

September 25, 2018

Via Regulations.gov

Dockets Management Staff (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Rm. 1061
Rockville, MD 20852

Re: Docket No. FDA-2011-F-0171 for *“Food Labeling: Calorie Labeling of Articles of Food Sold From Certain Vending Machines; Front of Package Type Size.”*

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.

NAMA supports the proposed regulation (FDA-2011-F-0171) as we believe it will provide clarity to vending machine operators and sufficient time for product manufacturers to update their packaging. Both operators and manufacturers will benefit from clear and concise regulations – streamlining efficiency and reducing costs. NAMA has estimated that FOP Calorie Disclosure finalization will save vending machine operators between \$50 - \$300 per vending machine with the greatest savings coming from small businesses that have limited resources to create and adjust vending machine signage.

NAMA strongly support FDA’s proposed rule to amend the type size requirement for FOP calorie declarations used to comply with the vending machine labeling final rule to require such declarations to be at least 150% the size of the net quantity of contents statement. We believe such a type size is easily visible to the prospective purchaser at the point of purchase and provides an objective standard that can be easily measured and enforced, while minimizing disruption to successful industry FOP labeling programs, and reducing the burden on vending machine owners/ operators, many of which are small businesses. We ask that FDA revise the proposed text slightly to clarify that the type size must be 150 percent of the size required for the net quantity of contents statement. We also ask the FDA to clarify that the type size requirement refers to the quantitative value for calories for FOP declarations and not the word “calories” itself. We believe an FOP calorie declaration to be essential for vending operators to comply with the vending machine calorie disclosure regulation.

The size of the net quantity statement is an appropriate standard because it does not depend on the size of other material on the label and provides an objective, consistent standard for each package size. In contrast, the existing standard of “50% of the size of the largest printed matter on the label” would result in calorie declarations that differ in size depending only on the size of other information on the label that is not relevant to the calorie declaration. FDA’s proposal would link the minimum size requirement to a standard that regulators can easily enforce and measure. It also would provide clarity and certainty to

consumers and operators implementing the rule, without the potential for confusion over what counts as “printed matter.”

We appreciate the Agency providing enforcement discretion until at least January 1, 2020, pending additional rule making, with respect to gums, mints, and roll candy products sold in glass front machines in packages that are too small to bear FOP labeling. We continue to seek FDA’s acceptance of our original proposal to allow signage inside the vending machine or in close proximity to the article of food or selection button that could apply to the rows of gums, mints, and rolled candies that have 25 calories or less per serving, that have a reference amount of 5 grams or less, and that contain at least three servings per package. We encourage continued collaboration between Industry and the FDA to address labeling concerns in this category.

NAMA applauds FDA for providing enforcement discretion and proposing to extend the compliance date to January, 1 2020, for the products in glass front vending machines that provide FOP calorie disclosures and comply with all aspects of the final rule except for the type size requirement. This enforcement discretion is critically important to vending machine operators and product manufacturers because the industry lacked information to implement the vending labeling final rule by the original July 26, 2018 compliance date.

We also appreciate the agency proposing to extend the compliance date to align with the compliance date for the nutrition facts labeling final rules for larger food manufacturers. Although the vending machine labeling final rule applies to vending machine operators, rather than to food manufacturers, operators of glass-front and similar style vending machines rely primarily on food companies to provide on-package calorie disclosures that meet their obligations under the vending rule. Harmonizing the two compliance dates provides for more efficient implementation of the final rules, so that companies only have to revise labels once to comply with both sets of requirements, which will avoid unnecessary costs.

In closing, NAMA strongly supports FOP font size that is at least 150% the size of the net quantity of contents statement, enforcement discretion until 2020, and encourages the FDA adopt a solution for very small packages - gum, mints and roll candy. 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