

## March 2013 National Legislative Review:

### (excerpts from FMI GR Conference Calls)

#### **Menu Labeling: More Press Attention; House Bill to Be Introduced:**

The Associated Press ran an article on the FDA's difficulties in issuing a final rule on the menu labeling regulation, citing FMI's hard work addressing the industry's many concerns with the regulatory burden of the rule. Copies of the transcript are available on FMI's website.

FMI, NGA and the menu labeling coalition partners have been working to have legislation re-introduced to prevent FDA from expanding menu labeling regulations to grocery store operations, as well as to provide some flexibility in posting of nutritional information for pizza delivery operations (and thus provide both groups with a good political alliance of regulatory overreach). Last year, the same legislation (H.R. 6174) had broad bipartisan support. To demonstrate our coalition's continued broad support for the legislation we are planning to send an updated version of the joint industry letter from last year that was co-signed by 180 companies and organizations representing several thousand grocery store and pizzeria establishments throughout the United States to lawmakers.

#### **House Appropriations Subcommittee Holds Hearing on USDA Food Assistance Programs:**

The House Appropriations subcommittee on Agriculture held a hearing on USDA nutrition programs. FNS Administrator Audrey Rowe was the sole witness. While the subcommittee has jurisdiction over all of the feeding programs within USDA, the primary focus of the hearing was WIC and SNAP. WIC is the largest discretionary spending program under the subcommittee's jurisdiction. And while SNAP is mandatory spending, it is the federal government's largest domestic food aid program. The majority of the questions from both sides of the aisle focused on eligibility requirements, access and overall cost of the feeding programs.

Some members of the committee raised questions regarding retailers. Rep. Sanford Bishop (D-GA) asked Administrator Rowe about the status of the GA WIC licensing moratorium, which is expected to go into effect today. Rowe discussed USDA's efforts to work with the state to find a quick solution that will allow the licensing process to resume. Other members had questions about the licensing process for retailers and efforts to reduce trafficking and fraud in SNAP. FMI staff is following up with member offices to ensure they understand the retailers' perspective and the role they play in both programs.

#### **Potential Impact of Sequestration on Meat, Poultry and Egg Products Inspections:**

USDA has stated that in order to comply with the forthcoming March 1, 2013, sequestration requirement, USDA would be required to furlough all the Food Safety and Inspection Service's (FSIS's) meat, poultry, and egg products inspectors for up to 15 days through September 30, 2013, the end of the federal government's 2013 fiscal year. Since U.S. meat, poultry and egg products facilities are required to have continuous food safety inspection overseen by USDA under the Federal Meat Inspection Act, Poultry Products Inspection Act, and Egg Products Inspection Act, federally-inspected facilities would be prohibited from operating if/when FSIS inspectors are furloughed. FMI members with USDA inspected facilities ranging from central kitchens to production plants for private label products would be impacted. The impact on reimbursement of states' food safety inspection programs is still to be determined.

USDA Secretary Tom Vilsack and other USDA staff have noted both publicly and privately that the process of such a furlough would likely not become effective until summer in order for USDA to fully

evaluate its budgetary impact and then work with inspectors' unions to provide proper notice as required under various collective bargaining agreements, with some notice requirements lasting up to 120-days. While the furloughs would be delayed under this process, the number of furlough days would remain the same and therefore be compressed from the beginning effective date through September 30, 2013. The USDA staff also noted that they would work to ensure that no region is disproportionately impacted and for furloughs not to occur on consecutive days.

FMI signed on to a letter to Secretary Vilsack, encouraging USDA to examine all options available to meet its obligations under sequestration without cutting an essential, legally mandated program such as food safety inspection. The meat and poultry industry considers a potential furlough of FSIS inspectors to be in violation of federal meat, poultry, and egg products inspection laws and contends that USDA's past consideration of food safety inspectors during federal holidays and potential government shutdowns as "necessary to protect Life and Health" and "essential to the Nation's food safety operations."

USDA contends that the sequestration is different from past government shutdowns and the sequestration provision does not provide reimbursement of salaries, even for workers designated as essential, unless they are specifically exempted in the law. If USDA opts to go forward with furloughs of food safety inspectors, other options remain, such as Congressional actions or legal challenges. Interestingly, if one entered USDA's or FSIS's website at the time of this writing, there is no mention of potential sequestration, let alone potential furloughs of food safety inspectors.

## **Clarification on SNAP Regulations**

### Sales Tax

SNAP licensed retailers may not charge state or local sales tax on SNAP purchases. This does NOT mean that food items that are subject to sales tax (e.g. soft drinks, snack foods, etc) are ineligible. Eligible items that are subject to sales tax may still be purchased with SNAP benefits. Sales tax, however, cannot be charged when SNAP is used to make the purchase. Sales tax can, however, be charged on the portion of eligible items paid for with manufacturers or other discount coupons. Such tax cannot be paid with SNAP benefits.

### Seasonal Gift Items

Holiday gift baskets for Valentine's Day, Easter, Mother's Day, Thanksgiving, Holiday stockings, and Seasonal items like holiday tins are NOT eligible for purchase with SNAP benefits if the value of the nonfood part of the item clearly accounts for more than 50% of the purchase price.

### For Example:

A stuffed holiday bear sold with a small package of chocolate for \$14.99 would not be eligible for SNAP purchase, but A gift basket consisting primarily of meats and cheeses or snack foods, and including a small toy —where the cost of the food items clearly accounts for more than 50% of the purchase price of the item — would be eligible for purchase with SNAP benefits.

Baskets and holiday stockings that contain any amount of alcohol, cigarettes, cat, dog, or other pet food and/or pet toys may not be purchased with SNAP benefits.