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June 21, 2005

Division of Dockets Management
(HFA-305)
Food and Drug Administration
5630 Fishers Lane
Room 1061
Rockville, MD 20852

Docket No. 2004N-0463 Food Labeling; Prominence of calories;
Docket No. 2004N-0456 Food Labeling: Serving sizes of products that can reasonably be consumed at one eating occasion; updating of reference amounts customarily consumed; approaches for recommending smaller portion sizes (70 FR 17008 & 17010; April 4, 2005)

Dear Sir or Madam:

Nestlé USA, Inc. (“Nestlé”) is a major food company in the U.S. with thousands of product labels that would be affected by any new labeling regulations. We appreciate the opportunity to comment on the questions FDA poses. We support most of the comments made by our trade associations, Food Products Association, Chocolate Manufacturers Association, and Grocery Manufacturers of America, but would like to emphasize several points.

All new labeling regulations should be bundled for a uniform compliance deadline

One of the most important comments Nestlé needs to convey is the absolute need to bundle together any new regulations resulting from these ANPRs and any other labeling initiatives contemplated by FDA over the next several years. It is extremely time-consuming and expensive to make changes to all our SKUs, as we are now experiencing as we implement the recent trans fat and allergen labeling requirements. Repeated rounds of label changes, as new labeling initiatives come along, are extremely burdensome. We believe that, to the extent possible, any further label-change regulations MUST be combined into a single effort in order to minimize the costs and complexities involved with such changes.

If the agency wishes, we could go into detail on what we face when implementing a compliance deadline for all packaging. It is particularly complex and burdensome for our seasonal confections products where lead times for labeling of holiday-specific multi-brand products are longer than for non-seasonal items.



No mandatory disclosures should be imposed for the Principal Display Panel (PDP)

All of the nutrition information is important in planning healthful diets, and singling out a calorie or servings-per-container disclosure on the PDP as mandatory would send a message to consumers that only certain nutrients are important or should be given consideration in planning diets. It is reasonable to conclude that Nutrition Facts panels are fully recognizable by consumers and that they understand where and how to find a product's nutrition information. Therefore, we see no benefit and only potential downsides to mandating nutritional or servings declarations on the PDP.

In addition, Nestlé believes that a mandatory PDP disclosure sets a precedent for future initiatives based on nutrients that become popular in the national media. For example, when the NLEA regulations were first written, fat happened to be the nutrient most "important" to consumers, and regulations focused on ensuring adequate disclosures about fat. Presently, calorie information is deemed significant, but next it could be calcium or trans fat or fiber. FDA should avoid a precedent that the "nutrient du jour" be disclosed on the PDP, or else interested parties could demand it be done for other nutrients that are deemed important in the future.

The communication of single servings versus multiple servings should be addressed in the Nutrition Facts panel by making more prominent the servings per container (when multiple), and including a calorie disclosure per container for products with up to four servings per container

It is clear that the agency wants to address the issue of consumers not always understanding how to determine the calories in a multi-serve product that they might typically consume in a single serving. There have been three basic proposals, each with multiple permutations, on how to best communicate this for consumers:

- 1) Mandate PDP disclosures such as calories per container.
- 2) Establish that products that are potentially consumed at a single occasion be labeled as single-serving packages.
- 3) Require two columns in the Nutrition Facts panel.

Nestlé prefers a modification of (3) whereby only the calories and servings per container would be highlighted in the Nutrition Facts panel for products that potentially would be consumed in a single occasion. Before going further into describing this suggestion, we will explain why we oppose the first two.



We already have stated our opposition to (1), as we feel mandatory disclosures on the PDP are the wrong approach. On a side note, some have suggested mandating disclosures for calories per package, regardless of package size, and we think that would be of little value to consumers in most cases (e.g., calories per sack of flour or sugar). Any discussion of disclosing information per package should address only packages that potentially could be consumed at a single eating occasion. Nestlé feels this applies only to products providing two, three, or four servings per container. Clearly, for products with five or more servings per container, there is no reasonable expectation that such packages would be consumed at a single sitting except in highly unusual situations where the consumer doing so would likely already know he is consuming a larger-than-normal quantity of the food.

We also strongly oppose (2) because we believe it is absolutely going in the wrong direction to label large servings as a single serving. While we understand that a total package disclosure may dissuade some individuals from consuming the entire package, we also see potential that such a disclosure could be construed by many as “permission” to consume a large serving -- an acceptable practice only for a specific few types of consumers (like teenage boys on a football team). Even though we produce some products with two, three, or four servings per container because there is a demand in the marketplace, we are aware that many purchasers do not eat these in a single occasion, nor do we want to encourage that. The comments from our trade associations did a good job of elaborating our opposition to this approach.

The problem with a full second set of nutritional values in (3) is that consumers generally are not going to be interested in all the additional information. In addition, label space will be an issue as well as a far more complicated presentation for Tabular formats, potentially making the Nutrition Facts panel less friendly and manageable. Even for the standard vertical format, many products currently have two columns to show as sold and as prepared (e.g., our Nesquik powder when mixed with milk as directed). Having to add two more columns for a total of four would make it unworkable.

Nestlé’s suggestion

Therefore, Nestlé’s suggestion is to allow for three approaches depending on how many servings per container the product provides.

- (1) If the product is a single-serve container, we see no need to make any changes at all regarding servings or calories per container. See Attachment 1 for an example.
- (2) For products with more than four servings per container, we suggest moving Servings per Container to the very top of the Nutrition Facts panel thereby making it more



prominent and easy to read. See Attachment 2 for an example.

- (3) For products with two, three, or four servings per container that are likely to be consumed at a single occasion, we recommend adding a disclosure for calories per container at the top of the Nutrition Facts panel just below the Servings per Container. In our opinion, making it clearer that this size of a product is intended for multiple servings is the single most important piece of information to help influence behavior to consume less food. This should be tested with consumer research, as should any proposed changes to labeling format, but we would predict that this would help clarify that the “recommended” portion size is less than the complete package. See Attachment 3 for an example.

Note: This requirement would apply only to products with two, three or four servings per container *that potentially could be consumed at a single occasion*. We think a rule should probably default to mandating this for any product with two, three, or four servings per container, but allow a company to defend why this calorie disclosure would not be necessary for a particular kind of product that would not be expected to be consumed in a single eating occasion. For example, a quart of milk would not be thought of as a single-serve container, so would not be required to list the calories per package

The DV footnote for 2000- and 2500-calorie diets should be eliminated altogether

While on the subject of changes to the Nutrition Facts panel format, Nestlé suggests that the DV footnote serves no real purpose with consumers and should be dropped. This would be especially true if any new additions would be required, such as our recommendation to disclose servings per container, and in some cases, calories per container, in a prominent way at the top of the panel.

Our understanding of the origin of the footnote is that it was a compromise between the HHS and USDA Secretaries given that the USDA Secretary opposed the %DV concept on the basis of differing calorie needs by consumers. Now that %DV has been on labels for 12 years, we see no need to retain a footnote regarding differing Daily Values depending on calorie intake. Although we understand that many consumers still do not fully know how to use the %DV values anyway, we certainly do not think the DV footnote adds anything useful to consumer understanding.

If this requirement is dropped, companies should be able to leave it on their labels voluntarily until which time they would make changes for other reasons.



Nestlé opposes a declaration for % DV for Calories to replace Calories from Fat

We oppose showing a %DV for calories (based on a 2000-calorie diet) for two reasons: 1) consumers already have difficulty understanding percentages and how the existing %DVs apply to their eating behaviors; and 2) people's calorie needs differ so vastly that it is improper to try to generalize such a declaration on the label for 2000-calorie diets. We think it's okay to use this "average" calorie marker when establishing other Daily Values, such as for the macronutrients, but to do the same for calories is too directly misleading for most people.

With regard to the existing Calories from Fat, the agency asked whether this information should be eliminated. Given that we think any proposed label change needs clear evidence of value with consumers, we believe this question should be researched. It is an example of why it is ill-advised to establish mandatory labeling requirements based on the current "nutrient of concern", which fat was when labeling regulations were first written. Likewise, research around consumers' understanding and use of a proposed %DV for calories should be conducted before mandating any such change.

FDA should NOT attempt to update RACCs

Nestlé believes this would be a non-productive exercise. There is not sufficient basis for making changes, and we certainly would not want to see RACCs increase simply because consumers are eating bigger portions (which is what we should be trying to counter).

FDA should allow calorie content comparisons with a minimum of 10% fewer calories, but should not allow comparisons between different portion sizes of the same food

Nestlé agrees that calorie differences less than 25% fewer calories can still be meaningful to consumers. As long as a minimum difference were required, for example 40 calories, then we think such claims should be allowed.

The ANPR also asked several questions about making comparisons of foods with different portion sizes. If the food is the same, we oppose making a calorie comparison based simply on a different serving size because we think it may be confusing (e.g., "This 8-oz serving has fewer calories than our 12-oz serving"). A message that a smaller portion had fewer calories than a larger portion is so obvious that we think the consumer would object once he fully realized what was truly being claimed (or, *not* claimed).

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However, we support the existing allowance in 101.13(j)(A)(i) for relative claims using “fewer calories” that compare different products that can generally be substituted for one another in an eating occasion (e.g., “One serving of blueberries has fewer calories than one serving of apple pie”, given that for dessert one could choose blueberries instead of pie).

Nestlé appreciates the opportunity to present these comments and recommendations for changes in labeling rules. If you have any questions about what we are recommending, please feel free to contact me at (818) 549-6353.

Sincerely,

Kenneth Mercurio
Director, Regulatory & Nutrition

Cc: Bruce Kohnz, Vice President, Quality Management and Regulatory Affairs
Kristin Adrian, Vice President and General Counsel