



My Plate, My Planet

Food for a Sustainable Nation

Statutory Authority for Sustainability in the Dietary Guidelines for Americans: Legal Analysis

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1. Plain Language of the Law Does Not Preclude Sustainability

A plain reading of the statute allows for sustainability, as the language is quite broad.

The National Nutrition Monitoring and Related Research Act of 1990 simply says that every five years, a report called “Dietary Guidelines for Americans”...

“shall contain nutritional and dietary information and guidelines for the general public”

Nothing in the words “nutritional and dietary” precludes how food is produced.

The law also requires that the report “be based on the preponderance of the scientific and medical knowledge which is current at the time the report is prepared”.

The preponderance of scientific knowledge tells us that food production impacts our diet, and thus should be considered as part of the Dietary Guidelines for Americans.

Under purposes of the statute is the following language

To “make more effective use of Federal and State expenditures for nutrition monitoring, and enhance the performance and benefits of current Federal nutrition monitoring and related research activities;”

To make the most effective use of expenditures, we need all the relevant information.

In addition, the statutory purpose is to “establish a central Federal focus for the coordination, management, and direction of Federal nutrition monitoring activities;”

A “central focus” indicates a need to have government speak in one voice (see more on this below). Sec. Vilsack’s position that we can talk about sustainability “elsewhere” is defied by the intent of the statute – to centralize and coordinate dietary advice.

Under the definitions to the overall statute is the following language

*[T]he term “nutrition monitoring and related research” means the set of activities necessary to provide timely information about the role and status of factors that bear on the contribution that nutrition makes to the health of the people of the United States, including... **food supply and demand determinations.***

That the statute clearly identifies “food supply and demand determinations” as relevant to “nutrition” defies Sec. Vilsack’s claim that sustainability should be considered separate from nutrition. How can we talk about the food supply without talking about how to produce enough food for the next generation?

2. Congressional Intent Shows Broad, Unifying Agenda

A reading of the discussion in both the House and the Senate at the time of passage of the legislation indicates that Congress intended to allow the federal government to “speak with one voice” when it comes to dietary advice. This is contrary to Sec. Vilsack’s position that the dietary guidelines are not the appropriate vehicle for sustainability. It’s also clear that the underlying value is the health of the nation, a broad concept not only driven by calories or nutrients.

The following excerpts are taken from the Congressional history for the bill, each supporting the goal of creating a uniform national agenda for nutritional information

We must ensure that the Federal Government speaks with one voice when it disseminates information on dietary guidance to Americans....

For years, researchers have struggled to use disconnected information from various Federal agencies in an effort to get a complete picture of nutritional status in this country. This information is essential to the development of sound food, nutrition, and health policies at all levels of government.

Congress and our Federal agencies, too, will be better informed to make fiscally and physically fit policy decisions relating to our Nation's feeding programs including School Lunch, WIC, nutrition activities for older Americans, and distribution of our surplus USDA commodities.

3. Previous DGAs Interpret the Statute Broadly for a Healthy Nation

The previous three versions of the Dietary Guidelines for Americans included issues that could be interpreted as falling outside of the statutory authority for “nutritional and dietary information” and yet no issues were raised.

2000 DGA: For the first time, two issues arguably outside the scope of “nutritional and dietary information” were added: Physical activity and food safety.

2005 DGA: Once again physical activity and food safety are incorporated.

Nothing in the food safety chapter is obviously connected to “nutritional and dietary information” The justification is overall health. For example: “*Avoiding foods that are contaminated with harmful bacteria, viruses, parasites, toxins, and chemical and physical contaminants are vital for healthful eating.*”

Chapter 4 is an entire chapter on physical activity, placed between “weight management” and “food groups to encourage”. The main justification for inclusion is “*health, sense of well-being, and maintenance of a healthy body weight*”, very broad concepts. Note that physical activity is justified not only as a weight loss tool but for prevention of specific diseases and overall health.

This is relevant because some may connect physical activity to diet as to maintain a healthy diet. But if physical activity is important for health separate from its relationship to calorie intake, then other issues can also be relevant to health.

2010 DGA: During Sec. Vilsack's tenure, the 2010 DGA was expanded well beyond "nutritional and dietary information" and beyond just for physical activity and food safety. The report goes into depth on broader societal factors that influence diet and health.

The following is from the 2010 DGA cover letter from Secretaries Vilsack and Sebelius:

"Our knowledge about nutrition, the food and physical activity environment, and health continues to grow, reflecting an evolving body of evidence".

The current "evolving body of evidence" includes environmental data.

Chapter 2 notes how society impacts diet

Ultimately, individuals choose the type and amount of food they eat and how physically active they are. However, choices are often limited by what is available in a person's environment, including stores, restaurants, schools, and worksites. Environment affects both sides of the calorie balance equation—it can promote over-consumption of calories and discourage physical activity and calorie expenditure.

Also recommended is to: "Limit Screen Time. *In children, adolescents, and adults, screen time, especially television viewing, is directly associated with increased overweight and obesity.*" Screen time certainly is not "nutritional or dietary".

From Chapter 6 - Helping Americans Make Healthy Choices

By working together through policies, programs, and partnerships, we can improve the health of the current generation and take responsibility for giving future generations a better chance to lead healthy and productive lives.

Certainly the concern for "future generations" is linked to sustainability.

Under CALL TO ACTION is the following

This type of approach emphasizes the development of coordinated partnerships, programs, and policies to support healthy eating and active living...Actions are best sustained when developed, implemented, and evaluated by supporters across multiple levels of influence. Positive changes to the current and future health of America will require broad, cooperative, and sustainable efforts by all.

This repeated theme of comprehensive, system-wide approach supports the concept of environmental sustainability.

Finally, Under “Guiding Principles” in the 2010 DGA is the following

Ensure that all Americans have access to nutritious foods and opportunities for physical activity.
Includes:

- *Develop and expand safe, effective, and sustainable agriculture and aquaculture practices to ensure availability of recommended amounts of healthy foods to all segments of the population.*
- *Increase food security among at-risk populations by promoting nutrition assistance programs.*

This key recommendation from 2010 demonstrates that the current call for sustainability is nothing new, but rather simply an expanded version of what Sec. Vilsack endorsed without controversy or public debate just five years ago.

In sum, the statutory language, Congressional intent, and previous versions of the guidelines all clearly demonstrate that the USDA and HHS would be well within its mandate to incorporate sustainability in the Dietary Guidelines for Americans.