

HEALTHY MENU CHOICES ACT FACT SHEET

Application of the Act to Advertisements and Online Menus

The *Healthy Menu Choices Act, 2015* ("HMCA") and its accompanying regulation (O. Reg 50/16) ("the Regulation") came into effect on January 1st, 2017 and require regulated food service premises to post calories for the food and drink items they serve. This document is intended to help food service premises owners and operators, public health stakeholders, and the general public understand, implement and enforce Ontario's menu labelling legislation as it may apply to advertisements, promotional flyers, circulars and magazines and to online menus and menu applications. This fact sheet should be used in conjunction with *A Guide to Menu Labelling Requirements in Regulated Food Service Premises in Ontario*.

What is a standard food item?

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

- Is served or processed and prepared primarily in a regulated premises;
- Is intended for immediate consumption without further preparation; and
- Is standardized for portion and content.

Where must calories be displayed?

Subsection 2(2) of the HMCA states that calories are to be displayed on:

- each menu on which the standard food item is listed or depicted **at the regulated food service premises**; and
- where the standard food item is put on display at the regulated food service premises, on a label or tag identifying the standard food item.

Subsection 2(3) adds that:

- where a regulated food service premises lists or depicts a standard food item on a menu that is distributed or available **outside the regulated food service premises**, calories are to be displayed on that menu.

What is the definition of a “menu”?

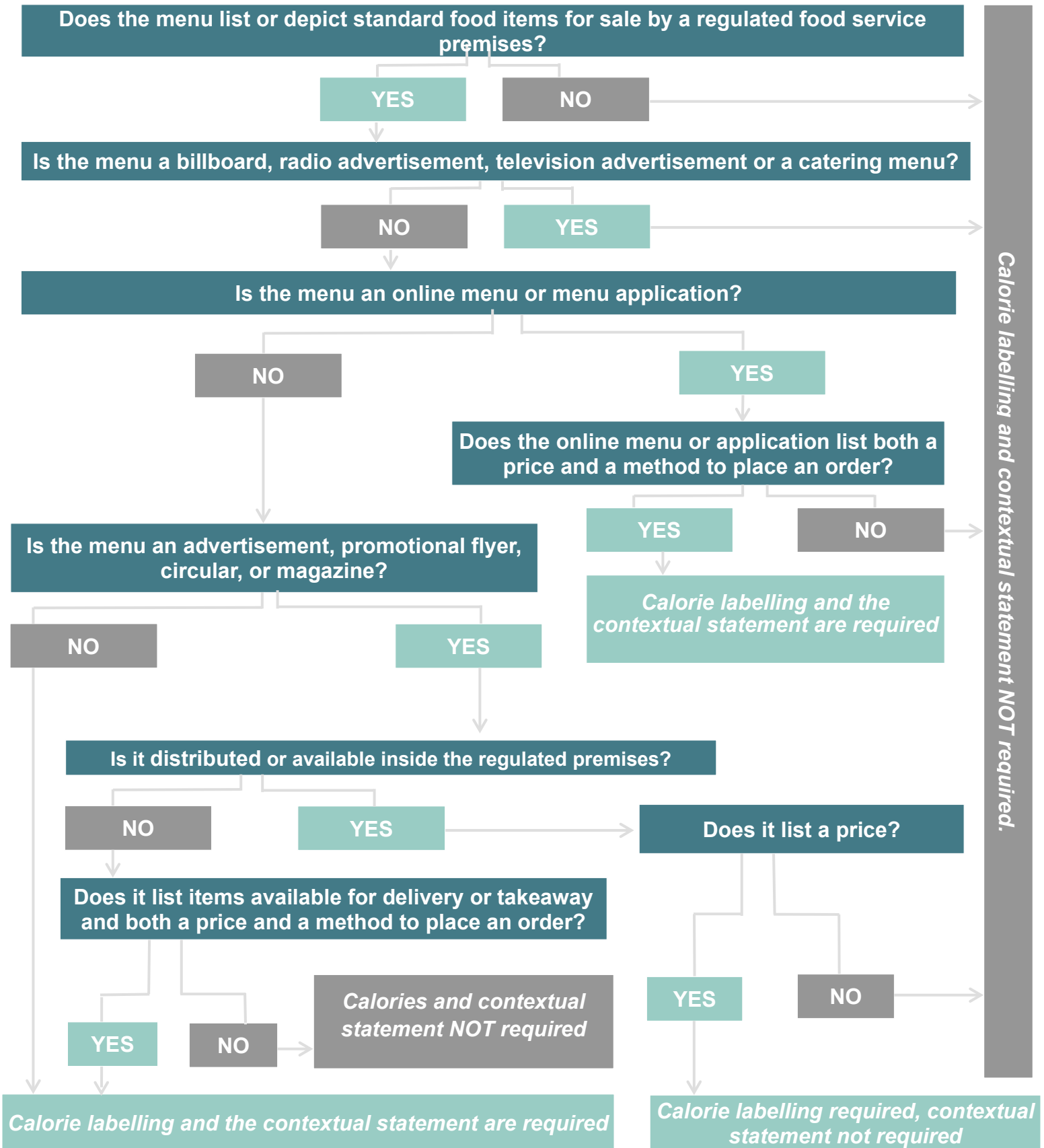
Subsection 3(1) of the Regulation defines “menu” as “any document or other written means of communicating information that lists standard food items offered for sale by a regulated food service premise”. A menu includes but is not limited to:

- Paper menus;
- Electronic menus (e.g. menus on tablets, self-order kiosks);
- Menu boards;
- Drive-through menus
- Online menus/applications;
- **Advertisements**, other than a billboard, radio or television advertisements, and
- **Promotional flyers.**

Advertisements are considered menus if they are a document or other written means of communicating information that lists or depicts standard food items offered for sale by a regulated food service premise. Advertisements do not include a billboard, radio or television advertisement for the purposes of the HMCA.

Subsection 2(2) of the HMCA requires calories to be displayed on any menu on which standard food items are **listed or depicted** at the regulated food service premise. This applies to, but is not limited to, signs, posters, table toppers, magazines, circulars, and promotional flyers. In addition, per subsection 2(3) of the HMCA, where a regulated food service premise lists or depicts a standard food item on a menu that is distributed or available outside the premise, calories must be displayed on the menu.

An owner/operator can determine whether or not the HMCA applies to a menu by answering 'yes' or 'no' to the questions in the diagram that follows:



Online menus and menu applications

Online menus and menu applications are considered menus if they are a written means of communicating information that lists or depicts standard food items offered for sale by a regulated food service premises.

However, the HMCA exempts online menus and menu applications from displaying calories if

1. They do not list prices for standard food items; or
2. They do not provide a method to place an order (e.g., phone number or website).

In other words, an online menu or menu application would only require calorie posting if they list both a price and a method to place an order (e.g. through the app or a phone number).

Online menus and applications that do list a price and a method to place an order require calorie posting and **also require the contextual statement** (see section 9 of the Regulation for more information).

Example #1: Requirements for Online Menus and Menu Applications

Calories and the contextual statement posted on online menu/application, since both the prices and a method to place an order are included

Restaurant APP

Click on items to add them to your order

- Guacamole and Nachos**
\$5.99
(400 Cals; serves 2)
- Salsa and Nachos**
\$4.99
(200 Cals; serves 2)
- Chicken Quesadilla**
\$8.99
(700 Cals)

Scroll ▾

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

YES

www.subspace.com

Try our New Subs

- Bologna
- Curry Chicken
- Smoked Turkey

Order them through our App

NO

Calories and the contextual statement not posted on online menu since a price is not included

Advertisements, Promotional Flyers, Circulars, and Magazines

Inside a Regulated Food Premises

Advertisements, promotional flyers, circular and magazines distributed or available **inside** of the regulated food service premises are exempt the requirement to display calories if they do not list prices for standard food items. Note, however, that a contextual statement is not required for in-store advertisements, promotional flyers, circulars, and magazines, even if calories are required.

For example, a promotional flyer inside a store that lists a standard food item (e.g. cheese pizza) and the price for that standard food item, would require calorie posting but would not require the contextual statement. Also, an advertisement affixed to a wall that lists a standard food item or category (e.g. sushi), but does not list a price, does not require calorie posting nor the contextual statement.

Example #2: Displaying Calories for In-store Advertisements

Calories posted on the advertisement in-store since a standard food item is depicted and a price is listed.

Range accounts for varieties of muffins (because varieties are not listed). Advertisement exempt from including the contextual statement; however, contextual statement posted on a sign as required for areas where a customer can serve themselves and a menu with the statement is not visible.

Flavor	Calories
Cherry	270 Cals
Chocolate	350 Cals
Carrot	220 Cals

Muffins \$1.99

Example #3: Displaying Calories for In-store Advertisements



Example #4: In-store Advertisement with no price listed



Outside a Regulated Food Service Premises

Advertisements, promotional flyers, circulars and magazines distributed or available **outside** of the regulated food service premises are exempt from the requirement to display calories if they satisfy at least one of the following criteria:

1. They do not list prices for standard food items.
2. They do not list standard food items that a person can order for takeaway or delivery ordering and do not provide a method to place an order.

In other words, an advertisement that is available outside the premises (e.g. a poster outside the store) would not require calorie posting if either the price is not listed or if a method to order, such as a website or phone number, is not listed. Similarly, a standard coupon mailer or grocery store flyer that has to be taken into the store to

redeem and does not provide a method to make an order would not require calories.

Note that for advertisements, promotional flyers, circulars and magazines, online menus and menu applications that are distributed or available outside of the regulated food service premises where calories are required, the contextual statement is also required.

Billboard, radio and television advertisements are exempted from the requirements of the HMCA.

Example #5: Displaying Calories on an Out-of-store Advertisement

PIZZA
DELIVERY
(444)444-4444

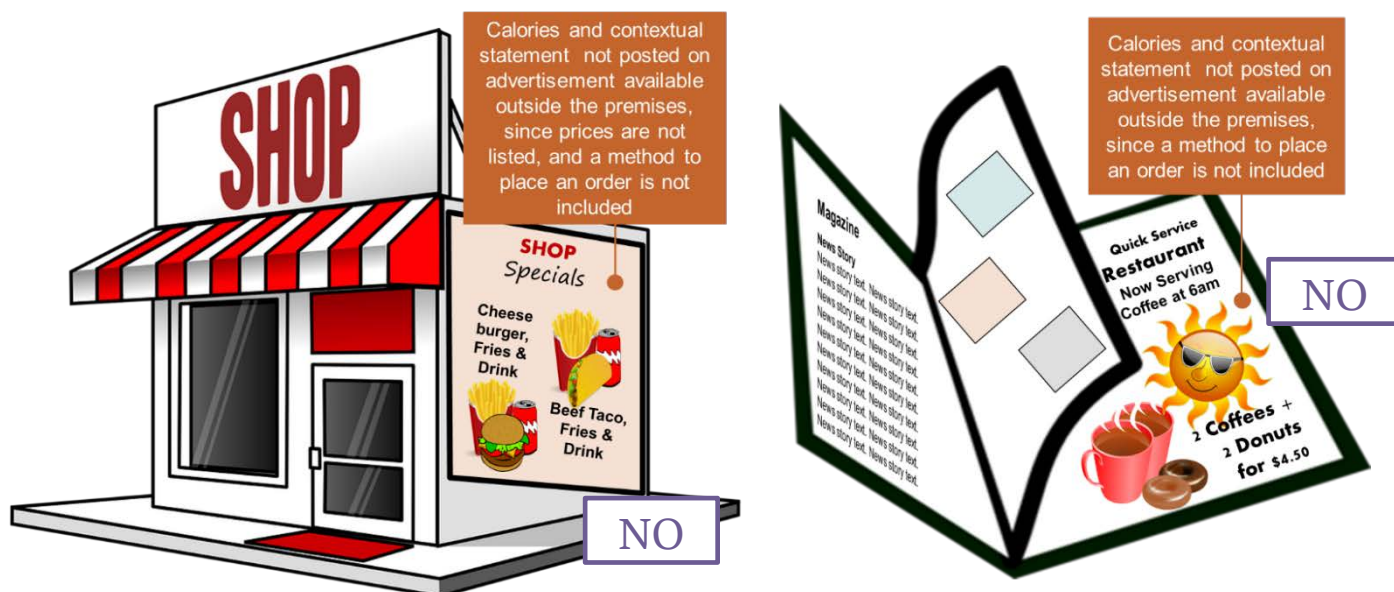
2 Medium Pizzas
\$15.99
90-150 Cals per slice, 16 slices

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

YES

Calories posted on take out promotional flyer distributed outside the premises, since prices for standard food items available for sale are listed, and a method to place an order is included

Examples #6 and #7: Exempted Out-of-store Advertisements



Disclaimer

This fact sheet is intended to reflect the policy intent, as supported by the legislation. This document is intended to help owners and operators of regulated food service premises understand and implement the HMCA. This document provides summary information about the *Healthy Menu Choices Act, 2015* and the regulation (O. Reg. 50/16) made under the Act. The ministry recognizes that application to each regulated food service premises is subject to the specific realities of each food service premises. The document is provided for educational use only and is not complete or exact reproductions of the legislation. It is not intended, or to be used, as legal advice about the requirements for menu labelling. Such advice should be obtained from lawyers. Where there is a discrepancy between anything in this document and a legislative provision, the legislation prevails.

Additional Information

For further information about the HMCA, please access the legislation and regulation at <https://www.ontario.ca/laws/statute/15h07>.

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