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Interagency Working Group on Food Marketed to Children: Proposed Nutrition Principles: 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 4<sup>th</sup> and 5<sup>th</sup> generation family owned companies, 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 voluntarily 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. Furthermore, the proposed nutrition criteria will not be successful in reaching the IWG's goal to motivate reformulation in the confectionery sector.

**I. Confectionery products are part of a healthy happy lifestyle.**

*In Section II A The Working Group states that “the purpose of the 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.”*

NCA would not expect the vast majority of products produced by our membership to fit within any nutritional criteria developed by the IWG. However, 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.<sup>1</sup> In fact, children and teenagers who consumed candy were significantly less likely to be overweight or obese than non-candy consumers.

Although this finding may seem unexpected, it has been shown that parental restriction of children's food intake is associated with increased likelihood of overweight and inability to self-regulate eating behavior.<sup>2</sup> This is particularly evident when it comes to palatable foods. A study by Fisher and Birch (1999) examined the relationship of parental restriction and moderate consumption. The authors concluded that “Restricting access focuses children's attention on restricted foods, while increasing their desire to obtain and consume those foods. Restricting children's access to palatable foods is not an effective means of promoting moderate intake of palatable foods and may encourage the intake of foods that should be limited in the diet.”<sup>3</sup>

Candy is a unique food category that parents do not purchase with the intention of providing a nutrient dense food for their children. It is a treat and is generally consumed in moderation. Candy contributes only ~2-3% of calories in children's diets and it is usually eaten infrequently, about 1-2 times per week.<sup>4 5 6</sup> Candy consumption does not replace the consumption of essential nutrients in children's diets. Analyses of the 2003-2006 NHANES data show that candy consumption does not decrease the likelihood that children and teenagers are meeting their nutritional needs.<sup>7</sup> Furthermore, higher frequency of candy consumption is not associated with increased prevalence of overweight/obesity or increased waste circumference, as shown in Table 1.

**Table 1. Waist circumference and prevalence of overweight/obesity by frequency of candy consumption from NHANES 2003-2006<sup>12</sup>**

Body measure	Sample size, unweighted	Candy Food Frequency Category			p-value
		≤3 EO/mo	> 3 EO/mo and ≤ 3.5 EO/wk	> 3.5 EO/wk	
<b>Waist Circumference (cm)</b>					
US 2+ y	10,166	94 ± 0.8	89 ± 0.6	88 ± 0.6	<0.01
Children 2-8 y	1,543	55 ± 0.8	57 ± 0.7	56 ± 0.9	NS
Males 9-18 y	1,433	81 ± 1.4	76 ± 1.2	76 ± 1.7	<0.05
Females 9-18 y	1,568	79 ± 1.1	76 ± 0.9	77 ± 1.1	NS
<b>% Obese/overweight</b>					
US 2+ y	10,482	63 ± 1.6	56 ± 1.6	54 ± 1.6	<0.01
Children 2-8 y	1,623	29 ± 4.2	30 ± 3.2	26 ± 3.5	NS
Males 9-18 y	1,448	48 ± 4.7	29 ± 3.6	32 ± 4.9	<0.05
Females 9-18 y	1,594	45 ± 5.7	32 ± 4.1	33 ± 4.2	NS

**II. The IWG Guidelines will not motivate reformulation in the confectionery sector.**

*In Section II A of the IWG Guidelines “The Working Group recommends that, as industry develops new products and reformulates existing products, it should strive to create foods that meet both of these two basic nutrition principles. It further recommends that industry focus these efforts on those categories of foods that are most heavily marketed directly to children”*

The Working Group’s proposed limit for added sugars in foods marketed to children is no more than 13 grams of added sugars per RACC. This is unrealistic for confectionery products given sugar’s essential role in candy. Beyond acting as a sweetener and a bulking agent, sugars also determine the candy’s flavor and textural characteristics. Sugars are necessary for the reactions that create flavor in candies like caramel and butterscotch. Textural aspects such as the extent of crystallization and the glass transition state, which determines whether a solution will be solid or liquid, are dependent on sugars. Sugar content also has an impact of the safety of candy products, due to its influence on water activity.

Just as importantly, consumers expect and want the taste experience of sugar or chocolate when they choose to eat a simple treat like candy. Nevertheless, candy makers HAVE had great success with some sugar alternatives, and reduced sugar or sugar-free options are already available for most types of confections. However, there are challenges and limitations to using sugar alternatives in candy. Many formulations with sugar alternatives do not lead to a significant caloric reduction. Other challenges include their impact on color, digestion, bulk, sweetness, and shelf life. Domestic and global regulatory acceptance is also a concern. For example, the standards of identity for chocolate require nutritive carbohydrate sweeteners.

**III. The IWG should acknowledge the contribution of sugar free gums in oral health of children and adolescents.**

*Under the guideline’s nutrition criteria “Principle A: Meaningful Contribution to a Healthful Diet” Individual Foods marketed to children should provide a meaningful contribution to a healthful diet by containing contributions from fruit; vegetable; whole grain; fat-free or low-fat (1%) milk products; fish; extra lean meat or poultry; eggs; nuts and seeds; or beans.*

An example of a confectionery category that has had great acceptance by consumers and incorporates sweetener alternatives is sugar-free gum, which now accounts for 90% of total gum sales compared to only 2-3% of total sugar-free candy and chocolate sales. However, sugar-free chewing gum and mints would not qualify under the IWG nutritional guidelines because they do not meet the criteria for “Principle A: Meaningful Contribution to a Healthful Diet”. While these products don’t include sufficient quantities of fruit, vegetables, whole grains, low fat dairy, meat, eggs, nuts or beans, they contain a negligible amount of calories and make a meaningful contribution to oral health.

Sugar free chewing gum can serve as a substitute for a higher calorie snack, and this “small” calorie savings each day can make a significant impact in decreasing total calorie intake over time. Sugar-free chewing gum is only about 5 calories per serving and is consumed in small amounts. The reference amount customarily consumed is 3 grams.

The body of evidence has a long history, dating back to the first dental caries trial in 1967,<sup>8</sup> that chewing sugar-free gum provides clear functional oral health benefits. Sugar-free chewing gum is unique because it is non-cariogenic and acts through stimulation of saliva at about 10 times what is normally in the mouth. Stimulated saliva leads to neutralization and buffering of plaque acids, oral clearance of sugars, acids and food debris from the mouth and re-mineralization of tooth enamel.<sup>9 10 11 12</sup> There are several randomized clinical trials that demonstrate the benefits of chewing sugar-free gum on cavity reduction.<sup>16 17 13 14 15 16</sup>

Leading dental health authorities, such as the FDI World Dental Federation and the American Dental Association (ADA), recognize the scientific evidence establishing benefits of chewing sugar-free gum.<sup>17 18</sup> The ADA, known for its stringent acceptance policies, awarded its Seal of Acceptance to sugar-free gums in 2007 after a thorough analysis of nearly 40 years of independent scientific research.

Sugar-free chewing gum may have particular importance for children. According to a systematic review published in the Journal of the American Dental Association “There is good evidence to support the use of sugar-free chewing gums as a caries-preventive measure in schoolchildren, especially in those with increased caries risk.”<sup>19</sup>

**IV. The Nutritional Criteria in the IWG Guidelines conflict with the total lifestyle approach of the Dietary Guidelines.**

The nutritional criteria outlined in the IWG Guidelines are not consistent with the intention of other federal nutrition standards, such as the 2010 Dietary Guidelines, to encourage a healthy lifestyle that includes a total diet approach. The overarching message of the 2010 Dietary Guidelines is that our nation needs to value and adopt the practices of good nutrition, physical activity, and a healthy lifestyle. The guidelines, [www.choosemyplate.gov](http://www.choosemyplate.gov), acknowledge the need for a total diet that is enjoyable while being energy-balanced and overall nutrient-dense. Different styles of eating patterns are addressed to illustrate that moderation goals and nutrient adequacy can be met in a variety of ways. For example, eating tips that support [www.choosemyplate.gov](http://www.choosemyplate.gov) acknowledge that “treats are great once in a while” and are a part of special occasions.<sup>20</sup>

**V. IWG should withdraw the 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 marketing practices that should be included in its guidance. The IWG did not complete a study, as Congress directed.

Compliance with the IWG proposal would cause dramatic changes to the confectionery industry, yet the IWG has produced no evidence that implementation of the proposed guidelines would 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.”<sup>21</sup>

In the past 5 years, the industry has made extensive strides to reduce advertisements 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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> Another study found exposure to candy ads fell by 47.2% among children ages 2-11 between 2004 to 2008.<sup>25</sup>

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.

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

In summary, candy is a unique food category that represents one of life's little pleasures. While NCA members support responsible advertising, these guidelines are over reaching and cannot be adopted by our industry. The guidelines will not encourage reformulation within the candy sector and do not acknowledge the oral health benefits of chewing gum.

Our members don't want their products or businesses penalized by de-facto and discriminatory regulations that may not work. 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. 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 guidelines 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; ensure that the benefits justify the costs; and, clearly demonstrate that the proposed restrictions will help consumers build healthy diets, based on objective science. Following the completion of the congressionally-directed study, NCA will be pleased to work with the IWG to reach alignment on nutritional criteria that encourage a healthy lifestyle through a total diet approach.

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<sup>1</sup>O'Neil, C. E., V. L. Fulgoni, and T. A. Nicklas. "Association of Candy Consumption with Body Weight Measures, Other Health Risk Factors for Cardiovascular Disease, and Diet Quality in US Children and Adolescents: NHANES 1999-2004." *Food and Nutrition Research* (2011). Print.

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<sup>2</sup> Clark HR, Goyder E, Bissell P, et al. How do parents' child-feeding behaviours influence child weight? Implications for childhood obesity policy. *J Pub Health*. 2007;29:132-41.

<sup>3</sup> Fisher JO, Birch LL. Restricting access to palatable foods affects children's behavioral response, food selection, and intake. *Am J Clin Nutr*. 1999;69:1264-72.

<sup>4</sup> "Mean Intake of Energy and Mean Contribution (kcal) of Various Foods Among US Population, by Age, NHANES 2005–06." *Risk Factor Monitoring & Methods Home*. National Cancer Institute. Web. 2011. <<http://riskfactor.cancer.gov/diet/foodsources/energy/table1b.html>>.

<sup>5</sup> "Snack Food Industry Trends | Market Research | Statistics." *Www.npd.com*. The NPD Group. Web. 08 July 2011. <[http://www.npd.com/corpServlet?nextpage=food-beverage-snacktrack\\_s.html](http://www.npd.com/corpServlet?nextpage=food-beverage-snacktrack_s.html)>.

<sup>6</sup> U.S. Department of Agriculture, Agricultural Research Service, Beltsville Human Nutrition Research Center, Food Surveys Research Group (Beltsville, MD) and U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics (Hyattsville, MD). *What We Eat in America, NHANES 1999-2006*. Available from: <http://www.ars.usda.gov/Services/docs.htm?docid=13793>

<sup>7</sup> Centers for Disease Control and Prevention (CDC). National Center for Health Statistics (NCHS). National Health and Nutrition Examination Survey Data. Hyattsville, MD: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, [1999-2006]

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- <sup>18</sup> ADA Seal of Acceptance Program, The American Dental Association, Web  
<[http://www.ada.org/ada/seal/chewing\\_gum.asp](http://www.ada.org/ada/seal/chewing_gum.asp)>
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