

November 22, 2023

Reagan-Udall Foundation for the Food and Drug Administration
1333 New Hampshire Ave, NW
Suite 420
Washington, DC 20036

RE: Comments in Response to the Foundation’s Front-of-Package Nutrition Labeling Public Meeting

Members of the Foundation:

I am writing on behalf of the National Automatic Merchandising Association (NAMA). NAMA represents the \$34.9 billion U.S. convenience services industry, with our membership comprised of owners and operators of vending machines and micro-markets, office coffee/tea/water services, pantry service providers, and vending machine manufacturers. As the association representing an industry that provides to the needs of 40 million American consumers each day, wherever they are – be it at home, work, or leisure, NAMA is committed to ensuring the accessibility and variety of food choices for consumers nationwide.

NAMA is proud to promote healthy lifestyles and serve as a conduit of nutrition information for consumers. In 2019, NAMA created a public health commitment with the Partnership for a Healthier America to increase the availability of ‘better-for-you’ options available to American consumers by 40 percent.¹

Our commitment to providing convenient and affordable food options aligns with our shared goal of fostering a healthier America. We continue to believe providing consumers with accurate and useful information enables them to make informed decisions. However, the convenience services industry is concerned with the effect of suggested mandatory front-of-pack nutrition labeling (FOPNL) schemes.

Support for Facts Up Front System and Calorie Disclosure

NAMA supports the continued use of the Facts Up Front system, which we find clear, factual, and supportive of the government's interest in informing consumers about nutrition. We believe that this approach encourages industry collaboration and innovation without compromising consumer choice. Further the convenience services industry relies on the calorie information conveyed through the current voluntary Facts Up Front system to comply with the application of calorie labeling requirements under the ACA.² Facts Up Front represents a successful negotiation among parties and this voluntary program allows vending operators to comply with the federal mandate.

FDA recognized the unique challenges faced by the application of the ACA's calorie disclosure requirement to vending machines and astutely brokered a solution that resulted in the utilization of Facts Up Front to meet the statute’s requirements.³ This has proven to be a workable solution that has

¹ <https://namanow.org/convenience-services/public-health-commitment/>

² Public Law 111-148

³ <https://www.federalregister.gov/d/2014-27834>

given consumers the required calorie information in our unique retail channel. However, we are now concerned that the new FOPNL proposals are not adequately considering the existing calorie labeling requirements and pose a potential risk of dual, or even competing, labeling mandates. Any mandatory FOPNL scheme that does not include calories would create hardships for the convenience services industry as well as our suppliers who are already struggling to maximize finite packaging space.

Federal labeling requirements must be complementary and provide consumers with easily understood information. Therefore, we strongly urge the inclusion of calories in any proposed FDA FOPNL scheme, which will allow our industry to remain in compliance with existing federal requirements.

Risk of Disproportionate Stigmatization

Products sold through the unattended retail channel could face disproportionate stigmatization under mandatory FOPNL schemes, particularly those incorporating interpretive elements related to added sugar, sodium, and fat. This stigmatization may unfairly target many products within traditional vending machines, potentially using negative terminology, warning labels and colors that could impact consumer perception.

While public health advocates argue that consumers are not using the nutrition information that is currently available on the nutrition facts panel, we have concerns that interpretive symbols may be similarly misunderstood or misread. Additionally, interpretive symbols have the potential to override consumers' ability to make their own informed choices within the context of the complete diet, leading to conclusions that may not be warranted. Warning labels, in this context, risk superseding reason. We believe the FDA must be careful to base any required labeling on science that empowers the consumer to make informed choices and avoid unnecessarily stigmatizing the products offered by our members.

Legal and First Amendment Concerns

Imposing mandatory labeling may infringe on the rights of businesses and consumers, necessitating a careful examination of the legal and constitutional dimensions of such regulations. NAMA urges the FDA to consider whether the Agency has the authority to require FOPNL given there is no express authority for such a requirement included in the Food, Drug, and Cosmetic Act (FDCA). Further, a requirement for redundant information labeling would impose burdens of clear First Amendment significance. Sections 403(q) and 403(f) of the FDCA require the FDA to mandate the disclosure of certain nutritional information on food labels, but the FDA's existing nutrition labeling regulations fulfill these requirements. Therefore, the FDA cannot rely on those sections to support additional FOPNL requirements. If the FDA moves forward with this work, we ask the Agency to consider voluntary approaches, created in collaboration with industry and other stakeholders, to more appropriately facilitate adoption and implementation.

Scientific Basis

NAMA urges the FDA to base any promotion of FOPNL on scientific evidence of its effectiveness with consumers. A thorough and unbiased evaluation of the evidence is essential before imposing regulations that can significantly impact both industry and consumers and may not move the needle on public health. We understand that the International Food Information Council is also conducting research and we urge the FDA to incorporate this and data from other trusted sources. Additionally, there should be an aligned scientific process by which the public health impact of FOPNL is measured.

In conclusion, we urge careful consideration of the potential unintended consequences associated with mandatory front-of-pack nutrition labeling, especially those that incorporate interpretive components or do not reference calories.

NAMA looks forward to engaging in constructive dialogue with stakeholders as the FDA considers options for FOPNL. We remain committed to working collaboratively towards solutions that prioritize consumer education, industry innovation, and the overall well-being of the American public.

Sincerely,



Matt Bisenius
Vice President, External Affairs