

House Hearing on Food Marketing to Kids -- Seller Beware

October 21, 2011 by [Sean Wajert](#)

Two subcommittees of the House Energy and Commerce Committee, the Subcommittee on Commerce, Manufacturing, and Trade and the Subcommittee on Health, held a [joint hearing](#) last week on the issue of "Food Marketing: Can 'Voluntary' Government Restrictions Improve Children's Health?"

Speakers came from the [CDC](#), the U.S. [Department of Agriculture](#), the [FTC](#), Campbell Soup Company, and the [Association of National Advertisers](#).

The background of the hearing is that the [2009 Consolidated Appropriations Act](#) contained report language forming an Interagency Working Group (IWG), comprised of the Federal Trade Commission, the Department of Health and Human Services, and the Department of Agriculture. The IWG was tasked with conducting a study and issuing a report to Congress concerning standards for marketing food to children. Instead of conducting the prescribed study or providing a report to Congress, the IWG issued a document entitled "[Preliminary Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts.](#)"

The document presented a a sweeping set of "voluntary" principles for marketing foods to kids, based on nutritional standards that exceed and conflict with those of other government programs. They also reflect a tenuous grasp of science, lacking evidence, critics say, showing that childhood obesity is related to advertising of food that doesn't comply with the proposed principles. The guidelines are so restrictive that many healthy foods, like low-fat yogurts, whole wheat bread, and 2% milk could not be marketed to those 17 and under. Even non-sweetened cereals would not meet the IWG guidelines. According to one analysis, 88 out of the 100 most advertised foods and drinks would be in violation of these standards.

Regardless of whether a child sees a commercial for an item, the ultimate purchasing decision rests with the parent who purchases the groceries – and those groceries carry nutrition labels that every parent can read. Of course, this is the nanny state rearing its head again. And there are serious issues of infringement of constitutionally protected commercial speech.

But a legitimate concern to our readers is that while these guidelines are labeled as voluntary, what happens when a litigious group sues a food manufacturer because it showed a commercial advertising a new kind of chocolate treat or drink that does not comply? Our readers are surely familiar with example of courts allowing plaintiff experts to note "voluntary" or "recommended" guidelines.