

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  $\frac{2}{3}$ -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  $\frac{2}{3}$ -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: