

(8) it is appropriate to finance the cooperative program described in paragraph (6)¹ with self-help assessments paid by the fluid milk processors; and

(9) fluid milk products move in interstate and foreign commerce, and fluid milk products that do not move in such channels of commerce directly burden or affect interstate commerce in fluid milk products.

(b) Policy

It is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of powers provided in this chapter, of an orderly procedure for developing, financing, through adequate assessments on fluid milk products produced in the United States and carrying out an effective, continuous, and coordinated program of promotion, research, and consumer information designed to strengthen the position of the dairy industry in the marketplace and maintain and expand domestic and foreign markets and uses for fluid milk products, the purpose of which is not to compete with or replace individual advertising or promotion efforts designed to promote individual brand name or trade name fluid milk products, but rather to maintain and expand the markets for all fluid milk products, with the goal and purpose of this chapter being a national governmental goal that authorizes and funds programs that result in government speech promoting government objectives.

(Pub. L. 101-624, title XIX, §1999B, Nov. 28, 1990, 104 Stat. 3914; Pub. L. 104-127, title I, §146(a), (b), Apr. 4, 1996, 110 Stat. 918.)

AMENDMENTS

1996—Subsec. (a)(6) to (9). Pub. L. 104-127, §146(a), added par. (6) and redesignated former pars. (6) to (8) as (7) to (9), respectively.

Subsec. (b). Pub. L. 104-127, §146(b), amended heading and text of subsec. (b) generally. Text read as follows: “It is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this chapter, of an orderly procedure for developing, financing (through adequate assessments on fluid milk products produced in the United States) and carrying out an effective and coordinated program of advertising designed to strengthen the position of the dairy industry in the marketplace and to maintain and expand markets and uses for fluid milk products produced in the United States. Nothing in this chapter shall be construed to provide for the control of production or otherwise limit the right of individual milk producers to produce milk.”

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103-72, §1, Aug. 11, 1993, 107 Stat. 717, provided that: “This Act [amending sections 6402 and 6409 of this title] may be cited as the ‘Fluid Milk Promotion Amendments Act of 1993.’”

SHORT TITLE

Section 1999A of Pub. L. 101-624 provided that: “This subtitle [subtitle H (§§ 1999A—1999R) of title XIX of Pub. L. 101-624, enacting this chapter] may be cited as the ‘Fluid Milk Promotion Act of 1990.’”

§ 6402. Definitions

As used in this chapter:

(1) Advertising

The term “advertising” means any advertising or promotion program involving only fluid milk products and directed toward increasing the general demand for fluid milk products.

(2) Board

The term “Board” means the National Processor Advertising and Promotion Board established under section 6407(b) of this title.

(3) Fluid milk product

The term “fluid milk product” has the meaning given the term in—

(A) section 1000.15 of title 7, Code of Federal Regulations, subject to such amendments as may be made by the Secretary; or

(B) any successor regulation.

(4) Fluid milk processor

The term “fluid milk processor” means any person who processes and markets commercially more than 3,000,000 pounds of fluid milk products in consumer-type packages per month (excluding products delivered directly to the place of residence of a consumer).

(5) Department

The term “Department” means the Department of Agriculture.

(6) Research

The term “research” means market research to support advertising and promotion efforts, including educational activities, research directed to product characteristics, product development, including new products or improved technology in production, manufacturing or processing of milk and the products of milk.

(7) Secretary

The term “Secretary” means the Secretary of Agriculture.

(8) United States

The term “United States”, except as used in sections 6410 through 6412 of this title, means the 48 contiguous States in the continental United States and the District of Columbia.

(Pub. L. 101-624, title XIX, §1999C, Nov. 28, 1990, 104 Stat. 3915; Pub. L. 103-72, §2(a), Aug. 11, 1993, 107 Stat. 717; Pub. L. 104-127, title I, §146(c), Apr. 4, 1996, 110 Stat. 918; Pub. L. 107-171, title I, §1506(a), (b), May 13, 2002, 116 Stat. 210.)

AMENDMENTS

2002—Par. (3). Pub. L. 107-171, §1506(a), added par. (3) and struck out heading and text of former par. (3). Text read as follows: “The term ‘fluid milk product’—

“(A) means any of the following products in fluid or frozen form: milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

“(B) does not include evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas specially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey.”

¹ So in original. Probably should be paragraph “(7)”.

Par. (4). Pub. L. 107-171, §1506(b), substituted “3,000,000 pounds of fluid milk products in consumer-type packages per month (excluding products delivered directly to the place of residence of a consumer)” for “500,000 pounds of fluid milk products in consumer-type packages per month”.

1996—Par. (6). Pub. L. 104-127 amended heading and text of par. (6) generally. Text read as follows: “The term ‘research’—

“(A) means market research limited to the support of advertising and promotion efforts, including educational activities; and

“(B) does not include research directed to product characteristics such as nutrients; product development including new products; or improved technology in production, manufacturing or processing; or any other efforts not directly applicable to measuring or increasing the effectiveness of advertising activities in expanding sales of fluid milk products.”

1993—Par. (4). Pub. L. 103-72 amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The term ‘fluid milk processor’ means any person who processes and markets commercially fluid milk products in consumer-type packages.”

§ 6403. Authority to issue orders

(a) In general

To effectuate the declared policy under section 6401(b) of this title, the Secretary shall issue and from time to time may amend, orders applicable to all fluid milk processors, authorizing—

- (1) the collection of assessments on fluid milk products subject to this chapter; and
- (2) the use of the assessments to provide research and advertising in a manner prescribed by this chapter.

(b) Scope

Any order issued under this chapter shall be national in scope.

(c) One order

Not more than one order shall be in effect under this chapter at any one time.

(Pub. L. 101-624, title XIX, §1999D, Nov. 28, 1990, 104 Stat. 3916.)

§ 6404. Notice and comment

Not later than 60 days after the Secretary receives a request for the issuance of an order under this chapter, and a specific proposal for an order from individual fluid milk processors that marketed during a representative period, as determined by the Secretary, not less than 30 percent of the volume of fluid milk products marketed by all processors, the Secretary shall publish the proposed order and give due notice and opportunity for public comment on the proposed order.

(Pub. L. 101-624, title XIX, §1999E, Nov. 28, 1990, 104 Stat. 3916.)

§ 6405. Findings and issuance of orders

(a) In general

After notice and opportunity for public comment are given, as provided in section 6404 of this title, 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 the requirements and the declared policy of this chapter.

(b) Effective date

Such order shall be issued and, if approved by fluid milk processors as provided in section 6413 of this title, shall become effective not later than 180 days following publication of the proposed order.

(Pub. L. 101-624, title XIX, §1999F, Nov. 28, 1990, 104 Stat. 3916.)

§ 6406. Regulations

The Secretary may issue such regulations as may be necessary to carry out this chapter and the powers vested in the Secretary by this chapter.

(Pub. L. 101-624, title XIX, §1999G, Nov. 28, 1990, 104 Stat. 3916.)

§ 6407. Required terms in orders

(a) In general

Each order issued under this chapter shall contain the terms and conditions prescribed in this section.

(b) National Processor Advertising and Promotion Board

(1) Establishment

The order shall establish a National Processor Advertising and Promotion Board to administer the order.

(2) Service to entire industry

In administering the order, the Board shall carry out programs and projects that will provide maximum benefit to the fluid milk industry and promote only fluid milk products. The Board shall, to the extent practicable, ensure that advertising coverage in each region is proportionate to the funds collected from each region.

(3) Regions

The Secretary shall establish not less than 12 nor more than 15 regions in order to ensure appropriate geographic representation on the Board.

(4) Board membership

The Board shall consist of one member appointed by the Secretary, from among fluid milk processors, to represent each of the regions established under paragraph (3), with the membership representing, to the extent practicable, differing sizes of operations. The Secretary shall appoint five additional at-large members to the Board, of which at least three shall be fluid milk processors and at least one shall be from the general public.

(5) Terms of office

The members of the Board shall serve for terms of 3 years, except that the members appointed to the initial Board shall serve, proportionately, for terms of 1, 2, and 3 years, as determined by the Secretary. No member shall serve for more than 2 consecutive terms, except that the members that are selected to serve for the initial term of 1 or 2 years shall be eligible to be reappointed for a 3-year term.

(6) Compensation

Each member of the Board shall serve without compensation, but shall be reimbursed for