

but capable of being individually sold in full compliance with all requirements of the regulations in this part. Open multiunit retail packages that do not obscure the number of units or prevent examination of the labeling on each of the individual units are not subject to this paragraph if the labeling of each individual unit complies with the requirements of paragraphs (f) and (i) of this section. The provisions of this section do not apply to that butter or margarine covered by the exemptions in § 1.24(a) (10) and (11) of this chapter.

(t) Where the declaration of net quantity of contents is in terms of net weight and/or drained weight or volume and does not accurately reflect the actual quantity of the contents or the product falls below the applicable standard of fill of container because of equipment malfunction or otherwise unintentional product variation, and the label conforms in all other respects to the requirements of this chapter (except the requirement that food falling below the applicable standard of fill of container shall bear the general statement of substandard fill specified in § 130.14(b) of this chapter), the mislabeled food product, including any food product that fails to bear the general statement of substandard fill specified in § 130.14(b) of this chapter, may be sold by the manufacturer or processor directly to institutions operated by Federal, State or local governments (schools, prisons, hospitals, etc.): *Provided, That:*

(1) The purchaser shall sign a statement at the time of sale stating that he is aware that the product is mislabeled to include acknowledgment of the nature and extent of the mislabeling, (e.g., “Actual net weight may be as low as \_\_\_% below labeled quantity”) and that any subsequent distribution by him of said product except for his own institutional use is unlawful. This statement shall be kept on file at the principal place of business of the manufacturer or processor for 2 years subsequent to the date of shipment of the product and shall be available to the Food and Drug Administration upon request.

(2) The product shall be labeled on the outside of its shipping container with the statement(s):

(i) When the variation concerns net weight and/or drained weight or volume, “Product Mislabeled. Actual net weight (drained weight or volume where appropriate) may be as low as \_\_\_% below labeled quantity. This Product Not for Retail Distribution”, the blank to be filled in with the maximum percentage variance between the labeled and actual weight or volume of contents of the individual packages in the shipping container, and

(ii) When the variation is in regard to a fill of container standard, “Product Mislabeled. Actual fill may be as low as \_\_\_% below standard of fill. This Product Not for Retail Distribution”.

(3) The statements required by paragraphs (t)(2) (i) and (ii) of this section, which may be consolidated where appropriate, shall appear prominently and conspicuously as compared to other printed matter on the shipping container and in boldface print or type on a clear, contrasting background in order to render them likely to be read and understood by the purchaser under ordinary conditions of purchase.

[42 FR 14308, Mar. 15, 1977, as amended at 42 FR 15673, Mar. 22, 1977. Redesignated at 81 FR 59131, Aug. 29, 2016]

#### § 101.8 Vending machines.

(a) *Definitions.* The definitions of terms in section 201 of the Federal Food, Drug, and Cosmetic Act apply to such terms when used in this section. In addition, for the purposes of this section:

*Authorized official of a vending machine operator* means an owner, operator, agent in charge, or any other person authorized by a vending machine operator who is not otherwise subject to section 403(q)(5)(H)(viii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)(5)(H)(viii)), to register the vending machine operator with the Food and Drug Administration (“FDA”) for purposes of paragraph (d) of this section.

*Vending machine* means a self-service machine that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses servings of food in bulk or in

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packages, or prepared by the machine, without the necessity of replenishing the machine between each vending operation.

*Vending machine operator* means a person(s) or entity that controls or directs the function of the vending machine, including deciding which articles of food are sold from the machine or the placement of the articles of food within the vending machine, and is compensated for the control or direction of the function of the vending machine.

(b) *Articles of food not covered.* Articles of food sold from a vending machine are not covered vending machine food if:

(1) The prospective purchaser can view:

(i) The calories, serving size, and servings per container listed in the Nutrition Facts label on the vending machine food without any obstruction. The Nutrition Facts label must be in the format required in §101.9(c) and (d). The Nutrition Facts label must be in a size that permits the prospective purchaser to be able to easily read the nutrition information contained in the Nutrition Facts label on the article of food in the vending machine. Smaller formats allowed for Nutrition Facts for certain food labeling under FDA regulation at §101.9 are not considered to be a size that a prospective purchaser is able to easily read; or

(ii) The calories, serving size, and servings per container listed in a reproduction of the Nutrition Facts label on the vending machine food, provided that the reproduction is a reproduction of an actual Nutrition Facts label that complies with §101.9 for a vending machine food, is presented in a size that permits the prospective purchaser to be able to easily read the nutrition information, and the calories, serving size, and servings per container are displayed by the vending machine before the prospective purchaser makes his or her purchase; or

(2) The prospective purchaser can otherwise view visible nutrition information, including, at a minimum, the total number of calories for the article of food as sold at the point of purchase. This visible nutrition information must appear on the food label itself.

The visible nutrition information must be clear and conspicuous and able to be easily read on the article of food while in the vending machine, in a type size at least 150 percent of the size required by §101.7(i) for the net quantity of contents declaration on the front of the package, and with sufficient color and contrasting background to other print on the label to permit the prospective purchaser to clearly distinguish the information.

(c) *Requirements for calorie labeling for certain food sold from vending machines—*

(1) *Applicability; covered vending machine food.* For the purposes of this section, the term “covered vending machine food” means an article of food that is:

(i) Sold from a vending machine that does not permit the prospective purchaser to examine the Nutrition Facts label prior to purchase as provided in paragraph (b)(1) of this section or otherwise provide visible nutrition information at the point of purchase as provided in paragraph (b)(2) of this section; and

(ii) Sold from a vending machine that:

(A) Is operated by a person engaged in the business of owning or operating 20 or more vending machines; or

(B) Is operated by a vending machine operator that has voluntarily elected to be subject to the requirements of this section by registering with FDA under paragraph (d) of this section.

(2) *Calorie declaration.* (i) The number of calories for a covered vending machine food must be declared in the following manner:

(A) To the nearest 5-calorie increment up to and including 50 calories and 10-calorie increment above 50 calories, except that amounts less than 5 calories may be expressed as zero.

(B) The term “Calories” or “Cal” must appear adjacent to the caloric content value for each food in the vending machine.

(C) 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. The vending machine

operator may voluntarily disclose calories per serving in addition to the total calories for the food.

(D) If a covered vending machine food is one where the prospective purchaser selects among options to produce a final vended product (*e.g.*, vended coffee, hot chocolate or tea with options for added sugar, sugar substitute, milk, and cream), calories must be declared per option or for the final vended products.

(ii) Calorie declarations for covered vending machine food must be clear and conspicuous and placed prominently in the following manner:

(A) The calorie declarations may be placed on a sign in close proximity to the article of food or selection button, *i.e.*, in, on, or adjacent to the vending machine, but not necessarily attached to the vending machine, so long as the calorie declaration is visible at the same time as the food, its name, price, selection button, or selection number is visible. The sign must give calorie declarations for those articles of food that are sold from that particular vending machine.

(B) When the calorie declaration is in or on the vending machine, the calorie declaration must be in a type size no smaller than the name of the food on the machine (not the label), selection number, or price of the food as displayed on the vending machine, whichever is smallest, with the same prominence, *i.e.*, the same color, or in a color at least as conspicuous, as the color of the name, if applicable, or price of the food or selection number, and the same contrasting background, or a background at least as contrasting as the background used for the item it is in closest proximity to, *i.e.*, name, selection number, or price of the food item as displayed on the machine.

(C) When the calorie declaration is on a sign adjacent to the vending machine, the calorie declaration must be in a type size large enough to render it likely to be read and understood by the prospective purchaser under customary conditions of purchase and use, and in a type that is all black or one color on a white or other neutral background that contrasts with the type color.

(D) Where the vending machine only displays a picture or other representa-

tion or name of the food item, the calorie declaration must be in close proximity to the picture or other representation or name, or in close proximity to the selection button.

(E) For electronic vending machines (*e.g.*, machines with digital or electronic or liquid crystal display (LCD) displays), the calorie declaration must be displayed before the prospective purchaser makes his or her purchase.

(F) For vending machines with few choices, *e.g.*, popcorn, the calorie declaration may appear on the face of the machine so long as the declaration is prominent, not crowded by other labeling on the machine, and the type size is no smaller than the name of the food on the machine (not the label), selection number, or price of the food as displayed on the vending machine, whichever is smallest.

(d) *Voluntary provision of calorie labeling for foods sold from vending machines*—(1) *Applicability*. A vending machine operator that is not subject to the requirements of section 403(q)(5)(H)(viii) of the Federal Food, Drug, and Cosmetic Act may, through its authorized official, voluntarily register with FDA to be subject to the requirements established in paragraph (c)(2) of this section. An authorized official of a vending machine operator that voluntarily registers cannot be subject to any State or local nutrition labeling requirements that are not identical to the requirements in 403(q)(5)(H) of the Federal Food, Drug, and Cosmetic Act.

(2) *Who may register?* A vending machine operator that is not otherwise subject to the requirements of section 403(q)(5)(H) of the Federal Food, Drug, and Cosmetic Act may register with FDA.

(3) *What information is required?* The vending machine operator must provide FDA with the following information:

(i) The contact information (including name, address, phone number, email address), for the vending machine operator;

(ii) The address of the location of each vending machine owned or operated by the vending machine operator that is being registered;

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(iii) Preferred mailing address (if different from the vending machine operator address), for purposes of receiving correspondence; and

(iv) Certification that the information submitted is true and accurate, that the person or firm submitting it is authorized to do so, and that each registered vending machine will be subject to the requirements of this section.

(v) Information should be submitted by email by typing complete information into the portable document format (PDF) form, saving it on the registrant's computer, and sending it by email to [menulawregistration@fda.hhs.gov](mailto:menulawregistration@fda.hhs.gov).

If email is not available, the registrant can either fill in the PDF form and print it out (or print out the blank PDF and fill in the information by hand or typewriter), and either fax the completed form to 301-436-2804 or mail it to FDA, CFSAN Menu and Vending Machine Labeling Registration, White Oak Building 22, rm. 0209, 10903 New Hampshire Ave., Silver Spring, MD 20993.

(vi) Authorized officials of a vending machine operator who elect to be subject to the Federal requirements can register by visiting <http://www.fda.gov/food/ingredientspackaginglabeling/labelingnutrition/ucm217762.htm>. FDA has created a form that contains fields requesting the information in paragraph (d) of this section and made the form available at this Web site. Registrants must use this form to ensure that complete information is submitted.

(vii) To keep the establishment's registration active, the authorized official of the vending machine operator must register every other year within 60 days prior to the expiration of the vending machine operator's current registration with FDA. Registration will automatically expire if not renewed.

(e) *Vending machine operator contact information.* (1) A vending machine operator that is subject to section 403(q)(5)(H)(viii) of the Federal Food, Drug, and Cosmetic Act or a vending machine operator that voluntarily registers to be subject to the requirements under paragraph (d) of this section must provide its contact information

for vending machines selling covered vending machine food. The contact information must list the vending machine operator's name, telephone number, and mailing address or email address.

(2) The contact information must be readable and may be placed on the face of the vending machine, or otherwise must be placed with the calorie declarations as described in paragraph (c)(2)(ii) of this section (*i.e.*, on the sign in, on, or adjacent to the vending machine).

(f) *Signatures.* Signatures obtained under paragraph (d) of this section that meet the definition of electronic signatures in § 11.3(b)(7) of this chapter are exempt from the requirements of part 11 of this chapter.

[79 FR 71291, Dec. 1, 2014, as amended at 84 FR 57610, Oct. 28, 2019]

### § 101.9 Nutrition labeling of food.

(a) Nutrition information relating to food shall be provided for all products intended for human consumption and offered for sale unless an exemption is provided for the product in paragraph (j) of this section.

(1) When food is in package form, the required nutrition labeling information shall appear on the label in the format specified in this section.

(2) When food is not in package form, the required nutrition labeling information shall be displayed clearly at the point of purchase (e.g., on a counter card, sign, tag affixed to the product, or some other appropriate device). Alternatively, the required information may be placed in a booklet, looseleaf binder, or other appropriate format that is available at the point of purchase.

(3) Solicitation of requests for nutrition information by a statement "For nutrition information write to \_\_\_\_\_" on the label or in the labeling or advertising for a food, or providing such information in a direct written reply to a solicited or unsolicited request, does not subject the label or the labeling of a food exempted under paragraph (j) of this section to the requirements of this section if the reply to the request conforms to the requirements of this section.