



Signature Report

March 12, 2008

R&R

Proposed No. BOH08-01.1

1 An amendment relating to the protection of the public
2 health through the nutrition labeling of food; amending
3 BOH R&R 07-01, Section 1, and BOH 5.10.005, BOH
4 R&R 07-01, Section 2, and BOH 5.10.015 and BOH R&R
5 07-01, Section 3, and BOH 5.10.025 and adding new
6 sections to BOH chapter 5.10; enacted pursuant to RCW
7 70.05.060, including the latest amendments or revisions
8 thereto; and declaring an emergency.

9
10 BE IT ADOPTED BY THE KING COUNTY BOARD OF HEALTH:

11 SECTION 1. Findings:

12 A. On July 19, 2007, the King County Board of Health adopted BOH R&R 07-
13 01, a rule and regulation relating to the protection of public health through the nutrition
14 labeling of food.

15 B. BOH R&R 07-01 requires chain food establishments to provide nutrition
16 information through labeling on menus and menu boards.

17 C. BOH R&R 07-01 takes effect August 1, 2008.

18 D. Three bills related to nutrition labeling in restaurants were introduced in the
19 senate during the 2008 Regular Session of the Washington state legislature and referred
20 to the senate health and long-term care committee. Senate Bill 6505, concerning
21 nutrition labeling of food, would apply menu labeling regulations similar to BOH R&R
22 07-01 statewide. Senate Bill 6786, creating a legislative task force on menu labeling,
23 would study current efforts on menu labeling around the state and the country. Senate
24 Bill 6659, addressing the availability of nutrition information, would require chain food
25 establishments to make nutrition information available upon request and would make null
26 and void BOH R&R 07-01. The bill would also prohibit local boards of health statewide
27 from adopting rules and regulations regarding menu labeling or nutrition information.

28 E. One bill related to nutrition labeling in restaurants was introduced in the house
29 of representatives during the 2008 Regular Session of the Washington state legislature
30 and referred to the house of representatives commerce and labor committee. House Bill
31 3160, addressing the availability of nutrition information, a companion to Senate Bill
32 6659, would require chain food establishments to make nutrition information available
33 upon request and would make null and void BOH R&R 07-01. The bill would also
34 prohibit local boards of health statewide from adopting rules and regulations regarding
35 menu labeling or nutrition information.

36 F. House Bill 3160 was amended and passed out of the house of representatives
37 commerce and labor committee as Substitute House Bill 3160 on February 7, 2008.

38 G. Substitute House Bill 3160 was amended and passed out of the senate rules
39 committee as Engrossed Substitute House Bill 3160 on February 19, 2008.

40 H. Engrossed Substitute House Bill 3160 was adopted by the house of
41 representatives on February 19, 2008. As amended, Engrossed Substitute House Bill
42 3160 would establish a state legislative task force on nutrition information disclosure and
43 place a moratorium on enforcement of BOH R&R 07-01 until April 26, 2009. The bill
44 would also prohibit local boards of health from adopting rules and regulations regarding
45 menu labeling or nutrition information disclosure until April 26, 2009.

46 I. Engrossed Substitute House Bill 3160 was referred to the senate government
47 operations and elections committee on February 21, 2008.

48 J. The King County Board of Health held a regular meeting on February 21,
49 2008. The board was briefed on the various bills and actions in the state legislature with
50 regard to menu labeling and nutrition information disclosure and the possibility that the
51 State could make BOH R&R 07-01 null and void or place a moratorium on its
52 enforcement.

53 K. The senate government operations and elections committee amended
54 Engrossed House Substitute Bill 3160 to remove the moratorium on local rules and
55 regulations and passed it on February 29, 2008.

56 L. The amended bill was placed on second reading in the senate rules committee
57 on March 5, 2008.

58 M. Before any final action that might be taken in the senate on Engrossed
59 Substitute House Bill 3160, the committee or the full senate could choose to amend the
60 bill to place in it provisions which would make null and void BOH R&R 07-01 or would
61 prohibit local boards of health from enacting or enforcing local rules and regulations
62 regarding menu labeling and nutrition information disclosure.

63 N. During hearings on House Bill 3160 on February 7, 2008, the house of
64 representatives commerce and labor committee heard testimony on House Bill 3160.
65 Representatives of the Washington Restaurant Association and Motion Picture Exhibitors
66 testified in support of the bill. Representatives of King County, the King County Board
67 of Health, the Washington state Board of Health, the Washington Association of
68 Counties, the Washington Association of Local Public Health Officials, the Washington
69 Association of Local WIC Agencies, the American Diabetes Association and the
70 American Heart Association testified in opposition to the bill.

71 O. The chair of the house of representatives commerce and labor committee
72 requested that representatives from King County and the Washington Restaurant
73 Association lead an effort to negotiate an agreement among the parties in support and in
74 opposition of the bill.

75 P. The parties met several times beginning on February 14, 2008.

76 Q. The meetings resulted in an agreement that was executed on March 8, 2008,
77 among the chair of the King County Board of Health, the director of the Seattle-King
78 County department of health and the Washington Restaurant Association.

79 R. In the agreement, the Washington Restaurant Association agrees to request
80 that the state legislature not take action on Engrossed Substitute House Bill 3160 and
81 agrees to not be a party to any lawsuit directed at King County regarding rules and
82 regulations established by the King County Board of Health on nutrition labeling in chain
83 food establishments.

84 S. In the agreement, the chair of the King County Board of Health commits to
85 holding a meeting before the end of the 2008 Regular Session of the Washington state

86 legislature to take action on amendments to BOH R&R 07-01 as negotiated with the
87 Washington Restaurant Association.

88 T. The last day of the 2008 Regular Session of the Washington state legislature is
89 Thursday, March 13, 2008.

90 U. A special meeting of the King County Board of Health is scheduled for March
91 12, 2008, in order to comply with the agreement.

92 V. The King County Board of Health finds that immediate action is necessary
93 under the emergency provisions of the King County Board of Health operating rules to
94 comply with the agreement and to avoid action by the state legislature that would make
95 null and void BOH R&R 07-01 or place a moratorium on its enforcement.

96 W. The King County Board of Health intends to take action on the provisions of
97 this rule and regulation under its regular rulemaking authority at its April 17, 2008,
98 regular meeting.

99 SECTION 2. BOH R&R 07-01, Section 1, and BOH 5.10.005 are each hereby
100 amended to read as follows:

101 **Chapter definitions.** In addition to the definitions in BOH ((C))chapter 5.04, the
102 definitions in this section apply throughout this chapter unless the context clearly requires
103 otherwise.

104 A. "Chain food establishment" means any one of at least ((ten)) fifteen food
105 establishments within the United States doing business under the same name and
106 collectively having at least one million dollars in gross annual sales and offering for sale
107 substantially the same menu items, regardless of whether the food establishments are subject
108 to the same ownership or type of ownership. For the purposes of this chapter, "chain food

109 establishment" excludes grocery stores and convenience stores. "Chain food establishment"
110 includes any chain food establishment located within another business, regardless of
111 whether that business is also a chain food establishment or grocery store or convenience
112 store.

113 B. "Condiment" means a sauce or seasoning including but not limited to ketchup,
114 mustard, hot sauce, tartar sauce and similar items offered for general use with or without
115 charge.

116 C. "Menu" means a printed list or pictorial display of a food item or items
117 available for sale from a food establishment and includes menus distributed or provided
118 outside of the establishment for purposes of ordering. "Menu" does not include printed
119 or pictorial materials posted in establishments for the purpose of marketing.

120 D. "Menu board" means any list or pictorial display of a food item or items
121 posted in and visible within a food establishment or outside of a food establishment for
122 the purpose of ordering. "Menu board" does not include printed or pictorial materials
123 posted in establishments for the purpose of marketing.

124 E. "Point of ordering" means the location at a chain food establishment where
125 consumers place their orders for menu items.

126 F. "Reasonable basis" or "reasonable bases" means any reliable and verifiable
127 calorie and nutrient analysis of a standard menu item, which may include the use of
128 calorie and nutrient databases, cookbooks, laboratory analyses and other reliable and
129 verifiable methods of analysis.

130 G. "Standard menu item" means food offered for sale for more than ((sixty))
131 ninety days per year(~~(, except for foods offered in a salad bar, buffet line, cafeteria~~

132 service or similar self-serve arrangement, and condiments)) and includes only those items
133 served in at least fifteen locations of a chain. "Standard menu item" does not include:

134 1. Food offered for sale identified only by one or more food tags. "Food tags"
135 means labels or tags that identify any food item displayed for sale such as in a display
136 case;

137 2. Unopened prepackaged foods;

138 3. Condiments;

139 4. Unique or location-specific food or meal items offered at fewer than fifteen
140 locations of a chain;

141 5. Foods offered in a salad bar, buffet line, cafeteria service or similar self-serve
142 arrangement. "Similar self-serve arrangement" means a food service location where
143 consumers may themselves take foods from a counter, display case or hot or cold holding
144 containers;

145 6. Foods served by weight or custom-ordered quantity;

146 7. Customized orders requested by consumers that change the standard menu
147 item;

148 8. Garnishes, such as a slice of lemon or a sprig of parsley.

149 H. "Standard recipe" means a recipe or formula used in preparing a menu item or
150 meal that is consistent from one establishment to the next in a chain.

151 I. "Substantially the same menu items" means eighty percent or more of the menu
152 items served in at least fifteen locations of a chain food establishment are the same and are
153 prepared using a standard recipe. Beverages that are prepared on site using a chain's
154 standard recipe are to be included as menu items for the purposes of calculating whether a

155 chain food establishment meets the definition of serving substantially the same menu items.

156 Other types of beverages are not included in this calculation.

157 SECTION 3. BOH R&R 07-01, Section 2, and BOH 5.10.015 are each hereby
158 amended to read as follows:

159 **Food nutrition labeling requirements.**

160 A. Nutrition labeling of food required. Each chain food establishment shall make
161 nutrition labeling of food available to consumers for all standard menu items as required
162 by this ~~((section))~~ chapter. The nutrition labeling of food shall include, but not be limited
163 to, the total number of calories and nutrients as follows, per standard menu item, as
164 usually prepared and offered for sale, including condiments routinely added to a menu
165 item as part of a standard recipe:

- 166 1. Total number of calories;
- 167 2. ~~((Total number of grams of trans fat;~~
- 168 ~~3-))~~ Total number of grams of saturated fat;
- 169 ~~((4-))~~ 3. Total number of grams of carbohydrate; and
- 170 ~~((5-))~~ 4. Total number of milligrams of sodium.

171 B. Nutrition labeling of food on menus. Each chain food establishment that
172 provides a menu shall provide the nutrition labeling of food required under subsection A,
173 of this section next to each standard menu item on the menu. The nutrition labeling shall
174 be easily readable, in a ~~((size and))~~ typeface similar to other information about each
175 standard menu item, and in a font no less than nine point. The menu shall include, in a
176 clear and conspicuous manner, the following statement: "~~Recommended limits for a~~
177 2,000-calorie daily diet For a typical adult who consumes 2,000 calories a day, the

178 recommended limits are 20 grams of saturated fat and 2,300 milligrams of sodium."
179 ~~((Each chain food establishment offering standard menu items containing artificial trans~~
180 ~~fat shall addend the statement to include: "Eating artificial trans fat increases risk of heart~~
181 ~~disease."))~~

182 C. Nutrition labeling of food on menu boards. Each chain food establishment
183 that uses a menu board shall post on the menu board the total number of calories per
184 standard menu item. The nutrition labeling shall be in a size that is easily readable and a
185 typeface similar to other information on the menu board about the item. This type of
186 chain food establishment shall make the other nutrition labeling of food required under
187 subsection A. of this section and the statement under subsection B. of this section
188 available on printed menus, pamphlets, brochures, posters or similar documents that are
189 plainly visible to consumers at the point of ordering.

190 D. Other methods of providing nutrition information. In lieu of the placement
191 requirements for nutrition labeling in sections B. and C. of this section, a chain food
192 establishment may provide nutrition labeling through an approved alternative or approved
193 substantially equivalent method as described in section 4 or section 5 of this regulation.

194 E. Additional nutrition labeling of food permitted. Nothing in this section
195 precludes food establishments from providing additional nutrition labeling of food
196 voluntarily.

197 ~~((E. Substantially equivalent methods of providing notice to consumers of~~
198 ~~nutrition information. The health officer may allow chain food establishments to provide~~
199 ~~nutrition labeling of food in a format that, in the discretion of the health officer, provides~~

200 substantially equivalent notice to consumers, at the point of ordering, of nutrition
201 information as is required by subsections B or C of this section.))

202 F. Standards for calorie and nutrient analysis. Chain food establishments shall
203 perform or obtain the required calorie and nutrient analysis using reasonable bases ((;
204 including nutrient data bases, cookbooks, or other analyses that assure the accuracy of the
205 nutrition labeling)). Calorie and nutrient analysis using reasonable bases is required once
206 per standard food item, provided that portion size is reasonably consistent and the food
207 service establishment follows a standard recipe and trains to a consistent method of
208 preparation. Chain food establishment owners or operators shall provide to the health
209 officer, if requested, ((information documenting the accuracy of the nutrition labeling
210 provided to consumers)) documentation of the reasonable bases of calorie and nutrient
211 analysis for purposes of enforcement of this regulation. ((A nutrition label shall be
212 deemed out of compliance with this section if it bears, for calories or any nutrient for
213 which labeling is required under subsection A of this section, a total number value that is
214 more than twenty percent lower or higher than nutrient analysis shows as the content of
215 the menu item.))

216 G. Disclaimer for nutrition content variation. The nutrition labeling of food
217 required under subsection A₂ of this section may be presented with a disclaimer stating
218 that there may be variations in nutrition content across servings, based on slight
219 variations in overall serving size or quantity of ingredients, or based on special ordering.

220 H. Identification of chain food establishment status. Each food establishment
221 shall identify whether or not it is a chain food establishment by a method approved by the
222 health officer.

223 NEW SECTION. SECTION 4. There is hereby added to BOH chapter 5.10 a
224 new section to read as follows:

225 **Approved alternative methods of nutrition labeling.**

226 A. Approved alternative methods of nutrition labeling for chain food
227 establishments that provide menus. A chain food establishment that provides a menu
228 may provide nutrition labeling through one of the approved alternative methods listed in
229 this subsection in lieu of the placement requirements in BOH 5.10.015.B., but only if a
230 statement clearly and prominently appears on each page of the menu stating the location
231 and specific method through which nutrition information is available and only if the
232 alternative method of nutrition labeling is available at each point of ordering.

233 1. Approved alternative methods for nutrition labeling on the menu are:

234 a. a menu insert. A menu insert shall be placed within each menu or shall be
235 presented by the server with the menu. A menu insert shall provide the nutrition
236 information required by this chapter next to each standard menu item. The nutrition
237 information shall be easily readable and in a font no less than nine point. A menu insert
238 shall list food categories and food items in the same order as these appear on the menu.
239 A menu insert is not required to contain photos or menu item descriptions that appear on
240 the menu;

241 b. a menu appendix. A menu appendix shall be attached in the back of the
242 menu. A menu appendix shall provide the nutrition information required by this chapter
243 next to each standard menu item. The nutrition information shall be easily readable and
244 in a font no less than nine point. A menu appendix shall list food categories and food

