



August 25, 2015

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Dear Ms. Greenberg,

Thank you for the opportunity to participate in the July webinar to discuss the new menu labelling legislation. We are excited to be part of this process. To assist the Ministry with this endeavour, we have identified a few key areas for ongoing Nutrition Resource Centre (NRC) involvement in this process including:

1. Continued participation in Ministry initiated consultations regarding the development of menu labelling regulations,
2. Leadership in developing materials to support implementation of the legislation and regulations,
3. Participation in training/education that may be provided by the Ministry to inform key stakeholders of the legislation, and its implementation, and
4. Participation in the evaluation of the legislation along with NRC partners, such as Public Health Ontario.

We would like to request a meeting with your team to elaborate on the unique role that NRC can play as the primary point of contact for Public Health Units and health intermediaries, such as public health inspectors and dietitians, for consultation and training on the nutrition related aspects of the menu labelling legislation, resource development, implementation and evaluation.

For your information and consideration, we have included further details regarding how the NRC can support the Ministry in the menu labelling initiative including additional details in response to your consultation questions.

1. Consultation

The NRC is in a position to assist the Ministry with reviewing research to support policy development. We have reviewed the consultation package and questions provided by the Ministry and have provided detailed responses to each of the questions in the appendices. Our responses are based on a review of menu labelling research evidence gathered from other jurisdictions.

With respect to the size, format, and prominence of calorie information we encourage you to look to the body of menu labelling research evidence that has been generated from evaluating the impact of similar menu labelling policies across the USA, as well as current research being conducted presently by Public Health Ontario. We also suggest formatting for calorie posting consistent with jurisdictions within the USA that have implemented effective menu labelling policies, such as New York City and Philadelphia, which 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.

Appendix A covers issues related to where and how calories should be posted, the regulatory definition of “menu” and also covers how calories should be determined, the use of calorie ranges and issues related specifically to alcoholic beverages, serving sizes and reference amounts. Some of our key points are:

- “Menu” shall mean any printed list, pictorial depiction or display of a food or beverage item or items that are available for sale from a food service premise. This includes all point of purchase information provided to consumers, such as printed menus and promotional materials that are distributed or provided inside or outside of a restaurant for the purpose of providing information and/or choosing food items to purchase from the food service establishment.
- Calories should be posted for all menu offerings and the calorie amount should be representative of the menu item, regardless of portion size.
- Where multiple flavour variations of the same item are available one average calorie amount may be posted to represent all flavours only when there is no significant difference in calorie levels between flavours if similar foods. We recommend a calorie variability threshold of less than 10% for averages of calories in similar foods or flavours. Ranges will be confusing and can be misleading to consumers.
- We are particularly concerned with how calories will be posted with respect to alcohol. For alcoholic beverages the number of calories should be listed according to the actual size of beverage sold as it is served to the customer (e.g. bottle, glass, can or jug) as serving sizes vary widely (see Appendix A).

In Appendix B, we’ve outlined how the contextual statements should be applied to menus. For example, one general and succinct statement for adults, such as ‘the average adult requires approximately 2000 calories a day’, reduces the complexity of multiple messages and addresses diverse levels of health literacy among the population. However, such statement doesn’t address the calorie recommendations for children, or teens.

The use of only one contextual statement for adults about their daily caloric requirements may not only lessen the public health impact of the policy but **could potentially contribute to childhood obesity**. Average reference values for adults are inaccurate when applied to children and could lead to significant overconsumption of calories. We recommend that a contextual statement be applied to meals targeted to children under 12 years of age. However, this further emphasizes the need for additional supporting materials to help consumers understand how to apply the calorie information on menus. Our recommendations for the contextual statements are:

- “The average adult requires about 2000 calories per day; however, individual needs may vary”.
- “The average child requires about 1500 calories per day; however, individual needs may vary”.

Appendix C. outlines our recommendations regarding regulations for “standard food items”; those which food or grocery items should be included or exempted from compliance with the legislation and the rationale.

Appendix D outlines our thoughts on which particular food service premises should be required to comply with the legislation and which should be exempted. Our suggestions are:

- Menu labelling legislation should capture any food service premise, as defined and covered by the Health Protection and Promotion Act, unless it is already covered by a menu planning legislation (i.e. PPM 150, Long-Term Care Homes Act, Child Care regulations).
- Menu labelling legislation should cover all food service premise locations not covered by other legislation, where standard food items are purchased by individuals for immediate consumption. For example, this would include food outlets in higher education, workplaces, recreational settings, restaurants, grocery/convenient stores, food trucks, movie theatres, etc.

2. Supporting Materials

The NRC is in a unique position to develop factsheets, toolkits and other resources to support health intermediaries in the implementation of the menu labelling legislation and regulations. Our clients include public health and food industry dietitians, public health inspectors and other health intermediaries. The Ministry indicated the intention to develop “a fact sheet” for key partners. However, it may be more appropriate to develop a number of fact sheets to suit the various needs of the different partners. An industry implementation guide should be developed in consultation with public health, including dietitians and inspectors, and NRC can play a role in developing resources that bring together all key partners. We are in a position to help develop the content for these resources and to provide the training and consultation related to these resources. We can also advise the Ministry on content for its marketing and social media campaigns. The NRC is presently very active in social media and can help communicate messages about the menu labelling legislation and public education campaign, as well as engage in other knowledge dissemination activities, such as webinars and workshops, to support legislation awareness and implementation.

3. Training/Education

In reference to PPM 150, the Ministry of Education offered targeted training workshops to high school teachers, elementary school teachers, and to School Board representatives. We recommend training and education workshops or webinars and other educational opportunities targeted to the various key partners and e.g. Public Health Inspectors, Dietitians/Nutritionists, food industry, etc. to provide detailed information about the legislation and its implementation.

As mentioned above, the NRC is well poised to provide consultation to the Ministry on these training materials. The NRC has as its mandate to provide nutrition program and policy consultation to Public Health Units and to health intermediaries working within Community Health Centres, Family Health Teams, etc. and, as such, are in a unique position to offer consultation and training on menu labelling, its nutrition implications, etc. to PHU's and their staff post Ministry training, if this is to occur. In this capacity, we would field requests from PHU's, assist with resource development based on questions from the field and liaise with the Ministry regarding the consultation requests received.

4. Evaluation

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. 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.

We would welcome additional dialogue on the role of NRC and our continued involvement as the menu labelling regulations are developed and the legislation is rolled out. Please feel free to contact us to set up a meeting to discuss.

Sincerely,



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Appendix A: Calorie Posting

Discussion Questions

1. a. Where should calories be posted?

Unless deemed exempt from the legislation, calorie postings should be required everywhere the food item is printed, listed, depicted or displayed for the purpose of informing consumers of food and beverage items available for sale in all food premises in Ontario as required by the Health Protection and Promotion Act.

Within those food service establishments, calories should be to be posted on:

- **All types of menus that list or depict food items available for purchase:**
 - Menu boards: including those on food trucks, sit down restaurants, fast-food restaurants, recreation setting concession stands etc.
 - Table top menus: these are point of purchase consumer materials that influence food choices in sit-down restaurants
 - Printed menus: these are point of purchase consumer materials that influence food choice when ordering food for take away or delivery
 - Drive through menus: these are point of purchase menu boards that influence food choice when ordering take-away food
 - Virtual/online menus: these are point of purchase consumer materials that influence food choices when consumers order from restaurants remotely (i.e. at home for delivery)
- **Food tags directly adjacent to all places where pre-prepared food items are displayed:**
 - Buffet and self-serve restaurants
 - Movie theatres where individuals serve themselves popcorn toppings and fountain drinks
 - Cafeteria style restaurants where staff serve portions of pre-prepared meals
 - Concession stands where staff serve portions of pre-prepared meals
 - Coffee shops, sandwich shops, convenience stores etc. where food is displayed in cabinets
 - Deli and bakery counters in grocery stores where staff serve portions of pre-prepared foods in cabinets
- **Promotional materials (such as flyers with coupons)** - These aim to inform consumers of food items available for purchase. These are point-of-decision materials aimed at influencing food choice/purchases when ordering from home or using coupons to order at restaurants.

Rationale for including calories in promotional materials such as flyers and coupons:

These are all point of purchase materials that consumers use to make food choices and should be covered under the Making Healthy Choices Act, 2015. Promotional materials such as restaurant flyers, coupons and posters with sale items are created to influence food choices and consumer behaviour/purchasing of food and beverage items from the food service premise and, therefore, should not be exempt from calorie postings.

Promotional coupons or vouchers provide “price” information to influence and entice consumers to purchase the featured food items and, as such, nutritional information is an equivalent source of information that should be included to factor into consumers’ decision making when using restaurant information to make an informed food choice. Moreover, fast-food restaurants use promotions, such as “Two can dine for \$9.99” to sell higher calorie content “value meals” and this legislation should uphold the consumers’ right to know the total calorie content of these larger value meals.

As a model policy, California State’s SB1420 Act specifically states that “Consumers should be provided with point of purchase access to nutritional information when eating out in order make informed decisions involving their health and diet.” As foods are ordered and purchased outside of the establishment, all materials distributed outside of the establishment should too be considered “point of purchase” information to be included in this legislation.¹

1.b. What should be included in the definition of ‘menu’?

Definition of ‘MENU’ - “Menu shall mean any printed list, pictorial depiction or display of a food or beverage item or items that are available for sale from a food service premise. This includes all point of purchase information provided to consumers, such as printed menus and promotional materials that are distributed or provided inside or outside of a restaurant for the purpose of providing information and/or choosing food items to purchase from the food service establishment.” This language has been adapted from various definitions stated in current legislation in the USA, including, New York City, King’s County, the State of California and Philadelphia.^{1,2,3,4} Philadelphia’s legislation explicitly recognizes that food service establishments display food and beverage information in several different ways and, as such, the legislation covers all menus, menu boards, and food tags, as well as packaging of foods to be delivered to consumers off the food service premise.⁵

The definition of menu should be inclusive of any tool(s) or material(s) produced to inform consumers of the types of foods/beverages available for purchase in a food service premise/establishment or additional marketing materials - such as price - that may influence

¹ <http://publichealthadvocacy.org/PDFs/SB1420-FullText.pdf>

² <http://www.phila.gov/health/pdfs/Menu%20Labeling%20Requirements.pdf>

³ <http://www.kingcounty.gov/healthservices/health/BOH/code.aspx>

⁴ <http://www.nyc.gov/html/doh/downloads/pdf/public/notice-adoption-hc-art81-50.pdf>

⁵ <http://www.phila.gov/health/pdfs/MenuLabelingguideFINAL2010-27.pdf>

consumers' food choice when ordering from the food service establishment. This includes every point of purchase place that the standard food item is listed, depicted, or displayed (i.e. menus, menu boards, food displays/tags, promotional materials/advertisements, and virtual menus) whether this is in the restaurant, at the drive-through or when providing printed or virtual/online information to consumers remotely for the purpose of informing or influencing consumer purchasing.

2. How should calories be posted (size, font, and prominence; rounding: “Cal” or “Calorie” beside number)?

Some menus in restaurants do not always list the price of foods for sale (i.e. dessert, cocktail or table-top menus). To overcome instances where prices are not listed on menus, consider using a directive such as “the posting of calories shall be directly adjacent to any location on a menu where the item is listed, depicted or displayed.”

The size and typeface should be similar to that of the main description/title of the food item and/or the price. This would be consistent with current legislation in the USA. For example, many policies in the USA have been implemented, evaluated and proven to have a positive impact by decreasing calories purchased/consumed in restaurants. As such, the regulations for the Making Healthy Choices Act, 2015 could adopt language similar to these successful policies. For example, USA's national policy, New York City and Philadelphia's regulations have adopted the language “clear and conspicuous” to prevent food establishments from using colour or visual techniques that hinder the consumers' ability to read the nutrition information. These policies are directive, such that they require calorie postings to be “adjacent” to the food item listing for clear association to the item AND include direction about the “prominence” of contextual statements on menus/menu boards. Here are some examples:

- Philadelphia's Menu Labelling Ordinance (1b) which states “the total number of calories (rounded to the nearest ten calories)...per menu item as usually prepared and offered for sale shall be provided adjacent to each item on the menu, in a size and typeface similar to price and other information provided about each item” and that the typeface is “clear and conspicuous.”⁵ NYC's legislation (amendment to the health code) states “All menu boards and menus in any covered food service establishment shall bear the total number of calories derived from any source for each menu item they list. Such information shall be listed clearly and conspicuously, adjacent or in close proximity such as to be clearly associated with the menu item, using a font and format that is at least as prominent, in size and appearance, as that used to post either the name or price of the menu item.”⁴

Drawing on the body of evidence around state and regional menu labelling policies in the USA the federal congress has passed a national policy with similar regulatory statements regarding

how the nutrition information should be disclosed on menus (for both calorie postings and the contextual statement)

- USA’s national policy states “the restaurant or similar retail food establishment shall disclose in a clear and conspicuous manner—(I)(aa) in a nutrient content disclosure statement adjacent to the name of the standard menu item, so as to be clearly associated with the standard menu item, on the menu listing the item for sale, 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 the public to understand, in the context of total daily diet, the significance of the caloric information that is provided on the menu;”

The literature has identified that the use of legends/keys has shown to be a barrier to consumers when trying to use and decipher menu labelling information in restaurant chains.⁶ Consumers report that calorie information is easier to read and process when the nutrition value and description is written in words and when it is presented directly adjacent to each item (i.e. “500 calories” is easier to read and process than “500” or “500 kcal”).⁶ To maximize the public health impact of this policy, we encourage you to be mindful of the broad range of literacy levels among consumers and ensure that information will be posted in a manner that is easy to process and use when making time-limited decisions in scenarios such as the line-up or drive-through of a fast-food restaurant.

Where prices and numeric values of calories will be posted in columns on the menu, a heading of “calories” at the top of the column is best. Where there are no columns used or when food is on display, 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 food display (by use of a food tag). The use of whole numbers and rounding of calories (to the nearest 5 or 10) is encouraged as this is likely to make information easier to read and process. This is consistent with current legislation and FDA rules in the USA.

3. How should calories be determined?

We agree with Dietitians of Canada’s response, which states that while the most accurate information can be obtained through laboratory analyses of each menu item, it should be recognized that nutrient databases and manufacturer’s ingredient information can provide nutrient information with sufficient accuracy for many situations. Health Canada’s *guidance on accurate nutrient calculations*⁷ can be used as a source of information.

For the purposes of these regulations, it is suggested that the foodservice operators be required to maintain a record of how nutrient values were obtained, including:

⁶ <http://www.ncbi.nlm.nih.gov/pubmed/23388204>

⁷ http://www.hc-sc.gc.ca/fn-an/label-etiquet/nutrition/reg/guide-nutri_val_tc-tm-eng.php

- Laboratory used, dates and nutrient values of food products analyzed, if applicable
- Nutrient databases used, credentials, title and role of person(s) entering data and providing analysis, if applicable

It should also be noted that 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. These inconsistencies might be mitigated through requiring review of menu analysis to be carried out by professionals with expertise in food and nutrition, such as registered dietitians

4. Should ranges or averages be allowed for food items that are listed on the menu only once but are sold in a variety of flavours?

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 flavours. We recommend a variability threshold of less than 10%, between similar items, the range of flavours for the same menu item. Ranges will be confusing and can be misleading to consumers, but averages could be incorporated as long the products are similar and within the <10% variability threshold (e.g. a variety of non-diet sodas or ice cream flavours). Similar foods that have larger variability in their calorie content (>10%), such as pizzas, should have their own specific calorie amounts. 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.”²

5. Should ranges/averages be used for alcoholic beverages listed on a menu?

As mentioned above, if similar alcoholic beverages are below the <10% variability threshold in calorie content an average could be used (i.e. bottles of regular beer or light beer, white wine, red wine, sweet/dessert wine). However, specialty drinks and cocktails are unique beverage items and should all have their own specific calorie amounts as ingredients for these can vary considerably.

For alcoholic beverages the number of calories should be listed according to the actual size of beverage sold as it is served to the customer (e.g. bottle, glass, can or jug). For example, a typical beer bottle is 341 ml, while beer 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. Ideally, reference amounts should reflect the low-risk drinking guidelines suggested by the [Canadian Centre for Substance Abuse](#) in which “a drink” means: 341 ml (12 oz.) bottle of 5% alcohol beer, cider or cooler; 142 ml (5 oz.) glass of 12% alcohol wine; and 43 ml (1.5 oz.) serving of 40% distilled alcohol. However, due to the growing market of alcoholic beverages available in a variety of sizes it will be a challenge to label products accordingly to low-risk drinking

guidelines unless beverage size containers are standardized to the recommended volumes. Where serving sizes of “common” alcoholic beverages vary, calories should be listed separately, i.e. 12 oz. vs. 18 oz. vs. 32 oz. containers of beer should all have separate calorie postings regardless of brand of beer.

Appendix B: Contextual Statement

Discussion Questions

1. Should the content of the contextual statement include an average or range for adults only? Or should it be age and gender specific?

USA’s national policy is a paradigm example as it 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—... (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;”

To address variation in population literacy levels and increase practicality of nutrition information provided to consumers, we suggest only one, succinct, non-gender specific contextual statement for adults. For example, Philadelphia’s health code regulation directs that “Every menu provided by a chain restaurant, or written information provided pursuant to subsection (1)(b) when menu boards or food tags are used, shall include clear and conspicuous typeface: ... (ii) the following statement: *A 2000 calorie daily diet is used as the basis for general nutrition advice; individual calorie needs, however, may vary.*” As this statement suggests, individual calorie needs vary but an average daily requirement for all adults is preferred to reduce complexity of multiple messages. We recommend the following statement for adults:

“The average adult requires about 2000 calories per day; however, individual needs may vary”.

The adult contextual statement should 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. An adults’ reference value for children may not only lessen the impact of the policy if the information provided is misinterpreted by parents, but **could potentially contribute to childhood obesity**. Average reference values for adults are inaccurate when applied to children and could lead to significant overconsumption of calories. 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. < 12 years old). We recommend using < 12 years old as the threshold for calculating the reference value as the inclusion of adolescents (up to 18 years of age) will increase the reference value considerably.
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. 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. Using the Dietary Reference Intakes 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.

Given the two considerations for a children's contextual statement aforementioned, we recommend the following statement for children's food items/meals:

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

2. How should the contextual statement be posted on menus (size, font, and prominence)? Included on each page of paper menu? Included in online menus? Should the contextual statement be required to be posted in display cabinets?

The contextual statements should be prominently posted in the same size and typeface as the calories posting on the menu. Again, the regulations should adopt terminology used in existing legislation, specifically “clear and conspicuous” and “prominent.” As the federal USA policy states “(b) a succinct statement concerning suggested daily caloric intake...posted prominently on the menu and designed to enable the public to understand, in the context of total daily diet, the significance of the caloric information that is provided on the menu.”

The statement should be posted on every menu board and every page of a printed or virtual menu so that consumers can quickly compare the calories posted for any given food item to the average daily requirement. Where children's food items are listed, depicted or displayed, the children's contextual statement should be posted clearly, conspicuously, prominently and adjacent to those items on the menu.

Food display cabinets should also require the contextual statement as food displays can be used in lieu of menus and for the purposes of this legislation we have recommended that food displays are captured in the definition of “menu.”

Appendix C: Standard Food Item

Discussion Questions

1. How should requirements for ‘standard food item’ be set out in the regulations? What food items should be captured by the legislation? Why? How would you define “ready-to-eat” or “restaurant-like foods”?

“**Standard Food Item**” should include all “pre-prepared”, “restaurant-like” and “ready-to-eat” foods/beverages listed, depicted or displayed on menus, menu boards, or in display cabinets in any food service establishment that is included in Ontario’s Health Protection and Promotion Act. “Ready-to-eat”, “restaurant-like” and “pre-prepared foods” include any food items that contain more than one component and have been prepared by a food service establishment for immediate consumption by the consumer as a meal or as a major component of a meal. This includes all foods that have been processed or prepared (i.e. transforming raw materials, chopping/mincing, mixing, cooking, baking, roasting, grilling, frying, etc.) to produce a “ready-made” full meal or component of a meal, such as a side dish, salad, or dessert. These must be standard menu food items that are available for a period of time that is longer than a seasonal exemption threshold; we recommend using < 30 days as the threshold for exemption.

These “ready-to-eat” foods are often made with cooking techniques, sauces, oils and other ingredients that can add a considerable amount of calories. The legislation should cover all of these types of foods as it should uphold the consumer’s right to know nutritional information that can help them make a healthier choice when eating away from home. Just as a fast-food restaurant would be required to post calories for a fried chicken meal or for a desert, so should a grocery store that sells these similar types of restaurant-like, ready-to-eat foods.

2. What food items, if any, should be exempt from the legislation? Why?

Foods that require additional food preparation once the consumer has left the food service premises (i.e. frozen meals, marinated chicken breasts) should be exempt. These would not be considered a standard food item as we have defined those as food items that contain more than one component and have been prepared by a food service establishment for immediate consumption by the consumer as a meal or as a major component of a meal. By this definition, other exemptions would include individual food items that you might find in bulk bins or the deli section (such as nuts, cheese, deli meat, dried fruit, etc.) These individual components are not a full meal or a “major component” of a meal (such as a side dish or desert). For detailed exemptions see question below.

3. What do you think of the following grocery exemptions from the U.S. FDA Final Rule:

It should be noted that USA's federal policy is diluted in comparison to currently existing state or municipal policies. As we have seen in other jurisdictions such as King's County, Washington, this is likely a result of food industry lobbying and restaurant association negotiations with policy-makers and government agencies.⁸ USA's federal policy is new and has yet to reach its compliance date or to be evaluated in terms of the public health impact of this legislation. However, various states and smaller jurisdictions have implemented more comprehensive policies with detailed regulations which have been evaluated. The current evidence supports these less diluted policies as effective in decreasing the amounts of calories consumed in restaurants, providing consumers with appropriate information that have been used to make healthier choices and encouraging healthier recipe reformulations from the food industry.^{9,10,11} We recommend that serious consideration be given the purpose of the policy when "standard food item" is defined in the regulations, as this definition will dictate what is or is not exempt and, consequently, may alter the public health impact of the policy. Below we have detailed where we may or may not agree with the FDA ruling based on our suggested definition of "standard food item."

(a) Foods that are eaten over several occasions or stored for later use (e.g., a whole cake, a loaf of bread, bags/boxes of rolls)

This example is misleading because it asks two different questions..(1) Should certain bakery food items be exempt?; and (2) Should items that are intended to be shared and/or that may not be eaten in one sitting be exempt.

Response (1) All of these examples are processed, pre-prepared, "ready-to-eat" components of meals and, as such, should NOT be exempt from compliance with calories postings legislation. See suggested definition of "standard menu item" above.

Response(2)There is no way to determine whether or not the food will be consumed over multiple occasion or shared with a group of people in one meal. If it is a processed, pre-prepared, standard food item that is made ready-to eat by a food service establishment, then it should NOT be exempt from the legislation, regardless of the portion size in which it is packaged or purchased.

(b) Foods that are typically intended for more than one person to eat or require additional preparation before consuming (e.g., pounds of deli meats and cheeses, large-size deli salads)

⁸ <http://publichealthlawcenter.org/sites/default/files/resources/phlc-policy-menu-labeling.pdf>

⁹ <http://www.pages.drexel.edu/~aha27/ExecSummaryForRestaurants.pdf>

¹⁰ http://www.cdc.gov/pcd/issues/2013/12_0224.htm

¹¹ <http://www.bmj.com/content/bmj/343/bmj.d4464.full.pdf>

Again, this statement asks multiple questions (1) Should foods that are “typically intended or more than one person to eat” be exempt? (2) Should foods that require extra preparation before consuming be exempt?

Response (1) Foods that are sold in portions that are typically intended for more than one person should NOT be exempt as grocery stores commonly sell “family-size” ready-to-eat meals, such as hot pizzas, buckets of chicken/chicken wings, sushi trays etc. If the food falls under the definition of a standard food item that has been prepared, processed, and made ready to eat by a food service establishment then it should be covered by the legislation, regardless of the portion size in which it is packed or purchased. This may require a standardized individual serving size with a calorie posting for bulk deli food items that are covered by the definition of standard food item (i.e. 1 cup of potato salad = 425 calories; 1 chicken fried parmesan cutlet = 325 calories).

Response (2) If the food item requires additional preparation before consuming (i.e. frozen pizza or uncooked marinated meat) this should be exempt as it is not a “ready-to-eat” food. Deli-meats and cheeses should be exempt as these are individual staple items that do not involve a recipe and production to further prepare them as a component of a “ready-made” meal. However, if the deli section includes pre-prepared food items that are processed, prepared, and “ready-to-eat” components of meals. (i.e. antipasto salads or pasta/potato salads that have been prepared according to a recipe), these should have calorie postings.

(c) Foods bought from bulk bin cases in grocery stores (e.g., nuts, dried fruits, olives from bulk bins)

Individual food items that are not pre-prepared to be consumed as a ready-to-eat meal or meal component should be exempt from the legislation. Again, refer to the definition of a “standard food item” above in question 1.

(d) Foods sold at deli counters and typically intended for more than one person

Same, as described above. If the food item in the deli section is a pre-prepared, processed, standard food item that is made ready-to-eat as a meal or major component of a meal (i.e. antipasto salads, pasta or potato salads that have been prepared according to a recipe, or grilled meat/protein entrees), these should NOT be exempt and should all have calorie postings, regardless if it is intended for one individual or sold in “family-size. These types of food items are similar to those you find in fast-food and sit-down establishments and, therefore, should NOT be exempt. Different portion sizes for a standard food item (for example a bucket of chicken vs. an individual piece of “ready-to-eat” chicken) should not vary with respect to legislation exemption just because one portion is larger than the other; both should be required to have calories posted.

Appendix D: Possible Exemptions

Discussion Questions

Should the regulations specify exemptions for particular food service premise settings? If so, what is the rationale for this exemption?

Legislation should capture any food service premise, as defined by and covered under the Health Protection and Promotion Act, where individuals purchase standard food items that are intended for immediate consumption as a meal or major component of a meal. For example, this would include:

- Fast-food and sit-down restaurants
- Institutional settings such as higher education campuses and hospitals
- Concession stands, such as those in movie theatres, recreational settings and workplaces
- Cafeterias and food trucks

Exemptions should apply to food service premises that are already covered by menu planning legislation, such as PPM 150, the Long-Term Care Homes Act or child care regulations.

By these criteria, for example, long-term care homes would be exempt but retirement homes would not be exempt. To provide another example, elementary and secondary schools would be exempt but higher education campus food service premises would not be exempt.

Appendix E: Supporting Materials

Discussion Questions

1. What content should be included in the: Industry implementation guide? Fact sheet? Social marketing campaign? Website supports?

2. Are there other supporting materials that would be helpful for successful implementation?

A number of resources have already been developed by communities who have evaluated their menu labelling legislation. The chart below provides some examples of the various types of public education and supporting materials that could be developed to support operationalization of Ontario's menu labelling legislation. The 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 and consultation related to these resources. We can also advise the Ministry on content for its website, marketing and social media campaigns.

Tools Identified	Examples
<p>Fact Sheets:</p> <p>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.</p>	<p>Philadelphia’s Menu Labeling Law - This 2-pager exert from the city’s health code is written concisely and in plain regulations so that the public will be able to better understand the regulations. http://www.phila.gov/health/pdfs/Menu%20Labeling%20Requirements.pdf</p> <p>What Every Philadelphian Should Know’ is a public education fact sheet in Q & A format. http://www.phila.gov/health/pdfs/What_Every_Philadelphian.pdf</p> <p>General Fact Sheet on Menu Labelling at Fast-Food and Other Chain Restaurants http://cspinet.org/new/pdf/factsheet-why-menu-labeling2011.pdf</p> <p>Supermarkets vs. Restaurants Factsheet http://cspinet.org/new/pdf/supermarket-fact-sheet.pdf</p> <p>Success of Menu Labelling in NYC Fact Sheet https://cspinet.org/menulabeling/handouts.html</p>
<p>Industry Implementation Guide:</p> <p>To support industry with implementing the legislation.</p>	<p>A Guide to Menu Labeling Requirements at Food Establishments in Philadelphia: Understanding Philadelphia’s Menu Labeling Law http://www.phila.gov/health/pdfs/MenuLabelingguideFINAL2010-27.pdf</p>
<p>Menu Labelling Evaluation Report(s):</p> <p>To assess the impact of the legislation and provide evidence-informed recommendations to promote public health</p>	<p>Philadelphia’s Menu Labelling Evaluation: Recommendations for restaurants http://www.phila.gov/health/pdfs/MenuLabelingEvaluationReport112013.pdf</p>
<p>Public Education Materials and Social Marketing Campaigns:</p>	<p>Here are some examples of menu labelling education campaigns in New York City, New York State, and Seattle/King’s County http://cspinet.org/new/pdf/ml-ed-campaigns-comparison-kc-nyc-nys.pdf http://cspinet.org/new/pdf/ny-menu-labeling-education-</p>

<p>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.</p>	<p>campaign.pdf</p> <p>Posters – New York City: http://www.nyc.gov/html/doh/downloads/pdf/calories/Calorie-Posters.pdf</p> <p>Brochure – New York City http://www.nyc.gov/html/doh/downloads/pdf/cdp/calorie-posting-brochure.pdf</p> <p>Health Bulletin: Eating Out, Eating Well; NYC http://www.nyc.gov/html/doh/downloads/pdf/public/dohmhnews10-03.pdf</p> <p>What Every Philadelphian Should Know’ is a public education fact sheet in Q & A format. http://www.phila.gov/health/pdfs/What_Every_Philadelphian.pdf</p> <p>‘Anyone's Guess: The Need for Nutrition Labeling’ is an example of a consumer education document that can help build public support for menu labelling policy by linking restaurant food choices to health and summarizing the evidence in plain language to support diverse literacy levels. http://www.phila.gov/health/pdfs/Anyones_Guess_-_The_Need_for_Nutrition_Labeling.pdf</p>
<p>Website:</p> <p>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.</p>	<p>Philadelphia Public Health’s Menu Labelling Web Page. http://www.phila.gov/health/services/Serv_MenuLabeling.html</p> <p>Website Information for consumers Philadelphia: FoodFit Philly Menu Labeling Page - http://www.foodfitphilly.org/menu-labeling/ http://www.foodfitphilly.org/eat-healthy-near-you/menu-labeling/</p> <p>Overview of FDA Labeling Requirements for Restaurants, Similar Retail Food Establishments and Vending Machines http://www.fda.gov/Food/IngredientsPackagingLabeling/LabelingNutrition/ucm248732.htm</p>