



NEW YORK CITY DEPARTMENT OF

HEALTH AND MENTAL HYGIENE

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*Commissioner*

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via electronic submission: [regulations.gov](http://regulations.gov)

**Re: Food Labeling: Nutrient Content Claims; Definition of Term “Healthy”  
[DOCKET FDA-2016-D-2335]**

To Whom It May Concern:

The New York City (NYC) Department of Health and Mental Hygiene (NYC Health Department) appreciates the opportunity to comment on the United States (US) Food and Drug Administration’s (FDA) petition on the proposed update for the implied nutrient content claim “healthy.” We support the action of the FDA to revisit this nutrient content claim to be more in line with current nutrition science and federal dietary guidance, including the Dietary Guidelines for Americans (DGA).

We at the Health Department have enacted programs and policies that help make the healthier choice the easier choice. We have supported initiatives that provide information to consumers to help them make informed decisions; since 2008 and 2016, respectively, NYC chain restaurants have been required to post calories on menus and have been required to post a warning icon next to menu items that contain at least 2,300mg of sodium, which is the chronic disease risk reduction level per day for most populations.<sup>1</sup> In 2017, we responded to the FDA’s Request for Information and Comments on “The Use of the Term “Healthy” in the Labeling of Human Food Products”, indicating our support for updated rules for the “healthy” label to facilitate healthier diets. Additionally, earlier this year we submitted a comment in support of the Citizen Petition submitted by the Center for Science in the Public Interest, the Association of SNAP Nutrition Education Administrators, and the Association of State Public Health Nutritionists for the FDA to adopt a mandatory, nutrient-specific, interpretive front-of-package nutrition labeling system for all packaged foods sold in the US.

The Health Department is particularly concerned with the nutritional quality of the food supply as diet-related diseases greatly impact New Yorkers. Further, we see large inequities in the rates of diet-related disease and premature deaths (i.e., deaths occurring in those younger than 65 years of age) in New York City and across the country. For example, 12% of Asian/Pacific Islander New Yorkers, 15% of Black New Yorkers and 16% of Latino New Yorkers reported having been told they have diabetes, compared to 8% of White New Yorkers.<sup>2</sup> Non-Hispanic Black New Yorkers are at more than 1.5 times the risk of non-Hispanic White New Yorkers for premature death, revealing

<sup>1</sup> National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Food and Nutrition Board; Committee to Review the Dietary Reference Intakes for Sodium and Potassium; Oria M, Harrison M, Stallings VA, editors. Dietary Reference Intakes for Sodium and Potassium. Washington (DC): National Academies Press (US); 2019 Mar 5. 10, Sodium: Dietary Reference Intakes Based on Chronic Disease.

<sup>2</sup> New York City Department of Health and Mental Hygiene. [Community Health Survey 2021](http://Community Health Survey 2021).



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significant inequalities in these preventable deaths.<sup>3</sup> Inequitable policies and systems are at the root of the inequities we see in consumption patterns as well as health outcomes. Corporate practices and commercial determinants of health, such as ubiquitous and targeted marketing, as well as portion sizes and placement, promote and make unhealthy products easy to buy and healthy foods challenging to access. A clear definition of “healthy” products will help New Yorkers and all US consumers navigate the food system.

The FDA’s rules for labeling are an important strategy to facilitate healthier diets because they can influence both the food supply and consumer choice. Based on the purview and expertise of the Health Department we are equipped to respond to a subset of questions posed by the FDA. The following responses provide recommendations regarding the specific criteria FDA is considering for use of the term “healthy” in the labeling of food products. We note this is primarily relevant for packaged foods, including those that are highly processed, however, we also encourage the FDA to support consumers in shifting their diets to include more unprocessed foods.

**FDA Proposal:** We propose to include a limit on the amount of sodium in foods bearing the nutrient content claim “healthy” to help individuals identify foods that are consistent with dietary recommendations for sodium. We are proposing a baseline sodium limit of  $\leq 10$  percent of the DV (currently, 230 mg for adults and children 4 years of age and older) per RACC for individual foods. This proposed, updated sodium limit is lower than the limit in the existing criteria for “healthy” (480 mg, or about 20 percent of current DV). We are proposing to adjust the baseline values for sodium as warranted, based on specific considerations of the different food groups and subgroups, as described below. We seek comment on this approach. (Docket No. FDA-2016-D-2335; pg. 59179).

**NYC Health Department’s Response:**

Sodium consumption in the U.S. far exceeds recommendations set forth by the DGA.<sup>4</sup> We generally support efforts to encourage reductions in sodium consumption. This is demonstrated by our work on the National Salt and Sugar Reduction Initiative (NSSRI) and the Sodium Warning Label. Therefore, we support adjusting the baseline sodium limit to less than or equal to 10 percent of the DV, down from the limit in the current “healthy” definition.

**FDA Proposal:** We therefore propose including a limit on the amount of added sugars in foods bearing the nutrient content claim “healthy” to help consumers choose foods that will contribute to a healthy dietary pattern that is lower in added sugars, consistent with current nutrition science and Federal dietary guidance. For individual foods, we are proposing a baseline value for added sugars of  $\leq 5$  percent of the DV per RACC. We are also proposing to adjust the baseline values for added sugars as warranted, based on specific considerations of the different food groups and subgroups, as described in the discussion of individual food groups below. We seek comment on this approach. (Docket No. FDA-2016-D-2335; pg. 59180).

**NYC Health Department’s Response:**

Sugar consumption in the US exceeds recommendations per the DGA (less than 10% of daily calories). There is a vast body of literature that links added sugar consumption to negative health outcomes, emphasizing why added sugars in the food supply are critical to address. Added sugars contribute calories but few essential nutrients. Research shows that consuming added sugars is associated with increased risk of excess weight, type 2 diabetes,

<sup>3</sup> NYC Vital Statistics Data, 2019

<sup>4</sup> U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans, 2020-2025*. 9th Edition. December 2020. Available at [DietaryGuidelines.gov](https://DietaryGuidelines.gov).



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hypertension, stroke, heart disease and cavities.<sup>5</sup> Average intake of added sugars is 266 calories per day, compared to the recommended limit of 200 calories (for a 2,000-calorie diet).<sup>6</sup> Added sugars are pervasive in the food supply, with 68% of barcoded foods and beverages purchased in the US containing added sweeteners;<sup>7</sup> this makes it difficult for individuals to reduce their sugar consumption. Because of this the NSSRI works to reduce the presence of added sugar in the food supply by setting voluntary sugar reduction targets with which food and beverage companies can comply.

Therefore, we support the inclusion of added sugar limits as a metric for the “Healthy” label definition. We support FDA’s proposed baseline value for added sugars of  $\leq 5$  percent of the DV, as it aligns with our overall goal of reducing added sugars in the food supply.

**FDA Proposal: we seek comments on whether there are any other terms synonymous with “healthy” that we should consider as we finalize this rulemaking. (Docket No. FDA-2016-D-2335; pg. 59183).**

**NYC Health Department’s Response:**

We strongly recommend all words that characterize a food’s general healthfulness, for example, “nutritious”, “nourishing”, “wholesome”, “nutritive”, “good for you”, etc. fall under the requirements of this final rule. Covering all words synonymous to “healthy” will strengthen the intent of this proposed rule to regulate the characterization of foods that should be encouraged to build healthy dietary practices.

**FDA Proposal: we are not proposing to subject raw, whole fruits and vegetables to the criteria. Raw, whole fruits and vegetables automatically qualify for use of the claim, regardless if they meet the criteria required of other foods. We therefore tentatively conclude that raw, whole vegetables and fruits should be able to meet the “healthy” criteria without meeting a food group equivalent threshold. We seek comment on our tentative conclusions. (Docket No. FDA-2016-D-2335; pg. 59184).**

**NYC Health Department’s Response:**

We strongly agree that all raw, single-ingredient nuts, legumes, seeds, fruits and vegetables, such as those traditionally found in the produce aisle, should be allowed to be called healthy even without meeting a food group equivalent threshold. This will enable foods containing significant amounts of heart healthy fats, like avocados, to be labeled “healthy” where this option did not previously exist due to total fat content. We would also suggest including single-ingredient, 100% whole grains in this category. In addition, we encourage the FDA go further to emphasize the healthiness of single-ingredient products by establishing a further designation, such as “healthiest”, that is exclusively reserved for whole, single-ingredient nuts, nut butters, whole grains, beans, legumes, seeds, fruits, and vegetables. For products that are not packaged, we recommend the FDA establish guidance for retail environments to put up signage, such as shelf talkers highlighting these healthiest products.

**FDA Proposal: We are proposing that the added sugars content for vegetable products must be no greater than 0 percent DV per RACC. We are proposing that vegetable products be subject to the baseline values for**

<sup>5</sup> Dietary Guidelines Advisory Committee. 2020. *Scientific Report of the 2020 Dietary Guidelines Advisory Committee: Advisory Report to the Secretary of Agriculture and the Secretary of Health and Human Services*. U.S. Department of Agriculture, Agricultural Research Service, Washington, DC. Available at: <https://doi.org/10.52570/DGAC2020>

<sup>6</sup> 2020-2025 Dietary Guidelines for Americans

<sup>7</sup> Popkin BM, Hawkes C. Sweetening of the global diet, particularly beverages: patterns, trends, and policy responses. *Lancet Diabetes Endocrinol.* 2016;4(2):174-186. doi:10.1016/S2213-8587(15)00419-2



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**sodium and saturated fat. We are seeking comment on this proposal. (Docket No. FDA-2016-D-2335; pg. 59185).**

**NYC Health Department's Response:**

We agree with the FDA's proposal that the added sugar content for vegetable products be no greater than 0% DV per RACC.

**FDA Proposal: we propose that grain products must contain whole grains to bear the “healthy” claim. Applying the baseline calculation for food group equivalent as explained in section VI.A (“Overview of Approach”), we are proposing that a whole grain equivalent is 3/4 oz-eq. This means that to bear the “healthy” claim, an individual grain product must contain at least 3/4 oz-eq whole grains per RACC. We seek comment on this approach. (Docket No. FDA-2016-D-2335; pg. 59186).**

**NYC Health Department's Response:**

We support this approach to grain products. We believe that this will better support consumers in achieving the DGA recommendation that at least half of grains consumed be whole grains. The NYC Food Standards aims to increase consumption of whole grains with requirements that at least half of all grains served are whole grains.<sup>8</sup>

**FDA Proposal: We are also proposing that the saturated fat content of nuts and seeds does not contribute toward the overall saturated fat limit for nut and seed products, which would be the baseline value of ≤5 percent DV per RACC. We seek comment on whether nuts with relatively higher amounts of saturated fat should be eligible for the “healthy” claim. (Docket No. FDA-2016-D-2335; pg. 59188).**

**NYC Health Department's Response:**

Most people eat enough protein, but they may not be eating enough whole, nutrient-dense proteins. Plant-based protein sources, such as beans, lentils, tofu, nuts and seeds, are full of fiber and other nutrients. Nuts are nutrient dense and a good source of protein in the diet and can be part of a healthy dietary pattern.<sup>9</sup> The Health Department advises New Yorkers to eat healthier protein sources by consuming more whole or minimally processed plant-based proteins, which includes nuts and seeds, and cutting down on deli meats, hot dogs, bacon and sausages. In addition to improving health, replacing animal protein with plant-based protein sources can help our planet's health by reducing greenhouse gas emissions.

We agree with the FDA's proposal that saturated fat of nuts and seeds should not contribute toward the overall saturated fat limit for nut and seed products.

**FDA Proposal: We seek comment on whether water should be included in the definition, and whether “water” should be expanded, for example, to include waters containing non-caloric flavors or other non-caloric ingredients. In addition, we also seek comment on whether allowing bottled water to be labeled “healthy” could potentially lead some consumers to believe that bottled water is healthier than tap water. We also seek comment on the eligibility of calorie-free beverages, coffee, and tea to bear the “healthy” claim. (Docket No. FDA-2016-D-2335; pg. 59193).**

<sup>8</sup> Meals and Snacks Purchased and Served. New York City Food Standards. [New York City Food Standards - Meals and Snacks Purchased and Served \(nyc.gov\)](http://New York City Food Standards - Meals and Snacks Purchased and Served (nyc.gov))

<sup>9</sup> U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans, 2020-2025*. 9th Edition. December 2020. Available at [DietaryGuidelines.gov](http://DietaryGuidelines.gov).



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### **NYC Health Department's Response:**

Water and seltzer are the healthiest options when choosing a beverage. We support including unsweetened water and seltzer products in the definition. We do not support inclusion of products that utilize low- and no-calorie sweeteners (LNCS). The World Health Organization released draft guidance this year on consumption of LNCS, finding that LNCS may contribute to lower body weight and BMI when compared with sugar intake but not when compared with water. This WHO guidance also noted a possibility of long-term harm associated with consumption of LNCS, including increased risk of obesity, type 2 diabetes, cardiovascular diseases, and mortality, with further research needed to determine these observed associations. Additional research is also needed for children and pregnant women, as some studies suggest unfavorable impacts on birthweight and adiposity in offspring.<sup>10</sup> Further, in the NYC Food Standards, we prohibit use of LNCS sweeteners for products served to children. Since there is no way to distinguish between child and adult consumption in a retail setting, we recommend the exclusion of waters containing LNCS.

**FDA Proposal: We seek comment on our estimates of costs and benefits of this proposed rule. (Docket No. FDA-2016-D-2335; pg. 59197).**

### **NYC Health Department's Response:**

We agree with the FDA's conclusion that there is an expected cost savings from the creation of a healthier food supply and increased consumption of healthier products. [A 2021 cost effectiveness analysis by Shangguan, et al.](#) estimates the potential cost savings of the National Salt and Sugar Reduction Initiative, if food manufacturers met the sugar reduction targets. It concludes that the initiative could save \$160.88 billion net costs from a societal perspective over a lifetime.<sup>11</sup> The methodology applied in this study may be able to inform FDA's analysis to calculate costs and benefits of the "healthy" definition revision.

In addition to the specific responses above, we encourage the FDA to launch an educational campaign in conjunction with the updated definition. In an effort to ensure that all Americans are aware of the changes and know what to look for when choosing products, the FDA can disseminate this information to a wide audience by providing funding to local partners to promote and explain the updated definition, and ensure materials are translated into multiple languages. This will help ensure the revised "healthy" label is as effective as possible.

We appreciate the opportunity to comment regarding the criteria for the term "healthy" in the labeling of human food products and we applaud the FDA in recognizing the need to update the definition. We ask the FDA to consider our recommendations and use them to strengthen the use of the "healthy" label to maximize its impact on public health. Thank you for your consideration.

Sincerely,

<sup>10</sup> Rios-Leyvraz M, Montez J. Health effects of the use of non-sugar sweeteners: a systematic review and meta-analysis. Geneva: World Health Organization; 2022. Licence: CC BY-NC-SA 3.0 IGO

<sup>11</sup> Shangguan S, Mozaffarian D, Sy S, et al. Health Impact and Cost-Effectiveness of Achieving the National Salt and Sugar Reduction Initiative Voluntary Sugar Reduction Targets in the United States: A Microsimulation Study. Circulation. 2021 Oct;144(17):1362-1376. DOI: 10.1161/circulationaha.121.053678. PMID: 34445886.



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Kate MacKenzie, MS, RD  
Executive Director  
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