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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. FSIS-2007-0048]

RIN 0583-AC83

Classes of Poultry

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the definitions and standards for the official U.S. classes of poultry so that they more accurately and clearly describe the characteristics of poultry in the market today. Poultry classes are defined primarily in terms of the age and sex of the bird. Genetic improvements and poultry management techniques have reduced the grow-out period for some poultry classes, while extensive cross breeding has produced poultry with higher meat yields but blurred breed distinctions. FSIS is taking this action to ensure that the labeling of poultry products is truthful and not misleading.

EFFECTIVE DATE: This rule is effective on January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Rosalyn Murphy-Jenkins, Director, Labeling and Program Delivery Division, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture (USDA), Washington, DC 20250-3700, Telephone (301) 504-0879, Fax (301) 504-0872.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 2003, FSIS proposed to amend the definitions and standards for the official U.S. classes of poultry (68 FR 55902). Before publishing the 2003 proposed rule, the Agency had reviewed the poultry class definitions with USDA's Agricultural Marketing Service (AMS) Poultry Programs, and both agencies discussed the issue with members of the poultry industry and others knowledgeable about poultry genetics and breeding. After examining current poultry production methods and reviewing the poultry classes defined in 9 CFR 381.170, FSIS and AMS concluded that a number of the poultry class definitions do not adequately reflect current poultry characteristics or industry practices. Therefore, FSIS, in consultation with AMS, determined that the poultry class definitions needed to be revised to more accurately and clearly describe poultry being marketed to consumers and to ensure that the labels for poultry products are truthful and not

misleading. FSIS consulted with AMS during this rulemaking because AMS incorporates FSIS' regulatory poultry class standards into its U.S. Classes, Standards, and Grades for Poultry (AMS 70.200 et seq.).

In the 2003 proposed rule, in addition to proposing to lower the age definitions for 6 classes of poultry, FSIS requested comments on the merit of establishing ready-to-cook (RTC)¹ carcass weights or maximums for poultry classes. The proposed classes were primarily based on the age and sex of the bird.

2009 Supplemental Proposed Rule

After FSIS published the 2003 proposed rule, AMS provided the Agency with new data that affected the proposed "roaster" class definition. These data, which were collected from the segment of the industry that routinely produces "roasters," suggested that a "roaster" class definition should include a RTC carcass weight. The data also suggested that FSIS should change the proposed weeks of age in the "roaster" class definition. Therefore, on July 13, 2009, FSIS issued a supplemental notice of

¹ Ready-to-cook poultry at 9 CFR 381.1 is defined as any slaughtered poultry free from protruding pinfeathers and vestigial feathers (hair or down), from which the head, feet, crop, oil gland, trachea, esophagus, entrails, and lungs have been removed, and from which the mature reproductive organs and kidneys may have been removed, and with or without the giblets, and which is suitable for cooking without need of further processing. Ready-to-cook poultry also means any cut-up or disjointed portion of poultry or other parts of poultry, such as reproductive organs, head, or feet that are suitable for cooking without need of further processing.

proposed rulemaking to provide new information on and to re-propose the definition and standard for the "roaster" or "roasting chicken" (74 FR 33374).

In the preamble to the 2009 supplemental proposed rule, FSIS explained that, on the basis of the new AMS data, the Agency had tentatively concluded that a "roaster" or "roasting chicken" should be defined as a chicken between 8 and 12 weeks of age. The Agency noted that most of the comments submitted on the 2003 proposed "roaster" class definition supported use of this age range for roasters (74 FR 33375).

In the 2009 supplemental proposal, the Agency also explained that it had tentatively concluded that a "roaster" or "roasting chicken" should be defined as a chicken with an RTC carcass weight of 5 pounds or more, based on survey information from AMS. The Agency stated that including the RTC carcass weight for this class of poultry would effectively differentiate "roasters" and "broilers". FSIS also explained that it had tentatively concluded that RTC carcass weight, instead of average live weight, is necessary in the class standard and definition so that FSIS can verify the appropriate use of the term "roaster" or "roasting chicken" on product labels.

FSIS reviewed the other poultry standards with AMS before issuing the 2009 rule and determined that they were still accurate, so the Agency only needed to re-propose the "roaster" definition.

Consultation with Advisory Committee

Under section 457(b)(2) of Title 21 of the United States Code, the Secretary of Agriculture is required to consult with the Secretary of Health and Human Services (HHS) and an appropriate advisory committee as provided for in 21 U.S.C. 454 before issuing standards of identity for poultry products. Pursuant to this requirement, FSIS consulted with the Food and Drug Administration (FDA), HHS, when developing the proposed rule. FDA determined that there were no existing product standards established by FDA that would be inconsistent with the revised poultry class standards as proposed. FDA has also reviewed this final rule and has determined that there are no existing FDA product standards that are inconsistent with the revised poultry class standards established in this final rule.

Also, pursuant to this requirement, in 2003, FSIS presented the proposed poultry class standards to the FSIS National Advisory Committee on Meat and Poultry Inspection (NACMPI) for consultation to ensure that there is no inconsistency between Federal and State standards.

Comments submitted by NACMPI and FSIS' response are discussed below.

RESPONSE TO COMMENTS

FSIS received 9 comment letters in response to the 2003 proposed rule and 6 comment letters in response to the 2009 supplemental proposed rule on the "roaster" class definition. Comments were submitted by trade associations that represent poultry processors, poultry processors, a non-profit organization that advocates humane treatment of farm animals, and 2 individuals.

After carefully analyzing the comments, FSIS has decided to adopt, with some changes, the poultry class definitions that it proposed in 2003 and the "roaster" class definition that it proposed in 2009.

The following is a summary of the comments submitted in response to the 2003 proposed rule and comments submitted in response to the 2009 supplemental proposed rule and FSIS' responses.

Comment: One trade association supported the 2003 proposed rule and stated that they had no objections to the proposed changes for the age definitions, proposed changes to the class definitions, deletion of the word "usually" from the age classifications, proposed changes to the game hen classes, and other proposed editorial changes.

Response: FSIS agrees with the comment.

"Roaster" class definition

Comment: In response to the 2003 proposed rule, FSIS received comments from the industry that suggested that FSIS adopt a "roaster" class definition that includes both an age range between 9 and 12 weeks at the time of slaughter and an average live flock weight of 7.75 to 8 pounds. The comments stated that a "roaster" class definition that includes this age range at the time of slaughter and a minimum average flock weight will provide reasonable parameters for companies that specially produce large, young "meat-type" birds.

Response: While FSIS agrees that the "roaster" class definition should include both an age range and weight requirements, the Agency does not agree that the weight should be based on the minimum average flock weight. Using RTC weight more accurately reflects the actual weight of the carcass that a consumer is purchasing. This weight is verifiable by the inspector at the processing site. The inspector cannot verify the flock weight. The flock weight is an average of a large number of birds rather than by individual bird. The variability in a flock weight may be large and not as accurate.

After consideration of the comments, and of the information that AMS obtained from "roaster" producers, FSIS has decided to adopt a "roaster" class definition that reflects AMS' recommendation to define a "roaster" as a chicken between 8 and 12 weeks of age and with a RTC carcass weight of 5 pounds or more. AMS' recommendation is based on the results of a survey of the segment of the industry that produces "roasters," and reflects data on target weights for birds produced from 8 of the 13 "roaster" suppliers. FSIS and AMS both agree that a definition that includes RTC carcass weight rather than average live flock weight is necessary for FSIS to verify that the labeling of chickens identified as "roasters" is truthful and not misleading. This definition also more accurately reflects the characteristics of poultry labeled as "roasters."

Comment: Several comments from trade associations and poultry processors were concerned that the 2003 proposed "roaster" age definition of less than 12 weeks with no minimum RTC carcass weight would allow large "broilers" to be classified as roasters because of the overlap in the proposed age definition for the "broiler" class (less than

10 weeks of age) and the proposed age definition for "roaster" class (less than 12 weeks of age).

One comment from a poultry processor asserted that relying only on age requirements and other proposed criteria, such as characteristics of the breastbone cartilage, to define certain poultry classes, particularly the "roaster" chicken class, might cause confusion among industry and FSIS inspection program personnel. The comment stated that some establishments and FSIS inspection personnel may conclude that birds less than 12 weeks of age can be classified as either a "broiler" or a "roaster." The comment recommended that FSIS allow the "roaster" class to be a marketing term that may include young immature poultry from the "broiler" class, as long as specified weight requirements are met.

Response: As noted above, the roaster class definition in this final rule includes both an age range of 8 to 12 weeks at the time of slaughter and a RTC carcass weight of 5 pounds or more. A broiler is defined by an age of less than 10 weeks with no specified minimum RTC carcass weight. Although there is some overlap in the age definition for "broiler" and "roasters," the higher age limit for the "roaster" class combined with the minimum RTC

carcass weight provides a way to clearly distinguish a "broiler" from a "roaster."

Comment: Several comments from poultry processors and an individual recommended that FSIS remove age from the definition of the "roaster" class and define "roaster" based solely on RTC carcass weight instead. According to the comments, a "roaster" class definition that includes the age of the bird is not relevant or meaningful to consumers. The comments asserted that defining the "roaster" class by weight alone is sufficient to enable the consumer to identify the product without being misled.

Response: FSIS has determined that the definition needs to include the age range along with a minimum RTC carcass weight to ensure that only young birds are labeled as "roasters." Because production practices and housing technology have changed, the birds come to market weight much quicker than in the past. Therefore, it is important to inform consumers that "roasters" are young birds, not the more mature birds that consumers were accustomed to buying in the past. This new roaster definition was requested by the poultry industry and supported by industry comments because a definition that uses both the age and weight information is more likely to provide clarity for industry and consumers.

Most of the comments submitted on the 2003 proposal supported the use of this age range, which is consistent with the age of "roasters" in the market today.

Comment: Comments from a trade association and a poultry processor recommended that instead of a 5 pound RTC carcass weight definition for the "roaster" class, FSIS should adopt a minimum 5.5 pound RTC carcass weight as the bird exits post-chilling in the slaughter/evisceration process. According to the comment, such a definition will more accurately reflect the weight range of chickens that are marketed as "roasters" and "roasting chickens" and will maintain a distinction between "roasters" and "broilers" that are also being grown to heavier weights. Another comment suggested a "roaster" class weight definition that would include a 5.5 pound RTC carcass weight for a carcass without giblets at post chill and a 6 pound minimum RTC carcass weight for a carcass packaged with giblets.

Response: As noted above, information that AMS obtained from "roaster" producers supports a RTC carcass weight of 5 pounds or more. Birds that have the age and other characteristics of the roaster class and that have a RTC carcass weight of 5.5 pounds would be classified as "roasters." RTC weight has not been based on the weight of the carcass and the weight of the carcass plus giblets.

There was no rationale provided with the comment to support the need for 2 different weight minimums for this class of poultry. FSIS does not believe it is necessary to stipulate a minimum weight based on the carcass plus giblets.

Comment: One comment from a trade association had no opinion on whether FSIS should include a requirement for RTC carcass weights for certain poultry classes but stated that if FSIS were to adopt market-ready weights, the weight designations should not include any added solutions that are used to prepare birds for the cooking process.

Response: The minimum RTC carcass weight for the roaster class applies to carcasses that do not contain added solutions.

Comment: One comment from a poultry processor submitted in 2003 suggested that FSIS delay the issuance of any final rule to update the poultry classes to conduct the appropriate studies in consultation with consumers and the industry to craft a classification standard that accurately reflects what a "roaster" is. Another comment from a poultry processor stated that FSIS should consult with a wide cross section of buyers, consumers, and industry to determine the appropriate RTC carcass weight for the "roaster" class.

Response: As noted above, after FSIS issued the 2003 proposed rule, AMS collected new data from the segment of the industry that routinely produces "roasters." The agencies used these data to develop a roaster class definition that more accurately reflects the characteristics of chickens marketed as "roasters" and requested comments on the revised definition through a supplemental proposed rule.

Comment: Comments from a trade association and a poultry processor stated that FSIS should not require that chickens that meet the definition for the "roaster" class be labeled as "roaster" or "roasting chicken." The comments suggested that FSIS give companies the option of labeling these birds as "young chickens." According to the comment, the term "young chicken" will not mislead consumers because it does not imply the product is somehow superior to a "roaster" or "roasting chicken."

Another comment from a poultry processor asserted that designation of an RTC chicken carcass as a "broiler," "fryer," "roaster" or "roasting chicken" is not meaningful to consumers. The comment stated that consumers would likely select the RTC chicken carcass based on their needs in relation to the meal being prepared, e.g., a family of four will likely require a larger RTC chicken carcass than

a single adult when preparing the same meal, regardless of how the bird is labeled. The comment said that the similarities between the "broiler" or "fryer" and "roaster" or "roasting chicken" class are such that the standards are almost interchangeable. The comment was concerned that under the proposed definitions, a "broiler" could be deemed misbranded simply because the RTC carcass weight infringes on the "roaster" class. The comment stated that FSIS should not require that chickens be labeled as a "broiler," "fryer," "roaster," or "roasting chicken," and that companies should have the option to label these poultry as "young chickens."

Response: Under the existing regulations, "broilers," and "roasters" are permitted to be labeled as "young chickens." 9 CFR 381.117(b) provides that "[t]he name of the product required to be shown on labels for fresh or frozen raw whole carcasses of poultry shall be in either of the following forms: the name of the kind (such as chicken, turkey, or duck) preceded by the qualifying term "young" or "mature" or "old," whichever is appropriate; or the appropriate class name as described in 9 CFR 381.170(a)."

This final rule does not change requirements for product names in 9 CFR 381.117(b). Therefore, "broilers" and

"roasters" may continue to be labeled by their class name or as "young chickens."

Young Turkeys

Comment: One comment submitted by a trade association that represents turkey processors objected to FSIS' proposal to lower the age for the young turkey class from under 8 months to less than 6 months. The comment stated that lowering the age for young turkeys by 2 months would place an undue burden on several companies that process young turkeys while providing little or no benefit to the consumer. According to the comment, if FSIS were to adopt the proposed reduction in age for the young turkey class, many establishments that process young turkeys would be dangerously close to exceeding or simply would not meet the new age requirements.

Response: After considering the comment, FSIS has decided to not lower the age definition for the young turkey class as proposed. Therefore, this final rule retains the existing "young turkey" age definition of less than 8 months.

To lower the definition to less than 6 months may adversely affect establishments that are labeling such birds as "young turkeys" under the existing regulations.

After considering the comments and recommendations from AMS, FSIS has concluded that a "young turkey" age definition of "less than 8 months" continues to accurately represent industry practices and accurately reflects the characteristics of these birds.

Broiler or Fryer Class

Comment: One commenter from a trade association noted that the terms "broiler" and "fryer" are permitted to be used interchangeably under the "broiler" or "fryer" chicken class definition. The commenter asserted that the use of both terms for one class of poultry might be confusing to consumers. The commenter suggested that FSIS either define the terms "broiler" and "fryer" in the regulations or amend the regulations to establish separate classes for "broiler" and "fryer" chickens, or for any other poultry identified by these terms.

Response: "Broiler" and "fryer" are regional terms for the same type of bird and are thus used interchangeably. The comment did not submit data to indicate that classifying chickens with certain characteristics as "broilers" or "fryers" is misleading to consumers. Therefore, FSIS is not establishing separate definitions for "broiler" and "fryer" chickens in this

final rule.

Cornish Game Hens

Comment: One comment from a trade association stated that the term "hen" as used in the "Rock Cornish game hen" or "Cornish game hen" class may be misleading because the term hen implies that these birds are female while the definition states that the birds may be of either sex. The comment suggested that FSIS change the name of this poultry class to "Rock Cornish game bird" or "Cornish game bird."

Another comment from a poultry producer said that the proposed "Cornish hen" definition is inaccurate because it allows industry to call a bird that is not necessarily Cornish, and not necessarily a hen, a "Cornish hen." The comment suggested that FSIS add a definition for "poussin" to describe the next youngest bird than the "Cornish hen" if the Agency decides to keep the term Cornish hen. The comment suggested that USDA review the literature produced by the North American Meat Processors Association (NAMP) as it applies to usage of the term "poussin." According to the commenter, because USDA is attempting to have its regulations reflect usage in the poultry industry, it must consider not just the production level, but also the market.

Response:

FSIS disagrees that the terms "Rock Cornish game hen" or "Cornish game hen" are misleading to consumers and that the Agency should change the name of the class to "Rock Cornish game bird" or "Cornish game bird." The existing terms for this poultry class, which provides for the use of the term "hen" for young immature chickens of either sex, has been in place since FSIS established this poultry class definition. The term "hen" can be used for immature chickens of either sex because birds of this class are sexually immature. FSIS is not aware of any data to support that consumers are misled with the reference to "hen" in these terms. Changing the name of the class is likely to spur confusion.

FSIS also disagrees that the proposed "Cornish hen" definition is inaccurate because it allows industry to call a bird that is not necessarily Cornish, and not necessarily a hen, a "Cornish hen." The existing standards in FSIS' regulations do specify that a Cornish chicken be the progeny of a Cornish chicken crossed with another breed of chicken. However, FSIS continues to believe that it is doubtful that any purebred Cornish lines currently exist in commercial chicken production today and, therefore, the birds cannot be reliably distinguished on the basis of progeny.

FSIS also disagrees that it should add a new poultry class that would define poussin. The poultry classes in 9 CFR 381.170 represent poultry that are typically marketed to consumers and are more broadly used than the standards for poussin in NAMP's Poultry Buyers Guide.

Other Comments

Comment: A comment from an organization that advocates humane handling of farm animals and an individual stated that the lower age requirements proposed for certain poultry classes sanction and promote abnormally rapid growth in poultry, which compromises animal welfare and public health. An organization that advocates the humane treatment of farm animals recommended that FSIS adopt a "no action" alternative because the proposed amendments are largely unnecessary. According to the commenter, of the 6 definitions proposed for revision, 4 are completely accurate as currently written.

Response: FSIS disagrees that the lower age requirements proposed for the poultry classes compromise animal welfare and public health. The lower age requirements reflect the advancements in breeding and husbandry that have occurred since the poultry classes were established over 40 years ago. These advances have generally shortened the period of time required for birds

to attain market-ready weights. FSIS is revising the poultry class standard to better reflect these changes.

Comment: A poultry processor requested that FSIS use this rulemaking to replace the term "squab" in its regulations with "pigeon." The commenter stated that squab should be used to describe a young pigeon in labeling but not to define inspection amenability.

Response: This comment is outside the scope of this rule; however, the FY 2001 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act (the 2001 Appropriations Act), signed by the President on October 28, 2000, provided inspection amenability for ratites and squabs. The statute specifically states that "squabs" are to be inspected under the Poultry Products Inspection Act (PPIA). The 2001 Appropriations Act does not mention pigeons. Subsequently, based on that statute, FSIS conducted rulemaking to include squab in the definition of Poultry in 9 CFR 381.1.

Comment: One trade association comment stated that the proposed changes in nomenclature and weight ranges for the poultry classes may bring about price changes that may benefit the industry and retailers but may not result in benefits to consumers.

Response: FSIS does not believe the proposed changes will result in a significant change in the market price of poultry because the rule will not have much effect on consumer behavior. The rule may benefit suppliers because lowering the age limit means the suppliers will not have to keep the birds for as long as they have under current class standards for all classes of poultry whose age limits are lowered by this final rule. However, despite the potential increase in the supply of roasters, consumer demand will determine how many more roasters will be sold. The Agency does not think that the consumers will buy more roasters simply because the proposed rule lowers the age limit.

NACMPI Review

As noted above, in 2003, FSIS presented the proposed poultry class standards to the National Advisory Committee on Meat and Poultry Inspection (NACMPI). NACMPI reviewed the proposed poultry class standards and suggested that FSIS look at poultry production practices for non-traditional raising of poultry, such as organic and free-range. NACMPI recommended that FSIS not exclude any sector of the marketplace from using the standards in labeling because they use different production practices and that FSIS determine whether the non-traditional raising of poultry meets the standards in the proposed rule.

Further, the NACMPI asked if the poultry products imported have their own standard and who would know the ages on the imported poultry product.

In response to NACMPI's request, FSIS consulted with representatives from AMS's National Organic Program (NOP) to determine whether the revisions to the poultry class standards would affect the way that organic poultry are classified and labeled. NOP responded that although it does not have extensive market information on the age and size of organic poultry to fully evaluate the implications of these new classes, it does not anticipate that organic poultry growers will have difficulty raising birds with characteristics of the new class definitions. AMS/NOP contacted a poultry producer (who sells under the broiler or fryer class) to get its perspective on whether such a change would present an issue for the 25,000 organic birds they raise for the market. The producer stated that, although organic birds do take longer to get to market size because of slower weight gain (e.g., about 30% less for organic birds which take about 49 days to attain market weight), the producer does not anticipate a problem marketing "broilers" or "fryers" as defined in this rule.

In reference to NACMPI's comment on foreign trade, FSIS ensures that inspection systems in countries that export meat, poultry, and processed egg products to the United States are equivalent to those in the United States and that products from these countries are accurately labeled in accordance with domestic requirements. Also, in terms of a trade perspective, the amount of product that USDA could market under these standards of identity is very small in terms of imported product to the United States.

THE FINAL RULE

In this final rule, FSIS is lowering the age definitions for 5 classes of poultry: "Rock Cornish game hen" or "Cornish game hen" from 5 to 6 weeks to less than 5 weeks (§ 381.170(a)(1)(i)); "broiler" or "fryer" from under 13 weeks to less than 10 weeks (381.170(a)(1)(ii)); "roaster" or "roasting chicken" from 3 to 5 months to 8 to 12 weeks of age (381.170(a)(1)(iii)); capon from under 8 months to less than 4 months (381.170(a)(1)(iv)); and fryer-roaster turkey from under 16 weeks to less than 12 weeks (381.170(a)(2)(i)). The Agency decided not to lower the age definition for a 6th class of poultry - young turkey - as proposed (see RESPONSE TO COMMENTS). Therefore, the age definition for a young turkey remains at less than 8

months of age. In addition to lowering the age definition for the "roaster" class, this final rule also defines a "roaster" based on a RTC carcass weight of 5 pounds or more. Consistent with the proposal, the Agency is deleting the word "usually" from the age designation descriptions in all of the poultry class standards so that these age designations will be clear and enforceable.

EFFECTIVE DATE

Based on the uniform compliance date regulations, January 1, 2014 is the effective date for this final rule. January 1, 2014 is the uniform compliance date for new food labeling regulations that are issued between January 1, 2011 and December 31, 2012 (75 FR 71344, November 23, 2010.)

OTHER PROVISIONS

In the 2003 proposed rule at 68 FR 55902, the Agency solicited comments on what age designations would be appropriate for poultry identified as "young geese," "mature geese," "young guineas" and "old guineas" but the Agency did not receive any comments in response.

Also, as proposed at 68 FR 55903, in addition to the changes made to the poultry class standards, this rule will delete the term "fully matured" from the yearling turkey class definition and change the name of the broiler

duckling or fryer duckling class to "duckling." Birds in this class of ducks are labeled and marketed as "ducklings" without the prefixes "broiler" or "fryer." FSIS is changing the name of the roaster duckling class to "roaster duck." Roaster ducks are currently labeled and marketed as "ducks" rather than "ducklings."

In addition, the class definitions have been edited for clarity, consistency, and uniformity. For example, the class names used within the regulatory text will be placed in quotation marks to make the format of the poultry class standards regulation consistent with the other regulations that prescribe standards of identity for poultry products. References to specific numbers of weeks or months will be preceded by the words "less than" or "more than" rather than "under" or "in excess of" to improve the clarity of the regulations.

EXECUTIVE ORDER 12866 and REGULATORY FLEXIBILITY ACT

This final rule has been determined to be "significant" and was reviewed by the Office of Management and Budget under Executive Order 12866.

ECONOMIC IMPACT OF THE CLASSES OF POULTRY FINAL RULE

This regulation may have some benefit for the industry, but it will not have a significant effect on the prices of poultry. Lowering the age limit for all the five

classes of poultry will benefit the suppliers because they can sell birds at younger ages. In the case of roasters, some of the chickens that are broilers under the current standards will be qualified as roasters and can be sold at a higher per-pound price.² However, FSIS does not know how many chickens will be re-classified because there is no Agency data or market data on ages of the chickens in the market. There is also a demand constraint on how many of the re-classified chickens will be actually sold and generate the revenue. Therefore, it is very difficult to quantify the benefits to the industry.

Another possible effect on the industry is associated with possible changes to labels because of changes in classification of poultry. The "Uniform Compliance Date for Food Labeling Regulations" (75 FR 71344) allows establishments to incorporate multiple label redesigns required by multiple Federal rules into one modification during 2-year increments. If the establishments combine other labeling changes required by other Federal regulations with the labeling changes under this rule, they can spread out the cost of changing other labels.

² AMS data shows the per-pound price for roasters are \$0.14 higher than broilers in 2009. *USDA Weekly Chicken Feature Activity*, July 23, 2010. <http://www.ams.usda.gov/pymarketnews>.

On the demand side, this rule will not have much effect on consumers. Although some broilers will be qualified as roasters and become more expensive, consumers who want to buy broilers will still buy broilers. There is no empirical evidence of consumer preference of one class of chicken (roaster or broiler) over the other. In addition, empirical evidence shows that price elasticity for chicken in the United States is quite inelastic.³ Because the rule will not have a significant effect on the demand side and is not imposing additional cost to the suppliers, there will not be significant change in prices.

FINAL REGULATORY FLEXIBILITY ANALYSIS

The FSIS Administrator certifies that, for the purposes of the Regulatory Flexibility Act (5 U.S.C. 601-602,) the final rule will not have a significant impact on a substantial number of small entities. The advancements in growing practices and technologies that have occurred since the original poultry class standards were developed are prevalent throughout the industry, regardless of the size of the entity. This rule merely updates existing regulations to reflect current poultry characteristics and production practices used throughout the entire industry.

³ For example, a study by the Research Triangle Institute (RTI) found that U.S. demand elasticity to be -.43 for young chickens and -.62 for other chickens. *Poultry Slaughter and Processing Sector Facility-Level Model, Final Report*. RTI. April, 2006.

In fact, by lowering the age definition for five classes of poultry, this rule benefits the small and very small establishments as well as the large ones. It is voluntary if the establishments want to sell the large broilers as roasters; and if they decide to do so, the perceived benefits must outweigh the associated cost, such as labeling changes.

The Agency has considered two alternatives to this rulemaking. The first alternative is no rulemaking and to keep the old definitions. However, these definitions fail to take into account current poultry production practices, which have generally shortened the period of time required for poultry to gain market-ready weights. The second option is to use a weight range to define turkey and roaster classes. However, for turkeys, the Agency found such a class system would not accurately distinguish birds that differ significantly in relevant characteristics. As for roasters, information also suggests that classifying by weight alone is not an accepted practice industry-wide. In any case, both the alternatives would apply to the entire industry, and neither would have a differential effect on the small and very small establishments.

Paperwork Requirements

FSIS has reviewed this rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and has determined that the information collection related to labeling has been approved by OMB under OMB Control Number 0583-0092.

FSIS does not anticipate many changes of labels due to changes in classification of poultry because many establishments are already using terms that meet the classifications established by this rule. In addition, the natural turnover of labels for poultry produced in a federally inspected facility will allow poultry establishments to incorporate label redesigns into one modification in 2-year increments based on the Uniform Compliance Date for Food Labeling Regulations (75 FR 71344). This rule established January 1, 2014, as the uniform compliance date for new meat and poultry product labeling regulations that are issued between January 1, 2011, and December 31, 2012. Hence, there will be basically no additional paperwork burden for establishments.

Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review

reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

USDA Nondiscrimination Statement

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Additional Public Notification

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List of Subjects in 9 CFR Part 381

Food grades and standards, Poultry and poultry products.

For the reasons stated in the preamble, FSIS amends 9 CFR part 381 as follows:

PART 381--POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 451-470; 7 CFR 2.18, 2.53.

2. Section 381.170 is amended by revising paragraph (a) to read as follows:

§ 381.170 Standards for kinds and classes, and for cuts of raw poultry.

(a) The following standards specify the various classes of the specified kinds of poultry and the requirements for each class:

(1) Chickens--(i) Rock Cornish game hen or Cornish game hen. A "Rock Cornish game hen" or "Cornish game hen" is a young, immature chicken (less than 5 weeks of age), of either sex, with a ready-to-cook carcass weight of not more than 2 pounds.

(ii) Broiler or fryer. A "broiler" or "fryer" is a young chicken (less than 10 weeks of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin and flexible breastbone cartilage.

(iii) Roaster or roasting chicken. A "roaster" or "roasting chicken" is a young chicken (between 8 and 12

weeks of age), of either sex, with a ready-to-cook carcass weight of 5 pounds or more, that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that is somewhat less flexible than that of a broiler or fryer.

(iv) Capon. A "capon" is a surgically neutered male chicken (less than 4 months of age) that is tender-meated with soft, pliable, smooth-textured skin.

(v) Hen, fowl, baking chicken, or stewing chicken. A "hen," "fowl," "baking chicken," or "stewing chicken" is an adult female chicken (more than 10 months of age) with meat less tender than that of a roaster or roasting chicken and a nonflexible breastbone tip.

(vi) Cock or rooster. A "cock" or "rooster" is an adult male chicken with coarse skin, toughened and darkened meat, and a nonflexible breastbone tip.

(2) Turkeys--(i) Fryer-roaster turkey. A "fryer-roaster turkey" is an immature turkey (less than 12 weeks of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin, and flexible breastbone cartilage.

(ii) Young turkey. A "young turkey" is a turkey (less than 8 months of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that is less flexible than that of a fryer-roaster turkey.

(iii) Yearling turkey. A "yearling turkey" is a turkey (less than 15 months of age), of either sex, that is reasonably tender-meated with reasonably smooth-textured skin.

(iv) Mature or old (hen or tom) turkey. A "mature turkey" or "old turkey" is an adult turkey (more than 15 months of age), of either sex, with coarse skin and toughened flesh. Sex designation is optional.

(3) Ducks--(i) Duckling. A "duckling" is a young duck (less than 8 weeks of age), of either sex, that is tender-meated and has a soft bill and soft windpipe.

(ii) Roaster duck. A "roaster duck" is a young duck (less than 16 weeks of age), of either sex, that is tender-meated and has a bill that is not completely hardened and a windpipe that is easily dented.

(iii) Mature duck or old duck. A "mature duck" or an "old duck" is an adult duck (more than 6 months of age), of either sex, with toughened flesh, a hardened bill, and a hardened windpipe.

(4) Geese--(i) Young goose. A "young goose" is an immature goose, of either sex, that is tender-meated and has a windpipe that is easily dented.

(ii) Mature goose or old goose. A "mature goose" or "old goose" is an adult goose, of either sex, that has toughened flesh and a hardened windpipe.

(5) Guineas--(i) Young guinea. A "young guinea" is an immature guinea, of either sex, that is tender-meated and has a flexible breastbone cartilage.

(ii) Mature guinea or old guinea. A "mature guinea" or "old guinea" is an adult guinea, of either sex, that has toughened flesh and a non-flexible breastbone.

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Done at Washington, DC, on: October 27, 2011

Alfred V. Almanza,

Administrator.

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