



United States
Department of
Agriculture

Food Safety and
Inspection
Service

Office of Policy and
Program Development

Washington, DC
20250-3700

Paul Zullo
Gourmet Boutique, LLC
144-02 158th Street
Jamaica, NY 11434

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Dear Mr. Zullo:

The Food Safety Inspection Service (FSIS) has completed its review of the petition submitted on behalf of Gourmet Boutique asking that the Agency amend its regulations to create a standard of identity for poultry products labeled as "grilled." The petition states that some products permitted to be labeled as "grilled" are not truly grilled, and that a grill is the only cooking device that can "impart a true grill mark." In addition, the petition states that current labeling of these products is misleading to consumers expecting "the flavor profile created when a product is truly grilled."

According to the petition, cooking methods that introduce moisture or lack high heat are not conducive to grilling and will inhibit the "Maillard Reaction" in which sugars and proteins chemically bond to form the caramelized taste and look of true grilled foods. To support the requested action, the petition includes an article on grilling, and six identical, concise affirmations from professional chefs that support the definition of "grilled" in the petition. The petition does not include consumer studies or other data to demonstrate how the suggested "grilled" standard would meet consumers' expectations of the characteristics of such products. The petition also does not include data on the potential economic effects of the requested action.

After careful consideration of the petition and the supporting documentation, we have concluded that the documents do not contain sufficient data to demonstrate that poultry products currently labeled as "grilled" do not meet consumers' expectations of a grilled product, or that the labeling of these products is otherwise misleading. Therefore, for the reasons discussed below, we are denying your petition without prejudice.

The existing regulations do not prescribe a standard of identity for poultry or meat products labeled as "grilled." Poultry products that are not covered by a regulatory standard and that do not have a common or usual name are required to be labeled with a truthful descriptive designation as the product name (9 CFR 381.117(a)). As noted in the petition, although the regulations do not prescribe the cooking methods required for poultry products labeled "grilled," the Agency has permitted use of the term "grilled" as a descriptive designation as part of the product name if such use is not false or misleading.

FSIS considers the descriptive designation "grilled" to represent a method of cooking by which a cooking utensil with parallel bars is used to expose food to heat. Thus, poultry may be "grilled" using types of equipment other than a standard grill. Examples of equipment routinely used to grill poultry include a grill pan (similar to a frying pan but with raised ridges to mimic the wires of an open grill), a flat griddle, and ovens with gas

or electric heating coils as the primary source of heat supplemented by steam. As noted in the petition, the Agency has indicated, through a non-publicly posted response to an "AskFSIS" inquiry, that labeling poultry products as "grilled" is not false or misleading if the grill marks are applied by a heat source. FSIS has only required the qualifier, "grill marks added," if the grill marks are added by an artificial means, such as by use of caramel coloring rather than a heat source.

The petition asserts that cooking methods that use heat to produce a grill mark but that introduce moisture or that do not use high heat result in products that do not meet consumer expectations for the taste and look of true grilled foods. According to the petition, under FSIS's existing label review and approval procedures, consumers are being misled about the true attributes of poultry products labeled as "grilled." However, the petition does not include consumer studies or other data on what consumers understand the term "grilled" to mean. FSIS is also not aware of any available data showing that consumers are being misled by the existing use of "grilled" in the labeling of poultry products. Thus, FSIS has no basis for concluding that poultry products labeled as "grilled" under the Agency's existing policy do not conform to consumer expectations for grilled products.

On May 20, 2005, FSIS, in conjunction with the Food and Drug Administration, proposed a set of "general principles" for establishing new food standards and for revising or eliminating existing food standards (see "Food Standards: General Principles and Modernization of Food Standards" 70 FR 29214 (available on the FSIS Web site at: <http://www.fsis.usda.gov/OPPDE/rdad/FRPubs/95-051P.pdf>)). Although the proposed general principles have not been finalized, petitions that are consistent with these principles are more likely to contain information that is needed to support a new standard of identity than petitions that do not. While FSIS recognizes that not all of the general principles will be applicable to every food standard, the proposal provides that a petition to establish a standard of identity should include a comprehensive statement that explains how the proposed food standard conforms to the general principles that apply to the proposed revision and should contain data showing how the suggested definitions would ensure that consumer expectations of the product characteristics are met.

In the proposed general principles, FSIS encourages petitioners to confer with different interest groups, such as consumers, industry, the academic community, and professional organizations, in formulating a standard of identity (70 FR 29225). As noted above, your petition includes statements from professional chefs that support your suggested standard for "grilled." However, in the general principles, FSIS also emphasizes that documentation of the support of interest groups would not be an acceptable substitute for the information or data that is needed to substantiate statements and claims made in the petition (70 FR 29225). Petitions that make claims about consumer expectations or beliefs for the purpose of defining the basic nature and essential characteristics of a food should also provide information or data that substantiates those claims. Marketing data, food formulary compilations, studies of restaurant menus, and consumer survey and focus group research data are potentially acceptable sources of data for substantiating statements and claims made in the petition.

As noted above, your petition also did not include information on the potential economic effects of establishing a standard of identity for "grilled" poultry. As part of the regulatory development process, FSIS is required to conduct certain analyses on the impact of proposed and final regulatory amendments. Such analyses include, among other things, an assessment of the costs and benefits of the proposed regulation and potential impacts on small businesses. The Agency's resources for petition review and regulatory development are limited, and after a petition is granted, the subsequent rulemaking often requires that FSIS expend resources to conduct these analyses. Thus, although it is not required, FSIS encourages petitioners to submit data on the potential economic impacts associated with the action they are requesting to facilitate petition review and regulatory development if the petition is granted.

For the reasons discussed above, we have concluded that your petition does not contain the type of information that FSIS would need to conclusively define "grilled" and support a regulation that establishes a new standard of identity. Therefore, we are denying your petition. Because our denial is without prejudice, you are not precluded from submitting a revised petition that contains additional information, such as the information described above, to support the requested action.

In accordance with FSIS regulations, the petition was posted on the FSIS website in June, 2011, and the Agency intends to post this response as well. We apologize for our delay in responding to your petition, but our resources for petition review are limited.

Sincerely,



Rachel Edelstein
Assistant Administrator
Office of Policy and Program Development

Cc:

- A. Almanza, OA
- P. Derfler, OA
- C. Blake, OPACE
- B. Mabry, OPACE/CPA
- A. Leach, OPACE/ECIMS
- R. Murphy-Jenkins, OPPD/LPDS
- J. Canavan, OPPD/LPDS