

(3) **STANDARD OF REVIEW.**—A finding of the Secretary shall be set aside only if the finding is found to be unsupported by substantial evidence.

(e) **FAILURE TO OBEY ORDERS.**—Any person who fails to obey a cease-and-desist order issued by the Secretary after the order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in subsections (c) and (d), of not more than \$500 for each offense. Each day during which the failure continues shall be considered a separate violation of the order.

(f) **FAILURE TO PAY PENALTIES.**—If a person fails to pay an assessment of a civil penalty after the assessment has become a final and unappealable order issued by the Secretary, or after the appropriate United States district court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in the district court of the United States in any district in which the person resides or conducts business. In the action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

#### **SEC. 950. INVESTIGATIONS AND POWER TO SUBPOENA.**

(a) **IN GENERAL.**—The Secretary may make such investigations as the Secretary considers necessary—

(1) for the effective carrying out of the responsibilities of the Secretary under this subtitle; or

(2) to determine whether a person subject to this subtitle has engaged or is engaging in any act that constitutes a violation of this subtitle, or any order, rule, or regulation issued under this subtitle.

(b) **POWER TO SUBPOENA.**—

(1) **INVESTIGATIONS.**—For the purpose of an investigation made under subsection (a), the Secretary may administer oaths and affirmations and may issue subpoenas to require the production of any records that are relevant to the inquiry. The production of any such records may be required from any place in the United States.

(2) **ADMINISTRATIVE HEARINGS.**—For the purpose of an administrative hearing held under section 948 or 949, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any records that are relevant to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) **AID OF COURTS.**—In the case of contumacy by, or refusal to obey a subpoena to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which the investigation or proceeding is carried on, or where the person resides or carries on business, to enforce a subpoena issued by the Secretary under subsection (b). The court may issue an order requiring the person to comply with the subpoena.

(d) **CONTEMPT.**—Any failure to obey the order of the court may be punished by the court as a contempt of the order.

(e) **PROCESS.**—Process in any such case may be served in the judicial district of which the person resides or conducts business or wherever the person may be found.

(f) **HEARING SITE.**—The site of any hearing held under section 948 or 949 shall be within the judicial district where the person is an inhabitant or has a principal place of business.

#### **SEC. 951. REFERENDA.**

(a) **INITIAL REFERENDUM.**—

(1) **REFERENDUM REQUIRED.**—During the 60-day period immediately preceding the proposed effective date of an order issued under section 944, the Secretary shall conduct a referendum among kiwifruit producers and importers who will be subject to assessments under the order, to ascertain whether producers and importers approve the implementation of the order.

(2) **APPROVAL OF ORDER.**—The order shall become effective, as provided in section 944, if the Secretary determines that—

(A) the order has been approved by a majority of the producers and importers voting in the referendum; and

(B) the producers and importers produce and import more than 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum.

(b) **SUBSEQUENT REFERENDA.**—The Secretary may periodically conduct a referendum to determine if kiwifruit producers and importers favor the continuation, termination, or suspension of any order issued under section 944 that is in effect at the time of the referendum.

(c) **REQUIRED REFERENDA.**—The Secretary shall hold a referendum under subsection (b)—

(1) at the end of the 6-year period beginning on the effective date of the order and at the end of each subsequent 6-year period;

(2) at the request of the Board; or

(3) if not less than 30 percent of the kiwifruit producers and importers subject to assessments under the order submit a petition requesting the referendum.

(d) **VOTE.**—On completion of a referendum under subsection (b), the Secretary shall suspend or terminate the order that was subject to the referendum at the end of the marketing year if—

(1) the suspension or termination of the order is favored by not less than a majority of the producers and importers voting in the referendum; and

(2) the producers and importers produce and import more than 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum.

(e) **CONFIDENTIALITY.**—The ballots and other information or reports that reveal, or tend to reveal, the vote of any person under this subtitle and the voting list shall be held strictly confidential and shall not be disclosed.

#### **SEC. 952. SUSPENSION AND TERMINATION OF ORDER BY SECRETARY.**

(a) **IN GENERAL.**—If the Secretary finds that an order issued under section 944, or a provision of the order, obstructs or does not tend to effectuate the purposes of this subtitle, the Secretary shall terminate or suspend the operation of the order or provision.

(b) **LIMITATION.**—The termination or suspension of any order, or any provision of an order, shall not be considered an order under this subtitle.

#### **SEC. 953. REGULATIONS.**

The Secretary may issue such regulations as are necessary to carry out this subtitle.

#### **SEC. 954. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such funds as are necessary to carry out this subtitle for each fiscal year.

#### **Subtitle D—Commodity Promotion and Evaluation**

#### **SEC. 961. COMMODITY PROMOTION AND EVALUATION.**

(a) **FINDINGS.**—Congress finds that—

(1) it is in the national public interest and vital to the welfare of the agricultural economy of the United States to expand and develop markets for agricultural commodities through generic, industry-funded promotion programs;

(2) the programs play a unique role in advancing the demand for agricultural commodities, since the programs increase the total market for a product to the benefit of consumers and all producers;

(3) the programs complement branded advertising initiatives, which are aimed at increasing the market share of individual competitors;

(4) the programs are of particular benefit to small producers, who may lack the resources or market power to advertise on their own;

(5) the programs do not impede the branded advertising efforts of individual firms but instead increase market demand by methods that each individual entity would not have the incentive to employ;

(6) the programs, paid for by the producers who directly reap the benefits of the programs, provide a unique opportunity for agricultural producers to inform consumers about their products;

(7) it is important to ensure that the programs be carried out in an effective and coordinated manner that is designed to strengthen the position of the commodities in the marketplace and to maintain and expand the markets and uses of the commodities; and

(8) independent evaluation of the effectiveness of the programs will assist Congress and the Secretary of Agriculture in ensuring that the objectives of the programs are met.

(b) **INDEPENDENT EVALUATIONS.**—Except as otherwise provided by law, and at such intervals as the Secretary of Agriculture may determine, but not more frequently than every 3 years or 3 years after the establishment of a program, the Secretary shall require that each industry-funded generic promotion program authorized by Federal law for an agricultural commodity shall provide for an independent evaluation of the program and the effectiveness of the program. The evaluation may include an analysis of benefits, costs, and the efficacy of promotional and research efforts under the program. The evaluation shall be funded from industry assessments and made available to the public.

(c) **ADMINISTRATIVE COSTS.**—The Secretary shall provide to Congress annually information on administrative expenses on programs referred to in subsection (b).

#### **AUTHORITY FOR RECORD TO REMAIN OPEN**

Mr. LOTT. Mr. President, I ask unanimous consent that the RECORD remain open until 2 p.m. today for the submission of statements and the introduction of bills.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### **UNANIMOUS-CONSENT AGREEMENTS—H.R. 849**

Mr. LOTT. I ask unanimous consent that calendar number 50, H.R. 849, be referred to the Labor Committee until the close of business on Wednesday, March 27, and if the committee has not taken action by that time, the bill be automatically discharged and placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. I further ask unanimous consent that it be in order for the majority leader, after consultation with the Democratic leader, to turn to the consideration of H.R. 849 at any time beginning Thursday, March 28, 1996.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 10:30 A.M.,  
TUESDAY, FEBRUARY 13, 1996

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now stand in recess under the previous order.

There being no objection, the Senate, at 1:27 p.m., recessed until Tuesday, February 13, 1996 at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate February 9, 1996:

DEPARTMENT OF STATE

THE FOLLOWING-NAMED CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, FOR THE PERSONAL RANK OF CAREER AMBASSADOR IN RECOGNITION OF ESPECIALLY DISTINGUISHED SERVICE OVER A SUSTAINED PERIOD:

J. STAPLETON ROY, OF PENNSYLVANIA

IN THE COAST GUARD

PURSUANT TO THE PROVISIONS OF 14 U.S.C. 729, THE FOLLOWING NAMED COMMANDERS OF THE COAST GUARD RESERVE TO BE PERMANENT COMMISSIONED OFFICERS IN THE COAST GUARD RESERVE IN THE GRADE OF CAPTAIN.

STEVEN D. POOLE  
THOMAS J. FALVEY  
JOHN P. MICELI  
GERALD P. FLEMING  
CATHERINE A. BENNETT  
RODERICK L. POWELL

RICHARD T. WALDE  
FRANK A. FREISHEIM  
BRIAN J. MCDONNELL  
IVAN R. KRISSEL  
RICHARD E. TINSMAN  
KEVIN J. MACNAUGHTON

IN THE ARMY

THE FOLLOWING-NAMED OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE SECTIONS 12203(A) AND 3366:

CHAPLAIN CORPS

*To be lieutenant colonel*

DANNY W. AGEE, 000-00-0000  
JACQUELINE ALEXANDER, 000-00-0000  
ROBERT L. BAST, 000-00-0000  
MICHAEL A. BATTLE, 000-00-0000  
ANTHONY BEGAY, 000-00-0000  
GERALD BLANKENHEIM, 000-00-0000  
RICHARD W. BOWER, 000-00-0000  
STEPHEN L. CONWELL, 000-00-0000  
ALBERT E. FRANKE, 000-00-0000  
JIMMY W. GALLOWAY, 000-00-0000  
RUSSELL S. GORDON, 000-00-0000

CARL D. HAMPTON, 000-00-0000  
JAMES B. HENSON, 000-00-0000  
ERIC C. HOLMSTROM, 000-00-0000  
CHARLES R. HUMPHREY, 000-00-0000  
CLEVEN L. JONES, SR., 000-00-0000  
MICHAEL H. KERRIGAN, 000-00-0000  
ALAN M. KOLLER, 000-00-0000  
DOUGLAS MCCREADY, 000-00-0000  
WALTER R. MC GEHEE, 000-00-0000  
FRANCIS S. MIDURA, 000-00-0000  
RODNEY K. MILLER, 000-00-0000  
WILLIAM R. MILLER, 000-00-0000  
MARVIN L. MILLS, 000-00-0000  
CHARLES A. MORRISON, 000-00-0000  
ROBERT S. MORTENSON, 000-00-0000  
DONALD W. MYERS, 000-00-0000  
MYRON E. NYSETH, 000-00-0000  
CARL A. PFEIFFER, 000-00-0000  
MICHAEL C. PHIPPS, 000-00-0000  
WILLIAM G. PHIPPS, 000-00-0000  
DAVID A. PILLSBURY, 000-00-0000  
ROBERT E. PINDELL, 000-00-0000  
DAVID P. ROLANDO, 000-00-0000  
JAMES F. ROZMUS, 000-00-0000  
JAMES A. RYAN, 000-00-0000  
HAROLD A. SHUDLICK, 000-00-0000  
JIMMY A. SMITH, 000-00-0000  
PATRICK J. STENSON, 000-00-0000  
RICHARD B. TUDOR, 000-00-0000  
RICHARD T. VANN, 000-00-0000  
CARLOS VILLANUEVA, 000-00-0000  
WILLIAM C. WAGNER, 000-00-0000  
CLARENCE M. WALKER, 000-00-0000  
FRANK A. WITTOUCK, 000-00-0000