Dietitians of Canada (Ontario) Comments on Regulations under The Healthy Menu Choices Act

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Dietitians of Canada (Ontario) appreciates the opportunity to provide recommendations on the proposed regulations under The Healthy Menu Choices Act pertaining to menu labeling. It is our understanding that these initial regulations provide the framework to implement caloric menu labeling in foodservice operations, and that regulations to be developed in the future will provide the framework for public education, monitoring, and enforcement of the requirements.

We would be happy to further discuss any of our recommendations, and continue to be engaged in the evolving regulatory scheme and implementation supports. Please contact us for any further information.

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**Introduction**

The Healthy Menu Choices Act provides an opportunity to support healthier eating for customers of foodservice operations; to ensure the best outcomes it is important that the regulations be sufficiently detailed to support effective implementation and enforcement, and based upon the best available evidence of effectiveness. The following are recommendations outside the scope of the draft regulations as posted September 11, 2015, which should be considered in the next phase of regulation development:

1. **A public education and awareness** campaign to assist consumers in understanding calorie and other nutrient information in the context of their own nutrition needs. EatRight Ontario is well-positioned to support this consumer education and awareness. We recommend that the regulations require conspicuous posting of contacts for sources of evidence-based information.

2. **Implementation supports for operators**

3. **A well-planned and resourced evaluation strategy** including but not limited to:
   - consumer awareness of information
   - consumer use of information (impact on food items ordered and consumed, impact on food intake at home or other locations, impact of foods ordered for children)
   - operators’ reformulation of menu items
   - operators’ overall menu changes
   - financial and operational impact on operators

4. **Consideration of additional posting requirements** such as sodium content of menu items and availability of full nutrient information for all menu items.
**Recommended Amendments to the Proposed Regulations**

**Definitions – Standard Food Items exemption for limited time offerings**
If the item is standardized for inclusion on a menu for any length of time, it is reasonable to assume that nutrient information including calories will be available, and there is no reason to exempt these items from the disclosure requirements. However, we recommend that the information’s placement may vary depending on where the item is promoted (if the item is promoted through use of a flyer or poster, the information could be included on those items rather than the actual menu or menu board, to simplify requirements for foodservice establishments).

**Definitions - Menu**
The following additions (highlighted) provide clarity for the definition.

“menu” means any document or other means of communicating information that lists standard food and/or 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/poster,
(d) a drive-through menu,
(e) an online menu or a menu application,
(f) an advertisement,
(g) a promotional flyer,
(h) Food tags/displays
(i) Table top information (e.g. table tent, placemats)

**Definitions – Exemption of Online menu Section 3(2)**
(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.

In order to avoid an unfair advantage for any type of foodservice operation, and to give consumers adequate information to base their food choices, it is important to provide consistent access to the information. The requirements for posting should be available anytime the food item is listed along with the price even if there is not a direct ordering method included on the menu.
Definitions – Exemption for Foodservice premises locations operating less than 60 days Section 5(1)
As long as the menu items are standardized (and also served in other locations of the foodservice operator) and the nutrition information is available, there is no reason to exempt the short-term premises. For example, a food kiosk that is open only during the summer months or during special events, but serves the same food as sold in the foodservice chain’s other locations, should be able to post the calorie information.

Calorie information for variety of flavours or sizes, and for combination meals
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.
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.

DC Recommendation: The primary consideration should be the usefulness of the information to the consumer. For that reason, ranges or averages should only be allowed within specified limits, and only when the typical presentation on the menu does not allow for listing each flavour/variety separately. A range no more than 50 calories and representing less than 20% variation in the caloric value may be considered as limits for using a range or median value, to give the consumer the most useful information if it is not feasible to list individual flavours separately. If there is opportunity to separate the flavours (e.g. on a self-serve fountain pop machine or softserve icecream machine) then the flavours should be listed separately with specific calorie information. For combination meals, the wide ranges between the lowest and highest combination options do not provide sufficient distinction between options for consumers to make an informed decision, and should only be allowed if the range is within 20% of the caloric value AND represents a difference of 50 calories or less.

Alcohol
The standard drink table provides basic information that is useful for bottled beer, and standard wine glasses. Item-specific caloric values would be most useful for mixed drinks and cocktails since they can vary considerably depending on the ingredients. These should have the calorie value indicated next to the menu item as required in section 6. In addition, for premises that serve draft beer, the actual serving sizes used in the establishment should be included along with the calorie information for regular and light varieties. The “calories per 100 ml” column is less useful to consumers than the specific information based on the serving sizes used in that operation.
Section 8 (2) (iii) Serving Sizes for Self-Serve Items
Operators should provide caloric information based on a “reasonable” serving size, that is also easily understandable by consumers, for example by milliliter, ounce, or common household measure.

Section 9 – Contextual Statement (adults)
We recommend a general contextual statement such as “The average adult requires approximately 2000 calories per day, individual needs may vary”. Although this statement is general and will not meet everyone's needs precisely, it is preferable to have only one statement rather than several specific statements based on gender/age. A key component is an educational campaign which will help people understand more about their individual energy needs, reduce sodium intake, and adapt their food intake to match individual nutrient needs, and to understand children’s nutrient and energy requirements.

Rationale:
- A single number, rather than a range, is advised to simplify consumers’ ability to use the contextual statement. This is supported by consumer-tested messages reported by the Society for Nutrition Education and Behaviour, who found that a “rule of thumb” such as a contextual statement noting average caloric needs of 2000 calories per day, was preferred by consumers. See [http://www.sneb.org/documents/Menu_Labeling_communicating_%20calories.pdf](http://www.sneb.org/documents/Menu_Labeling_communicating_%20calories.pdf)
- Consumers have generally low knowledge of daily energy needs, and it is unlikely that there is additional benefit to be gained by providing a range instead of a single number. See: Consumer Understanding of Calorie Labeling: A Healthy Monday E-Mail and Text Message Intervention. Michelle L. Abel, Katherine Lee, Ralph Loglisci, Allison Righter, Thomas J. Hipper and Lawrence J. Cheskin Health Promotion Practice [http://hpp.sagepub.com/content/early/2014/07/31/1524839914543105](http://hpp.sagepub.com/content/early/2014/07/31/1524839914543105) published online 31 July 2014
- Research that includes a contextual statement regarding calorie needs has generally used the 2000 calories per day guideline, for example [Journal of Nutrition Education and Behavior45(6) Efficacy and Consumer Preferences for Different Approaches to Calorie Labeling on Menus Jocelyn Pang David Hammond November 2013, Volume45(Issue6) Page 669-675](http://www.jneb.org/content/early/2014/07/31/1524839914543105)

Section 9 – Contextual Statement (Children)
The proposed contextual statements for children do not offer usable information as the ranges are too broad to be applied to an individual child. In addition, the caloric needs of children from 4 – 9 years of age and 10 – 13 years of age are extremely variable. The proposed values cover the range of the most sedentary female child to the most active male child in the defined age ranges according to Health Canada estimates as found at [http://www.hc-sc.gc.ca/fn-an/food-guide-aliment/basics-base/1-1_1-eng.php](http://www.hc-sc.gc.ca/fn-an/food-guide-aliment/basics-base/1-1_1-eng.php). This wide variation in calories does not provide information that can be easily used to guide parents’ decisions. We suggest eliminating the separate 10 – 13 year old statement, as developmental differences in this age group is even more variable due to onset of puberty at different ages, and most
childrens’ menus are aimed at children 10 years and under. For the younger age group, using a single number of 1500 calories may be most appropriate. This is the midpoint in the 4 – 9 year old female category, representing a low level of activity. The corresponding male energy requirement in that category is 1600 calories. According to the 2014 Active Healthy Kids Report Card, lower levels of activity is more representative of the Canadian average. As stated earlier, public education to direct them to resources such as EatRight Ontario, to get individualized advice is essential.

We recommend further research to understand parents’ use of calorie labels in making food choices for children in the restaurant setting, and the impact of calorie posting and contextual statements in encouraging overall healthy eating behaviours for children. There is little evidence on which to base a useful contextual statement for children; as noted above, a 1500-calorie midpoint may have merit but needs to be explored more fully for positive and negative implications.

**Section 10 Determination of calories**
The regulations should state that the operator must retain documentation of how and when the nutrient analysis was obtained (e.g. certificate from lab or contracted analyst). This will assist in future monitoring and enforcement activities.

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**For further information:**

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