

(b) Number of laying hens**(1) In general**

For purposes of subsection (a)(1) of this section, 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

Section 3(b) of Pub. L. 101-220 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 sec-

tion]. 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) of this section, 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