biological agent or toxin listed pursuant to section 212(a)(1) of the Agricultural Bioterrorism Protection Act of 2002 to a person who the transferor knows or has reasonable cause to believe is not registered as required by regulations under subsection (b) or (c) of section 212 of such Act shall be fined under this title, or imprisoned for not more than 5 years, or both.

(c) UNREGISTERED FOR POSSESSION.—

(1) SELECT AGENTS.—Whoever knowingly possesses a biological agent or toxin where such agent or toxin is a select agent for which such person has not obtained a registration required by regulations under section 351A(c) of the Public Health Service Act shall be fined under this title, or imprisoned for not more than 5 years, or both.

(2) CERTAIN OTHER BIOLOGICAL AGENTS AND TOXINS.—Whoever knowingly possesses a biological agent or toxin where such agent or toxin is a biological agent or toxin listed pursuant to section 212(a)(1) of the Agricultural Bioterrorism Protection Act of 2002 for which such person has not obtained a registration required by regulations under section 212(c) of such Act shall be fined under this title, or imprisoned for not more than 5 years, or both.

(d) In this section:

(1) 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 any such biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.

(2) The term “restricted person” means an individual who—

(A) is under indictment for a crime punishable by imprisonment for a term exceeding 1 year;

(B) has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;

(C) is a fugitive from justice;

(D) is an unlawful user of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(E) is an alien illegally or unlawfully in the United States;

(F) has been adjudicated as a mental defective or has been committed to any mental institution;

(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.