



February 16, 2023

Robert M. Califf
Food and Drug Administration
5630 Fishers Lane, Rm. 1061
Rockville, Maryland 20852

Re: Docket No. FDA-2016-D-2335 for “Food Labeling: Nutrient Content Claims; Definition of Term ‘Healthy’

Dear Commissioner Califf:

Thank you for the opportunity to provide comments on the U.S. Food and Drug Administration’s (FDA) Proposed Rule on Food Labeling: Nutrient Content Claims; Definition of Term ‘Healthy.’

Founded in 1919, the National Restaurant Association (“The Association”) is the leading business association for the restaurant industry, which comprises nearly 1 million restaurant and foodservice outlets and a workforce of 14.5 million employees. Together with 52 state associations, the National Restaurant Association creates a network of professional organizations dedicated to serving every restaurant through advocacy, education, and food safety.

FDA SHOULD CLARIFY THAT THE PROPOSED DEFINITION OF “HEALTHY” IS LIMITED TO THE IMPLIED NUTRIENT CONTENT CLAIM

The Association appreciates FDA’s proposal to update the definition for the implied nutrient content claim “healthy” to be consistent with current nutrition science and Federal dietary guidance, namely the Dietary Guidelines for Americans.

However, we urge the Agency to make it clear that the scope of the rulemaking is limited and narrow in nature. It should also be clear that the rulemaking does not deem particular foods as “unhealthy” or “bad,” nor does it apply in any broader regulatory context outside of the nutrient content claim definition.

The restaurant industry is extremely diverse ranging from small, independent local restaurants to multinational brands, food trucks, catering companies, and contract foodservice companies. Many restaurants serve as retailers of packaged foods (*e.g.* grab and go), and appreciate the ability to offer healthy options to customers. Although restaurant food is not subject to the packaged food standards, we understand from our members that some restaurants also look to the standard when considering claims on their menus and anticipate this practice will continue as restaurants work to meet their consumers’ health desires.



Therefore, the Association encourages FDA to adopt workable and achievable standards that may encourage companies to meet the definition and utilize the term, while maintaining consistency with FDA daily values and the Dietary Guidelines for Americans.

FDA SHOULD NOT CONSIDER TERMS BEYOND “HEALTHY”

We understand the Agency is also considering synonymous terms to “healthy” as part of this rulemaking. We are concerned that regulating synonymous terms would severely limit restaurants’ ability to guide guests to menu items that include better-for-you options.

For example, many restaurants currently highlight menu items that meet certain nutrition criteria through terms such as Fit Fare, Trim It, Guiltless, Wholesome Fixins, Under x# of calories, Fresco, and more. Now more than ever, our guests are seeking healthy options. In fact, Full-Service Restaurant News Magazine and Fast Casual.com recently highlighted a study showing 46 percent of consumers indicate they want to eat healthier, and 49 percent of consumers plan to order healthier food.¹ As restaurants meet the demand for healthy options, restaurants need an effective way to communicate healthier menu options to consumers and this is done, in part, by labeling with healthy related terms.

If the Agency also regulates terms that are synonymous with healthy, we believe restaurants will be constrained in their communications to consumers, which will lead to less education and access to nutritionally beneficial foods and beverages. Therefore, we recommend the Agency refrain from regulating these synonymous terms and limit its work to the definition of “healthy” rather than inadvertently limiting our ability to communicate to our customers through menus, menu boards, and other channels.

FDA SHOULD CONFIRM ITEMS THAT CURRENTLY BEAR THE TERM “HEALTHY” MUST BE ABLE TO BE LAWFULLY SOLD UNTIL THE COMPLIANCE DATE

While widespread use of the term “healthy” is limited at this time, the Association requests FDA clearly state that following the issuance of the final rule, and during the 3-year compliance period, the term “healthy” may continue to be used consistent with the existing regulation.

FDA SHOULD PROVIDE ADDITIONAL CLARIFICATIONS REGARDING THE RECORDKEEPING REQUIREMENTS FOR THE RULE

The Association also asks the Agency to provide additional clarifications regarding the rule’s recordkeeping requirements. This includes the ability to demonstrate compliance using

¹ <https://www.fsrmagazine.com/content/study-46-percent-consumers-plan-eat-healthier-2022> + <https://www.fastcasual.com/news/consumers-plan-to-eat-healthier-in-2022/>



the records they best believe meet the requirements and are not required to produce any specific form or document.

Thank you for the opportunity to share these recommendations with you. The restaurant industry looks forward to continuing the dialogue on this important topic.

Sincerely,

A handwritten signature in black ink that reads "Laura Abshire". The signature is written in a cursive, flowing style.

Laura Abshire
Director of Food and Sustainability Policy
National Restaurant Association