

tenance, 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) of this section 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 assessments 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) of this section—

- (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) of this section 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 imprisonment 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.

**§ 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) of this section 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) of this section.

**(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) of this section 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) of this section 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) of this section.

**(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-