

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.)

Editorial Notes

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.)

Editorial Notes

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."

Statutory Notes and Related Subsidiaries

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