

EXAMINING H.R. 2017, THE COMMON SENSE  
NUTRITION DISCLOSURE ACT OF 2015

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON HEALTH  
OF THE  
COMMITTEE ON ENERGY AND  
COMMERCE  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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JUNE 4, 2015  
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**EXAMINING H.R. 2017, THE COMMON SENSE  
NUTRITION DISCLOSURE ACT OF 2015**

**THURSDAY, JUNE 4, 2015**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON HEALTH,  
COMMITTEE ON ENERGY AND COMMERCE,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:02 a.m., in room 2123, Rayburn House Office Building, Hon. Joseph R. Pitts (chairman of the subcommittee) presiding.

Present: Representatives Pitts, Guthrie, Shimkus, Murphy, Burgess, Blackburn, McMorris Rodgers, Lance, Griffith, Bilirakis, Ellmers, Bucshon, Brooks, Collins, Upton (ex officio), Green, Schakowsky, Butterfield, Sarbanes, Matsui, Schrader, Kennedy, Cardenas, and Pallone (ex officio).

Staff Present: Clay Alspach, Chief Counsel, Health; Gary Andres, Staff Director; David Bell, Staff Assistant; Sean Bonyan, Communications Director; Leighton Brown, Press Assistant; Noelle Clemente, Press Secretary, Andy Duberstein, Deputy Press Assistant; Robert Horne, Professional Staff Member, Health; Carly McWilliams, Professional Staff Member, Health; Graham Pittman, Legislative Clerk; Chris Sarley, Policy Coordinator, Environment & Economy; Heidi Stirrup, Health Policy Coordinator; John Stone, Counsel Health; Jeff Carroll, Minority Staff Director; Eric Flamm, Minority FDA Detailee; Tiffany Guarascio, Minority Deputy Staff Director and Chief Health Advisor; Samantha Satchell, Minority Policy Analyst; and Kimberlee Trzeciak, Minority Health Policy Advisor.

**OPENING STATEMENT OF HON. JOSEPH R. PITTS, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA**

Mr. PITTS. The subcommittee will come to order.

The chair will recognize himself for an opening statement.

Today's health subcommittee hearing will be examining the costly and burdensome regulations regarding the menu labeling requirements as proposed by the administration and scheduled to be implemented by December 1, 2015. The subject of our hearing, H.R. 2017, the Common Sense Nutrition Disclosure Act, is sponsored by our subcommittee colleague and Republican conference chair, Cathy McMorris Rodgers, and Representative Loretta Sanchez. The legislation will help small business owners, franchisees, as well as consumers who want easy access to accurate nutrition information. Covered establishments, including pizza delivery businesses and

grocery stores will be subject to a cumbersome, rigid, and costly regulatory compliance process to avoid violations and possible criminal prosecution.

H.R. 2017 seeks to improve and clarify the final rule promulgated by the Food and Drug Administration implementing the menu labeling requirements of Section 4205 of the Affordable Care Act. The FDA issued a nearly 400-page final rule establishing a one-size-fits-all national nutrition disclosure requirement for restaurants and similar retail food establishments.

The concern is that this final rule goes well beyond what was intended by the ACA. The obligations are imposed not only on chain restaurants, including delivery establishments, but also on any other chain retailer that sells non-packaged food such as grocery store salad bars, and convenience stores' meals to go. Small businesses that are not chain restaurants but are indeed subject to the rule will face a dramatic increase in regulatory compliance cost.

Consumers most assuredly will see higher food costs, perhaps fewer choices. Some retailers may find it more advantageous to stop selling restaurant-type food altogether. So instead of purchasing fresh sandwiches, consumers may have to buy pre-packaged sandwiches, since those will not require the retailer to comply with labeling requirements.

Fixing this burdensome regulation could benefit tens of thousands of restaurants, grocery stores, convenience stores, small business owners, that otherwise would be burdened with regulations that will be costly and hurt job creation. According to the Office of Management and Budget, FDA's menu labeling proposal would be the third most burdensome regulation proposed in 2010; 14,536,183 hours to comply.

The objective of this legislation is to provide clarity, flexibility, and certainty for these companies, while also ensuring consumers have access to the information they need to make informed nutritional decisions.

So I look forward to the testimony today. I yield the balance of my time to Representative Morgan Griffith who would like to introduce some of our witnesses.

[The prepared statement of Mr. Pitts follows:]

#### PREPARED STATEMENT OF HON. JOSEPH R. PITTS

The Subcommittee will come to order.

The Chairman will recognize himself for an opening statement.

Today's Health Subcommittee hearing will be examining the costly and burdensome regulations regarding menu-labeling requirements as proposed by the Administration, and scheduled to be implemented by December 1, 2015. The subject of our hearing—H.R. 2017, the Common Sense Nutrition Disclosure Act, is sponsored by our Subcommittee colleague and Republican Conference Chairman, Cathy McMorris-Rodgers (R-WA) and Rep. Loretta Sanchez (D-CA).

The legislation will help small business owners, franchisees, as well as consumers who want easy access to accurate nutrition information. Covered establishments, including pizza delivery businesses and grocery stores, will be subject to a cumbersome, rigid and costly regulatory compliance process to avoid violations and possible criminal prosecution.

H.R. 2017 seeks to improve and clarify the final rule promulgated by the Food and Drug Administration (FDA) implementing the menu-labeling requirements of Section 4205 of the Affordable Care Act (ACA). The FDA issued a nearly 400-page final rule establishing a one-size-fits-all national, nutrition-disclosure requirement

for restaurants and “similar retail food establishments.” The concern is that this final rule goes well beyond what was intended by the ACA.

The obligations are imposed not only on chain restaurants—including delivery establishments, but also on any other chain retailer that sells non-packaged food, such as grocery store salad bars, and convenience stores’ meals to go.

Small businesses that are not chain restaurants but are indeed subject to the rule will face a dramatic increase in regulatory compliance costs. Consumers most assuredly will see higher food costs, and perhaps fewer choices. Some retailers may find it more advantageous to stop selling restaurant-type food altogether. So instead of purchasing fresh sandwiches, consumers may have to buy pre-packaged sandwiches since those will not require the retailer to comply with labeling requirements.

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According to the Office of Management and Budget, FDA’s menu labeling proposal would be the third most burdensome regulation proposed in 2010—14,536,183 hours to comply.

The objective of this legislation is to provide clarity, flexibility, certainty for these companies, while also ensuring consumers have access to the information they need to make informed nutritional decisions.

I look forward to the testimony today and yield the balance of my time to Rep. Morgan Griffith.

Mr. GRIFFITH. Thank you, Mr. Chairman. I appreciate that opportunity.

I am very pleased to introduce Delegate Israel O’Quinn. Israel has been a member of the Virginia House of Delegates formerly know as the House of Burgesses many, many decades ago, and he has been there since 2011. He in his legislative capacity serves on the Committee of Commerce and Labor, which is much akin to Energy and Commerce, Privileges and Elections, as well as Militia, Police, and Public Safety. He is a member of the legislative Coal and Energy Commission, and serves on the board of directors for the Virginia Public Safety Foundation.

He is here today, as a citizen legislator should be, not in his role as a member of the Virginia House of Delegates, but in his role as an employee of K-VA-T food stores. That is known as the Food City supermarket chain, and as you might gather from the K-VA-T name, they do business in Kentucky, Virginia, and Tennessee.

And he is here to talk about, of course, menu labeling as it impacts the grocery business. But probably most importantly that I shouldn’t leave out is that Israel also attended a fine institution of higher learning when he went to college at Emory & Henry College, which is also my alma mater. So it is very, very great that you allowed me to introduce my old friend Israel O’Quinn to the members of the committee.

Thank you, and I yield back.

Mr. PITTS. The chair thanks the gentleman and now yields Mr. Green 5 minutes for an opening statement.

**OPENING STATEMENT OF HON. GENE GREEN, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. GREEN. Thank you, Mr. Chairman, and thank our witnesses for being here today.

Today we are examining legislation that will roll back a policy designed to give people access to calorie information when ordering and consuming prepared foods. Congress embraced this principle when it mandated that the nutrition information be included on

packaged food more than 20 years ago. Providing the public with calorie information allows people to make informed choices about the food they eat.

The Affordable Care Act was enacted in 2010 to improve the health of American people and strengthen our healthcare system. The main substance of the landmark law centered on expanding access of affordable insurance and put to end some of the worst abuses of the insurance industry. It also contained many provisions to promote prevention measures and general wellness. We know that consumers make better health decisions when they are empowered with information.

Following this principle, Section 4205 of the Affordable Care Act requires chain restaurants and food establishments that sell prepared food to include calorie information on menus and menu boards. Menu labeling has become increasingly important in recent decades as people eat out much more often than before, and the obesity epidemic has reached a crisis level. It is a simple reform to ensure that consumers have access to the same information regardless of whether eating at home or outside their home.

As we will hear from witnesses today on how away-from-home foods have negatively impacted the diet and health of the American people. Without easily accessible and standard calorie information, it is difficult to make informed choices at the point of purchase.

The legislation we are considering today may weaken this important tool. When enacted, the provision built off of the thrust of the more than dozen State and local policies. H.R. 2017 could undermine the compromise negotiated between a wide diversity of interests and stakeholders. As written, it would have significant financial and public health burdens on consumers, industry, and ultimately on taxpayer-funded budgets.

Giving supermarkets and convenience stores and other food preparing establishments a blanket exemption to a uniform standard is unwarranted. It is unsupported by the wealth of research on the cost of compliance and real world evidence from chains and restaurants that have embraced the commonsense measures. It would create an uneven playing field for competition among the businesses.

I appreciate the concerns raised by stakeholders represented here today with menu labeling requirements. While I do not support the legislation being considered by the subcommittee, I am sympathetic to the concerns and the timing and implementation and enforcement.

Due to lack of guidance or understanding questions on the Agency's rule, I ask the FDA to provide at least a year additional time for food establishments to comply. The law does not include a statutory deadline. The FDA should extend the implementation period to give industry the time to review such guidance and address outstanding issues and comply with this important requirement.

Again, Mr. Chairman, thank you for calling the hearing, and when considering the legislation, we must always keep the priority of transforming our broken healthcare system into a true healthcare system in mind. And, again, I thank you and I yield back the balance of my time.

Mr. PITTS. The chair thanks the gentleman.

I now recognize the chair of the full committee, Mr. Upton, 5 minutes for an opening statement.

**OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. UPTON. Well, thank you, Mr. Chairman.

Today we are going to discuss important bipartisan legislation that indeed seeks to provide some balance to the recently proposed menu labeling guidelines, H.R. 2017, the Common Sense Nutrition Disclosure Act of 2015. The bipartisan effort has always been spearheaded by Cathy McMorris Rodgers, a good friend, member of our leadership, active member of our committee.

This bill seeks to bring much needed clarity and alleviate some of the burdensome and unnecessary requirements that the menu labeling final rule has placed on businesses across the country.

Take, for example, my Michigan-based company Domino's, which we all know. Domino's has 34 million different potential menu combinations. It has an online calculator that determines the nutrition information for your particular order, and 91 percent of their orders are placed online, 91 percent. Requiring in-store information for 34 million potential menu items would cost each store an average of nearly \$5,000 per year, and it wouldn't address the ultimate goal of informing consumers.

There is no doubt that the U.S. should have a uniform national policy for menu labeling. However, we need to take a pragmatic approach. The goal is ensuring customers have the information that they need to make informed decisions, and in order to do that we have to make sure that companies can reasonably comply with those requirements. The current situation fails to address the realistic needs of consumers and places enormous burden on businesses all across the country.

As it stands, restaurants and similar retail food establishments have until December 1 of this year to comply with the final rule, yet there are still a number of outstanding questions and issues. Complying with the final rule will take substantial time and resources, and FDA has made it even harder by failing to provide more clarity. Businesses need to know how to comply. In order to do so, businesses need time to plan and put things in place, and FDA's failure to provide clarity has made it impossible for those things to happen.

So today we are going to hear from the stakeholders. I hope that we can discuss solutions to the problems. I want to thank the panel, and I want to yield the balance of my time to the sponsor of the bill, Cathy McMorris Rodgers.

[The prepared statement of Mr. Upton follows:]

**PREPARED STATEMENT OF HON. FRED UPTON**

Today we will discuss important, bipartisan legislation that seeks to provide some balance to the recently proposed menu labeling guidelines—H.R. 2017, the Common Sense Nutrition Disclosure Act of 2015.

This bipartisan effort is being spearheaded by Rep. Cathy McMorris Rodgers, and I commend the GOP Conference Chair for her ongoing work on this important issue. This bill seeks to bring much needed clarity and alleviate some of the burdensome and unnecessary requirements that the menu labeling final rule has placed on businesses across the country.

Take, for example, Dominos, a Michigan-based company. Dominos has 34 million different potential menu combinations. It has an online calculator that determines the nutrition information for your particular order and 91 percent of their orders are placed online. Requiring in-store information for 34 million potential menu items would cost each store an average of \$4,700 per year—and it wouldn't address the ultimate goal of informing consumers.

There is no doubt that the U.S. should have a uniform national policy for menu labeling. However, we need to take a pragmatic approach. The goal is ensuring consumers have the information they need to make informed decisions. In order to do that, we need to also be sure that companies can reasonably comply with these requirements.

The current situation fails to address the realistic needs of consumers and places enormous burden on businesses all across the country. As it stands, restaurants and similar retail food establishments have until December 1 of this year to comply with the final rule, yet there are still a number of outstanding questions and issues. Complying with the final rule will take substantial time and resources, and FDA has made it even harder by failing to provide more clarity. Businesses need to know how to comply in order to do so; businesses need time to plan and put things in place. FDA's failure to provide clarity has made it impossible for these things to happen.

Today we will hear from stakeholders about the final rule and the challenges they face as they work toward compliance. I also hope we can discuss solutions to these problems. I would like to thank the panel for being here today to discuss this important topic. It is time we had a little more common sense in the discussion on menu labeling.

I yield the remainder of my time to the author of this legislation and my good friend, Congresswoman McMorris Rodgers.

Mrs. McMORRIS RODGERS. Thank you. I would like to thank Chairman Pitts and Chairman Upton for their attention to this important issue, and Representative Loretta Sanchez for co-leading this bill.

Our joint efforts to clarify these regulations and represent the needs of America's small business owners are critical. I would also like to thank Chairman Upton and the nearly 40 other bipartisan Members who have thus far agreed to cosponsor.

H.R. 2017 is simple. Clarify the intent of this nearly 400-page regulation so that businesses can comply with it and so that consumers can have access to helpful calorie information. That is why my staff and I have met with stakeholders and other Member offices on all sides of this issue more than 20 times this year and have asked how we can improve this legislation. Something that we have heard again and again was that the 50 percent revenue trigger for what defines a restaurant is not fair. And I would like to ask unanimous consent to insert into the record a letter from the National Restaurant Association to Congress on April 28 that only discusses the 50 percent revenue exemption in H.R. 2017 as concerning.

Mr. PITTS. Without objection, so ordered.

[The discussion draft follows:]



114TH CONGRESS  
1ST SESSION

# H. R. 2017

To amend the Federal Food, Drug, and Cosmetic Act to improve and clarify certain disclosure requirements for restaurants and similar retail food establishments, and to amend the authority to bring proceedings under section 403A.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 23, 2015

Mrs. McMORRIS RODGERS (for herself and Ms. LORETTA SANCHEZ of California) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Federal Food, Drug, and Cosmetic Act to improve and clarify certain disclosure requirements for restaurants and similar retail food establishments, and to amend the authority to bring proceedings under section 403A.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Common Sense Nutri-  
5 tion Disclosure Act of 2015”.

1 **SEC. 2. AMENDING CERTAIN DISCLOSURE REQUIREMENTS**  
2 **FOR RESTAURANTS AND SIMILAR RETAIL**  
3 **FOOD ESTABLISHMENTS.**

4 Section 403(q)(5)(H) of the Federal Food, Drug, and  
5 Cosmetic Act (21 U.S.C. 343(q)(5)(H)) is amended—

6 (1) in subclause (ii)—

7 (A) in item (I)(aa), by striking “the num-  
8 ber of calories contained in the standard menu  
9 item, as usually prepared and offered for sale”  
10 and inserting “the number of calories contained  
11 in the whole standard menu item, or the num-  
12 ber of servings and number of calories per serv-  
13 ing, or the number of calories per the common  
14 unit division of the standard menu item, such  
15 as for a multiserving item that is typically di-  
16 vided before presentation to the consumer”;

17 (B) in item (II)(aa), by striking “the num-  
18 ber of calories contained in the standard menu  
19 item, as usually prepared and offered for sale”  
20 and inserting “the number of calories contained  
21 in the whole standard menu item, or the num-  
22 ber of servings and number of calories per serv-  
23 ing, or the number of calories per the common  
24 unit division of the standard menu item, such  
25 as for a multiserving item that is typically di-  
26 vided before presentation to the consumer”; and

1 (C) by adding at the end the following  
2 flush text:

3 “In the case of restaurants or similar retail food es-  
4 tablishments where the majority of orders are placed  
5 by customers who are off-premises at the time such  
6 order is placed, the information required to be dis-  
7 closed under items (I) through (IV) may be provided  
8 by a remote-access menu (such as a menu available  
9 on the Internet) as the sole method of disclosure in-  
10 stead of on-premises writings.”;

11 (2) in subclause (iii)—

12 (A) by inserting “either” after “a res-  
13 taurant or similar retail food establishment  
14 shall”; and

15 (B) by inserting “or comply with subclause  
16 (ii)” after “per serving”;

17 (3) in subclause (iv)—

18 (A) by striking “For the purposes of this  
19 clause” and inserting the following:

20 “(I) IN GENERAL.—For the purposes of  
21 this clause,”;

22 (B) by striking “and other reasonable  
23 means” and inserting “or other reasonable  
24 means”; and

25 (C) by adding at the end the following:

1           “(II) REASONABLE BASIS DEFINED.—For  
2           the purposes of this subclause, with respect to  
3           a nutrient disclosure, the term ‘reasonable  
4           basis’ means that the nutrient disclosure is  
5           within acceptable allowances for variation in  
6           nutrient content. Such acceptable allowances  
7           shall include allowances for variation in serving  
8           size, inadvertent human error in formulation or  
9           preparation of menu items, and variations in in-  
10          gredients.”;

11          (4) by amending subclause (v) to read as fol-  
12          lows:

13          “(v) MENU VARIABILITY AND COMBINATION  
14          MEALS.—The Secretary shall establish by regulation  
15          standards for determining and disclosing the nutri-  
16          ent content for standard menu items that come in  
17          different flavors, varieties, or combinations, but  
18          which are listed as a single menu item, such as soft  
19          drinks, ice cream, pizza, doughnuts, or children’s  
20          combination meals. Such standards shall allow a res-  
21          taurant or similar retail food establishment to  
22          choose whether to determine and disclose such con-  
23          tent for the whole standard menu item, for a serving  
24          or common unit division thereof, or for a serving or  
25          common unit division thereof accompanied by the

1 number of servings or common unit divisions in the  
2 whole standard menu item. Such standards shall  
3 allow a restaurant or similar retail food establish-  
4 ment to determine and disclose such content by  
5 using any of the following methods: ranges, aver-  
6 ages, individual labeling of flavors or components, or  
7 labeling of one preset standard build. In addition to  
8 such methods, the Secretary may allow the use of  
9 other methods, to be determined by the Secretary,  
10 for which there is a reasonable basis (as such term  
11 is defined in subclause (iv)(II)).”;

12 (5) in subclause (x)—

13 (A) by striking “Not later than 1 year  
14 after the date of enactment of this clause, the  
15 Secretary shall promulgate proposed regulations  
16 to carry out this clause.” and inserting “Not  
17 later than 1 year after the date of enactment of  
18 the Common Sense Nutrition Disclosure Act of  
19 2015, the Secretary shall issue proposed regula-  
20 tions to carry out this clause, as amended by  
21 such Act. Any final regulations that are pro-  
22 mulgated pursuant to the Common Sense Nu-  
23 trition Disclosure Act of 2015, and any final  
24 regulations that were promulgated pursuant to  
25 this clause before the date of enactment of the

1 Common Sense Nutrition Disclosure Act of  
2 2015, shall not take effect earlier than 2 years  
3 after the promulgation of final regulations pur-  
4 suant to the Common Sense Nutrition Diselo-  
5 sure Act of 2015.”; and

6 (B) by adding at the end the following:

7 “(IV) CERTIFICATIONS.—Res-  
8 taurants and similar retail food estab-  
9 lishments shall not be required to pro-  
10 vide certifications or similar signed  
11 statements relating to compliance with  
12 the requirements of this clause.”;

13 (6) by amending subclause (xi) to read as fol-  
14 lows:

15 “(xi) DEFINITIONS.—In this clause:

16 “(I) MENU; MENU BOARD.—The term  
17 ‘menu’ or ‘menu board’ means the one listing of  
18 items which the restaurant or similar retail food  
19 establishment reasonably believes to be, and  
20 designates as, the primary listing from which  
21 customers make a selection in placing an order.  
22 The ability to order from an advertisement,  
23 coupon, flyer, window display, packaging, social  
24 media, or other similar writing does not make  
25 the writing a menu or menu board.

1           “(II) PRESET STANDARD BUILD.—The  
2 term ‘preset standard build’ means the finished  
3 version of a menu item most commonly ordered  
4 by consumers.

5           “(III) RESTAURANT OR SIMILAR RETAIL  
6 FOOD ESTABLISHMENT.—The term ‘restaurant  
7 or similar retail food establishment’ means a re-  
8 tail food establishment that derives more than  
9 50 percent of its total revenue from the sale of  
10 food of the type described in subclause (i) or  
11 (ii) of clause (A). For purposes of this defini-  
12 tion, the sale of motor fuel shall not count to-  
13 ward an establishment’s total revenue.

14           “(IV) STANDARD MENU ITEM.—The term  
15 ‘standard menu item’ means a food item of the  
16 type described in subclause (i) or (ii) of sub-  
17 paragraph (5)(A) with the same recipe prepared  
18 in substantially the same way with substantially  
19 the same food components that—

20           “(aa) is routinely included on a menu  
21 or menu board or routinely offered as a  
22 self-service food or food on display at 20 or  
23 more locations doing business under the  
24 same name; and

1                   “(bb) is not a food referenced in item  
2                   (vii).”; and

3                   (7) by adding at the end the following:

4                   “(xii) COMPLIANCE.—Any establishment that  
5                   the Secretary determines is in violation of this clause  
6                   shall have 90 days after receiving notification of the  
7                   violation to correct the violation. The Secretary shall  
8                   take no enforcement action, including the issuance  
9                   of any public letter, for violations that are corrected  
10                  within such 90-day period.”.

11 **SEC. 3. LIMITATION ON LIABILITY FOR DAMAGES ARISING**  
12 **FROM NONCOMPLIANCE WITH NUTRITION**  
13 **LABELING REQUIREMENTS.**

14                  Section 403(q)(5)(H) of the Federal Food, Drug, and  
15                  Cosmetic Act (21 U.S.C. 343(q)(5)(H)), as amended by  
16                  section 2, is further amended by adding at the end the  
17                  following:

18                         “(xiii) LIMITATION ON LIABILITY.—A  
19                         restaurant or similar retail food establish-  
20                         ment shall not be liable in any civil action  
21                         in Federal or State court (other than an  
22                         action brought by the United States or a  
23                         State) for any claims arising out of an al-  
24                         leged violation of—

25                         “(I) this clause; or

15

9

1                   “(II) any State law permitted  
2                   under section 403A(a)(4).”.

○

Mrs. MCMORRIS RODGERS. I would like to say that these concerns have been heard. And I intend to fully address them as we move to committee markup. I hope that today we can move on and discuss the merits of this important legislation beyond this one point. Like many other regulations, good intentions don't always add up to practical policy.

This regulation tries a cookie cutter approach to treat grocers and pizzerias like Capital Grill and Outback Steakhouse. I don't think that this is workable or affordable. Estimates state that this regulation could cost American businesses more than \$1 billion to comply and 500,000 hours of paperwork. One of the most expensive regulations ever.

Requiring Domino's franchisees to post in their stores every potential topping combination. As the chairman already said, more than 34 million possible outcomes. When more than 90 percent of their orders take place over the phone or Internet just doesn't make sense. This is commonsense legislation which provides access to calorie information in a practical and flexible manner by clarifying, not significantly altering, this complicated regulation. We have been requesting comments from stakeholders since January, and we have heard several on the revenue trigger, which we have agreed to address, and hope that we can move on now to the next step in the regular order of process.

This bill is ready to move, Mr. Chairman, and I thank the chairman and yield back.

Mr. PITTS. Chair thanks the gentlelady.

Now recognize the ranking member of the full committee, Mr. Pallone, 5 minutes for opening statement.

Mr. PALLONE. Thank you, Mr. Chairman.

Mr. Chairman, I would ask unanimous consent to put in the record a letter from Congresswoman DeLauro addressed to you and Mr. Green.

Mr. PITTS. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

**OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. PALLONE. Thank you.

Increasing access to nutrition information can play an important role in fighting our Nation's battle against obesity and diet-related disease. Obesity in this country is far too common, affecting nearly 78 million adults and 13 million children. It is also a serious and costly public health problem, with obesity-related conditions such as heart disease, stroke, Type 2 diabetes, and others being some of the leading causes of preventable death.

While there are many factors that may contribute to obesity, we know that overconsumption of calories is one of the primary causes, and that is why I have supported efforts to provide access to nutrition information to consumers.

Thanks to the Nutrition Labeling and Education Act, of which I was a cosponsor, this info has long been available on packaged food items that you find on the shelves of your grocery store. But it has not always been available to American families when eating out

away from home. This is a critical gap when you consider that American families are eating out twice as often as they have in the past and spend nearly half of their food dollars on food made outside of their home.

Congress sought to address this gap when it passed Federal menu labeling requirements in 2010 as part of the Affordable Care Act. Under the law, restaurants and retail food establishments with 20 or more locations doing business under the same name and offering the same menu items are required to put calorie information on their menus and offer more detailed nutritional information upon request. The availability of this information will help consumers make informed choices about the food they are purchasing for themselves or for their families.

This was not a new idea. Prior to the passage of Federal menu labeling requirements, more than 20 States and localities had passed some type of menu labeling requirements, including California, New York City, and even here in the D.C. area in Montgomery County, Maryland.

These efforts and widespread support from consumers for access to this information led the restaurant industry to work closely with Congress to draft a strong Federal menu labeling policy that would provide for consistent requirements for restaurants and retail food establishments and clear information to consumers. After much discussion and much debate, FDA issued final regulations implementing the menu labeling requirements in December last year. And I know this was a challenging issue for the Agency, and I want to thank FDA for following the intent of the law while also taking into consideration the concerns raised in the more than 1,000 comments received.

We will hear from our witnesses today that there are areas of the final rule where additional guidance may be warranted, such as what constitutes a menu, how to address the concerns of covered entities that offer prepared food items in various parts of their store, among others.

I am sympathetic to these concerns and agree that further clarification is needed, particularly for establishments without prior menu labeling experience, such as grocery stores or convenience stores. However, I do not believe legislative action is necessary. The FDA has worked to minimize the cost and burden for covered establishments and worked closely with industry to address their areas of concern. I have no reason to believe nor any evidence that the Agency will not continue to work with these stakeholders to address their concerns.

Further, we know that FDA is currently working on a guidance document to clarify some of the outstanding issues that we will hear about today.

It is for these reasons that I do not support H.R. 2017 and instead would support providing covered establishments additional time to comply with the final menu labeling rule.

I thank our witnesses for their work on this issue and look forward to hearing more about the legislation.

I would yield the rest of my time to Ms. Matsui.

Ms. MATSUI. I thank the ranking member for yielding me time. I thank the witness for being here today.

We all agree that the rising rates of obesity and the resulting chronic health conditions constitute a health crisis in our country. And we all agree that access to nutrition information is an important step in addressing the obesity epidemic.

The Affordable Care Act took great strides toward addressing this epidemic by requiring nutrition labeling at restaurants and other places where people purchase food.

The FDA has been working to implement this requirement in a reasonable way, and to provide guidance to stakeholders who have legitimate concerns about their ability to comply. However, to the extent that additional guidance is not supplied well in advance of the December 1 deadline, additional time is warranted.

I look forward to working with the FDA and stakeholders to ensure that this provision is successfully implemented to benefit consumers without imposing overly burdensome or impractical requirements on our businesses.

I look forward to hearing from our witnesses today and working with my colleagues to address this issue going forward, and I yield back the balance of my time.

Mr. PITTS. Chair thanks the gentlelady.

That concludes the opening statements. As usual, any members' written opening statements will be made a part of the record.

I have one request. I would like to submit the following document for the record, a statement from the Food Marketing Institute.

Mr. GREEN. No objection.

Mr. PITTS. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. PITTS. We have one panel before us today, and I will introduce them in the order of their presentation.

First, Ms. Sonja Yates Hubbard, Chief Executive Officer of E-Z Mart Stores, Inc., on behalf of the National Association of Convenience Stores; secondly, Mr. Israel O'Quinn that Congressman Grif-fith introduced, Director of Strategic Initiatives, Food City, on behalf of the Food Marketing Institute and National Grocers Association; third, Ms. Lynn Liddle, Executive Vice President, Communications, Legislative Affairs, Investor Relations of Domino's on behalf of American Pizza Community; next Ms. Karen Raskopf, Chief Communications Officer for Dunkin' Brands, Inc.; and, finally, Ms. Margo Wootan, Director of Nutrition Policy Center for Science in the Public Interest.

Thank you each for coming today. You will each be given 5 minutes to summarize your written testimony. Your written testimony will be entered into the record. There is a series of lights on your desk, and when it hits red, we ask that you would please conclude.

I will have to run tight gavel today. I will monitor my little TV. On the floor we are scheduled to vote between 11:00 and 11:30. So we will go as long as we can. Hope to get through the members' questions.

So at this point, Ms. Hubbard, you are recognized for 5 minutes for your summary.

**STATEMENTS OF SONJA YATES HUBBARD, CHIEF EXECUTIVE OFFICER, E-Z MART STORES, INC., ON BEHALF OF THE NATIONAL ASSOCIATION OF CONVENIENCE STORES; ISRAEL O'QUINN, DIRECTOR OF STRATEGIC INITIATIVES, FOOD CITY, ON BEHALF OF THE FOOD MARKETING INSTITUTE; LYNN LIDDLE, EXECUTIVE VICE PRESIDENT, COMMUNICATIONS, LEGISLATIVE AFFAIRS AND INVESTOR RELATIONS, ON BEHALF OF AMERICAN PIZZA COMMUNITY; KAREN RASKOPF, CHIEF COMMUNICATIONS OFFICER, DUNKIN BRAND, INC.; AND MARGO G. WOOTAN, D.SC., DIRECTOR, NUTRITION POLICY, CENTER FOR SCIENCE IN THE PUBLIC INTEREST**

**STATEMENT OF SONJA YATES HUBBARD**

Ms. HUBBARD. Chairman Pitts, Ranking Member Green, members of the subcommittee, thank you for the opportunity to testify before you today. My name is Sonya Hubbard, and I am the CEO of E-Z Mart Stores headquartered in Texarkana, Texas. E-Z Mart owns and operates nearly 300 convenience stores in Texas, Oklahoma, Arkansas and Louisiana, all of which offer foods that are subject to the FDA's current menu labeling regulations.

I am testifying today on behalf of NACS, the National Association of Convenience Stores. Although more than 60 percent of our members operate single stores, many of these single-store owners do business under the name of a major oil company or are franchisees of larger businesses that are thus covered by the menu labeling requirements that are subject of the hearing today.

The convenience store industry strongly supports H.R. 2017, the Common Sense Nutrition Disclosure Act, and the efforts to provide customers and consumers with nutrition information that they want and need. Indeed, most of the food sold in the convenience stores is prepackaged, as has been discussed, and already provides this information.

If Congress enacts H.R. 2017, consumers would receive more nutrition information than they do today, and they would receive it in a way that is more useful to them. The food operations of the convenience stores are very different than that of chain restaurants, yet the FDA's final ruling was geared toward the chain restaurant model. Many chain restaurants sell the same food offerings prepared in the same way and displayed on the same menu at all of their locations. That is not true for the convenience store industry. Convenience stores, even those that are part of the same chain, sell different foods based upon the different locations and the different market demands. Even stores that do sell the same items may offer those items in different ways in stores that are configured differently.

At E-Z Mart, we have different foods in different locations, which would in turn require different menus. Even when different stores have the same foods like a breakfast sandwich, they might have a different calorie count because the supplier that provides the components are different. E-Z Mart deals with more than 50 food suppliers, and it has proved difficult getting the nutrition information we need from them. We expect that some won't get us that information by the December 1 deadline. And there isn't much

we can do about it. Nothing in the law or regulations requires suppliers to give us the information that we need. The responsibility is ours alone.

The food we offer changes frequently. At any given time we may be testing 15 or 20 different new products, and some of them will become long-term permanent fixtures in our stores, and others may change and be only temporary. This only adds to the complexity and difficulties of complying with the rules.

We want to provide our customers with useful information, and H.R. 2017 does not roll back the regulations, but instead gives us the flexibility we need to do this.

For example, the legislation would allow us to have one menu board in our locations rather than a scattering of confusing signs throughout the stores that repeat the same information. A basic wall of words. It would allow us more flexibility to display calories in ranges and averages rather than trying to come up with exact calorie counts for all items that may vary. The bill would give us more flexibility for foods that we are testing in different locations.

In addition, the bill would be very helpful in curbing the high punitive nature of some of the enforcement provisions. It simply should be not be a felony if a store does not prepare the food exactly the same way as another store on the exact same day if one of my clerks makes a mistake. We need some recognition of the good faith efforts to comply. And no mistake in this area should be serious enough to charge one of my store managers with a felony.

Finally, we need more time to comply once new regulations are issued. This is a complex regulatory regime, and we must analyze each and every one of our locations differently. We need time to work with our suppliers.

The bottom line is that H.R. 2017 is good sensible legislation that will improve the FDA's rules by helping businesses actually comply, and that will mean more good useful information to consumers.

I thank you again for the opportunity to testify, and I look forward to answering any questions you may have.

Mr. PITTS. Chair thanks the gentlelady.

[The prepared statement of Ms. Hubbard follows.]



**Statement Of**

**Sonja Yates Hubbard  
Chief Executive Officer  
E-Z Mart Stores, Inc.  
Texarkana, Texas**

**On behalf of the**

**National Association of Convenience Stores  
(NACS)**

**Before the**

**U.S. House of Representatives  
Committee on  
Energy and Commerce,  
Subcommittee on Health  
June 4, 2015**

**Hearing Examining H.R. 2017, the  
Common Sense Nutrition Disclosure Act**

**The Association for Convenience & Petroleum Retailing**

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**SUMMARY OF TESTIMONY**

1. The convenience store industry strongly supports HR. 2017 and efforts to provide consumers the nutrition information they want. Indeed, most of the food products we sell today already include such information. The industry simply wants to be able to provide this information in ways that are practical for our businesses and useful for our customers.

2. The Food and Drug Administration's menu labeling regulations have serious flaws and appear to have been designed for chain restaurants rather than the wide variety of formats in which food is sold. Convenience stores' model for acquiring, preparing, and selling food to consumers, for example, differs greatly from chain restaurants' model. The regulations also will subject retailers to potentially harsh penalties even if retailers undertake good-faith efforts to comply. Unless the regulations are revised, consumers' access to a wide variety of affordable food options may be limited.

3. H.R. 2017 would help solve these problems: It contains provisions that would minimize unnecessary compliance burdens – without compromising consumers' ability to receive nutrition information – while also revising the enforcement regime to ensure that the regulations are not unreasonably punitive.

4. H.R. 2017 is sound legislation for food retailers and, more importantly, the consumers that they serve.

## INTRODUCTION

Chairman Pitts, Ranking Member Green, Members of the Subcommittee, thank you for the opportunity to testify today. My name is Sonja Hubbard. I am the CEO of E-Z Mart Stores headquartered in Texarkana, Texas.<sup>1</sup> I am testifying today on behalf of the National Association of Convenience Stores (NACS).<sup>2</sup> More than 60% of NACS's members operate a single store. Many of these single store owners operate under the name of a major oil company or as franchisees of larger companies and thus are covered by the menu labeling requirements that are the subject of today's hearing.

The convenience store industry supports H.R. 2017, the Common Sense Nutrition Disclosure Act, and efforts to provide customers the nutrition information they want. Indeed, most of the food sold in convenience stores is prepackaged and already contains such information. Should H.R. 2017 pass, consumers would receive more nutrition information than they do today and they would receive it in a way that is more useful to them and less burdensome to businesses than under the regulatory regime currently in place.

The Food and Drug Administration's ("FDA's") final menu labeling rules have serious flaws and appear to have been designed for chain restaurants. But food is sold in many different ways across the United States. Some stores have menus, some do not. There are a wide variety of self-serve food options in U.S. stores. There are also a wide variety of stores that allow consumers to make their own foods or order them in custom ways. And the stores look very different – from convenience stores to grocery stores to food trucks. The FDA's regulations simply do not fit these many different formats. Unless the regulations are revised, some businesses may be forced to curtail some of their most innovative offerings and consumers' access to a wide variety of affordable food options will be limited.

In my industry, for example, convenience stores are increasingly selling fresh and prepared food offerings to consumers. The FDA's menu labeling regulations recognize this fact. However, the manner in which convenience stores acquire, prepare, and offer for sale fresh and prepared food differs greatly from how chain restaurants do so. The FDA's final rule exhibits very little understanding of this reality.

H.R. 2017 would rectify this by providing retailers greater flexibility to comply with federal menu labeling requirements in a manner that minimizes unnecessary compliance burdens without compromising consumers' ability to receive nutrition

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<sup>1</sup> E-Z MART, Inc. owns and operates a chain of convenience stores and gasoline stations in Arkansas, Louisiana, Oklahoma, and Texas. The company began with one store and now operates nearly 300. We proudly remain family owned and operated. We do not consider ourselves to be the only family in the business, however. E-Z Mart employs more than 2,100 people, many long-tenured and passionate about the company, and all are considered part of the E-Z Mart Family.

<sup>2</sup> NACS is an international trade association composed of more than 2,200 retail member companies and more than 1,600 supplier companies doing business in nearly 50 countries. Total industry sales in 2013 were approximately \$700 billion.

information. The bill would also revise the menu labeling rule's enforcement regime to strike an appropriate balance between any noncompliance and potential punishment. These provisions will avoid the prospect of local store managers being charged with felonies for accidentally violating menu labeling regulations, while at the same time fostering a cooperative public-private partnership to ensure that food retailers are able to provide consumers the information that consumers want in a practical, reasonable manner.

In the testimony that follows, I will provide a brief overview of the convenience store industry's model for providing food to our customers and illustrate how this model differs from that of chain restaurants. I will also address how the FDA's menu labeling regulations do not account for these differences, and discuss H.R. 2017's approach to bridging this gap and creating a regulatory regime that accommodates a variety of models for providing food to consumers.

### **CONVENIENCE STORES VS. CHAIN RESTAURANTS**

As a general matter, quick-service restaurants and sit-down chain restaurants sell the same food offerings, prepared in the same way, and displayed on the same menu, at all of their respective locations. This model lends itself to a relatively simple menu labeling regulatory structure: place calorie counts next to every item on the menu or menu board. It is easy and inexpensive for restaurants to comply, and straightforward for FDA to enforce.

The convenience store industry is different. Stores within a chain do not have identical product offerings. Indeed, stores vary greatly – even those that are part of the same chain – based largely on their location and the market demands in a particular area. What's more, even stores that do sell the same items as one another may *offer* those items in different ways. For example, some store locations may have a self-serve station for customers to get a slice of pizza, while others might offer to make those pizzas with different toppings based on a customer's individual order. This and other variations make menu labeling compliance far more complicated.

By way of example, E-Z Mart stores offer a variety of different fresh and prepared food offerings. In the morning, most of our stores (but not all of them) offer breakfast options, such as sausage, egg, and cheese biscuits. These products are not all prepared in the same manner using the same ingredients – E-Z Mart has more than fifty different suppliers serving different store locations, and those suppliers' products have different calorie counts. What's more, some of our stores offer these products on a self-serve basis, while other stores require customers to ask a store employee for the item. Some stores list these products on a menu board while others do not. These complexities all trigger different obligations under the menu labeling law.

Similarly, in the afternoon and evenings, E-Z Mart offers a variety of chicken offerings to our consumers. Some stores offer fried chicken, others have baked chicken; some stores offer chicken tenders, while others offer chicken strips. All of these items

have different amounts of calories. Thus, unlike chain restaurants, we cannot develop a centralized compliance plan that can be uniformly adopted by all of our stores; instead, we need to analyze our stores on a location-by-location basis and develop more individualized compliance plans. This requires a great deal of time and resources.

In addition, our product offerings are constantly evolving. At any given time, we are testing 15-20 new products. Some stores will find that a product sells well and make that product a permanent item; others will find that a product does not sell and will stop offering the product. Responding to our customers' demands in this way injects a level of complexity into our compliance obligations that chain restaurants, due to the nature of their business model, will generally not be forced to endure.

Another important way that convenience stores differ from many chain restaurants is that our food offerings are often designed to enable customers to tailor food items to their own liking. For example, a menu board at a convenience store might offer a "turkey sandwich," and leave it to the customer to add various additional sauces, cheeses, bread, and the like to their meal. Under FDA's rule, stores will have to list a very wide range of calories a customer could consume by ordering such a "variable menu item" – from a plain "meat and bread" sandwich to a sandwich with "the works." Such a range is difficult for establishments to calculate – particularly for items such as pizza that could have hundreds or even thousands of potential combinations – and of little utility to the public.

Convenience stores offer food in many different settings. In our stores, we have food displayed at the counter area, self-serve coffee stations, self-serve soda stations, baked goods displayed away from the counter area, refrigerated foods that customers can "grab-and-go," and most of these foods and beverages are not even listed on the menu boards that sometimes appear above the counter. And we are just one chain of stores. The variations in the industry are even more numerous. But, just in our stores alone, we often have five or more different areas of the store that would have to be populated with a multiplicity of different calorie signs to meet the FDA's regulations. Displaying and maintaining dozens of calorie signs with hundreds of calorie counts in places all throughout the store will be a herculean task. Customers will knock them over, the signs will obscure other informational signage within our stores, and the signs will have to be constantly updated and changed-out to keep up with changing offerings. That makes us very different.

A final example of the menu labeling rule's incompatibility with convenience stores' business model is the calorie-labeling requirements for self-serve beverage machines. All E-Z Mart stores have soda fountains that enable customers to fill their own cups with a single – or a combination of – soft drink(s). Under the rules, for every cup size available to a consumer (*e.g.*, small, medium, large, extra large), we must declare the calorie information for *every soft drink* available in the machine. By way of example, if we have four cup sizes available and ten different beverage options in a soda fountain, we

will need to include the calorie information for forty different items.<sup>3</sup> What's more, different E-Z Mart stores offer different types of beverages, which means that we will need to create dozens of different signs that include this information depending upon the beverages offered at each store. This is an unreasonable compliance obligation, and in the end it will not provide consumers with meaningful information.

#### **FDA'S FINAL RULE AND HOW H.R. 2017 WOULD HELP**

H.R. 2017 will help convenience stores and their customers by making reasonable changes to the law and its current regulations. These changes generally fall into two categories: simplifying covered establishments' obligations and revising the enforcement regime.

##### *Simplifying Covered Establishments' Obligations*

###### One Menu Per Store

The menu labeling provisions in the healthcare reform law requires covered establishments to include calorie information on the "primary writing" from which a consumer makes an order selection. It is clear that Congress intended establishments to identify a *single* "primary" menu in the store and include information on that menu. Thus, Congress rightly concluded that consumers would have easy access to calorie information if such information were included on an establishment's "primary" menu or menu board.

FDA has interpreted this provision, however, to require convenience stores to include calorie information on virtually any writing in a store that a customer could see when making a food ordering decision. Because convenience stores sell food in so many different areas within a store, they will be required to create dozens of "menus" to accommodate the mandatory calorie declarations. This requirement is particularly problematic when it comes to advertisements. Under the FDA's rule, it is far less clear than it should be that advertisements and posters are not covered by the menu labeling rule. And, it is very difficult to determine what is an advertisement and what is a "menu."

H.R. 2017 will renew Congress's original intent by requiring covered establishments to identify their primary menu or menu board, and comply with the menu labeling requirements on that menu. It further clarifies that advertisements do not need to include calorie declarations. This will provide customers easy access to nutrition

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<sup>3</sup> Although the rule does allow "grouping" items with similar caloric contents and listing those items as a single item, the way that this "flexibility" is structured will be far less helpful than FDA appears to believe. Specifically, only items that have a caloric content identical to another item – after rounding to the nearest 10-calorie increment – may be grouped together. Thus, if a small Coke has 85 calories, and a small Dr. Pepper has 84 calories, those two items could not be grouped together (because Coke will need to be displayed as 90 calories and Dr. Pepper will need to be displayed as 80 calories). See 21 C.F.R. 101.11(b)(2)(i)(A)(4)(i) (allowing group for items with similar caloric contents); see also 21 C.F.R. 101.11(b)(2)(i)(A)(2) (outlining the requirements for rounding).

information without imposing unreasonable and duplicative obligations on small business owners.

#### Labeling Flexibility

FDA's final rule contains rigid calorie labeling requirements that often result in consumers' receiving no helpful information (for example, disclosing that an item has between 200 and 1,800 calories).

H.R. 2017 would provide establishments flexibility in disclosing the caloric information for variable menu items that come in different flavors or varieties (*e.g.*, sandwiches, pizza, soft drinks, etc.) or combination meals (*e.g.*, "Meal #1" being a sandwich with chips or carrots and a beverage). Specifically, the legislation would permit establishments to provide the information through any of the following methods:

- Ranges;
- Averages;
- "Standard" offerings (*e.g.*, the information for an "Italian sandwich" without regard to whether the customer orders extra cheese or sauce);
- The number of servings and the number of calories per serving; or
- Individual labeling of flavors or components of the item.

#### Food Items Offered at Fewer than 20 Stores

Under the menu labeling rule, if a retail food establishment has more than twenty locations, all hot or prepared food sold in such locations must be labeled, even if an item is only sold at a single store.

H.R. 2017 clarifies that items offered at fewer than twenty stores are not standard menu items for a particular chain.

#### *Revising the Enforcement Regime*

H.R. 2017 also makes a number of improvements to current law regarding how the menu labeling requirements will be enforced. These provisions will provide an incentive for businesses to comply with the requirements *without* the threat of draconian, unpredictable penalties that could discourage food establishments from continuing to offer the affordable variety of food options that our customers have come to expect.

#### Inadvertent Human Error

Under the FDA's regulations, store owners could be subject to severe criminal penalties for violating any of the rule's dozens of complex provisions, even when such violations are inadvertent. This is particularly problematic in light of the non-uniform preparation methods that exist across convenience store chains. For example, one employee may include less batter or breading when preparing fried chicken offerings than

a different employee uses. This will inevitably lead to a different calorie count for that product. Such minor variations should not subject our industry to criminal charges.

H.R. 2017 provides that establishments acting in *good faith* would not be penalized for inadvertent human error and reasonable variations in serving sizes and ingredients.

#### Felony Exposure

Under FDA's regulations, every store location is required to have an employee "certify" that the establishment is compliant with the menu labeling requirements. Violations of such requirements – even minor, inadvertent violations after good faith efforts to comply – could result in criminal charges for such employees, possibly including felony charges.

H.R. 2017 eliminates the requirement that individual store owners certify that a location is compliant with the menu labeling rules. This provision appropriately pushes compliance responsibility up the corporate ladder, minimizing the criminal exposure that individual store managers may face.<sup>4</sup>

#### Private Rights of Action

Under the FDA's regulations, plaintiffs' lawyers in certain states will be able to file class action lawsuits against retail chains to enforce the menu labeling regulations. Under the current regulations, for example, calorie information will be dispersed throughout the store in different displays. There is no question that customers or employees will, from time-to-time, bump into those displays. It will be a challenge to try to keep all of those displays compliant, but there is no doubt that compliance will lapse at times without any fault of store managers. That should not create a constant threat of private litigation. This is particularly true given the complexities of FDA's menu labeling rules. An explosion of private litigation in this area will not benefit consumer health in any way; it will only serve to limit food options and/or raise food prices.

H.R. 2017 provides that only the federal government or a state government can enforce the menu labeling rules.

#### Providing Establishment Reasonable Time to Comply

FDA's effective date for the menu labeling rules is December 1, 2015. Many food establishments – including convenience stores, supermarkets, movie theatres, and others – did not know that they would be subject to the menu labeling rules until the end of 2014. Thus, they were given just one year to bring themselves into compliance with

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<sup>4</sup> A person who violates the menu labeling law may be imprisoned for not more than 1 year and/or fined not more than \$1,000. If such a violation is a person's *second* violation, or the violation occurs "with the intent to defraud or mislead," the punishment escalates to a felony of imprisonment of not more than three years and/or not more than a \$10,000 fine.

an entirely new regulatory regime. This is simply not enough time. It took FDA more than four-and-a-half years to finalize the menu labeling rules after Congress passed the healthcare reform law. It is not reasonable to give the regulated community less than a quarter of that time to come into compliance.

H.R. 2017 would delay the menu labeling rule's effective date until two years after FDA updates its regulations to comport with the legislation's provisions.

**CONCLUSION**

The convenience store industry takes seriously its responsibility to provide its customers meaningful nutrition information. H.R. 2017 would better enable us to do so in a way that is both practical and useful to our customers. I urge you to pass this important legislation as expeditiously as possible, and NACS looks forward to working with you and your staffs to make that happen.

Again, thank you for the opportunity to testify today. I am of course happy to answer any questions you may have.

Mr. PITTS. Now recognizes Mr. O'Quinn 5 minutes for opening statement.

#### STATEMENT OF ISRAEL O'QUINN

Mr. O'QUINN. Good morning, Chairman Pitts, Ranking Member Green, and health subcommittee members. I am Israel O'Quinn, Director of Strategic Initiatives for K-VA-T food stores based in Abingdon, Virginia. Our company operates 105 supermarkets primarily under the Food City banner in Kentucky, Virginia, and Tennessee. We are also an associate-owned ESOP company, and that is certainly something that we all take a lot of pride in. Additionally, we are members of the Food Marketing Institute and the National Grocers Association. So I am here representing a lot of grocers all over the United States today.

We really appreciate the work that you are doing to consider the impact of the FDA's menu labeling regulations on grocery stores and the need for the Common Sense Nutrition Disclosure Act of 2015, also known as H.R. 2017.

As grocers, we like to provide our customers with the products they want in the format that they desire, and more than 90 percent of the foods in our grocery store have not only calorie information but the full nutrition facts panel listing fat, sodium, and sugar content among other things. Many of the remaining items that we offer are actually sourced from within the store. If a cantaloupe or some other fruit or vegetable gets ripe in the produce department, we bring it over to the bakery/deli department, cut it up, and put it in the salad bar. And, in fact, many of our bakery/deli departments actually prepare foods that may be specific to a single store or a handful of stores based on regional tastes and preferences.

Throughout our stores and across our company, we have a team of quality assurance personnel that is focused exclusively on food safety. That includes implementation of the Food Safety Modernization Act, compliance with country of origin labeling, ingredient labeling, allergen labeling, bioterrorism and recordkeeping and proposed updates to the nutrition facts panel, as well as recall notifications.

We also have our own safety and quality standards that go well beyond these laws because I can promise you the last thing we want is someone to get sick from the food in our grocery stores.

You might ask how any of this is related to what we are talking about today. These are all areas that are of priority of the supermarket industry specifically and where we devote a lot of time and resources. They are also regulations that are not applied to chain restaurants. So when the FDA takes a chain restaurant menu labeling law and stretches its regulations out to grocery stores on top of all the other food safety and nutrition laws that we comply with and abide by, it shouldn't surprise anyone that the glove simply doesn't fit.

Now, we are wholly committed to aiding our customers in making healthy choices, and I will highlight quickly just three of those things that we are currently doing.

We, along with a lot of other grocers, have a healthy initiatives department that helps our associates and our customers make

more informed decisions about healthy eating. Something we didn't have to do but something that is the right thing to do.

We have also invested significant resources in the NuVal scoring system, a system that gives a 0 to 100 score right on the shelf tag so you can easily tell the nutritional value of any given product.

We are also involved in a large locally grown produce initiative. Now, most of the farmers in this initiative were formerly tobacco farmers, and they are now growing the freshest and best tasting fruits and vegetables that you can find anywhere.

Over a 14-year span in this program, we have gone from purchasing \$750,000 in product to nearly \$6 million last year alone. We are now able to offer premium produce at a very affordable price, and you can know the specific farm from which that product came. We were doing locally grown a long time before it was actually cool.

In closing, you may or may not be aware that grocery stores operate on a profit margin that averages about 1 percent. There is very, very little room for us to absorb costs such as the ones presented by menu labeling.

When you operate on a razor thin profit imagine, you simply don't have the luxury of spending money on things that bring little to no value. The costs are ultimately passed along to the consumer, and in an economy that contracted at .7 percent last quarter, consumers can't afford to be paying more and getting very little in return for those investments.

Now, our industry has asked a lot of questions and attempted a lot of meetings with FDA throughout this process, and we have had very few meetings and very few answers. So we believe that H.R. 2017 is a huge step in the right direction. We thank Ms. McMorris Rodgers and Ms. Sanchez for putting this bill in, and we thank you very much for your time and attention.

Mr. PITTS. Chair thanks the gentleman.

[The prepared statement of Mr. O'Quinn follows:]

Mr. Israel O'Quinn  
Director of Strategic Initiatives  
K-VA-T Stores, Inc.,  
Abingdon, VA

On Behalf of  
Food Marketing Institute  
&  
National Grocers Association

Examining H.R. 2017, the Common Sense Nutrition Disclosure Act of 2015  
10:00am, June 4, 2015  
Subcommittee on Health  
House Energy & Commerce Committee  
2123 Rayburn House Office Building  
Washington, D.C.

#### INTRODUCTION

Good morning, Chairman Pitts, Ranking Member Green and Health Subcommittee Members,

My name is Israel O'Quinn, and I am Director of Strategic Initiatives for K-VA-T Food Stores, Inc. K-VA-T Food Stores is headquartered in Abingdon, Virginia, and we currently operate 106 retail supermarkets, under the banner of Food City, throughout the tri-state regions of Southwest Virginia, Southeast Kentucky, and Northeast Tennessee. In addition to our retail outlets we operate a distribution center and water bottling plant in Abingdon, Virginia. In total, we employ more than 13,000 associates. KVAT is committed to our customers, to our associates and to being a community-oriented organization. We are involved in efforts to source locally but also give back by partnering with non-profit organizations throughout our market area, such as recently working with local growers and *Let's Move's* Salad Bars to Schools program to help donate salad bars to multiple schools throughout our region.

I am also here as one of the voices of the Food Marketing Institute, who are a diverse spectrum of single owner grocery stores, large multi-store supermarket chains and mixed retail stores, as well as the National Grocers Association, which is comprised of the retailers and wholesalers that make up the independent channel of the supermarket industry, as well as the overarching supermarket industry who operates nearly 40,000 stores and employs more than 3.5 million people in retail operations where food is sold in the United States.

We greatly appreciate the work you are doing to consider the impact of FDA's final menu labeling regulations on grocery stores and to focus on the need for enactment of the *Common Sense Nutrition Disclosure Act of 2015* (H.R. 2017).

The key to this effort from my perspective is the **common sense** part of this legislation. Grocery stores are going to deliver what customers want and in the format they want to receive it. For the government to spend hundreds of pages of *Federal Register* text to prescribe as part of a menu labeling law a type size and a "succinct statement" that must accompany the calorie information and the written offer of additional nutrition information available upon request, all adjacent or directly affixed to an item that is not on a menu or menu board isn't common sense at all.

This legislation seeks to put the common sense back into the process. About 95% of the foods in a grocery store not only includes calorie information, but also the full Nutrition Facts panel which lists fat, sodium, carbohydrates and much more nutrition information. Many of the remaining items are sourced from the store. If cantaloupe, or any other fruit or vegetable, gets ripe in the produce department, we cut it up and put it in the salad bar. I don't believe these are the issues Congress was trying to address by incorporating the chain restaurant menu labeling legislation into the 2000+ page Affordable Care Act.

Throughout our stores and across our company, we have a team of food safety and quality assurance personnel focused on food safety. That includes implementation of the FDA regulations regarding the Food Safety and Modernization Act (FSMA), compliance with requirements for Country of Origin Labeling, Ingredient Labeling and Allergen Labeling, Bioterrorism Recordkeeping, proposed updates to the Nutrition Facts panel, as well as Recall Notifications. We also have our own safety and quality standards that go above and beyond these laws.

What does any of this have to do with FDA's menu labeling regulations? Well, these are all top priorities of the supermarket industry and to which we should and do devote much attention and significant resources. They are also regulations with which chain restaurants are not required to comply. So when FDA takes a chain restaurant menu labeling law and stretches its regulations to grocery stores, on top of all of the other food safety and nutrition laws that we are required to abide by, it shouldn't surprise anyone that "the glove doesn't fit."

#### **SUPERMARKET INDUSTRY POSITION AND ENAGEMENT ON CHAIN RESTAURANT MENU LABELING**

Companies engaged in the supermarket industry constantly compete with each other to be at the forefront of providing customers with what they want and need, so our concerns with "menu labeling" regulations are with FDA's effectively mandating the standardization of foods that removes the creativity, passion and regional flavors our customers expect from us and love.

Food City's Healthy Initiatives department has already been actively addressing nutrition and dietary needs of both our customers and our associates. We have a substantial locally grown produce project with local farmers who have converted their tobacco fields to expand and promote fresh fruits and vegetables, which are cut up in-store and offered through an expanded assortment salad bar and in convenient "grab-and-go" items. This locally grown initiative began fourteen years ago and we purchased approximately \$750,000 worth of product at that time. Now, we make purchases that near the \$6,000,000 level which provide local, healthy products to our customers.

We use the NuVal nutrition scoring and shelf-tag system, so customers can make quick and easy nutritional comparisons among foods. We have invested significant effort and resources in providing NuVal to our customers so they can make quick, yet highly-informed, decisions based on nutritional value. We also offer a wide variety of gluten-free and organic products, which include dairy, beverages, as well as numerous ingredients and recipes for breakfast and dinner options.

This is all in addition to the approximately 95% of foods sold throughout our stores that already are labeled with Nutrition Facts, which has far more information than calories, and is also undergoing revisions by FDA.

Our concerns with mandating “menu labeling” at grocery stores is that FDA has designed these regulations for a format with limited offerings, standard portions, and, frankly, pre-printed menus. This just doesn’t fit a grocery store operation that carries, on average, more than 36,000 food items that vary and alter the content of salads made by customers at salad bars or other freshly made items for the customer’s choosing.

FDA’s final rule, published on December 1, 2014, did indeed stretch the chain restaurant menu labeling approach to grocery stores, and our concerns were realized and questions multiplied.

For example, we view our company as a collection of stores with qualities that make each of them unique. We encourage our chefs and our bakery and deli departments to offer items that reflect the creativity, entrepreneurship, and local foods appreciated by the customers who shop in each of those stores. There are items that we may only sell at one or two stores, and while the same name may be listed in various stores, the ingredients or recipe may vary among our stores. Under FDA’s rules, these would all be considered “standard menu items” and regulated as such.

Some of this variance is also the result of what’s available in the store, particularly in the produce area or meat case. If we have a surplus of cucumbers or berries, these will appear more frequently along the salad bar. Under the regulations, grocery stores not only will need to produce and update signage, we will need to perform nutritional analyses to ensure these profiles are documented, maintained and available upon request. These are all things that eliminate creativity and reduce customer interest by driving standardized food. The shelf life on the items referenced is extremely short, and instead of risking an action by the FDA, we would likely be forced to shrink the product. Grocers are particularly concerned with food waste, and that is the last thing we want to happen.

Some of our stores have considered placing a sign, book or electronic kiosk above or at the end of the salad bar to list calorie counts for all items instead of putting a label on every ladle and tray, which are constantly moving and getting switched out. Based on the information FMI has received from FDA, this would not be considered compliant under FDA’s rules. We have also considered using scale-labels from our deli area for grab-and-go items, such as sandwiches made from the deli early in the day, but with an FDA-mandated font size, the font-size would not be compliant without having to completely replace all our scales and labels. To put it bluntly, this is going to be a very expensive endeavor.

And due to the high variability and potential for human error that inevitably comes with freshly preparing foods, even when using the same recipe and ingredients, we would like to have the opportunity to take corrective actions before enforcement actions are taken by FDA or by state and local health officials, who choose to enforce the menu labeling law.

Based on supermarket industry analyses of the current FDA final menu labeling regulations, FMI estimates the compliance costs for the overall supermarket industry to run up to \$1 billion initially, resulting from FDA’s requiring 150-200 individual items, on average, per store across 30,000 stores to undergo nutrition analysis, ranging from \$500-\$1,500 per item, plus the recordkeeping, signage, labeling and staff training. This does not account for the standardization process that stores will undergo to lower the liability risks of individual store offerings or for the timing and process for all of this to occur. In addition, the lack of industry guidance from FDA since the rule was released has compressed the compliance timeline, driving costs higher. Since FDA published the final regulations outside our normal budgeting cycle, these compliance costs were not accounted for and will directly impact our store operations, customer service, and food prices.

You may not be aware that grocery stores operate on a profit margin that averages 1% and based on FMI data collected for the past 40 years, this 1% margin has not changed in all those years. There is very little room for us to absorb significant costs such as the ones presented by a new menu labeling requirement. When a company operates on a razor-thin margin, it simply doesn't have the luxury of spending large amounts of money on things that return no value. These costs are ultimately passed along to the consumer, and in an economy that contracted at 0.7% last quarter, consumers can't afford to pay more and get practically nothing in return when they grocery shop.

We have raised these concerns, as well as many additional technical questions with FDA, through our trade associations, and FMI has even conducted store tours with a team of FDA officials as well as have several face-to-face meetings with industry compliance teams, and multiple conversations and webinars. However, we have not received any guidance or answers from FDA that would allow us to begin taking the steps necessary to be in compliance by December of this year.

Thankfully, the *Common Sense Nutrition Disclosure Act of 2015* (H.R. 2017), introduced by Representatives Cathy McMorris Rodgers and Loretta Sanchez and co-sponsored by many on this Subcommittee, attempts to correct many of these problems.

The *Common Sense Nutrition Disclosure Act of 2015* helps address fundamental problems with FDA's final menu labeling regulations, such by addressing such needs 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 to properly implement the law and take corrective actions as necessary.

I thank you for allowing me to testify today about the impact of FDA menu labeling regulations, and I appreciate the Subcommittee's consideration of this legislation. I would be pleased to take your questions.

**Summary of Supermarket Industry Testimony Regarding  
Examining H.R. 2017, the Common Sense Nutrition Disclosure Act of 2015**

- The supermarket industry supports the *Common Sense Nutrition Disclosure Act of 2015* (H.R. 2017) and appreciates the Health Subcommittee considering the impact of FDA's final menu labeling regulations on grocery stores.
- This legislation seeks to put the common sense back into the process. Most of the foods in a grocery store have not only calorie information, but also the NLEA Nutrition Facts panel which lists fat, sodium, carbohydrates and more. Many of the remaining items are sourced from the store. If cantaloupe, or any other fruit or vegetable, gets ripe in the produce department, they are cut up and used in the salad bar. These are not the issues Congress was trying to address by incorporating the chain restaurant menu labeling legislation into the Affordable Care Act.
- Food City's Healthy Initiatives have already been actively addressing nutritional dietary needs. We have been substantially expanding and promoting locally grown fresh fruits and vegetables, which are cut up in-store and offered through an expanded assortment salad bar and in convenient "grab-and-go" items. We use the NuVal nutritional scoring and shelf-tag system, so customers can make quick and easy nutritional comparisons between foods. This is on top of 95+% of the foods sold throughout our stores already being labeled with Nutrition Facts, which has far more information than calories and is also undergoing FDA revisions.
- Our concerns with mandating "menu labeling" at grocery stores is that FDA has designed these regulations for a format with limited offerings, standard portions, and, pre-printed menus. These are all things that take away creativity and reduce customer interest by driving standardized food.
- FDA's menu labeling rule doesn't fit a grocery store operation that carries, on average, over 36,000 food items that vary and alter the content of salad bars or other freshly made items. Store chefs and bakery-deli departments are empowered to offer items that reflect the local foods and tastes of their community. There are some items that we 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.
- Some of this variance is also the result of what's available in the store, particularly in the produce area or meat case. If we have a surplus of cucumbers or berries, you're going to start seeing a lot more of them along the salad bar. Under FDA's regulations, grocery stores still will need to perform nutritional analyses, to create and update signage, and to ensure these profiles are documented, maintained and available upon request. The shelf life on the items referenced is extremely short, so instead of risking an action by the FDA, stores would likely be forced to "shrink" the product.
- Some of our stores have considered putting a prominent sign, book or electronic kiosk listing calorie counts for all items above or at the end of the salad bar but this would not be considered compliant under FDA's rules. We've also considered using scale-labels from our deli-area for grab-and-go items like sandwiches made from the deli early in the day, but with a FDA mandated font size, this would not be compliant.
- And due to the high variability and potential for human error that inevitably comes with freshly preparing foods, we would like the ability to take corrective actions before enforcement actions are taken by FDA or by state and local health officials, who choose to enforce the menu labeling law.
- The supermarket industry has raised these concerns and other technical questions with FDA, but has not received positive response from FDA that would allow us to begin and complete the compliance process by December, 2015.
- The *Common Sense Nutrition Disclosure Act of 2015* 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 to properly implement the law and take corrective actions as necessary.

Mr. PITTS. Now recognizes Ms. Liddle 5 minutes for opening statement.

#### STATEMENT OF LYNN LIDDLE

Ms. LIDDLE. Good morning, ladies and gentlemen. I am honored to have the privilege to speak on behalf of the 20,000 pizzerias across the U.S. who make up our coalition called the American Pizza Community, and for 900 Domino's small business owners. I appreciate your giving us this chance to discuss how calorie information is best presented to our customers.

Our requests are simple modern practical solutions that will inform consumers in a better way and relieve a cost burden from small business. I believe that you will find them more than reasonable.

At Domino's, as we have heard, there are 34 million ways to make a single pizza based on all the crust types, sauces, and toppings that we offer. Pizza Hut has published that they now have 2 billion.

So our first point is that you can't possibly fit all the iterations of a pizza on a typical menu board like you can for burgers, for example. FDA did understand that too. So they said just put ranges. But if you put ranges for a whole pie, that is a range of up to 2,000 calories. If you do it by the slice, it is still a range of hundreds of calories. We think that the calories should be disclosed more precisely so that our customers actually know what they are eating. Our solution is to put the information where our customers go. Online. Right now about half of all Domino's orders and those of Pizza Hut and Papa John's come from online. And 5 minutes from now there will be more since the industry is moving there at warp speed. The rest of our customers who don't order online pick up the phone to order. This means that very few people, and our figures show less than 10 percent, walk into a store, look at a menu board and make their ordering decision in that way. Think about your own ordering habits. What do you do when you order pizza?

To illustrate this point with a specific example, we recently spent an average day in a Domino's store in Michigan. Out of the 324 orders we witnessed, 91 percent were placed remotely, either online or by phone. About 7 percent were placed in store, and not even 2 percent of customers, that is 5 out of 324, used the menu board to place an order. To us, it makes no sense to retrofit this information on a menu board which the vast majority don't even use.

My second point is about imposing an unneeded and somewhat bizarre expense, we think, on small business people. Most people think of Domino's or Papa John's, for example, as big business, but we are actually a collection of small business owners or franchisees. Nearly half of Domino's franchisees only own one store, and our average is just 5 stores per franchisee. This is the common model for pizza. So why make these small local business people who live, work, and hire in your districts pay thousands of dollars a year for something that nobody uses.

There are also other provisions of the final rules from FDA that we find pretty frightening. They define menus very broadly, which will force businesses to calorie label anything a customer could pos-

sibly order from. The original law defined a menu as the primary writing of the restaurant.

Now, I am a simple Midwesterner, but I think primary means first and foremost, not all. In our business, we send lots of advertising fliers out, top boxes with fliers, and put posters up in stores. None of these were ever intended as menus, and they can't possibly all be considered primary. And this isn't unique to pizza. It spans across many restaurant types. FDA claims to have recognized this point, but the definitions that they laid out in the final rules still don't differentiate these properly.

Lastly, the final FDA regulations require that you have to certify at both the corporate and individual store levels that you have listed all the correct calories in all the correct places and that you could face criminal penalties should you do this wrong. And what about class action lawsuits if a teenage pizza maker is a little heavy handed with the cheese and the slice doesn't match the listed calories.

We believe that a business should be required to show that it has made reasonable efforts to correctly depict calorie information, and I hope that we can all agree that inadvertently putting too many toppings on a pizza should not result in crippling fines and threats of jail time.

Even with all the fixes that we have proposed, the job of calorie labeling won't be an easy one, but we think it is worth it. People do have a right to know what they are eating, which is why we have been voluntarily disclosing calorie information in one form or another for 14 years.

But to get ready, computer programming, material design, nutritional research, and operational systems will need to be put in place. So we have asked for more time to get it done. But let me be clear. In no way do we see a delay in the rules as a solution. We must have a legislative fix.

In closing, I cannot say it too many times. We are not seeking an exemption. We want to comply in a way that fits our business model, provides the information to our customers in the clearest way, and doesn't make small business pay for materials customers won't see or use.

We ask you to support and ultimately vote for H.R. 2017 for the sake of all these important constituencies. Chairman Pitts, and members of the subcommittee, thank you for listening to me, and thank you, Representatives McMorris Rodgers and Sanchez for your leadership on this issue.

Mr. PITTS. Chair thanks the gentlelady.

[The prepared statement of Ms. Liddle follows:]

**Written Testimony of Lynn M. Liddle  
Executive Vice President of Communications, Investor Relations and  
Government Relations, Domino's  
and  
Chairperson, the American Pizza Community**

**Examining H.R. 2017, the Common Sense Nutrition Disclosure Act of 2015**

**Committee on Energy and Commerce  
Subcommittee on Health  
Hon. Joe Pitts, Chairman  
Hon. Gene Green, Ranking Member**

**June 4, 2015**

Good morning Chairman Pitts, Ranking Member Green, and distinguished members of the subcommittee. I'm honored to have the privilege to speak on behalf of the 20,000 pizzerias across the U.S. who make up our coalition, called The American Pizza Community – and for 900 Domino's small business owners. I appreciate your giving us this chance to discuss how calorie information is best presented to our customers.

Our requests are simple, modern, practical solutions that will inform consumers in a better way – and relieve a cost burden from small business. I believe you will find them more than reasonable.

At Domino's, there are 34 million ways to make a single pizza, based on all the crust types, sauces and toppings we offer. Pizza Hut has published that they now have two billion. So, our first point is that you can't possibly fit all the iterations of pizza on a typical menu board like you can for burgers, for example. FDA understood that, too, so they said "just put ranges." If you put ranges for a whole pie, that's a range of up to 2,000 calories. If you do it by the slice, it's still a range of hundreds of calories. We think the calories should be disclosed more precisely, so our customers actually know what they're eating.

Our solution is to put the information where our customers go to order: online. Right now, about half of all Domino's orders (and those of Pizza Hut and Papa John's) come from online. Five minutes from now, there will be more...since the industry is moving there at warp speed. The rest of our customers who don't order online pick up the phone to order. This means that very few people (our figures show 10%) walk into a store, look at a menu board and make their ordering decision in that way. Think about your own ordering habits. What do you do?

To illustrate this point with a specific example, we recently spent an average day in a Domino's store in Michigan. Out of the 324 orders we witnessed, 91 percent

were placed remotely, either online or by phone. About seven percent were placed in-store. And not even two percent of customers – five of 324 – used the menu board to place an order. To us, it makes no sense to ‘retrofit’ this information on a menu board which the vast majority doesn’t even use.

My second point is about imposing an unneeded and bizarre expense on small business people. Most people think of Domino’s or Papa Johns, for example, as “big business.” But we are actually a collection of small business owners, or franchisees. Nearly half of Domino’s franchisees only own one store, and our average is just five stores per franchisee. This is the common model for pizza. So why make these small, local businesspeople who live, work and hire in your districts pay thousands of dollars a year for something that almost nobody uses?

There are also other provisions of the final rules from FDA that we find pretty frightening. They define menus very broadly, which will force businesses to calorie label anything a customer could possibly “order from.” The original law defined a menu as the “primary writing” of the restaurant. I’m a simple Midwesterner, but I think “primary” means “first and foremost,” not “all.” In our business, we send out lots of advertising flyers, top boxes with flyers and put posters up in stores. None of these were ever intended as menus, and they can’t

possibly all be considered “primary.” And this isn’t unique to pizza; it spans across many restaurant types. FDA claims to have recognized this point, but the definitions they laid out in the final rules still don’t differentiate these properly.

Lastly, the final FDA regulations require that you have to “certify” at both the corporate and the individual store levels that you have listed all the correct calories in all the correct places, and that you could face criminal penalties should you do this wrong. And what about class action lawsuits if a teenage pizza-maker is a little heavy-handed with the cheese, and the slice doesn’t match the listed calories? We believe that a business should be required to show that it has made reasonable efforts to correctly depict calorie information. And, I hope we can all agree that inadvertently putting too many toppings on a pizza should not result in crippling fines and threats of jail time.

Even with all the fixes we have proposed, the job of calorie labeling won’t be an easy one – but we think it’s worth it. People have a right to know what they’re eating, which is why we have been voluntarily disclosing calorie information in one form or another for 14 years. But to get ready, computer programming, materials design, nutritional research and operational systems will need to be put

in place. So we've also asked for more time to get it done. But let me be clear: we in no way see a delay in the rules as a solution. We must have this legislative fix.

In closing, I cannot say it too many times: we are NOT seeking an exemption. We want to comply in a way that fits our business model, provides the information to our customers in the clearest way and doesn't make small business pay for materials customers won't see or use.

We ask you to support and ultimately vote for H.R. 2017 for the sake of all these important constituencies.

Chairman Pitts and members of this subcommittee, thank you for listening to me.

And thank you to Representatives McMorris Rodgers and Sanchez for your leadership on this issue.

Mr. PITTS. Now recognizes Ms. Raskopf 5 minutes for an opening statement.

**STATEMENT OF KAREN RASKOPF**

Ms. RASKOPF. Thank you for the opportunity to testify before you today. My name is Karen Raskopf, and I serve as the Chief Communications Officer for Dunkin' Brands. Dunkin' Brands is the franchisor and parent company of two of America's most beloved brands, Dunkin' Donuts and Baskin-Robbins. Both Dunkin' Donuts and Baskin-Robbins are essentially 100 percent franchised. At the end of 2014, Dunkin' Brands included more than 10,500 Dunkin' Donuts and Baskin-Robbins in the United States alone.

And, by the way, Baskin-Robbins franchisees own an average of about one restaurant. Dunkin' Donuts own an average of about six. So they are small business people.

Dunkin' Brands has proudly supported national uniform menu labeling for many years, and we continue to believe a national standard for providing nutrition information on all restaurant-type foods is critical. Over the past several years, Dunkin' Brands and many others in the restaurant industry have worked proactively with Congress and the administration to help reform what had previously been a complex highly localized approach to menu labeling.

Before the Federal solution, labeling laws were being passed on a state-by-state, city-by-city basis, and in some cases counties were competing with cities to pass such laws. Competing State and local menu labeling laws were difficult and disruptive for businesses, as well as lacking in consistency for customers. A national approach to labeling was an important and necessary step for our franchisees, our industry, and, most importantly, for consumers. It has been long overdue and remains critically important.

We acknowledge that today's food service industry is large and complex. However, though we continue to have some specific questions in regards to how to efficiently and effectively implement certain sections of the regulation, we appreciate FDA's commitment to working with stakeholders. We believe FDA generally followed the intent of the law, and did so in a manner to largely minimize cost and burden to the food service industry. While some may argue that there is expense and inefficiency in regards to implementation, after having complied with both individual State laws, as well as completing much of the work to meet the year end deadline, I can assure you FDA has worked to address most of the significant and potential costly issues to us.

Likewise, the new labeling regulation is intended to benefit both businesses and consumers by focusing on all establishments that serve restaurant-type food, not just a select few. For this reason, the regulation specifically includes not only restaurant chains but also other food service retailers with 20 or more locations, including convenience stores, grocery stores, and others.

H.R. 2017 includes a provision that imposes a percentage revenue threshold exempting grocery and convenience stores from having to label their restaurant-type food. We strongly disagree with this. The benefits of nutrition labeling are important no matter the size of the menu or the percentage of sales from food.

I hope Congress will maintain the labeling regulation as it was written. Grocery and convenience stores are increasingly competing against our restaurants. While we welcome the competition, we believe that restaurant-type food that grocery and convenience stores sell should be held to the same standards as the food that traditional restaurants sell. This is about the type of food being sold, not the business format.

A final point I would like to make is there have been many concerns expressed in regards to the expense associated with determining nutritional information and the cost to communicate that information. To be clear, the regulation states that food service operators need only use reasonable means to calculate nutrition information. Lab testing is not required. There are multiple ways to determine nutritional values, many of them at minimal cost.

And, very importantly, the regulation does not require menu boards. The regulation—how companies choose to communicate nutrition information is a business decision, not a legislative one, and from high tech to low tech, there are many communications options available to retailers.

For these reasons, we do not support the language in H.R. 2017 that clarifies this point. And to be clear, we do not believe any additional legislation is necessary. All clarifying information can be handled through FDA guidance.

Thank you for the opportunity to testify.

Mr. PITTS. The chair thanks the gentlelady.

[The prepared statement of Ms. Raskopf follows:]



Statement Of Karen Raskopf  
 Chief Communications Officer, Dunkin' Brands  
 Before The  
 Subcommittee On Health, Education, Labor And Pensions  
 House Of Representatives Energy & Commerce Committee

June 4, 2015

Chairmen Pitts, Ranking Member Green, and members of the Subcommittees on Health, Education, Labor and Pensions; thank you for the opportunity to testify before you today on “menu labeling” for chain restaurants and “similar retail food establishments” and H.R. 2017.

My name is Karen Raskopf and I serve as the Chief Communications Officer for Dunkin Brands, Inc. It is an honor to be here to share our perspective on the importance of menu labeling.

Dunkin' Brands is the franchisor and parent company of two of America's most beloved brands: Dunkin' Donuts and Baskin-Robbins. Both Dunkin' Donuts and Baskin-Robbins are essentially 100% franchised. At the end of 2014, Dunkin' Brands' franchise business model included more than 10,500 Dunkin' Donuts and Baskin-Robbins restaurants in the United States and more than 18,000 worldwide in 60 countries.

Dunkin' Brands has proudly supported national, uniform menu labeling for many years; and, in fact, was at the table as final details of the law were being determined in 2009 and 2010. We continue to support these efforts and look forward to providing our thoughts on why we believe a national standard for providing nutrition information on all restaurant type foods is appropriate.

Today, my testimony will focus on key issues of importance with respect to H.R. 2017 and menu labeling, in general, as we move towards compliance. These issues are:

- The need for consistent nutrition labeling on all restaurant type foods;
- Coverage of chain restaurants and “similar retail food establishments;” and
- The determination of which store materials should include calorie and/or nutrition information



**Our Company and Our Industry Supports Labeling of Restaurant Type Food**

At the end of 2014, the Administration announced the final menu labeling regulation. With implementation scheduled later this year, December 1, 2015, for the first time our country will have a national standardized approach to labeling restaurant type foods, ensuring a clear, effective and transparent way to present calorie information to best meet the public interest.

Dunkin' Brands and many others in the restaurant industry have worked proactively with Congress and the Administration over the past several years to help reform what had previously been a complex, highly localized approach to menu labeling. Before this federal solution, labeling laws were being passed on a state-by-state, city-by-city basis and, in some cases, counties were competing with cities to pass such laws. Competing state and local menu labeling laws were difficult and disruptive for businesses, as well as lacking in consistency for customers. A national approach to labeling was an important and necessary step for our franchisees, our industry, and more importantly for our consumers, and one that was long overdue.

Today's food service industry is large and complex. Though we continue to have some specific questions in regards to how to efficiently and effectively implement certain sections of the regulation, we appreciate FDA's commitment to working with stakeholders. We believe FDA generally followed the intent of the law and did so in a manner to largely minimize cost and burden to the food service industry. While some may argue that there is expense and inefficiency in regards to implementation, after having complied both with individual state laws as well as completing much of the work to meet the December 1, 2015 deadline, I can assure you, FDA has worked to address most of the significant and potentially costly issues that faced us.

**Consistent, National Labeling and Pre-emption**

As I mentioned earlier in my testimony, prior to the passage of the national requirement to label restaurant type food, the industry was facing a patchwork of varying state and local menu labeling regulations throughout the United States. For small and medium sized business owners, such as Dunkin' Donuts and Baskin-Robbins franchisees, we were tasked with having to design different menus for different parts of the country. This was inefficient, burdensome and costly. To prevent this from happening in the future, the federal law pre-empted state and local governments from passing different standards, which was news that our franchisees welcomed.

**Similar Retail Establishments**

Similarly, the new labeling regulation is intended to benefit both businesses and consumers by focusing on a full breadth of establishments that serve restaurant type food, not a select few. For this reason, the regulation specifically includes not just restaurant chains, but also other food-service retailers with 20 or more locations, including convenience stores, grocery stores, and others. Representatives from some of these non-restaurant food service establishments have been lobbying Congress for an exemption from the new federal menu labeling regulation. H.R. 2017 includes such a provision that imposes a percentage revenue threshold exempting grocery and convenience stores from having to label their restaurant type food. We strongly disagree with this. The benefits of nutrition labeling are important no matter the size of the menu or the percentage of sales from food, and I hope you and your colleagues in Congress will maintain the labeling regulation as it was written.

Grocery and convenience stores are increasingly competing against our restaurants and our franchisees. While we welcome the competition, we believe that the restaurant type food grocery and convenience stores sell should be held to the same standards as the food that traditional restaurants sell. We understand that grocery and convenience store businesses operate differently than restaurant businesses; however, when it comes to the actual serving of restaurant type food, there is no difference. When department stores, such as Target and Walmart, started selling grocery/convenience store food, they were not exempt from including the same nutrition information required for grocery/convenience stores – even though the department stores had additional regulations because of their differing business operations. We see no difference in the situation we are now faced with for restaurant type foods. Congress decided that restaurant type foods should bear calorie labeling, regardless of where they are sold. In the interest of creating a level playing field for these types of foods, we emphatically agree.

**Primary Writing**

Though we have additional comments on H.R. 2017 which we are sharing with the sponsors, co-sponsors and committee, an issue of significance that we want to raise here is language that would permit an establishment to label only the one menu that such establishment believes to be the primary writing from which customers make a selection in placing an order. We do not support this provision. Nor do we support the language that would permit an establishment where the majority of orders are placed by customers off premises to only provide calorie declarations through its remote access menu.

Dunkin' Brands, and many of our colleagues in the industry, believe that all menus and menu boards from which customers place an order should be labeled. Customers place orders using menu boards in the restaurant, menu boards at the drive thru, online menus, and menus now included in smartphone apps. At Dunkin' Brands, we intend to label all of these menu boards because to only choose one menu board to label defeats the purpose of the law entirely.

Additionally, restaurants and food service establishments that are claiming tremendous expenses associated in determining nutrition information and creating new menu boards clearly misunderstand the new regulation. The regulation states that food-service operators need only use reasonable means to calculate nutrition information.

While Dunkin' Donuts made the business decision to convert to digital menu boards in part for ease and flexibility in providing information to our guests, the regulation doesn't require menu boards to be replaced, only updated. How companies choose to label their menu boards, with stickers, slats, the use of iPads instead of menu boards, etc. is a business decision, not a legislative one.

We support a definition of menu and menu boards that includes all the menus from which customers place an order. We also believe the law must be clear that promotional items and advertisements are not considered menus and do not require calorie declarations. It is our understanding that FDA intends to clarify this point in their upcoming guidance document. For these reasons, we do not support the language in H.R. 2017 that clarifies this point.

#### **Summary**

In summary, Dunkin' Brands, strongly supports nutrition labeling for restaurant type foods in establishments with 20 or more units. We believe menu labeling is simply the right thing to do. The final regulation, as written, is in the best interests of both our industry and consumers. I am proud that Dunkin' Brands could play a part in its creation and we urge Congress to reject HR 2017 and any legislative efforts to alter the law or final regulation as written.

Thank you again for the opportunity to provide our views. I have provided my full statement for the record. I would be happy to answer any questions.

Mr. PITTS. Now recognizes Dr. Wootan 5 minutes for an opening statement.

**STATEMENT OF MARGO G. WOOTAN, D.SC.**

Ms. WOOTAN. Good morning. I am Margo Wootan, the Director of Nutrition Policy at the Center for Science in the Public Interest, and I appreciate the opportunity to share the consumer view this morning.

CSPI supports the Senate's bipartisan request to the FDA to give industry more time to comply with menu labeling, but we strongly oppose H.R. 2017. The Common Sense Nutrition Disclosure Act supports neither commonsense nor nutrition information disclosure. Commonsense would be to side with the American people who are afflicted by high rates of obesity over Domino's, which is hardly in need of Congressional protection, given its almost \$2 billion in annual sales.

At a time when two-thirds of Americans are either overweight or obese, half of our food dollars are spent on away-from-home foods, and studies clearly link eating out to obesity. Common sense would suggest that Congress support Americans' ability to make educated choices from the widest range of food service establishments provided under the law.

I admire the gutsiness of some of my fellow witnesses. It is politically astute and clever to focus on the fixes that H.R. 2017 would supposedly provide them while failing to mention that the bill would totally exempt them from providing calorie information for their prepared foods. This bill most definitely would not make it easier for people to access meaningful, easily accessible nutrition information. That is why over 115 health experts and organizations oppose this bill.

Supermarkets say that they are willing to give customers what they want, but fail to mention that over 80 percent of Americans want supermarkets to provide calorie information for their prepared foods like fried chicken, sandwiches and soups. And more than a quarter want calorie labeling for the hot dogs, pizza, nachos, and other foods sold at convenience stores. How are people supposed to make informed choices if Congress, supermarkets, convenience stores, pizza chains, and movie theaters withhold nutrition information from them?

Supermarket and convenience store exaggerations about the cost of menu labeling remind me of concerns in the early days when I was first working on menu labeling. But those did not turn out to be true. Menu labeling software is inexpensive. Many supermarkets already have dieticians on staff who can conduct calorie analysis. And restaurants have shown that calorie labeling is affordable and feasible in the dozens of jurisdictions where it is already in effect.

It is also disingenuous for supermarkets and convenience stores to promote themselves to customers as alternatives to restaurants while at the same time lobbying Congress about how different they are. Supermarket bakeries, buffets, salad bars are like those in restaurants, and many supermarkets now have tables where people can eat. 7-Eleven, Wawa and Sheetz are among the hundred top

food service establishments in the country. And some of them even belong to the National Restaurant Association.

It is particularly hard to understand why pizza restaurants need a special exemption from listing calories on in-store menu boards. While many people do order pizza by phone or computer, similarly, many do not enter fast food restaurants, and order instead through the drive-thru. Yet fast food restaurants aren't opposing having to provide their customers with nutrition information on each of their menus. Likewise, pizza restaurants should not deny nutrition information to their in-store customers.

And pizza is a real problem in American's diets. It is the fifth largest source of calories. It is the second biggest source of saturated fat, and it is the third biggest source of sodium. If any restaurants need comprehensive nutrition labeling, it is pizza restaurants. The variability of pizza with its different crusts and toppings is no different than the variability of Subway sandwiches with different breads and meats and toppings and spreads. Or ice cream sundaes or Chipotle burritos. Calories can and are being expressed as ranges, or being provided for commonly ordered standard builds.

Finally, H.R. 2017's provision to allow restaurants and other food service establishments to arbitrarily chose to label items for only a fraction of the menu item is a recipe for confusion. It would be deceptive for consumers and make it very difficult for them to order.

I urge the committee to oppose H.R. 2017. Your constituents' health depend on it.

Mr. PITTS. Chair thanks the gentlelady.

[The prepared statement of Ms. Wootan follows:]

Written Testimony of Margo G. Wootan, D.Sc.

Director, Nutrition Policy

Center for Science in the Public Interest

Before the Committee on Energy and Commerce, Subcommittee on Health

Hearing Examining H.R. 2017, the Common Sense Nutrition Disclosure Act of 2015

June 4, 2015

**Away-from-home foods negatively affect Americans' diets and health.** At least three dozen studies show that eating out is associated with obesity (see literature review on the link between eating out and obesity at [http://cspinet.org/new/pdf/lit\\_rev-eating\\_out\\_and\\_obesity.pdf](http://cspinet.org/new/pdf/lit_rev-eating_out_and_obesity.pdf)). For example, children eat almost twice as many calories when they eat a meal at a restaurant compared to at home (770 calories versus 420 calories). Women who eat out more than five times a week eat 300 more calories on average each day compared to women who out less often. People also eat more saturated fat and less calcium, fiber, fruits, and vegetables when they eat out compared to when they eat at home.

Food choices for away-from-home foods matter more than in the past because families are eating out twice as often as in the 1970s. Americans spend half their food dollars on eating out and take out foods and consume about one-third of their calories from food-service establishments.

While two-thirds of people believe they know how to make healthy choices when eating out, studies show that people have a difficult time identifying lower calorie options at restaurants. Without nutrition information, it is not easy to make informed choices. At Starbucks, a White Chocolate Mocha has six times as many calories as a nonfat Cappuccino. At TGI Fridays, the mashed potatoes have half the calories of the rice pilaf side dish.

Menu labeling **allows people to exercise personal responsibility and make informed choices** for a growing part of their diets. The law provides a reasonable small business exemption; chains with fewer than 20 outlets are exempt.

Giving blanket exemptions to chain supermarkets and convenience stores from providing their customers with calorie information is not what most would call providing flexibility, nor would it accomplish the goal of providing nutrition information to the overwhelming majority of Americans who want it. According to a national survey commissioned by the Center for Science in the Public Interest, 81 percent of Americans favor having supermarkets provide calorie information for their prepared restaurant-type foods, such as fried chicken, sandwiches, and soups, and 77 percent want calorie labeling for the hot dogs, pizza slices, and burritos sold at convenience stores.

The restaurant industry and public health groups agree that all chain establishments that serve ready-to-eat prepared foods should post calories, including supermarkets, convenience stores, and movie theaters. There should be a level playing field and the law should be fair to all chain establishments that sell ready-to-eat prepared foods. Importantly, it is what consumers want and need in order to manage their calorie intake and weight.

**Supermarkets are similar to chain restaurants in a number of ways:** both are often operated by local owners (franchises or in cooperatives); they have standard recipes for prepared foods, but allow for variation between locations; they have bakeries, buffets, hot bars, and salad bars; and many supermarkets have tables for eating. Increasingly, supermarkets and convenience stores are competing with restaurants to attract customers who want prepared entrees and convenient, prepared meals. Convenience stores sell a wide range of standardized hot and cold prepared foods, including sandwiches, pizza, nachos, and burritos.

According to the research firm Packaged Facts, in 2010, 64 percent of respondents said they had purchased a prepared meal from a supermarket within the last month. A Technomic, Inc. poll revealed that 82 percent of respondents buy prepared foods or beverages from a convenience store once a month, with 52 percent doing so once a week. Many convenience

stores are among the top 100 chain food-service establishments in the United States, including 7-Eleven, Circle K, Wawa, Casey's General Stores, and Sheetz.

**Providing nutrition information is practically and financially feasible.** Another growing trend within supermarkets is hiring registered dietitians at the store and corporate levels. For example, the Hy-Vee supermarket chain has a dietitian in 195 out of its 235 supermarkets. Having registered dietitians on staff means that the supermarket chain could inexpensively provide calorie information because a corporate dietitian could run computerized nutrition analyses of a supermarket's prepared foods.

Nutrition information is available for at least some prepared foods in 81 percent of the 35 top supermarkets that carry prepared foods (see study at <http://cspinet.org/new/pdf/supermarket-labeling-report.pdf>). However, few provide nutrition information for all their prepared foods and they generally provide the information through in-store booklets, binders behind the bakery or deli counters, on websites, in-store by request, or through customer service phone lines, which are hard for customers to find and use when shopping.

The costs associated with labeling calories for prepared foods are modest. Most supermarkets are already doing some nutrition analyses, so they seem to have the software and ability to analyze the rest of their prepared food items. In addition, most have dietitians on staff, who could conduct the analyses. For those chains that do not, the cost of menu analysis software can be as low as \$200. For those that do not have a registered dietitian, nutrition analysis is available for as low as \$49 for ten items. Once analyzed, supermarkets could inexpensively post the calorie information on display tags placed adjacent to the food items to ensure customers could readily see and use the information.

Chain convenience stores also should be able to provide calorie information. Convenience stores have relatively few prepared foods. They do little to no outside cooking; most everything is processed and shipped to them. They could ask their suppliers to provide the

necessary nutrition information or could hire an outside dietitian to analyze their recipes for a modest cost.

**Pizza.** It is hard to understand why pizza restaurants deserve a special exemption from listing calories on their in-store menus. While many people order pizza by phone or computer for delivery or carry out, similarly, many people do not enter fast-food restaurants and instead order through the drive-thru. Just as fast-food restaurants are not opposing having to provide their customers with nutrition information from more than one menu, pizza restaurants should not deny nutrition information to their in-store customers.

Pizza has become an American staple, and a key problem in Americans' diets. Pizza is the fifth largest source of calories in diets of adults and children. It is the third biggest source of sodium and second biggest source of saturated fat, which is a type of dietary fat that raises blood cholesterol and contributes to heart disease.

**Movie theaters.** H.R. 2017's provision to exempt any food service establishment which makes less than 50 percent of its revenue from the sale of prepared food would mean that movie theaters would not have to provide calorie information to their customers. Though people go to a movie theater primarily to see a movie, movie theaters also are food-service establishments, selling many (often surprisingly) high-calorie foods and beverages through their concession stands. Movie theaters are diversifying their concessions and adding more menu options, such as ice cream, fresh baked goods, nachos, pizza, hot dogs, and coffees, and a growing number have full service menus with seat-side ordering.

**Calorie labeling is required only for standard menu items.** The menu labeling regulations address the issue of variable menu items that come in different varieties by requiring that information be posted only for standard menu items, as they are usually offered for sale. Custom orders and daily specials are exempt. If the standard build for a small meat lovers pizza comes with pepperoni, sausage, ham, and meatballs on a hand-tossed crust, 1,680 calories would be listed for the complete pizza or 280 calories per slice. If a person orders that pizza without sausage, she may not know exactly how many calories she is saving, but she will

be able compare the meat lovers to the cheese pizza, and generally know that adding the meat toppings adds about 80 extra calories per slice. Such comparisons between items is how most people use nutrition information on packaged foods.

**Arbitrary serving sizes would lead to confusion.** H.R. 2017's provision to allow restaurants and other food establishments to arbitrarily choose to label items for only a fraction of a menu item is a recipe for consumer confusion. This is the case for serving size information on packaged foods that are labeled as multiple servings but viewed by consumers as single serve items. In one study, two-thirds of people could not correctly calculate the nutrition information in a 20-ounce bottle of soda that was labeled as 2.5 servings. People are likely to have similar difficulties understanding the calorie information for menu items if they are labeled as having more than one serving. For example, it would be hard to compare the calories in an order of nachos listed as three servings with an order of chicken wings listed as two servings.

Portion sizes at restaurants are often two to three times more than what food labels list as a serving. It would be deceptive to label muffins, pastries, desserts, entrees, and other menu items as multiple servings, since they are often consumed by one person. Menu items should be labeled as it is listed on the menu to make it easier for customers to compare options and make informed decisions with minimal amounts of math.

Thank you for the opportunity to testify today, and I would be happy to answer questions.

## Appendix

**Joint statement in opposition to H.R. 2017  
“Common Sense Nutrition Disclosure Act of 2015”**

We, the undersigned organizations and researchers, oppose the “Common Sense Nutrition Disclosure Act of 2015.” We do not think that it is common sense to weaken a policy that would allow people to make their own, informed choices about how many calories to eat at a time when obesity rates are at a record high. The bill would undercut the Food and Drug Administration’s (FDA) menu labeling regulations and undermine congressional intent to provide access to calorie labeling in a broad range of chain food service establishments.

The national menu labeling law requires chain restaurants and similar food establishments to provide consumers with calorie information for standard food and beverage items on menus and menu boards. Studies show that providing nutrition information at restaurants can help people make lower calorie choices, and a national poll found that 80 percent of Americans support calorie labeling at supermarkets and restaurants. H.R. 2017 would undermine the benefits of the national menu labeling law and confuse and mislead consumers.

**Supermarkets and convenience stores should not be exempt from calorie labeling.** Congress did not just require labeling in restaurants, but also at similar food service establishments that sell restaurant-type food (such as supermarkets, convenience stores, and superstores). People are increasingly picking up prepared dinners, salads, sandwiches, and bakery items at grocery or convenience stores, in place of take out at restaurants. Keeping them covered is fair to business and best for consumers.

**Pizza chains and other establishments that offer delivery service should post calories on their menu boards just like other chain restaurants, as Congress intended.** While some consumers use online menus, others use paper menus at home or menus and menu boards in a restaurant. All menus should list calorie so consumers can see the information when and where they are deciding what to order. Also, pizza chains need only post calories for the standard menu items they list on their menu boards — not every possible pizza combination — just as delis, ice cream shops, burrito stands, and other chains with variable menu items will do. Pizza chains in Vermont, California, Seattle, and other states/municipalities are already posting calorie information on menus—demonstrating it can be done in a reasonable space and at a reasonable cost.

**It is important for calories to be listed on a menu in a standard format as an item is offered for sale.** Without standardization, people will have more difficulty understanding and using the nutrition information for menu items. Posting the total calories per menu item enables consumers to more easily compare different types of

food items, such as nachos, chicken wings, or pizza, and leaves it up to the individual – not the restaurant – to determine how many people will share the item. It would be deceptive to label muffins, entrees, desserts, and most menu items as multiple servings, since items are most often consumed by one person.

The national menu labeling law was a bipartisan compromise supported by public health organizations and the restaurant industry, and it built on the momentum of more than 20 state and local policies. H.R. 2017 undermines the consensus and compromise worked out between a wide diversity of interests to pass the national menu labeling law. The bill would weaken an important tool intended to help Americans make informed food choices at a time when obesity and other nutrition-related health problems are at crisis levels, adding significant fiscal and public health burdens on the American public, businesses, and federal, state, and local budgets.

**We ask you to support consumer choice and American's health and join us in opposing H.R. 2017.**

Academy of Nutrition and Dietetics	American Society of Bariatric Physicians
Advocates for Better Children's Diets	Arizona in ACTION
American Academy of Sports Dietitians and Nutritionists	Association of State and Territorial Health Officials
American Association for Health Education	Association of State Public Health Nutritionists
American Cancer Society Cancer Action Network	B. Komplete
American Council on Exercise	Berkeley Media Studies Group
American Diabetes Association	Boston Public Health Commission
American Heart Association	California Center for Public Health Advocacy
American Institute for Cancer Research	Campaign for a Commercial-Free Childhood
American Nurses Association	Center for Behavioral Epidemiology and Community Health (CA)
American Public Health Association	
American School Health Association	Center for Communications, Health & the Environment

Center for Science in the Public Interest	Jump IN for Healthy Kids (IN)
ChangeLab Solutions	Laurie M. Tisch Center for Food, Education & Policy, Teachers College, Columbia University
Childhood Obesity Prevention Coalition (WA)	
Consortium to Lower Obesity in Chicago Children, a program of Ann and Robert H. Lurie Children's Hospital of Chicago	LiveWell Colorado
Corporate Accountability International	Louisiana Public Health Institute
City University of New York (CUNY) School of Public Health at Hunter College, Program in Nutrition	MomsRising.org
Day One (CA)	National Action Against Obesity
Defeat Diabetes Foundation	National Association of County and City Health Officials
D'fine Sculpting & Nutrition LLC	National Center for Health Research
Directors of Health Promotion and Education	National Congress of Black Women
Earth Day Network	National Consumers League
Eat Drink Politics	National Physicians Alliance
Eat Smart, Move More South Carolina	National WIC Association
Ehrens Consulting (ND)	Nemours Children's Health System
Energy Up!	New York City Department of Health and Mental Hygiene
Food Policy Action	New York State Department of Health
Food Sleuth, LLC	Nutrition First (WA)
Illinois Public Health Institute	Ohio Public Health Association
Integrated Medical Weight Loss (RI)	Oral Health America
Iowa Public Health Association	Oregon Public Health Institute

Parents Educators & Advocates Connection for Healthy School Food (CA)	David Baron, MEd, DO, DFAPA Assistant Dean, International Relations, Keck School of Medicine Professor and Vice Chair, Department of Psychiatry
Piedmont Dialysis Center (NC)	Psychiatrist-in-Chief, Keck Medical Center
Project Bread- The Walk for Hunger	Director, Global Center for Exercise, Psychiatry and Sports
Public Health Advocacy Institute	University of Southern California
Public Health Institute	
Real Food For Kids – Montgomery (MD)	Janet Bond Brill, PhD, RD, CSSD Nutrition/Health/Fitness Expert, Award- Winning Author, Consultant
Recipe for Success Foundation Shape Up America!	David V.B. Britt Retired CEO, Sesame Workshop
Society for Nutrition Education and Behavior	Greta Bunin, PhD Research Associate Professor, Pediatrics
SuperKids Nutrition	Children's Hospital of Philadelphia, Center for Childhood Cancer Research
Trust for America's Health	University of Pennsylvania School of Medicine, Department of Pediatrics
University of Arkansas for Medical Sciences, Fay W. Boozman College of Public Health	Carlos A. Camargo, Jr., MD, DrPH Professor of Medicine, Harvard Medical School
Voices for America's Children	Member, 2005 US Dietary Guidelines Advisory Committee
Wake Forest Baptist Medical Center (NC)	Sonja L. Connor, MS, RD, LD Research Associate Professor Endocrinology, Diabetes & Clinical Nutrition
Young People's Healthy Heart Program (ND)	Oregon Health & Science University
Youth Empowered Solutions (YES!)	Isobel R. Contento, PhD Mary Swartz Rose Professor of Nutrition and Education, and Coordinator, Program in Nutrition Department of Health and Behavior Studies Teachers College, Columbia University

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Director of Nutrition  
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Executive Director, Center for Food &  
Environment  
Teachers College, Columbia University

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Medical Director for Evidence-Based  
Health  
HealthPartners

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Clinical Professor of Medicine and  
Health Services  
University of Washington

Robert Lustig, MD  
Professor of Pediatrics  
Division of Endocrinology  
University of California, San Francisco

A. Rees Midgley, MD  
Professor Emeritus  
Department of Pathology  
University of Michigan  
President, inDepthLearning

Nancy Milio, RN, PhD  
Professor Emeritus of Public Health  
University of North Carolina at Chapel  
Hill

Matthew O'Brien, MD, MSc  
Assistant Professor of Medicine and  
Public Health  
Temple University Center for Obesity  
Research and Education

Barry M. Popkin, PhD  
W. R. Kenan, Jr. Distinguished  
Professor  
School of Public Health  
University of North Carolina, Chapel Hill

John D. Potter, MD, PhD  
Member and Senior Advisor  
Division of Public Health Sciences  
Fred Hutchinson Cancer Research  
Center  
Professor of Epidemiology  
University of Washington

Jim Raczynski, PhD, FAHA  
Professor and Founding Dean  
Fay W. Boozman College of Public  
Health University of Arkansas for  
Medical Sciences

Debra B. Reed, PhD, RD, LD  
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Bill Reger-Nash, EdD  
Professor Emeritus  
School of Public Health  
West Virginia University

Susan B. Roberts, PhD  
Professor of Nutrition  
Professor of Psychiatry  
Tufts University

Frank M. Sacks, MD  
Professor of Cardiovascular Disease  
Prevention  
Nutrition Department, Harvard School of  
Public Health  
Professor of Medicine, Channing  
Division of Network Medicine, Harvard  
Medical School, and Brigham &  
Women's Hospital

Mary Segal, PhD  
Research Scientist  
Center for Obesity Research and  
Education  
Temple University School of Medicine

Patricia K. Smith, PhD  
Professor of Economics  
University of Michigan-Dearborn

Alfred Sommer, MD, MHS  
Professor, Johns Hopkins Schools of  
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Member, National Academy of Science  
and the Institute of Medicine

Mary Story, PhD, RD  
Professor, Community and Family  
Medicine and Global Health  
Associate Director for Academic  
Programs  
Duke University

Vic Strasburger, MD  
Distinguished Professor of Pediatrics  
University of New Mexico School of  
Medicine

David M. Weiss, PhD  
Professor Emeritus  
The MHA Program  
Health Professions & Kinesiology  
Department  
School of Education, Health & Human  
Services  
Hofstra University

J. Gary Wheeler, MD  
Adjunct Professor of Pediatrics, Division  
of Infectious Diseases  
Department of Pediatrics  
University of Arkansas for Medical  
Sciences

Walter C. Willett, MD, DrPH  
Professor and Chair  
Department of Nutrition  
Harvard School of Public Health

Lisa R. Young, PhD, RD  
Adjunct Professor of Nutrition  
New York University

Mr. PITTS. As Mr. Lance said, I overheard him, he said, "You are making me hungry."

Thank you for the testimony. We will now begin questioning, and I will recognize myself 5 minutes for that purpose.

To all the panelists, let me start with this question: With the implementation date of December 1, less than 6 months away, there is still a lot of outstanding questions for the FDA. Considering the short amount of time for compliance and the lack of guidance from FDA, would you all agree that there should at least be a delay for implementation? Just yes or no, if we can go down the line.

Ms. Hubbard.

Ms. HUBBARD. Yes, sir.

Mr. PITTS. Mr. O'Quinn.

Mr. O'QUINN. Yes.

Ms. LIDDLE. Yes.

Mr. PITTS. Ms. Liddell.

Ms. Raskopf.

Ms. RASKOPF. We are willing to agree to a delay.

Ms. WOOTAN. Yes. We think that is reasonable.

Mr. PITTS. Thank you.

Go to Mrs. Hubbard, or Ms. Hubbard. What are the biggest issues your businesses are facing? And what do you anticipate the costs will be for implementing these regulations?

Ms. HUBBARD. I think the biggest challenge we face is the diversity in not just the industry but within my own chain, our own stores. We are 45 years old. We have acquired a lot of stores. They all have different age and different products in the way they are laid out. If you will envision one store we walk in and the food service is on this end that offers fountain as a bundled piece with something you purchase. The fountain dispensers are down on this end. Coffee bar is somewhere else, as is the hot dog and the pastry case.

The way we interpret this, we have to have all the postings of all the calorie count adjacent to those products and repeated. It would be duplicative throughout the store. I mean, it literally would be a wall of words for the consumer to try to interpret to find what the calorie count is, and how we display that.

And if somebody were to move that piece that displays the calorie count, then is this now a felony? I mean, we are very concerned about, I think, the punitive damages of this and the practicality of trying to implement and have all these in different stores. I mean, we truly would have 300 different compliance plans.

Mr. PITTS. Mr. O'Quinn, could you answer that question. What are your biggest issues you are facing with this?

Mr. O'QUINN. Well, I think certainly some of the biggest issues come in how you actually label these products in the grocery store. If you take a salad bar area, for instance, we have looked at multiple ways to do that, whether it be putting something on the spoon itself. But should perhaps my 10-year-old cousin come through and move all the spoons around, you are subject to FDA punitive penalties. If you put it up on—label everything up on the sneeze guard, someone comes through, cleans that, the alcohol-based cleaner makes one fall off. How do you account for that?

And then, we have looked at electronic boards and how often do things have to cycle through on them? How big do they have to be? I think the physical labeling of it is certainly one of the biggest challenges that we are going to face and how you make that consistent and how you make it the same every single day.

Mr. PITTS. Ms. Liddle, would you please respond to that question. Biggest issues your businesses are facing and the costs?

Ms. LIDDLE. I think the biggest head scratcher for us really is why we would put unclear range information on a menu board for those very few people who look at a menu board. We think a better solution for the few people who walk into a store would be to put a comprehensive booklet, perhaps, on the countertop or maybe even an iPad. But to put ranges on a static menu board that won't help consumers to make a good decision seems to not make sense to us. So that is the one issue.

And then secondly, even though we are a big company with revenues, as Ms. Wootan pointed out, we are a conglomeration of small business people. Half of our guys only own one store. So we are going to make them pay for something that people are not looking at. That to us just is beyond a challenge. It really makes no sense at all.

Mr. PITTS. Ms. Hubbard, you said you would support a delay. If Congress or FDA unilaterally should act to delay compliance for a year, does that solve the problem, or would we simply be back here a year from now hearing testimony debating regs again. Shouldn't we just put H.R. 2017 on a fast track to the White House?

Ms. HUBBARD. I absolutely do not think a delay solves our problem. We still have the issues, just as I said, on how do we communicate this to the consumer. If the intent is to provide the consumers with useful information to make choices, don't we need to do that in some concise way that they can actually find it? I think we have all walked into maybe a quick-serve restaurant and been overwhelmed by the menu board. Can you now imagine that 50 times worse with the configurations of all the sodas, and even within the advertising on the store. So a delay does not solve this, no, sir.

Mr. PITTS. My time is expired. I will have to send my questions to you in writing.

At this time I recognize ranking member, Mr. Green, 5 minutes for questions.

Mr. GREEN. Thank you, Mr. Chairman.

I want to remind the panel the Affordable Care Act was passed in 2010. It has taken the FDA a while to do it. Here we are 5 years later, and we still have a problem with obesity in our country. And some of the suggestions in here—we are not going to stop people from eating what they want to. I am going to go to Domino's or Dunkin or get enchiladas in Texas at one of our convenience stores.

But I think the bottom line, though, is we want people who are concerned about their obesity, their children's obesity, their parent's obesity, and that ultimately end in diabetes, and that is why it was part of the Affordable Care Act.

So I would like to see what we could do to be workable, but, again, you are right. I have been in a lot of convenience stores, but we do have some folks who are complying with it but we still need

to make sure the consumers have that information. And maybe we need to present it in a better way. I don't know if a booklet on the counter because fast food stores are meant to be fast food. Nobody is going to leaf through a booklet while they are waiting for their hamburger.

But, Ms. Raskopf, I want to thank Dunkin' Donuts and the restaurant industry for your leadership on the issue and your work on the final law. Consistency in menu labeling requirements is not only critical for the industry, but also for consumers to ensure that the presentation of calorie information is easily understood and regardless of where they live or where they dine.

Much of the discussion on this issue has been focused on types of restaurant. Retail restaurant, food restaurants should be covered by these menu labeling requirements. However, it seems to me that our focus should be more on types of food that should be covered, and especially on consumer demand for ready-to-eat and prepared food continues to grow.

In your testimony, you note the similarity between supermarkets and restaurants. We have heard from supermarkets that the cost of compliance would be up to \$1 billion in initial cost due to the number of items that would be undergoing in nutrition.

I have not heard that concern from restaurants. Ms. Raskopf, can you explain what the cost of compliance with FDA's final menu labeling rule would be for the Dunkin' Brands restaurant?

Ms. RASKOPF. Yes, sir. And we have spent the last year looking at this to ensure that we were able to comply with this by the end of this year. We too have a very complex business. I mean, if you look at all the different ways you can order coffee, 15,000 different ways; sandwiches, 3,000 different ways; and the cherry on the top, ice cream sundaes, 80,000 different ways. So we understand that this is a complex business, but we have been able to figure out a way to do this with our menus.

The cost of this for us is going to be Baskin-Robbins shops. It is about \$400 per restaurant. For Dunkin' Donuts, about a third of our Dunkin' Donuts restaurants in the United States have digital menu boards, and the cost for them will be to label the drive-thrus, and that is about \$600 to \$700 a restaurant. If they don't have a digital menu board, it is about \$1,200.

Again, I just want to say that it does not require menu boards. So there is a multitude of inexpensive ways that people can label for their nutritional value whatever type of business format they have.

Mr. GREEN. OK. Dr. Wootan, there has been a lot of discussion regarding your scope of the menu labeling requirements and the definition of a restaurant and similar retail food establishments. The intent of the law was not to confine the scope solely to restaurants or other establishments primarily engaged in the sale of food, but rather it applied broadly to entities that sell food to consumers. This was the decision based largely on an increasing trend of American families spending their food dollars on items prepared outside the home. That has been going on for a couple of decades now. Not only my children but also I see my grandchildren.

Dr. Wootan, as someone that were involved in the drafting of the original legislation, is it clear that the law was intended to broadly cover restaurant-type food?

Ms. WOOTAN. Absolutely. When the law was written, it include not only restaurants but also other food service establishments, and that was meant to cover the broad range of food service establishments that provide prepared foods.

In fact, I remember the supermarket industry trying to get an amendment to strike that part of the law, make it clear that they were excluded, and they were not successful in that effort. So they knew they were going to be included. They should have been preparing for this and getting ready as the restaurant industry has been.

Mr. GREEN. OK.

Dr. Wootan, from a consumer perspective, can you discuss what do you think the impact is from having certain food establishments exempted?

Ms. WOOTAN. Not having nutrition information in supermarkets and convenience stores will really limit people's access to information. They are increasingly competing with restaurants. And people are just stopping off at the grocery store and buying, you know, fried chicken or meatloaf with side dishes just as they do at restaurants.

And so more and more, people are turning to supermarkets for prepared foods like they do for carry-out from restaurants. And at pizza restaurants, while many people order over the phone, those people that do walk into the restaurant want to have nutrition information. We really need to look at this from the consumer perspective. And it is from where the consumer is ordering that matters and where they need the information.

The law does not require a pizza chain to put up a menu board. If they don't think that enough people are going into their restaurant that they feel they need to have a menu board, they don't have to have one. But if they think enough people are coming in, that they are putting up a menu board and listing the pizzas and the prices, then next to that price they also need to post the calories.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. PITTS. The chair thanks the gentleman and now recognizes the gentleman from Illinois, Mr. Shimkus, for 5 minutes of questions.

Mr. SHIMKUS. Thank you, Mr. Chairman. I was almost going to sneak out from the hearing. And I understand there is some people who want to see this information. And I think if you did national polling, people would say sure, I would like to have it on. I don't think I have ever in my life read a menu label. I don't think I have ever looked for calorie numbers on anything I have consumed. And I bet that, I bet you I am in the majority of Americans.

So I just throw that out there. I really struggle with this. This is the perfect example of a nanny state, of a national government telling individual citizens and saying what is best for them and directing and pushing private sector individuals, to push people to consume things that they feel—that, it is, and it is unfortunate but we are here.

And so we have some issues to address. And I was here when we passed the healthcare law. All we passed was the Senate version of a bill. The Obamacare that passed, the healthcare law was a Senate bill that we passed on the floor without any additional debate or oversight for a year and a half later.

So, I want to go to Ms. Hubbard. OK. Here is the example, I have sons that I love very much. So they go and they get a drink at one of the convenience stores. They have personally titled a Scourade. Now, I am not sure what is in this thing. I think it is Sprite, Coke, Powerade, you know, that they mix themselves. You can't label for that, can you?

Ms. HUBBARD. No sir. That is one of the complexities of the bill and of that self-service. It also would entail we list the calorie count for the items in cups without ice. I would also bet your sons also put ice in their cups. So, therefore, even what we provide them, based upon the rules, isn't going to be inaccurate, if I were to get their combination right.

Mr. SHIMKUS. How many kind of items just in one of your locations would have multiple concerns about getting the right calorie count so you wouldn't—and if you didn't and if you were held accountable by, I guess, Federal law enforcement, I guess we are going to have Federal law enforcement, police, coming into retail stores, checking the menu labeling and ensuring adequate calories are posted in multiple combinations?

Ms. HUBBARD. Virtually everything we serve would have some sort of the ability to—all of the drinks, obviously, have a wide variety of calorie-count combinations that can—some of that is self-service by the consumer. But then on the prepared items even, if I have a clerk that is feeling generous that day and they put, or the cheese sticks together, they slap an extra slice of cheese on there, they don't cut the pizza in exact eighths, I mean, all of those things, and, I think, obviously, you point out the obvious concern, this is a felony now. And how do I protect—

Mr. SHIMKUS. A felony?

Ms. HUBBARD. Yes, sir.

Mr. SHIMKUS. Mr. Quinn, also a delegate, I guess that is what you call it in Virginia, part of this debate early during the healthcare law was the same debate we have here in Energy and Commerce, is that there was a concern that if we don't have a national—this is now put in a national bill, then there would be maybe local, community movements or county movements or even States would then disrupt national chains.

So to the extent some of the national chains say save us from ourselves or save us from the different parts of the country who may do individual referendums and have multiple—can you speak to that from both positions that you, as a representative, not representing the State, but, just can you address that?

Mr. O'QUINN. Yes, sir. I think that we certainly have seen States and individual localities across the country adopting menu labeling laws. And I think that certainly becomes difficult for single-store operators or even a medium-sized grocery chain, like we are, to be able to comply with this patchwork of regulations. None of those have actually been in our area, but they have been in plenty of our friends' areas.

And so now you are saying that, the FDA is going to come in with this more overarching rule and be able to enforce it across the entire country. But then what you set up is, so you have got the Federal rule that would supercede the State laws. But all they have to do is mimic the exact same regulation at the local level. And then, all of a sudden, it doesn't supercede, it is more or less exactly the same.

So you could have FDA in your store one day saying, you know, this is not going to work, you are outside of your five calorie variance and you are in big trouble. You could also have someone from a town or a city or a county coming in and saying the exact same thing if they have set up a law that does not supercede the Federal law itself. And so you are going to be right back in the same boat, only FDA will have promulgated regulations. It is not like that there is going to be a regulatory process by a local county government. You are just going to be dealing with the on-the-fly interpretation by someone else. So, to me, that is a really slippery slope to start down.

Mr. PITTS. The chair thanks the gentleman and now recognizes the ranking member of the full committee, Mr. Pallone, for 5 minutes for questions.

Mr. PALLONE. Thank you, Mr. Chairman. I am listening to Mr. Shimkus describe mixing the sodas at the fountain and I have to tell you, I hate that. I am a purist. Some of those machines now, you press Coke and it gives you five different Cokes. And I am always afraid I am going to get the Cherry Coke and mix it with the regular because I don't like to do that.

But, anyway, I guess I am going to be asking questions about pizza here. I want to start with Dr. Wootan. I am interested in how H.R. 2017 treats serving sizes and how it differs from FDA's final menu labeling rule. The FDA final rule allows pizza slices to provide calorie counts for pizza or per standard slice with a listing of the number of slices per pizza. But H.R. 2017 seems to allow something very similar. It would allow covered establishments to list the number or servings and number of calories per serving or to list the number of calories per the common unit division of the standard menu item, such as for a multi-serving item that is typically divided before presentation to the consumer.

So the question is, do you think that the FDA final rule and H.R. 2017 are offering two different approaches to accomplishing the same policy goal? Or are there substantive differences between them? And if there are difference, could you explain their implications.

Ms. WOOTAN. So, actually H.R. 2017 has one other option and that is to list the nutrition information by the serving size or the common unit of subdivision unit without having to list the number of servings, which would be different than what FDA has.

So, for example, you could reduce the number of calories in a pizza overnight by slicing it into 10 slices instead of 8 slices. You could take a plate of chicken wings and you could just put half the chicken wings on one side of the platter and the other half of the chicken wings on the other and say it is two servings and then change the calories from 1,000 calories per appetizer to 500.

So this, the law as written would not require that the number of servings be listed. And without that information, it is very difficult for consumers to be able to compare options. Even with the servings listed, it is really difficult.

So, say, an appetizer of nachos is listed as 4 servings and the chicken wings is listed as 2 servings. You can't really compare how those would stack up for you personally. It is much easier to list the calories for the whole appetizer, the whole pastry, the whole dessert. And then people can compare options and decide which one they want for themselves.

This is not about, he left already, telling people what to eat. This is about giving people information so that they can make their own choices about how many calories they want to eat, given what a terrible health burden there is from obesity and other diet-related health problems.

Mr. PALLONE. All right thank you. Let me ask Ms. Raskopf, we have heard from pizza places and convenience stores about the difficulties they face with coming up with calorie counts for the myriad of choices they offer, whether it is the 34 million different combinations of pizzas or the 40 different calorie counts that are possible with self-serve soda machines. I have to imagine that restaurants also face similar difficulties, given the breadth of items and combinations they also serve on their menus.

So could you tell us whether things are just much simpler for the restaurant industry or whether you are finding ways to address similarly complicated issues?

Ms. RASKOPF. Yes, I think we are all very similar. I spent 15 years working at 7-Eleven. My CEO was, previous to coming to Dunkin' Brands, was the CEO for Papa John's. So I think we have a good understanding of the challenges that all of us in the food industry face.

We as Dunkin' Brands have a very complex business. Like I said, we have thousands of different combinations that we can offer to consumers, sandwiches, coffee, ice cream when you factor in Baskin-Robbins. We are located in 1,600 convenient stores. We have free-standing restaurants. We offer manager specials. We have tests. We have limited-time offers. It is very complex. I empathize with everybody here. But we have spent the last year figuring out how to label our products, to make nutritional information available to our consumers. And I feel all of us can do the same thing.

And may I add, I am sorry that the honorable Congressman from Illinois left, but to say that people are not interested is a mistake. Every month, 400,000 individuals visit blockbuster.com and baskin.com pages to get nutritional information every month. Millennials, in particular, care about this information.

Mr. PALLONE. I think you are right. I mean, I think that I am a little bit like Mr. Shimkus in that I don't pay much attention to it. But I think maybe that is because we are older. I think younger people pay a lot of attention. And maybe we should pay more attention frankly. So thanks a lot.

Mr. PITTS. The chair thanks the gentleman and now recognizes the vice chair of the subcommittee, Mr. Guthrie, for 5 minutes for questions.

Mr. GUTHRIE. Thank you, Mr. Chairman. Thank you all for being here and speaking to us today. Ms. Raskopf, on Dunkin' Donuts, I know you all are located in New York City. So New York City started this, what, in 2007 I believe? So you have been working on menu labeling for how long? Seven years, seven or eight, almost eight years?

Ms. RASKOPF. We have been working on it hard and fast for the past year. But, certainly, we have had some more insights into this than perhaps some others at the table who don't have operations in some of the localities that have nutritional labeling—

Mr. GUTHRIE. Was it difficult complying with New York City's laws?

Ms. RASKOPF. I remember sitting around a table just like here today saying we can't do this, we can't do it. And we did it. So we were able to—

Mr. GUTHRIE. You say you have been working on it for the last year. But how long were you working—New York City has had it since 2007.

Ms. RASKOPF. New York City, we were able to get that into place, I believe that was 2008 we were able to get that into place. We had a deadline we had to meet and we met it.

Mr. GUTHRIE. Are the New York City standards similar to the Federal standards? Are they more difficult or are they—

Ms. RASKOPF. We have been assuming that they were very similar to FDA. And as we have talked to them, that has been our feeling about it, that it is similar.

Mr. GUTHRIE. OK. Another question, so, just acknowledge, I mean, when you look back, and all of us want people to eat more nutritional. I mean, I was at something last evening, they had a menu label up, anywhere from, it was a soda, anywhere from zero to 1,080. And so I guess it picks on the size you get or whatever. That was enough information for me to say I know which one I am going to get because I want to go closer to the zero than the other way. And so just trying to, what is reasonable to make people more healthy.

I just went to our schools. And we actually have a lady in Daviess County, Kentucky making sure that kids only get three pickles if they get a cheeseburger. Because if they get four pickles, they violate Federal law. I mean, that sounds silly to sit here any say that. But that is absolutely true. And so what we are trying to say, I mean, that is actually fair. I will take people and show it to you.

And so how do we get information in people's hands that I think the vast number of American people want. I think that they want the information but in a way they can sit back and say Washington is doing things that are reasonable. And so we talk about having to display 34 million different pieces of information if you take, I don't know how many ingredients you have, but if you factor it out, I understand, 34 million, it just gets almost, online, I think, Dr. Wootan, you said something to the point that menu labeling software is very inexpensive.

But if you take menu labeling software that is very inexpensive to come up with your calories and you have to print 34 million different combinations or if you have to print it all through your

stores, you know, I think what is simple, we talk about young people wanting information, my kids live on their phone.

So why not have it displayed in an electronic way that people have access to and they can always have it. That just seems to make sense to get the information to the people and take care of all the different problems. I don't know why that doesn't make sense. Would that be easier, Ms. Hubbard, if you were, down the line, if you were able just to do electronic?

Ms. HUBBARD. Yes, sir. And we have already looked into both, having that on our Web site and we have a mobile app. As you point out, I think the millennials and the younger generations do, they live by those. And that would be a way to easily gather. And they can even do combinations. And it could mathematically compute those.

While I will, I agree that most of that generation may need some of that. But what I, along with Ms. Raskopf, I will disagree with her that our locations are similar. If you have ever walked in a Dunkin' Donuts, there is one point of purchase and one menu board. Ours are split throughout the location. I mean, you could have 10 places you go to in my stores and, based upon the rules that are written and advertisements, we would have to post the menu combination on every single one of those pieces.

Mr. GUTHRIE. I agree with my friend from Washington's legislation, it says we agree, we want everybody to have information, how can we do this in a way that people don't hold back? I mean, I could take you to Daviess County, Kentucky and show you the lunchroom lady making sure kids get three pickles with a hamburger, there is a labor they are putting there, instead of four. And they can't reach in and get it out of the jar and put it on their plate because if they put the glove on and do it, they might give them four. And it violates Federal regulations. And so those are what we are trying to get to.

I don't know, Mr. O'Quinn, if you want to talk, and Ms.—just dealing with, I know you all want to offer this information in a way that works and doesn't look absurd when you go, when reporters go with you to a school and say are you kidding me, is there somebody in Washington, D.C. Worried about whether a kid gets three or four pickles? Is that what our Federal Government is doing? And I said that is absolutely true. That is why you are here. I didn't stage these lunchroom workers to tell you that. They are here doing that. So—

Mr. O'QUINN. Sir, I think you can absolutely have information overload. Like I said, our tags already have a NuVal score. You have front-of-package labeling. You have the larger back-of-package labeling. You are talking about a lot of labels on one single food. And, frankly, you could put a label across the front, just like a tobacco product, that says this product will make you obese. And I promise you, people are still going to buy that product if they want it.

So I don't think that, you know, I think we are kind of arguing apples and oranges here. Everyone wants people to be healthier. But in the end, they are going to eat what they want to eat. And it doesn't matter what you put on there, they are going to get what their taster is set for, for that day.

Mr. GUTHRIE. I am one, I know I am over my time, but I am one that, I almost never pick up something that has that label on it and not read the calories. So I am one that is coming from I want to know the calories. But let's do it in a reasonable way. Thank you.

Mr. PITTS. The chair thanks the gentlemen and now recognizes the gentleman, Mr. Schrader, for 5 minutes.

Mr. SCHRADER. Thank you, Mr. Chairman. I guess for Dr. Wootan and Ms. Raskopf, these rules, actually to everybody, obviously, this rule is not ready for prime time. We have had considerable discussion about what it is going to do, how it would be implemented. I understand that. And, you know, although the rules have come out, it is my understanding that, you know, there has not been a whole lot of guidance going on.

And some of you already addressed this, some of us sent a letter asking for a little bit of a delay to, hopefully, iron out, get some more guidance before we went prime. I am grateful for this hearing and actually for this bill so that we can look at what options we may have to make this actually reasonable and work. Because I think, like everybody has testified, we want to actually have good information out there for our consumers. I think that is good.

But I am curious, I ask, I guess, Ms. Raskopf and Dr. Wootan, do you think a little bit more time is needed? Or is this, should we just get to it and do up and down votes on this type of legislation.

Ms. RASKOPF. I think there is a lot of common ground here with all of us. And I think we could focus on that. First of all, I think that we agree that an additional year is fine. We at Dunkin' Brands are ready to go now. But we are willing to say that if others need more time, that is fine. I think the other thing we look at is we all want to get that final guidance from the FDA. We want to make it clear that promotional and advertising materials are not covered by this as the law intended. We want to know that when we reformulate a product, how long do we have to give that information to the public.

So I think that we can all agree that there is a good deal of common ground here. And we just need to get that final guidance from the FDA. But I don't think that it is additional legislation that is needed, it is the final guidance from the FDA.

Mr. Schrader. Dr. Wootan?

Ms. WOOTAN. I think many of us expected that food establishments would be able to implement menu labeling directly from the final rule. But it has turned out that they have lots of questions that need answering that go beyond just mere interpretation. And so guidance is necessary. And that guidance is going to take a little bit longer because there will be an opportunity for public comment.

I mean, clearly hearing people testify today, I think many of them don't have a full understanding of what is required. Certainly 34 million possible combinations of pizza is not required by law. If they don't recognize that, I think their lawyers need to read the regulations a little more carefully.

Some of the other things about having 10 different signs in the convenience is not required by law. So, I mean, there is clearly some misunderstanding about what the law requires. And the guidance will help to clarify that. I think also as some of them become

more familiar with the regulations, they will realize that this is not as burdensome as they think it is.

Just like the restaurants did 10 years ago, when I first started working on menu labeling in Oregon and other places around the country, I heard the same complaints from the restaurant industry. But once they started to do it, they realized this is not as complicated as it seemed. They worked through it. They did it. It did not cost them a lot of money. It did not hurt their business. Their customers really like it, use it. And it is helping them to make lower-calorie choices when they want to.

Mr. SCHRADER. I appreciate that. Mr. Chairman, I ask that the letter that a lot of Senators, Representatives, put in be a matter of the record, if that is all right, sir.

Mr. PITTS. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. PITTS. And also I have another UC request from the ranking member, a letter from Wegmans put in the record. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. SCHRADER. Just a last question, I guess, for maybe Ms. Liddle. Other states have gone their own way on this and already, as we have heard, implemented labeling requirements for convenience stores, grocery stores, everything. So how are you, how have you dealt with that so far? And isn't there an opportunity maybe with some sort of Federal, hope a better Federal guideline to make it easier for you guys to compete in different venues across the country?

Ms. LIDDLE. Sure. We originally and always have agreed that a Federal preemptive law is a good idea because we have been dealing with a patchwork of different municipalities and changes. But my argument isn't about how difficult it is to get the 34 million ways up. I actually already do that online. Any pizza that you can concoct in your head, I can give you the actual calories for that slice. And so I want to do that for my consumers. What I don't want to do is retrofit onto a menu board just to fit in the box of the law.

To say well, put ranges, you don't have to put all 34 million, the law doesn't make you do that. That is true. But I want to do that. I want to do that because it is the right thing to do. What I don't want to do is put ranges that consumers will not understand and make my small businesses franchisees pay for that.

Mr. SCHRADER. OK very good. With that, I yield back. Thank you, Mr. Chairman.

Mr. PITTS. The chair thanks the gentleman, now recognizes the gentleman from Pennsylvania, Dr. Murphy, 5 minutes for questions.

Mr. MURPHY. Thank you, Mr. Chairman. And I thank this panel. It is an important issue we are trying to deal with, obesity in America. I need to get into some other areas here because I want to look at this picture globally. None of us want to have the epidemic of obesity and the problems it brings along with this.

There is a lot more that goes with this. As you know, there are a couple schools I have been monitoring over the years not in my district. One is a very famous study done with Naperville Schools

outside of Chicago. They actually required physical activity, intensive, not just battle ball, throw the ball, get hit, sit down so you are not doing anything, but real cardiovascular activity, where they wear monitors. And they found that their obesity rate plummeted. And they found that kids who were involved in these activities, their reading scores went up, their math score went up dramatically. Similar studies have been done in Cambridge, Massachusetts and other places. But it does raise other issues.

So calories itself, I am concerned about, is a very passive, small number. And if you look at studies out there of cause of obesity, it includes genetics, family history, age of the person, pregnancy, sleep levels, emotional wellness, medications they are on, other health conditions, such as thyroid and adrenal gland functioning, smoking. Anybody propose we put all those things on the message boards too? Because those are going to be much more predictive. In other words, if what you do is sit in front of your TV and eat our food and that is all you do, you will get fat. I don't care what restaurant it is.

And I get concerned that we are taking out, pardon the pun, such a small slice of information here, that we are not getting Americans the information to get off your butt and move. That is what it ought to be.

Now, I like it when some restaurants actually say that, some box of cereal say that. Good for them. I think that is a powerful message for kids. But I start to look at also how these messages go through. And we are going to have some things that I am not quite sure get the whole thing out. If we are going to be comprehensive, let's be comprehensive. I mean, for example, I understand that daily chef specials are going to be exempt from this. Is that true?

Ms. WOOTAN. That is true.

Mr. MURPHY. Does that, is it more, and why is it more difficult to provide nutrition information in a grocery or convenience store than in a restaurant? Could someone tell me that?

Ms. WOOTAN. It is not.

Ms. HUBBARD. Yes, sir. I think our concerns are, and I think Ms. Wootan said that it wouldn't be hard, we wouldn't have to have multiple menu boards. Well, I may need new lawyers because mine advised me I do.

And when I read the regulations, it is anyplace adjacent. So anyplace I offer food and/or advertising combinations, that would conclude even the fountain drink that maybe is over on this side of the building because I am offering it as a bundle here, again, adjacent to that product. So it is the number of menu boards and postings that I would have to have and the enormous combination. And I truly believe it would be information overload for consumers.

Mr. MURPHY. Now, you also compete for customers against traditional restaurants too?

Ms. HUBBARD. My particular stores do not. We offer limited food offerings. But we operate rural—

Mr. MURPHY. Prepared food?

Ms. HUBBARD. Prepared food, yes, sir.

Mr. MURPHY. OK.

Ms. WOOTAN. They actually have many fewer items than in most convenience stores than at a lot of sit-down chain restaurants. So

they will have fewer items to analyze. And they don't have to send those items to a lab, which is the cost estimates that you have seen. You can just run those recipes through menu analysis software or get them from a supplier or a database or a cookbook.

Mr. MURPHY. And those that have online or kiosk ordering, as part of this, are we going to have the technology to provide that kind of information on the kiosk? When you say I want the special number 1, it is going to flash—is that what we are going to be doing? Is that what you are proposing? Dr. Wootan?

Ms. WOOTAN. The calorie information disclosure is tied to the method through which the food service establishments provide information. So if you are a restaurant that has a printed menu, the calories would be there, if you are a restaurant that has a menu board. If you have foods on display, like your donuts on display at Dunkin' Donuts, the calories would be next to each donut. So the way the information is provided will depend on the way that the food service establishment decides to give information to their customers about what is available and the price.

Mr. MURPHY. But there is individual reactions to those too. I mean, it is different if you say, if you smoke, you got a pretty high percentage risk you are going to get an illness from that. Not everybody who smokes gets cancer. But it is a high percentage. Not everybody who gets cancer smokes.

But I wonder about this, do we reach the point, we give people this false sense of security, if you only know your calories, you are going to be oK. And all those other factors I mentioned, I am actually more concerned about kids that are not moving. Because it is that formula, you have to, if you take in the same amount of calories as you burn, you don't gain weight. If you take in more than you burn, you gain weight, et cetera.

So I think we have a long way to go on this in terms of other things with health promotion. But I see my time is up, so I am going to have to yield back. Thank you.

Mr. PITTS. The chair thanks the gentleman. Members are advised we are now voting on the floor. So we will keep going for, watching the vote total. I will get us over there in time.

The ranking member submitted another letter for, a UC request to be submitted to the record, signed by Congressman Loeb sack, Welch, Kilmer, Ruppertsberger, and Schrader to Secretary Burwell. Without objection, it will be entered in the record.

[The information appears at the conclusion of the hearing.]

Mr. PITTS. And the chair recognizes the gentlelady from Illinois, Ms. Schakowsky, 5 minutes for questions.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. This is a little bit of dj vu for me, my career, it seems, started, I didn't know it then, started in the grocery store 45 years ago when a small group of housewives wanted to know how old our food was. Because everything was code dated. And we did, like detectives, cracked some of the codes and found things in the grocery store that were days, weeks, months, and years beyond the date. We didn't question the dates. And now everybody looks at the dates. I like to look at, stand in the dairy section and watch people check those milk dates, which they do.

We want to encourage people to look at the calories. Whether or not my colleague from Illinois does, maybe he should. And maybe we all should. And I want to suggest in terms of pizza, if there were a board that said on a slice of pizza, this is how much sausage adds to that slice, this is how much pepperoni adds to that slice, I can figure out, at least relatively, whether I get a sausage pizza or a pepperoni pizza or if there is a difference at all. Or if I get mushrooms or whatever, I could see that. This is not hard. And, I'm sorry, it is not hard to list the additions that you have on a pizza so that I could check and see which is the better choice if I am watching calories.

There may be a gender difference here too. I don't know a woman who doesn't look at the calories on food that we are buying. And we all should. In terms of the grocery stores, many serve as catering operations also. Why on a catering menu, would it be harder to list what the calories are on those things? I would make decisions, I do get catering things from my grocery store. I would like to know that. What is the difference between, if there is one, a ham sandwich or a turkey sandwich and that kind of thing when I am having a party.

The cost of obesity is, just for the healthcare cost is projected to be \$344 billion by 2018. So even if you don't care about diabetes and all the other related things to obesity, we ought to be caring about the cost of, you know, what it costs us, what it costs our healthcare systems to treat obesity. And that, I think, would be one of the most important pieces of information.

So I don't quite understand the problem here. I did want to ask, who is pizza, Ms. Liddle—yes, why is this not a simple idea? And the FDA actually suggested it.

Ms. LIDDLE. Well, to do as you suggest, to put the information that you just described on a menu board, it would be very, very hard to read. And it would be a little bit like a forest or a tree falling in the forest and nobody hearing it.

Ms. SCHAKOWSKY. Wait, excuse me, I am sorry, you have got price and you got calories, these arguments are just silly to me.

Ms. LIDDLE. Well, there is nobody in the store, virtually, almost nobody in the store to look at the suggestions that you are making. But I do want to do exactly as you suggest and as you started out in the grocery store, I want to be able to give you that precise information online. To put it on—

Ms. SCHAKOWSKY. No, no, no. I wasn't saying that about the grocery store. Now, if you go to the grocery store, lucky us, you see that date, expiration date, use by date, whatever, on the product. And, believe me, people want it.

Ms. LIDDLE. And we have it. We have been disclosing it voluntarily for 14 years.

Ms. SCHAKOWSKY. Online?

Ms. LIDDLE. Online—

Ms. SCHAKOWSKY. I care about young people too. But I am telling you—of course, juvenile diabetes and juvenile obesity is a problem. But it is certainly more than just young people. I wondered if you wanted to comment, Dr. Wootan?

Ms. WOOTAN. Well, there are a lot of people going into pizza restaurants. It may only be 10 percent. But those people who do go

in have the right to nutrition information just like those people who are ordering online. If they don't think it matters, then they don't need to have a menu board and list out all the options that are there. But if they have a menu board and think that people need to know what is on the menu and list the prices for it, then they need to post the calories. Because, as you say, obesity really is one of the most pressing public health problems.

Ms. SCHAKOWSKY. Let me also say when I order pizza, there is also a menu usually attached to it so I can do it, you know, by phone or online again. Why not on that menu just list that?

Ms. LIDDLE. That is what we are proposing in our legislation. We are proposing that we bring the calorie information right on the electronic or the online menu. So—

Ms. SCHAKOWSKY. No, no, no. When I get the pizza, there is usually a paper menu attached to it. Why couldn't it be on that, on a carry-out menu?

Ms. LIDDLE. Well, we consider those to be promotional materials. They are ads with flyers that say order this special, which is one of the other problems with the legislation for us and many restaurants.

Mr. PITTS. The chair thanks the gentlelady. We have 8 minutes left in the vote. The chair recognizes Cathy McMorris Rodgers for 5 minutes for questions.

Mrs. MCMORRIS RODGERS. Thank you, Chairman. And I must admit, I, too, do look at the calorie counts. And my Democrat colleague and I, Loretta Sanchez, I think, probably share that in common. What we are trying to do and why we have been working with everyone to accomplish the goal of providing this information in a commonsense way. And that is the purpose of the legislation, is to accomplish the goal of the calorie counts in a commonsense way.

And I appreciate everyone being here today. I wanted to start with Ms. Hubbard. I understand that you own almost 300 stores, is that correct.

Ms. HUBBARD. Yes, ma'am.

Mrs. MCMORRIS RODGERS. Did you purchase them all at once?

Ms. HUBBARD. No. We have been in business for 15 years. And we have built some in 1970 that have evolved and morphed. We have acquired many stores and even our construction model has changed.

Mrs. MCMORRIS RODGERS. Are they exactly the same on the inside?

Ms. HUBBARD. None of them.

Mrs. MCMORRIS RODGERS. So do you sell the exact same stuff?

Ms. HUBBARD. No. Because we operate in four States and different markets. And the consumer demand and competition would merit different servings at different stores so.

Mrs. MCMORRIS RODGERS. So is it possible that you might need to design, buy, and install a different menu board at each location?

Ms. HUBBARD. Essentially every single location, yes, ma'am.

Mrs. MCMORRIS RODGERS. So how much do you think this will cost you?

Ms. HUBBARD. I am trying to figure out compliance and how many different menus we have, we think it will easily hit \$1 million for our locations.

Mrs. MCMORRIS RODGERS. Thank you. Next I wanted to go to Ms. Liddle from Domino's. A bipartisan group of House and Senate Members recently sent a letter to the FDA requesting a 1-year delay on the enforcement of the regulation. Do you support a delay on the enforcement of this regulation?

Ms. LIDDLE. We support and appreciate that. However, we do not think it is the solution. We really believe that we need a legislative fix.

Mrs. MCMORRIS RODGERS. Do you think that even with a delay, you and your franchisees could be able to eventually comply with this regulation?

Ms. LIDDLE. We could put ranges of calories on menu boards that would not make sense to consumers and that would cost our small franchisees a lot of money. We could do that, yes.

Mrs. MCMORRIS RODGERS. Do you think that others in the pizza community, Papa John's, Pizza Hut, Godfather's, feel the same way?

Ms. LIDDLE. I think the smaller the company, the more difficult it becomes because of the cost of compliance.

Mrs. MCMORRIS RODGERS. Do you, as the rule is currently written, could you or one of your store managers potentially be criminally charged for failing to comply?

Ms. LIDDLE. The way the law is currently written, there are criminal penalties because you have to certify that the information is correct both at the corporate level and at every store. There are 75,000 pizza stores in the United States. So that is a lot of paperwork, one. And there are lots of teenagers who make handmade products.

And even though we have very precise recipes for each thing, they can be off a little bit if they are just a little heavy-handed with the cheese or if they don't put as many pepperonis on, it is not going to be the same calories exactly. And I don't think that warrants sending a kid to jail.

Mrs. MCMORRIS RODGERS. OK, thank you. Next, Ms. Raskopf, I wanted to ask who is responsible for having the correct calorie count at each location? The individual manager or someone in the corporate office.

Ms. RASKOPF. If it is something that coming out from our central menu, something that most of the restaurants are going to carry, that is something that we at the corporate office do. There are things like manager specials. And those would be exempt is our understanding.

Mrs. MCMORRIS RODGERS. OK. If the FDA or a local law enforcement officer were to come in and find that, for example, a donut had been over-sprinkled and, therefore, did not comply with the posted calorie count and was outside the allowable standard, who would be at fault?

Ms. RASKOPF. Well, the reasonable basis standard under the FDA protects all of us in the food service industry. They understand that when you are making hand-prepared food, there will be errors. My understanding with the FDA is really this is all about,

any penalties are there to try to go after anybody who would deliberately mislead the public. It's not there to catch people—

Mrs. MCMORRIS RODGERS. OK. Is it possible that one of your employees could be potentially charged with a criminal charge?

Ms. RASKOPF. No. That is not our understanding. That is incorrect.

Mrs. MCMORRIS RODGERS. So then who do you think would receive the citation or the criminal charge?

Ms. RASKOPF. Our understanding is that the FDA, that there would be, we are still waiting for more guidance on that. But what we understand is that that information would be given to us and would give us time to correct that.

Mrs. MCMORRIS RODGERS. OK. OK and then to, I wanted to ask Ms. Liddle and Mr. O'Quinn, I would say that the two of you are quite different and also different from others on the panel, such as Dunkin' Donuts. Do you think this regulation tries to treat entities which are actually quite different in a cookie-cutter fashion which doesn't make sense? Maybe you can just say yes or no because I am out of time.

Mr. O'QUINN. Yes.

Ms. LIDDLE. Yes.

Mrs. MCMORRIS RODGERS. OK. Thank you.

Mr. PITTS. The chair thanks the gentlelady. And we have less than 3 minutes to get to the floor and vote. The chair recognizes the gentleman, Mr. Griffith, for 5 minutes for questions.

Mr. GRIFFITH. Thank you, Mr. Chairman. Again, great to see you, Delegate O'Quinn. Appreciate you coming to Capitol Hill to bring us some wisdom from southwest Virginia up here. Is there anything that you wanted to talk about that you haven't had an opportunity to talk about?

Mr. O'QUINN. Well, thank you, Congressman Griffith. I would just say this has been a very frustrating processes. We meet with, our industry meets with FDA on a regular basis.

Mr. GRIFFITH. And you are not talking about the hearing, you are talking about this—

Mr. O'QUINN. No. The hearing has been smooth as silk.

Mr. GRIFFITH. Thank you.

Mr. O'QUINN. But the process throughout the fleshing out of this has been difficult. Because we meet with FDA on a regular basis on a wide variety of topics. And this has been one particular topic in which they have been absolutely unwilling to meet or communicate. And so here we are discussing a delay versus some clarity and reasonable flexibility. But it has been a very frustrating process. But we do appreciate the opportunity to be here today to air our side of this story.

Mr. GRIFFITH. Well, thank you very much for being here. I will ask both you and Ms. Liddle, the concerns about, we have heard both today the concerns about somebody being charged with a felony, I guess Ms. Hubbard, as well. And one of the things you said, Ms. Liddle, was that as currently written.

Now, intent is a good thing. But as a lawmaker for a number of years, only a few years here but a long time in the Virginia legislature, if you don't make it clear, somebody will misinterpret the intent. And while the intent may be not to charge your worker with

a felony because they get a little excited with the cheese on the pizza or something where they don't follow the exact recipe, you have said the way it is currently written they could be charged. Is it a problem of the difference between the actual wording of the statute and the intent? Or do you all just disagree completely—

Ms. LIDDLE. Well, I am not a lawyer, but it is my understanding that this falls under the Food and Drug Cosmetic Act. And under this, there is a sort of a presumption of guilt ahead of time. There are criminal penalties that could be put on folks and I—

Mr. GRIFFITH. So you might like to see some words like intentionally and repetitively or a pattern of intentional behavior?

Ms. LIDDLE. As opposed to inadvertently correct. And I agree with Mr. O'Quinn, it has been a frustrating experience waiting for rules from FDA. And I, frankly, don't trust that the ultimate outcome of their rules will be correct. And so I really believe that we need this fix.

Mr. GRIFFITH. Well and I appreciate that. And I would probably have some more questions for you. But the votes are on the floor. And I know the chairman has been very patient to let me have this time. I thank each and every one of you for testifying. And I hope we can straighten this out. I yield back.

Mr. PITTS. The chair thanks the gentleman. The time has expired on the floor. We have additional questions. I am sure members will. We will submit those to you in writing. If you will please respond.

This has been a very, very interesting, informative hearing. I remind members that they have 10 business days to submit questions for the record. I ask witnesses to respond promptly. Members should submit their questions by the close of business on Thursday, June 18.

So thank for your patience, your testimony. And it is time for lunch I think. With that, excellent hearing. Without objection, the subcommittee is adjourned.

[Whereupon, at 11:41 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

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UNITED STATES  
HOUSE OF REPRESENTATIVES  
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3RD DISTRICT, CONNECTICUT

CO-CHAIR, DEMOCRATIC STEERING AND  
POLICY COMMITTEE

COMMITTEE ON APPROPRIATIONS  
SUBCOMMITTEE  
RANKING MEMBER

LABOR, HEALTH AND HUMAN SERVICES,  
EDUCATION, AND RELATED AGENCIES,  
AGRICULTURE, RURAL DEVELOPMENT,  
FOOD AND DRUG ADMINISTRATION,  
AND RELATED AGENCIES

June 3, 2015

The Honorable Joe Pitts, Chairman  
The Honorable Gene Green, Ranking Member  
Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Dear Mr. Chairman Pitts and Ranking Member Green,

A wealth of research shows that consumers make wiser health decisions when they have more information at their disposal. Our new menu labeling requirement will empower Americans to make more informed decisions about the food they eat—at the point of purchase. This is all the more important given that families now eat out more than twice as much as they did in 1970. An estimated one-third of calories are now consumed—and almost half of total food dollars are now spent—at restaurants and similar retail food establishments. Research shows that, where menu-labeling has taken effect, people who saw the calorie information select food with fewer calories.

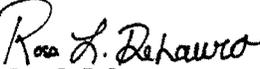
Access to this nutrition information is more important than ever to our national health, well-being, and economic future. Even as adult obesity has doubled in recent years, we have seen child obesity triple—to the point where one in every three children or adolescents in our nation is now overweight or obese. We have waited over a decade to implement national menu labeling standards, delaying implementation any further will continue to leave consumers in the dark, making it difficult to make informed food consumption decisions.

Menu labeling is a simple reform that ensures families finally have access to the information they need to stay healthy, even when eating outside the home. The single, national standard provided by the law is also important, giving consumers consistent information from place to place as well as providing businesses with a uniform standard with which to comply. So it is no surprise that some large chains—like Dunkin Donuts, Subway, and McDonald's—are following the new requirements and already embraced these common-sense measures.

Providing unwarranted exceptions to supermarkets, convenience stores, pizza chains, movie theaters, and others would not only undermine the purpose of menu labeling—to give consumers more information about the food they eat—but would also create an uneven playing field for business competition. This is all the more reason why we need swift implementation by the Department of Health and Human Services (HHS) of our new menu labeling requirements.

Just as consumers embraced the nutrition information on packaged foods when Congress mandated it over 20 years ago, clear and upfront dietary and nutrition information at chain restaurants and similar food retailers will help Americans eat and live healthier lives. To do that, we have to make sure that our national menu labeling law is implemented and followed by all relevant retailers. Thank you for considering these views as you hear concerns from businesses impacted by the law.

Sincerely,

  
Rosa L. DeLauro  
Member of Congress



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, appearing to read "Leslie G. Sarasin". The signature is written in a cursive, flowing style.

Leslie G. Sarasin  
President and Chief Executive Officer

**Congress of the United States**  
**Washington, DC 20515**

May 27, 2015

The Honorable Sylvia Matthews Burwell  
 Secretary  
 U.S. Department of Health and Human Services  
 200 Independence Avenue, SW  
 Washington, D.C. 20201

Dear Secretary Burwell:

We write regarding the Food and Drug Administration's (FDA) final rule entitled, "Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments" (79 FR 71155), to request that the agency delay the effective date for supermarkets, grocery stores and similar retail food establishments until at least December 1, 2016, due to a lack of guidance and several outstanding questions and concerns that make the regulations unworkable.

On December 1, 2014, the FDA published a final rule to implement Nutrition Labeling of Standard Menu Items at Chain Restaurants (§ 4205 of P.L. 111-148), a law that mandates nutrition labeling of standard menu items at chain restaurants and similar retail food establishments. As published, the final FDA regulations apply to "restaurant-type foods" at restaurants but also at other establishments with 20 or more locations operating under the same name, including thousands of supermarkets and grocery stores. Unfortunately, the final rule only provided regulated establishments until December 1, 2015 to comply, and FDA has yet to provide stakeholder guidance since the rule was published four months ago.

Since supermarkets and grocery stores had not been regulated under any preceding federal, state or municipal menu labeling laws, until FDA published its final menu labeling regulations on December 1, 2014, significant clarification is needed from FDA before compliance work can begin. For example, the scope and variety of items potentially categorized by this rule as "restaurant-type" foods in a supermarket ranges from 100 to 250 regulated items per store, many of them from other areas the store where there is no menu or menu board, such as fresh produce, baked goods, dairy and meat cases, in addition to pre-packaged and bulk foods. FDA Commissioner Margaret Hamburg acknowledged in recent Congressional hearings that the supermarket industry has attempted working with the agency, but guidance is not yet available and "that the clock has already started ticking on the one-year." The lack of agency guidance has compressed compliance time, increasing the likelihood for errors, further corrections, and higher compliance costs that will exacerbate unintended and undesirable consequences of this regulation, such as reduced fresh food and from-scratch food offerings in the food retail environment.

Since there is no statutory deadline in the menu labeling law, FDA should extend the implementation period to allow industry stakeholders to receive guidance and to continue addressing outstanding concerns with FDA and policymakers as necessary. Allowing a two-year compliance period is consistent with the simultaneously-released FDA nutrition labeling regulations for vending machines, as well as the compliance timeline granted by FDA for past implementation of the Nutrition Labeling and Education Act (NLEA).

We urge FDA to formally provide at least one-year additional time for supermarkets, grocery stores and similar retail food establishments to comply with the date for the final rule: "Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments" (79 FR 71155) no earlier than December 1, 2016.

Sincerely,

  
 Dave Loebbeck      Peter Welch      Derek Kilmer      C.A. Dutch Ruppersberger      Kurt Schrader



June 4, 2015

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

Wegmans Food Markets is a family-owned chain based in Rochester NY since 1916 with 86 stores in six states. We are pleased to offer insight on the FDA Menu Labeling regulations. Although known as a full service supermarket, we are often touted for our restaurant quality foods.

We believe that customers have a right to know what's in food products and consider provision of basic nutrition information a cost of doing business. In fact, Wegmans customers have long asked for nutrition information on our freshly prepared products. Up until 2001, as we expanded our offerings, we produced more and more printed charts and brochures containing info based on calculation (nutrition analysis software). However, with the growth of our in-store food preparation areas, it was impractical to keep various materials updated. In 2001 we added Nutrition Facts pages to [wegmans.com](http://wegmans.com) in the form of category-specific pdfs. Despite the fact that these are difficult for some consumers to find, having them on-line dramatically reduced the number of consumer calls to our corporate office. In 2008 we began placing calorie information on most products at point of sale. This usually is on the tag describing the item but often, such as in a package of sushi, is just below the product name on the scale label (sticker). If anything, having this information more readily available to consumers has increased their interaction with employees. We suspect that it changes purchasing behavior, though we don't have specific studies to share. We know that it is useful information for the product developers who, for example, now offer a smaller portion of sub sandwich allowing a lower calorie option to shoppers.

Today we have thousands of products offered in our stores that we believe are covered by the Menu Labeling regulations. That is, restaurant-style foods prepared and served in the store for immediate consumption. These include pizza, desserts, sushi, bagels and many, many other categories. Our goal is to be in compliance by September 2015, well before the current deadline as well as our busy holiday season.

Although we did not lobby for these regulations, we recognize advantages:

Having a national regulation prevents municipalities from creating a patchwork of different rules. Being in six states including several metropolitan areas, we are relieved to have one set of regulations, not multiple sets, to deal with.

In the past it has sometimes been difficult to get the information needed from our suppliers. Now that everyone must have this data, suppliers more readily provide complete nutrition information.

Having a national standard will result in development of support systems, such as scale-based information systems, that will more readily interface with nutrition analysis software and on-line product catalogs. Our greatest challenge is in simply managing all the detail behind each of these products. Better systems will help.

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Although we hope to be in compliance, we suspect that some aspects might not be in place by December 1<sup>st</sup>. It seems reasonable (in fact typical) for FDA to offer an extension or some kind of grace period. Wegmans has been ahead of the curve in providing this information. Others are in a different situation and could use the extension as well as better guidance documents (with practical examples), yet to be forthcoming, from FDA.

Respectfully,

Jane Andrews, MS, RDN  
Wegmans nutrition & labeling manager

United States Senate  
WASHINGTON, DC 20510

May 15, 2015

Stephen Ostroff, M.D.  
Acting Commissioner  
U.S. Food and Drug Administration  
10903 New Hampshire Avenue  
Silver Spring, MD 20993

Dear Acting Commissioner:

We write to request a one year delay of the compliance date included in the final rule, "Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments" published on December 1, 2014, given the outstanding guidance from the agency that is necessary to provide much needed clarity for small and large businesses impacted by the new requirements. The Food and Drug Administration (FDA) was given authority to require nutrition labeling of standard menu items at chain restaurants and similar retail food establishments in the Patient Protection and Affordable Care Act of 2010 to enable consumers to make informed choices regarding the nutritional value of food offered for sale in restaurants and other settings where Americans eat restaurant-like food.

FDA's final rule requires restaurants and similar retail food establishments that are part of a chain with 20 or more locations and operate under the same name and offer substantially the same menu items provide calorie and other nutrition information for standard menu items, including food on display and self-service food. This final rule is broad in scope with respect to covered entities and types of restaurant food included. Therefore, it is important that FDA provide appropriate and sufficient clarity about the restaurant-type food and menu items covered by the rule for the various types of businesses and other stakeholders who may be impacted.

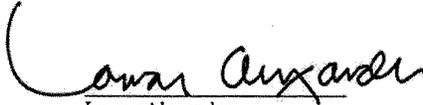
The agency's final rule sets a compliance date of December 1, 2015, for businesses to comply with the new requirements set forth by the rule. However, FDA has not yet provided guidance for industry or stakeholders on this regulation, including clarifying many of the key components of the final rule. While we recognize the benefit of improved access to nutritional information for consumers, we are concerned that the lack of clear and consistent guidance from the agency will make it difficult, confusing, and burdensome for businesses, particularly smaller businesses, to implement the new requirements by the December 1, 2015, deadline included in the final rule. Businesses, particularly small businesses, will need appropriate time to budget and plan accordingly to meet the rule's requirements to provide nutrition information to consumers that is understandable and clear, and therefore, of the greatest value to consumers.

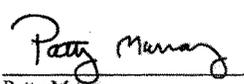
Ensuring access to nutrition information at restaurants and similar retail food establishments to help consumers better understand the nutritional value of food they consume is a worthy goal.

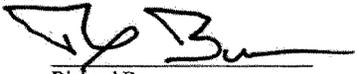
However, we are concerned that there are still outstanding questions regarding the details of how the final rule will be applied to certain covered entities, specific types of restaurant-type food, standard menu items, menu boards, and other key areas covered by the final rule. Given the short timeframe that businesses will need to begin expending resources to comply with the final rule, it is important that the agency not only provide clear and consistent guidance, but also adequate time to understand and come into compliance with the regulations.

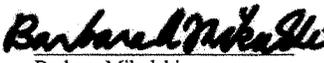
We respectfully request that FDA reconsider the current compliance date of December 1, 2015, included in the final rule and allow businesses, including small businesses, who are impacted by this regulation additional time of one year to understand and appropriately comply with the new requirements in a least burdensome manner.

Sincerely,

  
Lamar Alexander  
Chairman

  
Patty Murray  
Ranking Member

  
Richard Burr  
U.S. Senator

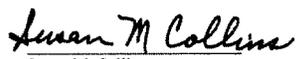
  
Barbara Mikulski  
U.S. Senator

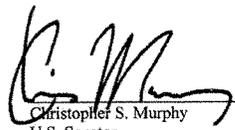
  
Johnny Isakson  
U.S. Senator

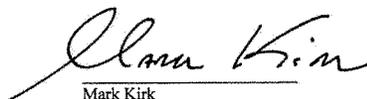
  
Al Franken  
U.S. Senator

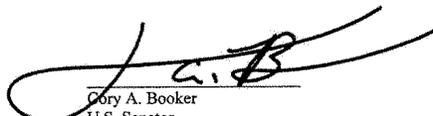
  
Rand Paul  
U.S. Senator

  
Tammy Baldwin  
U.S. Senator

  
Susan M. Collins  
U.S. Senator

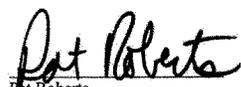
  
Christopher S. Murphy  
U.S. Senator

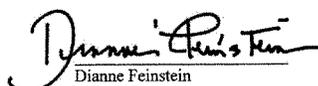
  
Mark Kirk  
U.S. Senator

  
Cory A. Booker  
U.S. Senator

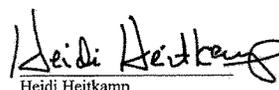
  
Orrin G. Hatch  
U.S. Senator

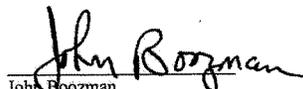
  
Sherrod Brown  
U.S. Senator

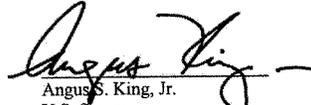
  
Pat Roberts  
U.S. Senator

  
Dianne Feinstein  
U.S. Senator

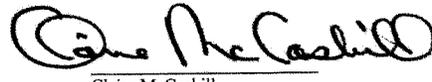
  
Roy Blunt  
U.S. Senator

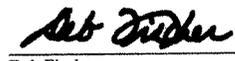
  
Heidi Heitkamp  
U.S. Senator

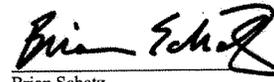
  
John Boozman  
U.S. Senator

  
Angus S. King, Jr.  
U.S. Senator

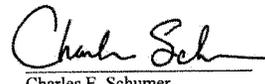
  
Tom Cotton  
U.S. Senator

  
Claire McCaskill  
U.S. Senator

  
Deb Fischer  
U.S. Senator

  
Brian Schatz  
U.S. Senator

  
James Lankford  
U.S. Senator

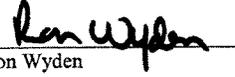
  
Charles E. Schumer  
U.S. Senator

  
David Perdue  
U.S. Senator

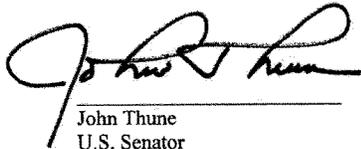
  
Tom Udall  
U.S. Senator



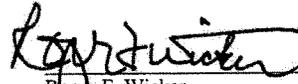
Marco Rubio  
U.S. Senator



Ron Wyden  
U.S. Senator



John Thune  
U.S. Senator



Roger F. Wicker  
U.S. Senator



April 28, 2015

Dear Representative:

We are writing to inform you of our opposition to H.R. 2017. This legislation would create an unfair advantage between competitors by specifically carving out segments of the food service marketplace from the federal requirement to provide uniform nutrition information. We urge you to treat establishments selling restaurant type food equitably. Congress should not provide a competitive advantage for one segment of an industry over another.

H.R. 2017 would broadly exempt thousands of chain grocery and convenience stores from providing uniform nutrition information on restaurant type food to customers notwithstanding that each day thousands of customers purchase such meals at these establishments. Such establishments each made strategic decisions to compete directly with their local restaurants. While we welcome their competition, there is no justifiable reason why they should not be held to the same rules as those with whom they have chosen to compete. While we recognize the need expressed by supporters of H.R. 2017 to have appropriate time for menu-labeling implementation, H.R. 2017 would outright exempt entities from providing nutrition information, create an uneven playing field, and cast different requirements amongst competitors.

The food service industry is a broad but competitive industry that is ever expanding in areas that have not traditionally provided restaurant meals. For example, today there are 54,000 grocery stores and 59,000 convenience stores that offer freshly prepared food and beverages, with annual average foodservice sales of \$25 billion dollars. Taken together, these two foodservice segments alone represent 12% of total restaurant and foodservice locations in the U.S. In fact, in recent years, sales in this broad 'retail host' segment have grown much faster than the restaurant industry as a whole. Between 2006 and 2011, sales in this sector jumped 31%, compared to a 16% increase in total restaurant industry sales.

It is clear that grocery and convenience stores are expanding into the traditional restaurant space and competing for the traditional restaurant customer. Just as a restaurant that decides to sell gas or packaged food would be required to adhere to the laws governing those products, our competitors should follow the rules that apply to restaurant products.

Moreover, as with most federal legislation, we recognized the need for a small business protection in the menu labeling requirements. As a result, the law only applies to chains with 20 or more locations that operate under the same trade name and offer for sale substantially the same menu items. Smaller chains and independent operators have the choice to voluntarily provide menu labeling but they are not required to do so under the federal law.

Enhancing the quality of life for all we serve

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2055 L Street NW, Washington, DC 20036 | (202) 331-5900 | (800) 424-5156



Lastly, the menu labeling rule comes at a time when consumers are demanding more information about the food they eat. In providing the nutritional content of restaurant foods, customers will have access to the information they seek. In fact, this information is being met favorably with estimates suggesting 76% of consumers want menu labeling.

We appreciate your consideration that establishments offering restaurant food be treated equally under the law. Should you have questions on the final requirements around menu labeling, please feel free to consult our website at [www.restaurant.org/menulabeling](http://www.restaurant.org/menulabeling). If you have any questions regarding this letter, please feel free to contact me ([droehi@restaurant.org](mailto:droehi@restaurant.org)) at the National Restaurant Association.

Sincerely,

A handwritten signature in black ink that reads "Dan Roehl".

Dan Roehl  
Vice President, Government Relations  
National Restaurant Association

---

Founded in 1919, the National Restaurant Association is the leading business association for the restaurant industry, which comprises 990,000 restaurant and foodservice outlets and a workforce of more than 13.5 million employees. We represent the industry in Washington, D.C., and advocate on its behalf. We operate the industry's largest trade show ([NRA Show](#) May 16-19, 2015, in Chicago); leading food safety training and certification program ([ServSafe](#)); unique career-building high school program (the NRAEF's [ProStart](#)); as well as the [Kids LiveWell](#) program promoting healthful kids' menu options. For more information, visit [Restaurant.org](http://Restaurant.org) and find us on Twitter [@WeRRestaurants](#), [Facebook](#) and [YouTube](#).

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CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY  
RANKING MEMBER

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**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641

June 23, 2015

Dr. Margo G. Wootan  
Director, Nutrition Policy  
Center for Science in the Public Interest  
1220 L Street, N.W.  
Washington, D.C. 20005

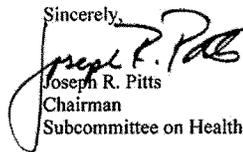
Dear Dr. Wootan:

Thank you for appearing before the Subcommittee on Health on June 4, 2015, to testify at the hearing entitled "Examining H.R. 2017, the Common Sense Nutrition Disclosure Act of 2015."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

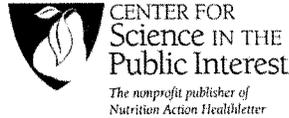
To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on July 7, 2015. Your responses should be mailed to Graham Pittman, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to [graham.pittman@mail.house.gov](mailto:graham.pittman@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,  
  
Joseph R. Pitts  
Chairman  
Subcommittee on Health

cc: The Honorable Gene Green, Ranking Member, Subcommittee on Health

Attachment



July 10, 2015

The Honorable Joseph Pitts  
 Chairman, Subcommittee on Health  
 Committee on Energy and Commerce  
 2125 Rayburn House Office Building  
 Washington, DC 20515

Dear Chairman Pitts:

Per your request, below are responses to questions from the Honorable Representative Capps from the hearing on June 4, 2015, entitled Examining HR 2017, the Common Sense Nutrition Disclosure Act of 2015.

**1. In your testimony you point out that people consume many more calories when they eat outside of the home. Can you elaborate on how people might change their choices when they are aware of the calorie content?**

It is hard to make informed choices without information. Some studies have concluded that menu labeling is not working based on small studies that lack enough statistical power to pick up the level of change that can be expected from a public health intervention. However, bigger, better conducted studies are showing some encouraging results on consumer selections and menu reformulation.

- A study conducted in Starbucks restaurants in New York City found that menu labeling led to a six percent decrease in calories on average per transaction. If people make similar changes in other chain restaurants (and about 25% of calories come from chains), that would mean a 30 calorie per person per day decrease population-wide. Keeping in mind that the obesity epidemic is explained by about a 100 calorie per day imbalance, such a change could have a meaningful impact on public health.
- A New York City study found 15 percent of customers reported using menu labeling and purchased 106 fewer calories in a fast-food lunch than customers who did not see or use the calorie information.
- In a restaurant study conducted in Philadelphia, displaying calorie and nutrient labels next to all food-item descriptions and prices resulted in an average purchase of 151 fewer calories, 224 mg less sodium, and 4 g less saturated fat relative to unlabeled sites.

**2. In your testimony you mentioned that Americans spend half of their food dollars on eating outside of the home. Can you also speak to how this has impacted the eating habits of children as well?**

Twenty-five percent of children's calories come from fast-food and other restaurants. This trend is of public health concern because consumption of restaurant food is associated with increased caloric intake and poorer diets.

- Most restaurants offer menu items designed for, and marketed to, children. The vast majority of kids' meals include calorie-dense, nutritionally-poor foods and beverages. For example, 86 percent of children's meals at the nation's largest chain restaurants are high in calories; many also are high in sodium (66%) and saturated fat (55%).
- Despite the health risks associated with sugary drink consumption, the majority of top restaurant chains feature soda or other sugary drinks with kids' meals; over three-quarters of the top restaurant chains promote sugary drinks through kids' menus. French fries are the most common kids' meal side option.
- Parents of children 3–6 years old presented with a McDonald's menu with calorie labeling ordered an average of 100 fewer calories for their children than did parents who did not receive calorie information.

**3. I understand that a key benefit of menu labeling in chain restaurants has spurred nutritional improvements of existing foods. If convenience stores were required to comply with these menu labeling rules, do you think that they would also see an increase in nutritional foods?**

Nutrition labeling not only allows consumers to make informed choices, it also provides an incentive for companies to reformulate products and introduce healthier options, like has happened with packaged food labeling. For example, since trans fat labeling was proposed, the amount of trans fat in the U.S. food supply has decreased by 80 percent. A study in Seattle/King County found that menu labeling there led to an average decrease of 40 calories per entrée in chain restaurants. We expect that calorie labeling in convenience stores and supermarkets would lead to improvements in the nutritional quality of their offerings, as well.

Please let me know if I can provide any additional information.

Sincerely,



Margo G. Wootan, D.Sc.  
Director, Nutrition Policy  
202-777-8354