

PROPOSED
REGULATIONS of the METROPOLITAN BOARD OF HEALTH GOVERNING MENU LABELING IN COVERED FOOD SERVICE ESTABLISHMENTS

DRAFT
NOVEMBER 6, 2008

(I) Definitions and construction of words and terms used in this regulation.

(A) *Covered food service establishment* shall mean a food service establishment as defined by Tennessee Code Annotated § 68-14-302 or a retail food store as defined by Tennessee Code Annotated § 53-8-203, located within Nashville/Davidson County, that is one of a group of fifteen (15) or more food service establishments doing business anywhere in the United States, even if only locally, offering for sale substantially the same menu items, in servings that are standardized for portion size and content, that operate under common ownership or control, or as franchised outlets of a parent business, or do business under the same name.

(B) *Food item tag* shall mean a label or tag that identifies any food or drink item displayed for sale at a covered food service establishment.

(C) *Menu* shall mean a printed list or pictorial display of a food item or items and their price(s) that are available for sale from a covered food service establishment and shall include menus distributed or provided outside of the establishment.

(D) *Menu board* shall mean any list or pictorial display of a food item or items and their price(s) posted in and visible within a covered food service establishment or outside of a covered food service establishment for the purpose of ordering from a drive-through window.

(E) *Menu item* shall mean any individual food or drink item, or combination of food or drink items, listed or displayed on a menu board or menu or identified by a food item tag that is/are sold by a covered food service establishment.

(G) *Substantially the same menu items* shall mean that sixty percent or more of the menu items served in at least fifteen (15) locations of a covered food service establishment are the same and are prepared using a standard recipe.

(II) Scope and applicability. This section shall apply to menu items that are served at a covered food service establishment. However, this section shall not apply to menu items that are listed on a menu or menu board for less than 30 days in a calendar year.

(III) Statement of dietary guidelines. The following statement shall be posted, at least once, on menus and menu boards in a font and format that is at least as prominent, in size and appearance, as that used to post either the name or price of the menu item: **The United States Department of Agriculture recommends that adults limit daily calorie intake to 2000 calories per day; however individual calorie needs may vary.**

(IV) Posting calorie information for menu items.

(A) All menu boards, menus, and food item tags in any covered food service establishment shall bear the total number of calories derived from any source for each menu item they list. Such information shall be listed clearly and conspicuously, adjacent or in close proximity such as to be clearly associated with the menu item, using a font and format that is at least as prominent, in size and appearance, as that used to post either the name or price of the menu item.

(B) If a food service establishment provides a salad bar, buffet line, or similar self-serve arrangement, the calorie content of each menu item **per standard serving** of that menu item shall be listed in accordance with paragraph (IV)(A) of this regulation, however the calorie content of each individual menu item may be listed on the food item tag rather than the menu or menu board.

(V) Calculating Calorie Content.

(A) *Calculating calories.* Calorie content values (in kcal) required by this regulation shall be based upon a verifiable analysis of the menu item, which may include the use of nutrient databases, laboratory testing, or other reliable methods of analysis, and shall be rounded to the nearest ten (10) calories for calorie content values above 50 calories and to the nearest five (5) calories for calorie content values 50 calories and below. Upon request, documentation of the calorie calculation must be provided.

(B) *Range of calorie content values for different flavors, varieties and combinations*

(i) *Different flavors and varieties.* For menu items offered in different flavors and varieties, including, but not limited to, beverages, ice cream, pizza, and doughnuts, the range of calorie content values showing the minimum to maximum numbers of calories for all flavors and varieties of that item shall be listed on menu boards and menus for each size offered for sale, provided however that the range need not be displayed if calorie content information is included on the food item tag identifying each flavor or variety of the food item displayed for sale, in accordance with paragraph (IV) of this regulation.

(ii) *Combinations.* For combinations of different food items listed or pictured as a single menu item, the range of calorie content values showing the minimum to maximum numbers of calories for all combinations of that menu item shall be listed on menu boards and menus. If there is only one possible calorie total for the combination, then that total shall be listed on menu boards and menus.

(VI) Disclaimer. This regulation is not intended to provide or be used to support a private cause of action by any individual, other than an individual, entity, or agency authorized to enforce this regulation, against a covered food service establishment for compliance or non-compliance with this regulation. This regulation does not prohibit a covered food service establishment from including a statement on a menu or menu board that there may be variations in calorie content values across actual servings based on slight variations in serving size, quantity of ingredients, or special ordering.

(VII) Effective date. This regulation shall take effect on December 31, 2009.

(VIII) Severability. If any provision of this regulation, or its application to any person or circumstance, is held invalid by any court of competent jurisdiction, the remaining provisions or the application of the regulation to other persons or circumstances shall not be affected.