



**28. PLANT PROTECTION ACT**

[As Amended Through Public Law 108–498, Dec. 23, 2004]



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December 23, 2004

## 28. PLANT PROTECTION ACT

Title IV of the Agricultural Risk Protection Act of 2000 (Public Law 106–224)

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## TITLE IV—PLANT PROTECTION ACT

### SEC. 401. [7 U.S.C. 7701 note] SHORT TITLE.

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

### SEC. 402. [7 U.S.C. 7701] FINDINGS.

Congress finds that—

(1) the detection, control, eradication, suppression, prevention, or retardation of the spread of plant pests or noxious weeds is necessary for the protection of the agriculture, environment, and economy of the United States;

(2) biological control is often a desirable, low-risk means of ridding crops and other plants of plant pests and noxious weeds, and its use should be facilitated by the Department of Agriculture, other Federal agencies, and States whenever feasible;

(3) it is the responsibility of the Secretary to facilitate exports, imports, and interstate commerce in agricultural products and other commodities that pose a risk of harboring plant pests or noxious weeds in ways that will reduce, to the extent practicable, as determined by the Secretary, the risk of dissemination of plant pests or noxious weeds;

(4) decisions affecting imports, exports, and interstate movement of products regulated under this title shall be based on sound science;

(5) the smooth movement of enterable plants, plant products, biological control organisms, or other articles into, out of, or within the United States is vital to the United State’s economy and should be facilitated to the extent possible;

(6) export markets could be severely impacted by the introduction or spread of plant pests or noxious weeds into or within the United States;

(7) the unregulated movement of plant pests, noxious weeds, plants, certain biological control organisms, plant products, and articles capable of harboring plant pests or noxious weeds could present an unacceptable risk of introducing or spreading plant pests or noxious weeds;

(8) the existence on any premises in the United States of a plant pest or noxious weed new to or not known to be widely prevalent in or distributed within and throughout the United States could constitute a threat to crops and other plants or plant products of the United States and burden interstate commerce or foreign commerce; and

(9) all plant pests, noxious weeds, plants, plant products, articles capable of harboring plant pests or noxious weeds regulated under this title are in or affect interstate commerce or foreign commerce.

### SEC. 403. [7 U.S.C. 7702] DEFINITIONS.

In this title:

(1) ARTICLE.—The term “article” means any material or tangible object that could harbor plant pests or noxious weeds.

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

(3) ENTER AND ENTRY.—The terms “enter” and “entry” mean to move into, or the act of movement into, the commerce of the United States.

(4) EXPORT AND EXPORTATION.—The terms “export” and “exportation” mean to move from, or the act of movement from, the United States to any place outside the United States.

(5) IMPORT AND IMPORTATION.—The terms “import” and “importation” mean to move into, or the act of movement into, the territorial limits of the United States.

(6) INTERSTATE.—The term “interstate” means—

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

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

(7) INTERSTATE COMMERCE.—The term “interstate commerce” means trade, traffic, or other commerce—

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

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

(8) MEANS OF CONVEYANCE.—The term “means of conveyance” means any personal property used for or intended for use for the movement of any other personal property.

(9) MOVE AND RELATED TERMS.—The terms “move”, “moving”, and “movement” mean—

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

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

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

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

(E) to release into the environment; or

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

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

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

(12) PERSON.—The term “person” means any individual, partnership, corporation, association, joint venture, or other legal entity.

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

(14) PLANT PEST.—The term “plant pest” means any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product:

- (A) A protozoan.
- (B) A nonhuman animal.
- (C) A parasitic plant.
- (D) A bacterium.
- (E) A fungus.
- (F) A virus or viroid.
- (G) An infectious agent or other pathogen.
- (H) Any article similar to or allied with any of the articles specified in the preceding subparagraphs.

(15) PLANT PRODUCT.—The term “plant product” means—

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

(16) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

(17) STATE.—The term “State” means any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

(18) SYSTEMS APPROACH.—For the purposes of section 412(e), the term “systems approach” means a defined set of phytosanitary procedures, at least two of which have an independent effect in mitigating pest risk associated with the movement of commodities.

(19) THIS TITLE.—Except when used in this section, the term “this title” includes any regulation or order issued by the Secretary under the authority of this title.

(20) UNITED STATES.—The term “United States” means all of the States.

## Subtitle A—Plant Protection

### SEC. 411. [7 U.S.C. 7711] REGULATION OF MOVEMENT OF PLANT PESTS.

(a) PROHIBITION OF UNAUTHORIZED MOVEMENT OF PLANT PESTS.—Except as provided in subsection (c), no person shall import, enter, export, or move in interstate commerce any plant pest, unless the importation, entry, exportation, or movement is authorized under general or specific permit and is in accordance with

such regulations as the Secretary may issue to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the United States.

(b) REQUIREMENTS FOR PROCESSES.—The Secretary shall ensure that the processes used in developing regulations under subsection (a) governing consideration of import requests are based on sound science and are transparent and accessible.

(c) AUTHORIZATION OF MOVEMENT OF PLANT PESTS BY REGULATION.—

(1) EXCEPTION TO PERMIT REQUIREMENT.—The Secretary may issue regulations to allow the importation, entry, exportation, or movement in interstate commerce of specified plant pests without further restriction if the Secretary finds that a permit under subsection (a) is not necessary.

(2) PETITION TO ADD OR REMOVE PLANT PESTS FROM REGULATION.—Any person may petition the Secretary to add a plant pest to, or remove a plant pest from, the regulations issued by the Secretary under paragraph (1).

(3) RESPONSE TO PETITION BY THE SECRETARY.—In the case of a petition submitted under paragraph (2), the Secretary shall act on the petition within a reasonable time and notify the petitioner of the final action the Secretary takes on the petition. The Secretary's determination on the petition shall be based on sound science.

(d) PROHIBITION OF UNAUTHORIZED MAILING OF PLANT PESTS.—

(1) IN GENERAL.—Any letter, parcel, box, or other package containing any plant pest, whether sealed as letter-rate postal matter or not, is nonmailable and shall not knowingly be conveyed in the mail or delivered from any post office or by any mail carrier, unless the letter, parcel, box, or other package is mailed in compliance with such regulations as the Secretary may issue to prevent the dissemination of plant pests into the United States or interstate.

(2) APPLICATION OF POSTAL LAWS AND REGULATIONS.—Nothing in this subsection authorizes any person to open any mailed letter or other mailed sealed matter except in accordance with the postal laws and regulations.

(e) REGULATIONS.—Regulations issued by the Secretary to implement subsections (a), (c), and (d) may include provisions requiring that any plant pest imported, entered, to be exported, moved in interstate commerce, mailed, or delivered from any post office—

(1) be accompanied by a permit issued by the Secretary prior to the importation, entry, exportation, movement in interstate commerce, mailing, or delivery of the plant pest;

(2) be accompanied by a certificate of inspection issued (in a manner and form required by the Secretary) by appropriate officials of the country or State from which the plant pest is to be moved;

(3) be raised under post-entry quarantine conditions by or under the supervision of the Secretary for the purposes of determining whether the plant pest—

(A) may be infested with other plant pests;

- (B) may pose a significant risk of causing injury to, damage to, or disease in any plant or plant product; or
- (C) may be a noxious weed; and
- (4) be subject to remedial measures the Secretary determines to be necessary to prevent the spread of plant pests.

**SEC. 412. [7 U.S.C. 7712] REGULATION OF MOVEMENT OF PLANTS, PLANT PRODUCTS, BIOLOGICAL CONTROL ORGANISMS, NOXIOUS WEEDS, ARTICLES, AND MEANS OF CONVEYANCE.**

(a) **IN GENERAL.**—The Secretary may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination of a plant pest or noxious weed within the United States.

(b) **POLICY.**—The Secretary shall ensure that processes used in developing regulations under this section governing consideration of import requests are based on sound science and are transparent and accessible.

(c) **REGULATIONS.**—The Secretary may issue regulations to implement subsection (a), including regulations requiring that any plant, plant product, biological control organism, noxious weed, article, or means of conveyance imported, entered, to be exported, or moved in interstate commerce—

(1) be accompanied by a permit issued by the Secretary prior to the importation, entry, exportation, or movement in interstate commerce;

(2) be accompanied by a certificate of inspection issued (in a manner and form required by the Secretary) by appropriate officials of the country or State from which the plant, plant product, biological control organism, noxious weed, article, or means of conveyance is to be moved;

(3) be subject to remedial measures the Secretary determines to be necessary to prevent the spread of plant pests or noxious weeds; and

(4) with respect to plants or biological control organisms, be grown or handled under post-entry quarantine conditions by or under the supervision of the Secretary for the purposes of determining whether the plant or biological control organism may be infested with plant pests or may be a plant pest or noxious weed.

(d) **NOTICE.**—Not later than 1 year after the date of the enactment of this Act, the Secretary shall publish for public comment a notice describing the procedures and standards that govern the consideration of import requests. The notice shall—

(1) specify how public input will be sought in advance of and during the process of promulgating regulations necessitating a risk assessment in order to ensure a fully transparent and publicly accessible process; and

(2) include consideration of the following:

(A) Public announcement of import requests that will necessitate a risk assessment.



(B) A process for assigning major/nonroutine or minor/routine status to such requests based on current state of supporting scientific information.

(C) A process for assigning priority to requests.

(D) Guidelines for seeking relevant scientific and economic information in advance of initiating informal rule-making.

(E) Guidelines for ensuring availability and transparency of assumptions and uncertainties in the risk assessment process including applicable risk mitigation measures relied upon individually or as components of a system of mitigative measures proposed consistent with the purposes of this title.

(e) STUDY AND REPORT ON SYSTEMS APPROACH.—

(1) STUDY.—The Secretary shall conduct a study of the role for and application of systems approaches designed to guard against the introduction of plant pathogens into the United States associated with proposals to import plants or plant products into the United States.

(2) PARTICIPATION BY SCIENTISTS.—In conducting the study the Secretary shall ensure participation by scientists from State departments of agriculture, colleges and universities, the private sector, and the Agricultural Research Service.

(3) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit a report on the results of the study conducted under this section to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives.

(f) NOXIOUS WEEDS.—

(1) REGULATIONS.—In the case of noxious weeds, the Secretary may publish, by regulation, a list of noxious weeds that are prohibited or restricted from entering the United States or that are subject to restrictions on interstate movement within the United States.

(2) PETITION TO ADD OR REMOVE PLANTS FROM REGULATION.—Any person may petition the Secretary to add a plant species to, or remove a plant species from, the regulations issued by the Secretary under this subsection.

(3) DUTIES OF THE SECRETARY.—In the case of a petition submitted under paragraph (2), the Secretary shall act on the petition within a reasonable time and notify the petitioner of the final action the Secretary takes on the petition. The Secretary's determination on the petition shall be based on sound science.

(g) BIOLOGICAL CONTROL ORGANISMS.—

(1) REGULATIONS.—In the case of biological control organisms, the Secretary may publish, by regulation, a list of organisms whose movement in interstate commerce is not prohibited or restricted. Any listing may take into account distinctions between organisms such as indigenous, nonindigenous, newly introduced, or commercially raised.

(2) PETITION TO ADD OR REMOVE BIOLOGICAL CONTROL ORGANISMS FROM THE REGULATIONS.—Any person may petition

the Secretary to add a biological control organism to, or remove a biological control organism from, the regulations issued by the Secretary under this subsection.

(3) DUTIES OF THE SECRETARY.—In the case of a petition submitted under paragraph (2), the Secretary shall act on the petition within a reasonable time and notify the petitioner of the final action the Secretary takes on the petition. The Secretary's determination on the petition shall be based on sound science.

**SEC. 413. [7 U.S.C. 7713] NOTIFICATION AND HOLDING REQUIREMENTS UPON ARRIVAL.**

(a) DUTY OF SECRETARY OF THE TREASURY.—

(1) NOTIFICATION.—The Secretary of the Treasury shall promptly notify the Secretary of Agriculture of the arrival of any plant, plant product, biological control organism, plant pest, or noxious weed at a port of entry.

(2) HOLDING.—The Secretary of the Treasury shall hold a plant, plant product, biological control organism, plant pest, or noxious weed for which notification is made under paragraph (1) at the port of entry until the plant, plant product, biological control organism, plant pest, or noxious weed—

(A) is inspected and authorized for entry into or transit movement through the United States; or

(B) is otherwise released by the Secretary of Agriculture.

(3) EXCEPTIONS.—Paragraphs (1) and (2) shall not apply to any plant, plant product, biological control organism, plant pest, or noxious weed that is imported from a country or region of a country designated by the Secretary of Agriculture, pursuant to regulations, as exempt from the requirements of such paragraphs.

(b) DUTY OF RESPONSIBLE PARTIES.—

(1) NOTIFICATION.—The person responsible for any plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance required to have a permit under section 411 or 412 shall provide the notification described in paragraph (3) as soon as possible after the arrival of the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance at a port of entry and before the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance is moved from the port of entry.

(2) SUBMISSION.—The notification shall be provided to the Secretary, or, at the Secretary's direction, to the proper official of the State to which the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance is destined, or both, as the Secretary may prescribe.

(3) ELEMENTS OF NOTIFICATION.—The notification shall consist of the following:

(A) The name and address of the consignee.

(B) The nature and quantity of the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance proposed to be moved.

(C) The country and locality where the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance was grown, produced, or located.

(c) PROHIBITION ON MOVEMENT OF ITEMS WITHOUT AUTHORIZATION.—No person shall move from a port of entry or interstate any imported plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance unless the imported plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance—

- (1) is inspected and authorized for entry into or transit movement through the United States; or
- (2) is otherwise released by the Secretary.

**SEC. 414. [7 U.S.C. 7714] GENERAL REMEDIAL MEASURES FOR NEW PLANT PESTS AND NOXIOUS WEEDS.**

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

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

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

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

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

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

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

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

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

(c) CLASSIFICATION SYSTEM.—

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

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

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

**SEC. 415. [7 U.S.C. 7715] DECLARATION OF EXTRAORDINARY EMERGENCY AND RESULTING AUTHORITIES.**

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

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

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

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

(4) prohibit or restrict the movement within a State of any plant, biological control organism, plant product, article, or means of conveyance when the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of the plant pest or noxious weed or to eradicate the plant pest or noxious weed.

(b) REQUIRED FINDING OF EMERGENCY.—The Secretary may take action under this section only upon finding, after review and consultation with the Governor or other appropriate official of the

State affected, that the measures being taken by the State are inadequate to eradicate the plant pest or noxious weed.

(c) NOTIFICATION PROCEDURES.—

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

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

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

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

(e) PAYMENT OF COMPENSATION.—The Secretary may pay compensation to any person for economic losses incurred by the person as a result of action taken by the Secretary under this section. The determination by the Secretary of the amount of any compensation to be paid under this subsection shall be final and shall not be subject to judicial review or a review of longer than 60 days by any officer or employee of the Federal Government other than the Secretary or the designee of the Secretary.

**SEC. 416. [7 U.S.C. 7716] RECOVERY OF COMPENSATION FOR UNAUTHORIZED ACTIVITIES.**

(a) RECOVERY ACTION.—The owner of any plant, plant biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance destroyed or otherwise disposed of by the Secretary under section 414 or 415 may bring an action against the United States to recover just compensation for the destruction or disposal of the plant, plant biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance (not including compensation for loss due to delays incident to determining eligibility for importation, entry, exportation, movement in interstate commerce, or release into the environment), but only if the owner establishes that the destruction or disposal was not authorized under this title.

(b) TIME FOR ACTION; LOCATION.—An action under this section shall be brought not later than 1 year after the destruction or disposal of the plant, plant biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance involved. The action may be brought in any United States district court

where the owner is found, resides, transacts business, is licensed to do business, or is incorporated.

**SEC. 417. [7 U.S.C. 7717] CONTROL OF GRASSHOPPERS AND MORMON CRICKETS.**

(a) **IN GENERAL.**—Subject to the availability of funds pursuant to this section, the Secretary shall carry out a program to control grasshoppers and Mormon crickets on all Federal lands to protect rangeland.

(b) **TRANSFER AUTHORITY.**—

(1) **IN GENERAL.**—Subject to paragraph (3), upon the request of the Secretary of Agriculture, the Secretary of the Interior shall transfer to the Secretary of Agriculture, from any no-year appropriations, funds for the prevention, suppression, and control of actual or potential grasshopper and Mormon cricket outbreaks on Federal lands under the jurisdiction of the Secretary of the Interior. The transferred funds shall be available only for the payment of obligations incurred on such Federal lands.

(2) **TRANSFER REQUESTS.**—Requests for the transfer of funds pursuant to this subsection shall be made as promptly as possible by the Secretary.

(3) **LIMITATION.**—Funds transferred pursuant to this subsection may not be used by the Secretary until funds specifically appropriated to the Secretary for grasshopper control have been exhausted.

(4) **REPLENISHMENT OF TRANSFERRED FUNDS.**—Funds transferred pursuant to this subsection shall be replenished by supplemental or regular appropriations, which shall be requested as promptly as possible.

(c) **TREATMENT FOR GRASSHOPPERS AND MORMON CRICKETS.**—

(1) **IN GENERAL.**—Subject to the availability of funds pursuant to this section, on request of the administering agency or the agriculture department of an affected State, the Secretary, to protect rangeland, shall immediately treat Federal, State, or private lands that are infested with grasshoppers or Mormon crickets at levels of economic infestation, unless the Secretary determines that delaying treatment will not cause greater economic damage to adjacent owners of rangeland.

(2) **OTHER PROGRAMS.**—In carrying out this section, the Secretary shall work in conjunction with other Federal, State, and private prevention, control, or suppression efforts to protect rangeland.

(d) **FEDERAL COST SHARE OF TREATMENT.**—

(1) **CONTROL ON FEDERAL LANDS.**—Out of funds made available or transferred under this section, the Secretary shall pay 100 percent of the cost of grasshopper or Mormon cricket control on Federal lands to protect rangeland.

(2) **CONTROL ON STATE LANDS.**—Out of funds made available under this section, the Secretary shall pay 50 percent of the cost of grasshopper or Mormon cricket control on State lands.

(3) **CONTROL ON PRIVATE LANDS.**—Out of funds made available under this section, the Secretary shall pay 33.3 percent of

the cost of grasshopper or Mormon cricket control on private lands.

(e) TRAINING.—From appropriated funds made available or transferred by the Secretary of the Interior to the Secretary of Agriculture for such purposes, the Secretary of Agriculture shall provide adequate funding for a program to train personnel to accomplish effectively the objective of this section.

**SEC. 418. [7 U.S.C. 7718] CERTIFICATION FOR EXPORTS.**

The Secretary may certify as to the freedom of plants, plant products, or biological control organisms from plant pests or noxious weeds, or the exposure of plants, plant products, or biological control organisms to plant pests or noxious weeds, according to the phytosanitary or other requirements of the countries to which the plants, plant products, or biological control organisms may be exported.

**SEC. 419. [7 U.S.C. 7719] METHYL BROMIDE.**

(a) IN GENERAL.—The Secretary, upon request of State, local, or tribal authorities, shall determine whether methyl bromide treatments or applications required by State, local, or tribal authorities to prevent the introduction, establishment, or spread of plant pests (including diseases) or noxious weeds should be authorized as an official control or official requirement. The Secretary shall not authorize such treatments or applications unless the Secretary finds there is no other registered, effective, and economically feasible alternative available.

(b) METHYL BROMIDE ALTERNATIVE.—The Secretary, in consultation with State, local and tribal authorities, shall establish a program to identify alternatives to methyl bromide for treatment and control of plant pests and weeds. For uses where no registered, effective, economically feasible alternatives available can currently be identified, the Secretary shall initiate research programs to develop alternative methods of control and treatment.

(c) REGISTRY.—Not later than 180 days after the date of enactment of this section, the Secretary shall publish, and thereafter maintain, a registry of State, local, and tribal requirements authorized by the Secretary under this section.

(d) ADMINISTRATION.—

(1) TIMELINE FOR DETERMINATION.—Upon the promulgation of regulations to carry out this section, the Secretary shall make the determination required by subsection (a) not later than 90 days after receiving the request for such a determination.

(2) CONSTRUCTION.—Nothing in this section shall be construed to alter or modify the authority of the Administrator of the Environmental Protection Agency or to provide any authority to the Secretary of Agriculture under the Clean Air Act or regulations promulgated under the Clean Air Act.

## Subtitle B—Inspection and Enforcement

### SEC. 421. [7 U.S.C. 7731] INSPECTIONS, SEIZURES, AND WARRANTS.

(a) **ROLE OF ATTORNEY GENERAL.**—The activities authorized by this section shall be carried out consistent with guidelines approved by the Attorney General.

(b) **WARRANTLESS INSPECTIONS.**—The Secretary may stop and inspect, without a warrant, any person or means of conveyance moving—

(1) into the United States to determine whether the person or means of conveyance is carrying any plant, plant product, biological control organism, plant pest, noxious weed, or article subject to this title;

(2) in interstate commerce, upon probable cause to believe that the person or means of conveyance is carrying any plant, plant product, biological control organism, plant pest, noxious weed, or article subject to this title; and

(3) in intrastate commerce from or within any State, portion of a State, or premises quarantined as part of a extraordinary emergency declared under section 415 upon probable cause to believe that the person or means of conveyance is carrying any plant, plant product, biological control organism, plant pest, noxious weed, or article regulated under that section or is moving subject to that section.

(c) **INSPECTIONS WITH A WARRANT.**—

(1) **GENERAL AUTHORITY.**—The Secretary may enter, with a warrant, any premises in the United States for the purpose of conducting investigations or making inspections and seizures under this title.

(2) **APPLICATION AND ISSUANCE OF A WARRANT.**—Upon proper oath or affirmation showing probable cause to believe that there is on certain premises any plant, plant product, biological control organism, plant pest, noxious weed, article, facility, or means of conveyance regulated under this title, a United States judge, a judge of a court of record in the United States, or a United States magistrate judge may, within the judge's or magistrate's jurisdiction, issue a warrant for the entry upon the premises to conduct any investigation or make any inspection or seizure under this title. The warrant may be applied for and executed by the Secretary or any United States Marshal.

### SEC. 422. [7 U.S.C. 7732] COLLECTION OF INFORMATION.

The Secretary may gather and compile information and conduct any investigations the Secretary considers necessary for the administration and enforcement of this title.

### SEC. 423. [7 U.S.C. 7733] SUBPOENA AUTHORITY.

(a) **AUTHORITY TO ISSUE.**—The Secretary shall have power to subpoena the attendance and testimony of any witness, and the production of all documentary evidence relating to the administration or enforcement of this title or any matter under investigation in connection with this title.



(b) LOCATION OF PRODUCTION.—The attendance of any witness and production of documentary evidence relevant to the inquiry may be required from any place in the United States.

(c) ENFORCEMENT OF SUBPOENA.—In the case of disobedience to a subpoena by any person, the Secretary may request the Attorney General to invoke the aid of any court of the United States within the jurisdiction in which the investigation is conducted, or where the person resides, is found, transacts business, is licensed to do business, or is incorporated, in requiring the attendance and testimony of any witness and the production of documentary evidence. In case of a refusal to obey a subpoena issued to any person, a court may order the person to appear before the Secretary and give evidence concerning the matter in question or to produce documentary evidence. Any failure to obey the court's order may be punished by the court as a contempt of the court.

(d) COMPENSATION.—Witnesses summoned by the Secretary shall be paid the same fees and mileage that are paid to witnesses in courts of the United States, and witnesses whose depositions are taken and the persons taking the depositions shall be entitled to the same fees that are paid for similar services in the courts of the United States.

(e) PROCEDURES.—The Secretary shall publish procedures for the issuance of subpoenas under this section. Such procedures shall include a requirement that subpoenas be reviewed for legal sufficiency and signed by the Secretary. If the authority to sign a subpoena is delegated to an agency other than the Office of Administrative Law Judges, the agency receiving the delegation shall seek review for legal sufficiency outside that agency.

#### SEC. 424. [7 U.S.C. 7734] PENALTIES FOR VIOLATION.

##### (a) CRIMINAL PENALTIES.—

###### (1) OFFENSES.—

(A) IN GENERAL.—A person that knowingly violates this title, or knowingly forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in this title shall be fined under title 18, United States Code, imprisoned not more than 1 year, or both.

(B) MOVEMENT.—A person that knowingly imports, enters, exports, or moves any plant, plant product, biological control organism, plant pest, noxious weed, or article, for distribution or sale, in violation of this title, shall be fined under title 18, United States Code, imprisoned not more than 5 years, or both.

(2) MULTIPLE VIOLATIONS.—On the second and any subsequent conviction of a person of a violation of this title under paragraph (1), the person shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both.

##### (b) CIVIL PENALTIES.—

(1) IN GENERAL.—Any person that violates this title, or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in this title may, after notice

and opportunity for a hearing on the record, be assessed a civil penalty by the Secretary that does not exceed the greater of—

(A) \$50,000 in the case of any individual (except that the civil penalty may not exceed \$1,000 in the case of an initial violation of this title by an individual moving regulated articles not for monetary gain), \$250,000 in the case of any other person for each violation, and \$500,000 for all violations adjudicated in a single proceeding; or

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

(2) FACTORS IN DETERMINING CIVIL PENALTY.—In determining the amount of a civil penalty, the Secretary shall take into account the nature, circumstance, extent, and gravity of the violation or violations and the Secretary may consider, with respect to the violator—

(A) ability to pay;

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

(C) any history of prior violations;

(D) the degree of culpability; and

(E) any other factors the Secretary considers appropriate.

(3) SETTLEMENT OF CIVIL PENALTIES.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty that may be assessed under this subsection.

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

(c) LIABILITY FOR ACTS OF AN AGENT.—When construing and enforcing this title, the act, omission, or failure of any officer, agent, or person acting for or employed by any other person within the scope of his or her employment or office, shall be deemed also to be the act, omission, or failure of the other person.

(d) GUIDELINES FOR CIVIL PENALTIES.—The Secretary shall coordinate with the Attorney General to establish guidelines to determine under what circumstances the Secretary may issue a civil penalty or suitable notice of warning in lieu of prosecution by the Attorney General of a violation of this title.

**SEC. 425. [7 U.S.C. 7735] ENFORCEMENT ACTIONS OF ATTORNEY GENERAL.**

The Attorney General may—

(1) prosecute, in the name of the United States, all criminal violations of this title that are referred to the Attorney General by the Secretary or are brought to the notice of the Attorney General by any person;

(2) bring an action to enjoin the violation of or to compel compliance with this title, or to enjoin any interference by any

person with the Secretary in carrying out this title, whenever the Secretary has reason to believe that the person has violated, or is about to violate this title, or has interfered, or is about to interfere, with the Secretary; and

(3) bring an action for the recovery of any unpaid civil penalty, funds under reimbursable agreements, late payment penalty, or interest assessed under this title.

**SEC. 426. [7 U.S.C. 7736] COURT JURISDICTION.**

(a) **IN GENERAL.**—The United States district courts, the District Court of Guam, the District Court of the Virgin Islands, the highest court of American Samoa, and the United States courts of other territories and possessions are vested with jurisdiction in all cases arising under this title. Any action arising under this title may be brought, and process may be served, in the judicial district where a violation or interference occurred or is about to occur, or where the person charged with the violation, interference, impending violation, impending interference, or failure to pay resides, is found, transacts business, is licensed to do business, or is incorporated.

(b) **EXCEPTION.**—This section does not apply to the imposition of civil penalties under section 424(b).

## Subtitle C—Miscellaneous Provisions

**SEC. 431. [7 U.S.C. 7751] COOPERATION.**

(a) **IN GENERAL.**—The Secretary may cooperate with other Federal agencies or entities, States or political subdivisions of States, national governments, local governments of other nations, domestic or international organizations, domestic or international associations, and other persons to carry out this title.

(b) **RESPONSIBILITY.**—The individual or entity cooperating with the Secretary under subsection (a) shall be responsible for—

(1) the authority necessary to conduct the operations or take measures on all land and properties within the foreign country or State, other than those owned or controlled by the United States; and

(2) other facilities and means as the Secretary determines necessary.

(c) **TRANSFER OF BIOLOGICAL CONTROL METHODS.**—The Secretary may transfer to a State, Federal agency, or other person biological control methods using biological control organisms against plant pests or noxious weeds.

(d) **COOPERATION IN PROGRAM ADMINISTRATION.**—The Secretary may cooperate with State authorities or other persons in the administration of programs for the improvement of plants, plant products, and biological control organisms.

(e) **PHYTOSANITARY ISSUES.**—The Secretary shall ensure that phytosanitary issues involving imports and exports are addressed based on sound science and consistent with applicable international agreements. To accomplish these goals, the Secretary may—

(1) conduct direct negotiations with plant health officials or other appropriate officials of other countries;

(2) provide technical assistance, training, and guidance to any country requesting such assistance in the development of agricultural health protection systems and import/export systems; and

(3) maintain plant health and quarantine expertise in other countries—

(A) to facilitate the establishment of phytosanitary systems and the resolution of phytosanitary issues;

(B) to assist those countries with agricultural health protection activities; and

(C) to provide general liaison on agricultural health issues with the plant health or other appropriate officials of the country.

**SEC. 432. [7 U.S.C. 7752] BUILDINGS, LAND, PEOPLE, CLAIMS, AND AGREEMENTS.**

(a) **IN GENERAL.**—To the extent necessary to carry out this title, the Secretary may acquire and maintain all real or personal property for special purposes and employ any persons, make grants, and enter into any contracts, cooperative agreements, memoranda of understanding, or other agreements.

(b) **TORT CLAIMS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the Secretary may pay tort claims in the manner authorized in the first paragraph of section 2672 of title 28, United States Code, when the claims arise outside the United States in connection with activities that are authorized under this title.

(2) **REQUIREMENTS OF CLAIM.**—A claim may not be allowed under this subsection unless the claim is presented in writing to the Secretary within 2 years after the date on which the claim accrues.

**SEC. 433. [7 U.S.C. 7753] REIMBURSABLE AGREEMENTS.**

(a) **AUTHORITY TO ENTER INTO AGREEMENTS.**—The Secretary may enter into reimbursable fee agreements with persons for preclearance of plants, plant products, biological control organisms, and articles at locations outside the United States for movement into the United States.

(b) **FUNDS COLLECTED FOR PRECLEARANCE.**—Funds collected for preclearance shall be credited to accounts which may be established by the Secretary for this purpose and shall remain available until expended for the preclearance activities without fiscal year limitation.

(c) **PAYMENT OF EMPLOYEES.**—

(1) **IN GENERAL.**—Notwithstanding any other law, the Secretary may pay employees of the Department of Agriculture performing services relating to imports into and exports from the United States, for all overtime, night, or holiday work performed by them, at rates of pay established by the Secretary.

(2) **REIMBURSEMENT OF THE SECRETARY.**—

(A) **IN GENERAL.**—The Secretary may require persons for whom the services are performed to reimburse the Secretary for any sums of money paid by the Secretary for the services.

(B) USE OF FUNDS.—All funds collected under this paragraph shall be credited to the account that incurs the costs and shall remain available until expended without fiscal year limitation.

(d) LATE PAYMENT PENALTIES.—

(1) COLLECTION.—Upon failure to reimburse the Secretary in accordance with this section, the Secretary may assess a late payment penalty, and the overdue funds shall accrue interest, as required by section 3717 of title 31, United States Code.

(2) USE OF FUNDS.—Any late payment penalty and any accrued interest shall be credited to the account that incurs the costs and shall remain available until expended without fiscal year limitation.

**SEC. 434. [7 U.S.C. 7754] REGULATIONS AND ORDERS.**

The Secretary may issue such regulations and orders as the Secretary considers necessary to carry out this title.

**SEC. 435. [7 U.S.C. 7755] PROTECTION FOR MAIL HANDLERS.**

This title shall not apply to any employee of the United States in the performance of the duties of the employee in handling the mail.

**SEC. 436. [7 U.S.C. 7756] PREEMPTION.**

(a) REGULATION OF FOREIGN COMMERCE.—No State or political subdivision of a State may regulate in foreign commerce any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order—

(1) to control a plant pest or noxious weed;

(2) to eradicate a plant pest or noxious weed; or

(3) prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed.

(b) REGULATION OF INTERSTATE COMMERCE.—

(1) IN GENERAL.—Except as provided in paragraph (2), no State or political subdivision of a State may regulate the movement in interstate commerce of any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order to control a plant pest or noxious weed, eradicate a plant pest or noxious weed, or prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed, if the Secretary has issued a regulation or order to prevent the dissemination of the biological control organism, plant pest, or noxious weed within the United States.

(2) EXCEPTIONS.—

(A) REGULATIONS CONSISTENT WITH FEDERAL REGULATIONS.—A State or a political subdivision of a State may impose prohibitions or restrictions upon the movement in interstate commerce of articles, means of conveyance, plants, biological control organisms, plant pests, noxious weeds, or plant products that are consistent with and do not exceed the regulations or orders issued by the Secretary.

(B) SPECIAL NEED.—A State or political subdivision of a State may impose prohibitions or restrictions upon the

movement in interstate commerce of articles, means of conveyance, plants, plant products, biological control organisms, plant pests, or noxious weeds that are in addition to the prohibitions or restrictions imposed by the Secretary, if the State or political subdivision of a State demonstrates to the Secretary and the Secretary finds that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.

**SEC. 437. [7 U.S.C. 7757] SEVERABILITY.**

If any provision of this title or application of any provision of this title to any person or circumstances is held invalid, the remainder of this title and the application of the provision to other persons and circumstances shall not be affected by the invalidity.

**SEC. 438. [7 U.S.C. 7758] REPEAL OF SUPERSEDED LAWS.**

(a) REPEAL.—The following provisions of law are repealed:

(1) The Act of August 20, 1912 (commonly known as the “Plant Quarantine Act”) (7 U.S.C. 151–164a, 167).

(2) The Federal Plant Pest Act (7 U.S.C. 150aa et seq. and 7 U.S.C. 147a note).

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

(4) The Federal Noxious Weed Act of 1974 (7 U.S.C. 2801 et seq.), except the first section and section 15 of that Act (7 U.S.C. 2801 note and 7 U.S.C. 2814).

(5) The Act of January 31, 1942 (commonly known as the “Mexican Border Act”) (7 U.S.C. 149).

(6) The Joint Resolution of April 6, 1937 (commonly known as the “Insect Control Act”) (7 U.S.C. 148 et seq.).

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

(8) The Golden Nematode Act (7 U.S.C. 150 et seq.).

(9) Section 1773 of the Food Security Act of 1985 (Public Law 99–198; 7 U.S.C. 148f).

(b) EMERGENCY TRANSFER AUTHORITY REGARDING PLANT PESTS.—The first section of Public Law 97–46 (7 U.S.C. 147b) is amended—

(1) by striking “plant pests or”; and

(2) by striking “section 102 of the Act of September 21, 1944, as amended (7 U.S.C. 147a), and”.

(c) EFFECT ON REGULATIONS.—Regulations issued under the authority of a provision of law repealed by subsection (a) shall remain in effect until such time as the Secretary issues a regulation under section 434 that supersedes the earlier regulation.

## Subtitle D—Authorization of Appropriations

**SEC. 441. [7 U.S.C. 7771] AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such amounts as may be necessary to carry out this title. Except as specifically authorized by law, no part of the money appropriated under this section

shall be used to pay indemnities for property injured or destroyed by or at the direction of the Secretary.

**SEC. 442. [7 U.S.C. 7772] TRANSFER AUTHORITY.**

(a) **AUTHORITY TO TRANSFER CERTAIN FUNDS.**—In connection with an emergency in which a plant pest or noxious weed threatens any segment of the agricultural production of the United States, the Secretary may transfer from other appropriations or funds available to the agencies or corporations of the Department of Agriculture such amounts as the Secretary considers necessary to be available in the emergency for the arrest, control, eradication, and prevention of the spread of the plant pest or noxious weed and for related expenses.

(b) **AVAILABILITY.**—Any funds transferred under this section shall remain available for such purposes without fiscal year limitation.

(c) **SECRETARIAL DISCRETION.**—The action of any officer, employee, or agent of the Secretary in carrying out this Act, including determining the amount of and making any payment authorized to be made under this title, shall not be subject to a review of longer than 60 days by any officer or employee of the Federal Government other than the Secretary or the designee of the Secretary.

## **Subtitle E—Noxious Weed Control and Eradication**

**SEC. 451. [7 U.S.C. 7701 note] SHORT TITLE.**

This subtitle may be cited as the “Noxious Weed Control and Eradication Act of 2004”.

**SEC. 452. [7 U.S.C. 7781] DEFINITIONS.**

In this subtitle:

(1) **INDIAN TRIBE.**—The term “Indian Tribe” has the meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(2) **WEED MANAGEMENT ENTITY.**—The term “weed management entity” means an entity that—

(A) is recognized by the State in which it is established;

(B) is established for the purpose of or has demonstrable expertise and significant experience in controlling or eradicating noxious weeds and increasing public knowledge and education concerning the need to control or eradicate noxious weeds;

(C) may be multijurisdictional and multidisciplinary in nature;

(D) may include representatives from Federal, State, local, or, where applicable, Indian Tribe governments, private organizations, individuals, and State-recognized conservation districts or State-recognized weed management districts; and

(E) has existing authority to perform land management activities on Federal land if the proposed project or activity is on Federal lands.

(3) FEDERAL LANDS.—The term “Federal lands” means those lands owned and managed by the United States Forest Service or the Bureau of Land Management.

**SEC. 453. [7 U.S.C. 7782] ESTABLISHMENT OF PROGRAM.**

(a) IN GENERAL.—The Secretary shall establish a program to provide financial and technical assistance to control or eradicate noxious weeds.

(b) GRANTS.—Subject to the availability of appropriations under section 457(a), the Secretary shall make grants under section 454 to weed management entities for the control or eradication of noxious weeds.

(c) AGREEMENTS.—Subject to the availability of appropriations under section 457(b), the Secretary shall enter into agreements under section 455 with weed management entities to provide financial and technical assistance for the control or eradication of noxious weeds.

**SEC. 454. [7 U.S.C. 7783] GRANTS TO WEED MANAGEMENT ENTITIES.**

(a) CONSULTATION AND CONSENT.—In carrying out a grant under this subtitle, the weed management entity and the Secretary shall—

(1) if the activities funded under the grant will take place on Federal land, consult with the heads of the Federal agencies having jurisdiction over the land; or

(2) obtain the written consent of the non-Federal landowner.

(b) GRANT CONSIDERATIONS.—In determining the amount of a grant to a weed management entity, the Secretary shall consider—

(1) the severity or potential severity of the noxious weed problem;

(2) the extent to which the Federal funds will be used to leverage non-Federal funds to address the noxious weed problem;

(3) the extent to which the weed management entity has made progress in addressing the noxious weeds problem; and

(4) other factors that the Secretary determines to be relevant.

(c) USE OF GRANT FUNDS; COST SHARES.—

(1) USE OF GRANTS.—A weed management entity that receives a grant under subsection (a) shall use the grant funds to carry out a project authorized by subsection (d) for the control or eradication of a noxious weed.

(2) COST SHARES.—

(A) FEDERAL COST SHARE.—The Federal share of the cost of carrying out an authorized project under this section exclusively on non-Federal land shall not exceed 50 percent.

(B) FORM OF NON-FEDERAL COST SHARE.—The non-Federal share of the cost of carrying out an authorized project under this section may be provided in cash or in kind.

(d) AUTHORIZED PROJECTS.—Projects funded by grants under this section include the following:

(1) Education, inventories and mapping, management, monitoring, methods development, and other capacity building



activities, including the payment of the cost of personnel and equipment that promote control or eradication of noxious weeds.

(2) Other activities to control or eradicate noxious weeds or promote control or eradication of noxious weeds.

(e) APPLICATION.—To be eligible to receive assistance under this section, a weed management entity shall prepare and submit to the Secretary an application containing such information as the Secretary shall by regulation require.

(f) SELECTION OF PROJECTS.—Projects funded under this section shall be selected by the Secretary on a competitive basis, taking into consideration the following:

(1) The severity of the noxious weed problem or potential problem addressed by the project.

(2) The likelihood that the project will prevent or resolve the problem, or increase knowledge about resolving similar problems.

(3) The extent to which the Federal funds will leverage non-Federal funds to address the noxious weed problem addressed by the project.

(4) The extent to which the program will improve the overall capacity of the United States to address noxious weed control and management.

(5) The extent to which the weed management entity has made progress in addressing noxious weed problems.

(6) The extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds.

(7) The extent to which the project will reduce the total population of noxious weeds.

(8) The extent to which the project promotes cooperation and participation between States that have common interests in controlling and eradicating noxious weeds.

(9) Other factors that the Secretary determines to be relevant.

(g) REGIONAL, STATE, AND LOCAL INVOLVEMENT.—In determining which projects receive funding under this section, the Secretary shall, to the maximum extent practicable—

(1) rely on technical and merit reviews provided by regional, State, or local weed management experts; and

(2) give priority to projects that maximize the involvement of State, local and, where applicable, Indian Tribe governments.

(h) SPECIAL CONSIDERATION.—The Secretary shall give special consideration to States with approved weed management entities established by Indian Tribes and may provide an additional allocation to a State to meet the particular needs and projects that the weed management entity plans to address.

**SEC. 455. [7 U.S.C. 7784] AGREEMENTS.**

(a) CONSULTATION AND CONSENT.—In carrying out an agreement under this section, the Secretary shall—

(1) if the activities funded under the agreement will take place on Federal land, consult with the heads of the Federal agencies having jurisdiction over the land; or

(2) obtain the written consent of the non-Federal landowner.

(b) APPLICATION OF OTHER LAWS.—The Secretary may enter into agreements under this section with weed management entities notwithstanding sections 6301 through 6309 of title 31, United States Code, and other laws relating to the procurement of goods and services for the Federal Government.

(c) ELIGIBLE ACTIVITIES.—Activities carried out under an agreement under this section may include the following:

(1) Education, inventories and mapping, management, monitoring, methods development, and other capacity building activities, including the payment of the cost of personnel and equipment that promote control or eradication of noxious weeds.

(2) Other activities to control or eradicate noxious weeds.

(d) SELECTION OF ACTIVITIES.—Activities funded under this section shall be selected by the Secretary taking into consideration the following:

(1) The severity of the noxious weeds problem or potential problem addressed by the activities.

(2) The likelihood that the activity will prevent or resolve the problem, or increase knowledge about resolving similar problems.

(3) The extent to which the activity will provide a comprehensive approach to the control or eradication of noxious weeds.

(4) The extent to which the program will improve the overall capacity of the United States to address noxious weed control and management.

(5) The extent to which the project promotes cooperation and participation between States that have common interests in controlling and eradicating noxious weeds.

(6) Other factors that the Secretary determines to be relevant.

(e) REGIONAL, STATE, AND LOCAL INVOLVEMENT.—In determining which activities receive funding under this section, the Secretary shall, to the maximum extent practicable—

(1) rely on technical and merit reviews provided by regional, State, or local weed management experts; and

(2) give priority to activities that maximize the involvement of State, local, and, where applicable, representatives of Indian Tribe governments.

(f) RAPID RESPONSE PROGRAM.—At the request of the Governor of a State, the Secretary may enter into a cooperative agreement with a weed management entity in that State to enable rapid response to outbreaks of noxious weeds at a stage which rapid eradication and control is possible and to ensure eradication or immediate control of the noxious weeds if—

(1) there is a demonstrated need for the assistance;

(2) the noxious weed is considered to be a significant threat to native fish, wildlife, or their habitats, as determined by the Secretary;

(3) the economic impact of delaying action is considered by the Secretary to be substantial; and

(4) the proposed response to such threat—

(A) is technically feasible;

(B) economically responsible; and

(C) minimizes adverse impacts to the structure and function of an ecosystem and adverse effects on nontarget species and ecosystems.

**SEC. 456. [7 U.S.C. 7785] RELATIONSHIP TO OTHER PROGRAMS.**

Funds under this Act (other than those made available for section 455(f)) are intended to supplement, not replace, assistance available to weed management entities, areas, and districts for control or eradication of noxious weeds on Federal lands and non-Federal lands. The provision of funds to a weed management entity under this Act (other than those made available for section 455(f)) shall have no effect on the amount of any payment received by a county from the Federal Government under chapter 69 of title 31, United States Code.

**SEC. 457. [7 U.S.C. 7786] AUTHORIZATION OF APPROPRIATIONS.**

(a) GRANTS.—To carry out section 454, there are authorized to be appropriated to the Secretary \$7,500,000 for each of fiscal years 2005 through 2009, of which not more than 5 percent of the funds made available for a fiscal year may be used by the Secretary for administrative costs.

(b) AGREEMENTS.—To carry out section 455 of this subtitle, there are authorized to be appropriated to the Secretary \$7,500,000 for each of fiscal years 2005 through 2009, of which not more than 5 percent of the funds made available for a fiscal year may be used by the Secretary for administrative costs of Federal agencies.