



THE VOICE OF FOOD RETAIL

Feeding Families  Enriching Lives

April 23, 2015

The Honorable Cathy McMorris Rodgers
United States House of Representatives
203 Cannon House Office Building
Washington, D.C. 20515-4705

Dear Congresswoman McMorris Rodgers,

I write today to thank you for your leadership and once again offer our industry's support of your legislation, the *Common Sense Nutrition Disclosure Act of 2015*. As you know, the Food Marketing Institute (FMI) has been working diligently on behalf of the supermarket industry to address fundamental problems with the Food and Drug Administration's (FDA's) flawed interpretation of the chain restaurant menu labeling law (Section 4205 of P.L. 111-148) that imposes unclear, expansive and expensive requirements on grocery stores. Your legislation would address several of these critical issues.

As you also know, on December 1, 2014, FDA published final regulations that dramatically expand the scope of chain restaurant menu labeling (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 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, nearly five months into this process, grocery stores have yet to receive any substantive guidance, let alone 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, we are losing time by the day, 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, such as 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 in introducing 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 that reads "Leslie G. Sarasin". The signature is written in a cursive, flowing style.

Leslie G. Sarasin
President and Chief Executive Officer