

(1) is moving into or through the United States or interstate, or has moved into or through the United States or interstate, and—

(A) the Secretary has reason to believe is a plant pest or noxious weed or is infested with a plant pest or noxious weed at the time of the movement; or

(B) is or has been otherwise in violation of this chapter;

(2) has not been maintained in compliance with a post-entry quarantine requirement; or

(3) is the progeny of any plant, biological control organism, plant product, plant pest, or noxious weed that is moving into or through the United States or interstate, or has moved into the United States or interstate, in violation of this chapter.

(b) Authority to order an owner to treat or destroy

(1) In general

The Secretary may order the owner of any plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance subject to action under subsection (a) to treat, apply other remedial measures to, destroy, or otherwise dispose of the plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance, without cost to the Federal Government and in the manner the Secretary considers appropriate.

(2) Failure to comply

If the owner fails to comply with the Secretary's order under this subsection, the Secretary may take an action authorized by subsection (a) and recover from the owner the costs of any care, handling, application of remedial measures, or disposal incurred by the Secretary in connection with actions taken under subsection (a).

(c) Classification system

(1) Development required

To facilitate control of noxious weeds, the Secretary may develop a classification system to describe the status and action levels for noxious weeds. The classification system may include the current geographic distribution, relative threat, and actions initiated to prevent introduction or distribution.

(2) Management plans

In conjunction with the classification system, the Secretary may develop integrated management plans for noxious weeds for the geographic region or ecological range where the noxious weed is found in the United States.

(d) Application of least drastic action

No plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance shall be destroyed, exported, or returned to the shipping point of origin, or ordered to be destroyed, exported, or returned to the shipping point of origin under this section unless, in the opinion of the Secretary, there is no less drastic action that is feasible and that would be adequate to prevent the dissemination of any plant pest or noxious weed

new to or not known to be widely prevalent or distributed within and throughout the United States.

(Pub. L. 106-224, title IV, §414, June 20, 2000, 114 Stat. 444; Pub. L. 107-171, title X, §10418(b)(1), May 13, 2002, 116 Stat. 508.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1)(B), (3), was in the original "this title", meaning title IV of Pub. L. 106-224, June 20, 2000, 114 Stat. 438, known as the Plant Protection Act, 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.

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107-171, §10418(b)(1)(A), struck out ", or the owner's agent," after "subsection (a)".

Subsec. (b)(2). Pub. L. 107-171, §10418(b)(1)(B), struck out "or agent of the owner" after "the owner" in two places.

Statutory Notes and Related Subsidiaries

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.

§ 7715. Declaration of extraordinary emergency and resulting authorities

(a) Authority to declare

If the Secretary determines that an extraordinary emergency exists because of the presence of a plant pest or noxious weed that is new to or not known to be widely prevalent in or distributed within and throughout the United States and that the presence of the plant pest or noxious weed threatens plants or plant products of the United States, the Secretary may—

(1) hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, any plant, biological control organism, plant product, article, or means of conveyance that the Secretary has reason to believe is infested with the plant pest or noxious weed;

(2) quarantine, treat, or apply other remedial measures to any premises, including any plants, biological control organisms, plant products, articles, or means of conveyance on the premises, that the Secretary has reason to believe is infested with the plant pest or noxious weed;

(3) quarantine any State or portion of a State in which the Secretary finds the plant pest or noxious weed or any plant, biological control organism, plant product, article, or means of conveyance that the Secretary has reason to believe is infested with the plant pest or noxious weed; and

(4) prohibit or restrict the movement within a State of any plant, biological control orga-

nism, plant product, article, or means of conveyance when the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of the plant pest or noxious weed or to eradicate the plant pest or noxious weed.

(b) Required finding of emergency

The Secretary may take action under this section only upon finding, after review and consultation with the Governor or other appropriate official of the State affected, that the measures being taken by the State are inadequate to eradicate the plant pest or noxious weed.

(c) Notification procedures

(1) In general

Except as provided in paragraph (2), before any action is taken in any State under this section, the Secretary shall notify the Governor or other appropriate official of the State affected, issue a public announcement, and file for publication in the Federal Register a statement of—

- (A) the Secretary's findings;
- (B) the action the Secretary intends to take;
- (C) the reasons for the intended action; and
- (D) where practicable, an estimate of the anticipated duration of the extraordinary emergency.

(2) Time sensitive actions

If it is not possible to file for publication in the Federal Register prior to taking action, the filing shall be made within a reasonable time, not to exceed 10 business days, after commencement of the action.

(d) Application of least drastic action

No plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance shall be destroyed, exported, or returned to the shipping point of origin, or ordered to be destroyed, exported, or returned to the shipping point of origin under this section unless, in the opinion of the Secretary, there is no less drastic action that is feasible and that would be adequate to prevent the dissemination of any plant pest or noxious weed new to or not known to be widely prevalent or distributed within and throughout the United States.

(e) Payment of compensation

The Secretary may pay compensation to any person for economic losses incurred by the person as a result of action taken by the Secretary under this section. The determination by the Secretary of the amount of any compensation to be paid under this subsection shall be final and shall not be subject to judicial review or a review by any officer or employee of the Federal Government other than the Secretary or the designee of the Secretary.

(Pub. L. 106-224, title IV, § 415, June 20, 2000, 114 Stat. 445; Pub. L. 107-171, title VII, § 7504(a), May 13, 2002, 116 Stat. 465; Pub. L. 110-234, title X, § 10203(a), May 22, 2008, 122 Stat. 1342; Pub. L. 110-246, § 4(a), title X, § 10203(a), June 18, 2008, 122 Stat. 1664, 2104.)

Editorial Notes

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. (e). Pub. L. 110-246, § 10203(a), struck out “of longer than 60 days” after “or a review”.

2002—Subsec. (e). Pub. L. 107-171 inserted before period at end “or a review of longer than 60 days by any officer or employee of the Federal Government other than the Secretary or the designee of the Secretary”.

Statutory Notes and Related Subsidiaries

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.

§ 7716. Recovery of compensation for unauthorized activities

(a) Recovery action

The owner of any plant, plant biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance destroyed or otherwise disposed of by the Secretary under section 7714 or 7715 of this title may bring an action against the United States to recover just compensation for the destruction or disposal of the plant, plant biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance (not including compensation for loss due to delays incident to determining eligibility for importation, entry, exportation, movement in interstate commerce, or release into the environment), but only if the owner establishes that the destruction or disposal was not authorized under this chapter.

(b) Time for action; location

An action under this section shall be brought not later than 1 year after the destruction or disposal of the plant, plant biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance involved. The action may be brought in any United States district court where the owner is found, resides, transacts business, is licensed to do business, or is incorporated.

(Pub. L. 106-224, title IV, § 416, June 20, 2000, 114 Stat. 447.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this title”, meaning title IV of Pub. L.