



**International Dairy Foods Association**  
Milk Industry Foundation  
National Cheese Institute  
International Ice Cream Association

Donald S. Clark, Secretary  
Office of the Secretary  
Federal Trade Commission  
Room H-113 (Annex W)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

July 14, 2011

**RE: Interagency Working Group on Food Marketed to Children: Proposed Nutrition Principles: FTC Project No. P094513**

Dear Mr. Clark:

The International Dairy Foods Association appreciates the opportunity to comment on the proposed guidelines regarding the marketing of foods and beverages to children.

The International Dairy Foods Association (IDFA), Washington, DC, represents the nation's dairy manufacturing and marketing industries and their suppliers, with a membership of more than 560 companies representing a \$110-billion a year industry. IDFA is composed of three constituent organizations: the Milk Industry Foundation (MIF), the National Cheese Institute (NCI) and the International Ice Cream Association (IICA). IDFA's 220 dairy processing members run more than 600 plant operations, and range from large multi-national organizations to single-plant companies. Together they represent more than 85 percent of the milk, cultured products, cheese and frozen desserts produced and marketed in the United States.

We offer the following comments in regard to the nutritional standards recommended in the proposed guidelines. Another set of comments regarding the advertising standards will also be submitted.

**Executive Summary**

- Self-regulation of marketing foods and beverages to children is working. Additional government guidance regarding marketing to children is not necessary or warranted.
- Milk products are nutrient-rich. Milk and milk products provide nine essential nutrients, including three of the four nutrients identified as “nutrients of concern” in the 2010 DGAs— calcium, vitamin D and potassium.
- Children are falling short of recommended intakes of milk products. Milk consumption is replaced by soft drinks, fruit drinks or other beverages as children get older.
- The 2010 Dietary Guidelines for Americans (DGAs) should serve as the basis for any government-released guidance on marketing foods and beverages to children. Since low-

fat and fat-free dairy products are foods to encourage in the DGAs, the marketing of these products should be encouraged, not restricted.

- If guidelines are set, the qualifications for marketing products to children should be transparent to consumers and regulators, including information declared on the Nutrition Facts panel, using total amounts of nutrients, rather than added sugar levels.
- The criteria for Nutrition Principle A (Meaningful Contribution to a Healthful Diet) is unclear. IDFA's members have concerns about the qualifications used for concentrated versions of dairy products and for the definition of low-fat.
- The Nutrition Principle B (Nutrients to Limit) would eliminate the marketing of many dairy products by setting using the Reference Amount Customarily Consumed and, in some cases 50 grams of food, as the basis for nutrient limitations.

### **Self-Regulation is Working**

One of the ongoing efforts for self-regulating marketing of foods and beverages to children is the Better Business Bureau's (BBB) Children's Food and Beverage Advertising Initiative (CFBAI). The goal of this initiative, launched in 2006, is to emphasize healthier options in advertising targeted to children. Between 2006 and 2010, the initiative has grown to 17 companies who have publicly set their standards on marketing to children. In a "snapshot" analysis of children's advertising conducted in 2010 by the BBB, 79% of the food and beverage advertising was from companies participating in the CFBAI.

In 2010, the CFBAI standards were updated to be made even more rigorous: all marketing to children under the age of 12 must be for healthier food and beverage choices and the scope of covered marketing was broadened to include video games and other games, mobile media, and DVDs geared toward children under the age of 12.<sup>1/</sup>

Some of IDFA's members are active in the CFBAI program. They have identified their healthiest options for children and targeted their marketing toward those products. Two of the IDFA member companies participating in CFBAI were specifically identified as adding healthier dairy product options to their portfolios in 2010: cheese products and calcium-fortified low fat milk.<sup>2/</sup> The snapshot analysis also showed that 21% of ads included milk and 12% of ads featured lowfat yogurt. This demonstrates that the self-regulation program is working. Additional government guidance regarding marketing to children is not necessary or warranted.

### **Role of Dairy in Children's Diets**

Milk and milk products provide significant levels of nutrients that are important in children's diets. These products must be able to be made available and should be able to be promoted to children so that children will choose to eat and drink them, benefitting from the variety of nutrients present. Milk provides nine essential nutrients, including three of the four nutrients identified as "nutrients of concern" in the 2010 DGAs— calcium, vitamin D and potassium.<sup>3/</sup> Milk is the number one source of these three nutrients of concern for Americans, while yogurt

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<sup>1</sup> Council of Better Business Bureaus, Inc. "The Children's Food & Beverage Advertising Initiative in Action: A Report on Compliance and Implementation During 2009." 3<sup>rd</sup> Edition, September 2010.

<sup>2</sup> Ibid.

<sup>3</sup> U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2010. 7<sup>th</sup> Edition, Washington, DC: U.S. Government Printing Office, December 2010.

provides protein, calcium, magnesium, phosphorous, vitamin A and some have vitamin D added. Cheese is a good source of protein, calcium, magnesium, phosphorous, and vitamin A.

Dairy products are well-known for their calcium content and the resulting effect on bone health. However, dairy is also a source of many other nutrients, including vitamin D. Many dairy products are good or excellent sources of vitamin D, a nutrient associated with bone health and a variety of nutritional and health benefits, while also being underconsumed by most Americans. The majority of milk sold in the U.S. is fortified with 25% of the Daily Value of vitamin D per cup. Many yogurts and some cheeses also have vitamin D added. This helps in calcium absorption and therefore bone health, and experts suggest that vitamin D has benefits beyond bone health.

Most dairy products are nutrient-dense foods or beverages. They provide a number of essential nutrients, while containing a moderate to low level of calories. Nutrient-dense foods are useful for both diet quality and for weight management by allowing nutrient needs to be met without consuming excess calories.

Yogurt is a nutrient-dense food that is an excellent source of calcium and a good source of protein. Most yogurt available in the United States is either low-fat or fat-free varieties. In addition to protein, yogurt is also a good source of calcium, riboflavin, vitamin B12, and phosphorous. Most yogurts have vitamin D added. Additionally, yogurt is naturally low in lactose as a result of the culturing process, thus providing a dairy option for those who are lactose intolerant.<sup>4/</sup> In fact, the Institute of Medicine has explicitly recognized that individuals with lactose maldigestion are able to tolerate yogurt better than milk.<sup>5/</sup> Yogurt is also a desirable alternative for those who avoid milk for cultural or other reasons. Importantly, as compared to other snacks, yogurt provides these nutrient contributions at similar or lower calories. Yogurt can play a key role in helping kids meet the recommended intake of nutrients such as calcium.

For children, yogurt can be an excellent choice. It comes in a variety of flavors and is available in convenient single servings. Yogurt tends to be higher in essential nutrients like protein, calcium and vitamin D and lower in fat, saturated fat and sodium content.

Cheese, like fluid milk and yogurt, is a nutrient-dense food, providing a good source of protein, calcium and phosphorous to children. In addition to being a nutritious and healthy snack, cheese is also naturally low in lactose. While there are very few low fat and fat free cheeses available in the marketplace, due to the requirements of the “low fat” claim regulations, there are more reduced fat cheeses available. The reduced fat category of cheese, although only about one-fifth of total cheese sales, is growing.

### **Children Not Consuming Enough Dairy**

The 2010 Dietary Guidelines for Americans (DGAs) recommended that children ages 2 and 3 consume 2 servings of milk and milk products per day, children between the ages of 4 and 8 consume 2.5 servings and children 9 and older consume 3 servings of milk and milk products

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<sup>4</sup> Adolphsson O et al. “Yogurt and Gut Function.” *American Journal of Clinical Nutrition*, 80(2):245-56, 2004.

<sup>5</sup> Institute of Medicine. “WIC Food Packages: Time for a Change.” Available at: [http://www.fns.usda.gov/oane/MENU/Published/WIC/FILES/Time4AChange\(mainrpt\).pdf](http://www.fns.usda.gov/oane/MENU/Published/WIC/FILES/Time4AChange(mainrpt).pdf) (last accessed November 12, 2010).

each day. With the increased recommendation to two and one-half servings for children between the ages of 4 and 8 years of age, nearly 75% of children in this age group would fall short. More than half of boys between 9 and 18 years of age do not meet their recommended intake of milk and milk products. More than 75% of girls 9-13 and more than 90% of girls 14-18 do not consume adequate milk and milk products.<sup>6/</sup> The report of the 2010 DGAC also indicated that calcium intake is considerably less than the Adequate Intake level for Americans of many ages, beginning at nine years old. This shortfall is particularly evident for females.<sup>7/</sup>

Yet, children and adolescents are drinking less milk and more soft drinks and other low-nutrient or nutrient-void beverages – a troubling trend that has been identified as one potential reason for chronic calcium shortages and the rising rates of obesity among America’s youth.<sup>8/</sup> In 2008, more than twice the amount of carbonated soft drinks were available than fluid milk.<sup>9/</sup> Researchers studied the diets of more than 3,000 children ages 2 to 18 years using food consumption data from the government’s National Health and Nutrition Examination Survey.<sup>10/</sup> They found that consumption of soft drinks and fruit drinks tends to increase gradually as a child gets older, while milk intake declines in a similar way. This finding is consistent with other recent studies.<sup>11/</sup> As an example of what occurs when milk and milk products are replaced by other beverages, the DGAC indicated that when milk and milk products are removed from sample diets in the USDA Food Patterns, calcium, vitamin A, vitamin D, choline, magnesium, phosphorus, and potassium become deficient.<sup>12/</sup>

### Flavored Milk

Flavored milk provides the same nine essential nutrients as unflavored milk, including three of the four nutrients identified as “nutrients of concern” in the 2010 DGAs– calcium, vitamin D and potassium.<sup>13/</sup> An 8-ounce serving of low-fat flavored milk contains only 2.5 grams of fat, the same amount as in low-fat unflavored milk. The main difference between flavored and unflavored milk is the added sugars, which add about 40 to 70 calories per 8-ounce serving. A clinical report from the American Academy of Pediatrics suggests flavored milks (reduced-fat or

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<sup>6/</sup>Dietary Guidelines Advisory Committee. 2010. Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans, 2010, to the Secretary of Agriculture and the Secretary of Health and Human Services. U.S. Department of Agriculture, Agricultural Research Service, Washington, DC.

<sup>7/</sup> Ibid.

<sup>8/</sup>Ludwig DS, Peterson KE, Gortmaker SL. Relation between consumption of sugar-sweetened drinks and childhood obesity: a prospective, observational analysis. *The Lancet*. 2001;357:505-508; American Academy of Pediatrics Policy Statement. Soft Drinks in Schools. *Pediatrics*. 2004;113:152-154; American Heart Association, American Stroke Association, Robert Wood Johnson Foundation. *A Nation at Risk: Obesity in the United States*. American Heart Association National Center: Dallas, June 2005.

<sup>9/</sup>Dietary Guidelines Advisory Committee. 2010. Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans, 2010, to the Secretary of Agriculture and the Secretary of Health and Human Services. U.S. Department of Agriculture, Agricultural Research Service, Washington, DC.

<sup>10/</sup>Murphy M, Douglass J, Latulippe M, Barr S, Johnson R, Frye C. Beverages as a source of energy and nutrients in diets of children and adolescents. *The FASEB Journal* 2005;A434,275.4.

<sup>11/</sup>Blum JW, Jacobsen DJ, Donnelly JE. Beverage consumption patterns in elementary school aged children across a two-year period. *Journal of the American College of Nutrition*. 2005;24:93-98; Rajeshwari R, Yang SJ, Nicklas TA, Berenson GS. Secular trends in children’s sweetened beverage consumption (1973-1994): the Bogalusa Heart Study. *Journal of the American Dietetic Association*. 2005;105:208-214.

<sup>12/</sup>Dietary Guidelines Advisory Committee. 2010. Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans, 2010, to the Secretary of Agriculture and the Secretary of Health and Human Services. U.S. Department of Agriculture, Agricultural Research Service, Washington, DC.

<sup>13/</sup> U.S. Department of Agriculture and U.S. Department of Health and Human Services.. *Dietary Guidelines for Americans, 2010*. 7<sup>th</sup> Edition, Washington, DC: U.S. Government Printing Office, December 2010.

fat-free) with modest amounts of added sweeteners are “generally recommended” to help optimize the bone health and calcium intakes of children and adolescents. <sup>14/</sup>

Research indicates that children who consume flavored milk tend to drink more milk and have higher calcium intakes than those who do not. <sup>15/</sup> Considering that most children are not meeting current calcium recommendations, flavored milk is an effective strategy to help children get the calcium their growing bodies need. Researchers at the University of Vermont evaluated data from the USDA Continuing Survey of Food Intakes of Individuals (CSFII) to determine the nutritional consequences of flavored milk consumption among 3,888 U.S. children ages 5 to 17. <sup>16/</sup> School-aged children who drank flavored milk consumed more milk and obtained more calcium, without increasing their total fat and added sugars intake. The flavored milk drinkers also consumed fewer nutrient-poor soft drinks and fruit drinks than children who did not drink flavored milk. The study indicates that allowing children to choose flavored milk adds to their nutrient intake without increasing added sugars and total fat.

### Yogurt

The nutritional benefits of yogurt are well-recognized. Yogurt plays a prominent role in healthy diets recommended by the 2010 DGAs. Specifically, yogurt is a standardized, nutrient-rich dairy food that contains many essential nutrients including protein, calcium, riboflavin, vitamin B12, phosphorous and potassium. Additionally, many commercially available yogurts are fortified with vitamin D. It is also commonly known as an excellent source of calcium—which, along with vitamin D and protein, is critical in developing and maintaining strong, healthy bones. This is particularly important for children since, as highlighted by the 2010 DGAs, children aged 9 and older and adolescent girls are of particular concern with regard to low bone mass due to low calcium intake from food.<sup>17/</sup> In fact, many yogurts provide more than 20 percent of the Daily Value of both calcium and vitamin D, and 10 percent of the Daily Value of potassium, three out of the four essential nutrients identified by the DGAs as “nutrients of concern”—i.e., nutrients for which typical intakes fall below recommended levels. Specifically, NHANES research estimates that over 90 percent of American children aged 9 to 12 years of age do not consume enough vitamin D and about 55 percent do not consume enough calcium.<sup>18/</sup>

### Cheese

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<sup>14/</sup> Greer FR, Krebs, NF. Optimizing bone health and calcium intakes of infants, children and adolescents. *Pediatrics*. 2006;117:578-585.

<sup>15/</sup> Frary CD, Johnson RK, MQ Wang. Children and adolescents’ choices of foods and beverages high in added sugars are associated with intakes of key nutrients and food groups. *Journal of Adolescent Health*. 2004;34:56-63; Johnson RK, Frary C, Wang MQ. The nutritional consequences of flavored-milk consumption by school-aged children and adolescents in the United States. *Journal of the American Dietetic Association*. 2002;102:853-856.

<sup>16/</sup> Johnson RK, Frary C, Wang MQ. The nutritional consequences of flavored-milk consumption by school-aged children and adolescents in the United States. *Journal of the American Dietetic Association*. 2002;102:853-856.

<sup>17/</sup> U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans, 2010*. 7<sup>th</sup> Edition, Washington, DC: U.S. Government Printing Office, December 2010.

<sup>18/</sup> NHANES 2007-08 (Day 1&2), NCI Usual Intake Method (pregnant & lactating women excluded) from foods only, Data analysis by Bell Institute of Health and Nutrition. NHANES is a survey and major program of the National Center for Health Statistics (“NCHS”) that is designed to assess the health and nutritional status of adults and children in the United States. The survey - recognized as the gold standard dietary intake survey in the United States - examines a nationally representative sample of about 5,000 people each year, and collects food intake data, in addition to nutrition, demographic, and other health information. NHANES is administered in different locations in the United States over a 2-year period, and involves interviews, a physical exam, and laboratory tests. CDC, “National Health and Nutrition Examination Survey,” available at <http://www.cdc.gov/nchs/nhanes.htm> (last accessed July 3, 2011).

While a variety of low-fat and fat-free milks and yogurts are widely available, relatively few cheeses are available that meet the FDA regulatory definitions for “low-fat” and “fat-free,” partially because cheese must meet the requirements of these claims on both the reference amount and also on 50 grams of the food rather than based on the standard serving size of 1 ounce (28 grams).<sup>19/</sup> This labeling requirement which is applied to all foods including cheese that have small serving sizes, requires that a “low fat” cheese have less than 1.7 grams of fat or less per serving, rather than 3 grams of fat or less required for foods with a larger serving size. Based on retail sales, only about 2% of cheese purchased is low-fat and fat-free. By contrast, reduced-fat cheeses, which contain at least 25% less fat than regular versions, offer convenient and appealing choices that can help consumers take modest steps to reduce fat intake. Reduced-fat cheeses make up about 22% of cheese available at retail.<sup>20/</sup> The 2010 DGA included choosing both low-fat and reduced-fat cheese as strategies for meeting dairy food recommendations.

### **Ice Cream/Frozen Desserts**

While ice cream and frozen desserts are traditionally thought of as indulgent treats, there are still occasions where frozen desserts can be appropriate for children. A variety of ice creams have been formulated to be lower in fat and sugar than traditional ice cream products, some specifically for children. Some light ice creams are good sources of calcium. In regard to other frozen desserts, sherbet and frozen yogurt can also be formulated to be lower in fat and calories. Some frozen yogurt products also have added nutrients for additional nutrition. Another benefit of frozen dessert novelties is their built-in portion control. When these products are packaged as single serving units, this makes it easy for kids to consume one low-fat ice cream sandwich as a dessert or snack.

IDFA does not believe that governmental guidance is needed regarding marketing of foods and beverages to children. However, if guidance is finalized, the criteria in the guidelines must be flexible enough to ensure that a wide variety of healthy and nutritious dairy products can be advertised and marketed to children.

### **Dairy companies are making and marketing healthier options for children**

Dairy companies are exploring ways to reduce the sugar, fat and sodium content of their products while still keeping the taste that children enjoy at a price that parents can afford. Many milk processors have been working to develop new reduced-fat, lower-sugar, and lower-calorie products. IDFA estimates that 75-80% of the milk industry is capable of producing milk products that contain 150 calories per 8 fluid ounce serving, as required by the Alliance for a Healthier Generation.

Many dairy products have packaged their products aimed to children in smaller sizes that are more appropriate to the age and appetite of the intended consumers. Chocolate milk is available in 1 cup bottles. Yogurts in flavors appealing to young children can be found in 2.75 ounce and 4 ounce cups. “Squeezable” tubes of yogurt are often in 2.3 ounce sizes. Drinkable yogurt is sold in 5 fluid ounce bottles. Ice cream and frozen novelties are now often available in smaller sizes, such as 4 fluid ounce cups, mini cones and ice cream sandwiches, 1.75 ounce fudge pops

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<sup>19</sup>21 CFR 101.62 *Nutrient content claims for fat, fatty acid, and cholesterol content of foods*

<sup>20</sup>IRI Scanner; Total U.S. Combined Food, Drug, Mass excluding Wal-Mart, 2010.



and 0.5 ounce ice pops. Cheese sticks and bars are available in 0.75 ounce and 2/3 ounce individually wrapped portions. The variety of products offering different serving sizes is perfect to help children meet diet recommendations for nutrients and calorie balance. However, basing nutrients to limit on the Reference Amount Customarily Consumed (RACC) as proposed, would exclude these products from being marketed to children.

Ice cream manufacturers have worked to develop frozen desserts that have lower levels of fat and sugar. Some frozen desserts, such as frozen yogurt or sherbet, may have added levels of beneficial nutrients, such as calcium. Manufacturers have also developed novelties and single serve products in serving sizes appropriate for children in order to help with portion control.

There are many reduced-fat versions of cheese available, including reduced fat versions of cheeses used often for children's snacks, such as light string cheese or reduced-fat cheese sticks.

Cheesemaking does require certain amounts of sodium, and cheesemakers have allocated significant time to developing lower sodium versions. However, the functionality of salt and lack of appropriate substitutes make this extremely difficult. Commonly available salt substitutes, including potassium chloride, may be useful in some foods for replacing the flavor of salt. However, salt that is added as part of cheesemaking is not added solely for flavoring. Salt also helps ensure food safety and is a critical functional component of the brine which is used to cool cheese. Overall, the industry recognizes the inherent sodium content of cheese and continues to work tirelessly to develop palatable, functional products that address this issue.

### **Guidance Should Align with the 2010 Dietary Guidelines for Americans**

The Dietary Guidelines for Americans are the official nutrition recommendations of the United States government. As such, the 2010 Dietary Guidelines for Americans (DGAs) should serve as the basis for any government-released guidance on marketing foods and beverages to children. Additionally, this would align with other federal nutrition programs.

The focus of the 2010 DGAs is promoting healthy eating patterns, rather than setting requirements for specific foods. All of the eating plans identified as examples of those meeting the recommendations of the Dietary Guidelines, the DASH diet, Mediterranean diet, and vegetarian diets, include dairy products.<sup>21/</sup> This demonstrates that dairy, along with other important foods and beverages, form the core of healthy diets.

The 2010 DGAs continued to identify low fat and fat free dairy foods as foods to encourage in Americans' diets.<sup>22/</sup> The recommended number of servings of dairy products either remained the same in some cases or increased in others. In fact, the 2010 DGAs recognized the increasing importance of dairy products in the diets of elementary-aged children by raising the recommended intake from two servings of dairy per day to two and one-half servings of dairy each day for children between the ages of four and eight years old. Children aged nine and older should continue to aim for three servings of low-fat and fat-free dairy products each day.<sup>23/</sup>

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<sup>21</sup> U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2010. 7<sup>th</sup> Edition, Washington, DC: U.S. Government Printing Office, December 2010.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

Most Americans, including school-aged children, are not consuming the recommended levels of dairy products. The 2010 Dietary Guidelines Advisory Committee (DGAC) report highlighted children as a population group of particular concern because nutrition during childhood can affect the development of chronic disease later in life.<sup>24</sup>/The 2010 DGAs noted the importance of increasing the intake of dairy products in children as they actively develop lifelong eating habits, which should include healthy choices such as milk and dairy rather than other, less nutrient-dense options.<sup>25</sup>/

Nutrient density is a concept that originated in the 2005 DGAs and has been carried over into the 2010 DGAs. The importance of building an eating pattern around nutrient-dense foods was highlighted in the speech given by Agriculture Secretary Vilsack at the release of the 2010 DGAs. He encouraged Americans to consider the nutrient density of the calories they consume, saying ~~not~~ every calorie is the same.”<sup>26</sup>/ Dairy foods have excellent nutrient density. Even those options that may contain naturally occurring solid fats or added sugar have high nutrient density because of the levels of beneficial nutrients they provide.

The 2010 DGAs emphasized calorie balance in order to attain weight maintenance. Calorie balance especially focused on decreasing the calories from added sugars and solid fats. The 2010 DGAs updated the nutrients of concern to just four: calcium, potassium, vitamin D and fiber. These nutrients are of concern for children as well as adults. Dairy products are a significant source of calcium, potassium and vitamin D, three of the identified nutrients of concern. Milk is the number one source of all three of these nutrients in the American diet, while cheese and yogurt provide calcium and some are also good sources of vitamin D.<sup>27</sup>/

If food marketing guidelines are set, they should follow and reinforce the main points of the DGAs. Since low-fat and fat-free dairy products are foods to encourage in the DGAs, the marketing of these products should be encouraged, not restricted, in any guidance.

### **Specific Comments on Proposed Guidelines**

#### **Nutrition Standards Must Be Transparent**

Consumers, food companies and regulators must be able to clearly and quickly understand the nutrition standards that would allow foods and beverages to be marketed to children. Guidelines should be straightforward and clear, using criteria and language that consumers understand. Consumers must have this to have confidence in the guidelines and overall program.

Food manufacturers must have this in order to understand how to formulate products for children or to develop marketing plans. In addition to their own efforts, they must be able to clearly communicate with their customers who have questions about the products they sell to children

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<sup>24</sup>Dietary Guidelines Advisory Committee. 2010. Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans, 2010, to the Secretary of Agriculture and the Secretary of Health and Human Services. U.S. Department of Agriculture, Agricultural Research Service, Washington, DC.

<sup>25</sup>U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2010. 7<sup>th</sup> Edition, Washington, DC: U.S. Government Printing Office, December 2010.

<sup>26</sup>USDA Secretary Thomas Vilsack. Release of the 2010 Dietary Guidelines for Americans, January 31, 2011. Archived at [www.dietaryguidelines.gov](http://www.dietaryguidelines.gov). Accessed March 18, 2011.

<sup>27</sup>Dietary Guidelines Advisory Committee. 2010. Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans, 2010, to the Secretary of Agriculture and the Secretary of Health and Human Services. U.S. Department of Agriculture, Agricultural Research Service, Washington, DC.



and parents. Dairy companies are concerned about criteria that would require them to provide proprietary information, such as formulations or marketing plans, to government entities to prove that they are in line with any guidance.

The standards should be based on information that is widely available through the Nutrition Facts panel. This will allow consumers and regulators to have access to this information without needing additional information from the food manufacturer. The Nutrition Facts is information that consumers are familiar with, is available to everyone and is already calculated or analyzed by food manufacturers.

Added sugars and naturally occurring sugars are hydrolyzed into the same monosaccharides in the body. The body treats all sugars in the same way, no matter whether they are added or naturally occurring in a food. In the same way, analytical methods cannot distinguish between natural or added sugars in a product.

Although the proposal tried to address the issue of naturally occurring nutrients by exempting these nutrients such as saturated fat and sodium found in low fat milk, from the “nutrients to limit” set in the proposal, our members have considered the implication of this exemption for dairy products. They have concerns that this approach is not clear to consumers or to regulators, who cannot identify naturally occurring nutrients through use of the Nutrition Facts. Basing guidance on criteria such as naturally occurring nutrients or added sugar instead of total sugar is not transparent.

### **Qualifications for Principle A: Meaningful Contribution to a Healthy Diet Are Unclear**

The proposed guidelines identify “fat-free or low-fat (1%) milk products” as foods that make a meaningful contribution to a healthful diet. However, the inclusion of the milkfat percentage would exclude a number of low-fat dairy products from being able to be marketed to children. Many low-fat dairy products contain more than 1% milkfat. Low-fat milk must contain less than 3 grams of fat per reference amount, to qualify for the “low fat” claim, which would permit up to 1.23% milkfat in milk products and higher milkfat percentages in cheese based on the small serving size. For example, low fat cheese must have 3 grams of fat or less per 50 grams of cheese which is actually 6% milkfat. We believe that this was not the intent of the proposal, so the percent milkfat declaration should be removed from all references to low fat milk products including yogurt and cheese.

Option 1, which requires foods to be comprised of at least 50% by weight of foods that contribute to a healthy diet, is not clear about how condensed, partially dehydrated or fully dehydrated ingredients would be counted. Many dairy products contain both full strength milk, along with condensed, concentrated or dehydrated milk or milk products. These products should be able to be credited for all the dairy ingredients used, including the hydration of the concentrated milk ingredients.

### **Principle B: Nutrients to Limit as Proposed, Would Eliminate the Marketing of Many Dairy Products**

Focusing solely on nutrients of concern will limit many nutrient-dense products, including some dairy products, from being marketed to children. Setting requirements for minimum content for

nutrients to encourage should be used to promote the marketing of nutrient-dense products. This would be in line with the 2010 DGAs which promote calcium, potassium, vitamin D and fiber as nutrients of concern.

Nutrient limits based on the Reference Amount Customarily Consumed (RACC) and 50 grams of food are inappropriate for setting standards for children. The RACCs as set by FDA are the basis for nutrient content claims.<sup>28/</sup> These are based on the amount of food usually consumed by the general American public, including adults. As indicated above, many dairy products targeted to children have been specifically package in smaller containers or portions to allow for the smaller appetites and portions available for younger children. These portions are often not close to the RACC, so it is not logical for marketing to depend on the RACC, rather than the portion amount. An example of this is the RACC for yogurt, which is 8 ounces. However, many yogurts today are available in single serve 4 ounce or 6 ounce containers with many yogurts marketed to kids sold in 4 ounce single serve containers. National survey data indicate that the average amount of yogurt consumed per eating occasion is 4.4 ounces for children 2-11 years old and 6.1 ounces for children 12-17 years old.<sup>29/</sup> Therefore, IDFA strongly recommends that the nutrient standards be based solely on the serving size rather than the RACC for food packaged in individual servings.

The 50 gram rule, which is related to regulations governing nutrient content claims,<sup>30/</sup> will also cut out a number of nutrient-dense foods that can be marketed to children. Most cheese has a RACC of 30 grams, meaning that “low fat” or “low sodium” claims must be based on both the labeled serving size and 50 grams of cheese. For cheeses that are individually wrapped in 20 gram sticks or bars, basing nutrient limits on a 50 gram basis would be equivalent to a child consuming 2.5 sticks at one time.

The outcome of this 50 gram rule would be that almost no cheeses would meet the proposed fat or sodium requirements. This is not because of the amount of fat or sodium in a single serving of the food, but rather the amount in multiple servings of a cheese. In order to accommodate marketing of cheese the nutrition standards should be applied on the actual RACC basis of one ounce (28 grams) for multi-serving packages and the actual labeled serving size for individual slices, sticks or pieces.

## **Conclusion**

Self-regulation of food and beverage marketing to children is working. Additional government guidance regarding marketing to children is not necessary or warranted. Milk and milk products provide nine essential nutrients, including three of the four nutrients identified as “nutrients of concern” in the 2010 DGAs— calcium, vitamin D and potassium. Children are falling short of recommended intakes of milk products. Milk consumption is replaced by soft drinks, fruit drinks or other beverages as children get older.

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<sup>28</sup> 21 CFR 101.12

<sup>29</sup> Dairy Research Institute™, NHANES (2001-2008). Data Source: Centers for Disease Control and Prevention, National Center for Health Statistics, National Health and Nutrition Examination Survey. Hyattsville, MD: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, [2001-2002; 2003-2004; 2005-2006; 2007-2008].

[<http://www.cdc.gov/nchs/nhanes.htm>]

<sup>30</sup> 21 CFR 101.13

The 2010 Dietary Guidelines for Americans (DGAs) should serve as the basis for any government-released guidance on marketing foods and beverages to children. Since low-fat and fat-free dairy products are foods to encourage in the DGAs, the marketing of these products should be encouraged, not restricted. If guidelines are set, the qualifications for marketing products to children should be transparent to consumers and regulators, including information declared on the Nutrition Facts panel, using total amounts of nutrients, rather than added sugar levels.

The criteria for Principle A (Meaningful Contribution to a Healthful Diet) is unclear. IDFA's members have concerns about the qualifications used for concentrated versions of dairy products and for the definition of low-fat. Principle B (Nutrients to Limit) would hinder the marketing of dairy products by setting using the Reference Amount Customarily Consumed and, in some cases 50 grams of food, as the basis for nutrient limitations. Therefore the nutrition standard for Principle B should be changed to apply to actual RACC servings for multi-serving packages and actual labeled serving size for individually packaged servings.

Since the Dietary Guidelines for Americans have identified milk products as a food group to encourage and most children fall short of the recommended levels of intake, marketing of nutrient-dense dairy products should continue to be allowed in order to promote the consumption of dairy products and the nutrients they provide for America's children

Sincerely,

Cary Frye  
Vice President, Scientific and Regulatory Affairs