

MENU LABELLING TECHNICAL BRIEFING WEBINARS

March 21-23, 2016: Questions and Answers

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

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Background

During the week of March 21st, 2016 the Ministry of Health and Long-Term Care held technical briefing webinars for industry and health stakeholders.

The sessions were well attended with over 145 members and organizations represented. At the technical briefings Ministry staff walked participants through the requirements of the *Healthy Menu Choices Act, 2015* (Act) legislation and its accompanying Regulation 50/16. Ministry staff also provided an overview of the sections in the Industry Guide, and a question and answer period was held for all participants.

The following reflects a summary of those questions asked in the technical webinar. We have provided responses to questions where appropriate. Your questions will continue to be considered as we develop additional supporting materials for the successful implementation of the Act, including the Industry Guide, Factsheets and a new *Ontario Public Health Standards* protocol.

Please note that this document is being provided for educational use and is not legal advice, nor should it be used as legal advice about the requirements for menu labelling. Such advice should be obtained from lawyers. Where there is a discrepancy between anything in this document and a legislative provision, the legislation prevails.

Ontario legislation may be found at <https://www.ontario.ca/laws>.

Questions

Standard Food Items

Serving Size

1. How is standard size determined for beverages?

Calories for beverages should be listed as per the sizes in which they are sold or offered for sale.

Subsection 8(4) of the regulation stipulates that serving size for self-serve items must be determined as follows:

- Where the premise provides a serving instrument that dispenses uniform amounts of food, by the volume of a serving dispensed by the instrument.
- Where cups or other vessels are offered for self-serve drinks, by the volume of the cups or vessels, expressed in millilitres or, if applicable, by description of the cup size.
- For other food or drink items, by a reasonable serving size determined by the person who owns or operates the regulated food service premise.

The ministry recommends that serving sizes are consistent across premises operating under the same or substantially the same name.

Alcohol

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

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.

3. Are alcoholic beverages listed on a menu exempt?

No, alcoholic beverages are not exempt if they are listed on a menu. If alcoholic beverages 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. Section 7 (1) of the regulation provides for an alternative method of displaying caloric information for alcoholic beverages.

Exemptions: Special Order Items

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

Subsection 2(2)(4) of the regulation exempts 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 premise.

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, and the customer orders the club sandwich with no cheese. Similarly, a customer may request that a standard food item may be customized; for example, ordering 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.

Nutrition Facts Table (NFT)

5. Can you provide more details on the exemption of products with a Nutrition Facts Table (NFT)? What does "on display" mean?

Under paragraph 2 of subsection 5(2) of the regulation, items that are on display and which have a NFT that meets the requirements of the Food and Drug Regulations made under the Food and Drugs Act (Canada) are exempt from the requirements of clause 2(2)(b) of the Act.

- However, if the item with an NFT is listed on a menu, the calories must be displayed on the menu. 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 total calories displayed for the combination meal.

Examples of items captured by the legislation:

- Bag of chips or pre-packaged sandwich that is listed on a menu.

- Slice of pizza and can of pop combination meal. Calories must be displayed for the combination meal, including the calories for the can of pop.

If the items (e.g., prepackaged sandwich, chocolate bar) are on display and are not listed on a menu or as part of a combination meal, calories do not need to be displayed.

6. For example, in a pizza and pop combo, if the drink is prepackaged and has an NFT, would the calories need to be posted?

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.

7. Are vending services with packaged items with an NFT (where the consumer cannot see the NFT before ordering) included in the scope of the regulation?

Based on feedback from stakeholders, the ministry is doing further assessment to clarify if these items should be captured by the Act and its regulation. Further information will be provided as soon as possible.

Further Preparation

8. What is the definition of further preparation (e.g. heating chilled fully cooked meal)?

Based on feedback from stakeholders, the ministry is doing further assessment to clarify if these items should be captured by the Act and its regulation. Further information will be provided as soon as possible.

9. Are fruit/vegetable salads and trays applicable for caloric labelling? What if there are cut fruit and/or veggie trays where the content isn't always the same (either composition or size)? Are these considered non-standardized?

Based on feedback from stakeholders, the ministry is doing further assessment to clarify if these items should be captured by the Act and its regulation. Further information will be provided as soon as possible.

Menus

10. Do calories need to be displayed in in-store advertisements and window signs?

Subsection 3(1) of the regulation defines a “menu” as any document or other means of communicating information that lists standard food items offered for sale by a regulated food service premise. A menu includes:

- Paper Menus

- Electronic Menus (e.g., menus on tablets)
- Menu Boards
- Drive-Through Menus
- Online Menus***
- Online Applications***
- Advertisements***
- Promotional Flyers***

Where standard food items are put on display, calories must be displayed on labels or tags.

****Subsection 3(2) stipulates that calories only need to be displayed on online menus, applications, advertisements and promotional flyers if prices for standard food items are displayed and the standard food items listed are available for delivery or take away ordering.*

11. Are direct mail advertisements and coupon mailers captured by the Act and regulation?

Subsection 3(2) of the regulation stipulates that calories only need to be displayed on advertisements and promotional flyers, if prices for standard food items are displayed and the standard food items listed are available for delivery or take away ordering.

How to Display Calories

12. 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:

Subsection 6(9) 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.

13. 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.

14. 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?

Section 6, paragraph 2: The information that, under section 2 of the Act, is required to be displayed on menus, labels and tags shall be displayed in accordance with the following rules:

- 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 the price of the standard food item to which it refers.

The name of the standard food item, price and calorie information should all be equally legible to the consumer when making their choice.

Where the fonts in the price vary in size (i.e., different sized fonts are used for the dollar value and cents value), the font size used for displaying calorie content must be at least the same size as the largest font size in the price.

15. How should calories be rounded?

Paragraph 4 of section 6 of the regulation states that the calorie information must be rounded to the nearest 10 for items with over 50 calories and to the nearest five for items with 50 calories or less. Thus, items with less than 50 calories could end in either a 0 or a 5 and calories over 50 will end in a 0.

Contextual Statement

16. Where does the contextual statement need to be displayed?

There are two options for how the contextual statement can be displayed:

- a. On every menu; or
- b. On a sign in the premise that is visible and legible to customers when making their order selections or serving it for themselves.

Option #1:

When displaying the mandatory and/or voluntary contextual statement on a menu, it must be:

- On every menu or on every page of a paper menu;
 - For a multiple page menu, the contextual statement can be posted on every open page of the menu

- In a place on the menu that is in close proximity to the standard food items listed on the menu; and
- In the same font and format, and at least the same size and prominence as the name or price of the standard food items listed on the menu.

Option #2:

When displaying the mandatory and/or voluntary contextual statement(s) on a sign or signs, it must be visible by and legible to every individual who is ordering food or beverages or serving themselves self-serve items in a regulated food service premise.

17. Does the contextual statement need to be displayed on promotional items (i.e. flyers)?

Based on feedback from stakeholders, the ministry is doing further assessment to clarify if these items should be captured by the Act and its regulation. Further information will be provided as soon as possible.

18. How do calories need to be displayed for menu items assembled based on customer preferences (e.g., caloric value is determined by the type of meat chosen and/or size of item ordered)?

Paragraph 8 of section 6 of the regulation states that for items that have the option of adding standard supplementary items that are listed on the menu, label or tag calories must be displayed for:

- The basic preparation of the item (i.e., default);
- Each available standard supplementary item (e.g., dressings, sauces, toppings or condiments) that is listed on the menu; and
- Each available supplementary item for each size of the standard food item it complements (this may also be displayed as a range).

A statement must also be included that indicates that the calories of supplementary items are additional to the calories displayed for the basic preparation of the standard food item.

Compliance with Canadian Food Inspection Agency (CFIA)

19. Does the legislation comply with CFIA rules?

Yes, the legislation is compliant with CFIA rules. In the process of developing the legislation and regulation, the ministry worked with both federal and provincial partners including Health Canada and the CFIA to ensure that there is no conflict between the new legislation and their existing rules.

Accessibility for Ontarians with Disability Act (AODA)

20. How will "visible and legible to any individual" be defined in relation to AODA?

Based on feedback from stakeholders, the ministry is doing further assessment to clarify if these items should be captured by the Act and its regulation. Further information will be provided as soon as possible.

Language Requirements

21. Does displayed information need to be bilingual?

There is no requirement to display calorie and contextual statement information in 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 *Healthy Menu Choices Act* or the regulation.

Food Service Premises Captured

22. Are college and university residence "all-you-can-eat" dining hall facilities that do not individually price items for retail sale included in the scope of the regulation?

All-you-can-eat dining hall facilities would be captured if they are part of a chain of 20 or more regulated food service premises in Ontario per the definition of "regulated food service premise" in the Act and the regulation.

23. Will special event or conference meeting catering (which includes some standardized menu items, some custom order items) be included in scope of the regulation?

Section 4 of the Regulation states:

Pursuant to clause (b) of the definition of "regulated food service premise" in subsection 1(1) of the Act, cafeteria-style food service premises that sell food to the general public and that are owned or operated by a person that owns or operates 20 or more cafeteria-style food service premises in Ontario are regulated food service premises for the purposes of the Act and this Regulation.

Note that custom orders (food or drink items prepared on an exceptional basis, in response to a specific consumer request, and that deviate from the standard food item offered by the regulated food service premise), is not considered to be a standard food item for purposes of the Act and the regulation.

24. How will Public Health Units (PHU) and Industry know which premises are to be regulated?

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

The Ministry requested a list of food service premises from each PHU on May 2, 2016. This list will be updated by the ministry annually based on annual data collection from the health units.

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. This information will be used to identify regulated food service premises and these will be sent to PHUs and industry in the summer of 2016.

25. What is the definition of substantially the same?

The Act defines a chain of foodservice premises as:
20 or more food service premises in Ontario that operate under the same or substantially the same name regardless of ownership, that offer the same or substantially the same food items.

The Act and the regulation do not further define the term “substantially the same”.

Determination of Caloric Information

26. How must calorie information be determined?

Section 10 and subsection 8(5) of the regulation provide for the methods by which calories for standard food items and restaurant-type food or drinks may be determined. The number of calories in a standard food item may be determined by either

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

The person who owns or operates a regulated food service premise 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.

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.

27. Will enforcement be limited to the presentation of caloric information or will the scope extend to accuracy of the information? Will inspectors be testing products for accuracy?

Inspectors will be enforcing the Act and its regulation. Inspector powers are set out in section 3(7) of the Act. Inspectors will be assessing compliance with the Act and its regulation, and this could include assessing compliance with these provisions.

When investigating the calorie information, inspectors will be encouraged to take into consideration evidence presented by a business regarding how caloric

content was determined to assess whether the method that was used was reasonable in accordance with the rules set out in the regulation.

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.

28. 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.

Once inspectors have been appointed, industry should advise inspectors as to the type of records each food service premise is required to keep on location with regards to calculation of calories and situations where such records are held by the corporate head office.

The ministry will encourage inspectors to take a progressive enforcement approach that emphasizes education as an initial step.

Enforcement

29. Could you please clarify when enforcement will begin?

The legislation and regulation will come into force on January 1, 2017.

The ministry is committed to providing supports for implementation. These include the Technical Briefings on the Regulation, the Industry Guide, factsheets, Qs and As and a dedicated menu labelling email address.

Offences

30. What are the penalties if there is an infraction?

As per the legislation:

Offences

4. (1) Every person who contravenes any provision of this Act or the regulations is guilty of an offence and is liable,

(a) in the case of an individual,

(i) for a first offence, to a fine of not more than \$500 for every day or part of a day on which the offence occurs or continues, and

(ii) for a second or subsequent offence, to a fine of not more than \$1,000 for every day or part of a day on which the offence occurs or continues; and

(b) in the case of a corporation,

- (i) for a first offence, to a fine of not more than \$5,000 for every day or part of a day on which the offence occurs or continues, and
- (ii) for a second or subsequent offence, to a fine of not more than \$10,000 for every day or part of a day on which the offence occurs or continues.

The ministry intends to work on a set fines regulation for the *Healthy Menu Choices Act* under the *Provincial Offences Act* which, if approved, will be implemented prior to January 1, 2017.

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

Section 1(2) of the legislation provides that:

For the purposes of this Act, a person who owns or operates a regulated food service premise means a person who has responsibility for and control over the activities carried on at a regulated food service premise. This may include a franchisor, a licensor, a person who owns or operates a regulated food service premise through a subsidiary and a manager of a regulated food service premise. However, this does not include an employee who works at a regulated food service premise but is not a manager.

For the purposes of fines imposed on a “franchisor” for failure to comply with any provision of the Act or its regulation, 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.

32. How will corporations be notified that there is a fine being issued to one of our 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.

Public Health Units (PHUs)

33. What are the enforcement expectations for PHUs?

The Ministry is proposing to work with Ministry appointed inspectors on a progressive enforcement approach. This could include inspectors carrying out education visits (informing about the requirements of the legislation), inspections, and responding to complaints regarding the displaying of calories and signs in regulated food service premises. Progressive enforcement means the use of more stringent charging and enforcement options to reflect the frequency and severity of the level of non-compliance.

The Ministry is planning to consult with PHUs on a protocol under the *Ontario Public Health Standards* to be released prior to the implementation date of January 1st, 2017. Further information will be released when available.

34. What enforcement supports will be available for PHUs?

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 and materials (including inspector forms) will also be provided to inspectors prior to January 1, 2017. The protocol would be consistent with the information provided to industry.

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 expenses to the Ministry for consideration once implementation has begun.

Designations

35. Who will be enforcing the legislation?

The menu labelling legislation permits the Minister of Health and Long-Term Care to appoint inspectors. It is planned that employees of local public health units will be appointed as inspectors.

Appointment cards would be provided to inspectors. The Ministry is currently setting up the process to be ready for implementation in January 1st, 2017.

Data

36. What are the report back requirements? Will there be a requirement to post infractions on a provincial database?

The Ministry continues to work on 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.

Scope

37. Will the legislation be broadened at a later date to include other nutrient information?

As a first step, the legislation requires regulated food service premises to display calories on menus, or tags and labels where the standard food item is put on display; however the legislation does provide the Lieutenant Governor in Council (LGIC) with regulation-making authority to require additional information about standard food items to be displayed 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. 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 scope of the nutritional information that is required to be displayed.

38. Why is the government exempting schools from the menu labelling legislation given that it's part of the Healthy Kids Strategy?

The government is committed to encouraging healthy eating and addressing obesity in children. We are proposing that schools be exempt from the

requirements of the menu labelling legislation 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.

Resources

39. Will you be providing companies with resources to obtain calorie information for all their menu items?

The ministry will not be providing resources for determining calories.

40. 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 expenses for consideration once implementation has begun.

41. 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. Informational webinars were held in March 2016. The Ministry will also be releasing an Industry Guide this spring regarding the Act and its regulation. Industry stakeholders have been consulted on the development of the Guide.

Additionally, fact sheets and Qs and As will also be developed based on questions the Ministry receives from industry stakeholders.

Evaluation

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

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

Policy Development

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

Ontario's menu labelling legislation (*Healthy Menu Choices Act, 2015*) 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.

44. How was the calorie range for the contextual statement selected?

The Ministry conducted extensive consultation on the contextual statement. A decision was made to select a statement that is in line with the one used in British Columbia's Informed Dining program.

Additional Questions

45. Will you be able to share the presentation?

The presentation was available for download during the webinar. We are also happy to share upon request after the webinar. Please send a request to the menulabelling@ontario.ca email account.

46. Who from MOHLTC will be our key contact should we have further questions?

Questions can be directed to: menulabelling@ontario.ca