Proposed Rules

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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 Parts 316, 317, and 381

[Docket No. 92–005N]

Prominently Disclosed Product Name Qualifiers

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of withdrawal of proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is withdrawing the proposed rule, ''Prominently Disclosed Product Name Qualifiers,'' which was published in the **Federal Register** on November 4, 1992 (57 FR 52596). In the 1992 proposal, the Agency proposed to remove certain provisions of the meat and poultry products inspection regulations that require that the labeling of meat and poultry products disclose that certain ingredients are present in a product through the use of a phrase that qualifies the product name. FSIS now believes that this proposal is redundant with later Agency initiatives, and that the proposal contains a number of errors. Therefore, FSIS is withdrawing the proposal and will rely on the initiatives currently under development to resolve the issues that had been raised in the proposed rule.

ADDRESSES: Send comments to FSIS Docket Clerk, Docket No. 92–005N, Room 102, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700. Any comments received will be available for public inspection in the Docket Room from 8:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Food Safety and Inspection Service, Washington, DC 20250–3700, Telephone(202)205–0279, Fax (202)205–3625.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 4, 1992, FSIS published a proposed rule, ''Prominently Disclosed Product Name Qualifiers,'' in which the Agency proposed to remove certain provisions from the meat and poultry products inspection regulations that require that the labeling of meat and poultry products disclose that certain ingredients are present in a product through the use of a phrase that qualifies the product name. In the preamble to the proposal, FSIS explained that it had required the product name qualifiers as a means of alerting consumers to the presence of unusual or unexpected ingredients in a product, but that the Agency had come to believe that consumers rely more on a product's ingredients statement to determine the composition of a food than they did in the past. In the preamble, FSIS reiterated its view that it had initially articulated in the final rule, ''Standards and Labeling Requirements for Mechanically Separated (Species) and Products in Which It Is Used''(47 FR 28214, June 29, 1982), that unless the addition of an ingredient significantly alters the identity of a product, the presence of unusual or unexpected ingredients in a product need not always be disclosed in a statement that qualifies the product name.

Since it published the proposal, the Agency has begun a number of other labeling reform initiatives that will provide opportunities for public comment on the need for product name qualifiers, labeling statements, and other required labeling features. As a result of these new initiatives, FSIS now considers the subject rulemaking to be redundant and unnecessary.

Furthermore, after careful review, FSIS has recognized that the 1992 proposal incorrectly categorized some of the subject labeling statements about ingredient declarations as product name qualifiers. Not all of the labeling statements cited in the 1992 proposal are product name qualifiers. For example, FSIS proposed to remove 9 CFR 317.2(j)(12), which requires that containers of certain meat food products preserved in, bearing, or containing any chemical preservative bear a label stating that fact. Although § 317.2(j)(12) requires containers of certain meat food products to bear a labeling statement that discloses the fact that the product is preserved in, bears, or contains a chemical preservative, it does not require that the statement qualify the product name. Moreover, under section 1(n)(11) of the Federal Meat Inspection Act (FMIA)(21 U.S.C. 601(n)(11)), when a product contains a chemical preservative, unless the regulations provide an impracticability exemption, that fact must appear on the product's labeling in order to prevent the product from being misbranded.

In the 1992 proposal, FSIS also mistakenly proposed to remove certain supplementary labeling requirements that are necessary to distinguish different versions of a particular type of product. For example, FSIS proposed to revise 9 CFR 319.180, which defines the standard of identity for certain cooked sausages, such as hotdogs and bologna, to permit these cooked sausages to contain meat byproducts and variety meats without disclosing the presence of these ingredients in a product name qualifier. Upon review, FSIS now recognizes that for cooked sausages defined under § 319.180, the inclusion of byproducts and variety meats affects product identity sufficiently to result in distinctive versions of the same product, and that the labeling of these products should continue to declare the presence of byproducts or variety meats as part of the product name.

Summary of Comments

FSIS received 20 comments in response to the 1992 proposal, most in support of the proposed rule. The following is a general description of the comments received and FSIS's response.

Comments: A few commenters objected to the 1992 proposal. These commenters felt that FSIS should continue to require that the presence of certain ingredients in a product be disclosed in a statement adjacent to the product name so that consumers who wish to avoid these ingredients in their diets can easily identify the products that contain them. The commenters noted that because of the potential for adverse health consequences, it is particularly important for consumers with allergies or intolerances to certain food ingredients to know when a food contains these ingredients.

Response: Although it is withdrawing the 1992 proposal, FSIS does not believe that removing the required qualifying phrases as proposed would deprive

consumers of the ability to easily identify food with ingredients that they wish to avoid in their diets. If a meat or poultry product is fabricated from two or more ingredients, all such ingredients must be listed on the product label by their common or usual names in descending order of their predominance (9 CFR 317.2(c)(2), 317.2(f)(1), and 381.118(a)). Thus, if a consumer wants to determine whether a product contains a specific ingredient, the consumer can easily find this information in the one place specifically designated for this purpose, the ingredients statement. In fact, because not all ingredients that consumers may wish to avoid, including those that may be allergens to some consumers, are required to be identified in a statement that qualifies a product name, FSIS expects that consumers would look to a product's ingredients statement rather than rely on supplementary labeling information to determine the composition of a meat or poultry product.

Comments: Several commenters expressed support for the proposal but requested that FSIS remove or amend additional supplementary labeling requirements contained in the regulations. Many of the required labeling statements that the commenters wanted FSIS to remove or amend are qualifying statements that identify ingredients or processing methods that affect product identity, and therefore, are needed to distinguish different versions of a particular type of product. For example, some commenters requested that FSIS remove the qualifying statements that are required to appear as part of the name of certain fabricated steaks that identify how these products are processed.

Response: In the preamble to the 1992 proposal, FSIS stated that, if the addition of an ingredient affects product identity sufficiently to result in distinctive versions of the same product, the labeling of the new product must declare the presence of the distinguishing ingredient as part of the product name. The same reasoning applies to processing methods that affect product identity. For example, the standard of identity for certain types of fabricated steaks requires that these products be identified by the product name in conjunction with a qualifying phrase that describes how these products are processed, such as ''Beef Steak, Chopped Shaped, Frozen,'' and ''Minute Steak, Formed, Wafer Sliced, Frozen,'' and ''Veal Steaks, Beef Added, Chopped-Molded-Cubed-Frozen, Hydrolyzed Plant Protein and Flavoring''(9 CFR 319.15(d)). Because the way these products are processed affects product identity, the qualifying phrases that describe the processing methods are needed to distinguish the fabricated versions of these products from the unprocessed versions. Thus, FSIS did not include the required labeling statements identified by the commenters as part of the 1992 proposal because many of these statements, like the statements that disclose the processing methods for certain fabricated steaks, pertain to ingredients or processing methods that affect product identity.

However, FSIS and the Food and Drug Administration (FDA) are jointly working on a comprehensive approach to modernizing food standards that will establish guiding principles for outside parties to apply when petitioning FSIS or FDA to revise or simplify a food standard. A description of this food standards modernization effort was published as an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** on September 9, 1996 (61 FR 47453). Thus, interested parties who believe that certain ingredients or processing methods do not sufficiently affect product identity to require disclosure in a statement that qualifies a product name will have the opportunity to request revisions to the standards of identity for meat and poultry products through this food standards modernization initiative.

Comments: In the preamble to the 1992 proposal, FSIS identified specific supplementary labeling requirements that do not necessarily distinguish different versions of a particular type of product, but that the Agency has determined must appear adjacent to the name of certain products in order to prevent the labeling of these products from being misleading to consumers. For example, meat products with a standard of identity that permits or requires the addition of nitrate or nitrite but that do not contain nitrate or nitrite must be identified as ''Uncured'' (9 CFR 319.2) and must bear the statements ''No Nitrate or Nitrite Added, Not Preserved,'' and, if they have not been sufficiently thermally processed, fermented, or dried, ''No Preservatives, Keep Refrigerated Below 40°,'' adjacent to the product name (9 CFR 317.17(c)). In the preamble to the proposed rule, FSIS stated that it was not proposing to remove these labeling requirements because they are needed to provide consumers with clear and complete information about the product. FSIS received several comments questioning the need for these and other required labeling statements and the manner in which they must be displayed in order to prevent misleading product labels. Some commenters suggested that some of the required information could be effectively communicated to consumers without the use of a statement adjacent to the product name.

Response: FSIS excluded certain supplementary labeling requirements from the 1992 proposal because, in the Agency's judgment, these statements are necessary to prevent the labeling of certain products from being misleading to consumers. In the example cited above, the fact that certain meat products are cured or uncured affects product identity. Therefore, the term ''Uncured'' is required to distinguish the uncured version of the product from the traditional cured version. However, because the uncured versions of these products are at a greater risk of microbial contamination and spoilage if handled improperly, FSIS determined that additional statements that describe how to handle the uncured product safely should appear on the product label. Furthermore, because the uncured products look and taste very much like the traditional cured products, FSIS requires that these statements be displayed adjacent to the product name to prevent consumers from being misled. When the 1992 proposal was published, FSIS determined that this labeling information and the other required labeling statements identified by the commenters must continue to appear adjacent to the product name to prevent misleading product labeling.

However, as previously mentioned, since the 1992 proposal was published, FSIS has begun a number of labeling reform initiatives that will provide opportunities for public comment on the need for product name qualifiers, labeling statements, and other required labeling features. Therefore, interested parties will have an opportunity to raise issues related to the need for certain required supplementary labeling information and the manner in which it must be displayed through these labeling reform initiatives.

Comments: FSIS received several comments requesting that the Agency remove certain supplementary labeling statements described in the Food Standards and Labeling Policy Book. For example, the Policy Book states that the phrase ''Batter Wrapped Frank on a Stick'' should be used in conjunction with the name ''Corn Dog.''

Response: The Policy Book contains informal food standards that do not have the same authority as the food standards codified in the regulations. However, FSIS will consider the need for such labeling statements described

in the Policy Book as part of its continuing review of informal policies.

Because the ''Prominently Disclosed Product Name Qualifiers'' proposal is no longer necessary and contains a number of errors, FSIS is withdrawing this proposed rule (Docket No. 92–005P). FSIS plans to rely on the other labeling reform initiatives to resolve issues that had been raised in the proposed rule.

With this notice, FSIS is officially withdrawing the proposed rule (Docket No. 92–005P) of November 4, 1992.

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 notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The 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 fax list 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 these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC, on: January 24, 2002.

Margaret O'K. Glavin,

Acting Administrator.

[FR Doc. 02–2133 Filed 1–28–02; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–73A]

Robert H. Leyse; Supplement to a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplemental petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a supplement to his original petition for rulemaking (PRM–50–73) filed with the Commission by Robert H. Leyse. The supplemental petition was docketed by the Commission and has been assigned Docket No. PRM–50–73A. The petitioner requests, in this supplement to his earlier petition, that the NRC amend its regulations on the acceptance criteria for emergency core cooling systems for light-water nuclear power reactors to address the impact of severe crud deposits on fuel bundle coolability during normal operation of a light-water-reactor (LWR).

DATES: Submit comments by April 15, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. Federal workdays.

For a copy of the petition, write to Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking Web site at *http://ruleforum.llnl.gov*. This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher, 301–415–5905 (e-mail: *cag@nrc.gov*).

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O1F21, Rockville, Maryland. Copies of comments received are also available through the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7163 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The NRC received a petition for rulemaking dated September 4, 2001, submitted by Mr. Robert H. Leyse, on his own behalf. The petition was docketed as PRM–50–73 on September 6, 2001. The notice of receipt of this petition was published on October 12, 2001, (66 FR 52065). On November 5, 2001, the NRC received a supplement to PRM–50–73 submitted by Mr. Leyse. The supplement to the petition was assigned docket number PRM–50–73A.

In his original petition, the petitioner requested that the NRC amend its regulations on the acceptance criteria for emergency core cooling systems for light-water nuclear power reactors to address the impact of crud on cooling capability during a fast-moving, large-break, loss-of-coolant accident (LOCA).

The petitioner requested that elements in § 50.46 concerning comparisons to applicable experimental data, and the following paragraphs in Appendix K to part 50, be revised to include the impact of crud deposits on fuel pins:

I.B. Swelling and Rupture of the Cladding and Fuel Rod Thermal Parameters;
I.C.2 Frictional Pressure Drops;
I.C.4 Critical Heat Flux;
I.C.5 Post-CHF Heat Transfer Correlations;
I.C.7 Core Flow Distribution During Blowdown;
I.D.3 Calculation of Reflood Rate for Pressurized Water Reactors;
I.D.6 Convective Heat Transfer Coefficients for Boiling Water Reactor Fuel Rods Under Spray Cooling; and