



July 5, 2011

The Honorable Margaret A. Hamburg, M.D.
Commissioner
Division of Dockets Management (HFA305)
U.S. Food and Drug Administration
5630 Fishers Lane
Room 1061
Rockville, MD 20852

Re: Docket No. FDA-2011-F-0171, Food Labeling; Calorie Labeling of Articles in Vending Machines

Dear Commissioner Hamburg:

Trust for America's Health (TFAH) applauds the FDA for its timely release of the proposed regulations for calorie labeling of articles in vending machines; however, we are very concerned with several proposals, including the proposal to allow of calories to be posted on a single sign next to a vending machine, and the exemption for bulk vending machines. Calorie labeling of beverages and foods in vending machines helps consumers to make more informed decisions about the foods and beverages they choose to purchase. In order to enhance the usefulness of calorie labeling in vending machines, we urge FDA to require calorie declarations to be as accessible as possible to the consumer.

TFAH is a non-profit, non-partisan organization dedicated to saving lives by protecting the health of every community and working to make disease prevention a national priority. According to TFAH's 2011 report, *F as in Fat: How Obesity Threatens America's Future*, adult obesity rates are now greater than 30 percent in 12 states, and exceed 25 percent in more than two-thirds of states (38 states).¹ It is estimated that Americans currently consume one-third of their total calories outside of the home.² Providing accurate, accessible, and easily understandable caloric information for foods consumed outside of the home serves as a tool to assist consumers in making more informed decisions about their food purchases.

¹ Trust for America's Health. *F as in Fat: How Obesity Threatens America's Future*. Washington, D.C.: Trust for America's Health, 2011.

² Lin, B-H., J. Guthrie and E. Frazzao. "Nutrient Contribution of Food Away From Home." In Chapter 12 of *America's Eating Habits: Changes and Consequences*, Elizabeth Frazzao (ed), USDA Agriculture Information Bulletin No. (AIB-750), pp. 213-242, May 1999.

In response to the issues raised in the FDA proposed regulations on Calorie Labeling of Articles in Vending Machines, TFAH offers the following recommendations that we hope will augment the efficacy of these regulations.

Caloric information should be provided in close proximity to each food and beverage item or its selection button.

Section 4205 of the Affordable Care Act requires companies to provide caloric information “**in close proximity to each** article of food or the selection button” (emphasis added). The current FDA proposed regulations are not consistent with this statute, and we therefore respectfully urge FDA to reconsider this proposal. Providing caloric information in a manner that is easy for consumers to find, read, and use is essential to enhancing consumers’ ability to make informed choices.

Caloric information for foods and beverages should be easily visible and comparable at the point of purchase.

TFAH agrees with the FDA conclusion that nutrition information should be “clear and conspicuous and noticeable at the point of purchase.” Therefore, we urge FDA to require caloric declarations to be at least as large as the name or price of item, whichever is **larger** (in comparison to the current proposal of whichever is **smaller**). Further, we oppose the tentative conclusion that electronic vending machines can provide caloric information one item at a time, as this limits the ability of consumers to compare nutritional information for foods and beverages.

Calorie labeling should be required for all types of vending machines, including bulk vending machines.

TFAH supports FDA’s definition of vending machines, but opposes the exemption of bulk vending machines from calorie labeling requirements. Bulk vending machines constitute 20 percent of vending machines, and frequently contain nutrition-poor foods. Absence of a selection button in bulk vending machines is not a justifiable reason for these machines to be exempted. In Section 4205, Congress was very specific about exemptions, and did not include bulk vending machines. Congress’ mention of selection buttons on vending machines was to provide options for the placement of caloric information; however, machines without a selection button have ample space elsewhere to place a calorie label. We therefore urge FDA to require all vending machines, as defined by the proposed rule, to provide caloric information for foods and beverages.

Caloric information should be provided for food and beverages as offered for sale.

We strongly support FDA's proposal for calories to be posted per package, as offered for sale, even if the Nutrition Facts label indicates that a food item constitutes more than one serving. Two-thirds of individuals could not accurately calculate the nutritional information for a 20-ounce bottle of soda that was labeled as having 2.5 servings, according to one study.³ Therefore, consumers should be provided with the total calorie content of the food item. Further, TFAH agrees with the FDA conclusion that calorie ranges are not necessary within the context of vending machines.

Calorie numbers should be rounded.

TFAH strongly supports the FDA's proposal to round calorie numbers, which is also required for Nutrition Facts labels. Unrounded calorie numbers can falsely indicate that calorie numbers are more precise than reality, and can make comparing calorie content of food items more difficult.

Vending labeling should be implemented within six months of the publication of the final rule.

FDA has proposed to implement menu labeling six months following publication of the final rule. This same timeline should apply to vending machines, as opposed to the proposed 12 months. If restaurants can comply with calorie labeling requirements within six months of the proposed rule, this is plenty of time for vending operators to provide caloric information for vending machines. Vending labeling is not burdensome, and for many vendors will simply involve placing a sticker adjacent to the food and beverage items in the machine. Nutrition analysis software is inexpensive (and even offered for free online), and most vending machine items already have caloric information on their Nutrition Facts labels. Further, many major beverage companies have already voluntarily consented to provide caloric information for beverages in vending machines by 2010.

TFAH strongly urges FDA to support state and local implementation and enforcement of the federal law. We urge FDA to: 1) create a reporting mechanism; 2) enforce fines or penalties for noncompliance; and 3) direct any resulting funds to inspection programs enforcing the law. Further, we recommend that FDA provide adequate training, guidance, and funding to states and localities to support implementation and enforcement of the law.

³ Rothman R., Housam R., Weiss H., et al. "Patient Understanding of Food Labels: The Role of Literacy and Numeracy." *American Journal of Preventive Medicine* 2006, vol. 31 (5), pp. 391-398.

Thank you for your consideration of these views. We hope that our comments will assist the FDA in making nutritional information more accessible to the American public. If you have any questions, please do not hesitate to contact our Director of Government Relations, Becky Salay, at (202) 223-9870 ext. 15, or via email at bsalay@tfah.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Levi". The signature is written in a cursive style with a large initial "J" and "L".

Jeffrey Levi, Ph.D.

Executive Director