



Food & Beverage

ISSUE ALLIANCE

August 21, 2020

Dr. Claudine Kavanaugh, Director, CFSAN, Office of Nutrition and Food Labeling
Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993
claudine.kavanaugh@fda.hhs.gov

Re: Request for Enforcement Discretion Related to Compliance Date for Final Rules on the Nutrition Facts Label for Smaller Manufacturers (Docket Nos. FDA-2012-N-1210 and FDA-2004-N-0258)

Dear Dr. Kavanaugh,

The undersigned members of the Food and Beverage Issue Alliance (FBIA) are writing to voice our appreciation to the Food and Drug Administration (FDA or the agency) as it granted one year of enforcement discretion to companies with greater than \$10 million in annual sales and respectfully request that FDA clarify that this grant also applies to companies with annual sales less than \$10 million. Such a communication would clarify and standardize the flexibility FDA has offered in its enforcement of the new nutrition labeling rules for all companies despite sales.

The food industry remains wholly committed to implementing the new nutrition labeling rules, and our member companies have expended significant time and resources to transition to new labels. We support the goal of the final rules to provide consumers information that will help them make informed decisions about the foods they purchase and enjoy. As we have done throughout the rulemaking process, including in our 2019 letter outlining why additional time for compliance was needed (see attached), we ask that this labeling initiative be implemented in a way that takes into consideration the time and complexity involved in making changes to product labels, in particular, for smaller companies. This need is made more urgent due to the challenges of adaptation to the current COVID-19 pandemic.

Many of our smaller member companies who have been diligently updating labels expect that while they will have already transitioned a significant majority of product labels to the new format, it will be difficult to meet the compliance date for 100 percent of labels in time to apply the new labels to any product labeled on or after January 1, 2021. These difficulties are in line with the challenges we projected companies would face in implementing rules of this magnitude as outlined in our previous FBIA request but are made yet more severe for smaller companies by the current COVID-19 pandemic.

At all steps, from reformulation, to compliance, to label production, this resource-intensive process has been further complicated. In light of the magnitude of the task at hand, we believe additional flexibility is warranted for smaller companies as the compliance date approaches.



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Request

FBIA members ask the agency to provide consistent flexibility in its enforcement of the new nutrition labeling rules. This can be accomplished by explicitly clarifying and communicating that the one-year enforcement discretion period to manufacturers with less than \$10 million in annual food sales, begins with the January 1, 2021 compliance date.

We thank you in advance for your consideration of this request.

Sincerely,

American Bakers Association
American Frozen Food Institute
American Herbal Products Association
American Spice Trade Association
Can Manufacturers Institute
FMI – The Food Industry Association
Independent Bakers Association
Juice Products Association
National Automatic Merchandising Association
National Fisheries Institute
National Pasta Association
National Seasoning Manufacturers Association
Produce Marketing Association
Refrigerated Foods Association
SNAC International
The Association for Dressings & Sauces
Vinegar Institute

cc: Frank Yiannas, Deputy Commissioner for Food Policy and Response

Dr. Susan T. Mayne, Director, Center for Food Safety and Applied Nutrition