ORAL ARGUMENT NOT YET SCHEDULED

Appeal No. 22-1052

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMAZON SERVICES LLC,

Petitioner,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE,

Respondent.

On Petition for Review of Order of the
United States Department of Agriculture

BRIEF OF PETITIONER AMAZON SERVICES LLC

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), Petitioner Amazon Services LLC (Amazon) submits the following Certificate as to Parties, Rulings, and Related Cases:

A. Parties and *Amici*

The parties to the agency proceedings were Amazon Services LLC and the Administrator of the Animal and Plant Health Inspection Service (APHIS). Although the Complaint named Amazon Services LLC, the correct entity name is Amazon.com Services LLC. This error does not affect the proceedings.

The parties to this appeal are Petitioner Amazon.com Services LLC and Respondent United States Department of Agriculture. *See* Fed. R. App. P. 15(a)(2), (B) ("The petition must … name the agency as a respondent ….").

As of the date of this filing, no intervenor or *amicus curiae* has appeared in this appeal, nor did any appear in the agency proceedings.

B. Rulings Under Review

Amazon seeks review of the *Decision and Order Denying Respondent's Appeal Petition and Affirming the Initial Decision and Order of the Chief Administrative Law Judge*. This ruling was issued on February 2, 2022, by the Honorable John Walk, Judicial Officer of the

Department of Agriculture, and is in the Joint Appendix at JA __–__. There is no official citation for the ruling.

C. Related Cases

This petition for review has not previously been before this Court or any other court. Amazon is not aware of any related cases.

Dated: July 11, 2022

Respectfully submitted,

By: */s/ William Brendan Murphy*

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, Amazon certifies that:

1. The sole member of Amazon.com Services LLC is Amazon.com Sales, Inc., which is a wholly-owned subsidiary of Amazon.com, Inc.

2. Amazon.com, Inc. is a publicly traded company (NASDAQ: AMZN) and no publicly held corporation owns ten percent or more of its stock.

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS
(Continued)

PAGE

TABLE OF AUTHORITIES

PAGE(S)

CASES

TABLE OF AUTHORITIES
(Continued)

PAGE(S)

TABLE OF AUTHORITIES
(Continued)

PAGE(S)

TABLE OF AUTHORITIES
(Continued)

PAGE(S)

TABLE OF AUTHORITIES
(Continued)

PAGE(S)

STATUTES

REGULATIONS

TABLE OF AUTHORITIES
(Continued)

PAGE(S)

ADMINISTRATIVE DECISIONS

TABLE OF AUTHORITIES
(Continued)

PAGE(S)

OTHER AUTHORITIES

*Authorities upon which the brief chiefly relies are marked with asterisks.

GLOSSARY

Abbreviation or Acronym	**Definition**
AHPA	Animal Health Protection Act (7 U.S.C. §§ 8301 *et seq.*)
APHIS	Animal and Plant Health Inspection Service
BSA	Amazon Services Business Solutions Agreement
CBP	U.S. Customs and Border Protection
Department	United States Department of Agriculture
FBA	Fulfillment by Amazon
FC	Amazon Fulfillment Center
IOR	Importer of Record
Order	*United States Decision and Order Denying Respondent's Appeal Petition and Affirming the Initial Decision and Order of the Chief Administrative Law Judge*, PPA/AHPA Dkt. No. 19-J-01467
PPA	Plant Protection Act (7 U.S.C. §§ 7701 *et seq.*)
SOA	Selling on Amazon

STATEMENT OF JURISDICTION

Amazon seeks review of the *Decision and Order Denying Respondent's Appeal Petition and Affirming the Initial Decision and Order of the Chief Administrative Law Judge*, PPA/AHPA Dkt. No. 19-J-0146 (the "Order"), issued on February 2, 2022. The Department had subject-matter jurisdiction under the Animal Health Protection Act, 7 U.S.C. § 8313(b)(1), and the Plant Protection Act, 7 U.S.C. § 7734(b)(1). Its order "assessing a civil penalty" is a "final order reviewable under chapter 158 of Title 28." 7 U.S.C. §§ 7734(b)(4), 8313(b)(4). This Court has subject-matter jurisdiction under 28 U.S.C. § 2349(a). Amazon timely petitioned for review on April 1, 2022. *See* 28 U.S.C. § 2344.

INTRODUCTION

The Department applied an unprecedented and incorrect construction of the Animal Health Protection Act (AHPA) and Plant Protection Act (PPA) to treat Amazon as the importer of products shipped to the United States by third parties. Amazon did not take any action to import the products. To the contrary, it is undisputed that third parties, not Amazon, obtained the products, shipped them into the United States, and addressed them to an Amazon facility. The Department determined that Amazon provided "benefits" to those third parties by offering lawful services that the third parties desired to use, and thereby "did 'aid, abet, cause, or induce' the restricted products to be moved into the United States." Order at 28. But the statutes do not define "import" as providing benefits that third parties might wish to use, and there is no basis for that unprecedented expansion of the law.

The statutory "aid, abet, cause, or induce" words that the Department purported to apply are secondary liability concepts with long-established meanings. They require knowledge of and substantial assistance to third parties' wrongdoing. There is no evidence of either here, which is why the Department could point only to lawful business services as liability-generating "benefits." The Department impermissibly sidestepped the failure of proof by deciding that "knowledge [of wrongdoing] and substantial assistance are not required to find a violation of the AHPA or PPA." Order at 29.

These elements have long been part of the legal firmament of secondary liability and provide essential protection from boundless liability for providing lawful services. In stripping them from the statutes, the Department disregarded numerous precedents from the Supreme Court, this Court, and many other courts, including a decision from the Tenth Circuit interpreting the same basic language in a Department regulation. Moreover, it offered no reason to believe that Congress intended secondary liability in the AHPA and PPA to have a radically different meaning from other areas of the law.

The Department exceeded its statutory authority and its Order should be reversed with directions to enter judgment in favor of Amazon.

STATEMENT OF ISSUES

First, did the Department misconstrue the "aid, abet, cause, or induce" language in the AHPA and PPA as not requiring "knowledge and substantial assistance"—and instead applying an unsupported extra-textual "benefits provided" test—despite the overwhelming weight of precedent requiring these elements for secondary liability?

Second, did the Department err in reaching the same unsupportable outcome with an alternative finding that providing legitimate business services that third parties misused amounts to knowledge of and substantial assistance to wrongdoing?

Third, did the Department abuse its discretion by imposing the maximum statutory penalty without properly considering the mandatory and discretionary penalty factors in the statutes?

STATUTES AND REGULATIONS

The Department based its Order on the "aid, abet, cause, or induce" language in the AHPA and PPA. Order at 16. The AHPA applies to the alleged violations involving animal products (Compl. ¶¶ 2.1–2.8, 2.10–2.17) and the PPA applies to those involving plant products (*id.* ¶¶ 2.18–2.23).

Congress defined "import" in both statutes as "to move" something into the United States. 7 U.S.C. §§ 7702(5); 8302(7). There are slight immaterial variations in the statutes' definitions of "move." The AHPA defines "move" as:

> (A) to carry, enter, import, mail, ship, or transport;
> (B) **to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting**;
> (C) to offer to carry, enter, import, mail, ship, or transport;
> (D) to receive in order to carry, enter, import, mail, ship, or transport;
> (E) to release into the environment; or
> (F) to allow any of the activities described in this paragraph.

7 U.S.C. § 8302(12) (key language bolded for emphasis). The PPA's version of subpart (B) states "to aid, abet, cause, or induce *the* carrying,

entering, importing, mailing, shipping, or transporting." 7 U.S.C. § 7702(9) (variation shown in italics).

Unlike the statutes, the regulatory definitions diverge from each other but are either parallel to, or are narrower than, their respective statutes. The definition of "move" under the PPA regulations tracks the statutory definition, 7 C.F.R. § 319.7, but the AHPA regulations define "import" more narrowly as "[t]o bring into the territorial limits of the United States." 9 C.F.R. § 94.0. The AHPA regulations, unlike the PPA regulations, do not include concepts of secondary liability. The Department applied the statutory definitions.

The AHPA and PPA specify mandatory and discretionary factors for imposing a civil penalty. The Department must "take into account the nature, circumstance, extent, and gravity of the violation" in determining a penalty. 7 U.S.C. §§ 7734(b)(2), 8313(b)(2). And the Department "may consider" the "ability to pay;" the "effect on ability to continue to do business;" "any history of prior violations;" "the degree of culpability;" and "any other factors the Secretary considers appropriate." 7 U.S.C. § 7734(b)(2); 7 U.S.C. § 8313(b)(2) (immaterial variations).

These statutes and regulations are appended in Addendum A.

STATEMENT OF THE CASE

1. Third parties sell products on Amazon.com.

Amazon operates an online store in which Amazon and millions of third parties sell products. Declaration of Vincent Liu ("Liu Decl.") ¶ 4. Third-party sellers "are independent from Amazon and make their own product sourcing and pricing decisions." Order at 4; *see also* Liu Decl. ¶ 5.

Sellers enter into the *Amazon Services Business Solutions Agreement* (BSA) before they can sell products in Amazon's store. Liu Decl. ¶ 13. The BSA makes clear that sellers are independent from Amazon and are responsible for procuring and selling their own products. *Id.* Ex. 1 at 6, 16. Sellers decide what and when to sell, decide where to procure their products, own their products, and set their prices. Liu Decl. ¶ 6.[1]

Sellers agree that their products and any "offer and subsequent sale" of those products will "comply with all applicable Laws." *Id.* Ex. 1 at 3, 15. Sellers also agree to be bound by Program Policies, which include "terms, conditions, policies, guidelines, rules and other information on the applicable Amazon Site or on Seller Central." Liu Decl. Ex. 1 at 12. The animal and plant pages in Seller Central, which is an online portal for sellers, reminds sellers that "[a]ll listings and products must comply with all laws and regulations." Liu Decl. Ex. 10 at 1; *see also* Ex. 9 at 1.

[1] Amazon's programs are described as they existed in 2015 and 2016, when the acts alleged in the Complaint took place. Liu Decl. ¶ 3.

Amazon also makes clear that the "sale of illegal or unsafe products or products that violate Amazon policy is strictly prohibited" and can "lead to legal action, including civil and criminal penalties." Liu Decl. Ex. 8 at 1. Sellers who "supply a product in violation of the law or any of Amazon's policies" can have their selling privileges suspended or terminated and their inventory in Amazon fulfillment centers can be destroyed or returned. *Id.*

2. Sellers are responsible for lawfully importing their products.

Sellers choose how to fulfill orders of their products. They can fulfill the order themselves and send the product directly to the buyer. Liu Decl. ¶ 7. Or they can use Amazon's Fulfillment By Amazon (FBA) logistics services. *Id.* ¶¶ 7–8. The FBA services consist primarily of storing the seller's inventory in an Amazon fulfillment center and arranging for the product to be delivered to the buyer. *Id.* ¶ 9.

Amazon makes clear in the BSA that sellers are responsible for shipping and importing their products into the United States. *Id.* ¶ 12 & Ex. 1 at 32–33. Sellers who "ship Units [of their product] from outside the [United States] to fulfillment centers" must "list [themselves] as the importer/consignee and nominate a customs broker." *Id.* Ex. 1 at 33.

Amazon's Program Policies in Seller Central reiterate that sellers must lawfully import products when using the FBA service. The *Delivering imports to Amazon* page states that an "Importer of Record

(IOR) is required for merchandise entering the United States" who "is responsible" for "ensuring the imported goods comply with local laws and regulations," and that "Amazon, including our fulfillment centers, **will not** act as an IOR for **any** shipment of FBA inventory." Liu Decl. Ex. 5 at 1 (emph. in original). The importer of record is responsible for certifying the correctness of entry documentation presented to Customs; paying for all duties, tariffs, taxes, and fees; and maintaining records pertaining thereto. *See id.* Ex. 5; 19 U.S.C. §§ 58c, 1484, 1485, 1487, 1508(a); 19 C.F.R. §§ 24.23, 141.61, 143.44, 163.2.

The *Important Information for International Sellers* page states that sellers "are responsible for complying with all import and export obligations and for payment of all duties and customs fees." *Id.* Ex. 6 at 1. And the *Importing and Exporting Inventory* page tells sellers that they "may not import prohibited or restricted products without all required permits and authorizations. For example, the import of certain agricultural, food products, alcohol, plants and seeds, fish and wildlife products, or medication into certain countries may be prohibited or restricted." *Id.* Ex. 7 at 1–2.

3. Customs and APHIS seized packages shipped to the United States by third-party sellers.

Between March 24 and March 31, 2015, U.S. Customs and Border Protection (CBP) and APHIS agents at an International Mail Facility in San Francisco seized 13 packages containing restricted animal food

products that lacked required importation certificates. Compl. ¶¶ 2.1–2.8; Declaration of Patrick Rieder ("Rieder Decl.") Exs. 1, 3–6; Order at 7. The sender addressed the packages to an Amazon fulfillment center in Moreno Valley, California. Rieder Decl. Ex. 3. On the international shipping label, the sender had mis-declared the contents as "rubber tube," "personal belongings," and other generic items. *Id.* Exs. 7, 8; Order at 7.

APHIS agents contacted Amazon and sought information about the sender. Based on the information provided by APHIS, Amazon identified the sender as third-party seller Yummy House Hong Kong and provided details about its seller account. Rieder Decl. Exs. 11–12; Liu Decl. ¶ 30; Order at 7–8. Amazon also promptly suspended Yummy House's seller account. Liu Decl. ¶ 37.

On July 9, 2015, CBP and APHIS agents at a Los Angeles International Mail Facility seized three packages containing restricted poultry products unaccompanied by required importation certificates. Compl. ¶ 2.17; Rieder Decl. Exs. 2, 16; Order at 10–11. The packages were addressed to a different Amazon fulfillment center in Moreno Valley. Rieder Decl. Exs. 15–16. APHIS agents contacted Amazon seeking information about the sender responsible for the shipment, which Amazon identified as a third-party seller known as Deng Dan (a/k/a DD222). *Id.* Ex. 18. Amazon immediately suspended its seller account. Liu Decl. ¶ 38.

On March 18, 2016, CBP and APHIS agents at an International Mail Facility in San Francisco seized three boxes containing food products derived from Kaffir lime leaves. Compl. ¶ 2.18; Rieder Decl. Ex. 19; Order at 11. These boxes were addressed to an Amazon fulfillment center in Joliet, Illinois. Rieder Decl. Ex. 19. APHIS agents contacted Amazon about the seized shipments, and Amazon identified the sender as third-party seller X-Sampa Co. *Id.* Ex. 21; Liu Decl. ¶ 30. Amazon promptly suspended its seller account. Liu Decl. ¶ 39.

All of these products "were shipped into the United States by foreign third-party sellers who used Amazon's online store and FBA services." Order at 6. The sellers handled all aspects of shipping the products into the United States. Liu Decl. ¶¶ 10–11, 35–36. Amazon did not ship them or transport them into the United States, and was not the importer of record. It was the addressee.

4. Amazon cooperated in APHIS's investigation.

After APHIS contacted Amazon about the March 2015 shipments, Amazon provided information about other Yummy House products located in Amazon fulfillment centers. Liu Decl. ¶ 40; Rieder Decl. Exs. 11–12; Order at 8. At APHIS's verbal request, Amazon placed a 30-day hold on all Yummy House items in its fulfillment centers. Second Declaration of Vincent Liu ("Second Liu Decl.") ¶¶ 3–5; Order at 8. After the hold expired without further action by APHIS, Amazon released the

products to the seller at the seller's request. Second Liu Decl. ¶ 5. More than a week later, APHIS belatedly issued formal written hold notifications directing Amazon not to move Yummy House products in its possession. *Id.* ¶¶ 5–6; Compl. ¶ 2.9.

The information that Amazon provided led APHIS to other Yummy House products. Rieder Decl. Ex. 13; Order at 9. APHIS seized and destroyed a Yummy House package located in an Amazon fulfillment center in Tennessee. Rieder Decl. Ex. 11 at 5. Other products had been released by Amazon at Yummy House's direction and sent to an independent warehouse in Passaic, New Jersey, which is not owned by or affiliated with Amazon. Liu Decl. ¶ 41; Second Liu Decl. ¶ 5. APHIS agents who inspected the Passaic warehouse found one package released from Amazon's fulfillment center and discovered other restricted products apparently belonging to Yummy House. Rieder Decl. Ex. 13. The record does not indicate whether the products seized in Passaic originated in the United States or were imported, or what paperwork accompanied them. Rieder Decl. ¶¶ 2–3, Ex. 13 at 1 ("No documentation for any of the products could be obtained.").

Amazon also identified other products belonging to X-Sampa, which are referenced in the Complaint at ¶¶ 2.19–2.23, and held them for APHIS to retrieve and destroy. Liu Decl. ¶ 39; Rieder Decl. Ex. 21; Order at 12. Unlike the X-Sampa products identified in the Complaint at ¶ 2.18, APHIS has no documentation regarding the importation of these

additional X-Sampa products that Amazon located and provided to APHIS. *See* Rieder Decl. Ex. 21.

The dates and locations where the products were discovered are summarized in a table at Addendum B.

5. The Department imposed the maximum civil penalty under the AHPA and PPA.

APHIS filed an administrative complaint alleging that Amazon "imports" products under the AHPA and PPA because it "offers a service called Fulfillment by Amazon (FBA) whereby products are posted on Amazon.com for sale by third-party sellers, stored in Amazon's fulfillment centers (FC), and Amazon packs, ships, and/or provides logistics services for these products." Compl. ¶ 1.3. It alleged 22 instances in which Amazon improperly "imported and moved" non-compliant products between March 24, 2015, and May 31, 2016. *Id.* ¶¶ 2.1–2.8, 2.10–2.23. Amazon and APHIS each moved for summary judgment.

The ALJ granted summary judgment to APHIS. The Department's Chief Administrative Law Judge granted summary judgment to APHIS. ALJ Order. The Chief ALJ determined that "Amazon imported the products at issue" based on its "involvement in the importation of the restricted products." ALJ Order at 23. The supposed "involvement" was that Amazon "was aware of these products and expected them to be delivered to Amazon fulfillment centers in the United States, where they were to be stored until purchased by customers on [A]mazon.com. Once

purchased, [Amazon] was contractually obligated to transport the products to the buyers, via interstate commerce if necessary." ALJ Order at 23. The ALJ also wrote that Amazon "fail[ed] to place stop guards that would prevent violations of the" AHPA and PPA, contrary to unspecified "statutory duties." ALJ Order at 35.

The Chief ALJ based the ruling on the "aid, abet, cause, or induce" language in the AHPA's and PPA's definition of "import." ALJ Order at 24, 34. He determined that the other definitions of "import" did not apply because "Amazon did not 'offer' or 'receive' to 'carry, enter, import, mail, ship, or transport imported goods'"; Amazon did not "receive[] the shipment[s] outside the U.S. territorial limits"; and Amazon did not "allow" the importation because it "was not in a position of authority to 'allow' importation of the restricted products." ALJ Order at 23–24. APHIS did not cross-appeal this ruling to the Judicial Officer. As a result, APHIS's claims that Amazon fell within other provisions of the statutes' definitions of "import" are no longer part of this case. The Chief ALJ also rejected APHIS's claim that Amazon violated a quarantine hold by releasing Yummy House's products, and APHIS did not cross-appeal that ruling either. ALJ Order at 15 n.42, 35–37.

Finally, the Chief ALJ determined that "no hearing is needed to determine penalties" and imposed the maximum $1,000,000 combined civil penalty allowed under the AHPA and PPA. ALJ Order at 38–41; *see also* 7 U.S.C. §§ 7734(b)(2), 8313(b)(2). He reasoned that the

repercussions of a disease outbreak—which did not occur here—are "great" and there "is no question that such penalty will not affect Amazon's ability to continue to do lawful business or that Amazon will be able to pay." ALJ Order at 40–41.

The Judicial Officer affirmed. The Department's Judicial Officer affirmed the Chief ALJ's ruling in the Order under review by this Court. Because APHIS did not cross-appeal the aspects of the ruling that were adverse to it, the "primary issue on appeal" to the Judicial Officer was the "interpretation of the 'aid, abet, cause, or induce' language in the AHPA and PPA." Order at 16.

The Judicial Officer determined that the "benefits provided, or intended to be provided, by Amazon to the third-party sellers did 'aid, abet, cause or induce' the restricted products to be moved into the United States." *Id.* at 28. These "benefits" were lawful business services consisting of storing third-party sellers' products (after the sellers imported them), arranging domestic shipment of those products, facilitating payment, providing customer support, and giving sellers access to customers through Amazon's website and the "opportunity for business growth and exposure." *Id.* at 27–28. Providing lawful services was sufficient, in the Judicial Officer's view, because "knowledge [of wrongdoing] and substantial assistance are not required to find a violation of the AHPA or PPA." *Id.* at 29.

The Judicial Officer dismissed precedents from the Supreme Court, this Court, and other courts holding that the same basic secondary liability words in criminal law, tort law, and regulatory law require precisely these elements, even when no scienter word like "knowingly" accompanies them. *Id.* at 16–20, 28; *see also*, *e.g.*, *Rosemond v. United States*, 572 U.S. 65, 76 (2014) (recognizing "aiding and abetting law's intent requirement" in criminal law even though the secondary liability statute, 18 U.S.C. § 2(a), does not specify a mens rea requirement); *Halberstam v. Welch*, 705 F.2d 472, 477 (D.C. Cir. 1983) (aiding and abetting requires awareness of the defendant's "role as part of an overall illegal or tortious activity" and the defendant "must knowingly and substantially assist the principal violation"). Those precedents include a Tenth Circuit decision holding that "aided, induced, or caused to be moved" in another Department regulation "requires an element of culpability together with direct involvement in the movement of cattle." *Culbertson v. USDA*, 69 F.3d 465, 467–68 (10th Cir. 1995). The Judicial Officer did not identify any cases applying these secondary liability words without these elements.

The Judicial Officer instead relied on "other indications in the text and structure of the statutes," principally the use of "knowingly" in the criminal penalties provision and its absence in the civil penalties provision, and Congress's use of "knowingly" in some statutes that employ secondary liability terms. Order at 17, 21–24. He inferred that

when "Congress wants to assign a mental state to any of the terms 'aid,' 'abet,' 'induce,' or 'cause,' it knows how to do so." *Id.* at 24. He did not address the Supreme Court's *Rosemond* case, which interprets the secondary liability language in the federal criminal code to require intent despite the absence of "knowingly." And he went beyond the statutes' "text and structure" by hypothesizing about their "manifest purpose" and invoking the Department's "longstanding policy" to broadly interpret "remedial legislation." Order at 24–25. He resisted any "restrictive interpretation" that "would make it more difficult for the USDA to prevent the introduction of dangerous animal and plant products into the United States …." *Id.* at 25.

After reading the traditional elements of secondary liability out of the statutes, the Judicial Officer determined in the alternative that he "would reach the same result" and find Amazon liable even if the "statutory terms did require knowledge and substantial assistance." *Id.* at 29. He concluded that the "many benefits … that third-party sellers receive" from Amazon's services "did substantially assist." *Id.* And he concluded that Amazon had "knowledge" because it was aware of the types of products offered by third-party sellers, had "pre-existing business relationships" with them, and was aware of relevant federal regulations. *Id.* at 29–30. He cited no evidence that Amazon knew of the third-party sellers' unlawful conduct, such as their failure to obtain proper certificates, or that Amazon intended to assist in any wrongdoing.

Finally, the Judicial Officer affirmed the Chief ALJ's penalty order. *Id.* at 36. He reasoned that the "nature of Amazon's violations … is serious" because the statutes are "designed to prevent the dangers from the spread of animal diseases and plant pests …." *Id.* at 33. He also cited the "numerous" violations, Amazon's "business relationship[s]" with the sellers, and Amazon's "knowledge of federal regulations that restrict animal and plant products." Order at 33–36.

SUMMARY OF ARGUMENT

The Department misconstrued "aid, abet, cause, or induce" as not requiring "knowledge and substantial assistance" in third parties' unlawful importation. Order at 29. It replaced these required elements of secondary liability with a nebulous "benefits provided" concept that would sweep in many other innocent actors who provide legitimate services.

1. The Department's construction has no basis in the text of the AHPA or PPA. Neither statute defines "import" in terms of providing benefits that third parties desire to use. The "aid, abet, cause, or induce" words that Congress chose have well-established meanings that include "knowledge and substantial assistance" elements. The Department's construction cannot be squared with (1) precedent interpreting the same basic language in another Department regulation, (2) ample precedent from the Supreme Court, this Court, and many other courts interpreting

these secondary liability concepts, and (3) precedent rejecting secondary liability for providing lawful products or services—which the Department termed "benefits." The novelty of the Department's construction is evident in the complete lack of precedent it mustered in support.

2. The Department also erred in "reach[ing] the same result" even "if the statutory terms did require knowledge and substantial assistance." Order at 29. APHIS offered no evidence of either. Nothing in the record supports a finding that Amazon knew the third parties were importing products without the required documentation or substantially assisted them in doing so. The Department incorrectly held that the secondary liability requirements were satisfied simply because Amazon knew that third-party sellers were selling products in the United States and provided lawful business services to sellers.

3. The Department compounded these errors by misapplying the mandatory and discretionary factors in imposing the maximum civil penalty. The Department erred by presuming that every violation of the AHPA and PPA has high severity, rather than assessing all the circumstances relevant to this case, and by improperly relying on Amazon's size and ability to pay as an aggravating factor instead of a neutral one.

STANDARD OF REVIEW

Under the APA, this Court reviews de novo questions of law in agency appeals, including "interpret[ation] … [of] statutory provisions." *See* 5 U.S.C. § 706*; Citizens Against Rails-to-Trails v. Surface Transp. Bd.*, 267 F.3d 1144, 1151 (D.C. Cir. 2001). It also reviews de novo the Department's alternative finding of knowledge and substantial assistance because the Department applied undisputed facts to the law on summary judgment. *See Trudel v. SunTrust Bank*, 924 F.3d 1281, 1285 (D.C. Cir. 2019) (court reviews "a summary judgment *de novo*"). The penalty determination is reviewed for abuse of discretion. *See Affum v. United States*, 566 F.3d 1150, 1161 (D.C. Cir. 2009).

STANDING

Amazon is directly impacted and aggrieved by the Department's Order, which affirmed the imposition of a $1,000,000 civil penalty. Order at 37. Amazon has suffered concrete and particularized injuries that are ongoing, traceable to the Department's actions, and likely to be redressed by a favorable decision. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992); *Am. Petroleum Inst. v. U.S. EPA*, 216 F.3d 50, 63 (D.C. Cir. 2000).

ARGUMENT

I. The Department disregarded the elements of secondary liability.

The "aid, abet, cause, or induce" language that Congress included in the AHPA and PPA has a specific meaning that does not encompass providing "benefits" that are entirely lawful. Inherent in these words chosen by Congress are the "knowledge and substantial assistance" elements that the Department disregarded. Order at 29. Ample precedent confirms this point.

A. The Department disregarded precedent involving the same secondary liability concepts in its own regulation.

The Department's position that "knowledge and substantial assistance are not required to find a violation of the AHPA or PPA," Order at 29, contradicts precedent holding that nearly identical secondary liability language in one of the Department's regulations "requires an element of culpability together with direct involvement" in the third party's wrongdoing. *Culbertson*, 69 F.3d at 468.

The Tenth Circuit's decision in *Culbertson* involved the same basic secondary liability language at issue here. A Department regulation under the Contagious Cattle Disease Act defined "moved" as "shipped, transported, delivered, or received for movement, or *otherwise aided, induced, or caused* to be moved." *Id.* at 467 (quoting 9 C.F.R. § 78.1; emph. added). Notably, that Act's penalty structure parallels the AHPA's and PPA's in requiring that a defendant act "knowingly" for criminal

penalties but specifying no scienter for civil penalties. *See* 21 U.S.C. § 122 (1994); *Culbertson*, 69 F.3d at 467 n.3 (citing the penalty provision).

The Judicial Officer determined that the defendant, a "cattle broker" who "presented the cattle" and "negotiated a sale price," "moved" cattle without a required certificate. *Id.* at 466–67 & n.2. The defendant did not know the cattle were infected with brucellosis. *Id.* at 468. He handed truckers health certificates but did not examine them and was "unaware that they were incomplete." *Id.* at 466. He later chauffeured others to an inspection of additional cattle, some of which were shipped without testing for brucellosis. *Id.* at 466–67. There was no evidence, however, that the defendant knew of or sought to further any proscribed movement. Nevertheless, the Judicial Officer determined that the defendant's "transportation of persons and documents as a courier, coupled with his presence at the time of shipment from the Major ranch, sufficed to establish a basis upon which liability could be imposed under the Regulations." *Id.* at 468.

The court found the Department's "interpretation of 'moved'" "insupportably broad" because "liability under the Regulations requires an element of culpability together with direct involvement in the movement of cattle." *Id.* There was no evidence to satisfy these elements. The defendant did not aid, induce, or cause the unlawful movement of cattle because he did not "own or control the cattle or influence the decisions prerequisite to their interstate movement"; did not "possess the

authority to arrange delivery of the cattle" or "assist in loading the cattle"; and he "reasonably relied upon those who owned and controlled the cattle to comply with the Regulations." *Id.*

The court noted that these culpability and direct involvement elements are necessary to protect innocent actors from boundless secondary liability. Without them, the Department "conceivably could impose liability upon the sale barn owner, or a chauffeur who transports the parties to the negotiations, or a mail courier who delivers the health certificates or a ranch hand who is present during the loading of the infected cattle." *Id.* These parties' "involvement in the movement of cattle" is "too attenuated to support liability" because "culpability" and "direct involvement" are absent. *See id.*

There is no way to reconcile the Department's view that "knowledge and substantial assistance are not required" for secondary liability under the AHPA and PPA with *Culbertson's* holding that "culpability and direct involvement" are required under the same basic language in a Department regulation. The Department did not even try. It simply dismissed *Culbertson* because the "facts in this proceeding are very different." Order at 27. Factual differences in adjudications do not justify wildly different interpretations of the same basic language in statutes or regulations administered by the Department.

B. The Department disregarded other precedents recognizing culpability requirements for secondary liability.

The "doctrines of secondary liability emerged from common law principles and are well established in the law." *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 930 (2005) (citations omitted); *see also Nat'l Org. for Women v. Operation Rescue*, 37 F.3d 646, 656 (D.C. Cir. 1994) ("'aiding' and 'abetting' are terms of art"). "It is a settled principle of interpretation that, absent other indication, Congress intends to incorporate the well-settled meaning of the common-law terms it uses." *Sekhar v. United States*, 570 U.S. 729, 732 (2013) (cleaned up). When "Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice," it "adopts the cluster of ideas that were attached to each borrowed word in the body of learning …." *Id.* at 733 (quoting *Morissette v. United States*, 342 U.S. 246, 263 (1952); cleaned up).

The "knowledge and substantial assistance" elements that the Department deemed "not required," Order at 29, are firmly within the "cluster of ideas" underlying the common law terms "aid, abet, cause, or induce." *See Sekhar*, 570 U.S. at 733.

Aiding and abetting. Secondary liability has long been part of criminal law. The Supreme Court held that "aid and abet" under federal criminal law incorporates these terms' longstanding common law meanings and requires culpable assistance. *Rosemond*, 572 U.S. at 70.

And this Court long ago recognized that, even in the civil context, "[a]iding-abetting focuses on whether a defendant knowingly gave 'substantial assistance' …." *Halberstam*, 705 F.2d at 478.

The Supreme Court addressed the elements of secondary liability in *Rosemond*. The issue was what intent is required to convict for aiding and abetting the offense of using a gun in connection with a drug trafficking crime. 572 U.S. at 68. The answer turned on the secondary liability language in 18 U.S.C. § 2(a), which states that "[w]hoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

The Court recognized that this secondary liability language "derives from (though simplifies) common-law standards for accomplice liability." 572 U.S. at 70 (citations omitted). "And in so doing, § 2 reflects a centuries-old view of culpability: that a person may be responsible for a crime he has not personally carried out if he helps another to complete its commission." *Id.* (citation omitted). But not any "help" will do. Culpable assistance is required. "As at common law, a person is liable under § 2 for aiding and abetting a crime if (and only if) he (1) takes an affirmative act in furtherance of that offense, (2) with the intent of facilitating the offense's commission." *Id.* at 71. The Court recognized "aiding and abetting law's intent requirement" despite the absence of a

scienter word like "intentionally" or "knowingly" preceding the statute's secondary liability terms. *Id.* at 76.

The Court wrote that the "canonical formulation of [the] needed state of mind … is Judge Learned Hand's" from *United States v. Peoni*. *Id.* at 76–77. In *Peoni*, Judge Hand noted that the "substance of that formula" in the "aids, abets, counsels, commands, induces, or procures" language "goes back a long way." *United States v. Peoni*, 100 F.2d 401, 402 (2d Cir. 1938). He surveyed centuries of legal doctrine and concluded that "these definitions have nothing whatever to do with the probability that the forbidden result would follow upon the accessory's conduct"; rather, "they all demand that he in some sort associate himself with the venture, that he participate in it as in something that he wishes to bring about, that he seek by his action to make it succeed. All the words used—even the most colorless, 'abet'—carry an implication of purposive attitude towards it." *Id.*; *see also United States v. Raper*, 676 F.2d 841, 849 (D.C. Cir. 1982) (describing *Peoni* as the "classic interpretation of the aiding and abetting rule of law").

As Judge Hand's "canonical" formulation makes clear, the probability that one's act would further a result accomplished by a third party is not sufficient. The focus is not on why the third-party wrongdoer did what it did, but on the alleged aider's knowledge of the wrongdoing and intent to assist in it—hence "aiding and abetting law's intent requirement." *Rosemond*, 572 U.S. at 76; *see also Raper*, 676 F.2d at 849

("What is required on the part of the aider is sufficient knowledge and participation to indicate that he knowingly and willfully participated in the offense in a manner that indicated he intended to make it succeed."). "Culpability of some sort is necessary to justify punishment of a secondary actor and mere unknowing participation in another's violation is an improper predicate to liability." *Monsen v. Consol. Dressed Beef Co.*, 579 F.2d 793, 799 (3d Cir. 1978) (citation omitted).

Aiding and abetting has the same elements in the civil context as well, as this Court held nearly forty years ago in its seminal *Halberstam* decision. The plaintiff sued the romantic partner of a robber who murdered the plaintiff's husband on theories of aiding and abetting and civil conspiracy. The defendant did not participate in the crimes but assisted with selling the loot and tracking the proceeds. 705 F.2d at 475. As the district court found, she "knew full well" her partner's illegal activities. *Id.* at 474, 486–88. One of the "primary issues" was "what kind of activities of a secondary defendant … will establish vicarious liability for tortious conduct by the primary wrongdoer …." *Id.* at 476.

This Court "clarif[ied] basic elements of vicarious liability in tort" and "analyze[d] case law to see what evidence is sufficient to establish them." *Id.* Drawing from the Restatement of Torts[2] and other sources, the

[2] The relevant Restatement provision states: "For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he … knows that the other's conduct constitutes a breach of

Court wrote that "[a]iding-abetting includes the following elements: (1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; (3) the defendant must knowingly and substantially assist the principal violation." *Id.* at 477; *see also Invs. Rsch. Corp. v. SEC*, 628 F.2d 168, 178 (D.C. Cir. 1980) (adopting the same basic elements in the securities context). The Court noted that these elements are sometimes described with varying language—a point the Department incorrectly seized upon to suggest they are not well recognized, Order at 17–18—but "of course these elements can be merged or articulated somewhat differently without affecting their basic thrust." 705 F.2d at 478 n.8.[3]

Halberstam has reached nearly the same canonical status as *Peoni*. Congress endorsed the decision "as the leading case regarding Federal civil aiding and abetting … liability." Justice Against Sponsors of Terrorism Act (JASTA), Pub. L. No. 114-222, § 2(a)(5), 130 Stat. 852, 852

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duty and gives substantial assistance or encouragement to the other so to conduct himself." Restatement (Second) of Torts § 876(b) (Am. L. Inst. 1979).

[3] In *Raper*, for example, this Court included an intent element: "The elements of aiding or abetting an offense are (1) the specific intent to facilitate the commission of a crime by another; (2) guilty knowledge on the part of the accused; (3) that an offense was being committed by someone; and (4) that the accused assisted or participated in the commission of the offense." 676 F.2d at 849 (cleaned up).

(2016). And the Supreme Court described it as "a comprehensive opinion on the subject" of aiding and abetting. *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 181 (1994).

Halberstam deemed case law from other jurisdictions "illustrative of some key issues" in aiding and abetting liability. 705 F.2d at 479. That case law uniformly requires some form of knowledge of and substantial assistance to the third party's wrongdoing. *See*, *e.g.*, *Pittman ex rel. Pittman v. Grayson*, 149 F.3d 111, 123 (2d Cir. 1998) ("aiding and abetting requires that the defendant have given substantial assistance or encouragement to the primary wrongdoer" and "the defendant must know the wrongful nature of the primary actor's conduct" (cleaned up)); *Monsen*, 579 F.2d at 799 ("Knowledge of the underlying violation is a critical element in proof of aiding-abetting liability …."); *Woodward v. Metro Bank of Dallas*, 522 F.2d 84, 95 (5th Cir. 1975) (requiring a "general awareness that one's role was part of an overall activity that is improper," and reasoning that simply "conduct[ing] what appears to be a transaction in the ordinary course of [one's] business" is insufficient).

Causing and inducing. Aiding and abetting are distinct from causing and inducing even though they have culpability elements in common. Aiding and abetting make an accessory liable as a principal based on providing culpable assistance to the wrongdoer. *See Pereira v. United States*, 347 U.S. 1, 11 (1954) ("[a]iding, abetting, and counseling" make "the defendant a principal when he consciously shares in a criminal

act"). Causing and inducing, on the other hand, impose liability for getting a third party to engage in a wrongful act on one's behalf.

"The courts have uniformly construed the word 'cause' ... to mean a principal acting through an agent or one who procures or brings about the commission of a crime." *United States v. Inciso*, 292 F.2d 374, 378 (7th Cir. 1961); *United States v. Tobon-Builes*, 706 F.2d 1092, 1099 (11th Cir. 1983) ("causing" liability encompasses one who causes an innocent intermediary to commit a crime). Relatedly, "inducing" means intentionally encouraging another to commit an unlawful act. *See Grokster*, 545 U.S. at 937.

Though they reach different types of conduct, liability for causing or inducing wrongdoing has the same basic culpability and substantial assistance elements as aiding and abetting. As Judge Hand explained in the "canonical formulation" of secondary liability, "[a]ll the words used" in the secondary liability statute—which are "aids, abets, counsels, commands, induces, or procures"—"carry an implication of purposive attitude towards" the wrongful "venture." *Peoni*, 100 F.2d at 402. Although section 2(a) of that statute uses the term "procures" rather than "causes," the courts recognize that liability for "causing" requires that "a criminal purpose or intent … accompany the causal nexus before conviction for a crime can be had." *King v. United States*, 364 F.2d 235, 240 (5th Cir. 1966); *see also United States v. Montoy*, 664 F. App'x 632, 634 (9th Cir. 2016) (unpublished) (holding that the defendant "induced"

another to sexually exploit a minor where he "was fully aware of the sexual exploitation … and intended for it to occur"); *Nat'l Org. for Women*, 37 F.3d at 656 (though the term "inducing," when "[t]aken in isolation" may "seem capable of such broad readings," like "'aiding' and 'abetting'" it "comes with [its] own impressive legal pedigree").[4]

* * *

The Department did not cite any cases that apply secondary liability without culpability elements or that support its "benefits provided" test. The cases it cited stand mostly for the uncontested propositions that (i) some acts described in other parts of the statutes can support a violation without any malintent (*e.g.*, unwittingly carrying a restricted item over the border), or (ii) civil penalties can be imposed without scienter (provided the underlying violation has no scienter requirement). Order at 22–23, 26. Although the precedents that the Department cast aside use varying formulations—"knowledge" instead of "culpability" or "substantial assistance" instead of "direct involvement"—

[4] The Chief ALJ wrote that "[b]ut for the services that Amazon provides, the subject violations of the AHPA and PPA could not have occurred." ALJ Order at 30. The Judicial Officer did not expressly adopt this but-for causation analysis, and for good reason. But-for causation "is not … a useful definition of cause." *Chi. Laws. Comm. for Civil Rights v. Craigslist, Inc.*, 519 F.3d 666, 671 (7th Cir. 2008). "One might as well say that people who save money 'cause' bank robbery, because if there were no banks there could be no bank robberies." *Id.*

they make one thing clear: secondary liability requires knowledge of and substantial assistance to the third party's wrongdoing.

C. The Department's broad construction would ensnare many other innocent actors.

The Department's "benefits provided" test, Order at 28, improperly shifted the focus from culpable assistance by the defendant to third parties' subjective motivations for importing products. That shift leads to unbounded secondary liability for wrongdoing committed by third parties. Any legitimate product or service that somebody desires to use can be construed as a "benefit provided." And any wrongdoing by a third party motivated in some way by obtaining that benefit would expose innocent providers of those products or services to liability.

The long-standing culpability elements for secondary liability are necessary guardrails. This Court has "acknowledged that an 'awareness of wrong-doing requirement' for an aider-abettor is designed to avoid subjecting innocent, incidental participants to harsh penalties or damages." *Halberstam*, 705 F.2d at 485 n.14 (citations omitted); *see also Invs. Rsch. Corp.*, 628 F.2d at 177 ("The awareness of wrong-doing requirement for aiding and abetting liability is designed to insure that innocent, incidental participants in transactions later found to be illegal are not subjected to harsh, civil, criminal, or administrative penalties."); *Woodward*, 522 F.2d at 97 (without requirements that the "alleged aider-abettor" be "generally aware of [its] role in improper activity" and

"knowingly render substantial assistance," the "securities laws would become an amorphous snare for guilty and innocent alike"); *Monsen*, 579 F.2d at 799 ("Knowledge of the underlying violation is a critical element in proof of aiding-abetting liability, for without this requirement financial institutions, brokerage houses, and other such organizations would be virtual insurers of their customers against security law violations."); *K & S P'ship v. Cont'l Bank, N.A.*, 952 F.2d 971, 977 (8th Cir. 1991) ("If an illegal scheme exists and a bank's loan assists in that scheme, the bank's knowledge of the scheme is the crucial element that prevents it from suffering automatic liability for the conduct of insiders to whom it loaned the money." (citation omitted)).

Without these guardrails, many innocent actors offering legitimate services could be construed as "aiding and abetting" wrongdoing or otherwise "causing" or "inducing" it. For instance, customs brokers, international logistics providers, and domestic transportation providers all provide services that could be called "benefits" under the Department's broad theory of secondary liability. Linking secondary liability to such an expansive concept could even ensnare consumers, whose purchase of foreign products could be construed as a "benefit" desired by foreign entities.

As this Court has pointed out, "in most cases, an alleged aider and abettor will merely be engaging in customary business activities, such as loaning money, managing a corporation, preparing financial statements,

distributing press releases, completing brokerage transactions, or giving legal advice." *Invs. Rsch. Corp.*, 628 F.2d at 178 n.61 (cleaned up). These "activities could constitute substantial assistance to the principal wrongdoer, yet any can be performed in complete good faith by an actor totally unaware that anything improper is occurring." *Ibid.* And "[w]here the activities of the alleged aider and abettor are in this respect innocent, it would be unjust to utilize secondary liability principles to impose punishment or administrative sanctions …." *Ibid.*

The Supreme Court has emphasized that providing a lawful product or service cannot support secondary liability for third parties' misuse of those products or services. *See Grokster*, 545 U.S. at 932–33. *Grokster* involved secondary liability under copyright law for providing "a product capable of both lawful and unlawful use." *Id.* at 918. The Court acknowledged the "law's reluctance to find liability when a defendant merely sells a commercial product suitable for some lawful use." *Id.* at 936 (collecting cases). It emphasized the need to shield legitimate business transactions from overbroad secondary liability. It held that "one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties." *Id.* at 936–37. By contrast, "mere knowledge of infringing potential or of actual infringing uses would not be enough here to subject a distributor to liability. Nor would ordinary

acts incident to product distribution, such as offering customers technical support or product updates, support liability in themselves." *Id.* at 937. The "inducement rule" thus "does nothing to compromise legitimate commerce or discourage innovation having a lawful promise." *Id.*

The Department's "benefits provided" test, in addition to having no statutory basis, leads straight into the morass of unbridled liability that the knowledge and substantial assistance elements exist to prevent.

D. The Department provided no sound reasons for its unprecedented construction of the statutes.

The Department asserted that "other indications in the text and structure of the statutes compel rejection of" knowledge and substantial assistance requirements. Order at 17. None of them supports its unprecedented and incorrect view of secondary liability under the AHPA and PPA.

1. Use of "knowingly" in other statutes. The Department asserted that a mens rea requirement for secondary liability is "inconsistent with the structure of the AHPA and PPA," which has a "knowingly" requirement for criminal penalties but not for civil penalties. Order at 21–22 (citing 7 U.S.C. §§ 7734(b)(1), 8313(b)(1)). But the "knowingly" requirement for criminal penalties does not indicate that Congress intended to dispense with culpability requirements for civil "aiding, abetting, causing, or inducing" liability.

The penalty provisions specify the mens rea required for a civil or criminal penalty; they do not specify the elements of an underlying violation. Some underlying violations can be established without any mens rea, such as unwittingly "carry[ing]" a restricted product across the border. 7 U.S.C. § 8302(12)(A). The "knowingly" distinction in the penalties provisions simply establishes that even a violation that has no mens rea requirement can be subject to civil penalties. It does not establish the mens rea requirement for the underlying violation. It certainly does not imply that *no* mens rea is required for any violation. The words that describe each violation—not the words in the separate penalty provisions—have to be assessed to discern the violation's elements.

The Judicial Officer similarly reasoned that Congress's use of "knowingly" in other statutory secondary liability provisions implies no mens rea requirement when the term is absent. He wrote that when "Congress wants to assign a mental state to any of the terms 'aid,' 'abet,' induce,' or 'cause,' it knows how to do so," and it chose "silence when it drafted the AHPA and PPA." Order at 24.

The Supreme Court's *Rosemond* decision conclusively answers this argument. If the Department's position were correct, then the absence of a scienter word in 18 U.S.C. § 2(a) should mean that no such requirement exists under that provision. But the Court held that the words "aid" and "abet" in the statute—though unmodified by any intent requirement—

"reflect[] a centuries-old view of culpability" that requires, among other things, "the intent of facilitating the offense's commission." *Rosemond*, 572 U.S. at 70–71 (citations omitted). "[A]iding and abetting law's intent requirement" exists despite the absence of a scienter word in section 2(a). *Id.* at 76; *see also Culbertson*, 69 F.3d at 467–68 (requiring "an element of culpability" despite no scienter language in regulation's secondary liability language).

The Department has not identified "anything pointing another way" that justifies departing from the rule that, "where Congress uses a common-law term in a statute, we assume the term comes with a common law meaning." *Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91, 101 (2011) (cleaned up).

2. Statutory purpose. The "manifest purpose of the AHPA and PPA," Order at 24, cannot justify stripping the long-standing meaning from the words Congress chose. The Judicial Officer reasoned that a "knowledge and substantial assistance requirement works against the respective Congressional purpose provided in the text of the statutes by allowing parties with a role in importing prohibited items into the United States to avoid responsibility to comply." Order at 24–25. Such a requirement "would make it more difficult for the USDA to prevent the introduction of dangerous animal and plant products into the United States and increases the risk of spreading associated diseases and pests." Order at 25.

Nothing in the statutes' text permits the Department to predicate liability on vague statutory purposes or on lightening its enforcement burden. Courts "are not 'free to pave over bumpy statutory texts in the name of more expeditiously advancing a policy goal.'" *Sw. Airlines Co. v. Saxon*, 142 S. Ct. 1783, 1792 (2022) (quoting *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 543 (2019)). There simply is "no warrant to elevate vague invocations of statutory purpose over the words Congress chose." *Id.* at 1792–93.

The Supreme Court's *Central Bank* decision further exposes the Department's error in resorting to "manifest purpose." The Court held that section 10(b) of the Security Exchange Act of 1934 did not provide for civil aiding and abetting liability. *Cent. Bank*, 511 U.S. at 177–78, 191. It reasoned that "the text of the statute controls our decision" on the "scope of conduct prohibited by § 10(b)" and "refused to allow 10b–5 challenges to conduct not prohibited by the text of the statute." *Id.* at 173. It rejected the sort of policy-based interpretation the Department engaged in here. "The issue … is not whether imposing private civil liability on aiders and abettors is good policy but whether aiding and abetting is covered by the statute." *Id.* at 177.

The *Valkering* decision also does not support the Department's broad interpretation. Order at 25–27 & n.107; *Valkering, U.S.A., Inc. v. USDA*, 48 F.3d 305 (8th Cir. 1995). That decision did not involve the statutory terms at issue here. It interpreted the meaning of "allowed to

be moved," 48 F.3d at 308, which is a basis for liability that the Department expressly rejected here. ALJ Order at 24 (ruling that Amazon "was not in a position of authority to 'allow' importation of the restricted products," and that APHIS's "interpretation and application of the term 'allow' [was] overbroad and out of context with respect to the statutory definition").

3. Remedial legislation. The "USDA's longstanding policy interpreting the statutory terms to enforce similar remedial legislation," Order at 25, similarly cannot override Congress's intent. The "proposition that remedial statutes should be interpreted in a liberal manner" is not "a substitute for a conclusion grounded in the statute's text and structure." *CTS Corp. v. Waldburger*, 573 U.S. 1, 12 (2014); *see also Symons v. Chrysler Corp. Loan Guarantee Bd.*, 670 F.2d 238, 241 (D.C. Cir. 1981). Indeed, the so-called remedial canon "is not favored" and is "inapplicable where, as here, the language of the relevant statute is not ambiguous." *Sykes v. Dudas*, 573 F. Supp. 2d 191, 203 (D.D.C. 2008) (citation omitted); *see also United States v. Cano-Flores*, 796 F.3d 83, 93 (D.C. Cir. 2015). Administrative agencies "cannot rewrite a statute just to serve a perceived statutory 'spirit'." *Landstar Express Am., Inc. v. Fed. Mar. Comm'n*, 569 F.3d 493, 500 (D.C. Cir. 2009).

4. Variations in phrasing the elements of secondary liability. The Judicial Officer wrote that "Courts have not uniformly accepted or applied the elements of aiding and abetting," Order at 17, but identified

no cases applying such liability without those elements. The *Central Bank* case that he cited for the purported lack of uniformity simply pointed out that not all states had adopted the Restatement of Torts provision. Nowhere did the Court suggest that, where civil aiding and abetting liability was adopted, it could be established without knowledge and substantial assistance.

What the Judicial Officer described as "uncertainty in its application," Order at 18, are minor differences in how courts phrase the elements of secondary liability. As this Court has recognized, "of course these elements can be merged or articulated somewhat differently without affecting their basic thrust." *Halberstam*, 705 F.2d at 478 n.8; *see also In re. Amaranth Nat'l Gas Commodities Litig.*, 730 F.3d 170, 182 (2d Cir. 2013) (noting that Third and Seventh Circuits' three-part test for aiding and abetting does not "differ, in substance," from the *Peoni* test applied by the Second Circuit; also concluding that the differing formulations are "different articulations for the same substantive legal standard"); *Aetna Cas. & Sur. Co. v. Leahey Constr. Co.*, 219 F.3d 519, 534 (6th Cir. 2000) ("We see no conflict between the position that an aider and abettor must have actual knowledge of the primary party's wrongdoing and the statement that it is enough for the aider and abettor to have a general awareness of its role in the other's tortious conduct for liability to attach." (citation omitted)). All of these minor differences converge on one central point: secondary liability requires knowledge and

substantial assistance. The Department did not identify a single authority to the contrary.[5]

E. The recent *Federal Express* decision does not support the Department's statutory construction.

One business day before this brief was filed, this Court issued its decision in *Federal Express Corp. v. U.S. Dept. of Commerce*, No. 1:19-cv-01840, __ F.4th __, 2022 WL 2582364 (D.C. Cir. July 8, 2022), rejecting an *ultra vires* challenge to the Commerce Department's strict-liability interpretation of a regulation under the Export Controls Act. That decision does not support the Department's interpretation of the AHPA and PPA here because it involves a different statutory scheme in which Congress acquiesced in Commerce's interpretation and the Court gave near-total deference to the agency.

Federal Express involved an *ultra vires* challenge to a provision in the Export Administration Regulations which states that "[n]o person may cause or aid, abet, counsel, command, induce, procure, permit, or approve the doing of any act prohibited" by the Export Controls Act or

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[5] In its recent *Federal Express* decision, which Amazon next addresses in section I.E, this Court noted that courts vary in their description of the knowledge requirement, ranging from "actual knowledge" to "general awareness of the primary tortfeasor's wrongdoing" to "recklessness or constructive knowledge." *Federal Express Corp. v. U.S. Dept. of Commerce*, No. 1:19-cv-01840, __ F.4th __, 2022 WL 2582364, *11 (D.C. Cir. July 8, 2022). The Court did not identify any cases that have no knowledge requirement whatsoever, which is the position the Department took here.

Export Administration Regulations. *Fed. Exp.*, 2022 WL 2582364, at *2 (quoting 15 C.F.R. § 764.2(b)). At one time this provision contained the word "knowingly," but the Commerce Department removed it in the 1980s. *Id.* at *3. The regulations remained largely unchanged and were "sustained by Congress's temporary legislation" until 2018, when Congress enacted the 2018 Export Controls Act. *Id.* at *2. Congress "statutorily endorsed those preexisting regulations" in the 2018 Act. *Id.* The 2018 Act also imposes criminal penalties for willful violations and authorizes the Secretary of Commerce to impose civil penalties for violations. *Id.*

The Commerce Department (acting through its Bureau of Industry and Security) charged FedEx with violating the Export Administration Regulations in 2011 and 2017 by transporting restricted items to certain countries without required licenses. *Id.* at *3–4. Despite agreeing to "waive[ ] all rights … to 'seek judicial review'" in the agreements settling those charges, FedEx filed suit "challeng[ing] Commerce's strict liability interpretation as *ultra vires*—that is, in clear excess of statutory authority …." *Id.* at *4. The district court dismissed the suit because it could not "declare that the Department's application of aiding and abetting liability constitutes a patent misreading of the statute," as required for Federal Express's *ultra vires* claim to succeed. *Federal Express Corp. v. U.S. Dept. of Commerce*, 486 F. Supp. 3d 69, 82 (D.D.C.

2020), *aff'd sub nom. Fed. Express Corp. v. United States Dep't of Commerce*, No. 20-5337, 2022 WL 2582364 (D.C. Cir. July 8, 2022).

This Court affirmed, but in doing so did not hold that the Commerce Department's strict-liability interpretation was correct. Rather, the "dispute on appeal center[ed] on whether FedEx has demonstrated the type of extreme agency error needed to demonstrate that Commerce acted *ultra vires*." 2022 WL 2582364, at *5. The Court found that the district court properly dismissed the case because FedEx "failed to demonstrate the type of blatant error necessary for an *ultra vires* challenge to succeed." *Id.* at *8. The Court reasoned that the relevant regulatory provision tracked the statutory language, which is "the antithesis of a facially *ultra vires* regulation." *Id.* And because the statute had no express mens rea requirement, Commerce's interpretation "does not contravene any clear statutory command." *Id.*

The decision does not support the Department's interpretation of the AHPA and PPA here. First, the Court applied a much higher standard that required "extreme agency error," which is not the APA standard applicable here. Unlike APA review, "*ultra vires* claims are confined to 'extreme' agency error"—that is, "error that is patently a misconstruction of the Act, that disregards a specific and unambiguous statutory directive, or that violates some specific command of a statute will support relief." *Id.* at *5 (cleaned up). "[G]arden variety errors of law or fact are not enough." *Id.* at *6 (quoting *Griffith v. Federal Labor*

Relations Auth., 842 F.2d 487, 493 (D.C. Cir. 1988)). *Ultra vires* claims are a "Hail Mary pass" in which "challengers must show more than the type of routine error in 'statutory interpretation or challenged findings of fact' that would apply if Congress had allowed APA review." *Id.* (citations omitted). The "statutory construction adopted by an agency will be held 'impermissible'" under *ultra vires* review "only if it is 'utterly unreasonable'." *Id.* at *8 (citations omitted). Under the APA, by contrast, questions of statutory interpretation are reviewed de novo. 5 U.S.C. § 706*; see Citizens Against Rails-to-Trails*, 267 F.3d at 1151.

Second, the statute and regulation at issue in *Federal Express* are different from the AHPA and PPA. Most important is Congress's acquiescence in Commerce's longstanding omission of a mens rea requirement. "Commerce removed a requirement that the violator act 'knowingly' three decades ago, and has long interpreted the regulation to impose strict liability. Yet Congress expressly carried the *mens-rea*-less regulation forward in the 2018 Export Controls Act." 2022 WL 2582364, at *9. The AHPA and PPA reflect no such acquiescence, nor does the Department have a longstanding record of imposing strict liability for the acts of others.[6] In addition, the Court relied on the fact that "neighboring"

[6] The Department decisions that the Judicial Officer cited as "impos[ing] liability on all parties involved in moving restricted items," Order at 26 & n.109, do not involve strict liability for acts of others. The two decisions in which parties were held secondarily liable relied upon their knowledge

sections of the 2018 Export Controls Act expressly impose a "knowledge" requirement for different violations. *Id.* at *8. Such "selective-use" of that term does not appear in the AHPA or PPA. *Id.* at *9.

* * *

The Supreme Court has cautioned that, "if judges could freely invest old statutory terms with new meanings, we would risk amending legislation outside the single, finely wrought and exhaustively considered, procedure the Constitution commands" and "would risk, too, upsetting reliance interests in the settled meaning of a statute." *New Prime*, 139 S. Ct. at 539 (cleaned up). That is precisely what happened here. The Department imposed an unprecedented construction of "aid, abet, cause, or induce" that contravenes the long-settled understanding of these terms. And it offered no reason to treat the secondary liability

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of the wrongdoing and direct involvement in the violation. *See In re: Steven Thompson & Darrell Moore*, 50 Agric. Dec. 392, 393–94, 398 (U.S.D.A. Mar. 6, 1991) (cattle dealer knowingly arranged for the transport of infected cattle); *In re: John Casey, Monty Milhouse, & Timothy Puckett*, 54 Agric. Dec. 91, 1995 WL 3694343, at *2–3, 8 (U.S.D.A. June 21, 1995) (parties were directly involved in interstate movement of cattle they knew were infected). In the other decisions, the parties were held directly liable for their own actions. *See In re: Dean Reed, d/b/a Dean Reed Cattle Co., Pete Donathan, & Speedway Trans., Inc.*, 52 Agric. Dec. 90 (U.S.D.A. Apr. 8, 1993); *In re: Unique Nursery & Garden Ctr., Butternut Creek Sales, Inc., Valkering U.S.A., Inc., Heyl Truck Lines, Inc., & Lebarnold, Inc.*, 53 Agric. Dec. 377 (U.S.D.A. Feb. 8, 1994); *In re: Mitchell Stanley, d/b/a Stanley Bros.*, 65 Agric. Dec. 822, 831 (U.S.D.A. Oct. 26, 2006).

language in the AHPA and PPA differently from how this language has been treated in other areas of law. Nor does this Court's recent decision in *Federal Express*, which involved a different statutory scheme and standard of review, provide such justification.

II. APHIS offered no evidence of knowledge or substantial assistance.

The Department determined in the alternative that "Amazon's conduct squarely falls within the 'aid, abet, cause, or induce' definition of the term 'move'" even "if the statutory terms did require knowledge and substantial assistance to find a violation of the AHPA and PPA." Order at 29. This conclusion was error. APHIS offered no evidence that satisfies either element.

No evidence of knowledge. APHIS offered no evidence that Amazon knew, or even could have known, that the third-party sellers were sending products to the United States without required compliance documentation. The Department's finding to the contrary is predicated on knowledge that third parties were selling products in the United States, not that they were importing them wrongfully. The entirety of the Judicial Officer's analysis of knowledge is reproduced below.

> [T]hird-party sellers who are accepted into the FBA program are required to register each product they want to offer and include in the FBA program which Amazon reserves the right to refuse. Amazon had a pre-existing business relationship with each of the three (3) third party-sellers. The information contained in Ex. 11 at 5 to the Rieder declaration also reflects

> awareness of the type of products offered by the third-party sellers. Further, third-party products are stored in Amazon controlled warehouses and listed and promoted on the [A]mazon.com website. In addition, as demonstrated by the information contained on its Seller Central portal, Amazon was aware of federal regulations that restrict animal and plant products. These facts show that Amazon had knowledge.

Order at 29–30.

Knowledge that somebody sells products in the United States via Amazon is not knowledge of wrongful importation. The products can be lawfully imported with proper documentation, Order at 13, and there is no evidence that Amazon knew they were imported without that documentation before APHIS informed Amazon of the seizures. Amazon was not the importer of record or involved in importing the products, nor was it privy to the details of the importation such as the country of origin for each product. Liu Decl. ¶ 36; Second Liu Decl. ¶ 7. The third-party sellers who shipped the products for sale in the United States were responsible for arranging their lawful importation, and did in fact arrange for the products to be moved into the United States. Liu Decl. ¶¶ 5–12, 19 & Ex. 1 at 32–33. Knowledge that the third parties' acts were wrongful is required, and that is entirely absent here. *See Pittman*, 149 F.3d at 123 (requiring knowledge of "the wrongful nature of the primary actor's conduct" (citation omitted)); *SEC v. Apuzzo*, 689 F.3d 204, 212 (2d

Cir. 2012) (complainant must "prov[e] that the primary violation occurred and that the defendant had knowledge of it").

Far from showing knowledge of wrongdoing, the record demonstrates that Amazon was *unaware* of any illegal activity and had to investigate internally when APHIS first contacted Amazon. Rieder Decl. Ex. 11. Once Amazon learned of the unlawful conduct, it promptly suspended the third-party sellers' accounts. Liu Decl. ¶¶ 37–39; *see also K & S P'ship*, 952 F.2d at 978 (rejecting secondary liability where "the record is deficient of probative evidence that Continental had even a general awareness of an Eagle or Penn Square illegal scheme").

No evidence of substantial assistance. APHIS offered no evidence that Amazon substantially assisted the third-party sellers' wrongdoing. It identified no actions taken by Amazon to transport the products into the country or to assist the third parties in shipping the products. It was undisputed that third parties packaged these products, addressed them to Amazon, described the contents, transported the products from abroad into the United States, handled the shipping and Customs paperwork, and paid for the shipping. Liu Dec. ¶ 36. Amazon had no control or supervision over their importation.

The Department's finding of substantial assistance rested entirely on Amazon's providing lawful services that third parties sought to use:

> The many benefits, just recounted, that third-party sellers receive through FBA and SOA did substantially assist. The

> prohibited items were shipped from China and Thailand to Amazon as part of the third-parties' participation in the FBA program. Amazon contracted with the third-party sellers to store their products while they were promoted to customers in the United States through [A]mazon.com. Amazon contracted to enable the third-party sellers to reach customers in the United States through Respondent's website. Amazon provided, or intended to provide, the many benefits of its services to the third-party sellers at issue in this proceeding. The facts in the record show that Amazon did substantially assist the importation.

Order at 29. These "benefits" are the services that Amazon offers to millions of third-party sellers in the United States and abroad. It was undisputed that these services are entirely lawful.

The "ordinary understanding of culpable assistance to a wrongdoer … requires a desire to promote the wrongful venture's success." *Doe v. GTE Corp.*, 347 F.3d 655, 659 (7th Cir. 2003) (citation omitted). There is no evidence that Amazon directed its business services toward promoting any unlawful importation by the three sellers at issue. To the contrary, the record shows that Amazon takes extensive measures to educate sellers about their responsibility to legally import their products into the United States and that it promptly suspended these sellers' accounts when it learned of the violations. Liu Decl. ¶¶ 21–27, 37–39 & Exs. 5–10; *see also Amacker v. Renaissance Asset Mgmt. LLC*, 657 F.3d 252, 257 (5th Cir. 2011) ("The merchants did no more than execute regular trades requested by Ramunno, who represented that he was trading for his own

personal accounts…. The routine execution of trades does not amount to substantial assistance.").

III. The Department misapplied statutory penalty factors in imposing the maximum penalty.

The Department imposed the maximum civil penalty on Amazon despite (i) the absence of any evidence that Amazon knew of any wrongdoing by the third parties or intended to assist in it, (ii) Amazon's cooperation in APHIS's investigation of the third parties' shipments, and (iii) the absence of prior violations. Its principal justifications were that Amazon is big and that all importation violations inherently pose a grave risk to agriculture.

The Department made two main legal errors in its penalty determination. First, it improperly applied the mandatory "nature" and "gravity" factors by failing to consider all the circumstances relevant to this case and assuming that every violation of the AHPA and PPA has high severity. Second, it improperly relied on Amazon's size and ability to pay as aggravating factors rather than neutral ones. The resulting truncated penalty framework, under which any alleged violation by Amazon would merit the maximum penalty, is "arbitrary, capricious, an abuse of direction, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A); *see also Affum*, 566 F.3d at 1161.

The Department misapplied the "nature" and "gravity" factors. The Department did not address the nature and gravity of the alleged

violations in the circumstances of this case. It simply presumed that "the nature of Amazon's violations are of serious concern" because "the regulations promulgated pursuant to the AHPA and PPA are designed to prevent the introduction of highly contagious diseases into the United States." Order at 32 (cleaned up). Similarly, it presumed "that the gravity of the violations is great" because the products "posed the risk of spreading disease intended for sale through [A]mazon.com to consumers in the United States." Order at 34.

"An agency must … select an appropriate disciplinary sanction based on the specific facts of the particular case before it" and "may not automatically impose a fixed penalty for a specific category of misconduct regardless of individual factors." *Parsons v. U.S. Dep't of Air Force*, 707 F.2d 1406, 1410 (D.C. Cir. 1983); *see also In re: Jose Lopez Garcia*, 67 Agric. Dec. 1321, 1322 (U.S.D.A. 2008) (rejecting proposed penalty because APHIS had merely "stat[ed] that Respondent's actions undermine USDA programs, and emphasiz[ed] the need for deterrence").

Congress instructed the Department to "take into account the nature, circumstance, extent, and gravity of the violation" in determining a penalty. 7 U.S.C. §§ 7734(b)(2), 8313(b)(2). That requires consideration of many "specific facts" that the Department largely overlooked. *Parsons*, 707 F.2d at 1410; *see also In re: All. Airlines*, P.Q. Docket No. 04-0009, 2005 WL 1649008, at *7 (U.S.D.A. July 5, 2005) ("the sanction in each

case will be determined by examining … all relevant circumstances"). Those facts include:

- The plant and animal products at issue belonged to third-party sellers and were procured, packed, and shipped by third-party sellers. Amazon was the addressee and was not involved in shipping the products into the United States. Liu Decl. ¶¶ 35–36.
- The third-party sellers violated their contracts with Amazon, which expressly conditioned use of Amazon's online marketplace and services on compliance with all import laws and regulations. Liu Decl. ¶¶ 13–20.
- Amazon enforced its contracts with the third-party sellers by suspending their accounts and removing their offers from Amazon.com. Liu Decl. ¶¶ 37–39.
- Amazon assisted APHIS with the underlying investigation by providing not only the information requested by APHIS, but also other information and leads identified by Amazon. Liu Decl. ¶ 40; *see supra*, pp. 9–11.
- Amazon took additional steps to identify unknown packages and other third-party violators. Liu Decl. ¶ 40; *see supra*, pp. 9–11.
- Amazon had no knowledge of the third parties' unlawful importation. *See supra*, section II (pp. 44–46).

The Department also failed to consider any specific facts on the gravity of the alleged violations. It simply concluded that the "nature" of

the alleged violation was "serious" and its "gravity" was "great" based on the statutes' remedial purpose and the hypothetical harm of an outbreak. Order at 32, 34. Under that reasoning, the "gravity" of a violation would support imposing the maximum penalty in *every* case, since the AHPA and PPA are always "designed to prevent the introduction of highly contagious diseases into the United States" and there will be hypothetical serious harm arising from any importation. Order at 32. Congress would not have required the Department to evaluate particular factors in assessing a penalty if the analysis were identical in every case. *See Kaseman v. District of Columbia*, 444 F.3d 637, 642 (D.C. Cir. 2006) ("[S]tatutes should be interpreted to avoid … unreasonable results, or unjust or absurd consequences" (cleaned up)).

The end result is that the Department "automatically impose[d] a fixed penalty for a specific category of misconduct" contrary to the statutory text and this Court's and the Department's case law. That is not permitted. *Parsons*, 707 F.2d at 1410; *see also Nat'l Indep. Coal Operator's Ass'n v. Morton*, 494 F.2d 987, 989 (D.C. Cir. 1974) (holding that "the Secretary must consider" all six factors in assessing a penalty under the Federal Coal Mine Health and Safety Act), *aff'd sub nom. Nat'l Indep. Coal Operators' Ass'n v. Kleppe*, 423 U.S. 388 (1976); *Loc. 2578, Am. Fed'n of Gov't Emps. v. Gen. Serv. Admin.*, 711 F.2d 261, 264 (D.C. Cir. 1983) (remanding to agency given "the arbitrator's complete failure independently to consider the severity of the penalty imposed"); *accord*

Hutto Stockyard, Inc. v. USDA, 903 F.2d 299, 305–06 (4th Cir. 1990) (vacating penalty order for failure to consider all mandatory factors under the Packers and Stockyards Act, and stressing the "need for full consideration of these equally important factors"); *Holiday Food Serv., Inc. v. USDA*, 820 F.2d 1103, 1105 (9th Cir. 1987) ("[I]mposition of a penalty without consideration of all relevant factors is improper."); *Corder v. United States*, 107 F.3d 595, 597 (8th Cir. 1997) ("[M]any statutes authorizing civil fines carefully prescribe the factors an agency must consider in imposing such penalties, and reviewing courts ensure that agencies obey those statutory mandates.").

Reliance on Amazon's size and ability to pay. The Department justified its penalty in part by Amazon's size and ability to pay. ALJ Order at 41; *see* Order at 35. Under that logic, big companies would always be subjected to higher penalties based simply on size, regardless of the underlying violation.

It is well-settled that the ability to pay and continue in business are mitigating rather than aggravating factors, as the Department's own precedent recognizes:

> [W]ith regard to the imposition of a civil penalty, the Secretary consider[s] a respondent's ability to pay and to continue to do business, [which] simply provides respondents with the opportunity to present evidence through which *they seek to mitigate a civil penalty*. This has been the Secretary's unbroken interpretation of this provision since the inception

> of the Act nearly twenty years and several hundred enforcement cases ago. … The nature of the regulatory scheme under *the Act makes a person's financial resources irrelevant to the violations charged*[.] … The Secretary can, however, via the Judicial Officer or the Administrative Law Judge, make an *equitable review of financial information provided by a respondent in an effort to reduce a civil penalty*.

In re: A. P. "Sonny" Holt, Richard Wall, & Wayne Putman, 49 Agric. Dec. 853, 866–67 (U.S.D.A. 1990) (emph. added) (discussing substantively identical language under Horse Protection Act); *see also In re: St. Johns Shipping Co., Inc., & Bobby L. Shields*, 66 Agric. Dec. 571, 578–79 (U.S.D.A. 2005) ("A violator's inability to pay a civil penalty is *a mitigating circumstance* to be considered for the purpose of determining the amount of the civil penalty to be assessed in plant quarantine cases[.]" (emph. added)); *In re: Garland E. Samuel*, A.Q. Docket No. 98-00002, 57 Agric. Dec. 905, 1998 WL 556345, at *4 (U.S.D.A. Aug. 17, 1998) (same).

The Department claims that it did not increase the statutory penalty based on Amazon's ability to pay, Order at 35, but it does not explain how it could have reached the maximum penalty amount where the other two discretionary factors—degree of culpability and history of prior violations—weighed in Amazon's favor. *Cf. Morall v. DEA*, 412 F.3d 165, 181 (D.C. Cir. 2005) (holding that a penalty constituted "arbitrary decisionmaking" where "DEA offered no explanation for its decision to revoke Dr. Morall's registration while declining to revoke the registration

of any other physician in a comparable context, or even under significantly more troubling circumstances"). As the Department acknowledged, "Amazon does not have a history of previous violations under the AHPA and PPA." Order at 35. And Amazon had no knowledge of unlawful conduct so the "degree of culpability" was zero. *Compare* ALJ Order at 41 ("Knowledge is not a factor in this case."), *with In re: Sweeny S. Gillette*, 75 Agric. Dec. 363, 394 (U.S.D.A. 2016) ("Respondent also is highly culpable for his violations of the regulations because the Complainant's evidence demonstrates that he was fully aware of the regulatory requirements for the interstate movement of cattle but violated them anyway."); *In re: David M. Zimmerman*, AWA Docket No. 98-005, 57 Agric. Dec. 1038, 1998 WL 799196, at *10 (U.S.D.A. Nov. 18, 1998) ("Respondent's conduct over a period of 5 months reveals consistent disregard for and unwillingness to abide by the requirements of the Animal Welfare Act and the Regulations." (cleaned up)).

CONCLUSION

The Department's Order has no basis in the statutes it purported to apply. Applying the proper meaning of the "aid, abet, cause, or induce" language, summary judgment was required for Amazon because the Department offered no evidence that Amazon knew of or substantially assisted the third-party sellers' unlawful importations. The Court therefore should direct entry of judgment for Amazon.

Dated: July 11, 2022

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 12,295 words, excluding the parts exempted by Rule 32(f). I further certify that the brief complies with the typeface and type-style requirements of Rule 32(a)(5)–(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Century Schoolbook and Palatino Linotype fonts.

/s/ *William Brendan Murphy*
William Brendan Murphy

CERTIFICATE OF SERVICE

I certify that on July 11, 2022, I electronically filed the foregoing brief with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit using the CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished through the CM/ECF system.

/s/ *William Brendan Murphy*
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ADDENDUM A: STATUTES AND REGULATIONS

TABLE OF CONTENTS

PAGE

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 7. Agriculture (Refs & Annos)
Chapter 109. Animal Health Protection

7 U.S.C.A. § 8302

§ 8302. Definitions

Effective: December 20, 2018
Currentness

In this chapter:

(1) Animal

The term "animal" means any member of the animal kingdom (except a human).

(2) Article

The term "article" means any pest or disease or any material or tangible object that could harbor a pest or disease.

(3) Disease

The term "disease" has the meaning given the term by the Secretary.

(4) Enter

The term "enter" means to move into the commerce of the United States.

(5) Export

The term "export" means to move from a place within the territorial limits of the United States to a place outside the territorial limits of the United States.

(6) Facility

The term "facility" means any structure.

(7) Import

The term "import" means to move from a place outside the territorial limits of the United States to a place within the territorial limits of the United States.

(8) Indian tribe

The term "Indian tribe" has the meaning given the term in section 5304 of Title 25.

(9) Interstate commerce

The term "interstate commerce" means trade, traffic, or other commerce--

(A) between a place in a State and a place in another State, or between places within the same State but through any place outside that State; or

(B) within the District of Columbia or any territory or possession of the United States.

(10) Livestock

The term "livestock" means all farm-raised animals.

(11) Means of conveyance

The term "means of conveyance" means any personal property used for or intended for use for the movement of any other personal property.

(12) Move

The term "move" means--

(A) to carry, enter, import, mail, ship, or transport;

(B) to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting;

(C) to offer to carry, enter, import, mail, ship, or transport;

(D) to receive in order to carry, enter, import, mail, ship, or transport;

(E) to release into the environment; or

(F) to allow any of the activities described in this paragraph.

(13) Pest

The term "pest" means any of the following that can directly or indirectly injure, cause damage to, or cause disease in livestock:

(A) A protozoan.

(B) A plant.

(C) A bacteria.

(D) A fungus.

(E) A virus or viroid.

(F) An infectious agent or other pathogen.

(G) An arthropod.

(H) A parasite.

(I) A prion.

(J) A vector.

(K) Any organism similar to or allied with any of the organisms described in this paragraph.

(14) Secretary

The term "Secretary" means the Secretary of Agriculture.

(15) State

The term "State" means any of the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands of the United States, or any territory or possession of the United States.

(16) This chapter

Except when used in this section, the term "this chapter" includes any regulation or order issued by the Secretary under the authority of this chapter.

(17) United States

The term "United States" means all of the States.

(18) Veterinary countermeasure

The term "veterinary countermeasure" means any biological product (including an animal vaccine or diagnostic), pharmaceutical product (including a therapeutic), non-pharmaceutical product (including a disinfectant), or other product or equipment to prevent, detect, respond to, or mitigate harm to public or animal health resulting from, animal pests or diseases.

CREDIT(S)

(Pub.L. 107-171, Title X, § 10403, May 13, 2002, 116 Stat. 494; Pub.L. 115-334, Title XII, § 12101(a), Dec. 20, 2018, 132 Stat. 4937.)

7 U.S.C.A. § 8302, 7 USCA § 8302
Current through P.L. 117-159. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 7. Agriculture (Refs & Annos)
Chapter 109. Animal Health Protection

7 U.S.C.A. § 8313

§ 8313. Penalties

Currentness

(a) Criminal penalties

(1) Offenses

(A) In general

A person that knowingly violates this chapter, or knowingly forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in this chapter shall be fined under Title 18, imprisoned not more than 1 year, or both.

(B) Distribution or sale

A person that knowingly imports, enters, exports, or moves any animal or article, for distribution or sale, in violation of this chapter, shall be fined under Title 18, imprisoned not more than 5 years, or both.

(2) Multiple violations

On the second and any subsequent conviction of a person of a violation of this chapter under paragraph (1), the person shall be fined under Title 18, imprisoned not more than 10 years, or both.

(b) Civil penalties

(1) In general

Except as provided in section 8309(d) of this title, any person that violates this chapter, or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided under this chapter may, after notice and opportunity for a hearing on the record, be assessed a civil penalty by the Secretary that does not exceed the greater of--

(A)(i) $50,000 in the case of any individual, except that the civil penalty may not exceed $1,000 in the case of an initial violation of this chapter by an individual moving regulated articles not for monetary gain;

(ii) $250,000 in the case of any other person for each violation; and

(iii) for all violations adjudicated in a single proceeding--

(I) $500,000 if the violations do not include a willful violation; or

(II) $1,000,000 if the violations include 1 or more willful violations.

(B) twice the gross gain or gross loss for any violation or forgery, counterfeiting, or unauthorized use, alteration, defacing or destruction of a certificate, permit, or other document provided under this chapter that results in the person's deriving pecuniary gain or causing pecuniary loss to another person.

(2) Factors in determining civil penalty

In determining the amount of a civil penalty, the Secretary shall take into account the nature, circumstance, extent, and gravity of the violation or violations and the Secretary may consider, with respect to the violator--

(A) the ability to pay;

(B) the effect on ability to continue to do business;

(C) any history of prior violations;

(D) the degree of culpability; and

(E) such other factors as the Secretary considers to be appropriate.

(3) Settlement of civil penalties

The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty that may be assessed under this subsection.

(4) Finality of orders

(A) Final order

The order of the Secretary assessing a civil penalty shall be treated as a final order reviewable under chapter 158 of Title 28.

(B) Review

The validity of the order of the Secretary may not be reviewed in an action to collect the civil penalty.

(C) Interest

Any civil penalty not paid in full when due under an order assessing the civil penalty shall thereafter accrue interest until paid at the rate of interest applicable to civil judgments of the courts of the United States.

(c) Liability for acts of agents

In the construction and enforcement of this chapter, the act, omission, or failure of any officer, agent, or person acting for or employed by any other person within the scope of the employment or office of the officer, agent, or person, shall be deemed also to be the act, omission, or failure of the other person.

(d) Guidelines for civil penalties

Subject to the approval of the Attorney General, the Secretary shall establish guidelines to determine under what circumstances the Secretary may issue a civil penalty or suitable notice of warning in lieu of prosecution by the Attorney General of a violation of this chapter.

CREDIT(S)

(Pub.L. 107-171, Title X, § 10414, May 13, 2002, 116 Stat. 504; Pub.L. 110-234, Title XI, § 11012(a), May 22, 2008, 122 Stat. 1360; Pub.L. 110-246, § 4(a), Title XI, § 11012(a), June 18, 2008, 122 Stat. 1664, 2122.)

7 U.S.C.A. § 8313, 7 USCA § 8313
Current through P.L. 117-159. Some statute sections may be more current, see credits for details.

End of Document

9 C.F.R. § 94.0

§ 94.0 Definitions.

Effective: August 16, 2021
Currentness

As used in this part, the following terms shall have the meanings set forth in this section.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service, of the United States Department of Agriculture (APHIS.)

APHIS–defined European CSF region. A single region of Europe recognized by APHIS as low risk for classical swine fever.

(1) A list of areas included in the region is maintained on the APHIS website at https://www.aphis.usda.gov/animalhealth/disease-status-of-regions. Copies of the list are also available via postal mail or email upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; AskRegionalization@usda.gov.

(2) APHIS will add an area to the region after it conducts an evaluation of the area to be added in accordance with § 92.2 of this subchapter and finds that the risk profile for the area is equivalent with respect to classical swine fever to the risk profile for the region it is joining.

APHIS–defined European Poultry Trade Region. A single region consisting of Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Great Britain (England, Scotland, and Wales), Greece, Hungary, Ireland (Republic of), Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Northern Ireland, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.

APHIS representative. An individual employed by Animal and Plant Health Inspection Service, United States Department of Agriculture, who is authorized to perform the function involved.

Approved establishment means an establishment authorized by Veterinary Services for the receipt and handling of restricted imported animal carcasses, products, and byproducts.

Authorized inspector. Any individual authorized by the Administrator of APHIS or the Commissioner of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this part.

Birds. All members of the class Aves (other than poultry or game birds).

Bovine. Bos taurus, Bos indicus, and Bison bison.

Bovine spongiform encephalopathy (BSE) minimal-risk region. A region that:

(1) Maintains, and, in the case of regions where BSE was detected, had in place prior to the detection of BSE in an indigenous ruminant, risk mitigation measures adequate to prevent widespread exposure and/or establishment of the disease. Such measures include the following:

(i) Restrictions on the importation of animals sufficient to minimize the possibility of infected ruminants being imported into the region, and on the importation of animal products and animal feed containing ruminant protein sufficient to minimize the possibility of ruminants in the region being exposed to BSE;

(ii) Surveillance for BSE at levels that meet or exceed recommendations of the World Organization for Animal Health (Office International des Epizooties) for surveillance for BSE; and

(iii) A ruminant-to-ruminant feed ban that is in place and is effectively enforced.

(2) In regions where BSE was detected, conducted an epidemiological investigation following detection of BSE sufficient to confirm the adequacy of measures to prevent the further introduction or spread of BSE, and continues to take such measures.

(3) In regions where BSE was detected, took additional risk mitigation measures, as necessary, following the BSE outbreak based on risk analysis of the outbreak, and continues to take such measures.

Cold spot. The area in a flexible plastic cooking tube or other type of container loaded with meat product, or the areas at various points along the belt in an oven chamber, slowest to reach the required temperature during the cooking process. The cold spot(s) for each container is experimentally determined before the cooking process begins, and once identified, remains constant.

Commercial birds. Birds that are imported for resale, breeding, public display, or any other purpose, except pet birds, zoological birds, research birds, or performing or theatrical birds.

Commercial poultry. Chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, and turkeys (including eggs for hatching) which are imported for resale, breeding, public display, or any other commercial purpose.

Contact. Known or potential commingling of products during processing or storage, or while being transported from any point to any other point. Contact includes the simultaneous processing in the same room, locker, or container, but not necessarily the same storage facility or conveyance, as long as adequate security measures are taken to prevent commingling, as determined by an authorized APHIS representative.

Container. For the purposes of § 94.1(c) and § 94.16(c), this term means a receptacle, sometimes refrigerated, which is designed to be filled with cargo, sealed, and then moved, without unsealing or unloading, aboard a variety of different transporting carriers.

Department. The United States Department of Agriculture (USDA, Department).

Direct transloading. The transfer of cargo directly from one means of conveyance to another.

Exporting region. A region from which shipments are sent to the United States.

Farm equipment. Equipment used in the production of livestock or crops, including, but not limited to, mowers, harvesters, loaders, slaughter machinery, agricultural tractors, farm engines, farm trailers, farm carts, and farm wagons, but excluding automobiles and trucks.

Flock of origin. The flock in which the eggs were produced.

Food Safety and Inspection Service. The Food Safety and Inspection Service (FSIS) of the United States Department of Agriculture.

FSIS inspector. An individual authorized by the Administrator, Food Safety and Inspection Service, United States Department of Agriculture, to perform the function involved.

Game birds. Migratory birds, including certain ducks, geese, pigeons, and doves ("migratory" refers to seasonal flight to and from the United States); free-flying quail, wild grouse, wild pheasants (as opposed to those that are commercial, domestic, or pen-raised).

Highly pathogenic avian influenza (HPAI). Highly pathogenic avian influenza is defined as follows:

(1) Any influenza virus that kills at least 75 percent of eight 4- to 6–week-old susceptible chickens within 10 days following intravenous inoculation with 0.2 mL of a 1:10 dilution of a bacteria-free, infectious allantoic fluid or inoculation of 10 susceptible 4- to 8–week-old chickens resulting in an intravenous pathogenicity index (IVPI) of greater than 1.2;

(2) Any H5 or H7 virus that does not meet the criteria in paragraph (1) of this definition, but has an amino acid sequence at the haemagglutinin cleavage site that is compatible with highly pathogenic avian influenza viruses; or

(3) Any influenza virus that is not an H5 or H7 subtype and that kills one to five out of eight inoculated chickens and grows in cell culture in the absence of trypsin within 10 days.

House. A structure, enclosed by walls and a roof, in which poultry are raised.

Immediate export. The period of time determined by APHIS, based on shipping routes and timetables, to be the shortest practicable interval of time between the arrival in the United States of an incoming carrier and the departure from the United States of an outgoing carrier, to transport a consignment of products.

Import (imported, importation) into the United States. To bring into the territorial limits of the United States.

Indicator piece. A cube or slice of meat to be used for the pink juice test, required to meet minimum size specifications.

Mechanically separated meat. A finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of bovine carcasses that meets the FSIS specifications contained in 9 CFR 319.5.

Newcastle disease. Newcastle disease is an acute, rapidly spreading, and usually fatal viral infection of poultry caused by an avian paramyxovirus serotype 1 that meets one of the following criteria for virulence: The virus has an intracerebral pathogenicity index (ICPI) in day-old chicks (Gallus gallus) of 0.7 or greater; or multiple basic amino acids have been demonstrated in the virus (either directly or by deduction) at the C–terminus of the F2 protein and phenylalanine at residue 117, which is the N–terminus of the F1 protein. The term "multiple basic amino acids" refers to at least three arginine or lysine residues between residues 113 and 116. In this definition, amino acid residues are numbered from the N–terminus of the amino

acid sequence deduced from the nucleotide sequence of the F0 gene; 113–116 corresponds to residues -4 to -1 from the cleavage site. Failure to demonstrate the characteristic pattern of amino acid residues as described above may require characterization of the isolated virus by an ICPI test. A failure to detect a cleavage site that is consistent with virulent strains does not confirm the absence of a virulent virus.

Operator. The operator responsible for the day-to-day operations of a facility.

Personal use. Only for personal consumption or display and not distributed further or sold.

Pink juice test. Determination of whether meat has been thoroughly cooked by observation of whether the flesh and juices have lost all red and pink color.

Port of arrival. Any place in the United States at which a product or article arrives, unless the product or article remains on the means of conveyance on which it arrived within the territorial limits of the United States.

Positive for a transmissible spongiform encephalopathy. A sheep or goat for which a diagnosis of a transmissible spongiform encephalopathy has been made.

Poultry. Chickens, turkeys, swans, partridges, guinea fowl, pea fowl; nonmigratory ducks, geese, pigeons, and doves; commercial, domestic, or pen-raised grouse, pheasants, and quail.

Premises of origin. The premises where the flock of origin is kept.

Processed animal protein. Meat meal, bone meal, meat-and-bone meal, blood meal, dried plasma and other blood products, hydrolyzed protein, hoof meal, horn meal, poultry meal, feather meal, fish meal, and any other similar products.

Region. Any defined geographic land area identifiable by geological, political, or surveyed boundaries. A region may consist of any of the following:

(1) A national entity (country);

(2) Part of a national entity (zone, county, department, municipality, parish, Province, State, etc.)

(3) Parts of several national entities combined into an area; or

(4) A group of national entities (countries) combined into a single area.

Region of origin. For meat and meat products, the region in which the animal from which the meat or meat products were derived was born, raised and slaughtered; and for eggs, the region in which the eggs were laid.

Restricted zone for classical swine fever. An area, delineated by the relevant competent veterinary authorities of the region in which the area is located, that surrounds and includes the location of an outbreak of classical swine fever in domestic swine or detection of the disease in wild boar, and from which the movement of domestic swine is prohibited.

Ruminants. All animals that chew the cud, such as cattle, buffaloes, sheep, goats, deer, antelopes, camels, llamas and giraffes.

Sentinel bird. A chicken that has been raised in an environment free of pathogens that cause communicable diseases of poultry and that has not been infected with, exposed to, or immunized with any strain of virus that causes Newcastle disease.

Specified risk materials (SRMs) from regions of controlled risk for BSE. Those bovine parts considered to be at particular risk of containing the BSE agent in infected animals, as listed in the FSIS regulations at 9 CFR 310.22(a).

Specified risk materials (SRMs) from regions of undetermined risk for BSE. Those bovine parts considered to be at particular risk of containing the BSE agent in infected animals, as listed in the FSIS regulations at 9 CFR 310.22(a), except that the following bovine parts from regions of undetermined risk for BSE are considered SRMs if they are derived from bovines over 12 months of age: Brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and the dorsal root ganglia.

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Suspect for a transmissible spongiform encephalopathy.

(1) A sheep or goat that has tested positive for a transmissible spongiform encephalopathy or for the proteinase resistant protein associated with a transmissible spongiform encephalopathy, unless the animal is designated as positive for a transmissible spongiform encephalopathy; or

(2) A sheep or goat that exhibits any of the following signs and that has been determined to be suspicious for a transmissible spongiform encephalopathy by a veterinarian: Weight loss despite retention of appetite; behavior abnormalities; pruritus (itching); wool pulling; biting at legs or side; lip smacking; motor abnormalities such as incoordination, high stepping gait of forelimbs, bunny hop movement of rear legs, or swaying of back end; increased sensitivity to noise and sudden movement; tremor, “star gazing,” head pressing, recumbency, or other signs of neurological disease or chronic wasting.

Temperature indicator device (TID). A precalibrated temperature-measuring instrument containing a chemical compound activated at a specific temperature (the melting point of the chemical compound) identical to the processing temperature that must be reached by the meat being cooked. The Administrator will approve a TID for use after determining that the chemical compound in the device is activated at the specific temperature required.

Thoroughly cooked. Heated sufficiently to inactivate any pathogen that may be present, as indicated by the required TID or pink juice test.

United States. All of the States.

Veterinarian in Charge. The veterinary official of the Animal and Plant Health Inspection Service, United States Department of Agriculture, who is assigned by the Administrator to supervise and perform the official animal health work of the Animal and Plant Health Inspection Service in the State or area concerned.

Wild swine. Any swine which are allowed to roam outside an enclosure.

Credits

[52 FR 33801, Sept. 8, 1987; 53 FR 48520, Dec. 1, 1988; 54 FR 7393, Feb. 21, 1989; 54 FR 14794, April 13, 1989; 54 FR 31504, July 31, 1989; 55 FR 38982, Sept. 24, 1990; 57 FR 43886, Sept. 23, 1992; 59 FR 13185, March 21, 1994; 61 FR 56891, Nov. 5, 1996; 62 FR 56021, Oct. 28, 1997; 67 FR 31937, May 13, 2002; 68 FR 5805, Feb. 5, 2003; 68 FR 36900, June 20, 2003; 70 FR 549, Jan. 4, 2005; 70 FR 18252, April 8, 2005; 70 FR 71218, Nov. 28, 2005; 71 FR 29070, May 19, 2006; 71 FR 49317, Aug. 23, 2006; 72 FR 67232, Nov. 28, 2007; 74 FR 18287, April 22, 2009; 76 FR 70039, Nov. 10, 2011; 77 FR 1392, Jan. 10, 2012; 78 FR 19083, March 29, 2013; 78 FR 72998, Dec. 4, 2013; 79 FR 71006, Dec. 1, 2014; 86 FR 45625, Aug. 16, 2021]

SOURCE: 28 FR 5980, June 13, 1963; 50 FR 52762, Dec. 26, 1985; 54 FR 7393, Feb. 21, 1989; 57 FR 23928, June 5, 1992; 58 FR 58753, Nov. 4, 1993; 59 FR 67615, Dec. 30, 1994; 60 FR 57315, Nov. 15, 1995; 60 FR 64115, Dec. 14, 1995; 62 FR 56021, Oct. 28, 1997; 65 FR 50605, Aug. 21, 2000; 66 FR 21063, April 27, 2001; 67 FR 47244, July 18, 2002; 67 FR 66533, Nov. 1, 2002; 68 FR 6345, Feb. 7, 2003; 68 FR 16938, April 7, 2003; 69 FR 21046, April 20, 2004; 70 FR 57994, Oct. 5, 2005; 74 FR 18287, April 22, 2009; 78 FR 19083, March 29, 2013; 83 FR 15493, April 11, 2018, unless otherwise noted.

AUTHORITY: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Notes of Decisions (5)

Current through July 7, 2022, 87 FR 40459. Some sections may be more current. See credits for details.

End of Document

9 C.F.R. § 94.4

§ 94.4 Cured or cooked meat from regions where foot-and-mouth disease exists.

Effective: April 11, 2018
Currentness

(a) The importation of cured meats derived from ruminants or swine, originating in any region where foot-and-mouth disease exists, as designated in § 94.1, is prohibited unless the following conditions have been fulfilled:

(1) All bones shall have been completely removed in the region of origin.

(2) The meat shall have been held in an unfrozen, fresh condition for at least 3 days immediately following the slaughter of the animals from which it was derived.

(3)(i) The meat shall have been thoroughly cured and fully dried in such manner that it may be stored and handled without refrigeration, as in the case of salami and other summer sausages, tasajo, xarque, or jerked beef, bouillon cubes, dried beef, and Westphalia, Italian and similar type hams. The term "fully dried" as used in this paragraph means dried to the extent that the water-protein ratio in the wettest portion of the product does not exceed 2.25 to 1.

(ii) Laboratory analysis of samples to determine the water-protein ratios will not be made in the case of all shipments of cured and dried meats. However, in any case in which the inspector is uncertain whether the meat complies with the requirements of paragraph (a)(3)(i) of this section, he will send a sample of the meat representative of the wettest portion to the Meat Inspection Division for analysis of the water-protein ratio. Pending such analysis the meat shall not be released or removed from the port of arrival.

(4) The cured meat shall be accompanied by a certificate issued by an official of the national government of the region of origin who is authorized to issue the foreign meat inspection certificate required by § 327.4 of this title, stating that such meat has been prepared in accordance with paragraphs (a)(1), (a)(2) and (a)(3)(i) of this section. Upon arrival of the cured meat in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

(b) The importation of cooked meats from ruminants or swine originating in any region where foot-and-mouth disease exists, as designated in § 94.1, is prohibited, except as provided in this section.

(1) The cooked meat must be boneless and must be thoroughly cooked.

(2) The cooked meat must have been prepared in an establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) and the regulations in 9 CFR 327.2; must meet all other applicable requirements of the Federal Meat Inspection Act and regulations thereunder (9 CFR Chapter III); and must have been approved by the Administrator in accordance with paragraph (c) of this section.

(3) Canned product (canned meat), as defined in § 318.300(d) of this chapter, is exempt from the requirements in this section.

(4) Ground meat cooked in an oven. Ground meat must be shaped into patties no larger than 5 inches in diameter and 1–inch thick. Each patty must weigh no more than 115 grams, with fat content no greater than 30 percent. These patties must be broiled at 210 degreesC for at least 133 seconds, then cooked in moist heat (steam heat) in a continuous, belt-fed oven for not less than 20 minutes, to yield an internal exit temperature of at least 99.7 degreesC, as measured by temperature indicator devices (TID's) placed in temperature monitor patties positioned, before the belt starts moving through the oven, on each of the predetermined cold spots along the oven belt. TID's must be used at the beginning of each processing run.

(5) Meat cooked in tubes. Ground meat (which must not include cardiac muscle), cubes of meat, slices of meat, or anatomical cuts of meat (cuts taken from the skeletal muscle tissue) weighing no more than 5 kg (11.05 lbs) must be loaded into a flexible or semiflexible cooking tube constructed of plastic or other material approved by the U.S. Food and Drug Administration. The meat must then be cooked in either boiling water or in a steam-fed oven, in either a batch cooker or a continuous cooker, to reach a minimum internal temperature of 79.4 °C (175 °F) at the cold spot after cooking for at least 1.75 hours. Thoroughness of cooking must be determined by a TID registering the target temperature at the cold spot, or by the pink juice test as follows:

(i) Cubes of meat and ground meat. For cubes of meat, at least 50 percent of meat pieces per tube must be 3.8 cm (1.5 in) or larger in each dimension after cooking or, if more than 50 percent of the cubes of meat pieces per tube are smaller than 3.8 cm (1.5 in) in any dimension after cooking, or if the meat is ground meat, an indicator piece consisting of a single piece of meat of sufficient size for a pink juice test to be performed (3.8 cm (1.5 in) or larger in each dimension after cooking) must have been placed at the cold spot of the tube.

(ii) Slices of meat. At least 50 percent of the slices of meat must be 3.8 cm (1.5 in) or larger in each dimension after cooking or, if more than 50 percent of meat pieces are smaller than 3.8 cm (1.5 in) in any dimension after cooking, an indicator piece of sufficient size for a pink juice test to be performed (3.8 cm (1.5 in) or larger in each dimension after cooking) must be placed at the cold spot of the tube.

(iii) Anatomical cuts of meat. An indicator piece removed from an anatomical cut of meat after cooking must be removed from the center of the cut, farthest from all exterior points and be 3.8 cm (1.5 in) or larger in each dimension for performance of the pink juice test.

(6) Further processing of meat cooked in tubes. Cubes of meat, slices of meat, or anatomical cuts of meat (cuts taken from the skeletal muscle tissue) cooked in tubes in accordance with paragraph (b)(5) of this section may be processed further after cooking if the following provisions are met:

(i) For meat that is cooked and is intended for further processing, up to two tubes from each batch per cooker must be randomly selected by the official of the National Government of the region of origin who is authorized to issue the meat inspection certificate required by § 327.4 of this title. If a TID is not used, a cylindrical or square piece of at least 3.8 cm (1.5 in) in each dimension must be cut from the cold spot of each tube. The cylindrical or square piece will be the indicator piece for the pink juice test. The indicator piece or piece containing the TID must be sealed in plastic or other material approved by the U.S. Food and Drug Administration, and be accompanied by a certificate issued by the official who selected the tube. The certificate must provide the date the tube was cooked and the cooker and batch number, and the date the tube was selected for sampling. Each batch per cooker must have at least one but no more than two indicator pieces or pieces containing TID's. All indicator pieces and pieces containing TID's must be individually sealed, properly labeled, and enclosed together in one sealed box that accompanies the shipment. Any indicator pieces or pieces containing TID's that are not used to accompany a shipment to the United States must be destroyed following loading of the batch into a container; and

(ii) After removing the indicator piece or piece containing a TID, all remaining meat from the same batch may be cut into smaller cubes and sealed in plastic or other material approved by the U.S. Food and Drug Administration. After being processed into smaller cubes once, the meat may not be further processed before shipment to the United States. The cubes of meat and the indicator piece or piece containing a TID must be accompanied to the United States by a certificate as provided in paragraph (b)(8) of this section.

(7) Any TID used in accordance with paragraph (b)(4) or (b)(5) of this section must remain in the meat, as originally inserted, and must accompany the cooked meat whose temperature it has gauged when that meat is shipped to the United States.

(8) Pork rind pellets (pork skins). Pork rind pellets (pork skins) must be cooked in one of the following ways:

(i) One-step process. The pork skins must be cooked in oil for at least 80 minutes when oil temperature is consistently maintained at a minimum of 114 °C.

(ii) Two-step process. The pork skins must be dry-cooked at 260 °C for approximately 210 minutes after which they must be cooked in hot oil (deep-fried) at 104 °C for an additional 150 minutes.

(9) Certificate.

(i) The cooked meat must be accompanied by a certificate issued by an official of the National Government of the region of origin who is authorized to issue the foreign meat inspection certificate required under § 327.4 of this title, stating: “This cooked meat produced for export to the United States meets the requirements of title 9, Code of Federal Regulations, § 94.4(b).” Upon arrival of the cooked meat in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

(ii) For cooked meat that is further processed in accordance with paragraph (b)(6) of this section, the certificate must include the following statement, in addition to the certification required under paragraph (b)(9)(i) of this section: “No more than two tubes were randomly selected per batch per cooker for cutting an indicator piece or obtaining a piece containing

a TID. The indicator piece or piece containing a TID represents a shipment of (describe form of processed product—e.g., diced cubes of a particular size). A piece containing a TID or a piece 3.8 cm (1.5 in) or larger in each dimension was cut from the cold spot of the tube, and was sealed and marked with the following cooking date, cooker, and batch: ___ and the following date of selection of the tube ___. The total number of indicator pieces or pieces containing TID's enclosed in a sealed box is ___."

(10) The meat is inspected by an FSIS inspector at a port of arrival in a defrost facility approved by the Administrator[2] and the meat is found to be thoroughly cooked.

[2] The names and addresses of approved defrost facilities and conditions for approval may be obtained from the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, Washington, DC 20250.

(i) Request for approval of any defrost facility must be made to the Administrator. The Administrator will approve a defrost facility only under the following conditions:

(A) The defrost facility has equipment and procedures that permit FSIS inspectors to determine whether meat is thoroughly cooked;

(B) The defrost facility is located at a port of arrival; and

(C) The defrost facility is approved by the Food Safety and Inspection Service, United States Department of Agriculture.[3]

[3] Conditions for the approval of any defrost facility by the Food Safety and Inspection Service, United States Department of Agriculture, may be obtained from the Import Inspection Division, International Programs, Food Safety and Inspection Service, United States Department of Agriculture, Washington, DC 20250.

(ii) The Administrator may deny approval of any defrost facility if the Administrator determines that the defrost facility does not meet the conditions for approval. If approval is denied, the operator of the defrost facility will be informed of the reasons for denial and be given an opportunity to respond. The operator will be afforded an opportunity for a hearing with respect to any disputed issues of fact. The hearing will be conducted in accordance with rules of practice that will be adopted for the proceeding.

(iii) The Administrator may withdraw approval of any defrost facility as follows: (A) When the operator of the defrost facility notifies the Administrator in writing that the defrost facility no longer performs the required services; or (B) when the Administrator determines that the defrost facility does not meet the conditions for approval. Before the Administrator withdraws approval from any defrost facility, the operator of the defrost facility will be informed of the reasons for the proposed withdrawal and given an opportunity to respond. The operator will be afforded a hearing with respect to any disputed issues of fact. The hearing will be conducted in accordance with rules of practice that will be adopted for the

proceeding. If approval of a defrost facility is withdrawn, the Administrator will remove its name from the list of approved defrost facilities.

(c) Meat processing establishment; standards.

(1) Before the Administrator will approve a meat processing establishment for export shipment of cooked meat to the United States, the Administrator must determine:

(i) That the meat processing establishment has furnished APHIS with a description of the process used to inactivate FMD virus that may be present in meat intended for export to the United States, and with blueprints of the facilities where this meat is cooked and packaged;

(ii) That an APHIS representative has inspected the establishment and found that it meets the standards set forth in paragraph (c)(2) of this section;

(iii) That the operator of the establishment has signed a cooperative service agreement with APHIS, stating: (A) That all cooked meat processed for importation into the United States will be processed in accordance with the requirements of this part; (B) that a full-time, salaried meat inspection official of the National Government of the exporting region will supervise the processing (including certification of the cold spot) and examination of the product, and certify that it has been processed in accordance with this section; and (C) that APHIS personnel or other persons authorized by the Administrator may enter the establishment, unannounced, to inspect the establishment and its records; and

(iv) That the operator of the establishment has entered into a trust fund agreement with APHIS and is current in paying all costs for an APHIS representative to inspect the establishment for initial evaluation, and periodically thereafter, including travel, salary, subsistence, administrative overhead, and other incidental expenses (including an excess baggage provision up to 150 pounds). In accordance with the terms of the trust fund agreement, before the APHIS representative's site inspection, the operator of the processing establishment must deposit with the Administrator an amount equal to the approximate cost of one inspection by an APHIS representative, including travel, salary, subsistence, administrative overhead, and other incidental expenses (including an excess baggage provision up to 150 pounds). As funds from that amount are obligated, a bill for costs incurred based on official accounting records will be issued, to restore the deposit to the original level, revised as necessary to allow for inflation or other changes in estimated costs. To be current, bills must be paid within 14 days of receipt.

(2) Establishment. An APHIS representative will conduct an on-site evaluation, and subsequent inspections, as provided in § 94.4(c)(1), to determine whether the following conditions are met:

(i) The facilities used for processing cooked meat in the meat processing establishment are separate from the facilities used for processing raw meat (precooking, boning, preparation, and curing), with only the through-the-wall cooking system through which the meat product is delivered at the end of the cooking cycle connecting them; and there is at all times a positive air flow from the cooked to the raw product side;

(ii) The cooking equipment has the capacity to cook all meat pieces in accordance with § 94.4 (b)(4) or (b)(5);

(iii) Workers who process cooked meat are at all times kept separate from workers who process raw meat, and have, for their exclusive use: A separate entrance, dining area, toilets, lavatories with cold and hot water, soap, disinfectants, paper towels, clothes hampers and waste baskets for disposal, and changing rooms stocked with the clean clothing and rubber boots into which all persons must change upon entering the establishment. Workers and all other persons entering the establishment must wash their hands and change into the clean clothing and boots provided in the changing rooms before entering the cooking facilities, and must leave this clothing for laundering and disinfecting before exiting from the establishment, regardless of the amount of time spent inside or away from the establishment;

(iv) Original records identifying the slaughtering facility from which the meat was obtained and the date the meat entered the meat processing establishment, and original certification (including temperature recording charts and graphs), must be kept for all cooked meat by the full-time salaried meat inspection official of the National Government of the exporting region assigned to the establishment, and must be retained for 2 years.

(Approved by the Office of Management and Budget under control number 0579–0015)

Credits

[52 FR 33801, Sept. 8, 1987; 53 FR 48520, Dec. 1, 1988; 54 FR 7393, Feb. 21, 1989; 59 FR 13186, March 21, 1994; 59 FR 67134, Dec. 29, 1994; 62 FR 42900, Aug. 11, 1997; 62 FR 46180, Sept. 2, 1997; 63 FR 67575, Dec. 8, 1998; 66 FR 29899, June 4, 2001; 66 FR 63911, Dec. 11, 2001; 68 FR 6345, Feb. 7, 2003; 68 FR 15936, April 2, 2003; 74 FR 66221, Dec. 15, 2009; 83 FR 15493, April 11, 2018]

SOURCE: 28 FR 5980, June 13, 1963; 50 FR 52762, Dec. 26, 1985; 54 FR 7393, Feb. 21, 1989; 57 FR 23928, June 5, 1992; 58 FR 58753, Nov. 4, 1993; 59 FR 67615, Dec. 30, 1994; 60 FR 57315, Nov. 15, 1995; 60 FR 64115, Dec. 14, 1995; 62 FR 56021, Oct. 28, 1997; 65 FR 50605, Aug. 21, 2000; 66 FR 21063, April 27, 2001; 67 FR 47244, July 18, 2002; 67 FR 66533, Nov. 1, 2002; 68 FR 6345, Feb. 7, 2003; 68 FR 16938, April 7, 2003; 69 FR 21046, April 20, 2004; 70 FR 57994, Oct. 5, 2005; 74 FR 18287, April 22, 2009; 78 FR 19083, March 29, 2013; 83 FR 15493, April 11, 2018, unless otherwise noted.

AUTHORITY: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Current through July 7, 2022, 87 FR 40459. Some sections may be more current. See credits for details.

End of Document

Code of Federal Regulations
Title 9. Animals and Animal Products
Chapter I. Animal and Plant Health Inspection Service, Department of Agriculture
Subchapter D. Exportation and Importation of Animals (Including Poultry) and Animal Products
Part 94. Foot–and–Mouth Disease, Newcastle Disease, Highly Pathogenic Avian Influenza, African Swine Fever, Classical Swine Fever, Swine Vesicular Disease, and Bovine Spongiform Encephalopathy: Prohibited and Restricted Importations (Refs & Annos)

9 C.F.R. § 94.6

§ 94.6 Carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds; importations from regions where Newcastle disease or highly pathogenic avian influenza is considered to exist.

Effective: August 16, 2021
Currentness

(a) Disease status of regions for Newcastle disease and highly pathogenic avian influenza (HPAI).

(1) Regions in which Newcastle disease is not considered to exist.

(i) A list of free regions is maintained on the APHIS website at https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions. Copies of the list are also available via postal mail upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; AskRegionalization@usda.gov.

(ii) APHIS will remove a region from the list referenced in paragraph (a)(1)(i) of this section upon determining that Newcastle disease exists there based on reports APHIS receives of outbreaks of the disease in commercial birds or poultry from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable. APHIS will add a region to this list after it conducts an evaluation of the region and finds that Newcastle disease is not likely to be present in its commercial bird or poultry populations. In the case of a region formerly on this list that is removed due to an outbreak, the region may be returned to the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

(2) Regions in which HPAI is considered to exist.

(i) A list of affected regions is maintained on the APHIS website at https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions. Copies of the list can be obtained via postal mail upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; AskRegionalization@usda.gov.

(ii) APHIS will consider a region to have HPAI and add it to this list referenced in paragraph (a)(2)(i) of this section upon determining that HPAI exists in commercial birds or poultry in the region based on reports APHIS receives of outbreaks

of the disease from veterinary officials of the exporting country, from the OIE, or from other sources the Administrator determines to be reliable. APHIS will remove a region from this list only after it conducts an evaluation of the region and finds that HPAI is not likely to be present in its commercial bird or poultry populations.

(b) Carcasses, and parts or products of carcasses, including meat, from regions where Newcastle disease or HPAI is considered to exist. This paragraph applies to carcasses, and parts or products of carcasses,[4] including meat, of poultry, game birds, or other birds that were raised or slaughtered in any region where Newcastle disease or any subtype of HPAI is considered to exist (see paragraph (a) of this section); are imported from any such region; or are moved into or through any such region at any time before importation or during shipment to the United States.

(1) Carcasses of game birds, if eviscerated with heads and feet removed, may be imported from regions where Newcastle disease is considered to exist. Carcasses of game birds may not be imported from regions where any subtype of HPAI is considered to exist. Viscera, heads, and feet removed from game birds in any of these regions are ineligible for entry into the United States.

(2) Carcasses, or parts or products of carcasses, of poultry, game birds, and other birds from regions where Newcastle disease or HPAI are considered to exist may be imported for consignment to any museum, educational institution or other establishment which has provided the Administrator with evidence that it has the equipment, facilities, and capabilities to store, handle, process, or disinfect such articles so as to prevent the introduction or dissemination of Newcastle disease or HPAI into the United States, and which is approved by the Administrator.[5]

[5] The names and addresses of approved establishments may be obtained from, and requests for approval may be made to, Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, APHIS, 4700 River Road, Unit 38, Riverdale, Maryland 20737–1231.

(3) Carcasses, or parts or products of carcasses, including meat, of poultry, game birds, or other birds, may be imported if packed in hermetically sealed containers and if cooked by a commercial method after such packing to produce articles that are shelf stable without refrigeration.

(4) Carcasses and parts or products of carcasses, including meat, of poultry, game birds, or other birds, may be imported if they are accompanied by a certificate that is signed by a full-time, salaried veterinarian of the government agency responsible for animal health in the region and that specifies that the articles were cooked throughout to reach a minimum internal temperature of 74 °C (165 °F).

(5) Carcasses, and parts or products of carcasses, including meat, of poultry, game birds, or other birds, that originated in a region considered to be free of Newcastle disease and any subtype of HPAI, and that are processed (cut, packaged, or other processing) in a region where Newcastle disease or HPAI is considered to exist, may be imported under the following conditions:

(i) Shipment to processing establishments. All poultry, game bird, or other bird products from such regions shall be shipped from the Newcastle disease and HPAI–free region where they originated to a processing establishment[6] in the region where Newcastle disease or HPAI is considered to exist in closed containers sealed with serially numbered seals applied

by an official of the national government of that region. They must be accompanied by a certificate that is signed by a full-time, salaried veterinarian of the government agency responsible for animal health in the region and that specifies the products' region of origin, the processing establishment to which the carcasses or parts or products are consigned, and the numbers of the seals applied to the shipping containers.

(A) The poultry, game bird, or other bird carcasses or parts or products may be removed from containers at the processing establishment in the region where Newcastle disease or HPAI is considered to exist only after an official of the national government has determined that the seals are intact and free of any evidence of tampering. The official must attest to this fact by signing the certificate accompanying the shipment.

(B) [Reserved]

6 As a condition of entry into the United States, poultry species and poultry products addressed by the Poultry Products Inspection Act (PPIA, 21 U.S.C. 451 et seq.) and regulations thereunder (9 CFR, chapter III, part 381), must also meet all of the requirements of the PPIA and part 381, including requirements that the poultry or poultry products be prepared only in establishments approved by FSIS. Species subject to these requirements include chickens, turkeys, ducks, geese, guineas, ratites, or squabs.

(ii) Handling of poultry, game bird, or other bird carcasses or parts or products. Establishments in regions where Newcastle disease or HPAI is considered to exist that process poultry, game bird, or other bird carcasses or parts or products for export to the United States:

(A) May not receive or handle any live poultry or birds.

(B) Must keep any records required by this section on file at the facility for a period of at least 2 years after export of processed products to the United States, and must make those records available to USDA inspectors during inspections.

(C) May process carcasses or parts or products that originate in any region, provided that:

(1) All areas, utensils, and equipment likely to contact the carcasses or parts or products to be processed, including skinning, deboning, cutting, and packing areas, are cleaned and disinfected between processing carcasses or parts or products from regions where Newcastle disease or HPAI is considered to exist and processing those from Newcastle disease and HPAI–free regions.

(2) Carcasses or parts or products intended for export to the United States are not handled, cut, or otherwise processed at the same time as any carcasses or parts or products not eligible for export to the United States.

(3) Carcasses or parts or products intended for export to the United States are packed in clean new packaging that is clearly distinguishable from that containing any carcasses or parts or products not eligible for export to the United States.

(4) Carcasses or parts or products are stored in a manner that ensures that no cross-contamination occurs.

(iii) Cooperative service agreement. Operators of processing establishments must enter into a cooperative service agreement with APHIS to pay all expenses incurred by APHIS in inspecting the establishment. APHIS anticipates that such inspections will occur once a year. The cooperative service account must always contain a balance that is at least equal to the cost of one inspection. APHIS will charge the cooperative service account for travel, salary, and subsistence of APHIS employees, as well as administrative overhead and other incidental expenses (including excess baggage charges up to 150 pounds).

(iv) Shipment to the United States. Poultry, game bird, or other bird carcasses or parts or products to be imported into the United States must be shipped from the region where they were processed in closed containers sealed with serially numbered seals applied by an official of the national government of that region. The shipments must be accompanied by a certificate signed by an official of the national government of the region where articles were processed that lists the numbers of the seals applied and states that all of the conditions of this section have been met. A copy of this certificate must be kept on file at the processing establishment for at least 2 years.

(6) Poultry, game bird, or other bird carcasses or parts or products that do not otherwise qualify for importation under paragraphs (b)(1) through (5) of this section may be imported only if the importer applies to, and is granted a permit by, the Administrator, authorizing such importation. A permit will be given only when the Administrator determines that such importation will not constitute a risk of introduction or dissemination of Newcastle disease or HPAI into the United States. Application for a permit may be made in accordance with paragraph (d) of this section.

[4] Animal byproducts are regulated under part 95 of this subchapter.

(c) Eggs (other than hatching eggs) from regions where Newcastle disease or HPAI is considered to exist. Eggs (other than hatching eggs [7]) from poultry, game birds, or other birds may be imported only in accordance with this section if they: Are laid by poultry, game birds, or other birds that are raised in any region where Newcastle disease or HPAI is considered to exist (see paragraph (a) of this section); are imported from any region where Newcastle disease or HPAI is considered to exist; or are moved into or through any region where Newcastle disease or HPAI is considered to exist at any time before importation or during shipment to the United States.

(1) With a certificate. The eggs may be imported if they are accompanied by a certificate signed by a salaried veterinary officer of the national government of the region of origin or, if exported from Mexico, accompanied either by such a certificate or by a certificate issued by a veterinarian accredited by the national government of Mexico and endorsed by a full-time salaried veterinary officer of the national government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so, and:

(i) The eggs are imported in cases marked with the identity of the flock of origin and sealed with the seal of the national government of the region of origin.

(ii) The certificate accompanying the eggs is presented to an authorized inspector when the eggs reach the port of arrival in the United States.

(iii) The certificate identifies the flock of origin and shows the region of origin, the port of embarkation, the port of arrival, the name and address of the exporter and importer, the total number of eggs, and cases of eggs, shipped with the certificate, and the date the certificate was signed.

(iv) The certificate states that the eggs qualify for importation in accordance with this section.

(v) The certificate states that no more than 90 days before the certificate was signed, a salaried veterinary officer of the national government of the region of origin or, if exported from Mexico, by a veterinarian accredited by the national government of Mexico, inspected the flock of origin and found no evidence of communicable diseases of poultry.

(vi) The eggs were washed, to remove foreign material from the surface of the shells, and sanitized on the premises of origin with a hypochlorite solution of from 100 ppm to 200 ppm available chlorine.

(vii) The eggs were packed on the premises of origin in previously unused cases.

(viii) Before leaving the premises of origin, the cases in which the eggs were packed were sealed with a seal of the national government of the region of origin by the salaried veterinarian of the national government of the region of origin who signed the certificate or, if exported from Mexico, by the veterinarian accredited by the national government of Mexico who signed the certificate.

(ix) In addition, if the eggs were laid in any region where Newcastle disease or HPAI is considered to exist (see paragraph (a) of this section), the certificate must also state:

(A) No Newcastle disease or HPAI occurred on the premises of origin or on adjoining premises during the 90 days before the certificate was signed.

(B) There is no evidence that the flock of origin was exposed to Newcastle disease or HPAI during the 90 days before the certificate was signed.

(C) The eggs are from a region free of HPAI, or from a flock of origin found free of Newcastle disease as follows: On the seventh and fourteenth days of the 21–day period before the certificate is signed, at least 1 cull bird (a sick or dead bird, not a healthy bird that was killed) for each 10,000 live birds occupying each poultry house certified for exporting table eggs was tested for Newcastle disease virus using embryonated egg inoculation technique. The weekly cull rate of birds of every exporting poultry house within the exporting farm does not exceed 0.1 percent. The tests present no clinical or immunological evidence of Newcastle disease by embryonated egg inoculation technique from tissues of birds that were culled and have been collected by a salaried veterinary officer of the national government of the region of origin or by a veterinarian accredited by the national government of Mexico. All examinations and embryonated egg inoculation tests were conducted in a laboratory located in the region of origin, and the laboratory was approved to

conduct the examinations and tests by the veterinary services organization of the national government of that region. All results were negative for Newcastle disease.

(D) Egg drop syndrome is notifiable in the region of origin and there have been no reports of egg drop syndrome in the flocks of origin of the eggs, or within a 50 kilometer radius of the flock of origin, for the 90 days prior to the issuance of the certificate.

(2) To an approved establishment for breaking and pasteurization. The eggs may be imported if they are moved from the port of arrival in the United States, under seal of the United States Department of Agriculture, to an approved establishment for breaking and pasteurization. Establishments will be approved when the Administrator determines that pasteurization and sanitation procedures for handling the eggs, and for disposing of egg shells, cases, and packing materials, are adequate to prevent the introduction of Newcastle disease and HPAI into the United States.

(3) For scientific, educational, or research purposes. The eggs may be imported if they are imported for scientific, educational, or research purposes and the Administrator has determined that the importation can be made under conditions that will prevent the introduction of Newcastle disease and HPAI into the United States. The eggs must be accompanied by a permit obtained from APHIS prior to the importation in accordance with paragraph (d) of this section, and they must be moved and handled as specified on the permit to prevent the introduction of Newcastle disease and HPAI into the United States.

(4) Other. The eggs may be imported when the Administrator determines that the eggs have been cooked or processed or will be handled in a manner that will prevent the introduction of Newcastle disease and HPAI into the United States. The eggs must be accompanied by a permit obtained from APHIS prior to the importation in accordance with paragraph (d) of this section, and they must be moved and handled as specified on the permit to prevent the introduction of Newcastle disease and HPAI into the United States.

[7] The requirements for importing hatching eggs are contained in part 93 of this chapter.

(d) To apply for a permit, contact Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, Maryland 20737, or visit https://efile.aphis.usda.gov/s/vs-permitting-assistant.

(Approved by the Office of Management and Budget under control numbers 0579–0015, 0579–0245, 0579–0328, and 0579–0367)

Credits

[39 FR 39546, Nov. 8, 1974; 39 FR 41242, Nov. 26, 1974, as amended at 40 FR 14571, April 1, 1975; 45 FR 29270, May 2, 1980; 45 FR 65520, Oct. 3, 1980; 48 FR 57472, Dec. 30, 1983; 50 FR 7328, Feb. 22, 1985; 50 FR 24613, June 12, 1985; 50 FR 28560, July 17, 1985; 52 FR 27327, July 21, 1987; 53 FR 5759, Feb. 26, 1988; 53 FR 22129, June 14, 1988; 53 FR 48520, Dec. 1, 1988; 54 FR 7393, Feb. 21, 1989; 54 FR 12531, March 27, 1989; 54 FR 14795, April 13, 1989; 54 FR 26466, June 23, 1989; 55 FR 29003, July 17, 1990; 57 FR 44331, Sept. 25, 1992; 59 FR 67615, 67616, Dec. 30, 1994; 60 FR 21429, May 2, 1995; 61 FR 56891, Nov. 5, 1996; 62 FR 5742, Feb. 7, 1997; 62 FR 19033, April 18, 1997; 62 FR 27940, May 22, 1997; 62 FR 46180, Sept. 2, 1997; 62 FR 48752, Sept. 17, 1997; 63 FR 44124, Aug. 18, 1998; 63 FR 67575, Dec. 8, 1998; 64 FR 38550, July 19, 1999; 67 FR 59137, Sept. 20, 2002; 68 FR 36900, June 20, 2003; 69 FR 3823, Jan. 27, 2004; 69 FR 25825, May 10,

2004; 70 FR 5044, Feb. 1, 2005; 70 FR 33803, June 10, 2005; 70 FR 36332, June 23, 2005; 70 FR 41610, July 20, 2005; 71 FR 4812, Jan. 30, 2006; 71 FR 7402, Feb. 13, 2006; 71 FR 28763, May 18, 2006; 71 FR 38261, July 6, 2006; 74 FR 18287, April 22, 2009; 76 FR 4054, Jan. 24, 2011; 78 FR 19084, March 29, 2013; 79 FR 71004, 71006, Dec. 1, 2014; 80 FR 10576, Feb. 27, 2015; 81 FR 40152, June 21, 2016; 86 FR 45626, Aug. 16, 2021]

SOURCE: 28 FR 5980, June 13, 1963; 50 FR 52762, Dec. 26, 1985; 54 FR 7393, Feb. 21, 1989; 57 FR 23928, June 5, 1992; 58 FR 58753, Nov. 4, 1993; 59 FR 67615, Dec. 30, 1994; 60 FR 57315, Nov. 15, 1995; 60 FR 64115, Dec. 14, 1995; 62 FR 56021, Oct. 28, 1997; 65 FR 50605, Aug. 21, 2000; 66 FR 21063, April 27, 2001; 67 FR 47244, July 18, 2002; 67 FR 66533, Nov. 1, 2002; 68 FR 6345, Feb. 7, 2003; 68 FR 16938, April 7, 2003; 69 FR 21046, April 20, 2004; 70 FR 57994, Oct. 5, 2005; 74 FR 18287, April 22, 2009; 78 FR 19083, March 29, 2013; 83 FR 15493, April 11, 2018, unless otherwise noted.

AUTHORITY: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Notes of Decisions (1)

Current through July 7, 2022, 87 FR 40459. Some sections may be more current. See credits for details.

End of Document

Code of Federal Regulations
Title 9. Animals and Animal Products
Chapter I. Animal and Plant Health Inspection Service, Department of Agriculture
Subchapter D. Exportation and Importation of Animals (Including Poultry) and Animal Products
Part 94. Foot–and–Mouth Disease, Newcastle Disease, Highly Pathogenic Avian Influenza, African Swine Fever, Classical Swine Fever, Swine Vesicular Disease, and Bovine Spongiform Encephalopathy: Prohibited and Restricted Importations (Refs & Annos)

9 C.F.R. § 94.9

§ 94.9 Pork and pork products from regions where classical swine fever exists.

Effective: August 16, 2021
Currentness

(a) APHIS considers classical swine fever to exist in all regions of the world except those declared free of the disease by APHIS.

(1) A list of regions that APHIS has declared free of classical swine fever is maintained on the APHIS website at https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions. Copies of the list are also available via postal mail upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; AskRegionalization@usda.gov.

(2) APHIS will add a region to the list of those it has declared free of classical swine fever after it conducts an evaluation of the region in accordance with § 92.2 of this subchapter and finds that the disease is not present. In the case of a region formerly on this list that is removed due to an outbreak, the region may be returned to the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter. APHIS will remove a region from the list of those it has declared free of classical swine fever upon determining that the disease exists in the region based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable.

(b) The APHIS–defined European CSF region is a single region of low-risk for CSF.

(c) Except as provided in § 94.31 for the APHIS–defined European CSF region, no fresh pork or pork product may be imported into the United States from any region where classical swine fever is known to exist unless it complies with the following requirements: [9]

[9] See also other provisions of this part and parts 93, 95, and 96 of this chapter, and part 327 of this title, for other prohibitions and restrictions upon the importation of swine and swine products.

(1) Such pork or pork product has been treated in accordance with one of the following procedures:

(i) Such pork and pork product has been fully cooked by a commercial method in a container hermetically sealed promptly after filling but before such cooking, so that such cooking and sealing produced a fully sterilized product which is shelf-stable without refrigeration;

(ii) Such pork or pork product is in compliance with the following requirements:

(A) All bones were completely removed prior to cooking; and

(B) Such pork or pork product was heated by other than a flash-heating method to an internal temperature of 69 °C. (156 °F.) throughout;

(iii) Such pork or pork product is in compliance with the following requirements:

(A) All bones have been completely removed in the region of origin, and

(B) The meat has been held in an unfrozen, fresh condition for at least 3 days immediately following the slaughter of the animals from which it was derived, and

(C) The meat has been thoroughly cured and fully dried for a period of not less than 90 days so that the product is shelf stable without refrigeration: *Provided*, That the period of curing and drying shall be 45 days if the pork or pork product is accompanied to the processing establishment by a certificate of an official of the national government of a classical swine fever free region which specifies that:

(1) The pork involved originated in that region and the pork or pork product was consigned to a processing establishment in _____ (a region not listed under paragraph (a) of this section as free of classical swine fever), in a closed container sealed by the national veterinary authorities of the classical swine fever free region by seals of a serially numbered type; and

(2) The numbers of the seals used were entered on the meat inspection certificate of the classical swine fever free region which accompanied the shipment from such free region: *And, provided further*, That the certificate required by paragraph (c)(3) of this section also states that: The container seals specified in paragraph (c)(1)(iii)(C)(1) of this section were found intact and free of any evidence of tampering on arrival at the processing establishment by a national veterinary inspector; and the processing establishment from which the pork or pork product is shipped to the United States does not receive or process any live swine, and uses only pork or pork product which originates in regions listed under paragraph (a) of this section as free of classical swine fever and processes all such pork or pork products in accordance with paragraph (c)(1)(i), (ii), or (iii) of this section; or

(iv) Pork rind pellets (pork skins) originating in regions where classical swine fever is known to exist may be imported into the United States provided they have been cooked in one of the following ways:

(A) One-step process. The pork skins must be cooked in oil for at least 80 minutes when oil temperature is consistently maintained at a minimum of 114 °C.

(B) Two-step process. The pork skins must be dry-cooked at a minimum of 260 °C for approximately 210 minutes after which they must be cooked in hot oil (deep-fried) at a minimum of 104 °C for an additional 150 minutes.

(2) Articles under paragraph (c)(1)(ii), (iii), or (iv) of this section were prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act and § 327.2 of this title; and,

(3) In addition to the foreign meat inspection certificate required by § 327.4 of this title, pork and pork products prepared under paragraph (c)(1)(ii), (iii), or (iv) of this section shall be accompanied by a certificate that states that the provisions of paragraph (c)(1)(ii), (iii), or (iv) of this section have been met. This certificate shall be issued by an official of the national government of the region of origin who is authorized to issue the foreign meat inspection certificate required by § 327.4 of this title. [10] Upon arrival of the pork or pork products in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

10 The certification required may be placed on the foreign meat inspection certificate prescribed by § 327.4 of this title or may be contained in a separate document.

(4) Small amounts of pork or pork product, subject to the restrictions in this section, may in specific cases be imported for purposes of examination, testing, or analysis if the importer applies for and receives written approval for such importation from the Administrator. Approval will be granted only when the Administrator determines that the articles have been processed by heat in a manner so that such importation will not endanger the livestock of the United States.

(d) Thoroughly cured and fully dried pork and pork products from regions where both classical swine fever and swine vesicular disease are known or considered to exist need not comply with paragraph (c)(1)(iii) of this section if they are in compliance with the provisions of § 94.12(b)(1)(iii) of this part.

(e) Uncooked pork or pork products that originated in a region considered to be free of classical swine fever (CSF) and are processed in a region where CSF exists may be imported into the United States under the following conditions:

(1) Shipment to approved establishments.

(i) The uncooked pork or pork products must be shipped from the CSF–free region of origin in closed containers sealed with serially numbered seals applied by an official of the national government of that region. They must be accompanied by a certificate that is signed by an official of that region's national government and that specifies the product's region of origin, the name and number of the establishment of origin, and the processing establishment to which the uncooked pork or pork products are consigned, and the numbers of the seals applied to the shipping containers.

(ii) The uncooked pork or pork products may be removed from containers at the processing establishment in the region where CSF is considered to exist only after an official of that region's national government has determined that the seals are intact and free of any evidence of tampering.

(2) Handling of uncooked pork and pork products. Establishments [11] in regions where CSF is considered to exist that process uncooked pork or pork products for export to the United States:

11 See footnote 9.

(i) May not receive or handle any live swine;

(ii) May not receive, handle, or process uncooked pork or pork products that originate in regions affected with CSF;

(iii) Must keep the certificate required by paragraph (e)(1)(i) of this section on file at the facility for a period of at least 2 years after export of processed products to the United States, and must make those records available to USDA inspectors during inspections; and

(iv) Must be evaluated and approved by APHIS through a site inspection.

(3) Compliance agreement. The operators of the processing establishment must sign a compliance agreement with APHIS, stating that:

(i) All meat processed for importation to the United States will be processed in accordance with the requirements of this part; and

(ii) A full-time, salaried meat inspection official of the national government of the region in which the processing facility is located will supervise the processing and examination of the product, and certify that it has been processed in accordance with this section; and

(iii) APHIS personnel or other persons authorized by the Administrator may enter the establishment, unannounced, to inspect the establishment and its records.

(4) Cooperative service agreement. The processing establishment, or a party on its behalf, must enter into a cooperative service agreement with APHIS to pay all expenses incurred by APHIS for the initial evaluation of the processing establishment and periodically thereafter, including travel, salary, subsistence, administrative overhead, and other incidental expenses, including excess baggage up to 150 pounds. In accordance with the terms of the cooperative service agreement, before the APHIS representative's site inspection, the operator of the processing establishment or the party acting on their behalf must deposit with the Administrator an amount equal to the approximate cost of one inspection by an APHIS representative, including travel, salary, subsistence, administrative overhead, and other incidental expenses, including excess baggage up to 150 pounds. As funds from that amount are obligated, a bill for costs incurred based on

official accounting records will be issued to restore the deposit to the original level, revised as necessary to allow for inflation or other changes in estimated costs. To be current, bills must be paid within 14 days of receipt.

(5) Shipment to the United States. Uncooked pork or pork products to be imported into the United States must be shipped from the region where they were processed in closed containers sealed with serially numbered seals applied by an official of the national government of that region. The shipments must be accompanied by a certificate signed by an official of the national government of the region where the pork or pork products were processed that lists the numbers of the seals applied and states that all of the conditions of this paragraph (e) have been met. The certificate shall also state that the container seals specified in paragraph (e)(1)(i) and (ii) of this section were found by an official of the region's national government to be intact and free of any evidence of tampering on arrival at the processing establishment in the CSF–affected region. A copy of this certificate must be kept on file at the processing establishment for at least 2 years.

(Approved by the Office of Management and Budget under control numbers 0579–0015 and 0579–0333)

Credits

[37 FR 21149, Oct. 6, 1972, as amended at 37 FR 22728, Oct. 21, 1972; 37 FR 24656, Nov. 18, 1972; 38 FR 4384, Feb. 14, 1973; 38 FR 15363, June 11, 1973; 38 FR 15621, June 14, 1973; 38 FR 34801, Dec. 19, 1973; 41 FR 15001, April 9, 1976; 44 FR 2568, Jan. 12, 1979; 48 FR 57472, Dec. 30, 1983; 49 FR 21042, May 18, 1984; 50 FR 16695, April 29, 1985; 51 FR 12988, April 17, 1986; 51 FR 25995, July 18, 1986; 52 FR 27327, July 21, 1987; 53 FR 22129, June 14, 1988; 53 FR 48520, Dec. 1, 1988; 54 FR 7394, Feb. 21, 1989; 54 FR 13053, March 30, 1989; 58 FR 11367, Feb. 25, 1993; 59 FR 28218, June 1, 1994; 61 FR 40293, Aug. 2, 1996; 62 FR 8868, Feb. 27, 1997; 62 FR 28620, May 27, 1997; 62 FR 42664, Aug. 8, 1997; 62 FR 43925, Aug. 18, 1997; 62 FR 46181, Sept. 2, 1997; 62 FR 54574, Oct. 21, 1997; 63 FR 12604, March 16, 1998; 64 FR 38550, July 19, 1999; 65 FR 1307, Jan. 10, 2000; 65 FR 56775, Sept. 20, 2000; 68 FR 16938, April 7, 2003; 68 FR 47841, Aug. 12, 2003; 68 FR 59531, Oct. 16, 2003; 69 FR 21046, April 20, 2004; 69 FR 41919, July 13, 2004; 70 FR 15570, March 28, 2005; 71 FR 29070, May 19, 2006; 71 FR 31069, June 1, 2006; 71 FR 67958, Nov. 24, 2006; 72 FR 30470, June 1, 2007; 72 FR 67232, Nov. 28, 2007; 73 FR 17885, April 2, 2008; 74 FR 18288, April 22, 2009; 74 FR 66221, Dec. 15, 2009; 75 FR 69857, Nov. 16, 2010; 76 FR 4054, 4055, Jan. 24, 2011; 76 FR 70039, Nov. 10, 2011; 77 FR 1393, Jan. 10, 2012; 78 FR 72998, Dec. 4, 2013; 79 FR 71004, Dec. 1, 2014; 86 FR 45626, Aug. 16, 2021]

SOURCE: 28 FR 5980, June 13, 1963; 50 FR 52762, Dec. 26, 1985; 54 FR 7393, Feb. 21, 1989; 57 FR 23928, June 5, 1992; 58 FR 58753, Nov. 4, 1993; 59 FR 67615, Dec. 30, 1994; 60 FR 57315, Nov. 15, 1995; 60 FR 64115, Dec. 14, 1995; 62 FR 56021, Oct. 28, 1997; 65 FR 50605, Aug. 21, 2000; 66 FR 21063, April 27, 2001; 67 FR 47244, July 18, 2002; 67 FR 66533, Nov. 1, 2002; 68 FR 6345, Feb. 7, 2003; 68 FR 16938, April 7, 2003; 69 FR 21046, April 20, 2004; 70 FR 57994, Oct. 5, 2005; 74 FR 18287, April 22, 2009; 78 FR 19083, March 29, 2013; 83 FR 15493, April 11, 2018, unless otherwise noted.

AUTHORITY: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Current through July 7, 2022, 87 FR 40459. Some sections may be more current. See credits for details.

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9 C.F.R. § 94.k1

§ 94.k1 Por6 and por6 products from regions where swine vesicular disease exists.

Effective: August k2, 101k
Currentness

(a) APHIS considers sl ine wesicf var disease to exist in aw regions oh tpe l orvd excebt tpose decvared hree oh tpe disease y. APHIS1

(m) A vist oh regions tpat APHIS pas decvared hree oh sl ine wesicf var disease is : aintained on tpe APHIS l eysite at pttbs/ul l l labpisl fsdalgowabpisuofrhocfsuani: avpeavtpuani: av-and-ani: av-brodfct-i: bort-inhor: ationuani: av-peavtp-statfs-oh-regions1 Cobies oh tpe vist are avso awaivayve wia bostav : aiv f bon reqfest to Regionavization Ewavfation Serwices, Strateg. and Povic., Veterinar. Serwices, Ani: avand Pvant Heavtp Insbection Serwice, 4700 Riwer Road, Unit 38, Riwerdave, Mar. vand 20737; AskRegionavization@fsdalgowl

(2) APHIS l iwadd a region to tpe vist ohtpose it pas decvared hree ohsl ine wesicf var disease ahter it condfcts an ewavfation oh tpe region in accordance l itp § 9212 oh tpis sfycpabter and hinds tpat tpe disease is not bresent1In tpe case oh a region hor: erv. on tpis vist tpat is re: owed dfe to an oftyreak, tpe region : a. ye retfrned to tpe vist in accordance l itp tpe brocedfres hor reestayvisp: ent oh a region's disease-hree statfs in § 9214 oh tpis sfycpabter1 APHIS l iwre: owe a region hro: tpe vist oh tpose it pas decvared hree oh sl ine wesicf var disease f bon deter: ining tpat tpe disease exists in tpe region yased on reborts APHIS receiwes oh oftyreaks oh tpe disease hro: weterinar. ohficiavs oh tpe exborting cofntr., hro: tpe Worvd Organization hor Ani: avHeavtp (OIE), or hro: otper sofrces tpe Ad: inistrator deter: ines to ye reviayve1

(y) To bork or bork brodfct : a. ye i: borted into tpe United States hro: an. region l pere sl ine wesicf var disease is knol n to exist f nvess it co: bvies l itp tpe howol ing reqfire: ents and it is not otperl ise bropiyited i: bortation into tpe United States f nder tpis bart/

(m) Sfcp bork or bork brodfct pas yeen treated in accordance l itp one oh tpe howol ing brocedfres/

(i) Sfcp bork or bork brodfct pas yeen hfw. cooked y. a co: : erciav: etpod in a container per: eticaw. seaved bro: btv. ahter hiwing, yft yehore sfcp cooking, so tpat sfcp cooking and seaving brodfced a hfw. sterivized brodfct l picp is spevh-stayve l itpoft rehrigeration1

(ii) Sfcp bork or bork brodfct is in co: bviance l itp tpe howol ing reqfire: ents/

(A) Awyones l ere co: bvetev re: owed brior to cooking; and

(–) Sf cp bork or bork brodf ct receiwed peat treat: ent in a co: : erciaw accebted : anner f sed hor berispayve canned bork brodf cts so tpat it reacped an internavte: beratf re ohF9 5C1(m6F 5Bl) tprof gpof t1

(iii) Sf cp bork or bork brodf ct ihcf red and dried is in co: bviance l itp tpe howol ing reqf ire: ents/

(A) Awyones pawe yeen co: bvetev re: owed in tpe region oh origin, and

(–) Sf cp bork or bork brodf cts spaw ye consigned directv hro: tpe bort oh entr. in tpe United States to a : eat brocessing estayvisp: ent oberating f nder Bederav: eat insbection and abbrowed y. tpe Ad: inistrator, [m2] hor peating to an internavte: beratf re oh nFF 5Bl° f ring : owe: ent hro: tpe bort oh entr. to tpe : eat brocessing estayvisp: ent, tpe bork or bork brodf cts : f st ye : owed f nder ° ebart: ent seavs or seavs oh tpe UIS1Cf sto: s Serwice, and spaw ye otperl ise pandved as tpe Ad: inistrator : a. direct in order to gf ard against tpe introdf ction and disse: ination oh sl ine wesicf var disease1Seavs abbvied f nder tpis section : a. not ye yroken excebt y. bersons af tporized y. tpe Ad: inistrator to do so1

[m2] _pe na: es and addresses oh abbrowed estayvisp: ents : a. ye oytained hro: , and reqf est hor abbrowav oh an. estayvisp: ent : a. ye : ade to, tpe Ani: av and Pvant Heavtp Insbection Serwice, Veterinar. Serwices, Strateg. and Povic., 4700 Riwer Road Unit 38, Riwerdave, Mar. vand 20737j m23ml Estayvisp: ents l iw ye abbrowed onv. ih tpe Ad: inistrator deter: ines tpat tpe i: borted artic ves l iwye so pandved at tpe estayvisp: ent as to brewent tpe introdf ction and disse: ination oh viwestock or bof vtr. diseases into tpe United States1Abbrowavohan. estayvisp: ent : a. ye rehf sed or l itpdral n onv. ahter tpe oberator tpereoh pas yeen giwen notice oh tpe brobosed action and pas pad an obbortf nit. to bresent pis wiel s tpereon1

(iw) Sf cp bork or bork brodf ct, ih it originated in a sl ine wesicf var disease hree region, pas yeen cf red and dried and is in co: bviance l itp tpe howol ing reqf ire: ents/

(A) Awyones pawe yeen co: bvetev re: owed, eitper in tpe region oh origin or in tpe region l pere tpe bork or bork brodf cts are brocessed; and

(–)(m) Sf cp bork or bork brodf ct is acco: banied hro: tpe sl ine wesicf var disease hree region oh origin to tpe brocessing estayvisp: ent in tpe sl ine wesicf var disease ahhected region y. a certihicate signed y. an ohhiciav oh tpe Tationav Dowern: ent oh tpe sl ine wesicf var disease hree region oh origin sbecih ing tpat tpe bork or bork brodf ct inwowed originated in tpat region and tpe bork or bork brodf ct l as consigned to a brocessing estayvisp: ent in [[[[[[(a region not visted f nder baragrabp (a)(m) oh tpis section as hree oh sl ine wesicf var disease), in a cvosed container seaved y. tpe nationav weterinar. af tporities oh tpe sl ine wesicf var disease hree region oh origin y. seavs oh a seriaw nf : yered t. be1_pe nf : yers oh tpese seavs spawye entered on tpis certihicate; and

(2) _pe certihicate reqf ired y. baragrabp (y)(3) oh tpis section spawavso state tpat/

(i) _pe container seavs sbecihied in baragrabp (y)(m)(iw)(–)(m) oh tpis section l ere hofnd intact and hree ohan. ewidence oh ta: bering on arriwavat tpe brocessing estayvisp: ent in tpe sl ine wesicf var disease ahhected region y. a nationavweterinar. insbector oh tpat region,

(ii) _pe brocessing estayvisp: ent hro: l picp tpe bork or bork brodfct l as spibbed to tpe United States does not receiwe or brocess an. viwe sl ine, and fses onv. bork or bork brodfcts l picp originate in regions visted fnder baragrabp (a)(m) oh tpis section as hree oh sl ine wesicf var disease; and

(iii) _pat sfcp estayvisp: ent brocesses awsfcp bork or bork brodfcts in accordance l itp baragrabp (y)(m)(i), (ii), (iii) or (iw) oh tpis section1

(w) Sfcp bork or bork brodfct is in co: bviance l itp tpe howol ing reqfire: ents/

(A) Awyones l ere co: bvetev. re: owed brior to cooking; and

(–) Sfcp bork or bork brodfct receiwed continfavpeat treat: ent in an owen hor a : ini: f: oh m0 pofrs so tpat it reacped an internavte: beratfre oh F6 5C1(m49 5Bl) tprofgpoft1_pe owen te: beratfre started at a : ini: f: oh F2 5C1 (m43 lF 5Bl) and reacped at veast 86 5C1(m86 5Bl)1

(wi) Pork rind bewets (bork skins) : fst ye cooked in one oh tpe howol ing l a. s/

(A) One-steb brocess1_pe bork skins : fst ye cooked in oivhor at veast 80 : inftes l pen oivte: beratfre is consistentv. : aintained at a : ini: f: oh mm4 5C1

(–) _l o-steb brocess1_pe bork skins : fst ye dr. -cooked at a : ini: f: oh 2F0 5C hor abbroxi: atev. 2m0 : inftes ahter l picp tpe. : fst ye cooked in pot oiv(deeb-hried) at a : ini: f: oh m04 5C hor an additionavm60 : inftes1

(2) Articves fnder baragrabp (y)(m)(ii), (iii) or (iw) oh tpis section l ere brebared in an insbected estayvisp: ent tpat is evigiyve to pawe its brodfcts i: borted into tpe United States fnder tpe BederavMeat Insbection Act and tpe regfvations in § 327l2 in cpabter III oh tpis titve1

(3) In addition to tpe horeign : eat insbection certihicate reqfired in § 327l4 oh tpis titve, bork or bork brodfcts brebared fnder baragrabp (y)(m) (ii), (iii) or (iw) oh tpis section spawye acco: banied y. certihication tpat baragrabp (y)(m)(ii), (y)(m)(iii)(A), or (y)(m)(iw)(–)(2) oh tpis section pas yeen : et1_pe certihication spawye issfed y. an ohhiciavoh tpe nationav gowern: ent oh tpe region oh origin l po is aftporized to issfe tpe horeign : eat insbection certihicate reqfired y. § 327l4 oh tpis titve1[m3] Ubon arriwav oh tpe bork or bork brodfcts in tpe United States, tpe certihicate : fst ye bresented to an aftporized insbector at tpe bort oh arriwavl

[m3] See hootnote m01

(4) S: awa: of nts oh bork or bork brodf ct sf yNect to tpe restrictions oh tpis section, : a. in sbecihic cases ye i: borted hor bf rboses oh exa: ination, testing, or anav. sis, ih tpe i: borter abbvies hor and receives l ritten abbrowavhor sf cp i: bortation hro: tpe Ad: inistrator, af tporizing sf cp i: bortation l Abbrowavl iwye granted onv. l pen tpe Ad: inistrator deter: ines tpat tpe articves pawe yeen brocessed y. peat in a : anner so tpat sf cp i: bortation l iwnot endanger tpe viwestock oh tpe United States1

(c) Reqf ire: ents hor bork-hiwed basta brodf cts hro: regions alhected l itp sl ine wesicf var disease1

(m) Pork-hiwed basta brodf cts brocessed hor exbort to tpe United States : a. onv. ye hiwed l itp bork or bork brodf cts tpat are otperl ise evigiyve to ye exborted to tpe United States and tpat : eet tpe reqf ire: ents oh baragrabp (y)(m)(i), (ii), or (w) oh tpis section or oh § 94 lm71

(2) _pe oberator oh tpe bork-hiwed basta brocessing hacivit. : f st pawe signed a cooberative serwice agree: ent l itp APHIS brior to receibt oh tpe bork intended to ye f sed in bork-hiwed basta brodf cts, stating tpat aw sf cp bork l iwye brocessed onv. in accordance l itp § 94 lm2 or § 94 lm71Pf rsf ant to tpe cooberative serwice agree: ent, tpe estayvisp: ent : f st awol tpe f nannof nced entr. into tpe estayvisp: ent oh APHIS rebresentatiwes, or otper bersons af tporized y. tpe Ad: inistrator, hor tpe bf rbose oh insbecting tpe hacivities, oberations, and records oh tpe estayvisp: ent l_pe estayvisp: ent : f st ye cf rrent in ba. ing aw costs hor sf cp insbections (it is anticibated tpat sf cp insbections l iw occf r f b to hof r ti: es ber . ear)l _pese costs incvf de trawev, savar. , sf ysistence, ad: inistrative owerpead, and otper incidentavexbenses (incvf ding an excess yaggage browision f b to m60 bof nds)1In accordance l itp tpe ter: s oh tpe cooberative serwice agree: ent, tpe oberator oh tpe brocessing estayvisp: ent : f st debosit l itp tpe Ad: inistrator an a: of nt eqf av to tpe abbroxi: ate costs hor APHIS to insbect tpe estayvisp: ent one ti: e, incvf ding trawev, savar. , sf ysistence, ad: inistrative owerpead and otper incidentav exbenses (incvf ding an excess yaggage browision f b to m60 bof nds), and, as hf nds hro: tpat a: of nt are oyvigated, yiws hor costs incf rred yased on ohhiciavaccof nting records l iwye issf ed to restore tpe debosit to its originavvewevl A: of nts to restore tpe debosit to its originavvewev: f st ye baid l itpin m4 da. s oh receibt oh sf cp yiws1

(3) At tpe basta brocessing estayvisp: ent, bork intended to ye f sed hor bork-hiwed basta brodf cts hor exbort to tpe United States : f st ye stored abart hro: an. : eat or : eat brodf cts not evigiyve hor exbort to tpe United States, eitper in a sebarate storage roo: or hacivit. or in a sebarate area oh tpe sa: e storage roo: 1An. storage roo: area reserwed hor bork or bork brodf cts evigiyve hor exbort to tpe United States : f st ye sebarated y. at veast m: eter hro: an. storage roo: area l pere : eat or : eat brodf cts inevigiyve hor exbort to tpe United States are stored and : f st ye : arked y. signs and y. pawing its yorders of tvined on tpe hvoor1

(4) Prior to pandving bork f sed hor bork-hiwed basta brodf cts intended hor exbort to tpe United States, l orkers at tpe brocessing hacivit. l po pandve bork or bork brodf cts in tpe hacivit. : f st spol er and bf t on a hf wset oh cvean cvotpes, or l ait 24 pof rs alter pandving bork or bork brodf cts tpat are not evigiyve hor i: bortation into tpe United States1

(6) Aweqf ib: ent and : acpiner. tpat l iwco: e in contact l itp tpe bork or otper ingredients oh bork-hiwed basta brodf cts intended hor exbort to tpe United States : f st ye cveaned and disinhected yehore eacp f se1

(F) Processing vines l orking l itp bork-hiwed basta brodf cts hor exbort to tpe United States : f st ye totaw dedicated to tpe brodf ction oh sf cp brodf cts hor tpe ti: e needed to co: bvete a giwen vot1Wpen an. brocessing vine in a hacivit. is l orking

l itp bork-hiwed basta brodf cts intended hor exbort to tpe United States, no otper brocessing vines in tpe sa: e hacivit. : a. l ork on brodf cts f sing : eat tpat is not evigiyve hor exbort to tpe United States1

(7) Processing hacivities tpat are co: bvetev. dedicated to brodf cing onv. bork-hiwed basta brodf cts hor exbort to tpe United States and do not receiwe, pandve, or brocess an. ani: avbrodf ct not intended hor exbort to tpe United States are exe: bt hro: tpe reqf ire: ents oh baragrabps (c)(3) tprof gp (c)(F) oh tpis section1

(8) ° f ring brocessing, tpe bork-hiwed basta : f st ye stea: -peated to a : ini: f : internavte: beratf re oh 90 5C, tpen dried, cooved, and backed to : ake tpe brodf ct spevh stayve l itpof t rehrigeration1

(9) _pe brocessing hacivit. : f st : aintain f nder vock and ke. , hor a : ini: f : oh 2 . ears, an originav record oh eacp vot oh bork or bork brodf cts f sed hor bork-hiwed basta brodf cts hor exbort to tpe United States1 Eacp record : f st incvf de tpe howol ing/

(i) _pe date tpat tpe cooked or dr. -cf red bork brodf ct l as received in tpe brocessing hacivit. ;

(ii) _pe nf : yer oh backages, tpe nf : yer oh pa: s or cooked bork brodf cts ber backage, and tpe l eigpt oh eacp backage;

(iii) A vot nf : yer or otper identihication : arks;

(iw) _pe peavtp certihicate tpat acco: banied tpe cooked or dr. -cf red bork brodf ct hro: tpe svaf gpterubrocessing hacivit. to tpe : eat-hiwed basta brodf ct brocessing hacivit. ; and

(w) _pe date tpat tpe bork or bork brodf ct f sed in tpe basta started dr. cf ring (ih tpe brodf ct f sed is a dr. -cf red pa:) or tpe date tpat tpe brodf ct l as cooked (ih tpe brodf ct f sed is a cooked bork brodf ct)1

(m0) _pe bork-hiwed basta : f st ye acco: banied y. a certihicate issf ed y. an ohhiciav oh tpe T ationav Dowern: ent oh tpe region in l picp tpe basta brodf ct is brocessed l po is af tporized to issf e tpe horeign : eat insbection certihicate reqf ired f nder § 327l4 oh tpis titve, stating tpat tpe bork-hiwed basta brodf ct pas yeen brocessed in accordance l itp tpe reqf ire: ents oh tpis section1

Ubon arriwav oh tpe bork-hiwed basta in tpe United States, tpe certihicate : f st ye bresented to an insbector at tpe bort oh arriwavl

(Abbrowed y. tpe Ohhice oh Manage: ent and – f dget f nder controvnf : yers 0679j 00m6 and 0679j 02m4)

Credits

J38 BR 20Fm0, Af g12, m973, as a: ended at 38 BR 24892, Sebt1mm, m973; 38 BR 3m4mF, T owl m4, m973; 38 BR 3623m, ° ec12F, m973; 39 BR 26F8,]an123, m974; 39 BR m3070; Abrivmm, m974; 39 BR m7430, Ma. mF, m974; 4mBR 7m09, Bey1m7, m97F; 4m BR m600m, Abriv9, m97F; 4mBR 23F99,]f ne mm, m97F; 44 BR 2F069, Ma. 4, m979; 48 BR 67472, ° ec130, m983; 60 BR 7329, Bey122, m986; 60 BR 24Fm3,]f ne m2, m986; 62 BR 27327,]f v. 2m, m987; 63 BR 22m29,]f ne m4, m988; 63 BR 48620, ° ec1m,

m988; 64 BR 7394, Bey12m, m989; 67 BR 4433m, Sebt126, m992; 68 BR mm3F7, Bey126, m993; 68 BR m3F98, Marcp m6, m993; 68 BR 3F69F,]fv. 8, m993; 69 BR m263F, Marcp m7, m994; 69 BR 282m9,]fne m, m994; 69 BR F7FmF, ° ec130, m994; F0 BR 26m2m, Ma. mm, m996; F0 BR 68203, Towl27, m996; FmBR 40293, Afg12, m99F; F2 BR 4Fm8m, Sebt12, m997; F3 BR F7676, ° ec18, m998; F4 BR 38660,]fv. m9, m999; F6 BR m307,]an1m0, 2000; F8 BR mF939, Abriv7, 2003; F8 BR 6387F, Sebt1m6, 2003; 72 BR F7232, Towl28, 2007; 73 BR m7886, Abriv2, 2008; 74 BR m8288, Abriv22, 2009; 74 BR FF22m, ° ec1m6, 2009; 76 BR F9867, TowlmF, 20m0; 7F BR 4064, 4066,]an124, 20mm, 7F BR 70039, Towlm0, 20mm, 77 BR m394,]an1m0, 20m2; 79 BR 7m004, ° ec1m, 20m4; 8F BR 46F2F, Afg1mF, 202mY

SOURCE/ 28 BR 6980,]fne m3, m9F3; 60 BR 627F2, ° ec12F, m986; 64 BR 7393, Bey12m, m989; 67 BR 23928,]fne 6, m992; 68 BR 68763, Towl4, m993; 69 BR F7Fm6, ° ec130, m994; F0 BR 673m6, Towlm6, m996; F0 BR F4mm6, ° ec1m4, m996; F2 BR 6F02m, Oct128, m997; F6 BR 60F06, Afg12m, 2000; FF BR 2m0F3, Abriv27, 200m, F7 BR 47244,]fv. m8, 2002; F7 BR FF633, Towlm, 2002; F8 BR F346, Bey17, 2003; F8 BR mF938, Abriv7, 2003; F9 BR 2m04F, Abriv20, 2004; 70 BR 67994, Oct16, 2006; 74 BR m8287, Abriv22, 2009; 78 BR m9083, Marcp 29, 20m3; 83 BR m6493, Abrivmm, 20m8, fnvess otperl ise noted1

AU_HORI_©/ 7 UlSlC1mF33, 770mj 7772, 778mj 778F, and 830mj 83m7; 2mUlSlC1m3F and m3Fa; 3mUlSlC1970m, 7 CBR 2122, 2180, and 37m41

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United States Code Annotated
Title 7. Agriculture (Refs & Annos)
Chapter 104. Plant Protection

7 U.S.C.A. § 7702

§ 7702. Definitions

Effective: June 20, 2000
Currentness

In this chapter:

(1) Article

The term "article" means any material or tangible object that could harbor plant pests or noxious weeds.

(2) Biological control organism

The term "biological control organism" means any enemy, antagonist, or competitor used to control a plant pest or noxious weed.

(3) Enter and entry

The terms "enter" and "entry" mean to move into, or the act of movement into, the commerce of the United States.

(4) Export and exportation

The terms "export" and "exportation" mean to move from, or the act of movement from, the United States to any place outside the United States.

(5) Import and importation

The terms "import" and "importation" mean to move into, or the act of movement into, the territorial limits of the United States.

(6) Interstate

The term "interstate" means--

(A) from one State into or through any other State; or

(B) within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

(7) Interstate commerce

The term "interstate commerce" means trade, traffic, or other commerce--

(A) between a place in a State and a point in another State, or between points within the same State but through any place outside that State; or

(B) within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

(8) Means of conveyance

The term "means of conveyance" means any personal property used for or intended for use for the movement of any other personal property.

(9) Move and related terms

The terms "move", "moving", and "movement" mean--

(A) to carry, enter, import, mail, ship, or transport;

(B) to aid, abet, cause, or induce the carrying, entering, importing, mailing, shipping, or transporting;

(C) to offer to carry, enter, import, mail, ship, or transport;

(D) to receive to carry, enter, import, mail, ship, or transport;

(E) to release into the environment; or

(F) to allow any of the activities described in a preceding subparagraph.

(10) Noxious weed

The term "noxious weed" means any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.

(11) Permit

The term "permit" means a written or oral authorization, including by electronic methods, by the Secretary to move plants, plant products, biological control organisms, plant pests, noxious weeds, or articles under conditions prescribed by the Secretary.

(12) Person

The term "person" means any individual, partnership, corporation, association, joint venture, or other legal entity.

(13) Plant

The term "plant" means any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

(14) Plant pest

The term "plant pest" means any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product:

(A) A protozoan.

(B) A nonhuman animal.

(C) A parasitic plant.

(D) A bacterium.

(E) A fungus.

(F) A virus or viroid.

(G) An infectious agent or other pathogen.

(H) Any article similar to or allied with any of the articles specified in the preceding subparagraphs.

(15) Plant product

The term "plant product" means--

(A) any flower, fruit, vegetable, root, bulb, seed, or other plant part that is not included in the definition of plant; or

(B) any manufactured or processed plant or plant part.

(16) Secretary

The term "Secretary" means the Secretary of Agriculture.

(17) State

The term "State" means any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

(18) Systems approach

For the purposes of section 7712(e) of this title, the term "systems approach" means a defined set of phytosanitary procedures, at least two of which have an independent effect in mitigating pest risk associated with the movement of commodities.

(19) This chapter

Except when used in this section, the term "this chapter" includes any regulation or order issued by the Secretary under the authority of this chapter.

(20) United States

The term "United States" means all of the States.

CREDIT(S)

(Pub.L. 106-224, Title IV, § 403, June 20, 2000, 114 Stat. 438.)

Notes of Decisions (2)

7 U.S.C.A. § 7702, 7 USCA § 7702
Current through P.L. 117-159. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 7. Agriculture (Refs & Annos)
Chapter 104. Plant Protection
Subchapter II. Inspection and Enforcement

7 U.S.C.A. § 7734

§ 7734. Penalties for violation

Currentness

(a) Criminal penalties

(1) Offenses

(A) In general

A person that knowingly violates this chapter, or knowingly forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in this chapter shall be fined under Title 18, imprisoned not more than 1 year, or both.

(B) Movement

A person that knowingly imports, enters, exports, or moves any plant, plant product, biological control organism, plant pest, noxious weed, or article, for distribution or sale, in violation of this chapter, shall be fined under Title 18, imprisoned not more than 5 years, or both.

(2) Multiple violations

On the second and any subsequent conviction of a person of a violation of this chapter under paragraph (1), the person shall be fined under Title 18, imprisoned not more than 10 years, or both.

(b) Civil penalties

(1) In general

Any person that violates this chapter, or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in this chapter may, after notice and opportunity for a hearing on the record, be assessed a civil penalty by the Secretary that does not exceed the greater of--

(A) $50,000 in the case of any individual (except that the civil penalty may not exceed $1,000 in the case of an initial violation of this chapter by an individual moving regulated articles not for monetary gain), $250,000 in the case of any

other person for each violation, $500,000 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and $1,000,000 for all violations adjudicated in a single proceeding if the violations include a willful violation; or

(B) twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided for in this chapter that results in the person deriving pecuniary gain or causing pecuniary loss to another.

(2) Factors in determining civil penalty

In determining the amount of a civil penalty, the Secretary shall take into account the nature, circumstance, extent, and gravity of the violation or violations and the Secretary may consider, with respect to the violator--

(A) ability to pay;

(B) effect on ability to continue to do business;

(C) any history of prior violations;

(D) the degree of culpability; and

(E) any other factors the Secretary considers appropriate.

(3) Settlement of civil penalties

The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty that may be assessed under this subsection.

(4) Finality of orders

The order of the Secretary assessing a civil penalty shall be treated as a final order reviewable under chapter 158 of Title 28. The validity of the Secretary's order may not be reviewed in an action to collect the civil penalty. Any civil penalty not paid in full when due under an order assessing the civil penalty shall thereafter accrue interest until paid at the rate of interest applicable to civil judgments of the courts of the United States.

(c) Liability for acts of an agent

When construing and enforcing this chapter, the act, omission, or failure of any officer, agent, or person acting for or employed by any other person within the scope of his or her employment or office, shall be deemed also to be the act, omission, or failure of the other person.

(d) Guidelines for civil penalties

The Secretary shall coordinate with the Attorney General to establish guidelines to determine under what circumstances the Secretary may issue a civil penalty or suitable notice of warning in lieu of prosecution by the Attorney General of a violation of this chapter.

CREDIT(S)

(Pub.L. 106-224, Title IV, § 424, June 20, 2000, 114 Stat. 450; Pub.L. 107-171, Title X, § 10810, May 13, 2002, 116 Stat. 531; Pub.L. 110-234, Title X, § 10203(d), May 22, 2008, 122 Stat. 1343; Pub.L. 110-246, § 4(a), Title X, § 10203(d), June 18, 2008, 122 Stat. 1664, 2105.)

7 U.S.C.A. § 7734, 7 USCA § 7734
Current through P.L. 117-159. Some statute sections may be more current, see credits for details.

End of Document

Code of Federal Regulations
Title 7. Agriculture
Subtitle B. Regulations of the Department of Agriculture
Chapter III. Animal and Plant Health Inspection Service, Department of Agriculture
Part 319. Foreign Quarantine Notices (Refs & Annos)
Subpart D. Permits: Allocation, Issuance, Denial, and Revocation (Refs & Annos)

7 C.F.R. § 319.7

§ 319.7 Definitions.

Effective: May 12, 2014
Currentness

The following definitions apply to this subpart:

Administrative instructions. Published documents related to the enforcement of this part and issued under authority of the Plant Protection Act, as amended (7 U.S.C. 7701 et seq.), by the Administrator.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any employee of the United States Department of Agriculture delegated to act in his or her stead.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Applicant. A person at least 18 years of age who, on behalf of him- or herself or another person, submits an application for a permit to import into the United States or move interstate a regulated article in accordance with this part.

Approved. Approved by the Administrator of the Animal and Plant Health Inspection Service.

Article. Any material or tangible objects that could harbor or be a vector of plant pests or noxious weeds.

Consignment. A quantity of plants, plant products, and/or other articles being moved from one country to another authorized when required, by a single permit. A consignment may be composed of one or more commodities or lots.

Country of origin. The country where the plants, or plants from which the plant products are derived, were grown or where the non-plant articles were produced.

Enter, entry. To move into, or the act of movement into, the commerce of the United States.

Import, importation. To move into, or the act of movement into, the territorial limits of the United States.

Inspector. Any individual authorized by the Administrator of the Animal and Plant Health Inspection Service or the Commissioner of the Bureau of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this part.

Intended use. The purpose for the importation of the regulated article, including, but not limited to, consumption, propagation, or research purposes.

Lot. All the regulated articles on a single means of conveyance that are derived from the same species of plant or are the same type of non-plant article, were subjected to the same treatments prior to importation, and are consigned to the same person.

Means of conveyance. Any personal property used for or intended for use for the movement of any other personal property.

Move. To carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce the carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive to carry, enter, import, mail, ship, or transport; to release into the environment; or to allow any of the activities described in this definition.

Oral authorization. Verbal permission to import that may be granted by an inspector at the port of entry.

Permit. A written authorization, including by electronic methods, to move plants, plant products, biological control organisms, plant pests, noxious weeds, or articles under conditions prescribed by the Administrator.

Permittee. The person who, on behalf of self or another person, is legally the importer of an article, meets the requirements of § 319.7–2(f), and is responsible for compliance with the conditions for the importation that is the subject of a permit issued in accordance with this part.

Person. Any individual, partnership, corporation, association, joint venture, or other legal entity.

Plant. Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

Plant pest. Any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan; a nonhuman animal; a parasitic plant; a bacterium; a fungus; a virus or viroid; an infectious agent or other pathogen; or any article similar to or allied with any of the foregoing enumerated articles.

Plant product. Any flower, fruit, vegetable, root, bulb, seed, or other plant part that is not included in the definition of plant, or any manufactured or processed plant or plant part.

Port of entry. A port at which a specified shipment or means of conveyance is accepted for entry or admitted without entry into the United States for transit purposes.

Port of first arrival. The area (such as a seaport, airport, or land border) where a person or means of conveyance first arrives in the United States, and where inspection of regulated articles may be carried out by inspectors.

PPQ. The Plant Protection and Quarantine Program, Animal and Plant Health Inspection Service of the United States Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines and regulations.

Regulated article. Any material or tangible object regulated by this part for entry into the United States or interstate movement.

Soil. The unconsolidated material from the earth's surface that consists of rock and mineral particles mixed with organic material and that supports or is capable of supporting biotic communities.

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Treatment. A procedure approved by the Administrator for neutralizing infestations or infections of plant pests or diseases, such as fumigation, application of chemicals or dry or moist heat, or processing, utilization, or storage.

United States. All of the States.

SOURCE: 24 FR 10788, Dec. 29, 1959, as amended at 36 FR 24917, Dec. 24, 1971; 50 FR 35535, Sept. 3, 1985; 50 FR 37638, Sept. 17, 1985; 57 FR 27898, June 23, 1992; 58 FR 59353, Nov. 9, 1993; 59 FR 67609, Dec. 30, 1994; 60 FR 27674, May 25, 1995; 60 FR 64115, Dec. 14, 1995; 66 FR 21054, April 27, 2001; 68 FR 9853, March 3, 2003; 68 FR 37915, June 25, 2003; 68 FR 50043, Aug. 20, 2003; 70 FR 57993, Oct. 5, 2005; 70 FR 61361, Oct. 24, 2005; 79 FR 19807, April 10, 2014; 84 FR 2428, Feb. 7, 2019, unless otherwise noted.

AUTHORITY: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Current through July 7, 2022, 87 FR 40459. Some sections may be more current. See credits for details.

End of Document

§ 319.8–26 Material refused entry.

Any material refused entry for noncompliance with the requirements of this subpart shall be promptly removed from the United States or abandoned by the importer for destruction, and pending such action shall be subject to the immediate application of such safeguards against escape of plant pests as the inspector may prescribe. If such material is not promptly safeguarded by the importer, removed from the United States, or abandoned for destruction to the satisfaction of the inspector it may be seized, destroyed, or otherwise disposed of in accordance with sections 414 and 421 of the Plant Protection Act (7 U.S.C. 7714 and 7731). Neither the Department of Agriculture nor the inspector will be responsible for any costs accruing for demurrage, shipping charges, cartage, labor, chemicals, or other expenses incidental to the safeguarding or disposal of material refused entry by the inspector, nor will the Department of Agriculture or the inspector assume responsibility for the value of material destroyed.

[24 FR 10788, Dec. 29, 1959, as amended at 66 FR 21055, Apr. 27, 2001]

Subpart—Sugarcane

§ 319.15 Notice of quarantine.

(a) The importation into the United States of sugarcane and its related products, including cuttings, canes, leaves and bagasse, from all foreign countries and localities is prohibited, except for importations for experimental, therapeutic, or developmental purposes under the conditions specified in a controlled import permit issued in accordance with § 319.6.

(b) As used in this subpart, unless the context otherwise requires, the term "United States" means the States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.

[24 FR 10788, Dec. 29, 1959, as amended at 66 FR 21055, Apr. 27, 2001; 78 FR 25570, May 2, 2013]

§ 319.15a Administrative instructions and interpretation relating to entry into Guam of bagasse and related sugarcane products.

Bagasse and related sugarcane products have been so processed that, in the judgment of the Department, their importation into Guam will involve no pest risk, and they may be imported into Guam without further permit, other than the authorization contained in this paragraph. Such importations may be made without the submission of a notice of arrival inasmuch as there is available to the inspector the essential information normally supplied by the importer at the time of importation. Inspection of such importations may be made under the general authority of § 330.105(a) of this chapter. If an importation is found infected, infested, or contaminated with any plant pest and is not subject to disposal under this part, disposition may be made in accordance with § 330.106 of this chapter.

Subpart—Citrus Canker and Other Citrus Diseases

§ 319.19 Notice of quarantine.

(a) In order to prevent the introduction into the United States of the citrus canker disease (*Xanthomonas citri* (Hasse) Dowson) and other citrus diseases, the importation into the United States of plants or any plant part, except fruit and seeds, of all genera, species, and varieties of the subfamilies Aurantioidcae, Rutoidcae, and Toddalioideae of the botanical family Rutaceae is prohibited, except as provided in paragraphs (b), (c), and (d) of this section.

(b) Plants or plant parts of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae may be imported into the United States for experimental, therapeutic, or developmental purposes under the conditions specified in a controlled import permit issued in accordance with § 319.6.

(c) Plants or plant parts of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family

Rutaceae may be imported into Guam in accordance with § 319.37–6.

(d) Plants or plant parts of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae that are regulated articles under §§ 319.40–1 through 319.40–11 may be imported into the United States in accordance with §§ 319.40–1 through 319.40–11 and without restriction by this subpart.

(e) As used in this section unless the context otherwise requires, the term "United States" means the continental United States, Guam, Hawaii, Puerto Rico, and the Virgin Islands of the United States.

[24 FR 10788, Dec. 29, 1959, as amended at 60 FR 27674, May 25, 1995; 78 FR 25570, May 2, 2013]

Subpart—Corn Diseases

QUARANTINE

§ 319.24 Notice of quarantine.

(a) The fact has been determined by the Secretary of Agriculture, and notice is hereby given, that maize or Indian corn (Zea mays L.) and closely related plants are subject to certain injurious diseases, especially Peronospora maydis Raciborski, Sclerospora sacchari Miyake and other downy mildews; also the Physoderma diseases of maize, Physoderma zeae-maydis Shaw, and Physoderma maydis Miyake, new to and not heretofore widely prevalent or distributed within and throughout the United States, and that these diseases occur in southeastern Asia (including India, Siam, Indo-China and China), Malayan Archipelago, Australia, Oceania, Philippine Islands, Formosa, Japan, and adjacent islands.

(b) Except as otherwise provided in this subpart, the importation into the United States of raw or unmanufactured corn seed and all other portions of Indian corn or maize and related plants, including all species of teosinte (*Euchlaena*), jobs-tears (*Coix*), *Polytoca*, *Chionachne*, and *Sclerachne*, from southeastern Asia (including India, Indochina, and the People's Republic of China), Malayan Archipelago, Australia, New Zealand, Oceania, Philippine Islands, Manchuria, Japan, and adjacent islands is prohibited. However, this prohibition does not apply to importations of such items for experimental, therapeutic, or developmental purposes under the conditions specified in a controlled import permit issued in accordance with § 319.6.

(c) As used in this subpart, unless the context otherwise requires, the term "United States" means the States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.

(d) Seed of Indian corn or maize (*Zea mays L.*) that is free from the cob and from all other parts of corn may be imported into the United States from New Zealand without further restriction.

[24 FR 10788, Dec. 29, 1959, as amended at 58 FR 44745, Aug. 25, 1993; 66 FR 21055, Apr. 27, 2001; 78 FR 25570, May 2, 2013]

§ 319.24a Administrative instructions relating to entry of corn into Guam.

Corn may be imported into Guam without further permit, other than the authorization contained in this section but subject to compliance with § 319.24–3. Such imports need not comply with the notice of arrival requirements of § 319.24–1 inasmuch as information equivalent to that in a notice of arrival is available to the inspector from another source. Section 319.24–5 shall not be applicable to importations of corn into Guam. Such importations shall be subject to inspection at the port of entry. Corn found upon inspection to contain disease infection will be subject to sterilization in accordance with methods selected by the inspector from administratively authorized procedures known to be effective under the conditions in which applied.

REGULATIONS GOVERNING ENTRY OF INDIAN CORN OR MAIZE

§ 319.24–1 Application for permits for importation of corn.

Persons contemplating the importation of corn into the United States shall obtain a permit in accordance with §§ 319.7 through 319.7–5.

(Approved by the Office of Management and Budget under control number 0579–0049)

[79 FR 19810, Apr. 10, 2014]

ADDENDUM B

Compl.	Date	Location	Third-Party Seller	Item	Record Cite
¶¶ 2.1–2.8	3/24/15 to 3/31/15	International Mail Facility, San Francisco, CA	Yummy House Hong Kong	13 boxes of beef, pork, and poultry	Rieder Decl. Ex. 3–6
¶¶ 2.10–2.12	6/11/15	Amazon fulfillment center, Murfreesboro, TN	Yummy House Hong Kong	1 box of pork	Rieder Decl. Ex. 13–14
¶¶ 2.13 – 2.16	6/11/15	Independent warehouse, Passaic, NJ	Yummy House Hong Kong	16 boxes of beef, pork, and poultry	Rieder Decl. Ex. 13
¶ 2.17	7/9/2015	International Mail Facility, Los Angeles, CA	Deng Dan	3 boxes of poultry	Rieder Decl. Ex. 17
¶ 2.18	3/18/2016	International Mail Facility, San Francisco, CA	X-Sampa Co.	3 boxes of Kaffir leaves	Rieder Decl. Ex. 19
¶¶ 2.19 – 2.23	5/11/16 to 5/31/16	Amazon fulfillment centers (various)	X-Sampa Co.	Various Kaffir products	Rieder Decl. Ex. 21