

[H.R. 2017, Common Sense Nutrition Disclosure Act of 2015](#)

FLOOR SITUATION

On Friday, February 12, 2016, the House will likely begin consideration of [H.R. 2017](#), the Common Sense Nutrition Disclosure Act of 2015, under a [structured rule](#). H.R. 2017 was introduced on April 23, 2015 by Rep. Cathy McMorris Rodgers (R-WA), and was referred to the Committee on Energy and Commerce, which ordered the bill reported by a vote of 36 to 12 on November 18, 2015.

SUMMARY

H.R. 2017 amends the Federal Food, Drug, and Cosmetics Act to clarify the information certain retail food chain establishments, with 20 or more locations, must disclose about nutrition to the consumer to prevent overly burdensome regulations for certain establishments, such as convenience stores, supermarkets, grocery stores and pizza restaurants, and to provide flexibility in how restaurants display calorie information.

Specifically, the bill allows retail food establishments where the majority of orders are placed by customers who are off-premises at the time such order is placed, such as pizza restaurants, to disclose nutritional information on a remote-access menu (such as a menu available on the Internet) as the sole method of disclosure instead of on-premises writings.¹ The bill also eliminates criminal penalties and allows restaurants and retailers to take corrective action, and preempts civil litigation for violations of the federal menu labeling law and any state laws that may exist. The bill accommodates for inadvertent variations that occur during the food preparation process.

BACKGROUND

The 1990 Nutrition Labeling and Education Act requires nutrition labeling of most foods and dietary supplements, but it did not require labeling of food sold in restaurants. The Patient Protection and Affordable Care Act (ACA) included a provision that required nutrition labeling in certain restaurants, similar retail food establishments, and for certain vending machine items because there was a patchwork of state and city nutrition labeling requirements that was causing many issues for the restaurant industry. Specifically, these labeling requirements apply to standard menu items offered for

¹ See [House Report 114-413](#) at 4.

sale in chain restaurants or similar retail food establishments that have 20 or more locations, which conduct business under the same name regardless of the type of ownership of the locations, and that offer the same menu items for sale.²

Pursuant to these requirements, the Food and Drug Administration (FDA) published an implementing rule establishing calorie labeling requirements for prepared food items, including alcoholic beverages, sold in certain restaurants, convenience stores, grocery stores, and movie theatres, which was finalized on December 1, 2014. The rule was set to take effect one year later (December 1, 2015); however, the compliance date was extended to December 1, 2016, in the wake of concerns expressed by industry groups, trade associations, and some Members of Congress.³ The delay of the rule was codified in the Consolidated Appropriations Act of 2016, stipulating that the rule would become effective on December 1, 2016 or one year after final guidance is issued, whichever comes later. According to the Committee, "the delay is not enough to address industries many concerns, in one year, industry will find itself in this position again needing a legislative solution."

Prior to the FDA rule, some food establishments, such as McDonalds, Panera Bread, and Starbucks, had already begun voluntarily posting nutrition information. However, variable state and local regulations had resulted in a patchwork of labeling requirements, making compliance more challenging for chain food establishments.

According to the bill sponsor, "In their current form, menu labeling regulations are fundamentally impractical and unnecessarily expensive. Compliance with this regulation is estimated to cost American businesses more than \$1 billion and 500,000 hours of paperwork. This is time, energy, and financial resources that should be spent on creating jobs and building up the economy – not on paperwork. [...] This legislation is commonsense and provides access to calorie information in a practical, flexible, and simpler manner by clarifying – not significantly altering – complicated regulations."⁴

COST

The Congressional Budget Office (CBO) [estimates](#) enacting H.R. 2017 would cost \$9 million over the 2016-2021 period, assuming appropriation of the necessary amounts. Enacting H.R. 2017 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

COST

1. Rep. Cathy McMorris Rodgers (R-WA)—The [amendment](#) ensures that businesses will not be penalized for inadvertent human error in preparation or variation of ingredients.
2. Rep. Mark DeSaulnier (D-CA)—The [amendment](#) maintains current state's rights to enact menu labeling laws.
3. Rep. Kurt Schrader (D-OR)—The [amendment](#) strikes "off-premises" ordering exception from bill.

² See CRS Report, "[Nutrition Labeling of Restaurant Menu and Vending Machine Items.](#)" November 16, 2015.

³ Id.

⁴ See Rep. Cathy McMorris Rodgers Press Release, "[Smarter Menu Legislation Passed Committee.](#)" November 18, 2015.

STAFF CONTACT

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