

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## 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

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the Egg Research and Promotion 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. AEB, which administers the Order, recommended this action to sustain and expand its national promotion, research, and consumer information program.

**DATES:** Comments must be received on or before November 24, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments on the Internet at <http://www.regulations.gov> or to Angela C. Snyder; Research and Promotion; Standards, Promotion, & Technology Branch; Poultry Programs, AMS, U.S. Department of Agriculture; 1400 Independence Avenue, SW., Stop 0256; Washington, DC 20250-0259; fax (202) 720-2930. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk, Poultry Programs, AMS, USDA, Room 3953-S, 1400 Independence Avenue, SW., Washington, DC 20250-0259, during regular business hours or can be viewed at: <http://www.regulations.gov>. All comments received will be posted without change,

including any personal information provided.

**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](mailto: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 and will not affect or preempt any State or Federal law authorizing promotion or research relating to an agricultural commodity.

The 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 the Board. 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 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 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 wholesale price of \$0.965 per dozen, total annual receipts would be \$1.59 million, which is well above the definition used to describe a small farm. The wholesale price of eggs would need to drop to 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 demonstrating that a 5-cent increase in the assessment rate (to a total of 15 cents) is appropriate 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 1994; (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 the status quo of 10 cents per case, an increase to 20 cents per case, and an increase to 15 cents per case. AEB ultimately concluded that the status quo 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.

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, and we invite comments concerning potential effects of these amendments on small businesses.

### 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 Egg Research and Promotion 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 are subject to the program, and producers owning 75,000 or fewer laying hens are exempt 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 equivalents 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 demonstrating that a 5-cent increase in the assessment rate to a total of 15 cents was appropriate 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 and Referendum

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 60-day comment period is provided to allow interested parties to respond to this proposal. All written comments received by the date specified in response to this rule will be considered prior to conducting the referendum.

After an opportunity for public comment, a referendum will be held among egg producers not exempt from the Act. Producers engaged in the production of commercial eggs during a representative period determined by the Secretary will be eligible to vote on the assessment rate change recommended by AEB.

All known eligible egg producers will receive information in the mail regarding the referendum.

The increase in the assessment rate shall become effective if the change is approved or favored by not less than two-thirds of the producers voting in the referendum, or a majority of such producers if they represent not less than two-thirds of the commercial eggs produced by those voting.

#### 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 part 1250 continues to read as follows:

**Authority:** 7 U.S.C. 2701–2718 and 7 U.S.C. 2401.

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 regulation 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 § 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 21, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9–23150 Filed 9–24–09; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2009–0776; Directorate Identifier 2009–NE–32–AD]

RIN 2120–AA64

#### Airworthiness Directives; Dowty Propellers R408/6–123–F/17 Model Propellers

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: Friction or contact between a propeller de-ice bus bar and the backplate assembly can cause failure of the bus bar and a consequent intermittent short circuit. Such a short circuit can cause a dual AC generator shutdown that, particularly in conjunction with an engine failure in icing conditions, could result in reduced controllability of the airplane.

We are proposing this AD to prevent an in-flight double generator failure, which could result in reduced controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by October 26, 2009.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* (202) 493–2251.

Contact Dowty Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL 29QN, UK; telephone: 44 (0) 1452 716000; fax: 44 (0) 1452 716001, for the service information identified in this proposed AD.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://>