



## Free Market Coalition to Congress: Support H.R. 2017 to Reform Menu Labeling Rule

November 4, 2015

Dear Representatives,



Several years into implementation, President Obama's health care law continues to provide a stark example in the law of unintended consequences. The controversial White House menu-labeling law is a disappointing example of what happens when out-of-touch bureaucrats write overly broad and inflexible rules—rules Congress must address.



The Common Sense Nutrition Disclosure Act (H.R. 2017) seeks to remedy this glaring instance of the ever-growing regulatory state that continually burdens so many businesses, including restaurants, convenience stores, and grocery stores, with unnecessary and expensive red tape. Although some larger chains appear to welcome new regulations they often do so because expensive regulations disadvantage smaller competitors. We believe that Members should support market-based competition and reject the crony capitalism driving much of the opposition to H.R. 2017.



H.R. 2017 would benefit thousands of businesses, regardless of their size or scope. The fact that some of the largest restaurant chains are actively lobbying Congress in favor of these onerous costly rules is due largely to that fact that expensive regulations gives them a competitive advantage over their smaller competitors.



Legislation to reduce regulatory burdens has become all the more necessary since the Food and Drug Administration (FDA) issued its final, flawed regulations late last year. The FDA failed to differentiate between the different models present in the restaurant industry and instead advocated for a one-size-fits-all solution that is, unfortunately, typical of regulatory agencies.



In addition to failing to account for the variety of businesses which fall under this new regulation, the FDA also vastly expanded its own definition of a menu. The FDA indicates that it now believes any and all materials that include a photo of an item and a phone number to be a

menu. This vague and overly broad definition will cause a great deal of confusion among many small business owners, and will likely do little to enhance consumer education.

Finally, the final rules do not do enough to protect businesses from excessive fines and other penalties that could result from an honest mistake on the part of an employee. Not only would H.R. 2017 correct these egregious problems, but it would also level the playing field between businesses of all sizes.

Members of Congress should combat bloated government red tape which stymies innovation and excellence in the marketplace. We encourage all Members to fight crony capitalism by supporting the Common Sense Nutrition Disclosure Act.

Sincerely,

Brent Gardner, Vice President of  
Government Affairs  
Americans for Prosperity

Sean Noble, President  
American Encore

Coley Jackson, President  
Americans for Competitive Enterprise

Peter J. Thomas, Chairman  
Americans for Constitutional Liberty

Scot Mussi, President  
Arizona Free Club

Norm Singleton, Senior Vice President  
Campaign for Liberty

Tom Brinkman Jr, Chairman  
COAST (Coalition Opposed to  
Additional Spending and Taxes)

Greg Conko, Executive Director  
Competitive Enterprise Institute

Andrew Clark, President  
Generation Opportunity

Pete Sepp, President  
National Taxpayers Union

Amy Ridenour, Chairman  
National Center for Public Policy  
Research

David Williams, President  
Taxpayers Protection Alliance

Judson Phillips, Founder  
Tea Party Nation

# AFP Supports Common Sense Menu Labeling Legislation

JUL 14, 2015 BY AFP

Dear Congresswoman McMorris Rodgers:

On behalf of more than 2.8 million Americans for Prosperity activists in all 50 states, I applaud you for introducing legislation that would make changes to the menu labeling requirements under the President's healthcare law (H.R. 2017). Even though the Food and Drug Administration (FDA) recently extended the deadline to comply, the rule still poses considerable problems for many small businesses around the country.

Under the menu labeling rule, restaurant companies that have 20 or more locations are required to provide nutritional information for their menu items. Franchise locations are caught in the cross-hairs of this rule. Although they have national branding, most are independent small business owners and will have difficulty shouldering the costs of providing new menu displays. Many may have to raise prices or even close their doors.

Displaying calorie counts on menus is difficult for restaurants that serve foods that are highly variable, like pizza, which has millions of combinations. It also fails to accommodate rules that are served in multiple servings, such as requiring calories to be displayed for a whole pizza instead of a slice of pizza. The rule is problematic for businesses that deliver food—even if they found a way to physically display this information in store, the overwhelming majority of their customers order remotely, and wouldn't be able to see it.

Your legislation would provide restaurants and small businesses with reasonable accommodations to comply with the menu labeling rule. AFP is proud to support the Common Sense Nutrition Disclosure Act of 2015 (H.R. 2017). Thank you for your work on this issue, and we look forward to working with you in the future.

Sincerely,

Brent Gardner  
Vice President of Government Affairs  
Americans for Prosperity

## Chopped: Congress Prepares To Slash Obamacare's Bloomberg-Inspired Calorie Counts



Guy Bentley

Reporter

9:07 PM 02/08/2016

46



(Getty

Images: Charles Ommanney)

The House of Representatives could soon vote to tear a slice out of an Obamacare rule that forces restaurants and vending machines to have calorie counts.

Obamacare, as it stands, requires the Food and Drug Administration (FDA) ensure that restaurants and other outlets selling food print calorie counts. The FDA has also made it a felony to break the calorie count rules.

“Few people realize ObamaCare’s tentacles extend all the way into your favorite corner pizza shop, even making an error in posting calorie counts a felony. Congress now has the opportunity to take a small slice out of this terrible law,” Jeff Stier, senior fellow at the National Center for Public Policy Research and head of its Risk Analysis Division, said Monday.

“The FDA’s reckless implementation of the calorie-count rule makes the launch of healthcare.gov look seamless by comparison,” Stier added.

The cost of calorie counts is far from trivial, with the White House Office of Management and Budget estimating it will hit the economy to the tune of \$1 billion and require a staggering 14 million compliance hours.

The FDA’s rigid approach to enforcing calorie counts by forbidding restaurants to post a range of calories for meals such as pizza also drew sharp criticism from Stier.

“Why didn’t the FDA take advantage of the provision of the bill that directs the agency to revise the regulations to account for the unique attributes of these types of entities without compromising consumers’ access to nutrition information?” Stier said.

“The fact that we even have to resort to fixing the FDA’s rules for implementing menu calorie counts is disheartening since there’s evidence that mandatory calorie counts actually increase the number of calories people consume at these establishments.”

But a swathe of businesses could be spared the FDA’s regulatory burden if the Common Sense Nutrition Disclosure Act of 2015 introduced by Reps. Cathy McMorris Rodgers and Loretta Sanchez is passed. The bill exempts grocery and convenience stores from the calorie count mandate.

While the exact cost a calorie count mandate may still be up for debate, the latest evidence shows it may actually have zero impact on getting Americans to eat less.

The policy rose to national prominence when it was adopted by former New York Mayor Michael Bloomberg as a way to give consumers more information and encourage New Yorkers to eat less.

But a study published in November 2015 found that calorie consumption was barely impacted by the changes. The study published in the journal Health Affairs examined 7,700 people who ate at chain restaurants such as McDonald’s both in New York City and New Jersey.

Between January 2013 and January 2014, the calorie intake for diners who ate at restaurants with calorie labels and those without was virtually indistinguishable. **(RELATED: The Evidence Is In: Bloomberg’s Calorie Count Menus Were A Total Failure)**

Customers who went to restaurants with the calorie counts displayed on menus averaged between 804 and 839 calories per meal, while those who dined at outlets without the labels averaged 802 and 857 per meal. Evidence also showed that overall calorie consumption has actually increased since the policy was put in place.

A 2008 survey showed that people consumed roughly 783 calories per meal at restaurants with calorie labels compared to 756 per meal at restaurants without calorie counts.



The Association of Food, Beverage  
and Consumer Products Companies

**Pamela G. Bailey**  
President and  
Chief Executive Officer

ph 202-639-5917  
fx 202-637-8464

February 8, 2016

The Honorable Cathy McMorris Rodgers  
United States House of Representatives  
203 Cannon House Office Building  
Washington, DC 20515

Dear Representative McMorris Rodgers,

GMA would like to express our support for H.R.2017, *The Common Sense Nutrition Disclosure Act*. We believe this legislation will provide flexibility to retail food establishments to better integrate “menu labeling” into their operations as well as provide more useful information for their customers.

GMA has supported menu labeling provisions in the past and we maintain our support for transparent, consumer-friendly nutrition disclosure, as demonstrated by our commitment to *Facts Up Front* and *SmartLabel*.

Finally, the flexibility provided by *The Common Sense Nutrition Disclosure Act* will help ensure that retail food establishments can effectively and efficiently comply with the goals of the menu labeling law to the benefit of the public.

Sincerely,

A handwritten signature in black ink that reads "Pamela G. Bailey".

Pamela G. Bailey  
President and Chief Executive Officer  
Grocery Manufacturers Association

**GROCERY MANUFACTURERS ASSOCIATION**

1350 I Street, NW :: Suite 300 :: Washington, DC 20005 :: ph 202-639-5900 :: fx 202-639-5932 :: [www.gmaonline.org](http://www.gmaonline.org)



## House Votes This Week on Common Sense Nutritional Disclosure Bill

Many, if not most proposals that make their way through Congress seem to have comically unsuitable names. However, at the end of this week the House of Representatives is expected to vote on a plan to remove one onerous, unneeded Obamacare regulation. A little known provision within Affordable Care Act (ACA) requires retail food establishments with 20 or more locations to list calories for regular menu items it serves on all signs and printed menus. While consumers might benefit from knowing calorie content, this one-size-fits-all mandate puts a big burden on small food retailers, and it could lead to unwanted price hikes. H.R. 2017—the Common Sense Nutrition Disclosure Act really is a common sense solution to the regulatory problem.

One problem is that a big cost government mandate may not mean big changes in consumer habits. The rule within ACA was intended to address the obesity problem in the U.S., but, as NYU population-health expert Brian Elbel found in his research on the effects of calorie labeling in New York City and Philadelphia restaurants, the requirement may not have any significant effect on customers' ordering.

Meanwhile, the rule, which was named “third-most-onerous regulation of 2013” by President Obama’s own Office of Management and Budget, would require restaurants, grocery stores, pizza shops, convenience stores, and vending machines to list—on physical menus—the calorie information for “standard menu items.” In addition to the estimated 14.5 million hours it would take retailers to comply with this new rule, the requirements may end up harming small suppliers, such as small craft breweries who’d love to see their products on chain-store menus, but might not be able to afford caloric testing for all of their beers.

For very large companies with menus that are the same throughout the county, these new requirements aren’t that terrible of a burden. But for smaller, regional chains and franchise owners, the costs are significant. As Jason Stverak at Forbes noted, “Although the law is designed to target corporate fast-food giants, in practice it will largely affect individual franchises that effectively operate as independent small businesses . . . [e]ach of these franchisees will now be tasked with complying with the mandate—paying for new signage, removing profit-generating advertisements to make room for the calorie data, updating menus every time recipes (sic) change, and accommodating inspectors.” And the costs will likely be passed along to consumer when they can.

That’s why The Common Sense Nutrition Disclosure Act, which CEI along with many other free market organizations have supported, seeks to add a little flexibility to the new menu rules.

For example, stores whose customers are mostly order-by-phone, like pizza shops, will be allowed to provide the required nutritional information through remote-access menus (i.e., online). It would also allow stores to list caloric ranges and label individual components of possible combination meals.

Perhaps most importantly, the House plan does away with the possibility of criminal penalties for shops that accidentally serve larger-than-expected portions.

This compromise plan would not alter the intent of the ACA provision—the disclosure of nutritional information—but would help in avoiding the unintended quagmire of red tape and costs that could harm small businesses and reduce choices and increase for restaurant-going consumers.

February 9, 2016

United States House of Representatives  
Washington, D.C. 20515

**Support the Common Sense Nutrition Disclosure Act of 2015 (H.R. 2017)**

Dear Representative,

As representatives of the restaurant and food retail sector employing 3.5 million people in grocery stores, 1.8 million people in convenience stores and more than a million people in 70,000 pizzerias in the United States, we seek your floor vote in support of H.R. 2017, the *Common Sense Nutrition Disclosure Act of 2015*, as approved with bipartisan support by House Energy and Commerce Committee to address problems with the Food and Drug Administration's (FDA's) final rule regarding menu labeling at restaurants and similar retail food establishments. The *Common Sense Nutrition Disclosure Act of 2015* maintains but modifies FDA's menu labeling regulations to provide nutritional information to customers in a more usable format, and to protect small businesses from overly burdensome costs.

FDA's final menu labeling regulations, published on December 1, 2014, require labeling of "restaurant-type foods" at chain restaurants and other establishments with 20 or more locations, including supermarkets, grocery stores, convenience stores, and general merchandise stores. These broad and prescriptive regulations provide little flexibility and expose tens of thousands of businesses and their employees to a range of liabilities for even minor oversights. The regulations also impact many foods that are not standardized and not on menus or menu boards. For a typical grocery store, the regulations will impact 100-250 items per store, many of them fresh produce or from bakery, dairy or seafood departments. The rules also do not provide workable compliance options for restaurants that receive most of their orders remotely, such as pizza delivery. With more than 90 percent of pizza delivery orders being placed over the phone or online, few customers would ever use nutrition information posted on a menu board. They are also challenging for convenience stores which often have significantly different footprints and store layouts even within the same chain. Recent draft guidance released by FDA reinforced the rigidity of the Final Rule, compelling the need for legislation to impart some common sense and lessen the confusion this rule has created for both businesses and consumers.

Our businesses and organizations support the *Common Sense Nutrition Disclosure Act of 2015* because it preserves local foods or fresh items that may only be sold at one or two restaurant or store locations; provides some flexibility on the placement and display of nutritional information where customers make their purchasing decisions; clarifies that an advertisement is not a menu; includes some liability protection; and allows reasonable time for businesses to comply with the law. The bill to be considered on the House floor does not exempt supermarkets, convenience stores or delivery operations from the menu labeling regulations but allows some practicality for providing nutritional information to customers based on the different ways that foods are prepared and sold across various venues and formats.

We seek your floor vote in support of H.R. 2017, the *Common Sense Nutrition Disclosure Act of 2015*, as approved by the House Energy and Commerce Committee. Our businesses want to provide customers with nutrition information. Adoption of the *Common Sense Nutrition Disclosure Act of 2015* is needed, however, to provide the critical flexibility needed to deliver information to customers effectively and limit the burden on small businesses.

Sincerely,

The undersigned businesses and organizations,

A&J Select Market  
 A-B Petroleum, Inc.  
 ADA Inc.  
 Affiliated Foods Midwest  
 AJ's Fine Foods Chandler AZ  
 Alabama Grocers Association  
 Albertsons Companies Inc.  
 Alon Brands, Inc.  
 American Pizza Community  
 Anderson's Grocery  
 Andy's Handy Mart  
 Arizona Food Marketing Alliance  
 Arkansas Oil Marketers  
 Associated Food and Petroleum Dealers  
 Associated Grocers, Inc.  
 Associated Wholesale Grocers  
 B&V Enterprises Inc.  
 Bailey's IGA  
 Baker's Management, Inc.  
 Bashas' Chandler AZ  
 Berts Markets Inc.  
 Big Y Foods, Inc.  
 Blackjack Pizza  
 Bobby and Steve's Auto World  
 Bonde's Quik Mart  
 Bredeaux Pizza  
 Burns and Burns  
 Burns Oil  
 Busch's Fresh Food Markets  
 California Grocers Association  
 California Retailers Association  
 Callaway Oil, Inc.  
 Casey's General Stores, Inc.  
 Circle K Stores, Inc.  
 Clifford Fuel Company  
 Colorado Wyoming Petroleum Marketers  
 Association  
 Columbiana Foods Inc.  
 Connecticut Food Association  
 Cranford's  
 CT Energy Marketers Association  
 D & G, Inc.  
 D&W Fresh Market  
 Daughtridge Gas & Oil  
 Delhaize America, LLC  
 Doc's Food Stores Inc.  
 Domino's  
 Douglas Distributing  
 E.Z. Mart Stores, Inc.  
 Ellwood City Save A Lot  
 Englefield Oil Company  
 Fairmount Grocery LLC  
 Family Fare  
 Family Fresh Market  
 Fiesta Foods, Inc.  
 Florida Petroleum Marketers and  
 Convenience Store Association  
 Food City  
 Food Industry Alliance of NYS  
 Food Industry Services, Inc.  
 Food Marketing Institute  
 Forest Hills Foods  
 Fremin's Food and Furniture Inc.  
 Fresh Grocer  
 Friedman's Freshmarkets  
 Georgia Association of Convenience Stores  
 Georgia Food Industry Association  
 GetGo  
 GF Buche Co.  
 Giant Eagle, Inc.  
 Giant Food LLC  
 Giant Food Stores LLC  
 GLN Inc. DBA Nichols Dollar Saver &  
 Country Mart  
 Godfather's  
 Granite Falls IGA  
 Grolmus Enterprises  
 GRUSS Inc. DBA Ralphs & Poulso Red  
 Apple Markets  
 GT Petroleum  
 H.A.C. Inc. Homeland Stores  
 Hannaford Supermarkets  
 Harbor Wholesale Foods  
 Harps Food Stores, Inc.  
 Harvest Foods Marketing, LLC  
 Hawaii Food Industry Association  
 Hawaii Petroleum  
 HEB  
 Henny Penny Convenience Store Chain  
 Homax Oil Sales, Inc.  
 Humboldt Petroleum

Hungry Howie's	Missouri Grocers Association
Hy-Vee	Missouri Retailers Association
Idaho Retailers Association	National Association of Convenience Stores
Illinois Food Retailers Association	National Grocers Association
Indiana Grocery & Convenience Store Association	National Petroleum
Indiana Retail Council	NATSO: Representing America's Travel Plazas and Truck Stops
International Pizza Hut Franchise Holder Association	Nebraska Grocery Industry Association
Jody's IGA	New Hampshire Grocers Association
K-VA-T Food Stores, Inc.	New Jersey Food Council
Kanawha Terrace Supermarket	New Mexico Petroleum Marketers Association
Kansas Food Dealers Association	New York Association of Convenience Stores
Kaune's Neighborhood Market	Niemann Foods
Keith's Foods	North Carolina Petroleum & Convenience Marketers
Kentucky Grocers Association	North Dakota Grocers Association
Kentucky Association of Convenience Stores	Nutricion Fundamental, Inc.
Krasdale Foods, Inc.	Nyquist Convenience Stores
The Kroger Co.	O. V. SMITH & SONS Inc.
Kum & Go, L.C.	Ohio Association of Convenience Stores
Kwik Check	Ohio Council of Retail Merchants
Kwik Trip, Inc.	Ohio Grocers Association
Little's Village IGA	Oklahoma Grocers Association
Louisiana Retailers Association	Papa John's
Love's Travel Stops and Country Stores	Papa's Pizza To-Go
Maine Grocers & Food Producers Association	Papa Romano's
Martin's Super Markets, Inc	Paradise Tomato Kitchen
Maryland Retailers Association	Peninsula Petroleum
Massachusetts Food Association	Pennsylvania Food Merchants Association
Maverik, Inc.	Pester Marketing
Meijer	Petroleum & Convenience Marketers of Alabama
Michigan Association of Convenience Stores	Petroleum Marketers Association of America
Michigan Petroleum Association	Petroleum Marketers and Convenience Store Association of Iowa
Michigan Grocers Association	Petroleum Marketers and Convenience Store Association of Kansas
Mid Atlantic Petroleum Distributors' Association	Pilot Flying J
Midtex Oil, LP	Pizza Factory
Miller's	Potash Markets
Minnesota Grocers Association	Potter's Piggly Wiggly
Mississippi Petroleum Marketers & Convenience Store Association	
Mississippi Retail & Grocers Association	

Price Chopper Supermarkets  
Price-Rite  
Ragland Bros Retail Cos., Inc.  
Redwood Oil Company  
Reid Stores Inc. d/b/a Crosby's  
REM Markets  
Retail Association of Nevada  
Retail Grocers Association of Greater Kansas  
City  
Rhode Island Food Dealers Association  
Rickers  
Ried's Market, Inc.  
Rocky Mountain Food Industry Association  
Rosauers Supermarkets  
Rosauers Supermarkets, Inc.  
Rotten Robbie/ Robinson Oil Company  
Royal Buying Group, Inc.  
Rutter's Farm Stores  
Schnucks Markets, Inc.  
Sendik's Food Markets  
Sheetz, Inc.  
ShopRite  
Society of Independent Gasoline Marketers of  
America (SIGMA)  
South Dakota Petroleum and Propane Marketers  
Association  
South Pacific Petroleum Corporation  
SpartanNash Company  
St. Petersburg Enterprises, LLC  
Stepherson Inc. DBA Superlo Foods  
Stolz Northwest, Inc.  
The Stop & Shop Supermarket Company LLC  
Stop'nGo of Medina Inc.  
Stormans Inc.  
Strough's IGA  
Supermarket Operations Inc.  
Tennessee Grocers & Convenience Store  
Association  
Tennessee Retail Association  
Texas Retailers Association  
The Convenience Group, LLC  
The Hub Convenience Stores, Inc.  
The Myers Group  
Town and Country Markets  
Tybee Market Inc. IGA

Unified Grocers  
URM Stores Inc.  
Utah Food Industry Association  
Utah Petroleum Marketers & Retailers  
Association  
Utah Retail Merchants Association  
Valley Petroleum  
Vermont Retail & Grocers Association  
Virginia Petroleum, Convenience, and Grocery  
Association  
Virginia Retail Merchants Association  
Walla Walla's Harvest Foods  
Washington Food Industry Association  
Wawa, Inc.  
West Virginia Oil Marketers and Grocers  
Association  
Williams Inland Distributors  
Wisconsin Grocers Association  
Wisconsin Petroleum Marketers and  
Convenience Store Association  
WMDA Service Station & Automotive Repair  
Assoc.  
Wray's Marketfresh IGA  
Y A Whitehills, Inc.  
Youngstown Area Grocers Association



# KEY VOTE

February 9, 2016

The Honorable Paul Ryan  
Speaker of the House  
H-232, The Capitol  
Washington, D.C. 20515

The Honorable Nancy Pelosi  
Democratic Leader  
H-204, The Capitol  
Washington, D.C. 20515

The Honorable Kevin McCarthy  
Majority Leader  
H-329, The Capitol  
Washington, D.C. 20515

The Honorable Steny Hoyer  
Democratic Whip  
H-148, The Capitol  
Washington, D.C. 20515

Dear Speaker Ryan, Leader Pelosi, Leader McCarthy, and Representative Hoyer:

On behalf of the National Grocers Association (NGA), I am writing to express our support for H.R. 2017, the Common Sense Nutrition Disclosure Act of 2015, which would provide common sense reforms to the Food and Drug Administration's (FDA) final rule for Nutritional Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments (FDA-2011-0172). NGA strongly encourages the House to pass this bill with bipartisan support. We commend House Leadership for bringing this bill to the Floor and the champions of the legislation, Congresswomen Cathy McMorris Rodgers (R-WA) and Loretta Sanchez (D-CA).

NGA is the national trade association representing the retail and wholesale grocers that comprise the independent channel of the food distribution industry. An independent retailer is a privately owned or controlled food retail company operating a variety of formats. Most independent operators are serviced by wholesale distributors, while others may be partially or fully self-distributing. Some independents are publicly traded, but with controlling shares held by the family and others are employee owned. Independents are the true "entrepreneurs" of the grocery industry and dedicated to their customers, associates, and communities. The independent supermarket channel is accountable for close to 1% of the nation's overall economy and is responsible for generating \$131 billion in sales, 944,000 jobs, \$30 billion in wages, and \$27 billion in taxes.

As part of the nutrition labeling provisions contained in the Affordable Care Act (ACA), the FDA is requiring the disclosure of caloric information for standard menu items in restaurants and retail food establishments. The provision amended the Federal Food, Drug, and Cosmetic Act (FFDCA) to require restaurants and similar retail food establishments that are part of a chain operating 20 or more locations and doing business under the same name to provide nutritional information for standard menu items, including food on display and self-service food. The original intent of the provision contained in the ACA aimed to provide one federal standard for chain restaurants with highly standardized menus and menu boards from regulatory confusion created by a growing list of state and local laws regarding nutrition information disclosures. Unfortunately, throughout the rulemaking process the FDA greatly expanded the scope of the rule, and has now included companies that have highly specialized menus that vary by location, including supermarkets.

H.R. 2017 contains important regulatory fixes that would eliminate confusion and uncertainty in implementation, limit burdensome regulatory costs and provide flexibility to community oriented supermarkets, allowing them to tailor their offerings to the neighborhoods and communities they serve. Importantly, H.R. 2017 does not exempt any entities, including supermarkets from the requirements under the law.

Under the FDA rule, independent supermarket operators with 20 or more locations would be required to provide caloric information throughout the store, including menus, display cases, booklets, pamphlets or fliers, advertising circulars . For independent supermarkets that provide extensive fresh and local options, freshly baked goods, cut fruit, and salad bars, this creates challenges in terms of how to properly display this information. H.R. 2017 provides important flexibility for supermarkets while also ensuring consumers are provided with the information they desire.

Additionally, the rule does not provide flexibility for unique, local items that are sold at only one store within a chain. Many independent grocers take pride in providing fresh and local items that reflect the communities in which they operate, often contracting with local businesses in order to provide one or two items to one location. NGA believes that this provides a large disincentive for independent supermarket operators to continue providing localized options. H.R. 2017 provides flexibility to ensure independent supermarkets can continue to provide these local, unique products.

As currently constituted, the final menu labeling rule creates extensive legal liability issues for independent supermarket operators. Due to the fact that the menu labeling rule falls under the FFDCRA, failure to comply with the menu labeling rule in any way carries potential felony penalties, including the possibility of jail time. Additionally, there is no grace period or warning system in place for first-time offenders who may be in violation of the rule due to inadvertent human error, such as adding an extra slice of ham to a sandwich, additional pepperoni to a pizza, or simply placing an item in the “wrong” bin before placing it in the salad bar. H.R. 2017 protects front line employees who make inadvertent mistakes while also providing establishments with 90 days to take corrective action prior to any enforcement action. Additionally, businesses are protected from frivolous lawsuits by prohibiting private rights of action.

NGA strongly supports H.R. 2017, and urges the House to pass this common sense bill to provide businesses with regulatory relief from this unworkable rule, while continuing to ensure that consumers receive the nutritional information they require from their local independent supermarket. NGA urges all Representatives to vote in favor of H.R. 2017, and will consider this a “key vote” for our scorecard for the 114<sup>th</sup> Congress.

Sincerely,

A handwritten signature in blue ink that reads "Greg Ferrara". The signature is fluid and cursive, with the first name being more prominent.

Greg Ferrara  
Senior Vice President,  
Government Relations and Public Affairs  
National Grocers Association

cc: All Members of the United States House of Representatives

RECLAIM *the* REPUBLIC. RESTORE *the* CONSTITUTION.

## Free Market Coalition to Congress: Support H.R. 2017 to Reform Menu Labeling Rule

**POSTED BY Megan Stiles December 02, 2015**

Campaign for Liberty joined other free-market organizations in support of H.R. 2017, which would reform the menu labeling requirements, which came out of President Obama's health care law. Read the text of the letter below and call your Representatives and urge them to support H.R. 2017 (202-224-3121)

November 4, 2015

Dear Representatives,

Several years into implementation, President Obama's health care law continues to provide a stark example in the law of unintended consequences. The controversial White House menu-labeling law is a disappointing example of what happens when out-of-touch bureaucrats write overly broad and inflexible rules—rules Congress must address.

The Common Sense Nutrition Disclosure Act (H.R. 2017) seeks to remedy this glaring instance of the ever-growing regulatory state that continually burdens so many businesses, including restaurants, convenience stores, and grocery stores, with unnecessary and expensive red tape. Although some larger chains appear to welcome new regulations they often do so because expensive regulations disadvantage smaller competitors. We believe that Members should support market-based competition and reject the crony capitalism driving much of the opposition to H.R. 2017.

H.R. 2017 would benefit thousands of businesses, regardless of their size or scope. The fact that some of the largest restaurant chains are actively lobbying Congress in favor of these onerous costly rules is due largely to that fact that expensive regulations gives them a competitive advantage over their smaller competitors.

Legislation to reduce regulatory burdens has become all the more necessary since the Food and Drug Administration (FDA) issued its final, flawed regulations late last year. The FDA failed to

differentiate between the different models present in the restaurant industry and Instead advocated for a one-size--fits-all solution that is, unfortunately, typical of regulatory agencies.

In addition for failing to account for the variety of businesses which fall under this new regulation, the

FDA also vastly expanded its own definition of a menu. The FDA indicates that it now believes any and all materials that include a photo of an item and a phone number to be a menu. This vague and overly broad definition will cause a great deal of confusion among many small business owners, and will likely do little to enhance consumer education.

Finally, the final rules do not do enough to protect businesses from excessive fines and other penalties that could result from an honest mistake on the part of an employee. Not only would H.R. 2017 correct these egregious problems, but it would also level the playing field between businesses of all sizes.

Members of Congress should combat bloated government red tape which stymies innovation and excellence in the marketplace. We encourage all Members to fight crony capitalism by supporting the Common Sense Nutrition Disclosure Act.



# Representatives Should Support Plan to Overturn Obamacare Menu-Labeling Rule

by Nan Swift / February 4, 2016 /share:

**NTU urges all Representatives to vote “YES” on H.R. 2017, the “Common Sense Nutrition Disclosure Act.” This legislation would provide relief for food retailers from the Food and Drug Administration’s (FDA) burdensome menu-labeling rule.**

Required under the President’s health care law, the FDA’s menu-labeling rule established a rigid 400 page, one-size-fits-all, nutritional disclosure requirement for grocery stores, restaurants, and other retail food establishments. This rule demands that these locations install at least one standard menu board displaying the price and calorie count of each individual item; for a single company that has hundreds of locations and a diverse selection of items, this regulation would cost well over \$1 million.

The FDA’s rule goes far beyond the underlying statute, and applies to chains, delivery services, or any franchise retailer selling non-packaged foods such as hot meals or a salad bar at a supermarket – even convenience stores. Many small-business franchises, who own one or two stores and operate independently from the corporate parent, will still be subject to this cumbersome, expensive regulatory scheme. Violations, which would be almost impossible to avoid given the broad range of menu options and customer preferences, could even be met with criminal penalties!

The new menu-labeling rule discourages growth and entrepreneurship in the food industry and will hurt customers through increased food prices and decreased selection. In response, H.R. 2017, a bipartisan initiative, would provide real relief for tens of thousands of grocery stores and restaurants, as well as consumers, by implementing commonsense reforms, including increased flexibility and clarity for small businesses.

**Roll call votes on H.R. 2017 will be included in our annual Rating of Congress and a “YES” vote will be considered the pro-taxpayer position.**



For Immediate Release: February 8, 2016

Contact: Judy Kent at (703) 759-7476 or cell (703) 477-7476 or [jkent@nationalcenter.org](mailto:jkent@nationalcenter.org)

### **Congress to Vote on Scaling Back ObamaCare's Requirement that Restaurants Print Calorie Counts in Menus**

### **Obama Administration's FDA Makes it a Felony if Even Small Restaurants Make an Error When Posting Calorie Counts**

### **Administration Also Forbids Restaurants from Posting a Range of Calories for Items, Such as Pizza, That May Be Ordered With Variable Toppings**

New York, NY - "Few people realize ObamaCare's tentacles extend all the way into your favorite corner pizza shop, even making an error in posting calorie counts a felony. Congress now has the opportunity to take a small slice out of this terrible law," says Jeff Stier, Senior Fellow at the National Center for Public Policy Research in Washington, D.C., and head of its Risk Analysis Division.

This week the House of Representatives is expected to debate and vote on the Common Sense Nutrition Disclosure Act of 2015.

Stier, who is based in Manhattan, was among the first to notice, as well as criticize, the calorie count requirement on menus buried in the Patient Protection and Affordable Care Act (PPACA), commonly called the Affordable Care Act, or ObamaCare.

The bill would scale back the FDA's onerous one-size fits all rules implementing the requirement that restaurants post calorie counts on menus.

The White House Office of Management and Budget has determined that the calorie count requirements will require more than 14 million compliance hours and cost more than \$1 billion.

"The FDA's reckless implementation of the calorie-count rule makes the launch of healthcare.gov look look seamless by comparison," says Stier.

"Why didn't the FDA take advantage of the provision of the bill that directs the agency to

revise the regulations to account for the unique attributes of these types of entities without compromising consumers' access to nutrition information?" asks Stier.

Stier is particularly concerned about the lack of flexibility in the FDA's approach to how restaurants handle variable menu items. "If a restaurant offers individual toppings or menu items that can be ordered with variations, it should be allowed to post a range of calories rather than a specific count for each of what could be millions of variations," he says.

"The fact that we even have to resort to fixing the FDA's rules for implementing menu calorie counts is disheartening, since there's evidence that mandatory calorie counts actually increase the number of calories people consume at these establishments."

Stier has been a leading voice against the Obama Administration's regulatory over-reach into our diets, debating the subject on CNBC and writing about it in the New York Post, Forbes, National Review and elsewhere.

To speak with Jeff Stier, contact Judy Kent at (703) 759-7476 or cell (703) 477-7476 or [jkent@nationalcenter.org](mailto:jkent@nationalcenter.org).