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DOCKETS MANAGEMENT BRANCH (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, Maryland 20852

RE: Docket No. 94P-0036; Food Labeling: *Trans* Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims; Reopening of the Comment Period; 67 Fed.Reg. 69171 (Nov. 15, 2002)

Dear Sir or Madam:

ConAgra Foods appreciates the opportunity to comment on the Food and Drug Administration ("FDA") proposal to require the statement "Intake of trans fat should be as low as possible" on the Nutrition Facts Panel when trans fat is listed. This document is a supplement to our first set of comments submitted December 16, 2002. While ConAgra Foods supports the FDA's decision to require the mandatory declaration of trans fat content on a separate line within the Nutrition Facts Panel, we are deeply opposed to the proposed footnote.

ConAgra Foods opposes the proposed statement because it is misleading and confusing, is not supported by consumer testing, is scientifically premature and sends conflicting messages to consumers about the relative benefits of consuming various quantities and types of fat including saturated fat consumption versus trans fat consumption. Rather than proceeding with the footnote, ConAgra Foods strongly recommends that FDA undertake a major consumer education campaign regarding trans fat consumption and how it fits into a nutritionally balanced diet.

To support the supposition that the footnote, "Intake of Trans Fat should be as low as possible" (the "Footnote") proposed by the FDA is confusing to consumers, ConAgra Foods commissioned a consumer study. Two independent third parties were utilized to develop and conduct the internet study. Seurat, Inc., devised and built the internet survey, which was then hosted and administered by Foodfit.com, a health oriented website founded by Ellen Haas, a former Undersecretary at USDA. An e-mail attaching the survey and asking for respondents was sent to Foodfit's database of nutrition and health conscious consumers. The respondent's e-mail address and name were verified for substantiation purposes.

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As of this writing, 485 health-motivated consumers have responded to the survey, a copy of which is available to the FDA upon request. A screening question was asked to determine if the Nutrition Facts Panel (“NFP”) on a food label was important when purchasing or consuming food. Four hundred seventy-two (472) respondents answered “yes”, the other 13 who responded “No” were removed from the survey.

A general information question was asked in which respondents were to choose which nutrient was most important to them when choosing between food products. Thirty-five percent (35%) indicated total fat, thirteen percent (13%) chose saturated fat, and three percent (3%) chose trans fat.

Because the Kraft survey focused on the potential that consumers will choose foods higher in saturated fats due to the footnote, ConAgra Foods focused on the possible confusion related to the footnote. In the question related to confusion, the respondents were provided two NFP’s, side by side, from random food products. Both NFP’s had identical nutrient levels, with the exception of the trans fat. The left NFP showed 5 grams trans fat, while the right NFP showed 1 gram trans fat. The FDA’s proposed footnote was included on both NFP’s.

The question was as follows:

“The statement at the bottom of the nutrition facts panel states:

“**Intake of Trans Fat should be as low as possible.’

“What does this statement mean to you.

- a. that 1 gram of trans fat is ok to eat.
- b. that 5 grams of trans fat is ok to eat.
- c. that 9 grams of trans fat is ok to eat.
- d. I don’t know how much trans fat is ok to eat.”

Sixty-seven percent (67%) of the respondents chose answer “d”, indicating that despite the presence of the footnote, they still did not know how much trans is ok to eat.

ConAgra Foods then had our biostatistician analyze the results of the survey overall and of this question specifically, to determine statistical significance. Indicating the survey met or exceeded the requirements for statistical significance, the analyst went on to comment on the above quoted question and responses:

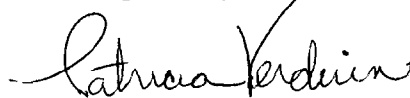
“Considering that the people that took this survey should be more ‘health’ oriented, I’d expect the results to be skewed opposite of what they are.

The high frequency of the 'I don't know' response reflects incredible uncertainty about trans fats...."

The footnote does not, in and of itself, address this confusion. It is clear that more education is needed.

Based on the results of this and Kraft's survey, as well as the reasons given in our previous comments, ConAgra Foods respectfully submits that the Footnote will do more to confuse consumers than enlighten them, will cause consumers to choose products higher in saturated fat and cholesterol, is not based on sound science related to acceptable levels of trans fat in the diet, and is a regulatory anomaly. Therefore, the Footnote should not be required on NFP's or on any part of the food label.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Patricia Verduin". The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

Patricia Verduin, Ph.D.
Sr. Vice President, Director Product
Quality and Development