

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

(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. For the purposes of this regulation, *covered food service establishment* shall not include:

- Religious institutions, including, but not limited to, churches, temples, or synagogues;
- Nonprofit membership organizations including, but not limited to, civic, fraternal, or veterans organizations;
- Educational institutions, including, but not limited to, day care centers, group day child homes, primary, or secondary education;
- Health care institutions, including, but not limited to, hospitals, nursing homes, long-term care facilities, veterans administration facilities, mental health facilities, group adult homes or mobile food facilities;
- Correctional facilities, including, but not limited to, prisons, jails or juvenile detention centers;
- Entertainment facilities, including, but not limited to, stadiums, convention centers, auditoriums, symphonies, performing arts centers, movie theaters, or theaters; or
- Lodging establishments, including, but not limited to, hotels, inns, tourist accommodations, cabins, motels, or bed and breakfast establishments;

However, when a covered food establishment leases, owns or occupies space within an exempted covered food service establishment, this regulation still applies.

(B) *Food item tag* shall mean a written or printed description of food or beverage items placed in the vicinity of the item 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. “Menu” does not include printed or pictorial materials used for marketing purposes that contain fewer than ten percent of a menu’s items.

(D) *Menu board* shall mean any list or pictorial display of a food item or items and their price(s) posted in the area of the point of ordering and visible within a covered food service establishment or outside of a covered food service establishment for the purpose of ordering. “Menu board” does not include printed or pictorial materials used for marketing purposes that contain fewer than ten percent of a menu’s items.

(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. “Menu item” does not include:

- Alcohol and alcoholic beverages, the labeling of which is not regulated by the federal Food and Drug Administration;
- A food item that is customized on a case by case basis in response to an unsolicited customer request;
- Condiments and other items placed on a table or counter for general use without charge;
- Items sold in a manufacturer’s original sealed package that contains nutrition information as required by federal law.

(F) *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 limited time offerings listed on a menu or menu board for less than 90 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 USDA recommends that adults limit 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** portion 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 or the information may be provided in a brochure that is readily available and prominently displayed at the point of serving. When caloric information is provided in a brochure, the food service establishment must post the following at the buffet: **Nutrition Information Available.**

(V) Calculating Calorie Content.

(A) *Calculating calories.* Calorie content values (in kcal) required by this regulation shall be calculated based on a reasonable basis. “Reasonable basis” means any reliable and verifiable calorie analysis of the menu item, which may include the use of nutrient databases, laboratory testing, cookbooks, or other reliable and verifiable 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. Food service establishment owners or operators shall provide to the health officer or his designee, if requested, documentation of the reasonable basis of calorie analysis for purposes of enforcement of this regulation.

(B) *Range of calorie content 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 for each size offered for sale, provided however that the range need not be displayed if calorie content information is included 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. If there is only one possible calorie total for the combination, then that total shall be listed .

(iii) *Multiple Servings.* Calorie information that contains more than one serving or is intended to serve more than one individual shall include both of the following:

1. The number of servings intended to be provided in that menu item;
2. The calorie content per individual serving.

(VI) Disclaimer.

(A) 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.

(B) This regulation does not prohibit a covered food service establishment from including a disclaimer 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) Identification of covered food service establishments. It is the responsibility of each food service establishment to determine, by a method approved by the health officer, whether or not it is covered by this regulation.

(VIII) Effective date. This regulation shall take effect on March 31, 2010.

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