



**THE VOICE OF FOOD RETAIL**

Feeding Families  Enriching Lives

June 3, 2015

The Honorable Fred Upton  
Chairman  
House Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Frank Pallone, Jr.  
Ranking Minority Member  
House Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Joe Pitts  
Chairman  
Subcommittee on Health  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Raymond Eugene Green  
Ranking Minority Member  
Subcommittee on Health  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairman Upton, Chairman Pitts, Ranking Member Pallone and Ranking Member Green:

I write today to thank you for the Health Subcommittee's consideration of, and to express Food Marketing Institute's and the supermarket industry's support for, legislation, the *Common Sense Nutrition Disclosure Act of 2015* (H.R. 2017), to address fundamental problems with the Food and Drug Administration's (FDA's) final regulations, "Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments" (79 FR 71155). FDA's flawed interpretation of the chain restaurant menu labeling law (Section 4205 of P.L. 111-148) imposes unclear, expansive and expensive requirements on grocery stores. This legislation would address several of these critical issues.

As you know, on December 1, 2014, FDA published final regulations that dramatically expand the scope of chain restaurant menu labeling requirements (Section 4205 of the Affordable Care Act) to thousands of grocery and general merchandise stores, and subjects them to enforcement by FDA, state/local officials, and potentially customers beginning on December 1, 2015. Although FDA was unwilling to engage with us prior to the release of the final rule notwithstanding numerous attempts on our part to do so, FMI has been engaging with FDA since the agency published its final menu labeling regulations to determine the Agency's perspectives regarding the manner in which such regulations could work, including an FMI hosted store tour with a team of FDA officials, several face-to-face meetings with industry compliance teams, and multiple conversations and webinars.

To this point, the supermarket industry has put forward dozens of questions, some as basic as determining the distinction between a "restaurant-type food" and a grocery item; some more technical, such as that which would constitute a certifiable nutritional database; and some that are mundane, such as font-size requirements for signage. Now, more than six months into this process, grocery stores have yet to receive tangible evidence that FDA intends to work through these concerns, demonstrating at least to our members that chain restaurant-style menu labeling regulations may, indeed, be unworkable for grocery stores. Making matters worse, FMI member companies are losing time by the day, making it

even more difficult if not impossible for an already complicated process to be in compliance by December of this year.

On behalf of the supermarket industry, FMI supports the *Common Sense Nutrition Disclosure Act of 2015* because it helps address fundamental problems with FDA's final menu labeling regulations, by protecting grocery stores that do not have menus or menu boards, limiting the regulations to foods that are truly standardized at 20 or more locations, providing flexibility on the placement and display of nutritional information where customers make their purchasing decisions, and allowing adequate time for regulated stakeholders to properly implement the law.

To be clear, grocery stores *want* to provide customers with nutrition information and have done so for a very long time, at least since the Nutrition Labeling and Education Act was enacted in 1992. This desire to respond to our customers extends to the instances in which there are menus or menu boards, and FMI will continue its efforts to work with FDA to identify alternatives for this provision of additional menu nutrition information in the context of a grocery store environment. But the lack of time, guidance, and flexibility by FDA compels us to seek the legislative process to address these critical, outstanding issues to minimize the significant economic impact and customer confusion this rule has created.

FMI thanks you for your leadership and specifically your work on this important issue by considering the *Common Sense Nutrition Disclosure Act of 2015*. We look forward to working with you to move the legislation forward.

Sincerely,

A handwritten signature in black ink, reading "Leslie G. Sarasin". The signature is written in a cursive, flowing style.

Leslie G. Sarasin  
President and Chief Executive Officer