

June 24, 2016

We, the undersigned organizations, write to ask you to oppose any further attempts to weaken or delay implementation of the national menu labeling law in the FY2017 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (S. 2956) and oppose the so-called Common Sense Nutrition Disclosure Act (S. 2217).

The FY2016 Omnibus Appropriations Act already provided restaurants and other food service establishments an additional year to implement menu labeling, which is now scheduled to go into effect May 5, 2017, over seven years after passage of the law. There is no need for further delay.

Common concerns raised by industry regarding menu labeling have been addressed through guidance, or can be addressed through technical assistance from the FDA. Further accommodation of their concerns would significantly reduce consumer access to understandable, readily available nutrition information. For example:

- **Labeling salad bars.** According to FDA's guidance, there are several options for the placement of calories: on a sign adjacent to and clearly associated with the food, on a sign attached to the sneeze guard, or on a single sign or placard listing the calories for all items as long as it can be seen while selecting the item. This applies to all self-service foods (e.g., salad bars, buffets, hot bars, grab-and-go, non-packaged foods in coolers, etc.).
- **Labeling different combinations, flavors, or varieties on the menu.** According to the FDA's guidance, calories can be listed as a range for menu items that have several or more options, such as a small pizza with a choice of toppings, "1000-1500 calories."
- **Liability and enforcement concerns.** [Many states and localities have required calorie labeling for years](#) and not one restaurant chain has been sued. If local agencies choose to inspect restaurants for menu labeling, they are likely to work with the restaurant to correct any problems before levying fines. Fines are usually reserved for restaurants that are unwilling to correct problems after multiple attempts to fix them.

We also do not think it is common sense to weaken a policy that would allow Americans to make their own, informed choices about how many calories to eat at a time of record high obesity rates. Rather than providing modest flexibility as touted, S. 2217 would weaken and repeal key parts of national menu labeling policy:

- **The bill would allow food establishments to set arbitrary serving sizes.**
 - The FDA already addressed the pizza industry's concern to label calories per slice of pizza. However, unlike the FDA's final regulations, the bill would not require total servings to be listed, which would make it impossible for customers to determine calories for such menu items.
 - Arbitrary serving sizes would make it difficult for customers to determine total calories and to compare calories, such as between appetizers, which could have calories listed for a half, one-third or one-fourth of the item.
- **The off-premises and primary listing provisions would deny customers calorie information from not only inside pizza chains but inside many fast-food and other chain restaurants.**
 - The bill would exempt food establishments from providing calorie information inside their restaurants even if 49% of orders are placed from in-store menus or menu boards. Online menus are unlikely to help a customer ordering in the store.

- **The bill would deny customers calorie information where they need it—at the point of decision making.** At supermarkets and convenience stores, calorie information at the cash register is not as helpful as having it at the point where people choose items.
- **The bill would hamper state and local control, and prevent states and localities from petitioning the FDA for any variations from the federal nutrition labeling approach.** For example, Philadelphia has petitioned the FDA to continue to use their already-in-place menu labeling law, which studies have shown to be effective.
- **The certification provision would hamper enforcement by not requiring restaurants and other food establishments to keep records on nutrition information.** Thus, there would be no way for inspectors to substantiate accuracy of the calorie and other nutrition information for menu items.
- Many public interest and health organizations are concerned about the **bill's limitation on private citizens' ability to take action on noncompliance**, especially given how underfunded FDA enforcement is.

Thank you for your support for providing consumers with nutrition information at chain food service establishments by opposing any change to the menu labeling rider (Sec. 735) already in the FY2017 Agriculture appropriations bill (S. 2956) and opposing the anti-menu labeling bill (S. 2217).

Sincerely,

American Cancer Society Cancer Action Network
American Diabetes Association
American Heart Association
American Public Health Association
Association of State Public Health Nutritionists
Center for Science in the Public Interest
Consumer Federation of America
Consumers Union
Eat Smart Move More SC
National Association of County and City Health Officials
Public Health Advocates
Trust for America's Health