

(3) develop new markets and uses for mushrooms.

**(c) Construction**

Nothing in this chapter may be construed to provide for the control of production or otherwise limit the right of individual producers to produce mushrooms.

(Pub. L. 101-624, title XIX, §1922, Nov. 28, 1990, 104 Stat. 3855.)

CONSTITUTIONALITY

For information regarding constitutionality of subtitle B of title XIX of Pub. L. 101-624, which enacted this chapter, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

SHORT TITLE

Pub. L. 101-624, title XIX, §1921, Nov. 28, 1990, 104 Stat. 3854, provided that: "This subtitle [subtitle B (§§1921-1933) of title XIX of Pub. L. 101-624, enacting this chapter] may be cited as the 'Mushroom Promotion, Research, and Consumer Information Act of 1990'."

**§ 6102. Definitions**

As used in this chapter—

**(1) Commerce**

The term "commerce" means interstate, foreign, or intrastate commerce.

**(2) Consumer information**

The term "consumer information" means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of mushrooms.

**(3) Council**

The term "Council" means the Mushroom Council established under section 6104(b) of this title.

**(4) Department**

The term "Department" means the Department of Agriculture.

**(5) First handler**

The term "first handler" means any person, as described in an order issued under this chapter, who receives or otherwise acquires mushrooms from a producer and prepares for marketing or markets such mushrooms, or who prepares for marketing or markets mushrooms of that person's own production.

**(6) Importer**

The term "importer" means any person who imports, on average, over 500,000 pounds of mushrooms annually from outside the United States.

**(7) Industry information**

The term "industry information" means information and programs that are designed to lead to the development of new markets and marketing strategies, increased efficiency, and activities to enhance the image of the mushroom industry.

**(8) Marketing**

The term "marketing" means the sale or other disposition of mushrooms in any channel of commerce.

**(9) Mushrooms**

The term "mushrooms" means all varieties of cultivated mushrooms grown within the United States for the fresh market, or imported into the United States for the fresh market, that are marketed, except that such term shall not include mushrooms that are commercially marinated, canned, frozen, cooked, blanched, dried, packaged in brine, or otherwise processed, as may be determined by the Secretary.

**(10) Person**

The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

**(11) Producer**

The term "producer" means any person engaged in the production of mushrooms who owns or who shares the ownership and risk of loss of such mushrooms and who produces, on average, over 500,000 pounds of mushrooms per year.

**(12) Promotion**

The term "promotion" means any action determined by the Secretary to enhance the image or desirability of mushrooms, including paid advertising.

**(13) Research**

The term "research" means any type of study to advance the image, desirability, marketability, production, product development, quality, or nutritional value of mushrooms.

**(14) Secretary**

The term "Secretary" means the Secretary of Agriculture.

**(15) State and United States**

The terms "State" and "United States" include the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 101-624, title XIX, §1923, Nov. 28, 1990, 104 Stat. 3855.)

**§ 6103. Issuance of orders**

**(a) In general**

To effectuate the declared policy of section 6101(b) of this title, the Secretary, subject to the procedures provided in subsection (b), shall issue orders under this chapter applicable to producers, importers, and first handlers of mushrooms. Any such order shall be national in scope. Not more than one order shall be in effect under this chapter at any one time.

**(b) Procedures**

**(1) Issuance of an order**

The Secretary may propose the issuance of an order under this chapter, or an association of mushroom producers or any other person that will be affected by this chapter may request the issuance of, and submit a proposal for, such an order.

**(2) Publication of order**

Not later than 60 days after the receipt of a request and proposal by an interested person

for an order, or when the Secretary determines to propose an order, the Secretary shall publish the 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 given, as provided in paragraph (2), the Secretary shall issue the 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 of this chapter. Such order shall be issued and, if approved by producers and importers of mushrooms as provided in section 6105(a) of this title, shall become effective not later than 180 days following publication of the proposed order.

**(c) Amendments**

**(1) In general**

The Secretary, from time to time, may amend any order issued under this section.

**(2) Application of chapter**

The provisions of this chapter applicable to an order shall be applicable to amendments to the order.

(Pub. L. 101-624, title XIX, §1924, Nov. 28, 1990, 104 Stat. 3856.)

**§ 6104. Required terms in orders**

**(a) In general**

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

**(b) Mushroom Council**

**(1) Establishment and membership of Council**

**(A) Establishment**

The order shall provide for the establishment of, and selection of members to, a Mushroom Council that shall consist of at least 4 members and not more than 9 members.

**(B) Membership**

Except as provided for in paragraph (2), the members of the Council shall be mushroom producers and importers appointed by the Secretary from nominations submitted by producers and importers in the manner authorized by the Secretary, except that no more than one member may be appointed to the Council from nominations submitted by any one producer or importer.

**(2) Appointments**

**(A) In general**

In making appointments, the Secretary shall take into account, to the extent practicable, the geographical distribution of mushroom production throughout the United States, and the comparative volume of mushrooms imported into the United States.

**(B) Units**

In establishing such geographical distribution of mushroom production, a whole State

shall be considered as a unit and such units shall be organized into 3 regions that shall fairly represent the geographic distribution of mushroom production within the United States.

**(C) Importers**

Importers shall be represented as one region, which shall be separate from the regions established for mushrooms produced in the United States.

**(D) Members per region**

The Secretary shall appoint one member from each region if such region produces or imports, on average, at least 50,000,000 pounds of mushrooms annually.

**(E) Additional members**

In addition to the members appointed pursuant to paragraph (1), and subject to the 9-member limit of members on the Council provided in that paragraph, the Secretary shall appoint additional members to the council from a region that attains additional pounds of production as follows:

(i) If the annual production of a region is greater than 110,000,000 pounds, but less than or equal to 180,000,000 pounds, the region shall be represented by 1 additional member.

(ii) If the annual production of a region is greater than 180,000,000 pounds, but less than or equal to 260,000,000 pounds, the region shall be represented by 2 additional members.

(iii) If the annual production of a region is greater than 260,000,000 pounds, the region shall be represented by 3 additional members.

**(F) Average annual production**

For purposes of this paragraph, in determining average annual mushroom production in each of the 4 regions of the United States established under this paragraph, the Secretary shall only consider mushrooms produced by producers covered by this chapter, as defined in section 6102(11) of this title.

**(G) Failure to nominate**

If producers and importers fail to nominate individuals for appointment, the Secretary may appoint members on a basis provided for in the order.

**(3) Terms; compensation**

**(A) Terms**

The term of appointment to the Council shall be for 3 years, except that the initial appointments shall to the extent practicable be proportionately for 1-year, 2-year, and 3-year terms.

**(B) Compensation**

Council members shall serve without compensation but shall be reimbursed for their expenses incurred in performing their duties as members of the Council.

**(c) Powers and duties of Council**

The order shall define the powers and duties of the Council, which shall include the following powers and duties—