



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

# H.R. 2017: Common Sense Nutrition Disclosure Act of 2015 (McMorris Rodgers, R-WA)

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## FLOOR SCHEDULE:

February 12, 2016 under a [structured rule](#), in which 3 amendments were made in order.

### TOPLINE SUMMARY:

[H.R. 2017](#) would revise federal menu labeling requirements to give restaurants and retail food establishments increased flexibility in disclosing the nutritional information of menu items.

### COST:

The [Congressional Budget Office](#) (CBO) estimates that implementing H.R. 2017 would cost \$9 million over the FY 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.

### CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** This bill would prohibit states and localities from petitioning the FDA to require menu labeling differs from federal requirements.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

### DETAILED SUMMARY AND ANALYSIS:

The Affordable Care Act (ACA) [requires](#) nutrition information, including the number of calories in menu options, to be provided to customers at restaurants or retail food establishment that have twenty or more locations. The Food and Drug Administration (FDA) released the [final rule](#) implementing this section on December 1, 2014. The rulemaking process was [described](#) by former FDA Commissioner Margaret Hamburg as “thorny,” due to the more than one thousand comments received. One of the largest issues with the poorly constructed regulations was the challenge in determining caloric information for customizable meals such as pizzas and burritos.

H.R. 2017 would provide flexibility by allowing covered restaurants and retail food establishments to determine how calorie information would be disclosed. This would include the serving size of menu items. In addition, it would allow a restaurant to display the number of calories contained in the whole item or the number of servings with the calories per serving. Restaurants where the majority of orders are placed by customers who are off-premises would be allowed to provide nutritional information on a remote-access menu, such as an online menu. This bill would define “reasonable basis” with respect to nutrition disclosure to account for variances in serving size, inadvertent human error in the preparation of means, and variations in ingredients.

The secretary would be required to establish regulation standards for determining and disclosing the nutrient content for standard menu items that come in different flavors, varieties or combinations, but which are listed as a single menu item. This could include ice cream, pizza, donuts or children’s combination meals. The regulation must allow restaurants to determine and disclose information through the use of ranges, averages, individual labeling of flavors or components, or labeling of one preset standard build. Any restaurant that is in violation would have 90 days after receiving notification to correct the violation. This bill would prohibit states and localities from petitioning the FDA to require menu labeling that is different from the federal requirements.

Finally, a restaurant would not be liable in any civil action in federal or state court for any claims arising out of an alleged violation.

### **AMENDMENTS MADE IN ORDER:**

#1 [Schrader \(D-OR\)](#): This amendment would remove the ability of a restaurant where the majority of orders are placed off site to post its nutritional information on a remote-access menu (such as online).

#2 [McMorris Rodgers \(R-WA\)](#); [Cardenas \(D-CA\)](#): This amendment would protect restaurants and food establishments by ensuring they would not be penalized for reasonable variations in nutrition information due to inadvertent human error.

#3 [DeSaulnier \(D-CA\)](#): This amendment would remove the prohibition on states and localities enacting their own menu labeling laws that differ from the federal requirements.

### **OUTSIDE GROUP SUPPORT:**

- [National Taxpayers Union](#)
- [Supermarket Industry](#)
- [Campaign for Liberty](#)
- [The Association for Convenience & Fuel Retailing](#)
- [Americans for Prosperity](#)
- [Coalition Support Letters](#)

### **OUTSIDE GROUP OPPOSITION:**

- [Group letter by Center for Democracy and Justice](#)
- [American Cancer Society Cancer Action Network joint letter](#)

### **COMMITTEE ACTION:**

This bill was introduced by Representative McMorris Rodgers and referred to the House Committee on Energy and Commerce. The committee held a mark-up and the bill was reported out by a vote of 36-12.

### **ADMINISTRATION POSITION:**

The Administration opposes H.R. 2017, the Common Sense Nutrition Disclosure Act of 2015.

### **CONSTITUTIONAL AUTHORITY:**

According to the sponsor, Congress has the power to enact this legislation pursuant to the following: The Constitutional authority in which this bill rests is the power of the Congress to regulate Commerce as enumerated by Article I, Section 8, Clause 1 as applied to providing for the general welfare of the United States through the administration of the Federal Food, Drug, and Cosmetic Act.

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