



1152 FIFTEENTH STREET NW, SUITE 430
WASHINGTON, DC 20005
PHONE: 202-296-2622

June 24, 2022

Frank Yiannas
Deputy Commissioner
Office of Food Policy and Response
Food and Drug Administration
U.S. Department of Health and Human Services
Building One
5901-B Ammendale Road
Beltsville, MD 20705

Ms. Sandra Eskin
Deputy Under Secretary
Office for Food Safety
United States Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Re: Labeling of plant-based poultry analogue products

Dear Mr. Yiannas and Ms. Eskin,

On behalf of the National Chicken Council (NCC), I am writing to bring to your attention the practice of misleadingly marketing certain plant-based alternative proteins as chicken products. This practice harms consumers, damages the conventional poultry industry, and undermines confidence in our food regulatory system. NCC is the national, non-profit trade association that represents poultry companies that produce and process more than 95 percent of the chicken marketed in the United States. In recent years, grocery shelves and freezers have been flooded with varieties of plant-based proteins that do not contain any amount of poultry yet bear the name “chicken” on their labels, implying the product is derived from animals and contains real chicken meat. This practice not only hurts our member companies, but also leads to needless consumer confusion, requiring clear guidance and, when necessary, enforcement from your agencies.

As explained in more detail below, these products are misbranded under the Federal Food and Cosmetic Act (FDCA) and violate Food Safety and Inspection Service (FSIS) regulations and policies. Accordingly, NCC respectfully requests the U.S. Food and Drug Administration (FDA) and FSIS individually or together take action to ensure that plant-based protein products that are in the marketplace are not misleading or disparaging and comply with FDA and FSIS standards. Specifically, we urge the agencies to issue clear guidance defining how to name these plant-based products and to prioritize enforcement for products marketed in a misleading manner.

I. Positioning Plant-Based Proteins as “Chicken” Is Misleading and Harms Consumers

NCC supports free choice in the marketplace and welcomes innovative products and market entrants. Chicken processors are among the most innovative companies in the American food system; they are constantly developing new types of products for restaurants and innovative offerings for consumers seeking thrilling new tastes and time-saving conveniences. And chicken has a longstanding and well-earned reputation as a versatile, cost-effective, and lean protein that plays a very important role in helping Americans choose a healthy and affordable diet. Chicken has earned its place on consumers' plates as American's number one protein by per capita consumption.

Recent leaps in food technology have allowed food manufacturers to produce plant-based protein matrices that can come close to replicating the sensory aspects of some chicken products. Some of these products are being misleadingly marketed as being a type of "chicken," when in fact they do not contain any real chicken meat at all. Many of these products have nutritional profiles that are very different than real chicken meat, and they are subjected to very different types of processing. NCC supports innovation in the food choices available to American consumers, but it is critical that all market participants play by the same rules. A plant-based protein product is no more "chicken" than a grilled chicken breast is a piece of cauliflower. Fundamentally, consumers deserve to know what food they are buying, and we are urging FDA and FSIS to ensure all companies are held to the same rules so that consumers can make informed decisions in the marketplace. When a consumer picks up a package that says "chicken" on it, the consumer deserves to be confident that the product actually contains real chicken meat.

These concerns are real. With an ever-expanding plethora of choices in the marketplace, consumers are craving clarity. NCC recently commissioned a survey to gauge how consumers understand labeling of plant-based protein products. The survey is robust. It involved 1,164 participants, including a nationally representative population of 1,000 Americans, plus oversampling to capture statistically robust populations of standard American diet eaters, vegans and vegetarians, and flexitarians.¹ The survey found that 29% of respondents reported having gotten confused about whether a product was plant-based protein or real chicken meat, based on the labeling. More troubling, 21% reported they actually purchased a plant-based protein called "chicken" product because they thought it contained real chicken meat. Given that plant-based proteins often cost more than their conventional counterparts, that means that 1 in 5 surveyed not only were misled into actually buying a product they didn't want, but they likely paid more for it too.² Confusion not only harms consumers economically, it also risks exposing consumers to unexpected food allergens and foods with unexpected nutrient profiles.³ Those who struggled to differentiate between plant-based proteins and real chicken products identified similar packaging and similar names as the source of the confusion.⁴

¹ https://www.nationalchickencouncil.org/wp-content/uploads/2022/06/NCC_PB-Chicken-Label-Survey-Data.pdf

² Because the study included 200 vegans/vegetarians and 325 flexitarians, who would have been less likely to be seeking to buy chicken, this result if anything understates the percentage of chicken-seeking consumers who have been misled.

³ For example, compared with real chicken, a plant-based protein formulation may contain major food allergens, such as soy, and it may contain higher levels of sodium, lower-quality protein, and lower levels of iron and other important micronutrients.

⁴ Our study found that individuals more likely to not want to buy chicken were even more likely to be confused by product names identifying plant-based products as chicken: 33% of flexitarians, 38% of plant-based product consumers, and 42% of vegans or vegetarians reported having gotten confused about whether a product was real chicken or the plant-based alternative protein they presumably were seeking. Likewise, these same groups were even more likely than the average survey respondent to have accidentally made a purchase based on this confusion.

Our survey similarly found that the majority of Americans – 59% – think that plant-based protein products mimicking chicken should be named differently than real chicken meat. Survey respondents identifying as vegan agreed as well, with 62% stating the names should be different, underscoring the importance that product names play, especially for consumers who for various reasons specifically do or do not want to purchase a certain product. Reinforcing this point, 81% of all Americans (and 86% of vegans and vegetarians) surveyed agreed that labeling should be clear, with the majority of consumers even thinking products should be placed separately in the grocery store to avoid confusion. Finally, only 14% of Americans said that plant-based protein products mimicking chicken products should be called “chicken.”

This survey reinforces what food regulators and food companies have long understood: product names provide very important information to consumers, and it is critical that product names are clear and accurate. When they are not, real confusion ensues, and consumers spend their hard-earned dollars and increase their health risk based on that confusion.

FDA and FSIS have an important opportunity to ensure clarity for years to come. The plant-based protein alternative segment remains new and in flux as technologies are refined and products tweaked and developed. Many consumers are not yet familiar with these products, but they will have additional exposure over the coming years. By acting now to ensure plant-based protein alternatives are properly named, FDA and FSIS can ensure that consumers have the information they need to make informed choices and that all protein companies can compete on a level playing field. Importantly, FDA and FSIS can ensure this fair outcome simply by enforcing the product-naming regulations already on the books. NCC is encouraged to see that FDA is planning to issue guidance on the naming of plant-based alternative proteins. We urge FDA to prioritize this guidance and in doing so to clarify how plant-based protein alternatives should be named to avoid confusion with the real chicken products that consumers are long familiar with. Similarly, FDA and FSIS should prioritize enforcement targeting the marketing of alternative protein products in a misleading manner.

II. FDA and FSIS Both Have an Important Role to Play in Ensuring Fair and Accurate Labeling

Both FDA and FSIS need to play an active role in ensuring fairness and clarity in the labeling of plant-based alternative protein products. Plant-based alternative protein products made without any meat or poultry component are manufactured and labeled under FDA's jurisdiction, and it is critically important that FDA ensures its labeling regulations are applied consistently and fairly to these products. At the same time, these products often compete against traditional meat and poultry products regulated by FSIS, and to the extent plant-based alternative protein products purport to be represented as being products of the meat or poultry industry through their naming, FSIS should use its authority to ensure that products purporting to be of the meat or poultry industries are not misbranded.

a. Labeling Plant-Based Proteins as “Chicken” Renders the Product Misbranded in Violation of the Federal Food Drug and Cosmetic Act

NCC is concerned that plant-based proteins marketed as “chicken” are misbranded under the FDCA because their labeling misleadingly indicates that the products contain real chicken meat and that the products are nutritionally comparable to real chicken meat. In fact, neither is true.

Under FDA's longstanding labeling regulations, products without an established standard of identity⁵ must be labeled using the "common or usual name of the food; or, in the absence thereof . . . an appropriately descriptive term, or when the nature of the food is obvious, a fanciful name commonly used by the public for such food."⁶ A common or usual name must "accurately identify or describe, in as simple and direct terms as possible, the basic nature of the food or its characterizing properties or ingredients," and it cannot be "confusingly similar" to other foods.⁷ Calling a plant-based protein matrix "chicken" directly contradicts FDA's product naming regulations. "Chicken" is not an "appropriately descriptive" term for plant-based products, and "chicken" certainly does not "accurately identify or describe, in as simple and direct terms as possible, the basic nature" of a complex matrix of plant proteins, binders, texturizers, and flavor components. "Chicken" is, however, "confusingly similar" to the name of another, very different product that American consumers are inherently familiar with: the meat from an actual chicken. NCC therefore does not believe that the term "chicken" is ever appropriate to describe a plant-based protein product formulated to imitate real chicken meat.

Importantly, no amount of on-label qualification can address this fundamental issue. Calling a product "Plant-Based Chicken" (or similar terms) is oxymoronic, and the "plant-based" qualification directly contradicts the name "chicken." "Plant-Based Chicken" no more "accurately identifies or describes" a product made of plant protein than the term "Chicken-Based Cauliflower" would accurately describe a product made of chicken breast. It is a longstanding principle of advertising and labeling law that a qualifier cannot contradict a claim, and it is important that FDA ensure this principle is respected in the labeling of these products.

In fact, to the extent plant-based protein products are labeled with reference to chicken, they appear to be "imitation" products and must be labeled as such as under FDA policy. A food that may be used interchangeably with a product it resembles but that is "nutritionally inferior" must be labeled in accordance with FDA's "imitation" policy.⁸ Nutritional inferiority includes "any reduction in the content of an essential nutrient that is present in a measurable amount."⁹ A food is misbranded as an "imitation" "unless its label bears, in type of uniform size and prominence, the word 'imitation' and, immediately thereafter, the name of the food imitated."¹⁰ Plant-based protein alternatives marketed as "chicken" are being overtly positioned to be used interchangeably with real chicken meat, and many of the products on the market are nutritionally inferior to real chicken meat.¹¹ If these products are positioned as "chicken," FDA regulations would call for them to also be labeled "imitation."

FDA's regulations governing product naming are longstanding and well established. It is imperative that FDA continue to see to it that they are followed.

5 There are no codified standards of identify for plant-based protein alternatives.

6 21 C.F.R. § 101.3(b)(2)-(3).

7 21 C.F.R. § 102.5(a).

8 21 C.F.R. 101.13(d); see also 9 CFR § 381.413(d) (FSIS regulations for poultry).

9 21 C.F.R. 101.3(e)(4).

10 21 U.S.C. § 434(c).

11 Many, for example, contain a difference of 2% or more of the Reference Daily Intake (RDI) essential vitamins or minerals listed under § 101.9(c)(8)(iv) per reference amount customarily consumed (RACC). 21 C.F.R. 101.3(e)(4).

b. Meatless Products Purporting to be “Chicken” Violate FSIS Policy and the Poultry Products Inspection Act

FSIS likewise has long overseen a well-established set of regulations and policies for how poultry products are supposed to be labeled, and the Poultry Products Inspection Act (PPIA) likewise prohibits the labeling of products in a false or misleading manner as well as the marketing of one food under the name of another.¹²

FSIS regulations identify the types of products that are considered real chicken meat.¹³ Plant-based proteins do not fit into any of these categories. Likewise, a number of food standards established in regulation or the *FSIS Food Standards and Labeling Policy Book* include the term “chicken” in the product name and require that the product contain at least a specified minimum quantity of real chicken meat.¹⁴ These policies and standards reinforce that consumers have a clear expectation that a product named “chicken” contains real chicken meat.

FSIS has also long taken the position that a product represented as containing poultry is treated as a product of the poultry industry. For example, FSIS exempts from its jurisdiction certain products containing small amounts of meat or poultry, so long as the product is not “represented as a meat food or poultry product.”¹⁵ More specifically, “A product is deemed as representing a meat food or poultry product if a term representing meat or poultry is used on labeling, e.g., in the product name, without appropriate qualification.”¹⁶ Adding a directly contradictory term to the name is not “appropriate qualification.” NCC is aware that FSIS has taken action against meatless products that are represented as products of the meat or poultry industries to avoid consumer confusion and to protect established standards, and it is important that FSIS takes action when appropriate to reinforce its and FDA’s labeling regulations.

III. Guidance is needed to establish uniformity and avoid consumer confusion

For the reasons explained in this letter, it is critical that plant-based protein products be named in a manner that makes clear their basic nature and that is not confusing to consumers. We urge FDA and FSIS to take action to provide clear guidance for the truthful and accurate labeling of these products and to enforce the agencies’ long-established labeling regulations and policies. We are pleased that FDA announced its intention to publish guidance in the form of its proposed *Labeling of Plant-Based Alternatives to Animal-Derived Foods; Draft Guidance for Industry* by December 2022. Yet with each passing day more potentially confusing products are entering the market, and more consumers are confused in the marketplace. We urge FDA to prioritize this guidance and to coordinate with FSIS to ensure that its guidance leads to product names that appropriately distinguish between real chicken meat and plant-based alternatives.

As FDA develops its guidance, we encourage the agency to adopt the following principles, which NCC believes will ensure fairness and clarity in the marketplace:

¹² 21 U.S.C. § 453(h).

¹³ 9 CFR § 381.170(a)(1).

¹⁴ For example, a product named “Chicken Cordon Bleu” must contain sliced chicken breast meat. FSIS, *Food Standards and Labeling Policy Book*, “Chicken Cordon Bleu.”

¹⁵ FSIS, *Food Standards and Labeling Policy Book*, “Amenability.”

¹⁶ *Id.*

1. Plant-based protein products should be labeled in a manner that clearly discloses they are made using plant protein.
2. Plant-based protein products should not be labeled in a manner that implies they are made from or are comparable to products made from animal protein.
3. Plant-based products should not be labeled or marketed using the names of specific animals (e.g., "Chicken") or using terms specifically recognized in FSIS regulations or policy as indicating the product is made using animal protein (e.g., "Chicken Tender" or "Chicken Tenderloin"), even if the label elsewhere references the plant-based nature of the product.
4. If variations on established animal or product names are used in the labels or marketing of these products, the product must be readily identifiable as not being an animal product, and the term must be immediately accompanied in all instances by a clear and equally prominent disclosure that the product is plant-based.
5. Claims that plant-based products are superior to conventional animal proteins should be prohibited unless such a claim is substantiated by scientific evidence.

Thank you for your consideration of this important issue. A copy of this letter is also being submitted to FDA's docket number FDA-2021-N-0553. If you have any questions, we would be pleased to meet with you to discuss the contents of this letter further.

Respectfully,



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

cc

Dr. Susan Mayne, Director, Center for Food Safety and Applied Nutrition, FDA
Paul Kiecker, Administrator, Food Safety and Inspection Service
Claudine Kavanaugh, Director, Office of Nutrition and Food Labeling, Center for Food Safety and Applied Nutrition, FDA
Rosalyn Murphy-Jenkins, Director, Labeling and Program Delivery Staff, FSIS
Dr. Patricia Hansen, Deputy Director, Office of Nutrition and Food Labeling, Center for Food Safety and Applied Nutrition, FDA
Jeffrey Canavan, Deputy Directory, Labeling and Program Delivery Staff, FSIS
Docket FDA-2021-N-0553, "Labeling of Plant-Based Alternatives to Animal-Derived Foods"