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..Title

A RULE AND REGULATION relating to the protection of the public health through the nutrition information disclosure of food; amending R&R 07-01, Section 3, as amended, and BOH 5.10.025, adding new sections to BOH chapter 5.10 and suspending R&R 07-01, Section 1, as amended, and BOH 5.10.005, R&R 07-01, Section 2, as amended, and BOH 5.10.015, R&R 08-02, Section 4, and BOH 5.10.022 and BOH R&R 08-02, Section 5, and 5.10.023; enacted pursuant to RCW 70.05.060, including the latest amendments or revisions thereto.

..Body

BE IT ADOPTED BY THE KING COUNTY BOARD OF HEALTH:

**SECTION 1. Statement of fact:** The King County Board of Health intends that restaurants in King County have a transition period during which they may continue providing menu labeling as described in BOH 5.10.015 and 5.10.022 while preparing to comply with new national requirements for nutrition labeling by chain restaurants. This transition period may last until the effective date of regulations to be promulgated by the federal Food and Drug Administration.

**NEW SECTION. SECTION 2.** There is hereby added to BOH chapter 5.10 a new section to read as follows:

The operation and effect of Code of King County Board of Health Sections 5.10.005, 5.10.015, 5.10.022 and 5.10.023 is suspended.

NEW SECTION. SECTION 3. There is hereby added to BOH chapter 5.10 a new section to read as follows:

**Nutrition labeling of standard menu items at chain restaurants.**

A. General requirements for chain restaurants. Except for food described in subsection D. of this section, in the case of food that is a standard menu item that is offered for sale in a restaurant that is part of a chain with fifteen or more locations doing business under the same name, regardless of the type of ownership of the locations, and offering for sale substantially the same menu items, a restaurant shall disclose the information described in subsections B. and C. of this section.

B. Information required to be disclosed by restaurants. Except as provided in subsection D. of this section, a restaurant shall disclose in a clear and conspicuous manner:

1. In a nutrient content disclosure statement adjacent to the name of the standard menu item, so as to be clearly associated with the standard menu item, on the menu listing the item for sale, the number of calories contained in the standard menu item, as usually prepared and offered for sale; and a succinct statement concerning suggested daily caloric intake posted prominently on the menu and designed to enable the public to understand, in the context of a daily diet, the significance of the caloric information that is provided on the menu. A restaurant may use the following statement: “The Dietary Guidelines for Americans recommend limiting saturated fat to 20 grams and sodium to

2,300 milligrams for a typical adult eating 2,000 calories daily. Recommended limits may be higher or lower depending upon daily calorie consumption.”

2. In a nutrient content disclosure statement adjacent to the name of the standard menu item, so as to be clearly associated with the standard menu item, on the menu board, including a drive-through menu board, the number of calories contained in the standard menu item, as usually prepared and offered for sale; and a succinct statement concerning suggested daily caloric intake posted prominently on the menu board, designed to enable the public to understand, in the context of a daily diet, the significance of the caloric information that is provided on the menu board. A restaurant may use the following statement: “The Dietary Guidelines for Americans recommend limiting saturated fat to 20 grams and sodium to 2,300 milligrams for a typical adult eating 2,000 calories daily. Recommended limits may be higher or lower depending upon daily calorie consumption.”

3. In a written form, available on the premises of the restaurant and to the consumer upon request, the following nutrition information:

a. The total number of calories derived from any source, and derived from the total fat, in each serving size or other unit of measure of the food; and

b. The amount of the following nutrients: total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fiber, and total protein contained in each serving size or other unit of measure; and

4. On the menu or menu board, a prominent, clear, and conspicuous statement regarding the availability of the information described in subsection B.3.a. and b. of this section.

C. Reasonable basis. For the purposes of this section, a restaurant shall have a reasonable basis for its nutrient content disclosures, including nutrient databases, cookbooks, laboratory analyses, and other reasonable means, as described in section 101.10 of title 21, Code of Federal Regulations (or any successor regulation) or in a related guidance of the Food and Drug Administration.

D. Nonapplicability to certain food – In General. Subsections A. through C. of this section do not apply to:

1. Items that are not listed on a menu or menu board, such as condiments and other items placed on the table or counter for general use;
2. Daily specials, temporary menu items appearing on the menu for less than sixty days per calendar year or custom orders;
3. Such other food that is part of a customary market test appearing on the menu for less than ninety days.

E. Definition. For the purposes of this section, "menu" or "menu board" means the primary writing of the restaurant from which a consumer makes an order selection.

SECTION 4. R&R 07-01, Section 3, as amended, and BOH 5.10.025 are each hereby amended to read as follows:

**Enforcement – ((N))nutrition labeling.**

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

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

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

~~D. From August 1, 2008, through August 1, 2009, a chain restaurant shall not be deemed to be in violation of BOH 5.10.015.B. and C. as it applies to drive through menu boards)) Owners and operators of chain restaurants shall have a transition period while preparing to comply with section 3 of this rule. The transition period shall commence on the effective date of this rule and remain in effect until the effective date of federal regulations adopted pursuant to Section 4205 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148.~~

D. During the transition period described in subsection C. of this section, the owner or operator of a chain restaurant that provides a menu does not violate section 3 of this rule if the restaurant makes nutrition labeling of calories, saturated fat, carbohydrate and sodium and the dietary statement available through an alternative method described in suspended BOH 5.10.022.

E. During the transition period described in subsection C. of this section, the owner or operator of a chain restaurant that provides a menu board does not violate section 3 of this rule if the restaurant

1. Makes nutrition labeling of calories available through an alternative method described in suspended BOH 5.10.022; or

2. Makes nutrition labeling of saturated fat, carbohydrate and sodium and the dietary statement available as described in suspended BOH 5.10.015 or 5.10.022, as applicable.

**SECTION 5. Severability.** If any provision of this rule or its application to any person or circumstance is held invalid, the remainder of the rule or the application of the provision to other persons or circumstances is not affected.