



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

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

July 14, 2011

**RE: Interagency Working Group on Food Marketed to Children: General  
Comments and Proposed Marketing Definitions: FTC Project No. P094513**

Dear Mr. Clark:

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

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

We offer the following comments in regard to the marketing standards recommended in the proposed guidelines, along with additional general comments. Another set of comments regarding the nutrition standards will also be submitted.

**Executive Summary**

- Self-regulation of marketing foods and beverages to children is working. Additional government guidance regarding marketing to children is not necessary or warranted.
- Milk products are nutrient-rich. Milk and milk products provide nine essential nutrients, including three of the four nutrients identified as “nutrients of concern” in the 2010 DGAs— calcium, vitamin D and potassium.

- Children are falling short of recommended intakes of milk products. Milk consumption is replaced by soft drinks, fruit drinks or other beverages as children get older.
- The proposed guidelines would prevent many dairy products from being marketed to children.
- Milk and milk products only make up a small amount of the total advertising expenditures targeted to children.
- If guidelines are set, the qualifications for marketing products to children should be transparent to consumers and regulators, including information declared on the Nutrition Facts panel, using total amounts of nutrients, rather than added levels such as added sugars.
- Reformulation of products can take significant periods of time, meaning that any changes cannot be implemented immediately.
- The proposed definition of marketing is too broad, including many activities beyond advertising.
- The definition of children in the proposed guideline is too broad.

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

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

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

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

### **Increased Consumption of Dairy Foods Should be Encouraged**

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

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

<sup>2</sup> Ibid.

consume 2.5 servings and children 9 and older consume 3 servings of milk and milk products each day. With the increased recommendation to two and one-half servings for children between the ages of 4 and 8 years of age, nearly 75% of children in this age group would fall short. More than half of boys between 9 and 18 years of age do not meet their recommended intake of milk and milk products. More than 75% of girls 9-13 and more than 90% of girls 14-18 do not consume adequate milk and milk products.<sup>3/</sup> The report of the 2010 DGAC also indicated that calcium intake is considerably less than the Adequate Intake level for Americans of many ages, beginning at nine years old. This shortfall is particularly evident for females.<sup>4/</sup>

Yet, children and adolescents are drinking less milk and more soft drinks and other low-nutrient or nutrient-void beverages – a troubling trend that has been identified as one potential reason for chronic calcium shortages and the rising rates of obesity among America’s youth. <sup>5/</sup> In 2008, more than twice the amount of carbonated soft drinks were available than fluid milk.<sup>6/</sup> Researchers studied the diets of more than 3,000 children ages 2 to 18 years using food consumption data from the government’s National Health and Nutrition Examination Survey. <sup>7/</sup> They found that consumption of soft drinks and fruit drinks tends to increase gradually as a child gets older, while milk intake declines in a similar way. This finding is consistent with other recent studies. <sup>8/</sup>As an example of what occurs when milk is replaced by other beverages, the DGAC indicated that when milk and milk products are removed from sample diets in the USDA Food Patterns, calcium, vitamin A, vitamin D, choline, magnesium, phosphorus, and potassium become deficient.<sup>9/</sup>

### **Proposed Guidelines Would Prevent Many Dairy Products From Being Marketed to Children**

Despite the DGAs urging Americans, especially children, to consume additional low-fat and fat-free dairy products, many of these products would not be able to be marketed to children under the proposed guidelines. Very little cheese would be able to be advertised to children due to the sodium and saturated fat limitations. Some yogurts and flavored milk could be excluded due to sugar and milkfat content. Many Ice cream, frozen yogurt and frozen desserts would be excluded as well due to sugar and fat limitations.

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<sup>3</sup>Dietary Guidelines Advisory Committee. 2010. Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans, 2010, to the Secretary of Agriculture and the Secretary of Health and Human Services. U.S. Department of Agriculture, Agricultural Research Service, Washington, DC.

<sup>4</sup>Ibid.

<sup>5</sup>Ludwig DS, Peterson KE, Gortmaker SL. Relation between consumption of sugar-sweetened drinks and childhood obesity: a prospective, observational analysis. *The Lancet*. 2001;357:505-508; American Academy of Pediatrics Policy Statement. Soft Drinks in Schools. *Pediatrics*. 2004;113:152-154; American Heart Association, American Stroke Association, Robert Wood Johnson Foundation. *A Nation at Risk: Obesity in the United States*. American Heart Association National Center: Dallas, June 2005.

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

<sup>7</sup>Murphy M, Douglass J, Latulippe M, Barr S, Johnson R, Frye C. Beverages as a source of energy and nutrients in diets of children and adolescents. *The FASEB Journal* 2005;A434,275.4.

<sup>8</sup>Blum JW, Jacobsen DJ, Donnelly JE. Beverage consumption patterns in elementary school aged children across a two-year period. *Journal of the American College of Nutrition*. 2005;24:93-98; Rajeshwari R, Yang SJ, Nicklas TA, Berenson GS. Secular trends in children’s sweetened beverage consumption (1973-1994): the Bogalusa Heart Study. *Journal of the American Dietetic Association*. 2005;105:208-214.

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

## **Milk and Milk Product Advertising is Not a Significant Portion of Children’s Food and Beverages Ads**

The proposed guidelines include dairy products as one of the categories of food products most heavily marketed to children. However, the expenditures for dairy advertisements are dwarfed by those of other products. Of the 10 categories of food identified in the 2008 FTC report, only fruits and vegetables had lower marketing expenditures. Beverages that compete with milk, including carbonated beverages and juice and non-carbonated beverages, were number 1 and number 4 in terms of expenditures. While nearly \$500 million was spent to market carbonated beverages, all dairy products, not just milk, were promoted with about \$55 million.<sup>10/</sup>

### **Specific Comments on Proposed Guidance**

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

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

Food manufacturers must have this in order to understand how to formulate products for children or to develop marketing plans. In addition to their own efforts, they must be able to clearly communicate with their customers who have questions about the products they sell to children and parents. Dairy companies are concerned about criteria that would require them to provide proprietary information, such as formulations or marketing plans, to government entities to prove that they are in line with any guidance.

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

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

Although the proposal tried to address the issue of naturally occurring nutrients by exempting these nutrients such as saturated fat and sodium found in low-fat milk from the nutrient limits set in the proposal, our members have considered the implication of this exemption for dairy products. They have concerns that this approach is not clear to consumers or to regulators, who cannot identify naturally occurring nutrients though use of the Nutrition Facts. Basing guidance

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<sup>10</sup> Federal Trade Commission. “Marketing Food to Children and Adolescents: Review of Industry Expenditures, Activities, and Self-Regulation.” July 2008.

on criteria such as naturally occurring nutrients or added sugar instead of total sugar is not transparent.

### **Reformulation of Products Can Take Significant Amounts of Time**

The dairy industry is currently engaged in efforts to reduce sugar, fat and sodium levels in dairy products, but some products are not as easy to reformulation as others. Many products have already been altered to make them healthier choices, but some have not yet been able to reach the levels outlined in the proposed guidelines. If standards were put in place to change marketing of foods and beverages immediately, this would even further restrict the nutrient-rich dairy products available to be marketed to children.

Companies also require significant amounts of time for planning, designing and implementing marketing plans and product labels. Designing, reprinting new labels and disposing of old labels can cost small companies into the hundreds of thousands of dollars, meaning that an immediate label change is unworkable and also potentially devastating to small companies.

### **Definition of Marketing in Proposed Guidelines is Too Broad**

In the proposed guidelines, the IWG gave a definition of marketing that would include 20 categories of activities. All of these activities would potentially be required to comply with any final guidance. Beyond the traditional marketing activities through television, print or radio advertising and newer marketing activities, such as emails, websites and social media, the proposed definition also includes product packaging, philanthropic activities and a general catch-all other category. This other category is unclear, but could potentially include almost any activity, making it difficult for companies to know whether a particular activity would cause the product to fall under any guidance.

The inclusion of some of these activities as marketing could cause products to be pulled from the market altogether, not just limiting the marketing of these products. A label photo of an ice pop in a color attractive to children could be a disqualifying factor, as could the required flavor labeling on a yogurt container, if the flavor name is deemed to be marketing to children.

While cartoons are identified as an indicator of marketing to children, this is often not the case. Many dairy products use cartoon-type depictions of cows or farms as part of their branding for an entire product line. The majority of these are not to appeal to children, but rather to an adult buying for themselves or an entire family. An example would be an illustration of a barn surrounded by grazing cows on the label of a gallon of whole milk. This product is more likely to be purchased by a mom for consumption by an entire household rather than by a child for their own consumption.

Additionally, the inclusion of point-of-sale materials as marketing to children causes problems for food manufacturers. While some companies do develop and implement their own point-of-sale displays and materials, many of these are developed by a third party, such as a retailer or a food service establishment. Dairy processors may not have input into these efforts, and may not specifically formulate products to be included in these marketing efforts. Processors cannot control the marketing of their products other than the activities they themselves undertake.

## **Definition of Children in Proposed Guidelines is Too Broad**

While Congress did require the IWG to consider marketing to children 17 years old and younger, there is no requirement that guidance be implemented for any or all of this age range. The IWG, along with an Institute of Medicine committee in a report released in 2006,<sup>11</sup> acknowledges that teenagers are targeted by different marketing techniques and have very different cognitive functions than younger children, meaning that the results of marketing could be very different between younger children and teenagers. Identifying marketing targeted specifically to teens could be difficult, since teens use many of the same websites, television programs and radio stations used by adults.

### **Conclusion**

The 2010 DGAs encourage increased consumption of low-fat or fat-free dairy products for all Americans, including children, while dairy products have a relatively low level of marketing expenditures.

Self-regulation of marketing foods and beverages to children is working. Additional government guidance regarding marketing to children is not necessary or warranted. Reformulation of products can take significant periods of time, meaning that any changes cannot be implemented immediately. If guidelines are set, the qualifications for marketing products to children should be transparent to consumers and regulators, including information declared on the Nutrition Facts panel, using total amounts of nutrients, rather than added levels.

Children are already falling short of recommended intakes of milk and milk products. The International Dairy Foods Association and our member companies have strong concerns that these proposed guidelines for marketing foods to children could reduce or preclude the marketing of essential and delicious dairy products to children, based on overly broad interpretations of marketing and children.

Sincerely,

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Cary Frye  
Vice President, Scientific and Regulatory Affairs

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<sup>11</sup> Institute of Medicine. "Food Marketing to Children and Youth: Threat or Opportunity?" The National Academies Press, 2006.