

**§ 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, although 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.

**(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 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).