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APPROVED

OCT 1 - 1974

Statements received 10/2/74

THE WHITE HOUSE
WASHINGTON

ACTION
Last day - Tuesday, Oct. 1

October 1, 1974

MEMORANDUM FOR:

THE PRESIDENT

FROM:

KEN COLE *C*

SUBJECT:

Enrolled Bill: Egg Research and
Consumer Information Act H.R.12000

Posted 10/2

*To Arch VBS
10/2*

BACKGROUND

This bill would authorize the Secretary of Agriculture to establish an 18-member Egg Board composed of egg producers or representatives of egg producers. The Board would assist egg and chicken producers in establishing, financing and carrying out a program of research and consumer education and promotion to improve the egg market.

The program would be financed entirely by an assessment by producers at the rate of over \$7 million a year. Agriculture would commit \$150,000 as seed money to get the program going.

ARGUMENTS FOR SIGNING

The bill will give the egg industry similar status with other agriculture commodities, e.g., cotton, potatoes, wheat, milk. Proponents counter the allegation that this could be inflationary (by adding to the cost of the middleman) by pointing out that increased consumption of eggs may reduce consumption of other protein sources such as beef. They reject the argument that you should withhold your signature because of the allegations that the cholesterol in eggs may contribute to cardiovascular diseases, as stated by OMB, "...we are unaware of any definitive analysis on the part of the medical profession that could be interpreted as a consensus position on this issue..."

ARGUMENTS FOR VETO

The bill would be inflationary, anti-competitive and the questions raised on the health issue overcome any arguments in favor of the government promoting this product.



STAFF AND AGENCY POSITIONS

The following recommend that you sign:

Secretary Butz
Bill Timmons
Roy Ash
Ken Cole

The following recommend veto:

Phil Buchen (Chapman)
Justice and FTC
HEW
CEA

DECISION - H. R. 12000

Sign (Tab A) _____

Veto _____
(Sign veto message
at Tab B)



APPROVED
OCT 1 - 1974

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SEP 26 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 12000 - Egg Research and
Consumer Information Act
Sponsor - Rep. Jones (D) Tennessee and 24 others

Last Day for Action

October 1, 1974 - Tuesday

Purpose

Authorizes egg and chicken producers to establish, finance, and carry out a program of research, producer and consumer education, and promotion to improve, maintain and develop markets for their products.

Agency Recommendations

Office of Management and Budget	Approval
Department of Agriculture	Approval
Department of State	No objection
Office of the Special Representative for Trade Negotiations	No objection (Informally)
Department of Commerce	No objection (cites concerns)
Department of Justice	Disapproval (Veto Message attached)
Department of Health, Education, and Welfare	Disapproval (Veto Message attached)
Federal Trade Commission	Disapproval (Veto Message attached)
Council of Economic Advisers	Disapproval

Discussion

Since the early 1950's, per capita egg consumption has fallen from 387 eggs to 306 eggs, a decline of more than 20 percent. This decline appears to be based on two factors: (1) the concern that egg cholesterol is a source of certain health problems; and, (2) the consumer switch to higher cost forms of protein such as beef made possible by increasing per capita incomes over the last two decades.

H.R. 12000 would authorize the Secretary of Agriculture to establish an 18 member Egg Board composed of egg producers or representatives of egg producers. Establishment of the Egg Board or any other order issued under this Act would require approval through an egg producer referendum with not less than two-thirds of the producers voting in favor or by a majority of the producers voting in favor if such majority constituted over two-thirds of all egg production. The Egg Board and orders administered by it would assist egg and chicken producers in establishing, financing, and carrying out a program of research, producer and consumer education, and promotion to improve, maintain, and develop markets for their products. Orders could be suspended or terminated and certain small egg producers would be exempt. The Secretary could prohibit brand name advertising and "unfair or deceptive" practices would not be allowed in any of the industry's activities.

The program would be financed entirely by an assessment paid by producers of not to exceed 5 cents per case (30 dozen eggs) of commercial eggs -- approximately \$7,500,000 would be generated annually by the assessments. Producers not favoring the program could demand and receive a refund of their assessment. While the \$150,000 cost for the initial referendum would be paid by Agriculture, all subsequent Federal costs would be defrayed by the assessments.

The general scheme and purpose of H.R. 12000 is similar to the statutory authorities enacted for cotton in 1966 and for potatoes in 1971. Also, promotional authorities similar to those provided by the enrolled bill have been available for

over 37 years under the provisions of the Agricultural Marketing Agreement Act of 1937 -- new commodity coverage has been provided several times under amendments to this Act in recent years, but never for eggs or poultry.

In reporting on this legislation, Agriculture offered "no objection" to enactment of H.R. 12000 subject to several substantive amendments which were accepted by the Congress. Agriculture has consistently favored or not objected to such bills, primarily on the basis that, since such promotional programs are available to producers of some commodities now, there is no reason to deny the opportunity to other producers to obtain similar authorities.

In this regard, the House Agriculture Committee's report appropriately takes note of the facts that:

"The Federal Government has cooperated with numerous similar programs involving peanuts, cotton, and other commodities."

* * *

"The Committee views this as self-help legislation . . . Government participation and expense would be minimal."

We also note that in addition to the Committee's persuasive arguments in support of the enrolled bill, several other points should be made in favor of approval:

- Utilization of chickens and eggs, a major protein source, could be improved to the joint advantage of both consumers and producers; and,
- Research directed at improving the nutritional quality of eggs and chickens could be increased along with improving the industry's merchandising, advertising, and promotion practices all of which should further assure consumers of quality products.

Agency views on the enrolled bill tend to follow those taken at the time Agriculture's proposed report was cleared. Accordingly, Agriculture recommends approval, State and STR have no objection to approval, and all the remaining agencies have serious reservations about the enrolled bill with HEW, FTC, CEA, and Justice recommending disapproval. The agencies' major concerns are that the bill: (1) would tend to be anticompetitive by nature and raise egg and poultry prices while not necessarily increasing demand for these commodities over the long term; and, (2) would unduly use Federal assistance to promote the consumption of a product that may be a contributing factor to vascular and heart disease -- Agriculture disputes both of these assertions in its enrolled bill letter.

As was true when we cleared Agriculture's original report on H.R. 12000, we continue to believe that it is not appropriate or feasible to deal with the commodity promotion question in the context of a single bill. The enrolled bill would provide egg and poultry producers the authority to compete on an equal footing with other major commodity groups at essentially no cost to the Federal Government. The charge that H.R. 12000 will cause higher prices may be theoretically valid, but little documentation of such a cause and effect relationship has been provided to OMB. In fact one could argue that while H.R. 12000 may stimulate the public's consumption of eggs and poultry thus increasing the cost of those commodities, there would be an offsetting drop in the consumption of other high protein foods, such as beef, which would likely result in a decrease in the public's overall cost per equivalent units of protein. With respect to the cholesterol associated health concerns and studies now underway that are attempting to link eggs to the health problem, we are unaware of any definitive analysis on the part of the medical profession that could be interpreted as a consensus position on this issue, nor has the Surgeon General set forth any type of health warning concerning eggs as has been done with cigarettes. Accordingly, we recommend that the enrolled bill be approved.



Director

Enclosures

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SEP 26 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 12000 - Egg Research and
Consumer Information Act
Sponsor - Rep. Jones (D) Tennessee and 24 others

Last Day for Action

October 1, 1974 - Tuesday

Purpose

Authorizes egg and chicken producers to establish, finance, and carry out a program of research, producer and consumer education, and promotion to improve, maintain and develop markets for their products.

Agency Recommendations

Office of Management and Budget	Approval
Department of Agriculture	Approval
Department of State	No objection
Office of the Special Representative for Trade Negotiations	No objection (Informally)
Department of Commerce	No objection (cites concerns)
Department of Justice	Disapproval (Veto Message attached)
Department of Health, Education, and Welfare	Disapproval (Veto Message attached)
Federal Trade Commission	Disapproval (Veto Message attached)
Council of Economic Advisers	Disapproval





DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

September 26, 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget

Dear Mr. Ash:

This is to report on the enrolled enactment of H.R. 12000, the Egg Research and Consumer Information Act.

The Department recommends that the President approve H.R. 12000. This enabling legislation would give authority to the egg industry similar to that provided in previous legislation for a number of agricultural commodities; e.g., cotton, potatoes, wheat, milk, and others. The policy issue of whether or not this type of legislation should be supported was determined previously during consideration of such legislation applying to these commodities. To now single out the egg industry as the one to be denied the use of this type of legislative tool could only be regarded as discriminatory. Consequently, we believe Presidential approval is desirable and equitable.

We have considered, but we disagree with, the possible anticompetitive effects which it has been alleged the measure will have. Further, we disagree strongly with the suggestion that increased egg consumption as a part of the American diet could have deleterious health effects. On balance, it is the view of this Department that the egg research and consumer information efforts to be afforded upon enactment of the bill will be helpful in maintaining a strong, viable egg industry in this country and will have beneficial effects with regard to consumer education and information.

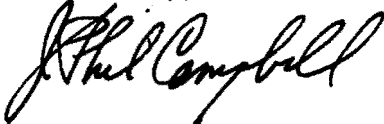
The bill would authorize the Secretary to issue an order providing for the establishment of an Egg Board of not more than 15 members which shall be composed of egg producers or representatives of egg producers appointed by the Secretary. Such representation shall reflect the proportion of eggs produced in each geographic area of the United States. The Board would develop and submit for the Secretary's approval a program to enable egg producers to establish, finance, and carry out a coordinated program of research, producer and consumer education, and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl. Before the order

could become effective, approval by producer referendum would be required by not less than two-thirds of the producers voting or by a majority of the producers voting if such majority produced not less than two-thirds of eggs produced during a representative period. Provision is also included for the termination or suspension of the order. Certain small egg producers would be exempt.

With the exception of the costs incurred by the Department for conducting the initial referendum, the program would be self-financing. The rate of assessment paid by producers to support the order could not exceed 5 cents per 30-dozen case of commercial eggs. Producers not favoring the program would have the right to demand and receive a refund.

It is estimated that the revenue to be generated by the assessments, based on 150 million cases at 5 cents per case, will approximate \$7.5 million annually. Costs to the Department for initial conduct of the referendum will approximate \$150,000. Thereafter, all USDA costs will be defrayed by assessment.

Sincerely,

A handwritten signature in cursive script, reading "J. Phil Campbell".

J. Phil Campbell
Acting Secretary



DEPARTMENT OF STATE

Washington, D.C. 20520

SEP 23 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Ash:

I am replying to Office of Management and Budget's request for State Department views and recommendations on H.R. 12000, a bill designated the "Egg Research and Consumer Information Act".

It appears that the only foreign policy feature of the bill relates to the authority to promote the marketing of US-produced eggs in foreign countries. Since this is an activity which is consonant with US foreign trade policy interests, the Department of State has no objection to the passage of this bill.

Cordially,

A handwritten signature in cursive script that reads "Linwood Holton".

Linwood Holton
Assistant Secretary
for Congressional Relations

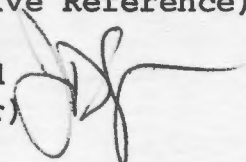
OFFICE OF THE SPECIAL REPRESENTATIVE
FOR TRADE NEGOTIATIONS

EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

September 26, 1974

MEMORANDUM

TO: W. H. Rommel
(Assistant Director
for Legislative Reference)

FROM: John Greenwald 
(Legal Adviser)

SUBJECT: H.R. 12000

Please be advised that the Office of the Special Trade Representative has no objection to the enactment of H.R. 12000, the Egg Research and Consumers Information Act.

RECEIVED
20-51 10 29 11/21/74
MANAGEMENT & SUPPORT
OFFICE OF



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Domestic
and International Business
Washington, D.C. 20230

SEP 23 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C. 20503

Attention: Assistant Director for Legislative
Reference

Dear Mr. Ash:

This is in response to your request for the views of this Department with respect to H.R. 12000, an enrolled enactment

"To enable egg producers to establish, finance, and carry out a coordinated program of research, producer and consumer education, and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl."

This bill would authorize the Secretary of Agriculture to issue a national order to establish an Egg Board. The Egg Board would develop, subject to the Secretary's approval, a program of research, consumer education and promotion to improve, maintain and develop markets for eggs, egg products, spent fowl and products of spent fowl. The program would be financed by assessments upon the large egg producers who must vote to establish a national order and who may, by referendum, terminate such an order. A producer not favoring the program would have the right, upon timely demand, to receive a refund of his assessment.

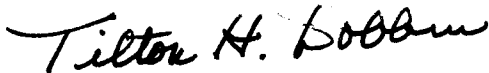
In our letter to you of March 28, 1974, we opposed enactment of H.R. 12000. Although the cost to the taxpayers would be de minimus, we continue to believe that our former comments

are valid. Specifically, we adhere to the essential principles of a free market system which demand more compelling reasons than exist in this instance for government assistance in supporting the promotion of a single industry.

However, in view of the fact that the Department of Agriculture has spoken on behalf of the Administration in not opposing H.R. 12000, we would have no objection to its approval by the President.

Enactment of this legislation will not involve expenditure of any funds by this Department.

Sincerely,

A handwritten signature in cursive script that reads "Tilton H. Lobbin".

Assistant Secretary for Domestic
and International Business

Department of Justice
Washington, D.C. 20530

SEP 25 1974

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill (H.R. 12000), to enable producers to establish, finance, and carry out a coordinated program of research, producer and consumer education, and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl.

The enrolled bill would authorize the Secretary of Agriculture to administer a nationwide promotional program for eggs, egg products, spent fowl (hens taken out of egg production for slaughter), and spent fowl products and to disburse funds for those purposes. The Secretary would conduct a referendum of egg producers to determine whether producers favor such a program. If two-thirds of the producers or a majority of producers accounting for two-thirds of egg production favor the proposition, the Secretary will issue an order establishing the program, appoint eighteen producer representatives to an Egg Board to formulate promotional and research plans, and obligate egg handlers (assemblers and wholesalers) to collect and turn over to the Egg Board up to five cents per case of eggs. Producers with fewer than three thousand laying hens or whose eggs are for hatching are exempt from the plan and other producers may demand and get their money back if they choose not to participate in the program. The Department of Agriculture estimates that the assessments would come to \$7.5 million annually, that developing an order and conducting a referendum would cost it \$150,000, and that administrative costs will run \$100,000 each year that the program endures. The Department of Justice cannot know how much its enforcement efforts will cost. No estimate exists of the costs of the program to egg handlers.

The Department of Justice recommends against executive approval of this bill.

On March 15, 1974, we stated we had no objection to the bill if it were amended to ensure that exempt producers are not obliged to keep records for or submit data to the Egg Board. That change has not been made and Section 7(c) clearly includes exempt producers among those who must report to the Egg Board. In addition, on reconsidering the matter more fully, particularly in the light of persistent inflation and the President's program of reduced federal spending, we believe the bill would be harmful in a number of respects. USDA notes that the bill is similar to several statutes authorizing the Secretary to administer promotion schemes for other agricultural products. We believe, however, that it is time to re-examine the basic premises underlying such legislation. Our objections to the bill are these:

1. The bill is not needed to permit egg producers to engage in joint, voluntary egg promotion and research. It will simply impose unnecessary expense on taxpayers and consumers.

2. Even if such orders were otherwise proper, the egg production industry would not be an appropriate one for this kind of special treatment.

3. The bill is in fact designed to promote egg sales rather than to provide objective consumer information about the possibly controversial subject of egg consumption.

4. The bill provides for unnecessarily wide coverage.

5. The bill makes the information gathered by the Egg Board and kept by USDA secret and unavailable, even to other government agencies with a legitimate need for the information and does not protect against improper use by Egg Board members.

6. The Egg Board is to consist exclusively of producer representatives. It has no consumer members, no handler members, and no government members. Moreover, there are no requirements that the Board conduct open meetings, or that it record what takes place at meetings.

7. The collection procedures require that handlers collect assessments even from producers who have chosen not to support the program and then requires the producers to apply to the Egg Board for a refund.

8. The bill continues to authorize requiring exempt and non-participating persons to keep records and submit reports to the Egg Board.

These objections are explained in greater detail below.

1. The Bill is unnecessary and costly.

Nothing in the antitrust laws forbids private persons and concerns from forming voluntary trade associations to engage in research and promotion. The American Soybean Association, for example, does extensive trade promotion and market development for soybeans and soybean products. Except in twelve states which have adopted soybean check-off systems, the Association is voluntarily supported by its members. Numerous other, successful, voluntary associations could be mentioned. Manifestly, egg producers can do the same things if they want to without involving the Secretary of Agriculture. Moreover, there are already sixteen states with check-off laws taxing eggs between 2/3¢ and 6¢ a case for similar programs. Those states accounted for 49% of 1972 production and collected more than \$3.7 million in promotional funds in that year. To add another \$7.5 million through a USDA administered check-off seems an unnecessary burden on consumers. Moreover, the cost to consumers may actually be somewhat higher. USDA estimates \$7.5 million in assessments on the basis of 150 million cases; however, 1972 production by producing units with more than 3200 birds came to 168.7 million cases - \$8.43 million at a nickel a case. Together with state mandated promotional expenditures, that would come to more than twelve million dollars per year of extra cost simply to get a universally familiar foodstuff into the hands of wholesalers. Taken together with the fact that in 1973 the farm value of eggs increased 81%, more than for any other component of the consumer food market basket, and the retail cost of eggs increased 48.6%, more than any other foodstuff, we think that this is not the time to involve the Federal Government in causing further increases in egg marketing costs. In addition, there is no reason to think eggs are presently underpromoted relative to other food products. USDA figures show advertising expense to be 1.9% of retail egg prices. This is slightly higher than beef, rice, apples, and tomatoes; approximately the same as for lettuce, potatoes, pork, and broilers; somewhat less than for milk and butter.

USDA's March 25, 1974, letter to the Chairman of the Committee on Agriculture requested that H.R. 12000 be amended to provide that all program costs be paid from producer assessments, including administrative expenses of the Department. On the floor of the House, Section 8(e) of the bill was amended to provide that the Department's administrative expenses after the adoption of an order may be paid from producer assessments but the bill still makes no provision for recovering the \$150,000 estimated as the cost to USDA of formulating an order and conducting a referendum. Without such a provision, the bill simply proposes to give approximately \$150,000 of the general revenues of the United States to the producers of a single commodity to help them do something they can perfectly well do for themselves. Though the amount is a small one, the principle is a bad one and should be disapproved.

Finally, there are other costs associated with adopting this legislation whose amounts cannot be known:

(a) Section 14(a) provides that persons subject to an order may apply for and obtain a hearing in respect of it. Following that, he may apply to a District Court for review of the Secretary's decision. Whether this will or will not happen with frequency cannot be predicted. To the extent it occurs at all, however, the time and attention of the Secretary, his aides, his attorneys, and, on application for review, our attorneys will be taken up with purely private disputes among the members of an essentially private trade association.

(b) On reference of a matter by the Secretary of Agriculture, the Attorney General of the United States is to institute civil suits to collect unpaid assessments and civil penalties as well as to prevent and restrain other disobedience of the order. Bearing in mind that participation in the order is supposed to be voluntary and that the ends of the Egg Board are private, we believe it altogether inappropriate that an "enforcement" mechanism exist and that the Department of Justice should be in any way involved in collecting the Board's dues. Such costs as are involved should plainly not come from the federal treasury but under this bill they would.

(c) USDA estimates its annual cost of administration at \$100,000. Presumably that includes the cost of conducting the proceedings concerning adoption of an order and enforcement of such order the various other duties imposed on the Secretary by the bill such as approving budgets of the Egg Board, reviewing Egg Board advertising, etc. We know of no estimate for the cost to egg handlers of collecting, segregating, banking, and remitting assessments to the Board, issuing receipts to handlers, and performing the other administrative tasks involved in operating the check-off system. Considering, however, that there are 18,000 farms with more than 3200 laying hens, those costs may be substantial. They will almost certainly be passed on to the consumer as another increment in the growing farm-retail price spread.

2. The Commercial Egg Industry is
Not Appropriate For the Treatment
Extended by This Bill.

Where farms and farmers are concerned, it is possible to make the case that they should be treated differently from other enterprises. In the case of many crops the producers are uncollectibly numerous, individually insignificant as producers, dependent upon the vagaries of weather, and incapable of changing the quantity or kind of their production once it is planted. Not only are their activities land-intensive but their crops tend to be geographically concentrated and the land they cultivate becomes the principal asset underlying the financial and commercial activity of whole regions. Under such circumstances, for government to make it possible for them to work together to promote their products may seem an appropriately public activity, especially where crop surpluses may not only affect large numbers of producers but, by devaluing land, may imperil the financial stability of whole communities.

Egg and poultry production raises no such problems. Egg production requires only slight investment in land, and it is carried on indoors with controlled temperatures and humidity. It is highly mechanized, and individual producers can continuously regulate the quantity of eggs they produce by reducing the numbers of laying hens they maintain. In addition, the egg production business is characterized by larger and larger production facilities held by fewer persons and by contract-growing arrangements

that lodge the decision on how many eggs to produce in a still smaller number of large agribusinesses. According to the 1969 Census of Agriculture, fully 87% of eggs produced came from the 3.9% of farms with more than 3200 layers, 90% of farms with layers had only 7% of the chickens while a mere 345 plants with 100,000 or more birds had over 20% of the 1969 total. These figures simply reflect an ongoing trend in egg and poultry production from "secondary farm projects to modern egg and poultry meat factories with much of the sophistication of automotive assembly lines." 1969 Census of Agriculture, Poultry, Volume V. Special Reports, p. xv. Consequently, in speaking of the egg production industry, or at least the part affected by this bill, we are really speaking of businessmen who own and operate substantial egg factories. There is no reason to believe that they cannot organize and administer their own trade association without the intervention of the Secretary of Agriculture.

3. The Bill is Designed to Promote the Sale of Eggs, Rather Than to Inform Consumers

If in fact it provides for federally supervised dissemination of information on egg products to consumers, something affirmative might be said for the bill, since it is consumers who will end up paying for it. It does not, however, have that in mind. Section 3(i) defines "promotion" as any action, including paid advertising, to advance the image or desirability of eggs, Section 3(j) includes as "research" any type of research to advance the "image or desirability" of eggs, and Section 3(k) defines "consumer education" as any action to advance the image or desirability of eggs. Nowhere in the bill is there authorization to collect and disseminate any information that is not "directed toward increasing the general demand for eggs" (Sec. 7(a)). In consequence, should that body of medical opinion that holds egg consumption to increase the risk of cardiovascular disease prevail, the Secretary might find himself promoting the consumption of injurious substances.

4. The Bill Provides for Unnecessarily Wide Coverage.

Marketing orders authorized to promote commodities under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. §608c(6)(I) are limited to regional production or marketing areas unless the Secretary finds a national order is necessary. 7 U.S.C. §608c(11). Section 4 of H.R. 1200 requires the Secretary to impose his egg order on "all production or marketing areas, or both, in the United States." The result is to permit any aggregation of two-thirds of all producers voting, or a majority producing two-thirds of commercial eggs to impose their program on producers in other areas or serving other markets who may be 100% against it. The referendum provision is no guarantee of fairness or even of legitimate majority assent. In the first place, 21% of the 18,097 growers with 3200 birds or more produce 62% of the eggs. Only a quarter of all these growers

could produce the requisite two-thirds of production. Six thousand nays would be required to defeat the proposal on votes, if all growers vote. The Pacific region has only 1409 eligible voters and the South Atlantic region has only 4528. Both are distinct and significant production areas and yet either could be bound to a program that they did not want at all or that did not suit local needs.

Moreover, those calculations assume that the voters will be the owners of the egg production facilities. That is, however, almost certainly wrong because Section 3(e) of the bill defines "egg producer" as "the person owning laying hens." Although we do not have at hand exact figures, we know that contract growing of eggs has become important in that business, with the result that the hens do not belong to the men who raise them but to a relatively smaller number of processors and suppliers.

We think it clear that no bill like this should be enacted unless it makes allowance for differences in regional practices and preferences, and for competition between different producing regions in getting eggs to market inexpensively. We also think it clear that, if anyone in the egg production business can fairly be thought of as a farmer, it is the man who owns the chicken house, owns the land on which it stands, owns the related equipment, bears most of the risk of market variations in egg prices, and is financially committed to the business of producing eggs. If anyone is, he is the one who should vote on whether or not there is to be an Egg Board and egg program, not the company that may happen to have title to the hens.

5. The Bill Keeps Information Gathered
By The Board Secret from Those With
a Need for It.

Section 7(c) requires egg producers, hatchery operators, egg handlers, and others to keep such books and make such reports as the Secretary and the Egg Board demand. Quite apart from the inequity of

imposing the cost of these reports on persons not engaged in egg production, the provision has two serious problems:

(a) It prevents agencies, such as the Department of Justice or the FTC, from obtaining access to the reports even though each may have need for it. In antitrust litigation, the Department has encountered this problem with data collected under other forms of marketing orders. Because of similar provisions, reports of business transactions maintained by the Department of Agriculture have been held unavailable to subpoena, even in criminal cases. If the information had been collected by a private trade association for like purposes, it would be available, under whatever protective terms are appropriate, to any agency or litigant who needs it. Certainly no bill extending the good offices of the Secretary of Agriculture to a private, voluntary group should hide from the rest of government the information it generates.

(b) Section 7(c) apparently permits both individual firm data and "intentions" information to be made accessible to the members of the Egg Board. Although the members are forbidden to disclose the data, nothing forbids them from using the information in the conduct of their own businesses nor from taking advantage of it to speculate in egg futures. Since Section 8(b) looks to a Board made up of persons engaged in the egg production business, it is clear that neither hazard is insignificant. We think that no bill like this should become law unless it forbids commercial or speculative use by any Board member of any information gained by him in that capacity, and limits the information to be given the Board to those kinds of general industry data that the Secretary deems necessary for the Board to carry out its functions.

6. Egg Board Membership and Rules.

Sections 8(a) and (b) of the bill declare that the Egg Board shall have not more than eighteen members all of them egg "producers" or representatives of egg producers, and subsection (f) states

that it shall keep such records and make such reports to the Secretary as he prescribes. We cannot pretend to be experts in marketing order or promotion order administration. Nonetheless, we have had occasion recently to consider the composition of marketing order committees and boards. As a result, we have concluded that each such board should include, and have in attendance at all its meetings, representatives of consumers, representatives of those commercial activities liable to be affected by the Secretary's orders, and representatives of the Secretary. We also believe that the transactions at every meeting of such boards should be recorded. These other representatives can recommend ways of accommodating the several interests at stake. Where differences are unreconciled, they can, using the facilities of the relevant Board, file timely dissents from, or criticisms or analyses of the Board's recommendations to the Secretary. In that way, the Secretary, on whom falls the burden of lending official sanction to proposals to aid limited sectors of society, can reasonably expect each recommendation to be accompanied by a full and fair discussion of the effect each proposal is likely to have on the community as a whole. It is in connection with ensuring that the Secretary, and those with standing to seek review of his decisions, have available a record of what occurred at Board meetings that we believe such Boards ought not to be created unless an obligation to record their sessions is a part of their constitutive statute.

7. Refunds and Personal Applications.

Section 13 of the Act provides that producers who do not wish to support the program may apply for and receive refunds, if they demand them on forms prescribed by the Egg Board within ninety days of their coming due. The Board has sixty days from demand within which to refund the money if an applicant submits satisfactory proof of payment. If the bill is to receive any consideration at all, it ought to provide instead that producers who do not wish to support the program may exempt themselves from assessments simply by informing handlers of that fact and,

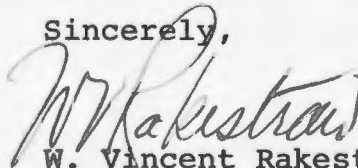
if need be, filling out an appropriate form. If participation is to be voluntary, so should submitting to collections be voluntary. Handling assessments of money that are to be subsequently returned simply imposes unnecessary costs on handlers, the Secretary, and the Board. Moreover, given the present high costs of money and the length of time the Board may keep a non-participating producer's money, we think that taking and holding assessments from an unwilling producer without payment of interest on returned assessments would impose an arbitrary expense on those who do not wish to participate.

9. Record Keeping and Reports by Non-participating and Exempt Persons.

As long as participation in the plan is to be voluntary, the Bill should not require anyone other than those choosing to participate to keep books or make reports to the Egg Board. USDA has argued that such persons should keep records so that their exempt status could be verified. We see no purpose in verifying exempt status since a producer without exempt status may acquire it simply by choosing not to participate. In short, to require bookkeeping and reports from anyone who is not a voluntary participant in the plan is to impose a needless and unjustified expense and, consequently, to add to the cost of getting eggs to market without any corresponding public benefit.

A suggested veto message is transmitted herewith.

Sincerely,



W. Vincent Rakestraw
Assistant Attorney General

Proposed Memorandum by the President of the United States Withholding Approval of the Bill (H.R. 12000) Entitled "The Egg Research and Consumer Information Act

I am withholding my approval of H.R. 12000, a bill "to enable egg producers to establish, finance, and carry out a coordinated program of research, producer and consumer education, and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl."

There are several technical reasons why I decline to sign H.R. 12000 but they are subsidiary to three objections, each of which would be dispositive of my decision.

First, in my view the bill is inflationary. As I have said to you, my leading priority as President is to work with the Congress to bring inflation under control and I cannot in good conscience approve any legislation that would tend to thwart that objective. At a time when all of us are concerned about food prices, we should not impose additional costs on food handlers which are certain to be passed on to the ultimate consumers unless there is a clear benefit to the public. This bill provides no such public benefit.

Second, this bill would require the Department of Agriculture to promote the sale of eggs rather than to dispense objective consumer information about the proper role of eggs in the

American diet. Many scientists and doctors are now attempting to learn more about the relationship between the consumption of certain foods (including eggs) and the development of cardiovascular diseases. Until we have more advanced scientific knowledge about these questions, I do not believe that a federal agency should be engaged in a promotional rather than an informational activity.

Third, I do not regard the kind of activity that this bill has in mind to be appropriate for the Secretary of Agriculture. Just as I do for other sectors of the economy, I have every hope that the domestic egg production business will find ways to grow and become more efficient. That does not, however, argue that government should become involved in managing or supporting what is essentially trade association activity designed to influence the domestic economy favorably to a particular line of goods. The activity itself may be laudably competitive; nonetheless, it is private, domestic, commercial activity and should be carried out by private, voluntary associations. I am well aware that the Department of Agriculture administers other programs similar to that proposed here; however, many of them are holdovers from or reflect agricultural policy of the years of the Great Depression. In due course, I hope that we can reconsider some of these laws. In the meantime,

as long as they are on the books, you may be assured we shall endeavor to execute them faithfully.

For the foregoing reasons, I am returning H.R. 12000 without my signature.

Gerald A. Ford

The White House



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SEP 20 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Ash:

This is in response to Mr. Rommel's request for a report on H.R. 12000, an enrolled bill, "To enable egg producers to establish, finance, and carry out a coordinated program of research, producer and consumer education, and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl."

Briefly stated, the bill would provide for the establishment, by the Secretary of Agriculture, of an "Egg Board" whose function would primarily be to maintain and develop markets for eggs, egg products, and products of spent fowl. The bill would be financed by an assessment on each case of commercial eggs, to be paid by the egg producers and collected for the Department of Agriculture by egg handlers.

In our letter to you of March 25, 1974, in which we expressed our views on the Department of Agriculture's proposed report acquiescing in the legislation, we objected to the bill's enactment for reasons that we think continue to remain true.

In a time of serious inflation it seems wholly undesirable and inappropriate to accept legislation that will (as similar programs for other commodities have demonstrated) inevitably result--indeed, is intended to result, as we understand the bill--in an increase in the price of one of the basic natural foods of the diet.

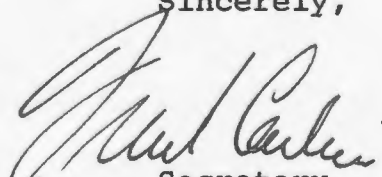
In the past, selected agricultural marketing programs of this character have been considered justified despite higher consumer costs because they engendered stable markets and fair prices for farmers when the marketplace was unable to do so. In recognition of the inefficiency that price support and related programs tend to produce in the effected industry, however, recent Administration policy has sought to reduce reliance on these programs as market conditions became more favorable for the agricultural sector of the economy. The bill runs counter to that policy. In this respect, the bill would allow the Secretary of Agriculture to exempt from specific provisions of the Act "any egg producer whose aggregate number of laying hens . . . has not exceed three thousand . . .". We find this contemplated exemption at least suggestive that the small farmer, like the consumer, is not seen by the bill's sponsors to be its principal beneficiary.

What we find particularly disturbing, however, is that the Federal Government should attempt to promote the consumption of a food that has come increasingly into question as a factor contributing to heart and vascular disease. Because of the cholesterol content of eggs, many physicians now urge certain of their patients to reduce their egg consumption, and would regard the recent drop in national per capita egg consumption as promotive of the public health.

While we recognize that the medical issues remain open to debate, their significance calls into serious question the prudence of approving H.R. 12000. The Government cannot responsibly undertake a program to increase the consumption of a product widely believed among physicians to endanger a proportion of its consumers.

For the reasons given, we recommend that the President return the bill to the Congress without his approval. We enclose for your consideration a draft veto message.

Sincerely,



Acting Secretary

Enclosure

PROPOSED VETO MESSAGE

I return to the Congress without my approval H.R. 12000, the proposed "Egg Research and Consumer Information Act". In a time of serious inflation it would be inappropriate for me to accept legislation intended to increase the demand for, and therefore the price of eggs, a basic natural food. In the recognition that programs of this character, in addition to raising prices, produce inefficiency in the assisted industry, recent Administration policy has sought to reduce reliance on these programs as market conditions became more favorable for the agricultural sector of the economy. The bill runs counter to that policy.

Moreover, many physicians regard the recent drop in national per capita egg consumption as promotive of the public

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

SEP 25 1974

The Honorable Roy L. Ash
Director, Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Dear Mr. Ash:

This report is in response to your request for the views of the Federal Trade Commission upon Enrolled Bill H.R. 12000, 93d Congress, 2d Session, an Act "To enable egg producers to establish, finance, and carry out a coordinated program of research, producer and consumer education, and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl."

The Commission has authorized the Bureau of Consumer Protection to prepare this report, and the views expressed herein do not necessarily represent those of the Commission. The Commission has determined to take this approach because of the pendency of adjudicative proceedings before the Commission involving the National Council on Egg Nutrition, and the desire of the Commission to avoid possible prejudgment of factual issues on which it may be necessary to render a judgment in the adjudication.

The "Legislative Findings and Declaration of Policy" of H.R. 12000 recite that the marketing of eggs and spent fowl (hens no longer used for egg production) by egg producers, individually, has failed adequately to promote these products or to improve their market; that cooperative and collective action by producers is necessary to achieve these results; and that authority to assess egg producers is necessary to finance a program "to strengthen the egg industry's position in the marketplace."

To accomplish these objectives, H.R. 12000 would establish an "Egg Board" consisting of not more than 18 egg producers or representatives of egg producers appointed by the Secretary of Agriculture from candidates nominated by organizations certified by the Secretary as eligible to represent commercial egg producers of given areas of the

United States. Programs to increase the public demand for eggs, spent fowl, and the products of each, would be proposed by certified egg organizations, interested persons affected by the bill, or by the Secretary. The Secretary would give notice and opportunity for hearings upon such proposals as he should have reason to believe necessary to carry out the purpose of the bill. Programs or plans approved by the Secretary would be promulgated as orders of the Secretary and would be carried out by the Egg Board.

The Egg Board would administer "consumer education" programs through advertising to increase the demand for eggs and spent fowl, provide for marketing and distribution studies, and require the maintenance of records which would be available to the Egg Board for monitoring compliance with the programs of the Board. The funding of the activities of the Egg Board would be provided by assessments of up to five cents per case of eggs (30 dozen eggs) levied upon the larger egg producers.

Because of two basic considerations, the public health and inflation, which will be discussed below, the Bureau of Consumer Protection of the Federal Trade Commission recommends that H.R. 12000 be vetoed. A significant number of specialists in the medical and nutrition professions find a relationship between consumption of eggs and blood cholesterol levels which affects the incidence of heart attacks and heart and artery disease. As this view is not shared by all members of these professions, this health question remains unsettled. The Bureau therefore questions the appropriateness of a statutorily sanctioned egg and egg products promotion program to be vested in a department of the Federal Government in the face of this major and unresolved controversy. Almost certainly the promotion of eggs under the auspices of the Department of Agriculture, including the dissemination of advertising and other promotional material, would be construed by the public as a signal that the Government is satisfied that eggs present no health problem. This unfortunate inference could well be drawn from the approval of this measure.

During committee hearings in the Senate on H.R. 12000, the American Heart Association, through its President, objected vigorously to recent advertisements by the egg industry which contend that there is "absolutely no scientific evidence (or proof) that eating eggs increases the risk of heart attacks." He appended to his statement a resume of a large number of scientific treatises which indicate a relationship between cholesterol level, diet, and the incidence of

heart attacks. To insure that the promotional activities of the Egg Board which would be established by the bill would have scientific validity, he recommended that membership of the Egg Board include at least one physician and one nutritionist. His recommendation that the bill be amended to provide for such scientific membership was not adopted, nor were several other recommendations which were offered to insure that the Egg Board would take other actions in the interests of public health.

Another, and closely related development, which should be pertinent to the President's decision to approve or disapprove this measure, is the issuance by the Commission of a complaint against the National Commission on Egg Nutrition, a trade association to promote the sale of eggs. The Commission's action against this respondent was announced on August 1, 1974, and is based on the same promotional activities which were criticized by the American Heart Association. The Commission has also filed recently a motion for a preliminary injunction in a federal district court to restrain the egg association from making such claims as to the harmless effects of eggs in relation to the risk of heart disease.

In view of the foregoing circumstances, the Bureau of Consumer Protection questions the appropriateness of this measure in that it establishes an egg promotion program but contains no provisions for evaluating the public health issues which have been raised.

Another factor which is of particular importance at this time in evaluating H.R. 12000 is the higher prices for eggs which will result from the activities of the Egg Board. Its assessments against egg producers will no doubt be passed on to the consumer. But, more importantly, as the central purpose of this legislation is to increase the demand for eggs, this also may be expected to result in increased prices in addition to the costs of assessment. Any additional increase in food prices is hardly in the public interest, particularly when no benefits other than to the egg industry have been suggested. Besides contributing to inflation generally, increased food prices particularly penalize the aged and others having fixed incomes.

While proponents of this measure point to legislation similar to H.R. 12000, which has been enacted to cover other

The Honorable Roy L. Ash

-4-

farm commodities, these laws were not passed in times of inflation, nor do they promote greater use of products which are the subject of a health controversy.

A proposed veto message which stresses the inflationary and public health implication of H.R. 12000 is enclosed in quadruplicate in accordance with the procedures outlined in your Circular A-19.

H.R. 12000 would have no budgetary impact upon the Federal Trade Commission.

Very truly yours,

A handwritten signature in cursive script that reads "J. Thomas Rosch". The signature is written in dark ink and is positioned above the typed name.

J. Thomas Rosch
Director

To the House of Representatives:

I am returning today without my approval H.R. 12000, the Egg Research and Consumer Information Act.

I am taking this action because of my concern that the enactment of this legislation may not be in the overall public interest because of two considerations either one of which in my view would be a sufficient ground to support my position.

The primary purpose of H.R. 12000, as is indicated in its legislative findings and declaration of policy, is to establish under the auspices of the Secretary of Agriculture a program to increase the dietary and other demands for eggs, spent fowl, and the products of both. This program would be financed by assessments against all egg producers except those who are exempted by reason of a prescribed minimum flock size and those who apply for reimbursement of such assessments. Both the assessment and the price increases which would inevitably be generated by the greater demand for eggs would be reflected in higher food costs to the consumer.

Certainly we are of one mind in pointing to food prices as the number one target in our fight to overcome inflation. We must therefore find strong justification for any legislation which will increase the demand, and consequentially the price of eggs. As much as we all wish to improve the well being of the poultry industry, we must not do so at the expense of the consumer, particularly those such as the elderly who depend upon fixed incomes. From the

very outset of my accession to the Presidency, I have stated that my first priority is to work with you, the Congress, to bring inflation under control and cannot in good conscience approve this legislation.

My second, and possibly even more important reason for not approving H.R. 12000 is based on considerations of public health. In my view it is not appropriate to sanction by public law an egg and egg products promotion program by a department of the Federal Government at a time when there is a major and unresolved controversy within the medical and nutritional professions concerning the health aspects of egg consumption. Significant numbers in these professions contend that there is a relationship between consumption of egg products and the risk of heart attacks, and heart and artery diseases. Unless and until this question has been resolved as posing no substantial health problem, the Government should not lend its sponsorship to advertising and other promotional activities which are designed to encourage increased consumption of eggs. Such governmental sanction can only be interpreted by the public as an indication that the Government is satisfied that greater egg consumption presents no health risk.

In taking this position, I am not unmindful that there are already laws which authorize very similar programs to promote other farm products. These laws were not enacted during inflationary periods, nor do they embrace products which are subject to health questions.

For the reasons I have outlined, I am returning this legislation without my approval.

Gerald R. Ford

The White House

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

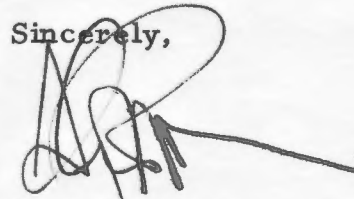
September 19, 1974

Dear Mr. Rommel:

This letter is in response to your request for the views of the Council of Economic Advisers on Enrolled Bill H. R. 12000.

The Council recommends that the President veto this Bill for the reasons outlined in the attached summary.

Sincerely,



Alan Greenspan

Mr. Wilfred H. Rommel
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D. C. 20503



RECEIVED
SEP 23 1974
OFFICE OF
MANAGEMENT & BUDGET

Synthesis and Analysis
Enrolled Bill H.R. 12000
"Egg Research and Consumer Information Act"

Synthesis:

This Bill would enable egg producers to establish, finance, and carry out a coordinated program of research, producer and consumer education, and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl. The Bill would authorize the Secretary of Agriculture to issue orders providing for the establishment of an Egg Board which, subject to the Secretary's approval, would:

(a) Provide for the establishment, issuance, effectuation, and administration of appropriate plans on 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 dispersement of necessary funds for such purposes; and

(b) Provide for the establishment and carrying on of 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, is made more acceptable, and...

The proposed Egg Board would administer this program, and would consist of 18 members. The Secretary of Agriculture would appoint these members from qualified nominees representing producers from regions of the U.S. designated by the Secretary.

The order will be supported financially by an assessment paid by producers and collected by the handlers. The assessment shall not exceed 5 cents per case of commercial eggs or the equivalent. Certain groups such as small producers and producers of hatching eggs would be exempt from the provisions of the act. Producers who do not favor the program would have the right to demand and receive a refund of the assessment.

Before an order can become effective the Bill requires approval by referendum of egg producers. In addition, the Secretary may conduct a referendum at any time to determine if producers favor termination of orders.

Analysis:

The motivation for this Bill is a significant decline in the per capita consumption of eggs in the post-World War II period. Average annual consumption was 387 eggs per person in the 1950-53 period, and suffered a decline of 81 to an average annual consumption of 306 per person in the 1970-73 period. This represents slightly more than a 20 percent decline in per capita consumption.

The basis of this decline in demand is two-fold. First, the concern about cholesterol as a source of health problems has probably caused a shift in the demand for eggs. Second, the relative income elasticities of demand are such that as per capita incomes rise, consumers substitute beef for eggs, as a source of protein.

The programs proposed under the legislation would be largely self-financing, and hence would not be a large drain on the budget. The USDA estimates that the Bill would cost the Department about \$150,000 in appropriated funds to develop the order and conduct a referendum, and about \$100,000 in administrative costs each year thereafter. The USDA also estimates that the revenue available for expenditure by the Egg Board would be approximately \$7.5 million annually (assuming 5 cents a case for 150 million cases).

The Bill is likely to be an exercise in futility, however. The reasons for this are as follows:

1. Past experience with comparable programs for other products, as well as economic theory, suggest that advertising and promotional programs have very little impact on demand for agricultural products in the aggregate. People eat only so much food. Success in the promotional program would be at the expense of some other product, which in turn could lead to similar legislation for other product groups. Once programs were in effect for all agricultural products there would be no impact on total demand, with the result that nothing would have been gained except to raise the cost of food by promotional programs that are largely self-defeating.

2. The incidence of the excise tax designed to support the program would be largely on the consumer. With substitute products available, the effect of the resulting rise in price would be to dampen off demand by reducing the quantity demanded.

3. The consequence of permitting any producer to demand and receive a refund of the assessment if he does not favor the program is likely to result in an anomolous situation in which producers will tend to vote for the order but refuse to pay on the grounds that the individual producer would benefit from general promotional activities paid by others.

The research proposed under the Bill could have some merit, especially if it were directed to understanding foreign markets and to improving the efficiency with which eggs and the other products of concern could be marketed more efficiently, either abroad or domestically. However, comparable gains in market potential could probably be gained more effectively by trade negotiations designed to open up foreign markets. In addition, since the consumer is likely to bear the bulk of the cost of the program, equity considerations would suggest that the research effort be directed to lowering the cost of production in order that the products could be provided to the consumer at a lower price, rather than to activities designed to increase the demand for eggs.

For these reasons we recommend that the Bill be vetoed.

(Gergen)PT

October 1, 1974

SUGGESTED VETO OF EGG BILL

TO THE HOUSE OF REPRESENTATIVES

I am returning today without my approval H. R. 12000, the Egg Research and Consumer Information Act.

This bill would authorize the Secretary of Agriculture, with the approval of two-thirds of all egg producers, to establish an Egg Board composed of egg producers and their representatives. The Board would develop and submit for the Secretary's approval a program of research, consumer information, and promotion of the egg industry. Most of the costs of the program, estimated at some \$7.5 million, would be met through assessments on egg producers. The estimated cost for the Federal Government would be approximately \$150,000.

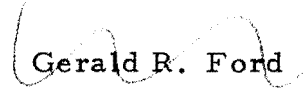
While this bill may sound unobjectionable on its face, it has three major shortcomings which convince me that it should not become law.

First, the effects of this bill on the economy can only be inflationary, for the egg producers are certain to pass on the costs of the program to the consumers. At a time when all of us are concerned about food prices, the Federal Government should not effect such inflationary measures unless there is a clear benefit to the public. This bill provides no such public benefit.

Secondly, since there is now an unresolved controversy within the medical and nutritional professions about the health aspects of egg consumption, I do not think the Government should lend its sponsorship to advertising and other promotional activities which are designed to encourage increased consumption of eggs until we have more advance scientific knowledge about this unresolved question.

Thirdly, I do not regard the kind of activity that this bill has in mind to be appropriate for the Secretary of Agriculture, for it would involve him in managing or supporting what is essentially trade association activity designed to favor a particular product or line of products. The activity itself may be laudably competitive; nonetheless, it is private, domestic, commercial activity which can and should be carried out by private, voluntary associations.

For the foregoing reasons, I am returning H. R. 12000
without my signature.


Gerald R. Ford

TO THE HOUSE OF REPRESENTATIVES:

I am returning today without my approval H.R. 12000, the Egg Research and Consumer Information Act.

This bill would authorize the Secretary of Agriculture, with the approval of two-thirds of all egg producers, to establish an Egg Board composed of egg producers and their representatives. The Board would develop and submit for the Secretary's approval a program of research, consumer information, and promotion of the egg industry. Most of the costs of the program, estimated at some \$7.5 million, would be met through assessments on egg producers. The estimated cost for the Federal Government would be approximately \$150,000.

While this bill may sound unobjectionable on its face, it has three major shortcomings which convince me that it should not become law.

First, the effects of this bill on the economy can only be inflationary, for the egg producers are certain to pass on the costs of the program to the consumers. At a time when all of us are concerned about food prices, the Federal Government should not effect such inflationary measures unless there is a clear benefit to the public. This bill provides no such public benefit.

Secondly, since there is now an unresolved controversy within the medical and nutritional professions about the health aspects of egg consumption, I do not think the Government should lend its sponsorship to advertising and other promotional activities which are designed to encourage increased consumption of eggs until we have more advance scientific knowledge about this unresolved question.

Thirdly, I do not regard the kind of activity that this bill has in mind to be appropriate for the Secretary of Agriculture, for it would involve him in managing or supporting what is essentially trade association activity designed to favor a particular product or line of products. The activity itself may be laudably competitive; nonetheless, it is private, domestic, commercial activity which can and should be carried out by private, voluntary associations.

For the foregoing reasons, I am returning H.R. 12000 without my signature.

X

THE WHITE HOUSE,

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 610

Date: September 27, 1974

Time: 2:00 p. m.

FOR ACTION: Michael Duval
 Phil Buchen
 Bill Timmons
Paul Theis

cc (for information): Warren K. Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Monday, September 30, 1974

Time: 9:00 a. m.

SUBJECT: Enrolled Bill H. R. 12000 - Egg Research and Consumer Information Act

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE
WASHINGTON
September 27, 1974

MEMORANDUM FOR: MR. WARREN HENDRIKS
FROM: WILLIAM E. TIMMONS *WT*
SUBJECT: Action Memorandum - Log No. 610
Enrolled Bill H. R. 12000 - Egg Research
and Consumer Information Act

The Office of Legislative Affairs concurs in ~~the attached~~ *OMB's position* and has no additional recommendations. *that this bill be approved.*

Attachment

Sign it!

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 610

Date: September 27, 1974

Time: 2:00 p. m.

FOR ACTION: Michael Duval
Phil Buchen
✓ Bill Timmons
Paul Theis

cc (for information): Warren K. Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Monday, September 30, 1974

Time: 9:00 a. m.

SUBJECT: Enrolled Bill H. R. 12000 - Egg Research and Consumer Information Act

ACTION REQUESTED:

___ For Necessary Action

XX For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

___ For Your Comments

___ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

I recommend the bill be signed. There is no adverse budget impact. - Max T.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 610

Date: September 27, 1974

Time: 2:00 p.m.

FOR ACTION: Michael Duval
✓ Phil Buchen
Bill Timmons
Paul Theis

cc (for information): Warren K. Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Monday, September 30, 1974

Time: 9:00 a.m.

SUBJECT: Enrolled Bill H. R. 12000 - Egg Research and Consumer
Information Act

ACTION REQUESTED:

___ For Necessary Action

XX For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

___ For Your Comments

___ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing - 2685

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

MEMORANDUM FOR:

KATHY TINDLE

FROM:

PHIL BUCHEN *JTF
for BUB*

SUBJECT:

Enrolled Bill H. R. 12000
Egg Research and Consumer
Information Act.

We have reviewed the various agency comments and have some sympathy for the OMB recommendation to sign the bill. There would probably be some political benefit in extending this minor favor to the egg producers, and similar groups have been benefitted in the past. We are also unimpressed with the inflation argument as a ground for veto. The bill would increase costs and prices, but very little, and not enough to warrant veto.

The objection that weighs most heavily from our view is that the government should not be singling out various commercial interests for special help in their commercial ventures. Once we give in to one group then claims for special treatment will be heard from others; and the massive troubles with the milk lobby show the danger of entanglement with these interests. Rather than commit this Administration to that course on the ground that others have done it, we should take advantage of this opportunity to change the policy. For these reasons we favor veto.

None of the proposed veto messages appears satisfactory. The Justice Department relies excessively on inflation; and the HEW draft raises the politically dangerous health issue. An alternative draft is attached.

PROPOSED VETO MESSAGE

I am returning to the Congress without my approval H. R. 12000, the proposed "Egg Research and Consumer Information Act."

This bill, like others that have preceded it, would involve the government in assisting a private commercial promotion. While the bill contains some reference to research and consumer information, its clear purpose is not to promote scientific research into the health questions involved, but to conduct a commercial promotion of one particular food product. I have no reluctance to encourage the domestic egg production business or any other segment of our economy; but I do not think it appropriate for government to become involved in what is essentially trade association activity to promote a particular line of goods. The promotional purpose of the bill is true to the American spirit of enterprise, but this kind of activity should be private, domestic and commercial, carried on by private, voluntary organizations.

I am well aware that the Department of Agriculture administers other programs similar to that proposed here; and I have considered the argument that since others have received this kind of special benefit, even handed treatment should be extended here.

But if the policy is wrong, as I think it is, we have to stop it at some point. Otherwise, we will only encourage other special interest groups to ask similar favors which would be increasingly difficult to deny.

Many of the programs similar to that proposed here are holdovers from or reflect agricultural policy of the years of the Great Depression. In due course, I hope we can reconsider some of these laws. In the meantime, I believe the time has come to discourage troubled industry groups from turning to the government for assistance that increases costs and removes some of the natural incentives of the marketplace. In these inflationary times we must give every encouragement to the cost reducing pressures of free markets.

For these reasons I am returning H. R. 12000 without my approval.

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 610

Date: September 27, 1974

Time: 2:00 p. m.

FOR ACTION: ✓ Michael Duval
Phil Buchen
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DUE: Date: Monday, September 30, 1974

Time: 9:00 a. m.

SUBJECT: Enrolled Bill H. R. 12000 - Egg Research and Consumer Information Act

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

EGG RESEARCH AND CONSUMER INFORMATION ACT

AUGUST 20, 1974.—Ordered to be printed

Mr. ALLEN, from the Committee on Agriculture and Forestry,
submitted the following

REPORT

[To accompany H.R. 12000]

The Committee on Agriculture and Forestry, to which was referred the bill (H.R. 12000) to enable egg producers to establish, finance, and carry out a coordinated program of research, producer and consumer education, and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

SHORT EXPLANATION

H.R. 12000 authorizes the Secretary of Agriculture to issue a national order providing for the establishment of an Egg Board consisting of not more than 18 persons.

The Egg Board would develop, subject to the Secretary's approval, a program of research, producer and consumer education, and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl (i.e., hens which have been producing eggs and have been removed from such production for slaughter), and products of spent fowl.

Members of the Egg Board would be appointed by the Secretary from qualified nominees representing producers from each egg producing geographic area as defined by the Secretary.

Approval by referendum among egg producers engaged in the production of commercial eggs would be required before the order could become effective. Certain small egg producers and producers of eggs utilized primarily for the hatching of baby chicks would be exempt from the provisions of the bill.

The order could be terminated or suspended by the Secretary if he found that it obstructs or does not tend to effectuate the purposes of

the bill. The Secretary may conduct a referendum at any time, and shall hold a referendum on request of ten percent or more of the number of egg producers voting in the referendum approving the order, to determine if the producers favor the termination or suspension of the order.

With the exception of the costs incurred by the Department of Agriculture in conducting the referendum relative to the issuance of the order, the program would be self-financing. Once the order was approved, all administrative costs of the Department would be defrayed by assessment. The rate of assessment paid by egg producers and collected from handlers of eggs could not exceed five cents for each case (30 dozen) of commercial eggs. Producers not favoring the program would have the right—upon making a timely demand—to receive a refund of the assessment.

COMMITTEE AMENDMENTS

The Committee made three amendments to H.R. 12000, as passed by the House, as follows:

1. On page 8, line 3, strike "false or misleading clauses" and insert in lieu thereof "unfair or deceptive acts or practices".

On page 8, line 5, strike "false or misleading statements" and insert in lieu thereof "unfair or deceptive acts or practices".

This amendment prohibits the use of unfair or deceptive acts or practices in advertising and promotional programs and conforms the language of the bill to language in the Federal Trade Commission Act.

2. On page 11, line 2, strike "six" and insert in lieu thereof "three".

On page 11, line 3, strike "years" and insert in lieu thereof "terms".

On page 11, line 4, strike "two, four, and six years" and insert in lieu thereof "two-year and three-year terms".

This amendment provides for staggered terms for Egg Board members.

3. On page 16, line 25, strike "thirty" and insert in lieu thereof "ninety".

This amendment assures egg producers not wishing to support the program the same minimum period of time for applying for refunds of assessments that is afforded producers under other research and promotion programs.

BACKGROUND AND NEED

The Federal Government has cooperated in establishing market research and promotion programs involving peanuts, cotton, and other commodities. This has been done both through specific enabling legislation and under the provisions of the Agricultural Marketing Agreement Act of 1937. Eggs are specifically exempted from the provisions of the Act.

The egg producing industry has been unable to organize itself independently for the purposes embodied in H.R. 12000. A basic impediment has been the wide variation in the size of operation of the Nation's egg producers. Eggs are produced in all fifty States by producers whose size of operation ranges from a few laying hens to large commercial operations with more than a million layers.

H.R. 12000 provides for a producer financed program of egg research, producer and consumer education, and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl. The bill is specifically designed for the participation of only commercial egg producers with laying flocks of more than 3,000. Even though small producers will not participate in the referendum nor pay any assessment, benefits from the program will accrue to all egg producers. Furthermore, all producers have the right—upon making a timely demand—to receive a refund of the assessment.

While past research has made the egg industry extremely efficient, the research has focused on the economics of production and processing, leaving several persistent problems unanswered.

The industry has experienced a declining market, as per capita egg consumption has fallen almost annually for the past two decades. Average consumption levels are now over a fifth below what they were in 1954. A sharp break in market and prices has also occurred with respect to spent fowl. Better utilization of spent fowl, a major protein source, would yield broad benefits to producers and consumers.

There is a serious lack of reliable consumption and market information necessary for more effective marketing practices and product development. The information would enable the industry to identify population groups which currently are using relatively few eggs and provide use and nutrition information to these groups. Since eggs represent one of the least expensive sources of protein, they represent an ideal tool to combat nutrition problems. Broader acceptance and utilization would help in the effort to assure adequate nutritional levels for all people, just as better utilization of spent fowl could aid in this problem. Research into alternative products and uses for eggs, egg products, and spent fowl could yield improved food resources, as well as make egg production more economically viable.

The egg industry has recently been confronted with the question of cholesterol in eggs. Past breeding and production work did not consider the cholesterol question since it was not identified as a problem until relatively recently. But research work has already shown that selective breeding and use of different feeds materially affect eggs in yolk size, nutrient make-up, and amount of cholesterol. Thus, the appropriate approach to the question is prompt research efforts.

This legislation would provide an estimated \$7.5 million and the vehicle for continued and expanded efforts to improve the quality of eggs and egg products, improve the marketing operation, expand the utilization of spent fowl, and enhance dissemination of pertinent information.

The Egg Board will provide a central clearinghouse to assure the efficiency of the program. The Egg Board and the Secretary of Agriculture will continuously review the program to insure that it is both adequate and appropriate.

Many direct benefits for producers and consumers are evident but other benefits that are not envisioned could result. For example, the development of a vaccine for Marek's disease (a cancerous disease of poultry) in 1969 was the first successful vaccine for a cancerous disease ever developed. This break-through is providing hope and insight in the larger research effort to control other forms of cancer. While such

dramatic breakthroughs are rare, research efforts continuously provide results that are far-reaching.

Possible major areas of research to be conducted under the legislation would include consumer preference studies, variable factors affecting egg sales, basic market research, new product development, production improvement, marketing technology and other studies of marketing and production which will aid individual egg producers. Also authorized by this legislation would be avian disease research, much of which is now conducted by land-grant universities. Federal Government grants for such research have been substantially reduced. It is anticipated that funds collected from egg producers would be used to assist in funding research studies where Federal funds have been reduced or are not available.

Research into purchaser motivation by age groups, income groups, and ethnic groups, would be authorized. Such information is necessary if products are to be disseminated to proper markets.

Studies into egg merchandising, advertising, and promotion will aid the establishment of marketing practices to assure consumers of quality products. Improvement in transportation and handling procedures could result in fewer product losses and give consumers a fresher, undamaged product. Research into feed conversion, packaging, handling, and marketing could reduce overhead costs, resulting in savings to producers and consumers.

In addition to research projects, funds would be available to establish and carry out information-dissemination programs. These programs could vary from making research information available to consumer groups, to providing homemakers with information on product uses, to paid advertising and promotion done on an industry-wide basis.

There will also be greater accountability with a national Egg Board appointed by the Secretary of Agriculture. The research and information program that the Egg Board develops will be subject to the Secretary's review and approval. The Committee anticipates that the Egg Board will periodically meet with, and take counsel from, experts in the fields of poultry nutrition, poultry, genetics, marketing, human nutrition medicine, and any other fields deemed appropriate to assure their programs are appropriate and adequate.

Program participation is voluntary on the part of producers as a producer-financed program should be. It is not meant to supersede or suspend any existing program operated by any state or regional organization. It is meant to address problems at a national level.

This is self-help legislation. It can only be activated after adequate hearings are held by the Secretary of Agriculture and after a plan is approved in a referendum by either two-thirds of the eligible producers voting or by a majority of the producers voting who produced at least two-thirds of the commercial egg production represented in the referendum.

SECTION-BY-SECTION ANALYSIS

Short title

The first section of the bill provides that the short title is the "Egg Research and Consumer Information Act."

Section 2. Statement of findings and policy

Section 2 contains legislative findings and declaration of policy.

Findings are made that—

(1) Eggs constitute one of the basic, natural foods in the diet, and that egg products, spent fowl, and products of spent fowl are derivatives of egg production.

(2) The maintenance and expansion of existing markets and the development of new or improved markets and uses are vital to the welfare of egg producers and those concerned with marketing, using, and processing eggs as well as the general economy of the Nation.

(3) The production and marketing of these products by numerous individual egg producers have prevented the development and carrying out of adequate and coordinated programs of research and promotion necessary for the maintenance of markets and the development of new products of, and markets for, eggs, egg products, spent fowl, and products of spent fowl.

(4) Without an effective and coordinated method for assuring cooperative and collective action in providing for and financing such programs, individual egg producers are unable to provide, obtain, or carry out the research, consumer and producer information, and promotion programs necessary to maintain and improve markets for these products.

(5) It is in the public interest to provide an adequate, steady supply of fresh eggs readily available to the consumers of the Nation. Maintenance of markets and the development of new markets, both domestic and foreign, are essential to the egg industry if the consumers of eggs, egg products, spent fowl, or products of spent fowl are to be assured of an adequate, steady supply of such products.

Section 2 then declares it to be the policy of the Congress that it is essential and in the public interest to authorize and enable the establishment of an orderly procedure for the development and financing, through assessment, of a coordinated program of research, consumer and producer education, and promotion designed to strengthen the egg industry's position in the marketplace, and maintain and expand domestic and foreign markets and uses for eggs, egg products, spent fowl, and products of spent fowl.

Section 2 also provides that nothing in the bill shall be construed to control the production of commercial eggs.

Section 3. Definitions

Section 3 contains definitions of the terms used in the bill.

Section 4. Egg research and promotion orders

Section 4 authorizes the Secretary of Agriculture to issue a national order to effectuate the declared policy of the Act.

Section 5. Notice and hearing

Section 5 requires the Secretary to give due notice and opportunity for hearing upon a proposed order, and provides that such proposed order and hearing may be requested by a certified organization of commercial egg producers or any interested person.

Section 6. Finding and issuance of an order

Section 6 provides for the issuance of an order if the Secretary finds, upon the evidence introduced at the hearing, that such order will tend to effectuate the declared policy of the bill.

Section 7. Permissive terms in orders

Section 7 provides that the order shall contain one or more of the following terms and conditions with respect to eggs, egg products, spent fowl, and products of spent fowl—

(1) Plans or projects for advertising, sales promotion, and consumer education with prohibitions on the use of private or brand names or use of unfair or deceptive acts or practices related thereto.

(2) Research, marketing, and development projects, and studies with respect to the sale, distribution, marketing, utilization, or production of eggs, egg products, spent fowl, and products of spent fowl, and the creation of new products thereof.

(3) Requirements that books and records be maintained and made available to the Egg Board and the Secretary by persons who process, prepare for market, or market eggs, including eggs of their own production, who sell egg-type baby chicks, started pullets or spent fowl, and hatchery operators, for administration or enforcement of the bill. The information so obtained is to be kept confidential.

Section 8. Required terms in orders

Section 8 provides for the establishment of an Egg Board with not more than 18 members. The Board shall be composed of egg producers or representatives of egg producers appointed by the Secretary from nominations submitted by eligible organizations, associations, cooperatives or egg producers as authorized by the Secretary. Such representation shall reflect, to the extent practicable, the proportion of eggs produced in each geographic area of the United States.

Section 8 also—

(1) Requires the Egg Board to develop and submit for the Secretary's approval all plans, projects, and budgets before they become effective.

(2) Provides for producer assessment, not to exceed five cents per case (30 dozen), to cover the cost of the program, including costs incurred by the Department of Agriculture.

(3) Requires that the Egg Board maintain books and records and report to the Secretary from time to time as he may prescribe.

(4) Provides that the Egg Board may enter into contracts or agreements to carry out activities authorized by the order.

(5) Provides that board members and alternates shall serve without compensation, but shall be reimbursed for the reasonable expenses they incur in performing their duties.

Section 9. Requirement of referendum and egg producer approval

Section 9 requires the Secretary to conduct a referendum to obtain approval of egg producers before the order can become effective. Approval must be made by not less than two-thirds of the producers voting, or by a majority of the producers voting if such majority produced not less than two-thirds of the commercial eggs produced during a representative period.

Section 10. Suspension and termination of orders

Section 10 provides that the order could be terminated or suspended by the Secretary if he finds that the order obstructs or does not tend to effectuate the purposes of the bill.

Section 10 also authorizes the Secretary to conduct a referendum for termination or suspension of the order and requires such a referendum on request of ten percent or more of the egg producers voting in the referendum approving the order. The suspension or termination of the order must be approved by a majority of the producers voting in the referendum who produced more than fifty percent of the volume of commercial eggs produced by egg producers voting in the referendum.

Section 11. Provisions applicable to amendments

Section 11 provides that the provisions of the bill applicable to orders shall also be applicable to amendments to orders.

Section 12. Exemptions

Section 12 exempts from the provisions of the bill (1) egg producers with 3,000 or less laying hens, and (2) producers of eggs utilized primarily for the hatching of baby chicks.

Section 13. Producer refund

Section 13 provides that producers not favoring the program may—upon making a demand within a time period prescribed by the Egg Board but in no event more than 90 days after the end of the month in which the assessments are due and collectable—receive a refund of the assessment.

Section 14. Petition and review

Section 14 authorizes any person subject to the order to file a written petition with the Secretary stating that the order is not in accordance with law. Such person shall be given an opportunity for a hearing upon such petition.

The district courts of the United States in any district where such person resides or has his principal place of business are vested with jurisdiction to review the Secretary's ruling on the petition, provided the complaint is filed with twenty days of such ruling.

Section 15. Enforcement

Section 15 vests the district courts of the United States with jurisdiction to enforce, and to prevent or restrain any person from violating, any order or regulation issued pursuant to the bill.

Section 15 also provides that civil actions shall be referred to the Attorney General. Any egg producer who willfully violates any provisions of any order issued by the Secretary, or willfully refuses to remit any assessment, is liable to a penalty not to exceed \$1,000, for each offense, to be recovered by a civil suit.

Section 16. Certification of organizations

Section 16 authorizes the Secretary to certify the eligibility of organizations representing commercial egg producers. Such certification is to be based, among other things, on the geographic area of the organization's membership; nature and size of its membership and proportion of total active membership accounted for by producers; egg production by state and volume of commercial eggs produced by

its membership in each state; degree of representation of commercial egg producers in the organization's policies; source of funds, stability, and functions of the organization; and its ability and willingness to further the objectives of the bill.

Section 16 provides that the primary consideration in determining the eligibility of an organization shall be whether its membership consists of a substantial number of egg producers producing a substantial volume of commercial eggs.

Section 17. Regulations

Section 17 authorizes the Secretary to issue such regulations as may be necessary to carry out the provisions of the bill.

Section 18. Investigations

Section 18 authorizes the Secretary to make any investigations he deems necessary to carry out his responsibilities, to issue subpoenas, to administer oaths and affirmations, and to take evidence.

Section 18 also authorizes the Secretary to invoke the aid of any court of the United States in case any person refuses to obey a subpoena.

Section 19. Separability

Section 19 provides that if any provision of the bill is held invalid, the validity of the remainder of the bill and of the application of such provision to other persons or circumstances shall not be affected thereby.

Section 20. Appropriations

Section 20 authorizes the appropriation of such funds as are necessary to carry out the provisions of the bill. Appropriated funds shall not be used for payment of the expenses or expenditures of the Egg Board.

Section 21. Effective date

Section 21 provides that the bill shall become effective upon enactment.

DEPARTMENTAL VIEWS

In a letter to the Committee dated June 18, 1974, the Department of Agriculture states that it has no objection to the enactment of H.R. 12000, as passed by the House. The letter reads as follows:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., June 18, 1974.

HON. HERMAN E. TALMADGE,
Chairman, Committee on Agriculture and Forestry, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: We appreciate this opportunity to respond to your request for a report on H.R. 12000, the "Egg Research and Consumer Information Act", as passed by the House May 15, 1974.

The Department has no objection to the enactment of H.R. 12000 as approved by the House. The House-passed bill incorporates recom-

mendations made by the Department in its report to the House Agriculture Committee, dated March 25, 1974. This enabling legislation would give authority to the egg industry similar to that provided in previous legislation for a number of agricultural commodities; e.g., cotton, potatoes, wheat, milk, and others.

As approved by the House, H.R. 12000 would authorize the Secretary to issue orders providing for the establishment of an 18-member Egg Board which would develop, subject to the Secretary's approval, a program to enable egg producers to establish, finance, and carry out a coordinated program of research, producer and consumer education, and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl. Members of the Egg Board would be appointed by the Secretary from qualified nominees representing producers from regions of the United States designated by the Secretary. Approval by referendum would be required before the order could become effective. Certain small egg producers would be exempt from provisions of the bill.

With the exception of the costs incurred by the Department for conduct of the referendum, the program would be completely self-financing. Once the order was approved, all USDA administrative costs would be defrayed by assessment. The rate of assessment paid by producers and collected by the handlers to support the order shall not exceed 5 cents per case of commercial eggs or the equivalent. Producers not favoring the program would have the right to demand and receive a refund of the assessment.

Industry groups generally believe that they can increase the demand for their commodity and strengthen their position in the marketplace through market promotion, including advertising. Per capita consumption of eggs has fallen substantially since World War II. For the 1970-73 period, the annual egg consumption average was 306 per person, down 81 eggs from the average annual consumption of 387 for the 1950-53 period. Improved markets for eggs and egg products, spent fowl and products of spent fowl would do much to strengthen the economic well-being of the egg industry.

H.R. 12000 would require an initial appropriation to the Department of about \$150,000 to develop the order and conduct the referendum. After approval of the order, USDA administrative costs approximating \$100,000 annually would be defrayed by assessment. The expenditures by the Egg Board would depend on the revenue generated by the assessment which, at 5 cents a case for 150 million cases, would amount to about \$7.5 million annually. These estimates are rough approximations since we have had no programs of this nature for the egg industry.

In accordance with the provisions of P.L. 91-190, Section 102(2) (C), the enactment of this legislation would have no significant impact on the quality of the environment.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

COST ESTIMATE

In accordance with section 252 of the Legislative Reorganization Act of 1970, the Committee estimates that the costs to be incurred by the federal government during the current and five subsequent fiscal years as a result of the enactment of this legislation would be (1) approximately \$150,000 to develop the order and conduct the referendum, and (2) annual administrative costs of approximately \$100,000 by the Department of Agriculture, which would be defrayed by assessment. This estimate of costs is in accord with the cost estimate submitted by the Department.

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EGG RESEARCH AND CONSUMER INFORMATION ACT

MAY 10, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. POAGE, from the Committee on Agriculture,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 12000]

The Committee on Agriculture, to whom was referred the bill (H.R. 12000) to enable egg producers to establish, finance, and carry out a coordinated program of research, producer and consumer education, and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 4, line 6, following the words "commercial eggs", insert the words "or eggs".

Page 4, line 8, following the word "processing", strike the period and add the phrase "into egg products."

Page 4, line 18, delete the word "fifty" and insert the words "the forty-eight contiguous"; and following the word "America" on line 19, delete the period, and insert the words, "and the District of Columbia."

Page 4, line 22, following the word "spent fowl", the second time it appears, insert a period and delete the remainder of the sentence.

Page 5, line 2, following the word "fowl", insert a period and delete the remainder of the sentence.

Page 5, line 6, following the words "spent fowl", the second time it appears, insert a period and delete the remainder of the sentence.

Page 5, line 8, delete the words "includes the sale" and insert in lieu thereof the words "means the sale or other disposition".

Page 5, line 13, delete the word "commercial".

Page 5, line 14, delete the word "shell".

Page 5, line 17, delete the word "through" and insert in lieu thereof the word "for".

Page 5, line 25, delete the words "raising and".

Page 6, lines 1 through 7, following the word "term" delete the remainder of the subsection, and subsections (u) and (v) in their entirety, and insert the words "handler" means any person, specified in the order or the rules and regulations issued thereunder, who receives or otherwise acquires eggs from an egg producer, and processes, prepares for marketing, or markets such eggs, including eggs of his own production."

Page 6, lines 13 and 14, delete the words "and marketing", and following the word "eggs" on line 14, delete the phrase "processors, breakers, and distributors of commercial eggs" and insert in lieu thereof the words "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."

Page 7, line 16, delete the words "for the advertising of, sales promotion of," and insert in lieu thereof the words "for advertising, sales promotion,".

Page 8, line 3, delete the word "knowingly".

Page 8, line 8, following the word "marketing", insert a comma.

Page 8, line 14, following the word "and" delete the words "that producers of said products shall be informed of data collected by such activities." and insert in lieu thereof, "the data collected by such activities may be disseminated".

Page 8, line 20, delete the words "egg producers, breakers, processors, persons marketing commercial eggs" and insert in lieu thereof the words "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."

Page 9, lines 22 through 24, delete the words "the name of any person or persons requesting and receiving funds, together with a statement concerning amount of refund and".

Page 9, line 25, delete the word "total".

Page 10, line 4, following the word "person" insert a period and delete the remainder of the sentence.

Page 10, line 7, following the word "and" insert the words "if an officer or employee of the Egg Board or Department of Agriculture".

Page 11, line 9, following the word "of" insert the word "egg".

Page 11, line 12, following the word "by" insert the words "such egg".

Page 11, line 21, after the word "advertising" delete the word "or" and insert a comma in lieu thereof.

Page 11, line 22, following the word "promotion" insert a comma, delete the word "or", the first time it appears in such line, and insert in lieu thereof the words "consumer education," and insert a comma following the word "research".

Page 12, line 5, insert a comma following the word "advertising".

Page 12, line 6, delete the words "and promotion and research" and insert in lieu thereof the words "promotion, consumer education, research,".

Page 12, line 8, delete the words "first processor of such producer's eggs," and insert in lieu thereof the words "handler of eggs designated by the order or the Egg Board pursuant to regulations issued under the order,".

Page 12, line 9, delete the word "processed" and insert in lieu thereof the word "handled".

Page 12, line 15, delete the word "processor" and insert in lieu thereof the word "handler".

Page 12, lines 19 through 22, delete the sentence beginning with the words "Such assessment" and insert in lieu thereof the following sentences:

To facilitate the collection of such assessments, the order or 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.

Page 13, line 4, delete the words "shall provide by contract or otherwise for the administration, development," and insert in lieu thereof the words "may enter into contracts or agreements for development".

Page 13, line 8, following the period, delete the balance of line 8 and line 9 in its entirety, and insert in lieu thereof the following:

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,

Page 13, line 11, delete the words "an annual report" and insert in lieu thereof the words "periodic reports".

Page 13, following line 18, insert the following new subsection:

(i) Providing 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.

Page 14, line 5, delete, following the word "or" the balance of Section 9 and insert in lieu thereof the following:

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.

Page 15, line 10, delete line 10 in its entirety, and insert in lieu thereof:

Sec. 12. The following may be exempt from specific provisions of this Act under such conditions and procedures as

may be prescribed in the order or rules and regulations issued thereunder:

Page 15, line 12, delete following the word "during" the balance of the subsection and insert in lieu thereof the following words:

a three consecutive month period immediately prior to the date assessments are due and payable has not exceeded 3,000 laying hens.

Page 15, lines 16 and 17, delete subsection (c) in its entirety.

Page 15, lines 22 and 23, delete the words "research and promotion program" and insert in lieu thereof the word "programs".

Page 16, line 4, following the word "days" insert the phrase:

after the end of the month in which the assessments are due and collectable,

Page 17, line 16, following the word "action" delete the period and insert in lieu thereof the following:

Provided, That nothing in this Act shall be construed as requiring the Secretary to refer to the Attorney General minor violations of this Act whenever he believes that the administration and enforcement of the program would be adequately served by suitable written notice or warning to any person committing such violation.

PURPOSE

The Egg Research and Consumer Information Act is specific enabling legislation. It would allow the egg industry of the United States, with the cooperation of the U.S. Department of Agriculture, to draft and put to referendum a national plan through which individual egg producers might assess themselves up to five cents (5¢) for each case (30 dozen) of commercial eggs. Funds would be used for the purpose of consumer education and information programs, research, advertising, promotion to enhance the utility, desirability, and image of eggs, egg products, spent fowls and products of spent fowl.

NEED

The Federal Government has cooperated with numerous similar programs involving peanuts, cotton, and other commodities. This has been done both through specific enabling legislation and under the provisions of the Agricultural Marketing Agreements Act of 1937. Eggs are specifically exempted from the provisions of this Act.

The egg producing industry, while very much in support of this legislation, has been unable to independently organize itself for the purposes embodied in this legislation. A basic impediment has been the wide variation in the size of operation of the Nation's egg producers. Eggs are produced in all fifty States by producers whose size of operation range from a few laying hens to large commercial operations with more than a million layers.

This bill is specifically designed for the participation of only commercial egg producers with laying flocks of 3,000 or more. Even though smaller producers will not participate in the referendum nor

pay any assessment, benefits from any programs undertaken will accrue to all egg producers.

The U.S. Department of Agriculture, using the latest census figures, testified that 87 percent of the U.S. egg supply is produced on farms with 3,200 or more layers. The figures indicate that 3.9 percent of the farms (18,000) have 3,200 or more layers. The egg industry estimates that there are 30,000 commercial egg producers with 3,000 or more layers in the 48 contiguous States. Hawaii and Alaska are exempted from the bill.

If approved in referendum an Egg Board, composed of 18 members recommended by certified egg industry organizations and appointed by the Secretary of Agriculture, will control all collected funds and contract with agencies, organizations, universities, etc. for specific work to be done in promotion and research. These functions, which are an integral part of almost every industry and segment of our economy, are generally beyond the capability and resources of individual egg producers, who are occupied with production and marketing.

It is recognized that an adequate, steady supply of fresh eggs for the Nation's consumers is in the public interest. Maintenance of markets and the development of new markets, both domestic and foreign, are essential if the egg industry is to remain viable enough to fill the needs of consumers. The per capita consumption of eggs has been declining since 1950. In that year, average per capita consumption was 389 eggs. The figure in 1973 had dropped to 292. Along with declining demand the egg industry has been characterized by widely varying levels of production and prices.

The U.S. Department of Agriculture estimates that should the program become operational, about \$7.5 million annually would be made available to the Egg Board. All expenditures of the Egg Board must be approved by the Secretary of Agriculture and accounted for annually by the Egg Board and the firms to which contracts are awarded.

Possible areas of research to be conducted would include consumer preference studies, variable factors affecting egg sales, basic market research, new product development, production improvement, marketing technology and other analysis studies of marketing and production which will aid individual egg producers. Also authorized by this legislation would be avian disease research much of which is now conducted by land-grant universities. Federal Government grants for such research have been substantially reduced. It is anticipated that funds collected from egg producers under the provisions of this act would be used to assist in funding research studies where Federal funds have been reduced or are not available.

Research into purchaser motivation by age groups, income groups, ethnic groups, etc., would be authorized. Such information is necessary if products are to be disseminated to proper markets.

Studies into egg merchandising, advertising, and promotion will aid the establishment of marketing practices to assure consumers of quality products when and where they are needed. Improvement in transportation and handling procedures could result in fewer product losses and give consumers a fresher, undamaged product. Research into feed conversion, packaging, handling, and marketing could reduce overhead costs resulting in savings to producers and consumers.

In addition to research projects, funds would be available to estab-

lish and carry out well coordinated information dissemination programs. These programs could vary from making research information available to consumer groups, to providing homemakers with information on product uses, to paid advertising and promotion done on an industry-wide basis.

The Committee views this as self-help legislation. It can only be activated after adequate hearings are held by the Secretary of Agriculture and after a plan is approved by either two-thirds of the eligible producers voting or by a majority of the producers voting who own at least two-thirds of the commercial egg production represented in the referendum. Government participation and expense would be minimal.

COMMITTEE CONSIDERATION

A hearing on H.R. 12000 and related bills was held before the Dairy and Poultry Subcommittee on March 26, and at a subsequent open business meeting of the Subcommittee on April 23 the bill was ordered reported to the full Committee with amendments by a voice vote.

On May 2, H.R. 12000, as amended, was considered by the full Committee on Agriculture, meeting in open session. At this meeting, the following letter from the Federal Trade Commission was discussed:

FEDERAL TRADE COMMISSION,
Washington, D.C., April 19, 1974.

HON. W. R. POAGE,
Chairman, Committee on Agriculture, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: The Federal Trade Commission notes the introduction and the recent hearings by your Committee of H.R. 12000, 93d Congress, 1st Session, a bill "To enable egg producers to establish, finance, and carry out a coordinated program of research, producer and consumer education, and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl," and, pursuant to discussions between our respective staffs, submits the report which follows.

The "Legislative Findings and Declaration of Policy" of this bill recite that the marketing of eggs and spent fowl (hens no longer used for egg production) by egg producers, individually, has failed adequately to promote these products or to improve their markets; that cooperative and collective action by producers is necessary to achieve these results; and that authority to assess egg producers is necessary to finance a program "to strengthen the egg industry's position in the marketplace."

To accomplish these objectives, H.R. 12000 would establish an "Egg Board" consisting of not more than 18 egg producers or representatives of egg producers appointed by the Secretary of Agriculture from candidates nominated by organizations certified by the Secretary as eligible to represent commercial egg producers of given areas of the United States. Programs to increase the public demand for eggs, spent fowl, and the products of each, would be proposed by certified egg organizations, interested persons affected by the bill, or by the Secretary. The Secretary would give notice and opportunity

for hearings upon such proposals as he should have reason to believe necessary to carry out the purposes of the bill. Programs or plans approved by the Secretary, would be promulgated as orders of the Secretary and would be carried out by the Egg Board.

The Egg Board would administer "consumer education" programs through advertising to increase the demand for eggs and spent fowl, provide for marketing and distribution studies, and require the maintenance of records which would be available to the Egg Board for monitoring compliance with the programs of the Board. The funding of the activities of the Egg Board would be provided by assessments of up to five cents per case of eggs (30 dozen eggs) levied upon the larger egg producers.

For reasons which follow the Federal Trade Commission questions the merits of H.R. 12000. Although the matter is not free of controversy, some health authorities and nutritionists find a relationship between the consumption of eggs and blood cholesterol levels. In view of this question, the possibility that the promotion of egg consumption may fall within the category of false or misleading advertising is presented by programs to build a demand for eggs. The enactment of H.R. 12000 would clothe such advertisement with the stamp of Congressional approval, and moreover, would place such promotion under the aegis of the Secretary of Agriculture. Further, eggs are now purchased on a price-quality basis and no public benefit has been suggested for creating a demand for the products embraced by this legislation greater than that which now exists.

Apart from its views on the general concept of H.R. 12000, the Commission objects specifically to the final proviso of Section 7(a) of the bill. Under this proviso, the knowing use of false or unwarranted advertising is prohibited, whereas Sections 5 and 12 of the Federal Trade Commission Act proscribe respectively, "unfair or deceptive acts or practices," and the dissemination of "any false advertising." This proviso should be deleted from the bill as it would create as to advertisements dealing with eggs, a different and less stringent test of legality.

For the foregoing reasons, the Commission is constrained to oppose the enactment of H.R. 12000.

By direction of the Commission, with Commissioner Thompson dissenting.

CHARLES A. TOBIN,
Secretary.

In response to the letter, it was pointed out by Mr. Jones that the bill already provides, in Section 7, a prohibition against false or unwarranted claims in advertising, consumer education, or sales programs carried on under the Act. Moreover, the Subcommittee on Dairy and Poultry had, subsequent to the date of the FTC communication, adopted an amendment also supported by the Department of Agriculture that deleted the word "knowingly" from the language of Section 7 relating to false advertising.

The Committee adopted two additional amendments suggested by the Department, and the bill was ordered reported by a show of hands vote of 20-0. A quorum was present and voting.

COMMITTEE AMENDMENTS

The amendments adopted in Committee and Subcommittee are largely in response to Administration recommendations on substantive measures, as well as those technical in nature.

CURRENT AND FIVE SUBSEQUENT FISCAL YEAR COST ESTIMATE

Pursuant to Clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee estimates the cost to be incurred by the Federal Government during the current and the five subsequent fiscal years as a result of the enactment of this legislation would be \$150,000 to develop the order and conduct a referendum, and approximately \$100,000 administrative costs each year thereafter.

The same cost estimate was submitted to the Committee by the Department of Agriculture, as shown in the Departmental Report on the bill. In commenting on the legislation, Under Secretary J. Phil Campbell wrote as follows:

H.R. 12000 would cost the Department about \$150,000 to develop the order and conduct a referendum, and about \$100,000 administrative costs each year thereafter. The expenditures by the Egg Board would depend on the revenue generated by the assessment which, at 5 cents a case for 150 million cases, would amount to approximately \$7.5 million annually. These estimates are rough approximations since we have had no programs of this nature for the egg industry.

ADMINISTRATION POSITION

In the following letter directed to the Chairman, the Department indicated its acquiescence to the bill, provided certain amendments were adopted. The Committee amendments adopted the Department's views.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., March 25, 1974.

Hon. W. R. POAGE,
Chairman, Committee on Agriculture,
House of Representatives.

DEAR MR. CHAIRMAN: We appreciate the opportunity to respond to your request for a report on H.R. 12000, the proposed "Egg Research and Consumer Information Act." This legislation would enable egg producers to establish, finance, and carry out a coordinated program of research, producer and consumer education and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl.

The Department does not object to the enactment of this bill with modifications as outlined herein. The authority provided by the bill is essentially similar to that provided in previous legislation for a number of other agricultural commodities.

H.R. 12000 would authorize the Secretary to issue orders providing for the establishment of an Egg Board which would develop, subject

to the Secretary's approval, appropriate plans or projects for research, advertising, promotion and consumer education with respect to eggs, egg products, spent fowl, and products of spent fowl and the disbursement of necessary funds for such purposes. To administer this program, the Secretary would appoint an 18-member Egg Board from qualified nominees representing producers from regions of the United States designated by the Secretary.

The bill requires approval by referendum of egg producers before an order can become effective. Also, the Secretary may conduct a referendum to determine if producers favor termination of orders.

The rate of assessment paid by producers and collected by the handlers to support the order shall not exceed 5 cents per case of commercial eggs or the equivalent. Certain small egg producers of hatching eggs and small imports of eggs would be exempt from the provisions of the Act. Producers who do not favor the program would have the right to demand and receive a refund of the assessment.

Industry groups generally believe that market promotion (including advertising) will strengthen their position in the marketplace and increase the demand for their commodity. Since World War II, the per capita consumption of eggs has fallen significantly. For the 1970-73 period, annual egg consumption average 306 per person, down 81 eggs from the average annual consumption of 387 in the 1950-53 period. Improved markets for eggs and egg products, spent fowl and products would do much to strengthen the economic well-being of the egg industry.

The Department recommends substantive changes in the bill, relating to producer refunds, assessments on imported eggs, producer approval in referendum, exemptions, and defrayment of USDA costs by assessment. In addition, we recommend a number of technical and clarifying amendments which are outlined in the attached statement.

Section 7(c), page 9, lines 22-24, would authorize publication of ". . . the name of any person or persons requesting and receiving refunds, together with a statement concerning amount of refund. . . ." The Department opposes publication of the names of persons receiving refunds. We do not believe this type of information is necessary to the effective operation of the program; and it could be used to exert coercion on producers seeking refunds. Such provision is not contained in similar legislation for other commodities.

Section 8(e), page 12 lines 19-22, concerning assessments on foreign commercial eggs entering U.S. domestic markets, should be deleted. Because of the insignificant volume of imported eggs entering the U.S. each year—less than one-half of one percent—it would not warrant the administrative efforts which would have to be expended by the Egg Board in establishing procedures for the collection of such assessments.

Section 9, page 14, lines 6-7, concerning the conduct of a referendum, requires that the order be approved by either two-thirds vote of the egg producers voting in such referendum, or by favorable vote of producers owning two-thirds of the production who vote in the referendum. With respect to the latter alternative, we recommend a further requirement that a majority of producers approve. This would insure that a minority of producers, who might control two-thirds of the production, could not impose the program upon a majority of producers. It also would

make the approval requirements consistent with the procedures for suspension or termination contained in Section 10(b).

Section 12, page 15, line 10, exempts from all requirements of the bill egg producers owning 3,000 hens or less, owners of breeding flocks whose eggs are primarily used for hatching, and foreign commercial eggs not exceeding 100 cases in any entry into the United States. We recommend that this section be amended to allow administrative flexibility in determining how and in what manner the exemptions should be applied and made effective. For example, it may be necessary to require persons exempt from assessment provisions to keep certain records or to submit information needed to verify their exempt status. There should be flexibility to permit these procedures to be developed and modified in the light of operating experience and evidence received in public hearings to develop order provisions. Further, *lines 16 and 17* should be deleted to conform to changes made in Section 8(e) to drop the provision concerning assessments on imported eggs.

Section 20, page 21, line 14-20, change "Section 20" to "Section 21". We recommend the addition of a new Section 20, entitled (Authority to Incur Expenses), to provide that all program costs be paid from producer assessments, including those incurred by the Department, as well as those of the Egg Board.

Specific language to implement these changes, as well as other recommended technical and clarifying changes, and justification therefor, are contained in the attached statement. We shall be glad to assist the Committee staff in implementing the proposed changes.

H.R. 12000 would cost the Department about \$150,000 to develop the order and conduct a referendum, and about \$100,000 administrative costs each year thereafter. The expenditures by the Egg Board would depend on the revenue generated by the assessment which, at 5 cents a case for 150 million cases, would amount to approximately \$7.5 million annually. These estimates are rough approximations since we have had no programs of this nature for the egg industry.

In accordance with the provisions of Public Law 91-190, Section 102(C), this legislation would have no significant impact on the quality of the environment.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

Enclosure.

SUGGESTED AMENDMENTS TO H.R. 12000, THE PROPOSED "EGG
CONSUMER INFORMATION ACT"

Substantive Changes

Section 7(c), page 9, lines 22, 23, and 24, delete "the name of any person or persons requesting and receiving refunds, together with a statement concerning amount of refund and". Deletion of this phrase is recommended since it may be construed as being coercive to those persons requesting refunds. To establish a new appropriation account and a new receipt

In other research and promotion programs, the Department's experience indicates that release of this type information is not necessary to the effective operation of the program. However, authority would still be retained for the issuance of general statements regarding refunds.

Section 8(e), page 2, line 13, after the word "Egg Board" insert "including those administrative costs incurred by the Department.". This change will provide for USDA costs to be defrayed by producer assessments, as well as all program costs and expenses of the Egg Board. *Lines 19-22*, delete the last sentence. Statistics on a ten-year basis indicate that in no year during the 1964-1974 period have imports exceeded one-half of one percent of total domestic production of eggs. To establish procedures for the collection of assessments not to exceed 5 cents per case of imported eggs would not warrant the administrative efforts which would have to be expended by the Egg Board for such an insignificant volume of eggs.

Section 9, page 14, line 7, delete the period and insert "and by not less than a majority of the producers voting in such referendum." This change is to insure that a small minority of the producers who may control two-thirds of the production do not impose the program upon the majority of the producers and is consistent with Section 10(b) which requires a majority of egg producers of more than 50 percent of the volume of eggs to suspend or terminate the program.

Section 12, page 15, line 10, delete "The following shall be exempt from this act" and insert in lieu thereof the following: "The following may be exempt from specific provisions of this Act under such conditions and procedures as may be prescribed in the order or rules and regulations issued thereunder." The purpose of this amendment is to allow the Secretary, in the order or in the rules and regulations issued thereunder, the administrative flexibility in determining how and in what manner the exemptions may be applied and made effective. *Lines 16 and 17*, delete subsection (c) to conform to the deletion made in Section 8(e), lines 19-22, respecting assessments on imports of eggs.

Section 20, page 21, lines 14-20, change "Section 20" to "Section 21" and insert a new Section 20 (Authority to Incur Expenses) as follows: "Section 20. The Egg Board is authorized to incur such expenses as the Secretary finds are reasonable and necessary to carry out the functions of the Egg Board under this Act during any fiscal year. The payment of such budgeted expenses, as well as the costs of the administration of this Act within the Department, shall be made from funds collected as prescribed in Section 8(e). Applicable appropriations available to the Department of Agriculture current at the time services are rendered may be reimbursed by the Egg Board for actual or estimated costs, as determined by the Secretary, incident to implementing the provisions of this Act." This change will provide for defrayment of USDA administrative costs by assessment and obviate the requirement account.

Technical and Clarifying Changes

Section 3(c), page 4, line 6, after "commercial eggs" insert "or eggs" and strike the period on *line 8* at the end of the sentence and insert "into egg products." Since both the terms "commercial eggs" and "eggs" are used throughout the Bill and appear to have the same meaning, the addition of the word "eggs" to the definition is desirable to ensure clarity as to intent. The addition of "into egg products" is deemed desirable to clarify that the only further processing involved would be the processing of shell eggs into egg products.

Section 3(h), page 4, line 18, insert "the" after "means" and on *line 19*, strike the period and insert "and the District of Columbia." These changes includes the District of Columbia within coverage of the Bill.

Section 3(i), page 4, lines 22 and 23, delete "in an organized campaign or program". The deleted words appear to be unnecessary and could be construed as preventing individual plans or projects unless they come within what can be considered an organized campaign or program.

Section 3(j), page 5, lines 2 and 3, delete ", and the accumulation and dissemination of statistical and research data with respect thereto". The deleted phrase is not appropriate in the definition section of the Bill. Such authority, if needed, should more appropriately be placed in Section 7(b) of the Bill which authorizes such research-type programs.

Section 3(k), page 5, lines 6 and 7, delete "through organized consumer-oriented campaigns or programs". The deleted phrase is not appropriate in the definition section of the Bill. Further, it could be construed as limiting the broader authority provided in Section 7(a) of the Bill.

Section 3(l), page 5, line 8, delete "includes the sale" and insert "means the sale or other disposition". This amendment recognizes that eggs may move from the producing operation to the consumer by transactions other than a sale.

Section 3(n), page 5, line 13, delete "commercial" and on *line 14*, delete "shell". The word "commercial" appears to be unduly restrictive in that it would limit the research and promotion programs to commercial products, whereas the intent of the programs could also be directed to products which are made by the housewife. The deletion of the word "shell" would make this definition conform to the definition of "commercial eggs or eggs."

Section 3(o), page 5, line 17, delete "through" and insert "for". The change is to make clear that recordkeeping requirements could be imposed upon dealers of live spent fowl, if deemed necessary for enforcement purposes.

Section 3(s), page 5, line 25, delete "raising and". This change would allow recordkeeping for enforcement purposes to be required of those persons who not only raise started pullets but also those who buy started pullets for resale to egg producers.

Section 3(t), (u), and (v), page 6, lines 1-7, delete subparagraphs (t), (u), and (v) and insert in lieu thereof new subparagraph (t) as follows: "(t) The term 'handler' means any person, specified in the order or the rules and regulations issued thereunder, who receives or otherwise acquires eggs from an egg producer, and processes, prepares for marketing, or markets such eggs, including eggs of his own production."

The egg industry is complex with many and varied types of operations by which eggs are moved from the producer to the processor or to the consumer. In order that the Bill may be administered effectively to accomplish its intent and purpose, it is necessary to provide authority to impose regulation on the various points within the industry to accomplish collection of assessments and provide for necessary recordkeeping in connection therewith. The Bill proposed that the focal point of regulation be the "processor." However, "processor," as it is defined in the Bill, may exclude from the collection provisions a variety of egg handling operations, and thus could result in a significant volume of eggs being free from assessment. The proposed "handler" definition is intended to provide broad authority to impose responsibility for collection of assessments and recordkeeping at the most administratively feasible point or points in the industry. The "handler" definition would allow such points of regulation to be determined by the Secretary, based upon evidence presented by the industry at the public hearing required in the promulgation of an order under the Bill.

Section 4, page 6, lines 13, 14, and 15, is amended as follows so as to conform with the definitions as proposed to be amended. Delete "persons engaged in the production and marketing of commercial eggs, processors, breakers, and distributors of commercial eggs," and insert in lieu thereof the following: "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."

Section 7(a), page 7, line 16, delete "the" and "of". These words appear superfluous to the context.

Section 7(a), page 8, line 3, delete "knowingly". We would be concerned about sources of misleading advertising whether its knowingly or otherwise.

Section 7(b), page 8, line 8, insert a comma after the word "marketing" so as to make it clear that there can be separate marketing and separate development projects.

Section 7(b), page 8, lines 14, 15, and 16, delete "that producers of said products shall be informed of data collected by such activities" and insert in lieu thereof the following: "the data collected by such activities may be disseminated". As presently written, the Bill appears to restrict availability of the data and information collected solely to be producers of the products involved. As proposed to be amended, such information can be disseminated to all who would be affected by the research, marketing, and development projects and

Section 7(c), page 8, lines 20 and 21, delete "egg producers, breakers, processors, persons marketing commercial eggs" and insert in lieu thereof the following: "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." The amendment would conform this subparagraph of the Bill to the proposed definition amendments.

Section 7(c), page 10, line 4, delete "or company" as being superfluous. *Line 7,* after "and" insert ", if an officer or employee of the Egg Board or Department of Agriculture,". Since it is doubtful the removal-from-office penalty can be applied to employees of contracting agencies, this amendment is necessary to make clear that removal from office will apply only to officers and employees of the Egg Board and Department of Agriculture and not to contracting agencies.

Section 8(b), line 9, insert "egg" immediately before "producers" and on *line 12,* insert "such egg" immediately before "producers". These amendments make it clear that the reference is to egg producers rather than other producers.

Section 8(c), page 11, line 22, insert ", consumer education," after "promotion". The phrase appears to be inadvertently omitted.

Section 8(d), page 12, line 6, insert ", consumer education," after "promotion". The phrase appears to be inadvertently omitted.

Section 8(e), page 12, line 8, delete "first processor of such producer's eggs," and insert "handler of eggs designated by the order or the Egg Board pursuant to regulations issued under the order." *Line 9,* delete "processed" and insert "handled". *Line 15,* delete "processor" and insert "handler". *Line 22,* insert two new sentences as follows: "To facilitate the collection of such assessments, the order or 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."

The amendments to the Bill would change the focal point for assessments from the "first processor" to a handler designated in the order or by the Egg Board in the rules and regulations issued under the order. This would provide the necessary flexibility, after a hearing, for the order and/or the Egg Board to recognize the varying practices of the industry and to take into account administrative feasibility in determining where the focal points for collection of assessments and recordkeeping should be. Further, the amendment of the Bill relating to the institution of suits for collection of assess-

ments is deemed appropriate so as to make clear that there will be no jurisdictional impediments for collection regardless of the amounts involved.

Section 8(g), page 13, lines 4 and 5, delete "shall provide by contract or otherwise for the administration," and insert "may enter into contracts or agreements for". *Line 5,* delete the comma after the word "development". *Lines 8 and 9,* delete "any such contract shall become effective upon approval by the Secretary and" and insert "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 the 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,". *Line 11,* delete "and annual report" and insert "periodic reports". By deleting the word "shall" and inserting "may" on line 4, flexibility is provided to the Egg Board to determine which activities it should contract to other organizations and others it may wish to retain itself. The deletion of "administration" on line 5 would require the Egg Board to administer the program itself rather than some contract organization and thereby makes this provision consistent with Section 8 which charges the Egg Board with the administration of the program. The suggested revision of the Bill on lines 8 and 9 would eliminate the requirement of the Secretary approving each individual contract and makes it consistent with Section 8(c) by requiring the Secretary's approval of the plans or projects to be carried out in such contracts.

Section 9, page 14, line 6, change "the representative period" to "a representative period, as determined by the Secretary,". The purpose of this change is to make clear that the representative period is one determined by the Secretary.

Section 12, page 15, lines 11, 12, and 13, delete Section 12(a) and insert in lieu thereof the following: "(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 3,000 laying hens." The purpose of this amendment is to clarify the intent of the provision.

Section 13, page 15, lines 22 and 23, delete "research and promotion program as" and insert "programs". This amendment is to make clear that the language of the section applies to all the authorized programs under the Act.

Section 13, page 16, line 4, insert after "thirty days," the phrase "after the end of the month in which the assessments are due and collectable,". *Line 4,* delete the comma after "thirty days". These changes are made to facilitate administration of the program. Amending the cut-off period for the producer to make application to thirty days after the month in which the assessments were paid by the producer

would facilitate the processing of refund applications for all assessments collected from the producer during that month and recognizes the fact that a producer may sell his eggs on a daily or weekly basis during the month.

Section 15(a), page 17, line 16, delete the period at the end of the subparagraph and insert the following: "*Provided*, That nothing in this Act shall be construed as requiring the Secretary to refer to the Attorney General minor violations of this Act whenever he believes that the administration and enforcement of the program would be adequately served by suitable written notice or warning to any person committing such violation." The purpose of this amendment is to avoid the necessity of involving the Attorney General and the courts in matters in which the person violating the program may be encouraged towards compliance without the necessity of instituting legal action. We have experienced satisfactory results in other programs utilizing this type of procedures.

ADDITIONAL VIEWS OF HON. GEORGE A. GOODLING

While I do not quarrel with the basic provisions of this bill, I do question both the desirability and the need for the Federal Government to finance the administration of the program.

It seems to me that the collections from assessments which will total an estimated \$7.5 million annually are adequate to finance the administrative costs of this bill.

Testimony from the Department of Agriculture indicated that administrative costs would run some \$100,000 annually after the program was inaugurated. I can see no good reason why the egg promotion fund could not be used to pay these expenses.

In committee, it was argued that this would be a precedent for other commodity check-off programs. If it is, it seems to me to be about time we start setting some precedents that will relieve the Federal Government of a few of its nearly unbearable fiscal burdens.

H.R. 12000 should therefore be amended as proposed by the U.S. Department of Agriculture to require administrative expenses for operating the egg promotion program to be paid from egg research and promotion check-off receipts.

GEORGE A. GOODLING.

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Ninety-third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-first day of January,
one thousand nine hundred and seventy-four*

An Act

To enable egg producers to establish, finance, and carry out a coordinated program of research, producer and consumer education, and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That this Act shall be known as the "Egg Research and Consumer Information Act."

LEGISLATIVE FINDINGS AND DECLARATION OF POLICY

SEC. 2. Eggs constitute one of the basic, natural foods in the diet. They are produced by many individual egg producers throughout the United States. Egg products, spent fowl, and products of spent fowl are derivatives of egg production. These products move in interstate and foreign commerce and those which do not move in such channels of commerce directly burden or affect interstate commerce of these products. The maintenance and expansion of existing markets and the development of new or improved markets and uses are vital to the welfare of egg producers and those concerned with marketing, using, and processing eggs as well as the general economy of the Nation. The production and marketing of these products by numerous individual egg producers have prevented the development and carrying out of adequate and coordinated programs of research and promotion necessary for the maintenance of markets and the development of new products of, and markets for, eggs, egg products, spent fowl, and products of spent fowl. Without an effective and coordinated method for assuring cooperative and collective action in providing for and financing such programs, individual egg producers are unable to provide, obtain, or carry out the research, consumer and producer information, and promotion necessary to maintain and improve markets for any or all of these products.

It has long been recognized that it is in the public interest to provide an adequate, steady supply of fresh eggs readily available to the consumers of the Nation. Maintenance of markets and the development of new markets, both domestic and foreign, are essential to the egg industry if the consumers of eggs, egg products, spent fowl, or products of spent fowl are to be assured of an adequate, steady supply of such products.

It is therefore declared to be the policy of the Congress and the purpose of this Act that it is essential and in the public interest, through the exercise of the powers provided herein, to authorize and enable the establishment of an orderly procedure for the development and the financing through an adequate assessment, an effective and continuous coordinated program of research, consumer and producer education, and promotion designed to strengthen the egg industry's position in the marketplace, and maintain and expand domestic and foreign markets and uses for eggs, egg products, spent fowl, and products of spent fowl of the United States. Nothing in this Act shall be construed to mean, or provide for, control of production or otherwise limit the right of individual egg producers to produce commercial eggs.

DEFINITIONS

SEC. 3. As used in this Act—

(a) The term "Secretary" means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

(b) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(c) The term "commercial eggs" "or eggs" means eggs from domesticated chickens which are sold for human consumption either in shell egg form or for further processing into egg products.

(d) The term "hen" or "laying hen" means a domesticated female chicken twenty weeks of age or over, raised primarily for the production of commercial eggs.

(e) The term "egg producer" means the person owning laying hens engaged in the production of commercial eggs.

(f) The term "case" means a standard shipping package containing thirty dozen eggs.

(g) The term "hatching eggs" means eggs intended for use by hatcheries for the production of baby chicks.

(h) The term "United States" means the forty-eight contiguous States of the United States of America and the District of Columbia.

(i) The term "promotion" means any action, including paid advertising, to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

(j) The term "research" means any type of research to advance the image, desirability, marketability, production, or quality of eggs, egg products, spent fowl, or products of spent fowl.

(k) The term "consumer education" means any action to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

(l) The term "marketing" means the sale or other disposition of commercial eggs, egg products, spent fowl, or products of spent fowl, in any channel of commerce.

(m) The term "commerce" means interstate, foreign, or intrastate commerce.

(n) The term "egg products" means products produced, in whole or in part, from eggs.

(o) The term "spent fowl" means hens which have been in production of commercial eggs and have been removed from such production for slaughter.

(p) The term "products of spent fowl" means commercial products produced from spent fowl.

(q) The term "hatchery operator" means any person engaged in the production of egg-type baby chicks.

(r) The term "started pullet" means a hen less than twenty weeks of age.

(s) The term "started pullet dealer" means any person engaged in the sale of started pullets.

(t) The term "handler" means any person, specified in the order or the rules and regulations issued thereunder, who receives or otherwise acquires eggs from an egg producer, and processes, prepares for marketing, or markets, such eggs, including eggs of his own production.

EGG RESEARCH AND PROMOTION ORDERS

SEC. 4. To effectuate the declared policy of this Act, the Secretary shall, subject to the provisions of this Act, issue and from time to time amend, orders applicable to persons engaged in the hatching and/or

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sale of egg-type baby chicks and started pullets, 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. Such orders shall be applicable to all production or marketing areas, or both, in the United States.

NOTICE AND HEARING

SEC. 5. Whenever the Secretary has reason to believe that the issuance of an order will tend to effectuate the declared policy of this Act, he shall give due notice and opportunity for hearing upon a proposed order. Such hearing may be requested and proposal for an order submitted by an organization certified pursuant to section 16 of this Act, or by any interested person affected by the provisions of this Act, including the Secretary.

FINDING AND ISSUANCE OF AN ORDER

SEC. 6. After notice and opportunity for hearing as provided in section 5, the Secretary shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing, that the issuance of such order and all the terms and conditions thereof will tend to effectuate the declared policy of this Act.

PERMISSIVE TERMS IN ORDERS

SEC. 7. Orders issued pursuant to this Act shall contain one or more of the following terms and conditions, and except as provided in section 8, no others.

(a) 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) 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) 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 Act 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 enforcement of the Act, or of any order or regulation issued pursuant to this Act: *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 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) Terms and conditions incidental to and not inconsistent with the terms and conditions specified in this Act and necessary to effectuate the other provisions of such order.

REQUIRED TERMS IN ORDERS

SEC. 8. Orders issued pursuant to this Act shall contain the following conditions: (a) Providing for the establishment and appointment, by the Secretary, of an Egg Board which shall consist of not more than eighteen 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) 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 16, 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.

(c) 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) 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.

(e) 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 Act—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. The rate of assessment prescribed by the order shall not exceed 5 cents per case of commercial eggs or the equivalent thereof. 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) 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) 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 7 (a) and (b) 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) 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) Providing 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.

REQUIREMENT OF REFERENDUM AND EGG PRODUCER APPROVAL

SEC. 9. 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 Act 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.

SUSPENSION AND TERMINATION OF ORDERS

SEC. 10. (a) The Secretary shall, whenever he finds that any order issued under this Act, or any provisions thereof, obstructs or does not tend to effectuate the declared policy of this Act, terminate or suspend the operation of such order or such provisions thereof.

(b) 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) The termination or suspension of any order, or any provision thereof, shall not be considered an order within the meaning of this Act.

PROVISIONS APPLICABLE TO AMENDMENTS

SEC. 11. The provisions of this Act applicable to orders shall be applicable to amendments to orders.

EXEMPTIONS

SEC. 12. The following may be exempt from specific provisions of this Act 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.

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PRODUCER REFUND

SEC. 13. Notwithstanding any other provisions of this Act, any egg producer against whose commercial eggs any assessment is made and collected from him under authority of this Act 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.

PETITION AND REVIEW

SEC. 14. (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 15(a) of this Act.

ENFORCEMENT

SEC. 15. (a) 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 Act. Any civil action authorized to be brought under this Act shall be referred to the Attorney General for appropriate action: *Provided*, That nothing in this Act shall be construed as requiring the Secretary to refer to the Attorney General minor violations of this Act whenever he believes that the administration and enforcement of the program would be adequately served by suitable written notice or warning to any person committing such violation.

(b) Any egg producer or other person who willfully violates any provision of any order issued by the Secretary under this Act, or who willfully fails or refuses to collect or remit any assessment or fee duly required of him thereunder, shall be liable to a penalty of not more than \$1,000 for each such offense which shall accrue to the United

States and may be recovered in a civil suit brought by the United States: *Provided*, That (a) and (b) of this section shall be in addition to, and not exclusive of, the remedies provided now or hereafter existing at law or in equity.

CERTIFICATION OF ORGANIZATIONS

SEC. 16. The eligibility of any organization to represent commercial egg producers of any egg producing area of the United States to request the issuance of an order under section 5, and to participate in the making of nominations under section 8(b) shall be certified by the Secretary. Certification shall be based, in addition to other available information, upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to, the following:

(a) Geographic territory covered by the organization's active membership,

(b) Nature and size of the organization's active membership, proportion of total of such active membership accounted for by producers of commercial eggs, a chart showing the egg production by State in which the organization has members, and the volume of commercial eggs produced by the organization's active membership in each such State,

(c) The extent to which the commercial egg producer membership of such organization is represented in setting the organization's policies,

(d) Evidence of stability and permanency of the organization,

(e) Sources from which the organization's operating funds are derived,

(f) Functions of the organization, and

(g) The organization's ability and willingness to further the aims and objectives of this Act: *Provided, however*, That the primary consideration in determining the eligibility of an organization shall be whether its commercial egg producer membership consists of a substantial number of egg producers who produce a substantial volume of commercial eggs. The Secretary shall certify any organization which he finds to be eligible under this section and his determination as to eligibility shall be final. Where more than one organization is certified in any geographic area, such organizations may caucus to determine the area's nominations under section 8(b).

REGULATIONS

SEC. 17. The Secretary is authorized to make regulations with force and effect of law, as may be necessary to carry out the provisions of this Act and the powers vested in him by this Act.

INVESTIGATIONS; POWER TO SUBPENA AND TAKE OATHS AND AFFIRMATIONS; AID OF COURTS

SEC. 18. The Secretary may make such investigations as he deems necessary for the effective carrying out of his responsibilities under this Act or to determine whether an egg producer, processor, or other seller of commercial eggs or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provisions of this Act, or of any order, or rule or regulation issued under this Act. For the purpose of such investigation,

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the Secretary is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena to, any person, including an egg producer, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

SEPARABILITY

SEC. 19. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

AUTHORIZATION

SEC. 20. There is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated such funds as are necessary to carry out the provisions of this Act. The funds so appropriated shall not be available for payment of the expenses or expenditures of the Egg Board in administering any provisions of any order issued pursuant to the terms of this Act.

EFFECTIVE DATE

SEC. 21. This Act shall take effect upon enactment.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

October 2, 1974

Office of the White House Press Secretary

NOTICE TO THE PRESS

The President has signed H. R. 12000 - Egg Research and Consumer Information Act which authorizes egg and chicken producers to establish, finance, and carry out a program of research, producer and consumer education, and promotion to improve, maintain and develop markets for their products.

Since the early 1950's, per capita egg consumption has fallen from 387 eggs to 306 eggs, a decline of more than 20 percent. This decline appears to be based on two factors: (1) the concern that egg cholesterol is a source of certain health problems; and, (2) the consumer switch to higher cost forms of protein such as beef made possible by increasing per capita incomes over the last two decades.

H. R. 12000 will authorize the Secretary of Agriculture to establish an 18 member Egg Board composed of egg producers or representatives of egg producers. Establishment of the Egg Board or any other order issued under this Act will require approval through an egg producer referendum with not less than two-thirds of the producers voting in favor or by a majority of the producers voting in favor if such majority constituted over two-thirds of all egg production. The Egg Board and orders administered by it will assist egg and chicken producers in establishing, financing, and carrying out a program of research, producer and consumer education, and promotion of research; producer and consumer education, and promotion to improve, maintain, and develop markets for their products. Orders can be suspended or terminated and certain small egg producers will be exempt. The Secretary can prohibit brand name advertising and "unfair or deceptive" practices which will not be allowed in any of the industry's activities.

The program will be financed entirely by an assessment paid by producers of not to exceed 5 cents per case (30 dozen eggs) of commercial eggs -- approximately \$7,500,000 will be generated annually by the assessments. Producers not favoring the program can demand and receive a refund of their assessment. While the \$150,000 cost for the initial referendum will be paid by Agriculture, all subsequent Federal costs will be defrayed by the assessments.

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September 19, 1974

Dear Mr. Director:

The following bills were received at the White House on September 19th:

H.R. 6395 ✓
H.R. 12000 ✓
H.R. 13595 ✓
S. 210 ✓
S. 3301 ✓

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C.