DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 94-022P]

RIN 0583-AB86

Use of the Term "Fresh" on the Labeling of Raw Poultry Products

AGENCY: Food Safety and Inspection

Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal poultry products inspection regulations to prohibit the use of the term "fresh" on the labeling of raw poultry products whose internal temperature has ever been below 26° F. The proposal would require such poultry products to be labeled with a descriptive term reflecting this fact. FSIS is proposing such action to ensure that poultry products distributed to consumers are not labeled in a false or misleading manner. Such action would also meet consumer expectations that the term "fresh" should not be applied to raw poultry products that have been subjected to processes that would cause such products to become frozen (i.e., below 26° F).

DATES: Comments must be received on or before March 20, 1995.

ADDRESSES: Written comments should be sent, in triplicate, to Policy, Evaluation and Planning Office, ATTN: Diane Moore, FSIS Docket Clerk, Room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments should be directed to Mr. Charles R. Edwards at (202) 254–2565. (See also "Comments" under SUPPLEMENTARY INFORMATION.)

FOR FURTHER INFORMATION CONTACT: Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Background

The Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 et seq.) authorizes the Secretary of Agriculture to establish and maintain inspection programs designed to assure consumers that poultry products distributed to them (including imports) are wholesome, not adulterated, and are properly marked, labeled, and packaged. The PPIA prohibits the shipment in commerce of poultry products that are misbranded

(21 U.S.C. 458). Under the PPIA (21 U.S.C. 453(h)(12)), a product is misbranded if it fails to bear, directly thereon or on its container, as the Secretary may by regulations prescribe, the inspection legend, and "such other information as the Secretary may require in * * * regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition." The PPIA also states (21 U.S.C. 457(c)): "No article subject to this Act shall be sold or offered for sale by any person in commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the Secretary are permitted.

General requirements governing the marking and labeling of federally inspected poultry products are set forth in subparts M and N of the poultry products inspection regulations (9 CFR 381 subparts M and N). The regulations also prescribe the processing procedures to be followed and the standards of identity and composition for products that are to be labeled in a certain manner (9 CFR 381 subparts I, O, and P).

At present, FSIS' poultry products inspection regulations do not define a non-frozen state. The regulations prescribe freezing procedures for poultry products and the labeling of products that are rapidly changed from a non-frozen state to a frozen state. The regulations (9 CFR 381.66(f)(2)) state that "ready-to-cook poultry shall be frozen in a manner so as to bring the internal temperature of the birds at the center of the package to 0° F or below within 72 hours from the time of entering the freezer." Under the poultry products labeling regulations (9 CFR 381.129(b)(3)), poultry that is not quickfrozen according to certain permitted procedures may be labeled "frozen" only if it has undergone prescribed 0° F or below freezing procedures. This proposal would not alter the current requirements governing the freezing of poultry that is to be labeled "frozen."

Current FSIS Policy on "Fresh" Labeling of Raw Poultry

From time to time, FSIS issues policy memoranda concerning significant or novel interpretations of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the PPIA, and/or departmental policy that affect product labeling. FSIS'

current policy on the use of the term "fresh" on the labeling of raw poultry products, which is contained in Policy Memo No. 022C, dated January 11, 1989, allows raw poultry to be labeled as "fresh" if its internal temperature is above 0° F and below 40° F, and it has not been previously frozen at or below 0° F. The policy memorandum states the opinion that "it is not practical, under existing marketing strategies and distribution patterns, to define 'fresh' in terms of internal temperature beyond the scope of current regulations, nor is it practical to define consumer expectations for poultry products labeled as 'fresh.'" In establishing this policy in 1989, FSIS concluded that the consumer is the best judge of preference in chilling temperatures for raw poultry products labeled as "fresh," and that the marketplace is best suited for making these distinctions. Thus, Policy Memo 022C establishes a broad range of temperatures for which the term "fresh" can be used.

In addition to limiting the use of the term "fresh" on raw poultry products based on internal temperature, FSIS Policy Memo No. 022C states that the word "fresh" may not be used in conjunction with the product name of any poultry product that is cured, canned, hermetically sealed shelf stable, dried, or chemically preserved. FSIS notes that, with regard to raw poultry or poultry parts, no substances are permitted to be added by the poultry products inspection regulations for the purpose of shelf life extension.

Other Policies on "Fresh" Labeling

While the term "fresh" has been used historically to describe raw poultry carcasses and parts of carcasses that have not been previously frozen to 0° F, the term has commonly been used by FSIS and industry to describe red meat products that have not been cured. The Federal meat inspection regulations at 9 CFR 317.8(b)(6) state that the word "fresh" shall not be used on labels to designate product which contains any sodium nitrate, sodium nitrite, potassium nitrate, or potassium nitrite, or which has been salted for preservation. In addition, FSIS Policy Memo No. 022C precludes use of the word "fresh" on any canned, hermetically sealed shelf stable, dried, or chemically preserved meat product. Thus, the use of the term "fresh," as applied to meat products, is not related to temperature. Red meat may be frozen and thawed, and then presented for sale to consumers as "fresh."
The Food and Drug Administration

The Food and Drug Administration (FDA) regulations at 21 CFR 101.95 provide for use of the term "fresh" on