



Serving the Vending, Coffee Service and Foodservice Management Industries

[Docket No. FDA-2011-F-0171]

RIN 0910-AG56

21 CFR Parts 11 and 101

Food Labeling; Calorie Labeling of Articles of Food in Vending  
Machines; Proposed Rule

Department of Health and Human Services  
Food and Drug Administration

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**Comments of:**

**The National Automatic Merchandising Association**

The National Automatic Merchandising Association. [www.vending.org](http://www.vending.org)

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**Re: [Docket No. FDA-2011-F-0171] RIN 0910-AG56**

The National Automatic Merchandising Association (NAMA) offers the following comments on the proposed rule: “Food Labeling; Calorie Labeling of Articles of Food in Vending Machines” which requires vending machine operators that own or operate 20 or more vending machines to disclose nutrient content information for certain articles of food sold from vending machines

**A. NAMA: Introductory Background**

The National Automatic Merchandising Association (NAMA) is the national trade association representing America’s vending, coffee service and food service industries. NAMA has approximately 2,200 members who operate vending machines, sell or manufacture equipment, and distribute or manufacture food and beverage items for sale through vending machines and related outlets. NAMA has 34 affiliated State Councils encompassing 41 states. The basic mission of NAMA is to collectively advance and promote the automatic merchandising and coffee service industries, so as to best serve these industries customers and NAMA members.

**B. NAMA’s Pro-Healthy Foods and Anti-Obesity Campaign**

**1. In Schools:**

Our members provide a wide variety of healthy food and beverages for purchase through vending machines. For example, the Alliance for a Healthier Generation reports that a school district in Florida recently purchased 60 vending machines which are providing students and faculty with “organic items, nutrition and sports bars, fresh fruits and vegetables, low fat milk and dairy selections such as yogurt and cheese sticks, fresh sandwiches, soymilk, bottled beverages and more.” Vending can provide “grab-and-go” solutions to meals through refrigerated vending machines which vend breakfast products such as low fat milk and single serving breakfast bars and breakfast cereals.

**2. In NAMA’s “Balanced for Life®” and “Fit Pick ®” Programs:**

To address the issue of obesity, NAMA developed the Balanced For Life ® and Fit Pick® (<http://balancedforlife.net> and [www.fitpick.org](http://www.fitpick.org)) programs to assist in the issue of providing “healthier for you” choices in vending. These are path-breaking healthy food programs for the vending industry which are popular and working. Across the country,

school and work vending accounts are looking to our industry and Association to partner with them on health and wellness issues. Our voluntary program components assist vending operators with tools to help and truly be part of the solution. In addition, because our nutritional programs are a stand-alone resource, each vending operator can easily implement the program he or she thinks is best suited to a particular location. More than 111 government agencies and 85 schools (includes school districts and universities) are currently registered participants in our Fit Pick vending programs.

**3. In Retail Business Locations:**

Vending machines are retail locations which provide a variety of snacks and beverages. For example, in addition to standard snacking choices, vending machines are available which sell fresh fruit, fresh vegetables, salads, milks and a wide variety of healthy meal choices. They provide similar products which are found at other retail locations such as convenience stores, grocery stores and even in the al a carte line in school cafeterias. Like these other retail locations, vending machines provide what customers want, including healthy and fitness oriented foods and beverages.

**4. In Workplace Offices and Factories:**

Vending also provides a very valuable service to those who work irregular hours, or who may not have full-service meal alternatives. For example, federal employees in the White House and Eisenhower Executive Office Building in Washington, DC use vending for healthy between-meal snacks and for salads after hours. The 24 hour work cycle of these and other government facilities such as congressional office buildings necessitate innovative solutions which vending provides. Many workplace offices and factories increasingly use vending machines to provide and promote healthy food and beverage offerings just like federal office buildings do for federal employees.

Our industry in essence is a retailer which provides shelf space to customers just like convenience stores, grocery stores and restaurants.

Our products have the required nutritional facts panel, and most consumers don't purchase a particular brand of snack or beverage for the first time via a vending machine. They already have access to, and understand the nutritional information of, our products prior to purchase.

In an effort to provide nutritional information to the public, NAMA is preparing an app for mobile devices that will provide consumers with nutritional information and will be available for a variety of electronic devices. This app will be released in the later part of this year.

**C. Specific Comments regarding FDA's Proposed Rule Overall:**

1. NAMA strongly supports the FDA's attempt to allow maximum flexibility in how disclosure can take place, and the Agency's attempt to minimize the economic impact to small businesses. NAMA encourages the FDA to allow a wide variety of disclosure solutions, to allow vending operator options. It is important that due to the very wide variety of machines in existence today, a wide variety of solutions be allowed. Any limiting of potential calorie disclosure solutions. will limit the information that we might

be able to provide to customers. If the goal is to provide information to customers prior to purchase, then vending companies must be allowed a variety of labeling solutions to meet the variety of machine configurations.

2. NAMA believes that the FDA estimates the frequency of changing labels is too low. Products in a vending machine are re-filled on a recurring basis to ensure that it maintains an inventory or is stocked. In some busy locations, machines may be restocked every week or more than once a week. In locations with fewer sales, the machine would be restocked every 2 to 5 weeks. But in almost all situations, machines are restocked and serviced at least every 5 weeks. During this restocking, it is highly likely that individual snacks and drinks could be replaced with different varieties, which would require new labeling. It is important to note that the foods which are stocked vary widely depending on the location. One site may have a very different group of snacks and drinks than a site in the next building. This very wide variety of potential product mixes within a particular machine or locations will mean that a wide variety of labels and frequent changes may be required. This more frequent restocking will definitely occur in the estimated more than 1.3 million snack machines. NAMA estimates that a typical vending machine will have to be re-labeled at least 10 times per year (every 5 weeks), and potentially 17 times a year (every 3 weeks). Some vending machines are refilled almost every week and could therefore require partial relabeling at least 50 times a year.
3. We agree that States and localities cannot have additional or different nutrition labeling requirements for food sold from vending machines that are operated by a person engaged in the business of owning or operating 20 or more vending machines subject to the requirements of 21 U.S.C. 343(q)(5)(H)(viii).
4. We commend the FDA for very thoroughly studying the economic impact on the industry and appreciate the effort to lower the burden from the initial FEDA economic analysis which estimated the impact of 14 million compliance hours each year. We agree and thank the FDA for proposing rules which “allow vending machine operators to choose from various approaches for compliance, including adopting less expensive measures”. We strongly encourage the FDA to continue to minimize the economic impact of these new regulations. As NAMA has previously commented in this rule writing process, vending is an industry of small businesses. The FDA should allow maximum flexibility for the industry in how individual vending companies disclose calories in specific settings. The FDA should not require specific new technology. The FDA should continue to resist any calls to increase reporting burdens or expensive labeling schemes.
5. The FDA should not economically harm the industry. Most of the vending operators are small businesses with three or fewer employees. These calorie disclosure requirements will reach an estimated 90 to 95 percent of the vending machine owners or operators. A business with 20 vending machines, may average an annual net profit of only \$3,559.20. If the FDA creates complicated and difficult to implement disclosure rules which could cost more than \$42,000 per operator, this would severely harm such small operators. When the FDA finalizes these regulations, it must do so in such a way that minimizes the economic impact and doesn't cost jobs.

6. The FDA must provide sufficient time to implement any new regulations. As NAMA has previously commented, vending has between 5 and 7.4 million machines, the majority of which will be forced to comply with these new regulations. There is a wide variety of machinery in the market today. At least 72% of the vending operators have 3 or fewer employees, and the profit margin is extremely low. Therefore, it is important that sufficient time be allowed for regulations to be implemented. Congress did not establish in the legislation a timeline for final regulations to be implemented or enforced.
7. We propose that the industry be allowed at least two years after rules are finalized to implement calorie disclosure. Depending on how the rules are written, for example, the industry may have to create a data bank with product calorie counts which operators could access to print menus or labels that would fit the specific vending machines. Electronic devices or digital displays would have to be designed, programmed and installed.
8. We agree with the FDA, that this rule should only apply to vending machine operators who own or operate 20 or more machines which sell articles of food. While vending operators may own and operate a variety of entertainment machines, or machines which sell items other than food, only food vending machines should be counted toward this 20 machine limit.
9. We agree with the FDA that “vending machines that may dispense food as part of a game or other non-food related activity are not covered by 403(q)(5)(H) of the FD&C Act.” Where the operation of the vending machine is primarily for entertainment, and not the purchase of food, it should not count toward the 20 machine limit, or be included in calorie disclosure requirements. Crane or Claw machines that reward players with candies as a consolation prize, are entertainment machines and not food vending machines.
10. Bulk vending machines do not have “dispensing buttons” as specified by the Act. They use a crank mechanism, and are exempt from inclusion of this regulation. We therefore agree with the FDA that food vending machines that do not have dispensing buttons do not have to disclose calories. This mechanical operation is only used for bulk vending, and is not currently used by other food vending machines. The impact of this interpretation will not impact the legislative intent of the Act.

**D. Specific Comments regarding Where “Nutritional Information” is Visible to the Prospective Purchaser Prior to Purchase:**

1. NAMA agrees with the Agency that when the Nutrition Facts Panel of an article of food sold from a vending machine may be examined by a prospective purchaser before purchasing the article, the vending machine operator is not required to provide additional calorie information. This is an accurate interpretation of the legislative intent of Congress.

2. NAMA believes that *any* visible display of the Nutritional Facts Panel prior to the point of purchase, exempts the vending operator from compliance with this act. NAMA believes that displaying the information on a sign, electronically or in a brochure which is available near the machine is sufficient disclosure. Since Congress made this distinction, FDA should also. Display of the Nutritional Facts Panel via a brochure will allow flexibility and will also minimize economic costs.
3. NAMA agrees with the FDA that the act specifically allows an operator to “provide visible nutritional information at the point of purchase”. Any operator who provides visible nutritional information at the point of purchase does not have to additionally label products for calorie. NAMA agrees that *any visible* display of nutritional information should be broadly interpreted. Visible nutritional information should include a sign near a bank of vending machines. An informational sign which is readable prior to the point of purchase, would therefore exempt the vending operator from compliance with this act.
4. Since the second prong of section 403(q)(5)(H)(viii)(I)(aa) specifies that if a vending machine “otherwise provide[s] visible nutrition information at the point of purchase” for an article of food sold from the machine, the vending machine operator is not required to provide the calorie information, we encourage the FDA to continue to allow the maximum flexibility in defining “visible nutritional information”.
5. The goal of the Act is to provide usable nutritional and calorie information to potential vending customers. Providing maximum flexibility and broad inclusion will allow more operators to provide more nutritional information to more customers. We agree with the FDA that (1) “nutrition information” in this context means total calories in the article of food, because this is the information that the vending machine operator must provide by a sign in the provisions in section 403(q)(5)(H)(viii)(I)(aa), but disagree that such information “should be on the article of food itself”.
6. Other nutritional information could be provided by other electronic means, signage or labels “in close proximity”. To limit other nutritional information to just that which is printed on the front of food packaging is too limiting. Other nutritional information should be allowed on the front of packaging, but it should also be allowed in other locations as well.
7. NAMA argues that Congress did not stipulate a size of a Nutrition Facts Panel which would qualify for this disclosure scheme. We agree that the Nutritional Facts Panel “must be in a size that permits the prospective purchaser to easily read the nutrition information while the food is in the vending machine.” However, we do not believe that the FDA is correct in establishing that a modified or smaller format based on the composition of the food, the size of the food package or other factors would not qualify. The goal of this Act is to provide information to customers so they can make informed choices on calories and nutritional information. It is possible that a product manufacturer or vending operator could design a clearly visible, readable and conspicuous Nutritional Fact Panel which can accomplish this requirement, and so it should be allowed. The

FDA should not stipulate that smaller formats, which are allowed in other situations, are not allowed in vending.

8. NAMA believes that “nutritional information” should include the voluntary front of pack labeling programs which have been announced by America’s leading food and beverage manufacturers and retailers. NAMA contends that both the *Clear on Calorie*® and *Nutrition Keys*® Programs, would comply with the proposed regulations. These two front of pack nutrition labeling systems will help busy consumers make informed choices when they shop. Information on these programs can be found at: <http://www.ameribev.org/nutrition--science/clear-on-calories> and <http://www.gmaonline.org/issues-policy/health-nutrition/responsible-public-policy-solutions/nutrition-keys-front-of-pack-labeling-initiative>. We support the style guide and artwork templates for both front of packaging programs. The graphic display has sufficient font size, print style and contrasting background color to effectively comply with these rules. And most importantly, such clear disclosure made by the *Clear on Calories*® and *Nutrition Keys*® labeling will provide valuable information to our customers.
9. We agree with the proposed Sec. 101.8(b), for the nutrition information on the label to be considered “visible,” it must be clear and conspicuous. To ensure that it is clear and conspicuous, it must be both (1) in a type size easily readable from the distance between the prospective purchaser and the label and (2) in print with sufficient color and contrasting background to be readily distinguishable from other types of information on the label.
10. However, we believe that the proposed type size of “at least 50% of the size of the largest print on the label” is too large and suggest that the “visible nutrition information” be in a type size that is reasonably related to the largest printed matter on the label.
11. If the FDA believes that other “nutritional information” includes more than just calories, then we suggest that *Nutrition Keys*® would qualify. We also agree that in this interpretation that “other nutritional information” can be provided in locations other than just the front of packaging. For example, providing information such as calories on a sign in close proximity does provide sufficient information to customers, and does comply with legislative intent of Congress.
12. NAMA does not believe that the dispensing coils or mechanical devices will hinder display of nutritional information or the Nutritional Facts Panel. Many vending machines have dispensing devices which move or push products down a stack or column. These devices occasionally are made from a thin metal coil which rotates in a circular motion to move a product forward. Based on the design of these metal coils, there is little to no chance that a product’s nutritional information would conceal nutritional information. The coil design allows for all four corners of the packaging to be clearly visible at all times. In addition, a large space in the center of the coil also is never covered. Product manufactures can easily place labeling on the packaging in a location to ensure that the nutrition information is conspicuously visible and readable prior to the point of purchase.

The FDA should not establish any rules related to the pushing or conveyer mechanism, in the proposed rules requiring visible information to customers.

13. Some have argued that Front of Packaging labeling may not be effective since products may shift or rotate during dispensing. NAMA contends that product shifting or rotation is extremely rare and unlikely to occur. Route drivers stock the machines so that the product is always placed on the vending machine shelf so that the front of the packaging is facing the customer. If products rotate, then the label would rotate to the back, which would therefore display the full Nutrition Facts Panel. So the FDA should not make additional regulations other than the proposed rules requiring visible information.

**E. Specific Comments regarding Where “Nutritional Information” is Not Visible to the Prospective Purchaser Prior to Purchase:**

1. On March 23, 2010, the Affordable Care Act (Pub. L. 111-148) was signed as amended. Section 403(q)(5)(H)(viii) of the FD&C Act requires that if an article of food is sold from a vending machine that does not permit a prospective purchaser to examine the Nutrition Facts Panel before purchasing the food or does not otherwise provide visible nutrition information at the point of purchase and the vending machine is operated by a person who is engaged in the business of owning or operating 20 or more vending machines, the vending machine operator must provide calorie information for the food. Specifically, the vending machine operator must “provide a sign in close proximity to each article of food or the selection button that includes a clear and conspicuous statement disclosing the number of calories contained in the article.”
2. The FDA should allow Front of Pack calorie labeling to be in compliance with this legislation. If allowed, then in glass front vending machines where calorie information is printed on the product and is readable by customers, this could be a quick, efficient and effective compliance method. This is a preferred calorie disclosure solution for many vending operators. As noted above, *Clear on Calories*® and *Nutrition Keys*® should be allowed to disclose calories in compliance with these proposed rules.
3. NAMA agrees with the FDA proposals which would allow one sign in close proximity to the vending machine with calorie counts of all foods which are stocked in a bank of vending machines. This flexibility will minimize the economic impact of these regulations. Grouping menu items into categories such as “beverages,” “chips,” “candy,” or “gum” might help consumers select snacks by comparing similar snack or beverage categories. A bank of machines would include all vending machines which are aligned and touching side-by-side.
4. We support allowing a sign which would list all products which could be in a machine. For example, a glass front vending machine might have 45 rows to hold different types of drinks. A snack machine might have spirals for 48 different snacks. A route driver may have 100 different food products on the truck. A vending company may have 200 different snacks in the warehouse. So a large variety of snacks may be placed into a particular vending machine. A menu should be allowed to list any food or beverage

which may potentially be stocked in the machine. This one menu would become a more permanent sign, and would reduce the need to print a new menu each time a vending machine is serviced.

5. We agree with the FDA that a “sign be placed in close proximity to the article” does mean that the sign may be placed either in or on the vending machine itself or adjacent to the vending machine and near the food, its price, its selection number, or its selection button.
6. We also agree with the FDA that while the calorie information must be clear and conspicuous to be readable by potential customers, that the FDA should not require a specific type size or font for such signage. With more than 300 designs of vending machines in service, flexibility in type size, font style and colors should be allowed to the operator. It is unnecessary and inappropriate to further define requirements to meet the “clear and conspicuous” requirements of the proposed rules.
7. NAMA encourages the FDA to be flexible in Sec. 101.8(c)(2)(ii)(B) that if the sign required by section 403(q)(5)(H)(viii) of the FD&C Act is placed adjacent to the vending machine, the calorie declaration should be “clear and conspicuous”. Requiring a specific font color, size, style or background contrasting color will be too limiting. We agree with the Agency to not propose a minimum type size for the calorie declaration. Operators are required to display information on signage which can be easily readable and discernable. Additional criteria may not assist customers. For example, a sign that is printed on a white background, with large black type may be readable. But it may not be attractive enough to attract attention from customers. A different contrasting color other than white might be more pleasing to the customers. Defining the format of the sign will create additional burdens, and may not increase the effectiveness of the signage. NAMA encourages the FDA to allow flexibility with regard to font color, size, style and background to allow for optional labeling practices,
8. For closed front machines, where product is not visible, then a label or “static cling” sign should be allowed to be placed on the outside of the machine. This one sign which lists all food or beverages for vending machines should be allowed. This sign could list all food and beverages which might be stocked in the machines. Grouping items into categories on the menu such as “beverages” “chips” “gums” might help consumers select snacks based on comparing comparable items, and so such grouping should be allowed. Since machines come with different exterior doors and frames, and machines are restocked regularly, the FDA should not regulate the size or design of such outside labels. The operator should be given flexibility to design and print a listing of products, which provides information, but will fit the unique needs of the specific machine.
9. We agree with the FDA that vending operators should be allowed to visibly display calories or “other nutritional information” in electronic devices. Several vending machine manufacturers currently produce devices with electronic screens that display the Nutritional Facts Panel for an item prior to purchase. This should be allowed, but due to the expense of such electronic equipment, should not be required. Such electronic

displays can be easily installed and located on or adjacent to a vending machine, or vending machine bank, allow a customer to view categories of food and select specific foods for graphical display of its nutritional information, and even enable the consumer to view the entire Nutritional Facts Panel and ingredient listing.

10. When the digital display shows a product image along with the Nutrition Facts Panel and ingredients, the information is clearly associated with the correct product. Including a product name and image along with the Nutrition Facts Panel reduces the reliance on the products being loaded into the correct slots within the machine in order to convey correct information for each product. So to reduce the possibility of a route person inadvertently placing a product in a slot marked with a label indicating an incorrect number of calories having an electronic display showing the product's name and / or a picture of the package will prevent the likelihood of such errors and as such should be specifically mentioned in the rules as a permitted means of compliance.
11. Compliancy with digital displays presents manufacturers with the opportunity to develop technologies to allow consumers to more effectively compare nutrition information and make informed decisions. An example would be technology that has already been developed which allows consumers to view two Nutrition Facts Panels side by side at the same time.
12. A digital display can be programmed to display the nutrition information for every product an operator stocks in their warehouse. A route driver can use the touch screen to add or delete products from the screen at the moment the machine is being refilled. This requires fewer man hours than changing printed labels and eliminates the issues that surround the wrong products being brought to refill the machine. Allowing operators to specifically comply using a digital display will increase accuracy of the displayed information and increased ease of compliancy.
13. Such electronic calorie disclosure can also be presented in an electronic display associated with the bill or coin acceptor. For example, a customer could press the dispensing button to first display the calorie count of the item on a digital screen. The item would only be vended if the dispensing button was pressed a second time. The FDA allowance of this type of disclosure allows flexible solutions for the wide variety of vending machines currently on the market. We also agree that for electronic vending machines (e.g., machines with digital or electronic or liquid crystal display (LCD) displays), the calorie disclosure sign required by the statute may be displayed when the selection numbers are entered but before the selection is confirmed.
14. NAMA agrees with the FDA proposed rules that calorie information printed on the outside of a closed front machine in the vend strip or selection button. This graphic would be included in the snack or beverage brand graphic. Since closed front vending machines have a wide variety of dispensing button labels, we believe that the FDA should not stipulate the font size, style or contrasting background. NAMA argues that the general requirement that the information be readable and clearly displayed is sufficient.

This general, rather than specific formatting rule will provide necessary flexibility for operators and can reduce the economic impact of the labeling requirements.

In the two attached examples below, you can see two examples of the types of large rectangular dispensing buttons which are used in closed front beverage vending machines. Flexibility will allow operators to design new dispensing button labels, which will disclosure calories. It will not burden them with expensive new requirements on specific font sizes.



NAMA supports the FDA proposal to allow operators to disclose calorie information at each individual coil, spiral or stack. We agree that such labeling could be placed at each spiral near the price and selection item number. Some manufacturers already produced “calorie label rolls” designed to be used in the machine’s price holder. We believe that if an operator chooses to eliminate the price label associated with each product and in its place inserts a calorie label with the number of calories and either “Cal” or “Calories” printed on its face and the printed calorie labels are clearly visible, readable and conspicuous relative to the amount of space available on the former price label then such labels should be specifically permitted.

15. Under Sec. 101.8(c)(2)(i)(B) and Sec. 101.8(c)(2)(i)(C) we do **not** agree that “the calorie declaration be made in the same color, or in a color at least as conspicuous, as the color of the name, price, or selection number of the food.” We believe that such definition is overly prescriptive and does not allow small business vending operator’s sufficient flexibility. Font colors and size do not have to be identical to the item number and pricing labels. Contrasting backgrounds do not have to be exactly similar to the other labels. A variety of labeling schemes could be used by operators, suppliers and manufacturers. Machines are routinely retrofitted by owners. Labels produced today, may be different than item and price labels printed years ago.

We oppose the FDA proposal that the calorie declaration on the machine must have the same contrasting background as the name or price or selection number it is in closest proximity to.

Some operators may prefer to use different colors to highlight types of items in the vending machine. For example, NAMA's Fit Pick® program uses labels to signify items which meet 35-10-35 nutritional information based on recommendations from the American Heart Association, the 2005 USDA Dietary Guidelines for Americans and the Alliance for a Healthier Generation. Fit Pick designated products mean that no more than 35% of total calories from fat, no more than 10% of calories from saturated fat, and not more than 35% of total product weight from sugar. We recognize the requirements to label items so that a customer can clearly read the calorie counts prior to the point of purchase. Yet NAMA strongly suggests that flexibility in size, font and background color should not be specified. Such flexibility will result in better graphic designs which could help customers, and would not result in a loss of information, and could minimize the economic impact to vending operators.

16. NAMA agrees with the FDA "that for certain types of vending machines with a limited number of selections", (e.g., popcorn with or without added butter), the sign with the statement of calories may appear anywhere on the front (or face) of the vending machine. A sign may consist of a handwritten sticker in permanent marking that is affixed to the machine, provided that the statement is prominent, not crowded by other labeling on the machine and in a type size reasonably related to the largest print on the vending machine.
17. Gum and mint packs should be allowed to display calories per serving, not calories per package, since these products are consumed differently.
18. We support Sec. 101.8(c)(2)(i)(A) which will "require that for a covered vending machine food, the statement of the number of calories in the food must be expressed to the nearest 5-calorie increment up to and including 50 calories, and 10-calorie increment above 50 calories. For a covered vending machine food that has fewer than 5 calories, the calorie declaration may be expressed as zero. These rounding rules are consistent with the declaration of calories for packaged foods as provided in Sec. 101.9(c)(1)."
19. We agree with the FDA conclusion that the term "Calories" or "Cal" must appear adjacent to the number of calories for the covered vending machine food." Allowing the abbreviation "Cal" is recognizable by the public and will provide flexibility to vending machine operators and will help minimize the economic impact.
20. NAMA is concerned with requiring all food products to display calories per package as opposed to calories per serving. In vending, there is a growing trend to offer customers a wider selection of product sizes. As more machines accept credit and debit card payments larger sized, multi-serve containers are becoming more common. It is not unusual to see vending machines selling large multi-serve bags of chips and multipacks of confections. In addition, sales of gum and mints are primarily sold in multi-serve packages.

21. We disagree that “the number of calories declared must be equal to the total number of calories contained in the food item as dispensed.” The statutory language requires the disclosure of “the number of calories contained in the article.” FFDC § 403(q)(5)(H)(iii). The FFDC does not specifically require the disclosure of the calories in the entire contents of the package. For gum, mints and other multiserve containers, we urge FDA to allow calories to be reported on a per serving basis that appears on the label. Such an approach would ensure the information on the vending machine is consistent with that on the label. A different approach would require the vending operator to calculate the number of calories in the product, creating opportunities for errors in calculations because the operator would not have access to the unrounded nutrition information. We recognize many companies, particularly in the beverage industry, are treating multi-serve containers, such as beverages in 20 fluid ounces, as single serve containers. In instances when the food product contains a dual declaration providing calorie information on a per serving and per container basis, it would be appropriate for the final rule to require the vending operator to declare the calories on a per unit basis.
22. We disagree that “the number of calories declared must be equal to the total number of calories contained in the food item as dispensed”. For gum, mints and other multiserve containers, we urge FDA to allow calories to be reported on a per serving basis as appears on the label. Such an approach would ensure the information on the vending machine is consistent with that on the label. We recognize many companies, particularly in the beverage industry, are treating multi-serve containers, such as beverages in 20 fluid ounces, as single serve containers. In instances where the food product contains a dual declaration providing calorie information on a per serving and per container basis, it would be appropriate for the final rule to require the vending operator to declare the calories on a per unit basis.
23. We recommend that the FDA allow the use of ranges, similar to those provided for restaurants. While food and beverage vending machines are designed to provide a consistent product each time it is dispensed, slight variations in servings can result. For example, in fresh coffee vending machines, it is possible that a different “brand” or type of creamer, or flavoring may be used by a route driver during the month. Slight variations will occur. For machines which dispense cotton candy, fresh fruit, sandwiches or pastries, slight calorie differences will result. NAMA recommends that vending operators be allowed to post ranges of calories for products. We agree that such posted ranges will be much smaller than ranges which will occur in chain restaurants, but calorie ranges will occur in vending fresh food. There they should be allowed in vending.
24. NAMA recommends that where calorie information is not available from a food manufacturer or supplier, that a vending operator should be allowed to use nutrient databases, cookbooks, laboratory analyses or other means to accurately determine calorie information. The costs of calorie analysis could be considerable, and to minimize the cost to small businesses, it’s important to allow a variety of tools to ascertain an accurate calorie count. Laboratory analysis for every fresh item which could be stocked into a

vending machine would be cost prohibitive. Allowing some use of databases and cookbook/menu tools will minimize cost, while still providing accurate information to customers.

25. NAMA does not believe that the FDA should require a vending machine operator to provide the FDA the method or information on which they relied to determine the total calories posted for the vending machine food. As noted earlier, NAMA believes the final rule should allow the vending operator to use the calorie information that is declared on the label of the packaged food. In instances when the vended food is not packaged form, the operator is already required to provide accurate information on the calories in the item. To require reporting of how this information is determined is unnecessary to the agency and customers. Any such reporting would be an economic burden for both the operator to provide such information, and to the FDA to collect, record and store such information.

Vending operators do sell fresh sandwiches in vending machines. These are unique, fresh made items, and it is possible that there will be some variety in the components and the individual chef making the sandwich. It is possible that one chef might have a heavier hand when applying sauces to the sandwich. A supplier might provide a different bread, meat or cheese each week. So vending machine operators must be allowed some legal protection and relief for minor and inadvertent difference in calorie information.

#### **F. Conclusion:**

Thank you for the opportunity to comment on the proposed rule: "Food Labeling, Calorie Labeling of Article of Food in Vending Machines". We are available and interested in providing additional information to assist in this ongoing process.

For additional information on these comments or as the FDA prepares rules and guidance please contact:

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