



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

I. Introduction

Founded in 1919, the National Restaurant Association (the “Association”) is the leading business association for the restaurant industry, which comprises 960,000 restaurant and foodservice outlets and a workforce of nearly 13 million employees. The Association represents all segments of the restaurant industry from quick service to table service. The Association recognizes that childhood obesity is a multi-faceted problem that requires a clear, coherent and well-designed response by both the public and private sector. As further discussed in this comment letter, our members have taken, and will continue to take, meaningful steps to address the rise in obesity in this country. In recent years the restaurant industry has significantly expanded the number of high-quality, nutritious, and tasty meal options available to children and their parents. Just yesterday, the Association unveiled a new nationwide initiative, Kids LiveWell. Restaurants participating in Kids LiveWell have made a commitment to offer and promote a selection of kids menu items that meet qualifying criteria based on leading health organization’s scientific recommendations, including the 2010 Dietary Guidelines. Two of the largest quick service restaurants have voluntarily pledged to restrict child directed advertising under The Children’s Food & Beverage Advertising Initiative (“CFBAI”). The Association and our members are committed to taking a leadership role in providing parents with menu choices and information to make informed decisions when dining out.

The Association appreciates the opportunity to submit these comments on the Preliminary Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts (“Proposed Principles”) prepared by the Interagency Working Group on Food Marketed to Children (the “Working Group”. As will be further discussed in this comment letter, the Association has many concerns with the Proposed Principles and finds them unworkable and unrealistic.

The Association shares the Working Group’s desire to ensure children have healthful options when dining out, and has expanded the number of healthful menu options available to consumers. This increase in healthful options not only recognizes the industry’s commitment to the health of our nation’s children, but also reflects an understanding of, and response to, consumer interests in such options. We believe such a market-based approach is fundamental to industry innovation and self regulation. True market based selections are only as effective as the information made available to consumers to make such decisions. Accordingly, any efforts to increase consumer access to healthier restaurant foods should fully embrace the value of truthful, non-misleading information in the marketplace. Communicating incremental improvements in a food’s nutritional attributes are vital to the food industry’s ability to combat childhood obesity. In trying to set an “ambitious goal” for

food marketed to children¹, the Working Group has proposed standards that are unduly strict and are difficult if not impossible to achieve in the restaurant industry. In fact, the Proposed Principles are so restrictive that they will prohibit the marketing of healthful offerings to children and adolescents, as further explained in our comments. This will not foster industry's efforts to increase healthful menu items and market these items to consumers.

Congress directed the Working Group to “conduct a study and develop recommendations for standards of the marketing of food” to children under the age of seventeen.² The Working Group failed to conduct a study. Its recommendations are not based upon sound science and are inconsistent with federal nutrition policy. The Proposed Principles lack the evidence to demonstrate that adopting the principles will result in children and adolescents consuming healthier foods or losing excess weight.

The Working Group is requesting that restaurants adopt the Proposed Principles on a voluntary basis. In doing so, the Working Group has skirted the rigor and analysis of the normal rulemaking process and has failed to consider the significant economic impact of its proposals. Moreover, it has placed the industry in an untenable position given the oversight that the IWG agencies hold over the industry.

The Proposed Standards are unworkable for the industry and for consumers. They impose impractical nutritional standards that will significantly compromise the taste and palatability that consumers demand and underestimate the technical limitations of the industry. Additionally, the proposed definition of “marketing to children” is so broad that it would misclassify vast amounts of business activity as marketing to children and adolescents.

Our concerns are explained in greater detail in this comment letter and we hope these comments provide the Working Group useful input in shaping its final report to Congress.

II. The Proposed Principles Fall Short of the Congressional Charge and Lack the Rigor and Findings Expected of Federal Regulations and Policies

The Working Group was given two tasks: “Conduct a study and develop recommendations for standards.”³ In conducting this study and assembling its recommendations, the Working Group was to consider “positive and negative contributions of nutrients” and “evidence concerning the role of consumption of nutrients,”⁴ among other things. This charge—to prepare a study and recommendations based on evidence—reflects a desired rigor of analysis to determine whether and how standards can be developed to have an impact on childhood obesity. The Working Group, though, failed to conduct a study or provide sufficient analysis that the Proposed Principles will decrease childhood obesity and, therefore, the Working Group failed to accomplish the fundamental charge directed by Congress to develop recommendations based upon sound evidence. Respectfully the

¹ Interagency Working Group on Food Marketed to Children. Preliminary Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts 3 (2011) [*hereinafter* Proposed Nutrition Principles].

² FY 2009 Omnibus Appropriations Act (H.R. 1105).

³ FY 2009 Omnibus Appropriations Act (H.R. 1105).

⁴ FY 2009 Omnibus Appropriations Act (H.R. 1105).

proposal as articulated does not provide sufficient explanation of its rationale. It is not enough for the Working Group to postulate that the Principles should have a significant impact and at the same time ask interested parties for any evidence contrary to the Working Group's unsupported hypothesis.

For example, the Proposed Principles fail to explain how they take into account a report recently published by the Institute of Medicine (the "IOM"), instead merely mentioning the report's existence. In 2006, the IOM published a comprehensive report explaining the effects marketing had on the food preferences and dietary and nutrition decisions made by children and adolescents. The report concluded: "The current evidence is not sufficient to arrive at any finding about a causal relationship from television advertising to adiposity."⁵ This study raises questions about one of the basic premises behind the Proposed Principles—that obesity can be addressed by controlling advertising. Sweeping, costly policy pronouncements by the federal government, whether mandated or voluntary, must be well-supported by empirical evidence and expert findings. Given the significant costs the Proposed Principles would impose on the entire industry and the impact such restrictions would have on limiting choices and variety for consumers, the Working Group must squarely explain and establish the validity of the core assumptions on which the Proposed Principles are built to satisfy its Congressional command. Such explanation is required as a matter of course for agency rulemakings and this important charge from Congress warrants a similar rigor.

Under general administrative rulemaking procedures, agencies must consider alternatives, must provide a reasoned basis grounded in good science for their proposed rules, must solicit and consider comments from stakeholders and the general public, must respond to and carefully consider all relevant comments, must justify the associated costs, and must consider the impact on small entities. Many agencies have developed additional good rulemaking practices to further ensure regulatory efforts are effective and efficient. Although the Working Group's Proposed Principles are partly a report to Congress and partly a recommendation for industry self-regulation, the agencies involved in the Working Group comprise those agencies that exercise the most significant regulatory oversight over most aspects of the food industry. Thus, it is reasonable to assume that the recommendations bear the imprimatur of the federal government and can be seen as a federal approach to food advertising. The shortcomings of the Working Group's proposal cannot be overlooked merely because they are contained in a Report to Congress and are "voluntary."

Furthermore, although the Working Group seeks only "voluntary" compliance," the recently issued Report to the President prepared by the White House Task Force on Childhood Obesity recommends that "[i]f voluntary efforts to limit the marketing of less healthy foods and beverages to children do not yield substantial results, the FCC could consider revisiting and modernizing rules on commercial time during children's programming."⁶ Moreover, one can expect that when the four key federal agencies that regulate food and advertising suggest "voluntary" standards, that state and local governments will look to these standards in promulgating their laws, including ordinances prohibiting the giving away of incentive items

⁵ Institute of Medicine, Food Marketing to Children and Youth. Threat or Opportunity? 307-08 (2006).

⁶ White House Task on Childhood Obesity Report to the President, Solving the Problem of Childhood Obesity Within a Generation, Recommendation 2.9, 32.

in connection with restaurant meals that do not meet certain nutritional criteria. Accordingly, while seemingly “voluntary,” given the threat of regulation in the event of noncompliance and the impact on other governmental bodies, there is no doubt that the Proposed Principles carry significant weight. Under these circumstances, the proposal’s legitimacy and effectiveness depend strongly on the Working Group following a process that closely resembles the federal rulemaking process.

The Association appreciates the Working Group’s efforts to gain additional information from stakeholders and believes the long list of thirty questions included at the end of the Proposed Principles raises important concerns and underscores the complexity and difficulty of creating broad-sweeping standards for an entire industry. It is difficult, and impossible in some instances, to meaningfully respond to questions posed given the lack of detailed explanation of the reasoning behind many of the decisions made in creating the Proposed Principles. Similarly, the Working Group failed to conduct (or at least produce) a “study” as requested by Congress. Indeed, as the questions identified by the Working Group and the issues raised in this comment demonstrate, the role that advertising does or does not play in the food preferences and dietary intake of children and adolescents, and how to align industry incentives and consumer demand with healthy nutrition principles is very complicated and requires significant study to support informed decision-making. Otherwise, a “voluntary” program amounts to no more than unsupported policy preferences and hypotheses that industry is asked to act upon with no assurance that the costs will be balanced against any concrete benefits.

III. The Proposed Principles Are Not Consistent with Federal Nutrition Policy

The Proposed Principles are not in harmony with the broader federal nutrition policy. For example, the Working Group indicates it based its recommendation in large part on the 2010 Dietary Guidelines for Americans (the “Guidelines”) for Americans, but there are inconsistencies between the Proposed Principles and the Guidelines. Recognizing the changing nutritional needs of children, the Guidelines, as well as recommendations from IOM provide nutrition recommendations for children based on four age ranges—1–3 years old; 4–8 years; 9–13 years; and 14–18 years—and the recommended essential nutrient intakes vary significantly across these groups. The Proposed Principles, though, include a single broad recommendation for all individuals ages 2–17. In addition, the Proposed Principles do not address nutrients of concern as addressed in the Guidelines.

Similarly, the Proposed Principles would prohibit marketing to children and adolescents foods that are explicitly encouraged under the Food and Nutrition Service’s (“FNS”) most recent proposed school meal standards.⁷ For example, the FNS proposal for final sodium standards for school lunch ranges from ≤640 to ≤740 mg depending on the age/grade group. This is considerably different than what is proposed by the Working Group. Such an incongruous result is confusing to parents who would wonder why the same components of meals their schools consider a healthy option as part of a well-balanced diet are considered “unhealthy” under the Proposed Principles. The Proposed Principles include key terms that

⁷ Food and Nutrition Services, Nutrition Standards in the National School Lunch and School Breakfast Programs, 76 Fed. Reg. 2494 (Jan. 13, 2011).

are not well-defined (e.g., “whole grain,” “added sugars”) and will further add to the impracticable implementation.

There is no indication that Congress intended for the Working Group to create new federal health policy nor that a disconnect between such guidelines and consensus federal nutrition health policy is desirable. The Guidelines, updated every five years, reflect consensus federal nutrition policy. The Working Group’s far more restrictive approach is inexplicably and unquestionably out-of-sync with consensus public health policy. It is telling that the Dietary Guidelines Advisory Committee focused on obesity, yet arrived at recommendations far more realistic and effective than the IWG draft Principles.

IV. The Proposed Principles Do Not Reflect the Complexity of the Restaurant Industry

The Proposed Principles are flawed in identifying all “restaurant foods” alongside the other categories of foods the Working Group identified (e.g., cereal, snack foods, candy, dairy products, baked goods). There is no apparent effort to articulate why the entire, broad class of restaurant foods is subject to the proposed guidelines beyond the reported level of expenditures directed toward children.⁸ This catch-all restaurant food category requires significant rethinking.

First, “restaurant foods” encompasses a tremendous variety of foods, venues and eating occasions. Many restaurant foods, such as those sold in fine dining restaurants or sports bars, can hardly be considered the types of foods “most heavily marketed to children,” but the Proposed Principles would apply to them nonetheless. Moreover, much restaurant advertising directed at parents and other adults would be swept up by the Working Group’s broad definition of “advertising to children.” Further, parents frequently accompany their younger children to restaurants, purchase food for their children, and thus can monitor first-hand their children’s meal choices and nutrient intake. Any categorization of restaurant foods should take these factors into account.

Next, restaurants fit into a family’s diet differently than packaged foods. On average one in four meals are eaten away from the home, so restaurant food still makes up a minority of American meals, and various restaurants fit into families’ lives differently. And when dining out, a family often expects a restaurant to be able to provide cuisine the family cannot easily prepare at home, but yet be wholesome and delicious. In these instances, the Proposed Principles make little sense and do not reflect the reality of what families expect and demand when dining out. Restaurant advertising reaches wide, diverse audiences and promotes many valued attributes—quality, value, convenience, healthfulness and fun, to name just a few. The simplified approach of the Working Group to sweep in the entire universe of restaurant foods is ill-considered and exacerbates the disconnect between how families dine-out and the Proposed Principles.

Effectively barring any restaurant food advertising under the Proposed Principles, the Working Group fails to account for the new menu labeling law, which was heavily supported by the restaurant industry. Mandatory calories and the nutrition profile of menu items will

⁸ As explained below, even the FTC’s expenditure compilations provide a dubious basis for establishing the scope of the Proposed Principles.

provide valuable information to parents and families and will allow them to make informed choices regarding the menu offerings they order.⁹ The Association recognizes the Working Group's obligation to respond to a request from Congress. The Working Group should also take account of the judgment by Congress to mandate calorie and other nutrient information appear in the vast majority of restaurants. Unlike the Working Group's virtual ban on nearly all food advertising, Congress mandates information from which consumers can make informed choices via the menu labeling law.

V. The Proposed Principles Are Unachievable For the Restaurant Industry

The standards set for foods in the Proposed Principles are unachievable for the restaurant industry. The Working Group even implicitly acknowledges this, explaining that "a large percentage of food products currently in the marketplace would not meet the principles."¹⁰ These products would have to be reformulated, and "in many cases reformulation would require substantial changes in the nutritional profile of the food, such as significant reductions in added sugars or sodium content . . . present[ing] both technical difficulties and challenges in maintaining the palatability and consumer acceptance of the product."¹¹ As already discussed, great strides have been made by restaurants, and will continue. Yet the Working Group cites no data or basis to support its assertion that the "voluntary" mandates could be met and in fact acknowledges that the Proposed Principles would impose significant costs on the food and beverage industry without providing scientifically based evidence of the benefits to consumers.

These difficulties become nearly insurmountable obstacles when restaurant and many other foods are concerned. In the quick service industry, children's meals are common. Principle A provides that meals should contain contributions from at least three of the following categories: fruit, vegetable, whole grain, fat-free or low-fat milk, fish, extra lean meat or poultry, eggs, nuts and seeds, or beans. Quick service restaurant meals to children often provide two of the food categories (fruit or vegetable and low-fat or fat-free milk or juice). It is unrealistic to expect advertising of restaurant meals to children to be limited to proteins from fish, extra lean meat or poultry, eggs (which are typically only eaten at breakfast), nuts and seeds (many children are allergic to nuts and seeds) or beans (which are not commonly served to children other than in Mexican style restaurants). Principle A alone would effectively eliminate all current advertising to children and teens by quick service restaurants. The Proposed Principles fail to provide evidence of the benefit received from such a drastic recommendation.

Principle B also includes unattainable and impractical nutritional standards. In many instances, it is technically impossible, for example, to reformulate menu offerings to contain qualifying levels of sodium while still retaining the taste and palatability customers demand. Food safety and other functional benefits of sodium have also proven difficult to replace. Many authorities have recognized the importance of gradually changing sodium in the food supply so that the taste is acceptable to the general public, yet the Proposed Principles

⁹ See Affordable Care Act, Section 4205; Food and Drug Administration, Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments, 76 Fed. Reg. 19192 (Apr. 6, 2011).

¹⁰ Proposed Nutrition Principles at 5.

¹¹ Proposed Nutrition Principles at 5.

suggest drastic changes in sodium that are at odds with the recently released Guidelines. Moreover, the Working Group assumes without any basis that the targets can be met. The collective experience in our industry strongly indicates that the targets are unrealistic.

Consumers, including families, children and adolescents, seek out a myriad of dining experiences that are often seen as a substitute for in-house cooking. Simply eliminating nutrients of concern will not realize any health benefit if such foods are unpalatable and unaffordable. Healthful foods are only beneficial if eaten. Bowing to this reality, restaurants have innovated significantly to develop and market foods that are more nutritious while still maintaining palatability and broad consumer acceptance. Numerous restaurant chains and operators have introduced menu options with reduced calories, such as ≤ 600 calories, and reduced sodium. Restaurants are also introducing healthier menu items for children. In fact, on July 13th, the Association in collaboration with Healthy Dining Finder, launched a new program, Kids LiveWell, aimed at assisting parents in identifying restaurants that feature kid's meals that meet nutrient criteria consistent with the recommendations of the IOM and the Guidelines.

Lastly, in 2005, the IOM and the FTC urged the food industry to voluntarily apply nutrition standards to advertising during children's programming. As previously mentioned, In partnership with the Council of Better Business Bureaus, food and beverage companies created CFBAI to help promote healthier dietary choices and lifestyles among children under 12. Two of the largest quick service chains are members of CFBAI. These chains only advertise food to children that meets accepted nutritional criteria consistent with the Guidelines. The advertised meals feature fruit and low fat or fat free milk or 100% juice as the side dishes. As a result of CFBAI and other voluntary efforts, advertising grew for foods and meals with fewer calories and more positive nutrients, and fell for other foods. Additionally, between 2004 and 2010, total advertisements viewed by children on children's television programming fell by more than 50%. Our industry has responded on numerous fronts to support a multi-prong solution needed to address childhood obesity. Current and future success will not come about by urging all advertisers to simply cease advertising nutritionally improved and other healthful foods that fall short of the unachievable criteria under the Proposed Principles.

VI. The Proposed Principles Create a Disincentive to Developing Healthier Foods

The Working Group explains that its proposals are intended to "lead to significant improvements in the overall nutritional profile of foods marketed to children."¹² In reality, though, the Proposed Principles would effectively eliminate marketing virtually all foods to children and would create a strong disincentive against developing incrementally healthier products.

By setting standards the industry cannot reasonably achieve without great cost and technological change and that may not be palatable or affordable for consumers, the Working Group's proposal would actually discourage companies from producing and marketing healthier foods for children. As the current market dynamic indicates, customers are demanding healthier menu options and restaurants are eager to compete to meet that

¹² Proposed Nutrition Principles at 3.

demand. But a restaurant that develops a dish with 25 percent fewer calories and containing a disqualifying level of sodium, for example, will not be able to advertise the healthier dish under the Proposed Principles. With no way to inform consumers of its new dish, the restaurant cannot compete on the basis of its new healthier offering because consumers will never know it exists until they happen to walk into the restaurant. The Proposed Principles thus raise significant barriers to competing through developing and marketing incrementally healthier dishes. Competition on the basis of incremental nutritional improvements in food is an important concept entirely omitted from the Working Group's approach.

Furthermore, by setting such costly and technologically challenging standards, the Working Group has created false expectations with the general public, and consumer and health advocacy groups. Such organizations may be unaware of the challenges associated with the Proposed Principles and, therefore, may view industry's inability to meet unrealistic goals as indifference to the obesity problem. In other words, in setting the bar so unrealistically high, the Working Group has placed industry in a no-win position. The inability to satisfy the Principles can be interpreted as unresponsive, and the unrealistic criteria is dismissive of industry's continuing efforts.

VII. The Overly Broad and Complicated Definition of "Marketing to Children" Is Ill-Suited as a Measure of Conduct Subject to the Proposed Principles

The Proposed Principles' definition of "marketing targeted to children and adolescents" is extremely complex, broad and not appropriate for self-regulatory efforts. The Proposed Principles adopt the definition of "marketing targeted to children and adolescents" used by FTC in its 2006 study of food marketing activities directed to children. But while arguably useful for gathering data on past marketing activities, these standards are not suited for forming the basis of ongoing self-regulatory efforts.

The Working Group explains that the FTC criteria for advertising to children and adolescents were adopted because they had already been subject to public comment and therefore had been "vetted" by the industry that would be applying them. But the circumstances of these standards' adoption reveals the inappropriateness of making them the basis for industry self-regulations. FTC designed these standards in conjunction with its 2006 survey of past advertising that could have been directed at children. These standards were meant to provide rough approximations to facilitate after-the-fact data collection and analysis, and they have not been revised or refined out of a need to ensure categories remain constant from year to year for comparison purposes. Developing criteria for collecting data on past activities is much different than developing criteria to guide policy development in the future that effectively bans advertising. Forward-looking criteria needs to provide clear, simple guidance that can easily be used in day-to-day activities. Accordingly, the fact that these criteria have been "vetted" by public comment for the purpose of collecting data on previous advertising to use in studies does not mean they have received critical analysis for use as guidance for day-to-day business activities.

Moreover, the Working Group's definition of "marketing targeted to children and adolescents" is unnecessarily broad in both the age range covered and the types of activities covered. The Proposed Principles incorporate the 20 categories of advertising, marketing and promotional activities identified in the FTC's food marketing studies definitions. For example, under the

proposed advertising ban, in measured media, restaurants would be prohibited from communicating truthful information concerning lawful products to audiences comprising 70% to 80% adults, and to mature teens who are old enough to drive and close to being eligible to join the military. While we appreciate that Congress established the 2 to 17 years of age range, the Working Group should not include adolescents in the same category as toddlers.

Restaurants would also be prohibited from sponsoring many of their national and local charitable programs that support important educational, social and health related causes, such as literacy and scholarship programs, children's charities, blood drives, and sport and recreational leagues. In addition, packaging that is appealing to children cannot be used in connection with meals that do not meet the restrictive strict nutritional standards set forth in the IWG proposal. Effectively, in quick service restaurants, children would need to be given a plain bag or box with their children's meal. Similarly, in sit down restaurants, fun place mats appealing to children would not be allowed unless the meal ordered met the strict standards. How this drastic requirement will contribute to solving the problem of childhood obesity is not explained in the proposal.

The Proposed Principles also apply to premium distributions. Children would not be allowed to receive toys or premiums in connection with meals that do not meet the unrealistic standards set forth in the Proposed Principles. Yet, polling indicates that the great majority of consumers do not favor toy bans at restaurants and that parents ought to be able to decide which meals to purchase for their children. We appreciate that some favor an outright ban on premiums. The Working Group has offered no evidence to indicate that these types of across-the-board restrictions have any impact on the underlying challenges faced in addressing childhood obesity.

In addition to being overly broad, the definition of "marketing targeted to children and adolescents" is overly complicated, creating strong disincentives against voluntarily adopting this guidance or trying to develop and market foods that would satisfy any nutrition principles, thus, frustrating the Working Group's Congressional directive. Under the proposed definition, a company would have to perform an unnecessarily complex analysis for each advertisement it considers releasing. First, the advertiser would have to determine into which of twenty listed categories the advertisement would fall. Next, the advertiser would have to decide whether there were any objective, measurable criteria that could be used to measure audience share. If there are, the advertiser would have to determine what percentage of that audience constitutes children ages two through eleven and what percentage accounts for adolescents ages twelve through seventeen. If the advertiser is considering multiple ad placements, it would have to inquire into each potential audience. Even if the advertiser concludes children and adolescents make up less than the required percentage of the audience, the advertiser would have to carefully review its marketing plan to determine whether it makes any references to marketing to children or adolescents, which could also trigger the definition of "marketing to children." Lastly, a cautious advertiser would also review its planned promotion to see whether it contains any subjective elements that might indicate it is targeted to children, such as using animated characters or children or adolescents in the contemplated ad. This analysis would be necessary for each type of promotion the advertiser considers using. Moreover, because an advertisement could be considered targeted to children under these criteria regardless of the advertiser's intention,

all companies advertising nearly any food to nearly any audience would have to conduct this inquiry.

Such a requirement would prove tremendously burdensome on the food and restaurant industry, introducing significant costs and disincentives to any potential advertising campaign. These significant costs would have a strong chilling effect on any food advertising, as even advertising not intended to target children would require thorough pre-clearance. Congress sought from the federal government recommendations on food advertising that would address the obesity problem. The request did not contemplate nor include an elaborate, complex method for defining promotional activities this complicated and overbroad. Clearly, this outcome far exceeds the goals of the Congressional directive.

VIII. The Proposed Principles Are Inconsistent With Industry Self-Regulatory Efforts and Substantial Efforts by Restaurants to Address Nutrition and Health Concerns Through Product Development and Reformulation

The gap between current restaurant-industry self regulation and the Proposed Principles may reflect a difference in goals. The restaurant industry strives to offer increasingly healthier options and draw attention to these healthier options via advertising. The Proposed Principles, on the other hand, would effectively bar most restaurant advertising to children and adolescents, and a large segment of adults, leaving restaurants with no effective way to call attention to these menu options. The Association strongly believes that the Working Group's strategy is inherently flawed.

The restaurant industry has consistently set about offering consumers more healthier options and more information by which to make decisions about which restaurants to frequent and which meals to order at those restaurants. Many restaurants use symbols to indicate reduced-fat or reduced-calorie options or have special portions of their menus or menu boards listing all their healthier options. Other restaurants position themselves as quick, healthier alternatives, and there is increasing interest in responding to growing consumer demand for menu options addressing special dietary concerns. More and more restaurants are including fruits and vegetables as part of their standard kid's meal. In the 2011 National Restaurant Association Whats Hot Chefs Survey, "nutritionally balanced" children's dishes ranked fourth out of 226 identified trends. Specifically within the quick service segment, healthy options in kids meal was the number one trend. According to recent Mintel studies, menu mentions of fruits and vegetables increased 15.2% from 2007 to 2011 with the greatest increase occurring over the last two years at 7.1%. The most significant growth in vegetable menu mentions occurred in soup (41.9%), sides (34.3%) and child/kids (31.5%) menu. In addition, the most significant growth of fruit occurred in child/kids menu options (77.7%).¹³ As evidenced by these trends, restaurants are responding to consumer demand for more healthy menu options. As these examples show, the restaurant industry is quite responsive to consumer demand, and restaurants are actively competing to try to offer consumer "better for you" options. This process has centered around two key, market-driven principles: responding to market demand by offering incrementally healthier options within the constraints of existing technology and consumer acceptance; and advertising these changes

¹³ Mintel Healthy Dining Trends, 2011.

to inform customers seeking healthier options that the restaurant has developed such menu offerings.

For the reasons already identified, the Proposed Principles would likely bar substantial amounts of restaurant advertising. Rather than allowing restaurants to compete by informing consumers of their increasingly healthier options, the Proposed Principles allow advertising for only limited, if any, foods. Under this approach, consumers would have significantly less information by which to make nutrition decisions. This approach would be unlikely to decrease the number of meals children and their families eat at restaurants, but it would decrease their awareness of which restaurants offered the healthier options they might desire. It may also weaken incentives for restaurants to invest in the complex, expensive, time-consuming research and development necessary to achieve the nutritional improvements that are acceptable to consumers from a taste and quality perspective.

Given the disconnect between the restaurant industry's efforts to offer healthier foods and the Working Group's desired plan, it would not appear that the Proposed Principles could (or should) serve as a basis for industry self-regulation. As explained throughout this comment, the Proposed Principles are impractical as applied to the restaurant industry, would significantly impede restaurants' ability to communicate with their customers, and would remove critical information conveying incremental improvements in foods' nutritional attributes that the FTC and others have found to be instrumental in influencing the decisions consumers make to improve their nutrition and health. It is crucial that any principles proposed by the Working Group reflect significant dialogue with and understanding of the industry that would bear the burden of meeting and implementing any nutrition standards. Notwithstanding the substantial work by the Working Group, it is apparent from the questions posed and the feedback we have obtained from our membership that the Proposed Principles will not advance the fundamental goals as framed by Congress.

Conclusion

The Association appreciates the opportunity to comment on the Working Group's Proposed Principles. As stated at the outset, the Association shares the Working Group's desire to ensure children and adolescents have access to healthy, nutritious food, including when dining at restaurants. Indeed, current industry self-regulatory efforts and market-driven competition to respond to consumer demand for healthier products continue to drive the industry to innovate to create healthy, great tasting menu offerings. Importantly, though, the Association and the Working Group appear to have fundamentally different approaches for continuing this evolution. The Proposed Principles would effectively end all information flow and eliminate important incentives for restaurants to invest in creating better for you, improved menu offerings.

The restaurant industry has made great strides in addressing one facet of a complex issue by improving the nutritional attributes of menu offerings. Virtually eliminating many uses of artificial trans fat, and reducing sodium and calories, along with and other modifications is difficult and experience has shown that such changes only produce benefits when the menu items are palatable and enjoyed alongside other traditional options. The Association continues to work with its members, and with all stakeholders, in finding new ways to advance shared goals.

The Proposed Principles, while well-intentioned, represent a step backward, not forward. The Proposed Principles do not meet the request by Congress, are unworkable, and should be permanently withdrawn. There are many government, industry and third-party initiatives that warrant our collective attention and support for reversing the trends in childhood obesity. The restaurant industry will continue to lead and support well-designed efforts to improve the diets of children and adolescents through healthful, diverse and enjoyable options.

Sincerely,



Joan McGlockton
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