

2/26/02

**Chicken Cordon Bleu  
Policy Standard and Chronology of Packaging Development at Maple Leaf Farms, Inc.**

Chicken Cordon Bleu (FR)

Product must contain not less than:

1. 60% chicken breast meat\*
2. 5% ham or Canadian Style Bacon.
3. Cheese (either Swiss, Gruyere, Mozzarella, or Pasteurized Processed Swiss)
4. Not more than 30% batter and breading (if used).

\*Note, 9CFR381.118(b) defines "meat" as "skinless."

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Jan 6, 1987	Policy Memo 102 "The Labeling of Products Containing Meat with Added Solutions or Other Nonmeat Ingredients in Secondary Products (Jan 6 1987). This policy memo states that when solution is used to meet a minimum meat%, a statement of marination % must be disclosed in the product title. Further clarification can be found in the rationale section: "The traditional names are considered appropriate if the finished products contain sufficient meat exclusive of the added solutions or other ingredients [in our case, skin] to meet the requirements of the standard."
Sometime in 1989	MLF notifies USDA that Barber has neglected to include the exact marination % on their product labels.
June 22, 1989	USDA corresponds with MLF: In this letter, they say that Barber packaging is indeed incorrect & they will contact the company. The letter continues... "when raw material is used as an ingredient in a secondary product (e.g., Kiev), a complete marination statement must appear in either the product title or may be included in the ingredient sequence." The letter references Policy Memo 044, but does not mention Policy Memo 102.
April 17, 1990	Sketch approval for Cordon Bleu is returned to MLF indicating that marination should be disclosed in the product title [Catherine Sundy]. It is likely that Catherine was aware of Policy Memo 102. However, it is also likely that she either didn't notice we had skin in the product OR that she was not entirely versed in the technical requirements of the product standard for Cordon Bleu. A review of packaging history suggests that the requested modifications were never implemented. Perhaps packaging was resubmitted and a different result was obtained.

**History of Prior Sketch Approvals for Marinated Cordon Bleu  
which do not follow Policy Memo 102:**

- 1) Julian 337, 1993 Sketch Approval # 1911989, Retail Carton, Chicken Cordon Bleu [RM]
- 2) Dec. 13, 1995 Sketch Approval #2083451, Sysco 6/6 oz. Chicken Cordon Bleu [RM]
- 3) July 17, 1995 Sketch Approval # NA, Retail Carton, Chicken Cordon Bleu]
- 4) Julian 207, 1995 Sketch Approval # 2049085, Bilingual f/s Chicken Cordon Bleu [DW]
- 5) Julian 180, 1995 Sketch Approval # 2044042, Chicken Cordon Bleu, f/s [RM]
- 6) Nov. 29, 1995 Sketch Approval #2080911, Sysco Chicken Cordon Bleu,
- 7) Feb 6, 1996 Sketch Approval #2093857, Bilingual f/s Chicken Cordon Bleu
- 8) Julian 061,1996 Sketch Approval #2100844, Retail Film, Chicken Cordon Bleu [RM]
- 9) Feb 6, 1996 Sketch Approval #2093857, Bilingual f/s Chic.Cordon Bleu
- 10) March 14, 1997 Sketch Approval #2168748, MLF Retail Film, Chic. Cordon Bleu
- 11) March 14, 1997 Sketch Approval #2168746, MLF Retail Carton 14oz, Chic. Cordon Bleu
- 12) March 21, 1997 Sketch Approval #2169981, Retail Film [MLF-Aldi], Chic.Cordon Bleu
- 13) March 27, 1997 Sketch Approval # 2170773, Bilingual f/s Chic. Cordon Bleu
- 14) Aug 7, 1997 Sketch Approval #2189539, Sysco Cordon Bleu 4 oz.

**Refusals / Negative Feedback:**

March 13, 1997

6 oz. Chicken Cordon Bleu, MLF-Aldi, Refused Approval

USDA comments “[for]Product Name Chicken Cordon Bleu, 60% meat... must be based on chicken breast meat with rib-meat not counting skin”

Film label was resubmitted to a different reviewer without disclosure\* of added skin. \*Stated “chicken breast” + marination. Label approved 3/21/97.

*March 25, 1997 Letter from Bob Hibbert,*

“[Policy Book Entries... ] are not necessarily legally binding and can be modified informally whenever circumstances dictate..... “

... Option 1: Ignore the objection; strengthen defenses...

... Option 2: Bring matter to USDA’s attention [In fact, D.Clemmer submitted a letter to LRB 04/05/00 seeking a reevaluation of the product standard, following April incident described below ].

April 2000

Verbal Objections from LRB following a submitted temp. for bilingual f/s label to cover a production error involving wrong cheese used.

>Rosalyn leaves voicemail requesting details on meatblock vs. product standard of CB.

>MLF verifies in writing that application is correct: 60.3622% includes marination and skin. MLF suggests that product standard is ill-conceived for breaded CB [see letter];

>Rosalyn responds that we need to correct packaging to comply with Policy Memo 102.

>>Temp approval issued by LRB with no reference to the product standard problem.

>> No action taken by LRB to rescind prior approvals

>> No action taken by MLF to correct packaging.

### **The competitive environment**

- Antioch Farms (Dist. by: Koch Poultry Co., Inc., Chicago, IL ): Not Marinated; “Boneless Breast of Chicken with Rib Meat, Salt” P-1358
- Barber Foods (Dist. by: Barber, Portland, Maine,): Marinated 8%; “Chicken Breast with Rib Meat(Marinated...8%...)” P-276
- Hannaford Brand (Dist. by Hannaford Bros, Scarborough, ME); Not Marinated; “Chicken Breast with Rib Meat, Salt”; Packed by Tyson P-880
- Tyson Brand (Dist. by Tyson Foods, Springdale, AK ) “Chicken Breast with Rib Meat, Salt” P-880

None of the above products contain marination verbiage in the product title. One cannot ascertain from labeling whether or not any of the above products contain added skin. The term “chicken breast” on a label suggests that skin may be present [in natural proportions]; however, the term is also allowed if there is no skin at all.

Unfortunately, methods for auditing composition of competitive finished product are limited at best. Product components are not easily separated [e.g., meat sticks to breading; interface is indistinguishable]. Also, the pre-frying process can obscure true profile as moisture migrates out of meat and into the breading. And, because fat% in chicken breast is not regulated, a finding of fat in a competitor’s meatblock is not necessarily an indication of added skin...

To date, no enforcement action has been taken by USDA against MLF in the way it produces Cordon Bleu. Also, previous legal counsel has suggested there is no cause for drastic measures. Nonetheless, the recent FSIS recall of Hanover Chicken Pies is a cause for concern due to the situational similarities.

The S&L policy book calls for 14% poultry meat in a poultry pie. Because the Pennsylvania company was instead using 10.5%, product was determined to be misbranded and subject to recall. Par for the course, FSIS confuses the matter as they reference the pie standard as "14% chicken" instead of "14 % chicken meat."

Because of the *tremendous* amount of inconsistency that has been applied at label review and because of related errors in the use of language vs. policy, it is likely that an uneven playing field in the Cordon Bleu category exists. The extent to which our competitors have changed what they are doing as a result of infrequent "prodding" would likely be the subject of much debate and speculation.

Beyond the competitive aspects, we should probably be reminded that, in June 1996, companies were no longer required to secure sketch approvals for products having standards, though, parenthetically, claims and serving sizes must still receive prior approval. The change to Prior Label Approval in 1996 may very well have been an outgrowth of the recognition that the agency was not keeping up all that well with the standards – that is, they were not applying them uniformly. In essence, then, the change in Prior Label Approval [1996] may very well have provided the agency with the perfect "out," allowing them to evade accountability in the midst of competitive conflict.

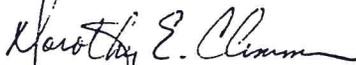
The idea that establishments themselves [not the branch] are ultimately responsible for accurate labeling is echoed, almost verbatim, in FSIS Directive 7221.1 Amend.1. (8/19/96). It stands to reason, then, that FSIS is saying to industry: If your product has a standard, it is your [company's] job to know that standard and to comply with it. In this framework, then, it can be argued that the existence of [favorable] prior approvals is largely irrelevant.

As we consider the possibility of bringing our cordon bleu line into technical compliance, it may be useful to look at revised labeling OR revising formulations. A re-costing of at least two of our biggest sellers - with no skin addition and no added marination - may be useful. The two portions below are offered as possible candidates for such an analysis.

- 304067V2 7 oz. f/s cordon bleu  
60.3622% meatblock (currently contains 8% marination and no skin)
- 302745 6 oz. retail cordon bleu  
60.0352 % meatblock (currently contains 8% marin. and nat. proportions skin & meat 18:82)

I would appreciate your thoughtful consideration of these issues as we strive to minimize regulatory exposure yet still produce a product at a good value for our customers. We will meet Friday to discuss these issues in a group setting. Bob Hibbert, our attorney, has been contacted; he will be available for a call Friday should the group feel that his expertise is needed.

Sincerely,



Dorothy E. Clemmer.

Labeling Administrator, Regulatory Compliance

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\*\*\*\*\* ACTIVITY REPORT \*\*\*\*\*  
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