

**MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION
ACT OF 1990¹**

(Revisions as of 01/05/2009)

(7 U.S.C. 6101-6112)

SEC. 1921. SHORT TITLE.

This subtitle may be cited as the “Mushroom Promotion, Research, and Consumer Information Act of 1990.” (7 U.S.C. 6101 note.)

SEC. 1922. FINDINGS AND DECLARATION OF POLICY.

(a) Findings. Congress finds that -

- (1) mushrooms are an important food that is a valuable part of the human diet;
- (2) the production of mushrooms plays a significant role in the Nation's economy in that mushrooms are produced by hundreds of mushroom producers, distributed through thousands of wholesale and retail outlets, and consumed by millions of people throughout the United States and foreign countries;
- (3) mushroom production benefits the environment by efficiently using agricultural byproducts;
- (4) mushrooms must be high quality, readily available, handled properly, and marketed efficiently to ensure that the benefits of this important product are available to the people of the United States;
- (5) the maintenance and expansion of existing markets and uses, and the development of new markets and uses, for mushrooms are vital to the welfare of producers and those concerned with marketing and using mushrooms, as well as to the agricultural economy of the Nation;
- (6) the cooperative development, financing, and implementation of a coordinated program of mushroom promotion, research, and consumer information are necessary to maintain and expand existing markets for mushrooms; and
- (7) mushrooms move in interstate and foreign commerce, and mushrooms that do not move in such channels of commerce directly burden or affect interstate commerce in mushrooms.

(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 mushrooms produced domestically or imported into the United States, and carrying out, an effective, continuous, and coordinated program of promotion, research, and consumer and industry information designed to -

- (1) strengthen the mushroom industry's position in the marketplace;
- (2) maintain and expand existing markets and uses for mushrooms; and
- (3) develop new markets and uses for mushrooms.

¹Pub. L. 101-624, Title XIX Subtitle B, Nov. 28, 1990, 104 Stat.3854; Pub. L. 102-237, Title VIII, Sec. 803(1), Dec. 13, 1991, 105 Stat. 1882; Pub. L. 110-234, Title X, Sec. 10104, May 22, 2008, 122 Stat. 1336; Pub. L. 110-246, Sec. 4(a), Title X, Sec. 10104, June 18, 2008, 122 Stat. 1664, 2097.

(c) Construction. - Nothing in this subtitle may be construed to provide for the control of production or otherwise limit the right of individual producers to produce mushrooms. (7 U.S.C. 6101.)

SEC. 1923. DEFINITIONS.

As used in this subtitle-

- (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 1925(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 subtitle, 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.

SEC. 1924. ISSUANCE OF ORDERS.

(a) In general - To effectuate the declared policy of section 1922(b) of this title, the Secretary, subject to the procedures provided in subsection (b) of this section, shall issue orders under this subtitle 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 subtitle at any one time.

(b) Procedures

(1) Issuance of an order - The Secretary may propose the issuance of an order under this subtitle, or an association of mushroom producers or any other person that will be affected by this subtitle 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 subtitle. Such order shall be issued and, if approved by producers and importers of mushrooms as provided in section 1926(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 subtitle - The provisions of this subtitle applicable to an order shall be applicable to amendments to the order. (7 U.S.C. 6103.)

SEC. 1925. REQUIRED TERMS IN ORDERS.

(a) In general - Each order issued under this subtitle 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 subtitle, as defined in section 1923(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 -

(1) to administer the order in accordance with its terms and provisions;

(2) to make rules and regulations to effectuate the terms and provisions of the order;

(3) to appoint members of the Council to serve on an executive committee;

(4) to propose, receive, evaluate, approve and submit to the Secretary for approval under subsection (d) of this section budgets, plans, and projects of mushroom promotion, research, consumer information, and industry information, as well as to contract and enter into agreements with appropriate persons to implement such plans or projects;

(5) to develop and propose to the Secretary voluntary quality and grade standards for mushrooms;

(6) to develop and propose to the Secretary programs for good agricultural and good handling practices and related activities for mushrooms;

(7) to receive, investigate, and report to the Secretary complaints of violations of the order;

(8) to recommend to the Secretary amendments to the order; and

(9) to invest, pending disbursement under a plan or project, funds collected through assessments authorized under this subtitle 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, except that income from any such invested funds may only be used for any purpose for which the invested funds may be used.

(d) Plans and budgets -

(1) Submission to Secretary - The order shall provide that the Council shall submit to the Secretary for approval any plan or project of promotion, research, consumer information, or industry information.

(2) Budgets - The order shall require the Council to submit to the Secretary for approval budgets on a fiscal year basis of its anticipated expenses and disbursements in the implementation of the order, including projected costs of promotion, research, consumer information, and industry information plans and projects.

(3) Approval by Secretary - No plan or project of promotion, research, consumer information, or industry information, or budget, shall be implemented prior to its approval by the Secretary.

(e) Contracts and agreements -

(1) In general - To ensure efficient use of funds, the order shall provide that the Council may enter into contracts or agreements for the implementation and carrying out of plans or projects of mushroom promotion, research, consumer information, or industry information, including contracts with producer organizations, and for the payment of the cost thereof with funds received by the Council under the order.

(2) Requirements - Any such contract or agreement shall provide that -

(A) the contracting party shall develop and submit to the Council a plan or project together with a budget or budgets that shall show estimated costs to be incurred for such plan or project;

(B) the plan or project shall become effective on the approval of the Secretary; and

(C) the contracting party shall keep accurate records of all of its transactions, account for funds received and expended, make periodic reports to the Council of activities conducted, and make such other reports as the Council or the Secretary may require.

(3) Producer organizations - The order shall provide that the Council may contract with producer organizations for any other services. Any such contract shall include provisions comparable to those provided in subparagraphs (A), (B), and (C) of paragraph (2).

(f) Books and records of Council -

(1) In general - The order shall require the Council 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 Council.

(2) Audits - The Council shall cause its books and records to be audited by an independent auditor at the end of each fiscal year, and a report of such audit to be submitted to the Secretary.

(g) Assessments -

(1) Collection and payment -

(A) In general - The order shall provide that each first handler of mushrooms for the domestic fresh market produced in the United States shall collect, in the manner prescribed by the order, assessments from producers and remit the assessments to the Council.

(B) Importers - The order also shall provide that each importer of mushrooms for the domestic fresh market shall pay assessments to the Council in the manner prescribed by the order.

(C) Direct marketing - Any person marketing mushrooms of that person's own production directly to consumers shall remit the assessments on such mushrooms directly to the Council in the manner prescribed in the order.

(2) Rate of assessment - The rate of assessment shall be determined and announced by the Council and may be changed by the Council at any time. The order shall provide that the rate of assessment -

(A) for the first year of the order, may not exceed one-quarter cent per pound of mushrooms;

(B) for the second year of the order, may not exceed one-third cent per pound of mushrooms;

(C) for the third year of the order, may not exceed one-half cent per pound of mushrooms; and

(D) for the following years of the order, may not exceed one cent per pound of mushrooms.

(3) Use of assessments - The order shall provide that the assessments shall be used for payment of the expenses in implementing and administering this subtitle, with provision for a reasonable reserve, and to cover those administrative costs incurred by the Secretary in implementing and administering this subtitle, except for the salaries of Government employees incurred in conducting referenda.

(4) Limitation on collection - No assessment may be collected on mushrooms that a first handler certifies will be exported as mushrooms.

(h) Prohibition - The order shall prohibit any funds received by the Council under the order from being used in any manner for the purpose of influencing legislation or governmental action or policy, except that such funds may be used by the Council for the development and recommendation to the Secretary of amendments to the order as prescribed in this subtitle and for the submission to the Secretary of recommended voluntary grade and quality standards for mushrooms under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.).

(i) Books and records -

(1) In general - The order shall require that each first handler and importer of mushrooms 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) Availability to Secretary - Such information shall be made available to the Secretary as is appropriate for the administration or enforcement of this subtitle, the order, or any regulation issued under this subtitle.

(3) Confidentiality -

(A) In general - Except as otherwise provided in this subtitle, all information obtained under paragraph (1) shall be kept confidential by all officers and employees of the Department and the Council, and agents of the Council, 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) Limitations - Nothing in this paragraph may be construed to prohibit –

(i) the issuance of general statements, based on the reports, of the number of persons subject to the order or statistical data collected therefrom, 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 the order, together with a statement of the particular provisions of the order violated by such person.

(4) Availability of information -

(A) In general - 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.

(B) Penalty - Any person knowingly 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 an officer or employee of the Council or the Department, shall be removed from office.

(5) Withholding information - Nothing in this subtitle shall be construed to authorize the withholding of information from Congress.

(j) 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 provisions for the assessment of a penalty for each late payment of assessments under subsection (g) of this section. (7 U.S.C. 6104.)

SEC. 1926. REFERENDA.

(a) Initial referendum -

(1) In general - Within the 60-day period immediately preceding the effective date of an order issued under section 1924(b) of this title, the Secretary shall conduct a referendum among mushroom producers and importers to ascertain whether the order shall go into effect.

(2) Approval of order - The order shall become effective, as provided in section 1924(b) of this title, if the Secretary determines that the order has been approved by a majority of the producers and importers voting in the referendum, which majority, on average, annually

produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum.

(b) Succeeding referenda -

(1) Determination concerning order -

(A) In general - Effective 5 years after the date on which an order becomes effective under section 1924(b) of this title, the Secretary shall conduct a referendum among mushroom producers and importers to ascertain whether they favor continuation, termination, or suspension of the order.

(B) Request for referendum - Effective beginning 3 years after the date on which an order becomes effective under section 1924(b) of this title, the Secretary, on request of a representative group comprising 30 percent or more of the number of mushroom producers and importers, may conduct a referendum to ascertain whether producers and importers favor termination or suspension of the order.

(2) Suspension or termination - If, as a result of any referendum conducted under paragraph (1), the Secretary determines that suspension or termination of an order is favored by a majority of the producers and importers voting in the referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum, the Secretary shall -

(A) within 6 months after making such determination, suspend or terminate, as appropriate, collection of assessments under the order; and

(B) suspend or terminate, as appropriate, activities under the order in an orderly manner as soon as practicable.

(c) Manner - Referenda conducted pursuant to this section shall be conducted in such a manner as is determined by the Secretary. (7 U.S.C. 6105.)

SEC. 1927. 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 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 such 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 a person who is a petitioner under subsection (a) of this section 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 such ruling of the Secretary under subsection (a) of this section.

(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 action as, in the opinion of the court, the law requires.

(4) Enforcement - The pendency of proceedings instituted under subsection (a) of this section shall not impede, hinder, or delay the Attorney General or the Secretary from obtaining relief pursuant to section 1928 of this title. (7 U.S.C. 6106.)

SEC. 1928. 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 by the Secretary 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 administrative action under subsection (c) of this section or suitable written notice or warning to the person who committed or is committing the violation.

(c) Civil penalties and orders -

(1) Civil penalties - A person who willfully violates a 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 such order or regulation, may be assessed a civil penalty by the Secretary of not less than \$500 nor more than \$5,000 for each such violation. Each violation shall be a separate offense.

(2) Cease-and-desist orders - In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring such 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 under this subsection unless the Secretary gives the person against whom the penalty is assessed or the order is issued notice and opportunity for a hearing before the Secretary with respect to such violation.

(4) Finality - The penalty assessed or cease and desist order issued under this subsection shall be final and conclusive unless the person against whom the penalty is assessed or the order is issued files an appeal with the appropriate district court of the United States in accordance with subsection (d) of this section.

(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) of this section may obtain review of the penalty or order by -

(A) filing, within the 30-day period beginning on the date such penalty is assessed or order issued, a notice of appeal in the district court of the United States for the district in which such person resides or does business, or in 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 promptly file 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 - A 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 this section, of not more than \$500 for each offense. Each day during which such failure continues shall be considered as a separate violation of such order.

(f) Failure to pay penalties - If a person fails to pay an assessment of a civil penalty after it has become final and unappealable, 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 any district court in which the person resides or conducts business. In such action, the validity and appropriateness of such civil penalty shall not be subject to review. (7 U.S.C. 6107.)

SEC. 1929. INVESTIGATIONS AND POWER TO SUBPOENA.

(a) Investigations - The Secretary may make such investigations as the Secretary considers necessary for the effective administration of this subtitle or to determine whether any person subject to this subtitle has engaged or is engaging in any act that constitutes a violation of this subtitle or of any order, rule, or regulation issued under this subtitle.

(b) Subpoenas, oaths, and affirmations -

(1) In general - For the purpose of an investigation made under subsection (a) of this section, 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 1927 or 1928 of this title, 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 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) of this section. 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 1927 or 1928 of this title shall be within the judicial district where such person resides or has a principal place of business. (7 U.S.C. 6108.)

SEC. 1930. SAVINGS PROVISION.

Nothing in this subtitle may be construed to preempt or supersede any other program relating to mushroom promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. (7 U.S.C. 6109.)

SEC. 1931. SUSPENSION OR TERMINATION OF ORDERS.

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 such order or provision. The termination or suspension of any order, or any provision thereof, shall not be considered an order under the meaning of this subtitle. (7 U.S.C. 6110.)

SEC. 1932. AUTHORIZATION OF APPROPRIATIONS.

(a) In general - There are authorized to be appropriated for each fiscal year such sums 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 Council in administering any provision of an order issued under this subtitle. (7 U.S.C. 6111.)

SEC. 1933. REGULATIONS.

The Secretary may issue such regulations as are necessary to carry out this subtitle. (7 U.S.C. 6112.)