

(i) a civil penalty by the Secretary of not more than \$1,000 for each violation; and

(ii) in the case of a willful failure to pay, collect, or remit an assessment as required by an order or regulation, an additional penalty equal to the amount of the assessment.

**(B) Separate offense**

Each violation under subparagraph (A) shall be a separate offense.

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

In addition to, or in lieu of, a civil penalty under paragraph (1), the Secretary may issue an order requiring a person to cease and desist from continuing a violation.

**(3) Notice and hearing**

No penalty shall be assessed, or cease-and-desist order issued, by the Secretary under this subsection unless the person against whom the penalty is assessed or the cease-and-desist order is issued is given notice and opportunity for a hearing 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 under this subsection shall be final and conclusive unless the affected person files an appeal of the order in the appropriate district court of the United States in accordance with subsection (d).

**(d) Review by district court**

**(1) Commencement of action**

Any person who has been determined to be in violation of this subchapter, or against whom a civil penalty has been assessed or a cease-and-desist order issued under subsection (c), may obtain review of the penalty or cease-and-desist order by—

(A) filing, within the 30-day period beginning on the date the penalty is assessed or cease-and-desist order issued, a notice of appeal in—

(i) the district court of the United States for the district in which the person resides or carries on business; or

(ii) the United States District Court for the District of Columbia; and

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

**(2) Record**

The Secretary shall file promptly, in the appropriate court referred to in paragraph (1), a certified copy of the record on which the Secretary determined that the person committed the violation.

**(3) Standard of review**

A finding of the Secretary under this section 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 under this section 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 \$5,000 for each offense. Each day during which the failure continues shall be considered as 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 under this section after the assessment has become a final and unappealable order, 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.

**(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, al-

though 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.