



July 5, 2011

Division of Dockets Management (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, MD 20852

Re: Docket No. FDA-2011-F-0171, RIN 0910-AG56

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

The American Cancer Society Cancer Action Network largely supports the Food and Drug Administration's (FDA) proposed regulations for calorie labeling of items in vending machines that are operated by a person owning or operating 20 or more vending machines and urges the FDA to amend certain provisions to better provide consumers with calorie information to support their making healthy choices. The American Cancer Society Cancer Action NetworkSM (ACS CAN) is the nonprofit, nonpartisan advocacy affiliate organization of the American Cancer Society dedicated to eliminating cancer as a major health problem. ACS CAN supports legislative, regulatory, and policy efforts that will make cancer a top national priority.

Nutrition and physical activity factors, including overweight and obesity, contribute to one third of all cancer deaths.¹ Overweight and obesity are clearly associated with increased risk for cancer of the breast (postmenopausal), colon, endometrium, esophagus and kidney.² There is also highly suggestive evidence of a link between overweight and obesity and cancers of the pancreas, gallbladder, thyroid, ovary, and cervix, and for multiple myeloma, Hodgkin's lymphoma, and aggressive prostate cancer.³ As a result of this clear relationship diet and weight status have with certain types of cancer, ACS CAN supports multi-faceted population-based policy approaches to improving nutrition and physical activity by removing barriers, changing social norms, and increasing awareness.

ACS CAN strongly supported the passage of the Affordable Care Act (Public Law 11-148; ACA), which contained a number of meaningful public health and health care system reforms that will benefit families affected by cancer by emphasizing prevention, expanding access to meaningful coverage, and improving quality of life for cancer patients and survivors. Section 4205 of the ACA, which amends sections 403 and 403A of the Federal Food, Drug, and Cosmetic Act (FDCA), requires vending machine operators who own or operate 20 or more vending machines to disclose nutrient content information for certain articles of food sold from vending machines

¹ American Cancer Society. *Cancer Prevention and Early Detection Facts & Figures 2011*. Atlanta: American Cancer Society, 2011.

² Ibid.

³ Ibid.

and requires chain restaurants and similar retail food establishments with 20 or more locations doing business under the same name and offering for sale substantially the same menu items to disclose nutrient content information for standard menu items appearing on restaurant menus and menu boards. ACS CAN supports providing consumers with nutrition information that will allow them to make informed decisions about the foods and beverages they consume and promote awareness for making healthy food and beverage choices.

Consumers spend up to 5 percent of their away from home food budget on vending machines and there is one vending machine for every 40 adults in the United States.⁴ Vending machines also typically sell high-calorie snack foods and beverages. Therefore, requiring vending machines to display calorie information for items sold is an integral part of a comprehensive approach to addressing obesity and ultimately preventing future cancer deaths.

Summary of Comments on Proposed Rule

Overall, FDA has proposed generally sound and clear regulations on how to fulfill the vending machine labeling requirements of Section 4205 of the ACA. We support FDA's proposal to require all vending machine owners or operators of 20 or more vending machine to comply with the regulations, without any additional exemptions based on primary business activity or for small businesses. However, we oppose the exemption for vending machines that lack a selection button. All vending machines owned or operated by covered vendors that sell foods or beverages should be covered by the regulations.

We support FDA's proposal that calorie information provided be clear and conspicuous in its font, size, color, and contrast and provide some recommendations on how this information should be displayed even more clearly and prominently. We recommend that calorie information be required to be provided for the entire item as vended. In addition, we oppose allowing that calorie information for all vended items be provided on a sign adjacent to the vending machine, rather than next to each item. Consumers must be able to view all available items, their prices, and the calorie information for each item simultaneously before making an initial selection.

For items with front of package labeling of calorie information, we support allowing this information to be used to fulfill the calorie labeling requirements if it is clear and conspicuous, oriented in the appropriate direction for the consumer to be able to easily the information, not obscured, and contains calorie information for the entire package.

We support a six month, rather than a 12 month, timeline for implementation of the final rule following publication and urge the FDA and state and local health departments to enforce the requirements to the extent allowed by law. We also recommend that FDA make clear that state and localities are not preempted from enacting other types of nutrition labeling requirements and from enacting vending machine labeling requirements for vendors that are not covered by this regulation.

⁴ Industry data, as cited in Proposed Rule on Food Labeling: Calorie Labeling of Articles of Food in Vending Machines [Docket No. FDA-2011-F-0171].

Specific comments on certain provisions are described in detail in the comments that follow.

Comments on Specific Provisions of the Proposed Rule

Who and What Are Covered by the Proposed Rule

Vending Machine Operators

ACS CAN supports the definition of “vending machine operator” in the proposed rule. The definition of vending machine operator is comprehensive and covers the many different types of individuals and entities that control or direct the function of, or placement of items in, a vending machine. We are pleased that all persons engaged in the business of owning or operating 20 or more vending machines are subject to this proposed rule, regardless of whether or not owning or operating vending machines is their primary business activity, which is the requirement for chain retail establishments to be subject to the menu labeling requirements in Section 4205 of the ACA.

We support FDA’s proposal to not provide an additional exemption from the vending machine nutrition labeling requirements for small businesses. Congress provided an explicit small business exemption for vending operators -- those who operate fewer than 20 vending machines. That exemption in Section 4205 is the standard to be used in this rule, not the definitions of small businesses employed by the Small Business Administration (SBA) or the small business exemption provided under the Nutrition Labeling and Education Act (NLEA). As the FDA pointed out, using the SBA definition would exempt 97 percent of vending operators who would be covered by the proposed rule. Congress did not pass a law to apply to only 3 percent of vending machine operators. We agree with the FDA that those vendors are covered by the vending labeling requirements and believe that the requirements are not too burdensome for chain vending machine operators to be able to comply.

Vending machine calorie labeling is not burdensome. The non-alcoholic beverage industry has already announced that they plan to provide total calorie counts on the beverage selection buttons for vending machines that they operate by 2012,⁵ and according to the proposed rule, half of all vending machines are for beverages. For companies that are not already working toward vending machine labeling, posting calories for vended items could be as simple as adding a sticker for each item on the machine or editing the selection cards in the machine. Few items will need to be analyzed for calorie content, as the overwhelming majority of vended items already have Nutrition Facts Panels. Those few items that do not can be analyzed using nutrition analysis software, which is available for free online and relatively simple to use.

Vending Machines

We support the definition of “vending machine” in the proposed rule and believe that it is comprehensive in including many of the types of vending machines that consumers encounter.

⁵ American Beverage Association. News Releases and Statements: Beverage Industry Will Make Calories More Clear and Usable for Consumers. February 9, 2010. Available at <http://www.ameribev.org/news--media/news-releases--statements/more/180/>. Accessed June 28, 2011.

We agree that only vending machines that dispense foods or beverages should count toward the number of vending machines that an entity owns or operates for purposes of determining whether or not they are subject to this rule. For example, we would agree that an individual that operates 50 vending machines, only 15 of which contain any food or beverage items, would not be subject to the rule. The FDA should make clear, however, that vending machines that contain a mix of food and non-food items are included in that count. For example, if a vending machine in a bus station includes aspirin, mouthwash, and candy bars, the machine should be included in the number of food vending machines owned or operated by the vendor.

We oppose FDA's tentative conclusion that vending machines, including bulk vending machines, that lack a selection button are not covered by the vending machine labeling requirements. We believe that the vending machine calorie labeling requirement should not depend on whether or not the machine has a selection button. Congress did not intend to exempt vending machines without selection buttons. Rather, the mention of selection buttons on vending machines in Section 4205 of the ACA is in reference to where the nutrition information should be placed. The lack of a selection button is not a legitimate reason to exempt a vending machine from the calorie labeling requirement. For many such machines, a crank or knob serves the purpose of a selection button. In addition, posting calorie for bulk vending machines, which lack selection buttons, should be easier than for other vending machines, given the limited number of vended items, ready availability of calorie information for most of those items, and ample space available to provide the calorie label. Also, bulk vending machines often contain foods of poor nutritional quality, such as candy, for which consumers especially need calorie information. Vending machines come in many different types and are operated in many different ways, as the proposed definition notes. It seems a poor excuse exempt from the calorie labeling requirements the 20 percent of vending machines that are bulk vending machines, simply because they lack a selection button.

Requirements for Calorie Declarations

Placement of Calorie Declarations

ACS CAN disagrees with FDA's interpretation of the requirement that calorie information be placed "in close proximity to the article of food or the selection button" to mean that a 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 selection button. We recommend that calorie labels be required to appear next to each vended item or its selection button. The FDA's proposal to allow companies to post the calories for all items on a single sign next to or on a vending machine does not comply with the requirements of the statute. The law requires that companies must "provide a sign [disclosing the calorie content] in close proximity to each article of food or the selection button", providing the calories separately for each vended item.

The FDA has proposed in §101.8(c)(2)(ii)(A) that the sign posting calorie counts be "visible at the same time as the food, its name, price, or selection button or selection number is visible." Thus, the sign must be in a person's field of vision when they are looking at the name, price, or selection button. The only way to achieve that would be for the calories to be listed directly on

the vending machine, on the selection button or adjacent to the food item. If calorie information was placed on a separate sign that is adjacent to the vending machine, it would be difficult for consumers to read the calorie information while looking at the selection or prices of products in the vending machine.

It is essential that the nutrition information be easy to see and easy to use. Just as the menu labeling proposed rule requires that signs be placed directly next to each menu listing and food on display in restaurants and does not allow the calorie information to be placed on a separate sign, calories for vended items should be directly next to the vended item or its selection button or device (such as a crank on a bulk vending machine). Consumers are not used to getting nutrition information for vended items. It is likely they would not see a sign posted next to a vending machine, even if the font size for the calories is large. Many vending machines also are next to other vending machines or other items and there is not always space for an adjacent sign. There is, however, ample space on or in vending machines for the calories to be posted in close proximity to each item or selection button, as Congress intended.

Also, it would be difficult to list the calorie information in the same order on the signs as they appear in the machines, given that products in vending machines are arranged in a grid of rows and columns and signs are more likely to present a single list of items. Having a different order or arrangement for the vended items and the nutrition information for those items would make it harder for consumers to find an item's nutrition information than if the information was placed directly next to the item or its selection button. Signs also would not allow people to readily see and easily use price and nutrition information together.

For certain types of vending machines with a limited number of selections, we disagree with FDA's tentative conclusion that the statement of calories may appear anywhere on the front of the vending machine. Regardless of the number of unique items for sale or manner of selection, calorie information for each item should be placed directly on the vending machine, on the selection button, or adjacent to the food item, in a clear and conspicuous manner.

For electronic vending machines, we disagree with FDA's tentative conclusion that the calorie disclosure may be displayed when the selection numbers are entered but before the selection is confirmed, as proposed in §101.8(c)(2)(ii)(E). This would mean that the consumer would only be able to see the calorie information for one item at a time and this information would only be required to be visible once a consumer puts their money into the machine or presses a selection button. In order for the calorie information to be useful, people must readily be able to make comparisons between items before making a purchase selection. In order to allow them to do this easily, the calorie information for all the items in a vending machine must be available and readily visible to people before they make their purchase selection. It also must be available at the same time for all items in the machine to allow people to make comparisons between items. Making comparisons between items is a key way that people use nutrition information. For example, people not only want to know that a Butterfinger candy bar has 270 calories, but also that it has 120 more calories than a bag of Pretzel M&M's (150 calories per bag).

Format of Calorie Declarations

ACS CAN strongly supports the FDA's conclusion that calories be posted per item as offered for sale. Section (H)(viii) of the statute explicitly requires the disclosure of calories contained in the whole vended item, even if the Nutrition Facts Panel for that item indicates it is more than one serving. The statute does not allow for exemptions to this requirement.

Foods and beverages purchased from a vending machine are typically consumed by a single person in a single eating occasion, regardless of the serving size and number of servings listed in the Nutrition Facts Panel. It would be deceptive to label a bag of chips as 160 calories (per one-ounce serving) on the vending machine, only to have people discover once they purchased it that the whole bag of chips contained 1.5 servings and 240 calories. Serving size information on packaged foods can be confusing. In one study, two-thirds of people could not correctly calculate the nutrition information in a 20-ounce bottle of soda that was labeled as 2.5 servings.⁶

We also support FDA's tentative conclusion that calorie ranges are not necessary within the context of vending machines. In order to purchase a unique item from a vending machine, one must make a unique selection. We agree that the selection buttons provide ample opportunity for labeling the calories contained in each of the available items, even if multiple flavors of a food are made available using different combinations of selection buttons.

We support FDA's proposal in §101.8(c)(2)(i)(A) that the number of calories in a covered vending machine food be rounded to the nearest 5 calorie increment up through 50 calories and to the nearest 10-calorie increment above 50 calories. It is essential that calorie numbers be rounded as the FDA has proposed and as is required in the Nutrition Facts Panel. Unrounded calorie numbers would imply a precision that is misleading. Also, it is harder for consumers to make comparisons between unrounded numbers.

We also support FDA's proposal in §101.8(c)(2)(i)(B) that the term "calories" or "cal" appear adjacent to the number of calories for each covered vending machine food. People are not accustomed to having calorie labeling on vending machines. Without this identifier, it might be unclear what the number means.

Prominence of Calorie Information

We support the requirement in Section 403(q)(5)(H)(viii) of the FDCA that calorie declarations for a covered vending machine food be clear and conspicuous. For the calorie information to be useful, the calories must be prominent and easy to read. While we agree that it would not be appropriate to recommend a specific font type or size for all calorie declarations, we recommend that FDA require that the calorie label be at least as large as the name or price associated with the vended item, whichever is larger, as opposed to the current proposal that the calories be as large as whichever is smaller. We agree that the color and contrasting

⁶ 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.

background must all be comparable to the name and price of the item, making it as easy to see and read as other ordering information.

Determination of Calorie Content

We agree with the FDA that vending machine operators should use the nutrition information on the Nutrition Facts Panel as the basis for calorie information provided on the vending machine when such information is available. However, if the Nutrition Facts Panel lists the item as more than one serving, the number of calories per serving must be multiplied by the number of servings to obtain the total number of calories in the item, which is what must be labeled on the vending machine. This would be the easiest way for vendors to obtain and provide accurate information for consumers. When vended items do not have a Nutrition Facts Panel, vendors could request calorie information from the product's manufacturer or supplier or use databases, laboratory analyses, or other reasonable basis determinations for obtaining calorie information.

When Calorie Information is Not Required

We agree with the proposed rule that only if the full Nutrition Facts Panel is readily visible without obstruction before purchase would the vendor not have to provide a sign listing the calories for the item. We agree that the Nutrition Facts Panel must be large enough to be read from the point of purchase for the exemption to take effect, and that smaller-format Nutrition Facts Panels would not meet this requirement. Possible obstructions include the coils of the vending machine, as well as folds in packaging. Standing in front of a vending machine, a person usually would be too far away to read small labels. Also, the product would have to be positioned in the machine so that the Nutrition Facts Panel would appear in the correct direction and one would not have to tilt their head to read it. It is not uncommon for smaller food items, such as candy bars, to use small label formats, for the Nutrition Facts Panel to be under a fold in the packaging, and for the item to be placed sideways in the vending machine, all of which would prohibit the purchaser from easily examining the Nutrition Facts Panel prior to purchase.

We also support FDA's conclusion that "nutrition information" in the context of section 403(q)(5)(H)(viii)(I)(aa) means total calories in the article of food because that is the information that vending machine operator would otherwise have to provide on a sign. We agree with the FDA that the exemption provided for items that "otherwise provide visible nutrition information" could only be for information on the package of the vended item.

We agree with the FDA that prominent front-of-pack labeling could be a way to provide visible nutrition information, as long as the calories are listed for the whole vended item and the font size, color, and contrasting background make the nutrition information readily visible and easily readable from the point of ordering. The final rule should clearly specify that to qualify for an exemption, such front-of-pack information must be provided for the entire vended item as offered per sale, and not per serving. The front-of-pack information must be clearly visible, not obscured by the coil or placement in the vending machine, and the item must be placed in the vending machine in the correct direction so that the calorie information appears upright.

For the requirement that vendors that do not place a sign with calorie information must “otherwise provide visible nutrition information at the point of purchase”, we recommend that “point of purchase” be defined as both before and after the consumer inserts the required money, token, card, or key into the machine or manually operates it and before the consumer makes their final item selection. These two separate points in time both should be included in FDA’s definition of point of purchase for the purposes of this rule.

Timeline for Implementation

We urge the FDA to enforce the final vending machine labeling regulations six months following publication of the final rule, not one year later as proposed. If six months is enough time for restaurants, it should be ample time for vending machine operators. As noted previously, the major beverage companies have already agreed to implement vending machine labeling by 2012. Leading food and beverage manufacturers and retailers that are members of the Grocery Manufacturer’s Association or the Food Marketing Institute also announced that they will place calorie and other nutrition information on the front of packages beginning in 2011. In addition, only a small fraction of vended items will require new nutrition analyses. Therefore, many vending machine operators will not have to do anything to fulfill the requirements of the regulation for some vending machines and vended products. For those vending machines and items that will require the use of a sign to fulfill the calorie labeling requirements, posting the calories on the vending machine can be as simple as adding a sticker next to each vended item or its selection mechanism.

Enforcement

The FDA can and should enforce vending machine labeling in a number of ways:

A). Devise a reporting mechanism and regime of penalties for violation of the federal law.

The FDA should set up a simple process for consumers, competitors, local health inspectors, and others to report potential violations of the federal menu labeling and vending machine labeling requirements and develop a system for collecting and storing reports of violations in a database that would be accessible to the public and state and local authorities to aid enforcement efforts. The FDA should detail the penalties for violations of the law and direct any funds from fines or penalties to support the reporting system and inspection programs enforcing the federal menu labeling and vending labeling laws.

B). Support state and local enforcement of the federal law.

The FDA should provide guidance, training, and funding to states and localities to facilitate enforcement of the federal menu labeling and vending machine labeling regulations.

C). The FDA should support state and local initiatives to enact "identical" vending machine labeling requirements.

For reasons of familiarity, tradition, and established practice, local and state authorities are more likely to enforce their own laws than they are to enforce a federal law. Thus, the FDA

should encourage and facilitate state and local enactment of new menu labeling and vending machine labeling laws and amendment of existing menu labeling laws by providing technical assistance to jurisdictions that are working to enact "identical" disclosure requirements in their laws or amend their existing menu labeling law to make it "identical," including adding a vending machine labeling requirement. The FDA should reiterate in its technical assistance that the *language* of the state or local measure need not be the same as the federal law in order for the relevant labeling requirements to be considered "identical." The word "identical" does not mean verbatim in wording but rather in effect -- state or local requirements that are worded differently from the federal requirements may still be "identical" under Section 4205, unless they compel more than federal law requires.

A significant benefit of local statutory regimes is that they allow states and municipal governments to make use of their existing inspection and enforcement system. We recommend that language be added to the final rule that makes clear that enforcement provisions included in "identical" state or local menu labeling and vending labeling laws are not affected by Section 4205 and need not be "identical" to federal enforcement mechanisms.

Preemption

Preemption of state and local authority is disfavored in the public health arena, where state and local governments historically and traditionally have had broad authority to regulate. Requiring vending machine operators to disclose nutritional information so that consumers can make informed choices falls squarely within this traditional realm of state and local authority. The Proposed Rule correctly recognizes that the preemptive effect of Section 4205 on state and local authority to require calorie labeling by vending machine owners or operators is limited. The Proposed Rule appropriately construes Section 4205 to restrict state and local authority to impose additional or different nutrition labeling requirements for food sold either (1) 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) or (2) from vending machines operated by a person not subject to the requirements of 21 U.S.C. 343(q)(5)(H)(viii) who voluntarily elects to be subject to those requirements by registering biannually under 21 U.S.C. 343(q)(5)(H)(ix).

We support the Proposed Rule's reading of the preemptive scope of Section 4205 as limited to calorie and other nutritional labeling requirements imposed on covered vending machine owners or operators. The language and intent of the statute, together with Executive Order 13132, underscore the validity of the FDA's determination that the Proposed Rule must not create a regulatory vacuum. The alternative interpretation offered by the FDA (that would preempt all "non-identical" state or local nutrition labeling requirements for vending machine owners or operators, regardless of size) would not only create a regulatory vacuum, but also would restrict state and local authority in a manner inconsistent with the federalism principles expressed in Executive Order 13132. Further, the petition process set out in 21 U.S.C. 343-1(b) and 21 CFR 100.1 would not fill that vacuum. In the decades that this petition process has existed, no successful petition has been brought.

This interpretation also would conform to the NLEA's and Section 4205's bar on implied preemption. In the face of the obesity epidemic, state and local governments are motivated to implement a variety of systems, policies, and environmental changes to promote healthy eating and active living, and to prevent chronic disease. It is especially important that their freedom to experiment not be curtailed by an inappropriately broad reading of Section 4205's preemptive language. The proposed rule properly construes the preemptive effect of section 4205. Thus, the FDA is correct that state and local governments retain their authority to impose non-"identical" labeling requirements for food sold (1) from vending machines that are operated by a person engaged in the business of owning or operating 19 or fewer vending machines, and (2) where the owner or operator has not agreed to comply with the federal law by registering with the FDA.

The final rule should include an explicit statement that the scope of the law's preemptive effect is coextensive with the law's nutrition labeling requirements; that is, the only state and local provisions that are preempted are those that explicitly require the type of menu labeling required by Section 4205 by a covered vending machine owner or operator. For example, if the FDA decided to exempt alcoholic drinks from menu labeling, state or local menu labeling requirements for alcoholic beverages sold by covered vending machine owners or operators would not be preempted.

We also believe that the final rule should more explicitly set forth the limitations on the preemptive effect of Section 4205. Given the presumption against preemption in public health matters, and specifically in areas affected by this statute, the final rule should contain a more explicit statement of non-preemption than what is included in the Proposed Rule. See Pub. L. No. 101-535, § 6(c)(1), 104 Stat. 2353, 2364 (21 U.S.C. § 343-1 note (NLEA "shall not be construed to preempt any provision of State law, unless such provision is expressly preempted under [21 U.S.C. § 343-1(a)] of the [FDCA]"); *NYSRA v. NYC Bd. of Health*, 556 F.3d 114 (2nd Cir. 2009). See also *Memorandum for the Heads of Executive Departments and Agencies*, Office of the Press Sec'y, The White House (Executive Order 13132) (May 20, 2009).

For example, the final rule should explicitly state that the word "identical" does not mean verbatim in wording but rather in effect—state or local requirements that are worded differently from the federal requirements may still be "identical" under Section 4205. Thus, we suggest the following language be added: "The specific words of the state or local requirements need not be the same. State or local requirements that are worded differently from the federal requirements and/or provide for different enforcement schemes may still be 'identical' under Section 4205."

Additionally, the savings clause for warnings about the safety of food or a component of the food is included in a section designated "Rule of Construction" that is not codified. See Section 4205(d). The exclusion of the Rule of Construction from the text of the codified version may lead to confusion over how the statute should be interpreted. Thus, we urge the FDA to include the Rule of Construction in the CFR. The lack of a codified statement of a similar rule of construction in the NLEA has led to confusion and to court decisions that did not take that rule

into account. *See, e.g., In re Farmed Raised Salmon Cases*, 142 Cal.App.4th 805 (Cal. Ct. App. 2006) (later overruled by California Supreme Court, which relied on the uncodified provision); *Cohen v. McDonald's Corp.*, 347 Ill.App.3d 627 (2004). Ensuring that the rule of construction is explicitly set out in the CFR could help to avoid similar problems with the vending machine labeling law.

Conclusion

Overall, ACS CAN strongly supports the FDA's conclusions that calories be posted clearly and conspicuously for items as offered for sale, meaning per package, and that ranges are not needed for labeling vended items.

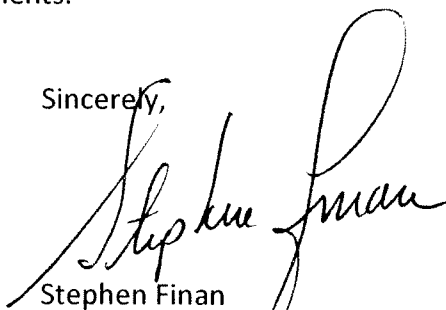
However, we strongly oppose the proposal to allow companies to post the calories for all items in a vending machine on a single sign next to the vending machine and the proposed exemption for vending machines without a selection button. Those proposals are inconsistent with the statute and would not allow the consumer to easily use calorie information to support their making more informed food choices at vending machines. In addition, we urge the FDA to require that the calorie labeling be in a font size at least as large as the name or price associated with the item, whichever is largest, not smallest. We also disagree with the tentative conclusion that calorie information for electronic vending machines could be provided one item at a time and after an item is selected, which would prevent consumers from comparing options and seeing calorie information before they make an initial selection.

We thank the FDA for its work to implement the vending machine labeling requirement in Section 4205 of the ACA and respectfully urge that it issue a strong final rule in a timely manner and provide companies with six months to implement the regulations following publication of the final rule.

We look forward to working with you to provide consumers with accurate calorie information for foods and beverages available for sale in vending machines, which we believe will increase their awareness about the relative healthfulness of food and beverages options and allow them to make healthier choices.

If you have any questions or we can provide additional information, please contact Melissa Maitin-Shepard at Melissa.maitin-shepard@cancer.org or 202-585-3205. Thank you for your time and your consideration of our comments.

Sincerely,

A handwritten signature in black ink that reads "Stephen Finan". The signature is fluid and cursive, with a large loop at the end of the last name.

Stephen Finan
Senior Director, Policy
American Cancer Society Cancer Action Network