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SUBCHAPTER I—COMMODITY PROMOTION
AND EVALUATION

§ 7401. Commodity promotion and evaluation

(a) “Commodity promotion law” defined

In this section, the term “commodity promotion law” means a Federal law that provides for the establishment and operation of a promotion program regarding an agricultural commodity that includes a combination of promotion, research, industry information, or consumer information activities, is funded by mandatory assessments on producers or processors, and is designed to maintain or expand markets and uses for the commodity (as determined by the Secretary). The term includes—

- (1) the marketing promotion provisions under section 608c(6)(I) of this title;
- (2) Public Law 89-502 (7 U.S.C. 2101 et seq.);
- (3) title III of Public Law 91-670 (7 U.S.C. 2611 et seq.);
- (4) Public Law 93-428 (7 U.S.C. 2701 et seq.);
- (5) Public Law 94-294 (7 U.S.C. 2901 et seq.);
- (6) subtitle B of title I of Public Law 98-180 (7 U.S.C. 4501 et seq.);
- (7) Public Law 98-590 (7 U.S.C. 4601 et seq.);
- (8) subtitle B of title XVI of Public Law 99-198 (7 U.S.C. 4801 et seq.);
- (9) subtitle C of title XVI of Public Law 99-198 (7 U.S.C. 4901 et seq.);
- (10) subtitle B of title XIX of Public Law 101-624 (7 U.S.C. 6101 et seq.);
- (11) subtitle E of title XIX of Public Law 101-624 (7 U.S.C. 6301 et seq.);
- (12) subtitle H of title XIX of Public Law 101-624 (7 U.S.C. 6401 et seq.);
- (13) Public Law 103-190 (7 U.S.C. 6801 et seq.);
- (14) Public Law 103-407 (7 U.S.C. 7101 et seq.);
- (15) subchapter II;

- (16) subchapter III;
- (17) subchapter IV;
- (18) subchapter V; or
- (19) any other provision of law enacted after April 4, 1996, that provides for the establishment and operation of a promotion program described in the first sentence.

(b) Findings

Congress finds the following:

(1) It is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, Government-supervised, generic commodity promotion programs established under commodity promotion laws.

(2) These generic commodity promotion programs, funded by the agricultural producers or processors who most directly reap the benefits of the programs and supervised by the Secretary of Agriculture, provide a unique opportunity for producers and processors to inform consumers about their products.

(3) The central congressional purpose underlying each commodity promotion law has always been to maintain and expand markets for the agricultural commodity covered by the law, rather than to maintain or expand the share of those markets held by any individual producer or processor.

(4) The commodity promotion laws were neither designed nor intended to prohibit or restrict, and the promotion programs established and funded pursuant to these laws do not prohibit or restrict, individual advertising or promotion of the covered commodities by any producer, processor, or group of producers or processors.

(5) It has never been the intent of Congress for the generic commodity promotion programs established and funded by the commodity promotion laws to replace the individual advertising and promotion efforts of producers or processors.

(6) An individual producer’s or processor’s own advertising initiatives are typically designed to increase the share of the market held by that producer or processor rather than to increase or expand the overall size of the market.

(7) In contrast, a generic commodity promotion program is intended and designed to maintain or increase the overall demand for the agricultural commodity covered by the program and increase the size of the market for that commodity, often by utilizing promotion methods and techniques that individual producers and processors typically are unable, or have no incentive, to employ.

(8) The commodity promotion laws establish promotion programs that operate as “self-help” mechanisms for producers and processors to fund generic promotions for covered commodities which, under the required supervision and oversight of the Secretary of Agriculture—

(A) further specific national governmental goals, as established by Congress; and

(B) produce nonideological and commercial communication the purpose of which is

to further the governmental policy and objective of maintaining and expanding the markets for the covered commodities.

(9) While some commodity promotion laws grant a producer or processor the option of crediting individual advertising conducted by the producer or processor for all or a portion of the producer's or processor's marketing promotion assessments, all promotion programs established under the commodity promotion laws, both those programs that permit credit for individual advertising and those programs that do not contain such provisions, are very narrowly tailored to fulfill the congressional purposes of the commodity promotion laws without impairing or infringing the legal or constitutional rights of any individual producer or processor.

(10) These generic commodity promotion programs are of particular benefit to small producers who often lack the resources or market power to advertise on their own and who are otherwise often unable to benefit from the economies of scale available in promotion and advertising.

(11) Periodic independent evaluation of the effectiveness of these generic commodity promotion programs will assist Congress and the Secretary of Agriculture in ensuring that the objectives of the programs are met.

(c) Independent evaluation of promotion program effectiveness

Except as otherwise provided by law, each commodity board established under the supervision and oversight of the Secretary of Agriculture pursuant to a commodity promotion law shall, not less often than every 5 years, authorize and fund, from funds otherwise available to the board, an independent evaluation of the effectiveness of the generic commodity promotion programs and other programs conducted by the board pursuant to a commodity promotion law. The board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this subsection.

(d) Administrative costs

The Secretary shall annually provide to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate information on administrative expenses on programs established under commodity promotion laws.

(e) Exemption of certified organic products from promotion order assessments

(1) In general

Notwithstanding any provision of a commodity promotion law, a person that produces, handles, markets, or imports organic products may be exempt from the payment of an assessment under a commodity promotion law with respect to any agricultural commodity that is certified as "organic" or "100 percent organic" (as defined in part 205 of title 7, Code of Federal Regulations (or a successor regulation)).

(2) Split operations

The exemption described in paragraph (1) shall apply to the certified "organic" or "100

percent organic" (as defined in part 205 of title 7 of the Code of Federal Regulations (or a successor regulation)) products of a producer, handler, or marketer regardless of whether the agricultural commodity subject to the exemption is produced, handled, or marketed by a person that also produces, handles, or markets conventional or nonorganic agricultural products, including conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed.

(3) Approval

The Secretary shall approve the exemption of a person under this subsection if the person maintains a valid organic certificate issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.).

(4) Termination of effectiveness

This subsection shall be effective until the date on which the Secretary issues an organic commodity promotion order in accordance with subsection (f).

(5) Regulations

The Secretary shall promulgate regulations concerning eligibility and compliance for an exemption under paragraph (1).

(f) Organic commodity promotion order

(1) Definitions

In this subsection:

(A) Certified organic farm

The term "certified organic farm" has the meaning given the term in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

(B) Covered person

The term "covered person" means a producer, handler, marketer, or importer of an organic agricultural commodity.

(C) Dual-covered agricultural commodity

The term "dual-covered agricultural commodity" means an agricultural commodity that—

(i) is produced on a certified organic farm; and

(ii) is covered under both—

(I) an organic commodity promotion order issued pursuant to paragraph (2); and

(II) any other agricultural commodity promotion order issued under a commodity promotion law.

(2) Authorization

The Secretary may issue an organic commodity promotion order under section 7413 of this title that includes any agricultural commodity that—

(A) is produced or handled (as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502)) and that is certified to be sold or labeled as "organic" or "100 percent organic" (as defined in part 205 of title 7, Code of Federal Regulations (or a successor regulation)); or

(B) is imported with a valid organic certificate (as defined in that part).

(3) Election

If the Secretary issues an organic commodity promotion order described in paragraph (2), a covered person may elect, for applicable dual-covered agricultural commodities and in the sole discretion of the covered person, whether to be assessed under the organic commodity promotion order or another applicable agricultural commodity promotion order.

(4) Regulations

The Secretary shall promulgate regulations concerning eligibility and compliance for an exemption under paragraph (1).

(Pub. L. 104-127, title V, §501, Apr. 4, 1996, 110 Stat. 1029; Pub. L. 107-171, title X, §10607, May 13, 2002, 116 Stat. 514; Pub. L. 113-79, title X, §10004(d), (e), Feb. 7, 2014, 128 Stat. 942, 943; Pub. L. 113-235, div. A, title VII, §747, Dec. 16, 2014, 128 Stat. 2170.)

REFERENCES IN TEXT

Public Law 89-502, referred to in subsec. (a)(2), is Pub. L. 89-502, July 13, 1966, 80 Stat. 279, as amended, known as the Cotton Research and Promotion Act, which is classified generally to chapter 53 (§2101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2101 of this title and Tables.

Public Law 91-670, referred to in subsec. (a)(3), is Pub. L. 91-670, Jan. 11, 1971, 84 Stat. 2040, as amended. Title III of Pub. L. 91-670, known as the Potato Research and Promotion Act, is classified generally to chapter 58 (§2611 et seq.) of this title. For complete classification of title III to the Code, see Short Title note set out under section 2611 of this title and Tables.

Public Law 93-428, referred to in subsec. (a)(4), is Pub. L. 93-428, Oct. 1, 1974, 88 Stat. 1171, as amended, known as the Egg Research and Consumer Information Act, which is classified generally to chapter 60 (§2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

Public Law 94-294, referred to in subsec. (a)(5), is Pub. L. 94-294, May 28, 1976, 90 Stat. 529, as amended, known as the Beef Research and Information Act, which is classified generally to chapter 62 (§2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

Public Law 98-180, referred to in subsec. (a)(6), is Pub. L. 98-180, Nov. 29, 1983, 97 Stat. 1128, as amended. Title I of Pub. L. 98-180 is known as the Dairy Production Stabilization Act of 1983. Subtitle B of title I is classified generally to subchapter I (§4501 et seq.) of chapter 76 of this title. For complete classification of title I to the Code, see Short Title note set out under section 4501 of this title and Tables.

Public Law 98-590, referred to in subsec. (a)(7), is Pub. L. 98-590, Oct. 30, 1984, 98 Stat. 3115, as amended, known as the Honey Research, Promotion, and Consumer Information Act, which is classified generally to chapter 77 (§4601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

Public Law 99-198, referred to in subsec. (a)(8), (9), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354, as amended, known as the Food Security Act of 1985. Subtitle B of title XVI of Pub. L. 99-198, known as the Pork Promotion, Research, and Consumer Information Act of 1985, is classified generally to chapter 79 (§4801 et seq.) of this title. Subtitle C of title XVI of Pub. L. 99-198, known as the Watermelon Research and Promotion Act, is classified generally to chapter 80 (§4901 et seq.) of this title. For complete classification of subtitles B and C to the Code, see Short Title notes set out under sections 4801 and 4901, respectively, of this title and Tables.

Public Law 101-624, referred to in subsec. (a)(10), (11), (12), is Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3359, as amended, known as the Food, Agriculture, Conservation, and Trade Act of 1990. Subtitle B of title XIX of Pub. L. 101-624, known as the Mushroom Promotion, Research, and Consumer Information Act of 1990, is classified generally to chapter 90 (§6101 et seq.) of this title. Subtitle E of title XIX of Pub. L. 101-624, known as the Soybean Promotion, Research, and Consumer Information Act, is classified generally to chapter 92 (§6301 et seq.) of this title. Subtitle H of title XIX of Pub. L. 101-624, known as the Fluid Milk Promotion Act of 1990, is classified generally to chapter 93 (§6401 et seq.) of this title. For complete classification of subtitles B, E, and H to the Code, see Short Title notes set out under sections 6101, 6301, and 6401, respectively, of this title and Tables.

Public Law 103-190, referred to in subsec. (a)(13), is Pub. L. 103-190, Dec. 14, 1993, 107 Stat. 2266, known as the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, which is classified generally to chapter 97 (§6801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

Public Law 103-407, referred to in subsec. (a)(14), is Pub. L. 103-407, Oct. 22, 1994, 108 Stat. 4210, known as the Sheep Promotion, Research, and Information Act of 1994, which is classified generally to chapter 99 (§7101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

The Organic Foods Production Act of 1990, referred to in subsec. (e)(3), is title XXI of Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3935, which is classified generally to chapter 94 (§6501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6501 of this title and Tables.

AMENDMENTS

2014—Subsec. (e). Pub. L. 113-79, §10004(d), added subsec. (e) and struck out former subsec. (e) which related to exemptions of certified organic products from assessments.

Subsec. (f). Pub. L. 113-79, §10004(e), added subsec. (f).

Subsec. (f)(1)(C)(ii)(II). Pub. L. 113-235 substituted “a commodity promotion law” for “section 7413 of this title”.

2002—Subsec. (a)(19). Pub. L. 107-171, §10607(b), added par. (19).

Subsec. (e). Pub. L. 107-171, §10607(a), added subsec. (e).

SHORT TITLE

Section 511 of title V of Pub. L. 104-127 provided that: “This subtitle [subtitle B (§§511-526) of title V of Pub. L. 104-127, enacting subchapter II of this chapter] may be cited as the ‘Commodity Promotion, Research, and Information Act of 1996.’”

Section 531 of title V of Pub. L. 104-127 provided that: “This subtitle [subtitle C (§§531-543) of title V of Pub. L. 104-127, enacting subchapter III of this chapter] may be cited as the ‘Canola and Rapeseed Research, Promotion, and Consumer Information Act.’”

Section 551 of title V of Pub. L. 104-127 provided that: “This subtitle [subtitle D (§§551-564) of title V of Pub. L. 104-127, enacting subchapter IV of this chapter] may be cited as the ‘National Kiwifruit Research, Promotion, and Consumer Information Act.’”

Section 571 of title V of Pub. L. 104-127 provided that: “This subtitle [subtitle E (§§571-582) of title V of Pub. L. 104-127, enacting subchapter V of this chapter] may be cited as the ‘Popcorn Promotion, Research, and Consumer Information Act.’”

SUBCHAPTER II—ISSUANCE OF ORDERS FOR PROMOTION, RESEARCH, AND INFORMATION ACTIVITIES REGARDING AGRICULTURAL COMMODITIES

§ 7411. Findings and purpose

(a) Findings

Congress finds the following:

(1) The production of agricultural commodities plays a significant role in the economy of the United States. Thousands of producers in the United States are involved in the production of agricultural commodities, and such commodities are consumed by millions of people throughout the United States and foreign countries.

(2) Agricultural commodities must be of high quality, readily available, handled properly, and marketed efficiently to ensure that consumers have an adequate supply.

(3) The maintenance and expansion of existing markets and the development of new markets for agricultural commodities through generic commodity promotion, research, and information programs are vital to the welfare of persons engaged in the production, marketing, and consumption of such commodities, as well as to the general economy of the United States.

(4) Generic promotion, research, and information activities for agricultural commodities play a unique role in advancing the demand for such commodities, since such activities increase the total market for a product to the benefit of consumers and all producers. These generic activities complement branded advertising initiatives, which are aimed at increasing the market share of individual competitors, and are of particular benefit to small producers who lack the resources or market power to advertise on their own. These generic activities do not impede the branded advertising efforts of individual firms, but instead increase general market demand for an agricultural commodity using methods that individual companies do not have the incentive to employ.

(5) Generic promotion, research, and information activities for agricultural commodities, paid by the producers and others in the industry who reap the benefits of such activities, provide a unique opportunity for producers to inform consumers about a particular agricultural commodity.

(6) It is important to ensure that generic promotion, research, and information activities for agricultural commodities be carried out in an effective and coordinated manner designed to strengthen the position of the commodities in the marketplace and to maintain and expand their markets and uses. Independent evaluation of the effectiveness of the generic promotion activities of these programs will assist the Secretary of Agriculture and Congress in ensuring that these objectives are met.

(7) The cooperative development, financing, and implementation of a coordinated national program of research, promotion, and information regarding agricultural commodities are

necessary to maintain and expand existing markets and to develop new markets for these commodities.

(8) Agricultural commodities move in interstate and foreign commerce, and agricultural commodities and their products that do not move in such channels of commerce directly burden or affect interstate commerce in agricultural commodities and their products.

(9) Commodity promotion programs have the ability to provide significant conservation benefits to producers and the public.

(b) Purpose

The purpose of this subchapter is to authorize the establishment, through the exercise by the Secretary of Agriculture of the authority provided in this subchapter, of an orderly program for developing, financing, and carrying out an effective, continuous, and coordinated program of generic promotion, research, and information regarding agricultural commodities designed to—

(1) strengthen the position of agricultural commodity industries in the marketplace;

(2) maintain and expand existing domestic and foreign markets and uses for agricultural commodities;

(3) develop new markets and uses for agricultural commodities; or

(4) assist producers in meeting their conservation objectives.

(c) Rule of construction

Nothing in this subchapter provides for the control of production or otherwise limits the right of any person to produce, handle, or import an agricultural commodity.

(Pub. L. 104-127, title V, § 512, Apr. 4, 1996, 110 Stat. 1032.)

§ 7412. Definitions

In this subchapter (unless the context otherwise requires):

(1) Agricultural commodity

The term “agricultural commodity” means—

(A) agricultural, horticultural, viticultural, and dairy products;

(B) livestock and the products of livestock;

(C) the products of poultry and bee raising;

(D) the products of forestry;

(E) products, as a class, that are—

(i) produced on a certified organic farm (as defined in section 6502 of this title); and

(ii) certified to be sold or labeled as “organic” or “100 percent organic” (as defined in part 205 of title 7, Code of Federal Regulations (or a successor regulation));

(F) other commodities raised or produced on farms, as determined appropriate by the Secretary; and

(G) products processed or manufactured from products specified in the preceding subparagraphs, as determined appropriate by the Secretary.

(2) Board

The term “board” means a board established under an order issued under section 7413 of this title.