



Signature Report

May 6, 2008

R&R

Proposed No. BOH08-02.2

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.

9

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

11 SECTION 1. Statements of Fact:

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 takes effect August 1, 2008 and requires chain food
16 establishments to provide nutrition information through labeling on menus and menu
17 boards.

18 C. Several bills related to nutrition labeling in restaurants were introduced during
19 the 2008 Regular Session of the Washington state legislature. House Bill 3160,
20 addressing the availability of nutrition information, would have required chain food
21 establishments to make nutrition information available upon request and would have
22 made null and void BOH R&R 07-01. The bill also would have prohibited local boards
23 of health statewide from adopting rules and regulations regarding menu labeling or
24 nutrition information.

25 D. House Bill 3160 was amended by the house of representatives commerce and
26 labor committee and adopted by the house of representatives as Engrossed Substitute
27 House Bill 3160. After being amended by the senate government operations and
28 elections committee, the bill was placed on second reading in the senate rules committee.

29 E. The chair of the house of representatives commerce and labor committee
30 requested that representatives from King County and the Washington Restaurant
31 Association lead an effort to negotiate an agreement among the parties in support of and
32 in opposition to the bill.

33 F. The negotiations resulted in an agreement that was executed on March 8,
34 2008, among the chair of the King County Board of Health, the director and health
35 officer of the Seattle-King County department of health and the Washington Restaurant
36 Association.

37 G. In the agreement, the Washington Restaurant Association agrees to request
38 that the state legislature not take action on Engrossed Substitute House Bill 3160 and
39 agrees to not be a party to any lawsuit directed at King County regarding rules and

40 regulations established by the King County Board of Health on nutrition labeling in chain
41 food establishments.

42 H. In the agreement, the chair of the King County Board of Health commits to
43 holding a meeting before the end of the 2008 Regular Session of the Washington state
44 legislature to take action on amendments to BOH R&R 07-01 as negotiated with the
45 Washington Restaurant Association.

46 I. A special meeting of the King County Board of Health was held on March 12,
47 2008, in order to comply with the agreement. At the meeting, the Board of Health
48 adopted BOH R&R 08-01, making amendments to BOH R&R 07-01 as negotiated with
49 the Washington Restaurant Association.

50 J. The Board of Health adopted BOH R&R 08-01 as an emergency rule and
51 regulation in order to comply with the agreement and to avoid action by the state
52 legislature that would make null and void BOH R&R 07-01 or place a moratorium on its
53 enforcement.

54 K. Emergency rules and regulations of the Board of Health lapse after ninety
55 days.

56 L. By transmittal of this rule and regulation, the Seattle-King County department
57 of health fulfills its commitment in the agreement to propose for adoption by the Board of
58 Health under its regular rulemaking authority the amendments to BOH R&R 07-01 that
59 were adopted by the Board of Health in emergency rule and regulation BOH R&R 08-01.

60 M. In BOH R&R 08-01, the Board of Health indicated its intent to take action on
61 the provisions of the emergency rule and regulation BOH R&R 08-01 under its regular
62 rulemaking authority at its April 17, 2008 regular meeting. The Board of Health also

63 indicated its intent to consider any additional technical amendments negotiated by the
64 parties to the agreement.

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

67 **Chapter definitions.** In addition to the definitions in BOH ((€))chapter 5.04, the
68 definitions in this section apply throughout this chapter unless the context clearly requires
69 otherwise.

70 A. "Chain (~~(food establishment))~~ restaurant" means any one of at least ~~((ten))~~ fifteen
71 ~~((food establishments))~~ restaurants within the United States doing business under the same
72 name and collectively having at least one million dollars in gross annual sales and offering
73 for sale substantially the same menu items, regardless of whether the ~~((food establishments))~~
74 restaurants are subject to the same ownership or type of ownership. "Restaurant" means a
75 food establishment at which any prepared, un-prepackaged foods are offered for sale and
76 consumption on or off the premises such as, for example, sit-down restaurants, cafes, coffee
77 stands, and fast-food outlets, but not grocery stores or movie theatres. For the purposes of
78 this chapter, "grocery store" means a store primarily engaged in the retail sale of canned
79 foods, dry goods, fresh fruits and vegetables, and fresh and prepared meats, fish, and
80 poultry, and includes convenience stores. "Chain restaurant" includes any chain restaurant
81 located within another business, regardless of whether the business within which it is located
82 is subject to this regulation.

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

86 C. "Menu" means a printed list or pictorial display of a food item or items
87 available for sale from a restaurant and includes menus distributed or provided outside of
88 the restaurant for purposes of ordering. "Menu" does not include printed or pictorial
89 materials for the purpose of marketing.

90 D. "Menu board" means any list or pictorial display of a food item or items
91 posted in and visible within a restaurant or outside of a restaurant for the purpose of
92 ordering. "Menu board" does not include printed or pictorial materials for the purpose of
93 marketing.

94 E. "Point of ordering" means the location at a chain restaurant where consumers
95 place their orders for menu items.

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

100 G. "Standard menu item" means food offered for sale for more than ((sixty))
101 ninety days per year ((, except for foods offered in a salad bar, buffet line, cafeteria
102 service or similar self-serve arrangement, and condiments)) and includes only those items
103 served in at least fifteen locations of a chain. "Standard menu item" does not include:

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

107 2. Unopened prepackaged foods;

108 3. Condiments;

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

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

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

116 7. Customized orders requested by consumers that change the standard menu
117 item;

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

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

121 I. "Substantially the same menu items" means eighty percent or more of the menu
122 items served in at least fifteen locations of a chain restaurant are the same and are prepared
123 using a standard recipe. Beverages that are prepared on site using a chain's standard recipe
124 are to be included as menu items for the purposes of calculating whether a chain restaurant
125 meets the definition of serving substantially the same menu items. Other types of beverages
126 are not included in this calculation.

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

129 **Food nutrition labeling requirements.**

130 A. Nutrition labeling of food required. Each chain (~~food establishment~~)
131 restaurant shall make nutrition labeling of food available to consumers for all standard

132 menu items as required by this ~~((section))~~ chapter. The nutrition labeling of food shall
133 include, but not be limited to, the total number of calories and nutrients as follows, per
134 standard menu item, as usually prepared and offered for sale, including condiments
135 routinely added to a menu item as part of a standard recipe:

- 136 1. Total number of calories;
- 137 2. ~~((Total number of grams of trans fat;~~
- 138 3.)) Total number of grams of saturated fat;
- 139 ~~((4.))~~ 3. Total number of grams of carbohydrate; and
- 140 ~~((5.))~~ 4. Total number of milligrams of sodium.

141 B. Nutrition labeling of food on menus. Each chain ~~((food establishment))~~
142 restaurant that provides a menu shall provide the nutrition labeling of food required under
143 subsection A₂ of this section next to each standard menu item on the menu. The nutrition
144 labeling shall be easily readable, in a ~~((size and))~~ typeface similar to other information
145 about each standard menu item, and in a font no less than nine point. The menu shall
146 include, in a clear and conspicuous manner, the following statement: "The Dietary
147 Guidelines for Americans recommend limiting saturated fat to 20 grams and sodium to
148 2,300 milligrams for a typical adult eating 2,000 calories daily. Recommended limits
149 may be higher or lower depending upon daily calorie consumption." ~~((Recommended~~
150 ~~limits for a 2,000-calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of~~
151 ~~sodium.~~" Each chain food establishment offering standard menu items containing
152 artificial trans fat shall add the statement to include: "Eating artificial trans fat
153 increases risk of heart disease."))

154 C. Nutrition labeling of food on menu boards. Each chain ((~~food establishment~~)
155 restaurant that uses a menu board shall post on the menu board the total number of
156 calories per standard menu item. The nutrition labeling shall be in a font size and
157 typeface that is at least as prominent as that used to post prices of menu items on the
158 menu board ((~~similar to other information on the menu board about the item~~)). This type
159 of chain ((~~food establishment~~)) restaurant shall make the other nutrition labeling of food
160 required under subsection A. of this section and the statement under subsection B. of this
161 section available on easily readable printed ((~~menus~~)) pamphlets, brochures, posters or
162 similar documents that are plainly visible to consumers at the point of ordering.

163 D. Other methods of providing nutrition information. In lieu of the placement
164 requirements for nutrition labeling in subsections B. and C. of this section, a chain
165 restaurant may provide nutrition labeling through an approved alternative or approved
166 substantially equivalent method as described in section 4 or section 5 of this regulation.

167 E. Additional nutrition labeling of food permitted. Nothing in this section
168 precludes ((~~food establishments~~)) restaurants from providing additional nutrition labeling
169 of food voluntarily.

170 ((~~E. Substantially equivalent methods of providing notice to consumers of~~
171 ~~nutrition information. The health officer may allow chain food establishments to provide~~
172 ~~nutrition labeling of food in a format that, in the discretion of the health officer, provides~~
173 ~~substantially equivalent notice to consumers, at the point of ordering, of nutrition~~
174 ~~information as is required by subsections B or C of this section.~~))

175 F. Standards for calorie and nutrient analysis. Chain ((~~food establishments~~))
176 restaurants shall perform or obtain the required calorie and nutrient analysis using

177 reasonable bases (~~(, including nutrient data bases, cookbooks, or other analyses that~~
178 ~~assure the accuracy of the nutrition labeling)~~). Calorie and nutrient analysis using
179 reasonable bases is required once per standard food item, provided that portion size is
180 reasonably consistent and the restaurant follows a standard recipe and trains to a
181 consistent method of preparation. Chain (~~(food establishment)~~) restaurant owners or
182 operators shall provide to the health officer, if requested, (~~(information documenting the~~
183 ~~accuracy of the nutrition labeling provided to consumers)~~) documentation of the
184 reasonable bases of calorie and nutrient analysis for purposes of enforcement of this
185 regulation. (~~(A nutrition label shall be deemed out of compliance with this section if it~~
186 ~~bears, for calories or any nutrient for which labeling is required under subsection A of~~
187 ~~this section, a total number value that is more than twenty percent lower or higher than~~
188 ~~nutrient analysis shows as the content of the menu item.)~~)

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

193 H. Identification of chain restaurant status. Each food establishment shall
194 identify whether or not it is a chain restaurant by a method approved by the health officer.

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

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

198 A. Approved alternative methods of nutrition labeling for chain restaurants that
199 provide menus. A chain restaurant that provides a menu may provide nutrition labeling

200 through one of the approved alternative methods listed in this subsection in lieu of the
201 placement requirements in BOH 5.10.015.B., but only if a statement clearly and
202 prominently appears on each page of the menu stating the location and specific method
203 through which nutrition information is available and only if the alternative method of
204 nutrition labeling is available at each point of ordering.

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

206 a. a menu insert. A menu insert shall be placed within each menu or shall be
207 presented by the server with the menu. A menu insert shall provide the nutrition
208 information required by this chapter next to each standard menu item. The nutrition
209 information shall be easily readable and in a font no less than nine point. A menu insert
210 shall list food categories and food items in the same order as these appear on the menu.
211 A menu insert is not required to contain photos or menu item descriptions that appear on
212 the menu;

213 b. a menu appendix. A menu appendix shall be attached in the back of the
214 menu. A menu appendix shall provide the nutrition information required by this chapter
215 next to each standard menu item. The nutrition information shall be easily readable and
216 in a font no less than nine point. A menu appendix shall list food categories and food
217 items in the same order as these appear on the menu. A menu appendix is not required to
218 contain photos or menu item descriptions that appear on the menu;

219 c. a supplemental menu. A supplemental menu similar in general appearance
220 to the menu shall be available at each point of ordering or shall be presented by the server
221 with the menu. A supplemental menu shall provide the nutrition information required by
222 this chapter next to each standard menu item. The nutrition labeling shall be easily

223 readable, in a typeface similar to the menu, and in a font no less than nine point. A
224 supplemental menu shall list food categories and food items in the same order as these
225 appear on the menu. A supplemental menu is not required to contain photos or menu
226 item descriptions that appear on the menu; and

227 d. electronic kiosks. An electronic kiosk shall be available at each point of
228 ordering. An electronic kiosk shall provide the nutrition information required by this
229 chapter for each standard menu item. The nutrition labeling shall be easily readable and
230 shall be presented in a manner such that consumers can easily view in one place and
231 compare nutrition information for similar menu items. An electronic kiosk shall present
232 food categories and food items in the same order as they appear on the menu.

233 2. Each of the approved alternative methods for nutrition labeling on the menu
234 shall include, in a clear and conspicuous manner, the following statement: "The Dietary
235 Guidelines for Americans recommend limiting saturated fat to 20 grams and sodium to
236 2,300 milligrams for a typical adult eating 2,000 calories daily. Recommended limits
237 may be higher or lower depending upon daily calorie consumption."

238 3. A chain restaurant that provides a menu and uses an approved alternative
239 method for nutrition labeling on the menu shall also provide consumers in the restaurant
240 who are ordering menu items for carryout with access to nutrition labeling that is
241 equivalent to that provided for all other consumers.

242 B. Approved alternative methods of nutrition labeling for chain restaurants that
243 use menu boards. A chain restaurant that uses a menu board may provide nutrition
244 labeling through one of the approved alternative methods listed in this subsection in lieu
245 of the placement requirements in BOH 5.10.015.C.

246 1. Approved alternative methods for labeling of calories. A chain restaurant
247 may use one of the following approved alternative methods in lieu of posting calorie
248 information on menu boards, but only if the chain restaurant provides the other nutrition
249 labeling in accordance with the provisions for nutrient labeling in this chapter.

250 a. a sign adjacent to the menu board. A sign adjacent to the menu board shall
251 appear on the same wall as the menu board and shall be in the same field of vision as the
252 menu board viewed by consumers at the point of ordering. A sign adjacent to the menu
253 board shall provide the calorie labeling required by this chapter next to each standard
254 menu item. The calorie labeling shall be in a font size and typeface that is at least as
255 prominent as that used to post prices of menu items on the menu board. A sign adjacent
256 to the menu board shall be easily readable and shall list food categories and food items in
257 the same order as these appear on the menu board; and

258 b. a sign in queue at eye level. A sign in queue at eye level shall be no less
259 than two feet by three feet, shall be posted with the bottom of the sign no lower than four
260 feet and the top of the sign no higher than eight feet from the ground, and shall be in clear
261 view to consumers in queue, whether standing or in a drive-through, at or before the point
262 of ordering. A sign in queue shall provide the calorie labeling required by this chapter
263 next to each standard menu item. A sign in queue shall be easily readable, in a typeface
264 similar to the menu board, and in a font no less than forty point.

265 2. Approved alternative method for providing nutrition information other than
266 calories to consumers in a drive-through. A chain restaurant may provide the other
267 nutrition labeling to consumers in queue in a drive-through at the first window of the
268 drive-through or at another location where it is easily accessible to drive-through

269 consumers in lieu of the requirement in BOH 5.10.015.C. that it be plainly visible to
270 consumers at the point of ordering, but only if the chain restaurant provides calorie
271 labeling to consumers in a drive-through in accordance with the provisions for calorie
272 labeling in this chapter.

273 C. Other approved alternative methods of nutrition labeling.

274 1. Approved alternative method of nutrition labeling for alcoholic beverages.

275 An approved alternative method for nutrition labeling of each alcoholic beverage is to
276 collectively label alcoholic beverages in a clear and prominent position using the average
277 nutritional values for beers, wines and spirits. Nutrition labeling of alcoholic beverages
278 collectively shall otherwise be in accordance with the provisions for calorie and nutrient
279 labeling in this chapter.

280 a. Chain restaurants that collectively label alcoholic beverages shall use the
281 following average nutritional values:

282 (1) wine – 5 ounces: 122 calories; 4 grams carbohydrate; 7 milligrams
283 sodium;

284 (2) regular beer – 12 ounces: 153 calories; 13 grams carbohydrate; 14
285 milligrams sodium;

286 (3) light beer – 12 ounces: 103 calories; 6 grams carbohydrate; 14 milligrams
287 sodium; and

288 (4) distilled spirits (80 proof gin, rum, vodka, or whiskey) – 1.5 ounces: 96
289 calories.

290 b. Chain restaurants that collectively label alcoholic beverages may add to the
291 nutrition labeling the following statement: "Signature drinks or liqueurs with added
292 ingredients may increase caloric content."

293 2. Approved alternative method of nutrition labeling for combination meals that
294 are posted on a menu board. A combination meal means a standard menu item that is
295 comprised of two or more food items with options of food items. Chain restaurants may
296 use the following approved alternative method of nutrition labeling for combination
297 meals that are posted on a menu board. An approved alternative method for nutrition
298 labeling of calories and nutrient values for each possible combination of food items
299 offered in a combination meal is to provide calorie labeling for a combination meal that
300 uses a range of the lowest and highest values of calorie content among all possible
301 combinations of food items offered in a combination meal. Labeling of other nutrient
302 values for combination meals is not required, but only if nutrition labeling is provided for
303 the individual food items that comprise a combination meal. Nutrition labeling using
304 calorie ranges shall otherwise be in accordance with the provisions for calorie labeling in
305 this chapter.

306 NEW SECTION. SECTION 5. There is hereby added to BOH chapter 5.10 a
307 new section to read as follows:

308 **Approval process for proposed substantially equivalent methods of nutrition**
309 **labeling.**

310 A. A chain restaurant may propose a method of nutrition labeling not otherwise
311 identified in BOH chapter 5.10 for approval by the health officer as a substantially
312 equivalent method for use in lieu of requirements in BOH 5.10.015.B or C. A chain

313 restaurant shall obtain approval from the health officer of any proposed substantially
314 equivalent method for nutrition labeling before implementation.

315 B. A chain restaurant shall seek approval of a proposed substantially equivalent
316 method by submitting a written proposal to the health officer that demonstrates how the
317 proposed method is expected to allow for consumers at the point of ordering to:

- 318 1. Perceive that nutrition information is readily available;
- 319 2. Encounter nutrition information routinely and automatically; and
- 320 3. Access nutrition information in a manner that does not interrupt the normal
321 flow of business.

322 C. The written proposal shall include documentation of at least one of the
323 following:

- 324 1. Sample nutrition labeling materials or other documents such as photographs
325 that demonstrate that the form in which nutrition information would be provided to
326 consumers is substantially equivalent to BOH 5.10.015.B. or C.
- 327 2. Existing data and other evidence from customer surveys that demonstrate that
328 the proposed nutrition labeling method results in a percentage of consumers who see
329 nutrition information before placing their order that is equal to or higher than the
330 percentage in the menu labeling equivalency benchmark established in accordance with
331 this subsection.

- 332 a. Customer surveys used to support a proposed substantially equivalent
333 method must be conducted independently by professionals using scientifically valid
334 survey methods, including the use of random sampling methods to conduct customer
335 assessments.

336 b. Pending the results of menu labeling research, the health officer establishes
337 a preliminary menu labeling equivalency benchmark as seventy-five percent of
338 consumers see nutrition information in the chain restaurant before placing their orders.
339 The health officer shall collaborate with the restaurant industry in revising the
340 preliminary benchmark based on scientifically valid menu labeling research.

341 3. A plan for evaluation of the proposed method and timeline for the submittal
342 to the health officer of the data and other results of the evaluation. The evaluation plan
343 shall be based on scientifically valid customer surveys that meet the requirements of
344 subsection C.2.a. of this section.

345 D. The health officer may request that additional information be submitted before
346 a proposal is considered for approval.

347 E. The health officer may approve a substantially equivalent method conditional
348 on changes to the proposed method.

349 F. The health officer may limit approval of a substantially equivalent method to
350 use in one chain and for a limited time.

351 G. Where an approved method may be applicable to several chain restaurants, the
352 health officer shall propose these methods to the Board of Health for inclusion in this
353 regulation as approved substantially equivalent methods of nutrition labeling.

354 H. Any changes in form to an approved substantially equivalent method require
355 submittal of a new written proposal and approval by the health officer before
356 implementation.

357 SECTION 6. BOH R&R 07-01, Section 3, and BOH 5.10.025 are each hereby
358 amended to read as follows:

359 **Enforcement – Nutrition labeling.**

360 A. The director of the Seattle-King County department of public health or his or
361 her authorized representative is authorized to enforce the nutrition labeling requirements
362 of this chapter in accordance with the food establishment inspection and other
363 enforcement provisions of BOH chapters 5.02 and 5.60 ((of this title)).

364 B. If the health officer questions the accuracy of nutrition labeling for a menu
365 item, the health officer may refer a nutrition professional from the Seattle-King County
366 department of public health to the restaurant to review and determine if the nutrition
367 information requires correcting. The health officer shall verify any required corrections
368 at the next regular inspection.

369 C. From August 1, 2008, through December 31, 2008, a chain restaurant shall not
370 be deemed to be in violation of BOH 5.10.015.B. and C. if the restaurant provides
371 documentation that it has taken steps to obtain calorie and nutrient analysis of standard
372 menu items and create nutrition labeling.

373 D. From August 1, 2008, through August 1, 2009, a chain restaurant shall not be
374 deemed to be in violation of BOH 5.10.015.B. and C. as it applies to drive-through menu
375 boards.

376 SECTION 7. The King County Board of Health intends to encourage the county
377 and cities and towns in the county to review and streamline, where appropriate, their
378 permitting requirements, including costs, that could apply to signage needed for the
379 purposes of complying with this regulation.

380 SECTION 8. If any provision of this regulation or its application to any person or
381 circumstance is held invalid, the remainder of the regulation or the application of the
382 provision to other persons or circumstances is not affected.

383 SECTION 9. Sections 2 through 6 of this regulation take effect August 1, 2008.

384

R&R was introduced on 4/17/2008 and passed by the Board of Health on 4/17/2008, by the following vote:

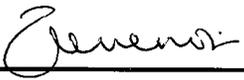
Yes: 10 - Mr. Ferguson, Ms. Lambert, Ms. Patterson, Mr. von Reichbauer,
Mr. Dunn, Ms. Clark, Mr. Sherman, Mr. Hutchinson, Dr. Counts and Mr.
Gossett
No: 0
Excused: 5 - Mr. Rasmussen, Ms. Frisinger, Dr. Nicola, Ms. Manning and Mr.
Licata

BOARD OF HEALTH
KING COUNTY, WASHINGTON



Julia Patterson, Chair

ATTEST:



Anne Noris, Clerk of the Board

Attachments None