

104TH CONGRESS  
2D SESSION

# S. 2128

To consolidate and revise the authority of the Secretary of Agriculture relating to plant protection and quarantine, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 1996

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

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## A BILL

To consolidate and revise 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.**

4 This Act may be cited as the “Plant Protection Act”.

5 **SEC. 2. FINDINGS.**

6 Congress finds that—

7 (1) the detection, control, eradication, suppres-  
8 sion, prevention, and retardation of the spread of  
9 plant pests and noxious weeds is necessary for the

1 protection of the agriculture, environment, and econ-  
2 omy of the United States;

3 (2) biological control—

4 (A) is often a desirable, low-risk means of  
5 ridding crops and other plants of plant pests  
6 and noxious weeds; and

7 (B) should be facilitated by the Secretary  
8 of Agriculture, Federal agencies, and States,  
9 whenever feasible;

10 (3) markets could be severely impacted by the  
11 introduction or spread of pests or noxious weeds into  
12 or within the United States;

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

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

1       burden interstate commerce or foreign commerce;  
2       and

3             (6) all plant pests, noxious weeds, plants, plant  
4       products, or articles capable of harboring plant pests  
5       or noxious weeds regulated under this Act are in or  
6       affect interstate commerce or foreign commerce.

7 **SEC. 3. DEFINITIONS.**

8       In this Act (unless the context otherwise requires):

9             (1) **ARTICLE.**—The term “article” means any  
10       material or tangible object that could harbor a pest,  
11       disease, or noxious weed.

12            (2) **BIOLOGICAL CONTROL ORGANISM.**—The  
13       term “biological control organism” means a biologi-  
14       cal entity, as defined by the Secretary, that sup-  
15       presses or decreases the population of another bio-  
16       logical entity.

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) INDIGENOUS.—The term “indigenous”  
10 means a plant species found naturally as part of a  
11 natural habitat in a geographic area in the United  
12 States.

13           (10) INTERSTATE.—The term “interstate”  
14 means from 1 State into or through any other State,  
15 or within the District of Columbia, Guam, the Virgin  
16 Islands of the United States, or any other territory  
17 or possession of the United States.

18           (11) INTERSTATE COMMERCE.—The term  
19 “interstate commerce” means trade, traffic,  
20 movement, or other commerce—

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

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

1 (C) within the District of Columbia, Guam,  
2 the Virgin Islands of the United States, or any  
3 other territory or possession of the United  
4 States.

5 (12) MEANS OF CONVEYANCE.—The term  
6 “means of conveyance” means any personal property  
7 or means used for or intended for use for the move-  
8 ment of any other personal property.

9 (13) MOVE.—The term “move” means to—

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

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

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

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

19 (E) allow any of the activities referred to  
20 this paragraph.

21 (14) NOXIOUS WEED.—The term “noxious  
22 weed” means a plant, seed, reproductive part, or  
23 propagative part of a plant that—

24 (A) can directly or indirectly injure or  
25 cause damage to a crop, other useful plant,

1 plant product, livestock, poultry, or other inter-  
2 est of agriculture (including irrigation), naviga-  
3 tion, public health, or natural resources or envi-  
4 ronment of the United States; and

5 (B) belongs to a species that is not indige-  
6 nous to the geographic area or ecosystem in  
7 which it is causing injury or damage.

8 (15) PERMIT.—The term “permit” means a  
9 written or oral authorization (including electronic  
10 authorization) by the Secretary to move a plant,  
11 plant product, biological control organism, plant  
12 pest, noxious weed, or article under conditions pre-  
13 scribed by the Secretary.

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

17 (17) PLANT.—The term “plant” means a plant  
18 or plant part for or capable of propagation, includ-  
19 ing a tree, shrub, vine, bulb, root, pollen, seed, tissue  
20 culture, plantlet culture, cutting, graft, scion, and  
21 bud.

22 (18) PLANT PEST.—The term “plant pest”  
23 means—

24 (A) a living stage of a protozoan, animal,  
25 bacteria, fungus, virus, viroid, infection agent,

1 or parasitic plant that can directly or indirectly  
2 injure or cause damage to, or cause disease in,  
3 a plant or plant product; or

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

6 (19) PLANT PRODUCT.—The term “plant prod-  
7 uct” means a flower, fruit, vegetable, root, bulb,  
8 seed, or other plant part that is not considered a  
9 plant or a manufactured or processed plant or plant  
10 part.

11 (20) SECRETARY.—The term “Secretary”  
12 means the Secretary of Agriculture.

13 (21) STATE.—The term “State” means each of  
14 the several States of the United States, the District  
15 of Columbia, the Commonwealth of Puerto Rico, the  
16 Virgin Islands, Guam, American Samoa, the Com-  
17 monwealth of the Northern Mariana Islands, and  
18 any other territory or possession of the United  
19 States.

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

1 **SEC. 4. RESTRICTIONS ON MOVEMENT OF PLANTS, PLANT**  
2 **PRODUCTS, BIOLOGICAL CONTROL ORGA-**  
3 **NISMS, PLANT PESTS, NOXIOUS WEEDS, ARTI-**  
4 **CLES, AND MEANS OF CONVEYANCE.**

5 (a) IN GENERAL.—The Secretary may prohibit or re-  
6 strict the importation, entry, exportation, or movement in  
7 interstate commerce of a plant, plant product, biological  
8 control organism, plant pest, noxious weed, article, or  
9 means of conveyance if the Secretary determines that the  
10 prohibition or restriction is necessary to prevent the intro-  
11 duction into the United States or the interstate dissemina-  
12 tion of a plant pest or noxious weed.

13 (b) MAIL.—

14 (1) IN GENERAL.—No person shall convey in  
15 the mail, or deliver from a post office or by a mail  
16 carrier, a letter or package containing a plant pest,  
17 biological control organism, or noxious weed unless  
18 it is mailed in accordance with such regulations as  
19 the Secretary may issue to prevent the introduction  
20 into the United States, or interstate dissemination,  
21 of plant pests or noxious weeds.

22 (2) POSTAL EMPLOYEES.—This subsection shall  
23 not apply to an employee of the United States in the  
24 performance of the duties of the employee in han-  
25 dling the mail.



1           (3) POSTAL LAWS AND REGULATIONS.—Noth-  
2           ing in this subsection authorizes a person to open a  
3           mailed letter or other mailed sealed matter except in  
4           accordance with the postal laws and regulations.

5           (c) STATE RESTRICTIONS ON NOXIOUS WEEDS.—No  
6           person shall move into a State, or sell or offer for sale  
7           in the State, a plant species the sale of which is prohibited  
8           by the State because the plant species is designated as  
9           a noxious weed or has a similar designation.

10          (d) ADMINISTRATION.—The Secretary may issue reg-  
11          ulations to carry out this section, including regulations re-  
12          quiring that a plant, plant product, biological control orga-  
13          nism, plant pest, noxious weed, article, or means of con-  
14          veyance imported, entered, to be exported, or moved in  
15          interstate commerce—

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

19                (2) be accompanied by a certificate of inspec-  
20                tion issued in a manner and form required by the  
21                Secretary or by an appropriate official of the coun-  
22                try or State from which the plant, plant product, bi-  
23                ological control organism, plant pest, noxious weed,  
24                article, or means of conveyance is to be moved;

1           (3) be subject to remedial measures the Sec-  
2           retary determines to be necessary to prevent the  
3           spread of plant pests; and

4           (4) in the case of a plant or biological control  
5           organism, be grown or handled under post-entry  
6           quarantine conditions by or under the supervision of  
7           the Secretary for the purpose of determining wheth-  
8           er the plant or biological control organism may be  
9           infested with a plant pest or noxious weed, or may  
10          be a plant pest or noxious weed.

11          (e) LIST OF RESTRICTED NOXIOUS WEEDS.—

12           (1) PUBLICATION.—The Secretary may publish,  
13           by regulation, a list of noxious weeds that are pro-  
14           hibited or restricted from entering the United States  
15           or that are subject to restrictions on interstate  
16           movement within the United States.

17           (2) PETITIONS TO ADD OR REMOVE PLANT SPE-  
18           CIES.—

19           (A) IN GENERAL.—A person may petition  
20           the Secretary to add or remove a plant species  
21           from the list required under paragraph (1).

22           (B) ACTION ON PETITION.—The Secretary  
23           shall—

1 (i) act on a petition not later than 1  
2 year after receipt of the petition by the  
3 Secretary; and

4 (ii) notify the petitioner of the final  
5 action the Secretary takes on the petition.

6 (C) BASIS FOR DETERMINATION.—The  
7 Secretary's determination on the petition shall  
8 be based on sound science, available data and  
9 technology, and information received from pub-  
10 lic comment.

11 (D) INCLUSION ON LIST.—To include a  
12 plant species on the list, the Secretary must de-  
13 termine that—

14 (i) the plant species is nonindigenous  
15 to the geographic region or ecosystem in  
16 which the species is spreading and causing  
17 injury; and

18 (ii) the dissemination of the plant in  
19 the United States may reasonably be ex-  
20 pected to interfere with natural resources,  
21 agriculture, forestry, or a native ecosystem  
22 of a geographic region, or management of  
23 an ecosystem, or cause injury to the public  
24 health.

25 (f) CONFORMING AMENDMENTS.—

1           (1) Section 102 of the Act of September 21,  
2           1944 (58 Stat. 735, chapter 412; 7 U.S.C. 147a) is  
3           amended by striking “(a)” in subsection (a) and all  
4           that follows through “(2)” in subsection (f)(2).

5           (2) The matter under the heading “ENFORCE-  
6           MENT OF THE PLANT-QUARANTINE ACT:” under the  
7           heading “MISCELLANEOUS” of the Act of March 4,  
8           1915 (commonly known as the “Terminal Inspection  
9           Act”) (38 Stat. 1113, chapter 144; 7 U.S.C. 166)  
10          is amended—

11                   (A) in the second paragraph—

12                           (i) by striking “plants and plant prod-  
13                           ucts” each place it appears and inserting  
14                           “plants, plant products, animals, and other  
15                           organisms”;

16                           (ii) by striking “plants or plant prod-  
17                           ucts” each place it appears and inserting  
18                           “plants, plant products, animals, or other  
19                           organisms”;

20                           (iii) by striking “plant-quarantine law  
21                           or plant-quarantine regulation” each place  
22                           it appears and inserting “plant-quarantine  
23                           or other law or plant-quarantine regula-  
24                           tion”;

25                           (iv) in the second sentence—

1 (I) by striking “Upon his ap-  
2 proval of said list, in whole or in part,  
3 the Secretary of Agriculture” and in-  
4 serting “On the receipt of the list by  
5 the Secretary of Agriculture, the Sec-  
6 retary”; and

7 (II) by striking “said approved  
8 lists” and inserting “the lists”;

9 (v) by inserting after the second sen-  
10 tence the following: “On the request of a  
11 representative of a State, a Federal agency  
12 shall act on behalf of the State to obtain  
13 a warrant to inspect mail to carry out this  
14 paragraph.”; and

15 (vi) in the last sentence, by striking  
16 “be forward” and inserting “be for-  
17 warded”; and

18 (B) in the third paragraph, by striking  
19 “plant or plant product” and inserting “plant,  
20 plant product, animal, or other organism”.

1 **SEC. 5. NOTIFICATION OF ARRIVAL AND INSPECTION BE-**  
2 **FORE MOVEMENT OF PLANTS, PLANT PROD-**  
3 **UCTS, BIOLOGICAL CONTROL ORGANISMS,**  
4 **PLANT PESTS, NOXIOUS WEEDS, ARTICLES,**  
5 **AND MEANS OF CONVEYANCE.**

6 (a) NOTIFICATION AND HOLDING BY SECRETARY OF  
7 THE TREASURY.—

8 (1) IN GENERAL.—Except as provided in para-  
9 graph (2), the Secretary of the Treasury shall—

10 (A) promptly notify the Secretary of the  
11 arrival of a plant, plant product, biological con-  
12 trol organism, plant pest, noxious weed, article,  
13 or means of conveyance at a port of entry; and

14 (B) hold the plant, plant product, biologi-  
15 cal control organism, plant pest, noxious weed,  
16 article, or means of conveyance until inspected  
17 and authorized for entry into or transit move-  
18 ment through the United States, or otherwise  
19 released by the Secretary.

20 (2) APPLICATION.—Paragraph (1) shall not  
21 apply to a plant, plant product, biological control or-  
22 ganism, plant pest, noxious weed, article, or means  
23 of conveyance that is imported from a country or re-  
24 gion of countries that the Secretary designates as  
25 exempt from paragraph (1), pursuant to such regu-  
26 lations as the Secretary may issue.

1           (b) NOTIFICATION BY RESPONSIBLE PERSON.—The  
2 person responsible for a plant, plant product, biological  
3 control organism, plant pest, noxious weed, article, or  
4 means of conveyance subject to subsection (a) shall  
5 promptly, on arrival at the port of entry and before the  
6 plant, plant product, biological control organism, plant  
7 pest, noxious weed, article, or means of conveyance is  
8 moved from the port of entry, notify the Secretary or, at  
9 the Secretary's direction, the proper official of the State  
10 to which the plant, plant product, biological control orga-  
11 nism, plant pest, noxious weed, article, or means of con-  
12 veyance is destined, or both, as the Secretary may pre-  
13 scribe, of—

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

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

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

23           (c) NO MOVEMENT WITHOUT INSPECTION AND AU-  
24 THORIZATION.—No person shall move from the port of  
25 entry or interstate an imported plant, plant product, bio-

1 logical control organism, plant pest, noxious weed, article,  
2 or means of conveyance unless the imported plant, plant  
3 product, biological control organism, plant pest, noxious  
4 weed, article, or means of conveyance has been inspected  
5 and authorized for entry into or transit movement through  
6 the United States, or otherwise released by the Secretary.

7 **SEC. 6. REMEDIAL MEASURES OR DISPOSAL FOR PLANT**  
8 **PESTS OR NOXIOUS WEEDS; EXTRAORDINARY**  
9 **EMERGENCY.**

10 (a) REMEDIAL MEASURES OR DISPOSAL FOR PLANT  
11 PESTS OR NOXIOUS WEEDS.—

12 (1) IN GENERAL.—Except as provided in sub-  
13 section (c), if the Secretary considers it necessary to  
14 prevent the dissemination of a plant pest or noxious  
15 weed new to or not known to be widely prevalent or  
16 distributed within and throughout the United States,  
17 the Secretary may hold, seize, quarantine, treat,  
18 apply other remedial measures to, destroy, or other-  
19 wise dispose of—

20 (A) a plant, plant product, biological con-  
21 trol organism, plant pest, noxious weed, article,  
22 or means of conveyance that is moving into or  
23 through the United States or interstate and  
24 that the Secretary has reason to believe is in-  
25 fested with the plant pest or noxious weed;



1           (B) a plant, plant product, biological con-  
2           trol organism, plant pest, noxious weed, article,  
3           or means of conveyance that has moved into the  
4           United States or interstate and that the Sec-  
5           retary has reason to believe was infested with  
6           the plant pest or noxious weed at the time of  
7           the movement;

8           (C) a plant, plant product, biological con-  
9           trol organism, plant pest, noxious weed, article,  
10          or means of conveyance that is moving into or  
11          through the United States or interstate, or has  
12          moved into the United States or interstate, in  
13          violation of this Act;

14          (D) a plant, plant product, biological con-  
15          trol organism, plant pest, noxious weed, article,  
16          or means of conveyance that has not been  
17          maintained in compliance with a post-entry  
18          quarantine requirement;

19          (E) a progeny of a plant, plant product, bi-  
20          ological control organism, plant pest, or noxious  
21          weed that is moving into or through the United  
22          States or interstate, or has moved into the  
23          United States or interstate, in violation of this  
24          Act; or

1           (F) a plant, plant product, biological con-  
2           trol organism, plant pest, noxious weed, article,  
3           or means of conveyance that is infested with a  
4           plant pest or noxious weed that the Secretary  
5           has reason to believe was moved into the United  
6           States or in interstate commerce.

7           (2) ORDERING TREATMENT OR DISPOSAL BY  
8           THE OWNER.—Except as provided in subsection (c),  
9           the Secretary may order the owner of a plant, plant  
10          product, biological control organism, plant pest, nox-  
11          ious weed, article, or means of conveyance subject to  
12          disposal under paragraph (1), or the owner’s agent,  
13          to treat, apply other remedial measures to, destroy,  
14          or otherwise dispose of the plant, plant product, bio-  
15          logical control organism, plant pest, noxious weed,  
16          article, or means of conveyance, without cost to the  
17          Federal Government and in a manner the Secretary  
18          considers appropriate.

19          (3) CLASSIFICATION SYSTEM FOR NOXIOUS  
20          WEEDS.—

21                (A) IN GENERAL.—To facilitate control of  
22                noxious weeds, the Secretary shall develop a  
23                classification system to describe the status and  
24                action levels for noxious weeds.

1 (B) CATEGORIES.—The classification sys-  
2 tem shall differentiate between—

3 (i) noxious weeds that are not known  
4 to be introduced into the United States;

5 (ii) noxious weeds that are not known  
6 to be widely disseminated within the Unit-  
7 ed States;

8 (iii) noxious weeds that are widely dis-  
9 tributed within the United States; and

10 (iv) noxious weeds that are not indige-  
11 nous, including native plant species that  
12 are invasive in limited geographic areas  
13 within the United States.

14 (C) OTHER CATEGORIES.—In addition to  
15 the categories required under subparagraph  
16 (B), the Secretary may establish other cat-  
17 egories of noxious weeds for the system.

18 (D) VARYING LEVELS OF REGULATION  
19 AND CONTROL.—The Secretary shall develop  
20 varying levels of regulation and control appro-  
21 priate to each of the categories of the system.

22 (E) APPLICATION OF REGULATIONS.—The  
23 regulations issued to carry out this paragraph  
24 shall apply, as the Secretary considers appro-  
25 priate, to—

- 1 (i) exclude a noxious weed;
- 2 (ii) prevent further dissemination of a  
3 noxious weed through movement or com-  
4 merce;
- 5 (iii) establish mandatory controls for  
6 a noxious weed; or
- 7 (iv) designate a noxious weed as war-  
8 ranting control efforts.

9 (F) REVISIONS.—The Secretary shall re-  
10 vise the classification system, and the place-  
11 ment of individual noxious weeds within the  
12 system, in response to changing circumstances.

13 (G) INTEGRATED MANAGEMENT PLANS.—  
14 In conjunction with the classification system,  
15 the Secretary may develop an integrated man-  
16 agement plan for a noxious weed for the geo-  
17 graphic region or ecological range of the United  
18 States where the noxious weed is found or to  
19 which the noxious weed may spread.

20 (b) EXTRAORDINARY EMERGENCIES.—

21 (1) IN GENERAL.—Subject to paragraph (2), if  
22 the Secretary determines that an extraordinary  
23 emergency exists because of the presence of a plant  
24 pest or noxious weed new to or not known to be  
25 widely prevalent in or distributed within and

1 throughout the United States and that the presence  
2 of the plant pest or noxious weed threatens a crop,  
3 other plant, plant product, or the natural resources  
4 or environment of the United States, the Secretary  
5 may—

6 (A) hold, seize, quarantine, treat, apply  
7 other remedial measures to, destroy, or other-  
8 wise dispose of, a plant, plant product, biologi-  
9 cal control organism, plant pest, noxious weed,  
10 article, or means of conveyance that the Sec-  
11 retary has reason to believe is infested with the  
12 plant pest or noxious weed;

13 (B) quarantine, treat, or apply other reme-  
14 dial measures to a premises, including a plant,  
15 plant product, biological control organism, arti-  
16 cle, or means of conveyance on the premises,  
17 that the Secretary has reason to believe is in-  
18 fested with the plant pest or noxious weed;

19 (C) quarantine a State or portion of a  
20 State in which the Secretary finds the plant  
21 pest or noxious weed, or a plant, plant product,  
22 biological control organism, article, or means of  
23 conveyance that the Secretary has reason to be-  
24 lieve is infested with the plant pest or noxious  
25 weed; or

1 (D) prohibit or restrict the movement with-  
 2 in a State of a plant, plant product, biological  
 3 control organism, article, or means of convey-  
 4 ance if the Secretary determines that the prohi-  
 5 bition or restriction is necessary to prevent the  
 6 dissemination of the plant pest or noxious weed  
 7 or to eradicate the plant pest or noxious weed.

8 (2) REQUIREMENTS FOR ACTION.—

9 (A) INADEQUATE STATE MEASURES.—

10 After review and consultation with the Governor  
 11 or other appropriate official of the State, the  
 12 Secretary may take action under this subsection  
 13 only on a finding that the measures being taken  
 14 by the State are inadequate to eradicate the  
 15 plant pest or noxious weed.

16 (B) NOTICE TO STATE AND PUBLIC.—Be-  
 17 fore taking any action in a State under this  
 18 subsection, the Secretary shall—

19 (i) notify the Governor or another ap-  
 20 propriate official of the State;

21 (ii) issue a public announcement; and

22 (iii) except as provided in subpara-  
 23 graph (C), publish in the Federal Register  
 24 a statement of—

25 (I) the Secretary's findings;

1 (II) the action the Secretary in-  
2 tends to take;

3 (III) the reason for the intended  
4 action; and

5 (IV) if practicable, an estimate of  
6 the anticipated duration of the ex-  
7 traordinary emergency.

8 (C) NOTICE AFTER ACTION.—If it is not  
9 possible to publish a statement in the Federal  
10 Register under subparagraph (B) prior to tak-  
11 ing an action under this subsection, the Sec-  
12 retary shall publish the statement in the Fed-  
13 eral Register within a reasonable period of time,  
14 not to exceed 10 business days, after com-  
15 mencement of the action.

16 (3) COMPENSATION.—

17 (A) IN GENERAL.—The Secretary may pay  
18 compensation to a person for economic losses  
19 incurred by the person as a result of action  
20 taken by the Secretary under paragraph (1).

21 (B) FINAL DETERMINATION.—The deter-  
22 mination by the Secretary of the amount of any  
23 compensation paid under this subsection shall  
24 be final and shall not be subject to judicial re-  
25 view.

1           (c) LEAST DRASTIC ACTION TO PREVENT DISSEMI-  
2 NATION.—No plant, plant product, biological control orga-  
3 nism, article, or means of conveyance shall be destroyed,  
4 exported, or returned to the shipping point of origin, or  
5 ordered to be destroyed, exported, or returned to the ship-  
6 ping point of origin under this section unless, in the opin-  
7 ion of the Secretary, there is no less drastic action that  
8 is feasible, and that would be adequate, to prevent the dis-  
9 semination of a plant pest or noxious weed new to or not  
10 known to be widely prevalent or distributed within and  
11 throughout the United States.

12           (d) COMPENSATION OF OWNER FOR UNAUTHORIZED  
13 DISPOSAL.—

14           (1) IN GENERAL.—The owner of a plant, plant  
15 product, biological control organism, article, or  
16 means of conveyance destroyed or otherwise disposed  
17 of by the Secretary under this section may bring an  
18 action against the United States in the United  
19 States District Court of the District of Columbia,  
20 not later than 1 year after the destruction or dis-  
21 posal, and recover just compensation for the de-  
22 struction or disposal of the plant, plant product, bio-  
23 logical control organism, article, or means of convey-  
24 ance (not including compensation for loss due to  
25 delays incident to determining eligibility for importa-



1 tion, entry, exportation, movement in interstate com-  
2 merce, or release into the environment) if the owner  
3 establishes that the destruction or disposal was not  
4 authorized under this Act.

5 (2) SOURCE FOR PAYMENTS.—A judgment ren-  
6 dered in favor of the owner shall be paid out of the  
7 money in the Treasury appropriated for plant pest  
8 control activities of the Department of Agriculture.

9 **SEC. 7. INSPECTIONS, SEIZURES, AND WARRANTS.**

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

12 (1) stop and inspect, without a warrant, a per-  
13 son or means of conveyance moving into the United  
14 States to determine whether the person or means of  
15 conveyance is carrying a plant, plant product, bio-  
16 logical control organism, or article regulated under  
17 this Act or is moving subject to this Act;

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

1           (3) stop and inspect, without a warrant, a per-  
2           son or means of conveyance moving in interstate  
3           commerce from or within a State, portion of a State,  
4           or premises quarantined under section 6(b) on prob-  
5           able cause to believe that the person or means of  
6           conveyance is carrying any plant, plant product, bio-  
7           logical control organism, or article regulated under  
8           this Act or is moving subject to this Act; and

9           (4) enter, with a warrant, a premises in the  
10          United States for the purpose of making inspections  
11          and seizures under this Act.

12          (b) WARRANTS.—

13           (1) IN GENERAL.—A United States judge, a  
14           judge of a court of record in the United States, or  
15           a United States magistrate judge may, within the  
16           judge’s or magistrate’s jurisdiction, on proper oath  
17           or affirmation showing probable cause to believe that  
18           there is on certain premises a plant, plant product,  
19           biological control organism, article, facility, or means  
20           of conveyance regulated under this Act, issue a war-  
21           rant for entry on the premises to make an inspection  
22           or seizure under this Act.

23           (2) EXECUTION.—The warrant may be exe-  
24           cuted by the Secretary or a United States Marshal.

1 **SEC. 8. COOPERATION.**

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

- 4 (1) other Federal agencies;
- 5 (2) States or political subdivisions of States;
- 6 (3) national, State, or local associations;
- 7 (4) national governments;
- 8 (5) local governments of other nations;
- 9 (6) international organizations;
- 10 (7) international associations; and
- 11 (8) other persons.

12 (b) RESPONSIBILITY.—The individual or entity co-  
13 operating with the Secretary shall be responsible for con-  
14 ducting the operations or taking measures on all land and  
15 property within the foreign country or State, other than  
16 land and property owned or controlled by the United  
17 States, and for other facilities and means determined by  
18 the Secretary.

19 (c) TRANSFER OF BIOLOGICAL CONTROL METH-  
20 ODS.—At the request of a Federal or State land manage-  
21 ment agency, the Secretary may transfer to the agency  
22 biological control methods utilizing biological control orga-  
23 nisms against plant pests or noxious weeds.

24 (d) IMPROVEMENT OF PLANTS, PLANT PRODUCTS,  
25 AND BIOLOGICAL CONTROL ORGANISMS.—The Secretary  
26 may cooperate with State authorities in the administration

1 of regulations for the improvement of plants, plant prod-  
2 ucts, and biological control organisms.

3 **SEC. 9. PHYTOSANITARY CERTIFICATE FOR EXPORTS.**

4 The Secretary may certify a plant, plant product, or  
5 biological control organism as free from plant pests and  
6 noxious weeds, and exposure to plant pests and noxious  
7 weeds, according to the phytosanitary requirements of the  
8 country to which the plant, plant product, or biological  
9 control organism may be exported.

10 **SEC. 10. ADMINISTRATION.**

11 (a) IN GENERAL.—The Secretary may acquire and  
12 maintain such real or personal property, employ such per-  
13 sons, make such grants, and enter into such contracts, co-  
14 operative agreements, memoranda of understanding, or  
15 other agreements as are necessary to carry out this Act.

16 (b) PERSONNEL OF USER FEE SERVICES.—Notwith-  
17 standing any other law, the Secretary shall provide ade-  
18 quate personnel for services provided under this Act that  
19 are funded by user fees.

20 (c) TORT CLAIMS.—

21 (1) IN GENERAL.—The Secretary may pay a  
22 tort claim (in the manner authorized in the first  
23 paragraph of section 2672 of title 28, United States  
24 Code) if the claim arises outside the United States

1 in connection with an activity authorized under this  
2 Act.

3 (2) TIME LIMITATION.—A claim may not be al-  
4 lowed under paragraph (1) unless the claim is pre-  
5 sented in writing to the Secretary not later than 2  
6 years after the claim accrues.

7 **SEC. 11. 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, and articles for  
13 movement into the United States.

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

18 (b) OVERTIME.—

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

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

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

9           (c) LATE PAYMENT PENALTY AND INTEREST.—

10           (1) PENALTY.—On failure of a person to reim-  
11 burse the Secretary in accordance with this section,  
12 the Secretary may assess a late payment penalty  
13 against the person.

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

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

22 **SEC. 12. VIOLATIONS; PENALTIES.**

23           (a) CRIMINAL PENALTIES.—A person who knowingly  
24 violates this Act, or who knowingly forges, counterfeits,  
25 or, without authority from the Secretary, uses, alters, de-

1 faces, or destroys a certificate, permit, or other document  
2 provided under this Act shall be guilty of a misdemeanor,  
3 and, on conviction, shall be fined in accordance with title  
4 18, United States Code, or imprisoned for not more than  
5 1 year, or both.

6 (b) CIVIL PENALTIES.—

7 (1) IN GENERAL.—A person who violates this  
8 Act, or who forges, counterfeits, or, without author-  
9 ity from the Secretary, uses, alters, defaces, or de-  
10 stroys a certificate, permit, or other document pro-  
11 vided under this Act may, after notice and oppor-  
12 tunity for a hearing on the record, be assessed a  
13 civil penalty by the Secretary of not more than  
14 \$25,000 for each violation.

15 (2) FINAL ORDER.—The order of the Secretary  
16 assessing a civil penalty shall be treated as a final  
17 order that is reviewable under chapter 158 of title  
18 28, United States Code.

19 (3) VALIDITY OF ORDER.—The validity of an  
20 order of the Secretary may not be reviewed in an ac-  
21 tion to collect the civil penalty.

22 (4) INTEREST.—A civil penalty not paid in full  
23 when due under an order assessing the civil penalty  
24 shall (after the due date) accrue interest until paid

1 at the rate of interest applicable to a civil judgment  
2 of a court of the United States.

3 (c) PECUNIARY GAINS OR LOSSES.—If a person de-  
4 rives pecuniary gain from an offense described in sub-  
5 section (a) or (b), or if the offense results in pecuniary  
6 loss to a person other than the defendant, the defendant  
7 may be fined not more than an amount that is the greater  
8 of twice the gross gain or twice the gross loss, unless impo-  
9 sition of a fine under this subsection would unduly com-  
10 plicate or prolong the imposition of a fine or sentence  
11 under subsection (a) or (b).

12 (d) AGENTS.—For purposes of this Act, the act,  
13 omission, or failure of an officer, agent, or person acting  
14 for or employed by any other person within the scope of  
15 the employment or office of the other person shall be con-  
16 sidered also to be the act, omission, or failure of the other  
17 person.

18 (e) CIVIL PENALTIES OR NOTICE IN LIEU OF PROS-  
19 ECUTION.—The Secretary shall coordinate with the Attor-  
20 ney General to establish guidelines to determine under  
21 what circumstances the Secretary may issue a civil penalty  
22 or suitable notice of warning in lieu of prosecution by the  
23 Attorney General of a violation of this Act.

24 **SEC. 13. ENFORCEMENT.**

25 (a) INVESTIGATIONS, EVIDENCE, AND SUBPOENAS.—



1           (1) INVESTIGATIONS.—The Secretary may  
2 gather and compile information and conduct any in-  
3 vestigations the Secretary considers necessary for  
4 the administration and enforcement of this Act.

5           (2) EVIDENCE.—The Secretary shall at all rea-  
6 sonable times have the right to examine and copy  
7 any documentary evidence of a person being inves-  
8 tigated or proceeded against.

9           (3) SUBPOENAS.—

10           (A) IN GENERAL.—The Secretary shall  
11 have power to require by subpoena the attend-  
12 ance and testimony of any witness and the pro-  
13 duction of all documentary evidence relating to  
14 the administration or enforcement of this Act  
15 or any matter under investigation in connection  
16 with this Act.

17           (B) LOCATION.—The attendance of a wit-  
18 ness and production of documentary evidence  
19 may be required from any place in the United  
20 States at any designated place of hearing.

21           (C) NONCOMPLIANCE WITH SUBPOENA.—  
22 If a person disobeys a subpoena, the Secretary  
23 may request the Attorney General to invoke the  
24 aid of a court of the United States within the  
25 jurisdiction in which the investigation is con-

1 ducted, or where the person resides, is found,  
2 transacts business, is licensed to do business, or  
3 is incorporated to require the attendance and  
4 testimony of a witness and the production of  
5 documentary evidence.

6 (D) ORDER.—If a person disobeys a sub-  
7 poena, the court may order the person to ap-  
8 pear before the Secretary and give evidence con-  
9 cerning the matter in question or to produce  
10 documentary evidence.

11 (E) NONCOMPLIANCE WITH ORDER.—A  
12 failure to obey the court's order may be pun-  
13 ished by the court as a contempt of the court.

14 (F) FEES AND MILEAGE.—

15 (i) IN GENERAL.—A witness sum-  
16 moned by the Secretary shall be paid the  
17 same fees and reimbursement for mileage  
18 that is paid to a witness in the courts of  
19 the United States.

20 (ii) DEPOSITIONS.—A witness whose  
21 deposition is taken, and the person taking  
22 the deposition, shall be entitled to the  
23 same fees that are paid for similar services  
24 in a court of the United States.

1 (b) ATTORNEY GENERAL.—The Attorney General  
2 may—

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

7 (2) bring an action to enjoin the violation of or  
8 to compel compliance with this Act, or to enjoin any  
9 interference by a person with the Secretary in carry-  
10 ing out this Act, if the Secretary has reason to be-  
11 lieve that the person has violated or is about to vio-  
12 late this Act, or has interfered, or is about to inter-  
13 fere, with the Secretary; and

14 (3) bring an action for the recovery of any un-  
15 paid civil penalty, funds under a reimbursable agree-  
16 ment, late payment penalty, or interest assessed  
17 under this Act.

18 (c) JURISDICTION.—

19 (1) IN GENERAL.—Except as provided in sec-  
20 tion 12(b), a United States district court, the Dis-  
21 trict Court of Guam, the District Court of the Vir-  
22 gin Islands, the highest court of American Samoa,  
23 and the United States courts of other territories and  
24 possessions shall have jurisdiction over all cases aris-  
25 ing under this Act.

1           (2) VENUE.—Except as provided in subsection  
2           (b), an action arising under this Act may be  
3           brought, and process may be served, in the judicial  
4           district where a violation or interference occurred or  
5           is about to occur, or where the person charged with  
6           the violation, interference, impending violation, im-  
7           pending interference, or failure to pay resides, is  
8           found, transacts business, is licensed to do business,  
9           or is incorporated.

10           (3) SUBPOENAS.—A subpoena for a witness to  
11           attend court in a judicial district or to testify or  
12           produce evidence at an administrative hearing in a  
13           judicial district in an action or proceeding arising  
14           under this Act may apply to any other judicial dis-  
15           trict.

16 **SEC. 14. PREEMPTION.**

17           (a) IN GENERAL.—Except as provided in subsection  
18           (b), no State or political subdivision of a State may regu-  
19           late any article, means of conveyance, plant, biological  
20           control organism, plant pest, noxious weed, or plant prod-  
21           uct in foreign commerce to control a plant pest or noxious  
22           weed, eradicate a plant pest or noxious weed, or prevent  
23           the introduction or dissemination of a biological control  
24           organism, plant pest, or noxious weed.

1 (b) STATE NOXIOUS WEED LAWS.—This Act shall  
2 not invalidate the law of any State or political subdivision  
3 of a State relating to noxious weeds, except that a State  
4 or political subdivision of a State may not permit any ac-  
5 tion that is prohibited under this Act.

6 **SEC. 15. REGULATIONS AND ORDERS.**

7 The Secretary may issue such regulations and orders  
8 as the Secretary considers necessary to carry out this Act,  
9 including (at the option of the Secretary) regulations and  
10 orders relating to—

11 (1) notification of arrival of plants, plant prod-  
12 ucts, biological control organisms, plant pests, nox-  
13 ious weeds, articles, or means of conveyance;

14 (2) prohibition or restriction of or on the impor-  
15 tation, entry, exportation, or movement in interstate  
16 commerce of plants, plant products, biological con-  
17 trol organisms, plant pests, noxious weeds, articles,  
18 or means of conveyance;

19 (3) holding, seizure of, quarantine of, treatment  
20 of, application of remedial measures to, destruction  
21 of, or disposal of plants, plant products, biological  
22 control organisms, plant pests, noxious weeds, arti-  
23 cles, premises, or means of conveyance;

24 (4) in the case of an extraordinary emergency,  
25 prohibition or restriction on the movement of plants,

- 1 plant products, biological control organisms, plant  
2 pests, noxious weeds, articles, or means of convey-  
3 ance;
- 4 (5) payment of compensation;
- 5 (6) cooperation with other Federal agencies,  
6 States, political subdivisions of States, national gov-  
7 ernments, local governments of other countries,  
8 international organizations, international associa-  
9 tions, and other persons, entities, and individuals;
- 10 (7) transfer of biological control methods for  
11 plant pests or noxious weeds;
- 12 (8) negotiation and execution of agreements;
- 13 (9) acquisition and maintenance of real and  
14 personal property;
- 15 (10) issuance of letters of warning;
- 16 (11) compilation of information;
- 17 (12) conduct of investigations;
- 18 (13) transfer of funds for emergencies;
- 19 (14) approval of facilities and means of convey-  
20 ance;
- 21 (15) denial of approval of facilities and means  
22 of conveyance;
- 23 (16) suspension and revocation of approval of  
24 facilities and means of conveyance;
- 25 (17) inspection, testing, and certification;

1 (18) cleaning and disinfection;

2 (19) designation of ports of entry;

3 (20) imposition and collection of fees, penalties,  
4 and interest;

5 (21) recordkeeping, marking, and identification;

6 (22) issuance of permits and phytosanitary cer-  
7 tificates;

8 (23) establishment of quarantines, post-import-  
9 ation conditions, and post-entry quarantine condi-  
10 tions;

11 (24) establishment of conditions for transit  
12 movement through the United States; and

13 (25) treatment of land for the prevention, sup-  
14 pression, or control of plant pests or noxious weeds.

15 **SEC. 16. AUTHORIZATION OF APPROPRIATIONS; TRANS-**  
16 **FERS.**

17 (a) AUTHORIZATION OF APPROPRIATIONS.—

18 (1) IN GENERAL.—There are authorized to be  
19 appropriated such sums as are necessary to carry  
20 out this Act.

21 (2) INDEMNITIES.—Except as specifically au-  
22 thorized by law, no part of the money made available  
23 under paragraph (1) shall be used to pay an indem-  
24 nity for property injured or destroyed by or at the  
25 direction of the Secretary.

1 (b) TRANSFERS.—

2 (1) IN GENERAL.—In connection with an emer-  
3 gency in which a plant pest or noxious weeds threat-  
4 ens any segment of the agricultural production of  
5 the United States, the Secretary may transfer (from  
6 other appropriations or funds available to an agency  
7 or corporation of the Department of Agriculture)  
8 such funds as the Secretary considers necessary for  
9 the arrest, control, eradication, and prevention of  
10 the spread of the plant pest or noxious weed and for  
11 related expenses.

12 (2) AVAILABILITY.—Any funds transferred  
13 under this subsection shall remain available to carry  
14 out paragraph (1) without fiscal year limitation.

15 **SEC. 17. REPEALS.**

16 The following provisions of law are repealed:

17 (1) Public Law 97–46 (7 U.S.C. 147b).

18 (2) The Joint Resolution of April 6, 1937 (50  
19 Stat. 57, chapter 69; 7 U.S.C. 148 et seq.).

20 (3) Section 1773 of the Food Security Act of  
21 1985 (7 U.S.C. 148f).

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

24 (5) The Golden Nematode Act (7 U.S.C. 150 et  
25 seq.).



1           (6) The Federal Plant Pest Act (7 U.S.C.  
2           150aa et seq.).

3           (7) The Act of August 20, 1912 (commonly  
4           known as the “Plant Quarantine Act”) (37 Stat.  
5           315, chapter 308; 7 U.S.C. 151 et seq.).

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

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

10          (10) The Federal Noxious Weed Act of 1974 (7  
11          U.S.C. 2801 et seq.), other than the first section of  
12          the Act (Public Law 93–629; 7 U.S.C. 2801 note)  
13          and section 15 of the Act (7 U.S.C. 2814).

○