

# 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 Part 319

[Docket No. 01-018P]

#### Definitions and Standards of Identity or Composition: Elimination of the Pizza Standard

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to remove the standards of identity for "pizza with meat" and "pizza with sausage." The Agency has determined that these standards may be inhibiting manufacturers of federally inspected frozen pizzas from producing and marketing the new styles of pizzas that today's consumers demand. This proposed rule responds to a petition submitted to the Agency by the National Frozen Pizza Institute (NFPI).

**DATES:** Comments must be received on or before January 2, 2002.

**ADDRESSES:** Send an original and two copies of comments to:

FSIS Docket Clerk, Docket #01-018P, Room 102, Cotton Annex, 300 C Street, SW, Washington, DC 20250-3700.

Reference materials cited in this document and any comments received will be available for public inspection in the FSIS 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, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700; (202) 205-0279.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 4, 1999, NFPI petitioned FSIS to amend part 319 of the Federal

meat inspection regulations to eliminate the standards of identity for "pizza with meat" and "pizza with sausage." In support of the petition, NFPI submitted data to demonstrate that the current standards are restricting the development of new products by the frozen pizza industry, and that consumers' expectations of what is meant by the term "pizza" are broader than what is prescribed by the current standards. In the petition, NFPI also demonstrated that, because of the prescribed meat content and cheese requirement, the current pizza standards restrict the frozen pizza industry from developing and marketing products with reductions in constituents that may be of health concern to some consumers, such as cholesterol and saturated fat. The petition and supporting data are available for public viewing in the FSIS docket room.

Under the Federal Meat Inspection Act (FMIA), a product is misbranded, in part, "if it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed \* \* \* unless \* \* \* it conforms to such definition and standards \* \* \*" (21 U.S.C. 601(n)(7)). The current standard for "Pizza with Meat" requires that the product consist of a bread base with tomato sauce, cheese, and meat topping. The product must contain cooked meat made from not less than 15 percent raw meat (9 CFR 319.600(a)). The current standard for "Pizza with Sausage" requires that the product consist of a bread base with tomato sauce, cheese, and not less than 12 percent cooked sausage or 10 percent dry sausage (9 CFR 319.600(b)). Thus, if a product subject to FSIS jurisdiction fails to contain any of these components, its labeling can not bear the term "pizza."

Pizzas prepared by restaurants have not been required to meet these prescribed standards. In fact, in support of the petition, NFPI provided information to show that several national and regional restaurant chains sell pizzas that do not contain the four traditional components required by the Federal standards (i.e., meat, cheese, tomato sauce, and bread-based crust). The information provided by the petitioner also shows that these new styles of pizzas are popular with consumers.

Under section 7 of the FMIA, FSIS is authorized to prescribe definitions and standards of identity or composition to protect the public (21 U.S.C. 607(c)). In general, standards of identity are intended to protect consumers from economic deception, i.e., from purchasing meat food or poultry products in which inferior ingredients have been substituted for more valuable ones. The meat pizza and sausage pizza standards were established several decades ago and reflect the common understanding at that time of what a food identified as "meat pizza" or "sausage pizza" should contain. Data submitted by the petitioner indicate that today's consumers accept a broader interpretation of what is expected of a product identified as "pizza," and that consumer expectations are largely driven by the restaurant and food service industries. According to information provided by NFPI, product innovation in the food service industry has broadened the traditional concept of pizza to the extent that consumers understand the product to be an open-faced crust that is topped with one or more of a variety of ingredients.

Based on the information submitted by the petitioner, FSIS agrees that the current pizza standards may be inhibiting manufacturers of federally inspected pizzas from producing and marketing new styles of pizzas, including pizzas with less constituents, such as cheese or meat, that would be more consistent with nutritional guidance (e.g., lower fat). Based on the data submitted by NFPI, this is what today's consumers appear to demand. Furthermore, the Agency has determined that, because consumer expectations of what a product identified as "pizza" should contain differ from what is prescribed by the current standards, the standards no longer serve their original purpose of protecting the public from economic deception. Therefore, the Agency is proposing to remove these standards of identity from the regulations.

Under this proposed rule, federally inspected pizzas that are identified as a "meat pizza" or "sausage pizza" (e.g., "pizza with bacon," "pizza with pepperoni," and "sausage and mushroom pizza") will be permitted to reduce their minimum meat content from 12% cooked or 15% raw to 2% cooked or 3% raw, the level of meat

required for a product to be considered a meat food product and, thus, under USDA jurisdiction. The Agency believes that if a new product formulated with less meat or sausage, or without the other components that are currently prescribed by the standard (i.e., cheese, sauce, and crust), does not meet consumer expectations, consumers are not likely to purchase the product and it will fail in the marketplace. In the absence of regulatory standards of identity for pizzas, FSIS has tentatively determined that required labeling features, such as the product name, ingredients statement, and nutrition facts panel, will provide adequate information for consumers to make informed choices when purchasing federally inspected pizza products. In particular, the product name would become a descriptive feature to convey to the consumer the components of the product. FSIS requests comment on whether the product name should be required to include the percentage of meat or poultry in the product.

The Agency proposes to amend title 9, part 319, subpart O, by removing and reserving section 319.600, Pizza.

Removing the meat pizza and sausage pizza standards of identity, as proposed, does not mean that the names for these products will be completely unregulated. Sections 317.2(c)(1) and 381.117(a) of Title 9 of the Code of Federal Regulations require that the name of a meat or poultry product appear on the principal display panel of the product label. Under §§ 317.2(c)(1) and 381.117(a), the name of the product is (1) a standardized name, if the product purports to be or is represented as a product for which a regulatory standard of identity or composition has been prescribed; (2) the common or usual name of the food; or (3) if the product has no common or usual name, a truthful, descriptive designation.

The information submitted by NFPI evidences that, because of innovations in the restaurant and food services industries, to most consumers, the term "pizza" means an open-faced crust that is topped with any number of a variety of ingredients. Thus, if this proposal is issued as a final rule, and the standards of identity for meat pizza and sausage pizza are removed, FSIS has determined that "pizza" represents the appropriate common or usual name for the class of products that have been traditionally formulated with the components currently stipulated in the standard, i.e., tomato sauce, cheese, and meat topping, on an open faced crust. If this proposal is finalized, products that comport with the traditional product and contain a bread-based crust, tomato sauce, cheese,

and meat or poultry, may be identified as "pizza" together with the term that identifies the meat or poultry component, e.g., "pizza with pepperoni." The names for other products purporting to be pizzas would need to be descriptively labeled to enable consumers to distinguish them from the traditional pizza, e.g., "pizza—garlic sauce, tomatoes, reduced-fat cheese, and seasoned beef strips on a crust."

If this proposal is issued as a final rule, FSIS will eliminate or revise its informal labeling policies related to pizza products that contain meat or poultry. Although the regulations do not contain a standard of identity for pizza products that contain poultry, FSIS has treated these products as "like products" to pizza with meat or sausage, and the Agency's policy has been that these products contain at least 12% cooked poultry meat. If the standards of identity for meat pizza and sausage pizza are removed, as proposed, the policy that pizzas that contain poultry need to have a minimum poultry content will also be revoked.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. It has been determined to be not significant for purposes of E.O. 12866 and therefore, has not been reviewed by the Office of Management and Budget (OMB).

#### **Effect on Small Entities**

Removing the standards of identity for pizza will have no effects on small entities. After the standards are eliminated, small companies may still produce these products and identify them by a common or usual name, or a descriptive term. Thus, if this proposal is adopted as a final rule, small companies could continue to produce these products and label them as a "meat pizza" (e.g., "pizza with ham") or a "sausage pizza" (e.g., "pepperoni pizza"). Small companies that choose to develop and market new styles of pizzas will incur the normal costs of product development, production, labeling, and marketing.

#### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposal: (1) Preempts State and local laws 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. However, the administrative procedures specified

in 9 CFR 306.5 and 590.320 through 590.370 must be exhausted before 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 FMIA.

#### **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).

#### **Public Notification and Request for Data**

FSIS requests information regarding the impact of this proposed rule on minorities, women, and persons with disabilities, including information on the number of minority-owned meat and poultry establishments, the makeup of establishment workforces, and the communities served by official establishments. Public involvement in all segments of rulemaking and policy development are important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this proposed rule and are informed about the mechanism for providing their comments, 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://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=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.

#### **List of Subjects in 9 CFR Part 319**

Food grades and standards, Meat inspection.

For the reasons set out in the preamble, FSIS is proposing to amend 9 CFR part 319 as follows:

### **PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION**

1. The authority citation for part 319 would continue to read as follows:

**Authority:** 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 319.600 would be removed and reserved.

Done at Washington, DC, on October 30, 2001.

**Margaret O’K. Glavin,**  
*Acting Administrator.*

[FR Doc. 01–27542 Filed 11–1–01; 8:45 am]

**BILLING CODE 3410–DM–P**

## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Part 73**

[Docket No. PRM–73–11]

#### **Three Mile Island Alert; Receipt of Petition for Rulemaking**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Three Mile Island Alert. The petition has been docketed by the NRC and has been assigned Docket No. PRM–73–11. The petitioner is requesting that the NRC regulations governing physical protection of plants and materials be amended to require NRC licensees to post at least one armed guard at each entrance to the “owner controlled areas” (OCAs) surrounding all U.S. nuclear power plants. The petitioner states that this should be accomplished by adding armed site protection officers (SPOs) to the security forces—not by simply moving SPOs from their protected area (PA) posts to the OCA entrances. The petitioner believes that its proposed amendment would provide an additional layer of security that would complement existing measures against radiological sabotage and would be consistent with the long-standing principle of defense-in-depth.

**DATES:** Submit comments by January 16, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration

cannot be given except as to comments received on or before this date.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC’s interactive rulemaking website through the NRC home page (<http://ruleforum.llnl.gov>). At this site, you may view the petition for rulemaking, this **Federal Register** notice of receipt, and any comments received by the NRC in response to this notice of receipt. Additionally, you may upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: [CAG@nrc.gov](mailto:CAG@nrc.gov)).

Documents related to this action are available for public inspection at the NRC Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland.

Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC’s Public electronic Reading Room on the Internet at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC’s Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC’s public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

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.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll-Free: 1–800–368–5642 or E-mail: [mtl@nrc.gov](mailto:mtl@nrc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Nuclear Regulatory Commission’s regulations require that licensees establish protected areas (PAs) surrounding nuclear power plants, with

strict access control at the PA boundaries including armed guards, entry barriers, vehicle barriers, intrusion detectors, personnel screening and vehicle screening. However, they do not require posting armed guards farther out, at the boundaries of the owner controlled areas (OCAs). The NRC has now received a petition for rulemaking dated September 12, 2001, submitted by the Three Mile Island Alert (petitioner) requesting that the regulations at 10 CFR 73.55 be amended to require licensees to post at least one armed guard at each entrance to the OCAs surrounding all nuclear power plants in the U.S.

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–73–11. The NRC is soliciting public comment on the petition for rulemaking. As a result of the attacks on the World Trade Center and the Pentagon on September 11, 2001, the NRC is conducting a comprehensive reexamination of its security requirements including the issues raised in this petition.

#### **Discussion of the Petition**

The petitioner believes that armed guards are needed at OCA entrances to serve as a physical and visual deterrent against potential violent actions. However, the petitioner cautions that additional site protection officers (SPOs) are needed and that licensees should not merely move SPOs from PA posts. The petitioner notes that 10 CFR 73.55, “Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage” does not require armed guards at OCA entrances in current security plans. The petitioner states that adding an armed guard at each entrance to the OCA at nuclear power plants would be consistent with defense-in-depth safety principles that have been in place for many years.

The petitioner has concluded that the additional layer of security would complement existing measures against radiological sabotage and would be relatively inexpensive. The petitioner contends that the NRC could not inform the public and Congress that every reasonable precaution had been taken after an attack on a nuclear power facility occurs if the NRC fails to implement this proposed amendment.

The petitioner believes that security should be a clear and visible presence at the OCA entrances, especially since, according to the petitioner, the NRC considers nuclear power plants as “hardened targets.” The petitioner states