



National Milk Producers Federation

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"Connecting Cows, Cooperatives, Capitol Hill, and Consumers"

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July 14, 2011

Donald S. Clark
Secretary

Federal Trade Commission
Room H-113 (Annex W)
600 Pennsylvania Avenue, NW
Washington, DC 20580

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

Dear Mr. Clark:

The National Milk Producers Federation is submitting comments in response to the Interagency Working Group's proposed nutrition principles to guide the food industry's marketing to children. Based in Arlington, Virginia, the National Milk Producers Federation develops and carries out policies that advance the well-being of dairy producers and the cooperatives they own. The members of NMPF's 31 cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of more than 40,000 dairy producers on Capitol Hill and with government agencies.

Overview

The Interagency Working Group (IWG) — made up of the Federal Trade Commission, Food and Drug Administration, Department of Agriculture and Centers for Disease Control — seeks public comments on proposed principles published April 28. The principles establish nutrition guidelines for foods and beverages marketed to children and adolescents up to age 18. Unfortunately, despite the considerable nutritional importance of dairy products in children's diets, many highly nutritious dairy products would not meet the nutrition criteria set forth in the principles. As a result, the National Milk Producers Federation is concerned that the IWG proposal would result in a decrease in dairy consumption at a time when children are not consuming the currently recommended numbers of servings. Further decreases in dairy consumption could adversely affect the diets of children and adolescents across the country, and unfairly malign the nutritional contributions of dairy products that don't comport with the proposed principles. In the comments below, we suggest a number of ways to modify the principles to better serve the interests of children and to reduce the guidelines' potential negative impact on the consumption of popular and nutritious dairy products. Key recommendations are to include reduced-fat cheeses as well as flavored milk and yogurt that contain moderate amounts of added sugar among foods approved for marketing to children.

Dairy in Children's Diets

Milk and dairy products are good or excellent sources of nine nutrients—calcium, potassium, phosphorus, high-quality protein, vitamins A, D and B12, riboflavin and niacin (niacin equivalents)—important to the diets of children and adolescents.¹ Milk is the number one source of calcium, vitamin D, phosphorus and potassium in the diets of children ages 2 to 18 and the number one source of protein in the diets of children ages 2 to 11.² Yogurt is a good source of protein, calcium, riboflavin, vitamin B12 and phosphorus.³ Cheese is a good source of protein and calcium in children's diets⁴ and, due to its high-quality naturally-occurring protein, is categorized as a meat substitute in the federal school lunch program.⁵ In addition, adding cheese to vegetables and whole grains can help increase consumption of these other nutrient-rich foods.⁶ Both cheese and yogurt are also recommended as good alternatives to fluid milk for children who are lactose intolerant.⁷

Milk is also the primary source of three of the four nutrients—vitamin D, calcium, and potassium—that are under-consumed by children and represent a substantial public health concern.⁸ For that reason, the nutrient contribution of low-fat and fat-free milk and dairy products was emphasized throughout the 2010 *Dietary Guidelines for Americans*, which included dairy products among the foods for which consumption should be increased.⁹

Consumption of dairy products has been linked to improved bone health, which is especially important for children and adolescents.¹⁰ In addition, consumption of milk and dairy products has been linked to reduced risks of cardiovascular disease, type 2 diabetes and lower blood pressure in adults.¹¹ The *Dietary Guidelines* recommends promoting milk drinking habits in children, since those who consume milk at an early age are more likely to reap dairy's health benefits in adulthood.

Despite these well-established benefits, many children are not consuming enough dairy. According to the report of the 2010 Dietary Guidelines Advisory Committee, nearly half of children ages four to eight do not meet the recommended daily consumption of dairy

¹ USDA Agricultural Research Service. 2010. National Nutrient Database for Standard Reference, Release 23 www.ars.usda.gov/nutrientdata

² Rafferty, K., and Hearney, R.P. 2008. Nutrient effects on the calcium economy: Emphasizing the potassium controversy. *Journal of Nutrition* 138: 166S-171S

³ National Dairy Council website, Facts About Yogurt page, <http://www.innovatewithdairy.com/Pages/FactsAboutYogurt.aspx>

⁴ Miller, G.D., Jarvis, J.K., and McBean, L.D. 2007. *Handbook of Dairy Foods and Nutrition*, 3rd ed. CRC Press. Also, USDA Economic Research Service, Briefing Room: Diet Quality and Food Consumption: Dietary Trends from Food and Nutrient Availability Data

⁵ Code of Federal Regulations 2011, Title 8, Vol. 4, part 210.10

⁶ Donnelly, J., et al. 2009. The Effects of Visible Cheese on Selection and Consumption of Food Groups to Encourage in Middle School Children. Presented at School Nutrition Association annual meeting

⁷ USDA Food and Nutrition Service. 2008. Milk for Kids with Lactose Intolerance. www.fns.usda.gov/tn/Resources/Nibbles/milk.pdf

⁸ Dietary Guidelines for Americans, 2010, www.healthierus.gov/dietaryguidelines

⁹ Dietary Guidelines for Americans, 2010, www.healthierus.gov/dietaryguidelines

¹⁰ Dietary Guidelines for Americans, 2010, www.healthierus.gov/dietaryguidelines

¹¹ Dietary Guidelines for Americans, 2010, www.healthierus.gov/dietaryguidelines

products.¹² Among older children, more than half of boys between 9 and 18 do not meet dairy recommendations. Among girls, more than 75 percent of those 9 to 13 and more than 90 percent of those 14 to 18 do not consume enough dairy.¹³ Also, while children and adolescents are drinking less milk, they are consuming more soft drinks and other low-nutrient beverages.¹⁴ These are troubling trends that have been identified as contributing to chronic calcium shortages and the rising rates of obesity among America's youth.

Impact of the Proposed Principles

The IWG's proposed principles were written with rising child obesity rates in mind. They are designed to encourage children, through advertising and marketing, to choose foods that contribute to a healthy diet and contain limited amounts of nutrients that could harm health and weight.

The principles would be applied to individual foods, main dishes and full meals. Foods that contribute to a healthy diet are defined under Principle A, while nutrients deemed to have a negative impact on health and weight are covered under Principle B. The "nutrients to limit" targeted under Principle B are saturated fat, *trans* fat, added sugars and sodium. Two options are offered to identify foods under Principle A, one based on weight and the other on RACC, or Reference Amount Customarily Consumed.

In placing a strong emphasis on "nutrients to limit," the IWG's proposed guidelines penalize many nutrient-rich foods that contribute significantly to children's diets. According to one analysis, 88 of the 100 most commonly consumed foods and beverages in America would fail to meet the working group's advertising and marketing standards.¹⁵ These include many foods that qualify for FDA health claims, satisfy standards for the Women, Infants and Children nutrition program, and are encouraged for consumption under the 2010 *Dietary Guidelines*. For example, some enriched grain products, nut products, lean deli meats and canned or frozen fruits and vegetables that contribute important nutrients to children's diets would not meet the requirements under Principle B because of saturated fat, sodium, or added sugar limits. Principle B also would limit marketing of dairy products to children to those that are low-fat or fat-free; many flavored low-fat yogurts and flavored low-fat and fat-free milks would not qualify. The principles would also negatively affect milk consumption by limiting the marketing of many ready-to-eat cereals. Approximately 40 percent of the milk consumed by children is in conjunction with cereal.¹⁶

¹² Dietary Guidelines Advisory Committee, Report to the Secretaries of USDA and HHS, 2010 <http://www.cnpp.usda.gov/DGAs2010-DGACReport.htm>

¹³ Dietary Guidelines Advisory Committee, Report to the Secretaries of USDA and HHS, 2010 <http://www.cnpp.usda.gov/DGAs2010-DGACReport.htm>

¹⁴ Nielsen, S.J., and Popkin, B.M. 2004. Changes in beverage intake between 1977 and 2001. *American Journal of Preventative Medicine*, 27 (3), 205–10. Also, Rampersaud, G.C., Bailey, L.B., and Kauwell, G.P., 2003. National survey beverage consumption data for children and adolescents indicate the need to encourage a shift toward more nutritive beverages. *Journal of the American Dietetic Association*, 103 (1): 97-100

¹⁵ NPD Group, Inc., National Eating Trends® in-home food consumption for the two years ending February 2011

¹⁶ National Health and Nutrition Examination Survey (NHANES), Centers for Disease Control

Recommendations for Improving the Principles

NMPF believes the proposed principles are overly focused on nutrients to limit. Modifying the principles to include reduced-fat cheeses, as well as flavored milk and yogurt with moderate amounts of added sugars, among foods approved for marketing will help children and adolescents reach their recommended daily servings of dairy products and reduce their intakes of calories, sodium and saturated fat. It would also be consistent with the *Dietary Guidelines*.

Cheese

Only low-fat and fat-free cheeses meet the requirements of Principle B, which limits saturated fat in individual foods to one gram per RACC and 15 percent of calories. Unfortunately, while dairy food scientists have engaged in extensive efforts to develop good-tasting low-fat and fat-free cheeses, very few such products are currently available.¹⁷ Substantial technological challenges (functionality, food safety, and sensory challenges) remain in developing low-fat and fat-free cheeses, and many that are currently available are higher in sodium compared to higher-fat cheeses. That means, under the proposed principles, children and adolescents could miss out on enjoying cheese, a highly popular food with many beneficial nutrients.

Compounding this problem, the proposed standard that a cheese serving must meet to qualify as low-fat is particularly high, due to the Food and Drug Administration's 50-gram rule.¹⁸ Because the Reference Amount Customarily Consumed for cheese is 30 grams or less, it must contain no more than three grams of fat per 50 grams to qualify as low-fat. This translates to only 1.8 grams of fat per 30 grams of cheese. For Cheddar, that would require a fat reduction of more than 80 percent. Combined with Principle B, the 50-gram rule would further prevent many reduced-fat cheeses that make positive contributions to diets from being marketed to children. In addition, the 50-gram rule's high qualifying threshold discourages manufacturers from reformulating products to meet low-fat requirements.

A reasonable solution to these problems is to include reduced-fat and part-skim cheeses among the foods qualifying under Principle A and to not apply the 50-gram rule under Principle B. Cheese contributes about 20 percent of the calcium in children's diets and reduced-fat cheese contains at least 25 percent less fat than full-fat cheese. This change would be consistent with both the *Dietary Guidelines*, which includes choosing reduced-fat cheese as a strategy to help meet dairy food recommendations,¹⁹ and the 2009 Institute of Medicine report on school meals, which included reduced-fat cheese in lunches that met its calorie and fat targets.²⁰ In addition, reduced-fat and part-skim cheeses are widely distributed by the Agriculture Department for use in school meals and other federal nutrition

¹⁷ IRI Scanner; Total U.S. Combined Food, Drug, Mass excluding Wal-Mart, 2010

¹⁸ Code of Federal Regulations 2011, Title 21, Chapter 1, Part 101.12

¹⁹ Dietary Guidelines for Americans, 2010, www.healthierus.gov/dietaryguidelines

²⁰ School Meals: Building Blocks for Healthy Children. 2009. Institute of Medicine consensus report, Washington, DC, <http://www.iom.edu/Reports/2009/School-Meals-Building-Blocks-for-Healthy-Children.aspx>

programs.²¹ Also, at 22 percent of the retail market, reduced-fat cheeses are much more widely available than low-fat and fat-free cheeses.²² Including reduced-fat cheese in Principle A would provide a meaningful incentive to food manufacturers to use lower-fat cheeses, thereby more likely contributing to actual reductions in fat levels of foods consumed by children.

Including reduced-fat and part-skim cheeses under Principle A could help children decrease their fat and saturated fat intakes while still providing the nutrient benefits of including cheese in the diet. NMPF also urges the working group to calculate the nutrients to limit under Principle B on the levels in actual serving sizes, not through use of the 50-gram rule. This will result in more realistic standards that will help reduce the fat in children's diets, will increase the availability of lower-fat cheeses in the market, and, when applicable, will encourage age-appropriate serving sizes (e.g., cheese snacks and slices).

Yogurt and Flavored Milk

Flavored low-fat or fat-free milk and yogurt can make significant contributions to the diets of children. Both are nutrient-rich and popular among children and adolescents. Yogurt is also a means to help achieve adequate dairy consumption among children who are lactose intolerant.

In crafting Principle B, the IWG wisely chose not to count nutrients to limit in foods if they are naturally occurring, which qualifies more nutrient-rich dairy foods for marketing to children. This also is consistent with the *Dietary Guidelines*, which focuses on reducing added sugars—rather than total sugar—in the diet.²³ According to the *Guidelines*, added sugars are best used to increase the palatability of nutrient-dense foods. It included fat-free chocolate milk as an example of a beneficial nutrient-rich food that contains some added sugar.²⁴ In addition, the American Heart Association, in a 2009 statement, said adding sugar to nutrient-rich foods, including sugar-sweetened dairy products, can improve the diets of children and adolescents.²⁵

Research supports these statements, showing that school-aged children who drink flavored milk do not have higher added-sugar intakes compared with children who do not drink flavored milk.²⁶ In addition, children who drink flavored milk have higher total milk intakes compared with those who exclusively drink plain milk.²⁷ Also, a recent NHANES analysis

²¹ Data provided by USDA Food Distribution Division, 2010

²² IRI Scanner; Total U.S. Combined Food, Drug, Mass excluding Wal-Mart, 2010

²³ Dietary Guidelines for Americans, 2010, www.healthierus.gov/dietaryguidelines

²⁴ Dietary Guidelines for Americans, 2010, www.healthierus.gov/dietaryguidelines

²⁵ American Heart Association Nutrition Committee. 2009. Dietary sugars intake and cardiovascular disease: A scientific statement. *Circulation* 120: 1011-1020

²⁶ Johnson, R., Frary, C.D., and Wang, M.Q. 2002. The nutritional consequences of flavored milk consumption by school-aged children and adolescents in the United States. *Journal of the American Dietetic Association* 102: 853-856

²⁷ Murphy, M. M., Douglass, J.S., Johnson, R.K., et al. 2008. Drinking flavored or plain milk is positively associated with nutrient intake and is not associated with adverse effects on weight status in U.S. children and adolescents. *Journal of the American Dietetic Association* 108: 631-639

found that flavored milk and yogurt contribute only three percent and one per percent of added sugars, respectively, to the diets of children ages two to 18 years, while soft drinks contribute 30 percent.²⁸

In short, there is considerable evidence that flavored milk and sweetened yogurt make positive nutrient contributions to, and therefore should be encouraged in, children's diets. Despite this, because of its limits on added sugar, Principle B precludes the marketing of many low-fat yogurts and flavored low-fat and fat-free milks. For flavored milk, some products on the market today would meet the proposed level of 13 grams of added sugar per 8 oz. serving, but there are numerous low-fat and fat-free flavored milks that do not meet this threshold. With respect to yogurt, applying the 13 gram per serving standard may be more problematic because added sugars are needed to counter the developed acidity and increase palatability. For many yogurts, a 13-gram added sugar limit would likely require use of non-nutritive sweeteners, in combination with added sugars, to meet the requirements under Principle B. In addition, the amount of added sugars in yogurt is not easily determined because naturally occurring and added sugars are included together on labels. Adequately addressing the barriers to yogurt consumption among children presented by the proposed principles would require a higher permissible level of sugars, whether calculated on a total or added sugar basis. If calculated on an added sugar basis, sugars contributed by dairy ingredients that are part of the FDA standard of identity for yogurt should be excluded. If calculated on a total sugar basis, the IWG may want to consider recommendations of other authoritative bodies, such as the Institute of Medicine committee that looked at competitive foods in schools, which recommended a yogurt standard of 30 grams of *total* sugar per serving.²⁹

As noted above with respect to cheese, an additional barrier to encouraging consumption of low-fat, fat-free and low-sugar dairy products is tying Principle B nutrient targets to RACCs rather than actual serving sizes. RACCs are based on 30- to 40-year-old consumption surveys and are not age-specific.³⁰ The RACC for yogurt, for example, is eight ounces, even though most yogurts marketed to children are in four- or six-ounce containers. That makes it harder for yogurt to qualify under Principle B's added sugar limit. Rather than using RACCs, nutrients to limit under Principle B should be applied to single-serving food packages, including single-serve milk and yogurt containers.

Dairy Ingredients

Milk, milk-derived ingredients (whey, whey protein concentrates, dry milk powder, etc.) and cheese are used extensively as dry or semi-solid ingredients in foods, main dishes and meals, all of which are covered under the principles. Thirteen percent of milk consumed by children ages 2 to 18 is in foods such as pudding, macaroni and cheese, frozen desserts, smoothies,

²⁸ Dairy Research Institute™, NHANES (2001-2006). Data Source: Centers for Disease Control <http://www.cdc.gov/nchs/nhanes.htm>

²⁹ Nutrition Standards for Foods in Schools: Leading the Way toward Healthier Youth. 2007. Institute of Medicine consensus report, Washington, DC, <http://www.iom.edu/Reports/2007/Nutrition-Standards-for-Foods-in-Schools-Leading-the-Way-toward-Healthier-Youth.aspx>

³⁰ Code of Federal Regulations 2011, Title 21, Chapter 1, Part 101.12

sauces and soups. Nearly two-thirds of cheese consumed by children is in foods such as pizza, pasta, Mexican dishes, sandwiches, sauces and soups. Dry or semi-solid milk-based ingredients are often grouped together on food labels (e.g., skim milk and nonfat dry milk as “skim milk” per 21 CFR 133.3(b)), which allows manufacturers the flexibility of using various ingredients to achieve a consistent formulation. The contribution of nutrients from dairy-based ingredients is often similar to that of milk; therefore, like dairy foods, these ingredients should be considered as making significant contributions to a healthy diet. Also, like dairy-based ingredients’ native counterparts—fluid low-fat and non-fat milk—their naturally occurring nutrients (sodium, lactose, saturated fat) should be excluded when calculating amounts of nutrients to limit under Principle B. This will encourage manufacturers to include more dairy-based ingredients in foods and contribute to healthier diets overall.

The working group suggested two options for determining what constitutes a significant contribution to a healthy diet under Principle A. The first is based on weight and the second on RACCs. In general, NMPF feels that Option 1—requiring foods contributing to a healthy diet to contain at least 50 percent of one or more beneficial items by weight—is preferable.

To determine whether foods with dairy ingredients make a significant contribution to a healthy diet under Option 1, NMPF suggests a standard of at least 4.4 percent non-fat milk solids by weight (equivalent to one-half of the non-fat milk solids contained in non-fat or low-fat milk by weight). For example, under Option 1, a smoothie would qualify if it contained 50 percent nonfat or low-fat milk by weight. As low-fat milk is approximately 8.8% nonfat milk solids, 50 percent low-fat milk in the smoothie would yield a final concentration of 4.4% nonfat milk solids. If nonfat dry milk powder and water were used as ingredients in the smoothie instead, an equivalent level of milk solids should also allow the smoothie to qualify under the guidelines (4.4% nonfat milk solids). Option 2 requires foods making a significant contribution to a healthy diet to include three-quarters of a cup of non-fat or fat-free milk, which translates to 16 grams of non-fat milk solids. Therefore, should the working group settle on Option 2, NMPF suggests that foods containing dairy ingredients with at least 16 grams of non-fat milk solids qualify as contributing to a healthy diet.

Other Issues

Sodium

NMPF again commends the IWG for not counting naturally occurring nutrients—like sodium—in nutrient-rich dairy products toward the limits in Principle B. However, Principle B sets an ultimate goal for sodium of 140 milligrams per RACC, which will be especially challenging to meet with respect to cheese. Sodium is important to maintaining the flavor, body, texture, shelf life and safety of cheese.³¹ In addition, federal regulations require the use of salt in the standards of identity for many cheeses (e.g., Cheddar cheese). Extensive R&D efforts are under way in an effort to reduce the sodium in cheese, but effective results

³¹ Walstra, P., Wouters, J. T.M., and Geurts, T.J. 2006. Chapter 24, Cheese Manufacture, pages 583-639, Dairy Science and Technology, 2nd edition, Taylor & Francis, New York

and timelines for progress are uncertain.³² Consequently, NMPF recommends as an alternate goal the New York Sodium Reduction Initiative target of 600 milligrams per 100 grams for natural cheeses,³³ which corresponds to 180 milligrams per RACC.

Conclusion

The IWG's proposed principles for foods and beverages marketed to children exclude many dairy foods that make significant beneficial contributions to the diets of children and adolescents. This could lead to a decrease in dairy consumption at a time when the *Dietary Guidelines* recommends that most children increase their consumption of low-fat and fat-free dairy products. NMPF has suggested several modifications to the principles that would include more dairy products among foods that qualify for marketing. Making these changes would reduce nutrients to limit in children's diets while increasing consumption of foods that contribute to a healthy diet.

The National Milk Producers Federation appreciates this opportunity to offer its views on the working group's proposed principles. Please contact us if you have questions or need additional information.

Sincerely,



Beth Briczinski, Ph.D.
Director, Dairy Foods & Nutrition

³² Cruz, A.G., Faria, J.A.F., Pollonio, M.A.R., Bolini, H.M. A., Celeghini, R.M.S., Granato, D., and Shah, N.P. 2011. Cheeses with reduced sodium content: Effects on functionality, public health benefits and sensory properties. *Trends in Food Science & Technology*, 22(6): 276-291

³³ National Salt Reduction Initiative, www.nyc.gov/html/doh/html/cardio/cardio-salt-initiative.shtml

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