

Nestle USA

5750 HARPER ROAD  
SOLON, OH 44139  
TEL (440) 349-5757  
FAX (440) 349-1615

RECEIVED  
FSIS DOCKET ROOM

02 FEB 27 AM



28

January 2, 2002

**FSIS** Docket Clerk  
Docket #01-018P  
Room 102  
Cotton Annex  
300 C Street, S.W.  
Washington, D.C.

01-018P  
01-018P-28  
Bruce Kohnz

Re: Docket No. 01-028P; Definitions and Standards of Identity or Composition: Elimination of the Pizza Standard; Proposed Rule; 66 Fed. Reg. 55,601

Dear Sir or Madam:

Nestlé U.S.A. (Nestlé) supports the proposed rule that would revoke antiquated standards of identity for meat-topped pizza and strongly urges long-overdue reform by the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) with respect to the vast array of formal and informal food standards. Nestlé brands such as Lean Cuisine® and Stouffer's® thrive due to our ability to deliver convenience and value with products that meet consumers' ever-changing expectations and preferences. Nestlé markets a broad spectrum of products, including many that are subject to a USDA, or Food and Drug Administration standard of identity. Given the substantial negative impact antiquated standards have on industry and consumers, we take this opportunity to address the proposed rule and certain of the fundamental issues raised by the proposal relating to standards reform in general.

#### Support for Proposed Rule and the Shift in FSIS Treatment of Standards

Nestlé fully supports the proposed rule because it removes a government regulation that distorts the marketplace. The pizza standard was created in an effort to capture expectations of "pizza" and, in turn, to protect consumers from purchasing a purported pizza product that failed to meet this expectation. Of course, as FSIS has tentatively concluded, this outdated notion of what constitutes a "pizza" impedes the food industry's ability to offer a range of pizza products to meet consumer preferences.

Standards were written to protect consumer expectations. Decades ago fixed, recipe-style requirements that dictated the use of product names recognizable to consumers may have served this purpose. The proposed rule

*Nestlé Makes the Very Best™*

illustrates but one instance where changes in the marketplace can render superfluous a well-intentioned standard adopted decades ago. Worse, standards of this kind impede product innovation spurred by ever-changing consumer preferences and tastes.

For many years, FSIS sought to codify by regulation, and increasingly via informal standards, advances in the ever-growing variety of foods offered to consumers. Historically, innovation could not occur until it had been committed to a standard crafted by FSIS. The preamble accompanying the proposal reflects a marked shift in the agency's views on the role of standards in the marketplace. Nestle strongly endorses several key observations and tentative conclusions set forth by the FSIS in the preamble accompanying the proposal.

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. . . .

[T]he 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.

The proposal also represents an important shift in agency thinking with respect to allowing the consumer to make informed purchasing decisions. Nestle strongly agrees with this statement contained in the preamble: "The Agency believes that if a new product formulated with less meat or sausage . . . does not meet consumer expectations, consumers are not likely to purchase the product and it will fail in the marketplace."

People vote with their pocketbook and no food company, big or small, can introduce a new product, or maintain sales of existing products, that fail to meet consumer expectations. Indeed, substantial market research and product testing by Nestlé and many other food processors focus on whether a particular food meets consumer expectations based on its composition, name, taste/quality and other factors. Hence, firms try to anticipate to the greatest extent possible whether a product will be accepted/liked by consumers prior to

launch to avoid the possibility that the product will fail in the marketplace because it does not meet consumer expectation. At the same time, many product introductions or reformulations fail in the marketplace because consumer expectations are not met. Consumer choice plays a far more significant and flexible measure of consumer protection than that associated with the numerous antiquated standards.

The wisdom of eliminating the pizza standard (and for broader standards reform) is underscored by the significant information available to the consumer that must appear on the food label. The product name itself must accurately and completely identify the nature of the product. Accompanying descriptive names are sometimes employed to further ensure that the nature of the food, including its primary characterizing attributes, are conveyed.

The ingredient statement provides readily accessible information to consumers by providing, in order of predominance by weight, the content of a food. Recall that at the time many standards were created, the mandatory ingredients dictated by a standard were exempt from the ingredient labeling. Passage of the Nutrition Labeling and Education Act, and accompanying changes implemented by **FSIS**, now mandate that all ingredients appear on the label. Accordingly, there is no need for percent ingredient labeling. Moreover, it is not apparent why percent ingredient labeling would be considered only for the amount of meat in a product versus any of the other primary components used to make a food (e.g., cheese, flour, seasoning). The notion of imposing percent ingredient labeling is flawed for the very reasons that have prompted the agency to propose this valuable proposed rule. That is, consumers can readily and accurately identify from the ingredient statement the relative amounts of all ingredients by consulting the ingredient statement that must appear on all retail food package labels.

Finally, mandatory nutrition labeling required on virtually all food products provides information to consumers as to the attributes of the product. The composite information provided for the finished food as packaged focuses consumers' attention to the overall nutritional attributes of the food, rather than unnecessarily emphasizing the amount of any particular ingredient (as would be the case if percent-ingredient labeling were required). Indeed, the agency tentatively concludes in its preamble 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." Nestle concurs.

## The Need for Broader Standards Reform

The key agency findings noted above are equally true for the numerous standards that the agency has established over the years. There are two significant considerations that Nestlé urges USDA to address: the scope and timeliness of reform.

Reform must include formal and informal standards of identity. In an effort to keep pace with product innovation, FSIS for many years attempted to develop wide-ranging informal standards of identity for virtually every "new" product offered to consumers. These standards are reflected in the ***Standards and Labeling Policy*** Book. None of these standards were created through notice and comment rulemaking. There are numerous other informal standards or naming conventions that the agency has adopted on an ad hoc basis that are not memorialized in any publicly available regulation or policy guidance document.

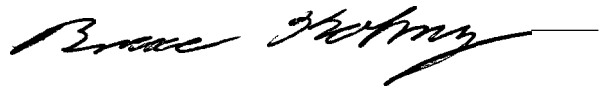
The nature of a standard should dictate the fashion in which reform can be accomplished. Formal standards, like that for pizza, are codified in the Code of Federal Regulations and cannot be modified except through notice-and-comment rulemaking. However, no such constraint faces FSIS if it were to determine that any or all of its informal standards should be modified or eliminated. Indeed, the elimination of, or substantial changes in, informal standards, for this very reason, presents a significant opportunity for FSIS to put into practice its oft-mentioned desire to accomplish meaningful standards reform.

The timing of standards reform is equally important. Since the early 1990's, FSIS officials have expressed in public comments the need for and value of standards modernization. Despite this commitment, the present rulemaking is one of only a very few number of standards that have been considered for reform. A guiding principles document has also been planned for many years but is still not forthcoming. While such a document may prove helpful, standards reform should not be further delayed. Moreover, as explained, FSIS need not await any new rulemaking initiatives to consider the necessity of its unwritten, ad hoc policies or the numerous informal standards.

On almost a weekly basis, Nestlé's efforts to create and market innovative products to meet consumer preference are stymied by standards of identity that are antiquated and provide no identifiable consumer benefit. Continued adherence to these standards by FSIS impedes product innovation to detriment of consumers and the food industry, alike.

Nestle welcomes the apparent significant changes in standards policy represented by the present proposal. FSIS should move expeditiously to a final rule and to facilitate broader reform. We would welcome the opportunity to meet with FSIS officials or provide any additional information helpful to the agency.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Kohnz", with a long horizontal flourish extending to the right.

Bruce Kohnz  
Director, Quality Management  
Nestle USA – Prepared Foods Division, Inc.