

PACKAGE DISCLOSURE REQUIREMENTS

ISSUE:

With an understanding of the current obesity situation in the United States, NAMA takes seriously its commitment to deliver the tools needed for the convenience services industry to provide consumers with nutritional information and a variety of food and beverage choices. The Affordable Care Act (ACA) requires businesses that own or operate 20 or more vending machines to disclose the caloric content of food and beverages prior to purchase at the point of sale. Separately, the FDA is in the process of updating the Nutrition Facts Panel (NFP) and the US Department of Agriculture (USDA) is developing labeling guidelines for Genetically Modified Organisms (GMO).

Important provisions in the final calorie disclosure rule are:

- Calorie information may be displayed by front of pack, front or adjacent to machine or electronic disclosure;
- Calorie information must be disclosed by amount of calories per package (limited situations allow for disclosure per serving);
- Rule applies to all items sold in vending, including industry-described “small package” items;
- Implementation date of December 1, 2016;

In addition to FDA’s regulatory action, as a result of NAMA’s efforts, Congress included report language in its fiscal year 2015 funding bill signed by President Obama, that the FDA “accept a clear, visible display of calories on the front of the package of articles of food sold from a vending machine or on the front of the vending machine as meeting such requirements.” This amendment has been helpful in assisting efforts to clarify front of pack disclosure requirements in the FDA’s pending guidance documents.

At the request of NAMA and other allied associations, the FDA formally extended the compliance date for final calorie declaration requirements for certain food products sold from glass-front vending machines to July 26, 2018. This announcement was followed by the issuance of the FDA’s draft guidance and small entity compliance guide. In December 2017 FDA announced submission of a proposed rule for review by the Trump Administration in response to a request from industry.

NAMA anticipates that the final rule likely will include: an extension of the compliance date for the vending machine labeling rule to align with the forthcoming extension in the compliance date for the Nutrition Facts Panel (NFP) revisions; proposals to address the outstanding issues involving type size for front-of-pack (FOP) calorie declarations as well as calorie declarations for gums, mints, and roll candies.

NAMA POSITION:

NAMA requests the FDA:

- Clarify the final rule's front of pack (FOP) font size disclosure language by amending the final rule to allowing type size of at least 150% of the Net Quantity of Contents disclosure to meet the rule.
- Clarify that an electronic/digital display of calories or a virtual image of the nutrition facts label on vending machines meets the requirements of the final rule as long as the disclosure is displayed before the customer buys the product, is clear and conspicuous, and prominently placed.
- Amend the final rule by allowing signage inside the vending machine or in close proximity to the article of food or selection button that could apply to the two bottom 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 serving per package.
- Grant a limited extension of the compliance date for the vending machine labeling rule to align with the forthcoming extension in the compliance date for the Nutrition Facts Panel (NFP) revisions, so that companies only have to revise labels once to comply with both sets of requirements.
- Issue a proposed rule or interim rule on vending machine labeling to address the outstanding issues involving type size for front-of-pack (FOP) calorie declarations, as well as calorie declarations for gums, mints, and roll candies.