

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 sub-

mit 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 applicable 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.)

Editorial Notes

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.