

104TH CONGRESS
1ST SESSION

H. R. 1486

To provide for a nationally coordinated program of research, promotion, and consumer information regarding kiwifruit for the purpose of expanding domestic and foreign markets for kiwifruit.

IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 1995

Mr. HERGER (for himself, Mr. FAZIO of California, Mr. DOOLEY, Mr. RIGGS, Mr. GALLEGLY, Mr. POMBO, Mr. CALVERT, Mrs. SEASTRAND, Mr. MATSUI, Mr. FARR, Mr. CONDIT, Mr. THORNTON, Mr. BISHOP, Mr. BROWN of California, and Mr. THOMAS) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for a nationally coordinated program of research, promotion, and consumer information regarding kiwifruit for the purpose of expanding domestic and foreign markets for kiwifruit.

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

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “National Kiwifruit Research, Promotion, and Consumer
4 Information Act”.

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

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.
- Sec. 4. Issuance of Kiwifruit Research, Promotion, and Consumer Information Order.
- Sec. 5. National Kiwifruit Board.
- Sec. 6. Required terms in order.
- Sec. 7. Permissive terms in order.
- Sec. 8. Incorporation of petition and review, enforcement, and investigation provisions by reference.
- Sec. 9. Referenda.
- Sec. 10. Suspension and termination of order by Secretary.
- Sec. 11. Authorization of appropriations.
- Sec. 12. Regulations.

7 **SEC. 2. FINDINGS AND PURPOSES.**

8 (a) FINDINGS.—Congress finds that—

9 (1) domestically produced kiwifruit are grown
10 by many individual producers;

11 (2) virtually all domestically produced kiwifruit
12 are grown in the State of California, although there
13 is potential for production in many other areas of
14 the United States;

15 (3) kiwifruit move in interstate and foreign
16 commerce, and kiwifruit that do not move in such
17 channels of commerce directly burden or affect inter-
18 state commerce;

1 (4) in recent years, large quantities of kiwifruit
2 have been imported into the United States;

3 (5) the maintenance and expansion of existing
4 domestic and foreign markets for kiwifruit, and the
5 development of additional and improved markets for
6 kiwifruit, are vital to the welfare of kiwifruit produc-
7 ers and other persons concerned with producing,
8 marketing, and processing kiwifruit;

9 (6) a coordinated program of research, pro-
10 motion, and consumer information regarding
11 kiwifruit is necessary for the maintenance and devel-
12 opment of such markets; and

13 (7) kiwifruit producers, handlers, and importers
14 are unable to implement and finance such a program
15 without cooperative action.

16 (b) PURPOSES.—The purposes of this Act are—

17 (1) to authorize the establishment of an orderly
18 procedure for the development and financing
19 (through an assessment) of an effective and coordi-
20 nated program of research, promotion, and
21 consumer information regarding kiwifruit;

22 (2) to use such program to strengthen the posi-
23 tion of the kiwifruit industry in domestic and foreign
24 markets and maintain, develop, and expand markets
25 for kiwifruit; and

1 (3) to treat domestically produced kiwifruit and
2 imported kiwifruit equitably.

3 **SEC. 3. DEFINITIONS.**

4 As used in this Act:

5 (1) BOARD.—The term “Board” means the Na-
6 tional Kiwifruit Board, as provided for under section
7 5.

8 (2) CONSUMER INFORMATION.—The term
9 “consumer information” means any action taken to
10 provide information to, and broaden the understand-
11 ing of, the general public regarding the consumption,
12 use, nutritional attributes, and care of kiwifruit.

13 (3) EXPORTER.—The term “exporter” means
14 any person from outside the United States who ex-
15 ports kiwifruit into the United States.

16 (4) HANDLER.—The term “handler” means
17 any person, excluding a common carrier, engaged in
18 the business of buying and selling, packing, market-
19 ing, or distributing kiwifruit as specified in the
20 order.

21 (5) IMPORTER.—The term “importer” means
22 any person who imports kiwifruit into the United
23 States.

1 (6) KIWIFRUIT.—The term “kiwifruit” means
2 all varieties of fresh kiwifruit grown or imported in
3 the United States.

4 (7) MARKETING.—The term “marketing”
5 means the sale or other disposition of kiwifruit into
6 interstate, foreign, or intrastate commerce by buy-
7 ing, marketing, distribution or otherwise placing
8 kiwifruit into commerce.

9 (8) ORDER.—The term “order” means a
10 kiwifruit research, promotion, and consumer infor-
11 mation order issued by the Secretary under section
12 4.

13 (9) PERSON.—The term “person” means any
14 individual, group of individuals, partnership, cor-
15 poration, association, cooperative, or other legal en-
16 tity.

17 (10) PROCESSING.—The term “processing”
18 means canning, fermenting, distilling, extracting,
19 preserving, grinding, crushing, or in any manner
20 changing the form of kiwifruit for the purposes of
21 preparing it for market or marketing the kiwifruit.

22 (11) PRODUCER.—The term “producer” means
23 any person who grows kiwifruit in the United States
24 for sale in commerce.

1 (12) PROMOTION.—The term “promotion”
2 means any action taken under this Act (including
3 paid advertising) to present a favorable image for
4 kiwifruit to the general public for the purpose of im-
5 proving the competitive position of kiwifruit and
6 stimulating the sale of kiwifruit.

7 (13) RESEARCH.—The term “research” means
8 any type of research relating to the use, nutritional
9 value, and marketing of kiwifruit conducted for the
10 purpose of advancing the image, desirability, mar-
11 ketability, or quality of kiwifruit.

12 (14) SECRETARY.—The term “Secretary”
13 means the Secretary of Agriculture.

14 (15) UNITED STATES.—The term “United
15 States” means the 50 States of the United States,
16 the District of Columbia, and the Commonwealth of
17 Puerto Rico. (7 U.S.C. 6202.)

18 **SEC. 4. ISSUANCE OF KIWIFRUIT RESEARCH, PROMOTION,**

19 **AND CONSUMER INFORMATION ORDER.**

20 (a) ISSUANCE.—To effectuate the declared purposes
21 of this Act, the Secretary shall issue an order applicable
22 to producers, handlers, and importers of kiwifruit. Any
23 such order shall be national in scope. Not more than one
24 order shall be in effect under this Act at any one time.

25 (b) PROCEDURE.—

1 (1) PROPOSAL FOR ISSUANCE OF ORDER.—Any
2 person that will be affected by this Act may request
3 the issuance of, and submit a proposal for, an order
4 under this Act.

5 (2) PROPOSED ORDER.—Not later than 90 days
6 after the receipt of a request and proposal for an
7 order, the Secretary shall publish a proposed order
8 and give due notice and opportunity for public com-
9 ment on the proposed order.

10 (3) ISSUANCE OF ORDER.—After notice and op-
11 portunity for public comment are given, as provided
12 in paragraph (2), the Secretary shall issue an order,
13 taking into consideration the comments received and
14 including in the order provisions necessary to ensure
15 that the order is in conformity with the require-
16 ments of this Act.

17 (c) AMENDMENTS.—The Secretary may amend any
18 order issued under this section. The provisions of this Act
19 applicable to orders shall be applicable to amendments to
20 orders.

21 **SEC. 5. NATIONAL KIWIFRUIT BOARD.**

22 (a) MEMBERSHIP.—An order issued by the Secretary
23 under section 4 shall provide for the establishment of a
24 National Kiwifruit Board, to consist of 11 members as
25 follows:

1 (1) Six members who are producers (or their
2 representatives) and who are not exempt from an as-
3 sessment under section 6(b).

4 (2) Four members who are importers (or their
5 representatives) and who are not exempt from an as-
6 sessment under section 6(b) or are exporters (or
7 their representatives).

8 (3) One member appointed from the general
9 public.

10 (b) ADJUSTMENT OF MEMBERSHIP.—Subject to the
11 11-member limit, the Secretary may adjust membership
12 on the Board to accommodate changes in production and
13 import levels of kiwifruit, so long as producers comprise
14 not less than 51 percent of the membership of the Board.

15 (c) APPOINTMENT AND NOMINATION.—

16 (1) APPOINTMENT.—The Secretary shall ap-
17 point the members of the Board from nominations
18 submitted in accordance with this subsection.

19 (2) PRODUCERS.—The members referred to in
20 subsection (a)(1) shall be appointed from individuals
21 nominated by producers.

22 (3) IMPORTERS AND EXPORTERS.—The mem-
23 bers referred to in subsection (a)(2) shall be ap-
24 pointed from individuals nominated by importers or
25 exporters.

1 (4) PUBLIC REPRESENTATIVE.—The public rep-
2 resentative shall be appointed from nominations sub-
3 mitted by other members of the Board.

4 (5) FAILURE TO NOMINATE.—If producers, im-
5 porters, and exporters fail to nominate individuals
6 for appointment, the Secretary may appoint mem-
7 bers on a basis provided for in the order. If the
8 Board fails to nominate a public representative, such
9 member may be appointed by the Secretary without
10 a nomination.

11 (d) ALTERNATES.—The Secretary shall appoint an
12 alternate for each member of the Board. An alternate
13 shall—

14 (1) be appointed in the same manner as the
15 member for whom such individual is an alternate;
16 and

17 (2) serve on the Board if such member is ab-
18 sent from a meeting or is disqualified under sub-
19 section (f).

20 (e) TERMS.—Members of the Board shall be ap-
21 pointed for a term of three years. No member may serve
22 more than two consecutive three-year terms. However, of
23 the members first appointed—

24 (1) five members shall be appointed for a term
25 of two years; and

1 (2) six members shall be appointed for a term
2 of three years.

3 (f) REPLACEMENT.—If a member or alternate of the
4 Board who was appointed as a producer, importer, ex-
5 porter, or public representative member ceases to belong
6 to the group for which such member was appointed, such
7 member or alternate shall be disqualified from serving on
8 the Board.

9 (g) COMPENSATION.—Members and alternates of the
10 Board shall serve without pay.

11 (h) GENERAL POWERS AND DUTIES.—The Board
12 shall—

13 (1) administer orders issued by the Secretary
14 under section 4, and amendments to such orders, in
15 accordance with their terms and provisions and con-
16 sistent with this Act;

17 (2) prescribe rules and regulations to effectuate
18 the terms and provisions of such orders;

19 (3) meet, organize, and select from among
20 members of the Board a chairperson, other officers,
21 and committees and subcommittees, as the Board
22 determines appropriate;

23 (4) receive, investigate, and report to the Sec-
24 retary accounts of violations of such orders;

1 (5) make recommendations to the Secretary
2 with respect to amendments that should be made to
3 such orders; and

4 (6) employ or contract with a manager and
5 staff to assist in administering such orders, except
6 that, in order to reduce administrative costs and in-
7 crease efficiency, the Board shall seek, to the extent
8 possible, to employ or contract with personnel who
9 are already associated with State chartered organi-
10 zations involved in promoting kiwifruit.

11 **SEC. 6. REQUIRED TERMS IN ORDER.**

12 (a) BUDGETS AND PLANS.—An order issued under
13 section 4 shall provide for periodic budgets and plans as
14 follows:

15 (1) BUDGETS.—The Board shall prepare and
16 submit to the Secretary a budget prior to the begin-
17 ning of the fiscal year of the anticipated expenses
18 and disbursements of the Board in the administra-
19 tion of the order, including probable costs of re-
20 search, promotion, and consumer information. A
21 budget shall take effect upon a two-thirds vote of a
22 quorum of the Board and approval by the Secretary.

23 (2) PLANS.—Each budget shall include a plan
24 for research, promotion, and consumer information
25 regarding kiwifruit. A plan under this paragraph

1 shall take effect upon approval by the Secretary.

2 The Board may enter into contracts and agree-
3 ments, upon approval by the Secretary, for—

4 (A) the development and carrying out of
5 such plan; and

6 (B) the payment of the cost of such plan,
7 with funds collected pursuant to this Act.

8 (b) ASSESSMENTS.—Such order shall provide for the
9 imposition and collection of assessments with regard to the
10 production and importation of kiwifruit as follows:

11 (1) RATE.—The assessment rate shall be rec-
12 ommended by a two-thirds vote of a quorum of the
13 Board, approved by the Secretary, but shall not ex-
14 ceed \$0.10 per seven pound tray of kiwifruit or
15 equivalent.

16 (2) COLLECTION BY FIRST HANDLERS.—Except
17 as provided in paragraph (4), the first handler of
18 kiwifruit shall—

19 (A) be responsible for the collection from
20 the producer, and payment to the Board, of as-
21 sessments under this subsection; and

22 (B) maintain a separate record of the
23 kiwifruit of each producer whose kiwifruit are
24 so handled, including the kiwifruit owned by the
25 handler.

1 (3) IMPORTERS.—The assessment on imported
2 kiwifruit shall be paid by the importer to the United
3 States Customs Service at the time of entry into the
4 United States and shall be remitted to the Board.

5 (4) EXEMPTION FROM ASSESSMENT.—The fol-
6 lowing persons or activities are exempt from an as-
7 sessment under this subsection:

8 (A) A producer who produces less than
9 500 pounds of kiwifruit per year.

10 (B) An importer who imports less than
11 10,000 pounds of kiwifruit per year.

12 (C) Sales of kiwifruit made directly from
13 the producer to a consumer for a purpose other
14 than resale.

15 (D) The production or importation of
16 kiwifruit for processing.

17 (5) CLAIM OF EXEMPTION.—To claim an ex-
18 emption under paragraph (4) for a particular year,
19 a person shall—

20 (A) submit an application to the Board
21 stating the basis for the exemption and certify-
22 ing that the person will not exceed any pound-
23 age limitation required for the exemption in
24 such year; or

1 (B) be on a list of approved processors de-
2 veloped by the Board.

3 (c) USE OF ASSESSMENTS.

4 (1) AUTHORIZED USES.—Such order shall pro-
5 vide that funds paid to the Board as assessments
6 under subsection (b) may be used by the Board—

7 (A) to pay for research, promotion, and
8 consumer information described in the budget
9 of the Board under subsection (a) and for other
10 expenses incurred by the Board in the adminis-
11 tration of an order;

12 (B) to pay such other expenses for the ad-
13 ministration, maintenance, and functioning of
14 the Board, including any enforcement efforts
15 for the collection of assessments as may be au-
16 thorized by the Secretary, including interest
17 and penalties for late payments; and

18 (C) to fund a reserve established under
19 section 7(d).

20 (2) REQUIRED USES.—Such order shall provide
21 that funds paid to the Board as assessments under
22 subsection (b) shall be used by the Board—

23 (A) to pay the expenses incurred by the
24 Secretary, including salaries and expenses of

1 Government employees, in implementing and
2 administering the order; and

3 (B) to reimburse the Secretary for any ex-
4 penses incurred by the Secretary in conducting
5 referenda under this Act.

6 (3) LIMITATION ON USE OF ASSESSMENTS.—
7 Except for the first year of operation of the Board,
8 expenses for the administration, maintenance, and
9 functioning of the Board may not exceed 30 percent
10 of the budget.

11 (d) FALSE CLAIMS.—Such order shall provide that
12 any promotion funded with assessments collected under
13 subsection (b) may not make—

14 (1) any false claims on behalf of kiwifruit; and

15 (2) any false statements with respect to the at-
16 tributes or use of any product that competes with
17 kiwifruit for sale in commerce.

18 (e) PROHIBITION ON USE OF FUNDS.—Such order
19 shall provide that funds collected by the Board under this
20 Act through assessments may not, in any manner, be used
21 for the purpose of influencing legislation or governmental
22 policy or action, except for making recommendations to
23 the Secretary as provided for in this Act.

24 (f) BOOKS, RECORDS, AND REPORTS.—

1 (1) BY THE BOARD.—Such order shall require
2 the Board—

3 (A) to maintain books and records with re-
4 spect to the receipt and disbursement of funds
5 received by the Board;

6 (B) to submit to the Secretary from time
7 to time such reports as the Secretary may re-
8 quire for appropriate accounting; and

9 (C) to submit to the Secretary at the end
10 of each fiscal year a complete audit report by
11 an independent auditor regarding the activities
12 of the Board during such fiscal year.

13 (2) BY OTHERS.—So that information and data
14 will be available to the Board and the Secretary that
15 is appropriate or necessary for the effectuation, ad-
16 ministration, or enforcement of this Act (or any
17 order or regulation issued under this Act), such
18 order shall require handlers and importers who are
19 responsible for the collection, payment, or remittance
20 of assessments under subsection (b)—

21 (A) to maintain and make available for in-
22 spection by the employees of the Board and the
23 Secretary such books and records as may be re-
24 quired by the order; and

1 (B) to file, at the times and in the manner
2 and content prescribed by the order, reports re-
3 garding the collection, payment, or remittance
4 of such assessments.

5 (g) CONFIDENTIALITY.—

6 (1) IN GENERAL.—Such order shall require
7 that all information obtained pursuant to subsection
8 (f)(2) be kept confidential by all officers and employ-
9 ees of the Department and of the Board. Only such
10 information as the Secretary considers relevant shall
11 be disclosed to the public and only in a suit or ad-
12 ministrative hearing, brought at the request of the
13 Secretary or to which the Secretary or any officer of
14 the United States is a party, involving the order
15 with respect to which the information was furnished
16 or acquired.

17 (2) LIMITATIONS.—Nothing in this subsection
18 prohibits—

19 (A) issuance of general statements based
20 on the reports of a number of handlers and im-
21 porters subject to an order, if the statements do
22 not identify the information furnished by any
23 person; or

24 (B) the publication by direction of the Sec-
25 retary of the name of any person violating an

1 order issued under section 4(a), together with a
2 statement of the particular provisions of the
3 order violated by such person.

4 (3) PENALTY.—Any person who willfully vio-
5 lates the provisions of this subsection, upon convic-
6 tion, shall be subject to a fine of not more than
7 \$1,000, or to imprisonment for not more than one
8 year, or both, and, if a member, officer, or agent of
9 the board or an employee of the Department, shall
10 be removed from office.

11 (h) WITHHOLDING INFORMATION.—Nothing in this
12 Act shall be construed to authorize the withholding of in-
13 formation from Congress.

14 **SEC. 7. PERMISSIVE TERMS IN ORDER.**

15 (a) PERMISSIVE TERMS.—On the recommendation of
16 the Board, and with the approval of the Secretary, an
17 order issued under section 4 may include the authorities
18 specified in this section and such additional terms and
19 conditions as the Secretary considers necessary to effec-
20 tuate the other provisions of the order and are incidental
21 to, and not inconsistent with, the terms and conditions
22 required by this Act.

23 (b) ALTERNATIVE PAYMENT AND REPORTING
24 SCHEDULES.—Such order may authorize the Board to
25 designate different handler payment and reporting sched-

1 ules to recognize differences in marketing practices and
2 procedures.

3 (c) WORKING GROUPS.—Such order may authorize
4 the Board to convene working groups drawn from produc-
5 ers, handlers, importers, exporters, or the general public
6 and utilize the expertise of such groups to assist in the
7 development of research and marketing programs for
8 kiwifruit.

9 (d) RESERVE FUNDS.—Such order may authorize the
10 Board to accumulate reserve funds from assessments col-
11 lected pursuant to section 6(b) to permit an effective and
12 continuous coordinated program of research, promotion,
13 and consumer information in years in which production
14 and assessment income may be reduced. However, any re-
15 serve fund so established may not exceed the amount
16 budgeted for operation of this Act for one year.

17 (e) PROMOTION ACTIVITIES OUTSIDE UNITED
18 STATES.—Such order may authorize the Board to use,
19 with the approval of the Secretary, funds collected under
20 section 6(b) for the development and expansion of sales
21 in foreign markets of kiwifruit produced in the United
22 States.

1 **SEC. 8. INCORPORATION OF PETITION AND REVIEW, EN-**
2 **FORCEMENT, AND INVESTIGATION PROVI-**
3 **SIONS BY REFERENCE.**

4 The following provisions of the Lime Research, Pro-
5 motion, and Consumer Information Act of 1990 (subtitle
6 D of title XIX of Public Law 101–624) shall apply to this
7 Act and any order or regulation issued under this Act:

8 (1) Section 1957 (7 U.S.C. 6206), relating to
9 petitions filed by persons subject to an order issued
10 under this Act and review of administrative rulings
11 on such petitions.

12 (2) Section 1958 (7 U.S.C. 6207), relating to
13 violations of any order or regulation issued under
14 this Act.

15 (3) Section 1959 (7 U.S.C. 6208), relating to
16 the authority of the Secretary to make investiga-
17 tions, administer oaths and affirmations, and issue
18 subpoenas in connection with inquiries under this
19 Act.

20 **SEC. 9. REFERENDA.**

21 (a) INITIAL REFERENDUM.—

22 (1) REFERENDUM REQUIRED.—During the 60-
23 day period immediately preceding the proposed effec-
24 tive date of an order issued under section 4, the Sec-
25 retary shall conduct a referendum among kiwifruit
26 producers and importers who will be subject to as-

1 assessments under the order, to ascertain whether pro-
2 ducers and importers approve of the implementation
3 of the order.

4 (2) APPROVAL OF ORDER.—The order shall be-
5 come effective, as provided in section 4, if the Sec-
6 retary determines that the order has been approved
7 by a majority of the producers and importers voting
8 in the referendum and these producers and import-
9 ers produce and import more than 50 percent of the
10 total volume of kiwifruit produced and imported by
11 persons voting in the referendum.

12 (b) SUBSEQUENT REFERENDA.—The Secretary may
13 periodically conduct a referendum to determine if kiwifruit
14 producers and importers favor the continuation, termi-
15 nation, or suspension of any order issued under section
16 4 and in effect at the time of the referendum.

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

19 (1) at the end of the six-year period beginning
20 on the effective date of the order and at the end of
21 every six-year period thereafter;

22 (2) at the request of the Board; and

23 (3) if not less than 40 percent of the kiwifruit
24 producers and importers subject to assessments

1 under the order submit a petition requesting such a
2 referendum.

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

7 (1) the suspension or termination of the order
8 is favored by not less than a majority of the produc-
9 ers and importers voting in the referendum; and

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

14 (e) CONFIDENTIALITY.—The ballots and other infor-
15 mation or reports that reveal, or tend to reveal, the vote
16 of any person under this Act as well as the voting list
17 shall be held strictly confidential and shall not be dis-
18 closed.

19 **SEC. 10. SUSPENSION AND TERMINATION OF ORDER BY**
20 **SECRETARY.**

21 (a) UPON FINDING.—If the Secretary finds that an
22 order issued under section 4, or a provision of such an
23 order, obstructs or does not tend to effectuate the pur-
24 poses of this Act, the Secretary shall terminate or suspend
25 the operation of such order or provision.

1 (b) LIMITATION.—The termination or suspension of
2 any order, or any provision thereof, shall not be considered
3 an order within the meaning of this Act.

4 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

5 There are authorized to be appropriated for each fis-
6 cal year such funds as are necessary to carry out this Act.

7 **SEC. 12. REGULATIONS.**

8 The Secretary may issue such regulations as are nec-
9 essary to carry out this Act.

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