



United States Department of Agriculture

Food Safety and
Inspection Service
1400 Independence
Avenue, SW,
Washington, D.C.
20250

Ashley B. Peterson, Ph.D.
Senior Vice President, Scientific and Regulatory Affairs
National Chicken Council
1152 Fifteenth Street, NW, Suite 430
Washington, DC 20005

November 3, 2023

Dear Dr. Peterson:

The Food Safety and Inspection Service (FSIS) has reviewed your petition dated May 8, 2018, that you submitted on behalf of the National Chicken Council (NCC). The petition requests that FSIS coordinate with the U.S. Food and Drug Administration (FDA) to exercise enforcement discretion to allow surplus broiler eggs to be processed into egg products under FSIS jurisdiction. Specifically, NCC requests that FSIS and FDA work together to exempt surplus broiler hatching eggs intended for breaking from the refrigeration requirements in 21 CFR 118.4(e) and instead rely on FSIS' egg products regulations to control for *Salmonella*.

Your petition states that enforcement discretion is needed because of constraints on the egg supply and high prices caused by the highly pathogenic avian influenza (HPAI) outbreak and rising prices for consumer goods. Your petition also states that your requested action would "relieve pressure on the egg supply without compromising consumer safety. In light of FDA's June 12, 2023, letter denying your request because the agency determined that your requested action would not maintain the same level of public health protection as FDA's egg safety rule, FSIS is also denying your petition.

FSIS' authority to regulate egg products comes from the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 et seq.). The EPIA directs the Secretary of Agriculture to maintain an inspection program designed to assure consumers that egg products are safe, wholesome, not adulterated, and properly labeled. FDA's authority is under the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. §301 et seq.), which encompasses protecting the public health by ensuring the safety of the United States' food supply, other than meat, poultry, and egg products. Under the FFDCA, FDA has the authority to regulate shell eggs. Because of this, FSIS must defer to FDA in requests regarding the use of shell eggs.

In accordance with our petition regulations, we have posted your petition on the FSIS website (9 CFR 392.6). We intend to post this letter, which serves as our official final response to your petition, as well.

Sincerely,

A handwritten signature in black ink that reads "Rachel A. Edelstein".

Rachel Edelstein
Assistant Administrator
Office of Policy and Program Development