

June 20, 2005

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

**Re: 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**

Dear Sir or Madam:

The International Dairy Foods Association (IDFA) appreciates the opportunity to comment on the serving sizes of food products. We recognize the problem of overweight and obesity in this country and stand ready to do our part in helping solve the obesity crisis.

IDFA, which represents the nation's dairy processing and manufacturing industries and their suppliers, is composed of three constituent organizations: the Milk Industry Foundation (MIF), the National Cheese Institute (NCI), and the International Ice Cream Association (IICA). Its 500-plus members range from large multinational corporations to single-plant operations, representing more than 85% of the volume of milk, cultured products, cheese, ice cream and frozen desserts produced and marketed in the United States.

While IDFA appreciates the attempts of FDA to address the obesity crisis in every possible way, we don't believe that mandating changes in the way serving sizes are declared on food labels will have the desired impact on obesity. We are unaware of any studies that indicate that the current method of setting and declaring serving sizes on food labels contributes to obesity or that a change in the method of declaration would help reduce the number of Americans who are overweight and obese.

In light of the desire to provide consumers with information in the most helpful format, IDFA offers the following responses to the questions posed by FDA.

Do consumers recognize the difference between serving sizes on food labels and servings recommended in dietary guidance? If so, what do consumers think the

differences are? What information on a label would help make this distinction clearer? For example, should the serving size and/or servings per container on the food label be made more prominent? If so, how?

Consumers do understand current servings. Using common household measurements to designate serving sizes, as currently done on food labels, makes it easy for consumers to measure servings and compare foods.

Foods that currently have the same serving size in both labeling and dietary guidance should not have changes made to their Reference Amounts Customarily Consumed (RACC) and labeled serving size. This would create a difference in serving size between food labels and dietary guidance, which could affect the recommendations already set forth in dietary guidance.

Would consumers think that an increase in serving size on food labels means more of the food should be eaten? What additional education efforts should be provided to consumers to avoid such a conclusion?

We are concerned that an increase in RACCs, and therefore serving size, would signal to consumers that they should be eating more. If they are currently consuming 125% of the labeled serving size and the serving size was increased to accommodate that consumption level, consumers may choose to consume 125% of the new serving size. This would result in having the opposite of the intended effect-- increasing consumption.

In addition, there are many foods where the industry has been portioning units specifically based on the RACC for that food, such as cheese slices or sticks of string cheese. In doing so, they are helping people limit their intake to an appropriate amount. If the RACC were changed, then these portion-controlled products would no longer be the correct sizes to help consumers use one unit as an appropriate portion.

Should the current cutoff criteria to define single-serving containers be changed? Should criteria vary for different types of products? Explain why or why not. What criteria should be used to designate which package sizes should be required to list nutrition information for the entire package?

The current nutrition labeling format and cutoff criteria should be maintained, in order to allow manufacturers the flexibility to respond to their markets. Currently, many products have the option, based on their size relative to their RACC, to declare either 1 or 2 servings or to declare a larger package as 1 serving. Processors consider who their target market is for a specific product and then determine which serving size will be most helpful to that market. If this flexibility is lost, consumers may be stuck with a product label that isn't appropriate or meaningful for them.

Setting criteria to determine when larger packages should be considered a single serving will be difficult, if not impossible. Different consumers eat or drink varied amounts at any given time. For example, the serving size may be based on the age of the intended

consumer: a young child may drink 8 ounces of milk, while an older teen may drink 16 ounces and a senior citizen may only consume 4 ounces. A single consumer may eat or drink varying amounts based on the situation. While for many people a pint of ice cream is four servings, for some it can be five servings or one serving. The existing serving size declaration, labeled in household units, is sufficient for consumers to estimate the nutrition and calories in the portion of the container they choose to consume.

Conversely, manufacturers may have an incentive to lower the size, and therefore the total calories, of single serving packages. Would this be an option that manufacturers would consider? If so, what would be the likely consequences of this repackaging?

Alterations in packaging size can be quite costly to make, including major capital investment costs, such as changing equipment to handle smaller packages. Many companies, especially smaller companies, cannot afford the investments necessary to provide different sized packages. Since product changes are based on consumer demand, if there was a great deal of consumer demand for a smaller package, there might be a benefit to manufacturers that would result in taking on the costs associated with decreasing package size. However, it is unlikely that a manufacturer would change their product size solely because of new serving size labeling rules. Therefore, any changes to the method of calculating serving sizes should be optional, not mandatory.

Because all currently approved comparative claims are based on the difference in the amount of the nutrient in a uniform amount of food such as per RACC, or per 100 g, will it be confusing to consumers to have claims made only on the basis of the difference in the amount of calories in two different labeled servings or two different portions of the same food? Explain why or why not.

This would probably be confusing to a consumer on a bulk-type package, where they are responsible for portioning out their own serving. They might serve themselves the same sized portion, but believe that they are getting fewer calories. However, if the claims were comparing single-serving containers, where the portion is determined by the manufacturer, this may be less confusing and more helpful to consumers. The calorie difference between choosing an 8 ounce can of soda versus a 12 ounce can may be more apparent if claims were allowed to be made.

One concern is how a comparison of different serving sizes would affect existing relative nutrient content claims, such as "light" which can be based on a reduction in calories. Would products be allowed to compare to another, larger product for the purposes of making a light claim? If this were allowed for light claims based on calorie reduction, how would it affect light claims based on a reduction in fat?

Should the size of the compared servings, portions, or packages be part of the claim? Explain why or why not.

When different sizes are compared, the claim should clearly state the serving sizes of each in the comparison statements currently required for "reduced calorie" claims. This would clearly state to consumers how the products were compared and would be less likely to be misleading or confusing. If a claim is made that compares the same amount of two different products, then declaring the serving size in the claim should be optional.

Currently all comparative calorie claims are limited to reductions of at least 25 percent. Should these comparisons continue to be limited to reductions of at least 25 percent, and if not, what justification is there that a smaller reduction of calories would be meaningful and significant?

If products contain fewer calories than another version, but do not meet the 25% reduction required by a "reduced calorie" claim, there should be some intermediate claim that is allowed. This smaller reduction should be differentiated from a "reduced" claim either by another term, such as "less," or by stating the percent reduction in the claim. If a smaller reduction, such as 10%, can be made and a consumer chooses foods with this amount of reduction several times a day, then a significant difference can be made in the consumer's calorie intake. As the DHHS anti-obesity initiative states, it takes "small steps" to make a change in a person's eating pattern and weight.

In addition to the above comments, we have concerns about the huge economic cost of these potential label changes to the industry. If the requirements on how to declare serving size on food labels were changed, every food label in the country would have to be redesigned. As we found when implementing the final rule on trans fat labeling, a seemingly simple label change can be quite costly, particularly for small companies. Rather than being a relatively inexpensive one printing color plate change, the entire Information Panel is affected as the size of the Nutrition Facts panel is altered, usually requiring multiple plate changes. If a RACC and serving size were changed, then all existing nutrient data would become incorrect. Products would have to be re-analyzed at a significant cost per product or have their nutrient values recalculated, which can take a great deal of time or a new investment in nutrition calculation software. New labels must be printed and old labels must be discarded, which disproportionately affects small businesses because their smaller production levels result in more obsolete packaging and larger relative costs for minimum packaging orders. For the upcoming trans fat label change, companies estimated a per-product cost of up to \$3,000 to change labels. This cost took into account the costs of design changes, printing new labels and employee time to review updated labels. Requiring food companies to make label changes without knowing what the impact will be on consumer behavior will have a negative economic impact on food companies, especially small companies who do not have the financial flexibility to absorb these costs.

In summary, IDFA is proud of the variety of reduced fat, reduced sugar and reduced calorie products that the dairy industry provides to consumers. We feel that providing the

information consumers want in order to control their weight is important, but feel that it must be in a format that is proven to be the most helpful to them. Please feel free to contact me if anyone at IDFA can help during this rulemaking process.

Sincerely,

Constance E. Tipton
President and CEO

cc: Michelle Matto MPH, RD