



# United Egg Association

August 18, 2005

FSIS Docket Clerk  
Docket No. 95-051P  
Rm. 102  
Cotton Annex Building  
300 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20250-3700

Division of Dockets Management  
5630 Fishers Lane  
Rm. 1061  
Rockville, Maryland 20852

**Re: Docket No. 1995N-0294 RIN 0910-AC54**

Dear Sir or Madam:

The Further Processors Division of United Egg Association (UEA) appreciates the opportunity to submit comments on the Food and Drug Administration's (FDA) and Food Safety and Inspection Service's (FSIS) proposed rule of May 20, 2005, dealing with food standards. UEA represents the interests of companies that utilize shell eggs for further processing into such products as liquid whole egg, dried yolk and powdered egg whites. Our customers include food manufacturers, the food service industry and food retailers.

## **Importance of Establishing and Enforcing Food Standards**

UEA strongly agrees with the agencies' basic decision to continue establishing and enforcing standards of identity for various foods. We believe such standards (1) provide valuable product and health information to consumers, (2) provide conditions for fair and open competition in the food industry and (3) constitute an important platform for U.S. engagement with world trade in food products.

**Al Pope\***  
President

**Gene Gregory\***  
Sr. Vice President

**Howard Magwire\*\***  
Director of  
Government Relations

**Michael McLeod\*\***  
Washington Counsel

**Randy Green\*\***  
Sr. Government Relations Rep.

### **Establishment of General Principles**

In concept, we agree with the approach of establishing general principles by which FDA and FSIS will judge petitions to set or change food standards. Such principles permit the agencies, affected industries and the public to share a common vocabulary for determining the adequacy of current standards and measuring them against clearly established benchmarks.

### **Approach to Changing Food Standards**

We urge the agencies, however, to consider carefully how they will view the process for changing standards in light of the general principles. At several points in the preamble to the proposed rule, the agencies say they will reject petitions for changing standards, if the petitions are inconsistent with the general principles. We agree with this approach. However, we believe the agencies should avoid any implication that if a petition is *not* inconsistent with the general principles, there would then be a presumption in favor of approving the petition. Even where a suggested change is not inconsistent with the general principles, it may nevertheless be undesirable for a variety of nutrition, public policy or health-related reasons. We believe the burden of proof should be on the party seeking to change a standard, and urge FDA and FSIS to clarify in the final rule that this is indeed the case.

### **Enhancing Public Participation**

In addition, we believe it would be helpful for FDA and FSIS to consider further the procedure for addressing a petition at the stage before the agencies determine whether to issue a proposed rule. UEA suggests that when a petition to change a food standard is submitted to FDA or FSIS, the relevant agency should make the petition available for public comment before deciding whether to issue a proposed rule effecting the requested change to a standard. (Of course, the agency would also need to receive comments on any proposed rule that might subsequently be issued.)

Specifically, FDA should utilize its authority under 21 CFR §10.30(h) to allow public participation through a *Federal Register* notice, an advance notice of proposed rulemaking or some other affirmative step that proactively seeks the opinions of all interested parties. In this way, FDA and FSIS will (1) increase opportunities for public and industry comment on a petition, permitting the agencies to make more informed judgments, and (2) in the case of petitions that seek inappropriate changes, save substantial agency resources by avoiding the considerable time and effort involved in preparing, clearing and publishing any proposed rule.

### Comments on the General Principles

We have the following comments on the proposed general principles themselves:

**Principle #3:** We agree that a food standard should reflect the essential characteristics of a food. We note with approval the agencies' explanation that "the essential characteristics are the attributes of a food that make the food what it is *even though they may not be readily apparent to the consumer.*" (Emphasis added.) For many foods with a standard of identity, particular ingredients are what make the food what it is: Without these ingredients, the food would not be the same product that consumers over several generations have come to expect and enjoy. This is the case regardless of whether most consumers are specifically aware of the ingredient itself. Rather, the ingredient is critical to the consumer's normal and customary experience of a product, and therefore an integral aspect of the product's very nature. (Such would be the case, for example, for eggs in mayonnaise or salad dressing.)

**Principle #6:** We support the reasoning behind this principle. A variety of manufacturing processes can result in the same product, and a good example is the one cited by the agencies, the removal of glucose from dried eggs. However, we believe the agencies should tread carefully in applying the portion of principle #6 that states "ingredients [should be described] as broadly and generically as feasible." We believe the agencies should avoid an approach in which ingredients are listed by their function (e.g., "emulsifiers") rather than by their common names (e.g., "eggs"). Instead, the agency should insist on unambiguous labeling of ingredients in a fashion understandable by the public, including those ingredients which are integral to the basic identity of the product, e.g., eggs in mayonnaise. Observing this principle will increase transparency and consumer understanding in food labeling.

To avoid listing specific foods that are ingredients in other foods would be contrary to (1) the need of consumers for easily understandable information, (2) the principle of more disclosure rather than less, and (3) the desire of some consumers for dietary information that helps them respond to specific religious, nutritional or health-related concerns.

### Conclusion

Overall, FDA and FSIS's proposed approach to food standards appears well-reasoned, grounded in sound public-policy considerations, and consistent with principles of transparency and public participation. We believe the modifications and cautions we have suggested would conform the proposed rule even more closely to these first principles.

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Thank you for your consideration of UEA's views. As part of an industry regulated by both FDA and FSIS, we appreciate the agencies' coordinated approach to these important issues.

Sincerely,

A handwritten signature in black ink that reads "Howard M. Magwire". The signature is written in a cursive style with a large, looped initial "H" and "M".

Howard M. Magwire  
Director of Government Relations