NATIONAL CHICKEN COUNCIL

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February 9, 2023

Dr. Susan Mayne
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Food and Drug Administration
5001 Campus Drive
College Park, Maryland 20740

Re: Request for FDA to Exercise Enforcement Discretion to Allow Surplus Broiler Eggs to be Processed into Egg Products Under FSIS Jurisdiction

Dear Dr. Mayne:

The National Chicken Council (NCC) respectfully requests that the Food and Drug Administration (FDA) exercise its enforcement discretion to allow surplus broiler eggs to be processed into egg products under United States Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) jurisdiction. NCC is the national trade association representing the vertically integrated United States chicken industry. NCC member companies (broiler companies) produce and process approximately 95 percent of the chickens in the United States. The highly pathogenic avian influenza (HPAI) outbreak and across-the-board cost increases for consumer commodities (including eggs) over the past year have contributed to acute egg shortages and spiking egg prices. Exercising enforcement discretion to allow surplus broiler eggs to be diverted for processing into egg products would relieve pressure on the egg supply without compromising consumer safety.

Historically, the broiler industry sent surplus hatching eggs for processing at egg breaking plants (but not into the table egg market) where breakers pasteurized the eggs under FSIS jurisdiction and oversight. In 2009, FDA published a final rule on Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Storage, and Transportation, codified at 21 C.F.R. Part 118 (the "Shell Egg Rule").[1] This rule required that shell eggs, including surplus broiler eggs sent for breaking, be refrigerated shortly after the time of lay. However, the timing of refrigeration under the FDA rule is incompatible with the process broiler eggs must follow. Refrigerating broiler eggs prevents them from hatching – that is, they cannot be warm enough for possible hatching yet cool enough for compliance with the FDA rule. Since the rule took effect, the broiler industry has been forced to discard these surplus eggs instead of sending them to breakers, costing the broiler industry more than $27 million each year and unnecessarily keeping billions of eggs out of the egg breaking market.

Most importantly, NCC's request, if granted, would maintain the same high level of public health protection as intended under the FDA Shell Egg Rule. The breaking process overseen by FSIS requires a pasteurization step validated to control *Salmonella*. Moreover, under the Shell Egg Rule, the remedy for eggs that test positive for *Salmonella enteritidis* is to send the non-compliant eggs to

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[1] *Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation*, 74 *Fed. Reg.* 33030 (July 9, 2009).

the breaker for pasteurization – *i.e.*, the very same step that NCC proposes for surplus broiler eggs. In either case, the FSIS-regulated pasteurization process is sufficient to assure safety for human consumption. We therefore request that FDA exercise its enforcement discretion to allow surplus broiler eggs to be sent for breaking without needing to meet the refrigeration requirement in the Shell Egg Rule.

I. Background

A. Broiler Hatching Eggs and Surplus Egg Uses

Broiler chickens are raised for meat production, whereas laying hens are used for egg production. Based on industry data, almost three percent of all broiler hatching eggs are either not needed for hatching or are unfit for hatching and subsequently culled. As a result, almost 380 million eggs are not placed for hatching each year. Some of these eggs are intended for exports, manufacturing vaccines, or other research needs. The remainder are surplus eggs and eggs that do not meet specifications (out-of-specification eggs). For instance, an out-of-specification egg may not meet the size requirements or shell conditions necessary for incubation.

To be viable for hatching, a broiler egg must be held at the proper temperature. For optimal hatching, broiler-type hatching eggs are maintained at around 65° Fahrenheit (F) prior to placement in the incubators.[2] If a broiler egg is refrigerated, it will not hatch. It can take up to five days to determine which eggs are needed and/or appropriate for hatching, and only after this point will it be known which eggs could be diverted. Prior to the implementation of the Shell Egg Rule at 21 C.F.R. Part 118 (in particular, the refrigeration requirement at 21 C.F.R. § 118.4(e)), these diverted eggs were sold to egg breakers and processed as liquid eggs in compliance with FSIS regulations. FSIS's egg-breaking regulations require that liquid eggs be processed to destroy *Salmonella*. Further, on December 28, 2020, FSIS amended the egg products inspection regulations to require official plants that process egg products to develop and implement Hazard Analysis and Critical Control Point (HACCP) Systems and Sanitation Standard Operating Procedures (Sanitation SOPs) and to meet other sanitation requirements consistent with FSIS's meat and poultry regulations. Among other things, official plants must follow processing steps scientifically validated to destroy any *Salmonella* (or other pathogens) that may be present. These amended regulations were implemented to further enhance the safety of egg products by ensuring that all egg breaking operations are following science-based processes.

By contrast, dedicated shell egg operations are set up significantly different than broiler hatcheries. In a typical shell egg laying facility, eggs are collected daily, and sometimes continuously. These facilities are not concerned with maintaining the eggs' viability for hatching, so the eggs can be placed quickly into dedicated refrigeration facilities or trailers. Grading, sorting, and other steps to determine which shell eggs should be marketed can be done after they are refrigerated. Although some of these eggs may be sent to breaking for various reasons, they are produced primarily with the table egg market in mind. Most table eggs are not processed to destroy *Salmonella*, making *Salmonella* control especially important during harvesting and processing. The Shell Egg Rule was developed with these eggs in mind. Surplus broiler hatching eggs, by contrast, historically were sold

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[2] North & Bell, *Commercial Chicken Production Manual* at 96 (4th ed. 1990). Eggs held longer than five days may be stored at temperatures as low as 51 degrees Fahrenheit, but hatchability is materially reduced for each day over four that an egg is held. *Id*. at 96–97.

only to egg breakers – not into the table egg market – and thus present significantly different production processes, timelines, and product risk profiles.

B. The FDA Shell Egg Rule

In 2009, FDA published a final rule on Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Storage, and Transportation, codified at 21 C.F.R. Part 118 (the "Shell Egg Rule").[3] Intended to address issues associated with *Salmonella* Enteritidis on shell eggs, the Shell Egg Rule requires that all shell eggs be refrigerated at or below 45°F beginning 36 hours after the time of lay. Although the proposed rule did not mention surplus broiler eggs, the final rule expanded the scope of the requirement to include surplus broiler eggs, even if destined solely for egg breaking operations. Broiler companies therefore are covered by the rule, which means that they must hold and transport eggs at or below 45°F beginning 36 hours after the time of lay if any of the eggs are to be sold into the egg breaking market. This requirement applies even if the eggs are to be sold exclusively for processing into pasteurized egg products under FSIS jurisdiction. This temperature requirement is incompatible with the necessary conditions for hatching chicks and renders the eggs useless for hatching. As a result, most broiler companies have stopped selling their surplus and out-of-specification hatching eggs to egg breakers.

At the time this rule was being implemented, NCC submitted a letter to the FDA requesting relief. In it, NCC explained that subjecting surplus broiler hatching eggs to the Shell Egg Rule was unnecessary and wasteful. Surplus broiler hatching eggs were sold for processing into egg products, not for consumption as shell eggs, and thus are subjected to a lethality process under FSIS inspection validated to destroy *Salmonella*. As a result of the rule, NCC pointed out, billions of eggs would be needlessly discarded. Moreover, NCC raised procedural concerns with the administrative process, noting that extending the refrigeration requirements in 21 C.F.R. § 118.4(e) to surplus hatching eggs was not a logical outgrowth of the proposed rule, as the FDA had expressly acknowledged in the final rule that the proposal did not address surplus hatching eggs. Ultimately, the FDA determined that the final rule would still nonetheless apply to surplus broiler eggs.

II. Immediate Need for FDA Enforcement Discretion

As noted above, since the Shell Egg Rule took effect, the broiler industry has been forced to discard surplus eggs instead of sending them to breakers, unnecessarily keeping billions of eggs out of the egg breaking market. Never has this food waste been more evident or had such an impact as throughout the COVID-19 pandemic, the subsequent rising costs due to across-the-board inflation, and the impact of HPAI on the egg industry.

According to Consumer Price Index (CPI) data, egg prices increased 11 percent from November 2022 to December 2022.[4] Since last year, total egg prices have increased by almost 60 percent.[5] At the forefront of this increase in prices is the rapidly evolving HPAI situation and its effects on the

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[3] *Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation*, 74 *Fed. Reg.* 33030 (July 9, 2009).

[4] *Consumer Price Index*, U.S. Bureau of Labor Statistics, (Dec. 2022), https://www.bls.gov/news.release/cpi.t02.htm.

[5] *Id*. These prices have contributed to overall increases in U.S. food prices. In 2022 food-at-home price increased 11.4 percent (and food-away-from-home prices increased 7.7 percent). *USDA Food Price Outlook, 2023*, USDA (last updated Jan. 25, 2023), https://www.ers.usda.gov/data-products/food-price-outlook/summary-findings/.

U.S. egg market. HPAI virus strains are extremely infectious, often fatal to chickens, and can spread rapidly from flock to flock.[6] Commercial flocks testing positive for HPAI are immediately depopulated as a well-recognized risk control measure. As of February 8, 2023, there have been 755 HPAI detections in commercial turkeys, layers, broilers, pullets, ducks, game birds, and backyard flocks.[7] These detections represent over 58 million birds with the majority being commercial egg laying flocks.

The poultry industry has been working tirelessly with APHIS and officials in affected states to respond in accordance with Federal and State HPAI response plans, which include implementing quarantine restrictions, depopulating affected flocks, disposing of depopulated birds, cleaning and eliminating the virus from affected premises, and conducting surveillance in surrounding areas. Unfortunately, the rapid spread of HPAI has caused over 44 million egg-laying hens and pullets to be depopulated to date,[8] and within the last year, U.S. egg inventories were 29 percent lower in the final week of December 2022 than in the beginning of the year in January 2022.[9]

The HPAI outbreak comes on the heels of the COVID-19 pandemic, broad inflationary pressures on household and other goods, and global supply chain disruptions and supply shortages caused by COVID-19 and the war in Ukraine. All of these factors are straining egg supplies and driving egg prices upwards.[10]

Despite sharp inflation and shocks to the egg supply, hundreds of millions of excess eggs are being rendered when they could be sold safely in the market. Surplus hatching eggs should be made available for sale to egg breakers who can pasteurize them under FSIS jurisdiction into safe and wholesome egg products. This would reduce input costs for products made with egg products, such as salad dressings, bread, cake mix, pasta, pancake mix, mayonnaise, ice cream, pie crusts, sauces, and many other food products consumers rely on every day.

NCC estimates that from 2009 through 2022, almost five billion surplus hatching eggs would have gone to egg breaking operations but for the Shell Egg Rule. This could have provided the almost one million residents in the State of Delaware an egg every day over the last thirteen years. From a nutritional standpoint, those five billion eggs amount to almost 30 billion grams of protein,[11] which

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6 *See Avian Influenza*, Animal and Plant Health Inspection Service (APHIS), (last updated Jan.18, 2023) https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-disease-information/avian/avian-influenza.

7 *See 2022-2023 Confirmations of Highly Pathogenic Avian Influenza in Commercial and Backyard Flocks*, APHIS (last accessed Feb. 8, 2023), https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-disease-information/avian/avian-influenza/hpai-2022/2022-hpai-commercial-backyard-flocks.

8 *Id.*

9 *Avian influenza outbreaks reduced egg production, driving prices to record highs in 2022,* U.S. Department of Agriculture Economic Research Service (Jan. 11, 2023), https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=105576. In this same period, the average shell-egg price at the end of December 2022 was 267 percent higher than it was in January of the same year. *Id.*

10 *Avian influenza outbreaks reduced egg production, driving prices to record highs in 2022*, USDA ERS (Jan. 11, 2023), https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=105576.

11 We assume 6 grams of protein per egg.

would satisfy the daily protein needs for 1.6 million people,[12] or the entire population of Philadelphia, for an entire year. Discarding these eggs achieves no societal benefit and deprives consumers of access to a safe and affordable protein source.

FDA's decision to subject surplus broiler hatching eggs to the Shell Egg Rule has resulted in significant cost to Americans and has needlessly deprived American consumers of hundreds of millions of servings of high-quality egg protein. NCC requests that FDA exercise its enforcement discretion to exempt surplus broiler hatching eggs intended for breaking from the refrigeration requirements in 21 C.F.R. § 118.4(e) and instead rely on the processing requirements applicable to egg product processing establishments, including the updated egg products HACCP regulations, to control *Salmonella* in these products.

III. Support for Requested Action—The Proposal Poses No Food Safety Risk

A. FDA's and FSIS's 2020 Risk Assessment Shows Use of Surplus Broiler Eggs for Breaking and Use in Liquid Egg Products Would Not Pose Any Public Health Risks

We understand that FDA in the past may have had theoretical concerns about extreme outlier scenarios in which an individual egg might have *Salmonella* growth that would overwhelm the FSIS pasteurization process, extrapolating from models developed in FSIS's 2005 *Risk Assessments of Salmonella Enteritidis in Shell Eggs and Salmonella spp. In Egg Products*.[13] Such concerns are unfounded.

In 2020, FDA and FSIS co-authored a scientific journal article that assessed the risk of salmonellosis linked to various types of egg products made from hatching eggs diverted for human consumption. The paper estimated and compared the risk of salmonellosis from the consumption of pasteurized liquid egg products made from eggs held at 45°F and 65°F during a storage period of 0 to 9 days after the layer house.[14]

Specifically, the liquid egg product model predicted the number of human salmonellosis cases linked to consumption of seven different types of liquid egg products (including whole egg 10% sugar and yolk 10% sugar) potentially contaminated with *Salmonella* species. Each of the egg products was assessed based on contamination level estimations, various bacterial growth, pasteurization efficiency, and cooking procedures (among other considerations).

The paper provides a summary of the increase in public health risk from salmonellosis cases expected per type of egg product for a 5-day storage at 45°F or 65°F, after a layer house storage of 36 hours at 75°F.[15] The paper demonstrates that the risk of salmonellosis varies by type of egg product, that all products receive at least a 5-log reduction, and that some products, whole and yolk

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[12] Both FSIS and FDA recognize a daily value of 50 g for protein. The calculations above are based on adults. The discarded eggs could feed even more children.

[13] *Risk Assessments of Salmonella Enteritidis in Shell Eggs and Salmonella spp. In Egg Products,* FSIS (Oct. 2005), https://www.fsis.usda.gov/sites/default/files/media_file/2020-07/SE_Risk_Assess_Oct2005.pdf.

[14] Pouillot, R., et al. *Assessment of the Risk of Salmonellosis Linked to the Consumption of Liquid Egg Products Made from Internally Contaminated Shell Eggs Initially Stored at 65°F (18°C) Compared with Eggs Stored at 45°F (7°C)*, J. Food Prot. (2020) 83 (5): 767–778.

[15] *Id*. at 774, Table 8.

egg products that contain 10% sugar, receive a massive *Salmonella* log reduction and show no increase in risk.

The authors concluded that "no cases of salmonellosis would be expected for those products as a result of the extremely high pasteurization efficiency," and the "absence of increase in the risk for 10% sugar whole eggs or 10% sugar yolk results from the extremely high log reduction (42 and 12.4 log, respectively) estimated by the FSIS with predictive microbiology models."[16]

Based on the conclusions by FDA and FSIS, no human health risk is associated with allowing surplus broiler eggs not refrigerated in compliance with the Shell Egg Rule to be processed for use in whole 10% sugar eggs and yolk 10% sugar eggs, and the other products would present very low risk. Importantly, these eggs would be processed under FSIS inspection under HACCP plans with validated lethality processes, which is the exact same process that eggs that failed to comply with the Shell Egg Rule would be diverted to under the regulation. Notably, this study used projected log reductions based on fixed processes. Under FSIS's new egg products HACCP regulations, establishments can tailor their food safety systems to any risks specific their inputs.

Moreover, recent data from FSIS's sampling program to identify *Salmonella* in egg products supports the report's findings that FSIS pasteurization is effective. For the one-year period of January 1, 2022, through December 31, 2022, FSIS collected 280 samples of processed dried egg products from 22 establishments. None of the samples tested positive for *Salmonella*. For the same one-year period, FSIS collected 1,202 samples of processed liquid egg products from 47 establishments. Only two of the 1,202 samples tested positive for *Salmonella* indicating that the FSIS pasteurization process works.[17]

Indeed, FDA's confidence in FSIS liquid egg pasteurization is reflected in the Shell Egg Rule, which provides that noncompliant shell eggs testing positive for *Salmonella* Enteritidis are to be diverted to FSIS-regulated egg breaking plants. Importantly, the Shell Egg Rule does not require testing to determine how much *Salmonella* Enteritidis may be present; rather, the rule simply assumes that no matter how high the levels may be, the FSIS-regulated pasteurization process will be sufficient. This demonstrates FDA's belief that pasteurization is adequate to protect the public health and notably creates the odd situation of unrefrigerated surplus broiler eggs destined for egg breakers being declared noncompliant even if no *Salmonella* is present. FDA should be similarly confident in the pasteurization process to control *Salmonella* that may or may not be present on surplus broiler eggs. This oddity reinforces the underlying point that this rule is intended for eggs destined for the table egg market and is not readily applicable to eggs intended only for either hatching or liquid egg (pasteurized) products.

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16 *Id*. at 778.

17 *Sampling Results for FSIS Regulated Products*, FSIS (Dec. 31, 2022) https://www.fsis.usda.gov/sites/default/files/media_file/documents/Dataset_QSR_SamplingProjectResultsData.pdf.

B. FSIS Regulations and Oversight Ensure Pasteurization and Safety Controls

Under the Egg Products Inspection Act ("EPIA"), it is a prohibited act to allow egg products[18] to be moved from a plant if they are adulterated or misbranded and capable of use as a human food.[19] The EPIA requires that egg products be pasteurized before leaving a plant, otherwise they are considered adulterated.[20] FSIS recently amended the Egg Products Inspection Regulations ("implementing regulations") to require all federally-inspected egg products plants to develop and implement Hazard Analysis and Critical Control Point (HACCP) systems, Sanitation Standard Operating Procedures (SOPs), and Sanitation Performance Standards (SPSs) to design and support the food safety system.[21]

Salmonella contamination in egg products can occur due to a variety of factors, including under-processing by not meeting the time and temperature parameters to achieve full lethality or contamination in the post-processing environment through contact with contaminated food contact surfaces, improper handling, addition of ingredients, and/or insect or animal vectors. Under the EPIA and implementing regulations, egg product plants must address pathogen reduction in their HACCP systems and have processes that are validated to achieve the necessary level of pathogen reduction for the products being processed. The industry operates from the framework that finished egg products found positive for any *Salmonella* species (or other pathogens) are adulterated and thus takes appropriate measures to ensure products comply with the requirements. If a breaker were to conclude that surplus broiler eggs presented a different risk profile from other eggs, the breaker would be free to adjust the pasteurization process for such eggs to ensure the eggs are pasteurized at a time and temperature validated to destroy *Salmonella*. This type of flexibility and science-based decision making is fundamental to HACCP and would ensure that surplus broiler eggs are handled safely. Moreover, FSIS could develop guidance for egg breaking plants providing recommendations on how to process surplus broiler eggs or which types of products these eggs can appropriately be used in, leveraging again the flexibility of HACCP systems.

NCC's proposed enforcement discretion for broiler eggs to be processed for breaking and use in liquid egg products would ensure these eggs are subjected to the same level of oversight, processing, and validation as all other egg products under FSIS jurisdiction. This includes (but is not limited to) identification of pathogen hazards (including *Salmonella*), validated pathogen reduction steps, FSIS continuous oversight, and appropriate labeling and marking for traceability of products. The FDA/FSIS risk assessment confirmed the risk to public health was extremely low (effectively zero for some egg product formulations) given the "extremely high pasteurization efficiency" of these products.[22] We would expect this high log reduction to continue for plants processing these types of

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[18] Egg products are defined as "any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion or historically have not been, in the judgment of the Secretary, considered by consumers as products of the egg food industry, and which may be exempted by the Secretary under such conditions as he may prescribe to assure that the egg ingredients are not adulterated and such products are not represented as egg products." 21 U.S.C. § 1033(f).

[19] 21 U.S.C. § 1037(b)(4).

[20] *Id.* at § 1036(a).

[21] 85 *Fed. Reg.* 81340 (Dec. 16, 2020)

[22] Pouillot, *supra* note 15, at 778.

products from surplus broiler eggs, regardless of front-end holding temperature. Verification sampling would confirm the validated kill steps are operating as intended for these products.

Moreover, unauthorized diversion is unlikely to pose a problem. NCC is not aware of concerns about surplus broiler eggs being diverted to inappropriate uses now, and there is no reason to believe that opening a higher-value avenue for using these eggs would increase the risk of diversion. To the extent FDA is concerned about potential diversion, FDA could premise enforcement discretion on the inclusion of a statement of limited use on the shipping boxes (*e.g.*, "for breaker only" or "for cooking only" or "for FSIS-inspected egg products establishments only").

As an additional protection, most broiler companies vaccinate their breeder flocks (the flocks that produce the eggs for hatching into broiler chickens) against a variety of *Salmonella* strains, including Enteritidis, Typhimurium, and Infantis, thereby reducing the risk that these or other strains are present on surplus broiler hatching eggs. Moreover, broiler breeder flocks are extremely important for broiler production operations, and the flocks are held under strict biosecurity protocols that are typically significantly more intensive than what is feasible at a large-scale commercial shell egg production facility. These measures further reduce the risk of surplus broiler eggs being contaminated with *Salmonella*.

The broiler industry is willing to implement additional, reasonable safeguards needed to ensure that surplus broiler hatching eggs are not introduced into the table egg market. For instance, broiler companies could certify all surplus hatching eggs that enter the food supply are sent only to breakers, use shipping seals, mark containers of surplus hatching eggs destined for the food supply as "for breaking only," and/or insist on agreements that buyers not resell surplus hatching eggs into the shell egg market. As the industry is not aware of outbreaks resulting from surplus broiler eggs sent to egg breakers, combining the current FSIS regulation scheme with some of these safeguards would adequately address any remaining public health concerns FDA may have.

C. FDA's Exercise of Enforcement Discretion Would Alleviate Economic Pressure on Consumers and Lift Needless Regulatory Costs

As consumers struggle with once-in-a-generation inflation and shocks to the egg supply, it is imperative to ensure that federal regulations are tailored carefully to avoid food waste and needless drag on the economy. As explained above, granting the requested enforcement discretion would release safely almost millions of surplus eggs into the egg breaking supply each year, helping to ease costs and inflationary pressures.

It would also reflect smart regulation. NCC projects that Shell Egg Rule has cost the broiler industry at least $27 million per year. Broiler companies receive much lower value for surplus and out-of-specification hatching eggs diverted to rendering and non-human food use than for eggs sold for breaking. In many cases, broiler companies would actually lose money selling surplus eggs to renderers or for non-human uses because of the costs of handling and transportation. Considering disposal costs and lost revenue, NCC conservatively estimates that, from 2009 through 2022, the Shell Egg Rule has cost the broiler industry over $350 million because they could not sell surplus hatching eggs to breakers and had to pay for their disposal. This loss adds to the costs of producing chicken and ultimately affects the market price consumers pay in the grocery store.

In 2021, 10.2 percent (13.5 million households) of U.S. households were food insecure. Food insecure households are those with low or very low food security, as categorized by the USDA.[23] Very low food secure households total 3.8 percent of U.S. households (5.1 million households).[24] Food insecure children made up 6.2 percent of U.S. households with children (2.3 million households) with 0.7 percent of all children in the U.S. living in very low food secure households (274,000 households).[25] Of the food insecure, USDA reported household fears taken from questionnaires of those affected by food insecurity:

- 98 percent reported having worried their food would run out before they had money to buy more.
- 97 percent reported the food they bought just did not last, and they did not have money to get more.
- 94 percent reported they could not afford to eat balanced meals.
- 95 percent reported an adult had cut the size of meals or skipped meals because there was not enough money for food; 87 percent reported this had occurred in three or more months.
- 94 percent reported they had eaten less than they felt they should because there was not enough money for food.
- 67 percent reported they had been hungry but did not eat because they could not afford enough food.
- 47 percent reported having lost weight because they did not have enough money for food.
- 32 percent reported an adult did not eat for a whole day because there was not enough money for food; 24 percent reported this had occurred in three or more months.[26]

Heightened inflation only exacerbates these concerns. The annual rate of inflation for 2022 average 6.5 percent.[27] Though down from 2021 rates of 7.1 percent, these inflationary pressures are still harmful on the average American's pocketbook, even more so on those who cannot afford items like bread or mayonnaise to cost even a dollar more. Those using Supplemental Nutrition Assistance Program (SNAP) benefits increased by 2.8 percent from January to October 2022, to 42.3 million people.[28] Nearly seven percent of households were visiting food pantries in December 2022[29], up from 4.4 percent in 2019.[30]

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[23] *Household Food Security in the United States in 2021*, USDA ERS (Sept. 2022), https://www.ers.usda.gov/publications/pub-details/?pubid=104655.

[24] *Id*.

[25] *Id*.

[26] *Food Security in the U.S.*, USDA ERS (Oct. 17, 2022), https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/definitions-of-food-security/.

[27] *Current US Inflation Rates: 2000-2023,* U.S. Inflation Calculator, https://www.usinflationcalculator.com/inflation/current-inflation-rates/#:~:text=The%20annual%20inflation%20rate%20for,ET.

[28] *SNAP Monthly Summary*, Supplemental Nutrition Assistance Program (Jan. 13, 2023), https://fns-prod.azureedge.us/sites/default/files/resource-files/34SNAPmonthly-1.pdf.

[29] *Household Pulse Survey: Measuring Social and Economic Impacts during the Coronavirus Pandemic*, Census Bureau (Dec. 28, 2022), https://www.census.gov/programs-surveys/household-pulse-survey.html.

[30] *Food Pantry Use Increased in 2020 for Most Types of U.S. Households*, USDA ERS (Nov. 8, 2021), https://www.ers.usda.gov/amber-waves/2021/november/food-pantry-use-increased-in-2020-for-most-types-of-u-s-households/.

The pandemic and rising inflation, which has yet to quell in any significant way, raises costs at the grocery store. The Biden Administration made tackling food insecurity one of its top goals, and one of the ways it can do so by allowing more products to enter the market and reduce costs. An exemption to the FDA Shell Egg Rule will do just that.

IV. Request for Enforcement Discretion

FDA's decision to subject surplus broiler hatching eggs to the Shell Egg Rule has resulted in significant cost to American businesses and needlessly deprived American consumers of millions of servings of high-quality egg protein. As the egg supply faces continued disruption and demand pressures, it is critical that FDA take this opportunity to allow billions of surplus broiler hatching eggs to be sent safely into the egg breaking market, which would in turn ease pressure on the egg supply and ultimately benefit consumers. NCC encourages FDA to focus on addressing consumer needs to eliminate needless waste. Specifically, NCC requests that FDA exercise enforcement discretion for surplus broiler hatching eggs intended for use in liquid egg products from the refrigeration requirements in 21 C.F.R. § 118.4(e) and instead rely on the existing processing requirements applicable to egg products processing establishments (*i.e.*, the requirements in FSIS's egg products HACCP regulations) to control for *Salmonella* in these products and requests that FDA coordinate with FSIS as necessary to ensure these surplus broiler eggs are handled properly at egg breaking plants.

Thank you for your consideration of this petition. Please do not hesitate to contact me if I can provide any additional information.

Respectfully submitted,

Ashley B. Peterson, Ph.D.
Senior Vice President, Scientific and Regulatory Affairs
National Chicken Council

cc. Dr. Steve Musser, Deputy Center Director for Scientific Operations, FDA-CFSAN
Dr. Mark Moorman, Director, Office of Food Safety, FDA-CFSAN
Dr. Janet McGinn, Director, Division of Dairy, Egg, and Meat Products, FDA-CFSAN
Dr. Emilio Esteban, Under Secretary for Food Safety, USDA