

of the shell eggs that are subject to the order fails to relabel, divert, or destroy them within 10-working days, or if the demand is affirmed by the FDA Regional Food and Drug Director after an appeal and the person in possession of such eggs fails to relabel, divert, or destroy them within 10-working days, the FDA district office, or, if applicable, the State or local agency may designate an officer or employee to divert or destroy such eggs. It shall be unlawful to prevent or to attempt to prevent such diversion or destruction of the shell eggs by the designated officer or employee.

(8) Persons engaged in handling or storing packed shell eggs for retail distribution shall permit authorized representatives of FDA to make at any reasonable time such inspection of the establishment in which shell eggs are being held, including inspection and sampling of the labeling of such eggs as may be necessary in the judgment of such representatives to determine compliance with the provisions of this section. Inspections may be made with or without notice and will ordinarily be made during regular business hours.

(9) No State or local governing entity shall establish or continue in effect any law, rule, regulation, or other requirement requiring safe handling instructions on unpasteurized shell eggs that are less stringent than those required in paragraphs (h)(1) through (h)(5) of this section.

[42 FR 14308, Mar. 15, 1977, as amended at 42 FR 22033, Apr. 29, 1977; 49 FR 13690, Apr. 6, 1984; 49 FR 28548, July 13, 1984; 61 FR 20100, May 3, 1996; 62 FR 2249, Jan. 15, 1997; 63 FR 8118, Feb. 18, 1998; 63 FR 37055, July 8, 1998; 63 FR 63982, Nov. 18, 1998; 66 FR 17358, Mar. 30, 2001; 65 FR 76111, Dec. 5, 2000]

§ 101.18 Misbranding of food.

(a) Among representations in the labeling of a food which render such food misbranded is a false or misleading representation with respect to another food or a drug, device, or cosmetic.

(b) The labeling of a food which contains two or more ingredients may be misleading by reason (among other reasons) of the designation of such food in such labeling by a name which includes or suggests the name of one or more but not all such ingredients, even

though the names of all such ingredients are stated elsewhere in the labeling.

(c) Among representations in the labeling of a food which render such food misbranded is any representation that expresses or implies a geographical origin of the food or any ingredient of the food except when such representation is either:

(1) A truthful representation of geographical origin.

(2) A trademark or trade name provided that as applied to the article in question its use is not deceptively misleading. A trademark or trade name composed in whole or in part of geographical words shall not be considered deceptively misleading if it:

(i) Has been so long and exclusively used by a manufacturer or distributor that it is generally understood by the consumer to mean the product of a particular manufacturer or distributor; or

(ii) Is so arbitrary or fanciful that it is not generally understood by the consumer to suggest geographic origin.

(3) A part of the name required by applicable Federal law or regulation.

(4) A name whose market significance is generally understood by the consumer to connote a particular class, kind, type, or style of food rather than to indicate geographical origin.

Subpart B—Specific Food Labeling Requirements

§ 101.22 Foods; labeling of spices, flavorings, colorings and chemical preservatives.

(a)(1) The term *artificial flavor* or *artificial flavoring* means any substance, the function of which is to impart flavor, which is not derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy products, or fermentation products thereof. Artificial flavor includes the substances listed in §§ 172.515(b) and 182.60 of this chapter except where these are derived from natural sources.

(2) The term *spice* means any aromatic vegetable substance in the whole, broken, or ground form, except for those substances which have been traditionally regarded as foods, such as