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New Legal Precedent Set on Pay for Donning, Doffing

The Eleventh Circuit Court of Appeals ruled that Cagle Foods JV, a Georgia-based poultry company and subsidiary of Keystone Foods, does not have to pay employees for donning and doffing time, the time required to put on and remove protective gear such as smocks, hair nets, gloves and hearing protection. The summary judgment in *Anderson vs. Cagle's Inc., et al*, comes at a time when many poultry and meatpacking companies, such as Hatfield Foods and Purdue, are making out of court settlements with their employees following a U.S. Supreme Court ruling on the issue. In 2005, the U.S. Supreme Court ruled that, in limited circumstances, companies must pay employees for the "walking time" following the time putting on and preceding the removing of protective clothing. However, in this case, the employees were covered under a collective bargaining agreement. Under the Fair Labor Standards Act, time spent in changing clothes or washing is excluded from time worked where it is considered a custom or practice and the employees are covered under a labor contract. "Since putting on and changing clothes is a customary practice, these employees are not entitled to additional compensation under their labor agreement. It is a simple and fair ruling, but one that marks a major development in this area of law," said Philadelphia attorney Howard A. Rosenthal, Esq., who represented Cagle Foods JV, LLC. (*WattPoultry.com, 7/2/07*)

FSIS Launches New Web Page for Small Businesses

FSIS has created a new Web page titled, "FSIS Policies on Regulatory Decisions," to help small businesses understand their rights under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). This page was developed to make certain that small and very small plants are aware of their rights under SBREFA and to clarify what is involved in the appeals process. The page covers topics such as small business protection laws and the non-retaliation policy. This policy describes how FSIS personnel should not retaliate in any way against establishment owners, operators or employees who have questioned or appealed regulatory or enforcement actions. It also describes how federally inspected establishments have the ability to appeal any inspection decision through the use of the agency's appeal process and how the Small Business Administration's Office of National Ombudsman can serve as a liaison between small business owners and Federal agencies to discuss the fairness of a regulatory action. To access the page, go to www.fsis.usda.gov/regulations_&_policies/Policies_on_Regulatory_Decisions/index.asp. Users can also link to this page from FSIS' home page by going to "Browse by Audience," "Small & Very Small Plants" or "Browse by Subject," "Regulations & Policies," "Regulations, Directives & Notices," "Acts & Authorizing Statutes."



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FSIS Publishes Directives on Voluntary Inspection, Overtime

FSIS publishes directives and notices to enable the agency to carry out its mission of protecting public health. The following directives and notice were issued last week:

- Directive 12,600.1, Revision 1, Amendment 1, Voluntary Reimbursable Inspection Services - This directive was amended to revise the questions and answers in Attachment 2. This directive is effective on July 23.
- Directive 12,600.2, Reimbursable Overtime Inspection Services at Meat and Poultry Establishments - This directive provides instructions to agency personnel on how to determine whether overtime inspection services should be provided and the manner in which inspection program personnel should provide inspection services during reimbursable overtime periods. It also provides instructions on how to combine establishments from various regular inspection assignments during overtime periods to form temporary overtime assignments. The directive is effective on July 23.
- Notice 40-07, Export Library Revisions for June 2007 - This notice provides links to the pages of the Export Library for those countries that made changes in their export requirements during the month of June.

The directives and notice are available online at www.fsis.usda.gov/Regulations_&_Policies/index.asp.

FSIS Increases *E. coli* Sampling

FSIS issued Notice 41-07 on July 6 titled, "Increase in Scheduled MT03 Samples in July." The agency increased the number of scheduled raw ground beef product samples for *E. coli* O157:H7 testing that it will collect in July. FSIS has taken this action following an increased number of positive agency *E. coli* O157:H7 results that occurred in June. Additional sampling should help clarify whether there have been any changes in the prevalence of this pathogen on raw ground beef. Therefore, FSIS has sent out an increased number of MT03 sample request forms this month and directed its personnel to take these additional samples. Notice 41-07 is available on the FSIS website at www.fsis.usda.gov/Regulations_&_Policies/Notice_41-07/index.asp.

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Briefly . . .

EU, FDA Sign Food Safety Risk Agreement: The European Food Safety Authority (EFSA) and the U.S. Food and Drug Administration (FDA) have signed the first U.S./European agreement in the area of assessing food safety risk. This is the first formal international cooperation agreement EFSA has signed and the first formal step in cooperation between the two bodies. The agreement is designed to facilitate the sharing of confidential scientific and other information between EFSA and the FDA, such as methodologies to ensure that food is safe. The formal agreement ensures appropriate protection of such confidential information under the

applicable legal frameworks in both the United States and the European Union.

Canadian Swine Imports Rise: According to a Dow Jones report, Canadian swine imports are up 22% from a year ago. For the week ending June 30, there were over 196,000 head, the largest number this year. USDA data show that for the first six months, swine imports from Canada were running 10.3% above a year ago. At the current pace, the total could approach 9.0 million head by year's end. Reduced slaughter capacity in Canada and rising feed costs are resulting in more hogs and pigs being shipped south to the U.S., analysts said. Feeder pigs make up about 54% of the increase from a year ago, and barrows and gilts sent directly to U.S. plants for slaughter account for 43% of the January-June growth. The balance, or approximately 12,500 head, are sows and boars for breeding or slaughter. Weak hog prices in Canada due to the strength of the Canadian dollar and high feed costs have caused producers there to trim their breeding herds.

GAO Reports Features FSIS Outreach Initiative: GAO recently released a report that features the FSIS small and very small plant outreach initiative. The report highlights the agency's program as one of a few programs of its type in the Federal government that provides assistance to small and very small manufacturers. The report titled, "Science and Technology: Information on Federal Programs and Interagency Efforts That Support Small Businesses Engaged in Manufacturing," identifies a total of 254 programs. FSIS' program is the first program highlighted. The report, which does not offer an evaluation of the programs surveyed, may be viewed at www.gao.gov/cgi-bin/getrpt?GAO-07-714.

Congress Investigates GRAS Approval Process: Representatives John Dingell, chairman of the Committee on Energy and Commerce, and Bart Stupak, chairman of the Subcommittee on Oversight and Investigations, intend to investigate the Food and Drug Administration approval process called "generally recognized as safe." The two Michigan Representatives are looking into whether meat treated with carbon monoxide creates a public-health risk. The two also sent letters to grocery retailer Safeway, Inc., meat processors Tyson Foods, Inc., Hormel Foods Corp., and Cargill, as well as a packaging company, Pactiv, with questions about how the companies handle the process and what systems are in place to handle consumer complaints.