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December 21, 2001

FSIS Docket Clerk
Docket #01-018P
Room 102
Cotton Annex
300 C Street, SW
Arlington, VA 20250-3700

01-018P
01-018P-7
Nicholas J. Kocz



Dear Docket Clerk:

I am a consumer who happens to be fairly knowledgeable about USDA labeling practices. I enjoy pizza products with significant meat content and can not help but be alarmed by FSIS' proposals to eliminate the pizza standard.

As noted in the proposal, standards of identity or composition are designed to protect consumers from purchasing meat food products that do not conform with their expectations. Meat content requirements are the most common aspect in standards for meat food products because, not surprisingly, consumers have traditionally viewed meat to be a valuable component in meat food products.

9 CFR 319.600 currently imposes a specific meat content requirement on meat pizzas, as well as recognizing that pizza products should contain a bread base, tomato sauce and cheese.

Removal of this standard would mean a significant reduction in the amount of meat on "meat pizzas" (from 15% raw meat to just 2% cooked or 3%-raw). Further, such products would no longer be required to have a bread-based crust, tomato sauce or cheese.

The petitioner, the National Frozen Pizza Institute (NFPI) contends that the standard should be deleted because it inhibits the pizza industry from developing innovative and healthier products. Further, NFPI alleges that consumer expectations of "pizza" have broadened so considerably over the years that this original definition represented in 9 CFR 319.600 has become anachronistic.

To support their position, NFPI supplemented its petition with approximately **386** recipes for pizza products taken from 22 commercially published cookbooks and the menus from 18 restaurants from around the country. NFPI failed to analyze this supplemental information, perhaps hoping that the sheer volume **of** these papers would be impressive enough to secure their wishes.

I heartily urge the Agency to re-think exactly what this supplemental information represents. When properly analyzed, one quickly realizes that not only does it fail to support NFPI allegations but this body of evidence which they have created often directly contradicts the wisdom of their proposal. Coupled with the fact that the petitioner does not offer a single direct consumer survey to support their contention that consumers no longer expect a certain amount of meat on their meat pizzas should lead the Agency to deny the removal of this long-cherished standard of identity.

A. The Current Standard Does Not Restrict New Products

The petitioner notes that over **\$30** billion of pizzas are sold on an annual basis in this country. Of that, the frozen pizza industry accounts for approximately \$2 billion in sales. Presumably, restaurant sales largely account for the remainder. Both restaurant sales and frozen pizza sales have been growing steadily.

Indeed, the frozen pizza industry is thriving. At my local **Harris** Teeter supermarket, frozen pizzas account for 25% of the shelf space devoted to frozen entrees. Eleven different brands are stocked in sixty-six different varieties (**48** meat, 18 non-meat).

However, the frozen pizza sales have not been growing at the same rate as restaurant sales. The petitioner wants us to believe that this is "in large part [due] to the restrictions imposed by the **FSIS** standard of identity."

According to information available on the National Restaurant Association's internet site, restaurant sales (in all food categories) have been growing at a

phenomenal rate for decades. For example, restaurant sales have surged **233%** since 1980. **This** tremendous growth reflects the fact that Americans are eating out at a greater frequency than ever before and owes a lot more to changes in lifestyles than to the standards of identity for a single product class.

Far from being restrictive, FSIS has made a number of policy interpretations on the regulations over the years that even the petitioner admits "assist companies who wish to innovate." These include:

- 1) recognizing that pizzas which are not made with tomato sauce, or are made with other types of sauces (but presumably still contain cheese), can be identified as "white pizza;"
- 2) broadly interpreting "tomato sauce" as meaning any sauce which contains at least 2% tomatoes. Traditional pureed Italian-style tomato sauces can be put aside in favor of barbecue sauces (most of which are tomato-based), salsas, tomato-yogurt curries, and cream sauces with tomatoes. Should a manufacturer wish to top a pizza with tomato slices, it can then claim it has created a "chunky style tomato sauce."
- 3) liberally interpreting the "bread-based crust" requirement to include most every kind of flour-based component. Traditional dough crusts can be forsaken for other breading options. Over the years as a food labeling consultant, I have assisted manufacturers in securing approvals for "pizzas" made on flour tortillas, bagels, French bread slices, and in pita breads and egg roll wrappers.
- 4) allowing for percentage meat labeling on pizza products that do not otherwise meet the minimum meat requirements of 9 CFR 319.600 (see Policy Memo 069). **This** last option, one which NFPI chose not to acknowledge in its petition, seemingly allows for all the flexibility manufacturers need should they want to offer pizzas with less meats than otherwise required.

As mentioned, NFPI provided 18 menus from restaurants. Putting aside questions of statistical relevancy (the National Restaurant Association believes there are 844,000 restaurants operating in this country), it appears

that the vast majority of meat pizzas offered by restaurants could indeed be produced under federal meat inspection.

The Agency, in its background comments to this proposal, states that “consumer expectations are largely driven by the restaurant and food service industries.” If this is the case, the data submitted by the petitioner suggests that restaurant patrons exhibit the same expectations about “meat pizzas” as envisioned in 9 CFR 319.600. Far from re-defining such expectations, restaurants are conforming to the same decades-old understanding of “pizza” that led to FSIS’ original standard of identity.

Of the 75 meat pizzas offered on these menus, 53 appear to contain all four components (meat, tomato sauce, cheese, and bread) required by the regulation.¹

Another twelve (12) clearly conform the Agency’s “White Pizza” policies.

Of the remainder, perhaps seven may qualify as “White Pizza.” As mentioned above, the Agency has seen fit to recognize the term “white pizza” for pizzas that are prepared without tomato sauce. “White pizzas” may have a “white sauce” component. However, the “white pizza” standard does not explicitly preclude the use of non-tomato sauces. Since descriptive labeling is required on “white pizzas,” it is thus conceivable that the Agency may allow a pizza made with, say, a peanut sauce to be labeled as “Thai Brand White Pizza (Made in USA) --Chicken, Spicy Peanut Sauce, Mozzarella Cheese and Bean Sprouts on a Crispy Crust.”

[If the Agency is intent on allowing more products to be labeled as “pizza,” less damage to consumer expectations would be inflicted if it simply broaden the “white pizza” standard. “White pizza” consumers are already aware that they are purchasing products that are not “traditional” pizzas. Interpreting the “white pizza” standard, while maintaining the current meat standard requirements, will still allow for innovative product development while protecting the interests of “traditional pizza” consumers like me.]

Despite its efforts, the petitioner could find only three examples (about 4% of the total) of meat pizzas offered for sale in restaurants which clearly

¹ For a detailed analysis of the petitioner’s menu data, please see Appendix A of this response.

could not be produced by manufacturers operating under federal inspection; all three fail to include cheese as a topping.

NFPI apparently has convinced the Agency that "these new styles of pizza [which the standard of identity bars meat and poultry establishments from producing] are popular with consumers." However, the petitioner fails to cite a single marketing or sales survey to support this contention. Just because a food item is offered on a few menus does not necessarily correlate to a level of popularity or consumer acceptance. Indeed, only three restaurants offer more than one meat pizza which falls in the later two categories defined above (questionable "white pizzas" & cheese-less pizzas), perhaps attesting to their true lack of popularity. --

The petitioner also alleges that "most restaurant pizzas do not comply with the minimum meat requirements and/or do not use cheese." Again, the petitioner offers no evidence to support this spurious claim. As noted above, only three meat pizzas found on menus were made without cheese. The petitioner apparently elected not to conduct a fill-weight sample to test for meat content on restaurant pizzas. Thus, there is no reason to suspect that restaurant pizzas have less meat than USDA otherwise requires.

Supplemental information provided by the petitioner includes recipes from 22 cookbooks. [For comparison, Amazon.com offered 8,029 cookbooks for sale while Booksamillion.com stocked 2,599 cookbook titles as of November 7, 2001.]

Like the menus, the recipe data seemingly supports the validity of FSIS' standard of identity?

There were 119 meat pizza recipes capable of being evaluated for the inclusion of the four major components required in 9 CFR 319.600.

Twenty-three of these recipes contained all four.

Seventy-eight recipes (**65.5%**) contain the elements necessary to conform to the "White Pizza" policy.

Only eighteen recipes (about 15%) clearly would not conform to either the "pizza" or "white pizza" standards.

² For a detailed analysis of the petitioner's recipe data, please see Appendix B of this response.

[Although these percentages differ tremendously from those in the restaurant sampling, one should note that the petitioner engaged in a certain amount of "cherry-picking" when preparing the recipe data. For example, the covers of two cookbooks (Pizza Presto by Norman Kolpas and Pizza California Style, also by Norman Kolpas) boast that they contain at least eighty recipes each-- yet NFPI saw fit to include only **39** total recipes combined from the two books.]

Most significantly, the vast majority of these meat pizza recipes contain meat levels at or above those specified in **9 CFR 319.600**. There were 107 recipes capable of being analyzed for meat content³ Ninety-five recipes (over **88%**) seemingly contained enough meat to pass USDA's standard,

Twelve recipes contained too little meat. Given the many different kinds of meats found on pizzas, it may be significant that six of these "rejects" (fully half) were for pizzas made with either prosciutto or bacon.

If there **is** anything to be learned from the petitioner's recipe and menu data, it is that frozen pizza manufacturers don't take enough advantage of the regulatory and policy flexibility already offered by the Agency. Time and again, NFPI submitted data suggesting the popularity of toppings like black beans, broccoli and asparagus; cheeses like gouda, gorgonzola and bleu; meats like chicken livers, ground lamb and duck breast. While the pizzas I found at my local Harris Teeter contained few of these novel ingredients, there is nothing in the standard of identity to prohibit their use.

³ Not all recipes capable of being analyzed for meat content (107) were capable of being analyzed for the inclusion of the four major components (**119**). The reasons for **this** difference include:

- cases where only one page of a two-page recipe was made available in the public hearing clerk's office. Meat content **was** disclosed on the first page, while the rest of the recipe made it unclear if the four major components were utilized.
- Several recipes in Alice Waters' Chez Panisse Pasta, Pizza & Calzone did not indicate the amount of meat to be used.
- The amount of meat specified for a recipe in Skinny Pizzas by Barbara Grunes seemed **so** absurdly **high** [**1 112** cooked turkey(s)] that I suspected a typographical error and could not in good conscience include it in the meat content survey.
- Five recipes stated a specific amount of meat in either **a** volumetric cup size or slice size that I was unable to convert into an ounce or percent equivalent. These five are broken **down** as follows: 1/2 cup sweet Italian Sausage meat, 1/2 cup diced ham, 1 cup chorizo, **5-6** slices pancetta slices (in two recipes).

B. Rescinding the Current Standard Will Not Lead to the Introduction of Healthier Pizzas

The Agency seemingly believes that rescinding the current regulatory standard will result in the introduction of healthier pizzas "that would be more consistent with nutritional guidance (e.g., lower fat)." While this may be theoretically possible, it is not likely.

NFPI suggests in its petition that restaurants have been able to introduce a number of such healthier pizzas because it is not bound by **FSIS'** rigid standard of identity. Yet in all the menus they presented, there was not a single meat pizza advertised as being a healthier or lower-fat product. [By contrast, six of the **63** non-meat pizzas on these menus made such claims].

The petitioner states that "...mandating the current minimum meat content (and mandatory cheese) virtually prohibits the production of a low fat pizza under inspection." This is false. There is at least one company that makes a "low fat" pizza under federal inspection (the product utilizes low-fat cheeses and turkey pepperoni).

Changing the standard will not suddenly spur the introduction of lower-fat meat pizzas; the industry is already able to produce healthier products if it so desired. Current regulations do not force the use fatty toppings such as bacon, pork sausages and pepperoni (produced with pork and/or beef), yet those toppings are on the vast majority of frozen pizzas being sold. Frozen pizza producers already have the flexibility to switch to nutritional toppings like turkey breast, pork tenderloins, and **95%** lean ground beef.

Indeed, FSIS must tread very cautiously because there is a very real **risk** that resulting products will not even be as "healthy" as traditional meat pizzas if the pizza standard is rescinded.

Simply adding two percent cooked Italian sausage to a cheese pizza will lead to a product that contains more cholesterol and saturated fat than an Italian Sausage pizza produced under existing regulations?

⁴ See Appendix C for this and other nutritional comparisons which are derived from the ESHA/Genesis computer data base program that is popular within the meat and poultry industry.

The petitioner notes that over-turning the existing standard **is** necessary because several manufacturers wish to introduce a "Thai Pizza." The spicy peanut sauce used in this variety, as several of the petitioners' own recipes indicate, contains up **to** fifteen times the amount of fat found in normal tomato-based sauces.

Unless the Agency requires a quid pro quo whereby meat and/or cheese requirements are only eased on products clearly labeled with low/lower fat or calorie claims, it can not guarantee its nutritional objectives.

[Such an approach is expressed in Policy Memo **123**. Through this memo, water and binder amounts can exceed those otherwise allowed by **FSIS** ... sausage regulations if notations are made in the ingredient statement (e.g., "[water] in excess of amount permitted in regular breakfast sausage.")]

C. Rescindment of the Pizza Standard will Adversely Effect Small Busine that Produce sausages

It is my understanding that, before proposing any regulatory changes, the Agency must carefully evaluate the possible effects such a change may have on small businesses. In this case, the Agency has neglected to consider one key small business that will be harmed by the regulation: producers of sausages, cured meats and other meat pizza toppings.

Reducing the amount of meats on pizzas will have a devastating effect on .these small businesses, especially given the tightening economy of recent months.

I most strongly urge the Agency to delay further action on this proposal until it has completed such a review and has offered the public a chance to comment on its findings.

D. Conclusion

In evaluating this proposal, the Agency should return again to the original intent for a standard of identity: to protect consumers from being deceived into purchasing products that do not conform to their general expectations.

The Federal Meat Inspection Act makes no mention **of** the expectations of restaurant operators or cookbook publishers. Nor does it allow standards of identity to be based on industry's fanciful interpretations of consumer expectations.

As near as I can tell, the Agency has always required direct consumer inquiry when considering modifications to existing regulatory and policy standards. Back in **1992**, when reviewing whether to alter the meat content requirement of soup products, FSIS did not act until supplied with tests showing consumer acceptance of soups prepared with various meat amounts.⁵

To date, there has been **no** direct evidence presented to show that consumer expectations have indeed changed.

The Agency will be setting dangerous precedent if it suddenly begins accepting wholesale all of industry's undocumented assertions about consumers' interests.

That a major trade association representing, by its own admission, virtually all the players in a \$2 billion industry can not provide a single consumer study of expectations speaks volumes about what it expects such a survey to find. Consumers need to be asked if they want less meats on their pizzas and if they no longer expect cheeses. These are questions that the petitioner apparently does not wish to have answered.

Further, the petitioner is unable to support its assertions that a) restaurants 'produce' pizzas with less meat than the FSIS standard, b) that "non-traditional" pizzas are popular with consumers (demonstrable through sales and marketing surveys and statistics), c) adherence to the current standards prevents the frozen meat pizza industry **from** making healthier products, and , d) that restaurants offer **a** substantially different kind of product that can not be labeled as a "pizza" under existing regulations governing federally inspected meat establishments.

NFPI submitted **a** petition without hard evidence to support its numerous allegations. Its many arguments essentially boil down to one point: non-inspected pizza companies can do whatever they want, *so* inspected pizza

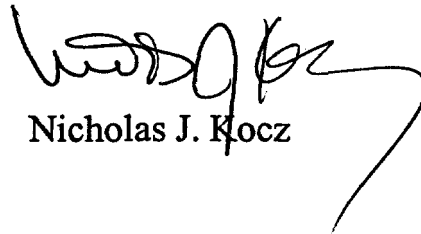
⁵ See Policy Memo 122, dated August 11, 1992.

companies should be able to do whatever they want as well. In an initial review, FSIS stated that “the NFPI petition is not free of **controversy.**”⁶ It is easy to see why.

The standard of identity has allowed consumers the confidence to expect a certain amount **of** meat in a meat pizza. If rescinded, pizzas with just a few scrapings **of** pepperoni could bear labeling indistinguishable from those which have been marketed for decades. A product with all of 2.2% meat could suddenly bear the boastful claim “Extra Meaty Pizza”⁷ A couple crumbs **of** sausage on a slice of cheese could suddenly be labeled “Pizza—Sausage on Cheese.”

Should FSIS grant this petition, consumers will face confusion and deception every time they **try** to buy a frozen meat pizza. The only party not confused would be the frozen pizza industry—which will be comforted with the knowledge that they have pulled one over on consumers like me.

Very truly yours,



Nicholas J. Kocz

⁶ Deputy Administrator Philip S. Derfler in a June 20, 2000 letter to the Executive Director of the National Frozen Pizza Institute.

⁷ Policy Memo 118 allows the use of labeling claims like “more meat” or “extra meat” on products formulated **with** at least 10% more meat **than** the standard for that product otherwise requires. Should the existing standard be rescinded, the ersatz meat requirement for pizzas will become the **minimum 2%** cooked meat necessary to make a product amenable to federal inspection. I **am** quite confident that the frozen meat pizza industry will pounce on the opportunity offered in **this** policy memo to make such claims on products that currently don’t meet the **minimum** pizza meat requirements.