

United States Senate

WASHINGTON, DC 20510

October 20, 2011

Dr. Margaret A. Hamburg
Commissioner
U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993

Dear Commissioner Hamburg:

We write to express our concerns about the U.S. Food and Drug Administration's (FDA) implementation of the nutrition labeling requirements mandated by the Patient Protection and Affordable Care Act (PPACA) of 2010. As you are aware, earlier this year, the FDA published, "Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments," to implement section 4205 of the new health care law.

While increasing transparency to inform consumer choice is worthwhile, one-size-fits-all federally-mandated nutritional disclosures are the wrong approach. We share the concerns expressed by employers and small businesses about how the implementation of these requirements will likely result in negative economic consequences for businesses across our nation. We share the concerns that have been raised regarding the scope of the rule and its imposition of an unbalanced uniform regulatory approach that will be costly and will fail to effectively advance the objective of enhancing consumers' access to information.

Specifically, we are concerned that the guidelines do not adequately consider the critical differences between sectors in the restaurant industry, such as restaurants that conduct a majority of their business through delivery. For example, requiring menu boards in pizza delivery restaurants could result in imprecise or confusing information, which contradicts common sense and the presumed intent of the provision. We encourage FDA to consider giving restaurants the flexibility to determine the best placement and presentation of nutritional information to ensure that this information is conveyed to the largest number of customers in as clear, accurate, and least burdensome manner as possible.

We are also concerned with the potential treatment of grocery stores under the proposed rule. As you are likely aware, grocery stores generally do not offer standard prepared food menu items, and while some grocery stores may have more than 20 locations, prepared foods served at these locations are typically not standardized. Unlike restaurants, grocery stores are not in the primary business of selling food for immediate consumption. Moreover, the vast majority of food products sold in grocery stores already have nutrition labels.

The economic analysis from the Agency's proposed rule acknowledges the disproportionate costs that would be placed on grocery stores by requiring nutrient analysis to enable accurate labeling of these prepared foods. While we did not support PPACA, given current law, we

encourage the Agency to exercise common sense and adopt the proposed alternative definition that would define the term “restaurants and similar retail food establishments” to mean only restaurants doing business marketed under the same name or retail establishments where the primary business is the selling of food for immediate consumption.

We look forward to learning how the Agency’s implementation of this rule will fulfill the President’s call to achieve regulatory ends in the least burdensome manner. Thank you in advance for your attention to this matter.

Sincerely,



Richard Burr
United States Senator



Tom Coburn, M.D.
United States Senator