

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).