

Healthy Menu Choices Act, 2015

Application of the Act in Convenience Stores

This document is intended to help food service premises owners and operators, public health stakeholders, and the general public understand, implement and enforce Ontario's menu labelling legislation as it may apply to regulated convenience stores. This fact sheet should be used in conjunction with *A Guide to Menu Labelling Requirements in Regulated Food Service Premises in Ontario*.

The *Healthy Menu Choices Act, 2015* and its accompanying regulation come into effect on January 1st, 2017 (with the exception of the revised contextual statement, which comes into effect January 1st, 2018). Owners and operators of regulated food service premises are required to comply with the menu labelling legislation as of January 1st, 2017.

Are Convenience Stores Considered to be Grocery Stores?

For the purposes of menu labelling, a "grocery store" is a food service premises where a variety of canned, dry and frozen foods, fresh produce, bakery products, dairy products and household items are offered for sale. **Convenience stores**, where a variety of these items are offered for sale, are also considered grocery stores under the Act.

What is a standard food item?

A "standard food item" is any restaurant-type food or drink item, that:

- is processed and prepared primarily in a regulated food service premises;
- is intended for immediate consumption without further preparation; and
- is standardized for portion and content.

Where must calories be displayed?

Calories must be displayed on any written menu at or outside of a regulated food service premises. A menu includes:

- Paper Menus,
- Electronic Menus (e.g. menus on tablets, self-order kiosks),
- Menu Boards; and
- Online Menus/Applications, Advertisements (other than billboard, radio and television advertisements), and Promotional Flyers that list prices for standard food items and provide a method that customers can use to order delivery or take away (e.g., phone number or website).

Where standard food items are put on display, calories must be displayed on labels or tags, regardless of whether the item is also listed on the menu.

Items that are on display and labelled with a Nutrition Facts table are exempt from the requirements of the legislation. However, if the item with a Nutrition Facts table is listed on a menu, then the calories for that standard food item must be displayed on the menu.

What standard food items are exempt from calorie labelling in a convenience store?

The regulation exempts certain food and beverage items from calorie display requirements. The following exemptions may be of interest to regulated grocery stores:

- **Temporary Food Items:** Food or drink items that are offered for sale for less than 90 days per calendar year, whether consecutively or non-consecutively.
- **Condiments:** Self-serve condiments that are available free of charge and that are not listed on the menu.
- **Special-Order Items:** 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. Please note that this does not include items intended to be personalized that are assembled based on customers' choices.
- **Items with a Nutrition Facts Table:** Standard food items that are on display and are labelled with a Nutrition Facts table. Note that items with a Nutrition Facts table that are listed on a menu require calorie labelling.
- **Vending Machines:** Food or drink items in a vending machine.

In addition to the exemptions previously listed, the following items sold at grocery stores, are exempt from calorie posting requirements:

- Deli meats and cheeses that are normally sold by weight;
- Prepared fruit and vegetables intended for multiple persons;
- Flavoured bread, buns and rolls; and
- Olives and antipasti.

Please note that calories for the abovementioned items must be provided when these items are part of a standard food item. For example, olives in a salad, or flavoured bread, buns or rolls that come in a combination meal with a soup, and deli meats and cheeses in a sandwich, would require calorie posting.

Table #1: Examples of Items Found in a Grocery or Convenience Store

The items below are examples of how the exemptions for grocery could be interpreted. The applicability of these items as standard food items depend on factors including the presentation or context on which they are sold. Note that these examples illustrate the policy intent and how the regulation could be interpreted. Appointed inspectors are responsible for making final decisions about whether a regulated food service premises is in compliance with the Act.

| Item | Examples of standard food items that could require calorie labelling | Examples of items that may be exempt from calorie labelling |
|---------------------------------|---|---|
| Deli meat, Cheese | <ul style="list-style-type: none"> • A sandwich containing sliced turkey • Prepared single serve cheese and cracker tray | <ul style="list-style-type: none"> • Deli meats and cheeses sold by weight at the deli counter |
| Prepared Fruit and vegetables | <ul style="list-style-type: none"> • Single serve fruit cup • A side of baby carrots that is part of a combination meal with a grilled cheese sandwich | <ul style="list-style-type: none"> • Fruit and vegetable platters prepared for multiple persons |
| Bun, Roll, Bread | <ul style="list-style-type: none"> • A sandwich made with an onion bun • A coffee and cinnamon bun combination meal • A soup, pumpernickel dinner roll and beverage combination meal | <ul style="list-style-type: none"> • Pizza bun sold on its own • A loaf of raisin bread • Multi-packs of herb rolls |
| Bagel | <ul style="list-style-type: none"> • Bagel with cream cheese • Bacon, eggs, tomatoes, hash browns and a bagel combination meal | <ul style="list-style-type: none"> • A chocolate chip bagel sold on its own • Multi-packs of plain bagels |
| Croissant, Tea biscuit, Scone | <ul style="list-style-type: none"> • Breakfast sandwich on a croissant • Chili and tea biscuit combination meal • A plain scone or croissant | <ul style="list-style-type: none"> • Multi-packs of scones |
| Donut, Fritter, Danish, Muffin | <ul style="list-style-type: none"> • An apple fritter sold on its own • A muffin sold on its own | <ul style="list-style-type: none"> • Multi-packs of donuts • Multi-packs of Danishes |
| Cake, Tart | <ul style="list-style-type: none"> • A slice of cherry pie • A butter tart | <ul style="list-style-type: none"> • A whole birthday cake • A whole pumpkin pie |
| Cookie, Cupcake, Dessert square | <ul style="list-style-type: none"> • A chocolate brownie • A date square | <ul style="list-style-type: none"> • Multi-packs of cupcakes • Multi-packs of cookies |
| Olives, Antipasti | <ul style="list-style-type: none"> • A salad containing Kalamata olives • A sandwich containing sun dried tomatoes | <ul style="list-style-type: none"> • Stuffed grape leaves that are sold at the deli counter • Marinated mushrooms that are part of a self-serve antipasti bar |

Example #1: Self-Serve Items in a Convenience Store


Calories posted in at least the same size, font, format and prominence as largest font used for the price

Calories for items with a Nutrition Facts table are included within the calories of the combination meal

Range accounts for varieties of muffins (because varieties are not listed)

Calories posted for depicted muffins even when the product name is not listed

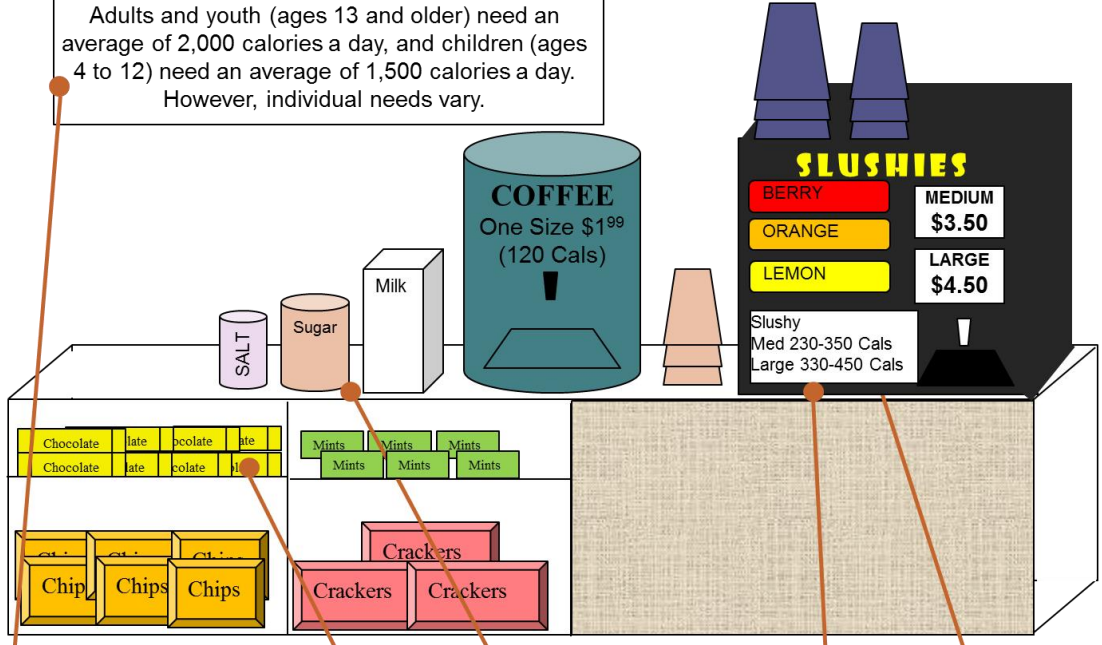
PROMO
Buy a Coffee and add a Chocolate Bar of your Choice \$2⁹⁹
 (220-350 Cals)



Adults and youth (ages 13 and older) need an average of 2,000 calories a day, and children (ages 4 to 12) need an average of 1,500 calories a day. However, individual needs vary.



Made Fresh Daily
 (120-350 Cals)



New contextual statement (effective Jan. 1, 2018*) readily visible by, and legible to, any individual where they can serve themselves

Calories for items with a Nutrition Facts table not included when the item is on display

Calories for self-serve condiments are not included

For self-serve beverages, a sign is posted in close proximity to the dispenser, that displays the calorie ranges for each serving size

Range accounts for different flavours of slushies available

*For requirements regarding the contextual statement between January 1, 2017 and December 31, 2017, please refer to the Contextual Statement section in this document.

How must the calorie information be displayed?

Calories for standard food items must be displayed:

- Adjacent (i.e. next to, above, or below) to the name or price of the standard food item;
- Unobstructed and legible to customers reading the menu, label or tag; and
- In the same font and format, and at least the same size and prominence as **either** the name **or** the price of the standard food item (e.g. same colour, boldness, style, etc.).

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

The term “Calories” or “Cals” must be displayed in the same size, font, and prominence as the calorie information and in one of the following two formats:

- Adjacent to the number of calories for each standard food item; or
- As a heading above a column listing the number of calories for each standard food item

Self-Serve Food and Beverages

For restaurant-type food or drink item that customers serve for themselves, calories must be posted on one or more signs that:

- include the name of the food or drink item;
- set out the number of calories of a serving of the food or drink item and the serving size used to determine the number of calories;
- include the term “Calories” or “Cals” in the same size, font, and prominence as the calorie information; and
- are in close proximity to and clearly associated with the food or drink item.

The sign or signs must be visible by and legible to any individual where they can serve themselves.

For self-serve beverages, as an alternative to the above approach, a sign can be displayed that lists calorie ranges for each serving size of every category of beverage. The sign must be visible and legible and posted in close proximity to the dispenser.

Example #2: Beverage Dispenser in a Convenience Store

The diagram shows a beverage dispenser with a purple sign that reads "FOUNTAIN DRINKS". To the right of the dispenser is a sign with a table of calorie information for fountain drinks. The table is titled "Fountain Drinks" and has columns for "Cals Small", "Cals Medium", and "Cals Large". The rows are: Pop (110-150, 140-180, 180-220), Diet Pop (0, 0, 0), Juice (140-180, 170-210, 210-250), Sports Drink (140-170, 180-210, 210-240), and Water (0, 0, 0). Below the table is a contextual statement: "Adults and youth (ages 13 and older) need an average of 2,000 calories a day, and children (ages 4 to 12) need an average of 1,500 calories a day. However, individual needs vary." Four callout boxes point to specific parts of the sign: 1. "Sign includes category of beverage, number of calories per serving and the serving size" points to the table header. 2. "Sign posted in close proximity to the dispenser" points to the sign's location. 3. "Serving size determined by cup size" points to the "Small", "Medium", and "Large" columns. 4. "Range accounts for different flavours within each category" points to the calorie ranges. 5. "New contextual statement (effective January 1, 2018*) posted in close proximity to self-serve items" points to the text below the table.

| | Cals Small | Cals Medium | Cals Large |
|--------------|------------|-------------|------------|
| Pop | 110-150 | 140-180 | 180-220 |
| Diet Pop | 0 | 0 | 0 |
| Juice | 140-180 | 170-210 | 210-250 |
| Sports Drink | 140-170 | 180-210 | 210-240 |
| Water | 0 | 0 | 0 |

Adults and youth (ages 13 and older) need an average of 2,000 calories a day, and children (ages 4 to 12) need an average of 1,500 calories a day. However, individual needs vary.

*For requirements regarding the contextual statement between January 1, 2017 and December 31, 2017, please refer to the Contextual Statement section in this document.

What serving size should be used when displaying calories?

- Standard food items for individuals: Calories must be listed for the standard food item as it is sold or offered for sale. For example, if the item is sold by container size (e.g. small, medium or large), calories would have to be posted according to the size of each container. Alternatively, if the item is sold by weight (e.g. per 100g), calories would be posted by weight.
- Standard food items intended to be shared: The number of calories of an item to be shared may be displayed by either:
 - displaying the number of calories of the *entire* standard food item and the number of servings that make up the entire item, or
 - displaying the number of calories of *a serving* of the standard food item and the number of servings that make up the entire item.
- Self-serve food: If the food service premise provides a serving utensil that dispenses a uniform amount of food, calories must be determined by the volume of a serving dispensed by the utensil. For other self-serve food items, the serving size must be a reasonable serving size determined by the owner or operator.
- Self-serve beverages: If cups or other containers are offered for self-serve drinks, serving sizes must be determined by the volume of the cups or containers, expressed in millilitres or by description of the cup size (e.g., small). For other self-serve drink items, the serving size must be a reasonable serving size determined by the owner or operator.

Please note that calorie information should include all items that come standard with the item (e.g. included as part of the description of the item). This would include dressings and dipping sauces.

How must the calorie information be displayed for combination meals?

A combination meal should be treated as a single standard food item, and calories must be posted for the entire combination meal.

- For 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 options of the combination meal that are available. If the options for the combination meal are individually listed, then the number of calories for each possible option must be displayed.
- If the options in a combination meal are displayed in bulk form (not portioned into their standard portion size), the number of calories per serving and the serving size must be posted on a sign that is in close proximity to and clearly associated with the item. However, if the calories for the options in a combination meal that are displayed in bulk are posted on a menu, label or tag, then premises would be exempt from posting this information on a sign.
- 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. Upsize your Combo - "Add 150 Cals").
- If the combination meal listed on a menu, label, or tag includes an item with a Nutrition Facts table, the calories for the item with the Nutrition Facts table must be included in the total number of calories displayed for the combination meal.

How must the calorie information be displayed for standard food items available in different flavours, varieties or sizes?

Where a food or drink item is available in a number of flavours, varieties or sizes:

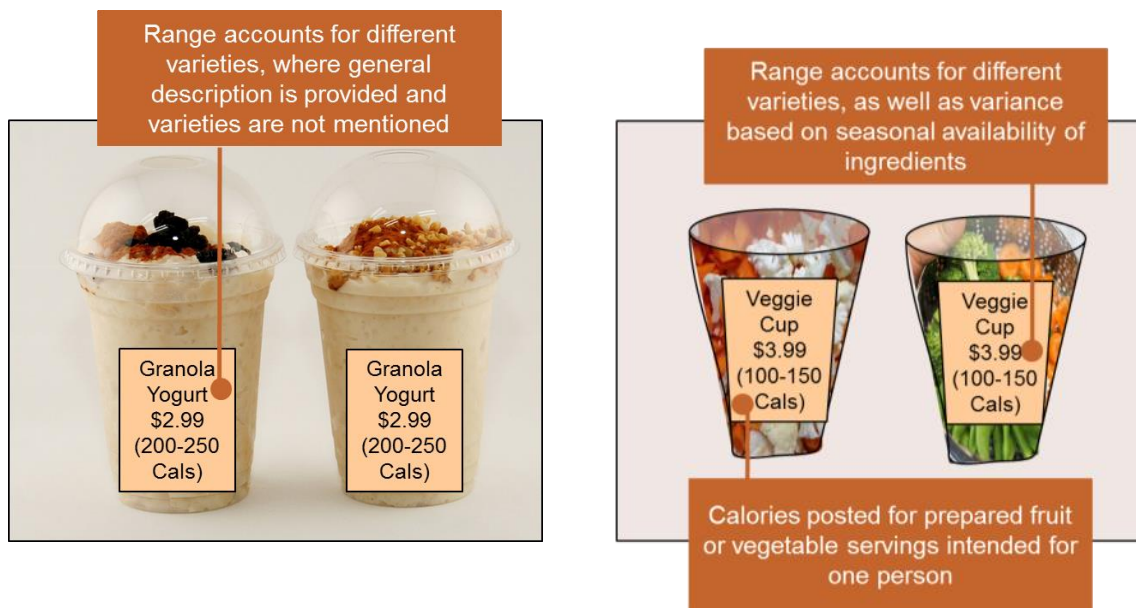
- If the menu, label or tag does **not** list the specific flavours, varieties or sizes, then the calorie range for all the available flavours, varieties or sizes of the item must be displayed.
- If the menu, label or tag lists specific flavours, varieties or sizes of the standard food item, the number of calories for each flavour, variety or size must be displayed.
- If the item is on display in bulk form (not portioned into their standard portion size) and the menu, label or tag does not list the available flavours, varieties, or sizes of the food item, then the number of calories per serving and the serving size must be posted on a sign that is in close proximity to and clearly associated with the item. However, if the calories for the item in bulk are listed on a menu, label or tag, then premises would be exempt from posting this information on a sign.

How do you post calories for items that vary in their composition based on store availability?

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.

Example #3: Variable Items on Display in a Convenience Store



Contextual Statement

A contextual statement, in English or in French, must be displayed.

As of January 1st, 2018, the following contextual statement must be displayed:

“Adults and youth (ages 13 and older) need an average of 2,000 calories a day, and children (ages 4 to 12) need an average of 1,500 calories a day. However, individual needs vary.”

Between January 1st, 2017 and December 31st, 2017, food service premises can choose to post the contextual statement above, or post the contextual statement as stated below:

“The average adult requires approximately 2,000 to 2,400 calories per day; however, individual calorie needs may vary.”

The contextual statement must be displayed:

- a. On a menu, in close proximity to the standard food items listed on the menu, 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 (e.g. same colour, boldness, style, etc.).
- b. Where an individual is able to order the food or drink or serve it for themselves, and a menu is not visible by, and legible to the individual, then it must be on a sign that is visible and legible to customers when making their order selections or serving it for themselves.

Disclaimer

This fact sheet 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 specific questions that they may have regarding how the Act and regulation apply to their food service premises.

This document is intended to help owners and operators of regulated food service premise understand and implement Ontario's menu labelling legislation. This document provides summary information about the *Healthy Menu Choices Act, 2015* and the regulation (O. Reg. 50/16) made under the Act. 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. Such advice should be obtained from lawyers. Where there is a discrepancy between anything in this document and a legislative provision, the legislation prevails.

Additional Information

For further information about the *Healthy Menu Choices Act, 2015*, please access the legislation and regulation at <https://www.ontario.ca/laws/statute/15h07>.

Questions or comments about this fact sheet can be directed to menulabelling@ontario.ca.