

ADVERTISING, MARKETING & PROMOTIONS

>>ALERT

PROPOSED VOLUNTARY GUIDELINES ON FOOD MARKETING TO CHILDREN

In an effort to combat childhood obesity, former Senator Sam Brownback and Senator Tom Harkin directed the Federal Trade Commission (FTC), the Food and Drug Administration (FDA), the Centers for Disease Control and Prevention (CDCP) and the Department of Agriculture (USDA), to establish an Interagency Working Group (IWG) consisting of nutrition, health and marketing experts to develop recommendations for the nutritional quality of foods marketed to children, ages 2-17. In response to that directive, the IWG developed the following nutrition principles and marketing criteria for implementation by the year 2016.

PROPOSED NUTRITION PRINCIPLES

The IWG's current proposal consists of two basic nutrition principles for foods marketed to children.

Nutrition Principle A

Foods marketed to children should contribute to a healthy diet. Individual foods would be required to contribute a significant amount of at least one of the following food groups: fruits, vegetables, whole grains, fat-free or low-fat milk products, fish, extra lean meat and poultry, eggs, nuts and seeds, and beans.

Main dishes would need to include a meaningful contribution from at least two of these food groups and meals would need to include a meaningful contribution from at least three of these food groups.

Nutrition Principle B

Foods marketed to children should have minimal quantities of nutrients that could have a negative impact on health and weight. Nutrition Principle B,

therefore, proposes targets for limiting the amount of saturated fat, trans fat, added sugars, and sodium in foods. The proposed target for individual foods, for

- >> saturated fat is 1 gram or less per Reference Amounts Customarily Consumed (RACC), and 15% or less of calories
- >> *trans* fat is 0 grams per RACC; and
- >> added sugars is no more than 13 grams per RACC.

The IWG set interim goals for sodium with the final goal for individual foods being 140 milligrams per RACC in 2021.

If adopted, these voluntary principles would have a significant impact on the types of foods that could be marketed to children. Advertising and marketing of candy, soda, potato chips and fast food are the most obvious targets, but the principles would also restrict the marketing of certain cereals, soups, pastas and yogurts to children.

THE BOTTOM LINE

If adopted, the proposed food marketing principles would limit the types of foods that can be marketed to both children and adolescents, ages 2-17. The deadline for submitting comments to IWG is July 14, 2011.

PROPOSED DEFINITION OF MARKETING

Who Is Covered?

The proposed nutrition principles would apply to children ages 2-17. Current self-regulatory initiatives, such as the Children's Advertising Review Unit (CARU) and the Children's Food and Beverage Advertising Initiative (CFBAI), have traditionally defined children as under the age of 12. Thus, the application of these nutritional principles to

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adolescents 12-17 would have a significant impact on the industry. First, it would impose new restrictions on food marketing to adolescents, a group often treated as adults for marketing purposes (requiring companies to reformulate their marketing plans). Second, because of overlap of adult and adolescent audiences, the proposed limitations could ultimately limit the marketing of food products to adults.

Promotional Activities Covered

The IWG proposal includes an expanded definition of marketing that goes beyond traditional media (e.g. television and radio) to cover virtually all types of promotional activities aimed at children, including in-school marketing, product placement in movies and video games, packaging and point of purchase displays, the use of movie characters in cross-promotions and fast-food meals, premium distribution, sponsorship of events, sports teams and individual athletes, celebrity endorsements, philanthropic activity tied to branding, text messages, word-of-mouth and viral marketing and other social media. If adopted, these nutritional principles would not only restrict certain food products from being advertised on television and radio, but may also restrict a food marketer's ability to sponsor Little League teams, sports events and/or charitable initiatives.

INDUSTRY RESPONSE

Not surprisingly, the food marketing industry has responded unfavorably to the IWG proposal finding it overly-restrictive, unworkable and paternalistic.

The industry believes the principles are also unnecessary in light of the overall decrease in food advertising aimed at children and the ongoing efforts to impose stricter self-regulatory standards, such as through the 17-member CFBAI, which is composed of the nation's largest food marketers.

While the food marketing industry and the IWG generally hold conflicting views on the value of these principles, one thing both sides agree on is that, if adopted, the principles would likely change the landscape of child-directed food marketing. As the five FTC commissioners said in a joint statement, "A significant percentage of the products currently marketed to children would not meet the proposed nutrition principles. Some foods would likely require substantial reformulation."

PRACTICAL EFFECTS

The IWG is in the process of soliciting comments on these proposed principles, including on the following topics:

- >> the proposed nutrition principles
- >> the food categories marketed to children
- >> the feasibility and market impact of the proposed nutrition principles
- >> the definition of food marketing to children
- >> the overall impact of the proposed nutrition principles and marketing definitions
- >> whether the principles raise First Amendment concerns

Even though the principles are currently in the proposal stage and, if adopted, would only be voluntary, we recommend that industry members file comments as these principles would significantly restrict the types of foods that could be marketed to children – including teenagers – and require cumbersome changes to food marketer's current marketing practices.

The deadline for comments is July 14, 2011. Please do not hesitate to contact us if you have any questions or would like our assistance in filing comments with the IWG.

FOR MORE INFORMATION

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