

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 violating 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.

**(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) 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.)

**Editorial Notes**

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) 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).

**(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.)