IAAPA

International Association of Amusement Parks and Attractions

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2010 EVENTS

Euro Attractions Show
October 6-8
Rome, Italy

IAAPA Attractions Expo
November 15-19
Orlando, Florida, USA

2011 EVENTS

Asian Attractions Expo
21-24 June
Singapore

September 7, 2010

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Ms. Geraldine A. June
Center for Food Safety and Applied Nutrition (HFS – 820)
Food and Drug Administration
5100 Paint Branch Parkway
College Park, MD 20740

Re: Docket No. FDA-2010-N-0298

Dear Ms. June:

The International Association of Amusement Parks and Attractions ("IAAPA") is the largest trade association for permanently situated amusement facilities and attractions. IAAPA represents nearly 3,000 facility, supplier, and individual members in the U.S. Member facilities include amusement/theme parks, waterparks, attractions, family-entertainment centers, arcades, zoos, aquariums, museums, science centers, resorts, and casinos, and members are very large, multi-location facilities as well as small, single-site, family-owned operations. Our members generally do not consider themselves to be "restaurants" or "retail food establishments", but most members sell some type of food on premise and as such have the potential to be subject to the requirements of the nutrient labeling rule the Food and Drug Administration ("FDA") must promulgate by March 2011.

Listed below are IAAPA's comments, questions, and concerns with regard to the FDA request for comments, data, and information on the Disclosure of Nutrient Content Information for Standard Menu Items Offered for Sale at Chain Restaurants or Similar Retail Food Establishments and for Articles of Food Sold from Vending Machines (Docket No. FDA-2010-N-0298).

Covered Establishments. Section 4205 of the Patient Protection and Affordable Care Act of 2010 specifically defines establishments that are subject to the nutritional labeling requirements as "a restaurant or similar retail food establishment that is part of a chain with 20 or more locations doing business under the same name (regardless of the type of ownership of the locations) and offering for sale substantially the same menu items . . .." IAAPA is concerned that in seeking comment on how to apply Section 4205 to "corporate entities that own, control or operate restaurants or similar retail food establishments offering substantially the same menu items using names specific to a location", the FDA is trying to expand this explicit Congressional mandate to a larger group of food establishments. Since the statute explicitly noted that the requirements applied "regardless of the type of ownership of the locations" but did not explicitly say that the statute applies to "entities providing substantially the same menu items using names specific to a location," applying the provision to restaurants with different names inappropriately expands the reach of the provision beyond the statutory language.

The sale of food is not our members' primary business purpose. The amusement and attractions industry comprises very different types of entities that may sell food to a varying degree in a variety of ways. For example, mobile hand-carts sell a variety of products and do not have large surfaces on which to write the labeling and nutritional information required by Section 4205. To the extent that the rules apply to the businesses we represent, we would like to work with FDA in developing common-sense rules that will work effectively to achieve Congress' goals and can be realistically implemented.

Liability. It appears from the statute and notice that if a franchise restaurant operates within an amusement park, the franchise restaurant will be responsible for adhering to the requirements of Section 4205. FDA should clarify this and specifically note that the business within which the food franchise operates is not liable for adherence to the regulation. In the case of amusement parks and attractions, the park or attraction would have no way of knowing whether the franchise restaurant meets the requirements for compliance. Similarly, the park would have no way of knowing whether a vending machine supplier meets the requirements of Section 4205.

Cost. The regulation has the potential to be very far reaching and will impose a large cost burden on businesses, many of which are not primarily restaurants or food-service establishments. IAAPA believes there needs to be a thorough review of the economic impact of this rule prior to implementation.

Timing of Compliance. IAAPA believes the parks and attractions industry should be given one year after publication of the final rule before FDA begins enforcement. The final rule is due in six months and much ambiguity remains. The regulations are likely to impose a large burden on many businesses that don't generally work with the FDA, are unfamiliar with nutritional labeling, and do not consider themselves restaurants or food establishments because selling food is a small portion of their business. These businesses will need time to implement the new regulations once they are final. The following are just a few of the steps that will need to be taken once final rules are implemented: determination of what is/is not covered for purposes of the rule; covered products tested; results received; designs planned and developed; displays printed and mounted. Given the extensive nature of the rule, demand for this work will be high and considerable time will need to be taken to fully implement.

IAAPA appreciates the opportunity to comment on the Disclosure of Nutrient Content Information for Standard Menu Items Offered for Sale at Chain Restaurants or Similar Retail Food Establishments and for Articles of Food Sold from Vending Machines proceeding (Docket No. FDA-2010-N-0298).
If I can provide more information or if you have any questions, please feel free to contact me.

Sincerely,

Randall Davis

Randy Davis
Senior Vice President
Government Relations & Safety Services