

DEPARTMENT OF AGRICULTURE**Food Safety and Inspection Service****9 CFR Part 381**

[Docket No. 95-011F]

RIN 0583-AB95

Continuous Chilling of Split Poultry Portions

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: FSIS is amending the poultry products inspection regulations to specify that the continuous immersion chilling of the front or rear portions of transversely-split carcasses is permitted. The existing regulations permit the continuous chilling of whole carcasses or "major portions," including front or rear portions, resulting from trimming or salvage. The final rule defines "major portions" to include the front or rear portions of transversely-split carcasses, without identifying the operation creating the portions. This change will afford flexibility to poultry establishments in adopting efficient production techniques, such as on-line carcass splitting, that meet food safety performance standards. This final rule is compatible with FSIS initiatives addressing fecal contamination and moisture absorption of raw poultry products.

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Alice Thaler, Chief, Concepts and Design Branch, Inspection Methods Development Division, Office of Policy, Program Development, and Evaluation, (202) 720-3219.

SUPPLEMENTARY INFORMATION:**Background**

The poultry products inspection regulations contain general and specific requirements for the chilling of ready-to-cook poultry. The current regulations (at 9 CFR 381.66(b)(2)) require that poultry carcasses, and major portions of poultry carcasses, that is, "parts of major size, either front or rear portions, wherein the major portion of the poultry carcass remains intact," be chilled to 40 °F. or lower within a specific time, depending on the weight of the bird. The regulations state that partial trimming and salvage of poultry carcasses often result in these major portions (9 CFR 381.66(c)(2)(iv)). Trimming operations remove some part of a poultry carcass. For example, a broken wing may be trimmed from a breast. Salvage operations, on the other

hand, are intended to save a portion of the carcass by cutting it away from an unacceptable portion. An example of a salvage procedure is the splitting of the carcass into front and rear portions to save the breast portion while condemning the rear portion that has become adulterated.

The regulations governing the chilling of poultry parts, including the provisions addressing "major portions," were intended to prevent the marketing of products containing excessive moisture. Excessive moisture is a form of economic adulteration. It can occur if, for example, individual poultry parts, such as drumsticks, thighs, split breasts, or split halves (carcasses split longitudinally along the sternum into "mirror image" portions), are permitted to be cooled in continuous immersion chillers. Under most current processing conditions, such individual parts are likely to absorb more water than "major portions." Under 9 CFR 381.66(c)(2)(iv), these individual parts may be cooled only in the air, in ice, or under a spray of water with continuous draining. The regulation does, however, permit whole carcasses and major portions of carcasses to be cooled in continuous chillers, provided that the moisture absorption limits prescribed in 9 CFR 381.66 are not exceeded.

The issue in this rulemaking is whether 9 CFR 381.66 should permit the immersion chilling of split poultry portions that are created by procedures other than trimming or salvage.

Establishments that have tested transversely-split-carcass processing methods under FSIS supervision have achieved favorable results in keeping water absorption low, in chilling product rapidly to a safe temperature, and in maintaining product wholesomeness. Proper application of these carcass splitting methods yields product that is not adulterated, even though, like the whole carcass, the front or rear portions of transversely-split carcasses absorb incidental amounts of moisture when placed in continuous chillers. This is true whether the portion was created by trimming, salvage operations, or a procedure such as on-line carcass-splitting.

Nonetheless, 9 CFR 381.66 was developed during the late 1960's and, on its face, it reflects the production and market conditions of that period, when poultry industry operations were oriented primarily toward the marketing of whole birds. At that time, the sale of poultry parts constituted a minor segment of the raw poultry market. Consequently, it does not make any provision for chilling of split carcasses

produced by means other than trimming and salvage.

FSIS tentatively determined that the regulatory provision for chilling major portions should be revised to specifically include transversely-split carcass portions, as described above, regardless of the operation used to create the portions. On June 6, 1997, FSIS proposed to amend the regulations to modify the definition of "major portion" to include transversely-split carcasses and carcasses from which small pieces have been removed. The proposal was not intended, however, to affect the existing regulatory restrictions on the chilling of individual parts.

Comments on the Proposal

FSIS received six letters commenting on the proposal. Two were from poultry processing companies, one was from a company that processes both meat and poultry, and three were from trade associations.

One letter strongly objected to the proposal and suggested that it be "set aside," at least until the completion of rulemaking addressing the larger regulatory issues concerning water absorption by poultry. The other five letters supported the proposal in general but suggested modifications to the proposal.

A poultry processor, an association representing the turkey industry, and an association representing meat and poultry producers and processors suggested that the scope of the proposed rule be broadened to permit the continuous chilling of split halves and other poultry parts. They argued that such a change would give greater flexibility to, and encourage innovation by, the poultry industry; would have the same advantages for the inspection service and food safety as the proposal; and would be consistent with Agency policy to reduce command-and-control regulations. They also pointed out that regulations limiting retained moisture would continue to apply to continuously chilled parts. The meat and poultry association said there should be a single standard for incidental moisture, without regard to poultry portion or part.

The two poultry processors and the turkey association also requested that the Agency consider amending the regulations to reduce the minimum amount of fresh water intake per bird in continuous immersion chillers. They argued that because major portions are smaller than whole birds, the required minimum gallons of fresh water per bird should be proportionally reduced. The turkey association also asserted that the current regulations permit the

adjustment of fresh water intake according to the proportion of the carcass chilled. Elsewhere in this issue of the **Federal Register**, FSIS is proposing new moisture-retention requirements for raw meat and poultry products and changes in the regulations on poultry chilling that include removing the required minimum amount of fresh water intake per bird.

The letter objecting to the proposed rule was submitted by three associations representing, respectively, cattle producers and beef establishments, pork producers, and the sheep industry. These associations called the proposal "inappropriate" and asked that it be "set aside" pending a rulemaking on retained water in poultry products. They presented four arguments for their position: (1) that the proposal would increase the percentage of poultry products subject to immersion chilling and to what the associations view as excess water absorption; (2) that the Agency did not provide data concerning the amount of water absorbed by transversely-split carcasses; (3) that the Agency is affording additional flexibility to poultry establishments while restricting beef processors using spray chill systems to zero-percent carcass weight gain from water retention; and (4) that, before proceeding with a rulemaking on the chilling of split poultry portions, FSIS should amend the regulations on water retention by poultry products that were set aside July 23, 1997, by order of a Federal district court in *Kenney v. Glickman*. As mentioned, elsewhere in this issue of the **Federal Register**, FSIS is proposing new retained-water requirements for raw meat and poultry products.

As noted in the preamble, the proposal clarifying the regulations regarding the chilling of transversely-split carcasses. (62 FR 31019). It was developed to address an issue concerning the interpretation of regulations governing the chilling of "parts of major size" or "major portions" of poultry resulting from trimming or salvage. Some persons had interpreted the regulations as not permitting the continuous chilling of major portions that did not result from trimming or salvage operations (62 FR 31018). To correct that interpretation, FSIS proposed to amend the regulations to specify that the immersion chilling of major portions is permitted, regardless of whether the portions were the result of trimming, salvage, or other handling of carcasses. It proposed to define "major portions" to include transversely-split poultry carcasses.

The suggestion that the regulations be further amended to permit the continuous chilling of split halves and other poultry parts may have merit and perhaps should be considered, but it is outside the scope of this rulemaking. FSIS was able to determine that methods used in continuously chilling transversely-split poultry portions yield product that complies with the water absorption and retention regulations. As indicated in the preamble to the proposal (62 FR 31019), establishments using such methods under FSIS supervision achieved favorable results in keeping water absorption low. Because the Agency had observed the application of these processing methods to the chilling of transversely-split portions, and because the portions so processed were consistently in compliance with the regulations controlling retained moisture, the Agency believed there was a sound basis for proposed rule.

In sum, the purpose of this rulemaking is to clarify the meaning and applicability of the existing regulations with respect to the chilling of major portions. The Agency has significant evidence to support this clarification. The commenters' request to permit the continuous chilling of all kinds of poultry parts is outside the scope of this rulemaking. While this issue may warrant consideration in a future rulemaking, it is not appropriately before the Agency in this proceeding.

The Agency did not intend to address, in the rulemaking, the possibility of changing the required minimum fresh water intake for continuous chillers. This issue is outside the scope of the rulemaking that the Agency instituted with the June 6, 1997, proposal.

Regarding the comments by the three livestock associations opposing the proposed rule, FSIS responds as follows:

(1) As noted above, the purpose of this rulemaking is to clarify the existing regulation, not to expand the percentage of product that would be able to absorb moisture during the chilling process. In fact, as noted in the third point of our response below, the proposed could result in less immersion-chilled product. The proposal was developed to address an issue concerning the interpretation of regulations governing the chilling of "parts of major size" or "major portions" of poultry resulting from trimming or salvage.

(2) The Agency based the proposal on findings that continuously chilled transversely-split portions are in compliance with retained moisture requirements. As noted in the preamble to the proposal, results of in-plant trials

of transversely-split carcasses processed under FSIS supervision showed that product was chilled rapidly to a safe temperature, and that water absorption was within the limits established by the Agency's regulations. The Agency had sufficient retained-moisture data from these trials to make an informed decision on the continuous chilling of transversely-split carcass portions. The data was available for viewing in the FSIS Docket Room during the public comment period.

(3) It is true that the proposal concerned only a limited class of poultry products, and that efficiency gains would be realized only by poultry establishments. However, the limited scope of the proposal does not preclude future consideration of changes that would address a wider range of meat and poultry products. (As previously mentioned, a proposed rule on poultry chilling standards and retained moisture in raw meat and poultry products is being published elsewhere in this issue of the **Federal Register**.)

The efficiency gains foreseen by the Agency would result primarily from the use of automation and large-scale processing techniques to make front and rear portions available for a variety of uses. For example, the use of the rear, dark-meat portions, for processing into such products as turkey salami and turkey ham, was discussed in the preamble (62 FR 31018). An efficiency gain sought with respect to these dark-meat portions would involve routing them past the immersion chilling step altogether (62 FR 31018). The front, or white-meat portions, on the other hand, would be permitted to enter the continuous chillers. Since the rear portions constitute 40% of carcass weight, potentially 40% less turkey would be chilled.

(4) While the U.S. District Court's order in *Kenney v. Glickman* set aside the moisture retention limits for all classes of poultry to be marketed as whole birds (9 CFR 381.66(d)(2)), the requirement to minimize moisture absorption and retention at the time of packaging (9 CFR 381.66(d)(1)) was left in place, as were the moisture absorption and retention limits for poultry intended to be cut up and for ice-packed poultry (9 CFR 381.66(d)(3)-(5)). Thus, the moisture retention limits that would apply to transversely-split poultry portions were left in place by the Court's order. Split poultry portions are intended to be routed to cut-up or further processing operations and obviously cannot be marketed as whole birds.

The Final Rule

This final rule concerns the application of existing moisture retention standards to transversely-split carcass portions, rather than the standards, themselves. Elsewhere in this issue of the **Federal Register**, FSIS is publishing a proposal that addresses the limits on moisture absorption and retention in raw meat and poultry carcasses and parts.

This final rule is limited to clarifying the regulations to accommodate the processing of transversely-split poultry carcasses. The rule amends the chilling requirement at § 381.66(b)(2) to apply both to whole carcasses and to major portions, as defined at proposed § 381.170(b)(22), which includes transversely-split carcasses. FSIS is amending § 381.66(b)(2) to refer to the new § 381.170(b)(22) rather than to § 381.66(c)(2)(iv).

The final rule also amends § 381.66(c)(2)(iv) by removing the word "carcasses" from the term "split carcasses" and replacing it with "halves." As mentioned previously, "split halves" is a term widely used in the poultry industry to denote the left and right halves of a poultry carcass divided lengthwise. (i.e., carcasses split longitudinally along the sternum into "mirror image" portions). The amended paragraph continues to prohibit the continuous chilling of split halves.

FSIS will continue to require establishments creating transversely-split carcass to meet the same moisture absorption and retention limits as for whole carcasses. These limits are set forth in 9 CFR § 381.66(d)(3), Table 3, and § 381.66(d)(4)(ii).

Finally, a new paragraph § 381.170(b)(22) defines "major portions" as carcasses from which small parts may be missing or the front or rear portions of transversely split carcasses. As mentioned, the amended § 381.66(b)(2) refers to this new definition.

Executive Order 12866

This final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are preempted by the

Poultry Products Inspection Act (PPIA) from imposing any marking or packaging requirements on federally inspected poultry products that are in addition to, or different than, those imposed under the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over poultry products that are outside official establishments for the purpose of preventing the distribution of poultry products that are misbranded or adulterated under the PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States.

This final rule is not intended to have retroactive effect.

There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule. However, the administrative procedures specified in 9 CFR § 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the PPIA.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This final rule will not impose any additional requirements on poultry processors. Compliance with this final rule is voluntary; poultry processors that intentionally split poultry carcasses into major portions as a result of a trimming or salvage operation do not have to cool the product using ice and water in a continuous chiller. They may cool major portions using air, ice, or under a spray of water with continuous drainage. Poultry processors opting to chill major parts resulting from production techniques such as on-line carcass-splitting could do so in a continuous ice and water chiller. This would allow them to appropriately handle the separated carcass portions immediately after splitting. The white meat portion could immediately be chilled to the proper temperature for further processing or direct sale to consumers, while the dark meat portion, which is usually processed, could be directly deboned and used in further processed cooked products.

List of Subjects in 9 CFR Part 381

Poultry and poultry products.

For the reasons set forth in the preamble, FSIS is amending 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 381.66 is amended by revising the first sentence of paragraph (b)(2); by removing the first and second sentences of paragraph (c)(2)(iv) and adding in their place one sentence; and, in the last sentence of (c)(2)(iv), by removing the words "from salvage operations," and by replacing the word "carcasses" with the word "halves" to read as follows:

§ 381.66 Temperatures and chilling and freezing procedures.

* * * * *

(b) * * *

(2) Major portions of poultry carcasses, as defined in § 381.170(b)(22), and poultry carcasses shall be chilled to 40° F. or lower within the following specified times: * * *

* * * * *

(c) * * *

(2) * * *

(iv) Major portions of poultry carcasses, as defined in § 381.170(b)(22), may be chilled in water and ice, including chilling in continuous chillers. * * *

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3. Paragraph (b)(22) is added to § 381.170 to read as follows:

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

* * * * *

(b) * * *

(22) "Major portions" of eviscerated poultry carcasses are either carcasses from which parts may be missing, or the front or rear portions of transversely-split carcasses.

Done at Washington, DC, on September 3, 1998.

Thomas J. Billy,
Administrator.

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