

106TH CONGRESS
1ST SESSION

S. 321

To streamline, modernize, and enhance the authority of the Secretary of Agriculture relating to plant protection and quarantine, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 1999

Mr. CRAIG introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To streamline, modernize, and enhance the authority of the Secretary of Agriculture relating to plant protection and quarantine, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Plant Protection Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Definitions.

TITLE I—PLANT PROTECTION

- Sec. 101. Regulation of movement of plant pests.
- Sec. 102. Regulation of movement of plants, plant products, biological control organisms, noxious weeds, articles, and means of conveyance.
- Sec. 103. Notification and holding requirements on arrival.
- Sec. 104. General remedial measures for new plant pests and noxious weeds.
- Sec. 105. Extraordinary emergencies.
- Sec. 106. Recovery of compensation for unauthorized activities.
- Sec. 107. Control of grasshoppers and Mormon crickets.
- Sec. 108. Certification for exports.

TITLE II—INSPECTION AND ENFORCEMENT

- Sec. 201. Inspections, seizures, and warrants.
- Sec. 202. Collection of information.
- Sec. 203. Subpoena authority.
- Sec. 204. Penalties for violation.
- Sec. 205. Enforcement actions of Attorney General.
- Sec. 206. Court jurisdiction.

TITLE III—MISCELLANEOUS PROVISIONS

- Sec. 301. Cooperation.
- Sec. 302. Buildings, land, people, claims, and agreements.
- Sec. 303. Reimbursable agreements.
- Sec. 304. Protection for mail carriers.
- Sec. 305. Regulations and orders.
- Sec. 306. Repeal of superseded laws.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS

- Sec. 401. Authorization of appropriations.
- Sec. 402. Transfer authority.

1 SEC. 2. FINDINGS.

2 Congress finds that—

3 (1) the detection, control, eradication, suppres-
 4 sion, prevention, and retardation of the spread of
 5 plant pests and noxious weeds is necessary for the
 6 protection of the agriculture, environment, and econ-
 7 omy of the United States;

8 (2) biological control—

1 (A) is often a desirable, low-risk means of
2 ridding crops and other plants of plant pests
3 and noxious weeds; and

4 (B) should be facilitated by the Secretary
5 of Agriculture, Federal agencies, and States,
6 whenever feasible;

7 (3) the smooth movement of enterable plants,
8 plant products, certain biological control organisms,
9 or other articles into, out of, or within the United
10 States is vital to the economy of the United States
11 and should be facilitated to the extent practicable;

12 (4) markets could be severely impacted by the
13 introduction or spread of plant pests or noxious
14 weeds into or within the United States;

15 (5) the unregulated movement of plants, plant
16 products, biological control organisms, plant pests,
17 noxious weeds, and articles capable of harboring
18 plant pests or noxious weeds would present an unac-
19 ceptable risk of introducing or spreading plant pests
20 or noxious weeds;

21 (6) the existence on any premises in the United
22 States of a plant pest or noxious weed new to or not
23 known to be widely prevalent in or distributed within
24 and throughout the United States could threaten
25 crops, other plants, and plant products of the United

1 States and burden interstate commerce or foreign
2 commerce; and

3 (7) all plants, plant products, biological control
4 organisms, plant pests, noxious weeds, or articles ca-
5 pable of harboring plant pests or noxious weeds reg-
6 ulated under this Act are in or affect interstate com-
7 merce or foreign commerce.

8 **SEC. 3. DEFINITIONS.**

9 In this Act:

10 (1) **ARTICLE.**—The term “article” means a ma-
11 terial or tangible object that could harbor a pest,
12 disease, or noxious weed.

13 (2) **BIOLOGICAL CONTROL ORGANISM.**—The
14 term “biological control organism” means an enemy,
15 antagonist, or competitor organism used to control a
16 plant pest or noxious weed.

17 (3) **ENTER.**—The term “enter” means to move
18 into the commerce of the United States.

19 (4) **ENTRY.**—The term “entry” means the act
20 of movement into the commerce of the United
21 States.

22 (5) **EXPORT.**—The term “export” means to
23 move from the United States to any place outside
24 the United States.

1 (6) EXPORTATION.—The term “exportation”
2 means the act of movement from the United States
3 to any place outside the United States.

4 (7) IMPORT.—The term “import” means to
5 move into the territorial limits of the United States.

6 (8) IMPORTATION.—The term “importation”
7 means the act of movement into the territorial limits
8 of the United States.

9 (9) INTERSTATE.—The term “interstate”
10 means—

11 (A) from 1 State into or through any other
12 State; or

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

17 (10) INTERSTATE COMMERCE.—The term
18 “interstate commerce” means trade, traffic, move-
19 ment, or other commerce—

20 (A) between a place in a State and a point
21 in another State;

22 (B) between points within the same State
23 but through any place outside the State; or

24 (C) within the District of Columbia, Guam,
25 the Virgin Islands of the United States, or any

1 other territory or possession of the United
2 States.

3 (11) MEANS OF CONVEYANCE.—The term
4 “means of conveyance” means any personal property
5 or means that could harbor a pest, disease, or nox-
6 ious weed and that is used for or intended for use
7 for the movement of any other personal property.

8 (12) MOVE.—The term “move” means to—

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

11 (B) aid, abet, cause, or induce the carry-
12 ing, entering, importing, mailing, shipping, or
13 transporting;

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

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

18 (E) release into the environment; or

19 (F) allow any of the activities referred to
20 this paragraph to be conducted by a person
21 under another person’s control.

22 (13) MOVEMENT.—The term “move” means the
23 act of—

24 (A) carrying, entering, importing, mailing,
25 shipping, or transporting;

1 (B) aiding, abetting, causing, or inducing
2 the carrying, entering, importing, mailing, ship-
3 ping, or transporting;

4 (C) offering to carry, enter, import, mail,
5 ship, or transport;

6 (D) receiving to carry, enter, import, mail,
7 ship, or transport;

8 (E) releasing into the environment; or

9 (F) allowing any of the activities referred
10 to this paragraph to be conducted by a person
11 under another person's control.

12 (14) NOXIOUS WEED.—The term “noxious
13 weed” means a plant or plant product that has the
14 potential to directly or indirectly injure or cause
15 damage to a plant or plant product through injury
16 or damage to a crop (including nursery stock or a
17 plant product), livestock, poultry, or other interest of
18 agriculture (including irrigation), navigation, natural
19 resources of the United States, public health, or the
20 environment.

21 (15) PERMIT.—The term “permit” means a
22 written (including electronic) or oral authorization
23 by the Secretary to move a plant, plant product, bio-
24 logical control organism, plant pest, noxious weed,

1 article, or means of conveyance under conditions
2 prescribed by the Secretary.

3 (16) PERSON.—The term “person” means an
4 individual, partnership, corporation, association,
5 joint venture, or other legal entity.

6 (17) PLANT.—The term “plant” means a plant
7 (including a plant part) for or capable of propaga-
8 tion (including a tree, tissue culture, plantlet cul-
9 ture, pollen, shrub, vine, cutting, graft, scion, bud,
10 bulb, root, and seed).

11 (18) PLANT PEST.—The term “plant pest”
12 means—

13 (A) a living stage of a protozoan, inverte-
14 brate animal, parasitic plant, bacteria, fungus,
15 virus, viroid, infection agent, or pathogen that
16 has the potential to directly or indirectly injure
17 or cause damage to, or cause disease in, a plant
18 or plant product; or

19 (B) an article that is similar to or allied
20 with an article referred to in subparagraph (A).

21 (19) PLANT PRODUCT.—The term “plant prod-
22 uct” means—

23 (A) a flower, fruit, vegetable, root, bulb,
24 seed, or other plant part that is not considered
25 by the Secretary to be a plant; and

1 (B) a manufactured or processed plant or
2 plant part.

3 (20) SECRETARY.—The term “Secretary”
4 means the Secretary of Agriculture.

5 (21) STATE.—The term “State” means each of
6 the several States of the United States, the District
7 of Columbia, the Commonwealth of Puerto Rico, the
8 Virgin Islands, Guam, the Commonwealth of the
9 Northern Mariana Islands, and any other territory
10 or possession of the United States.

11 (22) UNITED STATES.—The term “United
12 States”, when used in a geographical sense, means
13 all of the States.

14 **TITLE I—PLANT PROTECTION**

15 **SEC. 101. REGULATION OF MOVEMENT OF PLANT PESTS.**

16 (a) PROHIBITION OF UNAUTHORIZED MOVEMENT OF
17 PLANT PESTS.—Except as provided in subsection (b), no
18 person shall import, enter, export, or move in interstate
19 commerce a plant pest, unless the importation, entry, ex-
20 portation, or movement is authorized under general or
21 specific permit and is in accordance with such regulations
22 as the Secretary may promulgate to prevent the introduc-
23 tion of plant pests into the United States or the dissemina-
24 tion of plant pests within the United States.

1 (b) AUTHORIZATION OF MOVEMENT OF PLANT
2 PESTS BY REGULATION.—

3 (1) EXCEPTION TO PERMIT REQUIREMENT.—

4 The Secretary may promulgate regulations to allow
5 the importation, entry, exportation, or movement in
6 interstate commerce of specified plant pests without
7 further restriction if the Secretary finds that a per-
8 mit under subsection (a) is not necessary.

9 (2) PETITION TO ADD OR REMOVE PLANT
10 PESTS FROM REGULATION.—A person may petition
11 the Secretary to add a plant pest to, or remove a
12 plant pest from, the regulations promulgated under
13 paragraph (1).

14 (3) RESPONSE TO PETITION BY THE SEC-
15 RETARY.—In the case of a petition submitted under
16 paragraph (2), the Secretary shall—

17 (A) act on the petition within a reasonable
18 time; and

19 (B) notify the petitioner of the final action
20 the Secretary takes on the petition.

21 (4) BASIS FOR DETERMINATION.—The deter-
22 mination of the Secretary on the petition shall be
23 based on sound science.

24 (c) PROHIBITION OF UNAUTHORIZED MAILING OF
25 PLANT PESTS.—

1 (1) IN GENERAL.—Subject to section 304, a let-
2 ter, parcel, box, or other package containing a plant
3 pest, whether sealed as letter-rate postal matter, is
4 nonmailable, and a mail carrier shall not knowingly
5 convey in the mail or deliver from a post office such
6 a package, unless the package is mailed in compli-
7 ance with such regulations as the Secretary may
8 promulgate to prevent the dissemination of plant
9 pests into the United States or interstate.

10 (2) APPLICATION OF POSTAL LAWS.—Nothing
11 in this subsection authorizes a person to open a
12 mailed letter or other mailed sealed matter except in
13 accordance with the postal laws (including regula-
14 tions).

15 (d) REGULATIONS.—Regulations promulgated by the
16 Secretary to implement subsections (a), (b), or (c) may
17 include provisions requiring that a plant pest imported,
18 entered, to be exported, moved in interstate commerce,
19 mailed, or delivered from a post office—

20 (1) be accompanied by a permit issued by the
21 Secretary before the importation, entry, exportation,
22 movement in interstate commerce, mailing, or deliv-
23 ery of the plant pest;

24 (2) be accompanied by a certificate of inspec-
25 tion issued (in a manner and form required by the

1 Secretary) by appropriate officials of the country or
2 State from which the plant pest is to be moved;

3 (3) be raised under post-entry quarantine con-
4 ditions by or under the supervision of the Secretary
5 for the purposes of determining whether the plant
6 pest may be infested with other plant pests, may
7 pose a significant risk of causing injury to, damage
8 to, or disease in a plant or plant product, or may
9 be a noxious weed; and

10 (4) be subject to such remedial measures as the
11 Secretary determines are necessary to prevent the
12 dissemination of plant pests.

13 **SEC. 102. REGULATION OF MOVEMENT OF PLANTS, PLANT**
14 **PRODUCTS, BIOLOGICAL CONTROL ORGA-**
15 **NISMS, NOXIOUS WEEDS, ARTICLES, AND**
16 **MEANS OF CONVEYANCE.**

17 (a) IN GENERAL.—The Secretary may prohibit or re-
18 strict the importation, entry, exportation, or movement in
19 interstate commerce of a plant, plant product, biological
20 control organism, noxious weed, article, or means of con-
21 veyance, if the Secretary determines that the prohibition
22 or restriction is necessary to prevent the introduction into
23 the United States or the dissemination of a plant pest or
24 noxious weed within the United States.

1 (b) REGULATIONS.—The Secretary may promulgate
2 regulations to carry out this section, including regulations
3 requiring that a plant, plant product, biological control or-
4 ganism, noxious weed, article, or means of conveyance im-
5 ported, entered, to be exported, or moved in interstate
6 commerce—

7 (1) be accompanied by a permit issued by the
8 Secretary prior to the importation, entry, expor-
9 tation, or movement in interstate commerce;

10 (2) be accompanied by a certificate of inspec-
11 tion issued in a manner and form required by the
12 Secretary or by appropriate official of the country or
13 State from which the plant, plant product, biological
14 control organism, noxious weed, article, or means of
15 conveyance is to be moved;

16 (3) be subject to remedial measures the Sec-
17 retary determines to be necessary to prevent the
18 spread of plant pests or noxious weeds; and

19 (4) in the case of a plant or biological control
20 organism, be grown or handled under post-entry
21 quarantine conditions by or under the supervision of
22 the Secretary for the purpose of determining wheth-
23 er the plant or biological control organism may be
24 infested with a plant pest or noxious weed, or may
25 be a plant pest or noxious weed.

1 (c) LIST OF RESTRICTED NOXIOUS WEEDS.—

2 (1) PUBLICATION.—The Secretary may publish,
3 by regulation, a list of noxious weeds that are pro-
4 hibited or restricted from entering the United States
5 or that are subject to restrictions on interstate
6 movement within the United States.

7 (2) PETITIONS TO ADD PLANT SPECIES TO OR
8 REMOVE PLANT SPECIES FROM LIST.—

9 (A) IN GENERAL.—A person may petition
10 the Secretary to add a plant species to, or re-
11 move a plant species from, the list authorized
12 under paragraph (1).

13 (B) ACTION ON PETITION.—The Secretary
14 shall—

15 (i) act on the petition within a reason-
16 able time; and

17 (ii) notify the petitioner of the final
18 action the Secretary takes on the petition.

19 (C) BASIS FOR DETERMINATION.—The de-
20 termination of the Secretary on the petition
21 shall be based on sound science.

22 (d) LIST OF BIOLOGICAL CONTROL ORGANISMS.—

23 (1) PUBLICATION.—The Secretary may publish,
24 by regulation, a list of biological control organisms

1 the movement of which in interstate commerce is not
2 prohibited or restricted.

3 (2) DISTINCTIONS.—In publishing the list, the
4 Secretary may take into account distinctions be-
5 tween biological control organisms that are indige-
6 nous, nonindigenous, newly introduced, or commer-
7 cially raised.

8 (3) PETITIONS TO ADD BIOLOGICAL CONTROL
9 ORGANISMS TO OR REMOVE BIOLOGICAL CONTROL
10 ORGANISMS FROM LIST.—

11 (A) IN GENERAL.—A person may petition
12 the Secretary to add a biological control orga-
13 nism to, or remove a biological control organism
14 from, the list authorized under paragraph (1).

15 (B) ACTION ON PETITION.—The Secretary
16 shall—

17 (i) act on the petition within a reason-
18 able time; and

19 (ii) notify the petitioner of the final
20 action the Secretary takes on the petition.

21 (C) BASIS FOR DETERMINATION.—The de-
22 termination of the Secretary on the petition
23 shall be based on sound science.

1 **SEC. 103. NOTIFICATION AND HOLDING REQUIREMENTS ON**
2 **ARRIVAL.**

3 (a) DUTY OF SECRETARY OF THE TREASURY.—

4 (1) NOTIFICATION.—The Secretary of the
5 Treasury shall promptly notify the Secretary of the
6 arrival of a plant, plant product, biological control
7 organism, plant pest, noxious weed, article, or means
8 of conveyance at a port of entry.

9 (2) HOLDING.—The Secretary of the Treasury
10 shall hold a plant, plant product, biological control
11 organism, plant pest, noxious weed, article, or means
12 of conveyance for which notification is made under
13 paragraph (1) at the port of entry until the plant,
14 plant product, biological control organism, plant
15 pest, noxious weed, article, or means of conveyance
16 is—

17 (A) inspected and authorized by the Sec-
18 retary of Agriculture for entry into or move-
19 ment through the United States; or

20 (B) otherwise released by the Secretary.

21 (3) EXCEPTIONS.—Paragraphs (1) and (2)
22 shall not apply to a plant, plant product, biological
23 control organism, plant pest, noxious weed, article,
24 or means of conveyance that is imported from a
25 country or region of a country designated by the

1 Secretary, by regulation, as exempt from the re-
2 quirements of those paragraphs.

3 (b) NOTIFICATION BY RESPONSIBLE PERSON.—The
4 person responsible for a plant, plant product, biological
5 control organism, plant pest, noxious weed, article, or
6 means of conveyance required to have a permit under sec-
7 tion 101 or 102 shall promptly, on arrival at the port of
8 entry and before the plant, plant product, biological con-
9 trol organism, plant pest, noxious weed, article, or means
10 of conveyance is moved from the port of entry, notify the
11 Secretary or, at the Secretary's direction, the proper offi-
12 cial of the State to which the plant, plant product, biologi-
13 cal control organism, plant pest, noxious weed, article, or
14 means of conveyance is destined, or both, as the Secretary
15 may prescribe, of—

16 (1) the name and address of the consignee;

17 (2) the nature and quantity of the plant, plant
18 product, biological control organism, plant pest, nox-
19 ious weed, article, or means of conveyance proposed
20 to be moved; and

21 (3) the country and locality where the plant,
22 plant product, biological control organism, plant
23 pest, noxious weed, article, or means of conveyance
24 was grown, produced, or located.

1 (c) PROHIBITION OF MOVEMENT OF ITEMS WITHOUT
2 INSPECTION AND AUTHORIZATION.—No person shall
3 move from a port of entry or interstate an imported plant,
4 plant product, biological control organism, plant pest, nox-
5 ious weed, article, or means of conveyance unless the im-
6 ported plant, plant product, biological control organism,
7 plant pest, noxious weed, article, or means of conveyance
8 has been—

9 (1) inspected and authorized by the Secretary
10 for entry into or movement through the United
11 States; or

12 (2) otherwise released by the Secretary.

13 **SEC. 104. GENERAL REMEDIAL MEASURES FOR NEW PLANT**
14 **PESTS AND NOXIOUS WEEDS.**

15 (a) AUTHORITY TO HOLD, TREAT, OR DESTROY
16 ITEMS.—If the Secretary considers it necessary to prevent
17 the dissemination of a plant pest or noxious weed that is
18 new to or not known to be widely prevalent or distributed
19 within and throughout the United States, the Secretary
20 may hold, seize, quarantine, treat, apply other remedial
21 measures to, destroy, or otherwise dispose of a plant, plant
22 product, biological control organism, plant pest, noxious
23 weed, article, or means of conveyance that—

1 (1)(A) is moving into or through the United
2 States or interstate, or has moved into or through
3 the United States or interstate; and

4 (B)(i) the Secretary has reason to believe is a
5 plant pest or noxious weed or is infested with a
6 plant pest or noxious weed at the time of the move-
7 ment; or

8 (ii) is or has been otherwise in violation of this
9 Act;

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

12 (3) is the progeny of a plant, plant product, bi-
13 ological control organism, plant pest, or noxious
14 weed that is moving into or through the United
15 States or interstate, or has moved into the United
16 States or interstate, in violation of this Act.

17 (b) AUTHORITY TO ORDER AN OWNER TO TREAT OR
18 DESTROY.—

19 (1) IN GENERAL.—The Secretary may order the
20 owner of a plant, plant product, biological control or-
21 ganism, plant pest, noxious weed, article, or means
22 of conveyance subject to action under subsection (a),
23 or the owner's agent, to treat, apply other remedial
24 measures to, destroy, or otherwise dispose of the
25 plant, plant product, biological control organism,

1 plant pest, noxious weed, article, or means of con-
2 veyance, without cost to the Federal Government
3 and in a manner the Secretary considers appro-
4 priate.

5 (2) FAILURE TO COMPLY.—If the owner or
6 agent of the owner fails to comply with an order of
7 the Secretary under paragraph (1), the Secretary
8 may take an action authorized by subsection (a) and
9 recover from the owner or agent of the owner the
10 costs of any care, handling, application of remedial
11 measures, or disposal incurred by the Secretary in
12 connection with actions taken under subsection (a).

13 (c) CLASSIFICATION SYSTEM.—

14 (1) IN GENERAL.—To facilitate control of nox-
15 ious weeds, the Secretary may develop a classifica-
16 tion system to describe the status and action levels
17 for noxious weeds.

18 (2) CATEGORIES.—The classification system
19 may include the geographic distribution, relative
20 threat, and actions initiated to prevent introduction
21 or distribution.

22 (3) MANAGEMENT PLANS.—In conjunction with
23 the classification system, the Secretary may develop
24 integrated management plans for noxious weeds for

1 the geographic region or ecological range where the
2 noxious weed is found in the United States.

3 (d) APPLICATION OF LEAST DRASTIC ACTION.—No
4 plant, plant product, biological control organism, plant
5 pest, noxious weed, article, or means of conveyance shall
6 be destroyed, exported, or returned to the shipping point
7 of origin, or ordered to be destroyed, exported, or returned
8 to the shipping point of origin under this section unless,
9 in the opinion of the Secretary, there is no less drastic
10 action that is feasible and that would be adequate to pre-
11 vent the dissemination of any plant pest or noxious weed
12 new to or not known to be widely prevalent or distributed
13 within and throughout the United States.

14 **SEC. 105. EXTRAORDINARY EMERGENCIES.**

15 (a) AUTHORITY TO DECLARE.—Subject to subsection
16 (b), if the Secretary determines that an extraordinary
17 emergency exists because of the presence of a plant pest
18 or noxious weed that is new to or not known to be widely
19 prevalent in or distributed within and throughout the
20 United States and that the presence of the plant pest or
21 noxious weed threatens plants or plant products of the
22 United States, the Secretary may—

23 (1) hold, seize, quarantine, treat, apply other
24 remedial measures to, destroy, or otherwise dispose
25 of, a plant, plant product, biological control orga-

1 nism, article, or means of conveyance that the Sec-
2 retary has reason to believe is infested with the
3 plant pest or noxious weed;

4 (2) quarantine, treat, or apply other remedial
5 measures to any premises, including a plant, plant
6 product, biological control organism, article, or
7 means of conveyance on the premises, that the Sec-
8 retary has reason to believe is infested with the
9 plant pest or noxious weed;

10 (3) quarantine a State or portion of a State in
11 which the Secretary finds the plant pest or noxious
12 weed or a plant, plant product, biological control or-
13 ganism, article, or means of conveyance that the
14 Secretary has reason to believe is infested with the
15 plant pest or noxious weed; or

16 (4) prohibit or restrict the movement within a
17 State of a plant, plant product, biological control or-
18 ganism, article, or means of conveyance if the Sec-
19 retary determines that the prohibition or restriction
20 is necessary to prevent the dissemination of the
21 plant pest or noxious weed or to eradicate the plant
22 pest or noxious weed.

23 (b) REQUIRED FINDING OF EMERGENCY.—The Sec-
24 retary may take action under this section only on finding,
25 after review and consultation with the Governor or other

1 appropriate official of the State affected, that the meas-
2 ures being taken by the State are inadequate to prevent
3 the dissemination of the plant pest or noxious weed or to
4 eradicate the plant pest or noxious weed.

5 (c) NOTIFICATION PROCEDURES.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), before any action is taken in a State
8 under this section, the Secretary shall—

9 (A) notify the Governor or another appro-
10 priate official of the State;

11 (B) issue a public announcement; and

12 (C) except as provided in paragraph (2),
13 publish in the Federal Register a statement
14 of—

15 (i) the findings of the Secretary;

16 (ii) the action the Secretary intends to
17 take;

18 (iii) the reason for the intended ac-
19 tion; and

20 (iv) if practicable, an estimate of the
21 anticipated duration of the extraordinary
22 emergency.

23 (2) TIME SENSITIVE ACTIONS.—If it is not
24 practicable to publish a statement in the Federal
25 Register under paragraph (1) before taking an ac-

1 tion under this section, the Secretary shall publish
2 the statement in the Federal Register within a rea-
3 sonable period of time, not to exceed 10 business
4 days, after commencement of the action.

5 (d) APPLICATION OF LEAST DRASTIC ACTION.—No
6 plant, plant product, biological control organism, plant
7 pest, noxious weed, article, or means of conveyance shall
8 be destroyed, exported, or returned to the shipping point
9 of origin, or ordered to be destroyed, exported, or returned
10 to the shipping point of origin under this section unless,
11 in the opinion of the Secretary, there is no less drastic
12 action that is feasible and that would be adequate to pre-
13 vent the dissemination of a plant pest or noxious weed
14 new to or not known to be widely prevalent or distributed
15 within and throughout the United States.

16 (e) PAYMENT OF COMPENSATION.—

17 (1) IN GENERAL.—The Secretary may pay com-
18 pensation to a person for economic losses incurred
19 by the person as a result of action taken by the Sec-
20 retary under this section.

21 (2) AMOUNT.—The determination by the Sec-
22 retary of the amount of any compensation to be paid
23 under this subsection shall be final and shall not be
24 subject to judicial review.

1 **SEC. 106. RECOVERY OF COMPENSATION FOR UNAUTHOR-**
2 **IZED ACTIVITIES.**

3 (a) RECOVERY ACTION.—The owner of a plant, plant
4 product, biological control organism, plant pest, noxious
5 weed, article, or means of conveyance destroyed or other-
6 wise disposed of by the Secretary under section 104 or
7 105 may bring an action against the United States to re-
8 cover just compensation for the destruction or disposal of
9 the plant, plant product, biological control organism, plant
10 pest, noxious weed, article, or means of conveyance (not
11 including compensation for loss due to delays incident to
12 determining eligibility for importation, entry, exportation,
13 movement in interstate commerce, or release into the envi-
14 ronment) if the owner establishes that the destruction or
15 disposal was not authorized under this Act.

16 (b) TIME FOR ACTION; LOCATION.—

17 (1) TIME FOR ACTION.—An action under this
18 section shall be brought not later than 1 year after
19 the destruction or disposal of the plant, plant prod-
20 uct, biological control mechanism, plant pest, nox-
21 ious weed, article, or means of conveyance involved.

22 (2) LOCATION.—The action may be brought in
23 a United States District Court where the owner is
24 found, resides, transacts business, is licensed to do
25 business, or is incorporated.

1 (c) PAYMENT OF JUDGMENTS.—A judgment in favor
2 of the owner shall be paid out of any money in the Treas-
3 ury appropriated for plant pest control activities of the
4 Department of Agriculture.

5 **SEC. 107. CONTROL OF GRASSHOPPERS AND MORMON**
6 **CRICKETS.**

7 (a) IN GENERAL.—Subject to the availability of
8 funds under this section, the Secretary shall carry out a
9 program to control grasshoppers and Mormon Crickets on
10 all Federal land to protect rangeland.

11 (b) TRANSFER AUTHORITY.—

12 (1) IN GENERAL.—Subject to paragraph (3), on
13 the request of the Secretary, the Secretary of the In-
14 terior shall transfer to the Secretary, from any no-
15 year appropriations, funds for the prevention, sup-
16 pression, and control of actual or potential grass-
17 hopper and Mormon Cricket outbreaks on Federal
18 land under the jurisdiction of the Secretary of the
19 Interior.

20 (2) USE.—The transferred funds shall be avail-
21 able only for the payment of obligations incurred on
22 the Federal land.

23 (3) TRANSFER REQUESTS.—The Secretary shall
24 make a request for the transfer of funds under this
25 subsection as promptly as practicable.

1 (4) LIMITATION.—The Secretary may not use
2 funds transferred under this subsection until funds
3 specifically appropriated to the Secretary for grass-
4 hopper and Mormon Cricket control have been ex-
5 hausted.

6 (5) REPLENISHMENT OF TRANSFERRED
7 FUNDS.—Funds transferred under this section shall
8 be replenished by supplemental or regular appropria-
9 tions, which the Secretary shall request as promptly
10 as practicable.

11 (c) TREATMENT FOR GRASSHOPPERS AND MORMON
12 CRICKETS.—

13 (1) IN GENERAL.—Subject to the availability of
14 funds under this section, on request of the head of
15 the administering agency or the agriculture depart-
16 ment of an affected State, the Secretary, to protect
17 rangeland, shall immediately treat Federal, State, or
18 private land that is infested with grasshoppers or
19 Mormon Crickets at levels of economic infestation,
20 unless the Secretary determines that delaying treat-
21 ment will not cause greater economic damage to ad-
22 jacent owners of rangeland.

23 (2) OTHER PROGRAMS.—In carrying out this
24 section, the Secretary shall work in conjunction with

1 other Federal, State, and private prevention, control,
2 or suppression efforts to protect rangeland.

3 (d) FEDERAL COST SHARE OF TREATMENT.—

4 (1) CONTROL ON FEDERAL LAND.—Out of
5 funds made available under this section, the Sec-
6 retary shall pay 100 percent of the cost of grass-
7 hopper or Mormon Cricket control on Federal land
8 to protect rangeland.

9 (2) CONTROL ON STATE LAND.—Out of funds
10 made available under this section, the Secretary
11 shall pay 50 percent of the cost of grasshopper or
12 Mormon Cricket control on State land.

13 (3) CONTROL ON PRIVATE LAND.—Out of funds
14 made available under this section, the Secretary
15 shall pay 33.3 percent of the cost of grasshopper or
16 Mormon Cricket control on private land.

17 (e) TRAINING.—From funds made available or trans-
18 ferred by the Secretary of the Interior to the Secretary
19 to carry out this section, the Secretary shall provide ade-
20 quate funding for a program to train personnel to accom-
21 plish effectively the purposes of this section.

22 **SEC. 108. CERTIFICATION FOR EXPORTS.**

23 The Secretary may certify a plant, plant product, or
24 biological control organism as free from plant pests and
25 noxious weeds, and exposure to plant pests and noxious

1 weeds, according to the phytosanitary or other require-
2 ments of the countries to which the plant, plant product,
3 or biological control organism may be exported.

4 **TITLE II—INSPECTION AND**
5 **ENFORCEMENT**

6 **SEC. 201. INSPECTIONS, SEIZURES, AND WARRANTS.**

7 (a) IN GENERAL.—Consistent with guidelines ap-
8 proved by the Attorney General, the Secretary may—

9 (1) stop and inspect, without a warrant, a per-
10 son or means of conveyance moving into the United
11 States to determine whether the person or means of
12 conveyance is carrying a plant, plant product, bio-
13 logical control organism, plant pest, noxious weed,
14 article, or means of conveyance subject to this Act;

15 (2) stop and inspect, without a warrant, a per-
16 son or means of conveyance moving in interstate
17 commerce on probable cause to believe that the per-
18 son or means of conveyance is carrying a plant,
19 plant product, biological control organism, plant
20 pest, noxious weed, article, or means of conveyance
21 subject to this Act;

22 (3) stop and inspect, without a warrant, a per-
23 son or means of conveyance moving in intrastate
24 commerce or on premises quarantined as part of an
25 extraordinary emergency declared under section 105

1 on probable cause to believe that the person or
2 means of conveyance is carrying a plant, plant prod-
3 uct, biological control organism, plant pest, noxious
4 weed, article, or means of conveyance subject to this
5 Act; and

6 (4) enter, with a warrant, a premises in the
7 United States for the purpose of conducting inves-
8 tigations or making inspections and seizures under
9 this Act.

10 (b) WARRANTS.—

11 (1) IN GENERAL.—A United States judge, a
12 judge of a court of record in the United States, or
13 a United States magistrate judge may, on proper
14 oath or affirmation showing probable cause to be-
15 lieve that there is on certain premises a plant, plant
16 product, biological control organism, plant pest, nox-
17 ious weed, article, or means of conveyance regulated
18 under this Act, issue a warrant for entry on the
19 premises to conduct an investigation or make an in-
20 spection or seizure under this Act.

21 (2) EXECUTION.—The warrant may be applied
22 for and executed by the Secretary or a United States
23 marshal.

1 **SEC. 202. COLLECTION OF INFORMATION.**

2 The Secretary may gather and compile information
3 and conduct such investigations as the Secretary considers
4 necessary for the administration and enforcement of this
5 Act.

6 **SEC. 203. SUBPOENA AUTHORITY.**

7 (a) **AUTHORITY TO ISSUE.**—The Secretary may re-
8 quire by subpoena—

9 (1) the attendance and testimony of a witness;
10 and

11 (2) the production of all documentary evidence
12 relating to the administration or enforcement of this
13 Act or a matter under investigation in connection
14 with this Act.

15 (b) **LOCATION OF PRODUCTION.**—The attendance of
16 a witness and production of documentary evidence may be
17 required from any place in the United States at any des-
18 ignated place of hearing.

19 (c) **ENFORCEMENT OF SUBPOENA.**—If a person fails
20 to comply with a subpoena, the Secretary may request the
21 Attorney General to invoke the aid of a court of the United
22 States within the jurisdiction in which the investigation
23 is conducted, or where the person resides, is found, trans-
24 acts business, is licensed to do business, or is incorporated,
25 in obtaining compliance.

26 (d) **FEEES AND MILEAGE.**—

1 (1) IN GENERAL.—A witness summoned by the
2 Secretary shall be paid the same fees and mileage
3 that are paid to a witness in a court of the United
4 States.

5 (2) DEPOSITIONS.—A witness whose deposition
6 is taken, and the person taking the deposition, shall
7 be entitled to the same fees that are paid for similar
8 services in a court of the United States.

9 (e) PROCEDURES.—

10 (1) IN GENERAL.—The Secretary shall publish
11 procedures for the issuance of subpoenas under this
12 section.

13 (2) LEGAL SUFFICIENCY.—The procedures
14 shall include a requirement that a subpoena be re-
15 viewed for legal sufficiency and signed by the Sec-
16 retary.

17 (3) DELEGATION.—If the authority to sign a
18 subpoena is delegated, the agency receiving the dele-
19 gation shall seek review for legal sufficiency outside
20 that agency.

21 (f) SCOPE OF SUBPOENA.—A subpoena for a witness
22 to attend a court in a judicial district or to testify or
23 produce evidence at an administrative hearing in a judicial
24 district in an action or proceeding arising under this Act
25 may run to any other judicial district.

1 **SEC. 204. PENALTIES FOR VIOLATION.**

2 (a) **CRIMINAL PENALTIES.**—A person that knowingly
3 violates this Act, or that knowingly forges, counterfeits,
4 or, without authority from the Secretary, uses, alters, de-
5 faces, or destroys a certificate, permit, or other document
6 provided under this Act shall be guilty of a misdemeanor,
7 and, on conviction, shall be fined in accordance with title
8 18, United States Code, imprisoned not more than 1 year,
9 or both.

10 (b) **CIVIL PENALTIES.**—

11 (1) **IN GENERAL.**—A person that violates this
12 Act, or that forges, counterfeits, or, without author-
13 ity from the Secretary, uses, alters, defaces, or de-
14 stroys a certificate, permit, or other document pro-
15 vided under this Act may, after notice and oppor-
16 tunity for a hearing on the record, be assessed a
17 civil penalty by the Secretary that does not exceed
18 the greater of—

19 (A) \$50,000 in the case of an individual
20 (except that the civil penalty may not exceed
21 \$1,000 in the case of an initial violation of this
22 Act by an individual moving regulated articles
23 not for monetary gain), or \$250,000 in the case
24 of any other person for each violation, except
25 the amount of penalties assessed under this

1 subparagraph in a single proceeding shall not
2 exceed \$500,000; or

3 (B) twice the gross gain or gross loss for
4 a violation or forgery, counterfeiting, or unau-
5 thorized use, defacing or destruction of a cer-
6 tificate, permit, or other document provided for
7 in this Act that results in the person's deriving
8 pecuniary gain or causing pecuniary loss to an-
9 other person.

10 (2) FACTORS IN DETERMINING CIVIL PEN-
11 ALTY.—In determining the amount of a civil penalty,
12 the Secretary—

13 (A) shall take into account the nature, cir-
14 cumstance, extent, and gravity of the violation;
15 and

16 (B) may take into account the ability to
17 pay, the effect on ability to continue to do busi-
18 ness, any history of prior violations, the degree
19 of culpability of the violator, and any other fac-
20 tors the Secretary considers appropriate.

21 (3) SETTLEMENT OF CIVIL PENALTIES.—The
22 Secretary may compromise, modify, or remit, with or
23 without conditions, a civil penalty that may be as-
24 sessed under this subsection.

25 (4) FINALITY OF ORDERS.—

1 (A) IN GENERAL.—An order of the Sec-
2 retary assessing a civil penalty shall be treated
3 as a final order reviewable under chapter 158
4 of title 28, United States Code.

5 (B) COLLECTION ACTION.—The validity of
6 an order of the Secretary may not be reviewed
7 in an action to collect the civil penalty.

8 (C) INTEREST.—A civil penalty not paid in
9 full when due under an order assessing the civil
10 penalty shall (after the due date) accrue inter-
11 est until paid at the rate of interest applicable
12 to a civil judgment of the courts of the United
13 States.

14 (c) LIABILITY FOR ACTS OF AN AGENT.—For pur-
15 poses of this Act, the act, omission, or failure of an officer,
16 agent, or person acting for or employed by any other per-
17 son within the scope of employment or office of the officer,
18 agent, or person, shall be considered to be the act, omis-
19 sion, or failure of the other person.

20 (d) GUIDELINES FOR CIVIL PENALTIES.—The Sec-
21 retary shall coordinate with the Attorney General to estab-
22 lish guidelines to determine under what circumstances the
23 Secretary may issue a civil penalty or suitable notice of
24 warning in lieu of prosecution by the Attorney General of
25 a violation of this Act.

1 **SEC. 205. ENFORCEMENT ACTIONS OF ATTORNEY GEN-**
2 **ERAL.**

3 The Attorney General may—

4 (1) prosecute, in the name of the United States,
5 a criminal violation of this Act that is referred to
6 the Attorney General by the Secretary or is brought
7 to the notice of the Attorney General by any person;

8 (2) bring a civil action to enjoin the violation of
9 or to compel compliance with this Act, or to enjoin
10 any interference by a person with the Secretary in
11 carrying out this Act, if the Attorney General has
12 reason to believe that the person has violated or is
13 about to violate this Act, or has interfered, or is
14 about to interfere, with the Secretary; and

15 (3) bring a civil action for the recovery of an
16 unpaid civil penalty, funds under a reimbursable
17 agreement, late payment penalty, or interest as-
18 sessed under this Act.

19 **SEC. 206. COURT JURISDICTION.**

20 (a) **IN GENERAL.**—Except as provided in section
21 204(b), a United States district court, the District Court
22 of Guam, the District Court of the Virgin Islands, the
23 highest court of American Samoa, and the United States
24 courts of other territories and possessions are vested with
25 jurisdiction in all cases arising under this Act.

1 (b) LOCATION.—An action arising under this Act
2 may be brought, and process may be served, in the judicial
3 district where—

4 (1) a violation or interference occurred or is
5 about to occur; or

6 (2) the person charged with the violation, inter-
7 ference, impending violation, impending interference,
8 or failure to pay resides, is found, transacts busi-
9 ness, is licensed to do business, or is incorporated.

10 **TITLE III—MISCELLANEOUS** 11 **PROVISIONS**

12 **SEC. 301. COOPERATION.**

13 (a) IN GENERAL.—To carry out this Act, the Sec-
14 retary may cooperate with—

- 15 (1) other Federal agencies or entities;
- 16 (2) States or political subdivisions of States;
- 17 (3) national governments;
- 18 (4) local governments of other nations;
- 19 (5) domestic or international organizations;
- 20 (6) domestic or international associations; and
- 21 (7) other persons.

22 (b) RESPONSIBILITY.—The individual or entity co-
23 operating with the Secretary shall be responsible for con-
24 ducting the operations or taking measures on all land and
25 property within the foreign country or State, other than

1 land and property owned or controlled by the United
2 States, and for other facilities and means determined by
3 the Secretary.

4 (c) TRANSFER OF BIOLOGICAL CONTROL METH-
5 ODS.—The Secretary may transfer to a Federal or State
6 agency or other person biological control methods using
7 biological control organisms against plant pests or noxious
8 weeds.

9 (d) COOPERATION IN PROGRAM ADMINISTRATION.—
10 The Secretary may cooperate with State authorities or
11 other persons in the administration of programs for the
12 improvement of plants, plant products, and biological con-
13 trol organisms.

14 **SEC. 302. BUILDINGS, LAND, PEOPLE, CLAIMS, AND AGREE-**
15 **MENTS.**

16 (a) IN GENERAL.—The Secretary may acquire and
17 maintain such real or personal property, and employ such
18 persons, make such grants, and enter into such contracts,
19 cooperative agreements, memoranda of understanding, or
20 other agreements, as are necessary to carry out this Act.

21 (b) TORT CLAIMS.—

22 (1) IN GENERAL.—Except as provided in para-
23 graph (2), the Secretary may pay a tort claim (in
24 the manner authorized in the first paragraph of sec-
25 tion 2672 of title 28, United States Code) if the

1 claim arises outside the United States in connection
2 with an activity authorized under this Act.

3 (2) REQUIREMENTS OF CLAIM.—A claim may
4 not be allowed under paragraph (1) unless the claim
5 is presented in writing to the Secretary not later
6 than 2 years after the claim arises.

7 **SEC. 303. REIMBURSABLE AGREEMENTS.**

8 (a) PRECLEARANCE.—

9 (1) IN GENERAL.—The Secretary may enter
10 into a reimbursable fee agreement with a person for
11 preclearance (at a location outside the United
12 States) of plants, plant products, biological control
13 organisms, articles, and means of conveyance for
14 movement to the United States.

15 (2) ACCOUNT.—All funds collected under this
16 subsection shall be credited to an account that may
17 be established by the Secretary and shall remain
18 available until expended without fiscal year limita-
19 tion.

20 (b) OVERTIME.—

21 (1) IN GENERAL.—Notwithstanding any other
22 law, the Secretary may pay an employee of the De-
23 partment of Agriculture performing services under
24 this Act relating to imports into and exports from
25 the United States, for all overtime, night, or holiday

1 work performed by the employee, at a rate of pay
2 determined by the Secretary.

3 (2) REIMBURSEMENT OF SECRETARY.—The
4 Secretary may require a person for whom the serv-
5 ices are performed to reimburse the Secretary for
6 funds paid by the Secretary for the services.

7 (3) ACCOUNT.—All funds collected under this
8 subsection shall be credited to the account that in-
9 curs the costs and remain available until expended
10 without fiscal year limitation.

11 (c) LATE PAYMENT PENALTY AND INTEREST.—

12 (1) COLLECTION.—On failure of a person to re-
13 imburse the Secretary in accordance with this sec-
14 tion, the Secretary may assess a late payment pen-
15 alty against the person.

16 (2) INTEREST.—Overdue funds due the Sec-
17 retary under this section shall accrue interest in ac-
18 cordance with section 3717 of title 31, United States
19 Code.

20 (3) ACCOUNT.—A late payment penalty and ac-
21 crued interest shall be credited to the account that
22 incurs the costs and shall remain available until ex-
23 pended without fiscal year limitation.

1 **SEC. 304. PROTECTION FOR MAIL CARRIERS.**

2 This Act shall not apply to an employee of the United
3 States in the performance of the duties of the employee
4 in handling the mail.

5 **SEC. 305. REGULATIONS AND ORDERS.**

6 The Secretary may promulgate such regulations, and
7 issue such orders, as the Secretary considers necessary to
8 carry out this Act.

9 **SEC. 306. REPEAL OF SUPERSEDED LAWS.**

10 (a) REPEAL.—The following provisions of law are re-
11 pealed:

12 (1) Subsections (a) through (e) of section 102
13 of the Department of Agriculture Organic Act of
14 1944 (7 U.S.C. 147a).

15 (2) Section 1773 of the Food Security Act of
16 1985 (7 U.S.C. 148f).

17 (3) The Golden Nematode Act (7 U.S.C. 150 et
18 seq.).

19 (4) The Federal Plant Pest Act (7 U.S.C.
20 150aa et seq).

21 (5) The Joint Resolution of April 6, 1937 (56
22 Stat. 57, chapter 69; 7 U.S.C. 148 et seq.).

23 (6) The Act of January 31, 1942 (56 Stat. 40,
24 chapter 31; 7 U.S.C. 149).

1 (7) The Act of August 20, 1912 (commonly
2 known as the “Plant Quarantine Act”) (37 Stat.
3 315, chapter 308; 7 U.S.C. 151 et seq.).

4 (8) The Halogeton Glomeratus Control Act (7
5 U.S.C. 1651 et seq.).

6 (9) The Act of August 28, 1950 (64 Stat. 561,
7 chapter 815; 7 U.S.C. 2260).

8 (10) The Federal Noxious Weed Act of 1974 (7
9 U.S.C. 2801 et seq.), other than the first section
10 and section 15 of that Act (7 U.S.C. 2801 note,
11 2814).

12 (b) EFFECT ON REGULATIONS.—Regulations pro-
13 mulgated under the authority of a provision of law re-
14 pealed by subsection (a) shall remain in effect until such
15 time as the Secretary promulgates a regulation under sec-
16 tion 304 that supersedes the earlier regulation.

17 **TITLE IV—AUTHORIZATION OF**
18 **APPROPRIATIONS**

19 **SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

20 (a) IN GENERAL.—There are authorized to be appro-
21 priated such sums as are necessary to carry out this Act.

22 (b) COMPENSATION.—Except as provided in section
23 106 and as specifically authorized by law, no part of the
24 amounts appropriated under this section shall be used to

1 provide compensation for property injured or destroyed by
2 or at the direction of the Secretary.

3 **SEC. 402. TRANSFER AUTHORITY.**

4 (a) **AUTHORITY TO TRANSFER CERTAIN FUNDS.—**

5 In connection with an emergency in which a plant pest
6 or noxious weed threatens a segment of the agricultural
7 production of the United States, the Secretary may trans-
8 fer from other appropriations or funds available to the
9 agencies or corporations of the Department of Agriculture
10 such amounts as the Secretary considers necessary to be
11 available in the emergency for the arrest, control, eradi-
12 cation, and prevention of the dissemination of the plant
13 pest or noxious weed and for related expenses.

14 (b) **AVAILABILITY.—**Any funds transferred under
15 this section shall remain available for such purposes with-
16 out fiscal year limitation.

○