



VIA EMAIL ONLY: Scott.Gottlieb@fda.hhs.gov

November 21, 2017

The Honorable Scott Gottlieb, MD
Commissioner, Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, Maryland 20993

Dear Dr. Gottlieb:

Founded in 1936, the National Automatic Merchandising Association (NAMA) is the association representing the \$25 billion U.S. convenience services industry, with its core membership being comprised of owners and operators of vending machine companies. With nearly 1000-member companies – including many of the world’s most recognized brands – NAMA provides advocacy, education and research for its membership.

Consistent with previous conversations and formal written requests, NAMA would like to re-submit its request that the FDA extend the compliance date for front-of-package (FOP) Calorie Labeling on products sold in vending machines to align with the FDA’s proposed extension of the Nutrition Facts Label. This extension will provide vending company owners and operators the ability to continue to rely on FOP labeling to meet the FDA’s requirements set forth for calorie disclosure on vended products in its August 1, 2016 Constituent Update; and manufacturers will be able to streamline their packaging redesign process and reduce consumer confusion. Additionally, since the font size for FOP calorie disclosure for vended items has not been formally resolved, we ask that the FDA set the font size for FOP calorie disclosure on items sold from vending machines, provide flexible signage for calorie labeling for gum, mints and roll candies, and clarify multi-serve FOP calorie declaration as soon as possible through notice-and-comment rulemaking or through an interim final rule (whichever FDA believes is procedurally appropriate).

Front of Pack Calorie Labeling for Vended Food & Beverage and Nutrition Facts Label Extension

NAMA strongly believes that the compliance date for FOP calorie labeling of items sold in vending machines should be extended to harmonize with the proposed extension of the Nutrition Facts Label. As both the proposed rule and the final rule on FOP require manufacturers to redesign and print packaging; alignment of these dates is critical and will reduce vending operator exposure to liability, reduce costs and limit consumer confusion.

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Additionally, NAMA supports the FDA's proposed extension of compliance dates for Nutrition Facts Label updates for manufacturers with \$10 million in annual food sales from July 26, 2018, to January 1, 2020, and for manufacturers with less than \$10 million in annual food sales, from July 26, 2019, to January 1, 2021, and we have submitted comments to that effect. With several redesigns and the inclusion of new information, NAMA believes that providing manufacturers of all sizes adequate time to redesign and print packaging will be incredibly beneficial to both consumers and manufacturers.

Require Type Size of at least 150% of Net Quality of Contents

As noted above, the FDA has not proposed or finalized a rule to formalize a font size for FOP disclosure for food and beverage items sold in vending machines. An extension of the FOP compliance date for vended products will provide the FDA sufficient time to address unresolved issues with FOP for these products. NAMA supports the FDA requiring FOP calorie disclosures to be made in a font size that is at least 150% of the font size for the net quantity of contents statement. The "150%" standard is currently used for FOP calorie labeling on beverages under the American Beverage Association's Clear on Calories Program.¹

Flexibility for Calorie Disclosure for Gum, Mints and Roll Candies

For vended products in very small packages (specifically, gums, mints, and roll candies) NAMA requests the FDA provide flexibility for these very small packages to meet the requirements of calorie disclosure for items sold from vending machines, due to the unique nature of their size, placement in the machine and other factors previously noted by FDA in their August 1, 2016 Constituent Update. The flexibility would allow vending operators to meet the requirements of the rule by placing signage in close proximity to small package products that states "Gum, Mints and Roll Candy provide 25 calories or less per serving." NAMA also submits that this proposed declaration for gum, mints and roll candies must be clear and conspicuous and placed prominently on a sign in close proximity to the article of food or selection button so long as the signage is visible at the same time as the food, its name, price, selection button, or selection number is visible.

Clarification of Multi-Serve Packages Disclosure

The vending industry strongly supports the clarification that "x calories per serving and y servings per package" satisfies the requirement to label total calories per package. This labeling method allows for a consistent approach with requirements previously outlined by the FDA in the Nutrition Facts Panel (NFP) rules. Furthermore, it is the calorie format with which consumers are most familiar given the longevity of this NFP. Providing consistency in the manner in which calories are displayed on multi-serving packages is most likely to reduce consumer confusion

¹ <http://members.ameribev.org/files/toolkits/final-aba-clear-on-calories--calorie-label-initiat.pdf>

regarding mandatory nutrition information and provide much needed flexibility to small businesses in both the food manufacturing and vending operator areas.

Additionally, this method aligns with several long-standing voluntary industry front-of-package labeling programs such as the Grocery Manufacturers Association (GMA)'s "Facts Up Front" and the "Treat Right" FOP labeling system, a voluntary initiative launched by the National Confectioner's Association (NCA) in 2013. These programs were developed to be simple and easy for consumers to understand.

Further, allowing the FOP requirement to be listed as "x calories per serving and y servings per package" allows for greater consistency and greater clarity with the pre-existing NFP rule. A multi-serving package would list the calorie information on a per serving basis, so the "calories per serving, serving per package" declaration would resolve potential concerns regarding lack of consistency of the nutrient content claim with the information presented in the NFP.

NAMA requests that FDA clarify and confirm that a declaration of "x calories per serving and y serving per package" would be permissible as a calorie declaration consistent with 21 CFR 101.8.

In closing, NAMA strongly supports the compliance date for FOP calorie labeling of items sold in vending machines be extended to match the proposed extension for Nutrition Facts Label compliance date extension updates outlined in the October 2, 2017 proposal; that the FDA promulgate appropriate rulemaking for FOP calorie disclosure font size for items sold in vending machines to be at least 150% of the font size for net quantity of contents statement, adopt the proposed signage language referenced in this letter regarding very small packages - gum, mints and roll candies and clarify the rule regarding multi-pack calorie disclosure. Thank you for your consideration and should you have any additional questions please do not hesitate to contact me.

Kind regards,

Jason Eberstein
Director, State & Federal Government Affairs