



October 26, 2015

Martha Greenberg  
Assistant Deputy Minister (Acting)  
Health Promotion Division  
Ministry of Health and Long-Term Care  
777 Bay St, Suite 1903  
Toronto, ON M7A 1S5

**RE: Ontario Regulations under the Healthy Menu Choices Act, 2015: A Consultation Draft**

Dear Ms. Greenberg,

OPHA would like to congratulate the Government of Ontario for being the first jurisdiction in Canada to take this bold step towards creating healthier environments through this evidence-based public policy. Thank you for the opportunity to provide feedback to the draft regulations under the Making Healthy Menu Choices Act, 2015. After a review of the menu labelling research and best evidence in many existing international jurisdictions, OPHA has provided a detailed response to the draft regulations in **Appendix A**. Additionally, we would like to highlight a few overarching recommendations for your consideration below.

**Support for Legislation Implementation**

The Nutrition Resource Centre (NRC) is in a unique position to work with your Ministry and key partners to provide leadership in developing materials that support stakeholders, frontline staff and health intermediaries to ensure that it achieves the intended goal of creating healthier Ontarians. In addition to assisting with content for these resources, the NRC could provide training and consultation, including consultation with your Ministry on items, such as content for your website, marketing and social media campaigns. Please refer to **Appendix B** for further details.

**Health Equity: An Important Implication of this Legislation**

To maximize the public health impact of this policy and **promote health equity**, OPHA encourages your Ministry to be mindful of the broad range of literacy levels among consumers by adopting an **approach to nutrition communication that ensures health equity**. Throughout **Appendix A**, OPHA has identified key opportunities where the regulations would impact/promote health equity, for your consideration.

**Evaluation**

OPHA recommends that the Ministry put in place an evaluation plan to assess the impact of the menu labelling legislation both from a process and outcome perspective. The NRC would be well positioned to work with our colleagues at Public Health Ontario to support the evaluation of the menu labelling legislation and the accompanying knowledge translation. We have identified a mutual interest in ensuring this initiative achieves its intended goals: to assess public health impact of this legislation; and capture any unintended consequences leading to unhealthy choices. **Appendix C** provides additional evaluation insights and considerations for your information.

**Sodium**

OPHA notes that sodium is not addressed in these regulations. However, based on the associated negative health impact of sodium which disproportionately affects subpopulations across Ontario, and the high content of restaurant food, OPHA recommends a solution that promotes Public Health and Health Equity. **Similar to a recent New York City**<sup>1</sup>

---

<http://www.nyc.gov/html/doh/downloads/pdf/notice/2015/noa-section49-article81.pdf>

**decision, Ontario could take the lead in Canada by posting warning labels on menu offerings that exceed 2,300 mg of sodium.** This information would not restrict choice or limit how much sodium can be in food but could contribute to promoting healthier choices for consumers. In addition, restaurants may be prompted to reformulate their recipes, thus benefiting consumers to an even greater extent. Please see **Appendix D** for further considerations and rationale on sodium.

**Critical Considerations for the Draft Regulations** (See Appendix A for details & rationale)

- **Standard Food Items (Regulation 2(2).1.):** OPHA recommends that the exemption that states “Food or drink items that are offered for sale by the regulated food service premise for less than 90 days...” *be changed to “Food or drink items that are not standardized and offered as a one-time, customary market test for a period of less than 90 consecutive days...and have not yet undergone nutrient analysis”.* This phrasing will encourage Industry to move towards standardized food items while affording a sufficient threshold period for market tests, analysis and preparing labels for new products.
- **Signs, premises that serve alcohol (Regulation 7.):** It is important that the legislation provide information that is meaningful to consumers. As a result, OPHA recommends that an additional column be added entitled, “Size of Drink Sold at Food Service Premise” **AND** that the “Calories per 100 ml” be changed to “Calories per Drink Sold”. Further, the Ministry could consider an opportunity promote *Canada’s Low Risk Drinking Guidelines* in this regulation.
- **Contextual statement, certain premises:** To better achieve the intended outcomes of this healthy public policy and reflect the growing body of evidence, OPHA strongly recommends:
  - o That Regulation 9(1)1. be revised to provide a more robust provision. OPHA’s recommended revision would ensure that all food service premises (including delivery and drive-thru menus) post **clear, conspicuous and prominent** contextual statements on **all menus/pages** and in close proximity to the calories information so that consumers are able to easily use and understand this information, in context, at the point of decision.
  - o That Regulation 9(1)2. be revised to require one single, simplified, succinct and non-gender specific contextual statement for adults which communicates calories by means of an average rather than a range, to be posted on every menu as mentioned above. The statement should read **“The average adult requires approximately 2,000 calories per day, however, individual needs may vary”.**
  - o That Regulation 9.(1)1. and 9(1)2. be revised such that where there is a menu that sells standard food items targeted at children, all menus/pages targeted at children (<13 years) **must** include the following information: **“The average child requires approximately 1,500 calories per day, however, individual needs may vary”.**

In summary, OPHA commends the Ontario Government for its leadership in making it easier for consumers to select healthy food choices in food service premises, particularly with the growing number of Ontarians frequently eating outside the home. We appreciate being able to convey the concerns and expertise of our members and would happily share the findings of our research. In addition, we would welcome the opportunity to further discuss the role of NRC and ways NRC might support the implementation of this important legislation and the related regulations.

Sincerely,



Pegeen Walsh  
Executive Director  
Ontario Public Health Association  
[pwalsh@opha.on.ca](mailto:pwalsh@opha.on.ca)  
(416) 367-1281



Karen Gough  
Program Manager  
Nutrition Resource Centre, OPHA  
[kgough@opha.on.ca](mailto:kgough@opha.on.ca)  
(416) 367-2023

Cc:

Laura Pisko, Director -Health Promotion and Implementation Branch

Cc: Laura Pisko, Director -Health Promotion and Implementation Branch

Jackie Wood, Director (Acting) - Strategic Initiatives Branch

Victoria Walker, Senior Policy Analyst – Planning and Results Unit

Teri Lynch, Senior Policy Analyst (Acting) – Planning and Results Unit

## APPENDIX A – DRAFT REGULATIONS

### Ontario Public Health Association Consultation - Healthy Menu Choices Act, draft regulations

---

Government of Ontario - Draft Regulations  
OPHA – Suggested Revision of Regulation  
OPHA – Recommendations and Rationale

#### 1. Definition

1. In this Regulation, “restaurant-type food or drink item” means 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.

#### Suggested Revision:

1. In this Regulation, “restaurant-type food or drink item” means a food or drink item that is either served in a regulated food service premise or processed *and/or* prepared primarily in a regulated food service premise, and that is *ready-to-eat, meaning ready for consumption* on the premises or elsewhere without *the need* further preparation by a consumer before consumption.

**Recommendation:** Recommend the revision of regulation 1. as indicated above.

*Rationale: As the regulation is currently stated, the phrase “intended for immediate consumption” presents a loophole for industry, as they may justify the non-posting of calorie information on standard food items with rationale that the food was not prepared with intent to be consumed immediately either on the premises or elsewhere. This loophole may be resolved by replacing the words “intended for immediate consumption” with “ready-to-eat” and clarifying that this is “meaning, ready for consumption on the premises or elsewhere without the need for further preparation by a consumer before consumption.”*

#### 2. Standard food items

2. (1) For the purposes of the definition of “standard food item” in subsection 1 (1) of the Act, it is an additional requirement that the food or drink item be a restaurant-type food or drink item.

**Recommendation:** Recommend the development of supporting materials which clearly explain the full definition of a “standard food item” in plain language with examples of standard vs. non-standard food items.

*Rationale: This regulation requires the reader to refer to the Act for the definition of “standard food item” to understand the range of items that would require calories posting. Moreover, the language is very technical for the lay public. **To promote health equity**, the Government of Ontario must ensure that legislation and nutrition information*

2. (1) *Continued...*

*is provided to the public in a manner that is easily understood regardless of literacy or numeracy level. As such, any public educational materials developed should explain, in plain language, all requirements under the definition of a “standard food item” and should provide tangible examples of standard vs. not-standard “restaurant-type” food or drink items to enhance the industry and public’s understanding of food/drink items captured by the legislation.*

(2) The following food or drink items are exempt from the definition of “standard food item” in subsection 1 (1) of the Act:

1. Food or drink items that are offered for sale by the regulated food service premise for less than 90 days per calendar year, whether consecutively or non-consecutively.

**Suggested Revision:**

1. *Food or drink items that are not standardized and offered as one-time customary market test for a period of less than 90 consecutive days in any one year cycle and have not yet undergone nutritional analysis.*

**Recommendation:**

- Recommend the revision of regulation 2.(2)1. as indicated above.
- Regulation 2.(2)1. allows for the one-time testing and evaluation of non-standardized new/seasonal products with the understanding that, if approved, standardization and nutrient analysis will follow.
- A customary market test food item should NOT be exempt if the nutrition information is available; if the food item has been previously offered or market tested in any of the food service locations; or if the market test is greater than 90 days.
- Limited time offered or seasonal foods with standardized recipe and nutrition information should be NOT be exempt (i.e. Starbucks Pumpkin Spice lattes).
- Industry should be encouraged to move towards standardized food items, including portion and content.

**Rationale:** *According to the definition of “standard food item” in the Act, standard food items are required to be standardized for portion and content. Therefore, by definition, standard food items have a standardized recipe. If there is nutrition information available for standard food items, then there is no reason these should be exempt regardless of the length of time it is offered in a calendar year. For example, Starbucks has market-tested and standardized its recipe for the seasonal Pumpkin Spice Latte. While the nutrition information is available for this standard food item,<sup>1</sup> it would be exempt from 1.(1) of the Act as long as it is not offered for more than 90 consecutive or non-consecutive days of the calendar year. Products such as these are standardized across multiple food service premise locations and, therefore, nutritional analysis is possible. More importantly, the 90 day/per calendar year limit for exemption is too long.*

---

<sup>1</sup> <http://www.starbucks.com/menu/drinks/espresso/pumpkin-spice-latte>

2.(2) 1. *Continued....*

*As it is currently stated, industry may run a product for less than 180 consecutive calendar days, without calorie posting, as long as the calendar year ends at the midpoint of that time frame. Another loophole exists as regulation 2.(2)1. is currently stated, which is related to the definition of “standard food item” in the Act. If a standard food item – meaning “...standardized for portion and content”<sup>2</sup> – is altered in its composition, portion size, or taste profile after 90 days, then it would remain exempt from the legislation as, technically, this would be a completely different food item. Therefore, the 90-day limit would re-set. This 90 day limit provides leeway to the food industry to cycle menu items, within the 90 day/calendar year limit, and drives industry away from the use of standardized recipe formulations to avoid legislation compliance.*

*Industry has learned to navigate menu labelling legislation and these issues of non-standardization of recipes and cycling temporary food items have emerged in the public discourse regarding USA’s federal policy.<sup>3-4</sup> To support the intended outcomes of this policy, we strongly recommend that the exemption time limit for “temporary” or “seasonal” standard food items be removed entirely. We would support an exemption, however, for a one-time, customary market food test of a non-standardized item, in line with USA.<sup>4</sup> According to FDA’s regulations, “food that is part of a customary market test”<sup>4</sup> is allowed to appear on a menu without calories labelling for a period of less than 90 consecutive days in order to test customer acceptance of the product.<sup>4</sup> If this provision is to be considered by the Government, however, then **a customary market test food item should NOT be exempt if the nutrition information is available; if the standard food item has been previously offered or market tested in any of the food service locations; or if the market test is greater than 90 days.***

2. Self-serve condiments that are available free of charge and that are not listed on the menu of the regulated food service premise.

3. Food or drink items that are prepared specifically for,

i. 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*, or

ii. 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*.

**Recommendation:** Regulation subsections 2.(2)3 i. and 2.(2)3. ii. should be moved and included under regulation 5. – Food service premise exemptions.

**Rationale:** Regulation 2. (2) 3. provides examples of food service premise settings/populations, which should fall under regulation 5. – Food service premise exemptions. The definition of “standard food item” should be clear and exemptions

<sup>2</sup> <http://www.ontariocanada.com/registry/view.do?postingId=19762>

<sup>3</sup> <http://www.lexology.com/library/detail.aspx?g=71b67bba-c89c-47b2-98e0-efc7bd4a828d>

<sup>4</sup> [http://www.fda.gov/RegulatoryInformation/Guidances/ucm437403.htm#\\_II.D.6](http://www.fda.gov/RegulatoryInformation/Guidances/ucm437403.htm#_II.D.6)

2.(2)3. *Continued...*

*should relate to types of food items that would not be considered a “standard food item”, rather than exemptions to the definition of standard food items because they are served in a specific setting or to a specific population.*

4. 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.

**Recommendation:** Develop educational support materials that explain the rationale for these exemptions.

*Rationale: To enhance understanding, foster public support and increase transparency, the rationale for these exemptions should be communicated to the public.*

### **3. Definition, “Menu”**

3. (1) For the purposes of the Act and this Regulation, “menu” means any document or other means of communicating information that lists standard food and drink items offered for sale by a regulated food service premise and includes,

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

#### **Suggested Revision:**

3. (1) For the purposes of the Act and this Regulation, “menu” means any document or other means of communicating information that *lists, depicts or displays* standard food and drink items offered for sale by a regulated food service premise and includes, *but is not limited to:*

- (a) a paper menu,
- (b) an electronic menu,
- (c) a menu board/posters
- (d) a drive-through menu,
- (e) an online menu or a menu application,
- (f) an advertisement,
- (g) a promotional flyer,
- (h) food displays, and*
- (i) table top menu information (i.e. table tents, placemats)*

3.(1) Continued...

**Recommendation:** Recommend the revision of regulation 3.(1) as indicated above and the list of menu examples should include food displays and table top menu information.

***Rationale:** The definition of menu needs to be expanded to state that menu means “any document or other means of communicating information that **lists, depicts, or displays** standard food and drink items offered for sale by a regulated food service premise and includes, **but is not limited to** ....” The use of the only the word “lists” vs. “lists, depicts, or displays” implies that the calories posting would only be required when the name of the food is written. This regulation should be more explicit to include the range of scenarios where the calories posting would be required, such as standard food items that are available for sale and are displayed in cabinets, or standard food items available for sale that are depicted as images with the associated price on promotional materials. Additionally, the list of menus types should include “(h) food displays” as regulation 6.3. refers to the use of food tags which would be required with this type of menu. Further, “(i) Table top menu information”, such as table tents and placemats, should also be included as a menu example as these are important point of purchase materials that influence consumer choice in sit-down restaurants.*

(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.

#### **Suggested Revision:**

(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 **both** of the following criteria:

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

**Recommendation:** Recommend the revision of regulation 3.(2) as indicated above. Online menus and menu applications, advertisements and promotional flyers should only be exempt if they fulfill **both** criteria and if 3.(2)2. is revised to include the word “dine-in.”

***Rationale:** “Online menus, menu applications, advertisements and promotional flyers” are all point-of-decision materials aimed at influencing consumers’ food choice/purchases, whether the consumer is using this information to order food items off the premises for delivery, or when the consumer is using the material to decide which establishment to dine-in or order take-away food items. Therefore, the regulation should be reworded to capture all of the food items available for ordering; **including dine-in ordering**. If “online menus, menu applications, advertisements and promotional flyers”*



3.(2) *Continued...*

*list, depict or display standard food items available for dine-in, delivery, or takeaway ordering, then they should not be exempt from requirements of subsection 2 (2) of the Act. Further, promotional materials, coupons or vouchers provide “price” information about standard food items available for dine-in, take-away, and/or delivery to influence and entice consumers to purchase the featured food items both on the premises and off. As such, online menus, menu applications, advertisements and promotional flyers should not be exempt from requirements of subsection 2 (2) of the Act if they list prices for the standard food items. Therefore, the regulation needs further revision such that online menus, menu applications, advertisements and promotional flyers must satisfy **both** criteria in order to be exempt. Additionally, by adding the abovementioned words “list, depicts and displays” to this regulation, the regulation will be more explicit of the range of ways that food and drink information is displayed on menus [as menu is defined in regulation 3.(1)] and the range of point-of-decision materials that would help consumers make healthier choices when ordering dine-in, take-away, or delivery from a food service premise.*

#### 4. Additional regulated food service premises

4. 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.

**Recommendation:** Education and implementation support materials should describe, in plain language, the full definition of “regulated food service premise” and should provide concrete examples of the types of food service establishments that would be compliant vs. those that would be exempt. For example:

<b>Regulated</b>	<b>Exempt</b>
Higher education food service premises that belong to a chain with 20 or more Ontario locations	Primary or Secondary school food service premises
Food trucks that belong to a chain with 20 or more Ontario locations	An independent food truck (only one food service premise in Ontario)

***Rationale:** The public or food industry must refer to the Act for the definition of “regulated food service premise” in order to understand this regulation.*

#### 5. Exemptions

5. Persons who own or operate the following regulated food service premises are exempt from section 2 of the Act if the respective food service premises:

1. operate for less than 60 days in a calendar year.
2. are located in a school or private school within the meaning of the *Education Act*.

5. *Continued...*

3. are located in a correctional institution within the meaning of the *Ministry of Correctional Services Act*.
4. are located in a child care centre as defined in the *Child Care and Early Years Act, 2014*.

**Suggested Revision:**

5. ***Food service premises*** are exempt from section 2 of the Act if the respective food service premises:

1. operate for less than 60 days in a calendar year.
2. are located in a school or private school within the meaning of the *Education Act* as these premises are ***regulated under PPM150***.
3. are located in a correctional institution within the meaning of the *Ministry of Correctional Services Act*.
4. are located in a child care centre as defined in the *Child Care and Early Years Act, 2014*.
5. ***are located in a long-term care home within the meaning of the Long-Term Care Homes Act, 2007 (\*moved from 2. (2)3.ii.)***
6. ***are located in a retirement home within the meaning of the Retirement Homes Act, 2010. (\*moved from 2. (2)3.ii.)***
7. ***are serving 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. (\*moved from 2. (2)3.i.)***

**Recommendations:**

- As noted in OPHA's comments for draft regulation 2. (2) 3., the exemptions for the long-term care homes, retirement homes, hospitals and psychiatric facilities should be listed under regulation 5., rather than under regulation 2., as these are regulated food service premises rather than standard food items.
- All food service premise exemptions should state the rationale for exemption within the regulation where available.
  - For example, in 5.2. the suggested revision above indicates both the legislation that defines schools/private schools and the legislation that would warrant an exemption from the Making Healthier Choices Act.
- Educational support materials for the public should provide the rationale for exemptions.

***Rationale:*** See comments in 2. (2)3. The exemptions for long-term care homes, retirement homes, hospitals and psychiatric facilities should be categorized as exemptions by food service premise settings rather than standard food item exemptions. The understanding and implementation of this legislation, as well as transparency and public support for these regulations, may be enhanced by clearly stating the rationale for these exemptions.

## 6. How calorie information is to be displayed on menus, etc.

6. 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:

1. The information must be adjacent to the name or price of the standard food item to which it refers.

### Suggested Revision:

1. The information must be *directly* adjacent to the name, *image, food display* or price of the standard food item to which it refers.

**Recommendation:** Recommend the revision of regulation 6. 1. as indicated above.

***Rationale:** As we have recommended in regulation 3.(1), the definition of menu needs to be expanded to state that menu means “any document or other means of communicating information that **lists, depicts, or displays** standard food and drink items offered for sale by a regulated food service premise and includes, **but is not limited to....**” This regulation should be more explicit to include the range of ways that food service premises communicate the food items that are available and the range scenarios where the calories posting should be required, such as standard food items that are available for sale and are displayed in cabinets, or standard food items available for sale that are depicted as images with the associated price on promotional materials.*

2. 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.

3. The information must be unobstructed and readily legible to individuals reading the menu, label or tag.

### Suggested Revision:

3. The information must be unobstructed, *conspicuous* and readily legible to individuals reading the menu, label or tag.

**Recommendation:** Recommends including the word “conspicuous” in regulation 6. 3.

***Rationale:** OPHA suggests that the regulations specify the formatting for calorie posting in a manner that is consistent with jurisdictions, within the USA, that have implemented effective menu labelling policies, such as New York City and Philadelphia. These jurisdictions stress that the calorie posting is “clear”, “conspicuous”, “prominent” and “directly adjacent” to the location where a food item is listed, depicted or displayed in food service establishments.<sup>5-6</sup> As regulation 6.3. currently does not address a colour requirement for the calories posting, we strongly recommend including the word “conspicuous” in the wording of this regulation, as this would require calorie posting information to stand out, such that is both readily legible and clearly visible. This would*

---

<sup>5</sup> <http://www.nyc.gov/html/doh/downloads/pdf/public/notice-adoption-hc-art81-50.pdf>

<sup>6</sup> <http://www.phila.gov/health/pdfs/MenuLabelinguideFINAL2010-27.pdf>

6.3 *Continued...*

*prevent food establishments from using colour or visual techniques that hinder the consumers' ability to read the nutrition information.*

4. The information with respect to the number of calories of the standard food item 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.

5. The term “Calories” or “Cals” must appear either,

i. as a heading above a column listing the number of calories for each standard food item and in the same size, font and prominence as the calorie numbers, or

ii. adjacent to the number of calories for each standard food item, and in the same size, font and prominence as the calorie numbers.

**Suggested Revision:**

5. The term “*Calories*” must appear either,

i. as a heading above a column listing the number of calories for each standard food item and in the same size, font and prominence as the calorie numbers, or

ii. *directly* adjacent to the number of calories for each standard food item, and in the same size, font and prominence as the calorie numbers.

**Recommendations:**

- “Calories” over “Cals” is preferred format.
- Where prices and numeric values of calories will be posted in columns on a menu, as specified in regulation 6.5.i., a heading of “calories” must be used above the column.
- Where there are no columns used or when food is on display, as specified in regulation 6.5.i., the numeric nutrient value and the full word “calories” for the food item should be posted directly adjacent to the printed description, pictorial depiction and/or the displayed food.
- A public education campaign must instruct the public of the meaning and interpretation of the term “cals” if this is permitted in the final regulations.

**Rationale:** *In an evaluation of menu labelling formats, consumers report that calorie information is easier to read and process when the nutrition value and description of calories is written in full words and when it is presented directly adjacent to each food item on a menu (i.e. “500 calories” is easier to read and process than “500” or “500 cal”).<sup>7</sup> To maximize the public health impact of this policy and **promote health equity**, we encourage you to be mindful of the broad range of literacy levels among public consumers and ensure that information will be posted in a manner that is easy to process and use when making time-limited decisions in food service premise scenarios, such as*

<sup>7</sup> <http://www.ncbi.nlm.nih.gov/pubmed/23388204>

6.5. *Continued...*

*the line-up or drive-through of a fast-food restaurant, regardless of literacy level. If the Government of Ontario concedes the use of the word “cals” for posting calorie information on food service premise menus, then it would be imperative to launch a public education campaign that instructs the public on the meaning and interpretation of “cals” in order to maximize the impact of this legislation*

6. For standard food items that are normally intended to be shared among customers, the number of calories per individual serving, and the relevant serving size, must be displayed in addition to the total number of calories of the standard food item as it is sold or offered for sale.

7. Where a standard food item that is available in a number of flavours, varieties or sizes is listed on a menu, label or tag,

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

ii. 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.

**Suggested Revision:**

7. Where a standard food item that is available in a number of flavours, varieties or sizes is listed on a menu, label or tag,

i. if the menu, label or tag does not list the flavours, varieties or sizes of the standard food item that are available, and only includes a general description of the standard food item, a calorie range for the available flavours, varieties or sizes of the item may be displayed *when there is no significant difference between flavours, varieties, or sizes, and*

ii. *if a calorie range is displayed for the available flavours, varieties or sizes, as specified in 6.7.i., the range of food items must not exceeds a 50 calories or 20% of the median variability threshold for the range, and*

iii. *if a calorie range is displayed for the available flavours, varieties or sizes, as specified in 6.7.i., and exceeds a 50 calories or 20% of the median variability threshold for the range then , calories must be posted for each item within the range, and*

iv. 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.

6.7. Continued...

**Recommendations:**

- OPHA recommends that calories posting be required on all menu offerings and each item should display an accurate calorie amount, regardless of portion size.
- If a caloric range is permitted for a range of varieties, flavours, sizes, as specified in subsection 6.7.i., the regulation 6.7. should include the suggested revisions for subsections 6.7.i., 6.7.ii., 6.7.iii. and 6.7.iv. as indicated above.
- If a caloric range is permitted, a variability threshold of less than 50 calories and/or 20% from the median of the range of similar flavours, varieties or sizes should be imposed.
- If the range of food items exceeds the recommended variability threshold, calories must be posted for each item within the range.

***Rationale:** There may be instances where the ranges of flavours, varieties, or sizes vary dramatically in calorie content. In these cases, the range of calories for the range of varieties, flavours, or sizes could be misleading to the consumer and would not be useful to help the consumer make the healthier food choice. Therefore, this regulation requires a limit to increase the usefulness of calorie information to the consumer.*

*As a reference policy, Philadelphia’s ordinance uses “the median value for calories or nutrition information for flavors or varieties [to be] listed if the calories or other nutrition information are within 20% of the median.”<sup>8</sup> This regulatory example requires the provision of only one number to portray calories to the consumer rather than a range, which may increase the usefulness. It also prescribes a limit to the variability in calories between food items in the range of flavours/varieties to ensure that the amount of calories presented for the full range are not misleading to the consumer.*

8. For standard food items that are offered for sale with the option of adding standard supplementary items such as toppings, sauces, dressings or condiments that are listed on the menu, label or tag,

- i. the number of calories must be displayed for the basic preparation of the standard food item,
- ii. the number of calories must be separately declared for each standard supplementary item that is listed, and 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, and
- iii. 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.

---

<sup>8</sup> <http://www.phila.gov/health/pdfs/Menu%20Labeling%20Requirements.pdf>

6.8. Continued...

**Recommendations:**

- Calories should be posted on all menu offerings and each item should display an accurate calorie amount, regardless of portion size, unless there is no significant difference between sizes.
- If ranges are permitted, as specified in regulation 6.8.iii., we support the variability threshold stated of 50 calories/ 20 % of the median calorie content for the full range of sizes.

***Rationale:** In line with our rationale for revision to regulation 6.7., there may be instances where the ranges of supplementary items vary dramatically in calorie content. In these cases, the range of calories for the range of supplementary items could be misleading to the consumer and would not be useful to help the consumer make the healthier food choice. Therefore, this regulation requires a limit to increase the usefulness of calorie information to the consumer.*

9. 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. 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 within a range.

**Recommendations:**

- Where a menu, label or tag includes combination meals with two or more variable items, the number of calories for each standard food item and combination meal must be displayed.
- If caloric ranges are permitted for combination meals with two or more variable items, a variability threshold of less than 50 calories and/or 20% from the median of the range of similar flavours, varieties or sizes should be imposed; and
- If the range of food items exceeds the recommended variability threshold, calories must be posted for each item/combination meal within the range.
- A secondary caloric range should NOT be used to indicate an increase or decrease in size or otherwise.

***Rationale:** Components of a combination meal will vary dramatically with respect to caloric content, which may, ultimately, have a significant impact on the amount of calories the consumer might consume. Specifying a range for these types of meals, with a declaration of additional calories for increased or decreased size within the range will be misleading, confusing and difficult to interpret. This method of calories posting leads to consumers' inaccurate calorie estimates for the basis of their food choices in food service premises, as it requires substantial nutrition knowledge and the recipe/food preparation methods to accurately determine the caloric content of their chosen combination meal. Their inaccurate "guess" as to how many calories are in their meal requires the*

6.9. *Continued...*

*additional inaccurate “guess” as to the caloric change for their chosen meal when increasing or decreasing meal size. Further, it requires math skills to attempt to determine the final content for their meal. Again, we encourage the Government of Ontario to be mindful of the diverse levels of literacy and numeracy across the public and select **an approach to nutrition communication that ensures health equity**. As such, OPHA recommends that these regulations are designed to ensure that calories are posted in a way that facilitates consumers’ use, comprehension and interpretation of calorie and contextual information, regardless of literacy level. To achieve this end, OPHA recommends that calories be posted for each meal option and, as mentioned in our comments for (6) 7.i., if a range is permitted, the use of ranges should have the recommended < 50 calories/20 % of the median variability threshold for calorie content for the full range of combination meals and multiple ranges should not be permitted.*

10. Where, under this section, the number of calories may or must be displayed within a range, the range must be displayed in the format “xx–yy”, where “xx” is the number of calories of the lowest calorie option, and “yy” is the number of calories of the highest calorie option.

## 7. Signs, premises that serve alcohol

7. A person who owns or operates a regulated food service premise is exempt from paragraph 1 of subsection 2 (1) of the Act with respect to standard food items that are alcoholic beverages, as long as the information in the following Table, in substantially the same format as in the Table, is displayed in close proximity to the place where the alcoholic beverage is listed on the menu, label or tag, and in the same font, size and prominence:

Standard Alcoholic Beverages	Standard Serving Size	Average Calories per Standard Serving Size	Calories per 100 mL
Red Wine (11.5%)	1 glass (150 mL/5 oz)	127	85
White Wine (11.5%)	1 glass (150 mL/5 oz)	123	83
Regular Beer (5%)	1 bottle (341 mL)	147	43
Light Beer (4%)	1 bottle (341 mL)	99	29
Spirits (40%)	1 shot (45 mL/1½ oz)	98	217

Note: Actual calories of alcoholic beverages may vary and calories for additional ingredients are not included. Standard serving sizes are based on one drink as outlined in Canada’s Low-Risk Alcohol Drinking Guidelines.

### Suggested Revision:

**7. A food service premise that sells alcoholic beverages is required to display calories for all types of alcoholic beverages, as per subsection 2.(1)1. of the Act, unless exempt as per regulation 5., must post calories for alcoholic drinks in the same font, size, and prominence on the menu, label or tag, consistent with regulations’ 3., 6., and 8. requirements, including:**

- i. Calories to be listed per the size and amount of the alcoholic drink as sold to the customer in the food service premise (e.g., 341 ml bottle, 6 oz glass, 500 ml can or 1L jug), including mixed drinks and cocktails.**



7. *Continued...*

- ii. *Average calories for similar alcoholic beverages can be used with the provision that the type and serving size of the alcoholic drinks are the same (e.g., regular beer, light beer, white wine, red wine, sweet/dessert wine). Where serving sizes of “common” alcoholic beverages vary by more than 50 calories/20% of the median of the range of common alcoholic beverages, calories should be listed separately.*
- iii. *Food service establishments selling alcohol should provide information on the low-risk drinking guidelines suggested by the Canadian Centre for Substance Abuse.*

**Recommendations:**

- Regulations pertaining to alcohol need to be more meaningful for consumers and reflect the intent of this legislation to promote health. To maximize the public health impact of this policy and **promote health equity**, we encourage you to be mindful of the broad range of literacy levels among public consumers and ensure that information will be posted in a manner that is useful and easy to process.
- Food service establishments that serve alcoholic beverages should not be exempt from section 2(1) of the Act by posting a standard serving-size table.
- Calories information should be required for all types of ‘Standard Alcoholic Beverages’, including coolers, ciders, mixed drinks/cocktails, beer and wine.<sup>9</sup>
- Calories for alcoholic drinks should be posted on menus and menu boards consistent with section 2. of the Act and Sections 3., 6. and 8. of these regulations and as per the suggested revision above.
- Food service establishments selling alcohol provide information on the low-risk drinking guidelines suggested by the Canadian Centre for Substance Abuse.
- The Table format presented in these draft regulations is not meaningful to consumers. *As such, if a Table format is to be retained as a regulation requirement, an alternate format is recommended below which includes the size of drink sold in the food service premise, communicated in in both millilitres and ounces, and the calories for these respective serving sizes* (see Table below).

---

<sup>9</sup> Possible sources for caloric information on these types of beverages include Eat Right Ontario <https://www.eatrightontario.ca/en/Articles/Alcohol/Alcohol-and-Nutrition.aspx> Health Canada <http://webprod3.hc-sc.gc.ca/cnf-fce/index-eng.jsp> and some alcohol brand websites.

7. Continued...

**Suggested Revised Table Format:**

Standard Alcoholic Beverages – % alcohol	Standard Serving Size *	Average Calories per Standard Serving Size	Size of Drink Sold in Establishment	Average Calories per Drink sold in this establishment
Red Wine (11.5%)	1 glass (150 mL/5 oz)	127	1 glass (177mL/6 oz) 1 glass (266mL/9 oz)	
White Wine (11.5%)	1 glass (150 mL/5 oz)	123	1 glass (177mL/6 oz) 1 glass (266mL/9 oz)	
Regular Beer (5%)	1 bottle (341 mL)	147	1 or bottle (500 mL/16.9 oz) Half pint (236mL/8 oz) Pint (473 mL/16 oz ) Pint (591mL/20 oz)	
Light Beer (4%)	1 bottle (341 mL)	99	1 or bottle (16.9oz./500 ml) Half pint (236mL/8 oz) Pint (473 mL/16 oz ) Pint (591mL/20 oz)	
Spirits (40%)	1 shot (45 mL/1½ oz)	98	1 shot (45 mL/1½ oz)	
Spirits (40%) with regular (not diet) soft drink mixed			List size of beverage	List average calories
Cocktails Coolers/Cider			List size for each	List calories for each
*Note: Standard serving sizes are based on one drink as outlined in Canada’s Low-Risk Alcohol Drinking Guidelines by the <a href="#">Canadian Centre for Substance Abuse</a> . Actual calories of alcoholic beverages may vary.				

**Rationale:** Food service establishments that serve alcoholic beverages should not be exempt from section 2(1) of the Act by posting a standard serving-size table. Calories for alcoholic drinks should be posted on menus and menu boards consistent with section 2. of the Act and Sections 3., 6., and 8. of these regulations. OPHA is concerned that regulation 7. pertaining to alcohol is not informative enough for consumers. Allowing establishments to be exempt if they show a table of the calories in standard serving sizes is not helpful. Posting a table with general information places a lot of responsibility on consumers to notice, manipulate, and apply nutrition information when choosing to drink alcohol. In addition, this information would not be helpful to consumers who may be ordering beverages not sold in these standard serving sizes. Furthermore, calories per 100 ml as indicated in the chart will not be useful. If a table format is to be retained for the purpose of these regulations the revised table format below is suggested to be more helpful for consumers.

The number of calories should be listed according to the actual size and amount of the alcoholic drink sold to the customer in the food service premise (e.g. 341 ml bottle, 6 oz glass, 500 ml can or 1L jug). For example, a typical beer bottle is 341 ml, while beer

7. *Continued...*

*and cider are available in 355 ml, 473 ml or 500 ml cans. Draft beer sold by the glass can be served in pints but the amount varies in Canadian establishments from 16 oz (US pint size) to 20 oz (Canadian pint size) and can also be served in half pints, pitchers or other sizes. Wine is commonly served in 5, 6 or 9 oz glasses. There is a marketing trend now to package alcoholic beverages in larger containers (eg. Radlers and Beer in 500 ml cans) and for premises to up-size alcohol portions (e.g. promote 9 oz glass of wine vs 6 oz) to increase profit margins. Evidence from one US study showed increases in alcohol intakes as container size increased and that self-reported alcohol consumption based on standard drinks underreports consumption when compared with reports based on the amount of alcohol poured into commonly used containers.<sup>10</sup>*

*Mixed drinks and cocktails should have calories stated per serving size sold to the customer in the food service premise. There is a lot of variation in the calorie content of mixed drinks and cocktails depending on ingredients used, whether mixes are calorie free or regular, etc.*

*OPHA recommends that food service establishments selling alcohol provide information on the low-risk drinking guidelines suggested by the Canadian Centre for Substance Abuse.<sup>11</sup> Further, it is recommended that the Ministry consult with provincial public health experts in alcohol and injury prevention to determine the content and wording for such a statement. This additional messaging is consistent with the Low Risk Alcohol Drinking Guidelines and promotion of the guidelines is in line with the work of the MOHLTC.<sup>10</sup>*

*With the increasing market trend to ‘upsell’ consumers on larger sizes of alcoholic beverages to enhance profits, consumers may be unaware of what is a reasonable serving size. Including this information would help to provide additional context on what is considered a standard serving size.*

## **8. Signs, food and drink that customers serve for themselves**

**8. (1)** For the purposes of subsections 2 (6) and (7) of the Act, every regulated food service premise that sells or offers for sale a restaurant-type food or drink item that customers serve for themselves is required to publicly post one or more signs adjacent to and clearly associated with the item that,

(a) 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;

(b) are positioned in such a way that an individual could reasonably be expected to clearly associate the calorie declaration with the food or drink item; and (c) include the name of the food or drink item.

(2) For the purposes of subsection (1), serving sizes shall be determined as follows:

---

<sup>10</sup> Caetano, Mills and Harris, <http://www.jsad.com/doi/10.15288/jsad.2012.73.120>

<sup>11</sup> <http://www.ccsa.ca/Eng/topics/alcohol/drinking-guidelines/Pages/default.aspx>

8. *Continued...*

1. Where the regulated food service premise provides a serving instrument that dispenses uniform amounts of food, by the volume of a serving dispensed by the instrument.
2. 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.
3. For other food or drink items, by a reasonable serving size determined by the person who owns or operates the regulated food service premise.

**Recommendation:**

Implementation guide for food industry should provide guidance on reference amounts for serving size to ensure consistent application of ‘reasonable serving sizes’. Serving size consistency would improve consumer awareness and knowledge.

**9. Contextual statement, certain premises**

9. (1) For the purposes of subsections 2 (6) and (7) of the Act, one or more signs that comply with the following rules are required to be publicly posted at every regulated food service premise:

1. The sign or signs must be posted in such a manner that at least one sign is readily visible by, and legible to, every individual who is in a place in the regulated food service premises where customers order food or drink.

**Recommendations:**

- OPHA recommends the suggested revisions to the 9.(1)1. as stated below, including items i, ii, iii and iv.
- OPHA strongly recommends that subsections 9.(2)1., 9.(2)2., and 9.(2)3 be moved to be subsections of 9.(1)1., with the additional subsection 9.(1)1.iv.
- Research evidence, including the preliminary findings from Public Health Ontario’s menu labelling research, should be used to support the revision of this regulation.

**Suggested Revision:**

9. (1) For the purposes of subsections 2 (6) and (7) of the Act, one or more signs that comply with the following rules are required to be publicly posted at every regulated food service premise:

1. *The food service premise shall disclose in a conspicuous and readily legible manner the contextual statement, as specified in 9.(1) 2., in close proximity to calories posted on every menu and page of a menu, so as to be clearly associated with the calories posted for the standard menu items; and, the*

9. (1) 1. Continued...

*food service premise shall post the statement prominently to enable public to understand, in the context of total daily diet, the significance of the caloric information for standard food items that are listed, depicted or displayed on the menu. In addition,*

*i. Where a menu is composed of multiple pages, the information must appear on every page of the menu that lists standard food items.  
(\*Moved from 9.(2)1.)*

*ii. The information must appear in a place on the menu or page of the menu that is in close proximity to the standard food items listed on the menu or page. (Moved from 9.(2)2.)*

*iii. The information must appear in the same font and format as, and in at least the same size and prominence as, the name or price of the menu item it refers to. (Moved from 9.(2))*

*iv. Where the regulated food service premise sells or offers for sale standard food items that are targeted at children, a children’s contextual statement, as specified in 9.(1)2., must be displayed as stated in regulation 9.(1)1.*

**Rationale:** As regulation 9.(1) is currently stated, the contextual statement is not required to be posted on the menu at all and allows the discretion of the food industry to determine where they would like to post the contextual statement within a food service premise. This, for example, would allow the food service premise operator to post a statement at the back of the restaurant in the opposing direction from a menu board where calories are required to be posted and this would be a barrier to consumers to readily observe, use, and understand the calorie information to make healthier choices. Alternatively, the requirement to post the contextual statement directly on the menu board and in close proximity to the calories posting would facilitate the use and understanding of calories information in the context of consumers’ daily caloric requirement.

Moreover, as 9.(1)1. is currently stated, there is no requirement for a contextual statement outside of the food service premise (i.e. on drive-through menu boards or delivery menus) as it currently states that contextual statement “sign or signs” be “readily visible by, and legible to, **every individual who is in a place in the regulated food service premises** where customers order food or drink.”<sup>2</sup> This limits the boundaries of regulatory compliance to within the food service premise, when only the patrons within the establishment would need to be able to see such information.

As the menu labelling research and the evaluations of legislation in other jurisdictions suggests, menu labelling can have a significant impact on healthy food choices for children and adults in food service establishments when calories, sodium and contextual statement information is posted directly on the menu.<sup>11-13</sup> At Public Health Ontario, menu labelling research using experimental auction design is currently being conducted, with preliminary findings suggesting the following:

9.(1)1. Continued...

- *Adding calories, sodium information, and a health statement directly to menu boards influenced parents to bid significantly lower on fast-food kids' meals for their children, especially for meals with the highest calories and sodium content.*
- *A lower value for fast-food kids' meals signifies weaker demand, which according to standard economic theory should translate into lower consumption.*
- *Participants prefer menu labelling formats that include both calorie and sodium information over no nutrition information as well as calories only or calories and a health statement.*

***Leaning on the body of growing evidence, OPHA recommends that regulation 9.(1)1. be revised to explicitly state that the contextual statement be required to be posted clearly, conspicuously and prominently on every menu and page of a menu, such that consumers are able to easily use and understand calorie information in the context of their daily reference requirement for calories at the point of decision. As a paradigm policy, USA's federal legislation articulates not only how the contextual statement should be posted but the purpose for the statement. It states that "the restaurant or similar retail food establishment shall disclose in a clear and conspicuous manner, so as to be clearly associated with the standard menu item, as usually prepared and offered for sale; and (bb) a succinct statement concerning suggested daily caloric intake, as specified by the Secretary by regulation and posted prominently on the menu and designed to enable public to understand, in the context of total daily diet, the significance of the caloric information that is provided on the menu; ..."***<sup>11</sup>

*In addition to our suggested revision of 9.(1)1., OPHA strongly recommends that subsections 9.(2)1., 9.(2)2., and 9.(2)3 be moved to be subsections of 9.(1)1., with the additional subsection 9.(1)1.iv., as indicated above. Draft regulation subsections 9.(2)1., 9.(2)2., and 9.(2)3. and the suggested subsection 9.(1)1.iv. above would enhance consumers' ability to readily use and understand calories information and would contribute to the intended positive outcomes of this healthy public policy. As such, these subsections must be made regulatory requirements rather than merely voluntary actions for food industry. Further, we encourage the Government of Ontario to be mindful of the diverse levels of literacy and numeracy across the public and select **an approach to nutrition communication that promotes health equity.***

2. Each sign must contain the following information: "The average adult requires approximately 2,000 to 2,400 calories per day; however, individual needs may vary" and, where the regulated food service premise sells or offers for sale standard food items that are targeted at children, may contain the following information: "The average child aged 4 to 9 years old requires approximately 1,200 to 2,000 calories per day, and the average child aged 10 to 13 years old requires approximately 1,500 to 2,600 calories per day; however, individual needs may vary".

9.(1)2. Continued...

### Suggested Revision:

2. Each sign must contain the following information: *“The average adult requires approximately 2,000 calories per day; however, individual needs may vary”* and, where the regulated food service premise sells or offers for sale standard food items that are targeted at children, *must* contain the following information: *“The average child requires approximately 1,500 calories per day; however, individual needs may vary”*.

### Recommendations:

- Recommend one single, simplified, succinct and non-gender specific contextual statement for adults, which communicate an average daily caloric requirement, rather than a range, and should be posted on every menu/page of a menu of a food service premise.
- Recommend the adults’ contextual statement as: **“The average adult requires approximately 2000 calories per day; however, individual needs may vary.”**
- Recommend only one single, simplified, succinct and non-gender specific contextual statement for children, aged 4-12 years old, which communicates an average daily caloric requirement, rather than a range, and it **must** be posted on every menu/page of a menu where children’s food/drinks are listed, depicted or displayed.
- Recommend the children’s contextual statement as: **“The average child requires about 1500 calories per day; however, individual needs may vary.”**
- The age range to determine average daily calories for children should reflect the age range for children meals typically sold in food service premises (4-12 years).
- The activity level to determine average daily calories should reflect the typical activity level among Canadian children (i.e. Canadian Health Measures Survey data).

***Rationale:** As Bill 45 requires that calories are the only source of nutrition information to be posted on menus for consumers to make healthier food choices in food service premises, we recognize that there could be unintended consequences of basing food choices solely on calories information and excluding other relevant information, such as sodium. There may also be a concern that solely posting calories information could emphasize a focus on calorie counting rather than the nutritional quality of calories or the overall goal of eating a balanced and nutritious diet. However, as evidence suggests that posting calorie information in food service establishments leads to consumers making healthier food choices, OPHA supports calories posting when it is done in direct and close proximity to the posting of a contextual statement regarding the daily caloric requirement.<sup>12-13</sup> Additionally, results from the study by Scourboutakos et al (2014)<sup>14</sup> show that when sodium information was provided on restaurant menus, consumers ordered meals with significantly less sodium than did consumers who saw only calorie information. As Public Health Ontario’s preliminary research findings have demonstrated, the use of a contextual statement, specifically for children, in tandem with*

<sup>12</sup> <http://www.phila.gov/health/pdfs/MenuLabelingEvaluationReport112013.pdf>

<sup>13</sup> <http://cspinet.org/new/pdf/factsheet-why-menu-labeling2011.pdf>

<sup>14</sup> <http://journal.cpha.ca/index.php/cjph/article/viewFile/4492/2967>

9.(1)2. *Continued...*

*calories and sodium content information did enable parents to make the healthier food choice for their child from the offerings at two well-known food service premises.*

*OPHA strongly recommends that the adult contextual statement NOT be applied to children's meals. A contextual statement specifically for children should be included if there is a children's menu and/or anywhere a children's food item is listed, depicted or displayed. This is important to provide parents with an appropriate reference value when making food choices on behalf of their children. Average reference values for adults are inaccurate when applied to children **and could lead to significant overconsumption of calories when misinterpreted by parents.** For example, in the evaluation of Philadelphia's menu labelling legislation, one study — examining the nutritional content of food on menus in food service establishments — found that children's meals averaged 53% of calories (based on 1400 kcal/d) for an entire day and provided over 70% of daily recommended levels of sodium (based on 1610mg/day) and saturated fat.<sup>15</sup> If parents in these food service premises were to compare the caloric and sodium content of these children's meals to the average adult's reference value for calories and sodium, then parents would interpret these meals as meeting only ~37% of their child's average daily requirement for calories and only ~49% of their child's average daily requirement for sodium. The misinterpretation of children's nutrition information by parents in food service premises is concerning. This may not only lessen the intended impact of the policy but **could potentially contribute to childhood obesity.***

*When developing a contextual statement for children, the following are two critical considerations for calculating the reference value for average daily caloric requirement for children.*

- 1. Age Range - The selected age cut-offs will affect the numeric reference value. As this statement will apply to a child's meal, such as a 'Happy Meal' at McDonald's, the age range should reflect the typical age range that food service establishments use for eligibility to purchase a child's meal (i.e. < 13 years old). We recommend using < 13 years old as the threshold for calculating the reference value as the inclusion of adolescents (13 to 18 years of age) will increase the reference value considerably and would not reflect the age range intended for a child's meal.*
- 2. Activity Level - Just under 7% of Canadian children and youth achieve the guideline of 60 minutes of moderate-to-vigorous physical activity (MVPA) per day at least 6 days a week.<sup>16</sup> Based on this information it appears that the average Canadian child's estimated energy requirements (EER) can be based on a sedentary or low active physical activity level.*

---

<sup>15</sup> <http://www.phila.gov/health/pdfs/MenuLabelingEvaluationReport112013.pdf>

<sup>16</sup> [http://www.hc-sc.gc.ca/fn-an/label-etiquet/nutrition/educat/te\\_quest-eng.php#a13](http://www.hc-sc.gc.ca/fn-an/label-etiquet/nutrition/educat/te_quest-eng.php#a13)



9.(1)2. *Continued...*

*Given the two considerations above, calorie reference values were calculated using the Estimated Energy Requirements (EER) for boys and girl.<sup>17</sup> For children the average calories per day required for boys (age 4 to 12) is about 1600 calories and for girls about 1480 calories – averaging to 1540 calories per day. OPHA recommends the following contextual statement to support the use of caloric information for children’s food items/meals: “**The average child requires about 1500 calories per day; however, individual needs may vary.**”*

*To address variation in population literacy levels, increase practicality of nutrition information provided to consumers and **to promote health equity**, OPHA suggests only one, succinct, non-gender specific contextual statement for adults which uses one single number as an average of adults’ daily caloric requirement. The average daily caloric requirement should be 2000 calories which is consistent with the percent daily value reference set by Health Canada for use on the Nutrition Facts Table.<sup>14</sup> Moreover, the use of a single number, rather than a range, simplifies the information for the consumer and, according to research exploring messages to communicate calories on the menu, a simplified contextual statement with a general guideline of 2,000 daily calories was preferred by consumers.<sup>18</sup> OPHA recommends the following contextual statement for adults: “**The average adult requires about 2000 calories per day; however, individual needs may vary.**”*

(2) A person who owns or operates a regulated food service premise is exempt from subsection (1) if the information required under paragraph 2 of that subsection or, if applicable, the alternative information set out in subsection (3) is displayed on every menu in the premise according to the following rules:

1. Where a menu is composed of multiple pages, the information must appear on every page of the menu that lists standard food items.

**Recommendation:** As OPHA has recommended in our comments for regulation 9.(1)1., the contextual statement should be required to be posted on every page of a menu. OPHA strongly recommends that regulation subsection 9.(2)1. be made a requirement of 9.(1) rather than an exemption from 9.(1).

**Rationale:** *See rationale in 9.(1)1.*

2. The information must appear in a place on the menu or page of the menu that is in close proximity to the standard food items listed on the menu or page.

**Recommendation:** As OPHA has recommended in our comments for regulation 9.(1)1., the contextual statement should be required to be posted in close proximity on every page of a menu so as to be clearly associated with the calories posted for the standard menu

---

<sup>17</sup> Institute of Medicine, *Dietary Reference Intakes for energy, carbohydrate, fiber, fat, fatty acids, cholesterol, protein and amino acids*. <http://www.nap.edu/read/10490/chapter/1>

<sup>18</sup> [http://www.sneb.org/documents/Menu\\_Labeling\\_communicating\\_%20calories.pdf](http://www.sneb.org/documents/Menu_Labeling_communicating_%20calories.pdf)

9.(2) *Continued...*

items; OPHA strongly recommend that regulation subsection 9.(2)2. be made a requirement of 9.(1) rather than an exemption from 9.(1).

**Rationale:** See rationale in 9.(1)1.

3. The information must appear in the same font and format as, and in at least the same size and prominence as, the name or price of the menu item it refers to.

**Recommendation:** As OPHA has recommended in our comments for regulation 9.(1)1., the contextual statement should be required to be posted in close proximity on every page of a menu so as to be clearly associated with the calories posted for the standard menu items; OPHA strongly recommend that regulation subsection 9.(2)3. be made a requirement of 9.(1) rather than an exemption from 9.(1).

**Rationale:** See rationale in 9.(1)1.

(3) Where a menu or part of a menu is only targeted at children, the following alternative information may appear in place of the information listed in paragraph 2 of subsection (1):

“The average child aged 4 to 9 years old requires approximately 1,200 to 2,000 calories per day, and the average child aged 10 to 13 years old requires approximately 1,500 to 2,600 calories per day; however, individual needs may vary”.

**Suggested Revision:**

(3) Where a menu or part of a menu is only targeted at children, the following alternative information *must* appear in place of the information listed in paragraph 2 of subsection (1):

*“The average child requires about 1500 calories per day; however, individual needs may vary.”*

**Recommendations:**

- Recommend only one single, simplified, succinct and non-gender specific contextual statement for children, aged 4-12 years old, which communicates an average daily caloric requirement, rather than a range, and it must be posted on every menu/page of a menu where children’s food/drinks are listed, depicted or displayed.
- Recommend the children’s contextual statement as: “The average child requires about 1500 calories per day; however, individual needs may vary.”
- Recommend the development of educational materials, specifically targeting parents of children (<13 years), that impart information regarding their child’s daily caloric requirement and how to interpret the children’s contextual statement to make healthier food choices for their child in food service establishments.

9.(3) *Continued...*

**Rationale:** *As parents of young children (<13 years old) will be purchasing food items for their child in food service premises, it will be important to develop educational materials to support the use, understanding of, and interpretation of children’s nutrition information on menus. As there are diverse levels of literacy and numeracy across the public, this would be a supportive **approach to nutrition communication that would promote health equity**. For rationale regarding the suggested contextual statement for children (<13 years) and how this should be displayed, refer to 9.(1)2.*

## 10. Determination of number of calories

10. For the purposes of subsection 2 (8) of the Act, 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 food service premise reasonably believes will provide accurate results; or
- (b) a nutrient analysis method that the person who owns or operates the regulated food service premise reasonably believes will accurately estimate the number of calories in a standard food item.

### Suggested Revision:

10. For the purposes of subsection 2 (8) of the Act, *food services premises must be required,*

- *to have their nutrient analysis done by laboratory or nutrient analysis service involving trained professionals, including registered dietitians, and*
- *to maintain a record of how and when nutrient values were obtained (e.g. certificate from lab or contracted analyst), including Laboratory used, dates and nutrient values of food products analyzed; OR Nutrient Databases used and the credentials, title and role of person(s) entering data and providing analysis.*

### Recommendations:

- More rigorous regulations are required to ensure the reliability of the nutrient analysis information and compliance with the menu labelling legislation.
- Owners and operators of food service premises must be required to utilize professional for nutrient analysis and to retain records on how nutrient calculations were obtained.
- A process to ensure compliance with the regulations and to verify nutrient data for menu offerings
- Implementation guidelines provided for food service owners and operators.

**Rationale:** *The term “reasonably believes” does not ensure accuracy or reliability of the nutrient analysis or “calorie” data. The natural variation in foods and the human factor in food preparation will lead to inconsistencies from laboratory analyses or nutrient values obtained from databases. Errors made entering*

10. *Continued...*

*appropriate ingredients, weights or servings sizes (especially when serving size of ingredients differ from those called for in a recipe or formulation), variations caused by different cooking methods, and other errors. These inconsistencies may be mitigated by requiring nutrient analysis to be carried out by professionals with expertise in food and nutrition, such as registered dietitians.*

*Health Canada’s guidance on accurate nutrient calculation<sup>19</sup> can be used as a source of information to guide food industry to conduct appropriate nutrient analysis. The Food Safety Authority of Ireland also provides a reasonable and practical approach to help food industry understand more about nutrient analysis and generating accurate calorie data that could be incorporated in to the implementation guidelines (see Annex 3, page 16 of the FSAI document for more information – link provided in reference below)<sup>20</sup>.*

## **11. Commencement**

---

<sup>19</sup> [http://www.hc-sc.gc.ca/fn-an/label-etiquet/nutrition/reg/guide-nutri\\_val\\_tc-tm-eng.php](http://www.hc-sc.gc.ca/fn-an/label-etiquet/nutrition/reg/guide-nutri_val_tc-tm-eng.php)

<sup>20</sup> Food Safety Authority of Ireland (2012): <https://www.fsai.ie/uploadedfiles/legislation/consultations/Calories-Menus-Industry.pdf>

## **APPENDIX B - IMPLEMENTATION**

### **Implementation Supports:**

**OPHA works closely with key partners in public health including** Association of Supervisors of Public Health Inspectors of Ontario (ASPHIO), Canadian Institute of Public Health Inspectors of Ontario (CIPHI), Ontario Public Health Association (OPHA)'s Alcohol working group, Public Health Ontario (PHO), as well as the Ontario Society of Nutrition Professionals in Public Health (OSNPPH).

The Nutrition Resource Centre (NRC) is in a unique position to work with the Ministry and key partners to develop factsheets, implementation guides, toolkits and other resources to support stakeholders, front line staff and health intermediaries in the implementation of the menu labelling legislation and regulations. The NRC can help develop the content for these resources as well as provide the training support and consultation related to these resources. We can also advise the Ministry on content for its website, marketing and social media campaigns.

We identified a number of implementation supports in our previous letter and during our meeting with the Ministry. These included:

- **Fact Sheets:** To provide information to key partners/stakeholders (i.e. industry, the public, public health inspectors, front line restaurant staff) to raise awareness and help them to understand and implement the legislation.
- **Industry Implementation Guide:** To support industry with implementing the legislation.
- **Menu Labelling Evaluation Plan & Guide:** To assess the impact of the legislation and provide evidence-informed recommendations to promote public health.
- **Public Education Materials and Social Marketing Campaigns:** To raise awareness of the legislation and educate the public so that they can make use of calories posted information to make healthier choices in food service premises.
- **Website:** To provide a centralized hub to house all educational and promotional materials for download as well as links to other pertinent information to help the public understand and implement the legislation and make healthier choices.

Additional other supports have been recommended by OPHA members to help with the implementation of the menu labelling legislation:

- A list to identify which specific food service premises are affected by the legislation (i.e., provide a list of the food service providers with 20+ locations).
- Development of curriculum support materials to educate students about using menu labelling as well as specifying that calories represent only part of a food's nutrition profile; addressing body image and dieting issues.
- A guidance document for Public Health Inspectors to provide guidance on monitoring and enforcement of the regulations (including reporting process/mechanism for related violations).

To ensure that the Healthy Menu Choice Act achieves the intended goal of creating healthier food environments in Ontario, ongoing consultation with stakeholders is necessary regarding the development of these regulations and the resources to support implementation and supporting educational materials, as well as a comprehensive monitoring and evaluation plan.

## APPENDIX C - EVALUATION

### **Evaluation Research Recommendations:**

We recommend that the Ministry put in place an evaluation plan to assess the impact of the menu labelling legislation both from a process and outcome perspective.

Some potential areas for evaluation, as discussed at our meeting with the Ministry in Sept were to:

- Identify the overall goals and intended outcome of the program in order to evaluate the impact of the legislation.
- Establish some baseline data – e.g. eating habits of adults and children (e.g. calories and nutrients consumed, servings of fruit and vegetables, sugar sweetened beverages, number of meals eaten away from home, etc.).
- Assess awareness of the legislation and attitudes towards it (consumers, industry, health professionals, others).
- Examine the effects of the legislation and any unintended consequences (consumers, industry, etc.), as well as the impact of the legislation on priority populations, utilizing the MOHLTC’s own health Equity Impact Assessment.

More in-depth evaluation is recommend to assess the specific elements of the legislation to determine how this has impacted consumers, food industry and their behaviour and could include the following:

- Examine the nutrient profile of food/drink offered on the menu and changes to the menu offerings and the nutrient profile of food/drink offerings (including formulation of newer healthier options).
- Assess consumer awareness and understanding of the calorie/nutrient information posted on the menu and any additional nutrition information provided.
- Examine consumer use of the menu labelling information and behaviour in response to menu labelling (e.g. calories consumed, compensatory behaviour after eating in a restaurant that has menu labeling).
- Examine parents use, interpretation and understanding of calorie, sodium and children’s contextual statement information to make food choices for their child.

Philadelphia has the most comprehensive menu labeling regulations for full-service restaurants in the United States and have examined both menu nutritional content and customer responses to menu labeling.<sup>21</sup> They investigated: nutritional value of food on menus, what customers purchased and if their purchases differed based on menu labelling and customer knowledge, attitudes and behaviour about menu labelling. Data came from 21 full-service restaurants, 5 focus groups, and 648 customer surveys and transaction

---

<sup>21</sup> <http://www.phila.gov/health/pdfs/MenuLabelingEvaluationReport112013.pdf>

receipts. Almost 80% of customers reported seeing the menu labels, but only 34% reported using the label when deciding what to order. Customers who used the labels purchased about 160 fewer calories (10% less calories) than customers at outlets without labels, after adjusting for customer characteristics. Opportunities for improvement identified were:

- include nutrition information for each item;
- reduce portion sizes of regular entrees;
- reduce salt used in food preparation;
- offer more meals that are low in saturated fat;
- guaranteed that children have healthful meal options; and
- enhance appeal to health-conscious customers.

The NRC would be most interested in participating in a supporting role in the evaluation of the menu labelling legislation and the accompanying knowledge translation. We have already connected with Public Health Ontario to discuss our mutual interest in participating in an evaluation of this initiative to ensure that it is achieving its intended goals; to assess public health impact of this legislation; and potentially capture any unintended consequences.



## APPENDIX D - SODIUM

### Sodium Recommendations:

OPHA strongly recommends that the Government of Ontario consider making sodium information more accessible by requiring sodium content alongside calorie information. This is supported by research and menu labelling evaluations, described in Appendix A, which show sodium information in tandem with calorie posting and a contextual statement contributed to consumers to make healthier food choices for both adults and children.

Menu labelling legislation may also have a positive impact on increasing healthier menu choices in restaurants, particularly, as the food industry strives to reformulate its standard food and beverage items to reduce energy, saturated fat and sodium content of food items.<sup>22,23,24,25</sup> However, this is an outcome that should be monitored and evaluated closely, as the literature also suggests that **both positive and negative recipe reformulation can occur simultaneously and may be a result of differences in legislation across jurisdictions.**<sup>21</sup> As Bill 45 only requires the posting of calories, we might expect reformulations to have decreased calories, whereas sodium content is not communicated to the public and, therefore, industry would not be concerned with increasing sodium content to adjust the taste profile of food items undergoing recipe reformulations. Ideally, the reformulation of standard food items should lead to healthier food choices in restaurants, which would **promote public health and health equity**, as those with lower literacy levels would still benefit from increased healthier food options. As such, **sodium information should appear alongside calorie information**, wherever it appears on menus as specified in regulation 3.

If the Government of Ontario is not prepared to provide sodium labelling at this time it could be phased in at a later date. In the meantime, however, Ontario could take the lead in Canada, posting warning labels on menu offerings that exceed 2300 mg (the upper limit for adult daily consumption, according to Dietary Reference Intakes). This is the approach that was announced recently in New York City.<sup>26,27</sup> Commended as a trail-blazer in menu labelling policy, New York City's Board of Health has crafted its sodium labelling regulations to explicitly promote both public health and health equity.<sup>23</sup> As rationale for excessive sodium content labelling, in these model regulations, sodium is not only linked to restaurant foods and the inability of consumers to estimate the sodium content in restaurant foods, but also to negative health outcomes which disproportionately affect the city's population, leading to health disparities.

---

<sup>22</sup> <http://www.ncbi.nlm.nih.gov/pubmed/22704898>

<sup>23</sup> [http://www.ajpmonline.org/article/S0749-3797\(14\)00493-0/abstract](http://www.ajpmonline.org/article/S0749-3797(14)00493-0/abstract)

<sup>24</sup> <http://www.ncbi.nlm.nih.gov/pubmed/24095622>

<sup>25</sup> [http://www.cdc.gov/ped/issues/2013/pdf/12\\_0224.pdf](http://www.cdc.gov/ped/issues/2013/pdf/12_0224.pdf)

<sup>26</sup> <http://www.nyc.gov/html/doh/downloads/pdf/notice/2015/noa-section49-article81.pdf>

<sup>27</sup> <http://www.foodpolitics.com/2015/10/salt-warning-labels-coming-to-new-york-city-december-1/>

In NYC, [the rule takes effect December 1](#) and states that chains with 15 or more locations in New York City must display a warning symbol — a salt shaker inside a triangle — if the item has more than 2,300 milligrams of salt. This form of regulation does not restrict choice or limit how much sodium can be in food, while still encouraging industry not to replace the calories with sodium during the critical product reformulation process that occurs during menu labelling legislation implementation. This would be an easy way for the Government of Ontario to address concerns related to sodium content in restaurant foods raised by many health professional groups and supported by a body of research. This approach is not as robust as having sodium listed alongside calories but would be a recommended preliminary approach to introducing more rigorous sodium labelling regulations.

### **Rationale:**

Many food service establishments in Canada already provide nutrient data on their menu offerings. For restaurants that must generate calorie data on their menu offerings, the cost of adding one more nutrient, such as sodium, this will not be an additional burden as this data would be generated alongside calorie data, with laboratory or nutrient analysis.

Results from the study by Scourboutakos et al (2014)<sup>28</sup> show that when sodium information was provided on restaurant menus, consumers ordered meals with significantly less sodium than did consumers who saw only calorie information. Consumers were randomly allocated to see one of three menu-labelling treatments (calories; calories and sodium; or calories, sodium and serving size) and were given the option to change their order. There was a significant difference in the proportion of consumers who changed their order, varying from 17% to 30%, depending on the restaurant type. After participants had seen menu labelling, sodium levels decreased in all treatments. However, in three of the four restaurant types, consumers who saw calorie and sodium information ordered meals with significantly less sodium than consumers who saw only calorie information.

This is consistent with Public Health Ontario preliminary results from their experimental auction study suggesting that adding calories, sodium information, and a children's health statement to menu boards influenced parents to bid significantly lower on fast-food kids' meals for their children, especially for meals with the highest calories and sodium content. Moreover, the preliminary results showed that parent participants preferred menu labelling formats that include both calorie and sodium information over no nutrition information; calories only; or calories and a health statement. Preferences for calories and sodium information remained significant after controlling for socio-demographic factors as well as nutrition knowledge and behaviour variables.

---

<sup>28</sup> Scourboutakos, M., Corey, P., Mendoza, J., Henson, J., and L'Abbé, M. Restaurant menu labelling: Is it worth adding sodium to the label? *Can J Public Health* 2014;105(5):e.

The need to make sodium information more accessible for consumers is clear, based on high sodium content of restaurant food and the associated negative health impacts.<sup>29</sup> It is recommended that stakeholder consultations be arranged to allow for implementation of more rigorous sodium regulations and that these be phased in by January 2019.

---

<sup>29</sup> Mah L. Catherine L. 2013. *Serving up Nutrition Information in Ontario Restaurants: A Position Paper*. Prepared by Ontario Society of Nutrition Professionals in Public Health Menu Labelling Working Group [http://www.osnp-ph.on.ca/resources/Menu\\_Labelling\\_Position\\_Paper\\_FINAL\\_revision.pdf](http://www.osnp-ph.on.ca/resources/Menu_Labelling_Position_Paper_FINAL_revision.pdf).