



# United Egg Association



August 17, 2005

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Docket Clerk  
U.S. Department of Agriculture  
Food Safety and Inspection Service  
300 12<sup>th</sup> Street, S.W.  
Room 102 Cotton Annex  
Washington, D.C. 20001

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Sr. Government Relations Rep.

**Docket No. 03-027P**

**RIN 0538-AD12**

Dear Sir or Madam:

These comments are submitted with respect to the Food Safety and Inspection Service's (FSIS) proposed rule making changes in fees for meat, poultry, and egg products inspection services for fiscal years 2005-2008. The Further Processors Division of United Egg Association (UEA) represents companies who manufacture and sell processed egg products for use in the retail, food service and institutional markets.

UEA members appreciate the role FSIS plays in providing voluntary services, and recognize the agency's need to recover the costs of these services. By contrast, UEA has always joined the rest of the animal protein industry in strongly opposing any proposals to impose fees for the cost of mandatory inspection services during non-overtime and non-holiday hours of operation.

UEA acknowledges the difficult situation in which FSIS find itself when trying to establish annual fee levels on a timely basis. From the perspective of avoiding undue delays and playing perpetual catch-up in funding its operations, the agency's desire to set fees for several years at a time is understandable. We would not argue that the present system is ideal.

Nevertheless, the proposed rule causes us some concern, for reasons laid out below. We hope FSIS will seriously consider these concerns in its final rule.

## **I. Has FSIS Attempted to Reduce Costs?**

Many egg processors have experienced challenging economic times in recent years. In 2003 and 2004, supplies were tight and prices were high for shell eggs, which are processors' basic raw material for making their products. In addition, at times in the recent past, our members' selling prices have been less than attractive. Moreover, periodic outbreaks of low-pathogenic avian influenza (LPAI) have hampered our

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members' ability to export products to Japan and other important markets, despite clear scientific evidence that standard pasteurization inactivates the AI virus.

In this environment, our members would hope that FSIS is not only attempting to project its costs for the next several years – surely a prudent thing to do – but is also looking for ways to reduce the costs of providing the services. In addition, the agency should be considering whether potential changes in its regulatory environment may affect fees: Notably, FSIS has repeatedly stated its intention to propose a Hazard Analysis and Critical Control Point (HACCP) regulation for the egg products industry in the future. However, there is little in the *Federal Register* notice to suggest that FSIS has actively considered either cost-reduction options or the impact of foreseeable regulatory changes.

We would therefore encourage FSIS, in the final rule, to explore ways that high-quality services might be provided at a lower cost to the agency, and therefore to the industry.

## **II. A Multi-Year Rulemaking Reduces Opportunities for Public Comment**

We are also concerned that setting several years' worth of fee increases at once will reduce public participation in FSIS's regulatory activities and eliminate important opportunities for public comment. Although FSIS states that it will continue to assess costs annually and initiate corrective rulemaking if necessary, the agency has not said what form that rulemaking would take – e.g., if the correction were issued as a final or interim final rule, the opportunity for the public to challenge FSIS's estimates would be severely constrained, compared to the normal rulemaking process.

In addition, if in the future FSIS feels that costs have increased in line with its present estimates, but the industry or consumer groups should disagree, there would be no obvious forum for public discussion of the differences. In that scenario, it appears FSIS would not initiate any regulatory action, but simply impose the already-scheduled fee increase.

## **III. A Multi-Year Rulemaking May Reduce Incentives to Restrain Costs**

Another weakness in the multi-year approach is that it may reduce the agency's incentive to restrain internal costs. The knowledge beforehand of several scheduled fee increases – without any intervening regulatory action or public comment – could make any internal effort to re-examine costs and reduce expenses appear less pressing.

## **IV. FSIS Should Clarify the Situation for 2005**

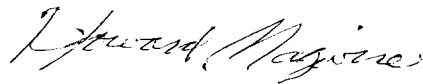
By this rulemaking, FSIS is substantially increasing – by 7-10% -- the hourly rates for fiscal year 2005, which will end on September 30. The text of the proposed rule simply states that these rates will apply “in fiscal year 2005.” FSIS should make it clear that the

agency does not intend to collect fees retroactively at the higher rate, when all companies that requested voluntary services so far during 2005 have done so in the expectation that hourly rates would be those actually in effect today.

Clearly, it would be unconscionable for FSIS to collect a retroactive fee increase, but the wording of the proposed rule creates an ambiguity that the agency should resolve in the final rule.

UEA members appreciate this opportunity to comment. FSIS is an important partner in our efforts to provide safe, high-quality products to our domestic and international customers. We look forward to working constructively with the agency on all the important food safety issues that we face together.

Sincerely,

A handwritten signature in cursive script that reads "Howard Magwire".

Howard Magwire