

# FLAG



FARMERS' LEGAL  
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INCORPORATED

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Division of Dockets Management  
Food and Drug Administration  
5630 Fishers Lane, Room 1061  
Rockville, MD 20852

Dear Sir or Madam:

Re: Prevention of Salmonella Enteritidis in Shell Eggs During  
Production, FDA Docket Nos. 1996P-0418, 1997P-0197, 1998P-  
0203, and 2000N-0504, 69 Fed. Reg. 56,824 (Sept. 22, 2004).

Farmers' Legal Action Group, Inc. (FLAG) submits these comments on behalf of the Rural Advancement Foundation International--USA (RAFI) concerning the proposed rule for the prevention of Salmonella Enteritidis in shell eggs during production, published at 69 Fed. Reg. 56,824 (Sept. 22, 2004).

RAFI is a grassroots farm groups dedicated to community, equity, and diversity in agriculture. RAFI works in its home state of North Carolina, as well as throughout the southeastern United States, and nationally and internationally. For over a decade, RAFI has provided education, networking, and advocacy to individual contract farmers through its Contract Agriculture Reform project. RAFI also plays a leadership role in promoting sustainable agriculture.

FLAG is a nonprofit, public interest law center dedicated to the preservation of family farms. For over fifteen years, FLAG has provided legal services to thousands of small and mid-sized family farmers throughout the nation in class action lawsuits, administrative proceedings, public education initiatives, and legislative technical assistance involving federal and state agricultural policy issues.

RAFI appreciates the opportunity to comment on the proposed rule, and submits the following comments.

### **Define "Producer" to Include Owners of Laying Hens As Well as Persons Who Maintain Them**

RAFI has some concerns about the definition of "producer" contained in proposed section 118.3. The proposed definition is "a person who maintains laying hens for the purpose of producing shell eggs for human consumption."

RAFI is concerned that use of the word "maintains" makes it somewhat unclear whether and how the definition applies to the contracting relationships that remain common in the table egg market. The proposed definition makes it unclear whether the requirements of the proposed rule apply solely to the individual grower, or whether the requirements also apply to an integrator who is likely to be the owner of the hens. In production contracting arrangements, it is the integrator who is generally the real decision-maker in terms of the care of the birds, from housing systems and routines, to content and timing of feed deliveries, to the pick up schedule for the eggs.

RAFI recommends changing the definition of producer to make it clear that for purposes of this rule, a "producer" includes independent growers, contract growers, poultry integrators who contract with growers, and farms operated by poultry companies. One way to do this would be to define "producer" as "a person who maintains or causes to be maintained laying hens for the purpose of producing shell eggs for human consumption." Such a definition would make it clear that integrators share responsibility with contract growers for compliance with the requirements.

The proposed rule does not appear to contemplate compensation to the producers for any eggs that are destroyed or diverted from the table egg market. Nonetheless, RAFI recommends that the final rule indicate that any compensation that may be appropriated by Congress in the future for eggs that are destroyed or diverted in order to prevent the spread of salmonella enteritidis will be available to contract growers as well as to owners of the hens. USDA recently implemented compensation for depopulation to prevent the spread of avian influenza in this manner. See 67 Fed. Reg. 67,089 (Nov. 4, 2002).

### **Retain and Clarify the Proposed Exemption for Producers Who Raise Fewer than 3000 Hens or Who Sell Directly to Consumers**

RAFI supports the exemption implicit in proposed section 21 C.F.R. § 118.1 for shell egg producers with fewer than 3,000 laying hens at a particular farm and for shell egg producers who sell all of their eggs directly to consumers. While the prefatory comments make it clear that proposed section 118.1 is in fact intended to create an exemption for all requirements of the rule, RAFI recommends that the rule be re-drafted to make the exemption explicit. This will help to clarify the scope and application of the exemption. RAFI supports an exemption from all proposed requirements for shell egg producers with fewer than 3,000 laying hens at a particular farm and for shell egg producers who sell all of their eggs directly to consumers.

Comments on Prevention of Salmonella Enteritidis

December 21, 2004

Page 3

FLAG

As is noted in the prefatory comments to the proposed rule, requiring these producers to comply with proposed rule would provide little additional risk reduction for consumers, while adding prohibitive costs for the affected producers. The direct to consumer market for eggs produced by pastured poultry provides an important alternative market for small farmers. One of the attractions of raising pastured poultry is that it is less capital intensive than large-scale confinement operations. The proposed exemption from all requirements of the proposed rule will maintain the low input nature of many direct market eggs. This benefits those consumers who seek to buy eggs produced by chickens raised on pasture, as well as farmers who seek to raise pastured poultry as one enterprise within a diversified farming operation.

Thank you for your consideration of these comments.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.

s/Jill E. Krueger

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