

BEFORE THE BOARD OF COUNTY COMMISSIONERS
ACTING AS THE MULTNOMAH COUNTY BOARD OF HEALTH

RESOLUTION NO. 09-019

Approving the County Department of Health Rules and Regulations Implementing the Nutrition Labeling Policy

The Multnomah County Board of Health Finds:

- a. The Multnomah County Board of County Commissioners constitutes and is the policymaking body of the Multnomah County Board of Health under ORS 431.410 and 431.415.
- b. On July 31, 2008, by Order 08-114, the Board adopted a nutrition labeling policy with respect to chain restaurants.
- c. The County Department of Health has developed rules and regulations implementing this policy as directed by the Board.

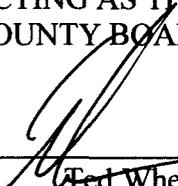
The Multnomah County Board of Health Resolves:

1. The attached Rules and Regulations implementing Order 08-114, the Chain Restaurant Nutrition Labeling Policy, are approved.

ADOPTED this 12th day of February, 2009.



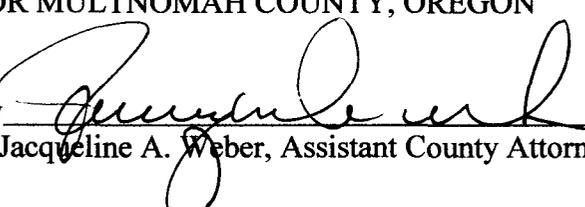
BOARD OF COUNTY COMMISSIONERS
ACTING AS THE MULTNOMAH
COUNTY BOARD OF HEALTH



Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 

Jacqueline A. Weber, Assistant County Attorney

SUBMITTED BY:

Lillian Shirley, Director, Department of Health



MULTNOMAH COUNTY HEALTH DEPARTMENT
Chain Restaurant Nutrition Labeling Policy Order 08-114
Administrative Rules

- 1.0 Purpose and policy
- 1.1 Definitions
- 1.2 Food nutrition labeling requirements
- 1.3 Enforcement

1.0 PURPOSE AND POLICY.

- A. These rules are adopted pursuant to the authority granted the Multnomah County Health Department by the Multnomah County Board of Health in Order 08-114.
- B. The purpose of this policy is to provide Multnomah County residents with basic nutrition information about prepared foods sold at chain restaurants licensed by Multnomah County Health Department. Readily available product disclosures are necessary to allow customers to make informed purchasing decisions about the food that they and their children and dependents eat. Further, product disclosures help foster free market competition based on the true nutritional quality of chain restaurants' products.
- C. Scope. These rules apply to Chain Restaurants defined in section 1.1(B) below that are licensed and inspected by Multnomah County Health Department.

1.1 DEFINITIONS. The definitions in this section apply throughout these rules unless the context clearly requires otherwise:

- A. "Restaurant" means any establishment where food or drink is prepared for consumption by the public or any establishment where the public obtains food or drink so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared, and also includes establishments that prepare food or drink in consumable form for service outside the premises where prepared, but does not include railroad dining cars, bed and breakfast facilities or temporary restaurants.
- B. "Chain Restaurant" means a Restaurant that is licensed by Multnomah County as a full service restaurant, and that is part of an affiliation of Restaurants and for which the affiliated Restaurants:
 - (1) Have at least fifteen or more restaurants within the United States;
 - (2) Sell Standard Menu Items that comprise at least eighty percent of Menu Items served in at least fifteen restaurants; and
 - (3) Operate under the same or substantially the same brand name, regardless of whether individual restaurants are subject to the same ownership or type of ownership (e.g., corporate ownership, individually-owned franchise, etc.).

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- C. “Food Product” means a discrete item of Food such as a hamburger or a soda that is offered for sale separately or as a part of a combination meal. A “Food Product” includes each different size or flavor offered. A Food Product does not include ingredients except ingredients that are sold separately, such as a slice of cheese added to a hamburger for an additional charge.
- D. “Food Tag” means any informational label placed in proximity to an individual Food Product it identifies or characterizes for example:
- (1) A label placed next to a cherry pie showing a picture of a cherry and listing the price per slice, or
 - (2) A label placed next to a container of pasta in a salad bar with the text, “Pesto Pasta Salad”.
- Food Tag is not synonymous with a Menu or a Menu Board.
- E. “Menu” means a printed or pictorial list of Food Products offered for sale. A Menu is intended to assist customers in ordering Food Products whether the ordering is done on the restaurant premises or off premises (for example, a phone-in menu or take-out menu). A menu does not include printed or pictorial materials intended for the purpose of marketing.
- F. “Menu Board” means any posted list or pictorial display of Food Products offered for sale. A Menu Board may be posted inside or outside a restaurant, and is typically designed to be visible to multiple customers, and/or visible at a moderate distance. A Menu Board is intended assist customers in ordering Food Products, and may take various forms, including but limited to, a back-lit marquee sign above an ordering counter, a chalk board or other hand-written board, or a drive-through area signboard. A Menu Board does not include posted text or pictorial materials intended for the purpose of marketing.
- G. “Menu Item” means
- (1) a single Food Product listed on a Menu, Menu Board, or Food Tag, or
 - (2) a combination of Food Products offered together on a Menu, Menu Board, or Food Tag, for example, a “kids meal” combining a hamburger, french-fries, and a carton of milk.
- H. “Standard Menu Item” means a Menu Item that is essentially the same between affiliated restaurants and prepared using a consistent standardized recipe.
- I. “Self-Service Item” means any Food Product or Menu Item that customers in a restaurant are permitted to obtain without assistance of a Restaurant employee or agent, for example, foods offered at a salad bar or buffet line. Condiments placed on a dining table or on a counter for general use without charge are not considered “Self Service Items”.

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- J. “Reasonable basis or reasonable bases” means any reliable and verifiable method for determining calorie and nutrient contents of Food Products offered for sale by the Chain Restaurant. These may include the use of calorie and nutrient databases, cookbooks, laboratory analyses, and other reliable and verifiable methods of analysis.

1.2 FOOD NUTRITION LABELING REQUIREMENTS.

- A. **Required Product Information.** Each Chain Restaurant shall accurately ascertain, and make available to customers the following product information for each Standard Menu Item, as the item is usually prepared and offered for sale, including condiments routinely added to a menu item as part of a standard recipe:
- (1) Total calories;
 - (2) Total grams of saturated fat;
 - (3) Total grams of trans fat;
 - (4) Total grams of carbohydrates;
 - (5) Total milligrams of sodium.
- B. **Food Item Exclusions and Exemptions.** Requirement 1.2 A does not apply to:
- (1) Food Products or Menu Items that are offered for sale for less than ninety (90) days in a calendar year;
 - (2) Condiments available for use without charge;
 - (3) Alcoholic beverages not listed as Standard Menu Items.
 - (4) Unopened pre-packaged food products that are not intended to be part of the standard menu item or combination meal. Examples include a jar of a sauce or dressing intended primarily for home use, or a bag of coffee beans. In contrast, pre-packaged food products that are intended to be part of the standard menu item or combination meal (e.g. a bag of potato chips that comes as part of a meal) must be included in Required Product Information per Section 1.2.
- C. **Nutrition Labeling on Menus.** Each Chain Restaurant that uses a Menu shall list the total number of calories next to each Standard Menu Item in a size and typeface that is easily readable, clear and conspicuous, and at least as prominent in size and appearance as that used to post either the name or price of the Menu Item. The use of abbreviations is acceptable (e.g. cal for calories). The Menu shall include, in an easily readable, clear and conspicuous manner, a statement substantially similar to the following: “Recommended limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of sodium. Additional nutrition information available upon request.”
- D. **Nutrition Labeling on Menu Boards.** Each Chain Restaurant that uses a Menu Board shall list the total number of calories next to each Standard Menu Item on the Menu Board in a size and typeface that is clear and conspicuous, and at least as prominent in size and appearance as that used to post either the name or price of the Menu Item. The use of abbreviations is acceptable (e.g., cal for calories).

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The Menu Board shall include, in an easily readable, clear and conspicuous manner, a statement substantially similar to the following: “Recommended limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of sodium. Additional nutrition information available upon request.”

- E. Nutrition Labeling of Food Tags. Each Chain Restaurant that uses a Food Tag shall list the total number of calories for each Standard Menu Item represented on the Food Tag in a size and typeface that is clear and conspicuous, and at least as prominent in size and appearance as that used to post either the name or price of the Menu Item. The use of abbreviations is acceptable (e.g. cal for calories). Menu Items labeled with Food Tags do not need to be labeled on Menu Boards.
- F. Listing of Additional Nutrition Information. Upon the request by a customer, the Chain Restaurant shall provide at the time of ordering a list of the values for nutrition information other than calories required by under subsection 1.2(A). The nutrition information shall be in an easily readable format, in a typeface similar to the Menu, and in a font no less than nine point. The use of abbreviations is acceptable (e.g., cal for calories). The listing is not required to contain photos or menu item descriptions that may appear on the menu. Approved methods for providing this requested information to a customer include:
- (1) A supplemental menu, or
 - (2) A menu insert, or
 - (3) A brochure or printed handout, or
 - (4) An electronic kiosk
 - (5) An alternate method not otherwise provided for in this section only after the method has been submitted to and approved by the Health Department as being substantially equivalent to the identified methods. A Chain Restaurant shall seek approval of the proposed alternative method for providing the additional nutritional information by submitting a written proposal to the Health Department that describes how the proposed nutrition labeling approach will operate, including sample nutrition labeling materials and other documents that demonstrate the form in which nutrition information would be provided to customers.
- G. Nutrition Labeling of Self-Service Items. Each Self-Service Item shall be accompanied by a Food Tag, or the Self-Service Item shall be listed on a Menu Board that is readily visible from the self-service location.
- H. Nutrition Labeling of Variable Items. For a Standard Menu Item that comes in more than one flavor, variety, or size (e.g., variations of bagel), the Chain Restaurant shall provide required nutrition information for Menu Items as follows:
- (1) If both the highest and lowest value of the Standard Menu Item that comes in more than one flavor, variety, or size are within 0-10% of the median value, the median value alone of the required nutrition information may be listed; .

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- (2) If both the highest and lowest value of the Standard Menu Item that comes in more than one flavor, variety, or size are within 11-20% of the median value, the range of values of the required nutrition information may be listed; and
 - (3) If neither subsection (1) or (2) applies, each flavor, variety, or size of the Standard Menu Item must be listed as a separate Standard Menu Item and accompanied by appropriately ascertained values of the required nutrition information.
- I. Nutrition Labeling of Combination Meals. A combination meal means a Standard Menu Item that is comprised of two or more food products and gives the consumer a choice of food items to be included in the meal
- (1) A Chain Restaurant may provide calorie labeling for a combination meal that uses a range of the lowest and highest values of calorie content among all possible combinations of food products offered in a combination meal.
 - (2) If the calorie range for combination meals is greater than 20%, labeling of individual combinations is not required as long as nutrition labeling is provided on the menu board, food tag, or menu for the individual food products that comprise the combination meal.
- J. Nutrition Labeling of Shared Meals. By nature or manner of serving, some Standard Menu Items can be intended to serve either one or multiple individuals. Nutrition Information for such Standard Menu Items must be provided for the entire Menu Item. In addition, the number of diners intended to be served may also be listed. Pizzas intended to serve more than one individual can be listed by two options: 1) by the slice or 2) the whole pizza.
- K. Approval Process for Proposed Substantially Equivalent Methods of Nutrition Labeling. A chain restaurant may propose a method of nutrition labeling not otherwise identified in these rules for approval by the Health Department as a substantially equivalent method for use in lieu of requirements in Section 1.2 (G) Nutrition Labeling of Self-Service Items, Section 1.2 (H) Nutrition Labeling of Variable Items, Section 1.2 (I) Nutrition Labeling of Combination Meals, and Section 1.2 (J) Nutrition Labeling of Shared Meals.
- (1) Restaurant shall obtain approval from the Health Department of any proposed substantially equivalent method for nutrition labeling before implementation.
 - (2) A chain restaurant shall seek approval of a proposed substantially equivalent method by submitting a written proposal to the Health Department that demonstrates how the proposed method is expected to allow for consumers at the point of ordering to:
 - a. Perceive that nutrition information is readily available;
 - b. Encounter nutrition information routinely and automatically; and
 - c. Access nutrition information in a manner that does not interrupt the normal flow of business.
 - (3) The written proposal shall include documentation of the following:
 - a. Sample nutrition labeling materials or other documents such as photographs that demonstrate that the form in which nutrition information

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- would be provided to consumers is substantially equivalent to the requirements of the relevant section(s) of these rules – i.e., Section 1.2 (G), Section 1.2 (H), Section 1.2 (I), Section 1.2 (J), and
- b. Evidence from customer surveys or other methods that demonstrate that the proposed nutrition labeling method results in at least 75% of consumers seeing nutrition information before placing their order. This percentage may be changed by the Health Department based on findings from future research.
 - c. In addition, Health Department may request that additional information be submitted before a proposal is considered for approval.
- (4) The Health Department may:
- a. Approve a substantially equivalent method as submitted,
 - b. Approve a substantially equivalent method conditional on changes to the proposed method required by the Health Department,
 - c. Limit approval of a substantially equivalent method to use in one chain,
 - d. Limit approval of a substantially equivalent method to use for a limited time.
- L. Nutrition Labeling of Alcoholic Beverages. A Chain Restaurant may use the following average nutritional values for beers, wines, and spirits:
- (1) Wine – 5 ounces: 122 calories; 4 grams carbohydrates; 7 milligrams sodium;
 - (2) Regular beer – 12 ounces: 153 calories; 13 grams carbohydrates; 14 milligrams sodium;
 - (3) Light beer – 12 ounces: 103 calories; 6 grams carbohydrates; 14 milligrams sodium; and
 - (4) Distilled spirits (80 proof gin, rum, vodka, or whisky) – 1.5 ounces: 96 calories.
- Calorie values may be rounded in accordance with section 1.2 N. These guidelines do not exempt or replace labeling of additional alcoholic beverages that are Standard Menu Items (such as signature drinks).
- M. Nutrition Labeling of Buffets. For Standard Menu Items offered in a buffet, nutrition labeling must specify:
- (1) The size of an individual serving.
 - (2) The nutrition information for an individual serving.
- N. Labeling of Trans Fat. A Restaurant may follow FDA guidelines for labeling trans fat. This means that trans fat does not have to be listed if the **total** fat in a food is less than 0.5 gram (or 1/2 gram) per labeled serving and no claims are made about fat, fatty acids or cholesterol content.
- O. Rounding Rules. Whenever a Restaurant, pursuant to this policy, is required to disclose information to the public, the Restaurant may round numerical values as follows:

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- (1) For values above 50 calories, the disclosed value shall be rounded to the nearest value evenly divisible by 10 (e.g., 322 is rounded to 320, 435 is rounded to 440, etc);
 - (2) For values equal to or less than 50 calories, the disclosed value shall be rounded to the nearest value evenly divisible by 5 (e.g., 43 is rounded to 45, 21 is rounded to 20, etc.).
- P. Verifiable and Accurate Information Required. If requested by the Health Department, Chain Restaurants shall provide information and documentation of the reasonable basis or bases of calorie and nutrient content of Food Products.
- Q. Disclaimers Permitted. Nothing in this policy prohibits the Restaurant from publishing truthful disclaimers, including on the Menus, Menu Boards, and Food Tags, notifying customers that there may be small variations in nutritional content across servings, due to differences in preparation, service sizes, ingredients, or custom orders.
- R. Additional Nutrition Labeling Permitted. Nothing in this policy precludes Restaurants from voluntarily providing additional nutrition labeling of Menu Items.
- S. Restaurant Exemptions. The following types of food service facilities are exempted from the requirements of this policy:
- (1) A food facility that is not a full service facility licensed by Multnomah County Health Department. Examples include: public and private school cafeterias, government operated food facilities, private organizations, or association facilities, facilities whose revenue exceeds 51% from retail sales.
 - (2) Movie theaters,
 - (3) Hospital cafeterias.
- T. The nutrition labeling requirements do not apply to licensed temporary events.

1.3 ENFORCEMENT. The Director of the Multnomah County Health Department or his or her authorized representative is authorized to enforce the nutrition labeling requirements of this chapter.

- A. The Health Department shall maintain a system for receiving reports of violations, providing educational materials and site visits, and issuing notices of violation.
- B. The Health Department shall: 1) develop procedures to identify Chain Restaurant Status, 2) provide education and assistance to restaurants to help them comply with nutrition labeling requirements, and 3) receive, respond to, and investigate reports of violations and take appropriate action to assure compliance.
- C. An Environmental Health Specialist who notes a possible violation of these rules during a regular inspection of a full service chain restaurant licensed and inspected

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by the Health Department shall note a possible violation of these rules and report the possible violation to Health Department staff delegated to supervise compliance with these rules.

D. Complaint Response. The Health Department shall respond to a report of violation as follows:

- (1) The Department shall determine status as a Chain Restaurant and if confirmed:
 - a. Provide the owner or operator with a notice of possible violation,
 - b. Provide the owner or operator with educational materials and other assistance to come into compliance with these rules,
 - c. Gather information to make the determination if the Restaurant is in compliance with these rules. This may include but is not limited to conducting site visits, requesting additional information from the Restaurant, carrying out additional independent analyses of nutritional content of Menu Items, and obtaining consultation from nutrition professionals.
- (2) Finding of Violation: A violation is deemed to have occurred if the Health Department finds that:
 - a. Nutrition information required by this policy is not present or is not in the form required by Subsection 1.2; or
 - b. The nutritional content of one or more Menu Items as posted on a Menu, Menu Board, Food Tag or other authorized method of display deviates by more than twenty percent (20%) from what actual analysis or other reliable evidence shows to be the actual nutritional content.
- (3) Remediation Plan: After a finding of a violation, a Health Department representative and the Restaurant will jointly agree on the contents of a plan contemplated to bring the restaurant into compliance with these rules by a clearly identified date. Within 14 days of reaching agreement with the Health Department representative, the Restaurant will submit and begin implementation of a remediation plan that is intended to remedy the violation. A restaurant owner or operator may request in writing an extension of time in which to complete implementation of the remediation plan for good cause.
- (4) Follow-up Visit: A Health Department representative shall make a follow-up visit within 14 days of the remediation plan completion date to confirm implementation.
- (5) Failure to Complete the Remediation Plan on Schedule. If during the follow-up visit, the Health Department representative finds that the remediation plan has not been implemented, the representative shall document the finding and notify the Restaurant that a citation will be issued. The citation, including a civil fine, shall be personally delivered to the restaurant employer or agent or mailed to the business address by both first class mail certified mail, return receipt requested.

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- E. Civil Fine Schedule:
- (1) A fine of \$100 will be assessed for failure to submit a remediation plan that remedies the violation within 14 days of reaching agreement with the Health Department representative.
 - (2) A fine of \$500 will be assessed for failure to fully implement the remediation plan within 60 days of the implementation date specified in the plan.
 - (3) Additional fines of \$250 will be assessed for each 30 day period that the remediation plan has not been fully implemented.
- F. Phased-in Implementation: The rules take effect March 12, 2009. From March 12, 2009, through December 31, 2009, a Chain Restaurant shall not be deemed to be in violation of these rules.
- G. Appeals Process: A Chain Restaurant cited with a violation may request and shall be provided an opportunity to challenge the citation, including an opportunity to refute any evidence against it.
- (1) The owner or operator of a Restaurant receiving a notice of violation or citation as provided in these rules may request a hearing by writing the Health Department Director or representative within seven days of the date of notice.
 - (2) The Health Department Director or Health Officer shall schedule and oversee the hearing and issue a ruling within 20 days of its conclusion. The Director or Health Officer's ruling shall be final.
 - (3) If the Health Department Director or Health Officer finds the violation to exist, the ruling shall set a date for remedy of the violation to be accomplished by the Chain Restaurant.
 - (4) If the Health Department Director or Health Officer determines that the violation was issued in error, the ruling may order the Health Department to vacate any fines and take other necessary and appropriate actions to remedy the situation.
- H. If any provision of these rules or its application to any person or circumstance is held invalid, the remainder of these rules of the application to other persons or circumstances is not affected.
- I. This section shall not be construed to create or enhance any claim, right of action, or civil liability that did not previously exist under state law or limit any claim, right of action, or civil liability that otherwise exists under state law. The only enforcement mechanism of the rules is the local enforcement agency.