

MENU LABELLING FREQUENTLY ASKED QUESTIONS & ANSWERS

Ministry of Health and Long-Term Care
Population and Public Health Division

December 2016

Table of Contents

- BACKGROUND** 7
- QUESTIONS**..... 8
- General** 8
- 1. What is the government trying to achieve through menu labelling? 8
- 2. When do the legislation and regulation come into effect? 8
- 3. Will there be a grace period for food premises to come into compliance beyond Jan 2017?..... 8
- 4. Are there any other jurisdictions in Canada that require menu labelling?..... 8
- Food Service Premises** 8
- 5. Does the legislation apply to non-fixed food service premises that are part of a chain of 20 or more locations? 8
- 6. Is a location (e.g. a kiosk) that is part of a chain of food service premises but operates less than 60 days in the year exempt?..... 8
- 7. Are college/university residence or workplace cafeterias included within the scope of the regulation? 9
- 8. What if a food service premises has a store within it (e.g. a café within a supermarket)? 9
- 9. What if a restaurant chain has two different restaurant brands with very similar names?..... 9
- 10. If one store within a chain of food service premises has unique product offerings, are those products exempt from caloric labeling? 9
- 11. What if a cafeteria owner or operator has a joint venture operated in partnership with a partner who is not captured? 10
- 12. How do public health units and industry know which premises are to be regulated? 10
- 13. Can a food service premises not captured by the legislation voluntarily display calorie information? 10
- 14. Are food service premises in long-term care facilities or retirement homes exempt from menu labelling?..... 10
- 15. Are food service premises in hospitals or psychiatric facilities exempt from menu labelling?.. 11
- 16. Are food service premises or cafeterias in a post-secondary school exempt from menu labelling?..... 11
- Definition of Menu**..... **12**
- 17. Do calories need to be displayed on direct mail advertisements and coupon mailers?..... 12
- 18. Are grocery store flyers captured by the menu labelling legislation? 12
- 19. Are billboard, radio and television ads captured by the legislation?..... 12
- 20. Are social media advertisements captured by the legislation?..... 12
- 21. Do calories need to be displayed on in-store advertisements?..... 12
- 22. Do calories need to be displayed for advertisements outside the food service premises or outward-facing window signs? 13
- 23. Do calories need to be displayed on self-order kiosks if they are already listed on the menu boards?..... 13
- 24. Do calories and ranges need to be posted on online delivery companies?..... 14
- 25. Do calories need to be shown on a loyalty app if food is offered for redemption?..... 14
- 26. Do calories need to be posted on catering menus?..... 14
- 27. Are advertisements and promotional flyers considered menus if they list or depict standard food items offered, regardless of whether or not they include a name or price? 14
- 28. Do calories need to be posted if an in-store advertisement or menu only includes an image of a food item (e.g. pizza slice or coffee cup) but does not list the product name? 15

29. Do calories need to be posted if there is no posted retail price on the menu (e.g. a savings \$ amount is portrayed, or a promotion to pay with points)?	15
Standard Food Item	16
30. Is self-serve bulk food captured by the legislation?	16
31. Do calories need to be posted for bulk items (e.g. loose whole beans) that are listed on a menu?.....	16
32. If a brand of convenience stores offers standard offers that are offered for sale at the majority of the locations, as well as other prepared foods that are only available at select locations and may be locally sourced:	
a) Does that exclude them from being a chain of food service premises?	16
b) Do the offerings at select locations need to be labelled?	16
33. Do calories need to be posted for food that is not prepared in store?.....	16
34. Does the menu labelling regulation require affected businesses to post the calories for items that are 0 calories (e.g., tea or water)?.....	17
35. Do calories need to be posted for frozen entrées that require thawing and re-heating at home?.....	17
36. Are continental breakfasts in hotels or motels captured by the menu labelling legislation?	18
37. Are monthly meal plans in university residence cafeterias or workplace cafeterias captured by the menu labelling legislation?	18
38. Are whole cakes captured by the legislation?.....	18
Exemptions	18
39. What does it mean that special order items are exempt?	18
40. Do calories need to be posted for items that are prepackaged with a Nutrition Facts Table (NFT) and are posted on a menu (e.g. listed or displayed as part of a combination meal)? ...	19
41. Are vending machines captured by the menu labelling legislation?	19
42. Are micro markets, where the customer selects from a shelf or cooler and pay through self check-outs, considered vending machines for the purposes of the legislation?	19
43. If a product varies according to seasonal availability of ingredients (e.g., a fruit salad), does it qualify under the temporary exemption?	19
44. Are complimentary items captured by the requirements of the menu labelling legislation?.....	19
45. Do calories need to be posted for salt & pepper, single packet condiments (e.g. single serve ketchup) and self-serve toppings that are free of charge (e.g. self-serve pickles)?.....	19
46. Do calories need to be posted for monthly limited time offers that are only available during a 30 day period?	20
47. Why did the ministry introduce exemptions for select standard food items when they are sold at grocery or convenience stores?.....	20
48. Are plain breads and rolls exempt when sold in a grocery or convenience store?	20
49. Do calories need to be posted for bakery multi-serve packs?.....	21
50. Are single serve fruit and vegetable trays exempt from the regulation when sold at a grocery or convenience store?.....	21
Calorie Posting	21
51. Can calorie information be displayed on a sign or wall poster instead of on a menu?	21
52. Can calorie information be posted on a spreadsheet at the end of the menu?	22
53. Is calorie labeling once per item sufficient? For example if a food item is listed with price in three places (on a menu board, on a shelf tag, and on a product label) can calories be posted on only on one of those items?	22
54. Do calories for items on display (e.g. behind glass counter) need to be posted on food tags?	22

55. Do calories need to be posted on beverage dispensers that are not self- serve but that are within sight of the customer?.....	22
56. If a menu lists the calories beside the price, but the menu has a call-out advertising “Double your Portion for \$5”, would calories be required within the call-out?	23
57. If an item that is listed as a substitution in a call-out (e.g. substitute for salad \$2) already has calories displayed elsewhere on the menu board, does the calorie information need to be repeated at the substitution call- out, as well?	23
58. Can calorie labeling be based on weight (i.e. 100 g) or individual units?	23
59. How is a standard size determined for self- serve beverages?.....	23
60. If a self-serve beverage machine has both flavour cards and a ‘menu’ of prices for each size of beverage, do calories need to be posted on both signs, or can a sign be posted?	24
61. Can calories for self-serve items be by posted weight (e.g. 100g)?.....	24
62. Can calories for self-serve items that are whole be listed per multiple pieces?.....	24
63. Do calories need to be posted on an online menu with the menu item description or would it be sufficient to include them as the customer makes a decision and the price is confirmed?	24
64. Do menu applications need to dynamically show calorie counts as customers order items? ..	24
65. When can ranges be used?	25
66. Does the regulation specify colour requirements for calorie posting?	25
67. How would the calorie font size be determined for an advertisement that depicts a standard food item but does not list a name or price?	25
68. When there are various calorie declarations of different size & prominences, can the size of the contextual statement match any of them?	26
69. For shareable items, can the words "Serves X" be in a smaller font size than the calories?...	26
70. What do “format and prominence” mean as used in the regulation?.....	26
71. What does “adjacent to” mean as used in the regulation?	26
72. If the name and price are listed in different font sizes, do the calories need to be the same size as the smaller or the larger font?.....	26
73. What do you do if the price is composed of two different font sizes?.....	27
74. How does a regulated food service premises account for ice displacement in drinks?	27
75. How should calories be posted for items that vary in their composition?	27
76. How are calories for “All-You- Can-Eat” to be displayed?.....	27
77. What if an item with multiple flavours, varieties or sizes has the same number of calories for each flavour, variety or size?.....	28
78. How do you declare calories for toppings which may change based on the number ordered? 28	
79. Do calories need to be posted for each supplementary topping listed on the menu, or can a range be used for the toppings if they are all the same price?.....	28
80. Do calories for decorative items need to be included in the calorie count?.....	28
81. How are calories for dipping sauces or salad dressings served with a dish to be posted?	28
82. How are calories for chicken wings and dipping sauces to be posted?	29
83. Is it necessary to post calories for each menu item included in a combination meal?.....	30
84. If an item with a Nutrition Facts Table (NFT) lists calories for a serving size (e.g. 100 Cal per 250g serving), but the package is sold in a bigger size (e.g. 500g), do calories need to be posted on a menu based on what is written on the NFT or on the entire item?.....	30
85. If a packaged item does not have a Nutrition Facts Table (NFT) because it is under the requirements for the NFT (i.e. is less than 21g), do calories need to be displayed?	30
86. For multiple full pizza offers (e.g. “2 medium pizzas for \$12”), do calories need to be based on the two full pizzas or by serving size?	30
87. If a customer has the option of substituting an item that would yield a lower calorie count, and	

the substitutions are listed on the menu, how would this change be declared?	31
88. If a range is already displayed for the meal, and a substitution still falls within the range (e.g. Substitute salad side for \$2) – so it neither reduces nor increases the range – should the calories for the substitution call-out be declared?	31
Alcohol	32
89. What is meant by alcohol beverages "on display"?	32
90. Are alcoholic beverages listed on a menu exempt?	32
91. If a menu has alcoholic drinks on every page of a multi-page menu, would posting the alcohol table on one page be sufficient?	32
92. Can the serving sizes in the alcohol caloric chart be modified, with calories adjusted as relevant?	32
Contextual statement	32
93. Does the contextual statement need to be displayed on promotional items?.....	32
94. Does the contextual statement need to be displayed on online menus?	33
95. Does the contextual statement need to be displayed on product labels?	33
96. How must the contextual statement be displayed for electronic menus that rotate?	33
97. How must the contextual statement be displayed on menu boards with multiple panels or menus with multiple pages?	34
98. Can the contextual statement be posted as a sign that is added on to the menu boards?.....	34
99. What are the font requirements for the contextual statement when posted on a sign next to self-serve items?.....	34
100. Do inserts in the menu have to include the contextual statement on each side?.....	34
101. Can the updated 2018 contextual statement be used right away?	34
102. Is it enough to display the contextual statement on one sign in the store?	34
103. Why did the ministry update the content of the contextual statement to include a mandatory child component? Why is the ministry allowing 2 contextual statements for 2017?	35
Nutritional Analysis	35
104. How must calorie information be determined?	35
105. Will the ministry be listing 'approved' consultants?	35
106. How will the consumers be able to report suspected inaccurate nutrition information?	36
107. Will there be audits planned by the MOHLTC to ensure accuracy?.....	36
108. Is there recourse for food service premises that post inaccurate information?	36
Enforcement	36
109. Who is enforcing the menu labelling legislation?.....	36
110. How will the Act and regulation be enforced?.....	36
111. Does a progressive enforcement approach mean that no charges will be laid in the first year?.....	37
112. Will there be a grace period for enforcement?	37
113. What are the fines for non-compliance?.....	37
114. Who will be charged in case of an infraction, franchises or corporations?.....	37
115. Would franchises be considered individuals or corporations as it relates to the fines?.....	38
116. How will corporations be notified that there is a fine issued to one of their restaurants?	38
117. Who is responsible for providing the evidence? Will inspectors communicate with corporate offices if they need to review information or will they ask the franchisee?	38
118. Does an inspector's demand for information/documents need to be in writing?.....	38
119. Will every store be required to have all the analytical data for calorie determination present in their restaurants to present to inspectors? Can inspectors be directed to corporate head	

offices to confirm the method of analysis for the calories?.....	39
120. Will inspectors be testing products for accuracy?	39
Public Health	39
121. What enforcement supports will be available for public health units?	39
122. Will there be an accountability indicator related to menu labelling in 2017?.....	39
123. Will there be provincial budget to support enforcement of the legislation?.....	39
124. Are enforcers expected to be trained on the nutrition aspects of the regulation?	40
125. How will inspectors get designated?	40
126. What are the report back requirements for public health units? Will there be a requirement to post infractions on a provincial database?.....	40
127. When will the short term wording be released?	40
128. Will there be a role for public health in a public education campaign?	40
129. Is the expectation that food service premises are inspected on an annual basis?	41
Supports	41
130. What supports are being provided to stakeholders for implementation of this Act and Regulation?	41
131. Are the guide and technical briefings posted on the MOHLTC website?	41
132. What public facing supports will be available?.....	41
133. Are there plans to evaluate the impact of menu labelling?.....	41
134. Who can stakeholders contact if there are any questions regarding menu labelling?	42
135. Can the ministry review a food service premises' menu?	42
136. Can a food service premises meet or call someone from the ministry to talk about implementation in their stores?.....	42
137. When will the enforcement protocol be released?	42
138. Will the ministry provide an assessment checklist for public health inspectors?	42
139. How will inspectors be trained?	42
140. Will the ministry provide expert support for public health units?.....	43
Other	43
141. Did the ministry consult with stakeholders on the legislation and regulation?	43
142. Does the legislation comply with Canadian Food Inspection Agency rules?	43
143. Does the information displayed under the legislation need to be bilingual?	44
144. Will the legislation be broadened at a later date to include other nutrition information?	44
145. Why are schools exempt from the menu labelling legislation given that it's part of the Healthy Kids Strategy?.....	44
146. Why does the legislation include alcohol if this is an initiative under the Healthy Kids Strategy and alcohol is an age-restricted product?	44
147. How was the '20 or more' threshold selected?	45
148. What if my municipality has a similar by-law requiring restaurants to post nutritional information?	45
149. Can the food premises post other nutrition information beside calories (e.g. sodium)?	45

BACKGROUND

During the weeks of March 21st and October 6th, 2016 the Ministry of Health and Long-Term Care held technical briefing webinars for industry and health stakeholders on the *Healthy Menu Choices Act, 2015* and its regulation (O. Reg. 50/16) (“Act”). The sessions were well attended with over 145 members and organizations represented. The technical briefings provided an overview of the requirements of the legislation and its accompanying Regulation 50/16 and invited participants to ask questions about implementation. Training sessions for staff wishing to be designated under the Act were held in November 2016, reaching over 600 people across all public health units.

In addition, since February 2016, the Ministry has responded to over 1,000 questions posed by industry and health stakeholders through the menulabelling@ontario.ca email account.

The following document reflects a summary of the questions asked in the technical webinar and training sessions as well as frequently asked correspondence questions. They are to be used in conjunction with the other supports released to date, including the Implementation Guide *A Guide to Menu Labelling Requirements in Regulated Food Service Premises in Ontario* and eight sector-specific fact sheets. We have provided responses to questions where appropriate.

This is a living document and may be revised as required to reflect specific implementation and enforcement information or further clarifications as needed.

This document is intended to reflect the policy intent, as supported by the legislation. The ministry recognizes that application to each regulated food service premises is subject to the specific realities of each food service premises. Stakeholders are encouraged to speak to their legal counsel about questions that they may have regarding how the Act and regulation apply to their food service premises.

The document is provided for educational use only, and is not complete or exact reproductions of the legislation. It is not intended, or to be used, as legal advice about the requirements for menu labelling required by the Act. Such advice should be obtained from an independent lawyer. Where there is a discrepancy between anything in this document and a legislative provision, the legislation prevails.

The Act can be found at <https://www.ontario.ca/laws/statute/15h07> and the regulation can be found at <https://www.ontario.ca/laws/regulation/160050>.

QUESTIONS

General

1. What is the government trying to achieve through menu labelling?

The Act will:

- Raise public awareness about the calorie content of foods eaten outside the home;
- Make it easier for people to make healthier choices when dining out; and,
- Encourage industry to reformulate high calorie menu items.

The Act will create a more supportive food environment that would make it easier for Ontario families to choose healthier foods when dining out.

2. When do the legislation and regulation come into effect?

The Act comes into effect on January 1st, 2017. Owners and operators of regulated food service premises will be required to comply with the Act as of this date.

3. Will there be a grace period for affected food premises to come into compliance beyond Jan 2017?

The Act will come into force on January 1, 2017. The ministry will encourage inspectors to take a progressive enforcement approach that emphasizes education as an initial step.

4. Are there any other jurisdictions in Canada that require menu labelling?

Ontario is the first province in Canada to legislate menu labelling requirements. British Columbia has a voluntary nutritional information program called *Informed Dining* which was launched in May 2013. Manitoba announced its support for Informed Dining in September 2013.

Food Service Premises

5. Does the legislation apply to non-fixed food service premises that are part of a chain of 20 or more locations?

A non-fixed food service premises (e.g. food truck, ice-cream cart, and hot dog stand) that is part of a chain of at least 20 food service premises in Ontario, operating under the same or substantially the same name and offering the same or substantially the same standard food items, is captured by the menu labelling legislation. The location must operate for at least 60 days per year to be captured by the menu labelling legislation.

6. Is a location (e.g. a kiosk) that is part of a chain of food service premises but operates less than 60 days in the year exempt?

Temporary locations that operate for less than 60 days per calendar year are exempt from the requirements of the Act. The exemption would apply even though they are part

of a chain of food service premises.

7. Are college/university residence or workplace cafeterias included within the scope of the regulation?

Cafeterias are captured by the Act if they sell food to the general public and are owned or operated by a person that owns or operates 20 or more cafeteria-style regulated food service premises in Ontario.

Private cafeteria-style premises that are not open to the general public would not be captured by menu labelling. However, cafeterias that are targeted to specific groups (e.g. student dining halls) but are also open to, or accessible by, the general public would be required to adhere to the requirements in the Act, if they fit the above description.

8. What if a food service premises has a store within it (e.g. a café within a supermarket)?

Whether a food service premises within another food service premises (e.g. a sushi bar within a grocery store) is subject to the requirements of the Act depend on:

- whether it is considered to be a separate food service premises (e.g. whether it is run as a stand-alone operation),
- whether it operates under the same or substantially the same name as at least 19 other food service premises in Ontario, and
- whether it offers the same or substantially the same standard food items as at least 19 other food service premises that operate under the same or substantially the same name.

If the food service premises operating within the larger food service premises is a stand-alone operation, it would be subject to the Act if it is part of a chain of at least 20 food service premises in Ontario that operate under the same or substantially the same name, and offer the same or substantially the same standard food items (e.g. brand name coffee shop inside a grocery store).

If the food service premises is not considered to be separate from the larger regulated food service premises it operates within, it would be subject to the Act (e.g. a coffee counter inside a regulated grocery store).

9. What if a restaurant chain has two different restaurant brands with very similar names?

Food service premises with 20 or more locations in Ontario that operate under the same or substantially the same name and sell the same or substantially the same standard food items would be considered to be part of the same food service premises chain, and would be captured by the Act (e.g. “Fast Food Restaurant” and “Fast Food Restaurant Express”).

10. If one store within a chain of food service premises has unique product offerings, are those products exempt from caloric labeling?

Regulated food service premises must be part of a “chain of food service premises”.

“Chain of food service premises” is defined as 20 or more food service premises in Ontario that operate under the same or substantially the same name, regardless of ownership, and that offer the same or substantially the same standard food items.

A chain of food service premises would be captured by the Act if it offers the same or substantially the same standard food items. If the chain of food service premises is captured, then all standard food items including those found only in select stores in the chain would be captured, with the exception of the exemptions provided for in the regulation.

11. What if a cafeteria owner or operator has a joint venture operated in partnership with a partner who is not captured?

Food service premises that are owned or operated by a person that owns or operates 20 or more cafeteria-style food service premises in Ontario that sell food to the general public are regulated food service premises for the purposes of the Act, regardless of a joint venture that is not captured.

12. How do public health units and industry know which premises are to be regulated?

Any food service premises with 20 or more locations in Ontario that operates under the same or substantially the same name and offer the same or substantially the same food items are subject to the Act.

In August 2016, the ministry released a preliminary list of identified chains of food service premises per the definition in the Act. This list is based on food service premises in Ontario as of May 2016 and it does not account for any changes since that date. An updated version will be provided to all ministry stakeholders (industry and public health) in November, 2016.

The list will be updated by the ministry annually based on annual data collection from public health units. Note that all food premises must provide notice of their intention to commence operation to the local medical officer of health under the *Health Protection and Promotion Act*.

The list is intended for information purposes only and it is not intended to be comprehensive. Any chain of food service premises that meets the definition on the Act but is not identified on the list is still subject to the requirements of the Act.

13. Can a food service premises not captured by the legislation voluntarily display calorie information?

Yes, a food service premises that is not part of a large chain can voluntarily display the calories on their menus. For consistency and to avoid confusion for consumers, premises electing to voluntarily implement menu labelling are encouraged to adhere to the requirements of the legislation.

14. Are food service premises in long-term care facilities or retirement homes exempt from menu labelling?

There is no provision exempting food service premises in long-term care facilities, or retirement homes from being regulated food service premises. If a food service premises that is part of a chain of food service premises is located within one of these facilities, then these premises would be regulated. Similarly, a cafeteria-style food service premises in a long-term care facility or retirement home that sells food to the general public and that is owned or operated by a person that owns or operates 20 or more cafeteria-style food service premises in Ontario would be regulated.

However, the regulation exempts food or drink items that are prepared specifically for, residents of a long-term care home within the meaning of the Long-Term Care Homes Act, 2007 or a retirement home within the meaning of the Retirement Homes Act, 2010 from the definition of standard food items.

Therefore, regulated food service premises that are located within a long-term or retirement home would not be required to post calories for food and drink items that are prepared specifically for residents. Should the food service premises or cafeteria offer food to the public (i.e. not residents), then calories for these standard food items would need to be posted.

15. Are food service premises in hospitals or psychiatric facilities exempt from menu labelling?

There is no provision exempting food service premises in hospitals or psychiatric facilities from being regulated food service premises. If a food service premises that is part of a chain of food service premises is located within a hospital or psychiatric facility, then these premises would be regulated. Similarly, a cafeteria-style food service premises in a hospital or psychiatric facility that sells food to the general public and that is owned or operated by a person that owns or operates 20 or more cafeteria-style food service premises in Ontario would be regulated.

However, the regulation exempts food or drink items that are prepared specifically for inpatients of a hospital within the meaning of the *Public Hospitals Act* or a private hospital within the meaning of the *Private Hospitals Act* or a psychiatric facility within the meaning of the *Mental Health Act* from the definition of standard food items. Therefore, regulated food service premises that are located within a hospital or psychiatric facility would not be required to post calories for food or drink items that are prepared specifically for inpatients.

Should the food service premises or cafeteria offer food to the public, then calories for these standard food items would need to be posted.

16. Are food service premises or cafeterias in a post-secondary school exempt from menu labelling?

Subsection 5(1) of Ontario Regulation 50/16 (made under the Healthy Menu Choices Act, 2015) exempts food service premises that are located in a school or private school within the meaning of the *Education Act* from the requirements of the regulation. This applies only to primary and secondary schools. Food service premises operated within post-secondary schools which do not fall under the definition of school under the *Education Act* are not exempt.

Definition of Menu

17. Do calories need to be displayed on direct mail advertisements and coupon mailers?

Subsection 3(2) of the regulation stipulates that for advertisements and promotions that are distributed or available outside the store, calories only need to be displayed if they list prices for standard food items or if they provide a method to place an order for delivery or take away.

Standard coupon mailers that have to be taken into the regulated food service premises and do not provide a way to order take out would be exempt.

18. Are grocery store flyers captured by the menu labelling legislation?

Online menus/applications, advertisements, and promotional flyers that are distributed or available outside the store are captured by the Act, and would only be exempt (as set out in the regulation) if they:

- do not list prices for standard food items; or
- do not list standard food items for delivery or take away and a method to place an order.

For example, if a grocery flyer or mail out lists standard food items that are available for delivery or take away and provides a means for which a customer can place an order (e.g. phone number), the flyer or mail out will require calorie labelling for those standard food items.

19. Are billboard, radio and television ads captured by the legislation?

Billboard, radio and television advertisements are exempted from the requirements of the Act.

20. Are social media advertisements captured by the legislation?

Social media advertisements that list prices for standard food items, and from which customers can order delivery or take away are captured by the Act. Additionally, if a social media advertisement lists standard food items that a person can order for delivery or takeaway ordering and provides a method to place an order (e.g. links to an order form or website), then it is captured by the legislation.

21. Do calories need to be displayed on in-store advertisements?

Subsection 2(2) of the Act states that calories are to be displayed on each menu on which the standard food item is listed or depicted at the regulated food service premises.

Subsection 3(1) of the regulation defines “menu” as any document or other written means of communicating information that lists standard food items offered for sale by a regulated food service premises and defines it as including an advertisement (other than a billboard, radio or television advertisement) and a promotional flyer.

The amendments to the regulation included a technical change to correct a cross-reference to the Act which clarified that online menus, menu applications,

advertisements and promotional flyers that are distributed or available outside of the premises are exempt from posting calories if they either (i) do not list prices for standard food items or (ii) do not list standard food items that are available for takeaway or delivery ordering and do not provide a method to place an order.

Online menus, menu applications, advertisements and promotional flyers that are distributed or available inside the premises can be used to order food or drink items as they can easily be referred to or pointed at by a customer when placing an order.

Therefore, if the advertisements constitute menus and are located at the regulated food service premises, then calories but not the contextual statement would have to be displayed on these advertisements.

22. Do calories need to be displayed for advertisements outside the food service premises or outward-facing window signs?

Subsection 2(3) of the Act states that where a regulated food service premises lists or depicts a standard food item on a menu that is distributed or available outside the regulated food service premises, calories are to be displayed on that menu.

Subsection 3(1) of the regulation defines “menu” as any document or other written means of communicating information that lists standard food items offered for sale by a regulated food service premises and defines it as including an online menu or a menu application, an advertisement (other than a billboard, radio or television advertisement) and a promotional flyer.

The amendments to the regulation included a technical change to correct a cross-reference to the Act which clarified that online menus, menu applications, advertisements and promotional flyers that are distributed or available outside of the premises are exempt from posting calories if they either (i) do not list prices for standard food items or (ii) do not list standard food items that are available for takeaway or delivery ordering and do not provide a method to place an order.

In addition, billboards, radio and television advertisements are excluded from the definition of menu and do not require calorie posting.

Therefore, menus that list or depict standard food items and that are distributed or available outside the regulated food service premises require calorie posting, unless an exemption set out in the regulation applies. In particular, online menus, menu applications, advertisements, and promotional flyers that are distributed or available outside the regulated food service premises do not have to have calories displayed on them if they either (i) do not list prices for standard food items or (ii) do not list standard food items that a person can order for delivery or takeaway ordering and do not provide a method to order.

23. Do calories need to be displayed on self-order kiosks if they are already listed on the menu boards?

The regulation defines the term ‘menu’ to include paper menus, electronic menus, menu boards, drive-through menus, online menus or menu applications, advertisements (other than a billboard, radio or television advertisement), and

promotional flyers.

Caloric information is required on each menu on which the standard food item is listed or depicted at the regulated food service premises. If the item is listed on more than one menu at the premises, then calories would have to be posted more than once. Thus, if self-order kiosks are captured within the definition of menu, the requirements regarding calorie posting and the contextual statement (per sections 6 to 9 of the Regulation) would apply to them and calories and the contextual statement would have to be displayed on them even if calories are listed on menu boards.

24. Do calories and ranges need to be posted on online delivery companies?

Online delivery companies that do not constitute food service premises would not be regulated food service premises under the Act and would not be subject to the Act's requirements. However, if a regulated food service premises uses the services of an online delivery company, the regulated food service premises would be required to post calories for standard food items that are sold or offered for sale at the premises on the menu that it provides through this service, unless an exemption provided for in the regulation applies.

25. Do calories need to be shown on a loyalty app if food is offered for redemption?

Regulated food service premises are to display calories for all standard food items, unless an exemption provided for in the regulation applies. Standard food items are restaurant-type food or drink items that are sold or offered for sale in servings that are standardized for portion and content.

If it is determined that the app constitutes a menu that lists items that are sold or offered for sale, and assuming that this application is available outside of the regulated food service premises, whether this app would be exempt from posting calories would be based on the following conditions:

- if the application does not list prices for standard food items, or
- if it does not list standard food items to be ordered for takeaway or delivery and does not provide a method to place an order.

26. Do calories need to be posted on catering menus?

Every person who owns or operates a regulated food service premises must ensure calories are displayed for every standard food item that is sold or offered for sale at the premises. Calorie information must be displayed on each menu on which a standard food item is listed or depicted at the regulated food service premises as well as on menus that are distributed or available outside the regulated food service premises that list or depict a standard food item (unless an exemption provided for in the regulation applies). Therefore, catering menus would be included if they list or depict a standard food item sold or offered for sale at a regulated food service premises (unless an exemption applies).

27. Are advertisements and promotional flyers considered menus if they list or depict standard food items offered, regardless of whether or not they include a name or

price?

The requirements of the Act apply to menus that depict standard food items, as per section 2 of the Act:

Subsection 2(2) of the Healthy Menu Choices Act, 2015 states that calories are to be displayed on:

- each menu on which the standard food item is listed **or depicted** at the regulated food service premises; and
- where the standard food item is put on display at the regulated food service premises, on a label or tag identifying the standard food item.

Subsection 2(3) of the Act adds that:

- where a regulated food service premises lists **or depicts** a standard food item on a menu that is distributed or available outside the regulated food service premises, calories are to be displayed on that menu.

Section 6 of the regulation outlines various rules for displaying information on menus, labels and tags. Some of these rules are specific to particular circumstances (such as combination meals or meals intended for sharing) while others are of a more general nature. Only those that are applicable to the given context would apply. With respect to depictions that do not list either a price or standard food item, for instance, while certain rules may not apply, other rules, including those in paragraphs 3 and 4, would apply. I would note that the rules set out in those paragraphs specify that the calorie information would need to be unobstructed and readily legible to individuals reading the menu, label or tag and must be appropriately rounded.

28. Do calories need to be posted if an in-store advertisement or menu only includes an image of a food item (e.g. pizza slice or coffee cup) but does not list the product name?

The Act provides that calories for a standard food item must be displayed on each menu on which the standard food item is listed or depicted at a regulated food service premises.

Therefore, if the standard food item is depicted on an in-store menu, calories are to be displayed on that menu, regardless of whether the product name is listed or not.

'Menu' is defined as including an advertisement, other than a billboard, radio or television advertisement. If a standard food item is depicted on an in-store advertisement, calories would also have to be displayed on that advertisement, regardless of whether the product name is listed or not.

29. Do calories need to be posted if there is no posted retail price on the menu (e.g. a savings \$ amount is portrayed, or a promotion to pay with points)?

Online menus and menu applications, advertisements and promotional flyers that are distributed or available outside of the food service premises are exempt from posting requirements if they either (a) do not list prices of standard food items, or (b) they do not list standard food items that are available for delivery or takeaway

ordering and do not provide a method to place an order.

For all other menus, the number of calories for every standard food item that is listed or depicted on the menu must be displayed on that menu. This is the case even if there is no posted retail price or a savings amount is listed instead of a posted retail price.

Standard Food Item

30. Is self-serve bulk food captured by the legislation?

It is not the intention to capture self-serve bulk food items (e.g. self-serve scoop & bag bulk nuts/trail mix/candy) that are not standard food items, as they are often not restaurant-type food or drink items and are not standardized for portion and content.

31. Do calories need to be posted for bulk items (e.g. loose whole beans) that are listed on a menu?

Only if an item that is listed on a menu at a regulated food service premises is a standard food item, do calories need to be displayed for that item. If the bulk item that is listed on such a menu is a standard food item (i.e., a restaurant-type item intended for immediate consumption without further preparation by a consumer and standardized for portion and content), then calories would have to be displayed for that bulk item.

For example, a salad that is sold for immediate consumption without further preparation by a consumer but is offered for sale in bulk could require calorie posting. On the other hand, loose whole beans that are sold not ready for consumption and, thus, require further preparation would not require calorie posting.

32. If a brand of convenience stores offers standard offers that are offered for sale at the majority of the locations (e.g. coffee, slushies), as well as other prepared foods that are only available at select locations and may be locally sourced.

a) Does that exclude them from being a chain of food service premises?

To be regulated, a premises must be a part of a chain of 20 or more food service premises in Ontario that operate under the same or substantially the same name, regardless of ownership, and that offer the same or substantially the same standard food items. Thus, if the brand of convenience stores has 20 or more locations across Ontario that operate under the same or substantially the same name and that offer the same or substantially the same standard food items, its food service premises are subject to the requirements of the legislation.

b) Do the offerings at select locations need to be labelled?

Regulated food service premises are to display calories for all standard food items sold or offered for sale at the premises, unless an exemption provided for in the regulation applies. If the select locations are regulated food service premises and if the offerings sold or offered for sale at select locations are standard food items, then calories would have to be displayed for those items.

33. Do calories need to be posted for food that is not prepared in store?

“Food service premise” is defined in the Act as any food premises “within the meaning of the *Health Protection and Promotion Act* where meals or meal portions are prepared for immediate consumption or sold or served in a form that will permit immediate consumption on the premises or elsewhere”. Thus, to be captured by the Act, food service premises do not necessarily need to do the preparation on-site. Standard food items that are sold in a regulated food service premises ready for immediate consumption without further preparation by a consumer require calorie posting, regardless of whether they were prepared on the premises.

34. Does the menu labelling regulation require affected businesses to post the calories for items that are 0 calories (e.g., tea or water)?

The Act requires regulated food service premises that sell or offer for sale zero calorie items (e.g. water or tea) to post calories in the following ways:

- For self-serve beverages, regulated food service premises must either (i) post calorie ranges for each serving size of every category of beverage dispensed by a self-serve beverage machine, including water, on a readily visible and legible sign that is in close proximity to the machine or (ii) post a sign in accordance with s. 8(1) of the regulation. If the regulated food service premises choose the first option, the categories of beverages will be determined by industry based on their beverage offerings.

Note that water in its various forms (e.g. carbonated, flat) would likely need to be considered a beverage category in most contexts.

- For menus, regulated food service premises must display calories for water if it is listed as a standard food item on a menu (e.g. bottled water), unless an exemption provided for in the regulation applies.
- For standard food items that are put on display at regulated food service premises, calories must be posted on a label or tag identifying the standard food item (unless an exemption applies). Notably, there is an exemption for standard food items that are put on display that are labelled with a nutrition facts table that meets the requirements of the *Food and Drug Regulations* made under the *Food and Drugs Act (Canada)*. Therefore, if a bottle of water that is a standard food item is on display at the regulated food service premises is labelled with such a nutrition facts table, calories would not have to be displayed on a label or tag identifying that bottle of water.

35. Do calories need to be posted for frozen entrées that require thawing and re-heating at home?

The Act does not define further preparation.

Standard food items are restaurant-type food or drink items that are either served or processed and prepared primarily in a regulated food service premises, and that are intended for immediate consumption on the premises or elsewhere without further preparation by a consumer before consumption.

The intention is not to capture a frozen entrée as it is likely not intended for immediate

consumption without further preparation by a consumer.

36. Are continental breakfasts in hotels or motels captured by the menu labelling legislation?

Therefore, if a hotel has a regulated food service premises, it will have to post calories for each standard food item in accordance with the legislation. Calorie postings are required to be displayed on each menu on which standard food items are listed, or, where the standard food item is put on display, on a label or tag identifying the standard food item. Also note that buffets that are captured by the legislation need to follow the requirements of section 8 of the regulation.

Calorie postings are required for every standard food item that is sold or offered for sale. Therefore, continental breakfasts that are truly offered free of charge would not require calorie posting.

37. Are monthly meal plans in university residence cafeterias or workplace cafeterias captured by the menu labelling legislation?

Cafeteria-style food service premises are regulated food service premises if they sell food to the general public and are owned or operated by a person that owns or operates 20 or more cafeteria-style food service premises in Ontario.

Even if customers pay one price for “all you care to eat” or a monthly meal plan, the standard food items that a customer can access at that price or through the meal plan can still be considered to be sold or offered for sale and would require calorie posting if the cafeteria is a regulated food service premises.

38. Are whole cakes captured by the legislation?

The intention is not to capture full cakes for sale as they are not considered to be intended for immediate consumption. However, please note that pieces of cake that are sold individually (i.e. do not require further preparation and are intended for immediate consumption) would likely be captured by menu labelling.

Exemptions

39. What does it mean that special order items are exempt?

Paragraph 4 of subsection 2(2) of the regulation exempts from the definition of ‘standard food item’ food or drink items that are prepared on an exceptional basis, in response to a specific customer request, and that deviate from the standard food items offered by the regulated food service premises.

Special order items refer to food or beverage orders that are prepared in a specific manner based on an individual customer’s request that requires the regulated food service premises to deviate from its usual preparation of a standard menu item.

For example, if a standard club sandwich comes with lettuce, tomato, cheese and ham, a customer that orders the club sandwich with no cheese would be ordering a special order item. Similarly, a customer may request that a standard food item be modified; for

example, a customer may order a strawberry-banana smoothie without milk. In these cases, operators are to display calories for the standard food or drink item (i.e. the club sandwich or smoothie) and are not expected to account for the customer's request.

Please note that this does not include items intended to be personalized that are assembled based on customers' choices.

40. Do calories need to be posted for items that are prepackaged with a Nutrition Facts Table (NFT) and are posted on a menu (e.g. listed or displayed as part of a combination meal)?

Yes, if the item with an NFT is listed on a menu, the calories must be displayed. Also, if the item with an NFT is an option in a combination meal, the calories for the item with the NFT must be included in the calories displayed for the combination meal.

41. Are vending machines captured by the menu labelling legislation?

Food items that are sold or offered for sale in vending machines are not captured by the legislation.

42. Are micro markets, where the customer selects from a shelf or cooler and pay through self check-outs, considered vending machines for the purposes of the legislation?

The regulation's vending machine exemption only applies to standard food items in vending machines. Calories for standard food items sold or offered for sale in a micro market would have to be displayed provided the micro market is a regulated food service premises under the definition set out in the Act and an exemption does not apply.

43. If a product varies according to seasonal availability of ingredients (e.g., a fruit salad), does it qualify under the temporary exemption?

The 90 day exemption in paragraph 1 of subsection 2 (2) of the regulation refers to food or drink items that are offered for sale by the regulated food service premises for less than 90 days per calendar year, whether consecutively or non-consecutively. This pertains to the availability of an item for a period of time shorter than 90 days, but does not make reference to the ingredients/composition of the item.

For standard food items that are made with ingredients that vary according to availability and where the menu listing is general and does not reference the specific flavours, varieties or sizes, a range could be used to depict the options of items (i.e. fruits) that are used for the standard food item.

44. Are complimentary items captured by the requirements of the menu labelling legislation?

Food items that are not sold or offered for sale would not be captured by the legislation.

45. Do calories need to be posted for salt & pepper, single packet condiments (e.g. single serve ketchup) and self-serve toppings that are free of charge (e.g. self-serve pickles)?

Self-serve condiments that are free of charge and not listed on the menu are exempt

from the requirements of the menu labelling legislation.

46. Do calories need to be posted for monthly limited time offers that are only available during a 30 day period?

The regulation exempts food or drink items from the definition of “Standard Food Item” if they are offered for sale by the regulated food service premises for less than 90 days per calendar year, whether consecutively or non-consecutively.

If a combination item (e.g. coffee and chocolate bar) is offered for only 60 days of the year, it would be exempt from the calorie posting requirement. However, if one of the items is also a standard food item that is sold or offered for sale on its own and is offered for sale by the regulated food service premises for 90 days or more, the requirement to post calories would still apply to that item.

Grocery

47. Why did the ministry introduce exemptions for select standard food items when they are sold at grocery or convenience stores?

The ministry recognizes that food items that are purchased at a grocery or convenience store may be either intended for immediate consumption or for later consumption requiring further preparation, depending on the format and location in the store where the items may be purchased. The policy intent of the Act is to capture restaurant-type food or drink items intended for immediate consumption, therefore an exemption was formulated that excludes items in grocery stores (including convenience stores that fall within the regulation’s definition of ‘grocery store’) that would likely be not intended for immediate consumption.

It is presumed that, unless they are part of another standard food item, deli meats and cheeses normally sold by weight, flavoured bread, buns and rolls, prepared fruit and vegetables intended for multiple persons and olives and antipasti would not be purchased for purposes of immediate consumption.

48. Are plain breads and rolls exempt when sold in a grocery or convenience store?

To be a “standard food item”, a food or drink item must be a restaurant-type food or drink item. A restaurant-type food or drink item is a food or drink item that is either served in a regulated food service premises or is processed and prepared primarily in a regulated food service premises, and that is intended for immediate consumption on the premises or elsewhere without further preparation by the consumer before consumption.

Whether plain bread and rolls are a standard food item depends, in part, on whether they are a restaurant type food or drink item. The fact that they are plain breads and rolls alone does not automatically exempt them from being a standard food item. The regulation exempts from the menu labelling requirements flavoured breads, buns, and rolls that are not part of another standard food item and are sold at grocery stores. This exempts only flavoured breads, buns and rolls; plain or unflavoured bread, buns and rolls are not exempt as long as they meet the definition of a standard food item, or if they are part of a standard food item (e.g., a combination meal with a soup and bread, or a sandwich).

49. Do calories need to be posted for bakery multi-serve packs (e.g. 6 count of muffins/scones)?

To be a “standard food item”, a food or drink item must be a restaurant-type food or drink item. A restaurant-type food or drink item is a food or drink item that is either served in a regulated food service premises or is processed and prepared primarily in a regulated food service premises, and that is intended for immediate consumption on the premises or elsewhere without further preparation by the consumer before consumption.

Decisions should be made based on whether the packs are considered standard food items. Multi-serve packs of bakery items sold at a grocery or convenience store are likely not intended for immediate consumption, and thus may not require calorie posting. However, decisions should be made based on each specific item.

50. Are single serve fruit and vegetable trays exempt from the regulation when sold at a grocery or convenience store?

To be a “standard food item”, a food or drink item must be a restaurant-type food or drink item that is either served or processed and prepared primarily in a regulated food service premises, and that is intended for immediate consumption on the premises or elsewhere without further preparation by the consumer before consumption.

“Prepared fruit and vegetables intended for multiple persons” that are sold at grocery stores are exempt from the menu labelling requirements as they are not intended for immediate consumption. This exemption, set out in the regulation, only applies if the prepared fruit and vegetables are intended for multiple persons.

Whether single serve fruit and vegetable trays are out of scope depends on whether they are standard food items, meaning that it depends on whether such trays are restaurant-type food items that are sold or offered for sale in servings that are standardized for portion and content. If single serve fruit and vegetable cups/bowls meet the definition of ‘standard food item’, calories would have to be posted where such items are listed or depicted on a menu and/or put on display at a regulated food service premises.

Calorie Posting

Where calories are to be posted

51. Can calorie information be displayed on a sign or wall poster instead of on a menu?

At regulated food service premises, calorie information for a standard food item must be displayed on each menu on which the standard food item is listed and on a label or tag where the standard food item is put on display. However, for self-service food and beverages or for food that is on display in bulk form, a sign with calorie information must be posted in close proximity to and clearly associated with the food or beverage items (For rules about signage, see section 6, paragraphs 7(iii) and 9, and section 8 of the regulation; see also subsection 8(6), which outlines a special rule applicable to self-serve beverages).

52. Can calorie information be posted on a spreadsheet at the end of the menu?

Section 6 of the Regulation specifies that calories for standard food items must be displayed:

- **Adjacent to the name or price of the standard food item;**
- Unobstructed and readily legible to customers;
- In the same font and format as, and at least the same size and prominence as, the name or price of the standard food item; and
- The term “Calories” or “Cals” must appear in the same size, font and prominence as the calorie number and either adjacent to the calorie number or as a heading above a column listing calories.

Posting the calories as a table at the end of the menu would not fulfill the requirements of the Act.

53. Is calorie labeling once per item sufficient? For example if a food item is listed with price in three places (on a menu board, on a shelf tag, and on a product label) can calories be posted on only on one of those items?

Subsection 2(2) of the Act requires that caloric information be posted on each menu on which the standard food item is listed or depicted at the regulated food service premises and, where the standard food item is on display at the regulated food service premises, on a label or tag identifying the item. Caloric information is required on each menu, label or tag where the item is listed. If the standard food item is listed on the menu, and is also on display – and, so, has the required tag or label – caloric labeling would be needed more than once; specifically, calorie information would have to be displayed on the menu and on a label or tag identifying the item.

54. Do calories for items on display (e.g. bakery items behind glass counter) need to be posted on food tags?

Where a standard food item is put on display at a regulated food service premises, calories must be displayed on a label or tag identifying the item. If the bakery items are standard food items and are on display, calorie information would have to be posted on labels or tags that identify the bakery items (unless an exemption provided for in the regulation applies). In addition, if the bakery items are listed or depicted on a menu at the regulated food service premises, calories for the items would need to be posted on that menu.

55. Do calories need to be posted on beverage dispensers that are not self-serve but that are within sight of the customer?

Where beverage dispensers are visible to the customer and where the beverage or beverages it dispenses are a standard food item and are on display, calories would need to be posted on a label or tag identifying the item (in compliance with section 6 of the regulation). Subsection 2 (2) of the Act stipulates that where the standard food item is put on display at the regulated food service premises, calorie information is to be posted

on a label or tag identifying the standard food item.

The intent of the Act is to provide customers with calorie information at the point of order selection and customers make their flavour selection from labels or tags on beverage dispensers.

56. If a menu lists the calories beside the price, but the menu has a call-out advertising “Double your Portion for \$5”, would calories be required within the call-out?

The regulation provides that, if the menu, label or tag lists specific flavours, varieties or sizes of the standard food item, the number of calories for each flavour, variety or size must be displayed. Thus, if the menu lists an option to increase the size of a standard food item, calories would need to be displayed for both this new size and the original size (that is, the size of the item before it is increased).

Similarly, if the standard food item is a combination meal, paragraph 9 of section 6 specifies that if the menu, label or tag includes an option to increase or decrease the size of a combination meal, the impact of the option on the overall number of calories of the combination meal must be declared for the increased or decreased size (e.g. “add X calories”).

57. If an item that is listed as a substitution in a call-out (e.g. substitute for salad \$2) already has calories displayed elsewhere on the menu board, does the calorie information need to be repeated at the substitution call-out, as well?

Yes. If the standard food item is a combination meal, paragraph 9 of section 6 specifies that where the variable items of the combination meal are individually listed on the menu, label or tag, the number of calories for each possible option must be displayed. Calorie information is to be posted at each instance that a standard food item is listed or depicted.

Serving Size

58. Can calorie labeling be based on weight (i.e. 100 g) or individual units?

Calories for standard food items should be listed in accordance with how the items are sold or offered for sale. For items that are not self-serve and are sold by weight, the calorie labelling can be based on weight (e.g. 100 grams).

In addition, if a standard food item with multiple individual units (e.g., wings) is sold or offered for sale and is intended for one customer, then the requirement is to post the calories for the item as a whole (e.g., 6 pieces).

If the standard food item is intended to be shared, owners or operators should refer to the requirements of paragraph 6 of section 6 of the regulation.

59. How is a standard size determined for self-serve beverages?

Where cups or other vessels are offered for self-serve drinks, serving sizes for self-serve beverages must be determined by the volume of the cups or vessels, expressed in milliliters or, if applicable, by description of the cup size.

Self-Serve

60. If a self-serve beverage machine has both flavour cards and a 'menu' of prices for each size of beverage, do calories need to be posted on both signs, or can a sign be posted?

The regulation states that, for self-serve beverages, calorie ranges for each serving size of every category of beverage can be displayed on a sign in close proximity to the dispenser. The sign must be readily visible and legible. Please note that each category of beverage must be distinct and that each range is to represent different flavours of each beverage category.

61. Can calories for self-serve items be by posted weight (e.g. 100g)?

If you are providing a serving instrument that dispenses uniform amounts of food, then the serving sizes for items that customers serve for themselves are determined by the volume of a serving dispensed by the serving instrument or utensil. Similarly, where cups or other vessels are offered for self-serve drinks, serving sizes must be determined by the volume of the cups or vessels, expressed in milliliters or, if applicable, by description of the cup size. For other food or drink items, a reasonable serving size must be determined by the person who owns or operates the regulated food service premises.

62. Can calories for self-serve items that are whole (e.g., perogies or sushi) be listed per multiple pieces?

If you are providing a serving instrument that dispenses uniform amounts of food, then the serving sizes for items that customers serve for themselves are determined by the volume of a serving dispensed by the serving instrument or utensil. This would also apply to individual items if a serving instrument that serves uniform amounts is provided. For example, if the serving instrument (e.g. tongs) serves one unit, then the serving size would have to be one unit.

Online Menus

63. Do calories need to be posted on an online menu with the menu item description or would it be sufficient to include them as the customer makes a decision and the price point has been confirmed?

Section 6 of the regulation requires in part that the calorie information must be adjacent to the name or price of the standard food item to which it refers. For online menus that do not fall under an exemption, calorie information would need to be posted on the online menu with the menu item description as the customer is faced with options for placing an order.

64. Do menu applications need to dynamically show calorie counts (increasing) as customers order items?

The Act requires calories to be posted for each standard food item as it is listed or depicted on a menu. There are no requirements stipulating that cumulative calorie counts should be offered. For online menus that do not fall under the exemption, in the case of an item that is personalized, owners or operators may choose to show a counter

as supplementary items are added to the basic preparation of the standard food item, but are not required to do so. For the rules with respect to standard food items that are offered for sale with the option of adding standard supplementary items (e.g. toppings), see paragraph 8 of section 6 of the regulation.

How calories are to be posted

65. When can ranges be used?

For menu items that are offered in different flavours, varieties, or sizes:

Subparagraph 7i of section 6 of the regulation states that if the menu, label or tag only includes a general description of the standard food item and does not list the flavours, varieties or sizes that are available, the calorie range for the available flavours, varieties or sizes must be listed.

For standard supplementary items:

Subparagraph 8iii of section 6 of the regulation states that the number of calories for each standard supplementary item that is listed on the menu, label or tag must be declared for each size of the standard food item it complements, or declared using a range between the smallest and largest servings of the standard supplementary item.

For combination meals:

Paragraph 9 of section 6 of the regulation states that where a menu, label or tag includes combination meals with two or more variable items, the number of calories for the combination meal must be displayed as a range between the lowest and highest calorie variations of the combination meal that are available.

For self-serve beverages:

Subsection 8(6) of the regulation states that for self-serve beverages, calorie ranges for each serving size of every category of beverage can be displayed on a sign that is posted in close proximity to the dispenser. The sign must be readily visible and legible.

66. Does the regulation specify colour requirements for calorie posting?

With respect to font and format, calories for standard food items must be displayed in the same font and format as, and at least the same size and prominence as, the name or price of the standard food item. The regulation does not specify colour requirements, but owners and operators should ensure that the calories are in the same prominence as the name or price of the item.

67. How would the calorie font size be determined for an advertisement that depicts a standard food item but does not list a name or price?

For depictions that do not list either a price or standard food item, while certain rules established in section 6 of the regulation may not apply, other rules, including those in paragraphs 3 and 4, would apply. The rules set out in those paragraphs specify that the calorie information would need to be unobstructed and readily legible to individuals reading the menu, label or tag and must be appropriately rounded. Decisions on the calorie font, format, size and prominence should make the declaration readily legible to

individuals reading the menu, label or tag.

68. When there are various calorie declarations of different size & prominences, can the size of the contextual statement match any of them?

Paragraph 4 of subsection 9(2) of the regulation states that the contextual statement must appear in the same font and format as, and must be at least the same size and prominence as, the name or the price of the standard food items listed on the menu or page. If the names or prices of the standard food items on the menu or page are in fonts that differ in size, owners or operators can choose what font size (i.e., the font size for the one standard food item or the font size for another) to use as a reference point.

69. For shareable items, can the words "Serves X" be in a smaller font size than the calories?

For standard food items that are normally intended to be shared among customers, the following pieces of information are required:

- number of calories of the item (may be displayed as either the calories of the entire item or the calories per serving), and
- the number of servings the standard food item is comprised of.

The information required must be displayed in accordance with the same rules that apply to the calorie information, which are outlined in section 6 of the regulation. Therefore, it would not be possible to list the numbers of servings in a smaller font size; the information must be in the same font and format as, and must be at least the same size and prominence as, the name or price of the standard food item to which it refers.

70. What do "format and prominence" mean as used in the regulation?

The legislation does not define the words format and prominence, however common definitions would relate to the visibility and legibility of the required information. Format and prominence may include factors such as color, boldness/thickness, and any other aspect that would affect the visibility of the writing. The intent here is to ensure that the calories are just as readily visible as the standard food item name or price to the consumer.

71. What does "adjacent to" mean as used in the regulation?

Calorie information must be adjacent to the name or price of the standard food item to which it refers. The regulation does not define the words 'adjacent to;' however common definitions would mean next to or adjoining. The intention is for calories to be posted next to or right above or below the name or price.

72. If the name and price are listed in different font sizes, do the calories need to be the same size as the smaller or the larger font?

Paragraph 2 of section 6 of the regulation states that calories must be posted in the same font and format as, and must be at least the same size and prominence as the name or the price of the standard food item to which it refers. Therefore, if the name and price differ in size, owners or operators can choose what font size (i.e., the one for the price or the one for the name) to use as a reference point.

73. What do you do if the price is composed of two different font sizes?

If an owner or operator should choose to post calories based on the size of the price, and the fonts within the price vary in size (i.e. different sized fonts are used for the dollar value and cents value), then the font size used for displaying calorie content must be at least the same size as the largest font size in the price.

74. How does a regulated food service premises account for ice displacement in drinks?

Calories must be displayed for the beverage as it is sold and served to customers. If the regulated food service premises serves the beverage with ice as a standard component of the drink, then calories should be declared for the size of the cup minus the volume displaced from the ice.

For self-serve beverages, where there is no standard portion of ice, a regulated food service premises must post calories for the beverage without ice displacement.

75. How should calories be posted for items that vary in their composition (e.g. a sandwich tray)?

When a standard food item is offered for sale for more than 90 days in the year, consecutively or non-consecutively, and its composition varies according to availability of ingredients:

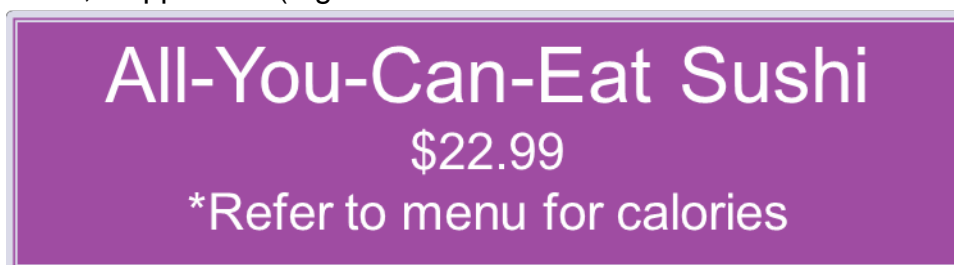
- If the menu, label or tag does not list the flavours or varieties of the standard food item according to the ingredients, a range can be used.
- If the menu, label or tag lists the specific flavours or varieties, then the number of calories for each flavour or variety must be displayed.

If the item is intended for more than one person (i.e. multi-person items), please refer to the requirements in paragraph 6 of section 6 of the regulation.

76. How are calories for “All-You-Can-Eat” to be displayed?

If a regulated food service premises offers an “all-you-can-eat” option for one specific food or beverage item (e.g. all-you-can-eat sushi) then the regulated food service premises can:

- Display calories for one serving of that food item and have a statement that outlines that the calories displayed are for one serving, or
- Refer customers to another place on the menu where one serving of the item is listed, if applicable (e.g. refer customers to the “ribs” section on the menu).



77. What if an item with multiple flavours, varieties or sizes has the same number of calories for each flavour, variety or size?

Regulated food service premises are required to display calories as a range for items with multiple flavours, varieties or sizes when only a general description is given and the individual flavours, varieties or sizes are not listed on the menu. If the flavours, varieties or sizes do not differ in calories, then calories can be displayed as one single number instead of as a range.

If a menu, label or tag lists specific flavours, varieties or sizes of the standard food item, the number of calories for each flavour, variety or size must be displayed, even if they are all the same.

78. How do you declare calories for toppings which may change based on the number of toppings ordered?

For rules about standard food items that are offered for sale with the option of adding standard supplementary items (e.g. toppings), see paragraph 8 of section 6 of the regulation.

If the amount of toppings added to a customizable item is determined by the number of toppings a customer selects, then calories should be declared for each topping with the assumption that only that one topping is added to the standard food item.

For example, a regulated food service premises may put less pepperoni on a pizza if other toppings are also selected. Calories for the pepperoni should be declared as if pepperoni is the only topping on the pizza.

79. Do calories need to be posted for each supplementary topping listed on the menu, or can a range be used for the toppings if they are all the same price?

Paragraph 8 of section 6 of the regulation provides that for standard food items that are offered for sale with the option of adding standard supplementary items (e.g. toppings), the number of calories must be separately declared for each standard supplementary item that is listed on the menu. Therefore, provided the supplementary toppings in this scenario are standard supplementary items, calories do need to be posted for each supplementary topping listed on the menu and a range cannot be used for the toppings if they are all the same price.

80. Do calories for decorative items need to be included in the calorie count?

Calories must be displayed for standard food items as they are sold and served to customers. This includes edible decorative items on the plate.

81. How are calories for dipping sauces or salad dressings served with a dish to be posted?

Calories must be posted for the entire standard food item as it is offered for sale and served to customers. It would depend on how the standard food item is presented on the menu.

- If the dressings come standard with a salad, then calories for the sauces must be included in the calories as calculated for the entire standard food item.

- If the standard food item is presented on the menu as one that is available in a number of varieties, paragraph 7 of section 6 of the regulation applies. Where the menu does not list the specific varieties and only includes a general description of the standard food item (e.g., “salad with your choice of dressing”), the calorie range for the available varieties must be displayed. However, should the menu list the specific varieties of the standard food item, then the number of calories for each variety must be displayed.
- Alternatively, if the salad dressings are not part of the standard food item but are presented on the menu as standard supplementary items that the customer has the option of having added to a standard food item, paragraph 8 of section 6 of the regulation would apply. The number of calories must be displayed for the basic preparation of the standard food item (e.g. the salad), and then the number of calories must be separately declared for each standard supplementary item that is listed (e.g. each of the available dressings). In addition, a statement must be included that indicates that the calories of the standard supplementary item are additional to the calories displayed for the basic preparation of the standard food item.

Note that under this scenario, the number of calories for each standard supplementary item that is listed on the menu must be declared for each size of the standard food item it complements, or declared using a range between the smallest and largest servings of the standard supplementary item.

82. How are calories for chicken wings and dipping sauces to be posted?

Calories must be posted for the entire standard food item as it is offered for sale. If the dipping sauces come standard with the chicken wings, then calories for the sauces must be included in the calories as calculated for the entire standard food item.

There are different ways of presenting information for standard food items such as chicken wings, depending on how the standard food item is presented on the menu.

- If the standard food item is presented on the menu as one that is available in a number of flavours, varieties or sizes, you should refer to paragraph 7 of section 6 of the regulation:
 - If these items are listed on a menu and the menu does not list the specific flavours, varieties or sizes, but rather includes only a general description of the standard food item, such as “chicken wings with your choice of dipping sauce”, the calorie range for the available flavours, varieties or sizes including the dipping sauce must be displayed.
If the menu lists the specific varieties, flavours or sizes of the standard food item (e.g. chicken wings listed with specific varieties of dipping sauces), then the number of calories for each flavour, variety or size must be displayed
- If the dipping sauces are not part of the standard food item, but are presented on the menu as standard supplementary items that the customer has the option of having added to a standard food item, then paragraph 8 of section 6 of the regulation would apply:

- The number of calories must be displayed for the basic preparation of the standard food item (e.g. chicken wings), and
- The number of calories must be separately declared for each standard supplementary item that is listed (e.g. each available dipping sauce).
- A statement must be included that indicates that the calories are additional to the calories displayed for the basic preparation of the standard food item.

Note that under this scenario the number of calories for each standard supplementary item that is listed on the menu must be declared for each size of the standard food item it complements, or declared using a range between the smallest and largest servings of the standard supplementary item.

- If the chicken wings are sold as part of a combination meal, you should refer to paragraph 9 of section 6 of the regulation. Calories would have to be posted for the entire combination meal (e.g. chicken wings, medium fries & drink) as if it was one standard food item.

83. Is it necessary to post calories for each individual menu item included in a combination meal?

Combination meals should be treated as one standard food item, and calories must be posted for the entire combination meal.

The Act does not require items in a combination meal to be listed individually on the menu. However, if the variable items that can be part of a combination meal are individually listed on the menu, label or tag, then the number of calories for each possible option must be displayed.

84. If an item with a Nutrition Facts Table (NFT) lists calories for a serving size (e.g. 100 Cal per 250g serving), but the package is sold in a bigger size (e.g. 500g), do calories need to be posted on a menu based on what is written on the NFT or on the entire item?

For standard food items, calories should be listed for the item as it is sold or offered for sale. If the item with an NFT is sold or offered for sale for consumption in its entirety by a single consumer, then calories posted would need to reflect this.

85. If a packaged item does not have a Nutrition Facts Table (NFT) because it is under the requirements for the NFT (i.e. is less than 21g), do calories need to be displayed?

Yes. Calories are to be included for all standard food items that are sold or offered for sale at the regulated food service premise and must be displayed on each menu, or where the item is put on display, on a label or tag identifying the standard food item, regardless of the requirements for Nutrition Facts table per the *Food and Drug Regulations* made under the *Food and Drugs Act* (Canada).

86. For multiple full pizza offers (e.g. “2 medium pizzas for \$12”), do calories need

to be based on the two full pizzas or by serving size?

For standard food items normally intended for more than one person, calorie information must be displayed in one of two ways:

- Displaying the calories for the entire standard food item and the number of servings the item is comprised of; or
- Displaying the calories for a serving size of the standard food item and the number of servings the entire item is comprised of.

If the owner or operator chooses to post the calories for the entire item, then calories should be posted for the entire combination meal (i.e. total calories both whole pizzas and number of servings in both pizzas). If the second option is chosen, then calories would be posted for a serving size, and the number of servings; the information would be based on all the items in the combination meal (i.e. number of servings in both pizzas).

87. If a customer has the option of substituting an item (e.g. opting for a gluten free bun) that would yield a lower calorie count, and the substitutions are listed on the menu, how would this change be declared?

For menu items that are intended to be personalized and that are assembled based on customer preferences (i.e. variable or customizable items) calories must be displayed for:

- the basic preparation of the item (i.e. default),
- each available supplementary item (e.g. dressings, sauces, toppings, condiments);
- each available supplementary item for each size of the standard food item it complements (this may also be displayed as a range); and
- a statement must be included that indicates that the calories of supplementary items are additional to the calories displayed for the basic preparation.

Note that the number of calories for each standard supplementary item that is listed on the menu must be declared for each size of the standard food item it complements, or declared using a range between the smallest and largest servings of the standard supplementary item.

If the items listed on the menu represent substitutions offering lower calorie counts rather than additions of supplementary items, then, although the regulation does not contemplate this, it would be reasonable to still display a calorie count of the substitution to provide information on its impact (for example, stating “subtracts X calories”).

88. If a range is already displayed for the meal, and a substitution still falls within the range (e.g. Substitute salad side for \$2) – so it neither reduces nor increases the range – should the calories for the substitution call-out be declared?

Where a menu, label or tag includes combination meals with two or more variable items, the number of calories for the combination meal must be displayed as a range

between the lowest and highest calorie variations of the combination meal that are available. Where the variable items of the combination meal are individually listed on the menu, label or tag, the number of calories for each possible option must be displayed. Calorie information is to be posted at each instance that a standard food item is listed or depicted on a menu.

Alcohol

89. What is meant by alcohol beverages "on display"?

Paragraph 1 of subsection 5(2) of the regulation exempts alcoholic beverages that are on display from clause 2(2) (b) of the Act; this would include the spirit bottles that are on display behind the bar or a bottle of beer or wine that is on display.

90. Are alcoholic beverages listed on a menu exempt?

No, alcoholic beverages are not exempt if they are listed on a menu. If alcoholic beverages that are standard food items are listed on the menu, the requirements of clause 2(2) (a) of the Act would apply and caloric information would have to be displayed. However, subsection 7 (1) of the regulation provides for an alternative method of displaying caloric information for alcoholic beverages.

91. If a menu has alcoholic drinks on every page of a multi-page menu, would posting the alcohol table on one page be sufficient?

If an owner/operator chooses to display the regulated Table (see s. 7(1) of the regulation) rather than displaying calories for each alcoholic beverage, then the Table must be displayed in close proximity to the place where the alcoholic beverage is listed on the menu. In the case of a menu with multiple pages, the Table can be displayed in a way that the information is visible when the menu is opened to any page that lists an alcoholic beverage (e.g. the Table can be listed on every open page instead of every page).

92. Can the serving sizes in the alcohol caloric chart be modified, with calories adjusted as relevant?

For alcoholic beverages, owners or operators can choose between posting the number of calories for each standard food item and posting the Table (see s. 7(1) of the regulation). If an owner or operator chooses to post the Table, rather than displaying calories for each standard alcoholic beverage, then he or she must provide information in the Table in accordance with the rules per section 7 of the regulation. The information in the Table must be displayed in substantially the same format as the Table and the information may not be modified.

Contextual statement

93. Does the contextual statement need to be displayed on promotional items?

The regulation provides that owners and operators are exempt from posting the contextual statement on:

- advertisements that are displayed at a regulated food service premises; and
- advertisements and promotional flyers that are distributed or made available outside of the regulated food service premises, only if:
 - they do not list prices for standard food items; or
 - they do not list standard food items that a person can order for delivery or takeaway ordering and do not provide a method to place an order.

Therefore, if the promotional item is inside the premises, it would not require a contextual statement; however, a promotional item would require a contextual statement if it is outside the premises, lists prices for standard food items, and lists standard food items that a person can order for delivery or takeaway and provides a method to order.

94. Does the contextual statement need to be displayed on online menus?

Subject to limited exceptions for certain advertisements and promotional flyers, the contextual statement must be displayed on every menu of the regulated food service premises.

The regulation provides that owners and operators are exempt from posting the contextual statement on advertisements and promotional flyers that are distributed or made available outside of the regulated food service premises, only if:

- they do not list prices for standard food items; or
- they do not list standard food items that a person can order for delivery or takeaway ordering and do not provide a method to place an order.

Therefore, assuming that the menu is outside the premises, if the online menu lists a price for standard food items and lists standard food items that a person can order for delivery or takeaway and provides a method to order, then it would require a contextual statement.

95. Does the contextual statement need to be displayed on product labels?

There are no requirements to post the contextual statement on product labels or tags. The contextual statement must be posted on all menus, subject to limited exceptions for certain advertisements and promotional flyers (see s. 9(4) of the regulation). In addition, where an individual is able to order food or drink or serve themselves, and a menu containing the contextual statement is not readily visible by, and legible to, the individual, then it must be posted on a sign that is readily visible by, and legible to, any individual who is in a place in the premises where he or she can order food or drink or serve it to himself or herself.

96. How must the contextual statement be displayed for electronic menus that rotate?

If a menu has multiple pages, the contextual statement needs to be visible when the menu is opened to any page listing a standard food item. If an electronic menu has multiple screens that rotate and that each list standard food items, the contextual statement must be visible to the customer regardless of the screen that he or she is

looking at.

97. How must the contextual statement be displayed on menu boards with multiple panels or menus with multiple pages?

If a menu has multiple pages, the contextual statement needs to be visible when the menu is opened to any page listing a standard food item.

If a menu board has multiple panels that each list standard food items, the contextual statement must be visible to the customer regardless of the panel that he or she is looking at.

98. Can the contextual statement be posted as a sign that is added on to the menu boards?

The contextual statement must be displayed on a menu, in close proximity to the standard food items listed on the menu or page, and in the same font and format as, and in at least the same size and prominence as, the name or price of the standard food items listed on the menu or page.

If a menu board has multiple panels that each list standard food items, the contextual statement must be visible to the customer regardless of the panel that he or she is looking at.

To fulfill the requirements of the regulation, the contextual statement must be on the menu; that is, it cannot be separate from the menu.

99. What are the font requirements for the contextual statement when posted on a sign next to self-serve items?

The legislation does not specify font requirements for the contextual statement when it is posted on a sign. However, the sign must be readily visible by, and legible to, any individual who is in a place in the regulated food service premises where he or she can order food or drink or serve it to himself or herself.

100. Do stand-alone inserts in the menu have to include the contextual statement on each side?

The contextual statement must be displayed on every menu of the premises, subject to limited exceptions. For a multiple page menu, the contextual statement must appear in such a way that it is visible when the menu is opened to any page listing a standard food item. Thus, for inserts that meet the definition of 'menu', the contextual statement must be included on each side if each side lists a standard food item.

101. Can the updated 2018 contextual statement be used right away?

Yes. Between January 1st, 2017 and December 31st, 2017, food service premises can choose to post the adults, youth and children contextual statement that becomes mandatory in 2018, or post the adults only contextual statement.

102. Is it enough to display the contextual statement on one sign in the store in close proximity to all the items for sale?

If there are menus in the regulated food service premises, the contextual statement

needs to be displayed on every menu of the premises, subject to limited exceptions.

In addition, where an individual is able to order food or drink or serve it for themselves, and a menu containing the contextual statement is not readily visible by, and legible to, the individual, then the contextual statement needs to be on a sign that is readily visible by, and legible to, any individual who is in a place in the regulated food service premises where they can order food or drink or serve it to himself or herself.

103. Why did the ministry update the content of the contextual statement to include a mandatory child component? Why is the ministry allowing 2 contextual statements for 2017?

The menu labelling legislation is a key initiative under Ontario's Healthy Kids Strategy that aims to reduce childhood obesity. Adding children and youth components to the contextual statement about average daily calorie needs will help parents make informed decisions for their children when ordering or dining out. Additionally, when consulted, health stakeholders supported the use of a single calorie reference value in the contextual statement, rather than a range, because evidence suggests this would simplify the consumers' ability to use the contextual statement.

To ease implementation and provide industry with time to comply with the changes to the provisions relating to the contextual statement, for the period between January 1, 2017 and December 31, 2017, industry has the option to post either the contextual statement for adults only, or the contextual statement for adults, youth and children. The contextual statement for adults, youth and children will become mandatory on January 1, 2018; however, food service premises may choose to post this contextual statement immediately.

Nutritional Analysis

104. How must calorie information be determined?

The number of calories in a standard food item may be determined by either

- Testing by a laboratory that the person who owns or operates the regulated food service premises reasonably believes will provide accurate results; or
- A nutrient analysis method that the person who owns or operates the regulated food service premises reasonably believes will accurately estimate the number of calories in the standard food item.

The person who owns or operates a regulated food service premises must reasonably believe the method for determining calories will provide accurate results. Calorie information may be derived from nutritional information provided in cookbooks or using supplier information, if the information was determined by laboratory testing or a nutrient analysis method.

105. Will the ministry be listing 'approved' consultants?

At this point, there are no plans to list approved consultants for menu labelling. Health Canada has developed a guide for determining accurate nutrition information

of food and beverage items to assist users in developing accurate nutrient values. This guide may be useful for regulated food service premises when determining accurate calorie information for their food and beverage items.

106. How and where will the consumers be able to report suspected inaccurate nutrition information?

Consumers can direct any complaints regarding implementation of the legislation to their public health units for their follow-up.

107. Will there be audits planned by the MOHLTC to ensure accuracy?

There are currently no audits planned by the ministry to ensure accuracy of calorie information.

108. Is there recourse for food service premises that post inaccurate information?

Inspectors, in their enforcement role, will have the authority to assess whether section 10 of the regulation has been complied with. Section 10 provides that owners or operators must use one of the following methods to determine the number of calories in a standard food item:

- testing by a laboratory that the person who owns or operates the regulated food service premises reasonably believes will provide accurate results; or
- a nutrient analysis method that the person who owns or operates the regulated food service premises reasonably believes will accurately estimate the number of calories in the standard food item.

Should the inspector decide that the owner or operator did not reasonably believe that the method used would provide accurate results or accurately estimate the number of calories in a standard food item, then a charge may be laid.

Enforcement

109. Who is enforcing the menu labelling legislation?

The menu labelling legislation permits the Minister of Health and Long-Term Care to appoint inspectors to support compliance. Staff of local Public Health Units who are appointed as inspectors will undertake inspection and enforcement activities. Inspectors appointed under the Act may choose to enforce the Act during existing routine inspections of food service premises.

110. How will the Act and regulation be enforced?

The Ministry will develop an enforcement protocol, in consultation with public health units, to be released prior to the implementation date of January 1st, 2017. Further details on enforcement will be released as soon as they become available.

The ministry is proposing to work with public health units on a progressive enforcement approach. This could include inspectors carrying out education visits, inspections, and responding to complaints regarding the posting of calories and signs

in regulated food service premises. Progressive enforcement means the use of more stringent charging options to reflect the frequency and severity of the level of non-compliance.

111. Does a progressive enforcement approach mean that no charges will be laid in the first year?

The ministry has stated it intends to train public health units on a progressive enforcement approach. However, please note that beginning January 1st, 2017, public health unit staff designated by the Minister as inspectors for purposes of the Act will have the power to enforce the Act.

112. Will there be a grace period for enforcement?

No, there is no grace period. Beginning January 1st, 2017, public health unit staff designated by the Minister as inspectors for purposes of the Act will have the power to enforce the Act. However, a progressive enforcement approach is recommended.

113. What are the fines for non-compliance?

The fines for not complying with the menu labelling legislation are: For

individuals:

- First offence – not more than \$500 per day or part of a day on which the offence occurs/continues.
- Second and subsequent offence – not more than \$1,000 per day or part of a day on which the offence occurs/continues.

For corporations:

- First offence – not more than \$5,000 per day or part of a day on which the offence occurs/continues.
- Second and subsequent offence – not more than \$10,000 per day or part of a day on which the offence occurs/continues.

The ministry is currently working with the Ministry of the Attorney General to develop a set fines regulation for the Act under the *Provincial Offences Act*.

114. Who will be charged in case of an infraction, franchises or corporations?

Section 1(2) of the Act provides that, for the purposes of the Act, a person who owns or operates a regulated food service premises means a person who has responsibility for and control over the activities carried on at a regulated food service premises, and may include a franchisor, a licensor, a person who owns or operates a regulated food service premises through a subsidiary and a manager of a regulated food service premises, but does not include an employee who works at a regulated food service premises but is not a manager.

Subsections 2(1) and 2(6) of the Act impose obligations on persons who own or operate regulated food service premises with respect to what caloric or other information must be posted on menus and signs.

The Act provides that every person who contravenes any provision of the Act or

regulations is guilty of an offence and liable to fines. As such, if a person who owns or operates a regulated food service premises contravenes a provision of the Act that applies to him or her, he or she would be guilty of an offence and liable to a fine as set out in the Act. For example, if a person who owns or operates a regulated food service premises (i.e. a franchisor) does not ensure calories are displayed for every standard food item that is sold or offered for sale at the premises in accordance with the requirements of section 2, then he or she would be contravening s. 2(1) of the Act and would be liable to a fine as set out in the Act.

In addition, the Act stipulates that directors and officers of a corporation that own or operate a regulated food service premises that fail to carry out their duty under s. 4(2) of the Act are guilty of an offence. Under s. 4(2), such directors and officers have a duty to take all reasonable care to ensure that the Act and regulations are complied with. If a director or officer of a corporation that owns or operates a regulated food service premises does not take all reasonable care to ensure that the Act and the regulation are complied with, then he or she would be guilty of an offence and liable to a fine as set out in the Act.

115. Would franchises be considered individuals or corporations as it relates to the fines?

For the purposes of fines imposed on a “franchisor” for failure to comply with any provision of the Act, the fine imposed would be dependent on the legal nature of the franchisor at issue. It is likely that a franchisor would be a corporation, but it may, depending on the circumstances, be a corporation or an individual.

116. How will corporations be notified that there is a fine being issued to one of their restaurants?

Sharing information about fines between premises and the parent corporation is an internal business process. It is the responsibility of each corporation to communicate with their premises about fines. However, when an offence is made and the owner or operator signals to the inspector that this was a directive from the corporation, public health units are encouraged to send corporate offices a letter informing them of the offences and/or charges.

117. Who is responsible for providing the evidence? Will inspectors communicate with corporate offices if they need to review information or will they ask the franchisee?

According to section 3(9) of the Act, if an inspector demands that a standard food item, a record or any other thing be produced under this section, the person who has custody of the standard food item, record or thing shall produce it and, in the case of a record, shall on request provide any assistance that is reasonably necessary to interpret the record or to produce it in readable form. We would expect that inspectors would request the owner or operator of the regulated food service premises to provide access to records relevant to the inspection.

118. Does an inspector's demand for information/documents need to be in writing?

Section 3(8) of the Act specifies that where an inspector demands the production of a standard food item, a record or any other thing be produced, the demand must be in writing and must include a statement of the nature of the standard food item, record or thing required.

119. Will every store be required to have all the analytical data for calorie determination present in their restaurants to present to inspectors? Can inspectors be directed to corporate head offices to confirm the method of analysis for the calories?

According to section 3(9) of the Act, if an inspector demands that a standard food item, a record or any other thing be produced under this section, the person who has custody of the standard food item, record or thing shall produce it and, in the case of a record, shall on request provide any assistance that is reasonably necessary to interpret the record or to produce it in readable form. We would expect that inspectors would request the owner and operator of the regulated food service premise to provide access to records relevant to the inspection.

120. Will inspectors be testing products for accuracy?

Inspectors will not be testing food and beverage items for accuracy. When investigating a complaint about the accuracy of the displayed calorie content, inspectors will consider whether the method of determining caloric content that was used was reasonable and take into consideration evidence presented by a business regarding how calorie content was determined. An owner or operator must demonstrate that they reasonably believed the method for determining the number of calories of an item would provide accurate results.

Public Health

121. What enforcement supports will be available for public health units?

The Ministry is planning on releasing a protocol under the Ontario Public Health Standards to support Minister-appointed public health unit inspectors in enforcing the Act. Training webinars were held in November 2016 and will be provided again in January/February of 2017. In addition, ongoing sessions will be scheduled on a regular basis as required. Materials (including an enforcement directive and inspection forms) will also be provided prior to January 1, 2017. The protocol and training materials will be consistent with the information provided to industry.

122. Will there be an accountability indicator related to menu labelling in 2017?

As you may know, at the end of 2015, the ministry embarked on a process to modernize the 2008 Ontario Public Health Standards (OPHS) and the 2011 Ontario Public Health Organizational Standards (Standards Modernization). As a result of this process, the ministry is not in the position to make decisions regarding accountability indicators for 2017. Further information will be provided when it becomes available.

123. Will there be provincial budget to support enforcement of the legislation?

The ministry understands that enforcing menu labelling may cause some public health units to incur extraordinary costs. Public health units will have an opportunity to submit extraordinary expenses to the Ministry for consideration once implementation of the Act has begun.

124. Are enforcers expected to be trained on the nutrition aspects of the regulation?

Inspectors will be responsible for enforcing the Act. Inspectors will be trained by the ministry on the requirements in the Act. There is no expectation for inspectors to be providing nutritional advice to either industry or the public.

125. How will inspectors get designated?

Subsection 3 (1) of the Act allows the Minister to appoint inspectors for the purpose of ensuring compliance with the Act.

The appointment of an inspector is legally effected through the issuance of a Letter of Appointment to the inspector. The inspector also receives an identification card as evidence of his/her appointment. The identification card is used by an inspector employed by the PHU to identify themselves as an inspector under the Act. Pursuant to section 3(6) of the Act, an inspector is required to produce this card on request when conducting an inspection.

Only persons appointed as inspectors by the Minister can enforce the Act. Other public health unit staff who have not been appointed as inspectors cannot enforce the Act, and, in particular, cannot lay a charge to an owner or operator. The Ministry is currently setting up the process to be ready for implementation in January 1st, 2017.

126. What are the report back requirements for public health units? Will there be a requirement to post infractions on a provincial database?

The Ministry continues to work on establishing the enforcement directives as well as the reporting requirements for inspectors. Further information will be available upon the release of the protocol under the Ontario Public Health Standards, prior to January 1, 2017.

127. When will the short term wording be released?

The Ministry is working to release short-term wording under the *Provincial Offences Act* prior to implementation. Further information will be shared as soon as it becomes available.

128. Will there be a role for public health in a public education campaign?

The ministry will be developing a provincial public education campaign. Public health units are invited to use these materials to develop local campaigns to ensure alignment and consistency for consumers.

129. Is the expectation that food service premises are inspected on an annual basis?

The Ministry continues to work on establishing the enforcement protocol under the Ontario Public Health Standards, prior to January 1, 2017. Further information will be shared as soon as it becomes available.

Supports

130. What supports are being provided to stakeholders for implementation of this Act and Regulation?

There has been extensive consultation with industry and health stakeholders throughout the policy development process. In addition, the following supports have been provided to stakeholders to date:

- Informational webinars were held in March and October 2016;
- A Questions and Answers document compiled from the May technical briefings were released (now updated to become this document);
- *A Guide to Menu Labelling Requirements in Regulated Food Service Premises in Ontario* was developed to provide more clarity to apply the Act and its regulation;
- Eight sector-specific fact sheets that provide additional detail on how to implement relevant sections of the Act and regulation were released in September; and
- Over 400 implementation questions were answered through the menu labelling email account.

To support successful implementation of the Act, the ministry continues to strive to provide supports for stakeholders that ensure consistent information is shared with affected food service premises and health units.

131. Are the guide and technical briefings posted on the MOHLTC website?

The ministry is working on posting the Guide and additional supports on the website as soon as possible. In the meantime, members who would like to receive copies of the supports can request them at menulabelling@ontario.ca.

132. What public facing supports will be available?

The ministry is planning to implement a public education campaign to coincide with implementation and enforcement of the Act on January 1, 2017.

The ministry is also currently developing a public-facing website featuring general information on the Act, as well as information on healthy eating.

In addition, public-facing fact sheets will be distributed to industry stakeholders, as well as public health stakeholders to provide answers to the public's general questions about menu labelling.

133. Are there plans to evaluate the impact of menu labelling?

Yes, the ministry is considering carrying out an evaluation on the impact of this Act. Further details on the evaluation will be released at a later date.

134. Who can stakeholders contact if there are any questions regarding menu labelling?

An email account, menulabelling@ontario.ca, has been set up to respond to all questions regarding menu labelling.

For Industry

135. Can the ministry review a food service premises' menu?

The ministry recognizes that the application to each regulated food service premises is subject to the specific realities of each operator and therefore is unable to review menus to interpret the Act. The Ministry does not have sufficient information about the nature and operation of the regulated food service premises to provide that type of advice. Providing such responses would in any event not bind inspectors who have the ultimate responsibility to interpret the Act and regulation when conducting inspections, regardless of any responses provided by the ministry. We recommend that owners and operators of regulated food service premises speak to their legal counsel on the interpretation of the *Healthy Menu Choices Act, 2015*.

136. Can a food service premises meet or call someone from the ministry to talk about implementation in their stores?

The ministry is unable to meet with individual vendors to interpret the Act since the application to each regulated food service premises is subject to the specific realities of each premises. We recommend that regulated food service premises speak to their legal counsel about specific questions. In addition, regulated food service premises are invited to email questions they may have via menulabelling@ontario.ca and the ministry will make every effort to assist them.

For Public Health

137. When will the enforcement protocol be released?

The ministry is working to establish the enforcement protocol under the Ontario Public Health Standards, prior to January 1, 2017. Further information will be shared as soon as it becomes available. The ministry shared the draft protocol with health units in November 2016 to consult and seek feedback on the enforcement approach. Comments will be considered in the final draft which will be released to coincide with implementation in January of 2017.

138. Will the ministry provide an assessment checklist for public health inspectors?

Yes, the ministry is working on providing public health units with an inspection form that can be used by public health inspectors to guide their enforcement of the legislation. Further information will be shared as soon as it becomes available.

139. How will inspectors be trained?

Training webinars were held in November 2016 and will be provided again in

January/February of 2017. In addition, ongoing sessions will be scheduled on a regular basis as required. Materials (including an enforcement directive and inspection forms) will also be provided prior to January 1, 2017. The protocol and training materials will be consistent with the information provided to industry.

140. Will the ministry provide expert support for public health units?

The ministry is committed to work with public health units to support them in enforcement of the legislation. Enforcement supports, including a protocol, a directive, and an inspection form will be shared with public health units in time for implementation. However, the ministry is unable to provide consultation services for implementation of the policy. If there are any specific enforcement questions they can be submitted to the menulabelling@ontario.ca and the ministry will work to provide as much support as possible.

Other

141. Did the ministry consult with stakeholders on the development of the legislation and regulation?

To inform the development of the Act, the Ministry of Health and Long-Term Care (MOHLTC) consulted with key stakeholders including public health and industry. MOHLTC also consulted with the public through an online survey on the development of the Act and the Ontario Regulatory Registry on the regulation.

MOHLTC held targeted consultations in the summer of 2015 with key stakeholders representing the following sectors:

- Health stakeholders
- Restaurants and Foodservices
- Food Retail (i.e. grocery and convenience)
- Entertainment sector (i.e. movie theatres)
- Food and Beverage Manufacturers and Processers
- Cafeteria Operators and Caterers
- Vending Machine Operators
- Beer, Wine and Spirits Industry
- Agriculture Sector

Stakeholders were consulted on the following areas of the regulation:

- Calorie posting – To determine the size, format and prominence of calorie information to be posted on menus, menu boards and display tags.
- Standard food items – To provide further clarity and/or set rules for ‘standard food items’.
- Contextual statement – to determine the size, format and content of the contextual statement.
- Exemptions – to determine if any exemptions from the calorie posting requirement are needed.

142. Does the legislation comply with Canadian Food Inspection Agency rules?

In the process of developing the legislation and regulation, the ministry worked with both federal and provincial partners including Health Canada and the Canadian Food Inspection Agency to ensure that there is no conflict between the Act and their existing rules.

Subsection B.01.401 (3) of the Food and Drugs Regulation made under the *Food and Drugs Act* (Canada) provides, in part, that certain exemptions to the general requirement that the label of a prepackaged product must carry a nutrition facts table do not apply where the label of the product, or any advertisement for the product that is made or placed by or on the direction of the manufacturer of the product, contains a reference to the energy value. Please note that the requirements of the *Healthy Menu Choices Act, 2015* and the regulation made under that Act are not the directions of a manufacturer.

143. Does the information displayed under the legislation need to be bilingual?

There is no requirement to display calorie and contextual statement information in both English and French. The decision to do so is at the discretion of the operator. In an area with a French population, the operator may choose to display the required information in both English and French, but it is not a requirement of the Act.

The Act is provided in both official languages and as such all wording required is available online on the E-Laws website.

144. Will the legislation be broadened at a later date to include other nutrition information?

As a first step, the Act requires regulated food service premises to display calories on menus; however, the legislation does provide the government with regulation-making authority to require additional information about standard food items to be displayed on menus, labels and tags at a later time.

The government will continue to monitor trends, research and other jurisdictions to continually assess the evidence base for expanding the nutritional information to be displayed on menus, labels and tags. It is proposed that an evaluation of the impact and outcomes of the legislation could be undertaken at which point the government could consider whether to expand the nutritional information to be displayed.

145. Why are schools exempt from the menu labelling legislation given that it's part of the Healthy Kids Strategy?

This government is committed to encouraging healthy eating and addressing obesity in children. We have exempted schools from the requirements of the Act as food and beverages sold in Ontario schools are already required to follow the nutritional requirements outlined in Ontario's School Food and Beverage Policy (PPM-150).

The nutrition standards in PPM-150 embody the principles of healthy eating outlined in Canada's Food Guide, and are intended to ensure that the food and beverages sold in schools contribute to students' healthy growth and development.

146. Why does the legislation include alcohol if this is an initiative under the Healthy Kids Strategy and alcohol is an age-restricted product?

Alcohol has been included because we know that adults want to make healthy decisions for themselves too. The legislation includes both alcoholic and non-alcoholic beverages as calories found in alcohol are part of an individual's daily caloric intake and alcoholic beverages can contain a significant amount of calories.

Other jurisdictions (such as New York City and the US FDA) have also included alcohol in their menu labelling legislation.

147. How was the '20 or more' threshold selected?

Ontario's Act applies to food service premises with 20 or more locations in Ontario that operate under the same or substantially the same name, regardless of ownership, and that offer the same or substantially the same standard food items. This threshold was set in order to ensure the legislation does not impact independents/small businesses. It does not apply to small operators (i.e., mom and pop operations) with less than 20 locations in order to mitigate any potential financial challenges in meeting the requirements of the Act and the regulation.

The threshold of 20 or more locations is consistent with other jurisdictions that have implemented, or are in the process of implementing, menu labelling such as the United States (Food and Drug Administration) and New South Wales, Australia.

148. What if my municipality has a similar by-law requiring restaurants to post nutritional information?

The Act provides that municipal by-laws are inoperative to the extent that they address caloric or nutritional information required to be displayed by food service premises. This prevents municipalities from imposing additional requirements on food service premises. This is done in order to avoid a patchwork of different menu labelling requirements across the province, create consistency across the province, and help streamline enforcement.

149. Can the food premises post other nutrition information beside calories (e.g. sodium)?

The decision on whether to post additional nutrition information on a menu is within an owner or operator's discretion. However, decisions regarding posting additional information on other nutritional information should not interfere with the correct application of the requirements of the Act and regulation to post calories.