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Food and Drug Administration  
Division of Dockets Management  
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Rockville, MD 20852

RE: Food Standards; General Principles and Food Standards Modernization  
70 Fed. Reg. 29214 (May 20, 2005)  
FSIS Docket No. 95-051P  
FDA Docket No. 1995N – 0294

The Center for Science in the Public Interest (CSPI)<sup>1</sup> submits these comments in response to the proposed rule issued by FSIS and FDA regarding food standards of identity.

1) We support the agencies' decision to retain food standards of identity. As we noted in our comments on the original advance notice of proposed rulemaking in 1996, standards of identity are necessary to ensure product quality and protect consumers from fraudulent and deceptive practices.

2) CSPI believes that some flexibility should be allowed in the regulations governing standards of identity, but *only* when a deviation from the standard would improve the nutritional profile of a food product. For this reason, we support existing agency regulations that allow the use of a nutrient content descriptor in conjunction with a standard product (e.g. "low fat ice cream," or "reduced fat hot dog").<sup>2</sup>

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<sup>1</sup> CSPI is a non-profit consumer advocacy and education organization that focuses on food safety and nutrition issues. It is supported principally by the 900,000 subscribers to its *Nutrition Action Healthletter* and by foundation grants.

<sup>2</sup> 21 C.F.R. § 130.10; 9 C.F.R. §319.10 and §381.172

We have endorsed the elimination of a particular standard when such action will allow for the creation of more healthful products. For example, we supported FSIS's decision to eliminate its standards for meat and sausage pizza.<sup>3</sup> The agency removed its standard of identity and, thereby, eliminated the minimum meat content requirement. Instead, it now allows "pizza products" containing meat, meat food products, poultry, or poultry products to use the term "pizza" as a common or usual name. FSIS also requires, but only for three years, that the labels of pizza containing meat or poultry products include the percent of the meat component or poultry component in the product in a parenthetical statement that is contiguous to the ingredients statement.

While CSPI supported elimination of the pizza standard, we do not support the agency's decision to limit the labeling requirement to a three-year period. Moreover, we would impose an additional labeling requirement: disclosure of the percentage of meat/chicken substitute (such as soy) as well as other "characterizing" ingredients (e.g. mushroom or onion) as part of the name of the pizza on the principal display panel. Only with both types of disclosures are consumers protected from deception when there is no applicable standard of identity.

3) While we endorse some flexibility in food standards regulation, we oppose the "horizontal" approach to allowing deviations from standards of identity, which has been proposed by a number of food companies and trade associations such as Kraft and the Grocery Manufacturers of America. The industry's suggestion would apply the approach used in the rules allowing the use of nutrient-content descriptors in conjunction with standardized products, to all standards modifications, not just those that allow for the creation of more healthful products. As a result, food companies would be allowed to modify standards on their own, without petitioning the relevant agency and requiring its approval. CSPI believes that such a widespread change would emasculate standards of identity, and would eliminate the valuable consumer protections that those standards provide.

Food companies and trade associations that advocate a horizontal approach to revising food standards contend that FSIS and FDA do not have enough resources to implement the approach that the agencies have proposed. Following their logic, the companies and trade associations would respond to a shortage of funds for a municipality's police department by advocating that compliance with various laws become voluntary.

Rather than arguing that the agencies should respond to the resource shortage by eliminating standards of identity, food companies and trade associations should support efforts to increase FDA's and FSIS's resources in this area.<sup>4</sup>

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<sup>3</sup> See 68 Fed. Reg. 44859 (2003).

<sup>4</sup> See Center for Science in the Public Interest, *Starvation Diet: FDA Lacks Adequate Resources for its Nutritional Health and Consumer Protection Missions* (2003), available online at <http://cspinet.org/new/pdf/starvationrep.final.pdf>.

4) In regard to the specific principles for revising the standards of identity proposed by the two agencies, CSPI has concerns with only two of them. First, we object to principal #7, which provides that “the food standard should be harmonized with international food standards to the extent feasible.” While some international food standards are stronger than comparable U.S. standards, others are weaker. For example, the U.S. standard for applesauce indicates that “bruised apple particles, peel, seed, core material, carpel tissue, and other coarse, hard, or extraneous materials are removed.”<sup>5</sup> By contrast, the Codex standard for the same product allows such materials to remain in the product, as long as “the number, size, and prominence of defects (such as seeds or particles thereof, peel, carpel tissue, bruised apple particles, dark particles, and any other extraneous material of like nature) should not seriously affect the appearance or the eating quality of the product.”<sup>6</sup> The agencies’ principles regarding standards of identity should not allow any weakening of U.S. food standards merely to facilitate international trade.

Additionally, we have concerns with standard #6. The use of the phrase “maximum flexibility” in this principle to describe the role of new technology in food production creates the impression that use of new technology is more important than retention of a food’s basis nature, nutritional quality, or safety. We recommend that the word “maximum” be removed in order to better reflect the balance that this principle is intended to reflect.

In conclusion, we support the agencies’ decision to retain food standards of identity, we support modifications of standards in order to improve nutrition, we urge FSIS and FDA to reject the approach to modification of food standards proposed by a number of food companies and trade associations, and we urge that the Agency’s revise two of the specific proposed principles as suggested in these comments.

Respectfully submitted,



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<sup>5</sup> 21 C.F.R. §145.110(a).

<sup>6</sup> Codex Standard 017-1981, Sec. 3.21, Rev. 1-2001.