



United States
Department of
Agriculture

Food Safety
and Inspection
Service

Office of Policy, Program,
and Employee Development

Washington, D.C.
20250

Steven B. Steinborn
Hogan & Hartson L.L.P.
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004-1109

MAR 24 2006

Dear Mr. Steinborn:

I am responding to your letter of February 17, 2006, requesting guidance on determining the proper net weight for consumer packages of fresh, single-ingredient poultry products where the net weight has been applied to the labeling by the U.S. Department of Agriculture (USDA) inspected facility prior to distribution of the product. Specifically, you would like to know whether the Food Safety and Inspection Service (FSIS) considers the free-flowing liquid in the packages of fresh, single-ingredient poultry products to be part of the product's net weight, just as free-flowing liquid in packages of enhanced poultry constitutes part of the product's net weight.

As you are aware, FSIS has previously clarified its position on determining the net weight of Federally inspected case-ready meat and poultry products labeled as enhanced or marinated with solutions. In a letter dated April 5, 2004, to the American Meat Institute, the Administrator of FSIS stated that, in the case of enhanced products, the solutions that are added to the meat or poultry, or into which the meat or poultry is placed for flavoring, seasoning, and tenderizing, are intended to be part of the product. As such, it is expected that the labeled net weight applied at the Federal establishment will represent the weight of the entire food product minus the packaging. Similarly, in regards to fresh, single-ingredient poultry products, FSIS would also consider any free-flowing liquid in the package to be part of the product at the time if it is weighed in the Federal establishment.

Although State and county government regulatory officials have concurrent authority to enforce net weight requirements at the local level, they must do so in a manner that is consistent with Federal law. State and county government regulatory officials are preempted from imposing requirements for determining the net weight of consumer packages of fresh, single-ingredient poultry products, where the net weight has been applied to the labeling by the USDA inspected facility, that conflict with those established by FSIS. Thus, State and county government regulatory officials must use a method for determining net weight compliance of fresh, single-ingredient poultry products that is consistent with the method used by FSIS, which is one that recognizes that the free-flowing liquids are a portion of the product.

If you have any questions, please contact Mr. Bill Jones, Chemist, or me at Area Code (202) 205-0279.

Sincerely,

for Robert C. Post, Ph.D., Director
Labeling and Consumer Protection Staff

Cc:

Robert C. Post, Director, LCPS

Jeff Canavan, LCPS

Bill Jones, LCPS

Sally Jones, LCPS

Mark Wheeler, LCPS

Tawana Duncan, LCPS

Lynn Yoder, LCPS

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