



POLICY & ACTION FROM CONSUMER REPORTS

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United States Department of Health and Human Services
Food and Drug Administration
10903 New Hampshire Avenue

Silver Spring, MD 20993

Submitted via www.regulations.gov

**Comments of Consumers Union to
The Food and Drug Administration on
“Food Labeling: Serving Sizes of Foods That Can
Reasonably Be Consumed at One-Eating Occasion:
Dual-Column Labeling; Updating, Modifying, and
Establishing Certain Reference Amounts Customarily
Consumed; Serving Size for Breath Mints;
And Technical Amendments”**

**Docket No. FDA-2004-N-0258
(Formerly Docket No. 2004N-0456)**

Introduction

Consumers Union¹ strongly supports the Food and Drug Administration’s (FDA) proposal to revise the Reference Amounts Customarily Consumed (RACCs) for certain food and beverage products. More accurate representations of customary serving sizes

¹ Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for telecommunications reform, health reform, food and product safety, financial reform, and other consumer issues. Consumer Reports is the world’s largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

will be of great benefit in helping consumers make choices that support a healthy lifestyle. We urge FDA to expeditiously finalize this rule, as well as the companion proposal regarding revisions to the Nutrition Facts Panel, regarding which we have submitted separate comments.

The Proposed Revisions More Accurately Reflect Modern-Day American Eating Habits

When labels list nutrition information for serving sizes that do not fit today's eating habits, that is misleading to consumers. We note that section 403(q)(1)A(i) of the Food, Drug, and Cosmetic Act provides that serving sizes are to reflect the amount "customarily consumed." We agree with FDA that it is time to revise the RACCs as to specific foods. As FDA notes, the RACCs were established using U.S. Department of Agriculture (USDA) survey data from 1977-1978 and 1987-1988.² Consumption patterns have changed significantly since then, with American adults consuming, on average, 240 more calories per day in 2009–2010 than in 1971–1975. Much of this is due to larger portion and package sizes for both foods and beverages.³

Small serving sizes listed on packages are often ignored, or can mislead consumers into thinking they reflect the package's entire contents rather than just a fraction. Moreover, many snack foods are now sold in packages and marketed in ways that suggest to consumers that they are single servings. For example, a "grab and go" package of Pringles actually contains slightly more than 2 1/3 "servings." An "on the go" package of Pepperidge Farm Goldfish has almost 2 1/2 "servings." Similarly, candy bars often contain 2-3 "servings," as does a bag of microwave popcorn. Frozen foods and prepared side dishes and entrees also often come in packages that can appear to be single serving but are in fact 2-3 "servings."

FDA Should Revise Serving Sizes for Certain Additional Foods

Using consumption data from the most recent National Health and Nutrition Examination Surveys (NHANES), 2003-2008, the agency proposes to modify an existing RACC if the median consumption increased or decreased by at least 25 percent, as compared with the RACC established in 1993.⁴⁵ In some instances, the FDA states, it

² Food and Drug Administration, Food Labeling; Serving Sizes, Jan. 6, 1993, 58 FR 2229, at 2236-2237.

³ Ford ES, Dietz WH, "Trends in energy intake among adults in the United States: findings from NHANES. *Am J Clin Nutr* 2013, vol. 97, pp. 848-53.

⁴ Food and Drug Administration, Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed at One-Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments, Mar. 3, 2014, 79 FR 11990, at 12008.

⁵ Juan W, "Memorandum to file: Consumption estimates for foods for infants and children 1 through 3 years of age and for the general food supply for individuals ages 4 years and older in the United States by general category and product category using data from the National Health and Nutrition Examination Survey, 2003–2008 (NHANES 2003–2008) compared to the 1993 RACCs, and Proposed Changes to RACCs." Feb. 11, 2014.

also took into account information received in citizen petitions and industry comments, as well as market trends.

We note that for some food categories where the change in consumption exceeds 25 percent, the FDA does not propose to revise the RACC. We urge the FDA to carefully consider the implications before deciding not to revise it. Similarly, there may be food categories where the impact on public health is significant enough that a revision may be warranted even though the change in consumption does not pass the 25-percent mark.

Among food categories that we believe warrant such further consideration are the following:

Canned soups often have listed serving sizes that are quite off from actual consumption. For example, the Nutrition Facts label for Campbell's Chunky Classic Chicken Noodle soup lists a 1-cup serving size. That is less than half the amount in an 18.6-ounce can. But a 2011 national telephone survey conducted by the Center for Science in the Public Interest (CSPI) found that almost two-thirds of consumers eat the entire can at one time – 280 calories and 1,840 mg of sodium, not the 120 calories and 790 mg of sodium listed for a single serving.⁶ For most adults, that is more than a full day's recommended intake of sodium.⁷ The median consumption of soup has risen approximately 29 percent as between the 2003-2008 measure of 316 grams and the 1993 RACC of 245 grams. We urge the FDA to reconsider whether soup warrants a revised RACC, given the higher risks associated with excess sodium consumption, of hypertension, heart attack, and stroke.⁸ Roughly 88 percent of Americans consume more than 2,300 mg of sodium a day,⁹ and two-thirds of adults have hypertension or pre-hypertension.¹⁰ FDA's proposal that containers up to two times the RACC would have to be labeled as single servings would not cover soup cans like Campbell's Chunky Classic Chicken Noodle Soup.

Powdered coffee creamers now have a 2-gram RACC, equivalent to a single teaspoon. But although, according to the NHANES 2003–2008 consumption data, the median intake of powdered creamer increased 100 percent (from 2 grams in 1993 to 4

⁶ Center for Science in the Public Interest. "Unrealistic serving sizes understate calories, sodium, saturated fat, says CSPI," Press Release, Aug. 2, 2011, <http://cspinet.org/new/201108021.html>.

⁷ The Dietary Guidelines for Americans, 2010 recommend consuming no more than 1,500 mg of sodium for people aged 51 and older, African Americans, and people who have hypertension, diabetes, or chronic kidney disease, and limiting sodium intake to 2,300 mg a day for others. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans*, 2010. 7th Edition, Washington, DC: U.S. Government Printing Office, December 2010.

⁸ He FJ, MacGregor GA, "A comprehensive review on salt and health and current experience of worldwide salt reduction programmes," *J Hum Hypertens*. 2009; 23:363-84.

⁹ Cogswell ME, Zhang Z, Carriquiry AL, et al. "Sodium and potassium intakes among US adults: NHANES 2003–2008," *Am J Clin Nutr* 2012, vol. 96, pp. 647-57.

¹⁰ Roger VL, Go AS, Lloyd-Jones DM, et al. "Heart disease and stroke statistics – 2012 update: A report from the American Heart Association," *Circulation* 2012, vol 125, pp. e2-e220.

grams), the FDA does not propose a change in its RACC.¹¹ For a number of reasons, consumers often add more than 2 grams into their coffee, often believing the creamer is effectively fat-free at any serving size, and they are drinking larger amounts of coffee than assumed in the RACC, or they want their coffee to have a creamier look. But Nestlé Fat Free Original Coffee-mate, for example, meets the definition of “fat-free” (i.e., less than 0.5 grams of fat per serving) only if 2 grams or less is used. We would recommend that the FDA modify the RACC to reflect a more realistic serving size, such as one tablespoon, the serving size for liquid creamers.

Aerosol cooking sprays, such as PAM, have tiny serving sizes – a third-, quarter-, or fifth-of-a-second spray. These products claim to have no calories or fat, even though the first ingredient in PAM Original Non-Stick Cooking Spray is canola oil. Some of PAM’s labels disclose that a one-second spray contains 9 calories and 1 gram of fat. We would recommend that the FDA increase the existing RACC for “Fats and oils, spray types” (0.25 grams) to reflect a more realistic serving size based on actual consumer use.

Pasta with sauce (a mixed dish) has increased in median consumption by 50 percent. Compared to the 1993 RACC of 1 cup, Americans are now consuming a median of 1.5 cups. We recommend that the FDA modify the RACC for pasta with sauce (mixed dish) to 1.5 cups (1 cup of pasta plus 0.5 cup of tomato sauce) to provide consumers with a more accurate measure of what they are consuming in calories, saturated fat, and sodium.

We recommend that FDA also consider requiring dual labeling for packages exceeding but close to the upper threshold for designation as single serving, to better inform consumers who might otherwise be misled. And in the other direction, it may be appropriate for the FDA to consider exempting certain food categories, where the risk of consumer confusion is low. Milk might be one such category, for example.

FDA Should Educate Consumers That Serving Sizes Are Not the Same As Recommended Portions

We recognize that the RACCs used to calculate serving sizes are required to be based on the amount of food people customarily consume, and are thus not intended to be recommended amounts of food to eat. But we believe it is natural for consumers to confuse the two, and we urge the FDA to address this confusion. One way would be to require that the serving size be noted on the label as a “typical” serving size. Another might be to indicate, in a clarifying footnote, that “the serving size is based upon the amount typically consumed, and is not a recommended portion size.” Taking both these approaches in combination would provide the clearest guidance. This would be in addition to the FDA’s proposed education efforts to increase consumer understanding of

¹¹ Juan W, “Memorandum to file: Consumption estimates for foods for infants and children 1 through 3 years of age and for the general food supply for individuals ages 4 years and older in the United States by general category and product category using data from the National Health and Nutrition Examination Survey, 2003–2008 (NHANES 2003–2008) compared to the 1993 RACCs, and Proposed Changes to RACCs.” Feb. 11, 2014.

the meaning of the change in serving sizes, which we also support.¹² And there may be other means of educating consumers on this distinction, which FDA could test in consumer research.

Conclusion

Consumers Union strongly supports the update to the Nutrition Facts Panel. We appreciate FDA's consideration of our views on this issue of great importance to the health and wellbeing of American consumers.

Respectfully submitted,



George P. Slover
Senior Policy Counsel

¹² 79 FR at 12007.