

information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (e)(12) (Computer Matching) if the agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(j) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

(k) From subsection (h) (Legal Guardians) the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

Dated: September 7, 2010.

Mary Ellen Callahan,
Chief Privacy Officer, Department of
Homeland Security.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1250

[Doc. No. AMS-PY-08-0032]

Amendment to Egg Research and Promotion Order and Regulations To Increase the Rate of Assessment and Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and notice of referendum.

SUMMARY: This proposed rule would amend the Egg Research and Promotion Order (Order) to increase the assessment rate on egg producers paying assessments to the American Egg Board (AEB) from 10 cents to 15 cents per 30-dozen case of commercial eggs, provided the increase is approved by egg producers voting in a referendum. This proposal would also make a conforming amendment to the regulations. Notice also is hereby given that the Agricultural Marketing Service (AMS) will conduct a referendum to determine whether egg producers favor the increase in the assessment rate.

DATES: For the purpose of determining voter eligibility, the representative production period is the period January 1, 2009, through December 31, 2009. The referendum will be held during the period October 29 through November 19, 2010.

FOR FURTHER INFORMATION CONTACT: Angela C. Snyder, Research and Promotion; Standards, Promotion & Technology Branch; Poultry Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 3932-S, Washington, DC 20250-0256; *telephone:* (202) 720-4476; *fax:* (202) 720-2930; or *e-mail:* Angie.Snyder@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have a retroactive effect.

The Egg Research and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Section 14 of the Act allows those subject to the Order to file a written

petition with the Secretary of Agriculture (Secretary) if they believe that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with the law. In any petition, the person may request a modification of the Order or an exemption from the Order. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Initial Regulatory Flexibility Act Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601-612], AMS has considered the economic impact of this action on the small producers that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened.

According to AEB, approximately 245 producers are subject to the provisions of the Order, including paying assessments. Under the current Order, producers in the 48 contiguous United States and the District of Columbia who own more than 75,000 laying hens each currently pay a mandatory assessment of 10 cents per 30-dozen case of eggs. Handlers are responsible for collecting and remitting assessments to AEB. There are approximately 160 egg handlers who collect assessments. Assessments under the program are used by AEB to finance promotion, research, and consumer information programs designed to increase consumer demand for eggs in domestic and international markets. At the current rate of 10 cents per 30-dozen case, assessments generate about \$20 million in annual revenues. The Order is administered by AEB under supervision of the U.S. Department of Agriculture.

In 13 CFR part 121, the Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms as those having annual receipts of no more than \$7 million. Under this definition, the vast majority of the egg producers that would be affected by this rule would not be considered small

entities. Producers owning 75,000 or fewer laying hens are eligible to be exempt from this program.

Given that a laying hen produces approximately 22 dozen eggs per year, production from 75,000 laying hens would result in 1.65 million dozen eggs. With a farm-gate price of \$0.837 per dozen, total annual receipts would be \$1.83 million, which is well above the definition used to describe a small farm. The wholesale price of eggs would have to be approximately \$0.45 per dozen before a producer with 75,000 hens could be classified as a small farm under the SBA definition.

The present 10-cent assessment is equivalent to approximately 0.28 percent of the wholesale price of a 30-dozen case of large eggs. An assessment rate of 15 cents per 30-dozen case would be equivalent to approximately 0.42 percent of the wholesale price of a 30-dozen case of large eggs. This wholesale price is based on the price per dozen Grade A large egg price reported in the "Weekly Combined Regional Shell Eggs" report (WA_PY001) published by USDA's Poultry Market News and Analysis Branch.

According to AEB, additional revenue is required in order to sustain and expand its programs. This proposed increase is consistent with sections 8 and 9 of the Act (7 U.S.C. 2701–2718) that permit AEB to recommend an increase in the assessment rate up to 20 cents per case and request that a referendum be held if such an increase is supported by a scientific study, marketing analysis, or other similar competent evidence.

AEB conducted a marketing analysis the results of which support a 5-cent increase in the assessment rate (to a total of 15 cents) to effectively strengthen AEB's programs. The marketing analysis addressed the need for a funding increase due to the following factors: (1) Inflation, including the overall increases in all costs associated with doing business since the last increase in AEB's assessment rate in 1995; (2) AEB's advertising program, including the increased cost of advertising expenditures as well as new media outlets; (3) AEB's nutrition program, including additional research needed to examine both the nutritional benefits of eggs and the relationship between eggs and increased serum cholesterol levels and heart disease risk; and (4) AEB's food safety program, specifically expanding research to cover food safety as the public becomes more concerned about food safety issues.

With the proposed increased assessment, the financial commitment

of the U.S. egg industry for generic research and promotion activity could increase by 50 percent, from approximately \$20 million to an estimated \$30 million annually.

AEB considered several alternatives, including keeping the current 10 cents per 30-dozen case, an increase to 20 cents per 30-dozen case, and an increase to 15 cents per 30-dozen case. AEB ultimately concluded that not increasing the rate would not allow AEB even to sustain its programs effectively, and that an increase to 15 cents was sufficient to maintain and expand its promotion, research, and consumer information programs consistent with the purposes of the Act.

This rule does not impose additional recordkeeping requirements on egg producers or collecting handlers. There are no Federal rules that duplicate, overlap, or conflict with this rule.

In accordance with OMB regulation 5 CFR part 1320 which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that are imposed by the Order and Rules and Regulations have been approved previously under OMB control number 0581–0093. This rule does not result in a change to those information collection and recordkeeping requirements.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of these proposed amendments to the Order and Rules and Regulations on small entities. We previously invited comments concerning potential effects of these amendments on small businesses (74 FR 48568). Comments on the Regulatory Flexibility Analysis are discussed below under Proposed Changes.

Background

The Egg Research and Consumer Information Act (7 U.S.C. 2701–2718) (hereinafter referred to as the "Act") established a national egg research and promotion program—administered by AEB—that is financed through industry assessments and subject to oversight by AMS. This program of promotion, research, and consumer information is designed to strengthen the position of eggs in the marketplace and to establish, maintain, and expand markets for eggs.

This program is financed by assessments on egg producers owning more than 75,000 laying hens. The Order specifies that handlers are responsible for collecting and remitting the producer assessments to AEB, reporting their handling of eggs, and maintaining records necessary to verify their reports.

This rule proposes to increase the assessment rate on egg producers from 10 cents to 15 cents per case of commercial eggs. Only producers in the contiguous United States and the District of Columbia are subject to the program, and producers owning 75,000 or fewer laying hens are eligible to obtain an exemption from paying assessments.

In order to sustain and expand the promotion, research, and consumer information programs at present levels, AEB believes that additional revenue is required. The proposed increase is estimated to generate \$10 million in new revenue, depending upon production levels. Currently, AEB collects approximately \$20 million per year. A 5-cent increase in the assessment rate is expected to increase the total to about \$30 million per year.

Section 8 of the Act provides for an assessment rate up to 20 cents per case. Section 1250.347 currently provides for an assessment at a rate not to exceed 10 cents per 30-dozen case of eggs, or equivalent thereof. Any increase from the current 10-cent rate established in the Order must be approved by egg producers voting in a referendum. Section 9 of the Act provides that if AEB determines, based on a scientific study, marketing analysis, or other similar competent evidence, that an increase in the assessment rate is necessary to effectuate the declared policy of the Act, AEB may recommend the increase to the Secretary and request that a referendum be held to vote on the assessment increase.

Marketing Analysis and AEB Recommendation

Consequently, AEB conducted a marketing analysis the results of which support a 5-cent increase in the assessment rate to a total of 15 cents to effectively strengthen AEB's programs.

Because of inflation, AEB estimates that an estimated \$14.7 million would be required to duplicate the same media program in 2008 as was conducted for \$7.9 million in 1995, when the assessment rate was last increased.

Despite the success of the advertising program, AEB's media budget has not kept pace with media inflation. Over the last 10 years, the budget has remained relatively flat, averaging roughly \$7.9 million annually. Meanwhile, the cost of media has steadily increased at the rate of 5 percent each year. If AEB's advertising budget matched inflation, it would be more than 50 percent larger today than it is, and it would reach \$22 million in 2017. By not keeping up with inflation, each year AEB has been

reaching fewer consumers and less often.

Ten years ago, AEB expanded its research to include studies on the nutritional benefits of eggs, including satiety and weight control; bioavailability of egg nutrients; egg protein and muscle retention in the elderly; egg lutein and eye health; egg choline and brain development, dietary choline requirements, and the relationship between choline and reduction of heart-disease risk; and eggs and school performance.

The expansion of the research programs over the past decade has been an essential component of AEB's mission. To continue to fund the best and most relevant research projects, AEB needs to increase its level of research funding to account for the rising cost of studies today compared to 10 years ago, the increased number of research topics, and publicizing research findings.

In addition to research into egg nutrients, AEB has also funded research and other programs related to food safety as the public's food security concerns have increased. AEB has funded research on Salmonella, avian influenza, transportation systems, cooking methods, and statistical analyses. Not only do these studies deal with current food safety issues, but they also help the egg industry prepare for and address potential risks.

At the March 27, 2008, board meeting, AEB members voted unanimously to recommend that the assessment rate be increased from 10 cents to 15 cents per 30-dozen case of commercial eggs.

Proposed Changes

This rule would amend the Order as well as the implementing Rules and Regulations. Section 1250.347 of the Order states that the assessment rate is not to exceed 10 cents per 30-dozen case of eggs, provided that no more than such assessment shall be made on any case of eggs. Section 1250.514 provides for an assessment rate of 10 cents per case of commercial eggs handled for the account of each producer, with each case being subject to assessment only once. Accordingly, section 1250.347 of the Order and section 1250.514 of the Rules and Regulations would be revised to reflect an assessment rate of 15 cents per case. In order to better reflect the provisions of the Act, section 1250.347 of the Order would be amended to reflect both the maximum assessment rate authorized under the Act as well as the assessment rate itself.

A proposed rule to increase the assessment rate in the Order from 10 cents to 15 cents per case was published

in the **Federal Register** on September 25, 2009 (74 FR 48568). Comments were solicited from interested parties through November 24, 2009. Four comments were received: Two from egg producer companies opposing the increase, one from a State egg association, and one from a member of the public.

One commenter, a large egg producer company, stated that AEB should be required to show the effectiveness of current programs before seeking to expand those programs. AEB employs a number of mechanisms to gauge the effectiveness of its programs, its producer members monitor those programs, and this information is communicated to the entire industry.

The commenter also stated that only one sentence in the proposal was dedicated to the marketing analysis conducted by AEB. Further, the commenter stated that a new notice should be published to include additional details of how the analysis was conducted. We disagree. AMS provided a reasonable and appropriate discussion of the key points of the marketing analysis. The marketing analysis was conducted by AEB under the supervision of AEB's Executive Committee and is available from AEB. Further, AMS does not believe that a revised proposed rule is necessary or warranted. Additionally, any changes made as a result of amending the Order provision will not become effective unless favored by the egg industry in a referendum.

The commenter further stated that the proposed rule failed to provide justification for what programs AEB conducts with its current budget. We disagree. AMS cited a number of AEB's current programs that are included in the summary of the marketing analysis. AEB informs the industry of its activities through a variety of producer communications, industry meetings, and other methods.

The commenter also challenged the figures used in the Initial Regulatory Flexibility Analysis. AMS reviewed this issue and used a farm-gate price per dozen in the analysis contained herein.

Additionally, the commenter stated that the rule did not contain an analysis of how the proposed increase affects the long-term profit margins of producers. The Initial Regulatory Flexibility Act analysis discussed and compared the equivalency of the current 10-cent assessment and the proposed 15-cent assessment on wholesale prices.

The commenter also stated that the proposal gave no mention of how AEB currently budgets and spends assessment funds and that this must be addressed in a proposed rule so that the

public can make an informed decision. We disagree. The discussion of the marketing analysis and AEB's recommendation in the proposed rule addresses this concern. Further, AEB regularly communicates with all egg producers about how funds are budgeted and expended.

The same commenter stated that the proposed rule's mention of food safety as partial justification for the assessment increase was misleading because AEB no longer maintained a food safety function. We disagree. While certain food safety work, primarily with the Safe Quality Foods program, is not conducted by AEB, there are still food safety programs under AEB. These programs include food safety research, risk assessment research, consumer education, and work with foodservice institutions and culinary schools, among others.

Finally, the commenter expressed opposition to a referendum and an increase in the assessment rate. We disagree. A referendum will be conducted in accordance with the provisions of the Act.

A second commenter, an egg producer company, requested that the assessment increase be denied because food safety was moved to another industry organization and because of the financial burden on the industry. We disagree. As previously discussed, food safety programs currently are conducted by AEB. Further, the proposed rule took into account the impact of the assessment increase on the industry and discussed the need for additional revenue to sustain and expand its programs to the benefit of the industry.

A third commenter, a member of the public, posed a number of questions that concerned the effectiveness of the program in relation to egg consumption, egg prices, program costs and benefits, and research studies produced. In addition, the commenter suggested an option for the increased assessment, stating that it should be appropriated back to the States or an option to select which committee can use the funds. This rule would increase the assessment rate from 10 cents to 15 cents per 30-dozen case of commercial eggs. As previously discussed, AEB regularly communicates with all egg producers about how funds are budgeted and expended. Consistent with the Act, AEB conducted a marketing analysis the results of which support a 5-cent increase in the assessment rate to effectively strengthen AEB's programs. With regard to the commenter's suggested options, the AEB budget process would determine where such funds would be expended.

A final comment was received from a State egg association. While the commenter declined to comment on whether the assessment should be increased, the commenter wrote in favor of AEB's programs. The commenter also suggested increasing support funding at the State level for promotion activities. As previously discussed, this would be up to producer members of the AEB to determine.

In addition, the commenter suggested changes concerning board membership that are outside the scope of the proposed rule.

The Act provides that AEB may recommend an increased assessment rate to the Secretary. In accordance with the provisions of the Act, AEB has done so, and the assessment increase provided for herein will be subject to a referendum vote.

The proposed rule published on September 25, 2009, stated that producers owning 75,000 or fewer laying hens were exempt and ineligible to vote, as producers owning 75,000 or fewer laying hens are eligible to receive an exemption. However, § 1250.530 of the regulations provide that, to obtain an exemption, producers must file an exemption statement with their collecting handler(s) and provide a copy to AEB. Producers who would qualify for an exemption but who are not certified for exemption and who pay assessments are not exempt and therefore eligible to vote in the referendum. The referendum order so states.

Referendum Order

It is hereby directed that a referendum be conducted among eligible egg producers to determine whether such producers favor the assessment increase.

The procedure applicable to the referendum shall be the procedure for the conduct of referenda in connection with the Egg Research and Promotion Order (7 CFR 1250.200) as published in this issue of the **Federal Register**. The referendum period shall be from October 29 through November 19, 2010.

For the purpose of determining voter eligibility, the representative period is the period January 1 through December 31, 2009. Producers engaged in commercial egg production are eligible to vote in the referendum if they (a) owned more than 75,000 laying hens during that period, or (b) owned 75,000 or fewer laying hens, are not certified as exempt producers, and paid assessments.

For the increase to be approved, it must be approved or favored by at least two-thirds of the producers voting in the referendum, or a majority of such

producers if they represent at least two-thirds of the commercial eggs produced by those voting.

The agents of the Secretary to conduct such referendum are hereby designated to be Angela C. Snyder and Sara D. Lutton, Research and Promotion; Standards, Promotion & Technology Branch; Poultry Programs, AMS, USDA; 1400 Independence Avenue, SW., Room 3932-S Stop 0256; Washington, DC 20250-20549; telephone (202) 720-4476; fax (202) 720-2930, or e-mail at Angie.Snyder@ams.usda.gov. The agent may appoint subagents to assist in performing duties related to the referendum.

Ballots, instructions, eligibility requirements, and other information pertinent to the referendum will be mailed to all known eligible egg producers.

If any eligible voter does not receive a ballot by the beginning date of the referendum period, such individual may obtain a ballot from the address provided in the information contact section of this rule. Single copies of the complete text of the proposed amendments to the Egg Research and Promotion Order and Rules and Regulations may also be obtained from this address.

List of Subjects in 7 CFR Part 1250

Administrative practice and procedure, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble 7 CFR part 1250 is proposed to be amended as follows:

PART 1250—EGG RESEARCH AND PROMOTION

1. The authority citation of 7 CFR part 1250 continues to read as follows:

Authority: 7 U.S.C. 2701-2718 and 7 U.S.C. 7401.

2. Section 1250.347 is revised to read as follows:

§ 1250.347 Assessments.

Each handler designated in § 1250.349 and pursuant to regulations issued by the Board shall collect from each producer, except for those producers specifically exempted in § 1250.348, and shall pay to the Board at such times and in such manner as prescribed by regulations issued by the Board an assessment at a rate of 15 cents per 30-dozen case of eggs, or the equivalent thereof, for such expenses and expenditures, including provisions for a reasonable reserve and those administrative costs incurred by the

Department of Agriculture after this subpart is effective, as the Secretary finds are reasonable and likely to be incurred by the Board and the Secretary under this subpart, except that no more than one such assessment shall be made on any case of eggs. The assessment rate shall not exceed 20 cents per case (or the equivalent of a case) of commercial eggs.

3. In section 1250.514, the first sentence is revised to read as follows:

§ 1250.514 Levy of assessments.

An assessment rate of 15 cents per case of commercial eggs is levied on each case of commercial eggs handled for the account of each producer. * * *

Dated: September 3, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010-22643 Filed 9-9-10; 8:45 am]

BILLING CODE 3410-02-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33-9138, 34-62841, 39-2470, IA-3078, IC-29408; File No. S7-20-10]

List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of list of rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is today publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on them.

DATES: Comments should be submitted by December 15, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-20-10 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.