

FDA Releases Draft Vending Labeling Rule Guidance

Additional Details Provided on Compliance Requirements

August 22, 2016

On August 15, 2016, the U.S. Food and Drug Administration (FDA) released [draft guidance](#) on complying with the [final rule](#) entitled “Food Labeling: Calorie Labeling of Articles of Food in Vending Machines” (“Vending Labeling Rule”).¹ The Vending Labeling Rule requires vending machine operators who own or operate 20 or more vending machines, or who voluntarily register with FDA to be covered, to declare calories for those vending machine foods for which the Nutrition Facts label cannot be examined before purchase or for which visible nutrition information is not otherwise provided at the point of purchase. FDA recommends comments on the draft guidance be submitted by September 30, 2016.

Key Questions and Answers

Does the Vending Labeling Rule require food manufacturers required to place calorie information on the product label of foods sold from vending machines?

No. The regulations apply to vending machine operators rather than food manufacturers. Food manufacturers may elect to label products (e.g. front-of-pack labeling) to meet the requirements of the regulation, but are not required to do so under the Vending Labeling Rule.

If a business owns 20 or more vending machines at business locations, but contracts with another company to operate them, who is responsible for posting calorie information? What if the machines are leased?

Whether a business owns or leases its vending machines, if the business is not a vending machine operator (i.e., the business does not control or direct the function of the vending machine, including deciding which articles of food are sold from the machine or placement of the articles within the vending machine, and the business is not compensated for the control or direction of the function of the vending machine), then the business would not be responsible for posting the calorie information for the foods sold from the vending machines. The person or entity contacted with to control or direct the function of the vending machines would be responsible for posting the calorie information.

¹ 79 Fed. Reg. 71259 (December 1, 2016).

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If a business owns 15 machines that dispense food and 10 machines that dispense nonfood items, is the business covered under the Vending Labeling Rule?

No. The Vending Labeling Rule applies to businesses that own or operate 20 or more food vending machines. The Vending Labeling Rule does not apply to vending machines that dispense nonfood items.

Are fresh foods (such as a sandwich or apple) sold in vending machines required to be labeled under the Vending Labeling Rule? Does the source of the fresh food (commissary restaurant, or wholesaler) matter?

Yes, fresh foods such as sandwiches or apples sold in vending machines are required to be labeled under the Vending Labeling Rule. The source of the fresh food does not matter. The foods must be labeled regardless of source.

How are calorie declarations determined for foods sold in vending machines that can vary in calorie content (such as fruit)?

FDA recognizes that certain vending machine foods, such as fresh fruit, may have naturally occurring variations in calorie content depending on the size of the fruit and other factors. A variety of means may be relied upon for determining calorie content such as information from the USDA National Nutrient Database for Standard Reference. Where a natural variation based on size is significant, vending machine operators should ensure that calorie declarations are accurate. FDA suggests this may be done by offering for sale vending machine foods of approximate standard size and calorie content or by modifying calorie declarations as appropriate. Another option FDA suggests is providing calorie declarations for vending machines as two or more different types of items, e.g. “Apple: small; 77 calories;” “Apple: medium; 95 calories;” “Apple: large; 116 calories.”

If a sandwich in a vending machine includes a single serving of a packaged condiment, such as a mayonnaise packet, must the calorie declaration include the calories contained in the condiment packet?

Yes. The calorie content in a condiment packet sold with the sandwich must be included in the calorie total declared. Total calories for the article of food as vended must be declared. Calories for the packaged components (e.g. calories for the sandwich only) may be declared in addition to the total calories for the complete article of food.

If a machine offers options for beverages, such as coffee with sugar and cream or hot chocolate with whipped cream, how are calories listed?

If a vending machine offers the customer options to customize the base product (for example, coffee, hot chocolate, or tea with options for sugar, sugar substitute, milk, and cream), you must declare the calories in one of two ways:

- Declare the calories for the base product and each option individually (e.g. black coffee; added calories from sugar; added calories from cream; etc.); or
- Declare the calories for every possible final product (e.g. black coffee; coffee with sugar; coffee with cream; coffee with sugar and cream; etc.).

If a vended food item has multiple servings (such as a package of mini donuts) and lists calorie information for a single serving, must additional calorie information be provided for the entire package?

Yes. The calorie declaration for a packaged food must include the total calories present in the packaged food, regardless of whether the packaged food contains a single serving or multiple servings. Calories per serving in addition to total calories for a food may be declared on a voluntary basis.

Does a vending machine with an electronic display that can show a virtual image of a Nutrition Facts label or digital display of the calories meet the requirements of the rule?

Yes, so long as the information is provided to the consumer before the purchase selection is made.

May a sign or stickers be used to display the calories?

Yes. One sign with calorie declarations for all of the food sold from the machine, or individual signs for each food item may be used to comply. Alternatively, stickers with calorie information may be affixed to the vending machine. Stickers must be placed near each article of food or selection button.

How often must calorie information be updated on a sign? Can a sign include calorie information for food items that may not always be stocked in the machine?

The calorie declarations for the foods sold in the vending machine must be accurate and up to date. FDA recognizes that calorie declarations could, in some cases, be displayed for vending machine items that are not available for sale in the machine at a given time (e.g. an item is sold out or is temporarily replaced with another item). Calorie information must be displayed for items sold in the machine at the time, but it is acceptable to have information displayed for items that are sold out, or temporarily replaced with other items.

If a new item is being sold in a vending machine, but it is not yet listed on the sign, when must it be declared on the sign?

Immediately. Calorie information must be displayed for all covered items. FDA states that if a sign is being used to display information, a vending machine operator may wish to leave blank spaces to accommodate calorie information for new items or use individual signs for items.

What if a coil in a vending machine blocks front-of-pack calorie information?

If front-of-pack calorie information is used to comply with the Vending Labeling Rule, but the coil blocks the information and the position of the information cannot be changed to ensure it is made visible to consumers, then calorie information must be provided by an alternative means.

Can a package simply be turned around so the Nutrition Facts label is visible through the glass front?

Yes, this would meet the requirements of the rule so long as the customer can easily read the information on the Nutrition Facts label before purchasing the product and other criteria in the Vending Labeling Rule are satisfied (e.g. proper calorie totals). FDA does not consider smaller Nutrition Facts formats (such as those on gum or mints) to be of a size that consumers can easily read.

When is compliance required?

December 1, 2016 generally. FDA has provided a limited extension. Compliance for certain gums, mints, roll candy and front-of-pack labeling font-size requirements has been extended until July 26, 2018. For more information, please see this [Lieberman PLLC regulatory alert](#).

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