

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 necessary and reasonable expenses incurred in the performance of duties of the Board.

(c) Powers and duties of Board

The order shall define the powers and duties of the Board, which shall include the power and duty—

- (1) to administer the order in accordance with the terms and conditions of the order;
- (2) to make rules to effectuate the terms and conditions of the order;
- (3) to receive, investigate, and report to the Secretary complaints of violations of the order;
- (4) to develop and recommend such rules, regulations, and amendments to the order to the Secretary for approval as may be necessary for the development and execution of programs or projects to carry out the order;
- (5) to employ such persons as the Board considers necessary and determine the compensation and define the duties of the persons;
- (6) to prepare and submit for the approval of the Secretary, prior to the beginning of each fiscal year, a fiscal year budget of the anticipated expenses in the administration of the order, including the probable costs of all programs and projects;
- (7) to develop programs and projects, subject to subsection (d);
- (8) to enter into contracts or agreements, with the approval of the Secretary, to develop and carry out programs or projects of research and advertising;
- (9) to carry out advertising or research, and pay the costs of the projects with funds collected pursuant to section 6409 of this title;
- (10) to keep minutes, books, and records that reflect all of the acts and transactions of the Board, and promptly report minutes of each Board meeting to the Secretary;
- (11) to furnish the Secretary with such other information as the Secretary may require; and
- (12) to invest funds collected by the Board pursuant to subsection (g).

(d) Plans and budgets**(1) Budgets**

The order shall require the Board, prior to the beginning of each fiscal year, or as may be necessary after the beginning of the fiscal year, to develop budgets of the anticipated expenses and disbursements of the Board in the implementation of the order, including projected costs of research and advertising. The budget shall be submitted to the Secretary and be effective on the approval of the Secretary.

(2) Incurring expenses

The Board may incur such expenses for research or advertising of fluid milk products, and other expenses for the administration, maintenance, and functioning of the Board, as may be authorized by the Secretary. The expenses shall include any implementation, administrative, and referendum costs incurred by the Department.

(3) Paying expenses

The funds to cover the expenses referred to in paragraph (2) shall be paid from assessments collected under section 6409 of this title.

(4) Limitation on spending

Effective 1 year after the date of the establishment of the Board, the Board shall not spend in excess of 5 percent of the assessments collected for the administration of the Board.

(e) Prohibition on branded advertising

A program or project conducted under this chapter shall not make any reference to private brand names or use false or unwarranted claims on behalf of fluid milk products, or false or unwarranted statements with respect to the attributes or use of any competing products, except that this subsection shall not preclude the Board from offering its programs and projects for use by commercial parties, under such terms and conditions as the Board may prescribe as approved by the Secretary.

(f) Contracts and agreements**(1) In general**

To ensure efficient use of funds collected under this chapter, the order shall provide that the Board may enter into contracts or agreements for the implementation and carrying out of programs or projects for fluid milk products research and advertising and for the payment of the costs of the programs or projects with funds received by the Board under the order.

(2) Requirements

Any such contract or agreement shall provide that—

- (A) the contracting party shall develop and submit to the Board a program or project, together with a budget or budgets that shall disclose estimated costs to be incurred for such program or project;
- (B) the program or project shall become effective on the approval of the Secretary; and
- (C) the contracting party shall keep accurate records of all of the transactions of the contracting party, account for funds received and expended, make periodic reports to the Board of activities conducted, and make such other reports as the Board or the Secretary may require.

(g) Investment of funds**(1) In general**

The order shall provide that the Board, with the approval of the Secretary, may invest assessment funds collected by the Board under the order, pending disbursement of the funds, only in—

- (A) obligations of the United States or any agency thereof;
- (B) general obligations of any State or any political subdivision thereof;
- (C) any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or
- (D) obligations fully guaranteed as to principal and interest by the United States.

(2) Income

Income from any such investment may be used for any purpose for which the invested funds may be used.

(h) Books and records of Board**(1) In general**

The order shall require the Board to—

(A) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may prescribe;

(B) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe; and

(C) account for the receipt and disbursement of all funds entrusted to the Board.

(2) Audits

The Board shall cause the books and records of the Board to be audited by an independent auditor at the end of each fiscal year. A report of each such audit shall be submitted to the Secretary.

(i) Books and records of processors

(1) In general

The order shall require that each fluid milk processor subject to this chapter maintain and make available for inspection such books and records as may be required by the order and file reports at the time, in the manner, and having the content prescribed by the order.

(2) Use of information

Information obtained under paragraph (1) shall be made available to the Secretary as is appropriate for the effectuation, administration, or enforcement of this chapter, or any order or regulation issued under this chapter.

(3) Confidentiality

(A) In general

Except as provided in subparagraphs (B) and (C), commercial or financial information that is obtained under paragraph (1) or (2) and that is privileged or confidential shall be kept confidential by all officers and employees of the Department and agents of the Board, and only such information so obtained as the Secretary considers relevant may be disclosed to the public by them and then only in a suit or administrative hearing brought at the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving the order.

(B) Availability of information

Except as otherwise provided in this chapter, information obtained under this chapter may be made available to another agency of the Federal Government for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency has made a written request to the Secretary specifying the particular information desired and the law enforcement activity for which the information is sought.

(C) Other exceptions

Nothing in subparagraph (A) may be construed to prohibit—

- (i) the issuance of general statements, based on the reports, of the number of persons subject to an order or statistical data collected from the persons, which statements do not identify the information furnished by any person; or
- (ii) the publication, by direction of the Secretary, of the name of any person vio-

lating any order, together with a statement of the particular provisions of the order violated by the person.

(4) Penalty

Any person violating this subsection, on conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for not more than 1 year, or both, and if such person is an agent of the Board or an officer or employee of the Department, shall be removed from office.

(5) Withholding information

Nothing in this subsection shall authorize the Secretary to withhold information from a duly authorized committee or subcommittee of Congress.

(6) Time requirement

The records required under paragraph (1) shall be maintained for 2 years beyond the fiscal year of the applicability of the records.

(j) Prohibition on use of funds to influence governmental action

(1) In general

Except as otherwise provided in paragraph (2), the order shall prohibit any funds collected by the Board under the order from being used in any manner for the purpose of influencing legislation or government action or policy.

(2) Exception

Paragraph (1) shall not apply to the development or recommendation of amendments to the order.

(k) Coordination

The order shall require the Board to take reasonable steps to coordinate the collection of assessments, and advertising and research activities of the Board with the National Dairy Promotion and Research Board established under section 4504(b) of this title.

(l) Exemptions

The order shall exempt fluid milk products exported from the United States from assessments under the order.

(m) Report

The Secretary shall provide annually for an independent evaluation of the effectiveness of the fluid milk promotion program carried out under this chapter during the previous fiscal year, in conjunction with the evaluation of the National Dairy Promotion and Research Board established under section 4504(b) of this title.

(n) Other terms and conditions

The order also shall contain such terms and conditions, not inconsistent with this chapter, as are necessary to effectuate this chapter, including regulations relating to the assessment of late payment charges.

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

§ 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.