

§ 2706. Permissive terms and conditions in orders

Order 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 enforce-

ment 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.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2707 of this title.

§ 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 in-

terest 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2706, 2715 of this title.

§ 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