

Congress of the United States
Washington, DC 20515

July 26, 2011

Food and Drug Administration
Division of Dockets Management (HFA -305)
5630 Fishers Lane
Room 1061
Rockville, MD 20852

RE: Docket No. FDA-2011-F-0172
RIN: 0910-AG57

Dear Commissioner Hamburg:

We are writing to provide guidance to you as the U.S. Food and Drug Administration (FDA) implements “Nutrition Labeling of Standard Menu Items at Chain Restaurants” following the proposed rule that FDA issued on April 6, 2011. We urge the FDA to follow Congressional intent and to adopt the agency’s own proposed alternative definition to the proposed rule that would encompass only establishments where the primary business is the selling of food for immediate consumption or selling food that is prepared and processed on the premises.

When Congress adopted menu labeling to provide some consistency for chain restaurants trying to navigate the many varied state laws on menu labeling, there was no mention in the law, legislative history or any statements that supermarkets should be regulated. Supermarkets are not primarily in the business of selling food for immediate consumption or selling food that is prepared or processed on the premises. FDA should 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.

Supermarkets operate much differently than chain restaurants. The sale of restaurant foods is not the primary business of supermarkets and menus are not a means to sell supermarket foods. In addition, more than 95 percent of foods sold at supermarkets already display nutrition information. Historically, labeling regulations, such as for nutrition panels, food safety, ingredient, and country-of-origin labeling have been applied differently between supermarkets and restaurants. These are key reasons why none of the states or municipalities that have enacted menu labeling laws have applied them to supermarkets.

We urge FDA to adopt the agency's own alternative to limit restaurant menu labeling regulations to establishments that primarily sell restaurant foods. This is what Congress intended with the menu labeling law.

Sincerely,



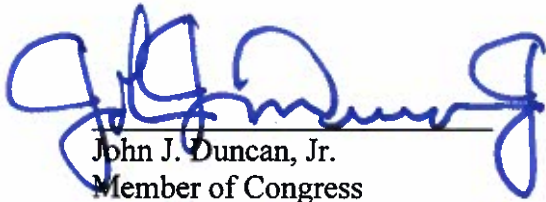
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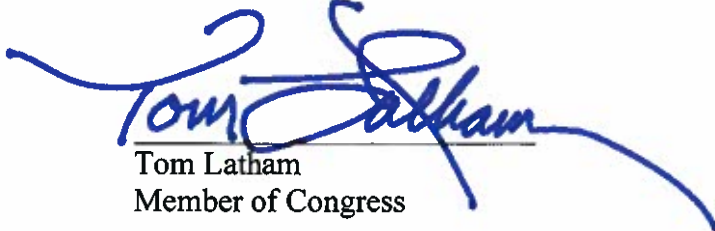
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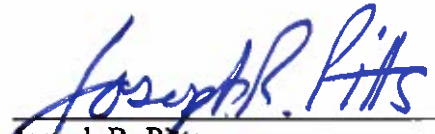
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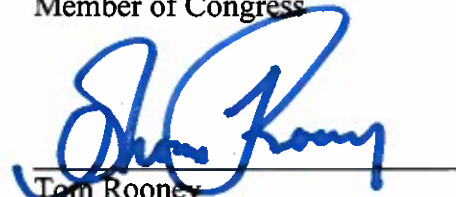
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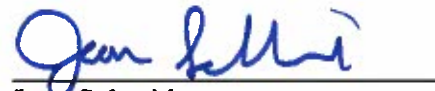
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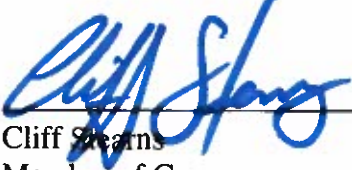
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