



DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. FSIS-2015-0026]

Classes of Poultry

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the definition and standard of identity for the "roaster" or "roasting chicken" poultry class to better reflect the characteristics of "roaster" chickens in the market today. "Roasters" or "roasting chickens" are described in terms of the age and ready-to-cook (RTC) carcass weight of the bird. Genetic changes and management techniques have continued to reduce the grow-out period and increased the RTC weight for this poultry class. Therefore, FSIS is proposing to amend the "roaster" definition to remove the 8-week minimum age criterion and increase the RTC carcass weight from 5 pounds to 5.5 pounds. This action is being taken in response to a petition submitted by the National Chicken Council.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by one of the following methods:

Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments. This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments.

Mail, including CD-ROMs, etc.: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8-163A, Washington, DC 20250-3700.

Hand- or courier-delivered submittals: Deliver to Patriots Plaza 3, 355 E Street SW, Room 8-163A, Washington, DC 20250-3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2015-0026. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriot's Plaza 3, 355 E St. SW, Room 8-136A, Washington, DC between 8:00 a.m. and 4:30

p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rosalyn Murphy-Jenkins,
Director, FSIS Labeling and Program Delivery Division, Phone:
(301) 504-0878, Fax: (202) 245-4795.

SUPPLEMENTARY INFORMATION:

Background

The Poultry Products Inspection Act (PPIA) prohibits the distribution of poultry products that are adulterated or misbranded (21 U.S.C. 458). The PPIA also authorizes the Secretary of Agriculture to prescribe, among other things, definitions and standards of identity or composition for poultry products whenever the Secretary determines that such action is necessary for the protection of the public (21 U.S.C. 457(b)). Poultry classes were established by USDA to aid in labeling poultry. The classes were based primarily on the age and sex of the bird. FSIS uses poultry class standards to ensure that poultry products are labeled in a truthful and non-misleading manner.

On November 3, 2011, FSIS published a final rule to amend the definitions and standards for the U.S. classes of poultry listed in 9 CFR 381.170(a)(1) (76 FR 68058). The 2011 final rule lowered the age definitions for five classes of poultry and

removed the word "usually" from the age designation descriptions, so that the age designations are clear and enforceable (76 FR 68058, 68062). In addition to lowering the age definition for the "roaster" class, the final rule also defined a "roaster" based on a ready-to-cook (RTC) carcass weight.

A "roaster" or "roasting chicken" (hereafter referred to as "roasters") is defined in 9 CFR 381.170(1)(a)(iii) as "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." This definition was informed by data collected by the USDA Agricultural Marketing Service (AMS) from the segment of the industry that routinely produces "roasters," comments received in response to a September 3, 2003, proposed rule to amend the poultry classes (68 FR 55902), and comments received in response to a 2009 supplemental proposed rule in which the Agency re-proposed to amend the "roaster" standard to establish an age range from 8 to 12 weeks and to provide for a RTC carcass weight (74 FR 3337, July 13, 2009). The 2011 final rule became effective on January 1, 2014, the uniform compliance date for FSIS labeling regulations issued between January 1 2011

and December 31, 2012 (75 FR 71344, November 23, 2010).

NCC Petition

On November 18, 2013 -- before the January 1, 2014, effective date for the final rule -- the National Chicken Council (NCC) submitted a petition requesting that FSIS amend the definition and standard of identity for the "roaster" chicken class to remove the 8-week minimum age requirement and to increase the RTC carcass weight to 5.5 pounds. The petition is available on the FSIS Website at

<http://www.fsis.usda.gov/wps/wcm/connect/adf54579-7a18-4ab2-a9b5-88f1eef65332/Petition-National-Chicken-Council.pdf?MOD=AJPERES>.

The petition specifically asked FSIS to amend 9 CFR 381.170(a)(1)(iii) to define a "roaster" as a young chicken (less than 12 weeks of age) of either sex, with an RTC carcass weight of 5.5 pounds or more, that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that may be somewhat less flexible than that of a "broiler" or "fryer." The petition also requested that FSIS, as necessary, exercise enforcement discretion or stay the effective date of the "roaster" definition scheduled to go into effect on January 1, 2014.

According to the petition, the "roaster" standard established in the 2011 final rule would detract from the

orderly and efficient marketing of classes of poultry because companies would be unable to label and market chickens with the RTC weight and other physical attributes of a "roaster" as "roasters" because of the minimum age requirement. The NCC asserted that improvements in breeding and poultry management techniques that have continued since FSIS published the November 2011 final rule have enabled producers to raise chickens with the characteristics of roasters in under 8 weeks.

NCC submitted additional data in support of its petition on December 16, 2013 (available on the FSIS Website at:

<http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/petitions>).

FSIS, in consultation with USDA's AMS conducted a preliminary review of the petition and supporting data. From this preliminary review, FSIS and AMS found that data show that producers are raising chickens with a RTC carcass weight of 5 pounds or more with the other physical characteristics of a "roaster" in less than 8 weeks. The data also show that in 2012, the average commercially processed chicken reached a slaughter weight of 5.95 pounds in 47 days. This amount of time is less than the 8-week minimum age for a "roaster," although the bird's weight would exceed the 5 pound RTC minimum weight requirement. Thus, the age of these birds falls within the age range for "broilers" (i.e., under 10 weeks), but these birds have the size and other physical attributes of "roasters." On the basis of

these findings, FSIS and AMS agreed on the need to address this gap in the regulations.

Therefore, in the December 27, 2013, edition of its Constituent Update newsletter, FSIS announced that it would allow chickens younger than 8 weeks of age to continue to be labeled and marketed as "roasters" after the new poultry class standards go into effect if these birds meet all of the other characteristics of a "roaster" in the standard. That is, they would have to have a RTC carcass weight of 5 pounds or more, be tender-meated, and have soft, pliable, smooth-textured skin that is somewhat less flexible than that of a broiler or fryer.¹ FSIS also stated that it intended to propose to revise the roaster definition or reaffirm the November 2011 definition (<http://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings/newsletters/constituent-updates/archive/2013/ConstUpdate122713>).

In July 2014, FSIS, in consultation with AMS, completed its review of the NCC petition. AMS verified that the data that NCC submitted to support the petition are consistent with production data that AMS collected from the poultry industry. After reviewing the available information, FSIS and AMS concluded that the data show that chickens younger than 8 weeks are

¹Before FSIS published the 2011 final rule, the former poultry class standards stated that roasters are "usually 3 to 5 months" but did not prohibit birds younger than 8 weeks from being labeled and marketed as "roasters."

consistently reaching higher average dressed weights in shorter periods of time, and that there is a trend of increasing growth rate of commercially processed chickens between 2009 and 2012, supporting the elimination of a minimum age for the "roaster" class. FSIS, in consultation with AMS, also found that the data show that, in those regions of the country where "roasters" are marketed, customers value "roasters" more highly on a pound-per-pound basis than they do "broilers," demonstrating the need to allow birds with the physical characteristics of "roasters" to be accurately labeled as "roasters."

Therefore, on July 23, 2014, FSIS sent a letter to the NCC to inform the organization that FSIS had decided to grant its petition to amend the "roaster" poultry class

(<http://www.fsis.usda.gov/wps/wcm/connect/d6fba22b-271d-4204-adc6-56ab45d7b587/NCC-FSIS-Response-72314.pdf?MOD=AJPERES>.)

The Proposed Rule

FSIS is proposing to amend the poultry class standards to define a "roaster" or "roasting chicken" as a young chicken (less than 12 weeks of age) of either sex, with a ready-to-cook carcass weight of 5.5 pounds or more, that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that may be somewhat less flexible than that of a "broiler" or "fryer." Removing the minimum age and increasing the RTC carcass weight for the "roaster" class, as requested in the petition,

would allow birds younger than 8 weeks that have the physical characteristics of a "roaster" to continue to be labeled and marketed as "roasters."

As noted above, FSIS is proposing to increase the RTC carcass weight for "roasters" from 5 to 5.5 pounds, as requested in the petition. However, FSIS is soliciting comments regarding the merit of increasing the minimum RTC carcass weight from 5 pounds to 5.5 pounds and the effect that such an increase may have on small poultry producers. To be of value, the comments must provide a factual basis for or against increasing the weight requirement for "roasters."

Executive Order 12866 and Executive Order 13563

This proposed rule has been designated as a "non-significant" regulatory action under section 3(f) of Executive Order (E.O.) 12866. Accordingly, the rule has been not been reviewed by the Office of Management and Budget under E.O. 12866.

Economic Impact Analysis

This rule will not have significant costs because FSIS currently allows birds younger than 8 weeks with the physical attributes of "roasters" to be labeled as "roasters."² The

² Food Safety and Inspection Service, Correspondence, July 23, 2014. Available at: <http://www.fsis.usda.gov/wps/wcm/connect/d6fba22b-271d-4204-adc6-56ab45d7b587/NCC-FSIS-Response-72314.pdf?MOD=AJPERES> . See Constituent Update, December 27, 2013, available at:

proposed rule would codify present practices and would not impose new requirements on establishments. For consumers, it would ensure that the labels for chickens with the characteristics of "roaster" are truthful and not misleading, and, consequently, consumers will be able to make informed purchase decisions.

Regulatory Flexibility Act Assessment

The FSIS Administrator has made a preliminary determination that this proposed rule would not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

FSIS projects that this rule will not result in additional costs to the industry because FSIS currently allows birds younger than 8 weeks with the physical attributes of "roasters" to be labeled as "roasters."³

Paperwork Reduction Act

FSIS has reviewed this rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and has determined that the

<http://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings/newsletters/constituent-updates/archive/2013/ConstUpdate122713>.

³ Food Safety and Inspection Service, Correspondence, July 23, 2014. Accessed here: <http://www.fsis.usda.gov/wps/wcm/connect/d6fba22b-271d-4204-adc6-56ab45d7b587/NCC-FSIS-Response-72314.pdf?MOD=AJPERES>

information collection related to labeling has been approved by OMB under OMB control number 0583-0092.

FSIS does not anticipate many label changes due to the proposed change to the "roaster" definition because establishments that produce chickens that comply with the proposed "roaster" poultry class standard are already labeling these birds as "roasters."

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, et seq.) by, among other things, promoting the use of the Internet and other information technologies, and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) all State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

Executive Order 13175

This proposed 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 proposed regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How to File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf, or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail:

U.S. Department of Agriculture
Director, Office of Adjudication
1400 Independence Avenue, SW
Washington, DC 20250-9410
Fax: (202) 690-7442

E-mail: program.intake@usda.gov

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this Federal Register publication on-line through the FSIS Web page located at: <http://www.fsis.usda.gov/federal-register> .

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, Federal Register notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which

provides automatic and customized access to selected food safety news and information. This service is available at:

<http://www.fsis.usda.gov/subscribe> . Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

List of Subjects in 9 CFR Part 381

Food grades and standards, Poultry and poultry products.

For the reasons set forth in the preamble, FSIS proposes to amend 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)(1)(iii) to read as follows:

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

(a) * * *

(1) * * *

(iii) Roaster or roasting chicken. A ``roaster`` or ``roasting chicken`` is a young chicken (less than 12 weeks of age) of either sex, with a ready-to-cook carcass weight of 5.5 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.

* * * * *

Done at Washington, DC, on: August 12, 2015.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2015-20433 Filed: 8/18/2015 08:45 am; Publication Date: 8/19/2015]