

***Supermarkets Seek Your Support For
The Common Sense Nutrition Disclosure Act (H.R. 2017)
To Fix FDA Menu Labeling Regulations***

- The supermarket industry seeks your vote in support of the *Common Sense Nutrition Disclosure Act of 2015* (H.R. 2017) when it comes to the floor of the U.S. House of Representatives. The bill was approved by a 36-12 bipartisan vote by the House Energy & Commerce Committee to fix Food and Drug Administration (FDA) final chain restaurant menu labeling regulations that were expanded to grocery stores.
- In December 2014, FDA published final regulations designed for chain restaurant menus, but also expanded the regulations to grocery stores, including for items sold at only one or two stores and for store areas where there are no menus or menu boards. The *Common Sense Nutrition Disclosure Act of 2015* (H.R. 2017) does not exempt supermarkets or any other retailers but makes the menu labeling regulations more workable in a grocery store setting.
- The *Common Sense Nutrition Disclosure Act of 2015* (H.R. 2017) preserves local foods or fresh items that may only be sold at one or two restaurant or store locations. Our individual stores have discretion to offer items that reflect the local foods and tastes of their community. There are some items that may only sell at one or two stores, and while the same name may be listed, the ingredients or recipes may vary. Under FDA's rules, these individualized foods are considered "standard menu items" and are regulated. The additional burden at individual stores and store employees of gathering nutrition information, creating and keeping new records, and developing labels for each store's local foods harms their ability to offer truly fresh items or source from local purveyors and is leading to more standardized or pre-packaged food offerings.
- The *Common Sense Nutrition Disclosure Act of 2015* (H.R. 2017) allows for use of a menu board in prepared foods areas instead of individually labeling each item. Our stores are also seeking to be allowed to use a prominent sign, menu board or menu adjacent to a salad bar or prepared foods area listing the foods and their calorie counts. FDA's rule and draft guidance, however, requires labeling of each individual item or along a window guard, which increases the likelihood for errors and consumer confusion in matching foods with labels since these food items and their location along a food/salad bar frequently change.
- The *Common Sense Nutrition Disclosure Act of 2015* (H.R. 2017) allows for corrective actions prior to enforcement and provides some liability protections. Due to the high variability and potential for human error that inevitably comes with freshly prepared foods, supermarkets would like the ability to take corrective actions before enforcement actions by FDA or by state/local health officials.
- The *Common Sense Nutrition Disclosure Act of 2015* (H.R. 2017) is needed because FDA has not adopted these modifications. For over a year, the supermarket industry has raised these concerns and proposals to FDA, but recent draft guidance failed to provide flexibility in these areas and the agency has indicated that it will not address these issues.
- We seek your floor vote in support of the *Common Sense Nutrition Disclosure Act of 2015* (H.R. 2017) to provide flexibility that will allow grocery stores to better integrate "menu labeling" into their operations and more useful information for their customers.

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Background on FDA Menu Labeling Rule and Common Sense Nutrition Disclosure Act (H.R. 2017)

- On December 1, 2014, FDA published a 395-page final rule that expanded chain restaurant menu labeling regulations to grocery stores, and subjects them to enforcement by FDA, state/local officials, and potentially customers.
- The supermarket industry has been attempting to work with FDA to address dozens of questions and concerns, but the agency's draft guidance either took a more strict approach or left concerns/questions unaddressed, prompting the need for legislative fixes. FDA has also indicated that the modifications in the bill (H.R. 2017) would NOT be included in the agency's final guidance.
- Concerns with mandating "menu labeling" at grocery stores stem from FDA writing these regulations for a format with limited offerings, standard portions, and pre-printed menus. H.R. 2017 allows for some practicality for providing nutritional information to customers based on the different ways that foods are prepared and sold across various venues and formats.
- For example, individual stores are empowered to offer items that reflect the local foods and tastes of their community. There are some items that may only sell at one or two stores, and while the same name may be listed, the ingredients or recipe may vary. Under FDA's rules, these would all be considered "standard menu items" and regulated as such. As a result, FDA's menu labeling regulation harms stores' ability to offer truly fresh and local items and leads to standardized or pre-packaged food offerings.
- Supermarkets/grocers are also seeking to be allowed to use a prominent sign, menu board or menu adjacent to a salad bar or prepared foods area listing the foods and their calorie counts. FDA's rule and draft guidance, however, requires labeling of each individual item or along a window guard, which increases the likelihood for errors and consumer confusion in matching foods with labels since food items and their location along a food/salad bar frequently change.
- Due to the high variability and potential for human error that inevitably comes with freshly preparing foods, supermarkets would like the ability to take corrective actions before enforcement actions by FDA or by state/local health officials
- [The Common Sense Nutrition Disclosure Act of 2015 \(H.R. 2017 as approved by the House Energy & Commerce Committee\)](#) maintains but modifies FDA's menu labeling regulations by:
 - Clarifying that the menu labeling regs are to be applied to "standard menu items," defined as foods prepared with uniformity at 20 or more locations; not a food item sold at one or two stores or restaurants.
 - Allowing for supermarkets to use a menu or menu board in a prepared foods area or next to a salad bar instead of individually labeling every item.
 - Allowing an establishment to take corrective actions within 90-days prior to federal, state or municipal enforcement and protecting against frivolous class-actions. The bill does NOT modify or weaken FDA and state officials current enforcement authority; and
 - Providing flexibility within "reasonable basis" standards, in-store certifications, remote-ordering, multi-serving and variable items.
 - The bill does NOT exclude retailers from the menu labeling regulations, so all establishments are treated equitably.