National Confectioners Association
NCA
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Office of the Secretary
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Interagency Working Group on Food Marketed to Children: General Comments and Proposed Marketing Definitions: FTC Project No. P094513.

The National Confectioners Association (NCA) appreciates the opportunity to offer comments on the Interagency Working Group's (IWG) Proposed Guidelines on Marketing Food to Children. NCA candy makers have been manufacturing candy, one of life's little pleasures, since 1884. Today, NCA represents 320 companies that manufacture and market the vast majority of chocolate confectionery, sugar confectionery and gum sold in the United States, 225 companies who supply those manufacturers and 115 companies who serve as third party sales agents for manufacturers, known as brokers.

While two thirds of NCA's members are small businesses, NCA's membership also consists of several large companies that sell recognizable brands. There are confectionery manufacturers in more than 40 states, with a particular concentration in Pennsylvania, New York, New Jersey, Illinois, Ohio, and California. According to the U.S Department of Labor, in 2009 there were approximately 70,000 confectionery manufacturing jobs in more than 1,000 facilities across the U.S.; when you count the related number of sales and distribution jobs associated with the industry that number triples.

Many of the industry's manufacturers are now 4th and 5th generation family owned companies that were started before the turn of the century and have long histories of engaging with and supporting their local communities. For our industry, which has had a strong presence in the American market for the past 150 years, traditions are essential to the identity of our companies and the products they produce. The very nature of confectionery means a fun treat, something special to be consumed occasionally.

NCA and our members support responsible advertising and marketing, especially when it comes to children. The industry has made significant efforts to demonstrate this commitment over the last five years. The largest confectionery companies in the U.S. have stopped advertising candy to children under the age of 12.

The Interagency Working Group Proposed Guidelines are over reaching. The nutrition criteria along with the age groups and scope of marketing activities they cover do not acknowledge candy's unique role in the diet and the commitments already made by the industry's leading confectionery companies. As virtually no candy could meet the proposed nutrition criteria and reformulation is not a reasonable option for the candy sector, the entire confectionery category would be subject to the full scope of marketing restrictions –thereby causing significant and damaging changes to the industry.

I. IWG should withdraw the Preliminary Proposed Nutrition Principles for Food Marketed to Children and complete the congressionally-directed study.

The FY 2009 Omnibus Appropriations Act directed the IWG to conduct a study and offer recommendations to guide food marketing to children and teens. The initial intention was for the IWG to investigate the impact of marketing practices on childhood obesity. The report indicated that the IWG was to examine nutritional standards and determine the scope of the media that should be included in its guidance. Yet, the IWG did not complete a study, as Congress directed.

While compliance with the IWG proposal would cause dramatic changes to the confectionery industry, the IWG has produced no evidence that implementation of the proposed guidelines will be effective at reducing childhood obesity. At this time the impact of food marketing on obesity is unknown. The Institute of Medicine's 2006 report on food marketing concluded that ". . . the current evidence is not sufficient to arrive at any finding about a causal relationship from television advertising to adiposity".[1]

In the past 5 years, the industry has made extensive strides to reduce advertisements directed to children under the age of 12. The majority of candy sold at retail in national distribution channels is manufactured by NCA's largest members: Kraft, Hershey, Mars, and Nestle USA. Since 2007, these leading U.S. confectionery companies have made major commitments under the Children's Food and Beverage Advertising Initiative (CFBAI) to no longer advertise candy to children under 12. Additionally, NCA and the few smaller/medium-sized members who advertise nationally have become members of CARU, the Children's Advertising Review Unit of the Better Business Bureau.

Recent literature has shown that these commitments have had a dramatic impact on the reduction of candy advertisements. A study by the Georgetown Economic Service (GES) found that exposure to candy ads fell by almost 70% for children ages 2-11 between 2004 and 2010.[2] Prior to publication, this GES study was cited by the Grocery Manufacturer's

Association in a presentation that noted ads for candy during children's programming had already fallen by 68% between 2004 and 2008.[3] Advertising reductions were apparent as early as 2007. One study found that exposure to candy bar ads fell by 69.1% and 62%, respectively, among children ages 2-5 and 6-11 between 2003 and 2007.[4] Another study found exposure to candy ads fell by 47.2% among children ages 2-11 from 2004 to 2008.[5]

These substantial changes in the profile of foods advertised to children under 12 provide more cause for the IWG to conduct a study on the impact of their proposed guidelines on childhood obesity. This study should include a re-assessment of the profile of foods that are currently being advertised to children under 12 and not rely on frequency data from 2006 as was noted in the current proposed guidelines.

The confectionery industry requests that the IWG withdraw the proposed nutrition principles for food marketed to children and instead first complete the congressionally-directed study to assess the impact of such principles.

The subsequent points outline major problems with the guidelines and explain why the confectionery industry cannot support them. Following the completion of the congressionally-directed study, NCA will be pleased to work with the IWG to reach alignment on a narrower scope of responsible marketing practices for the under 12 category that addresses traditional marketing channels.

II. Restrictions on marketing to children should not include adolescents.

In Section III of the IWG Guidelines, the working group proposes using a definition of marketing to children that encompass both children, ages 2-11 years, and adolescents, ages 12-17 years.

Considering the significant commitments the candy industry has made to responsible marketing to children by greatly reducing the advertisements to children under 12, as well as the established cognitive differences between children and teens, there are serious disadvantages to including adolescents in the IWG guidelines on marketing foods to children.

The candy industry's major commitments to not advertise to children under the age of 12 are based on established differences in cognitive abilities between children and adolescents. Developmentally, children's ability to understand and respond to marketing is different than adolescents'. Teens can perform similar to adults in their ability to make reasoned decisions about complex issues in research settings. Society grants them a broad range of responsibilities and freedoms (such as driving a motor vehicle, holding a job, etc.), which underscores their ability to make significant decisions. 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."[6] As early as age 12, adolescents' knowledge about advertiser tactics develops in the direction of adult understanding.[7]

Furthermore, there is no evidence that food and beverage marketing to adolescents is causally related to obesity. The Institute of Medicine (IOM) report on food marketing to children concludes that, with respect to diets, there is insufficient evidence about its influence on the short-term food intake of teens ages 12-18 years and weak evidence that it does not influence the usual dietary intake of teens ages 12-18 years.[1]

Adolescence is a unique developmental life stage and it is not appropriate to apply the same marketing guidelines that are outlined for children under 12 to this group. For example, the industry recognizes that schools are a special environment and that candy will likely no longer be available at school during the school day under the Healthy and Hunger-Free Kids Act of 2010, which reauthorized child feeding programs in schools.

We urge the Interagency Working Group to reconsider the age targets of these guidelines. Considering the commitments to reduce or discontinue advertising to children under 12 made by the confectionery industry and the broader food industry, our collective time and efforts would be better spent securing alignment on responsible marketing practices for the 12 and under age bracket across the food industry. NCA would be pleased to work with the Interagency Working Group to this end.

III. <u>The scope of marketing restrictions is overly expansive.</u>

In Section III of the IWG guidelines, the Working Group's proposed definitions include all advertising, marketing, and promotional activities identified in the FTC's food marketing study definitions, including (but not limited to) packaging and point-of-purchase displays, character licensing and toy co-branding, sponsorship of events, sports teams, and individual athletes and philanthropic activity tied to branding opportunities.

For advertising or promotional activities for which there are no objective criteria, such as audience share, opinion data, or inclusion in a company marketing plan, the Working Group proposes to follow the FTC's set of subjective indicators that the promotion targets children or adolescents. These include use of child- or teen-oriented animated or licensed characters; use of language to appeal particularly to children or teenagers; use of child or teen models; child- or teen-oriented themes, activities, or incentives; and whether the company actively seeks the participation of children or teens in some aspect of the promotion.

For all age categories, the extent of restrictions on marketing to kids is too broad. Because virtually no candy can meet the nutritional criteria proposed by the IWG, the covered marketing practices restrict any and all abilities of candy companies to make a connection with their consumers.

Candy companies have already made significant pledges to reduce advertising and marketing to kids under 12 through traditional means as well as through the use of the internet. Leading confectionery companies have made these commitments voluntarily without the benefit of evidence demonstrating their efficacy on reducing overweight. As stated previously by the IOM, there is not a causal link between advertising and obesity. Considering this lack of evidence, it is imprudent to recommend further restrictions on marketing activities.

Application of subjective criteria to measuring compliance with the guidelines is not appropriate for many marketing activities including some unique aspects of the candy industry (which are outlined in section IV).

Furthermore, it would be a particularly significant loss to communities, philanthropic organizations, sports teams and family entertainment if candy companies could no longer provide financial support to these entities and activities. For example, many of our small and medium sized companies proudly fund programs like Little League and high school athletic teams.

While the IWG may not have considered the impact of the guidelines to organizations like Little League baseball, high school athletic teams, or the United Way, the guidelines are not written in a way to indicate that companies should use flexibility in implementing them. Our members have a history of supporting such organizations and providing community support and will continue to do so. Yet, our companies anticipate significant pressure over time to comply in full with future "voluntary" guidelines supported by the federal government.

The proposed guidelines are extremely broad in scope and restrictive; the IWG should retract the current proposal's covered marketing activities and instead consider an approach that is narrower in scope plus clearly affords adequate flexibility for companies. Again, NCA believes our collective time would be better spent seeking alignment on a narrower scope of responsible marketing practices. NCA would be pleased to work with the Interagency working group to this end.

IV. **Candy is A Unique Category.**

Candy is a unique food category. Unlike other foods purchased and consumed for their nutrient value, candy is purchased and consumed for its "treat" value. Parents understand that candy is not a nutrient dense food. Candy is a small treat intended to bring joy and happiness. Candy contributes only about 2-3% of calories in children's diets and it is usually eaten infrequently, about 1-2 times per week.[8] [9] [10] Fun shapes, colors, characters and packaging are components of this pleasurable experience. While it may seem intuitive that reducing or eliminating children and teen consumption of candy would impact weight, candy consumption by children and teenagers is not associated with increased weight gain, decreased diet quality or negative risk factors for cardiovascular health.[11]

Seasonal/holiday products and new, innovative products comprise the majority of confectionery products sold. While NCA doesn't believe it was the intent of the IWG to eliminate iconic and celebratory seasonal confections, applying the FTC subjective indicators in addition to the proposed marketing restrictions would impact the ability of candy companies to use traditional as well as innovative shapes, figures, and packaging.

There is a long and rich history of candy treats as a fun, integral part of holidays, seasonal celebrations and special occasions. Easter, Halloween, Valentine's Day and the winter holidays are all associated with nostalgic candy traditions. For example, 88 percent of adults carry on the Easter tradition of creating Easter baskets for their kids, 89 percent of adults said candy plays a role in their winter holiday celebrations [12] and 93% percent of kids go trick or treating[13]. Products that could be restricted under the IWG guidelines include chocolate and candy bunnies, chicks, pumpkins, cats, hearts, snowmen, Santas, and angels. Considering almost half of all candy is sold around the holiday seasons, limits on the way these products are shaped, packaged and displayed in stores would negatively impact confectionery businesses.[14]

While tradition is an important tenet of the confectionery industry, innovation around packaging/shapes is also a major driver of our category. Thirty percent of our category's growth is attributed to new product launches and line extensions which rely on new sizes, shapes and packaging to be successful.[15] Products such as fun toy candy dispensers, candy jewelry, candies with packages that feature beloved characters (such as Charlie Brown, Disney princesses, and Pokeman), or candies that have interactive packaging or components, many of which are child-oriented have enhanced treat value for children and unique product identities. Limits on packaging and point-of-purchase displays, character licensing and toy co-branding would stifle innovation and fundamentally alter the nature of these fun products designed to provide occasional happiness and pleasure to children.

Novelty and seasonal treats are generally gifts or tend to be consumed at special events (birthdays, holidays, trips, occasional outings, etc). NCA requests the IWG consider a special exemption from marketing restrictions to cover seasonal, gift and novelty candies.

Conclusion: The IWG guidelines are not workable for the candy industry.

In summary, while NCA members support responsible advertising, these guidelines are over reaching and cannot be adopted by our industry. This is especially the case considering the lack of evidence demonstrating that such measures would actually have an impact on children's overall health status. Our members don't want their products or businesses penalized by discriminatory de-facto regulations that won't work.

Given the uncertainty of the effectiveness of these guidelines and their ability to harm the business practices and traditions of the candy industry, NCA urges the IWG to conduct a study to test the impact of the proposed guideline prior to requesting industry participation.

NCA requests that the IWG withdraw these guidelines and proceed with the congressional direction to complete the study required by Congress in the FY'2009 Omnibus Appropriations Bill. This study should comply with Executive Order 13653 by assessing the cost of the proposed marketing restrictions; ensuring that the benefits justify the costs; and, clearly demonstrating that the proposed restrictions will help consumers build healthy diets, based on objective science.

Sincerely,

Lawrence T. Graham
President

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[12] 2005-2009, NCA phone survey, 1000 adult participants

[13] 2005-2009, NCA phone survey, 1000 children participants (ages 9-12)

[14] 2010 Symphony IRI Group Sales Data

[15] Datamonitor’s 2010 Product Launch Analytics