

# HEALTHY MENU CHOICES ACT FACT SHEET

## Application of the Act in Convenience Stores

The *Healthy Menu Choices Act, 2015* (HMCA) and its accompanying regulation (O. Reg 50/16) (“the Regulation”) came into effect on January 1<sup>st</sup>, 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 regulated convenience stores. This fact sheet should be used in conjunction with *A Guide to Menu Labelling Requirements in Regulated Food Service Premises in Ontario*.

### What types of food service premises must comply with the HMCA?

Chains of food service premises that have 20 or more locations in Ontario that operate under the same or substantially the same name, regardless of ownership, and that offer the same or substantially the same standard food items are subject to the HMCA. The types of food service premises with 20 or more locations in Ontario can include, but are not limited to, chains of restaurants, bakeries, grocery stores, and convenience stores.

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

### 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?

Calories must be displayed on any written menu at or outside of a regulated food service premises. In convenience stores a menu may include but is not limited to:

- Menu boards, paper menus, or electronic menus;
- Advertisements, promotional flyers, circulars, and magazines available inside the store that list prices for standard food items; and
- Online menus/applications, out-of-store advertisements (other than billboard, radio and television advertisements), promotional flyers, circulars and magazines that list prices for standard food items and provide a method that a customer can use to order delivery or take away (e.g. phone number or website).

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

Note: Catering menus are exempt from section 2 of the HMCA (i.e., the requirement to display calories and any other information required by the Regulation).

### Example #1: Application of the HMCA to advertisements in a Convenience Store



## Are all sections of a convenience store captured under the HMCA?

No. The HMCA only applies to standard food and drink items that are sold in a "food service section" of a grocery store or if applicable, a convenience store.

**"Food service section"** means a section in a grocery store where the food and drink items that are sold or offered for sale, including at a food counter, whether the counter is clerk-served or self-serve, are primarily restaurant-type food and drink items (e.g., clerk served hot food counter, clerk served café, self-serve salad bar) that are not the subject of an exemption under the Regulation. The Regulation exempts the following items from calorie posting requirements in grocery stores and if applicable, convenience stores:

- Deli meats and cheeses that are normally sold by weight;
- Prepared fruit and vegetables intended for multiple persons;
- Bread, buns, and rolls;
- Olives and antipasti;
- Food or drink items that are sold outside of a food service section; and
- Standard food items that are labelled with a nutrition facts table.

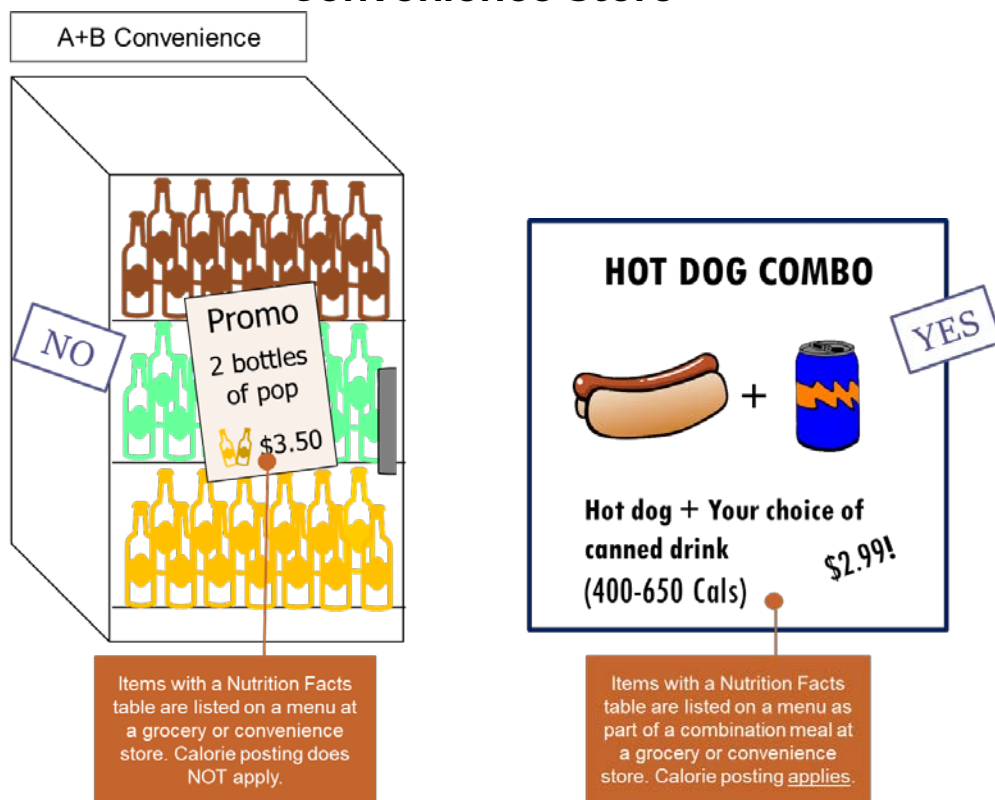
\*Please note that calories for the abovementioned items must be provided when these items are part of a standard food item (see subsection 5(3) of the Regulation for more details). For example, olives in a salad, flavoured bread, buns, or rolls that come in a combination meal with a soup, and sliced deli meats and cheeses in a sandwich, would require calorie posting.

## How do the HMCA requirements apply to prepackaged products in convenience stores?

Prepackaged standard food items in a grocery store, and if applicable, in a convenience store may be exempt from calorie posting under the HMCA in the following cases:

- **Items with a Nutrition Facts table (NFt):** Standard food items that are labelled with an NFt that meet the requirements of the *Food and Drug Regulations* made under the *Food and Drugs Act* (Canada) are exempt, unless they are part of another standard food item.

## Example #2: Items with a Nutrition Facts Table in a Convenience Store



- **Prepackaged items exempt from having a Nutrition Facts table:** Standard food items that are "prepackaged products" as defined in the *Food and Drug Regulations* made under the *Food and Drugs Act* (Canada), and that are exempt from the Nutrition Facts table requirements of those regulations;
- **Prepackaged items sold outside the "food service section":** Food or drink items that are not primarily restaurant-type and can be found outside the "food service section" (e.g. cereal box, milk carton); or
- **Prepackaged items in Vending Machines:** Standard food or drink items in a vending machine.

## Other exemptions for standard food items that may apply in a convenience store

The HMCA exempts certain food and drink items from calorie display requirements. The following exemptions may be of interest to regulated convenience stores:

- **Temporary food items:** Food or drink items that are offered for sale for less than 90 days per calendar year, whether consecutively or non-consecutively.
- **Condiments:** Self-serve condiments that are available free of charge and that are not listed on the menu.
- **Special-order Items:** Food or drink items that are prepared on an exceptional basis, in response to a specific customer request, and that deviate from the standard food items offered by the regulated food service premises. Please note that this does not include items intended to be personalized that are assembled based on customers' choices.
- **Whole fruits and vegetables:** Unprepared whole fruits and vegetables that are normally sold by weight or unit (e.g. a single banana) and that are not part of another standard food item (e.g. a banana in a combination meal or in a fruit salad).

## How must the calorie information be displayed?

Calories must be displayed:

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

The term "Calories," "CALORIES," "Cals," or "CALs" must be displayed in the same size, font, and prominence as the calorie information and either adjacent to the number of calories or as a heading above a column listing the calories.

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

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

- 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.
- If the menu, label or tag lists specific flavours, varieties or sizes of the standard food item, the number of calories for each flavour, variety or size must be displayed.
- If the item is displayed in a tray or vat (meaning that the items are not portioned into their standard portion) and the menu, label or tag does not list the flavours or varieties of the standard food item, the number of calories per serving and the serving size must be posted on a sign in close proximity to and clearly associated with the item. However, if calories are displayed on a label or tag, then food service premises would be exempt from the requirement to post this information on a sign.

## How must the calorie information be displayed for self-serve food and drinks?

For restaurant-type food or drink items that customers serve for themselves, calories must be posted on one or more signs that include the name of the item, the number of calories of a serving and the serving size, and the term "Calories," "CALORIES," "Cals," or "CALs". The sign or signs must be clearly associated with the food or drink item and be visible by and legible to any individual where they can serve themselves.

## Example #3: Self-Serve Items in a Convenience Store

The diagram illustrates a self-serve area in a convenience store with various items and callout boxes explaining labeling requirements:

- PROMO:** Buy a coffee and add a Chocolate Bar of your Choice \$2<sup>99</sup> (220-350 Cals). Callout: Calories posted in at least the same size, font, format and prominence as largest font used for the price.
- COFFEE:** One Size \$1<sup>99</sup> (120 Cals). Callout: Calories for items with a Nutrition Facts table are included within the calories of the combination meal.
- MUFFINS:** Made Fresh Daily (120-350 Cals). Callout: Calories posted for depicted muffins even when the product name is not listed.
- SLUSHIES:** BERRY, ORANGE, LEMON. MEDIUM \$3.50, LARGE \$4.50. Slushy Med 230-350 Cals, Large 330-450 Cals. Callout: Range accounts for varieties of muffins (because varieties are not listed).
- COFFEE DISPENSER:** COFFEE One Size \$1<sup>99</sup> (120 Cals). Callout: 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.
- CONDIMENTS:** SALT, Sugar, Milk. Callout: Calories for self-serve condiments are not included.
- SNACKS:** Chocolate, Chips, Mints, Crackers. Callout: Contextual statement readily visible by, and legible to, any individual where they can serve themselves.
- SLUSHIE SIGN:** For self-serve beverages, a sign is posted in close proximity, that displays the calorie ranges for each serving size.
- SLUSHIE SIGN:** Range accounts for different flavours of slushies available.

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

Please note that this only applies to self-serve beverages. For restaurant-type beverages that are not self-serve, they are to be treated as standard food items (i.e. calories for each beverage listed must be posted).

## Example #4: Beverage Dispenser in a Convenience Store

The diagram shows a beverage dispenser with a sign that reads "FOUNTAIN DRINKS". The sign includes a table of calorie information for various drinks, categorized by serving size (Small, Medium, Large). The sign also includes a note about calorie requirements for adults and children. Three callout boxes provide additional information: "Sign includes category of beverage, number of calories per serving and the serving size", "Sign posted in close proximity to the dispenser", and "Serving size determined by cup size".

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

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

## How must the calorie information be displayed for combination meals?

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

- For combination meals with two or more variable items, the number of calories for the combination meal must be displayed as a range between the lowest and highest calorie options of the combination meal that are available. If the options for the combination meal are individually listed, then the number of calories for each possible option must be displayed.
- If the options in a combination meal are displayed in a tray or vat (not portioned into their standard portion size), the number of calories per serving and the serving size must be posted on a sign that is in close proximity to and clearly associated with the item.
- If the menu, label or tag includes an option to increase or decrease the size of a combination meal, the impact of the option on the overall number of calories of the combination meal must be declared for the increased or decreased size (e.g. Upsize your Combo - "Add 150 Cals").
- If the combination meal listed on a menu, label, or tag includes an item with a NfT, then the calories for the item with the NfT must be included in the total number of calories displayed for the combination meal.



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

When a standard food item is offered for sale for more than 90 days in the year, consecutively or non-consecutively, and its composition varies according to availability of ingredients:

- If the menu label or tag does not list the flavours or varieties of the standard food item according to the ingredients, a range can be used.
- If the menu label or tag, lists the specific flavours or varieties, then the number of calories for each flavour or variety must be displayed.

## What serving size should be used when displaying calories?

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

For other self-serve drink items, the serving size must be a reasonable serving size determined by the owner or operator.

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

## Contextual Statement

The following contextual statement, in English or in French, must be displayed.

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

The contextual statement must be displayed:

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

If a menu has multiple pages, the contextual statement needs to be visible on any open page. If a menu board has multiple panels, the contextual statement should be visible to the customer when making their order but is not required on every panel.

## 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](mailto:menulabelling@ontario.ca).