Donald Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

July 14, 2011

Electronic Filing via commentworks.com

Re: Interagency Working Group on Food Marketed to Children: FTC Project No. P094513. General Comments and Comments on the Proposed Nutrition Principles and Marketing Definitions.

Dear Mr. Clark:

The Children's Food and Beverage Advertising Initiative (CFBAI or Initiative) of the Council of Better Business Bureaus (BBB) appreciates the opportunity to provide comments to the Interagency Working Group (IWG) on Food Marketed to Children to help shape its recommendations in the report to Congress that is required by the 2009 Omnibus Appropriations Act.

The CFBAI's participants share the IWG and the First Lady's goals of combating childhood obesity and are committed to being a part of the solution and supporting the efforts of parents by advertising healthier foods in child-directed advertising. We are pleased that the FTC supports self regulation efforts to address childhood obesity and recognizes that progress is being made.

Below we provide an overview of our comment. Following that, Part I contains an introduction, and Part II describes the BBB and the CFBAI. Part III provides comments on the IWG's proposed nutrition principles. It also describes new category-specific uniform nutrition criteria that the CFBAI is adopting and why they are a viable alternative to the IWG's approach. Part IV explains why the definitions of child-directed marketing that the IWG proposes to use are vague and over broad, and why the CFBAI's focus on advertising that is primarily directed to children under 12 is the better approach.

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Comment Overview

We are delighted that the IWG has requested "viable alternatives" to its proposed nutrition principles to guide industry self-regulatory efforts. We are including such an alternative in this comment (Appendix A). The CFBAI's new uniform nutrition criteria build on what CFBAI's participants have already accomplished. These new criteria will result in participants improving many products even further and be a solid roadmap for new product development. The new criteria are the result of a year-long effort to strengthen the existing criteria systematically.

Overall these new uniform nutrition criteria will impose significant challenges on the participants. They will require changes to many products the participants currently advertise — ones that already meet meaningful nutrition standards — if they wish to continue advertising them after these criteria go into effect. But, because they are realistic, the participants have agreed to the additional challenge of implementing the new CFBAI uniform nutrition criteria no later than December 31, 2013.

In contrast, the IWG's principles are not realistic and thus are not aspirational. Unlike the CFBAI's nutrition criteria, they will discourage, rather than encourage innovation. Specifically, the IWG's specific goals for nutrients to limit and for food groups to include exceed what reasonably can be accomplished within five years, and the longer term goals present even greater problems.

Reformulating familiar and well-liked products can be enormously difficult when a food producer is trying to increase food groups (such as whole grains or vegetables) *and* decrease nutrients such as sodium and sugars. If dramatic shifts (as the IWG proposes) are made to either nutrients to limit and/or food groups, meeting consumer taste expectations can be especially challenging. Shifting both, at the same time, is far more challenging, both from a taste standpoint and a functional and product performance standpoint.

It is very questionable whether, across the spectrum of foods that are advertised to children (and teens), foods that would meet the IWG's limits can be produced and, if they can, whether they would be safe, affordable or tasty. Unless foods taste good, no matter how healthy, they are not going to improve children's diets if children won't eat them. Further, in a period of rising food costs and rising food insecurity,

the significance of affordability cannot be overlooked. The importance of safe foods (i.e., ones that are microbiologically stable) is obvious.

The IWG's suggestion that companies focus their efforts on the 10 categories of foods that the FTC found were most heavily advertised to children in 2006 does not change this conclusion. That list, which includes soda and candy, is out of date, as other recent empirical data show. And, it certainly does not represent what foods the CFBAI participants have been advertising to children since they launched their commitments starting in 2007.

Although we recognize that further improvement is possible and additional improvements *will* occur under the new CFBAI criteria, the IWG's suggestion that its proposal will shift "children's food marketing away from foods of little or no nutritional value toward more healthful foods" is without merit when it comes to the CFBAI participants' advertising. These companies joined the CFBAI because they are committed to our goal of promoting healthier dietary choices to children and through their commitments already have shifted children's advertising away from foods with little or no nutritional value.

This initiative was founded in part to respond to the FTC's 2005/2006 call for self regulation to do more about advertising directed to children because of childhood obesity, and to the Institute of Medicine's (IOM) recommendations in its 2006 report, "Food Marketing to Children and Youth: Threat or Opportunity" (IOM Report). As IOM specifically recommended, CFBAI participants have succeeded in shifting their advertising to children emphasis to foods "that are substantially lower in total calories, lower in fats, salt, and added sugars, and higher in nutrient content." (IOM Report at p. 11).

The foods that the CFBAI's participants advertise today are *not*, for example, high in calories. In the individual food category all foods (except two peanut butters) contain no more than 200 calories. Main dishes do not exceed 350 calories and meals do not exceed 600 calories. And, their ads certainly are *not* focused on "cookies, cakes, pizza, soda or energy or sports drinks" that are the top sources of calories in the diets of children 2-18, according to the FTC. Their advertising has been for foods such as cereals, crackers, soups, canned pastas and meals with fruit and low-fat dairy that meet meaningful nutrition standards that are familiar to nutrition

professionals. The advertising also includes many foods that meet the Food and Drug Administration's (FDA) definition of "healthy" foods. A summary of the participants' product development and reformulation efforts is attached as Appendix B.

The CFBAI's new criteria will continue, and advance the development of products that are aligned with the Dietary Guidelines for Americans. The CFBAI's process for developing the criteria, unlike the IWG's proposed principles, had the benefit of the tremendous in-house experience of high-level nutrition professionals who work, on a daily basis, with teams on developing new products and changing the recipes for others. Accordingly, these new criteria are challenging, but practical.

Specifically, for the last year the CFBAI and scientists and nutrition professionals from many of the participants have been engaged in an effort to review and improve systematically the current, company-specific nutrition standards. The then planned issuance of the Dietary Guidelines for Americans 2010 (DGA 2010) was a key impetus for review as the CFBAI requires that company nutrition standards be consistent with established scientific and/or government standards. This review resulted in the new criteria for 10 product categories that are described in Appendix A.

Coincidentally, as the IWG suggested, these criteria have been developed based on an extensive review of "federal food labeling regulations defining the nutrient content claim 'healthy,' federal regulations establishing disclosure levels for certain nutrients in connection with other nutrient content claims, or the disqualifying nutrient levels used for health claims" (IWG Request for Comments at p. 6). Our review also included many other recommendations and criteria including the IWG's proposed tentative nutrition standards (Dec. 2009), the subsequent proposed principles (April 2011), the DGA 2010, IOM Reports on School Food and School Meals, and many respected third-party nutrition standards for foods marketed to children.

In creating the criteria, because of the participants' hands-on experience and expertise, we were able to be mindful of the current marketplace, the state of technology and food science, and companies' experiences with product changes and taste preference panels. In developing the criteria, the CFBAI also was sensitive to competitive issues and the criteria are purposefully flexible to encourage greater participation in self regulation and to promote competition. The attached "White

Paper on CFBAI's Uniform Nutrition Criteria" (Appendix C) describes the CFBAI's nutrition science review and the basis for the category-specific nutrition criteria.

The new uniform nutrition criteria differ from the current company-specific criteria in at least five ways. The CFBAI criteria:

1. Eliminate a product qualifying solely on a "reduced" claim (i.e., ≥ 25% less sodium).
2. Eliminate a product qualifying solely because it is packaged in a portion controlled, 100-calorie pack.
3. Include calorie limits for all categories.
4. Include nutrients to limit (NTL) criteria for key items: saturated fat, *trans* fat, sodium and total sugars for all categories.
5. Include nutrition components to encourage (NCTE) (food groups and/or nutrients) for all product categories.

Currently, not every participant has a standard for calories, NTL and NCTE, so the new criteria fill those gaps.

These criteria have a number of advantages over the current, company-specific criteria, and the IWG's proposal.

First, they are uniform. Now products across companies will meet the same criteria. At the same time, unlike the IWG's broad one-size-fits-all criteria, the CFBAI's category-specific criteria allow the inherent nutritional differences among product categories to be factored into the criteria, and the differing role of individual foods or categories in the diet. For example, dairy, grain and nut products inherently are very different nutritionally. Accordingly, the CFBAI criteria treat them differently. For example, the criteria for grain products such as cereals differ from those of soups and main dishes. But, now all cereals will have to meet the same sugars and other criteria for grain products, rather than three similar, but slightly different, sets of company-specific criteria. Similarly, all companies' canned pastas will have to meet the same sodium limit as well as other criteria for the main dishes category.

Second, the new criteria are stronger because they fill the gaps that currently exist (i.e., not every participant has a standard for calories, NTL and NCTE) and overall the limits and requirements are stronger than the current standards. For example, many of the currently advertised kids' yogurts, although nutritionally rich, do not

meet the new criteria because they are slightly too “sugary.” Additionally, many wholesome and nutritious canned pastas and lunch items do not meet the new criteria because sometimes they are too “salty.” The recipes for these and other products will need to be changed to meet the new criteria if a company wishes to continue advertising them after the implementation date.

Third, they are even more transparent and easier to understand and apply than the current standards. Thus, they can more easily serve as a roadmap for child-directed advertising practices for other U.S. food (or media) companies, and simplify compliance monitoring for the CFBAI and others. For example, they are based on the labeled serving size, which appears on the required Nutrition Facts Panel (NFP) on products, and the NFP can serve as a reference, for virtually all products, on whether key criteria have been met.

In contrast, the IWG’s principles are complex, inconsistent with current Federal regulations, lack transparency, and are difficult to apply. The IWG criteria are based on Reference Amount Customarily Consumed (RACC), a regulatory term and concept that is unfamiliar to anyone whose work does not involve FDA/USDA regulations or related compliance activities. The IWG criteria also require the application of a rule known as the “small RACC” rule (meaning that for items that have a small RACC of 30 grams or two tablespoons, the food must meet the criteria per 50 grams of food). Moreover, the IWG requires the small RACC rule to be applied even to what are already extremely low limits for saturated fat and *trans* fat. This is at odds with FDA’s current requirements for nutrient content and health claims, wherein saturated fat and *trans* fat levels are not required to meet the small RACC rule (i.e., meet limits at the higher 50 g portion size). Further, the IWG’s principles require reference to the USDA national nutrient database for standard reference *and* the proprietary company recipes. The IWG’s principles permit the inherent nutrient content to be excluded from the calculation, while the remaining “added” nutrient is counted towards the limit. The USDA database has severe limitations. The database does not accurately reflect the nutrient content of many products in the marketplace. Further, although it will tell you how much of a nutrient is inherent to certain foods, such as how much saturated fat there is in an egg, to know how many eggs are in the product, one would need to refer to the proprietary recipe. Thus, for many products, without such data, it will not be possible for interested parties to determine whether a product meets or fails the IWG’s criteria.

As noted, as of January 1, 2014, the CFBAI's criteria will be the foundation for participants' commitments to advertise only healthier foods in advertising primarily directed to children under 12 ("child-directed"), as advertising is defined in the CFBAI's Core Principles and Program Statement (3rd Edition, Sept. 2010) (Appendix D). These principles broadly cover advertising in child-directed media and channels, including both traditional media (TV, radio, print, and company-owned and third-party websites) and emerging venues, such as digital and social media (e.g., ads on child-directed apps, or on games rated "EC" or labeled for children under 12).

The IWG, however, proposes the use of far more extensive definitions of child-directed advertising and states that they have been "tested" because the FTC used them for information gathering purposes for reports on marketing to children. But, in fact, they have *not* been validated as ones that appropriately identify child-directed advertising. Indeed, companies that were required to respond to the FTC's subpoenas repeatedly advised the FTC that they were being asked to report on non-relevant activities (e.g., promotional activities that were mom or family-directed, not child-directed). The FTC also noted in its 2008 Report on Marketing Food to Children and Adolescents (FTC 2008 Report) that companies had lodged objections to its definitions. Thus, the FTC is aware that its "testing" revealed its definitions were problematic.

Definitions that sweep in, for example, the use of iconic company characters with appeal to all ages on packaging, or on products with particular appeal to specific adult age groups, or that discourage pro-social corporate or brand sponsorships (such as for physical activity or sporting events) have not been calibrated appropriately and are not in the public interest. Similarly, packaging that may be "child-appealing," and hence of interest to *parents* who shop for their children, and who along with other adults represent the vast majority of visitors to grocery stores (because most shoppers do not bring their children on their shopping trips) (see n.67, below), is not the same as "child-directed."

In contrast, we've worked hard with our participants to strike the right balance to cover advertising that is *primarily directed at children under 12*, and thus minimize the impact on others of the participants' voluntary restrictions on advertising.

Focusing on advertising primarily directed to the under 12 age group reflects a thoughtful and proportionate response by responsible food marketers who participate in self regulation. Expanding self regulation to address adolescents age 12-17 is neither necessary nor appropriate. Our society recognizes that seven year olds are different than 17 year olds. Adolescents are emerging adults and as such have a greater capacity to understand the world around them, including advertising, than children. Accordingly, our society grants adolescents meaningful privileges and responsibilities including the ability to be licensed to drive vehicles, be employed, pay taxes, marry (before 18 with parental consent throughout the U.S., and at 15 without parental consent in one state) be held criminally responsible for their actions in some circumstances, and enlist in the armed services (at age 17 with parental permission). Asking food companies to restrict food advertising to this group is inconsistent with the U.S. practice of treating adolescents more like adults than children. Moreover, because attempting to do so would interfere with the rights of adults to receive information it is also bad public policy.

The CFBAI, with its focus on children under 12 and broad coverage, *is* working and has made an important difference in what's advertised to children. It is noteworthy that a review, conducted by leading academics, of the progress made in meeting the IOM Report's recommendations, found that the food industry, through self regulation, was the only sector that had made "some" progress (higher than all other groups, including government, that were evaluated) in implementing the Report's recommendations (see n.7, below).

At the same time, the CFBAI has evolved since its inception. The successful development of uniform nutrition criteria is the latest in a series of significant program developments. These include a substantial expansion of its already rigorous and far-reaching requirements, harmonization of the definition of "child-directed" advertising, and a large increase in the number of participants.

In keeping with the CFBAI's principles, the CFBAI criteria will be reviewed after the issuance of the Dietary Guidelines for Americans 2015 (DGA 2015) to ensure that they are consistent with the new guidelines. The CFBAI's review also will consider the IWG's Report to Congress. In 2016, after the DGA 2015 have been issued, the participants will have had about two years of experience with the new criteria. If

necessary they will be aligned with any new DGA guidance, and if appropriate and feasible, strengthened even further.

I. Introduction

Childhood obesity is a national challenge requiring multiple strategies and interventions. BBB and leading food companies are committed to being a part of the solution by using child-directed advertising to promote healthier dietary choices and lifestyles. Under the CFBAI's leadership, self regulation has significantly changed the landscape of food advertising to children under 12.

At the outset, it is important to note that the IWG's "goal of improving children's diets and addressing the high rates of childhood obesity," which CFBAI's participants share, can be accomplished only through a multi-faceted solution. (IWG Request for Comments at p. 1). This solution must include a coordinated campaign to educate all consumers, but particularly parents, about nutrition and calories, because parents exert the greatest influence over their children's preferences and diets. The CFBAI participants' efforts are designed to support parents, not supersede them.

Survey data consistently show that most consumers do not understand calories,[1] and that many overweight moms underestimate their own weight and that of their children.[2] Unless and until these key information deficiencies are addressed systematically by government (and others), it will not be possible to stem the tide of childhood obesity. Advertisers' self regulation efforts, while important, can play only a small part in addressing the complex problem of childhood obesity, particularly when these building blocks for establishing healthy eating patterns are missing.

The CFBAI participants' commitments are supportive of parents' efforts to guide their children to healthier choices. The participants do this by developing and advertising wholesome and nutritious products to children, by providing information about healthy eating and lifestyles, and by supporting or sponsoring events and organizations that promote healthy eating, physical activity and sports (see Appendix

[1] International Food Information Council Foundation, *2011 Food & Health Survey: Consumer Attitudes Toward Food Safety, Nutrition & Health* (2011), available at http://www.foodinsight.org/Content/3840/2011_IFIC_FDTN_Food_and_Health_Survey.pdf. *See also* 2010 Dietary Guidelines Alliance, *Consumer Research Report: Motivating Families to Lead a Healthier Lifestyle in 2011 and Beyond* (2010), available at http://www.foodinsight.org/Content/3651/FINAL2010DGAConsumerResearchReport.pdf.

[2] Nicole E. Dumas *et al.*, *Obesity and Intergenerational Misperception of Body Size Prevalent among Urban Women and Their Children*, presentation at the AHA 2011 Conference, "Nutrition, Physical Activity and Metabolism/Cardiovascular Disease Epidemiology and Prevention 2011 Scientific Sessions," on March 23, 2011, available at http://www.newsroom.heart.org/index.php?s=98&cat=217&mode=gallery.

E). At the same time, Kaiser Family Foundation survey data show that although parents are concerned about inappropriate media content, advertising to children is a lesser concern, and food advertising ranks near the bottom of the types of advertising for which there is concern.[3]

Specifically, the Kaiser Family Foundation survey found that "two-thirds of parents say they are 'very' concerned that children in this country are being exposed to too much inappropriate content . . . ."[4] In contrast, only "34% say they are 'very' concerned that their children are exposed to too many ads in the TV programming they watch . . . ."[5] Among those who are concerned, "just 10% named food advertising as the issue that concerns them most."[6]

It is no surprise, however, that parents favor healthy food advertising to children. The Initiative's goal of shifting advertising to healthier products supports parents in guiding their children to healthier dietary choices and healthy lifestyles. The participants voluntarily have made strong and transparent commitments to the CFBAI regarding their child-directed advertising. Four participants are not engaging in advertising primarily directed to children under 12 and the 13 others are using science-based nutrition standards to determine what products are in their child-directed advertising.

The participants' nutrition standards are driving product reformulation and innovation. As a result, the fat, sugar, sodium or calorie content of foods advertised to kids has been reduced, and their nutrient density increased. For example, during the last several years, as the Initiative became operational, the participants have reformulated or newly created more than 100 products that are advertised to children to meet nutrition standards. (This number does not include products that did not meet participants' criteria that they stopped advertising or discontinued

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[3] *See* Kaiser Family Foundation, *Parents, Children, and Media, a Kaiser Family Foundation Survey* (June 2007), available at http://www.kff.org/entmedia/upload/7638.pdf.
[4] *Id*. at 3.
[5] *Id*. at 6.
[6] *Id*. Parents cited ads for toys, video games, clothing, and alcohol/beer as of greater concern than food ads. These results are consistent with findings of a Rudd Center 2008 Survey, which found significant levels of concern with the effect of media on young people, with the greatest concern expressed about sexual permissiveness, violence and materialism. Respondents also expressed concern about bad eating habits portrayed in the media and food marketing to kids, "but these concerns were low relative to other media effects." Rudd Center for Food Policy & Obesity, *Public Perceptions of Food Marketing to Youth, Results of the Rudd Center Public Opinion Poll*, *May 2008* (2009) at 13, available at http://www.yaleruddcenter.org/resources/upload/docs/what/reports/RuddReportPublicPerceptionsFoodMarketingYouth2009.pdf.

altogether. It also does not include products that participants reformulated prior to joining the CFBAI.)

It is noteworthy that a review of the progress made in meeting the IOM Report's recommendations, conducted by leading academics, found that that the food industry, through self regulation was the only sector that had made "some" progress (higher than all other groups, including government) in implementing the Report's recommendations.[7] Although the IWG recognizes that progress has been made, we have prepared Appendix B to illustrate the *significant* changes that have occurred.

II. About BBB and CFBAI

The Council of Better Business Bureaus, a non-profit 501(c)(6) membership organization, is the umbrella organization for local Better Business Bureaus, which are grassroots organizations that foster a fair and honest marketplace and an ethical business environment. BBB also administers a number of self-regulation programs including the *National Advertising Division*, the *Children's Advertising Review Unit* and the *Children's Food and Beverage Advertising Initiative*.

CFBAI Background and Goals. BBB and 10 (now 17) leading food advertisers announced the program's principles in November 2006. The Initiative's goal is to be part of a multi-faceted solution to the complex problem of childhood obesity by using advertising to help promote healthier dietary choices and lifestyles among children under 12. Under the Initiative's Core Principles, participants commit to not engage in child-directed advertising or that 100% of their child-directed advertising will be for healthier products.[8] Their advertising represents a substantial majority of child-directed food advertising.

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[7] V. Kraak, M. Story, J. Ginter & E. Wartella, *Progress Achieved Toward the IOM Food Marketing Report Recommendations for American Children and Adolescents, 2005–2010,* 25 FASEB J. 781.4 (2011) (abstract).

[8] The CFBAI's original Core Principles required that participants commit to advertising healthier products at least half the time but all participants committed that 100% of their child-directed advertising would be for healthier products. In December 2009 the CFBAI announced Enhanced Core Principles that formalized the 100% commitment in the Principles, effective January 1, 2010. The Enhanced Core Principles also eliminate the option of satisfying the Initiative's advertising commitment through healthy lifestyle messaging or some combination of better-for-you product and healthy lifestyle messaging. Now all advertising commitments must be met through healthier products (or by not advertising). Nonetheless, the participants continue to support and promote healthy lifestyles. The Enhanced Core Principles, which are attached as Appendix D, also are available at www.bbb.org/us/enhanced-core-principles/.

Historically, self regulation has focused on children under 12, and thus the CFBAI's efforts also focus on this age group. Although studies suggest various ages at which children begin to understand the persuasive intent of advertising, it is generally agreed that by age 12 children do have that ability. Because special protections are important for children under 12, the advertising industry always has had a set of stringent rules for advertising primarily directed to children under 12.

The Children's Advertising Review Unit or CARU, which is a BBB-administered program,[9] has promoted high standards of responsible advertising to children under 12 since 1974.[10] CARU and CFBAI are complementary programs. While CFBAI focuses on *what* foods are advertised to children, CARU focuses on *how* products, including foods, are advertised to children.[11] CARU's Guidelines apply to all advertising primarily directed to children under 12 without regard to the media or whether the advertiser is a BBB member or CARU supporter. Together the CFBAI and CARU self-regulation programs provide thoughtful and rigorous oversight of child-directed food marketing.

Participants' Current Commitments. Three candy companies no longer engage in child-directed advertising, and another participant is continuing its longstanding commitment to not direct advertising to children under 12.[12] Thirteen participants have pledged to advertise to children under 12 only foods that meet science-based nutritional standards that BBB has reviewed and approved.[13] The standards the companies use today are recognizable ones that are familiar to nutrition

[9] CARU's operational policies are set by the National Advertising Review Council (NARC), which is a strategic alliance of the advertising industry and the BBB.

[10] CARU has Guidelines for children's advertisers to ensure that children's advertising is not deceptive, unfair or inappropriate for its intended audience and it updates these Guidelines periodically to reflect marketplace and media developments.

[11] In 2006, BBB and NARC updated CARU's Guidelines regarding child-directed food advertising to make it even more robust. The revised Guidelines help ensure that food advertising to children is appropriate by:

- Requiring that depictions of food being eaten are tied to the labeled serving size;
- Requiring that snack foods be clearly depicted as such and not as a substitute for meals;
- Prohibiting the disparagement of healthy foods or lifestyles; and
- Requiring that mealtime depictions of foods be shown in the context of a nutritionally balanced meal.

The CARU staff prepared a summary of the CARU cases involving food advertising to children, which is attached as Appendix F.

[12] The participants that do not engage in child-directed advertising are Cadbury Adams USA LLC, The Coca-Cola Co., The Hershey Co., and Mars, Incorporated (Kraft Foods has purchased Cadbury Adams and its activities will soon be entirely subsumed into the Kraft Foods pledge). In addition, Nestlé USA no longer advertises its Wonka brand (or other confections) to children. It advertises other products that meet its nutrition standards, such as 100% fruit juice.

[13] These are Burger King Corporation; Campbell Soup Company; ConAgra Foods, Inc.; The Dannon Company; General Mills, Inc.; Kellogg Company; Kraft Foods Global, Inc.; McDonald's USA, LLC; Nestlé USA; PepsiCo, Inc.; Post Foods, LLC; Sara Lee Corp., and Unilever United States.

professionals. They are generally based on the Dietary Guidelines for Americans (2005) and FDA standards, such as FDA's definition of "healthy." The familiar "35, 10, 35" metric is commonly used.[14]

The Initiative's current approach of balancing flexibility (company-proposed nutrition standards) with rigor (standards must be science based and approved by BBB) and transparency (standards and commitments are publicly available on BBB's website) has encouraged participation and competition among the participants, resulting in significant improvements in products advertised to children.

CFBAI's Requirements Cover Traditional and New Media Platforms. The CFBAI broadly defines child-directed advertising to cover traditional and new media platforms and channels. Under the CFBAI's Core Principles, participants commit to devote all of their advertising primarily directed to children under 12 on TV, radio, print and the Internet to products that meet their nutrition standards. "Internet advertising" includes advertising on child-directed third-party websites and company-owned websites that are primarily directed to children under 12.[15] The Core Principles also have always included a separate commitment regarding participants' "Interactive Games" (commonly referred to as "advergames"), which often are part of the content of company-owned websites.

Consistent with the Initiative's focus on child-directed advertising, the CFBAI and its participants announced in December 2009 that the CFBAI's scope was being expanded, effective January 1, 2010. The venues and types of marketing covered by the Core Principles now also include advertising on video and computer games rated EC or Early Childhood, other video games that are age-graded on the label as being primarily child-directed, and cell phone or PDA marketing that is primarily directed to children under 12. Word-of-mouth advertising that is primarily directed to children under 12 is also covered. Although we expect television to continue to be the main venue for advertising to children, the Core Principles now include newer and still-emerging platforms.

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[14] This means that no more than 35% of calories can come from fat, less than 10% calories from saturated fat and no more than 35% of calories from sugars (or no more than 35% sugars by weight).
[15] The CFBAI's most recent report, "A Report on Compliance and Implementation During 2009" (hereafter "CFBAI 2009 Report") is available at http://www.bbb.org/us/children-food-beverage-advertising-initiative/info. Appendix F to the Report includes a table of child-directed company-owned websites maintained by participants in 2009.

III. The IWG's Proposed Nutrition Principles Are Unworkable and Unrealistic: The CFBAI's Category-Specific Uniform Criteria Are a Viable Alternative

A. Foods and Food Categories Most Heavily Marketed to Children Have Changed Significantly Since 2006

The IWG states that the purpose of its proposed nutrition principles "is to guide the industry in determining which foods would be appropriate and desirable to market to children to encourage a healthful diet and which foods industry should voluntarily refrain from marketing to children." (IWG Request for Comments at p. 5). The IWG proposes that industry focus its "efforts on those categories of foods that are most heavily most heavily marketed directly to children, such as breakfast cereals, carbonated beverages, restaurant foods and snack foods." (*Id*. at p. 3). The IWG further expanded the list to include six additional categories for which there are significant advertising expenditures. Thus, it recommended that "the food industry focus its efforts" on these 10 categories: "breakfast cereals; snack foods; candy; dairy products; baked goods; carbonated beverages; fruit juice and non-carbonated beverages; prepared foods and meals; frozen and chilled desserts; and restaurant foods." (*Id.* at p. 7).

As a preliminary matter, reliance on six-year old data, when better data exists, and conflating the categories of products marketed to children with those marketed to adolescents paints an erroneous picture of what products are advertised frequently to children today.[16] It also unfairly obscures the substantial changes and improvements in foods marketed to children under 12 that CFBAI participants (and

[16] The IWG contends that a more recent Yale University Rudd Center study confirms, based on 2008 Nielsen data, that the IWG's categories include the foods most heavily marketed to children and adolescents. (IWG Request for Comments at n.16, citing Rudd Center for Food Policy & Obesity, *Trends in Television Food Advertising: Progress in Reducing Unhealthy Marketing to Young People?* (Feb. 2010), available at http://www.yaleruddcenter.org/resources/upload/docs/what/reports/RuddReport_TVFoodAdvertising_2.10.pdf ("Rudd Center Study")). The Rudd Center Study, however, measured children's total exposure to ads "across all types of programming," without regard to whether the ads were placed in children's programming. (Rudd Center Study at 2). The data thus include children's exposure to adult-targeted ads across all shows and are not an accurate measure of advertising *directed* at children. Further, the Rudd Center Study uses 2008 data which does not capture changes in child-directed advertising that have occurred since then. Finally, the Rudd Center Study does not support the IWG's inclusion of carbonated beverages on the list of categories "most heavily advertised" to children. Carbonated beverages rank 10th on the study's tally of children's annual ad exposure list, averaging 47 ads per year (less than one ad per week across all television shows). (Rudd Center Study at p. 5). The Rudd Center released a June 2011 update of its findings which, again does not reflect advertising *directed* at children because it relies on exposure data across all types of programming. Rudd Center for Food Policy & Obesity, *Trends in Television Food Advertising to Young People* (June 2011), available at http://www.yaleruddcenter.org/resources/upload/docs/what/reports/RuddReport_TVFoodAdvertising_6.11.pdf.

others) have made since 2007. Changes have been both *quantitative*, through decreases in the amount of advertising within product categories, and *qualitative*, through improvements in the nutrition composition of the products advertised since the 2006 period analyzed in the FTC's 2008 Report. Below we discuss widely available data showing the shifts in many of the referenced product categories.

Carbonated Beverage Advertising. This area has changed dramatically because of a number of important advertising and in-school initiatives. For example, PepsiCo, Inc., one of CFBAI's founding participants, pledged to advertise to children only products meeting strict nutrition criteria starting January 1, 2008, and The Coca-Cola Company has a longstanding commitment not to advertise to children under 12 that predates the CFBAI program. Other beverage companies, as signatories to the International Council of Beverages Associations, also committed, starting in May 2008, to not advertise all non-alcoholic beverages other than water, fruit juice and dairy-based beverages to children when they are at least 50% of the audience.[17] Similarly, the School Beverage Guidelines, developed by the Alliance for a Healthier Generation and the industry, have substantially changed the beverages that are allowed to be sold in elementary, middle (for both, only water, milk and 100% juice are allowed), and high schools (some no- and low-calorie beverages with portion/calorie caps allowed).[18] A recent Georgetown Economic Services (GES) study confirms that ads for soft drinks in children's programming decreased by nearly 100% from 2004 to 2010.[19]

Snack Food Advertising. This area also has changed significantly. The GES study found that, between 2004 and 2010, ads for snack bars and ads for all snack foods in children's programming decreased by approximately 100% and 71%,

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[17] International Council of Beverages Associations, *Guidelines on Marketing to Children* (2008), available at http://www.icba-net.org/files/resources/icba-marketing-to-children-guidelines.pdf.

[18] In May 2006, the Alliance for a Healthier Generation (a joint initiative of the William J. Clinton Foundation and the American Heart Association) worked with representatives of The Coca-Cola Company, Dr Pepper Snapple Group, PepsiCo, Inc. and the American Beverage Association (ABA) to establish the Alliance School Beverage Guidelines. These guidelines limit portion sizes and reduce the number of beverage calories available to children during the school day. *See* Alliance for a Healthier Generation, *School Beverage Guidelines*, available at http://www.healthiergeneration.org/companies.aspx?id=1376. As of spring 2010, there had been an 88 percent decrease in total beverage calories shipped to schools between the first half of the 2004-05 school year and the first half of the 2009-10 school year. ABA, *Alliance School Beverage Guidelines Final Progress Report* (2010), available at http://www.healthiergeneration.org/uploadedFiles/About_The_Alliance/SBG%20FINAL%20PROGRESS%20REPORT%20(March%202010).pdf.

[19] Georgetown Economic Services (GES), *Food and Beverage Advertising 2004 and 2010: Children's Impressions and Expenditures on Children's Programs* (2011), available at http://www.gmaonline.org/file-manager/Health_Nutrition/ges_report_on_childrens_tv_advertising.pdf.

respectively.[20] Further, CFBAI's informal study of 38.5 hours of children's television programming that aired during May-June 2010 found that snack foods represented only 2.2% of all ads and 19% of products advertised by CFBAI participants.[21]

As with other products advertised to children, the snacks that CFBAI participants advertise have to meet nutrition standards. Accordingly, their nutritional composition has improved too. For example, Campbell Soup Company reformulated its Flavor Blasted Goldfish baked snack crackers from 300-320 mg to 250-280 mg sodium per serving and reduced the saturated fat content of its Goldfish Grahams to 1 gram from 2 grams. Advertised snacks also have included granola bars that are 90 calories and provide 8 grams of whole grains per serving.

Candy Advertising. Since 2007 four major confectionery companies (Cadbury Adams, The Hershey Company, Mars, Incorporated and Nestlé USA) that participate in CFBAI have pledged not to advertise their candy to children. The GES study unsurprisingly found that advertising for candy ads in children's programming fell by nearly 70% for children ages 2-11 between 2004 and 2010.[22]

Breakfast Cereals. Breakfast cereal advertising has changed too. The nutrition composition of the products has improved and the volume of advertising has declined. The GES study found that breakfast cereal advertising in children's programming decreased by approximately 40% between 2004 and 2010.[23] As to the nutrition profile of advertised cereals, CFBAI participants have significantly reformulated many cereals to reduce sugars, fats or sodium and to increase positive nutrients.[24]

Before CFBAI, some cereals advertised to children had 15 or 16 grams of sugar per serving. Now, all program cereals contain no more than 12 grams of sugars, and

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[20] *Id*. An earlier GES study cited by the Grocery Manufacturers Association noted ads for food, beverages and restaurants during children's programming fell by 31% between 2004 and 2008, with ads for snacks falling by 60% and ads for cookies declining by 82%. "GMA: More than Two-Thirds of the Advertisements Seen by Children and Teens Today Promote More Nutritious Foods and Healthy Lifestyles" (March 9, 2010), press release available at www.gmaonline.org/news. The GMA data was presented at the FTC Forum "Sizing Up Food Marketing and Childhood Obesity" (Dec. 15, 2009), available at http://ftc.gov/bcp/workshops/sizingup/presentations/Sophpos.pdf.

[21] *See* CFBAI, *A Report on Compliance and Implementation During 2009* (2010), available at http://www.bbb.org/us/children-food-beverage-advertisinginitiative/info.

[22] *See* GES at n.19, above.

[23] *See* GES at n.19, above.

[24] CFBAI, *CFBAI Fact Sheet* (March 2011), available at http://www.bbb.org/us/storage/0/Shared_Documents/ChildrensFoodBeverageFactssingle_v-2.pdf.

most (84%) contain no more than 10 grams per serving. (This results from reformulation and from business decisions to remove some cereals from the list CFBAI maintains of products that may be advertised to children.) The cereals also have strong nutritional characteristics: all contain no more than 130 calories; all provide essential vitamins and minerals; virtually all meet FDA's definition for "healthy;" the vast majority are low in fat and a "good" source of Vitamin D; several are a "good" source of fiber; and two-thirds provide at least 8 grams of whole grains.

However, even before the sugar reductions occurred, in the diets of the U.S. population ages 2 years and older, only 3.8% of added sugars came from ready to eat (RTE) cereals according to NHANES 2005-2006 data.[25] Similarly, for children aged 4-12, RTE cereals account for only 4% of calories on average and 5% of total sugars.[26] Further, empirical data consistently show that frequent cereal eaters (including eaters of pre-sweetened cereal) tend to have healthier body weights.[27] Consequently, although further improvements are possible, this category already has changed substantially since 2006.

Restaurant Foods. Quick serve restaurants participating in the CFBAI program now only advertise healthy choices with their kids' meals, including apple slices, low/non-fat milk, or 100% juice. As CFBAI participants, McDonald's and Burger King Corporation's child-directed advertising now helps to popularize these healthy foods.

Fruit Beverages. Ads for fruit *drinks* also have decreased significantly. The GES study found that ads for "fruit and other drinks and mixes" in children's programming decreased by over 50% between 2004 and 2010.[28] In contrast, ads for fruit and vegetable *juices* increased by approximately 200%.[29]

In the CFBAI's view, nutrition criteria generally should apply to all foods and beverages (except where there are good reasons for an exemption, such as for fruits

[25] DGA 2010, Figure 3-6, at p. 29.
[26] Centers for Disease Control and Prevention and National Center for Health Statistics, *National Health and Nutrition Examination Survey Data* (2005-06), available at http://www.cdc.gov/nchs/nhanes.htm. Hyattsville, MD: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
[27] A.M. Albertson *et al.*, *The Relationship between Ready-to-Eat Cereal Consumption Categorized by Sugar Content and Body Measures in American Children: Results from NHANES 2001-06*, 23 FASEB Journal 550.22 (April 2009) (Meeting Abstracts).
[28] *See* GES at n.19, above.
[29] *Id.*

and vegetables, or water) that are advertised to children and not just to some categories, which, as illustrated above, change over time. The CFBAI's new criteria apply to 10 product categories, including one for which there are no products currently being advertised. We created this category based on the input of participants that such products might be advertised to children in the future.

B. The CFBAI's Category-Specific Uniform Nutrition Criteria Represent a Viable Alternative to the IWG's Proposed Principles

The CFBAI created its uniform nutrition criteria during a year-long process with the assistance of a committee, comprising the top nutritionists and scientists from many participants (Nutrition Science Review or NSR committee). We initiated the review because of the then pending issuance of the Dietary Guidelines for Americans 2010 (DGA 2010) and the Initiative's requirement that the standards companies use be consistent with established scientific and/or government standards. Additionally, although we continue to believe that "uniformity" is not essential to drive change, we determined to explore the development of uniform nutrition criteria as a way to strengthen pledges *systematically* and bring consistency across all companies participating in the program.

The Nutrition Science Review committee reviewed dietary recommendations; regulations for nutrition labeling and nutrient content claims for foods and beverages; and recommendations for nutritional criteria for foods marketed directly to children, foods sold in competition with school meals, and school breakfast and school lunch programs; and standards of identity for foods. The Nutrition Science Review committee also was mindful of the IWG's December 2009 proposed tentative nutrition standards for marketing to children, and the subsequent April 2011 proposed nutrition principles.[30] Additionally, our work was particularly informed by the DGA 2010 (and before it was issued the report of the Advisory Committee for the Dietary Guidelines). Appendix Table A1 in the White Paper lists the recommendations by governmental agencies, reports published by the IOM, and other third-party organization standards that the committee reviewed. Finally, because the NSR committee consisted of scientists and nutrition professionals who are highly knowledgeable and have day-to-day experience with product development and reformulation issues, our work had the benefit of their expertise about the state of

[30] Although the NSR committee's work was substantially completed by the time the IWG issued its April 2011 request for comment on its Proposed Nutrition Principles for Food Marketed to Children, we also reviewed the revised principles.

technology and food science, and companies' experiences with product changes and taste preference panels.

As a result of the NSR committee's review, the CFBAI and its participants created uniform nutrition criteria for 10 product categories. Unlike the IWG's broad one-size-fits-all criteria, the CFBAI's category-specific criteria allow the inherent nutritional differences among product categories to be factored into the criteria. For example, dairy, grain and nut products inherently are very different nutritionally. Accordingly, the CFBAI criteria treat them differently.

Product categories, rather than a one-size-fits-all approach, have many advantages. First, criteria can be tailored appropriately to reflect the inherent nature of a particular product category and not be unnecessarily high for other categories. For example, regular peanut butters, a healthy food in common parlance, is not a low saturated fat food. Setting a saturated fat limit for a general category of individual foods that would include peanut butters would be higher than appropriate for other individual foods such as cereals, or would require creating an exemption for peanut butters. Second, category-specific criteria allow limits to be set that reflect meaningful, but realistic, goals for various food categories bearing in mind food science and technology challenges as well as the need for a step-wise approach to build consumer acceptance of foods that have lower amounts of fat, sugars and sodium.

The new CBFAI criteria are generally stronger than the current company-specific standards in at least five ways. First, the new criteria eliminate a product qualifying solely on meeting a "reduced" claim (i.e., ≥ 25% less sodium). Second, they eliminate a product qualifying solely because a product is packaged in a portion controlled, 100-calorie pack. Third, they include calorie (meaning kilocalories or kcal) limits for all categories. Fourth, they include nutrients to limit (NTL) criteria for key items: saturated fat, *trans* fat, sodium and total sugars. Fifth, they include nutrition components to encourage (NCTE) (food groups and/or nutrients) for all product categories. Currently, not every participant has a standard for each item — calories, NTL and NCTE — so the new criteria fill those gaps.

In setting the limits, we also considered whether a somewhat less restrictive limit for a NTL might encourage the development of products or meals that may include more

foods groups to encourage and that may be even more nutritious overall (e.g., inclusion of nutrient-rich milk, with its naturally occurring sodium, rather than 100% juice which has virtually no sodium, with meals that already contain fruit). Accordingly, the criteria for some NTL in some product categories may exceed what any one participant may have set previously but the criteria overall are stricter rather than more lenient.

Although the criteria are intended primarily to operate in the background to determine whether a product may qualify for advertising to children, as a self-regulation program the NSR committee believed it was important to make the criteria as transparent and user friendly as possible. This could encourage, for example, other U.S. food companies to use the criteria, and make it easier for consumers and third-party organizations who may be interested to determine what products meet or exceed the limits, particularly with regard to nutrients to limit.[31] Accordingly, these criteria, which replace 13 sets of company-specific criteria, are easier to use and even more transparent than the current standards. For example, the NTL criteria primarily are based on information that is available on NFPs. Additionally, the new criteria are tied to a product's labeled serving size. While mindful of the use of "reference amount customarily consumed" or "RACC" in some regulatory settings, we determined that tying limits and requirements to a labeled serving size, which is based on RACC, would be more consumer friendly. It eliminates the need to refer to the Code of Federal Regulations to ascertain RACC, to refer to the USDA National Nutrient Database, and to have a calculator to determine what the limits are for nutrients for any particular product as packaged.

Overall these new uniform nutrition criteria will impose significant challenges on the participants. They will require reformulation of many products participants currently advertise – ones that already meet meaningful nutrition standards – if they wish to continue advertising them after these criteria go into effect. But, because they are realistic, the participants have agreed to the additional challenge of implementing the new CFBAI uniform nutrition criteria by December 31, 2013. The White Paper explains that because the deadline is so challenging, there is little room to account

[31] Currently, to meet those goals, CFBAI publishes a summary of the participants' nutrition standards and a list of the products that meet those standards that participants may wish to show in child-directed advertising. This allows the public to easily understand what the participants are committing to and what those commitments translate into in terms of actual products. The new criteria will make the commitments even clearer.

for unexpected circumstances. In that case, a participant may apply to the administrator for a limited extension of the implementation deadline for a product (not to exceed twelve months from the effective date) if the applicant shows unexpected circumstances prevent the participant from meeting the December 31, 2013 implementation date.

In the next section, we discuss the maximum limits for NTL and the requirements for NCTE and why and how they differ from the IWG's principles.

C. The CFBAI Agrees with IWG's Overall Approach for Establishing Nutrition Criteria, But Not Its Proposal: The CFBAI's Criteria Are Strong Yet Practical

In terms of how criteria are established, the CFBAI agrees with the IWG's overall approach of considering a wide array of government and respected third-party standards to develop principles and criteria. The CFBAI's Nutrition Science Review committee did exactly the same thing, and indeed reviewed virtually all of the same standards. We also further agree on the specific nutrients that should be limited: saturated fat, *trans* fat, sodium and sugars. Additionally, our NSR committee believed it was important to set calorie and/or serving size limits. We also agree with the IWG that standards should include a criterion that ensures products make a meaningful contribution to the diet. Where we differ is on the specific limits for saturated fat, *trans* fat, sodium, sugars, and on what should be considered towards making a meaningful contribution to the diet and the amount of such a contribution.[32]

The NSR committee carefully considered the IWG's proposed tentative nutrition standards from December 2009 and found the limits on key nutrients to be impracticable and unworkable, particularly in combination with the requirements for a meaningful contribution to the diet. Our review of the subsequent April 2011 "nutrition principles," which are very similar to the December 2009 standards, did not change our conclusions.

Although the IWG acknowledges that "substantial changes . . . may present both technical difficulties and challenges in maintaining the palatability and consumer

[32] We also disagree with setting targets for the future (2021) that do not have the benefit of the two sets of Dietary Guidelines for Americans that will be issued during the interim (2015 and 2020). In contrast, the CFBAI plans to review its new criteria in 2016, after the DGA 2015 have been issued.

acceptance of the product" (at p. 5), the IWG has *seriously* underestimated the extent of these difficulties. Moreover, suggesting as did David Vladick, the FTC's Director of Consumer Protection, in his recent blog post[33] that the principles are "ambitious" and that cereal companies are "close to meeting the nutritional goals," and that it would be great if they would "*tweak* their formulations to raise the whole grain content and lower the added sugars," (emphasis added) underscores that the agency does not fully comprehend what is involved to meet its proposed principles. The comments of individual participants and others will provide more detailed information about how the IWG's principles raise many extremely difficult technical/food science issues (e.g., the functional roles of sugars and sodium) and practical difficulties (e.g., reformulation costs, higher food prices and consumer acceptance issues). The CFBAI's comment presents a high-level overview of these problems based on our experience administering the program and in developing the CFBAI's nutrition criteria.

At the outset, it is important to bear in mind that the standards cannot be viewed in isolation. One must look at each standard for each nutrient to limit and the amount of a food group that must be included to gauge the effects of the principles and the ability of a food producer to make foods that are acceptable to consumers. For example, for manufacturers of cereal products successfully to reduce the sodium content of their products to 210 mg sodium by 2016, while including 12-15 grams of whole grains and reducing the sugar content to no more than 8 grams would be more difficult than achieving a "hat trick" in hockey.[34] (In hockey, a player has three periods to score a hat trick, while these manufacturers would have to do the equivalent of scoring three goals *at once*.)

Even reducing *one* nutrient can be enormously difficult, depending upon the product. But, the IWG's one-size-fits-all approach for individual products does not take into account the differences between, for example, cereals and soups. The IWG's approach also does not consider the interaction between ingredients. For example, while perhaps whole grains content might be increased in some products (many cereals already have 8 grams), doing so while reducing sugar content, which helps

[33] The post is available online at: http://www.business.ftc.gov/blog/2011/07/whats-table.
[34] In this regard it does not particularly matter which of the two options for calculating a meaningful contribution to the diet is used. Both are untenable. For example, for children's cereals, which typically are 30 gram servings, the whole grains content would have to be 0.75 oz or 12 grams, or more than 50% of the product's weight, which would be ~15 grams.

make the products palatable (particularly to children who tend to consider whole grains bitter), again poses enormous hurdles.

In this regard, it is worth noting that the DGA 2010 recognize a half serving or 8 grams of whole grains as a significant contribution to the diet. Why the IWG chose to be inconsistent with the government's leading and most up-to-date source of dietary guidance is unclear. Although we recognize that the IWG desires only the "healthiest" of foods to be advertised to children, the IWG should consider the impracticability of its principles. Additionally, it should consider that government's effectiveness is reduced when it does not speak with one voice and consistently. Advising the entire U.S. population that 8 grams is good, but telling advertisers that 8 grams is not good enough, is not good public policy.

Sodium Limits. Philosophically and as a practical matter, it also is disconcerting that the IWG has chosen to ignore FDA/USDA's "healthy" sodium limits (480 mg for individual foods and 600 mg for main dishes and meals) and instead to recommend "low" sodium (140 mg), temporarily raised, only until 2016, by 150% to 210 mg per serving as the goal. After 2016, the proposed sodium limit for individual foods is 140 mg sodium per RACC or per 50 grams for a small RACC. This means only 84 mg sodium for a small RACC product. For main dishes and meals, the goal is half the "healthy" amount (300 mg) increased 150% to 450 mg until 2016.

The IWG is well aware of the enormous difficulties that manufacturers face in reducing sodium levels because sodium plays so many different roles in food (flavor, anti-staling, anti-microbial, leavening, texture, structure, etc.) and that finding appropriate and affordable substitutes is an ongoing challenge.[35] Because the IWG

[35] For example, in 1994, FDA had proposed to reduce the sodium level for "healthy" claims to 360 mg (called Tier II) from 480 mg (Tier 1) after 1998. That proceeding was stayed and then in 2005, after thoroughly analyzing the relevant factors, FDA eliminated the Tier II level. FDA stated then that:

> "Comments from both industry and consumer advocates support the conclusion that implementing the second-tier sodium requirements would risk substantially eliminating existing 'healthy' products from the marketplace because of unattainable nutrient requirements or undesirable and, thus, unmarketable flavor profiles. As a result of these comments, FDA has concluded that it can best serve the public health by continuing to permit products that meet the first-tier sodium level to be labeled as ''healthy,'' and thereby ensure the continued availability of foods that consumers can rely on to help them follow dietary guidelines not only for controlling sodium but also for limiting total fat, saturated fat, and cholesterol and consuming adequate amounts of important nutrients such as fiber, protein, and key vitamins and minerals."

70 Fed. Reg. 56828 (Sept. 29, 2005). Although many advances have been made, reducing sodium continues to be a particularly challenging issue. The IWG seems to have disregarded FDA's experience and conclusions in proposing 210 mg sodium as its criterion, which is more than 40% lower than the amount it

treats all individual foods the same, it appears to not recognize the very real and difficult challenges that producers of different kinds of products face. For some products, a 210 mg sodium goal (by itself) may be challenging, but not impossible. But, for others, such as soup, to achieve in a five-year period a greater than 50% reduction (going to 210 mg from an already significantly reduced and technically challenging level of 480 mg) and produce a product acceptable to consumers is simply not possible. This level of reduction far exceeds the goals that other respected organizations have set. For example, the National Salt Reduction Initiative's goal is a 20% reduction (from a base that may be higher than 480 mg sodium) over five years.

The CFBAI's category-specific criteria, in contrast, appropriately recognize differences among categories. Many CFBAI participants have been working towards meeting the "healthy" levels of sodium and our new criteria are reflective of those limits, with one exception, meals.

For meals (including a beverage) we have set 740 mg sodium as the maximum level, which includes naturally occurring[36] as well as added sodium.[37] After reviewing existing meals and the sodium reduction efforts that already have taken place, and considering future product development we are hopeful that the 740 mg limit will incent the development of meals that might be even healthier overall. For example, currently some advertised meals meet a 600 mg sodium limit, but include calcium-fortified apple juice, not milk, as part of the meal bundle that also includes apples. Even though there have been and continue to be efforts to reduce the sodium in the entrée and other meal items,[38] the naturally occurring sodium in a cup of milk (~120 mg, which may vary slightly across suppliers) along with the sodium in the entrée could make a meal bundle exceed 600 mg. For example, as shown in Figure 1, a

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had previously proposed (360 mg) and eliminated as a replacement for its 480 mg sodium level for "healthy" claims.

[36] The IWG proposes that any naturally occurring sodium and saturated fat, which are present in products such as milk, meats and nuts, be excluded from its limits. While these are well-intentioned exclusions they tend to detract from the fact that the totals are what matters because there is no difference between natural and added nutrients. The exclusions also are not practical because they are not transparent (without consulting a USDA database one cannot tell what is inherent and what is added).

[37] Under the IWG's principles, the naturally occurring sodium in products, such as the ~120 mg sodium in a cup of milk (8 fl oz), would not count towards the total. So, a meal that includes milk might be able to contain up to 570 mg sodium (450 + 120 mg). Thus, in many cases, the difference between the IWG's principles and the CFBAI criteria will be smaller than immediately apparent (i.e., only 170 mg rather than 290 mg).

[38] For example, Burger King Corporation has reduced the sodium in its chicken tenders by one-third (see Appendix B), and sourced lower-sodium ketchup.

breakfast sandwich consisting of an English muffin, an egg, a slice of cheese, along with a serving of apples with a dipping sauce, and 100% apple juice contains 600 mg sodium. Substituting nutrient-rich milk for the juice raises the sodium to 735 mg.[39]

Figure 1 Sodium Examples: BK® Kids Meal

Kids English Muffin Sandwich
BK® Fresh Apple Fries w/ caramel dipping sauce
100% Apple Juice
600 mg sodium

Kids English Muffin Sandwich
BK® Fresh Apple Fries w/ caramel dipping sauce
Fat-free Milk
735 mg sodium

Although the 740 mg sodium criterion is higher than the 600 mg "healthy" level, it is considerably lower than the disclosure limit set by FDA for meals (960 mg)[40] and more ambitious than the limits set by respected third-party standards for meals, which range from 770 to 1000 mg (See Appendix Table A10 in the attached White Paper, Appendix C). This tough, but reasonable, criterion provide a strong incentive for innovation.

[39] If NFPs were used on meals, 735 mg would have to be declared as 740. Thus, we rounded up to 740. Other meals that might be offered could include meat, fish or poultry products with up to 480 mg sodium. Some meals could include bread, cheese, and condiments, such as ketchup, and even though each individually contains a modest amount of sodium (e.g., breads may contain sodium to retard staling and molding, and other products may include sodium as part of the leavening ingredients), collectively they may add up to nearly 600 mg leaving no room for a beverage, such as milk, that contains sodium.

[40] The IWG proposal notes that the IWG "is open to considering alternatives drawn from federal food labeling regulations defining the nutrient content claim 'healthy,' *federal regulations establishing disclosure levels for certain nutrients in connection with other nutrient content claims*, or the disqualifying nutrient levels used for health claims." IWG Request for Comments at p. 6 (emphasis added). "Disclosure amounts" (i.e., 20% of the Daily Value) are amounts of a nutrient that FDA considers "high" and was the basis for how the IWG calculated the 13 grams added sugar limit in its December 2009 proposal (and in its April 2011 proposal). *See* Transcript from FTC Forum, titled "Sizing Up Food Marketing and Childhood Obesity." Schneeman at p. 228, lines 16-25, available at http://ftc.gov/bcp/workshops/sizingup/transcript.pdf, and IWG proposal at p. 12. FDA requires a company to make a "disclosure" statement calling the consumer's attention to one or more nutrients in a food that may increase the risk of a disease or health condition that is diet related when the company is making a nutrient content claim for the product. The disclosure statement is required when a food contains fat, saturated fat, cholesterol or sodium in excess of specified levels (20% of the Daily Value for those nutrients for individual food products and higher amounts for main dishes and meal products) for the RACC, per labeled serving, or for foods with small serving sizes, per 50 grams. The disclosure statement identifies the nutrient(s) at issue (e.g., "See nutrition information for sodium content").

Saturated Fat and *Trans* Fat Limits. The IWG's principles use "low" saturated fat (≤ 1 g per RACC and ≤ 15 % kcal) and <0.5 g for *trans* fat. But, the IWG also applies the *small* RACC rule to already low limits, which is not done in the FDA's or the USDA's nutrient content and healthy claim regulations, and therefore the targets are even more unrealistic. Under the IWG's principles, the small RACC rule would reduce the limit for saturated fat for individual foods from 1 gram (and ≤ 15% kcal) to ≤ 0.6 g/30 grams and 0 g *trans* fat from < 0.5 g/labeled serving to < 0.3 g/30 grams.

Our Nutrition Science Review committee considered FDA saturated fat criteria for "low," "healthy," "lean," and "extra lean" and "disclosure" amounts for making nutrient content claims (See Appendix Tables A5 and A6 in the attached White Paper, Appendix C). We determined that the criteria for low saturated fat for individual foods were unrealistic (even without the application of the small RACC rule) and criteria based on the FDA disclosure amounts[41] for saturated fat overly liberal. For example, products with eggs, nuts and vegetable oils often might naturally contain more than 1 gram saturated fat and low-fat milk contains 1.5 grams. Therefore the NSR committee looked to the saturated fat criteria for "lean" and "extra lean" claims as well as recommendations from other sources (See Appendix Table A7 in the attached White Paper, Appendix C) for guidance in setting our limits. While we recognize that the IWG's principles would exclude naturally occurring saturated fat from its limit, our saturated fat criterion reflects the naturally occurring amounts of saturated fats in products and what reasonable reductions could be made to saturated fats that are added. (See Table 3 in White Paper, Appendix C).

For *trans* fat, the DGA 2010 recommends that *trans* fatty acid consumption be kept as low as possible (p. 21), and many third parties recommend that products contain no *trans* fat (See Appendix Table A8 in the attached White Paper, Appendix C). Consequently, all products in the CFBAI must meet FDA regulations for 0 g labeled *trans* fat, i.e., they must contain less than 0.5 g *trans* fat per LSS. (For foods in the meat and dairy categories served as individual foods or as part of composite dishes or meals (e.g., soups, mixed dishes, entrees, meal-type products), naturally occurring *trans* fats are excluded.) Because FDA has already determined that 0 g labeled means less than 0.5 g, to reset zero to mean less than 0.3 g/30 grams as the IWG proposes, is unnecessarily restrictive. Further, as a result of the food

[41] See n.40 above.

industry reformulation efforts in response to scientific recommendations and *trans* fat labeling regulation, *trans* fat intake in the U.S. population already has decreased dramatically (from 4.3g/d in 2003 to 1.3g/d).[42]

Sugars. The IWG has proposed a 13 g added sugars limit for all products, including meals. The small RACC rule, however, would be applied. Setting criteria for added sugars presents a challenge. Except for products that contain dairy, fruit, and/or vegetable ingredients, most, if not all, of the sugars in products is added. Thus, we took a different approach; setting limits based on *total* sugars, rather than *added* sugars. As explained in the White Paper, a total sugars criterion generally can capture the concerns with added sugars. This approach also aligns with FDA's current nutrition labeling requirements for the Nutrition Facts Panel (NFP), which lists total sugars. The CFBAI criteria are, however, based on a modification of the approach the IWG used in 2009 (and that it retained in its April 2011 proposal).[43] Specifically, the CFBAI used the 13 g *added* sugars (per RACC) limit that the IWG developed, which would equate to 8 g added sugars for small RACC. To accommodate naturally occurring sugars and the need for a step-wise reduction, CFBAI rounded the 13 g down to 10 g per labeled serving size, and applied it to *total* sugars as a base sugars criterion for individual foods.[44] Based on our review of products currently advertised, we determined that 10 g would provide ample challenges for the participants to meet across product lines, and thus, met our guiding principle of moving NTL toward stricter criteria.

The 10-g base criterion for individual foods[45] then was adjusted down or up depending on the nature of specific product categories and certain types of products within some categories (Table 5 in White Paper, Appendix C). The 10-g base was adjusted to 15 g for main dishes and a base amount of 20 g for meals, which are 1.5 times and 2 times the amount for individual foods, respectively. This follows the logic

[42] *See* D. Doell *et al.*, *Updated Estimate of Trans Fat Intake by the US Population*. Poster presentation at IFT Annual Meeting and Food Expo 2011, New Orleans, LA. *See also* DGA 2010 at p. 26.
[43] The IWG used the allowance of 267 discretionary calories for a 2000 calorie diet based on the USDA Food Guide (HHS/USDA, 2005) and assumed that 100% of the discretionary calories were from added sugars (67 g). The IWG then used FDA's procedure for defining disclosure limits for total fat, saturated fat, cholesterol, and sodium when nutrient content claims are made for individual foods, which is 20% DV. Applying 20% to the 67 g results in 13 g.
[44] Additionally, by replacing the multiple ways sugars limits are currently expressed (e.g., ≤ 25% of kcal added; ≤ 35% total by weight; ≤ 25% total by weight) with new maximum levels for sugars listed in grams, the criterion will be easier to understand and apply than the current company-specific criteria.
[45] For grain products that contain more than 150 calories (e.g., cereals with a 50 g RACC), the CFBAI sugars criterion is 12 g total sugars, slightly less than the 13 g added that the IWG has proposed.

FDA used in setting disclosure amounts for nutrients for individual foods[46] (20% DV),[47] main dishes (30% DV), and meals (40% DV).[48] A base amount of 17 g total sugars was set for small meals, which is intermediary to the amount for main dishes and meals.

The total sugars criteria for some product categories were based on other criteria as described in Table 5 of the White Paper. For example, the amount of total sugars in milks and yogurts was based on or derived from the IOM School Foods Report recommendations and the IOM School Meal Report's recommendation for milk (Appendix Table A12 in White Paper, Appendix C). The White Paper contains an in-depth explanation of the maximum levels for key categories, and the exclusions from the sugar calculations for the small meals and meals categories that are designed to incent the inclusion of food groups to encourage as side dishes and beverages.

Our approach sets tough, but reasonable goals, and addresses concerns about products popular with children, even nutritionally dense ones, being slightly too "sugary."

Meaningful Contribution to the Diet. The CFBAI agrees with the IWG that nutrition criteria should include requirements that ensure that products make a meaningful contribution to the diet.[49] We disagree, however, with principles that limit the items that may make such a contribution to only food groups. Foods are eaten in order to obtain calories for energy and needed nutrients. Thus, we concluded that essential nutrients — those for which FDA has set a Daily Value (DV) — also should be counted as making a meaningful contribution to the diet.

We also considered the IWG's requirements for the requisite amount of a food group to be excessively high and impractical. While we recognize that the IWG's goal is to have only the healthiest foods advertised to children, specific requirements that are so restrictive (particularly in combination with exceedingly impractical principles for nutrients to limit) are likely to reduce or eliminate incentives to reformulate

[46] We note that the IWG stated it welcomes alternatives that might be based on disclosure amounts.
[47] 58 Fed. Reg. 2478 at 2493 (Jan. 6, 1993).
[48] *Id*. at 2495.
[49] We do, however, exclude from our criteria several products that do not make a meaningful contribution to the diet. These are beverages, including bottled waters, that meet FDA regulations for "low calorie" and "low sodium" and are important for hydration. Additionally, we exclude sugar-free mints and gums as they are low or calorie free.

products, and that is counter-productive. To require one individual product to contain ¼ of the recommended daily consumption for that food group is inappropriately high and impractical. It also ignores dietary patterns and the fact that children consume many individual products each day.

The required amounts also are inconsistent with the DGA 2010. For example, the IWG proposes that an individual food contain *more than a ½ cup equivalent of vegetable* (0.6 cup). A ½ cup equivalent has long been considered one serving, and is reflected as such on the NFP for vegetables. Suggesting that one product provide more than "one serving" conflicts with serving size regulation and the DGA recommendation that consumers learn proper portion sizes. Similarly, the IWG proposes that grain products contain more than ½ serving or 8 grams of whole grains (IWG requires either 0.75 oz=12 g or, under the 50% by weight option, a typical serving of cereal would need to contain at least 15 g whole grains), while the DGA 2010 recognize 8 g of whole grains as a significant contribution to the diet. As noted, for the government to tell the entire U.S. population that 8 grams is good, but to tell advertisers 8 grams is not good enough, is confusing and not good public policy.

In contrast, to be consistent with and to promote the Dietary Guidelines, the CFBAI has incorporated criteria for NCTE for all product categories (See Table 6 in White Paper, Appendix C). Except for products in Categories 5 (nuts, etc.) and 6 (meat products) the NCTE requirement includes a minimum amount of at least a ½ serving of fruit, vegetable, whole grains or low-fat dairy – food group(s) recommended for increased consumption by the Dietary Guidelines,[50] at least one essential nutrient at the 10% DV level, or a combination of both. The CFBAI will use USDA Food Group Serving Equivalents (Appendix Table A14 in White Paper, Appendix C) for determining compliance with the NCTE requirement.

Essential nutrients include protein, fiber, and vitamins and minerals for which a DV has been established, including those added to meet standards of identity that have an enrichment requirement or to restore naturally occurring nutrients that are lost in

[50] We also note that using grams is a more definite and measurable target than ounce equivalents (used by FDA) because weights vary with food types, especially in combination foods. As with the IWG proposal, the food group requirements may be met through a mixture of food groups so long as they add up to the requisite minimums. Because the serving size of dairy-based desserts is limited to a ½ cup, a ½ serving (½ cup) of dairy for NCTE is not feasible. Instead, such products must contain at least a ¼ cup dairy equivalent and 10% DV calcium per ½ cup serving and proportionately less for smaller servings.

processing.[51] If the essential nutrient requirement is met through fortification, it must be a nutrient of public health concern[52] as specified in the DGA 2010 (i.e., dietary fiber, potassium, calcium, and vitamin D) or a nutrient required to be listed on the NFP (i.e., iron, vitamin A, and vitamin C in addition to dietary fiber and calcium). In 1993, in final regulations implementing the Nutrition Labeling and Education Act, the FDA identified calcium, iron, vitamin C, and vitamin A as nutrients of public health concern and required the amount of these nutrients to be declared in the NFP. These same nutrients also are included in FDA's definition of "healthy" (i.e., an individual food must contain at least 10% DV of one or more of Vitamins A or C, iron, calcium, or fiber). The definition also includes protein as a qualifying nutrient, but in CFBAI's criteria, protein is a qualifying NCTE only for seeds, nuts and nut butters and spreads (Category 5), and for meat, fish and poultry products (Category 6).

Under the CFBAI's criteria, the NCTE requirements increase as the calorie caps increase and as the role of the food in the overall diet (e.g., mixed dishes, entrees) takes on greater importance. Generally, the NCTE can be met either through inclusion of essential nutrients or food groups. In lower calorie foods, it may not always be feasible to include a meaningful amount of a food group to encourage. Yet such foods, through their essential nutrient content, may contribute meaningfully to a healthy diet. Products that are a larger contributor to caloric intake must meet minimum food groups to encourage requirements.

We note that the IWG asked whether its principles should include these same nutrients (ones that are of public health concern and those listed on the NFP; IWG Request for Comments at p. 20, question 3) as a way for a product to make a meaningful contribution to the diet. We agree they should. We do not, however, agree that the list should be limited to those nutrients. The presence of any

[51] Some products are labeled as "enriched" because they meet FDA's definition (called a standard of identity) for a type of food with a name that includes that term (such as enriched bread or enriched rice). For example, a product labeled as "enriched flour" must contain specified amounts of thiamine, riboflavin, niacin, folic acid, and iron. Since the 1930s this has been done for certain foods to replace nutrients that were lost or removed through the normal processing when certain components are removed. For example, non and low-fat milks are generally enriched with vitamins A and D because when milk is "defatted," the A and D naturally found in the milk fat are removed. *See generally*, 21 C.F.R. § 104.20; FDA, *Basics: Are foods that contain added nutrients considered "enriched"?* (2009), available at http://www.fda.gov/AboutFDA/Transparency/Basics/ucm194348.htm.

[52] Currently, some participants include a requirement that their products contain one or more "short fall" nutrients as specified in the DGA 2005. The DGA 2010 list of nutrients of public health concern differs from the DGA 2005 as magnesium and vitamin E have been dropped and vitamin D added. Thus the new CFBAI criteria will serve to update such company-specific criteria.

"essential" nutrient at the good source (10% DV) level should suffice. Such nutrients are called *essential* for good reason, and when meeting FDA's definition of a good source they should be recognized as making a meaningful contribution to the diet.

Additionally, although fortification has played and continues to play an important role in helping Americans avoid nutrient deficiencies, the CFBAI essential nutrient requirement option is focused on naturally occurring nutrients (and those present through "enrichment"). Qualification through fortification is limited to a handful of key nutrients, as described above.

In crafting the NCTE, we also were mindful of competition issues. Although the criteria will encourage all participants to promote healthier foods to kids, they provide flexibility on how products may meet the requirements and thus do not unfairly favor one participant over another. Promoting rather than stifling competition among participants encourages the broadest array of healthy and quality product choices at the lowest cost.

IV. The IWG's Proposed Definitions of Marketing Targeted to Children and Adolescents Are Over Broad and Inappropriate: The CFBAI Properly Focuses on Advertising Primarily Directed to Children Under 12

In January 2014, the CFBAI's new nutrition criteria will be the foundation for participants' commitments to advertise only healthier foods in child-directed advertising, as advertising is defined in the CFBAI's Core Principles and Program Statement (3rd Edition, Sept. 2010) (Appendix D).[53] These principles broadly cover advertising in child-directed media and channels, including both traditional media (TV, radio, print, and company-owned and third-party websites) and emerging venues, such as digital and social media (e.g., ads on child-directed apps, ads on games rated "EC" or labeled for children under 12, or child-directed word-of-mouth advertising). The CFBAI's participants also agree to not pay for or actively seek out placement for their food and beverage products (even for products that meet nutrition standards for advertising to children) in the program/editorial content of any medium primarily directed to children under 12. Similarly, the participants agree

[53] The new criteria will be incorporated into the CFBAI's Core Principles and Program Statement, and will apply to participants that are engaging in advertising primarily directed to children under 12. Other participants will continue their commitments to not engage in child-directed advertising.

not to advertise their products (even the products that meet nutrition standards for advertising to children) to children in elementary schools (pre-K through 6th grade).[54]

The IWG, however, proposes that self regulation cover advertising to teens (particularly in-school and in social media), and the use of far more extensive definitions of child-directed advertising. First, we continue to believe that food marketing self regulation is properly focused on children under 12. Second, the IWG's definitions of marketing to children are over broad and flawed. We've worked hard with our participants to strike the right balance to cover advertising that is *primarily directed at children under 12*, and thus minimize the impact on others of the participants' voluntary restrictions on advertising.[55]

A. Self Regulation Is Appropriately Focused on Children Under 12

Historically, the CFBAI, and self regulation more generally, have focused on children under 12. Because special protections are important for children under 12, the advertising industry always has had a set of stringent rules for advertising primarily directed to children under 12. Specifically, since 1974 the Children's Advertising Review Unit has promoted responsible advertising to children under 12. Further, as discussed below, sound public policy and empirical evidence do not support imposing restrictions on food and beverage marketing to adolescents.

First, adolescents have greater cognitive and emotional sophistication than children. A number of our societal judgments acknowledge this fact. We allow adolescents, but not children, to drive, hold jobs, pay taxes, get married and enlist in the services (at age 17 with permission) and we sometimes hold them criminally liable for their actions. Though adolescents' brains continue to develop throughout the second decade of life, their cognitive capacities are far more advanced than those of children.[56]

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[54] This commitment does not apply to displays of food and beverage products, including materials that identify the products that are being offered for sale, charitable fundraising activities, public service messaging, items provided to school administrators for their personal use, and charitable donations to schools.

[55] We agree with the IWG's statement that "[i]n the case of adolescents, th[e] marketing definitions are more likely to result in limits on food marketing in media that is also reaching a substantial adult audience." (IWG Request for Comments at p. 23).

[56] Teens can perform similar to adults in their ability to make reasoned decisions about complex issues in research settings. C. Pechmann, L. Levine, S. Loughlin & F. Leslie, *Impulsive and Self-Conscious: Adolescents' Vulnerability to Advertising and Promotion*, 24 J. Pub. Pol'y & Marketing 202-21 (2005).

Some studies comparing decision-making in adolescents and adults "reveal more commonalities than differences. The general consensus is that the major gains in the capacity to think abstractly and make reasoned decisions in low-arousal settings occur between childhood and adolescence rather than between adolescence and adulthood."[57] Further, as early as age 12, adolescents' knowledge about advertiser tactics develops in the direction of adult understanding.[58] Researchers posit that adolescents' tendency to behave impulsively in emotionally-charged situations *might* make them vulnerable to certain types of ads, such as those that highlight image benefits or impulsive behavior, but caution that there is insufficient evidence to draw conclusions about adolescents' unique vulnerability to advertising.[59] Simply put, existing empirical evidence regarding the developmental status of adolescents does not provide a basis for proposing restrictions on food and beverage advertising to adolescents.

Second, the evidence does not support the conclusion that food and beverage marketing to adolescents is causally related to obesity, and indeed some evidence regarding dietary preferences and advertising goes the other way. The IOM's comprehensive review of research on the issue concluded that ". . . the current evidence is not sufficient to arrive at any finding about a causal relationship from television advertising to adiposity." [60] It further found that:

- with respect to *dietary precursors*, there is insufficient evidence on whether food and beverage television advertising influences the preferences, purchase requests and beliefs of teens ages 12-18 years;
- with respect to *diets*, there is insufficient evidence about its influence on the short-term consumption of teens ages 12-18 years and weak evidence that it does *not* influence the usual dietary intake of teens ages 12-18 years;

[57] *Id.* at 208-09 ("In laboratory studies in which adolescents are asked to think through hypothetical scenarios and reach decisions, adolescents have been found to make decisions using the same basic processes as adults. This similarity holds even for complicated decisions, such as whether to abort a pregnancy. Moreover, instead of displaying ignorance about risks, adolescents rate the likelihood of some negative outcomes (e.g., accidental pregnancy, drunk driving accident) as greater than do adults and as greater than is indicated by the statistics for their age groups." (citations omitted)).
[58] D.M. Boush, M. Friestad & G.M. Rose, *Adolescent Skepticism Toward TV Advertising and Knowledge of Advertiser Tactics*, 21 J. Consumer Res. 165, 171 (1994), available at http://www.sfu.ca/cmns/faculty/kline_s/320/06-spring/resources/course%20readings%20folder/AdscepticismBoush.pdf.
[59] Pechmann *et al*., n.56, at 214-15 ("virtually no research has been conducted" on whether adolescents are particularly receptive to certain types of advertising; "there is little direct evidence" that teens are more susceptible to image advertising than adults; neurological mechanisms underlying responses to advertising "are not yet understood for either adolescents or adults").
[60] Institute of Medicine, *Food Marketing to Children and Youth: Threat or Opportunity?*, Washington, DC: The National Academies Press (2006), at 8-9, available at http://www.iom.edu/Reports/2005/Food-Marketing-to-Children-and-Youth-Threat-or-Opportunity.aspx.

- with respect to *diet-related health*, there is a strong correlational association between exposure to television advertising and adiposity, but insufficient evidence of a causal relationship.[61]

The CFBAI participants are committed to being a part of the solution to childhood obesity and not debating causality. But, the unprecedented effort to propose that food marketing self regulation cover teens goes too far. It lacks a scientific basis and is inconsistent with how our society has otherwise determined to treat adolescents. Additionally, as the comments of others will describe in more detail, the FTC's definitions of advertising directed to teens are so over inclusive that they sweep in a considerable amount of adult-targeted advertising. Our shared goal of supporting parents' efforts is better served by focusing on marketing activities directed at children ages 2-11, as the CFBAI has done and will continue to do.

B. The IWG's Marketing Definitions Are Over Broad and Not in the Public Interest

The IWG proposes to adopt the FTC's specific definitions of when particular marketing techniques are targeted to children (and adolescents) using objective criteria where available and subjective criteria where objective measures are not available. The FTC's marketing definitions, however, are unnecessarily expansive, difficult to measure and even counterproductive, in that they effectively would limit funding for activities designed to *promote* children's health and wellbeing. In contrast, the CFBAI has over four years of experience in defining, monitoring and reporting on child-directed food and beverage advertising activities, spanning the collective knowledge of 17 participants and the Council of Better Business Bureaus. The CFBAI's existing definitions of child-directed advertising are workable and comprehensive, but not over inclusive.

The IWG claims that its proposed marketing definitions were "vetted through public comment in connection with the 2006 FTC study" and "have already been tested" by food, beverage, and restaurant companies. (IWG Request for Comments at p. 17). However, the IWG's reliance on definitions developed for the 2006 FTC study is problematic for several reasons.

[61] *Id*.

First, the FTC's definitions were designed for reporting purposes, and are a map of where the FTC decided to explore in advance, not a list of what the FTC found. In connection with the 2006 FTC study, reporting companies disagreed that the definitions captured marketing activities aimed at children and adolescents. They had serious practical difficulties complying with the FTC's definitions, which were so broad as to cover adult- and family-directed marketing activities. As acknowledged in the FTC's 2008 Report, the reporting companies expressed their objections to the FTC through formal comments, conversations and/or written statements accompanying their submissions.[62] Nevertheless, to comply with their reporting obligations, companies included adult- and family-directed activities in their reports to the FTC.

Second, the FTC's marketing definitions were designed for retrospective, not prospective, application. Some definitions cannot be applied prospectively for technical reasons. For example, the exact age composition of an audience at a philanthropic event is only available, if at all, after the date of the event. Other definitions, as discussed below, are too vague and/or over broad for feasible prospective application.[63] These vague and subjective definitions would lead to inconsistent application by companies trying to abide by the IWG's principles, as well as entities trying to monitor compliance with them.

Below we discuss how the IWG's proposed objective and subjective criteria, as well as its reference to marketing plans, are problematic.

Marketing plans targeting families. For all promotional activities, the IWG references company marketing plans and states that "if a marketing plan indicates the promotion is directed to or designed to appeal to children or teenagers it is considered targeted to that group." (IWG Request for Comments at p. 19). Although we agree in theory with using "intent" to identify youth-directed marketing, the CFBAI participants stated that they were obliged to report on promotional activities even when a marketing plan indicated only an intent to increase the product's penetration in households with children. Thus, mom-directed advertising for child-

[62] FTC, *Marketing Foods to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation* (2008), at A-5 to A-6.
[63] Even activities that the IWG may not have intended to cover could be chilled or eliminated if costly legal opinions analyzing the ambiguous definitions and their application to a proposed activity were deemed necessary, or if companies were to abandon the activity out of caution.

oriented products was swept in by the way the FTC referenced marketing plans in its definitions.

Further, marketing plans frequently include "all family" promotional activities. Because families include children, promotional activities that are not primarily aimed at children could be encompassed because the FTC's definition covers anything that could reach children. Instead, self regulation is properly limited to activities primarily directed at children, not the broader family unit.

Criteria based on percentage thresholds. Percentage thresholds are another indicator the FTC used to determine whether a promotional activity is targeted to children and adolescents. Such thresholds are used for several categories, including measured media, digital marketing, word-of-mouth marketing, philanthropic endeavors and public entertainment events. The FTC reasoned that the percentages selected represent double the proportion of the age group in the U.S. population or, for Internet activities, double the proportion of the age groups in the population of active Internet users. This rationale lacks empirical validity and leads to definitions that are considerably over broad.

Conceptually, whether media captures double the proportion of an age group bears little relationship to whether the activity is targeted at that age group. Under the IWG's rationale, a television show with 3.4% viewers ages 85 or older would be targeted to them, as adults ages 85 or older comprise an estimated 1.7% of the U.S. population.[64] Further, the 20% thresholds for some activities, including Internet activities and adolescent-targeted activities, are highly likely to capture older age groups represented at twice their population rate in the remaining 80% of the audience.

The population approach overlooks the reality of how marketing professionals make decisions to target specific age groups. For example, a 20% audience share ordinarily would not constitute a critical mass justifying the expenditure of funds allocated to child- or adolescent-targeted activities.[65] The CFBAI's audience

[64] U.S. Census Bureau, *2005-2009 American Community Survey 5-Year Estimates*, available at http://factfinder.census.gov/servlet/DatasetMainPageServlet?_program=ACS.

[65] In its 2008 Report, the FTC notes that "a few companies acknowledged that some advertising placed on programs popular with teens, but not meeting the 20% audience share, was in fact targeted to adolescents according to their own marketing plans." (FTC 2008 Report at A-6). Though for some atypical

percentages for child-directed TV advertising are based on historical experience showing the audience share that correlates with what is commonly understood to be children's programming, and not the representation of children in the population.

"Subjective" indicators of appeal to children or adolescents. For some marketing categories, the IWG proposes the use of subjective indicators to determine whether the promotional activity is youth-directed. Many of the subjective indicators are ambiguous and are over inclusive when the context is not considered. These subjective indicators, in fact, encompass marketing activities directed at families and adults. The IWG's proposal would have the effect of suppressing a broad range of marketing activities bearing little relationship to the IWG's Congressional directive. Below we illustrate some of the problems with these indicators.

Animated or licensed characters. The IWG proposes that the use of "child-oriented animated or licensed characters" and "adolescent-oriented, animated or licensed characters" establishes that an activity is targeted to children or adolescents. (FTC 2008 Report, Appendix B). Determining what characters are child- or adolescent-oriented is very difficult for a number of reasons.[66] Many characters that may seem child- or teen-oriented in fact appeal to people of all ages.

Further, in some situations, child-appealing characters are used on products and in adult-targeted advertising because the advertiser hopes to appeal to parents who want to delight their children or to signify to parents that a product might be appropriate for their children due to nutrition, portion size or other child-specific benefits. Under the proposed definitions, it would be no defense that the marketing activity using a child-oriented character explicitly targets gatekeepers (e.g., "your child will love the taste"). For example, under the IWG's definitions, the use on bandages of the "Cars" movie tie-in (a licensed character popular with children, or any of the plethora of other characters that can be found on bandages) would make that child-directed (if it were a food), notwithstanding that the product was

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shows the cost per adolescent viewer may justify the expense, a media plan designed to target adolescents is highly unlikely to include shows with 20% or fewer adolescent viewers, as the audiences for these shows are overwhelmingly non-adolescent. The companies' marketing plans, as an "intent" indicator, would capture these atypical shows.

[66] In contrast, the CFBAI focuses on the use of licensed characters (not a company's own characters or mascots), as well as celebrities and movie tie-ins only in conjunction with advertising primarily directed to children under 12, as advertising is defined in CFBAI's core principles. We do not consider advertising child-directed simply because it uses a licensed character.

advertised, for example, at 10:45 p.m. on an adult show. While the TV ad would be judged by objective criteria (the audience size), if it were shown on an Internet site, the use of the tie-in, as well as the presence of children in the ad (getting a bandage from mom), would make it child-directed, even though it was clearly aimed at moms. The same is true of many food ads not in measured media and on food packages.

For adolescents, it appears that the FTC considered the use of *any* animated or licensed character as indicating that the activity was adolescent-targeted. The use of animated characters is not, however, a per se definitive indicator that a marketing activity is targeted at children or adolescents. Animated characters routinely are employed to market adult-directed products and services. Some examples across industries include the Aflac duck, Chicken of the Sea mermaids, the Energizer bunny, the Geico gecko, the Nasonex bee, the Michelin man, the Pillsbury doughboy, Mr. Peanut, the Raid bugs, the Scrubbing Bubbles bubbles, the Snuggle bear and the Vlassic stork. Companies' use of animated or licensed characters spans an extensive range of family- and adult-targeted marketing activities, including corporate websites, online press releases, in-store coupons, seasonal product packaging, pamphlets at philanthropic events, billboards at football stadiums and a wide array of other marketing platforms.

Additionally, some companies have used brand mascots for very long periods of time, and a product and a mascot may be closely associated. The absence of the mascot could make it difficult for consumers to find a desired product and could destroy the company's long-term investment in that mascot. (The investment would include developing and protecting the intellectual property.)

Celebrity endorsers. The proposed subjective criteria would consider the use in promotional activities of celebrity endorsers popular with children or adolescents, according to a marketing plan or opinion polls or data, to be youth-targeted. Celebrity popularity is problematic as a criterion because celebrities who are popular with children or adolescents frequently are also popular with adults. For example, athletes and music performers regularly appeal to diverse age groups. Generally, as a celebrity's popularity increases, so does the likelihood that the celebrity will appeal to varied age groups. Further, a celebrity's appeal to particular age groups may vary

across time, depending on the celebrity's latest venture. Under the proposed definitions companies would, in essence, have to cease all adult-directed marketing activities that feature celebrities with cross-demographic appeal.

Words and images relating to children or adolescents. Under the proposed definitions, marketing activities target children if they use language such as "kid," "child," "tween," or similar words, or prominently depict models or characters who are or appear to be younger than age 12, to indicate the advertising or product is intended for children. Companies use words such as "kid," "child," and "tween" to reach kids *and* to reach parents. This indicator blurs the distinction between child-directed advertising and adult-directed advertising for child-oriented products or other products that parents may wish to purchase for their children. In addition, ads targeted to parents commonly include images of children. Thus, the proposed indicator could have the effect of significantly curtailing adult-directed marketing activities. For example, banner ads on parenting websites and labels for products distributed as samples to adults could not include the specified words unless the product were to meet the IWG's nutrition criteria.

Child- or adolescent-oriented "themes, activities, incentives, products, or media." Another way the IWG would determine whether a marketing activity is child- or adolescent-directed is based on whether an activity promotes child- or adolescent-oriented themes, activities, incentives, products, or media. This indicator is extremely ambiguous and subjective, as it potentially covers an almost infinite range of activities and incentives popular with individuals of all ages or targeted at adults and families. For example, sports, outdoor games, bicycles, parks, computers, handheld gaming devices (e.g., Nintendo DS), mobile devices (e.g., Ipads or Nanos) could qualify under this subjective indicator because they appeal to children yet also appeal to people of all ages. Without looking at the context in which these themes, activities, incentives, etc. are used, these criteria alone are unreliable indicators of child-oriented advertising.

Packaging and labeling. The IWG's references to marketing plans and subjective indicators to define youth-targeted packaging and labeling suffer from the same flaws discussed above. Unless a product meets the IWG's unrealistic nutrition criteria, the product's packaging and labeling could not depict the company's own

characters (e.g., the Nesquik bunny), any licensed animated character (e.g., Spiderman), holiday themes or characters (e.g., Easter Bunny, Cupid, Santa Claus or Halloween ghosts) or even label instructions indicating the product is formulated for children of a certain age.

Similarly, packaging that may be "child-appealing," whether it is for bandages, vegetables or candy, and hence of interest to *parents* who shop for their children is not the same as "child-directed." Products may include child-appealing characters on packages to speak to moms and may not be part of companies' child advertising portfolio (e.g., frozen vegetables with cheese sauce) yet they would fall under the proposed definition of marketing targeted to children. Child-appealing characters also may appear on products that children may not be able to see, such as products displayed on high shelves or in freezer cases. In any event, adults represent the vast majority of visitors to grocery stores where packaging is first seen.[67] Finally, the IWG's definition covers timeless characters and characters with nostalgic appeal to generations of adults.

Digital media and mobile marketing. The IWG's proposed definition covers any promotional materials transmitted to digital or mobile devices, including "but not limited to" email, text messages, instant messaging, picture messaging, multimedia messaging, mobile broadcasts, downloads, and podcasts. The use of a 20% audience or participant threshold is particularly problematic for mobile media because measures of audience or participant demographics for some platforms are either unavailable or imprecise. For example, demographic data for podcasts, applications and other media made available for download on mobile devices might only be available, if at all, after the download is completed.

Further, companies' ability to *a priori* restrict digital or mobile marketing campaigns to audiences containing at least 80% adults is limited by technological difficulties in measuring users of mobile media. Parents and children may share mobile devices, such as iPads, creating challenges in measuring the true audience of a mobile broadcast or download. The CFBAI's approach to digital and mobile marketing, in contrast, focuses on ads primarily directed to children under 12. So, for example, if

[67] According to the latest TNS Shopper360 study (2009), only 15% of shoppers brought their children on their shopping trip (all channels/US). This percentage varies by channel: in the "Grocery" category only 12% of shoppers brought their children along; in the "Supercenter" category, it was 20%.

an app is clearly child-directed, any participant food ads on it would have to meet the CFBAI's nutrition criteria. Similarly, if a child registers his or her cell phone number on a child-directed website to receive mobile content, any food ads displayed in such content would be limited to products that meet the CFBAI's nutrition criteria. Our participants look at the intent of the platform and the audience they intend to reach with their ads.

Company sponsored Internet and other Internet advertising. The IWG's definitions cover marketing activities on Internet sites for which "audience demographic data indicate that 20% or more of visitors to the site or page were children ages 2-11 for any month [in the relevant year]." This criterion raises enormous difficulties due to month-to-month variability (exacerbated with seasonal issues, such as the summer months when children may spend more time online) in the demographics of website visitors. To apply this criterion prospectively, companies would have to reassess their marketing plans on a monthly basis (assuming prospective monthly demographic data is even available). This, of course, would be an extremely burdensome and costly undertaking requiring a complete overhaul of the process through which companies, advertising agencies and Internet websites conduct their marketing-related planning, negotiations, and media buy transactions.

Event marketing. The IWG's references to marketing plans and subjective indicators to define youth-targeted event marketing suffer from the same flaws discussed above. The IWG considers sponsorship of a public event to be youth-targeted if the marketing plan references youth, the attendance of youth is sought, 30% or more of the attendees are children (or 20% adolescents), or any of the subjective indicators discussed above apply. The IWG also does not seem to take into account that parents/adults will be accompanying youth to such events and therefore can perform their natural and inherent mediator role of interpreting or placing what their children are seeing into context.

Under the proposed definitions, companies would not be able to sponsor or distribute promotional materials or samples at a wide array of family- or adult-oriented events. For example, the definitions could consider events such as the Special Olympics, state fairs, parent-child runs, community festivals and sports games, to be child-targeted. This might occur because a marketing plan might indicate that sampling

would be done at the event to increase penetration in households with children, the event might involve child-oriented activities or themes, or include child appealing characters such as clowns. Additionally, attendee percentage threshold criteria are problematic. For example, data on the age demographics of event attendees might not be available, thereby effectively limiting *all* event marketing to only products or brands that meet the IWG's nutrition criteria.

G-rated movies. The IWG's definition of child-targeted advertising is over broad because not all G-rated movies are child-oriented. Thus, this definition could sweep in ads shown before adult- or family-targeted movies, such as documentaries that are not child-directed. In the past, the CFBAI has looked at the distribution mechanisms for ads in movies and learned that the distribution services do not have the technology to distinguish between child-themed and family- or adult-themed G-rated movies, only between movies with different ratings.

Philanthropic endeavors. The proposed definitions of youth-directed marketing cover activities in conjunction with a donation to a philanthropic organization, program, or event that includes the use of trade names, logos, displays, signage, or other branded materials in connection with child-oriented clubs, parks, activities, or community programs or events. The IWG uses the same criteria as it does with event marketing and those criteria have the same flaws noted above. Additionally, the IWG includes as an indicator that 30% or more of the beneficiaries of the organization, program, or event are children (or 20% are adolescents). The inclusion of the age of charity beneficiaries as an indicator that the activity targets children or adolescents is highly problematic because companies routinely engage in adult-directed philanthropic activities for which children or adolescents are the ultimate beneficiaries. The definition therefore extends the reach of the IWG's principles to philanthropic activities that are exclusively adult-directed, such as evening gala fundraisers for charities that benefit children and/or adolescents.

Further, the inclusion of trade names in the proposed definition is extremely problematic for companies that use their company name as a trade name. Trade names may encompass a broad range of products. Unless the trade name represents only products that meet the IWG's nutrition criteria, these companies would not be able to include their company name "in connection with" charities, clubs, parks,

activities, community programs or events that benefit children or adolescents. Currently, virtually all of our participants use their company name as a trade name (which would encompass many different brands) and thus would be foreclosed from engaging in any philanthropic activities that benefit children or adolescents.

Examples of affected initiatives include:

- *The Sara Lee Foundation*. The Sara Lee Corporation produces products such as lunch meats and desserts. Because the Sara Lee trade name encompasses products with different nutritional composition, its philanthropic activities could be affected. Currently, the Sara Lee Foundation supports initiatives in the areas of food insecurity, nutrition education, and healthy and active lifestyles by awarding grants to non-profit organizations that benefit children and adolescents, including Boys & Girls clubs, local YMCAs and After School Matters, Inc.[68]

- *Kraft Foods partnership with The National Latino Children's Institute*. Since 2002, Kraft Foods and its Foundation have partnered with The National Latino Children's Institute on the Salsa, Sabor y Salud healthy lifestyles program for Hispanic families. Through an expanded partnership with the YMCA of the USA, the program will be rolled out at 130 Y's across the country.[69] Because Kraft Foods is a trade name used on an array of products, this type of partnership could be curtailed.

- *Ronald McDonald House Charities*. Ronald McDonald House Charities (RMHC) has been providing a home away from home for children and families in need since 1974. RMHC's three core programs are: 1) The Ronald McDonald House program provides a "home-away-from-home" for families so they can stay close by their hospitalized child at little or no cost; 2) Ronald McDonald Family Rooms offer a place for families to rest and regroup right at the hospital, just moments away from their sick child; and 3) Ronald McDonald Care Mobiles operate in vulnerable communities and provide cost-effective, high-quality medical, dental and health education services to benefit thousands of children. The spokesperson for the charity is Ronald McDonald. McDonald's

[68] *See* http://www.saraleefoundation.org/overview/intro.cfm.
[69] *See* http://www.nlci.org/programs/salsa/Salsa_News.html.

frequently conducts adult-targeted food related promotions benefiting this charity. These promotions would be prohibited unless the food met the IWG's principles.

- *Quaker Oats "Breakfast in the Park."* PepsiCo, Inc. recently launched a free breakfast program in Danville, IL to address childhood hunger among under-served children.[70] The program is a community partnership designed to address child hunger by providing its own products as free breakfasts. While Quaker Oats produces many nutritious products, conceivably not every product would satisfy the IWG's nutrition principles and thus programs like this one could be threatened.

Additional examples of potentially affected initiatives are attached as Appendix E.

In-school marketing. The CFBAI's participants have committed not to advertise branded food and beverage products, even the products that meet their nutrition standards, in elementary schools (pre-K through 6th grade), with limited exceptions to promote pro-social in-school initiatives (charitable fundraising activities, public service messaging and charitable donations to schools), to permit marketing activities directed at adults (items provided to school administrators for their personal use) and to allow participants to use materials that identify products offered for sale in schools (such as menus and placards with food displays).

In contrast, the IWG would permit in-school advertising of products that satisfy its nutrition principles. However, the IWG's definition of in-school marketing, in conjunction with its unrealistic nutrition principles, would significantly limit philanthropic donations to schools and for activities, such as athletics, that themselves are integral to the fight against childhood obesity. As with the IWG's proposed definition of philanthropic endeavor marketing, companies that use their company name as a trade name would not be able to use their company name in connection with any in-school activity.

In sum, the CFBAI's requirements, unlike the IWG's definitions, are carefully focused on advertising that is primarily directed to children. Our approach captures

[70] *See* http://www.news-gazette.com/news/social-services/2011-06-09/quaker-provide-summer-breakfast-kids-danville-park.html.

advertising designed to appeal to children, not advertising that might incidentally appeal to children, activities that include children, or philanthropic endeavors that benefit children. In addition, we are mindful of the rights of advertisers to speak to parents and other consumers. Thus the CFBAI has struck the right balance.

V. Conclusion

We appreciate the opportunity to share our views and the results of our intensive, year-long effort to develop nutrition criteria that are uniform and that build on the progress that already has been made under the CFBAI in improving food advertising primarily directed to children under 12. We hope that our comments help you in preparing your report to Congress.

Respectfully submitted,

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Appendix A. CFBAI Category-Specific Uniform Nutrition Criteria

Children's Food and Beverage Advertising Initiative
Council of Better Business Bureaus, Inc.
Category-Specific Uniform Nutrition Criteria

Product Category	Unit	Nutrients to Limit (NTL)				Nutrition Components to Encourage (NCTE)	Notes
		Calories	Sat Fat	Sodium	Total Sugars		
1. Juices	LSS	≤ 160	0 g	≤ 140 mg	No added sugars	≥ ½ c F/V juices	– A serving must contain ≥ 4 fl oz of 100% F/V juice – Sugars limited to those naturally occurring in F/V
2. Dairy products							
– Milks and milk substitutes	8 fl oz	≤ 150	≤ 2 g	≤ 200 mg	≤ 24 g	1 c dairy	– For LSS < 8 fl oz, NTL & NCTE to be scaled proportionately – Powder/syrup flavorings mixed with 8 fl oz non-fat milk are allowed ≤ 25 g total sugars as prepared
– Yogurts and yogurt-type products	6 oz	≤ 170	≤ 2 g	≤ 140 mg	≤ 23 g	≥ ½ c dairy and ≥ 10% DV calcium	– 6 oz (170 g) is most common single serving size – For LSS < 6 oz, NTL & NCTE to be proportionately lower
– Dairy-based desserts	½ c	≤ 120	≤ 2 g	≤ 110 mg	≤ 20 g	≥ ¼ c dairy and ≥ 10% DV calcium	– Serving sizes limited to ½ c – For LSS < ½ c, NTL & NCTE to be scaled proportionately
– Cheese and cheese products	LSS	≤ 80	≤ 3 g	≤ 290 mg	≤ 2 g	≥ ½ c dairy equivalent (provides ≥ 10% DV calcium)	– For LSS < 1 oz, NCTE to be scaled to ≥ ⅓ c dairy equivalent and ≥ 10% DV calcium
3. Grain, fruit and vegetable products, and items not in other categories	LSS	≤ 150	≤ 1.5 g	≤ 290 mg	≤ 10 g	≥ ½ serving of F/V/D/WG or ≥ 10% DV of any essential nutrient	– Subcategories differentiate, on a calorie basis, among products that have a small RACC (i.e., ≤ 30 g or ≤ 2 tbsp) and/or are lighter in density (e.g., g/cup) from those with a larger RACC and/or higher density – Examples of ≤ 150 calorie products: most children's breakfast cereals, crackers, & pretzels – Examples of > 150-200 calorie products: denser breakfast cereals (e.g., shredded wheat), waffles, & vegetable products with sauces
	LSS	> 150-200	≤ 2 g	≤ 360 mg	≤ 12 g		
4. Soups and meal sauces	LSS	≤ 200	≤ 2 g	≤ 480 mg	≤ 6 g	≥ ½ serving of F/V/D/WG or ≥ 10% DV of any essential nutrient	– Tomato-based products allowed ≤ 12 g of total sugars/LSS to include sugars naturally occurring in tomatoes & those added to balance product pH
5. Seeds, nuts, and nut butters and spreads	1 oz or 2 tbsp	≤ 220	≤ 3.5 g	≤ 240 mg	≤ 4 g	≥ 1 oz protein equivalent	– For LSS < 1 oz or 2 tbsp, NTL & NCTE to be scaled proportionately
6. Meat, fish, and poultry products	LSS	≤ 120	≤ 2 g	≤ 480 mg	≤ 2 g	≥ 1 oz equivalent of meat, fish, or poultry, and ≥ 10% DV of any essential nutrient	– For LSS ≤ 1 oz, NTL reduced to ≤ 60 kcal, ≤ 1 g sat fat, ≤ 240 mg sodium and ≤ 1 g total sugars
7. Mixed dishes	LSS	≤ 280	≤ 2.5 g	≤ 540 mg	≤ 10 g	≥ ½ serving of F/V/D/WG or ≥ 10% DV of *two* essential nutrients	– Products include casseroles, burritos, pizzas, & sandwiches that do not meet FDA/USDA definition for *main dishes* – Items that contain ≤ 200 kcal and meet NTL criteria may qualify if they contain ≥ ½ serving of F/V/D/WG or ≥ 10% DV of any essential nutrient

Product Category	Unit	Nutrients to Limit (NTL)				Nutrition Components to Encourage (NCTE)	Notes
		Calories	Sat Fat	Sodium	Total Sugars		
8. Main dishes and entrées	LSS	≤ 350	≤ 10% kcal	≤ 600 mg	≤ 15 g	≥ 1 serving of F/V/D/WG or ≥ ½ serving of F/V/D/WG and ≥ 10% DV of *two* essential nutrients	– Items must meet FDA/USDA definition for *main dish*es
9. Small meals	LSS	≤ 450	≤ 10% kcal	≤ 600 mg	≤ 17/12 g (See notes)	≥ 1½ servings of F/V/D/WG or ≥ 1 serving of F/V/D/WG and ≥ 10% DV of *three* essential nutrients	– Small meals contain multiple items but do not meet FDA/USDA definition for *meals* – Meals must meet FDA/USDA definition for *meal*s – Sugars from one qualifying milk/milk substitute, or qualifying yogurt/yogurt-type product, or qualifying fruit (i.e., without added sugars) or qualifying F/V juice are not counted in the 17 g or 20 g total sugars limits – When two qualifying items are present, the sugars from both items are not counted in the total sugars limit, but the limits (to account for all other items) are reduced to 12 g (small meals) and 15 g (meals) – All other NTL criteria for small meals and meals (calorie, sat fat, and sodium limits) must be met
10. Meals (entrée and other items including a beverage)	Meal	≤ 600	≤ 10% kcal	≤ 740 mg	≤ 20/15 g (See notes)	≥ 2 servings of F/V/D/WG or ≥ 1½ servings of F/V/D/WG and ≥ 10% DV of *three* essential nutrients	

***Trans* fat**. The criteria for *trans* fat is 0 g labeled for all categories. For foods in the meat and dairy categories served as individual foods or as part of composite dishes or meals (e.g., soups, mixed dishes, entrees, meal-type products), naturally occurring *trans* fats are excluded.

Exemptions

- Sugar-free mints and gum.
- The following products also are exempt from the nutrient criteria specified above, except as indicated in notes to Categories 9 & 10:
  - Fruit products without added sugars;
  - Vegetable products without added fats and which meet FDA regulations for "very low sodium;"
  - Beverages, including bottled waters, that meet FDA regulations for "low calorie" and "very low sodium" (diet sodas are excluded from this exemption).

Abbreviations and Glossary

DV: Daily Value.

Essential Nutrients: Those occurring naturally in foods (or that are added to foods to meet standards of identity or to restore nutrients lost in processing), and for which a DV has been established. If fortification is used to meet the criteria, the nutrient must be a DGA 2010 nutrient of concern (calcium, fiber, potassium, vitamin D) or a nutrient that is required to be listed on the Nutrition Facts Panel (iron, vitamins A & C).

F/V/D/WG: Any combination of fruits, vegetables, non/low-fat dairy, and/or whole grains.

LSS: Labeled serving size.

NA: Not applicable.

NCTE: Nutrient components to encourage are F/V/D/WG or Essential Nutrients.

NTL: Nutrients to limit are calories, saturated (sat) fat, *trans* fat, sodium and total sugars.

Qualifying F/V Juice: Any fruit or vegetable juice or blend that contains no added sugars and meets the requirements of Category 1.

Qualifying Flavored Milk/Milk Substitute/Yogurt/Yogurt-type Product: These are products that meet the Category 2 criteria for milk/milk substitutes, or yogurt/yogurt-type products.

RACC: Reference amount customarily consumed.

Serving(s): See USDA Food Group Serving Equivalents.

Total Sugars: Include naturally occurring and added sugars.

Appendix B – Examples CFBAI Participants' Product Development and Reformulation Successes

Some companies who joined the CFBAI had already reformulated their products prior to implementing their CFBAI pledges. During the last several years, the CFBAI participants have reformulated or newly created more than 100 products to meet their meaningful, science-based nutrition standards. A number of products have been reformulated more than once as companies seek to improve the nutrition profile of products advertised to kids through incremental and regular enhancements. Other products have been discontinued or no longer advertised.

Figure B1 provides an overview of development and reformulation of products the CFBAI participants feature in their child-directed advertising. Examples of the calorie levels in products, and changes and improvements in sugars, sodium, fats and nutrient components to encourage are discussed below.

Figure B1. Summary of Change & Improvement in CFBAI Participants' Products

- ≥ **100** products changed or created to meet nutrition standards
  - Some products reformulated several times
  - Other products discontinued or no longer advertised
- **Calories**
  - Virtually every individual product under 200 calories
  - No entrees/main dishes > 350 calories; No meals > 600 calories
- **Sugars**
  - Pre-CFBAI some cereals had as much as 15 or 16 grams per serving
  - 21 of 25 cereals currently 10 grams or less per serving; limit is 12 grams
- **Sodium**
  - Pre-CFBAI some products with > 900 mg sodium
  - Now highest is 750 (most far less: FDA "healthy" levels used by many)
- **Fats**
  - 2 grams or ≤ 10% calories sat fat; trans fat limits generally 0 g labeled
  - A number of products reformulated to lower fats to meet limits
- **Nutrients to Encourage**
  - More fiber & Vitamin D (nutrients of public health concern in U.S.)
  - Whole grains usage has increased

Calories

The foods that the CFBAI's participants advertise are not high in calories. In the individual foods and beverages categories, all foods (except two peanut butters that contain 210 calories) contain no more than 200 calories, as illustrated in Figure B2. Main dishes do not exceed 350 calories and meals do not exceed 600 calories.

Figure B2. Examples of calorie content in CFBAI participants' products

PepsiCo Quaker Chewy Granola Bars
90 calories

Capri Sun 100% Juice – Fruit Dive
80 calories

Dannon Danimals Drinkable Smoothies
70 calories

KRAFT 2% Milk Reduced Fat Mozzarella and Cheddar Cheese Twists
50 calories

Sugars

The CFBAI participants have reduced the sugar content in a number of their products. For example, General Mills reformulated its Yoplait Trix Yogurt to decrease total sugar content by 18%. And, in 2010, PepsiCo advertised Quaker Chewy granola bars with 25% less sugar.

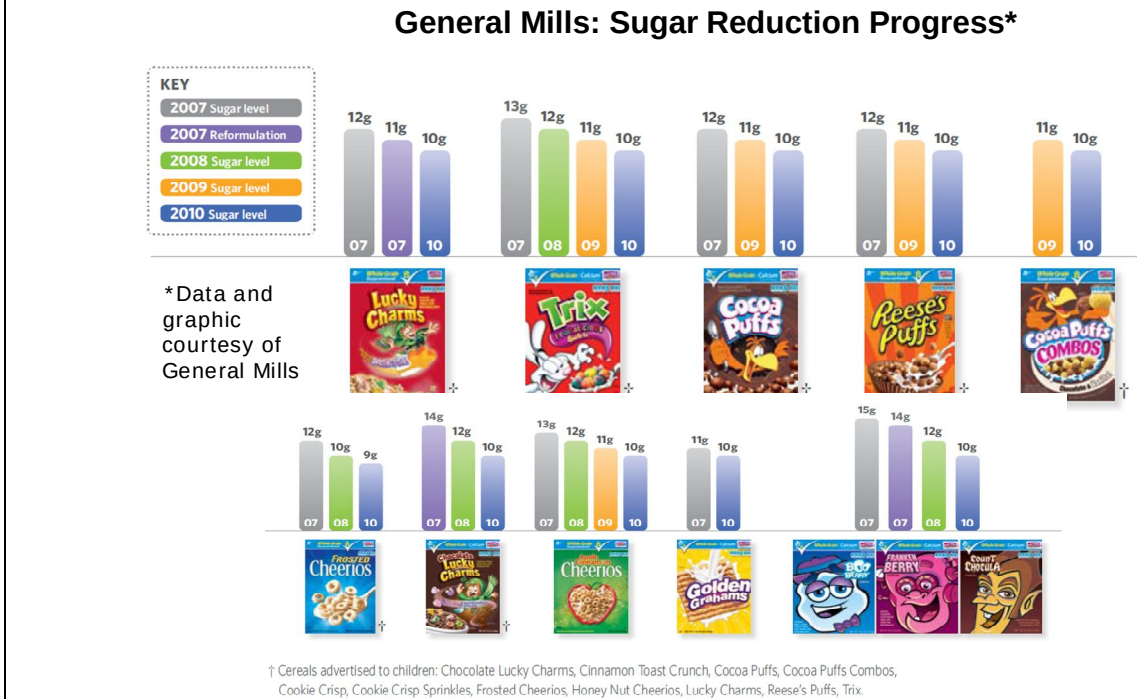
The breakfast cereal category is notable for sugar reductions. Before the CFBAI, some cereals advertised to children had 15 or 16 grams of sugars per serving. Under the CFBAI, participants committed to advertise only cereals with no more than 12 grams added sugars per serving (or a comparable limit based on percentage of calories or weight). This required many products to be reformulated to meet that limit. Since 2007, sugar reductions have ranged from about 10% to more than 25%. Now, all program cereals contain no more than 12 grams of sugars, and, as seen in Figure B3, most cereals (84%) contain no more than 10 grams per serving.

Figure B3. Sugar Content of Cereals 2009-2011

Sugar Content	2009	2010	2011
≤ 10 g	40 %	52 %	84 %
11 g	22 %	36 %	8 %
≤ 12 g	38 %	12 %	8 %

Figure B4 shows sugar reductions in General Mills breakfast cereals that are advertised to children or historically are popular with children.

Figure B4. Sugar Reductions in General Mills Cereals



Sodium

Virtually all participants have been reducing sodium in their products. Before the CFBAI, some products advertised to children had over 900 mg of sodium. Now the highest is 750 mg, but most have far less. The participants have reduced the sodium content of dozens of soups, canned pastas, and other items, generally to FDA "healthy" levels. Examples include:

- Kraft Foods reduced the sodium limit for *Lunchables* products advertised to children from 960 mg, to 840 mg and most recently to 600 mg.

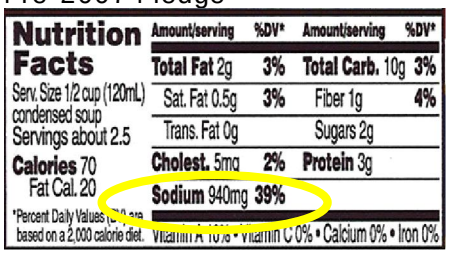
- Burger King Corporation reformulated its Chicken Tenders in 2009, reducing sodium by about 1/3.

- Campbell Soup Company now advertises to children only soups that have no more than 480 mg sodium, a level that meets the FDA's "healthy" criterion for sodium in individual foods. For example, as shown in Figure B5, Campbell's Chicken & Stars Soup was reformulated to decrease sodium by 49% (from 940 mg to 480 mg). Campbell Soup Company also reduced the sodium content in its pasta category by 5 to 10% and set a 600 mg sodium criterion standard in its 2010 pledge (the "healthy" level for main dishes). For example, as shown in Figure B6, SpaghettiO's® with Meatballs was reformulated to decrease sodium by 33% (from 890 mg to 600 mg).

- ConAgra Foods steadily has reduced the sodium content in its Chef Boyardee products. For example, since 2007, the sodium content in Chef Boyardee Mini O's decreased by 34%, as shown in Figure B7. Conagra Foods' also reduced the sodium content in its Kid Cuisine products. For example, the sodium content in Kid Cuisine Cheese Blaster Mac-n-Cheese decreased from 750 mg to 510 mg.

Figure B5. Sodium Reduction in Campbell's Chicken & Stars Soup

Pre-2007 Pledge



Current Formulation

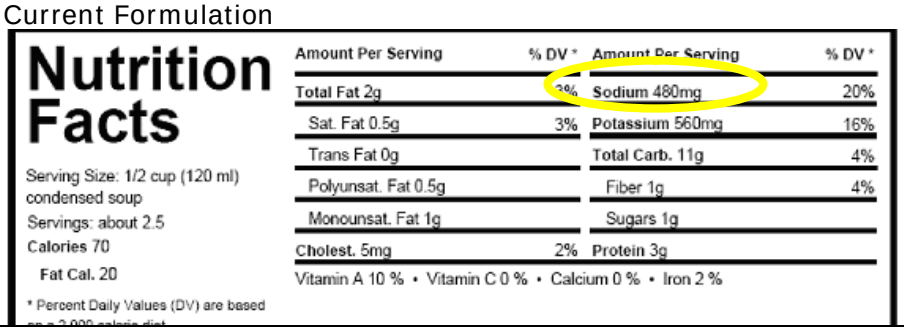


Figure B6. Sodium Reduction in Campbell's SpaghettiO's® with Meatballs

Pre-2007 Pledge

Nutrition Facts

Serv. Size 1 cup (252g)
Servings about 2

Calories 240
Fat Cal. 70

*Percent Daily Values (DV) are based on a 2,000 calorie diet.

Amount/Serving	%DV*	Amount/Serving	%DV*
Total Fat 8g	12%	**Total Carb.** 32g	11%
Sat. Fat 3.5g	18%	Fiber 4g	16%
Trans Fat 0.5g		Sugars 10g	
Cholest. 15mg	5%	**Protein** 11g	13%
Sodium 890mg	37%		

Vitamin A 10% • Vitamin C 10% • Calcium 15%
Iron 20% • Vitamin D 10% • Thiamin 10%
Riboflavin 10% • Niacin 15% • Folic acid 15%

Current Formulation

Nutrition Facts

Serving Size: 1 cup (252g)
Servings: about 2
Calories 240
Fat Cal. 70

* Percent Daily Values (DV) are based on a 2,000 calorie diet.

Amount Per Serving	% DV *	Amount Per Serving	% DV *
Total Fat 8g	12 %	Total Carb. 32g	11 %
Sat. Fat 2.5g	18 %	Fiber 4g	16 %
Trans Fat 0g		Sugars 8g	
Cholest. 15mg	5 %	Protein 11g	13 %
Sodium 600mg	25 %		

Vitamin A 10 % • Vitamin C 10 % • Calcium 15 % • Iron 20 % •
Vitamin D 10 % • Thiamin 10 % • Riboflavin 10 % • Niacin 15 % •
Folate 15 %

Figure B7. Sodium Reduction in ConAgra Foods Chef Boyardee Mini O's

2007 Formulation

Amount Per Serving	
Calories 180	Calories from Fat 10
	% Daily Value*
Total Fat 1g	**2%**
Saturated Fat 0.5g	**3%**
Trans Fat 0g	
Cholesterol 0mg	**0%**
Sodium 990mg	**41%**
Potassium 300mg	**9%**
Total Carbohydrate 38g	**13%**
Dietary Fiber 2g	**8%**
Sugars 14g	
Protein 5g	**10%**

Vitamin A 40% • Vitamin C 0%
Calcium 2% • Iron 6%

* Percent Daily Values are based on a 2,000 calorie diet.

2009 Formulation

Nutrition Facts

Serving Size
1 cup (252g)
Servings About 2
Calories 170
Fat Cal. 10

*Percent Daily Values (DV) are based on a 2,000 calorie diet.

Amount/serving	%DV*	Amount/serving	%DV*
Total Fat 1g	2%	**Potassium** 840mg	24%
Sat. Fat 0.5g	3%	**Total Carb.** 35g	12%
Trans Fat 0g		Fiber 3g	12%
Cholesterol 0mg	0%	Sugars 11g	
Sodium 700mg	29%	**Protein** 5g	10%

Vitamin A 2% • Vitamin C 0% • Calcium 10%
Iron 8% • Thiamine 10% • Riboflavin 10%
Folic Acid 10% • Phosphorus 10% • Zinc 10%
Selenium 10% • Manganese 10%

Nov. 2010 Formulation

Nutrition Facts

Serving Size
1 cup (252g)
Servings About 2
Calories 170
Fat Cal. 10

*Percent Daily Values (DV) are based on a 2,000 calorie diet.

Amount/serving	%DV*	Amount/serving	%DV*
Total Fat 1g	2%	**Potassium** 840mg	24%
Sat. Fat 0g	0%	**Total Carb.** 34g	11%
Trans Fat 0g		Fiber 3g	12%
Cholesterol less than 5mg	1%	Sugars 12g	
Sodium 650mg	27%	**Protein** 5g	5%

Vitamin A 2% • Vitamin C 0% • Calcium 10%
Iron 10% • Riboflavin 10% • Folic Acid 10%
Selenium 30% • Manganese 10%

Fats

The CFBAI participants have reduced the fat content of many canned pastas, meals, crackers and other products. The great majority of individual foods the CFBAI participants advertise to children have no more than 2 grams of saturated fat (or ≤ 10% calories sat fat). *Trans* fats are limited to 0 g labeled or no added. Examples of fat reductions include:

- In 2009, Campbell Soup Company reformulated its Pepperidge Farm Goldfish Grahams to meet its CFBAI nutrition standards, reducing the saturated fat content to 1 gram from 2 grams.

- Burger King Corporation transitioned to fat-free milk from low-fat milk in 2009 in all of its restaurants, resulting in a significant reduction in fat in approved Kids Meals that feature milk.

- ConAgra Foods reduced the saturated fat content of its Kid Cuisine Cheese Blaster Mac-n-Cheese by 40%, as shown in Figure B8.

Figure B8. Saturated Fat Reduction in ConAgra Foods Kid Cuisine Cheese Blaster Mac-n-Cheese

Pre-2008 Pledge

Nutrition Facts
Serving Size 1 Meal

Amount Per Serving	
Calories 380	Calories from Fat 100
	% Daily Value*
Total Fat 11g	**17%**
Saturated Fat 5g	**25%**
Trans Fat 0g	
Cholesterol 15mg	**5%**
Sodium 750mg	**31%**
Total Carbohydrate 58g	**19%**
Dietary Fiber 5g	**20%**
Sugars 11g	
Protein 11g	

Vitamin A 20% • Vitamin C 40%
Calcium 10% • Iron 4%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Current Formulation

Nutrition Facts
Serving Size 1 Meal (301g)

Amount Per Serving	
Calories 370	Calories from Fat 60
	% Daily Value*
Total Fat 7g	**11%**
Saturated Fat 3g	**15%**
Trans Fat 0g	
Cholesterol 10mg	**3%**
Sodium 510mg	**21%**
Potassium 540mg	**15%**
Total Carbohydrate 66g	**22%**
Dietary Fiber 5g	**20%**
Sugars 14g	
Protein 11g	**12%**

Vitamin A 10% • Vitamin C 70%
Calcium 15% • Iron 8%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Potassium		3,500mg	3,500mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g
Protein		50g	65g

Nutrients and Food Groups to Encourage

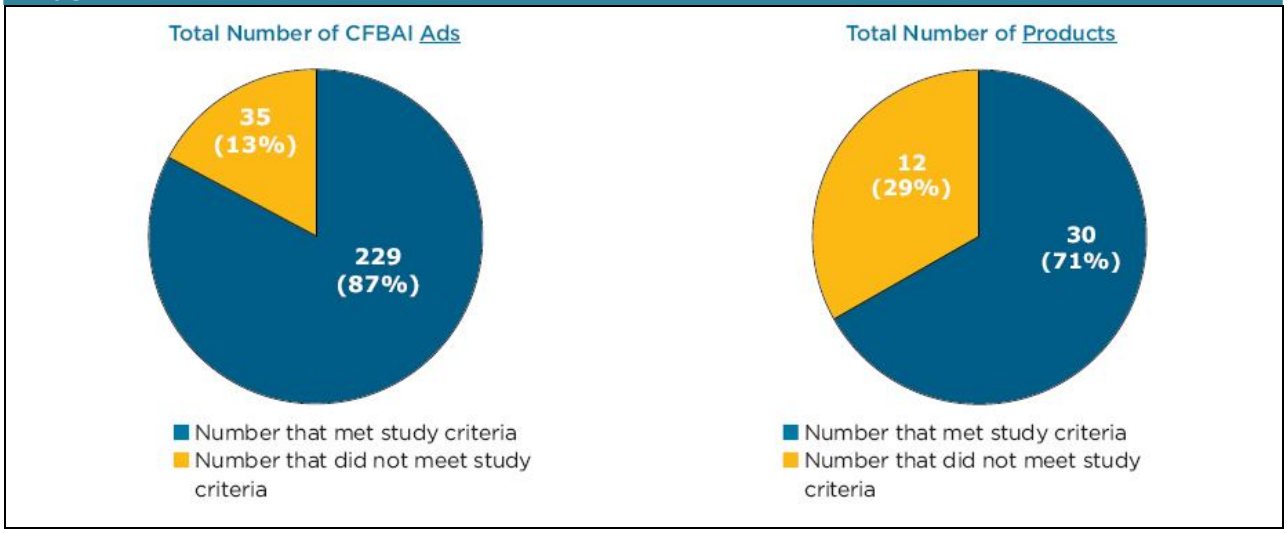
Overall, the CFBAI participants' use of meaningful nutrition standards is driving increases in nutrients and food groups to encourage.

The CFBAI's informal study of advertising during a sample of children's television programming in 2010 looked at the extent to which the CFBAI participants' ads depict products that contain nutrients and/or food groups to encourage.[1] Overall the results showed that the CFBAI participants' child-directed ads usually are for or include nutrient dense foods that also meet reasonable limits on calories, fats, sugars and sodium. As seen in Figure B9, more than three-quarters of participant child-directed food advertising was for products providing at least 10% of the Daily Value (DV) of one shortfall nutrient (potassium, fiber, calcium, magnesium and Vitamin E) or a half-serving of a food group to encourage.

Our analysis also showed that participant ads included the following:

- *Apples*. 24% included apples or applesauce.
- *Milk*. 21% included milk.
- *Vegetables*. 8% were for products that included at least a half-serving of vegetables.
- *Whole Grains*. 27% were for products or meals that included at least 8 grams of whole grains/50% whole grains.
- *Yogurt Products*. 12% featured low-fat yogurt products.

Figure B9. Nutrients & Food Groups to Encourage: Analysis of Ads on Sample of Kids' TV



[1] The CFBAI conducted an analysis of 38.5 hours of children's television programming that aired during May-June 2010, a follow-up to a similar analysis conducted and reported on in 2009. We determined whether products provided at least a good source of one or more shortfall nutrients for children (calcium, potassium, fiber, magnesium or Vitamin E) as identified in the Dietary Guidelines for Americans 2005 (DGA), or provided at least a half-serving of fruit, vegetables, low-fat dairy or eight grams of whole grains (i.e., food groups the 2005 DGAs recommend for increased consumption). In addition, we considered whether 50% of the grains in participants' grain-containing products were whole grains.

The CFBAI participants' product developments and reformulations to increase nutrients to encourage are numerous, and include the following examples:

- Post Foods increased Vitamin D in two products to 20% and 25% from 10%. All Post Foods cereals advertised to children are an "excellent" source of Vitamin D.

- PepsiCo, Inc. introduced Tropicana Tropolis Real Fruit Squeezers, a blend of fruit puree and fruit juice that is a good source of fiber and provides 100% DV of calcium.

- Nestlé USA updated its nutrition criteria in 2009 to require that all product categories provide at least 10% DV of one nutrient. The company also added a calcium-fortified low-fat milk product to its approved product list. This milk product provides 40% of the calcium DV, 10% more than regular low-fat milk.

- Since its original pledge, Kellogg Company reformulated nearly 80% of its U.S. ready-to-eat cereals to be a good or excellent source (20% DV) of fiber as part of a company-wide initiative. The fiber content of Kellogg's Apple Jacks cereal increased from 1 gram to 3 grams, as shown in Figure B10. The company also reformulated Apple Jacks cereal to contain at least 8 grams of whole grains per serving.

Figure B10. Fiber Increase in Kellogg's Apple Jacks

2008 Formulation

Nutrition Facts

Serving Size 1 Cup (28g/1.0 oz.)

Amount Per Serving	Cereal	Cereal with ½ Cup Vitamins A&D Fat Free Milk
Calories	110	150
Calories from Fat	5	5
	% Daily Value**	
Total Fat 0.5g*	**1%**	**1%**
Saturated Fat 0g	**0%**	**0%**
Trans Fat 0g		
Cholesterol 0mg	**0%**	**0%**
Sodium 135mg	**6%**	**9%**
Potassium 30mg	**1%**	**7%**
Total Carbohydrate 25g	**8%**	**10%**
Dietary Fiber less than 1g	**3%**	**3%**
Sugars 12g		
Other Carbohydrate 13g		
Protein 1g		
Vitamin A	10%	15%
Vitamin C	25%	25%
Calcium	0%	15%
Iron	25%	25%
Vitamin D	10%	25%
Thiamin	25%	30%
Riboflavin	25%	35%
Niacin	25%	25%
Vitamin B_6	25%	25%
Folic Acid	25%	25%
Vitamin B_{12}	25%	35%
Zinc	10%	15%

Current Formulation

Nutrition Facts

Serving Size 1 Cup (28g/1.0 oz.)

Amount Per Serving	Cereal	Cereal with ½ Cup Vitamins A&D Fat Free Milk
Calories	100	140
Calories from Fat	5	5
	% Daily Value**	
Total Fat 0.5g*	**1%**	**1%**
Saturated Fat 0g	**0%**	**0%**
Trans Fat 0g		
Cholesterol 0mg	**0%**	**0%**
Sodium 130mg	**5%**	**8%**
Potassium 35mg	**1%**	**7%**
Total Carbohydrate 25g	**8%**	**10%**
Dietary Fiber 3g	**10%**	**10%**
Sugars 12g		
Other Carbohydrate 10g		
Protein 1g		
Vitamin A	10%	15%
Vitamin C	25%	25%
Calcium	0%	15%
Iron	25%	25%
Vitamin D	10%	25%
Thiamin	25%	30%
Riboflavin	25%	35%
Niacin	25%	25%
Vitamin B_6	25%	25%
Folic Acid	25%	25%
Vitamin B_{12}	25%	35%
Zinc	10%	15%

The CFBAI participants also have developed or reformulated products to increase food groups to encourage. For example:

- PepsiCo developed new Quaker Chewy Bars containing 10 grams of whole grains per serving (these are also low in sodium and a good source of calcium).
- Burger King Corporation implemented its CFBAI pledge with the launch of a new product, BK® Fresh Apple Fries, which provides one serving of fruit.
- McDonald's Happy Meal advertising now always includes apple dippers and low-fat milk, as seen in Figure B11.
- Kraft Foods *Lunchables* products offer many positive elements including whole grain, fruit, and dairy. The *Lunchables* product depicted in Figure B12 provides 5 grams of whole grains, reduced fat dairy, one serving of fruit, and 100% white meat turkey; is an excellent source of Vitamin A and Vitamin C, a good source of protein and calcium; and has 280 calories per serving.

Figure B11. McDonald's Happy Meal with apple dippers and low-fat milk

Figure B12. Kraft Foods New Lunchables with fruit

Appendix C. White Paper on CFBAI's Uniform Nutrition Criteria

[The White Paper on CFBAI's Uniform Nutrition Criteria is posted as a separate document in CFBAI's electronic submission to the Interagency Working Group's Request for Comments]

Appendix D. CFBAI's Program and Core Principles Statement

I. INTRODUCTION

Companies engaged in advertising and marketing food and beverage products have developed this self-regulatory initiative for advertising such products to children under 12. The goal of this initiative is to use advertising to help promote healthy dietary choices and healthy lifestyles among American children. While it remains the primary responsibility of parents to guide their children's behavior in these areas, industry members are voluntarily pursuing this initiative as a means of assisting parents in their efforts.

This document was first issued in November 2006 when the Council of Better Business Bureaus (BBB) and 10 charter companies launched the Children's Food and Beverage Advertising Initiative (CFBAI). During 2009, BBB and 15 of the then 16 participants reviewed the program and made a number of enhancements to the scope of the advertising commitments, reflected in the Second Edition of this document, which became effective on January 1, 2010.[2] This, the Third Edition of the CFBAI Program and Core Principles Statement, contains additional information about the definition of "advertising primarily directed to children under 12." A number of participants have revised their definitions and now an audience threshold of no higher than 35% children 2-11 is generally being used.

This document consists of four parts. Part II describes the Core Principles. All participants agree to make commitments that are consistent with these principles. Part III describes the administrative elements of the program. Part IV describes an additional commitment regarding not advertising to children under six that some participants have made and that the CFBAI has agreed to monitor and oversee.

II. CORE PRINCIPLES

Companies participating in this initiative will publicly commit to advertising that will further the goal of promoting healthy dietary choices and healthy lifestyles to children under 12. These commitments will be set forth in an individual "Pledge" for each participant. Because companies and their product lines vary, company commitments also will vary. All commitments, however, will be consistent with the following Core Principles:

A. Advertising, Interactive Games, Licensed Character, Product Placement and Elementary School Requirements

1. Advertising Primarily Directed to Children Under 12. Participants will commit that all "advertising primarily directed to children under 12" will be for healthy dietary choices, or better-for-you products, in accordance with company-developed standards that are consistent with established scientific and/or government standards.[3]

Measured Media. This principle applies to advertising in measured media:

- Television

[2] Post Foods joined the CFBAI on October 1, 2009, after the review was substantially completed and thus did not participate in the review.

[3] Participants also are encouraged to disseminate healthy lifestyle messaging. This could include messaging that encourages:

- Physical activity, or
- Good dietary habits, consistent with established scientific and/or government standards, such as USDA Dietary Guidelines and MyPyramid.

- Radio
- Print
- Internet (third-party websites).

Child-Directed Content. This principle also applies to advertising that is primarily directed to children on:

- Company-owned websites or micro-sites primarily directed to children under 12
- Video and computer games that are rated "Early Childhood" or "EC," which are inherently primarily directed to children under 12, and other games that are age-graded on the label or packaging as being primarily directed to children under 12
- DVDs of movies that are rated "G" whose content is primarily directed to children under 12, and other DVDs whose content is primarily directed to children under 12.

Mobile Media and Word of Mouth. This principle also applies to advertising that is primarily directed to children under 12 on cell phones, PDAs, and through word of mouth.[4]

2. Use of Products in Interactive Games. Participants will commit that, in any interactive game provided free or at nominal charge (in whatever format, online, disk or cartridge) primarily directed to children under 12 where the company's food or beverage products are incorporated into the game, the interactive game will incorporate or be accompanied by healthy dietary choices or better-for-you products.

3. Use of Licensed Characters, Celebrities and Movie Tie-Ins. Participants will commit that the use of third-party licensed characters, celebrities (including athletes) and movie tie-ins in advertising primarily directed to children under 12 will be consistent with their advertising commitments.[5]

4. Product Placement. Participants will commit to not paying for or actively seeking to place their food or beverage products in the program/editorial content of any medium primarily directed to children under 12 for the purpose of promoting the sale of those products.

5. Advertising in Elementary Schools. Participants will commit to not advertising branded food or beverage products in elementary schools, pre-K through 6th grade.[6]

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[4] The commitment regarding word of mouth advertising refers to advertising where a participant provides incentives (financial or otherwise), product samples or other support to individuals or groups who are not employees to promote consumption of branded food or beverage products or to promote discussion of such products and the advertising is primarily directed to children under 12.

[5] This commitment applies to the advertising discussed in the advertising principle above. It does not apply to other marketing channels, such as point of sale materials or packaging (provided that the packaging does not appear in advertising primarily directed to children under 12). This commitment also does not apply to the use of company-owned characters.

[6] This commitment does not apply to displays of food and beverage products, including materials that identify the products that are being offered for sale, charitable fundraising activities, public service messaging, items provided to school administrators for their personal use, and charitable donations to schools.

B. DEFINITIONS

The participants are permitted, within reasonable limits and subject to CFBAI review and approval, to define "advertising primarily directed to children under 12" and the nutrition standards that determine what products may be depicted in such advertising. Below we summarize the types of approaches that participants are using and provide examples of established scientific and/or government standards that companies may use to define healthy dietary choices or better-for-you products.

1. Advertising Primarily Directed to Children under 12.

- For "measured" media this means advertising in dayparts for which children 2-11 constitute 25% to 50% of the audience at the time of the media buy, depending upon the participant. An audience threshold of no higher than 35% is used by most participants. Some participants also include supplemental measures to identify "advertising primarily directed to children under 12."[7]
- For advertising in non-measured media, determinations will be made in accordance with standards established by the company or set forth in its pledge. Participants may use an analysis of factors, including the overall impression of the advertising, the target demographic based on the company's media plan, actions taken to restrict child access, such as age-screening, and the audience definition for measured media. For example, participants may consider the percentage of children under age 12 viewing in-cinema G-rated movies that are now on DVDs, the content developer's designation and description of the expected target of mobile or PDA content, or the percentage of children viewing TV content that has been adapted for mobile media.

2. Standards for Determining What Are Healthy Dietary Choices or Better-for-You Products. Examples of established scientific and/or government standards that companies may use to define healthy dietary choices or better-for-you products include:

- FDA defined "healthy" foods [21 C.F.R. 101.65(d)(2)]
- Products that qualify for an FDA authorized health claim [21 C.F.R. 101.70-101.83]
- Products meeting FDA/USDA criteria for claims of "free," "low," or "reduced" for calories, total fat, saturated fat, sodium or sugar
- Products that qualify for the USDA Healthier School Challenge Program criteria for Sales/Service of A La Carte and/or Vended Items
- Principles addressing recommended consumption by children under 12 under USDA Dietary Guidelines and MyPyramid
- Products representing a portion control option, such as products advertised and sold in a package size of 100 calories or less.

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[7] The company pledges specify the audience percentage, and other factors, where applicable, that the company uses to determine whether advertising is "primarily directed to children under 12." The effective dates of changes to the definition vary by participant but all new policies will be in effect no later than January 1, 2011. Visit the CFBAI's website at http://www.bbb.org/us/children-food-beverage-advertising-initiative/ for a summary of each participant's current definition. Audience demographics will be based on reliable third-party information on media impressions or other relevant metrics at the time the advertising is purchased.

C. IMPLEMENTATION

Each Pledge will include an implementation schedule for each commitment made by the participant.

III. ADMINISTRATION AND OVERSIGHT

1. Pledge Development. Company Pledges, including the specific commitments that will identify the healthy dietary choice or better-for-you product criteria, are established in consultation with the BBB-administered CFBAI program.

2. Monitoring and Enforcement. The program is responsible for monitoring company commitments. Monitoring includes the review of advertising materials, product information, and other information as reasonably requested by the program administrator (submitted on a confidential basis) to confirm participant compliance. The program also responds to public inquiries relating to compliance.

The program provides, by contract, for the expulsion of a company that does not comply with its Pledge after being given notice and an opportunity to bring its conduct into compliance, and notice of any expulsion to regulatory authorities such as the Federal Trade Commission under appropriate circumstances.[8]

3. Public Reports. The program publicly issues reports detailing its activities, including any expulsions or notices of such to regulatory authorities.

4. Periodic Program Reviews. The program originally planned to review its procedures and the overall impact of this initiative after the new program had been operational for at least three years. The expanded Core Principles reflected in the Second Edition of this document were the result of an extensive review that occurred ahead of the planned 2010 review. The Third Edition reflects changes that individual participants made during 2010. The program will continue to conduct periodic reviews, but recognizes the need for a reasonable interval between reviews to allow participants to implement and assess the operation of any program enhancements. Accordingly, the program, in consultation with the participants, will conduct reviews at least once every three years.

IV. ADVERTISING TO CHILDREN UNDER SIX YEARS OLD

The CFBAI does not require that participants adopt policies regarding not engaging in advertising primarily directed to children under age six. Prior to the creation of the CFBAI, however, a number of participants had corporate policies that prohibited advertising directed to children under six years old (of even their healthier choices), and they maintained these policies after becoming participants in the CFBAI. During 2010, other participants also individually and voluntarily adopted such policies. Now the majority of participants have policies that are reflected in their CFBAI pledges on not engaging in advertising primarily directed to children under six. Although such policies are not required,

[8] Under the contracts, BBB will give participants at least 30 days prior written notice before termination for cause and 60 days prior written notice for termination without cause. (The participants also have the right to terminate their participation upon prior written notice.) Specifically, when appropriate, BBB will notify a participant in writing of substantial noncompliance and give the participant a reasonable opportunity to bring its conduct into compliance. Upon termination BBB may refer the matter to appropriate regulatory authorities. BBB will give a participant notice prior to making the termination and referral public.

CFBAI has agreed to monitor and report on compliance with these policies when they are incorporated into a participant's pledge.[9]

[9] The effective dates of new policies vary by participant. By January 1, 2011 all new policies will be in effect. Visit the CFBAI's website at http://www.bbb.org/us/children-food-beverage-advertising-initiative/ for a summary of each participant's current definition of child-directed advertising, which also includes a listing of such policies.

Appendix E. Illustrations of CFBAI Participants' Healthy Lifestyle Programs and Initiatives, and Philanthropic Activities that Could be Affected by the IWG's Advertising Definitions

The CFBAI participants are involved in a number of healthy lifestyle programs and initiatives, and philanthropic activities that potentially could fall under one or more of the IWG's proposed definitions of youth-directed marketing.

Percent Thresholds. The IWG's proposed definitions could cover public service announcements or healthy lifestyle messages that mention or feature company names, brands, or products and meet the proposed percent thresholds for several categories, including measured media, digital marketing, word-of-mouth marketing, philanthropic endeavors and public entertainment events. For example, a healthy lifestyle Internet site that features a company's name, logo or product(s) could fall under the proposed definitions of child-targeted marketing if ≥ 20% of its monthly visitors are children.

"Subjective" Indicators. Healthy lifestyles programs such as events, digital campaigns, and Internet sites could also fall under the proposed definitions if they include any of the proposed "subjective" indicators of appeal to children (animated or licensed characters; celebrity endorsers; words and images relating to children and/or child-oriented "themes, activities, incentives, products, or media;" *see* Section IV, B, above). The subjective indicators also apply to product packaging and labeling, so that any healthy lifestyle initiatives or philanthropic activities that involve packaging (*e.g.*, food banks) could be affected.

Philanthropic Activities. The proposed definitions also cover activities in conjunction with a donation to a philanthropic organization, program, or event that includes the use of trade names, logos, displays, signage, or other branded materials in connection with child-oriented clubs, parks, activities, or community programs or events. The IWG includes as an indicator that 30% or more of the beneficiaries of the organization, program, or event are children (or 20% are adolescents), which would cover a large segment of food and beverage companies' philanthropic activities. Further, as discussed in Section IV.B, above, the inclusion of trade names in the proposed definition is extremely problematic for companies that use their company name as a trade name. Unless the trade name represents only products that meet the IWG's nutrition criteria, these companies would not be able to include their company name "in connection with" charities, clubs, parks, activities, community programs or events that benefit children or adolescents.

In-school Activities. The proposed definitions of in-school marketing activities include the use of trade names, logos, displays, signage, or other branded materials in or school areas (*e.g.*, cafeterias and vending machines) or at school-related events, as well as payments pursuant to school food and beverage contracts and philanthropic donations to schools or school clubs, teams, events, or programs, including discounts, product donations, and branded materials such as curricula. These definitions could affect many healthy lifestyle initiatives that involve partnerships with schools (*e.g.*, programs that distribute educational materials to foster nutrition and health awareness).

Examples of programs that could be affected by the proposed definitions include:

Healthy Lifestyle Programs and Initiatives

- Alliance for a Healthier Generation's (AHG) *School Beverage* or *Competitive Food Guidelines* for beverages and foods available for purchase in schools. Under the IWG's proposal, packaged products that meet AHG's guidelines, but do not meet the IWG's nutrition principles, could not be made available in schools because the IWG's proposed definitions cover product packaging and labeling.
    - CFBAI participants: Campbell Soup Company, The Coca-Cola Company, The Dannon Company, Kraft Foods Global, Inc., Mars, Incorporated, and PepsiCo, Inc.

- The HealthierUS School Challenge (HUSSC) is a voluntary, nationwide award program established by the U.S. Department of Agriculture that recognizes schools that have voluntarily met school nutrition and wellness guidelines. Packaged products that qualify under the HUSSC guidelines but not the IWG's nutrition principles could not be made available for sale in schools, resulting in increased costs to school districts as their choices are limited with respect to nutritious and affordable products that kids will eat.
- The Healthy Weight Commitment Foundation (HWCF) is a national, multi-year effort designed to help reduce obesity – especially childhood obesity – by 2015. It brings together more than 170 retailers, food and beverage manufacturers, restaurants and others. Under the IWG's proposed definitions, the HWCF could be jeopardized, as HWCF could only mention company brands or their products if the companies' products meet the IWG's nutrition principles. The HWCF's activities could fall under several of the proposed definitions, including in-school marketing and philanthropy (both of which cover the use of trade names, logos, displays, signage, or other branded materials) and other definitions, such as Internet marketing, that use "subjective" indicators.
    - In 2011, the HWCF launched a national campaign called the Together Counts™ program that encourages families to eat meals together and engage in physical activities together to help counter obesity and promote good health. The program Internet site and digital media resources feature animated characters and youth-oriented themes, and thus could fall under the IWG's proposed definitions if they mention or feature company brands or products.
    - In 2009, the HWCF entered into the Healthy Schools Partnership with the American Council for Fitness and Nutrition Foundation, PE4life, and the American Dietetic Association Foundation. The Healthy Schools Partnership integrates nutrition education and physical education through a school-based curriculum to help children develop lifelong positive healthy habits. These activities could fall into the IWG's definition of in-school marketing if program materials were to include trade names, brands, logos or other branded materials.
    - CFBAI participants: Campbell Soup Company, The Coca-Cola Company, ConAgra Foods, General Mills Inc., The Hershey Company, Kellogg Company, Kraft Foods Global, Inc., Mars, Incorporated, Nestlé USA, PepsiCo, Inc., Sara Lee Corporation, and Unilever.

- Campbell Soup Company's *Fishful Thinking* program provides parents resources to help children develop emotional well-being. The *Fishful Thinking* parent-directed Internet site provides tips to help parents keep their kids active. Because the Internet site features animated characters and images of product packaging, it could fall under the IWG's proposed definition of Internet marketing.

- The Dannon Company provides annually, through *Dannon Next Generation Nutrition Grants*, funding to non-profit organizations in support of community-based childhood nutrition education programs. Each organization that receives a grant creates a program that helps children develop life-long habits for good nutrition and exercise. Dannon has awarded over $580,000 in grants to date. Since Dannon is a trade name, this program could be affected by the IWG's proposed definitions.

- Kellogg Company provides grants to *Action for Healthy Kids*, which makes resources and assistance available to help schools increase participation in school breakfast programs as well as capacity building to further organization's work to fight childhood obesity. The program could fall under the IWG's definition of in-school and/or philanthropic marketing activities, which cover the use of trade names.

- PepsiCo, Inc. partnered with America on the Move to develop *Balance First™* middle school classroom lesson plans that teach the concept of energy balance. The program could fall under the IWG's definition of in-school marketing activities, which covers the use of trade names.

- PepsiCo, Inc. supports the PE Central Internet site, which provides resources, ideas and activities for PE and health lessons. The Internet site could fall under the IWG's "subjective" indicators, as it might feature animated characters, words and images relating to children and/or child-oriented themes, etc.

- PepsiCo, Inc. created (through the Gatorade brand) the *GoGirlGo Ambassador Program* to enlist teen athletes to become activists in young women's health and fitness. As the program involves and features youth, its activities could fall under the IWG's "subjective" indicators for multiple categories of marketing activities.

- PepsiCo, Inc. sponsors the Little League World Series by Gatorade, in addition to sponsoring Major League and Minor League Baseball, the National Football League, the National Basketball Association, and countless local sports sponsorships. As these activities involve and feature youth, they could fall under the IWG's "subjective" indicators for multiple categories of marketing activities.

- Frito-Lay, a division of PepsiCo, Inc., ran *Score for Your School* in the Spring of 2011, which awarded more than $375,000 to local high school sports program. The program could fall under the IWG's definition of in-school marketing activities, which covers the use of trade and brand names.

- Sara Lee Corporation funds and supports the Sara Lee Foundation. The Foundation funds the Chicago-based Robert Crown Center for Education's FIT Curriculum, which contains ideas and projects for nutrition education along with physical activities for energy balance. The FIT Curriculum is distributed in classrooms as well as on an Internet site, providing parents and kids with fun specific activities. Because the Internet site features an animated character and the Sara Lee Foundation logo is listed during the term of our "sponsorship", it might fall under the IWG's proposed definition of Internet marketing.

- Nestlé USA has partnered with the National Education Association (NEA) – the nation's largest professional educators' organization – to expand nutrition and physical activity resources for teachers with the Healthy Steps for Healthy Lives program which provides a variety of fun, easy-to-use instructional activities that teach students about being

healthy. The program could fall under the IWG's definition of in-school marketing activities, which covers the use of trade names.

Philanthropic Activities. The activities listed below are "in connection with" charities or organizations that benefit youth, and thus could fall under the IWG's proposed definition of philanthropic marketing, which covers the use of trade names, brand names and other branded materials. Some trade names or brand names might include products that do not meet the IWG's nutrition principles (as well as products that do meet the principles) and thus could not be used in connection with philanthropic activities.

- ConAgra Foods, Inc. funds child hunger initiatives nationwide, from providing grants for summer meal programs to establishing a Child Hunger Corps, as a national donor/partner of *Feeding America*, the nation's leading domestic hunger-relief organization.

- The Hershey Company sponsors the *HERSHEY'S Track & Field Games* that, during its 30-year history, have introduced more than 10 million children in 3,000 communities across the U.S. and Canada to the fun and rewards of physical fitness.

- General Mills Inc. funds and supports the *General Mills Foundation,* which, among other things,
    - Awards grants to local YMCAs and Boys and Girls Clubs to support their youth nutrition and fitness programs.
    - Sponsors *The Champions for Healthy Kids* grant program, in partnership with the American Dietetic Association, which awards fifty $10,000 grants to grassroots organizations around the country that provide innovative youth nutrition and fitness programs.

- General Mills also operates its Box Tops for Education program, which although present in schools (K-8th grade), is primarily directed to parents and other adults. Since its inception in 1996, Box Tops for Education has raised more than $340 million for K-8 schools. More than 69,000 schools participated during the 2009-2010 school year. While the program began with Box Tops coupons on General Mills products exclusively, it has since expanded in 2010 to include multiple other companies. The collection boxes for General Mills' Box Tops for Education do not contain product messaging or brand depictions, but because the program involves product packaging, it could be affected by several of the IWG's definitions, including packaging and labeling marketing.

- Kellogg Company provided a grant to the *Make It Right Foundation* that was used to build a playground in the Lower Ninth Ward of New Orleans, Louisiana.

- The Kraft Foods Mobile Pantry program is a $4.5 million partnership with *Feeding America* that has put 25 refrigerated trucks on the road. The mobile food pantry fleet delivers fresh produce, food into communities where access to food is challenging, with a goal of delivering 50 million meals in three years' time. This activity could also fall under the IWG's definition of packaging and labeling marketing, as it involves the distribution of food.

- As part of Delicious Difference Week, Kraft Foods' global week of community service, Kraft Foods employees built 13 playgrounds in communities across the US in partnership with KaBOOM!, providing 100,000 children with fun, safe places to play.

- Kraft Foods promotes oral health education to children with its *Smiles Across America* program. The program supports services to over 90,000 children annually and helps communities respond to the critical need for oral disease prevention and oral health promotion.

- Mars, Incorporated promotes youth fitness by sponsoring Little League Baseball and other activities such as health fairs, fun runs and soccer, in communities in which Mars operates. In addition, Uncle Ben's, a Mars, Incorporated brand, has opened a Kids Cafe in Greenville, MS, providing free meals and snacks to children from low-income homes, in partnership with *Feeding America*. This activity could also fall under the IWG's proposed definition of packaging and labeling marketing, as it involves the distribution of food.

- McDonald's USA supports the Produce for Better Health Foundation by, among other activities, providing funding for its *Campaign for Children's Health*, a program that encourages the nation's children to eat more fruits and vegetables for better health.

- Jimmy Dean, a Sara Lee Corporation's brand, supports Share Our Strength's "No Kid Hungry" childhood hunger program. Sara Lee Corporation not only provides monetary support but encourages involvement by its employees.

- Sara Lee Corporation funds and supports the Sara Lee Foundation, which:
    - Awards grants to BackPack out-of-school programs through *Feeding America*'s network members;
    - Awards grants to regional youth nutrition programs; and
    - Provides grants in the area of Healthy and Active Lifestyles such as the Boys & Girls Club's "SMART Girls" and YMCA Healthy Kids curriculum.

- The Unilever United States Foundation, Inc. provides funding for *Feeding America's* BackPack, Kids Cafe, Afterschool Snack, School Pantry and Summer Food programs. These programs are designed to feed children at risk of hunger in or out of school. Kids Café also includes nutrition education and enrichment opportunities.

- PepsiCo, Inc. funds the *Pepsi Refresh Everything* program, awarding up to $1.125 million per month in grants to fund consumer projects in areas such as arts and music, education, and communities. PepsiCo, Inc. also funds the *Food for Good* program, providing free, wholesome meals during the summer months to underserved kids and teens in low income areas of Dallas via a mobile food truck. This activity could also fall under the IWG's proposed definition of packaging and labeling marketing, as it involves the distribution of food.

Appendix F. Summary of CARU Cases Involving Food Advertising to Children Since 2006

Established in 1974 by the advertising industry, the Children's Advertising Review Unit of the Council of Better Business Bureaus ("CARU") monitors advertising in all media primarily directed to children under 12 to ensure compliance with its *Guidelines*. The *Guidelines* set high standards for the industry to assure that advertising directed to children is not deceptive, unfair or inappropriate for its intended audience.

As applied to food advertising, CARU's *Guidelines* address "how" of food is advertised to children, while the CFBAI addresses "what" foods are advertised. CARU's *Guidelines* help ensure that food advertising directed to children is non-deceptive and appropriate by:

- Requiring that depictions of food being eaten are tied to the labeled serving size;
- Prohibiting the disparagement of healthy foods or lifestyles;
- Requiring that mealtime depictions of foods be shown in the context of a nutritionally balanced meal; and
- Requiring that snack foods be clearly depicted as such and not as a substitute for meals.

The *Guidelines* also require advertisers, including food advertisers, offering premiums to give primary emphasis to the product being sold and not to the premium.

CARU implements its *Guidelines* through prescreening hundreds of food company advertisements on an annual basis and through its case decisions. The following are food advertising cases reported by CARU since 2006.

HARIBO OF AMERICA, INC.
Gold-Bears Gummy Candy
Case #5255 Compliance Report (5/4/2011)

CARU's *Guidelines* provide that in advertisements depicting food consumption or suggesting that food will be consumed, the quantity of food shown should not exceed the labeled serving size.

CARU Findings: In its November 2010 decision, CARU found that the depiction of seven children, each eating from a bag of Gold-Bears containing 3.5 servings, could encourage children to over-consume the product in violation of CARU's *Guidelines*. CARU recommended that the Advertiser revise the original commercial to include an appropriate serving size or that the advertising be discontinued.

In March 2011, through its routine monitoring practices, CARU found a commercial for Gold-Bears which presented the identical problematic claims and issues regarding portion size and over-consumption.

The Advertiser responded that it did not believe that the referenced commercial encouraged excessive consumption of Gold-Bears. The Advertiser also stated that it had not produced any new television advertising or changed any existing advertising to comply with CARU's recommendation.

After reviewing all of the evidence in the record, CARU referred the matter to the Federal Trade Commission pursuant to Section 4.1 (B) of its Procedures.

BURGER KING
BK® Kids Meal
Case #5322 (04/20/11)

CARU's *Guidelines* provide that advertisements for a product with a promotional tie-in should feature the product more prominently than the premium.

CARU Findings: CARU determined that in the BK® Kids Meal commercial featuring *SpongeBob* toys, the premium message was primary and the product secondary. In making this determination, CARU looked to the fact that the commercial featured only two brief shots featuring the product, (the BK Kids Meal), while the rest of the commercial focused on the premiums (toys).

GENERAL MILLS, INC.
Yoplait Splitz Yogurt
Case #5309 (03/21/11)

CARU noted that in the absence of reliable consumer perception evidence, CARU may assess what reasonable messages are conveyed to children from the net impression of the advertisement.

Claim at issue: *"Yoplait Splitz, the yogurt that tastes like a sundae."*

CARU Findings: CARU reviewed this broadcast advertising in response to a consumer challenge raising the issue of whether the advertising implied that "Yoplait Splitz" yogurt was ice cream. CARU determined that the advertising for "Yoplait Splitz" is not likely to confuse child consumers or persuade them that the General Mills' product is ice cream. CARU examined whether the broadcast advertising at issue conveyed, through express and implied messages, that "Splitz" yogurt is ice cream, tastes like ice cream, or could reasonably be mistaken for ice cream. In making a determination, CARU considered what messages children would take away from the advertisement and whether those messages required substantiation.

KRAFT FOODS GLOBAL, INC.
Macaroni & Cheese
Case #5204 (08/05/10)

CARU *Guidelines* provide that advertisements representing a mealtime should depict the food products within the framework of a "nutritionally balanced meal."

CARU's Findings: CARU noted that there is often a fine line between depicting a wholesome snack and an incomplete meal and encouraged the Advertiser to clearly identify the eating occasion depicted. Here, CARU determined that because the overall net impression of the commercial was the depiction of an afternoon snack and not a meal, the commercial did not need to depict the product within the framework of a nutritionally balanced meal.

TYSON FOODS, INC.
Tyson Chicken Nuggets
Case #5172 (05/04/10)

CARU *Guidelines* provide that Advertisers should not discourage or disparage healthy lifestyle choices.

CARU's Findings: CARU recommended that Tyson Foods Inc. modify television advertising to avoid discouraging or disparaging healthy lifestyles and to better depict foods in the context of a balanced meal.

The commercial at issue depicted five scenes in which children were presented with balanced meal options by their parents and in each scene the child takes steps to avoid eating the meal (*e.g.*, child feeds meatloaf to a dog; boy puts a spoonful of tuna casserole into the trunk of his toy car). The last scene of the commercial presented a mother providing her young daughter with Tyson's Chicken Nuggets with ketchup and green beans. The young child eats this meal happily.

CARU determined that one reasonable take away message from the commercial is that children preferred eating Tyson chicken nuggets over the nutritionally-balanced meals their parents gave them. In demonstrating this preference the children in the ad disparaged the healthy lifestyle choices their parents were trying to help them make.

While Tyson disagreed with CARU's findings, it agreed to follow this decision.

KELLOGG COMPANY
Pop-Tarts
Case #5165 (04/23/10)

CARU noted that the net impression of an advertisement, including express and implied claims and material omissions, must not be misleading to the children to whom it is directed.

CARU's Findings: The front of the package of each variety featured pictures of fruit and pictures of the pastry with the filling prominently displayed, along with the language "Made with Real Fruit." According to the nutrition facts panel on boxes of fruit-flavored Pop-Tarts, the products contained less than 6 percent fruit.

CARU first determined that it has jurisdiction over product packaging and that the packaging for Pop-Tarts was primarily directed toward children. CARU further determined that the claim "Made With Real Fruit" combined with pictures of strawberries or other fruit on the package, could easily lead a child to believe that the product contained substantial amounts of fruit, when such was not the case. CARU recommended that Kellogg Co. discontinue product packaging that suggested Pop-Tart Toaster Pastries are made with substantial amounts of real fruit. The company said that the packaging at issue had been discontinued.

While Kellogg's asserted that the packaging at issue was not advertising primarily directed to children, it agreed to take CARU's concerns into consideration in future advertising.

MCDONALD'S CORPORATION
Kidz Bop Happy Meal
Case #5078 (8/28/09)

CARU's *Guidelines* provide that, since children have difficulty distinguishing product from premium, advertising that contains a premium message should focus the child's attention primarily on the product and make the premium message clearly secondary.

CARU Findings: CARU determined that the commercial focused primarily on the premium (the music on the CD) rather than the product (the Happy Meal). The Advertiser agreed to take CARU's comments into consideration when producing future advertisements.

PINNACLE FOODS GROUP, LLC
Mrs. Butterworth's Syrup
Case #5024 (05/22/09)

CARU *Guidelines* provide that in advertisements depicting food consumption or suggesting that food will be consumed, the quantity of food shown should not exceed the labeled serving size.

CARU Findings: After review of the advertising, CARU determined that the commercial featuring Mrs. Butterworth's Syrup being poured over a stack of five pancakes on a split screen comparison did not encourage overconsumption. The children featured in the commercial were depicted with a nutritionally balanced meal and the split-screen comparison, which did not feature the children, was only there to demonstrate the thickness of Mrs. Butterworth's Syrup in comparison to another brand. After carefully reviewing the split screen comparison in the context of the commercial and CARU's applicable *Guidelines*, CARU agreed that the commercial was in compliance.

KELLOGG COMPANY
Frosted Flakes Gold
Case #4898 (08/11/08)

CARU *Guidelines* provide that Advertisers are responsible for substantiating all reasonable interpretations of claims made in their advertising.

CARU Findings: CARU reviewed advertising for Frosted Flakes Gold and determined that the Advertiser had a reasonable basis for asserting that Frosted Flakes Gold provided "long-lasting energy" for the athletic activities depicted in its commercial. The Advertiser provided support for its claim with evidence that the formulation of its cereal provided complex carbohydrates to give children long-lasting energy. The Advertiser cited an authority on the chemistry of complex carbohydrates as evidence of its claim and CARU was persuaded that the evidence was sufficient support for the Advertiser's claim.

CHICK-FIL-A, INC.
Chick-Fil-A Breakfast Items
Case #4843 (5/5/08)

CARU *Guidelines* provide that representation of food products should be made so as to encourage sound use of the product with a view toward healthy development of the child and development of good nutritional practices.

CARU Findings: CARU determined that by denigrating the consumption of cereal as a breakfast option, children viewing the advertisement could take away the message that eating cereal for breakfast is a negative and this could discourage selection. The Advertiser said that all advertisements in question were permanently discontinued prior to its receipt of CARU's inquiry. CARU closed this matter administratively.

SUNNY DELIGHT BEVERAGES CO.
www.sunnydelight.com
Case #4761 (11/27/07)

CARU noted that the "net impression" of the entire advertisement, considering, among other things, the express and implied claims, any material omissions, and the overall format, must not be misleading to the children to whom it is directed.

CARU Findings: CARU determined that the depiction of an orange which appeared when a child dragged her mouse over the Sunny D Original product could imply that the product contained a significant amount of orange juice. Also CARU determined that a caption stating "A full day's supply of vitamin C!" over a slice of an orange flanking a bottle of Sunny D Original makes the implied claim that the Vitamin C comes from the orange juice in the product. While Sunny Delight disagreed with CARU's position, it changed the advertising to address CARU's concerns.

CONAGRA FOODS
Chef Boyardee Beef Ravioli
Case #4711 (08/16/07)

CARU *Guidelines* provide that in advertisements depicting food consumption or suggesting that food will be consumed, the quantity of food shown should not exceed the labeled serving size.

CARU Findings: CARU determined that the Advertiser's portrayal of a monster that turns into a boy chugging a can of Chef Boyardee, which provides two servings, could potentially encourage overconsumption. CARU recommended that the advertisements be removed from broadcast.

GENERAL MILLS, INC.
Cookie Crisp
Case #4708 (8/9/07)

CARU *Guidelines* provide that the amount of product featured should not be excessive or more than would be reasonable to acquire, use or consumed by a person in the situation depicted.

CARU Findings: CARU determined that children could potentially believe that more than one bowlful of cereal is a reasonable portion, based upon the depiction of a boy adding more cereal to his bowl. In order to avoid any misleading interpretations of the appropriate serving size, General Mills removed the referenced depiction.

MCDONALD'S USA
Happy Meal
Case #4590 (10/25/06)

CARU's *Guidelines* provide that in advertising containing a premium message, care should be taken that the child's attention is focused primarily on the product. The premium message should be clearly secondary.

CARU Findings: CARU found that the commercial was not in compliance with the *Guidelines* because it focused on two boys playing with toys that they had obtained from a Happy Meal, and merely included a vague shot of a Happy Meal box in the far background. The Advertiser agreed to take CARU's concerns into consideration for future commercial production.

The Children's Food & Beverage Advertising Initiative

White Paper
on
CFBAI's Uniform Nutrition Criteria

July 2011

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Children's Food and Beverage Advertising Initiative
Council of Better Business Bureaus, Inc.

The CFBAI's participants are shown below.

The CFBAI wishes to acknowledge the contributions of the scientists and nutrition professionals that participated in the development of the CFBAI criteria and contributed to or reviewed this White Paper. These include Stephanie Quirantes, MS, RD, LDN (Burger King Corporation), Chor San Heng Khoo, PhD (during her tenure as Senior Research Fellow, Campbell Soup Company), Robert Earl, MPH, RD, LD (The Coca-Cola Company), Kristin Reimers, PhD, RD (ConAgra Foods, Inc.), Philippe Caradec, MS and Soline Kintz, MS (The Dannon Company), Kathy Wiemer, MS, RD (General Mills, Inc.), Joan Apgar, BA (The Hershey Company), Lisa Sutherland, PhD (Kellogg Company), Daniel Steffen, PhD and Jackie Dillon, MS (Kraft Foods Global, Inc.), Dorothy Lagg, MS (Mars, Incorporated), Cynthia M. Goody, PhD, MBA, RD, LDN and Megan C. Murphy, MPH, RD, LDN (McDonalds USA), Mark Nelson, PhD and Elizabeth Roark, MPH, RD (Nestlé USA), Susan Zaripheh, PhD (Sara Lee Corporation), and Douglas Balentine, PhD (Unilever).

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Executive Summary

The Children's Food and Beverage Advertising Initiative (CFBAI or Initiative) of the Council of Better Business Bureaus (BBB) and its participants are adopting uniform category-specific nutrition criteria ("criteria") to replace existing company-specific nutrition standards. These criteria will go into effect no later than December 31, 2013, and will be the new foundation for the CFBAI's participants to fulfill their pledges to depict only healthier products in advertising primarily directed to children under 12 ("child-directed" advertising). Overall they will impose significant challenges on the participants, and require reformulation of many products participants currently advertise if they wish to continue advertising them after these criteria go into effect.

Last year, mindful of the then pending issuance of the Dietary Guidelines for Americans 2010 (DGA 2010) and the Initiative's requirement that the standards companies use must be consistent with established scientific and/or government standards, the participants embarked on a Nutrition Science Review. The review included the Dietary Guidelines Advisory Committee Report and then the DGA 2010, after they were issued in January 2011, as well as many other government and third-party nutrition standards or recommendations. The review also took into consideration public health concerns, dietary patterns and nutrient intakes in the U.S. This review also was used to consider ways to improve the criteria *systematically*, which included consideration of *uniform* criteria.

Although the existing company-specific criteria have worked well to drive improvements in products that are advertised to children, the participants recognized that uniform criteria would have additional advantages. For example, these uniform criteria respond to recommendations from the First Lady and the White House Task Force on Childhood Obesity, the Federal Trade Commission (FTC) and others. Additionally, uniform criteria can provide a roadmap that other food (or media) companies in the U.S. could use to guide their child-directed advertising practices, and simplify compliance monitoring.

The CFBAI's criteria are organized around 10 product categories, with requirements that recognize inherent nutritional differences among product categories (e.g., dairy and grain products) and the role they play in the overall diet. In addition to being uniform, the new criteria are generally stronger than the current standards in at least five ways. First, the new criteria eliminate a product qualifying based solely on meeting a "reduced" claim (i.e., ≥ 25% less sodium). Second, they eliminate a product qualifying solely because it is packaged in a portion controlled, 100 calorie pack. Third, they include calorie limits for all categories. Fourth, they include nutrients to limit (NTL) criteria for key items: saturated fat, *trans* fat, sodium and total sugars. Fifth, they include nutrition components to encourage (NCTE) (food groups and/or nutrients) for all product categories. Currently, not every participant has a standard for each item — calories, NTL and NCTE — so the new criteria fill those gaps. The new criteria also are designed to encourage the inclusion of foods that are even more nutrient-rich in advertised kids' meals.

The criteria are designed to include challenging, yet feasible goals. Approximately one-third of the products currently advertised to children—which are products that already meet tough, meaningful, science-based company-specific nutrition standards—do not meet the new uniform criteria. Because the criteria represent realistic goals, however, the participants have agreed to the additional challenge of implementing the new criteria on a rigorous timeline—no later than the end of 2013. Not all participants will necessarily be able to reformulate all affected products by then, but they have agreed, nonetheless, that on January 1, 2014 they will stop advertising to children products that do not meet the new criteria.

The criteria also will be reviewed periodically, such as after the issuance of new Dietary Guidelines for Americans. For example, when the 2015 Dietary Guidelines are issued, the CFBAI will review the criteria to ensure that they are consistent with the new guidelines. At that point the participants also will have had more than two years of experience with the new criteria and will be able to determine if they can be further strengthened, if appropriate. Periodic reviews also will help us determine if new or different categories or subcategories would be appropriate to reflect innovation and new products in the marketplace.

As this self-regulation initiative has matured it has undergone many changes. The successful development of uniform nutrition criteria is the latest in a series of significant program developments. These include a substantial expansion of its already rigorous and far-reaching requirements, harmonization of the definition of “child-directed” advertising, and a large increase in the number of participants. These enhancements are reflected in the CFBAI’s current Core Principles and Program Statement.

I. Introduction

The CFBAI and its participants have developed category-specific uniform nutrition criteria to replace existing company-specific nutrition standards. See Figure 1. These criteria, which will go into effect no later than December 31, 2013, will be the new foundation for the CFBAI's participants to fulfill their pledges to depict only healthier products in child-directed advertising.[1] Although some products already meet the new criteria, overall the new criteria will impose significant challenges on the participants and lead to further improvements in products advertised to children. Approximately one-third of the products currently advertised to children—which are products that already meet tough, meaningful, company-specific nutrition standards—do not meet the new uniform criteria. Thus, the participants will have to change their recipes for these products if they wish to continue advertising them after these new criteria go into effect.

The current system of science-based company-specific standards has been working well to drive significant improvements in the nutritional composition of foods advertised to children. Many companies also have changed or developed products to make them even better than their requirements and/or have strengthened their requirements. Thus, the current system will continue to be an effective one during the interim period before implementation of the new criteria to meet our goal of shifting the mix of products advertised to children and promoting choices that could lead to diets and lifestyles more aligned with the Dietary Guidelines for Americans. Under the current CFBAI system, the participants, whose advertising represents a substantial majority of child-directed advertising, have significantly altered the children's food and beverage advertising landscape.[2] For example, while many product names and packaging may be the same as before, what's inside often has undergone substantial reductions in sugars, sodium or fat. At the same time, the nutritional density of products has been improving too. One example of a positive change is that now whole grains are used more often and in greater amounts.

The new criteria are the result of a nearly year-long intensive effort to strengthen self-regulation even further by developing strong, yet practical, uniform nutrition criteria. Since inception, CFBAI participants have been improving the nutritional composition of their products and, in some instances, their nutrition criteria. To improve the criteria *systematically* the participants have been conducting a Nutrition Science Review. This review was designed to ensure, as required by the Initiative's core principles, that the standards are consistent with established scientific and/or government standards. Thus, we particularly focused on the DGA 2010, issued in January 2011 (and before it was issued the report of the Advisory Committee for the Dietary Guidelines). The extensive review also included many other government and third-party nutrition standards or recommendations.

As this self-regulation initiative has matured it has undergone many changes. The successful development of uniform nutrition criteria is the latest in a series of significant program developments. These include a substantial expansion of its already rigorous and far-reaching requirements, harmonization of the definition of "child-directed" advertising, and a large increase in the number of participants. These enhancements are reflected in the CFBAI's current Core Principles and Program Statement.[3]

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[1] The new criteria will be incorporated into the CFBAI's Core Principles and Program Statement, and will apply to participants that are engaging in advertising primarily directed to children under 12. Other participants will continue their commitments to not engage in child-directed advertising.

[2] While most participants are using nutrition standards to govern their child-directed advertising practices, some participants decided to stop engaging in child-directed advertising. These actions reduced greatly, for example, the amount of candy advertising directed to children under 12.

[3] Available online at http://www.bbb.org/us/enhanced-core-principles/.

Part II of this White Paper provides a short history and background on the CFBAI. Part III outlines the goals and process used to develop the new criteria. Part IV summarizes how we determined what product categories and reference units to use. Part V describes what nutrition components we include in the criteria, why we include them and the rationale for the established limits and requirements. Part VI, “Looking Ahead,” contains our implementation and review plans.

Figure 1 CFBAI Category-Specific Uniform Criteria

Product Category	Unit	Nutrients to Limit (NTL)				Nutrition Components to Encourage (NCTE)	Notes
		Calories	Sat Fat	Sodium	Total Sugars		
1. Juices	LSS	≤ 160	0 g	≤ 140 mg	No added sugars	≥ ½ c F/V juices	– A serving must contain ≥ 4 fl oz of 100% F/V juice – Sugars limited to those naturally occurring in F/V
2. Dairy products							
– Milks and milk substitutes	8 fl oz	≤ 150	≤ 2 g	≤ 200 mg	≤ 24 g	1 c dairy	– For LSS < 8 fl oz, NTL & NCTE to be scaled proportionately – Powder/syrup flavorings mixed with 8 fl oz non-fat milk are allowed ≤ 25 g total sugars as prepared
– Yogurts and yogurt-type products	6 oz	≤ 170	≤ 2 g	≤ 140 mg	≤ 23 g	≥ ½ c dairy and ≥ 10% DV calcium	– 6 oz (170 g) is most common single serving size – For LSS < 6 oz, NTL & NCTE to be proportionately lower
– Dairy-based desserts	½ c	≤ 120	≤ 2 g	≤ 110 mg	≤ 20 g	≥ ¼ c dairy and ≥ 10% DV calcium	– Serving sizes limited to ½ c – For LSS < ½ c, NTL & NCTE to be scaled proportionately
– Cheese and cheese products	LSS	≤ 80	≤ 3 g	≤ 290 mg	≤ 2 g	≥ ½ c dairy equivalent (provides ≥ 10% DV calcium)	– For LSS < 1 oz, NCTE to be scaled to ≥ ⅓ c dairy equivalent and ≥ 10% DV calcium
3. Grain, fruit and vegetable products, and items not in other categories	LSS	≤ 150	≤ 1.5 g	≤ 290 mg	≤ 10 g	≥ ½ serving of F/V/D/WG or ≥ 10% DV of any essential nutrient	– Subcategories differentiate, on a calorie basis, among products that have a small RACC (i.e., ≤ 30 g or ≤ 2 tbsp) and/or are lighter in density (e.g., g/cup) from those with a larger RACC and/or higher density – Examples of ≤ 150 calorie products: most children's breakfast cereals, crackers, & pretzels – Examples of > 150-200 calorie products: denser breakfast cereals (e.g., shredded wheat), waffles, & vegetable products with sauces
	LSS	> 150-200	≤ 2 g	≤ 360 mg	≤ 12 g		
4. Soups and meal sauces	LSS	≤ 200	≤ 2 g	≤ 480 mg	≤ 6 g	≥ ½ serving of F/V/D/WG or ≥ 10% DV of any essential nutrient	– Tomato-based products allowed ≤ 12 g of total sugars/LSS to include sugars naturally occurring in tomatoes & those added to balance product pH
5. Seeds, nuts, and nut butters and spreads	1 oz or 2 tbsp	≤ 220	≤ 3.5 g	≤ 240 mg	≤ 4 g	≥ 1 oz protein equivalent	– For LSS < 1 oz or 2 tbsp, NTL & NCTE to be scaled proportionately
6. Meat, fish, and poultry products	LSS	≤ 120	≤ 2 g	≤ 480 mg	≤ 2 g	≥ 1 oz equivalent of meat, fish, or poultry, and ≥ 10% DV of any essential nutrient	– For LSS ≤ 1 oz, NTL reduced to ≤ 60 kcal, ≤ 1 g sat fat, ≤ 240 mg sodium and ≤ 1 g total sugars
7. Mixed dishes	LSS	≤ 280	≤ 2.5 g	≤ 540 mg	≤ 10 g	≥ ½ serving of F/V/D/WG or ≥ 10% DV of *two* essential nutrients	– Products include casseroles, burritos, pizzas, & sandwiches that do not meet FDA/USDA definition for *main dishes* – Items that contain ≤ 200 kcal and meet NTL criteria may qualify if they contain ≥ ½ serving of F/V/D/WG or ≥ 10% DV of any essential nutrient

Product Category	Unit	Nutrients to Limit (NTL)				Nutrition Components to Encourage (NCTE)	Notes
		Calories	Sat Fat	Sodium	Total Sugars		
8. Main dishes and entrées	LSS	≤ 350	≤ 10% kcal	≤ 600 mg	≤ 15 g	≥ 1 serving of F/V/D/WG or ≥ ½ serving of F/V/D/WG and ≥ 10% DV of *two* essential nutrients	– Items must meet FDA/USDA definition for *main dish*es
9. Small meals	LSS	≤ 450	≤ 10% kcal	≤ 600 mg	≤ 17/12 g (See notes)	≥ 1½ servings of F/V/D/WG or ≥ 1 serving of F/V/D/WG and ≥ 10% DV of *three* essential nutrients	– Small meals contain multiple items but do not meet FDA/USDA definition for *meals* – Meals must meet FDA/USDA definition for *meal*s – Sugars from one qualifying milk/milk substitute, or qualifying yogurt/yogurt-type product, or qualifying fruit (i.e., without added sugars) or qualifying F/V juice are not counted in the 17 g or 20 g total sugars limits – When two qualifying items are present, the sugars from both items are not counted in the total sugars limit, but the limits (to account for all other items) are reduced to 12 g (small meals) and 15 g (meals) – All other NTL criteria for small meals and meals (calorie, sat fat, and sodium limits) must be met
10. Meals (entrée and other items including a beverage)	Meal	≤ 600	≤ 10% kcal	≤ 740 mg	≤ 20/15 g (See notes)	≥ 2 servings of F/V/D/WG or ≥ 1½ servings of F/V/D/WG and ≥ 10% DV of *three* essential nutrients	

***Trans* fat**. The criteria for *trans* fat is 0 g labeled for all categories. For foods in the meat and dairy categories served as individual foods or as part of composite dishes or meals (e.g., soups, mixed dishes, entrees, meal-type products), naturally occurring *trans* fats are excluded.

Exemptions

- Sugar-free mints and gum.
- The following products also are exempt from the nutrient criteria specified above, except as indicated in notes to Categories 9 & 10:
  - Fruit products without added sugars;
  - Vegetable products without added fats and which meet FDA regulations for "very low sodium;"
  - Beverages, including bottled waters, that meet FDA regulations for "low calorie" and "very low sodium" (diet sodas are excluded from this exemption).

Abbreviations and Glossary

DV: Daily Value.

Essential Nutrients: Those occurring naturally in foods (or that are added to foods to meet standards of identity or to restore nutrients lost in processing), and for which a DV has been established. If fortification is used to meet the criteria, the nutrient must be a DGA 2010 nutrient of concern (calcium, fiber, potassium, vitamin D) or a nutrient that is required to be listed on the Nutrition Facts Panel (iron, vitamins A & C).

F/V/D/WG: Any combination of fruits, vegetables, non/low-fat dairy, and/or whole grains.

LSS: Labeled serving size.

NA: Not applicable.

NCTE: Nutrient components to encourage are F/V/D/WG or Essential Nutrients.

NTL: Nutrients to limit are calories, saturated (sat) fat, *trans* fat, sodium and total sugars.

Qualifying F/V Juice: Any fruit or vegetable juice or blend that contains no added sugars and meets the requirements of Category 1.

Qualifying Flavored Milk/Milk Substitute/Yogurt/Yogurt-type Product: These are products that meet the Category 2 criteria for milk/milk substitutes, or yogurt/yogurt-type products.

RACC: Reference amount customarily consumed.

Serving(s): See USDA Food Group Serving Equivalents.

Total Sugars: Include naturally occurring and added sugars.

II. Background

In 2006 BBB and 10 (now 17) leading food and beverage companies launched the CFBAI.[4] This Initiative was designed to respond to the FTC's[5] and Institute of Medicine's (IOM)[6] calls for self regulation to do more to address concerns about food marketing to children because of the growth in childhood obesity, and supplement BBB's existing children's self-regulation program, the Children's Advertising Review Unit (CARU).[7] The goal of the Initiative was to shift the mix of child-directed advertising[8] to encourage healthier dietary choices and healthy lifestyles, as the IOM had recommended. Specifically, IOM had recommended that advertising include products that contain fewer calories and that are lower in fats, sodium and sugars, and higher in nutrient content.

Each company has been responsible for developing an individual commitment (called a "pledge") that addresses the program's Core Principles. For those participants that intended to continue engaging in child-directed advertising, this included establishing nutrition standards, consistent with established scientific and/or government standards and subject to BBB approval, to govern what foods they may advertise to children. The CFBAI has published annual compliance and progress reports that document the development of these standards, the changes that have occurred in advertising to children, and the improvements in the products participants advertise.[9] It is also noteworthy that a review of the progress made in meeting the IOM Report's recommendations, conducted by leading academics, found that the food industry, through self-regulation, was the only sector that had made "some" progress (higher than all other groups that were evaluated) in implementing the Report's recommendations.[10]

III. The Nutrition Science Review

Although we continue to believe that "uniformity" is not essential to drive change, we acknowledge that others believe "uniformity" would be a positive development and a strengthening of the program. Accordingly, we determined in 2010 to explore the development of uniform nutrition criteria as a way to strengthen pledges and bring consistency across all companies participating in the program. At the same time, we believed that it was important to improve the criteria overall in principled and practical ways and not just adopt the least common denominator among the existing standards.

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[4] One participant, Cadbury, has been acquired by Kraft Foods, and its practices soon will be governed by the Kraft Foods pledge. At that point, the official number of participants will be 16.

[5] The FTC recommendation emerged from a joint FTC/HHS workshop conducted in July 2005 on "Perspectives on Marketing, Self-Regulation and Childhood Obesity," and a follow up report on the workshop that FTC/HHS jointly issued in April 2006. *See* http://ftc.gov/os/2006/05/PerspectivesOnMarketingSelf-Regulation&ChildhoodObesityFTCandHHSReportonJointWorkshop.pdf at 50-51.

[6] IOM, 2006 (IOM Report).

[7] CARU is a BBB-administered program whose operational policies are set by the National Advertising Review Council board of directors. Since the 1970s, CARU has promoted responsible children's advertising and has issued Guidelines to help advertisers ensure that children's advertising is not deceptive, unfair or inappropriate for its intended audiences. CARU has updated these Guidelines periodically to reflect marketplace and media developments. To view the guidelines go to www.us.bbb.org/caru.

[8] This initiative has focused on children under 12, as CARU historically has, because it is this age group that is generally considered the most vulnerable and least sophisticated. While tweens and teens may not yet have the judgment and skills of adults, and do not have all the privileges of adults, our society recognizes that 13 year olds and 7 year olds should not be treated the same. Additionally, adolescents are accorded the right to drive, hold jobs, pay taxes, get married (before age 18 throughout the U.S. with parental consent, and as young as 15 without parental consent in one state), and enlist in the services (at age 17 with permission), and adolescents may be held criminally responsible for their actions. Thus, our focus will continue to be on children under age 12. Although not a CFBAI requirement, many participants have policies on not directing advertising to children under 6 (i.e., when they are a significant percentage of the audience).

[9] These are available on the CFBAI's website, www.bbb.org/us/children-food-beverage-advertising-initiative.

[10] Kraak *et al.,* 2011.

To inform its activities, the CFBAI and a participant committee, comprising the top nutritionists and scientists from many participants (Nutrition Science Review committee or NSR committee), reviewed dietary recommendations, including the DGA 2010; regulations for nutrition labeling and nutrient content claims for foods and beverages; and recommendations for nutritional criteria for foods marketed directly to children, foods sold in competition with school meals, and school breakfast and school lunch programs; and standards of identity for foods. The NSR committee also was mindful of the Interagency Working Group's (IWG) December 2009 proposed tentative nutrition standards for marketing to children.[11] Appendix Table A1 lists the recommendations by governmental agencies, reports published by IOM, and other third-party organization standards that the committee reviewed.[12]

On February 2, 2011 the CFBAI held a Nutrition Science Review Conference for its participants and guests (representatives of the Canadian and EU Pledge programs and food-related trade associations). Leading government and other experts discussed various aspects of the DGA 2010, current IWG thinking on nutrition standards for marketing to children, proposed new requirements for school meals and sodium reduction strategies, and front-of-package nutrition rating systems and symbols (Appendix Table A2).

All of the respected sources that we consulted had commonalities and differences. No one set of criteria provided a complete and realistic roadmap for uniform criteria for the CFBAI's participants with their broad and differing product portfolios. For example, FDA's definition of "healthy" requires many products to have no more than one gram of saturated fat per reference amount customarily consumed (RACC) and no more than 15% of calories from saturated fat. Yet products that virtually everyone would agree are healthy in common parlance, such as low-fat milk, eggs, and peanut butter, naturally contain more than one gram of saturated fat. Another issue with the "healthy" definition is that it does not include calorie, *trans* fat or sugars limits. Thus, use of the "healthy" definition overall was not workable. At the same time, the sodium limits in the definition were useful guideposts for the committee's work.

As a result of the committee's review, the CFBAI and its participants have created nutrition criteria for 10 product categories that have been informed by many relevant sources. The new criteria are generally stronger than the current company-specific standards in at least five ways. First, the new criteria eliminate a product qualifying based solely on meeting a "reduced" claim (i.e., ≥ 25% less sodium). Second, they eliminate a product qualifying solely because it is packaged in a portion controlled, 100-calorie pack. Third, they include calorie (meaning kilocalories or kcal) limits for all categories. Fourth, they include nutrients to limit (NTL) criteria for key items: saturated fat, *trans* fat, sodium and total sugars. Fifth, they include nutrition components to encourage (NCTE) (food groups and/or nutrients) for all product categories. Currently, not every participant has a standard for each item — calories, NTL and NCTE — so the new criteria fill those gaps.

In setting the limits, we were mindful of the current marketplace, including competitive issues, the state of technology and food science, and companies' experiences with product changes and taste preference panels. We also considered whether a somewhat less restrictive limit for a NTL might encourage the development of products or meals that may

[11] Although the NSR committee's work was substantially completed by the time the IWG issued its April 2011 request for comment on its Proposed Nutrition Principles for Food Marketed to Children, we also reviewed the revised principles.

[12] Our review focused on U.S. sources. Because nutritional needs, taste preferences, and food availability vary in different countries, the CFBAI's nutrition criteria were designed solely to improve further child-directed advertising by CFBAI participants in the U.S.

include more foods groups to encourage and that may be even more nutritious overall (e.g., inclusion of nutrient-rich milk, with its naturally occurring sodium, rather than 100% juice which has virtually no sodium, with meals that already contain fruit). Accordingly, the criteria for some NTL in some product categories may exceed what any one participant may have set previously but the criteria overall are stricter rather than more lenient. Also some participating companies may elect to adhere to even stricter nutrition criteria than the CFBAI criteria.

Although the criteria are intended primarily to operate in the background to determine whether a product may qualify for advertising to children, as a self-regulation program the NSR committee believed it was important to make the criteria as transparent and user friendly as possible. This could encourage other food (or media) companies in the U.S. to use the criteria to guide their child-directed advertising practices, and make it easier for consumers and interested third-party organizations to evaluate products, particularly with regard to NTL.[13] Accordingly, these criteria are easier to use and even more transparent than the current standards. For example, the NTL criteria primarily are based on information that is available on Nutrition Facts Panels (NFP). As a result, one significant difference between the new criteria and the current standards is the exclusive use of *total* sugars, rather than *added* sugars as the criteria. Total sugars are listed on required NFPs for products and thus are readily discernable. (Total sugars of course include naturally occurring sugars in dairy and fruits and thus the limits may be higher in some categories than if the limit had been based only on added sugars.) Additionally, the limits for sugars are listed in grams, rather than percentages. This will make the standards easier to understand by replacing the multiple ways sugars limits are currently expressed (e.g., ≤ 25% of kcal added; ≤ 35% total by weight; ≤ 25% total by weight). Finally, while mindful of the use of RACC in some regulatory settings, we determined that tying limits and requirements to a product's labeled serving size, which is based on RACC, would be more consumer friendly, and eliminate the need to refer to the Code of Federal Regulations and to have a calculator to determine what the limits are for nutrients for any particular product as packaged.

In terms of implementation, the participants commit to develop plans to reformulate products they intend to continue to advertise to children under the age of 12 years to meet the new standards by the effective date. However, given the aggressive timeline for implementation,[14] these plans may be met with unexpected circumstances. Rather than adopt a later date for implementation of these standards to account for this possibility, we have provided for a limited extension process. In the event a participant is unable to implement a planned reformulation for a particular product by the effective date due to unexpected circumstances, the participant must advise the program administrator of the circumstances in advance of December 31, 2013 and may request an extension of time, not to exceed twelve months from the effective date, to implement the reformulation for that product. Extensions will not be granted for new product introductions planned for after the effective date.

Finally, the participants recognize that no matter how thoughtful and carefully set, criteria and standards inevitably are subject to criticism because the criteria may both exclude and include products that others find appropriate or distasteful for advertising to children. Although we have made every effort to avoid and minimize such results, we anticipate that

[13] Currently, to meet those goals, CFBAI publishes a summary of the participants' nutrition standards and a list of the products that meet those standards that participants may wish to show in child-directed advertising. This allows the public to easily understand what the participants are committing to and what those commitments translate into in terms of actual products. The new criteria will make the commitments even clearer.

[14] The timeline for implementation is two and a half years, or 30 months from the announcement of the criteria. Typically, companies' timelines for major strategic changes such as significant product reformulations or dramatic changes in marketing plans are a minimum of three years.

could happen. We urge those interested in food marketing to children to focus on the participants' achievement of strong, category-specific common criteria that will lead to many further improvements in the products advertised to children.

Additionally, we have built in two mechanisms for dealing with such circumstances. One mechanism is intended to deal with individual products that might be problematic. The other is to deal with scientific developments and innovation.

First, as is the case now, participants must advise the program administrator of the products to be advertised in advance and the participants further agree that the administrator will have the right to review and question the inclusion of products that may meet the letter of the criteria but not their spirit. If, in the administrator's judgment, the inclusion of a product undermines the soundness of the program, the administrator will request that the product not be included, and ultimately may terminate the company's participation in the program if an appropriate solution cannot be reached.[15]

Second, the participants agree that these criteria will be reviewed systematically from time to time, such as when new Dietary Guidelines for Americans are issued. During such reviews the criteria may be adjusted to take into account any new guidance, or further strengthened, if appropriate, to take into account, for example, new food science technologies to reduce nutrients to limit while retaining taste, flavor, texture and microbiological stability. Additionally, new categories could be developed to reflect innovation and new products in the marketplace.

IV. Product Categories and Reference Units

The new criteria are organized around 10 product categories. Product categories, rather than a broad one-size-fits-all approach, have many advantages. First, criteria can be tailored appropriately to reflect the inherent nutritional nature and functional characteristics of a particular product category and not be unnecessarily high for other categories. For example, regular peanut butters, a healthy food in common parlance, generally contain about three grams of saturated fat per serving. Setting a saturated fat limit for a general category of individual foods that would include peanut butters would be higher than appropriate for other individual foods such as cereals, or would require creating an exemption for peanut butters. Second, category-specific criteria allow limits to be set to create meaningful, but realistic goals for food categories bearing in mind food science and technology challenges as well as the need for a step-wise approach to build consumer acceptance of foods that have lower amounts of fat, sugars and sodium.

There are many different ways to group food and beverage items into product categories and many different considerations to factor in such as typical serving sizes and product density.[16] The CFBAI started with the FDA (and USDA) categorization of foods as individual foods (including meat, poultry, fish, and game meats), main dishes, and meals and the serving sizes or RACCs associated with such categories. We found, however, that some products typically advertised to children did not fit well into the FDA/USDA definitions of entrée/main dish and meal. Accordingly, the CFBAI created 10 product categories with nutrient criteria appropriate for foods within any one category and subcategories that reflect

[15] The contracts between BBB and each participant provide that BBB can terminate participants. Under the contracts, BBB will give participants at least 30 days prior written notice before termination for cause and 60 days prior written notice for termination without cause. (The participants also have the right to terminate their participation upon prior written notice.)

[16] For example, individual food products vary considerably in product density (gram per volume) and/or RACC, e.g., from 30 g for crackers and cheeses to 15–55 g for breakfast cereals and ~1 cup for juices, milks, mixed dishes, and soups. 21 C.F.R. § 101.12.

the inherent nature of various foods (e.g., grain vs. dairy products) and their general calorie and weight/product density/serving size ranges (Table 1).

The dairy products category contains four subcategories—milks and milk substitutes, yogurts and yogurt-type products, dairy-based desserts, and cheese and cheese products—to address important, inherent differences in nutritional content among items within the subcategories.

The category for grain, fruit and vegetable products, and items not in other categories contains two subcategories to address differences in nutritional content related to product density and/or RACC within this category. Group 1 (products ≤150 calories) includes, for example, breakfast cereals with a low product density (i.e., < 43 g per cup) and crackers; Group 2 (> 150 to 200 calories) includes cereals with a higher product density (i.e., ≥ 43 g per cup) and grain, fruit, and/or vegetable products with a large RACC (e.g., waffles, and vegetables with sauces).

A small meals category was created for products that contain multiple items and more than one food group and that fall between the weight and/or food group requirements that FDA has established for nutrition labeling and nutrient content claims for main dishes[17] and meals.[18] Also, a category for meat, fish, and poultry products was created even though currently there are no products in this category that are advertised to children. The intent in creating this category was to anticipate reasonably other products companies might consider advertising to children in the future. As noted, categories could be changed or added in the future to reflect marketplace developments and innovation.

The CFBAI decided that certain types of products, when marketed separately, should be exempted from nutrient criteria. These include the following:

1. Fruit products (fresh, canned, dried, refrigerated, or frozen) without added sugars;
2. Vegetable products (fresh, canned, dried, refrigerated, or frozen) without added fats and that meet FDA regulations for "very low sodium" (≤ 35 mg per RACC);[19]
3. Beverages, including bottled waters, that meet FDA regulations for "low calorie" (≤ 40 calories per RACC)[20] and "very low sodium" (diet sodas are excluded from this exemption); and
4. Sugar-free mints and gum, as these products are essentially calorie free and thus not associated with obesity.

When exempted products are included in a small meal or meal, the calories and nutrient content of the products are factored into the overall nutrient content of the small meal or meal.[21] Fruit, vegetable, and beverage products that are not exempted must meet the nutrition criteria of the relevant product category, such as juices; milks and milk substitutes; and grain, fruit and vegetable products, and items not in other categories.

Table 1 also lists the units of reference used for each product category, i.e., the unit on which the nutrition criteria and a product's nutrient content are based. In most cases the labeled serving size (LSS) was chosen as the basis for nutrient criteria instead of the RACC. FDA developed regulations to determine the LSS based on the RACC. In many but not all cases the LSS is the same as or close to the RACC. Therefore the CFBAI decided to base

[17] 21 C.F.R. § 101.13(m).
[18] 21 C.F.R. § 101.13(l).
[19] 21 C.F.R. § 101.61(b)(2).
[20] *See* Appendix Table A3. 21 C.F.R. § 101.60(b)(2).
[21] There is a limited exemption for the sugars content of exempted fruit (and certain dairy) products when part of a small meal or meal. The conditions of this exemption are discussed in Part V, A, Sugars.

criteria on LSS because that is the amount declared on the NFP and the amount upon which nutrients are disclosed on the NFP. This provides considerable transparency and consistency for consumers or third parties that are interested in understanding how the criteria work. The nutrient criteria for small meals and meals are based on the entire meal.[22]

Milks and milk substitutes, yogurts and yogurt-type products, dairy-based desserts, and seeds, nuts, and nut butters and spreads each have a specified unit of measure. For products in these categories, the NTL and NCTE must be scaled appropriately for smaller LSS. The rationale for scaling is that dietary recommendations encourage consumption of dairy products and seeds/nuts while recognizing ongoing concerns about some products in these categories sometimes being too "fatty" or sometimes slightly too "sugary." With the exception of yogurts, the specified unit closely approximates the RACC. The RACC for yogurts is 225 g (~8 oz) but the vast majority of single serving units on the market today are 6 oz (170 g).[23] Many yogurt products, particularly those designed for and advertised to children, actually have a LSS of 4 oz or less.

TABLE 1 CFBAI Product Categories and Units of Reference

Product Category	Unit	Description/Examples
1. Juices	LSS	Fruit and vegetable juices and blends that contain no added sugars
2. Dairy products		
– Milks and milk substitutes	8 fl oz	Unflavored and flavored milks, soy-based milks
– Yogurts and yogurt-type products	6 oz (170 g)	Plain and fruited yogurts, drinkable yogurts
– Dairy-based desserts	½ cup	Puddings, ice milks, frozen novelties
– Cheese and cheese products	LSS	String cheeses, processed cheese slices
3. Grain, fruit and vegetable products, and items not in other categories	LSS	Group 1: Cereals with lower density and items with a small RACC, such as crackers Group 2: Grain, fruit, and/or vegetable products with a large RACC or higher density
4. Soups and meal sauces	LSS	Soups, pasta sauces
5. Seeds, nuts, and nut butters and spreads	1 oz or 2 tbsp	Pumpkin seeds, almonds, peanuts, and nut butters and spreads
6. Meat, fish, and poultry products	LSS	Lunch meat, fish sticks, chicken
7. Mixed dishes	LSS	Single items such as casseroles, burritos, pizza, and sandwiches that do not meet FDA or USDA definition of main dish products
8. Main dishes and entrées	LSS	Single items that meet FDA or USDA definition of a main dish product
9. Small meals	LSS	Combination of items (e.g., sandwich + fruit + beverage) that does not meet the FDA or USDA definition of meal-type products
10. Meals (entrée and other items including beverage)	Meal	Combination of items that meets FDA or USDA definition of a meal-type product

V. Nutrition Components

Dietary recommendations, public health objectives, and nutrient standards for school meals consistently target reduced consumption of total calories because of concerns about overweight and obesity; saturated fat, *trans* fat, and sodium because of concerns about

[22] For these two categories, because of their multiple components, we have structured the criteria to incent the inclusion of food groups to encourage for the side dish and beverage, as explained in Part V.
[23] A LSS of 8 oz is used in the NFP primarily on multi-serve, quart containers of yogurt.

cardiovascular health; and added sugars because of concerns about overall dietary quality, i.e., the relative contribution of calories versus essential nutrients. Accordingly, the CFBAI criteria include limits for these nutrition components. We determined, however, to include limits for *total* sugars, rather than *added* sugars, because limits on total sugars can effectively address concerns about added sugars (see "sugars" discussion below) and total sugars are listed on the NFP and thus are easier to apply and monitor.

The CFBAI did not establish criteria for total fat because expert groups, including the DGA 2010 (at p. 24), have determined that limiting saturated fat and *trans* fat intake is more important in influencing health. Limits on total calories, saturated fat and *trans* fat along with requirements for NCTE are in line with dietary recommendations. Also, not setting a limit for total fat hopefully will encourage the CFBAI participants, consistent with DGA 2010 recommendations (at p. 21), to include products in which saturated and *trans* fat are replaced with mono- and polyunsaturated fats. The CFBAI did not establish criteria for cholesterol because limits on saturated fat effectively limit cholesterol from many food sources.[24]

The DGA 2010 recommend that Americans, including children, increase their intakes of fruits, a wide variety of vegetables, and fat-free and low-fat milk and milk products; consume at least half of all grains as whole grains by replacing refined grains with whole grains; and choose a variety of protein foods, including seafood, lean meat and poultry, eggs, beans and peas, soy products, and unsalted nuts and seeds (at p. 34). According to the DGA 2010, dietary intake should emphasize foods that provide more potassium, dietary fiber, calcium, and vitamin D, which have been identified as nutrients of public health concern in American diets.

To be consistent with and to promote the DGA 2010, the CFBAI established criteria for NCTE for all product categories. The NCTE requirements include a minimum amount of one or more food groups the DGA 2010 recommended for increased consumption, one or more essential nutrients, and/or a combination of both.

In general, the NTL and NCTE criteria progress from a lower amount to a higher amount as the relative contribution of a product category to the total diet increases, e.g., from an individual item such as a grain, fruit, or vegetable product to a mixed dish, small meal, and meal. Criteria for NTL are "maximum levels" and some individual products in the CFBAI already have nutrient amounts below at least one of the maximum levels for their category. Conversely, criteria for NCTE are minimum requirements, and many products in the CFBAI will exceed the minimum requirements.

A. Nutrition Components to Limit

Calories

Daily energy requirements for children (and adults too) vary considerably based on age, gender, and activity level, from 1200 calories for sedentary boys and girls age 4 years to 2400 calories for active boys age 12 years. The CFBAI relied extensively on the IOM report on *Nutrition Standards for Foods in Schools: Leading the Way Toward Healthier Youth* (IOM

[24] Based on its review of the DGA 2010, the IWG did not include recommendations for cholesterol or total fat in its nutrition principles. (IWG 2011 at p. 11). Specifically, it noted that "The 2010 DGA do not include any recommendation for limiting consumption of total fat . . . recognizing that the types of fatty acids consumed are more important in influencing the risk of disease than is the total amount of fat in the diet." (IWG 2011 at p. 11). Thus the IWG proposed limits for saturated and *trans* fat. Similarly, according to the 2010 Dietary Guidelines "the potential negative effects of dietary cholesterol are relatively small compared to those of saturated fat and *trans* fat." (IWG 2011 at p. 11).

School Foods report; IOM, 2007) (Appendix Table A3) and the IOM report on *School Meals: Building Blocks for Healthy Children* (IOM School Meals report; IOM, 2010a) (Appendix Table A4) for guidance on developing calorie limits. The recommendations in these reports were compared to the recommendations of other third parties and adjusted up or down to develop calorie criteria specific to each of the 10 CFBAI product categories (Table 2).

While the calorie needs of children vary, as noted, the participants' product advertising, however, is generally not so finely honed and instead is directed broadly at children under 12 (or in many cases at children 6-11). Just as a common serving of cereal (30 g) may be too large for some children and too little for others, 600 calories for meals may exceed the calorie needs of younger children but be insufficient for older or more active children. Accordingly, the calorie limits for meals (breakfast, lunch or dinner) and the other product categories are of necessity based on averages and midpoints.[25] They do not replace parental guidance about what is the appropriate amount of food per occasion for any particular child.

TABLE 2 CFBAI Criteria for Calories

Product Category	Calories	Rationale
1. Juices	≤ 160	Calorie content of 248 mL (~8 fl oz).[26] Reflecting the upper calorie content of 100% juices with no added sugars. Most products will contain less[27]
2. Dairy products		
– Milks and milk substitutes	≤ 150	Saturated fat, *trans* fat, and total sugars criteria and specified unit of reference serve to cap calories
– Yogurts and yogurt-type products	≤ 170	Same
– Dairy-based desserts	≤ 120	Same
– Cheese and cheese products	≤ 80	Saturated fat and *trans* fat criteria serve to cap calories
3. Grain, fruit and vegetable products, and items not in other categories	≤ 150	Group 1: Below limit of IOM School Foods report recommendation for Tier 1 foods
	> 150– 200	Group 2: Upper limit based on IOM School Foods report recommendation for Tier 1 foods
4. Soups and meal sauces	≤ 200	IOM School Foods report recommendation for Tier 1 foods
5. Seeds, nuts, and nut butters and spreads	≤ 220	Calorie limit in nut butters, spreads, nuts and seeds determined by standard labeled serving size
6. Meat, fish, and poultry products	≤ 120	Based on calories inherent in 2 oz equivalent of meat, fish and poultry products where saturated

[25] We did not set minimum calorie limits for the various categories or generally, except that dairy products, meat products, and mixed dishes that contain no more than 200 calories (see Table 6 below) require the scaling of NTL and/or NCTE for items below the calorie caps. We recognize that for most products in other categories there could be range of calorie levels. Overall, the NTL are reasonable whether a product has 110 calories or 150, and the NCTE act as basic guard rails to prevent problems (e.g., a product far below a calorie cap but at the limit of the NTL). Also, some products at the calorie cap will be below the NTL and above the NCTE and the differences are likely to be evened out over a range of products. Thus, we concluded that for most products the complexity of scaling outweighed the benefits. This approach also is consistent with a number of respected third-party standards that set calorie limits, but not minimums (See Appendix Tables A3, A7, A10 and A12). Additionally, as noted above, the administrator may challenge the inclusion of products that do not meet the spirit of the criteria.

[26] Some sparkling juice products are packaged in cans with just slightly more than 8 fl oz—i.e., 248 mL.

[27] We note that the American Academy of Pediatrics (AAP) recommends limiting 100% juice consumption based on the potential association between 100% juice intake and obesity in children (4-6 oz for 1-6 year olds and 8-12 oz for 7-18 year olds). However, we also note the lack of conclusive evidence linking 100% juice intake to adiposity in children. While a limited number of studies have found a positive association, the association is limited to unusually large amounts of juice (> 12 fl oz/day) and/or apple juice intake only. Longitudinal and nationally representative cross-sectional studies have found no association. (ADA, 2011). Further, per National Health and Nutrition Examination Study (NHANES) data, the average daily intake of 2-11 year olds in the U.S. is just 4.1 fl oz/day, well within AAP's recommendations. (Nicklas *et al.*, 2008). Although the calories in nutrient-rich, dark-colored 100% juices (e.g., grape, pomegranate, etc.) are on the higher side of the calorie range for 100% juices, we believe it is important to include all 100% juices. The IWG proposes neither a calorie nor a serving size limit for 100% juices.

		fat amount is aligned with the regulatory definition of "extra-lean" meat
7. Mixed dishes	≤ 280	IOM School Foods report recommendation for Tier 1 foods adjusted up to account for greater contribution to a meal
8. Main dishes and entrées	≤ 350	Limit for meals adjusted down by 250 calories to allow for additional items to accompany the main dish
9. Small meals	≤ 450	Intermediate to limit for main dishes and meals; midpoint of IOM school breakfast minimum recommendation for ages 5-10 years and maximum for 11-13 years[28]
10. Meals (entrée and other items including beverage)	≤ 600	Slightly below midpoint (625 calories) of IOM school lunch minimum recommendation for ages 5-10 years and maximum for 11-13 years[28]

Saturated Fat

The NSR committee reviewed FDA's saturated fat criteria for "low," "healthy," "lean," and "extra lean" and disclosure amounts for making nutrient content claims (Appendix Tables A5 and A6). We considered the criteria for low saturated fat (≤ 1 g per RACC and ≤ 15% of calories for individual foods) unrealistic, and criteria based on the FDA disclosure amounts[29] for saturated fat overly liberal. For example, products with eggs, nuts and vegetable oils often might naturally contain more than one gram saturated fat and low-fat milk contains 1.5 grams. Therefore the NSR committee considered saturated fat criteria for "lean" and "extra lean" claims as well as recommendations from other sources (Appendix Table A7).[30] Table 3 lists the saturated fat criteria for each of the CFBAI product categories and subcategories, and the basic rationale for each limit. Below the table we provide additional information for the two categories with the highest absolute limits of saturated fat (3 and 3.5 grams).

TABLE 3 CFBAI Criteria for Saturated Fat

Product Category	Saturated Fat	Rationale
1. Juices	0 g	Fruit and vegetable juices do not contain saturated fat
2. Dairy products		
– Milks and milk substitutes	≤ 2 g	Less stringent than "low/healthy" but more stringent than disclosure amount; includes inherent saturated fat content of 1% fat milk plus amount that may be in chocolate flavorings (1.5 to 2 g/8 fl

[28] We also considered USDA's proposed regulations for school meals. Because the proposed regulations, which were issued after much of the NSR committee's work was completed, are substantially similar to the IOM School Foods report, we have primarily retained our references to the IOM School Foods report.

[29] The IWG proposal notes that the IWG "is open to considering alternatives drawn from federal food labeling regulations defining the nutrient content claim 'healthy,' *federal regulations establishing disclosure levels for certain nutrients in connection with other nutrient content claims*, or the disqualifying nutrient levels used for health claims." IWG 2011 at p. 6 (emphasis added). "Disclosure amounts" (i.e., 20% of the DV) are amounts of a nutrient that FDA considers "high," and was the basis for how the IWG calculated the 13 grams added sugar limit in its December 2009 proposal (and in its April 2011 proposal). Transcript from FTC Forum, titled "Sizing Up Food Marketing and Childhood Obesity." Schneeman at p. 228, lines 16-25 (IWG 2009b). *See also* n.38 and accompanying text, below, and IWG 2011 at p. 12. FDA requires a company to make a "disclosure" statement calling the consumer's attention to one or more nutrients in a food that may increase the risk of a disease or health condition that is diet related when the company is making a nutrient content claim for the product. The disclosure statement is required when a food contains fat, saturated fat, cholesterol or sodium in excess of specified levels (20% of the Daily Value for those nutrients for individual food products and higher amounts for main dishes and meal products) for the RACC, per labeled serving, or for foods with small serving sizes, per 50 grams. The disclosure statement identifies the nutrient(s) at issue (e.g., "See nutrition information for sodium content").

[30] We note that the DGA 2010 recommend consumption of meat and poultry in *lean,* not *extra lean* forms (e.g., at p. 38).

		oz)
– Yogurts and yogurt-type products	≤ 2 g	Less stringent than "low/healthy" but more stringent than disclosure amount
– Dairy-based desserts	≤ 2 g	Less stringent than "low/healthy" but more stringent than disclosure amount
– Cheese and cheese products	≤ 3 g	Less stringent than "low/healthy" but more stringent than disclosure amount; includes inherent saturated fat content of 2% milk
3. Grain, fruit and vegetable products, and items not in other categories	≤ 1.5 g	Group 1: Less stringent than "low/healthy" but more stringent than disclosure amount; consistent with IOM School Foods report recommendation (i.e., < 10% of calories based on category calorie cap)
	≤ 2 g	Group 2: Same
4. Soups and meal sauces	≤ 2 g	Less stringent than "low/healthy" but more stringent than disclosure amount; consistent with IOM School Foods report recommendation (i.e., < 10% of calories based on category calorie cap)
5. Seeds, nuts, and nut butters and spreads	≤ 3.5 g	Limit based on saturated fat content of peanut butters and peanut *spreads* formulated without partially hydrogenated vegetable oil
6. Meat, fish, and poultry products	≤ 2 g	Aligned with FDA/USDA "extra lean" definition
7. Mixed dishes	≤ 2.5 g	Less stringent than "low/healthy" but more stringent than disclosure amount; consistent with IOM School Foods report recommendation (i.e., < 10% of calories based on category calorie cap)
8. Main dishes and entrées	≤ 10% kcal	Consistent with "low/healthy" and IOM School Meals report recommendation
9. Small meals	≤ 10% kcal	Consistent with IOM School Meals report recommendation
10. Meals (entrée and other items including beverage)	≤ 10% kcal	Consistent with "low/healthy" and IOM School Meals report recommendation

Cheese and Cheese Products (3 g saturated fat limit). 2% milk (reduced-fat) cheese is the benchmark for cheese and cheese products that will qualify under the new criteria. Typically these products are > 50% by weight dairy, providing a meaningful amount of calcium and protein. Although the DGA 2010 recommend consumption of non-fat and low-fat dairy products, mostly in the form of fluid milk and yogurt, the report acknowledges that cheese remains a substantial contributor to dairy intake and little is consumed (or available) in lower-fat forms (at p. 38). In the sections on specific consumer advice and strategies, the DGA suggest, "When selecting cheese, choose low-fat or reduced-fat versions" (at p. 65). Other groups also endorse reduced-fat cheese as a food choice for children. In the Women, Infants, and Children Supplemental Food Program, cheeses that are labeled low, free, reduced, less or light in the nutrients of sodium, fat, or cholesterol are allowed. The IOM School Meals report suggests that "low-fat, reduced-fat and lite cheeses and cheeses made from skim/fat-free milk" should be among the offerings in schools (at p. 191).[31]

The 3 g level of saturated fat represents, in general, a substantial reduction from standard full-fat cheeses. These full-fat cheeses account for about two-thirds of cheese consumption in the U.S., based on 2009 USDA/ERS per capita consumption data; over half of cheeses in this category are "American-style" cheeses (e.g., cheddar cheese), followed by Colby and

[31] The IOM School Foods report tabulation of competitive food standards across school districts, indicates that many states (including California, Connecticut, Illinois, Louisiana, New Mexico, Rhode Island, and Tennessee) permit the sale of reduced-fat cheeses in schools (at pp. 183-255). This report also notes that the Alliance for a Healthier Generation's competitive foods guidelines for schools would allow "any reduced-fat or part-skim cheese ≤ 1.5 oz" (at p. 258).

Monterey Jack, with saturated fat at the lower levels of the range for full-fat cheeses. The remaining cheese consumption is mozzarella, already a relatively reduced-fat variety at 4 g saturated fat/serving. For this cheese type the new criterion represents a smaller but still significant reduction in saturated fat.

In conjunction with the relatively low calorie limit for cheese and the nutrient density of the product, the move to a reduced-fat cheese, with lower saturated fat content, represents a significant step in public health terms. Further, palatable reduced-fat cheeses are available in the marketplace with current technologies and provide a reasonable choice as producers develop acceptable lower fat varieties consistent with DGA 2010 goals.

Seeds, Nuts, and Nut Butters and Spreads (3.5 g saturated fat limit). The DGA 2010 encourage consumption of seeds and nuts because of their high level of heart healthy unsaturated fats. However, these foods inherently contain some saturated fatty acids too. Accordingly, for Category 5, the saturated fat level is based on the typical content of peanut butters listed in the USDA National Nutrient Database for Standard Reference Release 23. The saturated fat content of smooth peanut butters ranges from 3.0 to 3.3 g per 2 tablespoons (RACC), which would appear on the NFP as 3.0 and 3.5 g saturated fat per serving.[32] Therefore the saturated fat limit for Category 5 was set at no more than 3.5 g per serving to accommodate both standard of identify peanut butters and peanut butter spreads.

Trans Fat

The DGA 2010 recommend that *trans* fatty acid consumption be kept as low as possible (at p. 21), and many third parties recommend that products contain no *trans* fat (Appendix Table A8). However, the DGA 2010 also note that natural *trans* fatty acids are present in meat, milk and milk products and their elimination is not recommended because of potential implications for nutrient adequacy (at p. 26). Rather, consuming fat-free or low-fat milk and milk products and lean meats and poultry will reduce the intake of natural *trans* fat.

Thus the CFBAI criteria for *trans* fat is 0 g labeled (i.e., products must contain less than 0.5 g *trans* fat per LSS). For foods in the meat and dairy categories served as individual foods or as part of composite dishes or meals (e.g., soups, mixed dishes, entrées, meal-type products), naturally occurring *trans* fats are excluded.

It is noteworthy that food industry reformulation efforts in response to scientific recommendations and *trans* fat labeling regulations have led to a dramatic decrease in *trans* fat intake in the U.S. population (from 4.3g/d in 2003 to 1.3g/d). (Doell *et al*., 2011. *See also* DGA 2010 at p. 26).

Sodium

Similar to saturated fat, the NSR committee considered FDA sodium criteria for "low," "healthy," and disclosure amounts for making nutrient content claims (Appendix Table A9) as well as sodium recommendations from other sources (Appendix Table A10) including the IOM School Meals report (Appendix Table A11). After considering these recommendations

[32] The majority of saturated fat in peanut butter and spreads is from peanuts. With peanut butter *spreads*, the hydrogenated or partially hydrogenated vegetable oils (as specified by the standard of identity) that are used as a stabilizing agent to prevent separation are replaced with tropical oils. These oils provide a similar functionality. The saturated fat content of these spreads, however, is within the 3.0 to 3.5 g saturated fat range of typical peanut butters.

along with taste preferences, feasibility, functionality, and microbial safety issues,[33] the CFBAI developed criteria for sodium (Table 4) that are both reasonable and represent significant but gradual step-wise reductions. Gradual sodium reduction is essential for acceptability (IOM 2010b).

In general, the CFBAI limits are reflective of the sodium limits in FDA's definition of "healthy." An exception is the criterion for meals. Although the 740 mg sodium criterion is higher than the "healthy" level, it is considerably lower than the disclosure limit FDA set for meals (960 mg), and the limits contained in respected third-party standards, which range from 770 to 1000 mg (See Appendix Table A10).

In addition, after reviewing existing meals and the sodium reduction efforts that already have taken place, and considering future product development we are hopeful that this limit will incent the development of meals that might be even healthier overall. For example, currently some advertised meals meet a 600 mg sodium limit, but include calcium-fortified apple juice, not milk, as part of the meal bundle that also includes apples. Even though there have been and continue to be efforts to reduce the sodium in the entrée and other meal items, the naturally occurring sodium in milk (~120 mg per 8 fl oz) along with the sodium in the entrée could make a meal bundle exceed 600 mg (See Figure 2).[34]

Figure 2 Sodium Examples: BK Kids Meal

Kids English Muffin Sandwich
BK® Fresh Apple Fries w/ caramel dipping sauce
100% Apple Juice
600 mg sodium

Kids English Muffin Sandwich
BK® Fresh Apple Fries w/ caramel dipping sauce
Fat-free Milk
735 mg sodium

Finally, the need for step-wise reductions and transition periods is well recognized. For example, the need for a transition period to lower sodium limits, particularly for meals, is reflected in the IOM School Meals sodium recommendations of ≤ 640 mg for 5–9 year-olds and ≤ 710 mg for 10–13 year-olds for school lunches to be met by *2020* (IOM, 2010a). In contrast, the CFBAI criteria will be implemented no later than the end of *2013*.[35]

The CFBAI criteria for sodium (and other NTL and NCTE) also will be reviewed when the Dietary Guidelines 2015 are issued along with any data regarding efforts to implement the recommendations of the IOM report on *Strategies to Reduce Sodium Intake in the United*

[33] Sodium reduction is one of the most challenging issues to tackle because sodium is used to add/enhance flavor, improve texture, act as a preservative and serve as a thickener. (IOM 2010b). Finding suitable and affordable alternatives is proving difficult, as is garnering consumer acceptance of lower sodium products.
[34] Other meals that might be offered could include meat, fish or poultry products with up to 480 mg sodium. Some meals could include bread, cheese, and condiments, such as ketchup, and even though each individually contains a modest amount of sodium (e.g., breads may contain sodium to retard staling and molding, and other products may include sodium as part of the leavening ingredients), collectively they may add up to nearly 600 mg leaving no room for a beverage, such as milk, that contains sodium.
[35] Many of the participants also are otherwise committed to reducing sodium in their product portfolios generally, and several are participating in the National Salt Reduction Initiative.

States (IOM, 2010b), the proposed rule for Nutrition Standards in the National School Lunch and School Breakfast Programs,[36] as well as a proposal on non-program foods (formerly "competitive" foods) in schools that is expected towards the end of 2011 in compliance with the December 2010 Healthy, Hunger-Free Kids Act.

TABLE 4 CFBAI Criteria for Sodium

Product Category	Sodium	Rationale
1. Juices	≤ 140 mg	Consistent with "low" sodium
2. Dairy products		
– Milks and milk substitutes	≤ 200 mg	Reflects sodium intrinsic to milk and sodium that is included in flavoring for milks (e.g., from the dutch processing of cocoa); less than "healthy"
– Yogurts and yogurt-type products	≤ 140 mg	Close to sodium content of protein-enriched plain, low-fat yogurts
– Dairy-based desserts	≤ 110 mg	Consistent with "low" sodium
– Cheese and cheese products	≤ 290 mg	Approximates amount for "healthy" based on RACC of 30 g or less (288 rounded to 290)
3. Grain, fruit and vegetable products, and items not in other categories	≤ 290 mg	Group 1: Consistent with amount required for "healthy" for small RACC (288 rounded to 290)
	≤ 360 mg	Group 2: Less than amount required for "healthy"
4. Soups and meal sauces	≤ 480 mg	Consistent with requirement for "healthy"
5. Seeds, nuts, and nut butters/spreads	≤ 240 mg	Less than amount required for "healthy"
6. Meat, fish, and poultry products	≤ 480 mg	Consistent with requirement for "healthy"
7. Mixed dishes	≤ 540 mg	Intermediary to soups and meal sauces and main dishes
8. Main dishes and entrées	≤ 600 mg	Meets requirement for "healthy"
9. Small meals	≤ 600 mg	Consistent with requirement for "healthy"
10. Meals (entrée and other items including beverage)	≤ 740 mg	Moderately higher than "healthy" but less than disclosure amount

Sugars

Several reports have recommended that Americans reduce their intake of added sugars and many third-party organizations have developed criteria for the amount of total or added sugars in food and beverage products (Appendix Table A12). The primary concern expressed by these reports relates to added sugars' contribution of calories in certain foods with little or no naturally occurring essential nutrients, leading to decreased nutrient density and in some cases increased energy density. The effect sugar has on energy density varies, depending on whether sugar is replacing another carbohydrate (no change), replacing fat (reduces energy density), or is added to a solution (increases energy density). However, setting criteria for added sugars presents a challenge. Except for products that contain dairy, fruit, and/or vegetable ingredients, most or all of the sugars are added. Thus a total sugars criterion generally captures the concerns associated with added sugars.

Setting limits based on total sugars, rather than added sugars, aligns with FDA's current nutrition labeling requirements for the NFP. Total sugars are reported on the NFP while added sugars are not. Added sugars content cannot be determined by analytical means because naturally occurring and added sugars are indistinguishable via chemical analysis.

[36] 76 Fed. Reg. 2494 (Jan. 13, 2011). *See also* note 28, above.

Adding to the challenge of setting a sugars criterion is that FDA has not established a Daily Value ("DV") for either total sugars or added sugars due to a lack of scientific evidence to support a DV. In the absence of a DV, many organizations have adopted standards that limit sugars by using a percentage of total calories or percentage of weight approach. Some percentage-based approaches are for added sugars and others for total sugars. The percentages used also vary by organization (e.g., 10, 25 and 35%). Some participants also have used a percentage approach. We determined, however, that, going forward, it would be preferable to use a different criterion to avoid the problem that recommendations based on a percentage of total calories really reference the amount of sugars in a daily *diet* as opposed to individual *products*, and when applied to products may have incongruous results.[37] Accordingly, after reviewing the recommendations and criteria of others for added and total sugars, the CFBAI developed criteria for gram amounts of *total* sugars.

The CFBAI criteria are based on a modification of IWG's 2009 proposal (and that it retained in its April 2011 proposal; IWG 2011) for an *added* sugars standard of ≤ 13 g added sugars per RACC and per 50 g for foods with a small RACC 30 g or 2 tablespoons (IWG, 2009a; IWG, 2009b).[38] Specifically, the CFBAI used the 13 g *added* sugars (per RACC) limit that the IWG developed, rounded it down to 10 g per LSS, and applied it to *total* sugars as a base sugars criterion for individual foods. In determining to use 10 g, we considered its application to products with a small RACC (30 g). For these products, a 13 g added sugars limit means ≤ 8 grams. We deemed this amount impractical for the foreseeable future for small RACC products overall. At the same time we considered 13 g, if the small RACC rule were overlooked, too high. Based on our review of products currently advertised, we determined that 10 g would provide ample challenges for the participants to meet across product lines, and thus, as a judgment call, set 10 g as our base level.[39]

The 10-g base criterion for individual foods then was adjusted down or up depending on the nature of specific product categories and certain types of products within some categories (Table 5). The 10-g base was adjusted to 15 g for main dishes and a base amount of 20 g for meals, which are 1.5 times and 2 times the amount for individual foods, respectively. This follows the logic FDA used in setting disclosure amounts for individual foods[40] (20% DV),[41] main dishes (30% DV), and meals (40% DV).[42] A base amount of 17 g total sugars was set for small meals, which is intermediary to the amount for main dishes and meals.

The total sugars criteria for some product categories were based on other criteria as described in Table 5. For example, the amount of totals sugars in milks and yogurts was based on or derived from the IOM School Foods report recommendations and the IOM School Meals report's recommendation for milk (Appendix Table A12). More detail about the specific limits for key categories is provided below Table 5.

[37] For example, a low-calorie beverage (≤ 40 calories) may contain 10 g of added and/or naturally occurring sugars, which would represent 100% of total calories or ~4% of total volume. The same 10 g in a solid food product that contains 120 calories per 40 g would represent 33% of calories and 25% of total weight.
[38] *See also* n.29 and accompanying text, above.
[39] A 10 grams total sugars criterion also represents a meaningful decrease from the 12 grams added sugars limit that an advocacy group previously hailed as an appropriate limit for children's cereals.
[40] *See* n.29, above, noting that the IWG is open to alternatives that might be based on "disclosure" amounts.
[41] 58 Fed. Reg. 2478 at 2493 (Jan. 6, 1993).
[42] *Id*. at 2495.

TABLE 5 CFBAI Criteria for Total Sugars

Product Category	Total Sugars	Rationale
1. Juices	No added sugars	Only naturally occurring sugars in fruits and vegetables allowed
2. Dairy products		
– Milk and milk substitutes	≤ 24 g	Ready to Drink milk: Derived from IOM School Foods report recommendation; adjusted slightly to reflect formulation and marketplace challenges
	≤ 25 g	Powder/syrup flavoring mixed with 8 fl oz non-fat milk are allowed ≤ 25 g total sugars as prepared; based on naturally occurring lactose and added sugars
– Yogurts and yogurt-type products	≤ 23 g	Based on IOM School Foods report recommendation; scaled down from 8 oz to 6 oz (170 g) serving
– Dairy-based desserts	≤ 20 g	Base on minimum amount needed to control ice crystal formation
– Cheese and cheese products	≤ 2 g	Naturally occurring lactose content
3. Grain, fruit and vegetable products, and items not in other categories	≤ 10 g	Group 1: Derived from the IWG added sugars proposal for individual foods
	≤ 12 g	Group 2:Derived from the IWG added sugars proposal for individual foods; consistent with WIC requirements for breakfast cereals
4. Soups and meal sauces	≤ 6 g	Based on IWG added sugars proposal for individual foods
	≤ 12 g	Products containing tomato–based ingredients; allows for naturally occurring sugars as well as added sugars to balance product pH
5. Seeds, nuts, and nut butters/spreads	≤ 4 g	Based on IWG added sugars proposal for individual foods with small RACC and standard peanut butter formulations
6. Meat, fish, and poultry products	≤ 2 g	Based on the functional and flavor role sugars play in these products, primarily as a component of carrier systems for flavorings
7. Mixed dishes	≤ 10 g	Derived from the IWG added sugars proposal for individual foods; intermediary to *soups & meal sauces* and *main dishes*
8. Main dishes and entrées	≤ 15 g	Derived from the IWG added sugars proposal for individual foods adjusted for *main dishes* (1.5x individual foods)
9. Small meals	≤ 17/12 g	Intermediate amount between criteria for *main dishes* and *meals*; – Sugars from <u>one</u> qualifying milk/milk substitute, <u>or</u> qualifying yogurt/yogurt-type product, <u>or</u> qualifying fruit (i.e., without added sugars) <u>or</u> qualifying F/V juice are not counted in the 17 g total sugars limit – When <u>two</u> qualifying items are present, the sugars from both items are not counted in the total sugars limit, but the limit (to account for all other items) is reduced to 12 g – All other NTL criteria for small meals (calorie, sat fat, and sodium limits) must be met
10. Meals (entrée and other items including beverage)	≤ 20/15 g	Derived from the IWG added sugars proposal for individual foods adjusted for *meals* (2x individual foods); – Sugars from <u>one</u> qualifying milk/milk substitute, <u>or</u> qualifying yogurt/yogurt-type product, <u>or</u> qualifying fruit (i.e., without added sugars) <u>or</u> qualifying F/V juice are not counted in the 20 g total sugars limit – When <u>two</u> qualifying items are present, the sugars from both items are not counted in the total sugars limit, but the limit (to account for all other items) is reduced to 15 g – All other NTL criteria for meals (calorie, sat fat, and sodium limits) must be met

NOTE: WIC means the Women, Infants, and Children Supplemental Food Program (USDA/FNS, 2009).

Category 2: Dairy Products.

For milk, the IOM School Foods report recommended 22 g total sugars per 8 oz of low-fat or non-fat milk, and the IOM School Meals report did not set a limit on sugars for non-fat flavored milk (but the calories would have to fit into the meal allowance). The CFBAI criteria permit 24 g total sugars for ready-to-drink milk and 25 g for flavored non-fat milk prepared from powder or syrup.[43] We determined to allow slightly more sugars than the IOM School Foods report recommended (and bearing in mind the absence of a limit in the School Meals report for flavored non-fat milk) because we understand that even meeting the 24/25 g limits with good tasting flavored milk will be difficult and challenging by the implementation deadline.[44] The additional two gram allowance also is reasonable considering that flavored milk is a nutrient dense food, and that it is widely acknowledged that most children are not consuming enough milk.

For yogurts, the IOM recommendation was based on 8 oz because that is the RACC. The CFBAI criterion, however, is based on 6 oz, which is the most common single serving unit size commercially available (see unit of reference discussion under Section IV).

For dairy-based desserts, while technical considerations have driven the sugars and saturated fat criteria, meeting them will impose meaningful challenges. This is a broad category, but it is dominated by ice cream and frozen yogurt products. The standard serving size or RACC for these products is ½ cup; typically these products are 50% by weight dairy and provide ¼ cup dairy per portion and are a good source of calcium and vitamin D. The CFBAI set a sugars limit of ≤ 20 g total and a saturated fat limit of ≤ 2 g per LSS, which is the minimum amount of each required technically to produce a frozen dairy dessert.[45] For reference, typical full-fat ice cream products, which represent the majority of frozen dairy desserts in typical stores, have a range of 4.5 to 10 g for saturated fat and 15 to 25 g for total sugars. Because many products currently do not meet the CFBAI criteria, they will need to be reformulated if companies wish to advertise those products in the future.

Category 3: Grain, fruit and vegetable products, and items not in other categories. As described in Part IV on product categories and Table 1, Category 3 has been divided into two subcategories, ≤ 150 calories and > 150–200 calories. These subcategories provide a differential between lighter/smaller items and denser/larger items. The calorie divide essentially serves as an approximate, but more transparent and easier to understand, surrogate for RACC and small RACC. The sugars limit has been adjusted appropriately with the lower calorie/small RACC subcategory having the 10-g base sugars limit, and the higher calorie/larger RACC foods allowed an additional two grams, for a 12 g limit.

Cereals, which are frequently advertised to children, fall into Category 3. Most child-oriented cereals contain less than 150 calories and have a 30-g RACC and thus fall into the subcategory with a 10 g total sugars limit. Although this criterion is not as low as the IWG proposal of ~ 8 grams for such products, it reflects a significant change from the 12 and 11 gram *added* sugars limits the participants currently use (which itself was a significant

[43] For ready-to-drink (RTD) flavored milk, the total sugars limit is ≤ 24 g with the 8 fl oz serving including both milk and the flavoring. For flavored milks prepared from powder/syrup added at the time of preparation, the total sugars limit is ≤ 25 g and the total volume includes the 8 fl of milk and the added powder or syrup flavoring. A serving of RTD flavored milk contains 11 g of naturally occurring lactose from the milk, plus 13 g of added sugar from the flavoring, for 24 g of total sugars. For flavored milk prepared from powder/syrup, there are 12 g of naturally occurring lactose in the 1 cup (8 fl oz) of milk and 13 g of added sugar from the powder/syrup flavoring, for 25 g of total sugars.

[44] Currently, many flavored milks in the marketplace contain 27-29 g sugars per 8 fl oz.

[45] The required creamy texture and desired smooth mouth feel are created by both the sugar and saturated fat content. While the sugar plays a key role in lowering the freezing point, the saturated fat helps create the whipped structural network.

change from the 15 and 16 grams of added sugars in some advertised cereals before the CFBAI was launched). The cereal category is notable for how ongoing product reformulations have been driving sugars levels down significantly.[46]

Category 4: Soups and meal sauces. For products in this category the total sugars limit is 6 g, recognizing that such products are usually more savory than sweet. There is an exemption for tomato-based products, which are permitted ≤ 12 g. This level reflects the sugars inherent in tomatoes and that are added to balance the natural acidity of tomatoes.[47]

Categories 9 and 10: Small meals and meals. For the products in these categories, which include multiple components, we considered the plausible sources of natural and added sugars. As a result, we set modest sugars limits, but excluded from the limits sugars in products that the DGA 2010 consider food groups to encourage (low-fat dairy, fruit without added sugars and fruit/vegetable juices or blends with no added sugars) to incent their inclusion. Thus, sugars in a qualifying milk/milk substitute,[48] or qualifying yogurt/yogurt-type product,[45] or a qualifying fruit/vegetable juice,[49] or qualifying fruit (i.e., without added sugars) are not counted towards the total sugars criterion of 17 g for small meals and 20 g for meals. When two such products are included in the meal bundle, the sugars from the second item also are not counted towards the total. In this circumstance, the base amount of total sugars is reduced to 12 g for small meals and 15 g for meals to account for sugars in the remainder of the items. This reduction drives relatively lower sugar in the remaining meal components. The calorie, saturated fat and sodium limits apply to the entire meal bundle, however, thus serving as an additional guard rail on how meal bundles are configured.[50]

This unique approach for small meals and meals was necessary because of the multi-component nature of the products. Consider that fruit (½ c unsweetened applesauce/12 g sugars) plus flavored milk (24 g sugars/8 fl oz) could add up to 36 g of total sugars. This is a reasonable amount from these nutrient dense foods, but setting a 36 g total sugars limit for a composite small meal or meal would potentially allow excessive added sugars unless additional guardrails were put into place. This was achieved by excluding the sugar content of products providing NCTE, while setting the sugar criterion for the remaining meal components to accommodate the sugars, for example, in tomato sauce, fruit with some sugar added, vegetables, bread, peanut butter, condiments and/or a small treat.

Overall, the use of a gram limitation, based on a total sugars approach, is consistent with the NFPs, and as previously described should be easier for interested third parties and organizations to understand, but does have limitations. Specifically, for small meals and

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[46] The sugars content of child-advertised cereals declined significantly from 2009 to 2011. In 2009, 38% of the cereals in the program contained 12 g sugars and 40% contained ≤ 10 g. In 2011, only 8% contained 12 g sugars, while 84% contained ≤ 10 g sugars. The changes occurred as a result of reformulation and business decisions to remove higher sugars cereals from the participant's list of products that could be advertised to children.

[47] One way that the safety of foods is maintained is by controlling their acidity or pH level. Tomato products are high acid products (pH < 4.6). This acidity, while important for food safety over the shelf life of these products, makes them sour or tart, reducing their palatability. To counter-act this undesirable taste, sugar is added to the products to help assure consumer acceptability. In general, naturally-occurring sugar in tomatoes can account for up to 60% of the total sugar content of the finished product (e.g., soup, sauce or beverage).

[48] A qualifying milk/milk substitute and a qualifying yogurt/yogurt-type mean any product that meets the CFBAI Category 2 criteria for such products.

[49] A qualifying fruit or vegetable juice means any fruit or vegetable juice or blend that contains no added sugars and meets the requirements of Category 1.

[50] Additionally, meals must meet FDA's definition of "meals," which requires that the product contain at least 10 oz of food, and at least three 40 gram servings of portions of foods or combinations of foods from at least two of four food groups (bread, cereal, rice, and pasta group; fruits and vegetables group; milk, yogurt, and cheese group; meat, poultry, fish, dry beans, eggs, and nuts group). *See* n. 18, above. These requirements provide yet another bumper on the overall components of a meal.

meals, because the sugars from yogurt, fruit or milk components are excluded, facially the sugars total on the NFP or provided in restaurants may exceed the CFBAI sugars criterion. In those cases, observation and qualitative evaluation of the presence of milk, yogurt or fruit would help to explain the higher sugars content.

B. Nutrition Components to Encourage

The DGA 2010 recommend that Americans, including children, increase their intakes of fruits, a wide variety of vegetables, and fat-free and low-fat milk and milk products; consume at least half of all grains as whole grains by replacing refined grains with whole grains; and choose a variety of protein foods, including seafood, lean meat and poultry, eggs, beans and peas, soy products, and unsalted nuts and seeds (p. 34). Emphasis should be on foods that provide more potassium, dietary fiber, calcium, and vitamin D, which have been identified as nutrients of public health concern in American diets. Many third-party organizations, including the IWG, have incorporated minimum criteria for fruits, vegetables, fat-free or low-fat dairy products, and whole grains for food marketed or served to children (Appendix Table A13).

To be consistent with and to promote the Dietary Guidelines, the CFBAI also has incorporated criteria for NCTE for all product categories (Table 6). Except for products in Categories 5 (nuts, etc.) and 6 (meat products) the NCTE requirement includes a minimum amount of at least a ½ serving of a food group(s) recommended for increased consumption by the Dietary Guidelines,[51] at least one essential nutrient at the 10% DV level, or a combination of both. The CFBAI will use USDA Food Group Serving Equivalents (Bowman *et al*., 2008; Appendix Table A14) for determining compliance with the NCTE requirement[52]. Essential nutrients include protein, fiber, and vitamins and minerals for which a DV has been established, including those added to meet standards of identity that have an enrichment requirement or to restore naturally occurring nutrients that are lost in processing.[53] If the essential nutrient requirement is met through fortification, it must be a nutrient of public health concern as specified in the DGA 2010 (i.e., dietary fiber, potassium, calcium, and vitamin D[54]) or a nutrient required to be listed on the NFP (i.e., iron, vitamin A and vitamin C, in addition to dietary fiber and calcium).[55] In 1993, in final regulations implementing the

[51] For example, for whole grains a half serving is 8 grams, which the DGA 2010 specifically recognize as a significant contribution to the diet. (Using 8 grams is a more definite and measurable target than ounce equivalents (used by FDA), in which weights vary with food types, especially in combination foods.) The food group requirements may be met through a mixture of food groups so long as they add up to the requisite minimums. Because the serving size of dairy-based desserts is limited to a ½ cup, a ½ serving (½ cup) of dairy for NCTE is not feasible. Instead, such products must contain at least a ¼ cup dairy equivalent and 10% DV calcium per ½ cup serving and proportionately less for smaller servings.

[52] USDA replaced MyPyramid with MyPlate on June 2, 2011, but did not change the basis or the quantities associated with recommended cups and oz/oz equivalents that were in MyPyramid. Thus, CFBAI will use the MyPyramid Equivalents Database (the name of which has not been yet updated) to translate the amounts of foods into the number of equivalents for major groups and corresponding subgroups. We refer to these as "USDA Food Group Serving Equivalents" for the sake of convenience.

[53] Some products are labeled as "enriched" because they meet FDA's definition (called a standard of identity) for a type of food with a name that includes that term (such as enriched bread or enriched rice). For example, a product labeled as "enriched flour" must contain specified amounts of thiamine, riboflavin, niacin, folic acid, and iron. Since the 1930s this has been done for certain foods to replace nutrients that were lost or removed through the normal processing when certain components are removed. For example, non and low-fat milks are generally enriched with vitamins A and D because when milk is "defatted," the A and D naturally found in the milk fat are removed. *See generally*, 21 C.F.R. § 104.20; FDA, 2009.

[54] Currently, some participants include a requirement that their products contain one or more "short fall" nutrients as specified in the DGA 2005. The DGA 2010 list of nutrients of public health concern differs from the DGA 2005 as magnesium and vitamin E have been dropped and vitamin D added. Thus the new CFBAI criteria will serve to update such company-specific criteria.

[55] Fortification can contribute significantly to the intake of nutrients. (Berner *et al.*, 2001). Iron enrichment and fortification, for example, have played an important role in helping to reduce the incidence of iron deficiency anemia in key populations (e.g., young children and girls/women of childbearing age). (Sherry *et al.* 2001). For

Nutrition Labeling and Education Act, the FDA identified calcium, iron, vitamin C, and vitamin A as nutrients of public health concern and required the amount of these nutrients to be declared on the NFP.[56]

The NCTE requirements increase as the calorie caps increase and as the role of the food in the overall diet (e.g., mixed dishes, entrees) takes on greater importance. Generally, the NCTE can be met either through inclusion of essential nutrients or food groups. In lower calorie foods, it may not always be feasible to include a meaningful amount of a food group to encourage. Yet such foods, through their essential nutrient content, may contribute meaningfully to a healthy diet. Although fortification has played and continues to play an important role in helping Americans avoid nutrient deficiencies, the essential nutrient requirements are focused on naturally occurring nutrients (and those present through "enrichment"). Qualification through fortification is limited to a handful of key nutrients, as described above. However, products that are a larger contributor to caloric intake must meet minimum food groups to encourage requirements.

In crafting the NCTE, we also were mindful of competition issues. Although the criteria will encourage all participants to promote healthier foods to kids, they provide flexibility on how products may meet the requirements and thus do not unfairly favor one participant over another. Promoting rather than stifling competition among participants encourages the broadest array of quality and healthy product choices at the lowest cost.

TABLE 6 CFBAI Criteria for Nutrition Components to Encourage[57]

Product Category	Criteria
1. Juices	– ≥ ½ cup (4 fl oz) of fruit/vegetable juices[58]
2. Dairy products	
– Milks and milk substitutes	– 1 cup (8 fl oz) of low-fat or fat-free dairy – For LSS < 8 fl oz, NTL & NCTE to be scaled proportionately
– Yogurts and yogurt-type products	– ≥ ½ cup (4 oz) of low-fat or fat-free dairy, and ≥ 10% DV calcium per 6 oz – For LSS < 6 oz, NTL & NCTE to be proportionately lower
– Dairy-based desserts	– ≥ ¼ cup serving (2 fl oz) of low-fat or fat-free dairy and ≥ 10% DV calcium – For LSS < ½ c, NTL & NCTE to be scaled proportionately
– Cheese and cheese products	– ≥ ½ cup dairy equivalent (provides ≥ 10% DV calcium) – For LSS < 1 oz or 2 tbsp, NTL & NCTE to be scaled to ⅓ cup dairy equivalent and ≥ 10% DV calcium
3. Grain, fruit and vegetable products, and items not in other categories	– ≥ ½ serving of F/V/D/WG, or – ≥ 10% DV of any essential nutrient
4. Soups and meal sauces	– ≥ ½ serving of F/V/D/WG, or – ≥ 10% DV of any essential nutrient
5. Seeds, nuts, and nut	– ≥ 1 oz protein equivalent

example, the WIC program includes RTE cereals (that meet the iron and sugar criteria) to provide iron to the participants. One of the criteria for participants to receive the WIC food package is iron deficiency anemia.

[56] These same nutrients also are included in FDA's definition of "healthy" (i.e., an individual food must contain at least 10% DV of one or more of Vitamins A or C, iron, calcium, or fiber). The definition also includes protein as a qualifying nutrient.

[57] The participants will be required to provide the program administrator with any information relevant to the product's qualification under the NCTE that is not transparent from the NFP, the ingredient list or packaging (e.g., the amount of whole grains) and that information will be available publicly on the CFBAI website.

[58] Although the calorie limit for this category is based on an 8 fl oz portion, there are juice products that are 100% juices mixed with water or sparkling water, with no added sugars. The NCTE requires that such products contain a meaningful amount of 100% juices, 4 fl oz. The marketplace also includes products that are blends of 100% fruit and 100% vegetable juices and the NCTE can be met with a combination of such juices to equal 4 fl oz or more, up to the calorie cap.

	butters/spreads	– For LSS < 1 oz or 2 tbsp, NTL & NCTE to be scaled proportionately
6.	Meat, fish, and poultry products	– ≥ 1 oz equivalent of meat, fish, or poultry and ≥ 10% DV of any essential nutrient – For LSS ≤ 1 oz, NTL reduced to ≤ 60 kcal, ≤ 1 g sat fat, ≤ 240 mg sodium and ≤ 1 g total sugars
7.	Mixed dishes	– ≥ ½ serving of F/V/D/WG, or – ≥ 10% DV of *two* essential nutrients for mixed dishes with 200–280 calories, or – ≥ 10% DV of any essential nutrient for mixed dishes with < 200 calories
8.	Main dishes and entrées	– ≥ 1 serving of F/V/D/WG, or – ≥ ½ serving of F/V/D/WG and ≥ 10% DV of *two* essential nutrients
9.	Small meals	– ≥ 1½ servings of F/V/D/WG, or – ≥ 1 serving of F/V/D/WG and ≥ 10% DV of *three* essential nutrients
10.	Meals (entrée and other items including beverage)	– ≥ 2 servings of F/V/D/WG, or – ≥ 1½ servings of F/V/D/WG and ≥ 10% DV of *three* essential nutrients

NOTE 1: F/V/D/WG means any combination of fruits, vegetables, non-fat or low-fat dairy, and/or whole grains.
NOTE 2: "Any essential nutrient(s)" means those nutrients occurring naturally in foods (or that are added to foods to meet standards of identity or to restore nutrients lost in processing), and for which a DV has been established. If fortification is used to meet the criteria, the nutrient must be a nutrient of concern as specified in the DGA 2010 (calcium, fiber, potassium, vitamin D) or a nutrient required to be listed on the NFP (iron, vitamins A and C) (list excludes nutrients already on prior list).

VI. Looking Ahead

The CFBAI is excited about the additional improvements to and developments for products that will be depicted in child-directed advertising as a result of the new nutrition criteria. The criteria are designed to be meaningful but practical goals. Because they are realistic, the participants have agreed to the additional challenge of attempting to meet the new criteria on a rigorous timeline.

In establishing an implementation deadline we took into account that product development or reformulation, testing, and production take a significant amount of time. We also considered the time needed for shipment (to get new products on shelves) and the lead time needed for media purchases. Based on those considerations, the participants have agreed to be in compliance with the new criteria no later than December 2013.[59] A considerable amount of change is required for many products to meet the new criteria, and it may not be possible for every product to be reformulated by that date. In that event, the participants have agreed to cease advertising the non-conforming product to children as of January 1, 2014.

The CFBAI intends to review the nutrition criteria periodically to determine whether new or different categories or subcategories are necessary to reflect innovation and new products in the marketplace, and in keeping with our core requirement that nutrition standards be consistent with established scientific and/or government standards. For example, the criteria will be reviewed after the issuance of the Dietary Guidelines for Americans 2015. At that point the participants will have had more than two years worth of experience with the new criteria. If necessary, they will be aligned with any new DGA guidance and if appropriate and feasible, will be strengthened even further.

[59] As noted, in certain situations, the administrator may grant a limited extension due to a participant encountering unexpected circumstances. *See* n.14 and accompanying text, above.

References

AAP (American Academy of Pediatrics/Committee on Nutrition). 2001. The use and misuse of fruit juice in pediatrics. *Pediatrics* 107(5):1210–1213.

AAP. 2006. Dietary recommendations for children and adolescents: A guide for practitioners. *Pediatrics* 117:544-559.

ADA (American Dietetic Association). 2011. American Dietetic Association Evidence Analysis Library, Is Intake of 100% Fruit Juice Related to Adiposity in Children? Available online: http://www.adaevidencelibrary.com/evidence.cfm?evidence_summary_id=24.

AHG (Alliance for a Healthier Generation). 2009. *Healthy schools program framework: Criteria for developing a healthier school environment*. Available online: http://www.healthiergeneration.org/uploadedFiles/For_Schools/Healthy_Schools_Program_Framework/Framework_July09_sp_highres.pdf (accessed April 2, 2011).

Berner LA, Clydesdale FM, Douglass JS. 2001. Fortification contributed greatly to vitamin and mineral intakes in the United States, 1989–1991. *J Nutr* 131:2177–2183.

Bowman SA, Friday JE, Moshfegh A. 2008. *MyPyramid Equivalents Database, 2.0 for USDA Survey Foods, 2003-2004* [Online] Food Surveys Research Group. Beltsville Human Nutrition Research Center, Agricultural Research Service, U.S. Department of Agriculture, Beltsville, MD. Available at: http://www.ars.usda.gov/ba/bhnrc/fsrg. (accessed April 23, 2011).

CSPI (Center for Science in the Public Interest). 2005. *Guidelines for responsible food marketing to children*. Available online: http://www.cspinet.org/marketingguidelines.pdf (accessed April 2, 2011).

CSPI. 2007. *Historic Settlement with a Cereal Company.* Available online: http://www.cspinet.org/new/200706141.html.

DGAC (Dietary Guidelines Advisory Committee). 2010. *Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans, 2010.* Washington, DC: U.S. Department of Health and Human Services, U.S. Department of Agriculture. Available online: http://www.cnpp.usda.gov/DGAs2010-DGACReport.htm (accessed April 2, 2011).

Disney. 2006. *The Walt Disney Company Introduces New Food Guidelines to Promote Healthier Kids' diets*. Available online: http://corporate.disney.go.com/news/corporate/2006/2006_1016_food_guidelines.html (accessed April 2, 2011).

Doell D, Folmer D, Lee H, Honigfort M, Carberry S. 2011. *Updated estimate of trans fat intake by the US population.* Poster presentation at IFT Annual Meeting and Food Expo 2011, New Orleans, LA.

FDA. 2009. *FDA Basics: Are foods that contain added nutrients considered "enriched"?*. Available online at: http://www.fda.gov/AboutFDA/Transparency/Basics/ucm194348.htm (accessed July 5, 2011)

HHS/FDA/CFSAN (Department of Health and Human Services/Food and Drug Administration/Center for Food Safety and Applied Nutrition). September 1994; revised October 2009. *Food labeling Guide: Guidance for Industry.* See Appendices A and B. Available online: http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/FoodLabelingGuide/default.htm (accessed April 3, 2011).

HHS/USDA (U.S. Department of Agriculture). 2005. *Dietary Guidelines for Americans, 2005.* Washington, DC: Government Printing Office. Available online: http://www.health.gov/dietaryguidelines/dga2005/document/default.htm (accessed April 3, 2011)

HHS/USDA. 2011. *Dietary Guidelines for Americans, 2010*. Available online: http://www.cnpp.usda.gov/DGAs2010-PolicyDocument.htm (accessed April 2, 2011).
HHS. 2010. Healthy People 2020. *Nutrition and Weight Status Objectives*. Available on line: http://www.healthypeople.gov/2020/topicsobjectives2020/objectiveslist.aspx?topicid=29 (accessed April 2, 2011).
IOM (Institute of Medicine). 2006. *Food marketing to children and youth: Threat or Opportunity?* Washington, DC: The National Academies Press.
IOM. 2007. *Nutrition standards for foods in schools: Leading the way toward healthier youth.* Washington, DC: The National Academies Press.
IOM. 2010a. *School meals: Building blocks for healthy children*. Washington, DC: The National Academies Press.
IOM. 2010b. *Strategies to reduce sodium intake in the United States.* Washington, DC: The National Academies Press.
IOM. 2010c. *Front-of-package nutrition rating systems and symbols: Phase I report*. Washington, DC: The National Academies Press.
IWG. (Interagency Working Group) 2009a. *Tentative Proposed Standards for Marketing Foods to Children, 2-17 years of age.* Slides of B. Schneeman presentation at FTC Forum, "Sizing Up Food Marketing and Childhood Obesity," on Dec. 15, 2009. Available online: http://ftc.gov/bcp/workshops/sizingup/presentations/Schneeman.pdf (accessed April 2, 2011).
IWG. 2009b. *Tentative Proposed Standards for Marketing Foods to Children, 2-17 years of age.* Text of presentations at FTC Forum, "Sizing Up Food Marketing and Childhood Obesity," held Dec. 15, 2009. Available online: http://htc-01.media.globix.net/COMP008760MOD1/ftc_web/transcripts/121509_sess4.pdf (accessed April 2, 2011).
IWG. 2011. *IWG on Food Marketed to Children Preliminary Proposed Nutrition Principles to Guide Industry Self-regulatory Efforts, Request for Comments.* Available online: http://www.ftc.gov/os/2011/04/110428foodmarketproposedguide.pdf (accessed May 22, 2011).
Kraak VI, Story M, Ginter J, Wartella EA. 2011. Progress achieved toward the IOM food marketing report recommendations for American children and adolescents, 2005–2010. *FASEB J* 25: 781.4 (abstract).
Nicklas TA, O'Neil CE, Kleinman R. 2008. Association between 100% Juice Consumption and Nutrient Intakes and Weight of Children Ages 2 to 11 Years, *Arch Pediatr Adolesc Med* 162(6): 557-565.
Sherry B, Mei Z, Yip R. 2001. Continuation of the Decline in Prevalence of Anemia in Low-Income Infants and Children in Five States, *Pediatrics* 107(4):677-682.
QUBO. Available from QUBO on request.
USDA/FNS (USDA/Food and Nutrition Service). 2009. *WIC Food Packages - Regulatory Requirements for WIC-Eligible Foods.* Available online: http://www.fns.usda.gov/wic/benefitsandservices/foodpkgregs.htm (accessed April 2, 2011).
USDA/FNS. 2007. *HealthierUS School Challenge Criteria and Instructions for Elementary Schools.* Available online: http://www.fns.usda.gov/tn/HealthierUS/criteria_instructions.pdf (accessed April 2, 2011).

List of Appendix Tables

TABLE A1 Sources That Informed Development of CFBAI Nutrition Criteria

Source	Reference(s)
Government	
FDA regulations for nutrition labeling, labeled serving sizes, and nutrient content claims	21 C.F.R. 101 HHS/FDA/CFSAN, 1994
Dietary Guidelines for Americans 2005 (DGA 2005)	HHH/USDA, 2005
Dietary Guidelines for Americans 2010 (DGA 2010)	HHS/USDA, 2010
Report of the 2010 Dietary Guidelines Advisory Committee (DGAC)	DGAC, 2010
HealthierUS School Challenge for Elementary Schools	USDA/FNS, 2007
Interagency Working Group (IWG) on Nutrition Standards for Marketing to Children (slides a; transcript b)	IWG, 2009a IWG, 2009b
IWG on Food Marketed to Children: Preliminary Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts: Request for Comments	IWG, 2011
Healthy People 2020	HHS, 2010
Women, Infants, and Children's Program (WIC)	USDA/FNS, 2009
Institute of Medicine	
Nutrition standards for foods in schools: Leading the way toward healthier youth (IOM School Foods report)	IOM, 2007
School meals: Building blocks for healthy children (IOM School Meals report)	IOM, 2010a
Strategies to reduce sodium intake in the United States	IOM, 2010b
Front-of-package nutrition rating systems and symbols: Phase I report	IOM, 2010c
Other	
Alliance for a Healthier Generation (AHG)	AHG, 2009
American Academy of Pediatrics (AA)	AAP, 2001 AAP, 2006 AAP, 2010
Center for Science in the Public Interest (CSPI)	CSPI, 2005
Disney	Disney, 2006
QUBO	QUBO, 2007

TABLE A2 Presentation Topics and Speakers at the CFBAI Nutrition Science Review held February 2, 2011

Topic	Speaker
A Perspective from Front-of-Pack Examination Work	Dr. Ellen Wartella Chair, IOM Committee on Examination of Front-of-Package Nutrition Ratings Systems and Symbols
A Review of the 2010 Dietary Guidelines and Sodium Reduction Strategies	Dr. Robert C. Post Deputy Director, Center for Nutrition Policy and Promotion, USDA
IWG Current Thinking	Dr. William H. Dietz Director, Division of Nutrition, Physical Activity, and Obesity, CDC
A Perspective Based on Proposed New Requirements for School Meals	Ms. Heather Hopwood Nutritionist, Child Nutrition Division, Food and Nutrition Service, USDA
A Practical Perspective on Dietary Guidance	Dr. Joanne Slavin 2010 Dietary Guidelines Advisory Committee Member

TABLE A3 Third-Party Recommendations or Criteria for Calories

Source	Recommendation or Criteria
FDA "low" claim	≤ 40 calories/RACC (and per 50 g if RACC is small) for individual foods ≤ 120 calories/100 g for main dishes and meals
IOM School Meals report	See Table A3
IOM School Foods report	≤ 200 calories/portion as packaged for Tier 1 foods
HealthierUS School Challenge	Portion sizes for a la carte sales not to exceed serving size of food served in NSLC/SBP ≤ 200 calories for all other items
Alliance for a Healthier Generation	Varies from ≤ 100 calories to ≤ 150 for elementary school
Disney	≤ 110 calories for juice beverages ≤ 170 calories for dairy beverages and yogurts ≤ 200 calories for special occasion sweets ≤ 200 calories for breads and pastries 100-150 calories for snacks 150-200 calories for side dishes 270-360 calories for main dishes 360-560 calories for complete meal (main dish + side dish)
QUBO	≤ 100 calories for snacks and dairy ≤ 200 calories for cereal and prepared foods (side dish) ≤ 300 calories for prepared foods (main dish) ≤ 500 calories for complete meal (main dish + side dish)
CSPI	None specified

TABLE A4 IOM School Meals Report Recommendations for Calories

Ages	Total Daily	Breakfast	Lunch
5-10 years	1800	350-500	550-650
11-13 years	2000	400-550	600-700
Midpoint[a]	1900	450	625

[a] Calculated from data presented in the report (IOM, 2010a).

TABLE A5 FDA Saturated Fat Criteria for "Low" and "Healthy" Claims and "Disclosure" Amounts

Product Type	Low	Healthy	Disclosure
Individual foods	≤ 1 g/RACC & ≤ 15% calories	≤ 1 g/RACC & ≤ 15% calories	> 4 g/RACC & LSS
Individual foods, with small RACC	≤ 1 g/RACC & ≤ 15% calories	≤ 1 g/RACC & ≤ 15% calories	> 4 g/50 g (> 2.4 g/30 g or 2 tbsp)
Main dish products	≤ 1 g/100 g & ≤ 10% calories	≤ 1 g/100 g & ≤ 10% calories	> 6 g/LSS
Meal-type products	≤ 1 g/100 g & ≤ 10% calories	≤ 1 g/100 g & ≤ 10% calories	> 8 g/LSS

TABLE A6 FDA/USDA Saturated Fat Criteria for Claims on Meat, Fish, & Poultry

Claim	Criteria
Lean meat, fish, poultry	≤ 4.5 g/RACC & 100 g
Lean meat, fish, poultry main dishes/meals	≤ 4.5 g/100 g & LSS
Lean meat, fish, poultry mixed dishes	≤ 3.5 g/RACC
Extra lean meat, fish, poultry	< 2 g/RACC & 100 g
Extra lean meat, fish, poultry main dishes/meals	< 2 g/100 g & LSS
Healthy meat, fish, poultry	< 2 g/RACC & 100 g

TABLE A7 Third-Party Recommendations or Criteria for Saturated Fat

Source	Recommendation or Criteria
DGA 2010	Consume < 10% of calories from saturated fat by replacing them with monounsaturated and polyunsaturated fatty acids
Healthy People 2020	Target 9.5% of calories for total diet
IOM School Foods report	< 10% of calories for Tier 1 foods
IOM School Meals report	< 10% of calories for school breakfast and school lunch
IWG	≤ 1 g/RACC & ≤ 15% calories (i.e., FDA "low")
HealthierUS School Challenge	≤ 10% of calories for individual foods Reduced fat (2%), low-fat (1%), or skim milk
Alliance for a Healthier Generation	≤ 10% of calories or ≤ 1 g Any reduced fat or part-skim cheese ≤ 1.5 oz No limit for nuts, nut butters, & seeds
Disney	8.5-10% of calories for main dish, side dish, complete meal ≤ 10% of calories for snacks ≤ 2% milk fat, 0% preferred for dairy beverages and yogurt
QUBO	≤ 2 g for cereal ≤ 3 g for prepared foods (side dish) ≤ 4 g for prepared main dish ≤ 7 g for complete meal (main dish + side dish) None specified for snacks, dairy, juice beverages, breads and pastries
CSPI	≤ 10% of calories from saturated + *trans* fat

TABLE A8 Third-Party Recommendations or Criteria for *Trans* Fat

Source	Recommendation or Criteria
FDA labeled zero	< 0.5 g/serving
DGA 2010	Keep *trans* fatty acid consumption as low as possible, especially by limiting foods that contain synthetic sources of *trans* fat, such as partially hydrogenated oils, and by limiting other solid fats
Healthy People 2020	Solid fats [saturated + *trans* fats] target 16.7% of calories for total diet
IOM School Foods report	Zero *trans* fat (≤ 0.5 g per serving) [sic: "zero" *trans* fat under FDA regulations means < 0.5] as packaged for Tier 1 foods
IOM School Meals report	Nutrition labels [of products used] must specify zero grams of *trans* fat per serving
IWG	< 0.5 g per RACC and per 50 g for small RACC
HealthierUS School Challenge	None specified
Alliance for a Healthier Generation	0 g
Disney	None specified
QUBO	0 g
CSPI Guidelines	≤ 10% of calories from saturated + *trans* fat

TABLE A9 FDA Sodium Criteria for Claims

Product Type	Low	Healthy	Disclosure
Individual foods	≤ 140 mg/RACC	≤ 480 g/RACC & LSS	> 480 g/RACC & LSS
Individual foods with small RACC	≤ 140 mg/50 g (≤ 84 mg/30 g or 2 tbsp)	≤ 480 mg/50 g (≤ 288 mg/30 g or 2 tbsp)	> 480 mg/50 g (> 288 mg/30 g or 2 tbsp)
Main dish products	≤ 140 mg/100 g	≤ 600 mg/LSS	> 720 mg/LSS
Meal-type products	≤ 140 mg/100 g	≤ 600 mg/LSS	> 960 mg/LSS

TABLE A10 Third-Party Recommendations or Criteria for Sodium

Source	Recommendation or Criteria
DGA 2010	Reduce daily sodium intake to less than 2,300 mg (and further reduce intake to 1,500 mg among certain other groups)
Healthy People 2020	Target 2300 mg per day
IOM School Foods report	≤ 200 mg per portion as packaged for Tier 1 foods
IOM School Meals report	See Table A11
IWG Tentative proposal	≤ 200 mg per portion to be reduced over time to ≤ 140 mg
HealthierUS School Challenge	None specified
Alliance for a Healthier Generation	≤ 230 mg ≤ 480 mg for low-fat and non-fat dairy products ≤ 480 mg for vegetables w/ sauce and soups if contain ≥ specified positive nutrient or ≥ ½ serving (¼ cup) fruit or vegetables
Disney	100-350 mg for snacks 100-350 mg for side dishes 600-800 mg for main dishes < 1000 mg for complete meal (main dish + side dish) None specified for juice beverages, dairy beverages and yogurts, or occasional sweets
QUBO	< 200 mg for snacks, dairy beverages, and yogurts < 250 mg for cereal < 500 mg for prepared foods (side dish) < 800 mg for prepared foods (main dish) < 1300 mg for complete meals (main dish + side dish) Does not apply to juice beverages None specified for breads and pastries
CSPI Guidelines	≤ 230 mg per serving of chips, crackers, cheese, baked goods, French fries, and other snack items ≤ 480 mg per serving for cereal, soups, pastas, and meats ≤ 600 mg for pizza, sandwiches, and main dishes ≤ 770 mg for meals

TABLE A11 IOM School Meals Report Recommendations for Sodium[a]

Ages	UL[b]	Breakfast	Lunch
5-10 years	1900 mg[c]	≤ 430 mg	≤ 640 mg
11-13 years	2200 mg	≤ 470 mg	≤ 710 mg
Midpoint[d]	2050 mg	≤ 450 mg	≤ 675 mg

[a] To be attained by the year 2020.
[b] Tolerable Upper Intake Level (UL).
[c] Lowest listed UL for age group.
[d] Calculated from data presented in the report (IOM, 2010a).

TABLE A12 Third-Party Recommendations or Criteria for Sugars

Source	Recommendation or Criteria
DGA 2010	Reduce the intake of calories from…added sugars
Healthy People 2020	Target 10.8% of total calories from added sugars
IOM School Foods report	≤ 22 g total sugars per 8 oz portion of (1% fat and non-fat) milk ≤ 30 g total sugars per 8 oz portion as packaged for yogurt
IOM School Meals report	Discretionary sources of calories (e.g., solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, *trans* fat, and sodium; no sugars limit for flavored milk if non-fat milk and if calories fit into maximum allowed
IWG tentative proposal standards	≤ 13 g added sugars per RACC or per 50 g for small RACC (≤ 7.8 g per 30 g or 2 tbsp)
HealthierUS School Challenge	< 35% total sugar by weight
WIC Program	≤ 21.2 g of sucrose and other sugars per 100 g dry cereal
AAP Healthy Children.org	Choose cereals with less than 10 grams of sugar and at least 2 grams of fiber per serving
Alliance for a Healthier Generation	≤ 35% sugar by weight
Disney	0 g added sugars for juice beverages < 10 g added sugars per oz for cereal 20-25% of calories added sugars for snacks < 35% of calories added sugars for dairy beverages and yogurt < 10% of calories added sugars for side dish < 10% of calories added sugars for main dish < 10% calories added sugars for complete meal (main dish + side dish)
QUBO	< 6 g sugar for snacks, dairy beverages, and yogurts ≤ 12 g sugar for cereal < 5 g sugar for prepared foods (side dish) < 8 g sugar for prepared foods (main dish) < 13 g for complete meals (main dish and side dish) Does not apply to juice beverages None specified for breads and pastries
CSPI Guidelines	< 35% by weight added sugars

TABLE A13 Third Party Recommendations or Criteria for Nutrition Components to Encourage

Source	Recommendation or Criteria
FDA "good source"	≥ 10% to 19% DV
FDA "excellent source"	≥ 20% DV
FDA "healthy"	≥ 10% DV for protein, fiber, calcium, iron, vitamin A, or vitamin C
DGA 2010	Recommendations for fruits; a variety of vegetables; whole grains; fat-free or low-fat milk and milk products; emphasis on foods that provide potassium, dietary fiber, calcium, and vitamin D
Healthy People 2020	Increase fruits to 0.9 cup equivalents per 1000 calories Increase variety and contribution of vegetables to 1.1 cup equivalents per 1000 calories Increase whole grains to 0.6 oz equivalents per 1000 calories Increase calcium to 1300 mg Reduce iron deficiency in young children
IOM School Foods report	Combination products must contain a total of ≥ servings as packaged of fruits, vegetables, or whole grain products per portion
IOM School Meals report	Weekly standards for fruits; various types of vegetables; grains (≥ 50% of which are must be whole grain rich); meats, beans, cheese, yogurt; fat-free or low-fat milk
IWG tentative proposal standards	Standard II Option A: Food must contain ≥ 50% by weight of ≥ 1 of the following: fruit, vegetable whole grain; fat-free or low-fat milk or yogurt; fish; extra lean meat or poultry; eggs; nuts and seeds; or beans Option B: food must contain one or more of the following per RACC (per 50 g if small RACC): 0.5 cups fruit or fruit juice 0.6 cups vegetables or vegetable juice 0.75 oz equivalent of 100% whole grain 0.75 cups milk or yogurt; 1 oz natural cheese; 1.5 oz processed cheese 1.4 oz meat equivalent of fish or extra lean meat or poultry 0.4 cups cooked dry beans 0.7 oz nuts or seeds 1 egg or egg equivalent
HealthierUS School Challenge	Weekly recommendations for fruits; vegetables; entrées; legumes; whole grain foods Daily amounts of low-fat and non-fat milks
Alliance for a Healthier Generation	Any fruit with no added sweeteners or vegetables that are non-fried Any reduced-fat or part skim cheese ≤ 1.5 oz
Disney	Juice beverages that contain ≥ 50% real juice with no added sugar
QUBO	Processed meats (e.g., hot dogs) not acceptable Unprocessed meats, poultry or seafood without added oil or sugar permitted No restrictions for fresh fruits or vegetables; fruits, vegetables, and legumes in other forms accepted if no added sugar or oil No restrictions for condiments (ketchup, mustard, mayonnaise, salsa, salad dressings)
CSPI Guidelines	Beverages that contain ≥ 50% juice and no added sweeteners Low-fat and fat-free milks Water and seltzers without added sweeteners

TABLE A14 USDA Food Group Serving Equivalents

Food Group/Component	1 Serving	½ Serving	¼ Serving
Fruits and vegetables	½ cup	¼ cup	
Fruit and vegetable juices	½ cup (4 fl oz)	¼ cup (2 fl oz)	
Dried fruit	¼ cup	⅛ cup	
Dairy			
Milks	1 cup (8 fl oz)	½ cup (4 fl oz)	¼ cup (2 fl oz)
Cheese, natural	1.5 oz	0.75 oz	
Cheese, processed	2.0 oz	1.0 oz	
Whole grains[a]	16 g	8 g	

[a] Whole grains are grains that consist of the entire grain seed, which is made up of three components: the germ, the bran, and the endosperm. Whether cracked, crushed, ground, flaked, or processed in some other manner, a grain remains a whole grain so long as all three components (germ, bran, and endosperm) are retained in approximately the same proportion as the unprocessed grain (IOM, 2010a, at p. 363).

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