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January 18, 2023

Lisa Jones
Office of Information and Regulatory Affairs
Office of Management and Budget
Executive Office of the President

Re: Food Safety and Inspection Service Notice, “*Salmonella* in Certain Not-Ready-To-Eat Stuffed Chicken Products”

Dear Ms. Jones:

The National Chicken Council (NCC) thanks the Office of Management and Budget (OMB) for the opportunity to share NCC’s perspective regarding the US Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) notice entitled “*Salmonella* in Certain Not-Ready-To-Eat Stuffed Chicken Products.” While we have not seen the proposal and lack certainty, we understand this notice would propose to declare *Salmonella* an adulterant when present at above a threshold level in certain not ready-to-eat (NRTE) products and apply that standard to finished chicken products rather than raw material chicken components. During our meeting yesterday, January 17, 2023, NCC raised four issues relevant to OMB’s regulatory review:

- 1. This proposal would present a novel legal issue.** Because *Salmonella* occurs inherently in poultry, to classify *Salmonella* above a threshold level as an adulterant under the Poultry Products Inspection Act (PPIA), FSIS must demonstrate that *Salmonella* above that threshold “ordinarily” renders the product injurious to health. FSIS has not provided any scientific information to support its approach, including risk assessments, product testing, or scientific analysis. In reality, longstanding FSIS policy and caselaw affirms that *Salmonella* is not an adulterant in raw poultry because ordinary and customary cooking practices call for thoroughly cooking chicken. NCC’s views regarding *Salmonella* as an adulterant in poultry products are explained in detail in its comments to Docket No. FSIS-2022-0028 regarding FSIS’s similar but separate Proposed *Salmonella* Framework. We attach these comments for OMB’s reference and direct OMB’s attention in particular to the discussion on pages 3–8.
- 2. This proposal would have serious economic impacts.** NCC conducted a survey of member companies that produce NRTE but appears RTE stuffed chicken products. Based on this survey, on an annual basis, these companies produce over 75 million pounds of finished product, which equates to almost 193 million servings. It is estimated that this volume of finished product has an annualized value of almost \$284 million dollars. If *Salmonella* would be declared an adulterant in these products, it would undermine the commercial viability of these products and would likely result in the closure of five total production lines and job losses for almost 550 full time equivalent (FTE) employees. NCC believes the net economic costs of this proposal would exceed \$100 million annually. It is likely that this proposal would drive smaller producers of this product out of business entirely.

3. **This proposal would conflict with other Administration priorities.** The Administration has prioritized addressing concerns with food availability and affordability. This proposal would undermine these goals by driving up food costs, reducing the supply of convenient, nutritious chicken products, and forcing consumers of these products to purchase more expensive alternatives.
4. **Alternative approaches would provide greater flexibility.** NCC is aware of at least two alternative approaches that would advance FSIS's food safety objectives with much less cost to the economy. First, FSIS could require mandatory safety labeling for these products to reinforce the raw nature of these products and ensure consumers understand how to properly prepare them. This approach was recommended by FSIS's National Advisory Committee on Meat and Poultry Inspection (NACMPI). NCC petitioned FSIS for such labeling in 2016 and updated that petition in 2022, but FSIS has not acted on the NCC petitions. NACMPI's final report and NCC's petitions are enclosed for OMB's reference. Second, FSIS could conduct baseline sampling on source material (chicken) and not finished product to begin assessing *Salmonella* presence or levels in these products, which is the first step toward developing performance standards.

Please do not hesitate to reach out with any questions regarding these concerns.

Sincerely,



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

Enclosures

1. NCC Comments to FSIS Docket No. FSIS-2022-0028, Proposed Salmonella Framework (Dec. 2022)
2. NCC Petition to Create Regulations for NRTE Stuffed Chicken Breas Products (May 2016)
3. NCC Updated Petition, NRTE Stuffed Chicken Breast Products (Feb. 2022)
4. NACMPI Subcommittee II, Stuffed Not Read-to-Eat Poultry Products Final Report (Sept. 2021)