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February 25, 2022

FSIS Docket Clerk
Department of Agriculture
Food Safety and Inspection Service
Room 2534 South Building
1400 Independence Ave., SW
Washington, DC 20250-3700

Re: Petition to Establish Regulations for the Labeling and Validated Cooking Instructions for Not-Ready-to-Eat Stuffed Chicken Breast Products That Appear Ready-to-Eat

Dear Docket Clerk:

The National Chicken Council (NCC) respectfully submits this supplement updating our 2016 petition requesting that the Food Safety and Inspection Service (FSIS) adopt regulations establishing labeling requirements for not-ready-to-eat (NRTE) stuffed chicken breast products that may appear ready-to-eat (RTE) and to issue a Compliance Guideline for developing and communicating validated cooking instructions for such products. NCC first filed this petition on May 24, 2016 (Attachment 1). This supplement updates the 2016 petition to reflect updates in in collective understanding of these products. Information presented in this supplement should be read cumulatively with our 2016 petition, except that the requested language amending FSIS's regulations identified in our 2016 petition should be replaced with the language provided in this supplemental letter.

NCC remains is aware that some consumers may be uncertain of the proper handling and cooking methods for NRTE stuffed chicken breast products that may appear RTE, and the proposed measures are necessary to ensure proper handling and cooking of these products. FSIS has demonstrated that adding information to labels, such as warning statements and validated cooking instructions, is the appropriate way to address products when the Agency believes that consumers may need additional information to ensure they are consuming the product safely. We agree with this approach.

NCC has long advocated for additional labeling to address consumer confusion related to these products and has worked with its members to develop guidelines for such labels. This labeling would clearly inform consumers that these products are raw and require proper cooking while providing specific and uniform instructions on how to cook the products. NCC has drafted proposed regulatory text establishing the language and prominence requirements that have been shown to be effective in increasing consumer perception and understanding of warning statements. NCC is confident that these proposed labeling regulations would inform consumers

are appropriately informed that NRTE stuffed chicken breast products that may appear RTE are raw and must be handled properly and cooked for safety. An FSIS Compliance Guideline on validating cooking instructions for these products also would reinforce these efforts by ensuring that these products are safe to consume when cooked in accordance with the instructions provided and that cooking instructions can be easily replicated by consumers.

Further, FSIS conducted a Food Safety Consumer Research Project titled “Meal Preparation Experiment on Raw Stuffed Chicken Breasts,” which was published in September of 2020. According to the results, consumers often do not pay attention to safe handling instructions required by regulations, yet they are more likely to look at the manufacturer’s cooking instructions. Nearly all participants in this study reported reading the instructions on the package and the majority of participants believed that the product was raw or partially cooked. Given these findings, it is of utmost importance that labels are clear and provide appropriate information and instructions on how to properly cook these products.

The National Advisory Committee on Meat and Poultry Inspection (NACMPI) held a public meeting in September 2021 and specifically discussed these NRTE stuffed chicken breast products that may appear RTE. The subcommittee was charged with the following questions:

1. Given FSIS’ consumer research findings and an open multistate *Salmonella* Enteritidis illness outbreak, should FSIS re-verify that companies continue to voluntarily label these products as raw in several places on the label and include validated cooking instructions?
2. What, if any, actions can FSIS take to prevent and reduce illnesses associated with the handling or consumption of these NRTE products? For example, should FSIS:
 - a. Conduct exploratory sampling for pathogens and/or indicator organisms in these and other similar raw, stuffed or non-stuffed partially processed products?
 - b. Require establishments to apply a lethality treatment to ensure that all products are RTE?
 - c. Sample these products for *Salmonella* because consumers customarily undercook them?
 - d. Require establishments that produce these products to reassess their HACCP plans, in light of outbreak data?
 - e. Conduct targeted consumer outreach? If so, please provide some ideas on the best approaches.

The NACMPI subcommittee concluded, in summary, that FSIS should reverify the labeling and validated cooking instructions for these products. In addition, it was recommended that labels should include language warning consumers not to use microwaves or air fryers if validated cooking instructions are not provided for these methods and cooking the product to a minimum of 165°F as measured using a meat thermometer. Moreover, the subcommittee discussed the NCC petition submitted in 2016 and recommended adoption of mandatory labeling requirements for this product category and that FSIS publish a compliance guide on validated cooking instructions for these products.

For these reasons, NCC maintains and requests that the Agency take the following actions:

1. Conduct a rulemaking to adopt a regulation requiring that NRTE stuffed chicken breast products that appear RTE be labeled to clearly inform consumers that the products are raw and how to properly handle and cook them, as proposed below; and
2. Publish a Compliance Guideline explaining how to validate cooking instructions for NRTE stuffed chicken breast products that appear RTE, which incorporates NCC's "Best Practices for Cooking Instruction Validation for Frozen NRTE Stuffed Chicken Breast Products." (Attachment 2 – NCC Best Practices.)

Specifically, NCC requests that FSIS amend Part 381 of Title 9 of the Code of Federal Regulations to add a new subsection (c) to Section 381.125, to read as follows:

(c)(1) Definition. For purposes of this section, the term "not-ready-to-eat (NRTE) stuffed chicken breast product that appears ready-to-eat (RTE)" means a non-homogenous product that contains raw, comminuted chicken breast meat, which has been heat-treated only to set the batter or breading but has not received a full lethality treatment; which has an RTE appearance such as a set or hardened breaded crust or grill marks; and which has an inner cavity filled with ingredients, including, but not limited to, raw vegetables, butter, cheese, or meat. NRTE stuffed chicken breast products that appear RTE do not include the following products, among others: par-fried products such as chicken nuggets or chicken tenders unless they have been stuffed; or stuffed products such as whole stuffed chickens, or chicken thighs stuffed with stuffing and almonds, which do not appear RTE.

(2) Product Name. Unless the product is destined to be fully cooked or to receive a full lethality treatment at an official establishment or at a foreign establishment certified by a foreign government found equivalent under Section 196 of this Part, the product name for a NRTE stuffed chicken breast product that appears RTE must contain:

- (i) the term "raw" as a descriptive designation; and
- (ii) an accurate description of the poultry component (e.g., "Raw Stuffed Chicken Breast" or "Raw Chicken with Broccoli and Cheese").

(3) Required labeling to signal the product is raw. The principal display panel of NRTE stuffed chicken breast product that appears RTE and is destined for household consumers (not for hotels, restaurants, or similar institutions) must bear:

- (i) the following safety statement:

"RAW PRODUCT. For food safety, cook to a minimum internal temperature of 165°F measured by a meat thermometer."

 - (A) Such that the word "RAW" may be used in lieu of the term "RAW PRODUCT";
 - (B) With the words "RAW" or "RAW PRODUCT" capitalized and in a minimum type height of ¼ inch; and
 - (C) With the statement "For food safety, cook to a minimum internal temperature of 165°F measured by a meat thermometer" capitalized or in a combination of upper and lowercase letters, with the letter height of the capitalized letters at least ½ the height of the words "RAW" or "RAW PRODUCT"; and

(D) With the statement appearing on a solid color background that contrasts with the text and the portion of the label on which it appears. Either the text color or the background color must be red in color, but not both.

(ii) a “raw chicken” icon, which must be prominent, conspicuous, and legible; comprise at least 5% of the principal display panel in area; contain the statement “RAW CHICKEN” in all capital letters; and include:

(A) The statement “Do Not Microwave” accompanied by an illustration of a microwave enclosed in a red circle, square, or rectangle with a red line across it; and

(B) The statement “Oven Bake Only” which should appear written across the door of an illustration of an oven enclosed in a green circle, square, or rectangle; and

(C) The statement “Do Not Air Fry” with an illustration of an air fryer enclosed in a red circle, square, or rectangle with a red line across it.

(iii) a serving suggestion notice explaining that the label illustrates the suggested serving of the product after baking, if the label contains an illustration of the cooked product (e.g., “serving suggestion after oven baking” or “serving suggestion: photo shows product after oven baking”). The serving suggestion notice, if used, must:

(A) Appear in red, bold text with at least 1/8 inch size font height; and

(B) Appear on a solid color contrasting background.

(4) **Validated cooking instructions.** The labels on NRTE stuffed chicken breast products that appear RTE destined for household consumers must contain validated cooking instructions. The validated cooking instructions may appear anywhere on the label and must contain all information necessary to instruct consumers how to cook the product safely. Such information shall include, at a minimum:

(i) The proper cooking method;

(ii) The endpoint temperature;

(iii) Instructions to measure the internal temperature using a meat thermometer;

(iv) The “Do Not Microwave” icon with an illustration of a microwave enclosed in a red circle, square, or rectangle with a red line across it;

(v) The “Oven Bake Only” icon with an illustration of an oven enclosed in a green circle, square, or rectangle;

(vi) The “Do Not Air Fry” icon with an illustration of an air fryer enclosed in a red circle, square, or rectangle with a red line across it;

(vii) A website URL, QR code, or similar mechanism that takes the consumer to a webpage or similar openly accessible platform that includes a video demonstrating proper cooking methods, which shall be placed near the written cooking instructions;

(viii) The statement “Raw Chicken – Do Not Microwave” in at least 3/16 inch font followed by the explanation “to help prevent foodborne illness caused by eating raw poultry” in at least 1/16 inch font; and

(ix) Any additional statements or illustrations, as appropriate, to inform the consumer that the product is raw and must be cooked in an oven to ensure product safety.

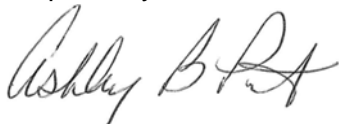
(x) The cooking instructions and icons identified in subparagraphs (i) through (ix) must be placed on a solid color background in a contrasting color to the text.

(5) **Additional Validated Cooking Methods.** The elements identified in paragraphs (3)(ii)(A)-(C) and (4)(iv)-(vi) and (4)(viii) may be modified to reflect any additional validated cooking instructions provided on the label. For example, if a label for an NRTE stuffed chicken breast product that appears RTE destined for household consumers contains validated cooking instructions for air frying, the “Do Not Air Fry” elements otherwise required in paragraphs (3)(ii)(C) and (4)(vi) may be omitted, and the element required in paragraphs (3)(ii)(B) and (4)(v) may be modified to say “Oven Bake or Air Fry Only.”

In conclusion, NCC believes it is necessary that the Agency adopt these proposed regulations to require that the labels of NRTE stuffed chicken breast products that may appear RTE adequately indicate to consumers that these products are raw and must be prepared according to the validated cooking instructions provided to ensure the product safety. A corresponding FSIS Compliance Guideline incorporating NCC’s Best Practices for validating cooking instructions will also provide industry with the guidance needed to ensure its instructions are effective and consistent with typical consumer use. NCC believes these requests complement the FSIS consumer research published in September 2020 and the recommendations set forth by the NACMPI Subcommittee in September 2021.

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

Respectfully submitted,



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National Chicken Council

cc: Sandra Eskin, Deputy Under Secretary for Food Safety
Paul Kiecker, FSIS Administrator
Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development
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Attachments:

Attachment 1 – NCC 2016 Petition
Attachment 2 – NCC Best Practices
Attachment 3 – NCC Consumer Perception Research