

CLAIMS vs. REALITY

What's billed as a little flexibility is actually a recipe for confusion.

The Common Sense Nutrition Disclosure Act (S. 261/HR. 772)

CLAIMS

REALITY

FLEXIBILITY

The bill "eases FDA's one-size-fits-all approach" by providing more flexibility.

FDA has offered extensive flexibility such as: pizza can be listed as calories per slice (instead of the whole pie); variation of ingredients and flavors or combinations can be listed as a range of calories; and salad bars can be labeled in a variety of ways including a sign by the salad bar.

SMALL BUSINESSES

The bill addresses small business concerns.

Small businesses are not covered by menu labeling; only chains of 20 or more outlets.

DELAY

Provides "extended time for compliance" to allow "covered businesses the necessary time to prepare and develop plans."

Menu labeling goes into effect May 5, 2017 over seven years since the law passed. The bill would significantly delay menu labeling by putting the whole rule on hold while the FDA undertakes new rulemaking to weaken the current regulations. Writing the rule could take 2-3 years with implementation two years after the new regulations go into effect. The new rule would be subject to the executive order that requires rescinding two existing rules for every new rule.

ACCESS TO NUTRITION INFORMATION

Provides "the same nutrition information to customers as required," Food Marketing Institute (a trade group for supermarkets).

The bill would allow supermarkets and convenience stores to list calories in places away from the point of decision-making for prepared foods and foods on display (salad bar, bakery, deli, beverage station, rotisserie items). For example, calories could be listed on a menu board by the cash register instead of by the food item where customers are choosing items.

"The bill will ensure that customers have access to important nutrition information," American Pizza Community (APC).

The bill would exempt any restaurant with a majority take-out business from listing calories in-store, denying customers access to calorie information in thousands of restaurants that are currently covered.

SERVING SIZES

The bill "simply provides businesses with the ability to label based on how they serve their products."

The bill would allow food establishments to set arbitrary serving sizes and not require total servings to be disclosed. This would make it impossible for customers to determine calories of menu items and compare them.

LIABILITY

The National Association of Convenience Stores (NACS) claims menu labeling puts businesses at risk of "potential felony prosecution for accidentally putting too many pickles in a sandwich."

Many states and localities have required calorie labeling for years and not one restaurant chain has been sued. The regulations allow variability in calories, as long as they are based on a reasonable basis.

ENFORCEMENT

The bill protects industry from "overzealous inspectors," Food Marketing Institute.

FDA has publicly stated that the agency will focus on technical assistance and education rather than enforcement in the beginning of implementation. The enforcement and penalties for menu labeling would be the same as for packaged food labeling. The FDA does not have funds for menu labeling enforcement.

COST

The bill would significantly delay and change menu labeling requirements that would increase costs to consumers and industry. An independent economic analysis found that the Administration's one-year delay of the law costs consumers \$15 in increased health care costs and loss of productivity for every \$1 saved by food service establishments, and any changes to the law will increase costs to industry. Food service establishments would have to spend an additional \$282-327 million to redo their menus (cost estimates according to FDA's Regulatory Impact Analysis for the final regulations), retrain their staff (given 100% turnover per year), and reconduct the legal review.