

retary 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 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.)

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 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 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:

(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.