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

Dear Secretary Vilsack, Chairman Leibowitz, Director Frieden, and Commissioner Hamburg:

Thank you for all of the work you have done to develop new voluntary guidelines for marketing foods and beverages to children and youth. We are tremendously grateful for this effort, and appreciate the opportunity to comment on the proposal.

The Dr. Robert C. and Veronica Atkins Center for Weight and Health at the University of California, Berkeley, is committed to establishing healthy food and activity environments for children and youth. We are a large, multidisciplinary research center, primarily funded through foundations and partnerships with local, state, and federal agencies, as well as Cooperative Extension. The Center is comprised of a wide variety of professionals from many backgrounds, including more than ten Registered Dietitians.

Overall, we are extremely supportive of this effort to fix the market failure that has allowed companies to profit from selling poor health to children. The media and marketing environment in recent decades has facilitated the movement of children's diets toward consumption of unhealthy foods, contributing to the children's health crisis we currently face. While these marketing and advertising efforts have generated substantial profits for food and beverage companies, these profits have come at significant public costs, paid through increased healthcare expenditures as well as poorer health and decreased productivity of our nation's citizens.

While we would prefer to see an even stronger effort to protect children, especially younger children who are least able to understand the persuasive intent of marketing and advertising, we understand that the pursuit of uniform voluntary standards is a significant step toward improving children's health. **While we appreciate the substantial contribution this effort will make, we also want to express our strong**

preference not to allow any advertising or targeted marketing to children under age twelve, since this vulnerable population should be protected from financial interests looking to profit from shaping their behavior. Children should make dietary decisions based on their internal cues under the guidance of parents, guardians, educators, and other adult caretakers. Interference in young children's preferences by anyone with a financial interest in their decisions is not acceptable, even to encourage children to purchase products that are considered healthy. The marketing and advertising of products designed for young children should be directed toward the adults who care for them, rather than to the children themselves.

While the current proposal is applauded for its emphasis on foods rather than nutrients, and the guidance to promote foods that contribute substantially to a healthful diet, we would like to see resolution of a particular issue related to whether certain kinds of foods included should actually be considered "healthy and desirable" for children to consume regularly. Our main concern with the proposal as it is written is that while the actual guidelines appear to promote 'better-for-you' products rather than healthy, whole foods as described in the Dietary Guidelines, the language of the document suggests that the intent is to "guide industry in determining which foods would be appropriate and desirable to market to children to encourage a healthful diet." The distinction between reformulated, processed snack, dessert, and meal foods and desirable foods for children to consume is critically important. We know that an extremely small percentage of children (1-2%) in the US consume a diet consistent with the Dietary Guidelines. Further, children consume at least 40% of their calories from added sugars and fats, largely contributed by consumption of snack foods (Reedy J, Krebs-Smith SM. Dietary sources of energy, solid fats, and added sugars among children and adolescents in the United States. *J Am Diet Assoc.* 2010) Oct;110(10):1477-84) while they under-consume whole, fresh foods from the food groups identified in the Dietary Guidelines, like fruits, vegetables, whole grains, lean protein and dairy products. These proposed voluntary guidelines appear to support the continued marketing of processed snack foods and beverages, albeit items that contain at least a small amount of food from a desirable food group. However, by suggesting that these products will be "appropriate and desirable", the implementation of the standards may produce a health halo effect on the compliant reformulated snack items that are not optimal for children. For example, we are unable to determine how chips, such as Lay's Potato Chips or Cool Ranch Doritos, will not be compliant, if corn and potatoes are considered vegetables. These products currently are low in saturated fat and meet the sodium limit (they have 180mg and 170mg per serving, respectively); however, we would not want to promote these products for children to consume regularly as part of a healthful diet. Even if fried foods were to be disallowed, we do not feel that baked chips meet the threshold for being considered "desirable" foods for children. Similarly, sweetened, flavored milks also could be considered "desirable" for children to consume according to the standards as currently written. While these items may be fine choices for children occasionally, depending upon their overall diet and nutritional needs, they should not be promoted through advertising or marketing.

The proposed voluntary standards emphasize addressing the categories of foods and beverages most heavily marketed to children. However, the food and beverage products that have been most heavily advertised and marketed to children in recent decades are those items that interfere with more healthful choices. While dietary guidance has for many decades centered around the importance of eating balanced meals composed of whole foods, like fruits, vegetables, grains, lean proteins, and dairy products, this has not been what has been promoted to children in advertising and marketing campaigns. Thus, while the proposed standards clearly aim to restrict food and beverage companies from marketing the least healthy products to children and youth, they appear to be resigned to the notion that it is acceptable to encourage children to consume highly processed, nutrient modified foods and beverages. **If the standards are adopted as written, we feel the language of the proposal should be clear about promoting better-for-you products, rather than suggesting that all foods that meet the standards are “healthy and desirable” for children to consume regularly.** We should be clear in recognizing that the guidelines should not suggest that all foods that meet the standard are healthy, rather that the acceptable products no longer include the least healthy foods for children. The products meeting the standards will provide a wide range of more and less healthy options, and this point must be well understood by parents, guardians, educators, and others working to help children make healthy food choices.

While we appreciate that children should consume a range of foods as part of a healthy diet, which can include desserts and other items that will not comply with these standards, we feel that if money can be spent to influence and encourage children to select particular products, spending only should be allowed on foods that meet the spirit of the Dietary Guidelines with few added sugars and discretionary fats. In addition, we feel that the voluntary standards should include a requirement that the portfolio of products marketed by any particular company should include items that have a range of the levels of nutrients to discourage. For example, companies should be encouraged to market cereals with a range of grams of added sugars, from 0 to the maximum amount, rather than exclusively market cereals that contain the maximum number of 'allowable' grams of added sugars under the proposed guidelines.

Our children’s health is suffering. Evidence suggests that marketing and advertising foods and beverages to kids is successful in changing their behavior. If we hope to see a decline in childhood obesity, diabetes, and heart disease risk factors "within a generation" and an improvement in children’s nutritional health, we feel that these voluntary standards are a critical step, and fully support their adoption with the few suggestions already highlighted and those that follow in response to the specific questions posed. We must not continue to allow protection of corporate financial health to outweigh the protection of children’s health. The current system creates negative externalities—these will begin to be fixed by ensuring that all the messages targeted to children encourage them to engage in behaviors that are optimally healthy.

Response to request for specific comments:

(1) Congress directed the Working Group to develop proposed nutrition principles for

foods marketed to children and adolescents up to the age of 17. Does the prevalence of obesity in both children and adolescents warrant the same approach to limits on food marketing for both age groups? Given the wide age range, should there be two sets of nutrition principles, one for younger children (2-11 years) and one for adolescents (12-17 years), based on differences in the nutritional needs and recommended caloric intake of adolescents compared to younger children?

We support the Working Group's decision to use the same standards for children and adolescents in determining which foods should be considered acceptable to be marketed to youth. We do not feel that any differential in obesity statistics among groups should be used to direct what foods should be encouraged for consumption. In fact, all children over age two (as well as adults) will benefit from consuming a diet rich in fruits, vegetables, whole grains, nuts & seeds, lean sources of protein, and limited in added sugars, solid fats, and sodium. Given that our preference would be to discourage the marketing of any foods and beverages to children under 12, the guidelines as written would be appropriate for the older group of children. However, if marketing directed at younger children is allowed, we feel that adjustments should be made to account for their lower caloric needs.

(2) The Working Group recognizes that companies often engage in brand advertising and marketing, without reference to a specific food product in the brand line. How should the nutrition principles be adapted to accommodate advertising and marketing of a general brand or an entire product line as opposed to specific food products or menu items?

Companies should be allowed to advertise and market brands that include a product portfolio for which the average product (based on sales volume) meets the nutrition principles.

(3) The proposed nutrition principles do not include a separate proposal setting targets for nutrients to encourage, including specific nutrients of concern as identified in the 2010 DGA, such as calcium, potassium, fiber, magnesium, and vitamins A, C, and E.⁴⁹ Should the Working Group recommendations include targets for nutrients to encourage and, if so, how should the recommendations address the issue of nutrients added to foods through fortification as opposed to nutrients that are inherent in foods?

We do not support the addition of particular nutrients to encourage, but prefer the food-based set of guidelines currently proposed. If the Working Group wants to ensure that products include nutrients to encourage, it could be included in the standards that the servings of fruits, vegetables, etc. need to come from whole foods, not processed fruit and vegetable foods. For example, fruit snacks made from real fruit may not actually provide the intended nutrients without fortification, but a real fruit smoothie may.

(4) The proposed nutrition principles do not include limits on portion size or calories for foods marketed to children. Should the Working Group recommendations address portion size or calories directly or is over-consumption adequately addressed by the recommendations that all foods marketed to children make a meaningful contribution to a healthful diet and minimize consumption of saturated fat, trans fat, and added sugars?
Food Categories

The standards should include marketing foods in portion sizes that are appropriate for children. As the guidelines are currently written, children could inadvertently be encouraged to over consume mixed food items and main dishes like pasta with meat and tomato sauce—the meat and sauce could comprise the two required food groups, and the pasta could still be refined grain in an excessively large portion size. It is important to include serving size limits to ensure that the items marketed to children are appropriate for them.

(5) The Working Group proposal recommends that the industry focus its efforts on improving the nutrition profile of products that fall within ten specific categories of foods most heavily marketed to children. While this approach would address a substantial majority of all products marketed directly to children, some foods marketed directly to children do not fall within any of the specified categories. Examples include hot dogs, jams and jellies, and sauces and dressings. Are there specific food products or categories of foods that should be added to or dropped from the proposed list? What are the advantages and disadvantages of focusing on the most heavily marketed foods rather than on all foods marketed to children?

We feel strongly that all foods marketed to children should meet the voluntary uniform standards. The disadvantage of focusing on the categories of food most heavily marketed to children is that many of these categories of foods should not be marketed to children at all. The explicit encouragement for reformulation of candy, desserts, carbonated beverages, and snack foods seems sub-optimal. We feel that all products marketed to children should meet the principles outlined, and industry should be encouraged to market whole foods consistent with the Dietary Guidelines, like fresh fruits, vegetables, lean proteins, and whole grains.

(6) The Working Group is seeking comment on the proposed adjustments to the nutrition principles for main dish and meal products. For instance, should main dishes and meals make meaningful contributions from at least two and three food groups respectively, as proposed under Principle A? Should the targets set under Principle B be tied to a 100-gram amount, a labeled serving, a 40-gram portion, or some combination of these? What would be the advantages or disadvantages of using a 100-gram basis to set food group contributions and nutrient targets for all individual foods, main dishes, and meals?

We support the proposal that main dishes and meals make meaningful contributions from 2 and 3 food groups, respectively, though we would also like to see explicit assurance that meals include a vegetable other than fried potatoes. Further, we would prefer to see more consistency with the meal standards and the types of vegetables that are encouraged in the Dietary Guidelines, namely dark green and orange vegetables. While we do not feel that every meal promoted to children needs to include these items, it would be beneficial for companies to market a portfolio of foods to kids that include some foods with these important items.

The targets in Principle B should be tied to a labeled serving, so that interested parties are able to assess the degree to which the companies are meeting the voluntary standards. If the portions are set to limit those who can interpret the degree to which they adhere to the standards to those with access to additional information or complex calculations, it will be a

disadvantage.

(7) The Working Group also seeks comment on alternative approaches to address the marketing of children's meals by restaurants. One possible approach would be to recommend that a minimum number of the offerings on a children's menu be healthier and that at least two out of three components of the meals marketed to children meet certain nutrition principles that make them healthier choices. What would be the advantages or disadvantages of such an approach? Are there other approaches to the marketing of children's meals by restaurants that the Working Group should consider?

Essentially, the marketing of children's meals has sold more than a generation of adults and children on the concept of what constitutes an appropriate and desirable meal for children. This marketing impacts not simply what a child consumes when he or she frequents a particular eating establishment, but has broader impact on the diets of children. Thus, restaurant meals marketed to children should meet the Dietary Guidelines, not be simply better-for-you reformulations of less healthy food items. We feel that all of the components of the meals marketed to children should meet the nutrition principles, and should be considered healthy choices. We are disappointed that items such as chicken nuggets and French fries appear to meet the guidelines as foods that will be considered "appropriate and desirable" to market to children. Thus, we feel the standards do not go far enough in ensuring that norms for children's meals that are in accordance with the spirit of the Dietary Guidelines (this is whole foods with a limit to SoFAS) are established. If restaurants market meals to children, they should be required to ensure that their portfolio of children's meals meets the standard, on average. It would be beneficial to establish some kind of award or incentive program, in which companies that actually sell more of the healthiest meals, meeting an agreed upon threshold beyond the minimum standards, are recognized. This recognition could be advertised to the public, thus providing further encouragement for companies to market and sell the healthiest offerings to children.

Further, while we feel that it is fine for children to eat desserts, we do not think that children need to be encouraged to eat dessert by advertisements and other marketing practices. It is acceptable for restaurants to sell desserts to children, but these foods should not be actively promoted to children.

Nutrition Principle A

(8) Under both the Option 1 and Option 2 proposals for Principle A, companies can aggregate contributions from more than one of the specified food categories to meet the meaningful amount targets for individual foods. Does this approach diminish the meaningful contribution to the diet by allowing small contributions from multiple food groups? Should the principle recommend that the entire contribution come from one food group?

Yes, the allowance to contribute meaningful amounts from different food groups for individual foods could diminish the impact of the principles. For example, a cereal bar with a little bit of fruit, a little bit of whole grain, added sugar, oil, and plenty of refined flour could be considered an "appropriate and desirable" food for children to consume.

(9) The list of food groups that make a meaningful contribution to a healthful diet under Principle A includes both the basic food groups to encourage as identified in the 2010 DGA – fruits, vegetables, whole grains, fat-free and low-fat milk products – as well as other food categories that are compatible with an overall healthful diet – fish, lean meat and poultry, beans, nuts and seeds, and eggs. Are there food categories that should be added to or eliminated from Principle A?

We support the addition of the protein foods to the list of foods that can be considered to contribute to a healthful diet. Because some nutrition guidelines include beans as vegetables, it is not clear why they are separated here. Certain foods, such as peas, beans, lentils and soy have the benefit of falling into two categories. It is beneficial to promote these foods to children. We recommend combining the protein food categories, rather than having multiple different groups, since otherwise protein foods are over-emphasized, and children in the US generally consume more than adequate levels of protein.

(10) The 2010 DGA recommend consuming a variety of vegetables, especially darkgreen and red and orange vegetables and beans and peas. Given that children consume starchy vegetables disproportionately to other subgroups like dark-green and red and orange vegetables, should Principle A include recommendations for specific subgroups of vegetables?

Yes, we feel that incentives for industry to market dark green, red, and orange vegetables, beans and peas should be included in the principles. We suggest requirements that product portfolios include the marketing of these items, but that individual items would not be required to include them.

(11) The Working Group has included two possible approaches for Principle A. What are the advantages and disadvantages of Option 1 (based on weight) and Option 2 (based on amounts per RACC)?

Since the public is more accustomed to thinking in term of portions rather than weight, it seems that Option 2 is more consistent with other popular considerations of food portions. It would be beneficial to have the principles be accessible not only to industry, but also to parents and children, so that they are able to understand whether the brands they enjoy are adhering to the voluntary recommendations. Further, by using a weight standard, adding water or other ingredients could allow for less nutritious products to qualify as “appropriate and desirable” to market to children.

(12) The food contribution amounts proposed in Option 2 are calculated based on a 2,000 calorie daily diet and assume four eating occasions per day. Should this calculation be adjusted to reflect children’s caloric needs and eating patterns?

While it is not possible to tailor broad standards to all individual children, it is quite clear that most younger children do not require 2000 calories per day. Thus, we would recommend

using a lower caloric threshold for items marketed to younger children.

Nutrition Principle B

(13) Principle B provides that any nutrients naturally occurring as part of the food contributions under Principle A are not counted toward the proposed limits for specific nutrients under Principle B. This exemption is intended to resolve any inherent inconsistencies between Principle A and Principle B. At the same time, the Working Group recognizes that the calculations involved in partially “netting out” certain nutrients would entail a detailed knowledge of the product recipe or formulation and make it difficult for any third party to verify whether a product meets Principle B. Are there alternative approaches the Working Group should consider in reconciling the provisions of Principles A and B?

We support the decision to exclude naturally occurring nutrients from contributing toward the proposed limits for specific nutrients under Principle B. Encouraging the use of whole, natural, food products seems an important step toward marketing healthier foods to children and youth. Further, we would not want to see reduced fat milk not included in children’s meals due to the naturally occurring fats. It makes sense for companies using this exemption to be required to post product details on a company website, outlining how the product meets the voluntary standard. This way, concerned individuals can access the information and judge whether the product adheres.

(14) Under Principle B, the proposed nutrient targets for individual foods are generally tied to the RACC. The proposal recommends that individual foods with a small RACC (30 grams or less), meet the targets for saturated fat, trans fat, added sugars, and sodium per 50 grams (with the exception of the interim sodium value of 210 milligrams per serving). What are the implications of this approach in particular for smaller serving foods like cereals or for foods marketed in smaller children’s portions? What would be the advantages and disadvantages of tying Principle B recommendations to labeled serving instead of the RACC?

It seems more straightforward to link the Principle B recommendations to labeled servings rather than the RACC, since people are accustomed to interpreting these serving sizes. While this approach may be less precise, it would enhance the opportunities for interested parties to understand the standards and to know whether companies whose products they choose are meeting the voluntary recommendations.

(15) Are there other nutrients or ingredients not currently included in Principle B that the Working Group should recommend be limited in foods marketed to children? If so, what is the evidence regarding the nutrition and health justification for including the nutrient or ingredient?

Because the language of this proposal states that the voluntary guidelines are designed to identify the foods that would be “appropriate and desirable to market to children to encourage a healthful diet” we feel that some artificial ingredients deserve to be included on the list of ingredients to be limited. While the data specifying the negative consequences of some of

these ingredients may not be robust, it would be unfortunate to develop standards that actually encourage industry to increase their use of artificial ingredients in children's foods in order to meet the nutrition principles, particularly when increased consumption of these ingredients has not been demonstrated to be "desirable" for children's health. Thus, we would like to see language discouraging the use of non-caloric sweeteners and fats, as well as artificial colors in foods marketed or advertised to children. Further, since there is a very real likelihood that reformulation will lead to an increase in a wide variety of new added ingredients, such as shelf-stabilizers and other ingredients to maintain product form while manipulating saturated fats or other ingredients, we recommend including language in the proposal encouraging the marketing and advertising of foods with fewer overall additions of additives and preservatives. An increased consumption of additives is a very real concern to children's health, and important to include limits to this in these voluntary standards.

(16) The Working Group proposal recommends a target for added sugars for foods marketed to children. What are the advantages and disadvantages of the proposal for limiting added sugars content as opposed to total sugars content?

We need to limit added sugars, but not naturally occurring sugars. The evidence does not suggest that the sugars naturally occurring in dairy products and fruits are detrimental to children's health. However, the principles should ensure that concentrated fruit juice sweeteners added to foods are not considered a serving of fruit, but are instead considered added sugars. Further, we feel that the calculation for added sugars should be based on a smaller total caloric allotment for younger children and that the formula should assume that no more than half of the calories available for added fats and sugars, be consumed as sugar.

(17) The Working Group proposal recommends an interim goal for limiting sodium content for foods marketed to children of 210 milligrams per serving for individual foods and 450 milligrams per serving for main dishes and meals, with a target date of 2016. Is there a nutrition-based rationale for an alternative interim goal for sodium that the Working Group should consider? The Working Group's final value for sodium is 140 milligrams per RACC for individual foods and 300 milligrams per serving for main dishes and meals, with a target date of 2021. Is there a nutrition-based rationale for an alternative final goal on sodium that the Working Group should consider?

For snack foods, the 210mg per serving standard seems high. Currently, a 1-oz serving of Lays regular potato chips has 180mg of sodium; Cool Ranch Doritos have 170 mg. Since serving sizes for snack foods can be small, a 210 mg per serving limit does not seem sufficient. For meals and main dish items, the interim standards seem more reasonable.

Sincerely yours,

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