

7 USC Ch. 60: EGG RESEARCH AND CONSUMER INFORMATION
From Title 7—AGRICULTURE

CHAPTER 60—EGG RESEARCH AND CONSUMER INFORMATION ACT

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§2701. Congressional findings and declaration of policy

Eggs constitute one of the basic, natural foods in the diet. They are produced by many individual egg producers throughout the United States. Egg products, spent fowl, and products of spent fowl are derivatives of egg production. These products move in interstate and foreign commerce and those which do not move in such channels of commerce directly burden or affect interstate commerce of these products. The maintenance and expansion of existing markets and the development of new or improved markets and uses are vital to the welfare of egg producers and those concerned with marketing, using, and processing eggs as well as the general economy of the Nation. The production and marketing of these products by numerous individual egg producers have prevented the development and carrying out of adequate and coordinated programs of research and promotion necessary for the maintenance of markets and the development of new products of, and markets for, eggs, egg products, spent fowl, and products of spent fowl. Without an effective and coordinated method of assuring cooperative and collective action in providing for and financing such programs, individual egg producers are unable to provide, obtain, or carry out the research, consumer and producer information, and promotion necessary to maintain and improve markets for any or all of these products.

It has long been recognized that it is in the public interest to provide an adequate, steady supply of fresh eggs readily available to the consumers of the Nation. Maintenance of markets and the development of new markets, both domestic and foreign, are essential to the egg industry if the consumers of eggs, egg products, spent fowl, or products of spent fowl are to be assured of an adequate, steady supply of such products.

It is therefore declared to be the policy of the Congress and the purpose of this chapter that it is essential and in the public interest, through the exercise of the powers provided herein, to authorize and enable the establishment of an orderly procedure for the development and the financing through an adequate assessment, an effective and continuous coordinated program of research, consumer and producer education, and promotion designed to strengthen the egg industry's position in the marketplace, and maintain and expand domestic and foreign markets and uses for eggs, egg products, spent fowl, and products of spent fowl of the United States. Nothing in this chapter shall be construed to mean, or provide for, control of production or otherwise limit the right of individual egg producers to produce commercial eggs.

(Pub. L. 93-428, §2, Oct. 1, 1974, 88 Stat. 1171.)

Effective Date

Pub. L. 93-428, §21, Oct. 1, 1974, 88 Stat. 1179, provided that: "This Act [enacting this chapter and provisions set out as notes under this section] shall take effect upon enactment [Oct. 1, 1974]".

Short Title of 1993 Amendment

Pub. L. 103-188, §1, Dec. 14, 1993, 107 Stat. 2256, provided that: "This Act [amending sections 2707, 2708, and 2711 of this title and enacting provisions set out as a note under section 2703 of this title] may be cited as the 'Egg Research and Consumer Information Act Amendments of 1993'."

Short Title of 1988 Amendment

Pub. L. 100-575, §1, Oct. 31, 1988, 102 Stat. 2895, provided that: "This Act [amending sections 2707 and 2712 of this title] may be cited as the 'Egg Research and Consumer Information Act Amendments of 1988'."

Short Title of 1980 Amendment

Pub. L. 96–276, §1, June 17, 1980, 94 Stat. 541, provided: "That this Act [amending sections 2707, 2708, and 2714 of this title and enacting provisions set out as a note under section 4a of this title] may be cited as the 'Egg Research and Consumer Information Act Amendments of 1980'."

Short Title

Pub. L. 93–428, §1, Oct. 1, 1974, 88 Stat. 1171, provided: "That this Act [enacting this chapter and provisions set out as notes under this section] shall be known as the 'Egg Research and Consumer Information Act'."

Separability

Pub. L. 93–428, §19, Oct. 1, 1974, 88 Stat. 1179, provided that: "If any provision of this Act [enacting this chapter and provisions set out as notes under this section] or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby".

§2702. Definitions

As used in this chapter—

(a) The term "Secretary" means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

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

(c) The term "commercial eggs" or "eggs" means eggs from domesticated chickens which are sold for human consumption either in shell egg form or for further processing into egg products.

(d) The term "hen" or "laying hen" means a domesticated female chicken twenty weeks of age or over, raised primarily for the production of commercial eggs.

(e) The term "egg producer" means the person owning laying hens engaged in the production of commercial eggs.

(f) The term "case" means a standard shipping package containing thirty dozen eggs.

(g) The term "hatching eggs" means eggs intended for use by hatcheries for the production of baby chicks.

(h) The term "United States" means the forty-eight contiguous States of the United States of America and the District of Columbia.

(i) The term "promotion" means any action, including paid advertising, to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

(j) The term "research" means any type of research to advance the image, desirability, marketability, production, or quality of eggs, egg products, spent fowl, or products of spent fowl.

(k) The term "consumer education" means any action to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

(l) The term "marketing" means the sale or other disposition of commercial eggs, egg products, spent fowl, or products of spent fowl, in any channel of commerce.

(m) The term "commerce" means interstate, foreign, or intrastate commerce.

(n) The term "egg products" means products produced, in whole or in part, from eggs.

(o) The term "spent fowl" means hens which have been in production of commercial eggs and have been removed from such production for slaughter.

(p) The term "products of spent fowl" means commercial products produced from spent fowl.

(q) The term "hatchery operator" means any person engaged in the production of egg-type baby chicks.

(r) The term "started pullet" means a hen less than twenty weeks of age.

(s) The term "started pullet dealer" means any person engaged in the sale of started pullets.

(t) The term "handler" means any person, specified in the order or the rules and regulations issued thereunder, who receives or otherwise acquires eggs from an egg producer, and processes, prepares for marketing, or markets, such eggs, including eggs of his own production.

(Pub. L. 93–428, §3, Oct. 1, 1974, 88 Stat. 1172.)

§2703. Orders of Secretary to egg producers, etc.

To effectuate the declared policy of this chapter, the Secretary shall, subject to the provisions of this chapter, issue and from time to time amend, orders applicable to persons engaged in the hatching and/or sale of egg-type baby chicks and started pullets, persons engaged in the production of commercial eggs and persons who receive or otherwise acquire eggs from such persons and who process, prepare for market, or market such eggs, including eggs of their own production, and persons engaged in the purchase, sale or processing of spent fowl. Such orders shall be applicable to all production or marketing areas, or both, in the United States.

(Pub. L. 93–428, §4, Oct. 1, 1974, 88 Stat. 1172.)

Amendment of Egg Promotion and Research Order

Pub. L. 103–188, §5, Dec. 14, 1993, 107 Stat. 2257, provided that: "Notwithstanding any other provision of law:

"(1) In general.—The Secretary of Agriculture shall issue amendments to the egg promotion and research order issued under the Egg Research and Consumer Information Act (7 U.S.C. 2701 et seq.) to implement the amendments made by this Act [see Short Title of 1993 Amendment note set out under section 2701 of this title]. The amendments shall be issued after public notice and opportunity for comment in accordance with section 553 of title 5, United States Code, and without regard to sections 556 and 557 of such title. The Secretary shall issue the proposed amendments to the order not later than 80 days after the date of enactment of this Act [Dec. 14, 1993].

"(2) Effective date.—The amendments to the egg promotion and research order required by paragraph (1) shall become effective not later than—

"(A) 30 days after the proposed amendments are issued; or

"(B) if the Director of the Office of Management and Budget determines that the amendments are a significant action that requires review by the Director, 50 days after the proposed amendments are issued.

"(3) Referendum.—The amendments referred to in paragraph (2) shall not be subject to a referendum conducted under the Egg Research and Consumer Information Act."

§2704. Notice and hearing upon proposed orders

Whenever the Secretary has reason to believe that the issuance of an order will tend to effectuate the declared policy of this chapter, he shall give due notice and opportunity for hearing upon a proposed order. Such hearing may be requested and proposal for an order submitted by an organization certified pursuant to section 2715 of this title, or by any interested person affected by the provisions of this chapter, including the Secretary.

(Pub. L. 93–428, §5, Oct. 1, 1974, 88 Stat. 1173.)

§2705. Findings and issuance of orders

After notice and opportunity for hearing as provided in section 2704 of this title, the Secretary shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing, that the issuance of such order and all the terms and conditions thereof will tend to effectuate the declared policy of this chapter.

(Pub. L. 93–428, §6, Oct. 1, 1974, 88 Stat. 1173.)

§2706. Permissive terms and conditions in orders

Orders issued pursuant to this chapter shall contain one or more of the following terms and conditions, and except as provided in section 2707 of this title, no others.

(A) ADVERTISING, SALES PROMOTION, AND CONSUMER EDUCATION PLANS OR PROJECTS; PROHIBITION ON REFERENCE TO PRIVATE BRAND OR TRADE NAME AND USE OF UNFAIR OR DECEPTIVE ACTS OR PRACTICES

Providing for the establishment, issuance, effectuation, and administration of appropriate plans or projects for advertising, sales promotion, and consumer education with respect to the use of eggs, egg products, spent fowl, and products of spent fowl, and for the disbursement of necessary funds for such purposes: *Provided, however,* That any such plan or project shall be directed toward increasing the general demand for eggs, egg products, spent fowl, or products of spent fowl. No reference to a private brand or trade name shall be made if the Secretary determines that such reference will result in undue discrimination against eggs, egg products, spent fowl, or products of spent fowl of other persons: *And provided further,* That no such advertising, consumer education, or sales promotion programs shall make use of unfair or deceptive acts or practices in behalf of eggs, egg products, spent fowl, or products of spent fowl or unfair or deceptive acts or practices with respect to quality, value, or use of any competing product.

(B) RESEARCH, MARKETING, AND DEVELOPMENT PROJECTS AND STUDIES

Providing for, establishing, and carrying on research, marketing, and development projects, and studies with respect to sale, distribution, marketing, utilization, or production of eggs, egg products, spent fowl, and products of spent fowl, and the creation of new products thereof, to the end that the marketing and utilization of eggs, egg products, spent fowl, and products of spent fowl may be encouraged, expanded, improved or made more acceptable, and the data collected by such activities may be disseminated and for the disbursement of necessary funds for such purposes.

(C) RECORDKEEPING AND REPORTING REQUIREMENTS; DISCLOSURE OF CONFIDENTIAL INFORMATION; VIOLATIONS; PENALTIES

Providing that hatchery operators, persons engaged in the sale of egg-type baby chicks and started pullet dealers, persons engaged in the production of commercial eggs and persons who receive or otherwise acquire eggs from such persons and who process, prepare for market, or market such eggs, including eggs of their own production, and persons engaged in the purchase, sale, or processing of spent fowl, maintain and make available for the inspection such books and records as may be required by any order issued pursuant to this chapter and for the filing of reports by such persons at the time, in the manner, and having content prescribed by the order, to the end that information and data shall be made available to the Egg Board and to the Secretary which is appropriate or necessary to the effectuation, administration or enforcement of this chapter, or of any order or regulation issued pursuant to this chapter:

Provided, however, That all information so obtained shall be kept confidential by all officers and employees of the Department of Agriculture, the Egg Board, and by all officers and employees of contracting agencies having access to such information, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which he or any officer of the United States is a party, and involving the order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (1) the issuance of general statements based upon the reports of the number of persons subject to an order or statistical data collected therefrom, which statements do not identify the information furnished by any person, (2) the publication, by the direction of the Secretary, of general statements relating to refunds made by the Egg Board during any specific period, or (3) 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 such person. Any such officer or employee violating the provision of this subsection shall, upon conviction, be subjected to a fine of not more than \$1,000 or to imprisonment for not more than one year, or to both, and if an officer or employee of the Egg Board or Department of Agriculture shall be removed from office.

(D) INCIDENTAL AND NECESSARY TERMS AND CONDITIONS

Terms and conditions incidental to and not inconsistent with the terms and conditions specified in this chapter and necessary to effectuate the other provisions of such order.

(Pub. L. 93-428, §7, Oct. 1, 1974, 88 Stat. 1173.)

§2707. Required terms and conditions in orders

Orders issued pursuant to this chapter shall contain the following conditions:

(A) EGG BOARD; ESTABLISHMENT; APPOINTMENT AND TERMS OF MEMBERSHIP; POWERS AND DUTIES

Providing for the establishment and appointment, by the Secretary, of an Egg Board which shall consist of not more than twenty members, and alternates therefor, and defining its powers and duties which shall include only the powers (1) to administer such order in accordance with its terms and provisions, (2) to make rules and regulations to effectuate the terms and provisions of such order, (3) to receive, investigate and report to the Secretary complaints of violations of such order, and (4) to recommend to the Secretary amendments to such order. The term of an appointment to the Egg Board shall be for two years with no member serving more than three consecutive terms, except that initial appointment shall be proportionately for two-year and three-year terms.

(B) COMPOSITION OF BOARD

Providing that the Egg Board, and alternates therefor, shall be composed of egg producers or representatives of egg producers appointed by the Secretary from nominations submitted by eligible organizations, associations, or cooperatives, and certified pursuant to section 2715 of this title, or, if the Secretary determines that a substantial number of egg producers are not members of or their interests are not represented by any such eligible organizations, associations or cooperatives, then from nominations made by such egg producers in the manner authorized by the Secretary, so that the representation of egg producers on the Board shall reflect, to the extent practicable, the proportion of eggs produced in each geographic area of the United States as defined by the Secretary: *Provided, however,* That each such egg producing geographic area shall be entitled to at least one representative on the Egg Board: *Provided further,* That two members of the Egg Board, and alternates therefor, shall be

consumers or representatives of consumers, if approved by egg producers voting in a referendum on an amendment to the order. Such consumer appointments shall be made by the Secretary from nominations submitted by eligible organizations. If the Secretary determines that such nominees are not members of either a bona fide consumer organization or do not represent consumers, the Secretary may appoint such consumers or representatives of consumers as deemed necessary to properly represent the interest of consumers. Consumer members of the Egg Board shall be voting members.

(C) ADVERTISING, SALES PROMOTION, CONSUMER EDUCATION, AND RESEARCH AND DEVELOPMENT PLANS OR PROJECTS; DEVELOPMENT AND SUBMITTAL TO SECRETARY BY BOARD

Providing that the Egg Board shall, subject to the provisions of subsection (g) of this section, develop and submit to the Secretary for his approval any advertising, sales promotion, consumer education, research, and development plans or projects, and that any such plan or project must be approved by the Secretary before becoming effective.

(D) BUDGETS; SUBMITTAL TO SECRETARY BY BOARD

Providing that the Egg Board shall, subject to the provisions of subsection (g) of this section, submit to the Secretary for his approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of the order, including probable costs of advertising, promotion, consumer education, research, and development projects. In preparing a budget for each of the 1994 and subsequent fiscal years, the Egg Board shall, to the maximum extent practicable, allocate a proportion of funds for research projects under this chapter that is comparable to the proportion of funds that were allocated for research projects under this chapter in the budget of the Egg Board for fiscal year 1993.

(E) ASSESSMENT PAYMENTS BY EGG PRODUCERS TO EGG HANDLERS; IMPLEMENTATION PURSUANT TO ORDER OF BOARD; DETERMINATION OF AMOUNT; COLLECTION OF ASSESSMENT; RATE LIMITATION; MAINTENANCE OF SUIT FOR COLLECTION

(1) Providing that each egg producer shall pay to the handler of eggs designated by the order of the Egg Board pursuant to regulations issued under the order, an assessment based upon the number of cases of commercial eggs handled for the account of such producer, in the manner as prescribed by the order, for such expenses and expenditures—including provision for a reasonable reserve and those administrative costs incurred by the Department after an order has been promulgated under this chapter—as the Secretary finds are reasonable and likely to be incurred by the Egg Board under the order during any period specified by him. Such handler shall collect such assessment from the producer and shall pay the same to the Egg Board in the manner as prescribed by the order.

(2)(A) The assessment rate shall be prescribed by the order. The rate shall not exceed 20 cents per case (or the equivalent of a case) of commercial eggs.

(B) The order may be amended to increase the rate of assessment if the increase is recommended by the Egg Board and approved by egg producers in a referendum conducted under section 2708(b) of this title.

(C) The order may be amended to decrease the assessment rate after public notice and opportunity for comment in accordance with section 553 of title 5 and without regard to sections 556 and 557 of such title.

(3) To facilitate the collection of such assessments, the order of the Egg Board may designate different handlers or classes of handlers to recognize differences in marketing practices or procedures utilized in the industry. The Secretary may maintain a suit against any person subject to the order for the collection of such assessment, and the several district courts

of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy.

(F) RECORDKEEPING AND REPORTING REQUIREMENTS; ACCOUNTING BY BOARD

Providing that the Egg Board shall maintain such books and records and prepare and submit such reports from time to time, to the Secretary as he may prescribe, and for appropriate accounting by the Egg Board with respect to the receipt and disbursement of all funds entrusted to it.

(G) CONTRACTS OR AGREEMENTS BY BOARD FOR IMPLEMENTATION OF ORDERS AND PAYMENT OF COSTS; REQUIRED PROVISIONS

Providing that the Egg Board, with the approval of the Secretary, may enter into contracts or agreements for development and carrying out of the activities authorized under the order pursuant to section 2706(a) and (b) of this title and for the payment of the cost thereof with funds collected pursuant to the order. Any such contract or agreement shall provide that such contractors shall develop and submit to the Egg Board a plan or project together with a budget or budgets which shall show estimated costs to be incurred for such plan or project, and that any such plan or project shall become effective upon the approval of the Secretary, and further, shall provide that the contracting party shall keep accurate records of all of its transactions and make periodic reports to the Egg Board of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require.

(H) RESTRICTION ON USE OF FUNDS COLLECTED BY BOARD FOR POLITICAL PURPOSES

Providing that no funds collected by the Egg Board under the order shall in any manner be used for the purpose of influencing governmental policy or action, except as provided by subsection (a)(4) of this section.

(I) COMPENSATION AND EXPENSES OF MEMBERS OF BOARD

Providing that the Board members, and alternates therefor, shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Board.

(J) REASONABLE COSTS LIMITATION FOR COLLECTION OF ASSESSMENTS AND FOR AN ADMINISTRATIVE STAFF

Providing that the total costs incurred by the Egg Board for a fiscal year in collecting producer assessments and having an administrative staff shall not exceed an amount of the projected total assessments to be collected by the Egg Board for such fiscal year that the Secretary determines to be reasonable.

(Pub. L. 93-428, §8, Oct. 1, 1974, 88 Stat. 1174; Pub. L. 96-276, §§2-4, June 17, 1980, 94 Stat. 541; Pub. L. 100-575, §2, Oct. 31, 1988, 102 Stat. 2895; Pub. L. 103-188, §§2(a), 3, Dec. 14, 1993, 107 Stat. 2256, 2257.)

Amendments

1993—Subsec. (d). Pub. L. 103-188, §3, inserted at end "In preparing a budget for each of the 1994 and subsequent fiscal years, the Egg Board shall, to the maximum extent practicable, allocate a proportion of funds for research projects under this chapter that is comparable to the proportion of funds that were allocated for research projects under this chapter in the budget of the Egg Board for fiscal year 1993."

Subsec. (e). Pub. L. 103–188, §2(a), designated first and second sentences of existing provisions as par. (1), added par. (2) and struck out third and fourth sentences of existing provisions which read as follows: "For fiscal year 1981, the rate of assessment prescribed by the order shall not exceed 7½ cents per case of commercial eggs or the equivalent thereof. For each fiscal year thereafter, the rate of assessment may be increased by no more than three-quarters of a cent per case of commercial eggs or the equivalent thereof: *Provided*, That the rate of assessment shall not exceed 10 cents per case of commercial eggs or the equivalent thereof.", and designated fifth and sixth sentences of existing provisions as par. (3).

1988—Subsec. (j). Pub. L. 100–575 added subsec. (j).

1980—Subsec. (a). Pub. L. 96–276, §2, substituted "twenty" for "eighteen".

Subsec. (b). Pub. L. 96–276, §3, extended membership on the Egg Board to two consumers or representatives of consumers, and their alternates, when approved by egg producers voting in a referendum on an amendment to the order, to be appointed by the Secretary from nominations submitted by eligible organizations or otherwise when necessary to properly represent the interest of consumers, the consumer members to be voting members.

Subsec. (e). Pub. L. 96–276, §4, substituted rate of assessment provisions prescribing for fiscal year 1981 a rate not exceeding 7½ cents per case of commercial eggs or its equivalent, authorizing increases of three-quarters of a cent per case for each fiscal year thereafter, but limiting maximum rate to 10 cents per case for prior limitation of the rate of assessment to 5 cents per case.

§2708. Referendum among egg producers

(A) PRODUCER APPROVAL OF ORDER

The Secretary shall conduct a referendum among egg producers not exempt hereunder who, during a representative period determined by the Secretary, have been engaged in the production of commercial eggs, for the purpose of ascertaining whether the issuance of an order is approved or favored by such producers. No order issued pursuant to this chapter shall be effective unless the Secretary determines that the issuance of such order is approved or favored by not less than two-thirds of the producers voting in such referendum, or by a majority of the producers voting in such referendum if such majority produced not less than two-thirds of the commercial eggs produced during a representative period defined by the Secretary.

(B) REQUEST BY EGG BOARD FOR REFERENDUM

(1) If the Egg Board determines, based on a scientific study, marketing analysis, or other similar competent evidence, that an increase in the assessment rate is needed to ensure that assessments under the order are set at an appropriate level to effectuate the policy declared in section 2701 of this title, the Egg Board may request that the Secretary conduct a referendum, as provided in paragraph (2).

(2)(A) If the Egg Board requests the Secretary to conduct a referendum under paragraph (1) or (3), the Secretary shall conduct a referendum among egg producers not exempt from this chapter who, during a representative period determined by the Secretary, have been engaged in the production of commercial eggs, for the purpose of ascertaining whether the producers approve the change in the assessment rate proposed by the Egg Board.

(B) The change in the assessment rate shall become effective if the change is approved or favored by—

(i) not less than two-thirds of the producers voting in the referendum; or

(ii) a majority of the producers voting in the referendum, if the majority produced not less than two-thirds of all the commercial eggs produced by the producers voting during a representative period defined by the Secretary.

(3)(A) In the case of the order in effect on December 14, 1993, the Egg Board shall determine under paragraph (1), as soon as practicable after December 14, 1993, whether to request that the Secretary conduct a referendum under paragraph (2).

(B) If the Egg Board makes such a request on the basis of competent evidence, as provided in paragraph (1), the Secretary shall conduct the referendum as soon as practicable, but not later than—

(i) 120 days after receipt of the request from the Egg Board; or

(ii) if the Director of the Office of Management and Budget determines that the change in the assessment rate is a significant action that requires review by the Director, 170 days after receipt of the request from the Egg Board.

(4) Notwithstanding any other provision of this chapter, if an increase in the assessment rate and the authority for additional increases is approved by producers in a referendum conducted under this subsection, the Secretary shall amend the order to reflect the vote of the producers. The amendment to the order shall become effective on the date of issuance of the amendment.

(C) NONAPPROVAL OF AMENDMENTS AS NOT INVALIDATING ORDER

The failure of egg producers to approve an amendment to any Egg Research and Promotion Order shall not be deemed to invalidate such order.

(Pub. L. 93–428, §9, Oct. 1, 1974, 88 Stat. 1176; Pub. L. 96–276, §5, June 17, 1980, 94 Stat. 541; Pub. L. 103–188, §2(b), Dec. 14, 1993, 107 Stat. 2256.)

Amendments

1993—Pub. L. 103–188 designated first and second sentences of existing provisions as subsec. (a), added subsec. (b), and designated last sentence of existing provisions as subsec. (c).

1980—Pub. L. 96–276 provided that failure of egg producers to approve an amendment to any Egg Research and Promotion Order shall not be deemed to invalidate the order.

§2709. Termination or suspension of orders

(A) AUTHORITY OF SECRETARY

The Secretary shall, whenever he finds that any order issued under this chapter, or any provisions thereof, obstructs or does not tend to effectuate the declared policy of this chapter, terminate or suspend the operation of such order or such provisions thereof.

(B) REFERENDUM TO TERMINATE OR SUSPEND; ELIGIBLE VOTERS; REQUIREMENTS FOR APPROVAL; TERMINATION OR SUSPENSION DATE

The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 per centum or more of the number of egg producers voting in the referendum approving the order, to determine whether such producers favor the termination or suspension of the order, and he shall suspend or terminate such order six months after he determines that suspension or termination of the order is approved or favored by a majority of the egg producers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production of commercial eggs, and who produced more than 50 per centum of the volume of eggs produced by the egg producers voting in the referendum.

(C) TERMINATION OR SUSPENSION NOT TO BE CONSIDERED AS ORDER

The termination or suspension of any order, or any provision thereof, shall not be considered an order within the meaning of this chapter.

(Pub. L. 93-428, §10, Oct. 1, 1974, 88 Stat. 1176.)

§2710. Applicability of provisions to amendments to orders

The provisions of this chapter applicable to orders shall be applicable to amendments to orders.

(Pub. L. 93-428, §11, Oct. 1, 1974, 88 Stat. 1176.)

§2711. Exempted egg producers and breeding hen flocks; conditions and procedures

(A) IN GENERAL

The following shall be exempt from the specific provisions of this chapter under such conditions and procedures as may be prescribed in the order or rules and regulations issued thereunder:

(1) Any egg producer whose aggregate number of laying hens at any time during a 3-consecutive-month period immediately prior to the date assessments are due and payable has not exceeded 75,000 laying hens, as determined under subsection (b).

(2) Any flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks.

(B) NUMBER OF LAYING HENS

(1) IN GENERAL

For purposes of subsection (a)(1), the aggregate number of laying hens owned by an egg producer shall include—

(A) in cases in which the producer is an individual, laying hens owned by such producer or members of such producer's family that are effectively under the control of such producer, as determined by the Secretary;

(B) in cases in which the producer is a general partnership or similar entity, laying hens owned by the entity and all partners or equity participants in the entity; and

(C) in cases in which the producer holds 50 percent or more of the stock or other beneficial interest in a corporation, joint stock company, association, cooperative, limited partnership, or other similar entity, laying hens owned by the entity.

Ownership of laying hens by a trust or similar entity shall be considered ownership by the beneficiaries of the trust or other entity.

(2) STOCK OR BENEFICIAL INTERESTS

For purposes of paragraph (1)(C), stock or other beneficial interest in an entity that is held by—

(A) members of the producer's family described in paragraph (1)(A);

(B) a general partnership or similar entity in which the producer is a partner or equity participant;

(C) the partners or equity participants in an entity of the type described in subparagraph (B); or

(D) a corporation, joint stock company, association, cooperative, limited partnership, or other similar entity in which the producer holds 50 percent or more of the stock or other beneficial interests,

shall be considered as held by the producer.

(Pub. L. 93–428, §12, Oct. 1, 1974, 88 Stat. 1176; Pub. L. 101–220, §3(a), Dec. 12, 1989, 103 Stat. 1877; Pub. L. 103–188, §4, Dec. 14, 1993, 107 Stat. 2257.)

Amendments

1993—Subsec. (a)(1). Pub. L. 103–188 substituted "75,000" for "30,000".

1989—Pub. L. 101–220 amended section generally. Prior to amendment, section read as follows: "The following may be exempt from specific provisions of this chapter under such conditions and procedures as may be prescribed in the order or rules and regulations issued thereunder:

"(a) Any egg producer whose aggregate number of laying hens at any time during a three-consecutive-month period immediately prior to the date assessments are due and payable has not exceeded three thousand laying hens.

"(b) Any flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks."

Egg Promotion and Research Order

Pub. L. 101–220, §3(b), Dec. 12, 1989, 103 Stat. 1878, provided that:

"(1) Amendment.—The Secretary of Agriculture shall issue an amendment to the egg promotion and research order issued under the Egg Research and Consumer Information Act (7 U.S.C. 2701 et seq.) to implement the amendments made by this section [amending this section]. Such amendment shall be issued after public notice and opportunity for comment in accordance with section 553 of title 5, United States Code, and without regard to sections 556 and 557 of such title. The Secretary shall issue a proposed amendment to such order not later than 30 days after the date of enactment of this Act [Dec. 12, 1989].

"(2) Effective date.—The amendment to the egg promotion and research order required by paragraph (1) shall become effective no later than March 1, 1990, and shall not be subject to a referendum under the Egg Research and Consumer Information Act (7 U.S.C. 2701 et seq.)."

§2712. Refund of assessment from Egg Board

(A) PROCEDURES

Notwithstanding any other provisions of this chapter except as provided in subsection (b), any egg producer against whose commercial eggs any assessment is made and collected from him under authority of this chapter and who is not in favor of supporting the programs as provided for herein shall have the right to demand and receive from the Egg Board a refund of such assessment: *Provided*, That such demand shall be made personally by such producer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary but in no event more than ninety days after the end of the month in which the assessments are due and collectable, and upon submission of proof satisfactory to the Board that the producer paid the assessment for which refund is sought, and any such refund shall be made within sixty days after demand is received therefor.

(B) AMENDMENT OF ORDER TO ELIMINATE PRODUCER REFUND; EFFECTIVE DATE; REFUND REFERENDUM; ESCROW ACCOUNT; REQUIREMENTS FOR ONE-TIME REFUND; PRORATION OF REFUNDS

(1) With regard to each order issued under this chapter that provides for a producer refund, the Secretary shall amend such order to eliminate such refund.

(2) Notwithstanding sections 2708 and 2710 of this title, an amendment made by the Secretary pursuant to paragraph (1)—

(A) shall take effect on the date that the Secretary issues the amendment; and

(B) shall not be subject to a referendum under section 2708 or 2709(b) of this title until the end of the 18-month period beginning on such effective date.

(3) During the period prior to the referendum of an amendment issued pursuant to paragraph (1) and beginning on the effective date of such amendment, the Egg Board shall—

(A) establish an escrow account to be used for assessment refunds; and

(B) place funds in such account in accordance with paragraph (4).

(4) The Egg Board shall place in such account, from assessments collected during the period referred to in paragraph (3), an amount equal to the product obtained by multiplying the total amount of assessments collected during such period by 10 percent.

(5) Subject to paragraphs (6), (7), and (8), any producer shall have the right to demand and receive from the Egg Board a one-time refund of assessments collected from such producer during the period referred to in paragraph (3) if—

(A) such producer is responsible for paying such assessments;

(B) such producer does not support the program established under this chapter; and

(C) the amendment issued pursuant to paragraph (1) is not approved pursuant to a referendum under section 2708 or 2709(b) of this title.

(6) Such demand shall be made in accordance with regulations, on a form, and within a time period prescribed by the Egg Board.

(7) Such refund shall be made on submission of proof satisfactory to the Egg Board that such producer paid the assessment for which refund is demanded.

(8) If the amount in the escrow account required to be established by paragraph (3) is not sufficient to refund the total amount of assessments demanded by all eligible producers under this subsection and the amendment issued pursuant to paragraph (1) is not approved pursuant to a referendum under section 2708 or 2709(b) of this title, the Egg Board shall prorate the amount of such refunds among all eligible producers who demand such refund.

(Pub. L. 93-428, §13, Oct. 1, 1974, 88 Stat. 1177; Pub. L. 100-575, §3, Oct. 31, 1988, 102 Stat. 2895.)

Amendments

1988—Subsec. (a). Pub. L. 100-575 designated existing provisions as subsec. (a), inserted "except as provided in subsection (b) of this section", and added subsec. (b).

§2713. Administrative review of orders; petition; hearing; judicial review

(a) Any person subject to any order may file a written petition with the Secretary, stating that any such order or any provisions of such order or any obligations imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(b) The district courts of the United States in any district in which such person is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction to review

such ruling, provided a complaint for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to subsection (a) of this section shall not impede, hinder, or delay the United States or the Secretary from obtaining relief pursuant to section 2714(a) of this title.

(Pub. L. 93-428, §14, Oct. 1, 1974, 88 Stat. 1177.)

§2714. Civil enforcement proceedings

(A) ENFORCEMENT OF ORDERS BY DISTRICT COURT; REFERRAL OF CIVIL ACTIONS TO ATTORNEY GENERAL

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 pursuant to this chapter. Any civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action: *Provided*, That nothing in this chapter shall be construed as requiring the Secretary to refer to the Attorney General violations of this chapter whenever he believes that the administration and enforcement of the program would be adequately served by administrative action pursuant to subsection (b) of this section or suitable written notice or warning to any person committing such violations.

(B) CIVIL PENALTY; REVIEW BY COURT OF APPEALS; NONCOMPLIANCE WITH FINAL ORDER; REFERRAL TO ATTORNEY GENERAL

(1) Any person who violates any provisions of any order or regulation issued by the Secretary pursuant to this chapter, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of him thereunder, may be assessed a civil penalty by the Secretary of not less than \$500 or more than \$5,000 for each such violation. Each violation shall be a separate offense. 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 or violations. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing before the Secretary with respect to such violation, and 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 United States court of appeals.

(2) Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under paragraph (1) of this subsection may obtain review in the court of appeals of the United States for the circuit in which such person resides or has his place of business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence.

(3) Any person who fails to obey a cease and desist order after it has become final and unappealable, or after the appropriate court of appeals has entered 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 pursuant to the procedures specified in paragraphs (1) and (2) of this subsection, of not more than \$500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

(4) 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 court of appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(Pub. L. 93–428, §15, Oct. 1, 1974, 88 Stat. 1177; Pub. L. 96–276, §6, June 17, 1980, 94 Stat. 541.)

Amendments

1980—Subsec. (a). Pub. L. 96–276 substituted "civil action authorized to be brought under this subsection" for "civil action authorized to be brought under this chapter", struck out "minor" before "violation of this chapter", and inserted reference to administrative action pursuant to subsection (b).

Subsec. (b). Pub. L. 96–276 substituted provisions authorizing Secretary to assess civil penalty of not less than \$500 or more than \$5,000 per violation, to issue cease and desist orders for violations of regulations or orders issued by Secretary, and, after review in court of appeals, to assess civil penalty of \$500 per offense for failure to abide by duly issued cease and desist order, and authorized actions by Attorney General in appropriate district courts to collect assessed penalties, for provisions authorizing penalties of up to \$1,000 per offense for willful violations of this chapter, recoverable in civil action brought by the United States.

§2715. Certification of organizations; required contents of report as criteria

The eligibility of any organization to represent commercial egg producers of any egg producing area of the United States to request the issuance of an order under section 2704 of this title, and to participate in the making of nominations under section 2707(b) of this title shall be certified by the Secretary. Certification shall be based, in addition to other available information, upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to, the following:

(a) Geographic territory covered by the organization's active membership.

(b) Nature and size of the organization's active membership, proportion of total of such active membership accounted for by producers of commercial eggs, a chart showing the egg production by State in which the organization has members, and the volume of commercial eggs produced by the organization's active membership in each such State,

(c) The extent to which the commercial egg producer membership of such organization is represented in setting the organization's policies,

(d) Evidence of stability and permanency of the organization,

(e) Sources from which the organization's operating funds are derived,

(f) Functions of the organization, and

(g) The organization's ability and willingness to further the aims and objectives of this chapter: *Provided, however,* That the primary consideration in determining the eligibility of an organization shall be whether its commercial egg producer membership consists of a substantial number of egg producers who produce a substantial volume of commercial eggs. The Secretary shall certify any organization which he finds to be eligible under this section and his determination as to eligibility shall be final. Where more than one organization is certified in any geographic area, such organizations may caucus to determine the area's nominations under section 2707(b) of this title.

(Pub. L. 93–428, §16, Oct. 1, 1974, 88 Stat. 1178.)

§2716. Regulations

The Secretary is authorized to make regulations with force and effect of law, as may be necessary to carry out the provisions of this chapter and the powers vested in him by this chapter.

(Pub. L. 93–428, §17, Oct. 1, 1974, 88 Stat. 1178.)

§2717. Investigations by Secretary; oaths and affirmations; subpoenas; judicial enforcement; contempt proceedings; service of process

The Secretary may make such investigations as he deems necessary for the effective carrying out of his responsibilities under this chapter or to determine whether an egg producer, processor, or other seller of commercial eggs or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provisions of this chapter, or of any order, or rule or regulation issued under this chapter. For the purpose of such investigation, the Secretary is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which 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. In case of contumacy by, or refusal to obey a subpoena to, any person, including an egg producer, 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 requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

(Pub. L. 93–428, §18, Oct. 1, 1974, 88 Stat. 1178.)

§2718. Authorization of appropriations

There is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated such funds as are necessary to carry out the provisions of this chapter. The funds so appropriated shall not be available for payment of the expenses or expenditures of the Egg Board in administering any provisions of any order issued pursuant to the terms of this chapter.

(Pub. L. 93–428, §20, Oct. 1, 1974, 88 Stat. 1179.)