the product. However, almost all pathogens of food safety concern have minimum growth temperatures that exceed 40° F. For example, the two most important pathogens associated with raw poultry, *Salmonella* and *Campylobacter jejuni,* have minimum growth temperatures of approximately 50° F and 85° F, respectively.

There are a limited number of foodborne pathogens that are capable of growth under refrigerated conditions. The most important is *Listeria monocytogenes,* which under ideal conditions has minimum growth temperature in the range of 30° F to 34° F. This species can occur on raw poultry products; surveys suggest that it may be present on approximately 18 percent of broiler carcasses. However, while the microorganism can grow under refrigeration conditions in certain circumstances, extensive studies have indicated that the pathogen does not grow on adequately refrigerated meat and poultry products. This reflects the fact that raw meat and poultry do not provide the ideal conditions for growth, with both the depressed pH associated with these products and the presence of a competing microflora depressing the potential for growth. For example, competing microorganisms such as *Pseudomonas, Corynebacterium,* and *Lactobacillus* have a much greater growth rate than *L. monocytogenes* at refrigeration temperatures, and have been shown to help depress the growth of the pathogen. Even without this inhibitory effect, the more actively growing spoilage organisms would likely cause the product to be unpalatable before *L. monocytogenes* began to multiply.

Yersinia enterocolitica, the other major foodborne pathogen capable of growth at refrigeration temperatures, is similarly unlikely to grow in adequately refrigerated raw poultry products. While keeping refrigerated raw poultry products as close to 28° F as possible will help delay microbial spoilage, extend shelf life, and provide a small safety margin against transitory temperature abuse, as long as the product is maintained at 40° F or less, there should be no increased microbiological safety risks associated with the growth of pathogenic microorganisms.

Scientific Research

In order to provide FSIS with additional information in support of its rulemaking on the definition of ''fresh'' as applied to raw poultry, ARS engaged in research on important quality factors, such as flavor, texture, and juiciness, that influence consumer preference for fresh or frozen poultry. ARS is conducting studies to evaluate the sensory, chemical, and physical properties of raw poultry products that have been exposed to and held at temperatures from 0° F to 40° F from the time of post-slaughter chilling to 48 hours and to 7 days. ARS is also examining poultry that has been exposed to these conditions and subsequently frozen to temperatures below 0° F. In addition, microbiological data are being collected and the research will seek to develop a spectroscopic analytical model to measure the temperature to which poultry has been chilled. The findings of this research effort will be incorporated into the record of this rulemaking.

The Proposal

After carefully reviewing the information provided at the public hearings, the results of the Meat and Poultry Hotline survey, the literature review, and other information generated during the significant events discussed in the preamble, FSIS has determined that its current policy on the use of the term ''fresh'' on the labeling of raw poultry products has considerable potential to mislead consumers about the products they seek to buy as ''fresh.'' FSIS believes that consumers are willing to pay more for a product that they perceive to be ''truly'' fresh, and that the potential for economic deception is great when a product offered for sale as ''fresh'' is not the product the consumer expects to purchase. FSIS does not believe that product safety is an issue with raw poultry that is maintained at 40° F or below. Furthermore, because the shelf life of the product is determined by temperature, poultry is stored and transported at temperatures that are well below 40° F. FSIS believes that the definition of ''fresh'' is a labeling issue, as was stated by many participants at the public hearings. Therefore, FSIS is proposing to establish by regulation, the conditions that will govern the use of the term ''fresh'' on the labeling of raw poultry products and the language that would apprise consumers when such products do not meet the Agency's proposed criteria for ''fresh.''

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 proposed rule would not allow raw poultry products whose internal temperature has ever been below 26° F to bear a label declaration of ''fresh,'' and would require such products to be labeled in a manner that reflects that fact. Such products would not be called by their common or usual name without further descriptive labeling. Raw poultry products whose internal temperature has never been below 26° F may be labeled as ''fresh,'' and such products could also be called by their common or usual name, for example, chicken breast, without further description. FSIS would continue to permit use of terms such as ''fresh frozen'' and ''frozen fresh'' as currently provided by 9 CFR 381.129(b)(3) to describe products that are frozen rapidly in accordance with the provisions of 9 CFR 381.66(f)(1) to an internal temperature of 0° F or below.

While FSIS continues to hold its position, as stated in Policy Memo 022C, that the term ''fresh'' may not be used on the labeling of any cured, canned, hermetically sealed shelf stable, dried, or chemically preserved poultry product, it is not proposing to establish regulatory requirements for these products in this rulemaking. FSIS believes that use of the term ''fresh'' on the labeling of such products is not controversial. Also, FSIS believes that Policy Memo 022C and the current poultry products inspection regulations (9 CFR 381.129) are sufficient to preclude the false and misleading use of the term ''fresh'' on poultry products that are processed or preserved by methods other than freezing. However, FSIS invites comments on whether it would be useful and desirable to initiate rulemaking to establish regulatory requirements for all uses of the term ''fresh'' on the labeling of poultry products.

FSIS is aware that, in some instances, the term ''fresh'' could be incorporated into brand names, firm names, etc., or used in sensory modifiers, e.g., fresh tasting, on the labeling of raw poultry products whose internal temperature has been below 26° F. In the past, as described in Policy Memo 022C, FSIS generally has not restricted use of the word ''fresh'' when incorporated in trademarked names, company names, fanciful names, logos, and sensory modifiers on labeling of poultry products that are frozen, previously frozen, cured, or preserved because, in many instances, it would be unlikely that consumers would be led to believe they were purchasing a fresh product. However, this allowance is not consistent with FDA's application of its ''fresh'' labeling policy which extends to use in a brand name and use as a sensory modifier as described in 21 CFR 101.95. While FSIS believes that the term ''fresh'' can be used in brand names, company names, sensory