

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**AGRICULTURAL MARKETING SERVICE**  
**FLUID MILK PROMOTION ACT OF 1990**  
**(7 U.S.C. 6401-6417)**  
**(As Amended Through May 13, 2002)**

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**Printed: August 1, 2002**

# FLUID MILK PROMOTION ACT OF 1990

(7 U.S.C. 6401-6417)

7 U.S.C. 6401 Note. **1999A Short title**

This subtitle may be cited as the "Fluid Milk Promotion Act of 1990".

7 U.S.C. 6401. **1999B Findings and declaration of policy.**

(a) *Findings.*- Congress finds that-

(1) fluid milk products are basic foods and are a primary source of required nutrients such as calcium, and otherwise are a valuable part of the human diet;

(2) fluid milk products must be readily available and marketed efficiently to ensure that the people of the United States receive adequate nourishment;

(3) the dairy industry plays a significant role in the economy of the United States, in that milk is produced by thousands of milk producers and dairy products (including fluid milk products) are consumed every day by millions of people in the United States;

(4) the processing of milk into fluid milk products and the marketing of such products are important to the dairy industry because the fluid milk segment of the dairy market contributes substantially to ensuring that the prices paid to milk producers for raw milk are stable and adequate to maintain the overall strength of the dairy industry;

(5) the maintenance and expansion of markets for fluid milk products are vital to the Nation's fluid milk processors and milk producers, as well as to the general economy of the United States;

(6) the congressional purpose underlying this subtitle is to maintain and expand markets for fluid milk products, not to maintain or expand any processor's share of those markets and that the subtitle does not prohibit or restrict individual advertising or promotion of fluid milk products since the programs created and funded by this subtitle are not extended to replace individual advertising and promotion efforts;

(7) the cooperative development, financing, and implementation of a coordinated program of advertising and promotion of fluid milk products is necessary to maintain and expand markets for fluid milk products;

(8) it is appropriate to finance the cooperative program described in paragraph (6) with self-help assessments paid by the fluid milk processors; and

(9) fluid milk products move in interstate and foreign commerce, and fluid milk products that do not move in such channels of commerce directly burden or affect interstate commerce in fluid milk products.

(b) *Policy.*- It is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this subtitle, of an orderly procedure for developing, financing, through adequate assessments on fluid milk products produced in the United States and carrying out an effective, continuous, and coordinated program of promotion, research, and consumer information designed to strengthen the position of the dairy industry in the marketplace and maintain and expand domestic and foreign markets and uses for fluid milk products, the purpose of which is not to compete with or replace individual advertising or promotion efforts designed to promote individual brand name or trade name fluid milk products, but rather to maintain and expand the markets for all fluid milk products, with the goal and purpose of this subtitle being a national governmental goal that authorizes and funds programs that result in government speech promoting government objectives.

### AMENDMENT

1996 - Pub. L. 104-127, April 4, 1996, in subsec. (a), redesignated paras. (6), (7), and (8) as paras. (7), (8), and (9), respectively, and added new para. (6); and substituted subsec. (b) for one which read: "(b) *Policy.* It is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this subtitle, of an orderly procedure for developing, financing (through adequate assessments on fluid milk products produced in the United States) and carrying out an effective and coordinated program of advertising designed to strengthen the position of the dairy industry in the marketplace and to maintain and expand markets and uses for fluid milk products produced in the United States. Nothing in this chapter shall be construed to provide for the control of production or otherwise limit the right of individual milk producers to produce milk."

### 7 U.S.C. 6402. **1999C Definitions.**

As used in this subtitle:

(1) *Advertising.*- The term "advertising" means any advertising or promotion program involving only fluid milk products and directed toward increasing the general demand for fluid milk products.

(2) *Board.*- The term "Board" means the National Processor Advertising and Promotion Board established under section 1999H(b).

(3) *Fluid milk product.*- The term "fluid milk product" has the meaning given the term in -

(A) § 1000.15 of Title 7, Code of Federal Regulations, subject to such amendments as may be made by the Secretary; or

(B) any successor regulation.

(4) *Fluid milk processor*.- The term "fluid milk processor" means any person who processes and markets commercially more than 3,000,000 pounds of fluid milk products in consumer-type packages per month (excluding products delivered directly to the place of residence of a consumer).

(5) *Department*.- The term "Department" means the Department of Agriculture.

(6) *Research*.- The term "research" means market research to support advertising and promotion efforts, including educational activities, research directed to product characteristics, product development, including new products or improved technology in production, manufacturing or processing of milk and the products of milk.

(7) *Secretary*.- The term "Secretary" means the Secretary of Agriculture.

(8) *United States*.- The term "United States", except as used in sections 1999K through 1999M, means the 48 contiguous States in the continental United States and the District of Columbia.

### AMENDMENTS

1993 - Pub. L. 103-72, August 11, 1993, amended para. (4) generally. Prior to amendment, para. (4) read as follows: "The term 'fluid milk processor' means any person who processes and markets commercially fluid milk products in consumer-type packages."

1996 - Pub. L. 104-127, April 4, 1996, substituted para. (6) for one which read:

"(6) Research. 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."

2002 – Pub. L. 107-171, May 13, 2002, substituted para. (3) for one which read:

“(3) *Fluid milk product*.- The term "fluid milk product"-

(A) means any of the following products in fluid or frozen form: milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(B) does not include evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas specially prepared for infant feeding

or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey.”

2002 - Pub. L. 107-171, May 13, 2002, amended para. (4) generally. Prior to amendment, para. (4) read as follows: "The term 'fluid milk processor' means any person who processes and markets commercially more than 500,000 pounds of fluid milk products in consumer-type packages per month."

**7 U.S.C. 6403. 1999D Authority to issue orders.**

(a) In general.- To effectuate the declared policy under section 1999B(b), 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 subtitle; and
- (2) the use of the assessments to provide research and advertising in a manner prescribed by this subtitle.

(b) Scope.- Any order issued under this subtitle shall be national in scope.

(c) One order.- Not more than one order shall be in effect under this subtitle at any one time.

**7 U.S.C. 6404 1999E Notice and comment.**

Not later than 60 days after the Secretary receives a request for the issuance of an order under this subtitle, 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.

**7 U.S.C. 6405. 1999F Findings and issuance of orders.**

(a) In general.- After notice and opportunity for public comment are given, as provided in section 1999E, 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 subtitle.

(b) Effective date.- Such order shall be issued and, if approved by fluid milk processors as provided in section 1999N, shall become effective not later than 180 days following publication of the proposed order.

**7 U.S.C. 6406. 1999G Regulations.**

The Secretary may issue such regulations as may be necessary to carry out this subtitle and the powers vested in the Secretary by this subtitle.

7 U.S.C. 6407. **1999H Required terms in orders.**

(a) In general.- Each order issued under this subtitle 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 the 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 the 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 1999J;
- (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 1999J.

(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 subtitle 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 subtitle, 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 subtitle 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 subtitle, or any order or regulation issued under this subtitle.

(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 subtitle, information obtained under this subtitle 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 113(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(b)).

(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 subtitle during the previous fiscal year, in conjunction with the evaluation of the National Dairy Promotion and Research Board established under section 113(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(b)).

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

7 U.S.C. 6408. **1999I Permissive terms.**

(a) In general.- Each order issued under this subtitle 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 subtitle 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 subtitle as are necessary to effectuate the other provisions of the order.

**7 U.S.C. 6409 1999J 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 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), enacted with amendments by the Agricultural Marketing Agreement Act of 1937;

(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 subtitle 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 113(g) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(g)), 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 1999P(b) of this title, the rate of assessment prescribed by the order shall be 20 cents per hundredweight of fluid milk products marketed.

### AMENDMENT

1993 - Pub. L. 103-72, August 11, 1993, subsec. (e) inserted ", and that are fluid milk processors," after "section 4504(g)".

#### 7 U.S.C. 6410. **1999K Petition and review.**

(a) Petition.-

(1) In general.- A person subject to an order issued under this subtitle 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.

7 U.S.C. 6411. **1999L 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 subtitle.

(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 subtitle, or any order or regulation issued under this subtitle, if the Secretary believes that the administration and enforcement of this subtitle 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).

(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 subtitle, 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 subtitle or a regulation issued under this subtitle, 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).

(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) 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 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 subtitle shall be in addition to, and not exclusive of, other remedies that may be available.

#### AMENDMENT

1991 - Pub. L. 102-237, December 13, 1991, subsec. (b) substituted "this section" for "this subsection" after "brought under".

#### 7 U.S.C. 6412. **1999M Investigations and power to subpoena.**

(a) Investigations.- The Secretary may make such investigations as the Secretary considers necessary.-

(1) for the effective administration of this subtitle; or

(2) to determine whether any person has engaged or is engaging in any act that constitutes a violation of this subtitle, or any order, rule, or regulation issued under this subtitle.

(b) Subpoenas, oaths, and affirmations.-

(1) In general.- For the purpose of an investigation under subsection (a), the Secretary may administer oaths and affirmations, and issue a subpoena to require the production of any records that are relevant to the inquiry. The production of any such records may be required from any place in the United States.

(2) Administrative hearings.- For the purpose of an administrative hearing held under section 1999K or 1999L, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) Aid of courts.- In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b). The court may issue an order requiring such person to comply with such a subpoena.

(d) Contempt.- Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) Process.- Process in any such case may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

(f) Hearing site.- The site of any hearings held under section 1999K or 1999L shall be within the judicial district where such person resides or has a principal place of business.

**7 U.S.C. 6413 1999N Requirement of initial referendum.**

(a) In general.- Within the 60-day period immediately preceding the effective date of an order issued under section 1999F(a) of this title, the Secretary shall conduct a referendum among fluid milk processors to ascertain whether the order shall go into effect.

(b) Implementation.- If, as a result of the referendum conducted under subsection (a), the Secretary determines that implementation of the order is favored-

(1) by at least 50 percent of fluid milk processors voting in the referendum; and

(2) by fluid milk processors voting in the referendum that marketed during the representative period, as determined by the Secretary, 60 percent or more of the volume of fluid milk products marketed by fluid milk processors voting in the referendum;

the order shall become effective as provided in section 1999F(b).



(c) Costs of referendum.- The Secretary shall be reimbursed from any assessments collected by the Board for any expenses incurred by the Department in connection with the conduct of any referendum under this subtitle.

(d) Manner.-

(1) In general.- Referenda conducted pursuant to this subtitle shall be conducted in a manner determined by the Secretary.

(2) Advance registration.- A fluid milk processor who chooses to vote in any referendum conducted under this subtitle shall register with the Secretary prior to the voting period, after receiving notice from the Secretary concerning the referendum under paragraph (4).

(3) Voting.- A fluid milk processor who votes in any referendum conducted under this subtitle shall vote in accordance with procedures established by the Secretary. The ballots and other information or reports that reveal or tend to reveal the vote of any processor shall be held strictly confidential.

(4) Notice.- The Secretary shall notify all processors at least 30 days prior to a referendum conducted under this subtitle. The notice shall explain the procedure established under this subsection.

#### AMENDMENT

1996 - Pub. L. 104-127, April 4, 1996, in subsec. (b)(2) substituted "fluid milk processors voting in the referendum" for "all processors".

#### 7 U.S.C. 6414. **1990 Suspension or termination of orders.**

(a) Suspension or termination by Secretary.- The Secretary shall, whenever the Secretary finds that the order or any provision of the order obstructs or does not tend to effectuate the declared policy of this subtitle, terminate or suspend the operation of the order or provision.

(b) Other referenda.-

(1) In general.- The Secretary may conduct at any time a referendum of persons who, during a representative period as determined by the Secretary, have been fluid milk processors on whether to suspend or terminate the order, and shall hold such a referendum on request of the Board or any group of such processors that among them marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products marketed by fluid milk processors voting in the preceding referendum

(2) Suspension or termination.- If the Secretary determines that the suspension or termination is favored-

(A) by at least 50 percent of fluid milk processors voting in the referendum; and

(B) by fluid milk processors voting in the referendum that marketed during a representative period, as determined by the Secretary, 40 percent or more of the volume of fluid milk products marketed by fluid milk processors voting in the referendum;

the Secretary shall, within 6 months after making the determination, suspend or terminate, as appropriate, collection of assessments under the order, and suspend or terminate, as appropriate, activities under the order in an orderly manner as soon as practicable.

(3) Costs; manner.- Subsections (c) and (d) of section 1999N of this title shall apply to a referendum conducted under this subsection.

### **AMENDMENTS**

1996 - Pub. L. 104-127, April 4, 1996, in the introductory matter of subsec. (a) substituted "2002" for "1996"; and , in subsec. (c), in para. (1), substituted "fluid milk processors voting in the preceding referendum" for "all processors", and, in para. (2)(B), substituted "fluid milk processors voting in the referendum" for "all processors".

2002 – Pub. L. 107-171, May 13, 2002, struck subsec. (a) and re-designated subsec. (b) and (c) as subsec. (a) and (b). Prior to the amendment, subsec. (a) read as follows:

(a) Termination of order.- Any order effective under this subtitle shall be terminated December 31, 2002. The Secretary shall-

(1) terminate the collection of assessments under the order upon such date; and

(2) terminate activities under the order in an orderly manner as soon as practicable after such date.

### **7 U.S.C. 6415 1999P Amendments.**

(a) Amendments to order.- Subject to subsection (b), the Secretary may issue such amendments to an order as may be necessary to carry out this subtitle.

(b) Amendment to assessment rates.-

(1) In general.- The Secretary may conduct at any time a referendum of persons who, during a representative period as determined by the Secretary, have been fluid milk processors on adjusting the assessment rate under the order issued under this subtitle then in effect, and shall hold such a referendum on request of the Board or any group of such processors that among them marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products marketed by all processors.

(2) Adjustment to assessment rate.- The Secretary shall adjust the assessment rate under the order whenever the Secretary determines that the adjustment is favored-

(A) by at least 50 percent of fluid milk processors voting in the referendum; and

(B) by fluid milk processors that marketed during a representative period, as determined by the Secretary, 60 percent or more of the volume of fluid milk products marketed by all processors;

In no event shall the rate of assessment prescribed by the order exceed 20 cents per hundredweight.

(3) Effective date.- The adjusted assessment rate shall be effective on a date, as determined by the Secretary, after the results of the referendum are known, but not later than 30 days after the referendum.

(4) Costs; manner.- Subsections (c) and (d) of section 1999N shall apply to a referendum conducted under this subsection.

**7 U.S.C. 6416 1999Q Independent evaluation of programs.**

(a) Review and evaluation.- The Comptroller General of the United States shall review and evaluate the order to-

(1) determine the effectiveness of the promotion program conducted under this subtitle on fluid milk sales;

(2) determine if the assessments for the program have been passed back to milk producers by fluid milk processors; and

(3) make recommendations for future funding and assessment levels for the program.

(b) Report to Congress.- The Comptroller General shall submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the valuations made under this section no later than January 1, 1995.

**7 U.S.C. 6417. 1999R Authorization of appropriations.**

(a) In general.- There are authorized to be appropriated for each fiscal year such funds as are necessary to carry out this subtitle.

(b) Administrative expenses.- The funds so appropriated shall not be available for payment of the expenses or expenditures of the Board in administering any provision of any order issued under this subtitle.

1. Pub. L. 101-624, Title XIX, Subtitle H, 104 Stat. 3914, November 28, 1990.

2. We believe that Congress meant this to be (7) as opposed to (6) in accordance with section 146 of Pub. L. 104-127.