

May 18, 2020

Mindy M. Brashears, Ph.D.  
Under Secretary for Food Safety  
U.S. Department of Agriculture  
Food Safety and Inspection Service,  
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*Re: Expansion of Use of the Term “Healthy” (Docket No. FSIS-2019-0008)*

Dear Dr. Brashears:

The Academy of Nutrition and Dietetics (the “Academy”) appreciates the opportunity to submit comments to the U.S. Department of Agriculture Food Safety and Inspection Service (FSIS) related to its notice and request for comments related to “Expansion of Use of the Term ‘Healthy’ (Docket No. FSIS-2019-0008)” published in the Federal Register on March 19, 2020. Representing over 107,000 registered dietitian nutritionists (RDNs),<sup>1</sup> nutrition dietetic technicians, registered (NDTRs), and advanced-degree nutritionists, the Academy is the largest association of food and nutrition professionals in the United States and is committed to improving the nation’s health through food and nutrition. Our members work in a variety of clinical and community settings across the continuum of care, and work with industry and consumers to develop and effectively utilize product labels that encourage individuals to make healthy food choices.

**The Academy supports FSIS’s intention “to maintain consistent requirements for food labels by allowing the same uses of the claim “healthy” for meat and poultry products as are currently allowed for food products under the Food and Drug Administration’s (FDA’s) jurisdiction.”**

**We reiterate the Academy’s ongoing commitment to working with government, industry, consumer, and scientific organizations in the hope of creating a balanced regulatory structure. The revised “healthy” definition must be grounded in strong science and have buy-in from all relevant groups recognizing its validity and usefulness. Universal support among stakeholders will help ensure the public can have confidence in the “healthy” label as objective, accurate, and non-biased, engendering their trust as they gain the skills to make informed decisions to build a healthier diet.**

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<sup>1</sup> The Academy approved the optional use of the credential “registered dietitian nutritionist (RDN)” by “registered dietitians (RDs)” to more accurately convey who they are and what they do as the nation’s food and nutrition experts. The RD and RDN credentials have identical meanings and legal trademark definitions.

## **A. ACADEMY'S LABELING PRINCIPLES**

The Academy adopted in 2014 the following principles for labeling initiatives that guide our comments and policy stances. Those principles specifically relevant to the Academy's comments on FSIS's notice and request for comment are bolded below and referenced as appropriate throughout these comments.

- 1. Label claims should be clear and understandable to consumers; consumers' nutrition literacy is key to promoting understanding.**
- 2. The label must be truthful and not misleading.**
- 3. Content on the label should help consumers make informed decisions to build a healthy diet.**
- 4. Labels should help to provide understanding about the nutrient density and overall healthfulness of overall food rather than a focus on particular nutrients.**
5. Label content should have consistent type and format so products can be read and consumers can make product comparisons.
- 6. Labeling should enhance consistency among the various government nutrition recommendations.**
7. All claims should include labeling of accurate quantitative information about the dietary substance, including percent of Daily Value in a single serving of the products, when known, or the daily dietary intake necessary to achieve the claimed effect.
- 8. Consumer research is imperative before making changes to the label.**
9. The label is only a source of information, and thus sustained support for educational programs and individual counseling by registered dietitian nutritionists is essential.

## **B. HEALTH CLAIMS AND GOVERNMENT GUIDELINES**

### *1. Seizing the Potential of Health Claims*

The Academy has previously noted, "Eating for health and wellness can be an elusive goal for many consumers, especially given the complex marketplace and the influx of mixed messages from varied information outlets."<sup>2</sup> There is enormous potential to cut through the cacophony of confusing, conflicting, and often-false information made about food and nutrition by establishing a scientifically sound implied nutrient content and health claims that consumers actually understand, trust, and use after having been educated on its meaning and strategies for using it. A well-designed health claim leverages the awesome power and reach of the federal government and organizes stakeholders with often-conflicting concerns and opinions to support achieving its worthy purpose. The 2015-2020 Dietary Guidelines for Americans (2015 DGAs), "in its role as the cornerstone of Federal

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<sup>2</sup> Crowe KM, Francis C. Position of the academy of nutrition and dietetics: functional foods. *J Acad Nutr Diet.* 2013;113(8):1096-103.

nutrition policy and nutrition education activities,” identified significant problems and concerns with Americans’ food and nutrition intake. The Academy believes the 2015 DGAs made healthy diet patterns its primary focus and was wise to move beyond a singular focus on particular nutrients. In conjunction with the forthcoming 2020-2025 iteration of the Dietary Guidelines, the focus on choosing and maintaining healthy diet patterns provides the predicate for updating the definition of the “healthy” nutrient content claim to reflect the best available scientific evidence.

The potential public health benefit to defining the term “healthy” is a positive, visual, point of purchase education tool for consumers who are trying to make good choices among similar products, *i.e.*, foods from the same groups. However, each aspect of the label, including front of package claims such as “healthy,” are merely one piece of what must be a larger, comprehensive effort to educate consumers about what constitutes healthful food and eating patterns.

## *2. Reconsidering the “Healthy” Claim*

The Academy appreciates FSIS’s effort “to maintain consistent requirements for food labels” and recognizes the necessity to proceed cautiously when revising the “healthy” definition because of the potential to significantly disrupt or eliminate entire food product lines by precluding some current food manufacturers’ products from continuing to use the “healthy” nutrient content claim on the label or in the product’s name. Some disruptions may be intended, and others may be the expected result of specific changes to regulatory language. Continuing to work collaboratively with FSIS and the FDA throughout the process of updating the definition of “healthy” and undertaking efforts to align with the new 2020 DGAs when released is absolutely essential.

In addition, the Academy is concerned about unanticipated disruptions that may result from inartfully drafted language or overly restrictive regulatory requirements that materially impact the commercial viability of products eligible for the nutrient content claim. Without a business case for a “healthy” food product, the “healthy” claim is likely to be relegated to a virtually meaningless label for fresh fruits and vegetables, which consumers already know are healthy and which are still woefully underconsumed. The Academy is hopeful that stakeholders can find a mutually acceptable—even if imperfect—new definition for “healthy” that will help consumers shift to more nutrient-dense food and beverage choices and limit their intake of added sugars, sodium, and other ‘nutrients to discourage.’ **There is no benefit to the consumer and no positive impact on health from a nutrient content claim unless the label is widely disseminated, understood, and used.**

Several of the Academy’s dietetic practice groups<sup>3</sup> endorsed strengthening the regulatory definition for “healthy” in-line with the DGA recommendations. Several others expressed concerns that the complex interrelationship between food and health is too-quickly

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<sup>3</sup> Dietetic Practice Groups are professional-interest groups, made up of Academy of Nutrition and Dietetics members, who wish to connect with other members within their areas of interest and/or practice. Specialized practice groups enable members to improve their job performance, gain insight into specialized areas of food and nutrition and network with colleagues. A list of dietetic practice groups is available at <http://www.eatrightpro.org/resources/membership/academy-groups/dietetic-practice-groups>.

dismissed and oversimplified when a food obtains a government imprimatur as “healthy” or “unhealthy” solely because it contains a specified presence and absence of a very small number of nutrients of concern. In addition, Academy members noted that taking the opportunity to change the labeled term when the FDA eventually revises the nutrient content definition allows a clean break from the previous definition, should the FDA determine that would be useful in communicating the new elements of a definition. We appreciate FSIS’s engagement with the FDA and its efforts to promote interagency consistency.

Although the Academy continues to have reservations about the continued use of the legally-defined term “healthy” on food labels as an implied nutrient content claim, the Academy strongly believes it should have a consistent meaning across food categories. The guiding principle should be whether the labeled food helps move American diets closer to goals of the Dietary Guidelines. We appreciate that using the same criteria for all food categories is difficult because foods in different categories have different nutrient profiles—this is, after all, the reason these foods were categorized differently. Despite the difficulty of selecting specific nutrients for describing “healthy” foods (*e.g.*, because the nutrients that are low in the diet depend upon demographic consideration, such as some populations requiring more calcium than others; different vitamin requirements for different population groups), it would be even more confusing and complicated for the same descriptor to mean different things for different food categories. The likely result would be a significant health literacy challenge.

### *3. Dietary Guidelines for Americans Recommendation*

Pursuant to the 1990 National Nutrition Monitoring and Related Research Act (P.L. 101-445, NNMRR), the Secretaries of the Departments of Health and Human Services and Agriculture are tasked with developing and issuing “nutritional and dietary information and guidelines” “based on the preponderance of the scientific and medical knowledge” every five years. As FDA’s the industry guidance notes, “The Dietary Guidelines is the foundation of federal nutrition guidance and is fundamental in shaping federal policies and programs related to food, nutrition, and health. The Dietary Guidelines provides information and perspectives on healthy eating patterns and consumption of foods from various food groups, as well as the intake of specific macronutrients such as fats, sugars, and micronutrients such as vitamins and minerals. The Academy strongly encourages the FDA and FSIS to defer to the DGA’s recommendations for nutrition guidance generally and specifically, which also serves to enhance consistency among the various government nutrition recommendations.

We applaud efforts by FSIS and the FDA to avoid adopting conflicting dietary advice and recommendations and encourage the agencies to seek to synthesize these recommendations with existing and forthcoming standards enshrined in regulations. Dietary advice should be consistent and represent the best of our scientific evidence base. If it differs across federal agencies or programs, the differences must be explained by different legal requirements or scientific standards or other transparent objective reasons. It is just as important to have consistent messages across different sectors of the food supply.

### **C. Focusing on Food Patterns Rather than Nutrients and Food Groups**

The Academy adopted the principle that “labels should help to provide understanding about the healthfulness of overall food rather than a focus on particular nutrients” because it provides context and more accurately reflects how people eat and how they think about eating. As a result, the Academy was thrilled with the 2015-2020 DGA’s unambiguous statement that the focus of policy has shifted away from discussing individual foods as healthful and unhealthful and instead towards dietary patterns.

An eating pattern is more than the sum of its parts; it represents the totality of what individuals habitually eat and drink, and these dietary components act synergistically in relation to health. As a result, the eating pattern may be more predictive of overall health status and disease risk than individual foods or nutrients. Thus, eating patterns, and their food and nutrient components, are at the core of the 2015-2020 Dietary Guidelines for Americans. The goal of the Dietary Guidelines is for individuals throughout all stages of the lifespan to have eating patterns that promote overall health and help prevent chronic disease.<sup>4</sup>

The Academy agrees wholeheartedly with the DGA’s rationale for focusing on meal patterns: “Previous editions of the Dietary Guidelines focused primarily on individual dietary components such as food groups and nutrients. However, people do not eat food groups and nutrients in isolation but rather in combination, and the totality of the diet forms an overall eating pattern. The components of the eating pattern can have interactive and potentially cumulative effects on health. These patterns can be tailored to an individual’s personal preferences, enabling Americans to choose the diet that is right for them.”<sup>5</sup> The healthfulness of a food in a dietary pattern relates to the portion-size of the food, its nutrient density, and its composition in terms of nutrients of concern, not simply the presence of absolute amounts of a single nutrient.

This direction from the current Dietary Guidelines is consistent with the Academy’s belief that the total diet or overall pattern of food eaten is the most important focus of healthy eating, which stipulates that all foods can fit into a healthy overall pattern when accounting for portion size and diet variety. With this overall pattern approach to healthy eating, there is little doubt that any individual food item can contribute to a healthy eating pattern when the quantity and frequency of its contribution remains moderate.

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<sup>4</sup> U.S. Department of Health and Human Services and U.S. Department of Agriculture. 2015 – 2020 Dietary Guidelines for Americans, 8th Edition [Internet]. 2015. Available from: <http://health.gov/dietaryguidelines/2015/>

<sup>5</sup> *Id.*

#### **D. Definitions Should Reflect Current Science**

The Academy believes it is important for FSIS and the FDA to commit to updating the definitions as needed, including but not limited to events such as a determination of significant scientific agreement or the issuance of an authoritative statement from a scientific body of the US government or the National Academy of Sciences, Engineering, and Medicine that could trigger a reevaluation of an implied nutrient content claim.

#### **E. Conclusion**

The Academy appreciates the opportunity to comment on the notice and request for comment related to the “healthy” nutrient content claim. Please contact either Jeanne Blankenship at 312-899-1730 or by email at [jblankenship@eatright.org](mailto:jblankenship@eatright.org) or Pepin Tuma at 202-775-8277 x6001 or by email at [ptuma@eatright.org](mailto:ptuma@eatright.org) with any questions or requests for additional information.

Sincerely,



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