

AMERICAN FRESH JUICE COUNCIL

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Dockets Management Branch (HFA-305)
Food and Drug Administration
5630 Fisher Lane, Rm 1061
Rockville, MD 20852

RE: Docket No. 00N-1351
Public Meeting on Use of Term "Fresh" on Foods Processed with
Alternative Nonthermal Technologies

To Whom It May Concern:

The American Fresh Juice Council (AFJC) is a national trade organization of fresh fruit and vegetable juice producers. The meaning, use and understanding of the term "fresh" is the keystone of the fresh juice industry. Consequently, the AFJC welcomes the opportunity to offer comment on the issues and questions posed in Docket No. 00N-1351. The AFJC position on these questions is very clear and concise. This is a simple and straightforward issue that deserves a quick and decisive reply from FDA. Processed foods are not fresh and should not, under any circumstance, be labeled and marketed as fresh.

The AFJC is concerned that economics are driving this issue. Clearly, small businesses would be devastated by a loosening of the term fresh, as large juice processing companies would benefit from new market opportunities. It is not in the public's best interest to quantify a basic truth.

Issues presented in the Docket:

1. Do consumers associate the term "fresh" with organoleptic characteristics, nutritional characteristics, or some other characteristics?

Answer #1

People seek fresh product for three reasons: (1) Taste, (2) Healthful properties, (3) the desire to consume a product that is as close as possible to the fresh fruit or vegetable from which it was extracted.

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- (1) Taste: Despite the fact that juice from low heat and emerging technologies tastes better than more highly processed juice, taste alone does not and should not define fresh. New technologies improve the flavor of foods and additives every year. However, it makes little sense to allow a good tasting additive, processed food or synthetic product to be labeled as fresh. Consumers are intelligent and experienced enough to know that "tastes-like-fresh" is not fresh. Good taste and fresh are by no means synonymous.
 - (2) Many consumers seek fresh unprocessed juice because of the healthful benefits that they derive from it. Whole and natural food experts will attest to the fact that the human body can better assimilate fresh fruits and juices, than those that have been processed. Consumers in this category deserve a "fresh" alternative.
 - (3) Juice that has been subjected to intensive light, heat, electricity, pressure, x-rays, radiation, etc. has clearly undergone a process. Processed product is not fresh. Consumer association with the term fresh should have no bearing on what is fresh..
2. Do consumers want a way to identify foods that taste and look fresh but have been processed to control pathogens?

Answer #2

Consumers simply want to make informed decisions about the foods that they consume and purchase for their families. Any bending or manipulation of the term fresh would be tantamount to purposely misleading the American consumer. Some consumers prefer to purchase a processed juice. Surely these same consumers would prefer that the juice have a superior taste and/or appearance. It is not unreasonable to incorporate adjectives to describe superior taste and appearance. However, whether labeling is addressing taste or appearance, use of the word "fresh" should not be permissible. The word "fresh" defines a unique and special product. Its application to a processed product would be untruthful.

3. What does the industry think the term "fresh" means?

Answer #3

The AFJC maintains that the definition of "fresh" in 21 CFR 101.95 is what the industry perceives and understands as fresh. 21 CFR 101.95 reads as follows: (a) The term "fresh," when used on the label or in labeling of a food in a manner that suggests or implies that the food is unprocessed, means that the food is in its raw state and has not been frozen or subjected to any form of thermal processing or any other form of preservation. This is clear and well understood by the industry.

4. Is the term "fresh" when applied to foods processed with the new technologies misleading to consumers?

Answer #4

The purpose of labeling laws is to prevent verbiage (on packaged food items) from misleading consumers. Consumers want to make informed decisions about their food purchases. The use of the term "fresh" on processed juices (or foods) would clearly mislead consumers and would be untruthful. Fresh food is food that has not undergone a compositional change.

5. Do the new technologies preserve the foods?

Answer #5

Any process that extends the shelf life of a product is a means of preservation. This can take place via a reduction in spoilage organisms or a cancellation of enzymatic activity. Any process that goes beyond quality maintenance (such as chilling) and that changes the actual composition of the food is a means of preservation.

6. Are the new technologies truly non-thermal?

Answer #6

Although the AFJC questions whether any of the known treatments are truly non-thermal, it is more appropriate to question whether this is a relevant question. It seems more appropriate to question whether these technologies are a process. If these technologies are a process, do they constitute a means of preservation? The answer to both of these questions is clearly yes. The next logical question is whether nominal heat preservation processes should be permitted on fresh products. No, they should not. Processed product is not fresh.

7. Are there quantifiable parameters, e.g., level of nutrients, vitamins, etc., that could be measured to determine if a food is "fresh"?

Answer #7

The introduction of arbitrary measurements of nutrients in order to quantify the use of the term fresh is no more sensible than an arbitrary assessment of taste. This would indeed be a slippery slope for the agency. Such an approach would leave the definition of fresh flexible, and at the mercy of political winds, economic clout and process innovations. FDA could conceivably find itself conducting annual debates among emerging technologies for which is fresher, and by what degree. Fresh is not a measurement; it is a state of being. Gray areas and quantitative measurements do not serve the agency or the consumer.

8. Is there a term other than "fresh" that can be used for foods processed with the new technologies?

Answer #8

There is potential for new language to identify new products with superior taste and appearance (to traditionally processed products). The AFJC chooses not to comment on this issue other than to object to the inclusion of the word "fresh" in this terminology.

9. Would consumers understand a new term?

Answer #9

Educated, knowledgeable consumers will most likely continue to differentiate fresh product from processed product. Others will continue to be manipulated by tricky verbiage, product labels and advertising "puffery".

10. What is the economic impact of allowing the use of the term "fresh" for foods processed with the new technologies?

Answer #10

The AFJC maintains that the manipulation and expansion of the word "fresh" to include preservation processes would benefit equipment manufacturers and large food processors. In the case of juice, the market for "fresh" product is an attractive expansion for large processors. Because these emerging technologies are economically infeasible for small firms, large traditional processors would be the only firms able to adapt.

Soon, consumers would be misled into believing that the newly available juices, with flavor superior to traditionally processed juices, were fresh. They would have no reason to believe otherwise. The FDA would have passed a rule that allowed the product to be identified as fresh. Small fresh juice producers would not be able to compete with the scale of large processors. The economic damage to the current fresh juice industry could be catastrophic.

The allowance of the term fresh on processed products would reach beyond small juice producers. It is currently estimated that up to 40% of Florida's fresh orange crop is used in the production of fresh juice. When fresh juice producers cave under economic pressure from larger processors, these growers will either be left without a market for their product, or they will be forced to sell to larger processors at a lower price. Florida packinghouses, which rely on small fresh juice plants, could be

impacted heavily. Some estimate that a 30% loss in fresh orange sales is not outside the realm of possibility.

11. Would allowing the term "fresh" on foods processed with new technologies place small firms not able to use these technologies at an economic advantage?

Answer #11

Our response to this question was covered in our answer to question #10. Please reference this answer.

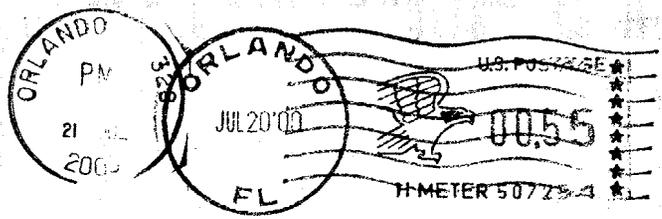
Sincerely,



J. PETER CHAIRES
President

JPC/dg

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