

**(g) Additional remedies**

The remedies provided in this subchapter shall be in addition to, and not exclusive of, other remedies that may be available.

(Pub. L. 104-127, title V, §539, Apr. 4, 1996, 110 Stat. 1061.)

**§ 7449. Investigations and power to subpoena****(a) Investigations**

The Secretary may make such investigations as the Secretary considers necessary—

- (1) for the effective administration of this subchapter; and
- (2) to determine whether any person has engaged or is engaging in an act that constitutes a violation of this subchapter, or an order, rule, or regulation issued under this subchapter.

**(b) Subpoenas, oaths, and affirmations****(1) In general**

For the purpose of an investigation under subsection (a), the Secretary may administer oaths and affirmations, subpoena witnesses, take evidence, and issue subpoenas to require the production of any records that are relevant to the inquiry. The attendance of witnesses and the production of records may be required from any place in the United States.

**(2) Administrative hearings**

For the purpose of an administrative hearing held under section 7447 or 7448 of this title, the presiding officer is authorized to administer oaths and affirmations, subpoena and 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 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 issued 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, in order 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**

A failure to obey an order of the court under this section may be punished by the court as contempt of the court.

**(e) Process**

Process may be served on a person in the judicial district in which the person resides or carries on business or wherever the person may be found.

**(f) Hearing site**

The site of a hearing held under section 7447 or 7448 of this title shall be in the judicial district where the person affected by the hearing resides or has a principal place of business.

(Pub. L. 104-127, title V, §540, Apr. 4, 1996, 110 Stat. 1062.)

**§ 7450. Suspension or termination**

The Secretary shall, whenever the Secretary finds that an order or a provision of an order obstructs or does not tend to effectuate the declared policy of this subchapter, suspend or terminate the operation of the order or provision. The suspension or termination of an order shall not be considered an order within the meaning of this subchapter.

(Pub. L. 104-127, title V, §541, Apr. 4, 1996, 110 Stat. 1063.)

**§ 7451. Regulations**

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

(Pub. L. 104-127, title V, §542, Apr. 4, 1996, 110 Stat. 1063.)

**§ 7452. Authorization of appropriations****(a) In general**

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

**(b) Administrative expenses**

Funds appropriated under subsection (a) shall not be available for payment of the expenses or expenditures of the Board in administering a provision of an order issued under this subchapter.

(Pub. L. 104-127, title V, §543, Apr. 4, 1996, 110 Stat. 1063.)

## SUBCHAPTER IV—KIWIFRUIT

**§ 7461. Findings and purposes****(a) Findings**

Congress finds that—

- (1) domestically produced kiwifruit are grown by many individual producers;
- (2) virtually all domestically produced kiwifruit are grown in the State of California, although there is potential for production in many other areas of the United States;
- (3) kiwifruit move in interstate and foreign commerce, and kiwifruit that do not move in channels of commerce directly burden or affect interstate commerce;
- (4) in recent years, large quantities of kiwifruit have been imported into the United States;
- (5) the maintenance and expansion of existing domestic and foreign markets for kiwifruit, and the development of additional and improved markets for kiwifruit, are vital to the welfare of kiwifruit producers and other persons concerned with producing, marketing, and processing kiwifruit;
- (6) a coordinated program of research, promotion, and consumer information regarding kiwifruit is necessary for the maintenance and development of the markets; and
- (7) kiwifruit producers, handlers, and importers are unable to implement and finance such a program without cooperative action.

**(b) Purposes**

The purposes of this subchapter are—

(1) to authorize the establishment of an orderly procedure for the development and financing (through an assessment) of an effective and coordinated program of research, promotion, and consumer information regarding kiwifruit;

(2) to use the program to strengthen the position of the kiwifruit industry in domestic and foreign markets and maintain, develop, and expand markets for kiwifruit; and

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

(Pub. L. 104-127, title V, §552, Apr. 4, 1996, 110 Stat. 1064.)

#### § 7462. Definitions

In this subchapter (unless the context otherwise requires):

##### (1) Board

The term “Board” means the National Kiwifruit Board established under section 7464 of this title.

##### (2) Consumer information

The term “consumer information” means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of kiwifruit.

##### (3) Exporter

The term “exporter” means any person from outside the United States who exports kiwifruit into the United States.

##### (4) Handler

The term “handler” means any person, excluding a common carrier, engaged in the business of buying and selling, packing, marketing, or distributing kiwifruit as specified in the order.

##### (5) Importer

The term “importer” means any person who imports kiwifruit into the United States.

##### (6) Kiwifruit

The term “kiwifruit” means all varieties of fresh kiwifruit grown in or imported into the United States.

##### (7) Marketing

The term “marketing” means the sale or other disposition of kiwifruit into interstate, foreign, or intrastate commerce by buying, marketing, distribution, or otherwise placing kiwifruit into commerce.

##### (8) Order

The term “order” means a kiwifruit research, promotion, and consumer information order issued by the Secretary under section 7463 of this title.

##### (9) Person

The term “person” means any individual, group of individuals, partnership, corporation, association, cooperative, or other legal entity.

##### (10) Processing

The term “processing” means canning, fermenting, distilling, extracting, preserving, grinding, crushing, or in any manner changing

the form of kiwifruit for the purpose of preparing the kiwifruit for market or marketing the kiwifruit.

##### (11) Producer

The term “producer” means any person who grows kiwifruit in the United States for sale in commerce.

##### (12) Promotion

The term “promotion” means any action taken under this subchapter (including paid advertising) to present a favorable image of kiwifruit to the general public for the purpose of improving the competitive position of kiwifruit and stimulating the sale of kiwifruit.

##### (13) Research

The term “research” means any type of research relating to the use, nutritional value, and marketing of kiwifruit conducted for the purpose of advancing the image, desirability, marketability, or quality of kiwifruit.

##### (14) Secretary

The term “Secretary” means the Secretary of Agriculture.

##### (15) United States

The term “United States” means the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 104-127, title V, §553, Apr. 4, 1996, 110 Stat. 1064.)

#### § 7463. Issuance of orders

##### (a) Issuance

To effectuate the purposes of this subchapter specified in section 7461(b) of this title, the Secretary shall issue an order applicable to producers, handlers, and importers of kiwifruit. Any such order shall be national in scope. Not more than 1 order shall be in effect under this subchapter at any 1 time.

##### (b) Procedure

###### (1) Proposal for issuance of order

Any person that will be affected by this subchapter may request the issuance of, and submit a proposal for, an order under this subchapter.

###### (2) Proposed order

Not later than 90 days after the receipt of a request and proposal for an order, the Secretary shall publish a proposed order and give due notice and opportunity for public comment on the proposed order.

###### (3) Issuance of order

After notice and opportunity for public comment are provided under paragraph (2), the Secretary shall issue an order, taking into consideration the comments received and including in the order provisions necessary to ensure that the order is in conformity with this subchapter.

##### (c) Amendments

The Secretary may amend any order issued under this section. The provisions of this subchapter applicable to an order shall be applica-

ble to an amendment to an order, except that an amendment to an order shall not require a referendum to become effective.

(Pub. L. 104-127, title V, §554, Apr. 4, 1996, 110 Stat. 1065; Pub. L. 105-185, title VI, §603(a), June 23, 1998, 112 Stat. 585.)

#### AMENDMENTS

1998—Subsec. (c). Pub. L. 105-185 inserted “, except that an amendment to an order shall not require a referendum to become effective” before period at end.

### § 7464. National Kiwifruit Board

#### (a) Membership

An order issued by the Secretary under section 7463 of this title shall provide for the establishment of a National Kiwifruit Board that consists of the following 11 members:

(1) 10 members who are producers, exporters, or importers (or their representatives), based on a proportional representation of the level of domestic production and imports of kiwifruit (as determined by the Secretary).

(2) 1 member appointed from the general public.

#### (b) Adjustment of membership

Subject to the 11-member limit, the Secretary may adjust membership on the Board to accommodate changes in production and import levels of kiwifruit.

#### (c) Appointment and nomination

##### (1) Appointment

The Secretary shall appoint the members of the Board from nominations submitted in accordance with this subsection.

##### (2) Producers

The members who are producers referred to in subsection (a)(1) shall be appointed from individuals nominated by producers.

##### (3) Importers and exporters

The members who are importers or exporters referred to in subsection (a)(1) shall be appointed from individuals nominated by importers or exporters.

##### (4) Public representative

The public representative shall be appointed from nominations submitted by other members of the Board.

##### (5) Failure to nominate

If producers, importers, and exporters fail to nominate individuals for appointment, the Secretary may appoint members and alternates on a basis provided for in the order. If the Board fails to nominate a public representative, the member and alternate may be appointed by the Secretary without a nomination.

#### (d) Alternates

The Secretary shall appoint an alternate for each member of the Board. An alternate shall—

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

(2) serve on the Board if the member is absent from a meeting or is disqualified under subsection (f).

#### (e) Terms

A member of the Board shall be appointed for a term of 3 years. No member may serve more than 2 consecutive 3-year terms, except that of the members first appointed—

(1) 5 members shall be appointed for a term of 2 years; and

(2) 6 members shall be appointed for a term of 3 years.

#### (f) Disqualification

If a member or alternate of the Board who was appointed as a producer, importer, exporter, or public representative member ceases to belong to the group for which the member was appointed, the member or alternate shall be disqualified from serving on the Board.

#### (g) Compensation

A member or alternate of the Board shall serve without pay.

#### (h) General powers and duties

The Board shall—

(1) administer an order issued by the Secretary under section 7463 of this title, and an amendment to the order, in accordance with the order and amendment and this subchapter;

(2) prescribe rules and regulations to carry out the order;

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

(4) receive, investigate, and report to the Secretary accounts of violations of the order;

(5) make recommendations to the Secretary with respect to an amendment that should be made to the order; and

(6) employ or contract with a manager and staff to assist in administering the order, except that, to reduce administrative costs and increase efficiency, the Board shall seek, to the extent practicable, to employ or contract with personnel who are already associated with organizations involved in promoting kiwifruit that are chartered by a State, the District of Columbia, or the Commonwealth of Puerto Rico.

(Pub. L. 104-127, title V, §555, Apr. 4, 1996, 110 Stat. 1066; Pub. L. 105-185, title VI, §603(b), June 23, 1998, 112 Stat. 585.)

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-185, §603(b)(1), added pars. (1) and (2) and struck out former pars. (1) to (3) which read as follows:

“(1) 6 members who are producers (or representatives of producers) and who are not exempt from an assessment under section 7465(b) of this title.

“(2) 4 members who are importers (or representatives of importers) and who are not exempt from an assessment under section 7465(b) of this title or are exporters (or representatives of exporters).

“(3) 1 member appointed from the general public.”

Subsec. (b). Pub. L. 105-185, §603(b)(2), struck out par. (1) designation and heading, struck out “and to paragraph (2)” after “11-member limit”, and struck out heading and text of par. (2). Text read as follows: “Producers shall comprise not less than 51 percent of the membership of the Board.”

Subsec. (c)(2). Pub. L. 105-185, §603(b)(3)(A), inserted “who are producers” after “members”.

Subsec. (c)(3). Pub. L. 105-185, § 603(b)(3)(B), inserted “who are importers or exporters” after “members” and substituted “(a)(1)” for “(a)(2)”.

Subsec. (c)(5). Pub. L. 105-185, § 603(b)(3)(C), inserted “and alternate” before “may be appointed” in second sentence.

### § 7465. Required terms in order

#### (a) Budgets and plans

##### (1) In general

An order issued under section 7463 of this title shall provide for periodic budgets and plans in accordance with this subsection.

##### (2) Budgets

The Board shall prepare and submit to the Secretary a budget prior to the beginning of the fiscal year of the anticipated expenses and disbursements of the Board in the administration of the order, including probable costs of research, promotion, and consumer information. A budget shall become effective on a ¾-vote of a quorum of the Board and approval by the Secretary.

##### (3) Plans

Each budget shall include a plan for research, promotion, and consumer information regarding kiwifruit. A plan under this paragraph shall become effective on approval by the Secretary. The Board may enter into contracts and agreements, on approval by the Secretary, for—

(A) the development and carrying out of the plan; and

(B) the payment of the cost of the plan, with funds collected pursuant to this subchapter.

#### (b) Assessments

##### (1) In general

The order shall provide for the imposition and collection of assessments with regard to the production and importation of kiwifruit in accordance with this subsection.

##### (2) Rate

The assessment rate shall be the rate that is recommended by a ¾-vote of a quorum of the Board and approved by the Secretary, except that the rate shall not exceed \$0.10 per 7-pound tray of kiwifruit or an equivalent rate.

##### (3) Collection by first handlers

Except as provided in paragraph (5), the first handler of kiwifruit shall—

(A) be responsible for the collection from the producer, and payment to the Board, of assessments required under this subsection; and

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

##### (4) Importers

The assessment on imported kiwifruit shall be paid by the importer to the United States Customs Service at the time of entry into the United States and shall be remitted to the Board.

##### (5) Exemption from assessment

The following persons or activities are exempt from an assessment under this subsection:

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

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

(C) A sale of kiwifruit made directly from the producer to a consumer for a purpose other than resale.

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

#### (6) Claim of exemption

To claim an exemption under paragraph (5) for a particular year, a person shall—

(A) submit an application to the Board stating the basis for the exemption and certifying that the quantity of kiwifruit produced, imported, or sold by the person will not exceed any poundage limitation required for the exemption in the year; or

(B) be on a list of approved processors developed by the Board.

#### (c) Use of assessments

##### (1) Authorized uses

The order shall provide that funds paid to the Board as assessments under subsection (b) may be used by the Board—

(A) to pay for research, promotion, and consumer information described in the budget of the Board under subsection (a) and for other expenses incurred by the Board in the administration of an order;

(B) to pay such other expenses for the administration, maintenance, and functioning of the Board (including any enforcement efforts for the collection of assessments) as may be authorized by the Secretary, including interest and penalties for late payments; and

(C) to fund a reserve established under section 7466(d) of this title.

##### (2) Required uses

The order shall provide that funds paid to the Board as assessments under subsection (b) shall be used by the Board—

(A) to pay the expenses incurred by the Secretary, including salaries and expenses of Federal Government employees, in implementing and administering the order; and

(B) to reimburse the Secretary for any expenses incurred by the Secretary in conducting referenda under this subchapter.

##### (3) Limitation on use of assessments

Except for the first year of operation of the Board, expenses for the administration, maintenance, and functioning of the Board may not exceed 30 percent of the budget for a year.

#### (d) False claims

The order shall provide that any promotion funded with assessments collected under subsection (b) may not make—

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

(2) any false statements with respect to the attributes or use of any product that competes with kiwifruit for sale in commerce.

#### (e) Prohibition on use of funds

The order shall provide that funds collected by the Board under this subchapter through assess-

ments may not, in any manner, be used for the purpose of influencing legislation or governmental policy or action, except for making recommendations to the Secretary as provided for under this subchapter.

**(f) Books, records, and reports**

**(1) Board**

The order shall require the Board—

(A) to maintain books and records with respect to the receipt and disbursement of funds received by the Board;

(B) to submit to the Secretary from time to time such reports as the Secretary may require for appropriate accounting; and

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

**(2) Others**

To make information and data available to the Board and the Secretary that is appropriate or necessary for the effectuation, administration, or enforcement of this subchapter (or any order or regulation issued under this subchapter), the order shall require handlers and importers who are responsible for the collection, payment, or remittance of assessments under subsection (b)—

(A) to maintain and make available for inspection by the employees and agents of the Board and the Secretary such books and records as may be required by the order; and

(B) to file, at the times and in the manner and content prescribed by the order, reports regarding the collection, payment, or remittance of the assessments.

**(g) Confidentiality**

**(1) In general**

The order shall require that all information obtained pursuant to subsection (f)(2) be kept confidential by all officers, employees, and agents of the Department of Agriculture and of the Board. Only such information as the Secretary considers relevant shall be disclosed to the public and only in a suit or administrative hearing, brought at the request of the Secretary or to which the Secretary or any officer of the United States is a party, involving the order with respect to which the information was furnished or acquired.

**(2) Limitations**

Nothing in this subsection prohibits—

(A) the issuance of general statements based on the reports of a number of handlers and importers subject to an order, if the statements do not identify the information furnished by any person; or

(B) the publication, by direction of the Secretary, of the name of any person violating an order issued under section 7463(a) of this title, together with a statement of the particular provisions of the order violated by the person.

**(3) Penalty**

Any person who willfully violates this subsection, on conviction, shall be subject to a fine of not more than \$1,000 or to imprison-

ment for not more than 1 year, or both, and, if the person is a member, officer, or agent of the Board or an employee of the Department of Agriculture, shall be removed from office.

**(h) Withholding of information**

Nothing in this subchapter authorizes the withholding of information from Congress.

(Pub. L. 104-127, title V, §556, Apr. 4, 1996, 110 Stat. 1067.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107-296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114-125, and section 802(b) of Pub. L. 114-125, set out as a note under section 211 of Title 6.

**§ 7466. Permissive terms in order**

**(a) Permissive terms**

On the recommendation of the Board and with the approval of the Secretary, an order issued under section 7463 of this title may include the terms and conditions specified in this section and such additional terms and conditions as the Secretary considers necessary to effectuate the other provisions of the order and are incidental to, and not inconsistent with, this subchapter.

**(b) Alternative payment and reporting schedules**

The order may authorize the Board to designate different handler payment and reporting schedules to recognize differences in marketing practices and procedures.

**(c) Working groups**

The order may authorize the Board to convene working groups drawn from producers, handlers, importers, exporters, or the general public and utilize the expertise of the groups to assist in the development of research and marketing programs for kiwifruit.

**(d) Reserve funds**

The order may authorize the Board to accumulate reserve funds from assessments collected pursuant to section 7465(b) of this title to permit an effective and continuous coordinated program of research, promotion, and consumer information in years in which production and assessment income may be reduced, except that any reserve fund may not exceed the amount budgeted for operation of this subchapter for 1 year.

**(e) Promotion activities outside United States**

The order may authorize the Board to use, with the approval of the Secretary, funds collected under section 7465(b) of this title and funds from other sources for the development and expansion of sales in foreign markets of kiwifruit produced in the United States.

(Pub. L. 104-127, title V, §557, Apr. 4, 1996, 110 Stat. 1070.)

**§ 7467. Petition and review****(a) Petition****(1) In general**

A person subject to an order may file with the Secretary a petition—

(A) stating that the order, a provision of the order, or an obligation imposed in connection with the order is not in accordance with law; and

(B) requesting a modification of the order or an exemption from the order.

**(2) Hearings**

A person submitting a petition under paragraph (1) shall be given an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

**(3) Ruling**

After the hearing, the Secretary shall issue a ruling on the petition which shall be final if the petition is in accordance with law.

**(4) Limitation on petition**

Any petition filed under this subchapter challenging an order, or any obligation imposed in connection with an order, shall be filed not later than 2 years after the effective date of the order or imposition of the obligation.

**(b) Review****(1) Commencement of action**

The district court of the United States for any district in which the person who is a petitioner under subsection (a) resides or carries on business is vested with jurisdiction to review the ruling on the petition of the person, if a complaint for that purpose is filed not later than 20 days after the date of the entry of a ruling by the Secretary under subsection (a).

**(2) Process**

Service of process in the proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure.

**(3) Remands**

If the court determines that the ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions—

(A) to make such ruling as the court shall determine to be in accordance with law; or

(B) to take such further action as, in the opinion of the court, the law requires.

**(4) Enforcement**

The pendency of a proceeding instituted pursuant to subsection (a) shall not impede, hinder, or delay the Attorney General or the Secretary from obtaining relief pursuant to section 7468 of this title.

(Pub. L. 104-127, title V, §558, Apr. 4, 1996, 110 Stat. 1070.)

## REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

**§ 7468. Enforcement****(a) Jurisdiction**

A district court of the United States shall have jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued by the Secretary under this subchapter.

**(b) Referral to Attorney General**

A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation of this subchapter, or any order or regulation issued under this subchapter, if the Secretary believes that the administration and enforcement of this subchapter would be adequately served by administrative action under subsection (c) or suitable written notice or warning to the person committing the violation.

**(c) Civil penalties and orders****(1) Civil penalties**

Any person who willfully violates any provision of any order or regulation issued by the Secretary under this subchapter, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of the person under the order or regulation, may be assessed a civil penalty by the Secretary of not less than \$500 nor more than \$5,000 for each such violation. Each violation shall be a separate offense.

**(2) Cease-and-desist orders**

In addition to or in lieu of the civil penalty, the Secretary may issue an order requiring the person to cease and desist from continuing the violation.

**(3) Notice and hearing**

No order assessing a civil penalty or cease-and-desist order may be issued by the Secretary under this subsection unless the Secretary gives the person against whom the order is issued notice and opportunity for a hearing on the record before the Secretary with respect to the violation.

**(4) Finality**

The order of the Secretary assessing a penalty or imposing a cease-and-desist order shall be final and conclusive unless the person against whom the order is issued files an appeal of the order in the appropriate district court of the United States, in accordance with subsection (d).

**(d) Review by United States district court****(1) Commencement of action**

Any person against whom a violation is found and a civil penalty assessed or cease-and-desist order issued under subsection (c) may obtain review of the penalty or cease-and-desist order in the district court of the United States for the district in which the person resides or carries on business, or the United States District Court for the District of Columbia, by—

(A) filing a notice of appeal in the court not later than 30 days after the date on

which the penalty is assessed or cease-and-desist order issued; and

(B) simultaneously sending a copy of the notice by certified mail to the Secretary.

**(2) Record**

The Secretary shall promptly file in the court a certified copy of the record on which the Secretary found that the person committed the violation.

**(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 cease-and-desist orders**

Any person who fails to obey a cease-and-desist order issued by the Secretary after the cease-and-desist 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 cease-and-desist 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 for any district in which the person resides or carries on business. In an action for recovery, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(Pub. L. 104-127, title V, § 559, Apr. 4, 1996, 110 Stat. 1071.)

**§ 7469. 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 subchapter; or

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

**(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 7467 or 7468 of this title,

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 court.

**(e) Process**

Process in any such case may be served in the judicial district in which the person resides or carries on business or wherever the person may be found.

**(f) Hearing site**

The site of any hearing held under section 7467 or 7468 of this title shall be in the judicial district where the person affected by the hearing resides or has a principal place of business.

(Pub. L. 104-127, title V, § 560, Apr. 4, 1996, 110 Stat. 1072.)

**§ 7470. Referenda**

**(a) Initial referendum**

**(1) Referendum required**

During the 60-day period immediately preceding the proposed effective date of an order issued under section 7463 of this title, 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 7463 of this title, 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 favoring approval 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 7463 of this title 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 subchapter and the voting list shall be held strictly confidential and shall not be disclosed.

(Pub. L. 104-127, title V, §561, Apr. 4, 1996, 110 Stat. 1073.)

**§ 7471. Suspension or termination**

**(a) In general**

If the Secretary finds that an order issued under section 7463 of this title, or a provision of the order, obstructs or does not tend to effectuate the purposes of this subchapter, the Secretary shall suspend or terminate the operation of the order or provision.

**(b) Limitation**

The suspension or termination of any order, or any provision of an order, shall not be considered an order under this subchapter.

(Pub. L. 104-127, title V, §562, Apr. 4, 1996, 110 Stat. 1074.)

**§ 7472. Regulations**

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

(Pub. L. 104-127, title V, §563, Apr. 4, 1996, 110 Stat. 1074.)

**§ 7473. Authorization of appropriations**

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

(Pub. L. 104-127, title V, §564, Apr. 4, 1996, 110 Stat. 1074.)

SUBCHAPTER V—POPCORN

**§ 7481. Findings and declaration of policy**

**(a) Findings**

Congress finds that—

(1) popcorn is an important food that is a valuable part of the human diet;

(2) the production and processing of popcorn plays a significant role in the economy of the United States in that popcorn is processed by several popcorn processors, distributed through wholesale and retail outlets, and consumed by millions of people throughout the United States and foreign countries;

(3) popcorn must be of high quality, readily available, handled properly, and marketed efficiently to ensure that the benefits of popcorn are available to the people of the United States;

(4) the maintenance and expansion of existing markets and uses and the development of new markets and uses for popcorn are vital to the welfare of processors and persons concerned with marketing, using, and producing popcorn for the market, as well as to the agricultural economy of the United States;

(5) the cooperative development, financing, and implementation of a coordinated program of popcorn promotion, research, consumer information, and industry information is necessary to maintain and expand markets for popcorn; and

(6) popcorn moves in interstate and foreign commerce, and popcorn that does not move in those channels of commerce directly burdens or affects interstate commerce in popcorn.

**(b) Policy**

It is the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this subchapter, of an orderly procedure for developing, financing (through adequate assessments on unpopped popcorn processed domestically), and carrying out an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to—

(1) strengthen the position of the popcorn industry in the marketplace; and

(2) maintain and expand domestic and foreign markets and uses for popcorn.

**(c) Purposes**

The purposes of this subchapter are to—

(1) maintain and expand the markets for all popcorn products in a manner that—

(A) is not designed to maintain or expand any individual share of a producer or processor of the market;

(B) does not compete with or replace individual advertising or promotion efforts designed to promote individual brand name or trade name popcorn products; and

(C) authorizes and funds programs that result in government speech promoting government objectives; and

(2) establish a nationally coordinated program for popcorn promotion, research, consumer information, and industry information.

**(d) Statutory construction**

This subchapter treats processors equitably. Nothing in this subchapter—

(1) provides for the imposition of a trade barrier to the entry into the United States of imported popcorn for the domestic market; or

(2) provides for the control of production or otherwise limits the right of any individual processor to produce popcorn.