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July 14, 2011



Federal Trade Commission
Office of the Secretary
Room H-113 (Annex W)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: PepsiCo, Inc. Comments on Interagency Working Group on Food
Marketed to Children: Proposed Nutrition Principles: FTC Project No. P094513
and Interagency Working Group on Food Marketed to Children: General
Comments and Proposed Marketing Definitions: FTC Project No. P094513

To Whom It May Concern:

PepsiCo appreciates the opportunity to submit comments to the Interagency Working Group ("IWG") concerning its Proposal on Food Marketed to Children (the "Proposal"). Although we share the ultimate goals of the IWG, this Proposal fails to achieve its stated objective. It does nothing to address the only real solution to the obesity epidemic – that is, to educate and motivate people to eat sensibly and exercise. Cutting to the chase, we strongly urge the IWG to withdraw the Proposal in its entirety, and for the reasons set forth below, to embrace the Children's Food and Beverage Advertising Initiative as a more viable alternative to the Proposal.

The Interagency Working Group Proposal would create a *de facto* ban against most forms of food advertising, marketing and promotion. Although the Proposal claims to target only "advertising to children," it would actually capture a vast amount of commercial speech clearly targeted towards adults. While the Proposal claims to restrict only advertising for "junk foods," it would capture a wide array of foods that government nutritionists and the medical community have long considered an acceptable part of a healthy balanced diet.

In our view, there is no single or convenient solution to the complex and multi-faceted problem of rising obesity rates. Notwithstanding, the IWG proposes these sweeping limits on advertising without any credible evidence that such restrictions would likely reduce rising obesity rates. Furthermore, the Proposal does not offer any recommendations to address the obesity epidemic, through education that would help people balance calorie intake and calories expended to achieve a healthy weight.

Well before the IWG came forth with this “voluntary” Proposal, PepsiCo has been leading the way with responsible marketing practices. We have reduced the amount of advertising primarily directed to children, and established stringent but practical nutrition criteria for products that we advertise to children twelve and under, and we are a founding member of the Children’s Food and Beverage Advertising Initiative (“CFBAI”). This initiative ensures transparency and accountability for our public commitments.

To meet our commitments, not just to children but to all of our consumers, we continue to improve the nutritional credentials of many of our existing products, such as by removing trans fats or decreasing sodium or sugar. We are a founding member of the Healthy Weight Commitment Foundation and a sponsor of countless organizations (such as becoming the first corporate mission sponsor of the YMCA) and activities (such as the American Heart Association’s Annual Heart Walk) that promote the well-being of our consumers. Thus, even in the absence of the IWG’s Proposal, the federal agencies involved in this effort can rest assured that PepsiCo will continue to make and deliver on meaningful commitments to promote and make available healthy choices, and at the same time, engage in responsible marketing practices.

For your convenience, we have divided our specific comments into the following sections:

- I. Introduction to PepsiCo and Performance with Purpose
- II. PepsiCo’s Record of Responsible Practices
- III. PepsiCo’s General Comments on the Proposal
- IV. PepsiCo’s Comments on the Proposed Nutrition Criteria
- V. PepsiCo’s Comments on the Proposed Marketing Definitions
- VI. The Existing Children’s Food and Beverage Advertising Initiative is a Preferable Alternative to the IWG Proposal
- VII. Conclusion

I. Introduction to PepsiCo and Performance with Purpose

PepsiCo’s Size and Scale

With annual 2010 revenues of approximately \$60 billion, PepsiCo offers the world’s largest portfolio of billion-dollar food and beverage brands, including 19 different product lines that each generates more than \$1 billion in annual retail sales. Our main businesses – Frito-Lay, Quaker, Pepsi-Cola, Tropicana and Gatorade – make hundreds of nourishing, functional, tasty and affordable foods and drinks that bring joy to our consumers in more than 200 countries. We are not only PEPSI brand soda, LAY’S brand potato chips and QUAKER brand oatmeal, but we are also zero calorie SOBE LIFEWATER, SABRA brand hummus, and NEAR EAST brand whole grain blends, to mention only a few of our products.

On a global basis, PepsiCo operates more than 700 manufacturing facilities, employs 300,000 people, operates approximately 100,000 distribution routes directly and through our bottlers, and serves nearly 10,000,000 retail outlets. In the U.S. alone, PepsiCo employs approximately 108,000 Americans and has facilities in almost every state.

Performance With Purpose

PepsiCo's associates – the more than 300,000 employees around the world – are united by our unique commitment to sustainable growth, called “Performance with Purpose.”¹ This means that we strive every day to care for our customers, consumers and the world we live in. By dedicating ourselves to offering a broad array of choices for healthy, convenient and fun nourishment, reducing our environmental impact, and fostering a diverse and inclusive workplace culture, PepsiCo balances strong financial returns with giving back to our communities worldwide.

PepsiCo sets and follows high standards for ethical governance and corporate citizenship. That commitment has been recognized with numerous awards and acknowledgements, including the following recent honors:

- PepsiCo was named among *Fortune's* World's Most Admired Companies in 2011, for the third consecutive year;
- PepsiCo was again included in the Dow Jones Sustainability Index (DJSI World and DJSI North America) in 2010 for our economic, environmental and social performance;
- PepsiCo was ranked among Fast Company's 2011 World's Most Innovative Companies for our commitment to healthy research and development, as well as our environmental sustainability efforts;
- Ethisphere has named PepsiCo among its World's Most Ethical Companies for the past five years (2007-2011), one of the few companies in the world with this record;
- PepsiCo received numerous employer recognitions in 2010, including from the Great Places to Work Institute, and Universum, which named PepsiCo among the Top 50 of The World's Most Attractive Employers; and
- Honors for our Diversity and Inclusion efforts in 2010 include: Diversity Business Magazine's Top 50 Organizations for Diversity; National Association for Female Executives' Top Companies for Executive Women; *Black Enterprise* Magazine's Top 40 Companies for Diversity; Working Mother Media's Best Companies for Multicultural Women; Asian MBA's Best Companies for Asians; *Hispanic Business* Magazine's Top 25 Companies for Supplier Diversity; The Human Rights Campaign's Best Places to Work for LGBT Equality; and Corporate Achievers for Individuals with Disabilities' 2010 Corporate Achievers Award.

¹ Additional information about PepsiCo Performance with Purpose is available at our website, located at <http://www.pepsico.com/Purpose/Performance-with-Purpose.html>.

We include this list of honors not for self-promotion, but to highlight PepsiCo's demonstrated and externally validated track record of social responsibility.

II. PepsiCo's Record of Responsible Practices

Well before the IWG came forth with its Proposal, PepsiCo embraced a variety of voluntary programs aimed at improving consumer health and well-being. We have voluntarily adopted our own bold nutrition goals for the entire PepsiCo portfolio. We have also voluntarily adopted meaningful limits on marketing to children, including active support of the CFBAI, the school guidelines developed by the Alliance for a Healthier Generation ("AHG"), and similar programs discussed below.

PepsiCo's Overall Nutrition Goals

As of 2011, approximately \$13 billion of PepsiCo's \$60 billion in annual sales come from nutritious and functional products (fruit juices, oatmeal, nuts and seeds, dairy products, sports drinks for athletes, etc.). We have set an ambitious goal of building a \$30 billion nutrition business by 2020. To achieve this bold goal, we have expanded our research and development team, led by a well-regarded chief science officer, to include a number of world-renowned medical doctors, nutritionists and food scientists who are working together to improve the nutritional credentials of many of our existing products, and to develop new products. We have announced a set of industry-leading nutrition goals, including: (i) reducing the amount of saturated fat per serving in key global food brands, in key countries, by 15% by 2020, compared to a 2006 baseline; (ii) reducing the average amount of added sugar per serving in key global beverage brands, in key countries, by 25% by 2020, compared to a 2006 baseline; (iii) reducing the average sodium per serving in key global food brands, in key countries, by 25% by 2015, compared to a 2006 baseline; and (iv) increasing the amount of whole grains, fiber, fruits, vegetables, nuts, seeds and low-fat dairy in our global product portfolio.

We are also investing in our portfolio to provide more food and beverage choices made with natural and wholesome ingredients that contribute to healthier living. For instance, within the past year, in the U.S., we have reformulated our LAY'S potato chips flavors by removing all artificial colors, artificial flavors, and artificial preservatives; and by reducing sodium an average of 25% across our entire flavored potato chip portfolio.

PepsiCo is proud of each and every one of the products in our portfolio, and believes that a wide variety of foods and beverages – from "good for you" to "better for you" to "fun for you" products – has an appropriate place in a balanced diet and healthy lifestyle for people of all ages. Even foods and beverages that we voluntarily refrain from advertising directly to children under 12 and that don't meet specific nutrition criteria can be enjoyed in appropriate portions and contexts (e.g. when selected by parents as an occasional treat for their children). For example, a 1 oz. serving of LAY'S Classic Potato Chips contains 160 calories, 1g saturated fat, 0g trans fat, 170 mg sodium, and 10% DV of potassium and Vitamin C.

Alliance for a Healthier Generation

In 2006, PepsiCo and other food and beverage industry leaders worked with the AHG, a joint initiative of the American Heart Association and the William J. Clinton Foundation, to establish guidelines for foods and beverages available to children in America's schools. The beverage guidelines prohibit the sale of full-calorie soft drinks to schools for students in elementary and secondary schools and permit only low-calorie and portion-controlled choices. In March of 2010, an independent auditor verified that 98.8 percent of measured schools were in compliance with the beverage guidelines and that total beverage calories shipped to schools were reduced by 88 percent since 2004. The "competitive food" guidelines, which apply to products sold outside the reimbursable school meal plan (e.g. for a la carte sales, vending sales and sales in school stores), set limits for calories, fat, sugar and sodium. Since 2006, PepsiCo has introduced more than 50 new products that meet the competitive food guidelines for schools, continuing to expand the range of healthier and nutritious options for school children.²

Children's Food and Beverage Advertising Initiative and PepsiCo Global Criteria

As described in more detail in Section VI of these comments, PepsiCo was a founding member of the CFBAI and has pledged since January 2008 to follow voluntary guidelines restricting advertising to children under the age of 12 in the United States to products that meet specified nutrition criteria and to refrain from any product advertising in elementary and middle schools. A significant group of other major national food and beverage companies also participate in the CFBAI program.³

Effective January 1, 2011, PepsiCo also implemented a global policy restricting advertising for food and beverages to children under the age of 12 to those products that meet stringent yet practical nutrition criteria. These global nutrition criteria have been incorporated into the PepsiCo CFBAI Pledge. A copy of PepsiCo's current criteria for advertising products to children under the age of 12 is attached as *Exhibit I* to these comments. We believe that our nutrition guidelines are more consistent with the 2010 DGA than the IWG standards, and provide strict yet practical limitations on products to be marketed directly to children.

Beverage Association Initiatives

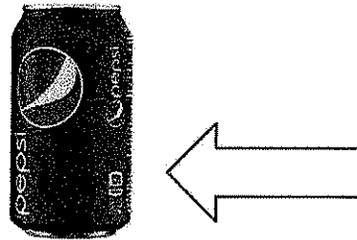
PepsiCo complies with the International Council of Beverages Associations ("ICBA") Guidelines on Marketing to Children, which prohibit placement of any marketing communication for non-alcoholic beverages other than water (mineral, source and purified), fruit juice, and dairy-based beverage, as defined by local regulations, in paid third party media whose audience consists of 50% or more of children under the age of 12.⁴

² Because PepsiCo's food products are sold to schools by third party distributors, we do not have sales data to quantify the impact of the snack policy.

³ Current CFBAI participants other than PepsiCo, Inc. include many of the largest grocery manufacturers: Cadbury Adams USA LLC, Campbell Soup Company, The Coca Cola Co., ConAgra Foods, Inc., The Dannon Company, General Mills, Inc., Hershey Co., Kellogg Company, Kraft Foods Global, Inc., Mars Snackfoods US, LLC, Nestle USA, Post Foods, LLC, Sara Lee Corp., and Unilever United States.

⁴ Full details are available at <http://www/icba-net.org>

PepsiCo also participates in the American Beverage Association Clear on Calories Initiative, which requires beverage companies to add label disclosures to the front of every can, bottle and carton displaying the total calories per container on beverages 20 oz and smaller.



The Clear on Calories initiative was praised by First Lady Michelle Obama, in a speech announcing the launch of the “Let’s Move!” anti-obesity campaign: “...the nation’s largest beverage companies announced that they’ll...provide clearly visible information about calories on the front of their products – as well as on vending machines and soda fountains. This is exactly the kind of vital information parents need to make good choices for their kids.”⁵

Nutrition Keys Program

PepsiCo, along with many other leading food and beverage manufacturers and retailers, has also agreed to participate in the GMA and Food Marketing Institute (“FMI”) Nutrition Keys program, a front-of-pack labeling initiative that will make calorie and other critical nutrition information visible to consumers on the shelves to facilitate informed food and beverage purchases.

Healthy Weight Commitment Foundation

PepsiCo is one of the founding members of the Healthy Weight Commitment Foundation (“HWCF”), a 160-member organization committed to reducing obesity – especially childhood obesity. In 2010, PepsiCo joined other food and beverage companies by pledging to reduce 1.5 trillion calories by 2015, and in 2009 the PepsiCo Foundation made a two-year commitment of \$2.5 million to the HWCF to increase understanding and opportunities for physical activity and nutrition education.

In 2011, the HWCF launched “Together Counts,” a U.S.-wide campaign that encourages families to eat meals and engage in physical activities together to help counter obesity and promote good health. The Together Counts program is aimed at encouraging energy balance between calories consumed and calories expended – a fundamental underpinning of efforts to reduce obesity. Through the Together Counts website, participating families are provided with online tools to track their own progress and compare against others, as well as tips, advice and a downloadable mobile app.

⁵ First Lady Michelle Obama, as noted in her speech announcing the launch of “Let’s Move” (February 9, 2010).

II. PepsiCo's General Comments on the Proposal

PepsiCo shares the IWG's concern for the health of children and adolescents and, as evidenced by our leadership role in existing voluntary programs such as AHG and CFBAI, has long been committed to being part of the solution to childhood obesity. While we respect the IWG's efforts to improve children's diets and reduce the rate of childhood obesity in America, we do not believe that this Proposal presents a workable solution to the problem.

The IWG assumes, without any evidence, that there is a causal relationship between the marketing practices it proposes to banish and the problem it purports to solve. It then leaps to the unfounded conclusion that the Proposal would have an appreciable curative effect on obesity rates among American children and adolescents.

We take issue with the IWG's characterization of its Proposal as nothing more than a gentle suggestion for possible industry self-regulation. In reality, most interested parties expect the agencies of the IWG to use the full weight of the government's considerable influence to "persuade" food and beverage companies to participate and adopt these unmistakably "governmental" standards.⁶ The food and beverage industry is heavily regulated by the same agencies that make up the IWG, and these agencies are in a position to apply significant pressure on the food and beverage companies. Media outlets may also be pressured not to run advertising that does not comply with the Proposal. Moreover, companies that do not comply with the Proposal may face damage to their reputations and/or be subjected to class-action lawsuits based on non-compliance with the Proposal.

PepsiCo also agrees with comments from the American Beverage Association ("ABA") and others identifying the IWG's failure to adhere to established agency procedural requirements prior to issuing the Proposal. The IWG agencies have skirted the requirements of the Administrative Procedures Act, 5 U.S.C. § 553; neglected the cost-benefit analysis of Executive Order 13,563; and failed to meet the accuracy, reliability and objectivity of information standards contained in the Data Quality Act, 44 U.S.C. § 3516, and its implementing regulation, 67 Fed. Reg. 8452 (Feb. 22, 2002). Additionally, even if it is not technically a regulation, the IWG agencies should have at least characterized the Proposal as an "economically significant guidance document" within the meaning of OMB Bulletin 07-02 ("Final Bulletin for Agency Good Guidance Practices"), Jan. 18, 2007.

⁶ Martin H. Redish, "Childhood Obesity, Advertising, and the First Amendment – a White Paper", June 8, 2011 (Presented at the US Chamber of Commerce Regulatory Affairs Committee meeting, June 30, 2011.)

In addition, PepsiCo agrees wholeheartedly with the general comments submitted by the CFBAI, the Grocery Manufacturers Association (“GMA”), the ABA and others in opposition to the Proposal. These comments clearly and convincingly:

- Outline the harmful economic impact of the Proposal;
- Expose the absence of any credible evidence that the Proposal would have a positive impact on the health of children or adolescents, and point out that obesity rates have been rising while advertising food to children has actually been decreasing;
- Question the necessity and/or appropriateness of restricting advertising directed to adolescents, as opposed to children;
- Highlight discrepancies between the nutrition criteria in the Proposal and other respected nutrition guidelines and criteria, including the 2010 Dietary Guidance for Americans; and question the science behind the proposed nutrition criteria;
- Describe the many ways in which the marketing definitions are overly broad and likely to capture significant marketing activity and other consumer communication not reasonably targeted to children or adolescents;
- Question the constitutionality of the Proposal;
- Identify procedural defects in the process by which the Proposal was issued;
- Characterize the Proposal as an attempt at “back door” regulation; and
- Set forth compelling reasons why the current CFBAI program is a superior alternative to the Proposal, especially with the new uniform nutrition criteria.

Rather than rearticulating these points that others have already thoroughly explained, PepsiCo’s comments on the nutrition criteria and marketing standards are designed to supplement and provide specific examples to illustrate the concerns expressed in more general terms by the other entities submitting comments in opposition to the Proposal.

IV. PepsiCo’s Comments on the Proposed Nutrition Criteria

Omission of Healthy and Nutritious Foods

The Proposal would deem as “unacceptable” many wholesome and nutritious products, including some that qualify as “healthy” and/or are eligible for health claims under FDA regulations⁷, are “eligible products” under the Healthier US School Challenge⁸, and that qualify for sale in schools under the Alliance for a Healthier Generation⁹. Although these

⁷ ROLD GOLD HEARTZELS Pretzels meet the FDA definition of “healthy” (21 CFR 101.65 (d)(2)) but are ineligible under the IWG’s proposed nutrition criteria. Most QUAKER oatmeal products are eligible for FDA-approved health claims regarding soluble oat fiber and cholesterol reduction, yet many varieties do not meet the IWG’s proposed nutrition criteria.

⁸ Examples of products permitted under the US Healthier Schools Challenge include all flavors of SUNCHIPS snacks (Reimbursable Meals) and a variety of Baked! LAY’S potato crisps, Baked! CHEETOS snacks, Baked! TOSTITOS SCOOPS! Tortilla Chips, MUNCHIES Flamin Hot Backpack Mix snack mix, QUAKER Kids Mix snack mix, Reduced Fat DORITOS chips, STACY’S cinnamon sugar pita chips and ROLD GOLD HEARTZELS pretzels.

⁹ Examples of products qualifying under the AHG competitive foods guidelines for elementary schools are various QUAKER CHEWY bars, QUAKER Oatmeal products, Baked! CHEETOS snacks, Baked! LAY’S

products qualify under other strict yet rational criteria, the IWG Proposal's broad definition of marketing (which includes labels) would ban the sale of these products in school. This result would create significant economic hardship for affected companies and school districts, while offering no corresponding benefit as the newly disqualified items meet other strict and appropriate nutrition criteria.

Over the past few years, PepsiCo has invested heavily in the development of new products and the reformulation of others to provide "better-for-you" and "good-for-you" options for consumers that taste great, are affordable, are lower in calories, sugar, sodium and/or fat than other food and beverage choices and/or that provide positive nutrition benefits such as whole grains. Despite these efforts, most of PepsiCo's "better-for-you" and "good-for-you" products would not qualify under the Proposal and could not easily or inexpensively be reformulated to comply.

Notable omissions under the Proposal in the beverage category include a variety of zero calorie, low calorie, reduced calorie and functional beverages, including:

- AQUAFINA and other zero calorie bottled waters
- SOBE LIFEWATER, PROPEL ZERO, AQUAFINA FLAVORSPLASH and other zero and low calorie water beverages
- GATORADE and reduced calorie G2 Sports Drinks, which provide scientifically proven functional benefits for those engaged in sports and physical activities¹⁰
- TROPICANA Trop50, IZZE ESQUE and other reduced calorie juice drinks

crisps, QUAKER Kids Mix snack mix, Reduced Fat DORITOS tortilla chips, Baked! TOSTITOS SCOOPS! Tortilla Chips, ROLD GOLD HEARTZELS Pretzels and STACY'S cinnamon sugar pita chips.

¹⁰ GATORADE thirst quencher has a functional benefit related to calories, is intended for athletes and active people of all ages, and is not advertised or promoted as a drink for sedentary children or adolescents. Research has shown that, at 50 calories per serving, the fluids and electrolytes of Gatorade are rapidly absorbed and the muscles are properly fueled for exercise. Providing fluids, sodium and calories is appropriate for an athlete of any age, particularly football players and other suited-up athletes practicing in the heat. As noted by the Committee on Sports Medicine and Fitness of the American Academy of Pediatrics (hereinafter "AAP") in their *2000 Policy Statement on Climatic Heat Stress and the Exercising Child and Adolescent*: "Exercising children do not adapt to extremes of temperature as effectively as adults when exposed to a high climatic heat stress. The adaptation of adolescents falls in between. . . Children frequently do not feel the need to drink enough to replenish fluid loss during prolonged exercise. This may lead to severe dehydration. . . A major consequence of dehydration is an excessive increase in core body temperature. Thus, the dehydrated child is more prone to heat-related illness than the fully hydrated child. For a given level of hypohydration, children are subject to a greater increase in core body temperature than are adults. Although water is an easily available drink, a flavored beverage may be preferable because the child may drink more of it. Another important way to enhance thirst is by adding sodium chloride (approximately 15 to 20 mmol/L, or 1 g per 2 pints) to the flavored solution. This has been shown to increase voluntary drinking by 90%, compared with unflavored water. The above concentration is found in commercially available sports drinks." Then in a *2005 Policy Statement on Promotion of Healthy Weight-Control Practices in Young Athletes* the AAP Committee noted: "Because the body does not store fluid or electrolytes before exercise, it is predisposed to dehydration. The extent of the dehydration is determined by sweat loss and the inability or refusal to replace those losses with oral fluids. On the basis of studies in adults, weight loss by dehydration results in suboptimal performance because of impaired strength, reaction time, endurance, and electrolyte imbalance and acidosis. It also may result in temporary learning deficits, inability to concentrate, lethargy, mood swings, and changes in cognitive state."

- Diet PEPSI, TROPICANA Light Lemonade, LIPTON Diet Iced Tea and other zero calorie, low calorie and reduced calorie beverages

In the food category, notable omissions under the Proposal include:

- QUAKER Instant Oatmeal – assorted flavors (a handful do qualify)¹¹
- QUAKER Rice Cakes
- QUAKER Oatmeal Squares
- Baked! snacks
- SUNCHIPS multigrain snacks¹²
- A variety of enriched grain products¹³
- TOSTITOS tortilla chips and other products containing 8g or more of whole grain per serving¹⁴



PepsiCo estimates that less than 5% of its current portfolio would qualify under the unrealistic nutrition criteria contained in the Proposal, and that meeting the IWG's proposed criteria for most of these products would be difficult (if not impossible). Even where reformulation is possible, it would likely result in more expensive products that are ultimately not palatable to children or adolescents. More practical criteria that is consistent with the 2010 DGA and permits a broader range of products is more likely to be accepted by consumers, and therefore more likely to actually improve dietary habits.

Sodium Limits

The IWG's proposed sodium limits are unreasonable, especially when applied to foods with a small RACC. Under the Proposal, the interim sodium target for products with a 30 gram RACC will go from 210mg to 84mg when the 2016 sodium step-down occurs. This 60% reduction in sodium is not a reasonable requirement and would essentially eliminate all small portion-sized snack food products, which are encouraged to control calorie intake. The sodium content of products should also be based on their labeled serving size, rather than the RACC. Additionally, the 2010 DGA recommendation for sodium for the general population is 2300 mg per day. The 1500 mg sodium per day recommendation upon which the IWG nutrition criteria is based was intended to apply

¹¹ Most QUAKER Oatmeal and Oatmeal Squares qualify for FDA-approved health claims regarding soluble oat fiber and cholesterol reduction.

¹² A 1 oz. serving of SUNCHIPS multigrain snacks contains 18g whole grain per serving. SUNCHIPS snacks qualify for an FDA approved heart health claim.

¹³ Enriched grain products are encouraged by the 2010 DGA for folic acids and other nutrients

¹⁴ Omitting products with 8g whole grain ignores the contributions that can be made to a healthful diet by a half-serving of whole grains, and is inconsistent with the 2010 DGA.

solely to individuals with hypertension and other at-risk sub-populations. Most children fall into the general population and should not be targeted to a low sodium diet.

Added Sugar

The IWG's reliance on "added sugars" as a disqualifying factor under the proposed nutrition criteria is also problematic. Added sugars are not part of the FDA-mandated Nutrition Fact Panel and are not easily determined or understood by consumers. Moreover, the small RACC rule provides further complexity. The nutrition criteria should be tied to total sugar per labeled serving size, consistent with the Nutrition Fact Panel.

V. Issues with the Proposed Marketing Standards

PepsiCo disagrees strongly with the exceedingly broad marketing definitions contained in the Proposal. As explained below, the Proposal, if implemented, would amount to a *de facto* ban on food and beverage advertising. It would significantly harm our business, and many other businesses, without any evidence by the IWG that it would actually improve the health of children or adolescents.

Definitions Have Not Been Properly Vetted

Contrary to statements made by defenders of the Proposal, the marketing definitions in the Proposal have not been properly vetted or shown to provide a workable framework for restrictions on food and beverage advertising. It is true that food and beverage companies were compelled to utilize substantially the same definitions under the FTC's 2006 and 2009 Food Marketing Studies. However, as contemporaneously noted by PepsiCo and other responding companies, these marketing definitions are seriously flawed. In both 2006 and 2009 they captured significant marketing activity properly characterized as adult-targeted, and they resulted in gross overstatements of advertising and marketing activities directed to children and teens. Use of these same flawed marketing definitions in the Proposal guarantees the prohibition of adult-targeted communications under the guise of a program that purports to restrict only advertising and marketing targeted to children and adolescents.

Audience Demographic Thresholds

The IWG's proposed audience thresholds for children (30%) and adolescents (20%) are unreasonably low and will inevitably restrict messaging, even where it is established that the clear intent of the advertiser is to reach an adult audience. PepsiCo's experience with the 2006 and 2009 Food Marketing studies provides multiple examples of adult-targeted advertising for adult-targeted products being aired under an adult-targeted insertion order on programming that had historically been viewed by an overwhelmingly adult audience being misclassified as directed to children because of isolated and unanticipated spikes in audience composition. Even in those instances, it is important to note that the actual audience composition remained more than 50% adult.



One example of the absurdity of these proposed marketing definitions is that the Proposal would ban our Frito-Lay “Women’s Portfolio” advertisements (e.g. for Smartfood Popcorn Clusters with fiber and calcium for women) because of an unexpected and uncontrollable blip in adolescent viewership above 20% under a media buy targeted to women aged 25-49. The advertising campaign was titled “Only in a Women’s World” and featured 4 animated adult female characters engaged in situations and conversations appealing to adult women, yet we were required to report expenditures as adolescent-targeted advertising in the 2009 FTC Food Marketing study. We have provided a typical image from the Women’s Portfolio creative, where a woman looks in a mirror, sees a plump cupcake smiling back at her, and says: “Whoa, bad mirror.” This advertising is in no way targeted to children or adolescents and should not be restricted under any rational program purporting to be about advertising to children.

The proposed marketing definitions ignore the realities of how media is purchased, as well as the intended target audience of the advertiser. By focusing on actual viewership, the Proposal’s approach is tantamount to an after-the-fact strict liability game of “gotcha.” The definitions should, like the CFBAI criteria, take into account the projected audience demographics at the time the media is purchased and the actual intended target audience. Under a typical insertion order, the media outlet promises a minimum number of impressions among the target audience (e.g. adult women), but does not make any commitments about the audience composition. It is simply not possible to purchase media with a guarantee from the media outlet that the advertising will not reach more than 20% teens or 30% children. Media buyers review historical viewership patterns and make media purchases based on projected audience composition. This is consistent with the CFBAI approach to defining advertising to children, which currently utilizes a projected audience composition of 35% children. Based on our experience, the lines between adolescent and adult programming would be much blurrier than those between adult and child programming, and the proposed 20% adolescent threshold nearly guarantees that any adult media buy risks being misclassified as advertising directed to adolescents under the Proposal.

Adolescents

It is well established that very young children do not have the cognitive ability to distinguish advertising from other content or to appreciate the persuasive intent of advertising. For that reason, PepsiCo’s CFBAI Pledge promises not to direct any advertising, for any products, directly to children under the age of 6. Under the CFBAI program, only those food and beverage advertisements featuring products that meet strict nutrition criteria will be directed to children between the ages of 7 and 12. In contrast, adolescents have the cognitive ability to distinguish advertising from other programming and should not be treated the same as children for purposes of restrictions on food and

beverage advertising. PepsiCo supports the approach of the CFBAI in limiting the scope of voluntary restrictions on food and beverage advertising to children under the age of 12.



Not All Animated Characters are Targeted to Children or Adolescents

Another significant problem with the proposed marketing definitions in the Proposal is the mistaken assumption that all animated characters are child or teen directed. Many animated characters appeal to adults, such as Cracker Jack's Sailor Jack and Bingo characters, who are targeted primarily to nostalgic adults and sports fans. Similarly, the four cartoon women in the "Only in a Woman's World" advertisements (described above) are unmistakably targeted to adult women and are not appealing to children or adolescents. By once again ignoring the intent of the advertiser and disregarding the actual target audience, the Proposal improperly restricts advertising targeted to adult audiences.

Company Owned Characters Should Not Be Restricted

Yet another significant issue with the proposed marketing definitions is the failure to distinguish between company-owned characters and 3rd party licensed characters. This is in stark contrast to the CFBAI program, which properly limits only licensed 3rd party characters in advertising primarily directed to children. The inclusion of company-owned characters under the Proposal is magnified by the improper inclusion of packaging and point of sale materials in the definition of advertising activity. The net result of these sweeping definitions would be the elimination of valuable trademarks such as the Quaker man, Chester Cheetah, and Sailor Jack and Bingo from our product packages and point of sale displays, which amounts to a wrongful taking of our property.



Parent-Targeted Advertising

In order to make informed decisions about food and beverage choices for their children, parents need access to truthful information about product attributes. The marketing definitions in the Proposal improperly capture significant advertising clearly targeted to parents. The use of certain words (e.g. kid, child, or teen) should not transform advertising clearly intended for adults into restricted child or adolescent advertising. Similarly, the mere inclusion of child/teen models in advertising should not transform advertising intended for parents into restricted child or adolescent advertising under the

Proposal. Such prohibitions hurt parents by limiting their access to information, in addition to trampling the free speech rights of companies.

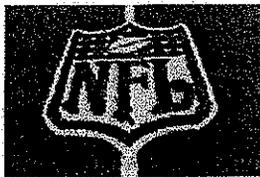


This image (above) is an example of overtly mom-targeted material for a product (in this case a 22 count multi-pack of Frito-Lay snacks) suitable for purchase by adults for their families. It would, however, be banned under the Proposal. This material also included a philanthropic element benefiting youth sports programs.

Corporate Sponsorships

Corporate sponsorships would also be affected under the Proposal because our company name (PepsiCo) includes the name of our iconic carbonated soft drink (Pepsi). We have similar issues with the names of individual PepsiCo divisions, which include the names of some of our most famous brands: Quaker, Tropicana and Gatorade, and arguably Frito-Lay, which combines "Fritos" and "Lay's." The Proposal would inhibit companies from sponsoring or advertising in concert halls, sports arenas and other entertainment venues where the audience demographics change from event to event and cannot be accurately predicted at the time the sponsorship decision is made.

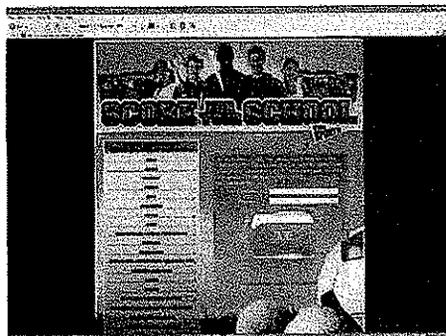
The Proposal would have the counter-productive effect of inhibiting companies from sponsoring athletes, sports teams, sports leagues and programs and/or promoting physical activity and healthy lifestyles. PepsiCo currently sponsors a wide variety of professional and amateur athletes, teams, leagues and programs on a national and local level, including many Gatorade-sponsored youth sports development programs that have a positive impact on the fitness of children and adolescents, encouraging them to get active and stay active. All of this sponsorship would be jeopardized if the Proposal were implemented.





Philanthropy

Corporate philanthropy would be significantly curtailed under the Proposal, which would have a dramatic negative effect on many charities benefiting children and/or adolescents. Examples of programs that would be restricted under the Proposal include the PepsiCo Refresh Everything grant program, which awards more than \$1 million per month in grants to fund consumer projects for arts, music, education, communities and other worthwhile causes; and Frito-Lay's Score for Your School promotion, which awarded more than \$375,000 to local high school sports programs this Spring.



Movie and Video Game Ratings Alone Do Not Indicate Target Audience

The Proposal is further misguided in that not all G rated movies and/or video games are targeted to children and should not automatically be deemed to be advertising to kids. Under the proposed definitions, food and beverage companies would be prohibited from sponsoring a science-oriented-adult-targeted documentary film like *March of the Penguins* by virtue of the G rating, which is based more on the absence of cursing, nudity, violence and/or sexual content than on its actual audience appeal.

There are additional issues with the proposed marketing definitions; however, we believe the foregoing examples highlight the Proposal's excesses.

VI. The Existing Children's Food and Beverage Advertising Initiative is a Preferable Alternative to the IWG Proposal

PepsiCo is one of 17 leading food and beverage companies that participate in the voluntary CFBAI program. Our CFBAI Pledge is attached as *Exhibit 2* to these comments. The CFBAI Program covers a broad range of advertising and marketing activity primarily directed to children under the age of 12, including:

- TV
- Radio
- Print
- Internet
- Company Websites
- Licensed Characters
- Product Placement
- Interactive Games
- Paid Word of Mouth Advertising
- Cell Phone/PDA Advertising
- DVD and Movie Sponsorship
- In-School Advertising

Significant progress has been made under the CFBAI program in reducing the amount of food/beverage advertising directed primarily to children in recent years, and encouraging companies to improve existing products and bring new, more healthful offerings to market. Previously, the primary criticism of the CFBAI program was the absence of uniform nutrition standards for products that will be advertised to children. The CFBAI has recently adopted minimum nutrition standards that are both science-based and reasonably achievable in the near term.

The CFBAI will continue to make a difference in the health of children as the enhanced program and new minimum nutrition criteria are implemented by participants. We believe that the fastest way to make significant inroads against childhood obesity is not to layer yet another new set of governmental criteria on top of an already complex web of other government standards. Rather, by (1) allowing companies to focus on providing consumers a wider array of wholesome and appetizing choices that fit into an overall diet

consistent with the 2010 DGA, and (2) educating consumers about energy balance, we are more likely to attain real, incremental progress over time.

VII. Conclusion

While IWG's efforts are well-intentioned, PepsiCo does not support the Proposal. The guidelines are fundamentally misguided for several reasons. First and foremost, the proposed nutrition standards are not grounded in scientific evidence and conflict with well-established standards and programs. Secondly, the Proposal would restrict advertising for many nutritious products because the proposed marketing definitions are overbroad and guaranteed to inappropriately curtail advertising and marketing activities focused on consumers generally, not children. Finally, the guidelines are unworkable. Practically speaking, it is not feasible for companies to purchase advertising for non-qualifying products targeted to adults without a high risk of the advertising being mischaracterized as child or teen directed under the Proposal.

In sum, PepsiCo is committed to and invests substantial resources in product development intended to improve the nutrition profile of our product portfolio. As we have described in great detail, we participate in a wide variety of programs and activities that support our commitments to improve the health of consumers, including children. We support programs requiring clear and accurate label disclosures about our products, limiting the sale of certain products in schools, and restricting advertising of food or beverages to children under the age of 12 unless the products meet strict yet practical nutrition guidelines. We believe that the existing CFBAI program, enhanced with the new uniform nutrition criteria, provides a much better and more realistic alternative to the Proposal.

Thank you again for allowing us to share this feedback with the IWG. We look forward to a continuing dialogue with all of the agencies represented in the group.

Respectfully submitted,

Maura Abeln Smith

Exhibit 1
Summary of PepsiCo Global Nutrition Criteria
For Advertising to Children – Effective 1/1/11

SNACKS AND FOODS: PepsiCo snack and food products must meet all of the following criteria to be advertised to kids under 12 years old:

Total Fat	≤ 35% of Calories ^{1,2}
Saturated Fat	≤ 10% of Calories ³
Trans Fat	< 0.5g per Reference Quantity ⁴
Cholesterol	≤ 30mg per Reference Quantity
Sodium	≤ 150mg per Reference Quantity
Added Sugar	≤ 10% of Calories ⁵
Food Group to Encourage	At least ½ serving of one Food Group to Encourage ⁶ per Reference Quantity
Nutrient to Encourage	OR Minimum content of one locally relevant Nutrient to Encourage ⁷ per Reference Quantity

AND CALORIE LIMIT:⁸ All snacks to be advertised to children must also have no more than 150 Calories per package.

Footnotes:

1. **Savoury Snacks** may contain up to 43% of Calories from total fat IF they also contain ONE FULL SERVING of a Food Group to Encourage.
2. **Seeds, Nuts and Nut Butters** (eg whole tree nuts, peanuts, seeds, tahini, peanut paste) and **Nut-Containing Products** (which contain at least 50% nuts and ≤1g added fat) are not required to meet the Total Fat limit.
3. **Seeds, Nuts and Nut Butters** may contain up to 15% of Calories from Saturated Fat.
4. **Reference Quantities** have been established for a wide range of snacks and foods e.g. 30g crisps, 30g nuts, 40g grain-based bars, 30g ready-to-eat breakfast cereal, 50g bread, 245ml soup.
5. **Sweet Snacks, Breakfast Cereals, Sauces and Dips** may contain up to 25% of Calories from added sugar IF they also contain ONE FULL SERVING of a Food Group to Encourage
6. **Food Group to Encourage** = Fruit, Vegetables, Whole Grains, Low Fat Milk Products, Nuts/Legumes. Serving sizes have been determined for each Food Group.
7. **Nutrient to Encourage** = Protein, Fiber, Calcium, Potassium, Magnesium, Iron, Zinc, Folate, Vitamin A, Vitamin D, Vitamin C, Vitamin E (specific nutrients that may be used to meet this criterion are defined locally based on dietary gaps). Minimum contents per Reference Quantity have been determined for each Nutrient to Encourage.
8. The **Calorie limit** does not apply to foods (e.g. bread, pasta, pancakes, rice, breakfast cereals, oats, pasta, sauces, soup, dips). Examples of ‘snacks’ are potato chips, crisps, corn chips, popcorn, biscuits, crackers, bread snacks, muesli bars, grain-based bars, cookies, cakes, muffins, trail mix, nuts, seeds, nut clusters, nut/seed bars.

BEVERAGES: PepsiCo complies with the International Council of Beverages Associations (ICBA) Guidelines on Marketing to Children. This commitment is to not place any marketing communication for non-alcoholic beverages other than water (mineral, source and purified), fruit juice, and dairy-based beverage, as defined by local regulations, in paid third party media whose audience consists of 50% or more of children under the age of 12. Full details are at <http://www.icba-net.org/>.

Exhibit 2

Children's Food and Beverage Advertising Initiative

2011 Amended Pledge of PepsiCo Inc.

PepsiCo, Inc. is proud to be one of the first companies to commit as a participant in the Children's Food and Beverage Advertising Initiative (CFBAI). As an industry leader in the discussions of children's marketing, PepsiCo believes children are a special audience and takes particular care developing advertisements and evaluating programming that carries messages to children.

Through the company's major business units, which include Pepsi-Cola and Aquafina beverages, Frito-Lay snack foods, Quaker food products, Tropicana juices and Gatorade sports beverages, PepsiCo is continuously transforming its portfolio to meet consumer needs, including products chosen by young people. As part of that on-going transformation, PepsiCo has improved the nutritional profile of its flagship brands by changing to healthier oils, reducing sugar and sodium content, and expanding the range of products offered. A major plank of PepsiCo's "Performance with Purpose" commitment revolves around improving "human sustainability" and continuing the transformation of the PepsiCo portfolio to support that commitment.

PepsiCo is the only food and beverage company to have signed voluntary agreements regarding beverages in schools and snacks in schools through the partnership with the Alliance for a Healthier Generation - a joint initiative of the William J. Clinton Foundation and the American Heart Association. Both agreements represent break-through steps to adopt a practical policy in the U.S. that provides a sensible and workable solution for young people, parents and educators.

In accordance with CARU guidelines, PepsiCo defines "advertising directed primarily to children under 12" based on an analysis of the following factors, no single one of which will be controlling:

- whether the content of the media (e.g.: subject matter, format, characters and other advertising) is designed for children under 12,
- whether the advertised product or service is intended for use by, or is of interest to children under 12;
- where the media in which the advertising appears is promoted and advertised;
- whether 35% or more of the audience is projected to be children under 12, based on available projections, at the time the advertising is placed, of audience demographics; and
- for television programs, whether they are aired during what is generally understood to be children's programming.

To continue its responsible leadership, PepsiCo pledges to incorporate the core principles of the

CFBAI into its advertising primarily directed to children under 12 as fully described below (the "PepsiCo Pledge").

The PepsiCo Pledge

PepsiCo understands the importance of being a responsible marketer to children and we commit to standards that exceed the CFBAI policies and programs.

PepsiCo does not direct any form of advertising primarily to children under 6. PepsiCo defines "advertising directed primarily to children under 6" utilizing the same factors set forth above, substituting "6" for "12" where appropriate.

PepsiCo advertising (including TV, radio, print and internet advertising) directed primarily to children under 12 will feature only products that meet PepsiCo's Nutrition Criteria for Advertising to Children. These criteria meet or exceed established nutrition criteria based on authoritative statements from the Food and Drug Administration and the National Academy of Sciences, as well as standards that the CFBAI finds acceptable.

PepsiCo Inc. is headquartered at 700 Anderson Hill Road, Purchase, New York 10577. For information regarding Pledge implementation contact Jeanne E. O'Neill, Frito-Lay Marketing Counsel, 7701 Legacy Drive, Plano TX 75024; Phone: (972) 334-3839; email: Jeanne.e.oneill@pepsico.com.

On behalf of all of its U.S.-based businesses PepsiCo makes the following commitments that are in effect not later than January 1, 2011:

TV & Radio

One hundred percent (100%) of any PepsiCo advertising on television or radio directed primarily to children under 12 will be for products that meet PepsiCo's Nutrition Criteria for Advertising to Children. Television compliance will be measured using Nielsen and IRI ratings at the time the advertisement is purchased as well as the time of programming and programming content. Radio compliance will be measured using Arbitron and/ or RADAR ratings as appropriate. Compliance will be measured separately for each medium. This commitment (or a similar commitment based on the prior Smart Spot nutrition criteria) has been in effect since not later than January 1, 2008.

Print Advertising

One hundred percent (100%) of any print advertising directed primarily to children under 12 will be for products that meet PepsiCo's Nutrition Criteria for Advertising to Children. Compliance will be measured using PIB (Publisher's Information Bureau) or MRI (Mediamark research) data. This commitment (or a similar commitment based on the prior Smart Spot nutrition criteria) has been in effect since not later than January 1, 2008.

Internet Advertising Not On Company Owned Websites

One hundred percent (100%) of any internet advertising directed primarily to children under 12 will be for products that meet PepsiCo's Nutrition Criteria for Advertising to Children. Compliance will be calculated relying upon ComScore Networks estimate of target age. This commitment (or a

similar commitment based on the prior Smart Spot nutrition criteria) has been in effect since not later than January 1, 2008.

Advertising on Company Owned Websites

Any company owned websites directed primarily to children under 12 will acknowledge that the website is a form of advertising and will do so in language appropriate for communication to the target audience. One hundred percent (100%) of the products featured will meet PepsiCo's Nutrition Criteria for Advertising to Children and the site will also encourage active lifestyles. This commitment (or a similar commitment based on the prior Smart Spot nutrition criteria) has been in effect since not later than January 1, 2008.

Third-Party Licensed Characters

PepsiCo acknowledges that from time-to-time third-party characters may be used to promote its products. In contrast to company-owned characters such as Cap'n Crunch or Chester Cheetah, these third-party characters are usually licensed for a set period of time. These third-party characters may be associated with television programs, movies, or the like. When such third-party characters are used in advertising directed primarily at children under 12, they will be used in conjunction with only those products meeting PepsiCo's Nutrition Criteria for Advertising to Children. Licensing agencies have been notified of PepsiCo's position. This commitment (or a similar commitment based on the prior Smart Spot nutrition criteria) has been in effect since not later than January 1, 2008.

Product Placement

PepsiCo will not pay for or actively seek placement of our products in the content of any medium directed primarily to children under 12. Product placement agencies were notified of PepsiCo's position. This commitment has been in place since not later than January 1, 2008.

Use of Products in Interactive Games

PepsiCo will not allow its products to be incorporated into interactive games designed primarily for children under 12 unless such products meet PepsiCo's Nutrition Criteria for Advertising to Children. Such interactive games include video and computer games rated "Early Childhood" or "EC" and other video/computer games that are age graded on the label or packaging as being primarily directed to children under 12. Licensing agencies were notified of PepsiCo's position. This commitment (or a similar commitment based on the prior Smart Spot nutrition criteria) has been in effect since not later than January 1, 2008.

Paid-Word-of-Mouth Advertising

PepsiCo does not and will not advertise its products to children under 12 via the medium of word-of-mouth advertising.

Cellphones and PDAs

PepsiCo does not and will not advertise its products to children under 12 via these media.

DVD Advertising and Sponsorship

PepsiCo does not advertise on nor sponsor DVDs of "G" rated movies that are primarily directed to children under 12. Neither does it advertise on or sponsor other DVDs whose content is primarily child-directed.

Advertising in Schools

PepsiCo will not advertise our products in elementary and middle schools as these are the schools which children under 12 attend. This includes book covers, book packs, pencils, posters and the like. PepsiCo is the only company which is a signatory to both the snack food and the beverage school policy statements of the Alliance for a Healthier Generation, a joint initiative of the William J. Clinton Foundation and the American Heart Association. PepsiCo is fully committed to compliance with these policy commitments.

Advertising Not Directed Primarily at Children

PepsiCo has provided CFBAI with a list of all of our brands, including those that do not direct advertising primarily to children under 12. PepsiCo advertising which is not directed primarily to children under 12 will continue to be held to the highest standards of the advertising industry.

Nutrition Standards

PepsiCo has provided CFBAI with references and citations to support the nutrition foundation of its "Advertising to Children" nutrition criteria. These criteria and standards are grounded in well-established and broadly recognized scientific and/ or governmental standards. PepsiCo's Nutrition Criteria for Advertising to Children can be found at www.pepsico.com/Purpose/Performance-with Purpose/Policies.html#responsible-marketing.

As of January 1, 2011, the only PepsiCo products that are anticipated to engage in advertising primarily to children under 12 are:

- QUAKER CHEWY® Granola Bar – Chocolate Swirl (with 10g whole grain per 24g serving; low sodium; good source of calcium) – marketed by The Quaker Oats Company, a division of PepsiCo, Inc.
- QUAKER CHEWY® Granola Bar – Chocolatey Mint (with 10g whole grain per 24g serving; low sodium; good source of calcium) – marketed by The Quaker Oats Company, a division of PepsiCo, Inc.
- QUAKER CHEWY® Granola Bar – Chocolatey Caramel (with 10g whole grain per 24g serving; low sodium; good source of calcium) – marketed by The Quaker Oats Company, a division of PepsiCo, Inc.
- QUAKER CHEWY® Granola Bar – Chocolate Chip Cookie Dough Bar (with 10g whole grain per 24g serving; low sodium; good source of calcium) – marketed by The Quaker Oats Company, a division of PepsiCo, Inc.
- TROPICANA TROPOLIS™ real fruit squeezers - Apple World™ (flavored with other natural flavors) Fruit Puree & Juice Blend with Vitamin C and Fiber – marketed by Tropicana Products, Inc., a division of PepsiCo, Inc.
- TROPICANA TROPOLIS™ real fruit squeezers Cherry World™ (flavored with other natural flavors) Fruit Puree & Juice Blend with Vitamin C and Fiber – marketed by Tropicana Products, Inc., a division of PepsiCo, Inc.; and

- TROPICANA TROPOLIS™ real fruit squeezers Grape World™ (flavored with other natural flavors) Fruit Puree & Juice Blend with Vitamin C and Fiber – marketed by Tropicana Products, Inc., a division of PepsiCo, Inc.

At any time in the future should a decision be made to advertise one or more additional PepsiCo products to children under 12, PepsiCo agrees that only products which meet its Nutrition Criteria for Advertising to Children will be so advertised. PepsiCo will notify CFBAI of any such decision and will amend our Pledge accordingly so that CFBAI can effectively monitor PepsiCo's on-going compliance.