

is edible without additional preparation to achieve food safety and may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes. RTE product is not required to bear a safe-handling instruction (as required for non-RTE products by 9 CFR 317.2(1) and 381.125(b)) or other labeling that directs that the product must be cooked or otherwise treated for safety, and can include frozen meat and poultry products.

§ 430.4 Control of *Listeria monocytogenes* in post-lethality exposed ready-to-eat products.

(a) *Listeria monocytogenes* can contaminate RTE products that are exposed to the environment after they have undergone a lethality treatment. *L. monocytogenes* is a hazard that an establishment producing post-lethality exposed RTE products must control through its HACCP plan or prevent in the processing environment through a Sanitation SOP or other prerequisite program. RTE product is adulterated if it contains *L. monocytogenes* or if it comes into direct contact with a food contact surface which is contaminated with *L. monocytogenes*.

(b) In order to maintain the sanitary conditions necessary to meet this requirement, an establishment producing post-lethality exposed RTE product must comply with the requirements included in one of the three following alternatives:

(1) *Alternative 1.* Use of a post-lethality treatment (which may be an antimicrobial agent) that reduces or eliminates microorganisms on the product and an antimicrobial agent or process that suppresses or limits the growth of *L. monocytogenes*. If an establishment chooses this alternative:

(i) The post-lethality treatment must be included in the establishment's HACCP plan. The antimicrobial agent or process used to suppress or limit the growth of the pathogen must be included in either the establishment's HACCP plan or its Sanitation SOP or other prerequisite program.

(ii) The establishment must validate the effectiveness of the post-lethality treatment incorporated in its HACCP plan in accordance with § 417.4. The es-

tablishment must document, either in its HACCP plan or in its Sanitation SOP or other prerequisite program, that the antimicrobial agent or process, as used, is effective in suppressing or limiting growth of *L. monocytogenes*.

(2) *Alternative 2.* Use of either a post-lethality treatment (which may be an antimicrobial agent) that reduces or eliminates microorganisms on the product or an antimicrobial agent or process that suppresses or limits growth of *L. monocytogenes*. If an establishment chooses this alternative:

(i) The post-lethality treatment must be included in the establishment's HACCP plan. The antimicrobial agent or process used to suppress or limit growth of the pathogen must be included in either the establishment's HACCP plan or its Sanitation SOP or other prerequisite program.

(ii) The establishment must validate the effectiveness of a post-lethality treatment incorporated in its HACCP plan in accordance with § 417.4. The establishment must document in its HACCP plan or in its Sanitation SOP or other prerequisite program that the antimicrobial agent or process, as used, is effective in suppressing or limiting growth of *L. monocytogenes*.

(iii) If an establishment chooses this alternative and chooses to use only an antimicrobial agent or process that suppresses or limits the growth of *L. monocytogenes*, its sanitation program must:

(A) Provide for testing of food contact surfaces in the post-lethality processing environment to ensure that the surfaces are sanitary and free of *L. monocytogenes* or of an indicator organism;

(B) Identify the conditions under which the establishment will implement hold-and-test procedures following a positive test of a food-contact surface for *L. monocytogenes* or an indicator organism;

(C) State the frequency with which testing will be done;

(D) Identify the size and location of the sites that will be sampled; and

(E) Include an explanation of why the testing frequency is sufficient to ensure that effective control of *L. monocytogenes* or of indicator organisms is maintained.

(iv) An establishment that chooses this alternative and uses a post-lethality treatment of product will likely be subject to more frequent verification testing by FSIS than if it had chosen Alternative 1. An establishment that chooses this alternative and uses an antimicrobial agent or process that suppresses or limits the growth of *L. monocytogenes* will likely be subject to more frequent FSIS verification testing than if it uses a post-lethality treatment.

(3) *Alternative 3. Use of sanitation measures only.*

(i) If an establishment chooses this alternative, its sanitation program must:

(A) Provide for testing of food contact surfaces in the post-lethality processing environment to ensure that the surfaces are sanitary and free of *L. monocytogenes* or of an indicator organism;

(B) Identify the conditions under which the establishment will implement hold-and-test procedures following a positive test of a food-contact surface for *L. monocytogenes* or an indicator organism;

(C) State the frequency with which testing will be done;

(D) Identify the size and location of the sites that will be sampled; and

(E) Include an explanation of why the testing frequency is sufficient to ensure that effective control of *L. monocytogenes* or of indicator organisms is maintained.

(ii) An establishment producing a deli product or a hotdog product, in addition to meeting the requirements of paragraph (b)(3)(i) of this section, must meet the following requirements:

(A) The establishment must verify that the corrective actions that it takes with respect to sanitation after an initial positive test for *L. monocytogenes* or an indicator organism on a food contact surface in the post-lethality processing environment are effective by conducting follow-up testing that includes a targeted test of the specific site on the food contact surface area that is the most likely source of contamination by the organism and such additional tests in the surrounding food contact surface area as

are necessary to ensure the effectiveness of the corrective actions.

(B) During this follow-up testing, if the establishment obtains a second positive test for *L. monocytogenes* or an indicator organism, the establishment must hold lots of product that may have become contaminated by contact with the food contact surface until the establishment corrects the problem indicated by the test result.

(C) Further, in order to be able to release into commerce the lots of product that may have become contaminated with *L. monocytogenes*, the establishment must sample and test the lots for *L. monocytogenes* or an indicator organism using a sampling method and frequency that will provide a level of statistical confidence that ensures that each lot is not adulterated with *L. monocytogenes*. The establishment must document the results of this testing. Alternatively, the establishment may rework the held product using a process that is destructive of *L. monocytogenes* or the indicator organism.

(iii) An establishment that chooses Alternative 3 is likely to be subject to more frequent verification testing by FSIS than an establishment that has chosen Alternative 1 or 2. An establishment that chooses Alternative 3 and that produces deli meat or hotdog products is likely to be subject to more frequent verification testing than one that does not produce such products.

(c) For all three alternatives in paragraph (b):

(1) Establishments may use verification testing that includes tests for *L. monocytogenes* or an indicator organism, such as *Listeria* species, to verify the effectiveness of their sanitation procedures in the post-lethality processing environment.

(2) Sanitation measures for controlling *L. monocytogenes* and procedures for antimicrobial agents or processes that suppress or limit the growth of the pathogen may be incorporated either in the establishment's HACCP plan or in its Sanitation SOP or other prerequisite program. When these control procedures are incorporated into the Sanitation SOP or prerequisite program, and not as a CCP in the HACCP

plan, the establishment must have documentation that supports the decision in its hazard analysis that *L. monocytogenes* is not a hazard that is reasonably likely to occur.

(3) The establishment must maintain sanitation in the post-lethality processing environment in accordance with part 416.

(4) If *L. monocytogenes* control measures are included in the HACCP plan, the establishment must validate and verify the effectiveness of measures for controlling *L. monocytogenes* included in its HACCP plan in accordance with § 417.4.

(5) If *L. monocytogenes* control measures are included in the Sanitation SOP, the effectiveness of the measures must be evaluated in accordance with § 416.14.

(6) If the measures for addressing *L. monocytogenes* are addressed in a prerequisite program other than the Sanitation SOP, the establishment must include the program and the results produced by the program in the documentation that the establishment is required to maintain under 9 CFR 417.5.

(7) The establishment must make the verification results that demonstrate the effectiveness of the measures it employs, whether under its HACCP plan or its Sanitation SOP or other prerequisite program, available upon request to FSIS inspection personnel.

(d) An establishment that produces post-lethality exposed RTE product shall provide FSIS, at least annually, or more often, as determined by the Administrator, with estimates of annual production volume and related information for the types of meat and poultry products processed under each of the alternatives in paragraph (b) of this section.

(e) An establishment that controls *L. monocytogenes* by using a post-lethality treatment or an antimicrobial agent or process that eliminates or reduces, or suppresses or limits the growth of the organism may declare this fact on the product label provided that the establishment has validated the claim.

PART 441—CONSUMER PROTECTION STANDARDS: RAW PRODUCTS

AUTHORITY: 21 U.S.C. 451–470, 601–695; 7 U.S.C. 450, 1901–1906; 7 CFR 2.18, 2.53.

SOURCE: 66 FR 1771, Jan. 9, 2001, unless otherwise noted.

§ 441.10 Retained water.

(a) Raw livestock and poultry carcasses and parts will not be permitted to retain water resulting from post-evisceration processing unless the establishment preparing those carcasses and parts demonstrates to FSIS, with data collected in accordance with a written protocol, that any water retained in the carcasses or parts is an unavoidable consequence of the process used to meet applicable food safety requirements.

(b) Raw livestock and poultry carcasses and parts that retain water from post-evisceration processing and that are sold, transported, offered for sale or transportation, or received for transportation, in commerce, must bear a statement on the label in prominent letters and contiguous to the product name or elsewhere on the principal display panel of the label stating the maximum percentage of water that may be retained (e.g., “up to X% retained water,” “less than X% retained water,” “up to X% water added from processing”). The percent water statement need not accompany the product name on other parts of the label. Raw livestock and poultry carcasses and parts that retain no water may bear a statement that no water is retained.

(c)(1) An establishment subject to paragraph (a) of this section must maintain on file and available to FSIS its written data-collection protocol. The protocol must explain how data will be collected and used to demonstrate the amount of retained water in the product covered by the protocol that is an unavoidable consequence of the process used to meet specified food safety requirements.

(2) The establishment must notify FSIS as soon as it has a new or revised protocol available for review by the Agency. Within 30 days after receipt of this notification, FSIS may object to