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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, D.C.

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.

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:]

***** COMMITTEE INSERT *****

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 known 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 my 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 Foods -- 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.

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.

[The prepared statement of Mr. Green follows:]

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

The Chairman. 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 The Chairman follows:]

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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 information follows:]

***** COMMITTEE INSERT *****

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.

[The prepared statement of Mrs. McMorris Rodgers follows:]

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Mr. Pitts. 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 follows:]

***** COMMITTEE INSERT *****

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 acknowledge -- 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.

[The prepared statement of Mr. Pallone follows:]

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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.

[The prepared statement of Ms. Matsui follows:]

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

I have one UC 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 follows:]

***** COMMITTEE INSERT *****

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 Griffith 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 as 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:]

***** INSERT 1-1 *****

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:]

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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 possibly 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 programing, 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:]

***** INSERT 1-3 *****

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:]

***** INSERT 1-4 *****

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 totality 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 dietitians 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:]

***** INSERT 1-5 *****

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, you know, we have looked at multiple ways to do that, whether it be putting something on the spoon itself. But should, you know, perhaps my, you know, ten-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 -- you know, the alcohol-based cleaner makes one fall off. You know, where do you -- you know, how do you account for that.

And then, you know, 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 consumers -- 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 and -- 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.

So and, again, I just want to say that we are not requiring -- 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. Okay. 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. Okay.

RPTR MAAR

EDTR HUMKE

[10:57 a.m.]

Mr. Green. 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. Okay. 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, you know, 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, you know, 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, you know, 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. Yeah, 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, you know, 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 -- I mean, 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. Okay. 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 Davis 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 and 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 factorial 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 Davis 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 they are 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, you know, 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, you know, 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, you know, 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. You know, 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, you know, 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 follows:]

***** COMMITTEE INSERT *****

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 follows:]

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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 know, 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. Okay 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, you know, 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. Okay.

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 okay. 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, Rupp ersberger, and Schrader to Secretary Burwell. Without objection, it will be entered in the record.

[The information follows:]

***** COMMITTEE INSERT *****

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 déjà 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, we, 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 mean, 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 -- yeah, 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. You know, 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. Okay 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. Okay. 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. Okay. 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. Okay. Okay 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. Okay. 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.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Pitts. 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.]