



United States Department of Agriculture

Food Safety and
Inspection Service

1400 Independence
Avenue, SW,
Washington, D.C.
20250

Ryan Joyce
Joyce Farms
4787 Kinnamon Road
Winston-Salem, NC 27103

NOV 04 2019

Dear Mr. Joyce:

The Food Safety and Inspection Service (FSIS) has completed its review of the July 26, 2017, petition you submitted on behalf of Joyce Farms requesting that the Agency amend the regulations to add “heritage chicken” as a new poultry class. The petition notes that poultry currently labeled and marketed as “heritage chicken” breeds reach market-ready weights between 11 and 18 weeks and thus, do not meet the definition for the “broiler or fryer” or the “roaster or roasting chicken” classes in 9 CFR 381.170(a). The petition states a “heritage chicken” poultry class for young chickens is needed to enhance the orderly and efficient marketing of classes of poultry and to reduce consumer confusion.

To support the request, the petition includes industry data related to broiler chickens, reviews from satisfied customers, and non-scientific articles describing how heritage breed chickens and turkeys differ from the birds typically used by large-scale commercial poultry operations. The petition states there is a niche market for heritage chickens but that it is difficult to determine the number of heritage birds brought to market because most are slaughtered at very small establishments or locally by farmers exempt from mandatory inspection requirements (see 9 CFR 381.10). The petition asserts that establishing a poultry class for heritage chickens will help expand this market by clarifying age and size requirements, thereby enhancing consumer education. The petition, however, does not include quantitative data on the potential economic effects of the requested action.

After careful consideration of the issues raised in the petition and in consultation with USDA’s Agriculture Marketing Service (AMS), we have concluded that our current procedures for evaluating and approving animal-raising claims are effective in ensuring that product labels bearing “heritage” and other breed claims are not misbranded. Therefore, for the reasons discussed below, we are denying your petition without prejudice.

The Poultry Products Inspection Act (PPIA) and implementing regulations prohibit the sale and distribution of “misbranded” poultry products (21 U.S.C. 453(h)(1); 9 CFR Part 381.129). The PPIA also authorizes the Secretary of Agriculture (FSIS by delegation) to prescribe 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)). The poultry

class standards in 9 CFR 381.170 were established by USDA to aid in the labeling of poultry and were based primarily on the age and sex of the bird.¹ FSIS uses poultry class standards to ensure that the labeling of poultry products is truthful and not misleading. AMS incorporates FSIS's regulatory poultry class standards into AMS's U.S. Standards and Grades for Poultry (AMS 70.200).

FSIS recognizes that heritage chicken breeds are slower growing and may have physical attributes that do not fall under any of the specific poultry classes in 9 CFR 381.170. However, FSIS considers the term "heritage" in the labeling of a poultry product to be an animal-raising claim related to the bird's breed, rather than a poultry market class, which is associated primarily with the age and sex of the bird. In fact, the "heritage chicken" definition requested in your petition states that a heritage chicken is "a slow growing breed suited for outdoor production." As discussed below, FSIS has already established procedures to ensure that labels bearing breed declarations, including "heritage chicken" breed declarations, and other animal raising claims are truthful and not misleading. Therefore, we have concluded that a separate "heritage chicken" poultry class is not needed to ensure product is not misbranded. In addition, because there is known variation in heritage chicken breeds, we believe that the heritage chicken poultry class definition requested in your petition may not accurately reflect the characteristics of all heritage chickens in the market today.

To prevent labeling claims that are false and misleading, any label with a special statement or claim, including a heritage breed claim, must be submitted to FSIS for prior approval (9 CFR 412.1(c)(3)). As part of the label evaluation process, FSIS verifies the accuracy of these claims on a case-by-case basis by reviewing the supporting documentation² submitted with the label approval application. FSIS will approve the claim if it is truthful and not misleading, and the establishment submits documentation to substantiate the claim (e.g., a certificate from a breed organization). FSIS considers this approach to be effective in ensuring that poultry products bearing labels that include "heritage" and other breed claims are not misbranded.

The requirements for the labeling of poultry products are in 9 CFR Subpart N. Specifically, 9 CFR 381.117(b) requires that (fresh or frozen) raw whole carcasses be labeled by the name of the kind (e.g., chicken, turkey, or duck) preceded by the qualifying term "young," "mature," or "old," whichever is appropriate; or the appropriate class name as described in 9 CFR 381.170(a). FSIS consulted with AMS on this requirement as it relates to heritage breed chickens. AMS confirmed the most appropriate qualifying term for a heritage chicken between 11 and 18 weeks of age is "young." When naming parts cut from birds in this age range, only the identity of the kind of poultry and the name of the part would need to be included in the product name, e.g. "chicken breast."

¹ See Classes of Poultry final rule (81 FR 21706, April 13, 2016)

² Additional guidance on documentation necessary to substantiate these types of claims is available at <https://www.fsis.usda.gov/wps/wcm/connect/6fe3cd56-6809-4239-b7a2-bccb82a30588/RaisingClaims.pdf?MOD=AJPERES>.

The petition states that many consumers have limited experience with heritage chickens and rely on product labeling to inform them that a particular bird in the market is different from the standard commodity chickens. The Agency intends to continue its current practice to permit voluntary label claims denoting that a poultry product is derived from a heritage breed chicken, e.g., "young heritage chicken." Under the conditions for label approval described above, FSIS will approve the breed claim. Please note that, when supported, FSIS would similarly approve additional terms that accurately describes the characteristics of the birds used to make the product, e.g., "young heritage chicken — Joyce Farms' heritage chickens are a slower growing breed suited for outdoor production and have a more elongated carcass." This provides establishments that want to use such information in marketing their products with opportunity to do so without the need for a regulatory standard.

For the reasons discussed above, we are denying your petition. Because your denial is without prejudice, you are not precluded from submitting a revised petition that contains additional information to support the requested action. If you have any questions, please contact Rosalyn Murphy-Jenkins, Director, Labeling and Program Delivery Staff at 301-504-0878.

In accordance with FSIS regulations, the petition was posted on the FSIS website, and the Agency intends to post this response as well.

Sincerely,



Terri Nintemann
Assistant Administrator
Office of Policy and Program Development