

Congress of the United States
Washington, DC 20515

May 27, 2015

The Honorable Sylvia Matthews Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretary Burwell:

We write regarding the Food and Drug Administration's (FDA) final rule entitled, "Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments" (79 FR 71155), to request that the agency delay the effective date for supermarkets, grocery stores and similar retail food establishments until at least December 1, 2016, due to a lack of guidance and several outstanding questions and concerns that make the regulations unworkable.

On December 1, 2014, the FDA published a final rule to implement Nutrition Labeling of Standard Menu Items at Chain Restaurants (§ 4205 of P.L. 111-148), a law that mandates nutrition labeling of standard menu items at chain restaurants and similar retail food establishments. As published, the final FDA regulations apply to "restaurant-type foods" at restaurants but also at other establishments with 20 or more locations operating under the same name, including thousands of supermarkets and grocery stores. Unfortunately, the final rule only provided regulated establishments until December 1, 2015 to comply, and FDA has yet to provide stakeholder guidance since the rule was published four months ago.

Since supermarkets and grocery stores had not been regulated under any preceding federal, state or municipal menu labeling laws, until FDA published its final menu labeling regulations on December 1, 2014, significant clarification is needed from FDA before compliance work can begin. For example, the scope and variety of items potentially categorized by this rule as "restaurant-type" foods in a supermarket ranges from 100 to 250 regulated items per store, many of them from other areas the store where there is no menu or menu board, such as fresh produce, baked goods, dairy and meat cases, in addition to pre-packaged and bulk foods. FDA Commissioner Margaret Hamburg acknowledged in recent Congressional hearings that the supermarket industry has attempted working with the agency, but guidance is not yet available and "that the clock has already started ticking on the one-year." The lack of agency guidance has compressed compliance time, increasing the likelihood for errors, further corrections, and higher compliance costs that will exacerbate unintended and undesirable consequences of this regulation, such as reduced fresh food and from-scratch food offerings in the food retail environment.

Since there is no statutory deadline in the menu labeling law, FDA should extend the implementation period to allow industry stakeholders to receive guidance and to continue addressing outstanding concerns with FDA and policymakers as necessary. Allowing a two-year compliance period is consistent with the simultaneously-released FDA nutrition labeling regulations for vending machines, as well as the compliance timeline granted by FDA for past implementation of the Nutrition Labeling and Education Act (NLEA).

We urge FDA to formally provide at least one-year additional time for supermarkets, grocery stores and similar retail food establishments to comply with the date for the final rule: "Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments" (79 FR 71155) no earlier than December 1, 2016.

Sincerely,


Dave Loeb sack Peter Welch Derek Kilmer C.A. Dutch Ruppertsberger Kurt Schrader