

[FTC Requests Comments on Guidelines for Advertising Unhealthy Foods to Children](#)

by [David Oxenford](#)

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The advertising to children of food deemed unhealthy has been the subject of government concern for many years. We [wrote about the efforts of then-Senator Brownback to limit such ads](#) - either by voluntary industry action or by government regulation. These concerns led to the formation of a public-private task force to come up with voluntary actions to limit advertising unhealthy foods to children. The FTC this week released a [draft of that report](#) - proposing prohibitions on advertising most unhealthy food to children that would be in place by 2016 (with certain additional restrictions becoming effective 5 years later). These guidelines would apply not only to broadcast advertising, but also to marketing on the Internet and in many other media. While the report talks about voluntary industry guidelines, the NY Times quotes some as asking just how voluntary such guidelines really would be - asking if the government might not step in to mandate compliance if industry was unsuccessful (see the Times article [here](#), subscription may be required). Comments on the FTC proposals are due on June 13, 2011.

The guidelines published by the FTC ask many questions about how to define what foods are considered unhealthy, and also about whether the timeline of 2016 for implementing a ban on unhealthy food advertising is reasonable (the later 2021 deadline would apply to certain restrictions on salt in food). Advertising would be restricted for those up to 17 years of age, and extends to 20 categories of advertising including radio and TV, online ads, sweepstakes, ads in video games, and other marketing in traditional and digital media directed to children. Broadcast programming that reaches an audience that is 30% children 2 to 11 would be deemed "targeted" to them, for children 12 to 17, the programming would be deemed targeted to children if there were a 20% representation of those age groups in the audience. Internet ads would also use the 20% standard.

The report is posed as a discussion of what should be covered by guidelines that are voluntarily agreed to and implemented by industry. Curiously, the among the questions on which the FTC seeks comment is whether these guidelines would violate the antitrust laws if voluntarily implemented, and whether they would suffer from First Amendment issues if Congress enacted them into law. Obviously, if Congress adopted them, they would hardly seem voluntary! The FTC also asks what impact the adoption of these guidelines would have on media directed to children - presumably asking if the economic impact of these guidelines would curtail the amount of programming developed for children.

The FTC public notice also announces a Forum for the discussion of these issues, to be held on May 24, 2011. Interested parties should consider comments in writing or attendance at the forum or both - as these proposals may well have a significant impact both on what food is marketed to children - and what advertising we see in the media in the future.

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