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February 12, 2018

Office of Budget and Program Analysis, USDA
Jamie L. Whitten Building, Room 101-A
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Re: 7 CFR Subtitles A and B; 9 CFR Chapters I, II, and III

Dear Sir or Madam:

United Egg Producers (UEP) submits these comments in response to a request for information published by the U.S. Department of Agriculture (USDA) entitled "Identifying Regulatory Reform Initiatives" (82 FR 135, July 17, 2017). UEP is a farmer-owned cooperative whose members independently market more than 90% of all eggs produced in the United States.

UEP and its members value their relationship with USDA and its individual agencies. We work together with multiple agencies, including the Agricultural Marketing Service (AMS), the Animal and Plant Health Inspection Service (APHIS), the Food Safety and Inspection Service (FSIS) and the Foreign Agricultural Service (FAS), among others. These agencies perform critical tasks that directly benefit egg producers, further processors, our customers in retail, food service and food manufacturing, and the general public.

UEP members have held several discussions about USDA regulations that could be modified without compromising agency missions, and we submit the following suggestions.

Base the Frequency of Shell Egg Surveillance Program Inspections on Risk

Four times a year, AMS inspects all shell egg packing plants under the Shell Egg Surveillance Program, which is mandated by the Egg Products Inspection Act (21 USC 1034(d)). These inspections promote both egg quality and food safety. While the law instructs the Secretary of Agriculture to carry out quarterly inspections, the same law also provides authority to grant exemptions from its provisions (21 USC 1044 (a)).



Council Representative

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At the time the Egg Products Inspection Act was enacted, the Food and Drug Administration (FDA) had not yet promulgated its Egg Safety Rule (21 CFR Parts 16 and 118). This rule has been successfully implemented by FDA and the egg industry, and FDA regards it as a success in promoting food safety. To a degree, the Egg Safety Rule has rendered the Shell Egg Surveillance Program redundant.

UEP recommends that USDA consider two alternatives. First, the Department could determine that in light of the Egg Safety Rule and numerous private-sector quality control and food safety programs, the Shell Egg Surveillance Program is unnecessary unless problems are found in a plant during regular inspections to ensure proper refrigeration (these inspections are required separately from quarterly Shell Egg Surveillance Program inspections, and are carried out pursuant to 21 USC 1034(e)).

In the alternative, USDA could use its exemptive authority for individual plants with an outstanding food safety record, so that they would be inspected fewer than four times per year. We believe that either alternative would permit AMS to use its personnel more efficiently and reduce regulatory burdens on producers without compromising food safety.

Grant Certification of Cage-Free Status on a Similar Basis to Other Certifications

AMS certifies various label claims for eggs in its voluntary grading program. These may include vegetarian diets, no use of animal by-products in feed, and numerous others. For such claims, AMS requires written verification by the producer, but does not inspect or audit feed facilities. By contrast, a claim of cage-free production does require an audit, at the producer's expense.

In most if not all cases, producers making these label claims are participating in a private-sector certification program, such as those administered by various humane groups. These groups all have procedures to verify the claims, independent of AMS's role in approving labels. In that sense, the AMS audit requirement is duplicative and unnecessary.

UEP recommends that AMS require producer verification for cage-free claims in those cases where the producer is already participating in a recognized third-party certification or verification program.

Better Accommodate Customer Preferences in the National Organic Program

A number of UEP members produce organic eggs and therefore are subject to regulations of the National Organic Program (NOP) at 7 CFR 205. UEP has become aware of a situation in which the current interpretation of these regulations creates an unnecessary restriction on the acquisition and marketing practices of a major retail customer.

This retailer sources organic eggs from more than one producer. All the producers from whom the retailer purchases eggs are certified under NOP rules. The producers, who are independent of each other, utilize two separate certifying agencies.

For reasons of cost and product consistency, the retailer wishes to sell the producers' eggs in a single carton that would clearly identify both certifiers and the egg operations from which the eggs may have come. To this point, NOP's informal guidance has been that this practice is not allowed.

Allowing a carton of this type would not in any way compromise the role of each farm's certifier, who would continue to ensure the integrity of the organic eggs in exactly the same way as at present. Since the retailer's request could be accommodated without any compromise to certification procedures, UEP recommends that NOP issue guidance or otherwise inform producers that arrangements of this type are permitted.

UEP thanks USDA for its consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Chad Gregory", with a long, sweeping horizontal line extending to the right.

Chad Gregory, President and CEO