

Regulatory Alert: FDA Extends Compliance Date for Certain Items Subject to Vending Labeling Rule

Extension Applies to Items with FOP, and Gums, Mints and Roll Candy

August 3, 2016

On August 1, 2016, the U.S. Food and Drug Administration (FDA) published in the Federal Register a [final rule extending the compliance date](#) for certain requirements in the [Final Vending Labeling Rule](#). The compliance date is extended to July 26, 2018,¹ for the type/font size requirements for front-of-pack (FOP) labeling, and certain gums, mints and roll candy products sold in glass-front vending machines are not required to be labeled until that date. The compliance date for all other requirements in the final rule remains December 1, 2016.

The Final Vending Labeling Rule published in the Federal Register on December 1, 2014, requires calorie information for foods sold from vending machines to be available for consumers to view before purchasing. As a reminder, the Final Vending Labeling Rule applies to food sold from vending machines operated by a person engaged in the business of owning or operating 20 or more vending machines. A Lieberman PLLC webinar replay on the Final Vending Labeling Rule and questions and answers document may be found [here](#). The Final Vending Labeling Rule applies to food that does not permit a prospective purchaser to examine the Nutrition Facts Panel before purchasing the article, or does not otherwise provide visible nutrition information at the point of purchase.

The Final Vending Labeling Rule specifies how calories must be declared. In brief:

- Vending machine operators do not have to declare calorie information for a food if a prospective purchaser can view calorie information on the front of the package, in the Nutrition Facts label on the food, or in a reproduction of the Nutrition Facts label before purchasing the item
- Calorie declarations must be clear and conspicuous and placed prominently, and may be placed on a sign in, on or adjacent to the vending machine, so long as the sign is in close proximity to the article of food or selection button
- The Final Vending Labeling Rule establishes type size, color and contrast requirements for calorie declarations in or on the vending machines, and for calorie declarations on signs adjacent to vending machines
- The Final Vending Labeling Rule establishes requirements for calorie declarations on electronic vending machines, those vending machines with only pictures or names of food items, and those vending machines with few choices (e.g. popcorn machines)
- Contact information for the vending machine operator must be displayed on the machine

¹ The July 26, 2018, date is also the deadline for compliance with the new Nutrition Facts label requirements for businesses with \$10 million or more in annual food sales. FDA aligned the two dates so that companies can make all the changes at once.

Extension for Type Size Requirement

Products that bear total calorie count information in front-of-pack labeling (FOP) comply with the vending labeling law² if the information is clear and conspicuous and easily read on the article of food while it is in the vending machine (e.g. in a glass front machine). The calorie information must be in a type size at least 50 percent of the size of the largest printed matter on the label and with sufficient color and contrasting background to other print on the label to permit the prospective purchaser to clearly distinguish the information.³

The Facts Up Front voluntary FOP labeling program is not completely consistent this requirement. FDA is considering revising the type-size requirement in the Final Vending Labeling Rule so that voluntary FOP programs like Facts Up Front can be used to comply.

The extension applies to packaged foods:

1. Sold from glass-front vending machines that allow prospective purchasers to view foods offered for sale;
2. That bear calorie information on the front of the pack; and,
3. Where the label complies with all aspects of the Final Vending Machine Labeling Rule except the FOP declaration is not 50 percent of the size of the largest print on the label requirement.

Gums, Mints and Roll Candy

The Final Vending Labeling Rule requires total calories present in the entire packaged food to be declared regardless of whether the food contains a single serving or multiple servings. FDA has acknowledged the challenges in labeling gums, mints and roll candy and the fact that consumers typically do not consume the entire package of such items at one time.⁴ The agency is therefore extending the compliance date for such items so it may consider these issues further.

The extension is limited to:

1. Gums, mints and roll candy sold in packages that are too small to bear FOP labeling and where the gums, mints and roll candy are located in a small space within a glass-front vending machine that allows prospective purchasers to view the packaged foods offered for sale;
2. The space within the glass-front vending machine holding the gums, mints and roll candy is so small that it is not practicable to provide calorie information under each gum, mint or roll candy; and
3. The glass-front vending machine also does not or is not capable of providing calorie information electronically.

² 21 USC § 343(q)(5)(H).

³ Such products are considered “articles of food not covered” under the Final Vending Machine Labeling Rule (e.g. they satisfy the requirements of the law and thus additional signage displaying calorie information is not required).

⁴ The Final Vending Labeling Rule does allow for an optional per serving calorie declaration in addition to the declaration for total calories in the package.

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