

§ 6408. Permissive terms**(a) In general**

Each order issued under this chapter may contain one or more of the terms and conditions described in this section.

(b) Advertising

The order may provide for the establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising of fluid milk products and the use of funds collected under this chapter for such programs or projects.

(c) Research and development

The order may provide for establishing and carrying out research projects and studies to support the advertising efforts for fluid milk products, and the use of funds collected under the order for such projects and studies.

(d) Reserve funds

The order may provide authority to accumulate reserve funds from assessments collected pursuant to the order, to permit an effective and continuous coordinated program of research and advertising in years when the assessment income may be reduced, except that the total reserve fund may not exceed 25 percent of the amount budgeted for the operation in the current fiscal year of the order.

(e) Other terms

The order may contain such other terms and conditions incidental to and not inconsistent with the terms and conditions specified in this chapter as are necessary to effectuate the other provisions of the order.

(Pub. L. 101-624, title XIX, §1999I, Nov. 28, 1990, 104 Stat. 3920.)

§ 6409. Assessments**(a) In general**

The order shall provide that each fluid milk processor shall pay an assessment on each unit of fluid milk product that such person processes and markets commercially in consumer-type packages in the United States.

(b) No effect on producer prices

Such assessments shall not—

(1) reduce the prices paid under the Federal milk marketing orders issued under section 608c of this title;

(2) otherwise be deducted from the amounts that handlers must pay to producers for fluid milk products sold to a processor; or

(3) otherwise be deducted from the price of milk paid to a producer by a handler, as determined by the Secretary.

(c) Remitting assessments**(1) In general**

Assessments required under subsection (a) of this section shall be remitted by the fluid milk processor directly to the Board in accordance with the order and regulations issued by the Secretary.

(2) Time to remit assessment

Each processor who is responsible for the remittance of an assessment under paragraph (1)

shall remit the assessment to the Board not later than the last day of the month following the month that the milk being assessed was marketed.

(3) Verification

Remittances shall be verified by market administrators and State regulatory officials, and local and State Agricultural Stabilization and Conservation Service offices, as provided by the Secretary.

(d) Limitation on assessments

Not more than one assessment may be assessed under this section for the purposes of this chapter on a processor for any unit of fluid milk product.

(e) Producer-handlers

Producer-handlers that are required to pay the assessment imposed under section 4504(g) of this title, and that are fluid milk processors, shall also be responsible for the additional assessment imposed by this section.

(f) Processor assessment rate

Except as provided in section 6415(b) of this title, the rate of assessment prescribed by the order shall be 20 cents per hundredweight of fluid milk products marketed.

(Pub. L. 101-624, title XIX, §1999J, Nov. 28, 1990, 104 Stat. 3921; Pub. L. 103-72, §2(b), Aug. 11, 1993, 107 Stat. 717.)

AMENDMENTS

1993—Subsec. (e). Pub. L. 103-72 inserted “, and that are fluid milk processors,” after “section 4504(g) of this title”.

§ 6410. Petition and review**(a) Petition****(1) In general**

A person subject to an order issued under this chapter may file with the Secretary a petition—

(A) stating that the order, any provision of the order, or any obligation imposed in connection with the order is not established in accordance with law; and

(B) requesting a modification of the order or an exemption from the order.

(2) Hearings

The petitioner shall be given the opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

(3) Ruling

After the hearing, the Secretary shall make a ruling on the petition, which shall be final if in accordance with law.

(b) Review**(1) Commencement of action**

The district courts of the United States in any district in which the person who is a petitioner under subsection (a) of this section resides or carries on business are hereby vested with jurisdiction to review the ruling on such person's petition, if a complaint for that purpose is filed within 20 days after the date of the entry of a ruling by the Secretary under subsection (a) of this section.

(2) Process

Service of process in such proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure.

(3) Remands

If the court determines that such ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions either—

- (A) to make such ruling as the court shall determine to be in accordance with law; or
- (B) to take such further proceedings as, in the opinion of the court, the law requires.

(Pub. L. 101-624, title XIX, §1999K, Nov. 28, 1990, 104 Stat. 3921.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 6411. Enforcement**(a) Jurisdiction**

The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued under this chapter.

(b) Referral to Attorney General

A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation of this chapter, or any order or regulation issued under this chapter, if the Secretary believes that the administration and enforcement of this chapter would be adequately served by providing a suitable written notice or warning to the person who committed such violation or by administrative action under subsection (c) of this section.

(c) Civil penalties and orders**(1) Civil penalties**

Any person who violates any provision of any order or regulation issued by the Secretary under this chapter, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of the person under the order or regulations, may be assessed—

- (A) a civil penalty by the Secretary of not less than \$500 nor more than \$5,000 for each such violation; or
- (B) in the case of a willful failure or refusal to pay, collect, or remit any assessment or fee duly required of the person under this chapter or a regulation issued under this chapter, a civil penalty by the Secretary of not less than \$10,000 nor more than \$100,000 for each such violation.

Each violation shall be a separate offense.

(2) Cease-and-desist orders

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

(3) Notice and hearing

No penalty shall be assessed or cease-and-desist order issued by the Secretary unless the

person against whom the penalty is assessed or the order issued is given notice and opportunity for a hearing before the Secretary with respect to such violation.

(4) Finality

The order of the Secretary assessing a penalty or imposing a cease-and-desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate district court of the United States in accordance with subsection (d) of this section.

(d) Review by district court**(1) Commencement of action**

Any person against whom a violation is found and a civil penalty assessed or cease-and-desist order issued under subsection (c) of this section may obtain review of the penalty or order by—

(A) filing, within the 30-day period beginning on the date the penalty is assessed or 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 such court a certified copy of the record on which the Secretary found that the person had committed a violation.

(3) Standard of review

A finding of the Secretary shall be set aside only if the finding is found to be unsupported by substantial evidence.

(e) Failure to obey orders

Any person who fails to obey a cease-and-desist order after the 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 this section, of not more than \$5,000 for each offense. Each day during which the failure continues shall be considered as a separate violation of such order.

(f) Failure to pay penalties

If any person fails to pay an assessment of a civil penalty after it 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 in which the person resides or conducts business. In the action, 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 chapter shall be in addition to, and not exclusive of, other remedies that may be available.