



NEW YORK CITY DEPARTMENT OF  
HEALTH AND MENTAL HYGIENE  
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*Commissioner*

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Re: Preliminary Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts – Nutrition Principles; Project No. P094513

To Whom It May Concern:

The New York City Department of Health and Mental Hygiene (DOHMH) is pleased to have the opportunity to comment on the Interagency Working Group's proposal on Food Marketed to Children (FTC Project No. P094513).

We strongly support the Working Group's efforts to reduce marketing of less healthy foods to children and to provide a framework that emphasizes children's health. While we applaud initiatives to reduce the incidence of childhood obesity, we do not believe that marketing food products to children is an effective way to promote healthy eating habits.

The main goal of advertising is to create brand recognition, not necessarily to sell a particular product. Thus, allowing companies to market "healthy" products to children provides an opportunity for companies to reach their target audience and create brand recognition even though the product line may include unhealthy options.

Additionally, there is no standard definition for a "healthy" product. While the Working Group has attempted to set parameters to define healthfulness, this issue is complex. Standards that attempt to capture all food categories inevitably lead to exclusion of some nutritious foods and inclusion of some foods that provide minimal nutritional benefit.

Therefore, DOHMH advocates for no food marketing to children through any venue identified in the proposal including media advertisements, company websites, social marketing and product placement. This restriction would allow product selection to be based solely on information about healthfulness without being swayed by a child's focus on brands and characters. This approach also eliminates the need to define healthfulness (as the proposed voluntary guidelines have attempted to do), which can be problematic and does not always accomplish the stated goal.

While DOHMH advocates first and foremost for no food marketing to children, we recognize the legal challenges inherent to implementing more stringent

restrictions under US law. We encourage the federal government to seek opportunities to implement the strongest restrictions that are legally feasible for marketing food to children.

### **Response to Questions**

#### ***General Questions:***

##### **4 – DOHMH recommends addressing portion size in the guidelines.**

Portion sizes of virtually all foods and beverages for immediate consumption have increased over time and now appear to the consumer as the “typical” size. Overconsumption of food and beverages is not adequately addressed by the recommendations put forth in the guidelines that limit saturated fat, trans fat and added sugars. Depiction of larger portion sizes contributes to the perceived consumption norms and should be addressed in order to shift behavior. DOHMH suggests that any foods or commercial packaging displayed in marketing to children should be restricted to the smallest portion size available, (e.g. for juice: 4 or 6 ounce juice boxes) and accurately depicted.

#### ***Food Categories:***

##### **5 - DOHMH supports restriction of all food marketed to children.**

If the Working Group decides to proceed with the proposed framework, we believe the guidelines should cover all categories of foods and beverages marketed to children. There is no benefit to restricting the guidelines to the most heavily advertised products.

The current proposal misses the opportunity to maximize impact and simplify implementation by imposing the same requirements on all categories of foods and beverages. Even though the proposal captures the majority of foods marketed to children, other products contribute to the overall nutritional value of a child’s diet. We believe all food items marketed to children should follow the same guidelines to promote healthier options and encourage reformulation of new and existing products.

#### ***Nutrition Principle A:***

##### **10 – DOHMH recommends limits on starchy vegetables.**

As discussed in the proposal, children consume starchy vegetables disproportionately to other types of vegetables. In order to encourage consumption of a variety of vegetables, the Working Group should be more specific in the recommendations. We don’t believe certain subgroups should be promoted, instead we recommend that a colorful mix of vegetables be required by the guidelines and limits on potatoes and other starchy vegetables should be included. Specifically we recommend that potatoes not be considered a vegetable in this framework; many countries have adopted this position. Additionally, among children, over 80% of potatoes are eaten as French Fries or other fried versions, which contradicts the purpose of the guidelines.

**11- DOHMH supports Option 2 under Principle A.**

It is essential that food products marketed to children contribute nutrients that support a healthy diet. DOHMH does not support Option 1 because requiring that only 50% of the product comes from a nutrient-dense component is not significant enough to support a healthy diet. Consider a fruit juice that is only 50% juice or a chicken nugget that is only 50% chicken meat; these products should not be promoted as nutritious options to support the dietary needs of children. We believe a 50% minimum requirement allows too much room for ingredients of minimal nutrition value. Additionally, this encourages ingredient manipulation to meet the minimum requirement rather than reformulation to create a more nutritious product.

If the Working Group decides to proceed with the proposed framework, Option 2 ensures a minimum nutrient contribution as this standard is based on a notable contribution from a food category encouraged by USDA's MyPlate. Also, since the Reference Amount Customarily Consumed (RACC) is a standardized value, this option limits the opportunity for ingredient manipulation to meet the requirements without improving the overall quality of the product.

***Nutrition Principle B:*****13- DOHMH advocates for removal of "naturally occurring nutrient" exemption.**

The food environment is complex and there are many foods that contribute to a diet high in saturated fat, trans fat, sugar and sodium, including foods with naturally occurring nutrients. In order to achieve a healthy diet, these nutrients should be limited, regardless of the source. The exemption for naturally occurring nutrients allows additional sugar, fat and sodium in products that may already contain these nutrients from natural sources; this could lead to promotion of products with nutrient values well above recommended levels.

Additionally, the definition for "naturally occurring" is unclear when considering foods like bread and cheese that require salt in processing or bacon that naturally contains high amounts of saturated fat. This exemption as suggested offers the risk for misinterpretation and promotion of products with nutrient levels that are much higher than the levels that are recommended by the Dietary Guidelines for Americans.

The Working Group should instead consider providing exemptions only for specific nutrient-dense foods that do not meet the requirements, such as fruit and dairy products with no added sugars. Allowing a general exemption for "naturally occurring nutrients" undermines the purpose of the proposal, which is to limit nutrients that are harmful in excess.

**15 - DOHMH recommends restriction of artificial and natural nonnutritive sweeteners in foods marketed to children.**

Research on artificial sweeteners and natural nonnutritive sweeteners (e.g. stevia) shows inconclusive results regarding health effects with long-term use. The nutrition principles created by the Working Group are supposed to encourage product reformulation to create healthier foods, not allow the use of artificial sweeteners as a substitute. We urge the Working Group to restrict marketing of products containing artificial sweeteners to protect the health of children.

**15 – DOHMH recommends restriction of fried foods in foods marketed to children.**

Based on the proposed saturated fat and sodium limits under Principle B, fried foods would very rarely meet the criteria for foods that can be marketed to children. However, as products are reformulated this may become an issue in the future. To ensure that the framework restricts marketing of all foods that are fried, we urge the Working Group to include the following requirement to Principle B: “Individual foods should not be fried or contain components that are fried”.

**16- DOHMH recommends target for total sugars at 10 grams.**

There is an urgent need, as highlighted by the 2010 US Dietary Guidelines, to limit sugars in the diet to avoid consumption of excess calories from foods that lack nutritional value. Foods that contain naturally-occurring sugars should not be permitted to add an additional 13 grams of sugar as that leads to highly sweetened foods such as fruit products and breakfast cereals that could be marketed as “healthy options”.

We urge the Working Group to take a stronger approach to this component by setting the limit for total sugars at 10 grams with exemptions only for specific nutrient-dense foods that do not meet this requirement, such as fruit and dairy products with no added sugars. This will ensure products with natural sugars are allowed, while restricting the addition of sugars to naturally sweet foods.

**17 - DOHMH recommends implementing the final sodium goal with a 2012 target date.**

We applaud the Working Group’s strong position on sodium reduction targets, but believe the need for change is immediate due to increasing levels of hypertension in children and resulting morbidity and mortality in adulthood. DOHMH urges the Working Group to consider a more aggressive timeline for instituting the final sodium guidelines. Through the National Salt Reduction Initiative, DOHMH has worked with a number of food companies to voluntarily reduce the levels of sodium in their food products by target dates in 2012 and 2014. Major national manufacturers participate in the initiative and are working to reformulate their products.

We believe it is feasible to implement the final sodium levels by the end of 2012. In order for this initiative to be effective, it must drive product reformulation now, rather than allowing ten years for products to meet the proposed limits to be considered “healthy”, even in a set of voluntary guidelines. As with the other nutrient targets, we believe companies should be encouraged to reformulate their products to meet this criteria in order to market their products to children.

Sincerely,

Thomas Farley, MD MPH  
Commissioner