

**Economic Impact Statement**  
LSA Document #17-449

*NOTE: The Economic Impact Statement for LSA Document #17-449, posted at [20180110-IR-370170449EIA](#), was revised and resubmitted for publication.*

**IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses**

Per the requirements of [IC 4-22-2.1-5](#), the economic impact statement for LSA Document #17-449 has been updated for the proposed rule. The proposed rule posted at [20180620-IR-370170449PRA](#) amends [370 IAC 1-3-2](#) to change the expiration date on Grade A eggs from 30 days to 45 days and add the terms "SELL BY", "BEST BY", and "USE BY" as terms that may be used as synonymous to "EXP". Creates [370 IAC 1-3-3.1\(a\)](#) that requires all eggs sold at retail to be packaged in new consumer containers. Creates [370 IAC 1-3-3.1\(b\)](#) exempting sales to the end consumer at a farmers market from the requirement to use new consumer containers.

**1. An estimate of the number of small businesses, classified by industry sector, that will be subject to the proposed rule.**

The Indiana State Egg Board licenses all retailers selling eggs in Indiana and all wholesalers distributing eggs into Indiana. Therefore we have a high level of confidence in the estimated numbers of small businesses that would be impacted by this proposed regulation. Total number of small businesses in Indiana who would be impacted by the proposed rule to change the expiration dating on Grade A eggs from 30 to 45 days is estimated to be 540.

Total number of small businesses in Indiana who would be potentially impacted by the requirement for using new packaging materials is estimated to be 170 producer packers. This number was determined by the total of 540 small egg businesses minus 355 registered farm market retailers who would be exempt under the proposed rule. We then removed the 15 small wholesalers who are not packing their own eggs and would not have a direct cost associated with purchasing new packaging materials.

**2. An estimate of the average annual reporting, record keeping, and other administrative costs that small businesses will incur to comply with the proposed rule.**

Changing the expiration date on Grade A eggs from 30 to 45 days will not require additional record keeping, reporting, nor result in additional administrative costs. It could potentially reduce administrative and overhead costs of any small wholesaler distributing to adjoining states by eliminating the need for maintaining inventory of both 30 and 45 day dated eggs.

The additional requirement for the use of new packaging materials for eggs sold at retail will not impact any administrative costs nor change the requirements for reporting and/or record keeping.

**3. An estimate of the total annual economic impact that compliance with the proposed rule will have on all small businesses subject to the rule.**

The dating change will have no negative economic impact on small businesses.

Of the 170 producers included in the potential impact from using new packaging material, there is a high percentage of these eggs already being marketed in new consumer packaging. These producers are distributing to retailers who will not take the potential food safety risk afforded them by selling eggs in reused cartons.

Based on this assumption, we will only include the group of businesses that are currently distributing eggs under a farm market retail/wholesale permit. The majority of these producers are marketing to one or two restaurants or small specialty retail locations. As of March 31, 2018, we have 139 registrants in this classification.

Each of these registrants is required to report the volume of eggs they distribute. This information indicates that on average, this group of producer retailers is distributing approximately 145,000 dozen eggs per year.

Assumptions for calculating annual impact:

- All eggs are marketed in 1 dozen egg cartons
- New egg carton cost was calculated from an average of 3 on-line suppliers
- Egg cartons are foam material, purchased in 100 carton packages

The average price per carton = \$.42.

The 145,000 dozen distributed by small businesses with a carton cost of \$.42 would result in a total annual economic impact of \$60,900 in increased cost, if all eggs were currently being marketed in used cartons. Average annual per business cost is calculated to be \$438.13. Range from (\$0 - \$2500 (all eggs retailed from a 250 bird flock)).

**4. A statement justifying any requirement or cost that is imposed on small businesses by the rule:**

Extending the expiration date on Grade A eggs from 30 – 45 days lengthens the time eggs may remain on a

retailer's shelf by 15 days, the result of which will be a lower rate of product loss due to the product being expired. Data from the USDA/ARS Egg Quality program indicates that eggs can maintain a Grade A quality for more than 45 days.

The primary reason for requiring the use of new packaging materials at retail is a consumer safety and product traceability issue.

- Consumer safety
  - Eggs are a potentially hazardous food item that can serve as a medium for the growth of pathogenic bacteria that could cause a food borne illness.
  - Residue, specifically fecal material from poorly cleaned eggs could leave a potential vector for bacterial contamination to the consumer receiving the previously used carton.
  - The majority of our 170 businesses who may reuse egg cartons are from small back yard flocks of 250 birds or less. According to a report from the Centers for Disease Control, there were 8 cases of Salmonella in Indiana that were attributed to back yard poultry flocks. Nationally, 2017 saw the largest increase in the incidence of Salmonella in humans as a result of live poultry.
- Product traceability
  - When egg cartons are reused there is an increased probability that the trace back information required on every egg carton can be incorrect or conflicting when multiple sets of information are present.
  - In the event of a food borne illness contributed to egg consumption occurs, the accurate and rapid trace back to the origin is vital. Using only new cartons at retail will alleviate the potential to trace back to multiple origins and save significant resources.

**5. A regulatory flexibility analysis that considers any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule. The analysis under this subdivision must consider the following methods of minimizing the economic impact of the proposed rule on small businesses:**

The Indiana State Egg Board has two distinct retail permits. A standard retail permit applies to anyone retailing to the end consumer eggs that have been obtained from a wholesaler. The farm market retail permit is for anyone selling eggs from their own production to the end consumer at a farmers market. The volume of eggs sold under the farm market retail permit is limited to < 150 dozen per week.

Farm market retailers have an increased risk of potential food safety concerns, since they are exempt from food safety laws that apply to producers with 3,000 or more birds. However, a person buying from a farm market has the opportunity to form a relationship with the seller. Additionally, buyers from farm markets are less likely to report a food borne illness. The potential impact of a food borne illness through eggs purchased at a farmers market is much less than that from a larger volume producer. Additionally, eggs sold at a farmers market with a farm market retail permit are limited to end consumer so the eggs cannot be used in food service nor catering.

In an effort to reduce the cost to farm market retailers, the board has included in the proposed rule an exemption from the new carton requirements.

Anyone selling eggs under a standard retail permit shall meet the requirements of using new cartons.

We are unable to identify any other opportunities to reduce the cost of this regulation on small businesses.

*Posted: 06/20/2018 by Legislative Services Agency*

An [html](#) version of this document.