



New Dietary Guidelines Advisory Report: Eggs and Coffee Are Back, but Sugar is Out

On February 19, 2015, a group of 14 outside experts who formed the 2015 Dietary Guidelines Advisory Committee (“Committee”) released the *Scientific Report of the 2015 Dietary Guidelines for Americans* (“Advisory Report”) to the Secretaries of the U.S. Department of Health and Human Services and the U.S. Department of Agriculture. Although the recommendations are nonbinding, the agencies are likely to rely on the 571-page Advisory Report in developing the *Dietary Guidelines for Americans, 2015*, to be jointly released by HHS and USDA later this year. HHS’s Office for Disease Prevention and Health Promotion takes the administrative lead in developing the *Dietary Guidelines*, partnering closely with USDA’s Center for Nutrition Policy and Promotion and USDA’s Agricultural Research Service. As mandated by the National Nutrition Monitoring and Related Research Act,¹ new *Dietary Guidelines* have been published every five years since 1980 and form the basis of federal nutrition policy, education, outreach, and food assistance programs used by consumers, industry, nutrition educators, and health

professionals. The *Dietary Guidelines* are intended for Americans ages two and over.

Against the backdrop of data showing that more than two-thirds of Americans are obese or overweight, the Committee concludes in the Advisory Report that “a healthy dietary pattern is higher in vegetables, fruits, whole grains, low- or non-fat dairy, seafood, legumes, and nuts; moderate in alcohol (among adults); lower in red and processed meats; and low in sugar-sweetened foods and drinks and refined grains.” In doing so, however, the Advisory Report focuses less on individual nutrients and more on overall patterns of eating, highlighting Mediterranean-style and vegetarian diets in particular.

While much of the Advisory Report reinforces what we saw in the 2010 *Dietary Guidelines*, and the Committee’s suggestion that we eat more fruits and vegetables is hardly radical, there are some notable changes with respect to added sugars, cholesterol, and caffeine, as discussed in more detail below.

¹ 7 U.S.C. § 5341.

A Focus on Sugar

Although previous *Dietary Guidelines* warned generally against eating too much added sugar, the Committee for the first time recommends in its Advisory Report that Americans limit their added sugars to no more than 10 percent of daily calories (roughly 12 teaspoons per day) due to the link between added sugar and obesity and chronic disease. Americans currently consume 22 to 30 teaspoons of added sugar daily, with beverages supplying 47 percent of added sugars, and sweets and snacks composing 31 percent. Along those lines, the Committee suggests removing sugary drinks from schools and endorses a [proposed Food and Drug Administration rule](#) that would require added sugars to be separately and distinctly labeled on the nutrition facts panel.²

But the Advisory Report also warns against relying on artificial sweeteners rather than sugar, saying that there is little evidence on the long-term effects of relying on artificial sweeteners for weight loss and healthy weight maintenance. Instead, the Committee recommends drinking water in place of sweet beverages.

The shift to focusing on sugar represents a contrast from earlier *Dietary Guidelines*. Starting in the 1980s, the *Dietary Guidelines* largely encouraged a low-fat diet, in turn triggering an explosion of sugar-loaded, low-fat processed foods. The Advisory Report reflects more recent studies showing that replacing fat with refined carbohydrates can actually threaten cardiovascular health. The recommendation is also in line with the World Health Organization's suggested goal of limiting sugars to 5 percent of daily calories.

Looser Restrictions on Cholesterol

The Committee has eased some of the earlier restrictions on cholesterol. Previously, the *Dietary Guidelines* recommended that cholesterol intake be limited to no more than 300 milligrams per day. But the Advisory Report discontinues this recommendation “because available evidence shows no appreciable relationship between consumption of dietary cholesterol and serum cholesterol.” In determining that

“[c]holesterol is not a nutrient of concern for overconsumption,” the Committee aligns itself with other major health groups, such as the American Heart Association, which recently backed away from dietary cholesterol restrictions, instead focusing on reducing added sugars.

This recommendation echoes more recent thinking among nutritionists and researchers who have argued that the great danger comes not from eating high-cholesterol foods such as eggs, shrimp, and lobster, but instead from too many servings of foods laden with saturated fats, such as fatty meats, whole milk, and butter.

The comparatively relaxed stance on cholesterol, however, does not apply to everyone. Experts warn that people with particular health problems, such as diabetes, should continue to avoid high-cholesterol foods. And although the Committee is no longer making a cholesterol recommendation, this new view does not undo warnings about high levels of “bad” cholesterol in the blood, which have been linked to heart disease.

Saturated Fat is Still Bad—But That Conclusion is Controversial

The Advisory Report recommends unsaturated fat—found in fish, nuts, and olive and vegetable oils—instead of saturated fat—found primarily in animal foods. The top three sources of saturated fat in the American diet are cheese, pizza, and grain-based desserts like cookies and cakes. Specifically, the Advisory Report recommends that fewer than 10 percent of calories should come from saturated fat. Sources of saturated fat should be replaced with unsaturated fat, particularly polyunsaturated fatty acids (“PUFAs”), found in vegetable oils.

This recommendation reflects the conventional wisdom dating back to the 1950s that saturated fat increases total cholesterol and increases the risk of heart disease and stroke. The Committee concludes that replacing saturated fat with unsaturated fats, particularly PUFAs, significantly reduces total and LDL cholesterol. However, the Committee also notes that while replacing saturated fats with PUFAs can reduce the

2. Food Labeling: Revision of the Nutrition and Supplement Facts Labels, 79 Fed. Reg. 11879 (Mar. 3, 2014).

risk of cardiovascular events, replacing total fat with overall carbohydrates does not lower the risk of cardiovascular disease. Accordingly, the Committee recommends that dietary advice should stress “optimizing types of dietary fat and not reducing total fat.” In addition, carbohydrates and added sugars should not be replaced by foods high in saturated fat, but instead should be replaced by “healthy sources of carbohydrates,” such as whole grains, legumes, vegetables, and fruit and “healthy sources of fats,” such as non-hydrogenated vegetable oils and nuts/seeds. In other words, “[t]he consumption of ‘low-fat’ or ‘nonfat’ products with high amounts of refined grains and added sugars should be discouraged.” This advice is echoed by organizations such as the American Heart Association, which recommends limiting saturated fats, although it notes that “[s]aturated fats are just one piece of the puzzle” and “you can’t go wrong eating more fruits, vegetables, whole grains and fewer calories.”

While the Committee’s advice with respect to avoiding *trans* fats and refined carbohydrates is in line with recent trends, the Committee received some criticism from scientists and others³ regarding its advice against saturated fat. A handful of recent studies have found no significant evidence associating saturated fat with an increased risk of coronary heart disease or cardiovascular disease. Some also argue that the *Dietary Guidelines’* repeated warnings against saturated fat have simply encouraged increased consumption of grains and processed foods.

Caffeine is Now Okay

The Advisory Report says that healthy adults can have up to 400 milligrams of caffeine a day, or about three to five cups of coffee. According to the Committee, consuming this level of coffee “is not associated with increased long-term health risks among healthy individuals.” Moreover, the Committee says, “consistent evidence indicates that coffee consumption is associated with reduced risk of type 2 diabetes and cardiovascular disease in adults” and also shows a “protective association between caffeine intake and risk of Parkinson’s disease.” But the Advisory Report also warns against added calories from cream and sugars.

Keep Lowering the Salt

Since its first edition in 1980, the *Dietary Guidelines* have consistently recommended a reduced sodium intake due to the relationship between sodium intake and high blood pressure. Likewise, the Advisory Report states that “[sodium] consumption continues to far exceed recommendations” and identifies sodium as “ubiquitous in the current U.S. food supply” and a “nutrient of public health concern because of overconsumption.” Adults who need to lower their blood pressure (about 30 percent of U.S. adults) should eat fewer than 2,300 milligrams of sodium per day (the equivalent of about one teaspoon of salt), or as low as 1,500 milligrams per day to further reduce blood pressure. The current average sodium intake in the United States is 3,478 milligrams per day. Mixed dishes, primarily burgers and sandwiches, are the largest contributor of sodium intake, comprising 44 percent of sodium intake in American diets.

A New Consideration For the Environment

For the first time, the Committee explicitly considers the impact of our food choices on the environment. In its Advisory Report, the Committee notes that “[t]he major findings regarding sustainable diets were that a diet higher in plant-based foods, such as vegetables, fruits, whole grains, legumes, nuts, and seeds, and lower in calories and animal-based foods is more health promoting and is associated with less environmental impact than is the current U.S. diet.” The Advisory Report then specifically recommends three patterns of eating that can achieve a diet that has less environmental impact: the Healthy U.S.-style Pattern, the Healthy Mediterranean-style Pattern, and the Healthy Vegetarian Pattern. (All three patterns contain two cups of fruit per day, two and a half cups of vegetables per day, three ounces of whole grains per day, three ounces of eggs per week, and 27 grams of oils per day, although the quantities of legumes, dairy, and proteins vary slightly among the three patterns.) Currently, the average U.S. diet “has a larger environmental impact in terms of increased greenhouse gas emissions, land use, water use, and energy use, compared to the above dietary patterns” due to its intake of animal-based foods.

3. See, e.g., Anahad O’Connor, “Nutrition Panel Calls for Less Sugar and Eases Cholesterol and Fat Restrictions,” *The New York Times*, Feb. 19, 2015.

The focus on sustainable food choices has garnered criticism from some politicians and industry groups who feel that the Committee should refrain from fusing nutrition advice with environmental outcomes. But other groups and coalitions are urging HHS and USDA to adopt the Committee's recommendations on lower meat consumption and more sustainable production.

Opportunities for Public Comment

The public can view the Advisory Report and submit comments at www.DietaryGuidelines.gov until April 8, 2015. On March 24, 2015, the public can also offer oral comments at a public meeting in Bethesda, Maryland.

Lawyer Contacts

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

Mark Mansour

Washington
+1.202.879.3883
mmansour@jonesday.com

Edgar Asebey

Miami
+1.305.714.9707
easebey@jonesday.com

Jonathan Berman

Washington
+1.202.879.3669
jberman@jonesday.com

Emily K. Strunk

Washington
+1.202.879.3778
estrunk@jonesday.com

Stephanie L. Resnik

Washington
+1.202.879.5458
sresnik@jonesday.com

Jones Day publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.