

Proposed Rules

Federal Register

Vol. 68, No. 188

Monday, September 29, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 99-017P]

RIN 0583-AC83

Classes of Poultry

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend 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 new 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. This action is being taken to ensure that poultry products are labeled in a truthful and non-misleading manner.

DATES: Comments must be received on or before November 28, 2003.

ADDRESSES: Submit one original and two copies of written comments to: FSIS Docket Clerk, DOCKET #99-017P, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, SW., Washington, DC 20250-3700. All comments submitted on this proposal will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Robert C. Post, Director, Labeling and Consumer Protection Staff, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture; (202) 205-0279.

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 almost 30 years ago to aid in labeling five kinds of poultry—chickens, turkeys, ducks, geese, and guineas. The classes were based primarily on the age and sex of the bird, with Rock Cornish-type chickens also being defined by breed.

FSIS uses poultry class standards to ensure that poultry products are labeled in a truthful and non-misleading manner.

Recently, FSIS 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. The mission of the AMS is to facilitate the marketing of poultry through grading, certification, market news, and commodity procurement services. The classes are incorporated into AMS's official U.S. Classes, Standards, and Grades for Poultry (AMS 70.200 *et seq.*) as a convenience for those processors, marketers, and consumers using AMS's voluntary poultry grading service.

After examining current poultry production methods and reviewing the poultry classes defined in 9 CFR 381.170, FSIS and AMS determined that a number of poultry class definitions did not reflect today's poultry characteristics nor current industry practices. Advancements in breeding and husbandry have generally shortened the period of time required for birds to attain market-ready weights. For example, today broilers 3.5 to 4.5 pounds in weight can be produced in less than 10 weeks, and are frequently produced in 6 to 8 weeks. Thirty years ago, it took 12 to 13 weeks to produce birds with the physical characteristics of broilers. Given these findings, FSIS and AMS determined that the poultry class definitions need to be revised to more

accurately and clearly describe poultry being marketed today and to ensure that the labels for poultry products are truthful and non-misleading. When the revised class definitions are finalized, AMS will incorporate them into its U.S. Classes, Standards, and Grades for Poultry.

FSIS is concerned with the truthful presentation of the characteristics of poultry products because consumers rely on product labels when making purchasing decisions. The age of the bird affects the tenderness of the meat and the smoothness of skin, thus dictating the cooking method to use for maximum flavor and tenderness. Poultry meat from young birds is more tender than that from older birds. Young birds are suitable for all cooking methods, especially broiling, barbecuing, roasting, and frying. Less tender, mature birds are most suitable for moist-heat cooking, such as stewing and baking, and may be preferred for use in soups, casseroles, salads, and sandwiches.

FSIS is proposing to lower the age definitions for six 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)(iii)); roaster or roasting chicken from 3 to 5 months to less than 12 weeks (381.170(a)(1)(iv)); capon from under 8 months to less than 4 months (381.170(a)(1)(v)); fryer-roaster turkey from under 16 weeks to less than 12 weeks (381.170(a)(2)(i)); and young turkey from under 8 months to less than 6 months (381.170(a)(2)(ii)). The Agency is proposing to delete 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.

The poultry class definitions for geese and guineas currently do not contain age designations that distinguish young birds from mature birds (381.170(a)(4) and 381.170(a)(5)). However, the Agency is considering revising the geese and guinea poultry class standards to include such age designations. Therefore, FSIS is soliciting comments on what age designations would be appropriate for poultry identified as "young geese," "mature geese," "young guineas" and "old guineas."

The general physical characteristics of birds identified as mature or old turkeys

are the same regardless of the gender of the bird. Therefore, FSIS is proposing to revise the labeling of mature or old turkeys so that sex designation, such as hen or tom, currently required, would be optional.

Current class definitions state that a bird labeled as a Rock Cornish-type chicken must be "the progeny of a cross between a purebred Cornish and a purebred Rock chicken" (9 CFR 381.170(a)(1)(ii)), or "a Cornish chicken or the progeny of a Cornish chicken crossed with another breed of chicken" (9 CFR 381.170(a)(1)(i)). While this statement was appropriate when these chickens were originally developed over 40 years ago, today it is doubtful that any purebred Cornish or Rock lines exist in commercial chicken production. The names "Rock Cornish game hen" and "Cornish game hen" are now used to identify a very young, very small, whole chicken that is marketed as an individual serving. Although the names refer to hens, either sex can be used since birds of this class are sexually immature. The names "Rock Cornish fryer," "Rock Cornish roaster," and "Rock Cornish hen" are no longer meaningful because these birds cannot be reliably distinguished on the basis of progeny from other existing classes. Therefore, the Agency is proposing to define the Rock Cornish game hen or Cornish game hen class only in terms of age and weight and to delete the class of Rock Cornish fryer, roaster, and hen.

The existing class definition for the roaster or roasting chicken class states that the breast bone cartilage of these birds "may be somewhat less flexible" than the breast bone cartilage of birds in the broiler or fryer class (9 CFR 381.170(a)(iv)). The Agency is proposing to replace the words "may be" with the word "is," so that the definition better reflects the characteristics of birds classified as roasters and to make the language of the revised roaster class definition more consistent with the other poultry class definitions.

In most of the poultry class definitions the term "mature" refers to old adult birds. However, the term "fully matured" in the yearling turkey class definition is used to describe the breeding capability of the bird. FSIS has determined that the description of the age and physical characteristics provided in the proposed yearling turkey definition sufficiently characterize the birds that belong to this poultry class. Therefore, for consistency, FSIS is proposing to delete the term "fully matured" from the yearling turkey class definition.

FSIS is proposing to change the name of the broiler duckling or fryer duckling

class to "duckling." Birds in this class of ducks are currently labeled and marketed as "ducklings" without the prefixes "broiler" or "fryer." These are obsolete marketing terms for ducks that are not being used and have not been used for quite some time. In addition, FSIS is proposing to change the name of the roaster duckling class to "roaster duck." Roaster ducks are currently labeled and marketed as "ducks" rather than "ducklings."

In addition to the substantive changes made to the poultry class standards, the class definitions have been edited for clarity, consistency, and uniformity. For example, under the proposed revisions, 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.

To avoid inconsistencies, section 457(b)(2) of Title 21 of the U.S.C. requires that the Secretary of Agriculture consult with the Secretary of Health and Human Services 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, before it publishes any final rule that is developed as a result of this proposal, FSIS will consult with the Food and Drug Administration (FDA) to ensure that the revised poultry class standards are not inconsistent with any existing product standards established by the FDA. FSIS will also present the revised poultry class standards to the National Advisory Committee on Meat and Poultry Inspection (NACMPI) for consultation to ensure that there is no inconsistency between Federal and State standards. Any changes to the revised standards that occur as a result of these consultations will be incorporated into the final rule.

Interested parties have suggested that certain poultry classes should include a requirement for ready-to-cook (RTC) carcass weight in addition to the proposed maturity factors. For example, some parties have suggested that the Agency require that roaster chickens have a RTC weight of 5 pounds or more in addition to the appropriate maturity characteristics. FSIS is soliciting comments regarding the merit of establishing RTC carcass weights or maximums for poultry classes. To be of value, the comments must provide a

factual basis for or against the establishment of weight requirements.

Executive Order 12866 and Regulatory Flexibility Act

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

FSIS is proposing to amend its regulations to update the standards for poultry classes to reflect current poultry characteristics and industry production practices. Under the authority of the PPIA, FSIS develops and enforces poultry product definitions and standards of identity to protect the public. FSIS is concerned with the truthful presentation of the characteristics of poultry because consumers rely on product labels when making purchasing decisions. For FSIS to enforce poultry class labeling claims, the poultry class definitions must reflect current poultry characteristics and the corresponding industry norms.

Presently, labels on poultry products are not necessarily based on current industry standards. For example, birds with the general physical characteristics of the broiler class can be produced in less than 10 weeks, often in 6 to 8 weeks, and are labeled as "broilers." However, the current broiler class definition under 9 CFR 381.170 states that broilers are "usually under 13 weeks of age." Birds with the general physical characteristics of the roaster class are being produced in 10 to 12 weeks and are labeled as "roasters." However, the current roaster class definition under 9 CFR 381.170 states that roasters are "usually 3 to 5 months of age." While these birds have physical characteristics that are consistent with the current poultry class standards that are defined in 9 CFR 381.170, the age references in the regulations may be misleading to consumers because the ages associated with the regulatory classification do not reflect current industry norms. When consumers purchase a bird labeled as a "broiler," they are generally getting a bird that is less than 10 weeks old, not as old as 13 weeks as suggested by the current broiler class definition. Likewise, when consumers purchase a bird labeled as a "roaster," they are generally getting a bird that was produced in less than 12 weeks rather than 3 to 5 months as suggested by the current roaster class definition. Labeling a product as a "broiler," "roaster," or any other definition should be truthful and reflective of today's production practices and industry norms so that product definitions and labels are

correct and not misleading to consumers. All poultry being marketed today have physical attributes that conform to the proposed class definitions. Thus, there is no need to establish entirely new poultry classes.

In addition to the proposed rule, FSIS considered the option of no rulemaking and the option of defining poultry classes using weight ranges in place of general maturity characteristics. Under the option of no rulemaking, the poultry class standards as defined in the FSIS regulations would remain in place. However, these definitions fail to take into account current poultry characteristics and poultry production practices, which have generally shortened the period of time required for birds to attain market-ready weights. Therefore, the usual ages of the birds stated in the current class definitions are inaccurate and, as a result, may mislead consumers. Without the proposed changes, FSIS's ability to enforce poultry class labeling claims is also not as effective.

At the suggestion of a trade organization and of an industry processor, FSIS considered using weight ranges to define turkey and roaster classes rather than age and general maturity characteristics. However, for turkey classes, FSIS did not believe that such a class system would accurately distinguish birds that differ significantly in product characteristics, such as meat tenderness and skin texture. Also, while some processors use the weight of the poultry they sell as part of their marketing program, except for Rock Cornish game hens, none of the poultry classes are based on weight. During early discussions with industry, a major processor that sells roasters suggested creating a weight requirement for this class of birds. However, information suggested that classifying roasters on the basis of weight was not an accepted practice by processors industry-wide. Therefore, the Agency has used age and general physical characteristics as the basis for the revised poultry class standards. Nevertheless, in this proposed rule, FSIS is soliciting comments on the merit of establishing ready-to-cook weight ranges for poultry classes.

Amending the poultry class definitions to better reflect the characteristics of poultry that is being marketed today will benefit consumers by ensuring that labels for poultry products are truthful and non-misleading. Companies, such as high volume food buyers, will also benefit because they refer to these classes in their purchase specifications to ensure that they receive products with the

appropriate characteristics. Because poultry class standards are used by AMS to define requirements for quality grades and in official U.S. government procurement specifications used to purchase products for the School Lunch Program and the military, updating the poultry class standards will benefit AMS by ensuring the legal sufficiency of these quality requirements and the procurement documents. This proposed rule will also enhance FSIS' ability to enforce poultry class labeling claims.

This proposed rule has the potential to raise prices somewhat for consumers. The most significant change in the proposed poultry classes is the definition changes for the broiler and roaster classes, and the effects of this change may be minimal. Roasters are generally \$.08 to \$.13 per pound more expensive than broilers. Because the typical age in the definition of roaster will be reduced from 3 to 5 months to less than 12 weeks, some birds that may have been sold as broilers under the less than 13 week age definition may be sold for higher price per pound as roasters. This change would result in a net transfer from consumers to producers. Assuming a 5 lb. dressed carcass, that is a price difference of \$.40 to \$.65 per bird. If such a change occurs, there would be no net social cost, but there would be redistributive impacts. FSIS has no information on and cannot estimate the potential for such changes. Because these birds have the general physical characteristics of roasters, they most likely are already being marketed as roasters rather than broilers. Thus, the proposed changes to the poultry class definitions may validate existing practices so that this cost effect should be minimized.

Effect on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). 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. The proposed rule merely updates existing regulations to reflect current poultry characteristics and production practices used throughout the entire industry.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule (1) preempts all State and local law and

regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Requirements

There are no paperwork or recordkeeping requirements associated with this proposed rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this proposed rule, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS web page located at <http://www.fsis.usda.gov>. The Constituent update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at <http://www.fsis.usda.gov/oa/update/update.htm>. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

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 would be 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 (less than 12 weeks of age), of either sex, 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 6 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.

* * * * *

Done at Washington, DC, on September 24, 2003.

Linda Swacina,

Acting Administrator.

[FR Doc. 03–24536 Filed 9–26–03; 8:45 am]

BILLING CODE 3410-DM-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

[Docket No. PRM 52–2]

Nuclear Energy Institute; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is denying a petition for rulemaking (PRM) submitted by the Nuclear Energy Institute (NEI or the petitioner) and docketed as PRM 52–2. The petitioner requested that the NRC amend its regulations to remove requirements that applicants and licensees analyze, and

the NRC evaluate, alternative energy sources and the need for power with respect to the siting, construction, and operation of nuclear power plants. The NRC is denying the petition because the NRC must continue to consider alternative energy sources and the need for power to fulfill its responsibilities under the National Environmental Policy Act of 1969, as amended (NEPA).

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC’s letter of denial to the petitioner may be viewed electronically on public computers located at the NRC’s Public Document Room (PDR) at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. These documents are also available on the NRC’s rulemaking Web site at <http://ruleforum.llnl.gov>.

FOR FURTHER INFORMATION CONTACT:

Nanette V. Gilles, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1180, e-mail nvg@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

By letter dated July 18, 2001, NEI submitted a petition for rulemaking (ADAMS accession no. ML012060198) to modify Title 10, Part 52, of the *Code of Federal Regulations* (10 CFR Part 52), Subpart A, “Early Site Permits.” The petitioner requested that the NRC amend its regulations in 10 CFR part 52 to eliminate the requirement that an early site permit (ESP) applicant include, and the NRC review, alternatives to the site proposed in an ESP application. The petitioner further requested that the NRC initiate a rulemaking to remove requirements in 10 CFR parts 2, 50, and 51 that applicants and licensees analyze, and the NRC evaluate, alternative sites, alternative energy sources, and the need for power with respect to the siting, construction, and operation of nuclear power plants. The NRC docketed the petition as PRM 52–2.

The regulations in 10 CFR part 52 govern the issuance of ESPs, standard design certifications, and combined licenses (COLs) for new nuclear power facilities licensed under section 103 or 104b of the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974. The provisions of 10 CFR part 52, subpart A, apply to applicants seeking an ESP. The regulations in 10 CFR part 52, subpart A, are designed to resolve site suitability