



March 10, 2016

MENU LABELLING

Bill 45: Making Healthier Choices Act, 2014

- Bill 45: Making Healthier Choices has been enacted.
- This requires chains with 20 or more establishments in Ontario to post calories on their menus and menu boards.
- Prepared food at groceries, convenience stores and movie theatres are included.
- The law will take effect **January 1, 2017**.
- This law supersedes any municipal by-laws.
- While the government could require other nutritional information in the future, **only calories are required to be posted by January 1**.
- The government will produce an implementation guide to provide interpretation and guidance for operators.
- Restaurants Canada will work with government officials during the implementation of the regulations.

BACKGROUND:

Bill 45: Making Healthier Choices Act, 2014 followed up on a campaign commitment by the Liberal Government to require calories to be posted on menus and menu boards.

The calorie posting regime is summarized succinctly in the explanatory note of the bill:

Owners and operators of regulated food service premises are required to display the number of calories in each standard food item sold at the premises, as well as any other information required by the regulations.

"Regulated food service premises" are food service premises that sell meals for immediate consumption, and that belong to a chain with 20 or more Ontario locations, or that are brought under this Act by the regulations.

The bill will take effect on **January 1, 2017**.

The bill can be found on the [Ontario Legislature website](http://www.ontario.ca/laws/regulation/r16050). Almost all the details are in the regulations, which can be found at: <https://www.ontario.ca/laws/regulation/r16050>.

RELEVANT SECTIONS OF THE LEGISLATION:

The legislation applies to a “chain of food service premises” as defined in the legislation 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.

“Food service premise” includes prepared food at grocery and convenience stores, as well as theatres and anywhere that sells prepared food for “immediate consumption” at the location or elsewhere.

At present, only calories are included in the regulations, but the legislation provides the ability for the government to expand to other nutritional information:

2. Any other information required by the regulations with respect to every standard food item that is sold or offered for sale at the regulated food service premise.

The legislation says, “the Minister may appoint inspectors for the purposes of this Act.” Inspectors are not mentioned in the regulations, but the government has announced that local public health units will enforce the Act. In most cases, this will put the enforcement under the purview of the local municipality.

To counter the possibility of municipal by-laws going further, the legislation addresses this by making such by-laws inoperative:

A municipal by-law is inoperative to the extent it addresses caloric or nutritional information required to be displayed by food service premises.

The key part of the legislation is the broad power to set out regulations:

6. The Lieutenant Governor in Council¹ may make regulations,

(a) providing for anything that this Act describes as being provided for, required or specified in the regulations;

REGULATIONS:

Definition of Standard Food Items

The definition of *Standard Food Items* is straightforward as:

A food or drink item that is either served in a regulated food service premise or processed and prepared primarily in a regulated food service premise, and that is intended for immediate consumption on the premises or elsewhere without further preparation by a consumer before consumption.

¹ Lieutenant Governor in Council refers to the Provincial Cabinet

The important part of this definition is found in the exemptions. Exempted from the law are:

- Items offered for sale "less than 90 days per calendar year, whether consecutively or non-consecutively."
- Self-serve condiments that are available free of charge and that are not listed on the menu.
- Items prepared in response to a specific customer request that aren't normally available.
- Food that is prepared for inpatients of public care or retirement facilities.

Definition of Menu

Menus are defined as follows:

"menu" means any document or other means of communicating information that lists standard food items offered for sale by a regulated food service premise and includes,

- (a) a paper menu,*
- (b) an electronic menu,*
- (c) a menu board,*
- (d) a drive-through menu,*
- (e) an online menu or a menu application,*
- (f) an advertisement, and*
- (g) a promotional flyer.*

(2) Online menus and menu applications, advertisements and promotional flyers are exempt from the requirements of subsection 2 (2) of the Act as long as they satisfy either of the following criteria:

- 1. They do not list prices for standard food items.*
- 2. They do not list standard food items that are available for delivery or takeaway ordering.*

The inclusion of online menus, apps, advertisements and flyers could cause tensions in interpretations and there will be a need to ensure that the Implementation Guide is clear. While the definition provides exemptions, it is clear that the legislation will affect marketing tools.

Additional regulated food service premises

The regulations specifically include chains that operate "cafeteria-style food service premises."

Exemptions

Exemptions from the Act are:

- Food service premises that operate for less than 60 days
- Premises that operate in locations overseen by the Education Act, Correctional Services Act, or Child Care and Early Years Act
- Alcoholic beverages on display
- Standard food items labelled under the *Food and Drugs Act (Canada)*

These last two exemptions are important as they recognize the common practice of displaying alcoholic beverages (e.g. bottles behind the bar) and of operators displaying packaged items (e.g. pop, chips, candy) in a display case.

Display of calorie information

The majority of food items are to be displayed according to these rules:

- Adjacent to the name or price
- Same font, format, size and prominence as the name or price
- Unobstructed and readily legible
- Rounded to the nearest 10 calories, or nearest 5 calories if under 50 calories
- Term "Calories" or "Cals" must appear adjacent to, or as a column heading

Shareable Items

Shareable items must display the number of servings the item includes and **either** the total calories for the item **or** a calories-per-serving value. This is a change from the draft regulations.

Different flavours, varieties or sizes

If the menu label or tag only contains a general description of an item available in different flavours, varieties or sizes, a range of all available items can be used.

If a list is provided, each flavour, variety or size listed must have a separate caloric value.

Customizable Items

Items that are intended to be customized with different toppings, dressings etc must list the calories for a basic preparation of the standard food item.

Any options for the item that are listed must have the calories declared for each item. The calories must be listed for each size, or a range between smallest and largest sizes may be used.

Combination Meals

If combination meals are listed on the menu, the calories must be displayed in a range between the highest and lowest calorie variations.

As with customizable items, if combination meal items are listed separately, each item listed must have the calories posted adjacent to the item description or price.

Ranges

Ranges must be listed in the format of "xx—yy", "xx" being the lowest calorie option and "yy" being the highest.

Alcoholic Beverages

There are two ways to display calories for alcoholic beverages.

The calories can be displayed using the same rules as for other food and beverages.

Alternatively, caloric values do not have to be listed separately as long as the information on the table below is displayed on the menu board in close proximity to the alcoholic beverage list, or in the case of a menu, in such a way as to be visible when the menu is open to any page listing alcoholic beverages.

The table must be given the same prominence and text size as the alcoholic beverage list. It does not need to be displayed as below, but the information must be displayed "in substantially the same format." We expect the implementation products will provide further guidance on this.

As mentioned before, alcoholic beverages on display are exempt from the requirements.

Standard Alcoholic Beverages	Standard Serving Size	Approximate average calories per standard serving size
Red Wine (12%)	1 glass (142 mL/5 oz)	130
White Wine (12%)	1 glass (142 mL/5 oz)	120
Regular Beer (5%)	1 bottle (341 mL)	150
Light Beer (4%)	1 bottle (341 mL)	100
Spirits (40%)	1 shot (43 mL/1½ oz)	100
Note: Actual calories of alcoholic beverages may vary; the addition of mixes will increase the calories of these beverages. Standard serving sizes are based on one drink as outlined in Canada's Low-Risk Alcohol Drinking Guidelines.		

Self-Serve Food and Drink

Any food or drinks that are self-served by the customer must have a sign posted listing the calories for each size and variety "in close proximity and clearly associated with the item."

These signs must list calories in the same font, format and proximity as the item description.

This is fairly straightforward with self-serve stations that have serving vessels provided (e.g. cups at a drink station). The value for that provided vessel (cup) must be listed by millilitres or by size.

The issue becomes more complex with self-serve food stations, like a buffet. If no vessel is provided, calories can be based on the serving instrument provided (e.g. amount per scoop). If neither a vessel nor a serving instrument is provided, calories can be displayed "by a reasonable serving size" determined by the operator.

Again, the implementation tools provided by the ministry will be important for interpreting this part of the act.

Contextual Statement

A contextual statement must be visible and legible to anyone who is ordering, or serving themselves.

The statement must be in close proximity to where standard food items are listed, and must be in the same font and prominence.

For menus with multiple pages, the contextual statement must be placed so it is visible “when the menu is opened to any page listing a standard food item.” This means that menus with facing pages need only place the contextual statement on one of the pages.

The contextual statement must read:

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

Children’s Menu

An operator **may** chose to put the following statement in place of the contextual statement on children’s menus. This is not mandatory but an option that some operators may want to choose.

The average child aged 4 to 8 years old requires approximately 1,200 to 1,400 calories per day, and the average child aged 9 to 13 years old requires approximately 1,400 to 2,000 calories per day; however, individual calorie needs may vary.

Determination of Calories

Calories may be determined using any laboratory testing or nutrient analysis method that the operator “reasonably believes will provide accurate results.” This gives operators the option to decide which testing method and provider are best for them. It also allows operators to use different methods depending on the standard food item.