

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) of this section 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 activi-

ties 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) 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; and
- (4) \$50,000,000 for fiscal year 2012 and each fiscal year thereafter.

(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.)

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.

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 an 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's¹ 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, 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.

§ 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.)

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

¹ So in original. Probably should be “magistrate judges’s”.