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Examining H.R. 2017, the Common Sense Nutrition Disclosure Act of 2015

Committee on Energy and Commerce
Subcommittee on Health
Hon. Joe Pitts, Chairman
Hon. Gene Green, Ranking Member

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Good morning Chairman Pitts, Ranking Member Green, and distinguished members of the subcommittee. I'm 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 you will find them more than reasonable.

At Domino's, there are 34 million ways to make a single pizza, based on all the crust types, sauces and toppings we offer. Pizza Hut has published that they now have two billion. So, our first point is that you can't possibly fit all the iterations of pizza on a typical menu board like you can for burgers, for example. FDA understood that, too, so they said "just put ranges." If you put ranges for a whole pie, that's a range of up to 2,000 calories. If you do it by the slice, it's still a range of hundreds of calories. We think the calories should be disclosed more precisely, so our customers actually know what they're eating.

Our solution is to put the information where our customers go to order: online. Right now, about half of all Domino's orders (and those of Pizza Hut and Papa John's) come from online. Five 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 (our figures show 10%) 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?

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 seven percent were placed in-store. And not even two percent of customers – five 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 doesn’t even use.

My second point is about imposing an unneeded and bizarre expense on small business people. Most people think of Domino’s or Papa Johns, 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 five stores per franchisee. This is the common model for pizza. So why make these small, local businesspeople who live, work and hire in your districts pay thousands of dollars a year for something that almost 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. I’m a simple Midwesterner, but I think “primary” means “first and foremost,” not “all.” In our business, we send out lots of advertising flyers, top boxes with flyers 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 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 the 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 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 we have proposed, the job of calorie labeling won’t be an easy one – but we think it’s worth it. People have a right to know what they’re eating, which is why we have been voluntarily disclosing calorie information in one form or another for 14 years. But to get ready, computer programming, materials design, nutritional research and operational systems will need to be put

in place. So we've also asked for more time to get it done. But let me be clear: we in no way see a delay in the rules as a solution. We must have this 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 this subcommittee, thank you for listening to me. And thank you to Representatives McMorris Rodgers and Sanchez for your leadership on this issue.