

The Children's Food & Beverage Advertising Initiative
White Paper
on
CFBAI's Uniform Nutrition Criteria

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The CFBAI's participants are shown below.



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Executive Summary

The Children's Food and Beverage Advertising Initiative (CFBAI or Initiative) of the Council of Better Business Bureaus (BBB) and its participants are adopting uniform category-specific nutrition criteria ("criteria") to replace existing company-specific nutrition standards. These criteria will go into effect no later than December 31, 2013, and will be the new foundation for the CFBAI's participants to fulfill their pledges to depict only healthier products in advertising primarily directed to children under 12 ("child-directed" advertising). Overall they will impose significant challenges on the participants, and require reformulation of many products participants currently advertise if they wish to continue advertising them after these criteria go into effect.

Last year, mindful of the then pending issuance of the Dietary Guidelines for Americans 2010 (DGA 2010) and the Initiative's requirement that the standards companies use must be consistent with established scientific and/or government standards, the participants embarked on a Nutrition Science Review. The review included the Dietary Guidelines Advisory Committee Report and then the DGA 2010, after they were issued in January 2011, as well as many other government and third-party nutrition standards or recommendations. The review also took into consideration public health concerns, dietary patterns and nutrient intakes in the U.S. This review also was used to consider ways to improve the criteria *systematically*, which included consideration of *uniform* criteria.

Although the existing company-specific criteria have worked well to drive improvements in products that are advertised to children, the participants recognized that uniform criteria would have additional advantages. For example, these uniform criteria respond to recommendations from the First Lady and the White House Task Force on Childhood Obesity, the Federal Trade Commission (FTC) and others. Additionally, uniform criteria can provide a roadmap that other food (or media) companies in the U.S. could use to guide their child-directed advertising practices, and simplify compliance monitoring.

The CFBAI's criteria are organized around 10 product categories, with requirements that recognize inherent nutritional differences among product categories (e.g., dairy and grain products) and the role they play in the overall diet. In addition to being uniform, the new criteria are generally stronger than the current standards in at least five ways. First, the new criteria eliminate a product qualifying based solely on meeting a "reduced" claim (i.e., $\geq 25\%$ less sodium). Second, they eliminate a product qualifying solely because it is packaged in a portion controlled, 100 calorie pack. Third, they include calorie limits for all categories. Fourth, they include nutrients to limit (NTL) criteria for key items: saturated fat, *trans* fat, sodium and total sugars. Fifth, they include nutrition components to encourage (NCTE) (food groups and/or nutrients) for all product categories. Currently, not every participant has a standard for each item – calories, NTL and NCTE – so the new criteria fill those gaps. The new criteria also are designed to encourage the inclusion of foods that are even more nutrient-rich in advertised kids' meals.

The criteria are designed to include challenging, yet feasible goals. Approximately one-third of the products currently advertised to children—which are products that already meet tough, meaningful, science-based company-specific nutrition standards—do not meet the new uniform criteria. Because the criteria represent realistic goals, however, the participants have agreed to the additional challenge of implementing the new criteria on a rigorous timeline—no later than the end of 2013. Not all participants will necessarily be able to reformulate all affected products by then, but they have agreed, nonetheless, that on January 1, 2014 they will stop advertising to children products that do not meet the new criteria.

The criteria also will be reviewed periodically, such as after the issuance of new Dietary Guidelines for Americans. For example, when the 2015 Dietary Guidelines are issued, the CFBAI will review the criteria to ensure that they are consistent with the new guidelines. At that point the participants also will have had more than two years of experience with the new criteria and will be able to determine if they can be further strengthened, if appropriate. Periodic reviews also will help us determine if new or different categories or subcategories would be appropriate to reflect innovation and new products in the marketplace.

As this self-regulation initiative has matured it has undergone many changes. The successful development of uniform nutrition criteria is the latest in a series of significant program developments. These include a substantial expansion of its already rigorous and far-reaching requirements, harmonization of the definition of "child-directed" advertising, and a large increase in the number of participants. These enhancements are reflected in the CFBAI's current Core Principles and Program Statement.

I. Introduction

The CFBAI and its participants have developed category-specific uniform nutrition criteria to replace existing company-specific nutrition standards. See Figure 1. These criteria, which will go into effect no later than December 31, 2013, will be the new foundation for the CFBAI's participants to fulfill their pledges to depict only healthier products in child-directed advertising.¹ Although some products already meet the new criteria, overall the new criteria will impose significant challenges on the participants and lead to further improvements in products advertised to children. Approximately one-third of the products currently advertised to children—which are products that already meet tough, meaningful, company-specific nutrition standards—do not meet the new uniform criteria. Thus, the participants will have to change their recipes for these products if they wish to continue advertising them after these new criteria go into effect.

The current system of science-based company-specific standards has been working well to drive significant improvements in the nutritional composition of foods advertised to children. Many companies also have changed or developed products to make them even better than their requirements and/or have strengthened their requirements. Thus, the current system will continue to be an effective one during the interim period before implementation of the new criteria to meet our goal of shifting the mix of products advertised to children and promoting choices that could lead to diets and lifestyles more aligned with the Dietary Guidelines for Americans. Under the current CFBAI system, the participants, whose advertising represents a substantial majority of child-directed advertising, have significantly altered the children's food and beverage advertising landscape.² For example, while many product names and packaging may be the same as before, what's inside often has undergone substantial reductions in sugars, sodium or fat. At the same time, the nutritional density of products has been improving too. One example of a positive change is that now whole grains are used more often and in greater amounts.

The new criteria are the result of a nearly year-long intensive effort to strengthen self-regulation even further by developing strong, yet practical, uniform nutrition criteria. Since inception, CFBAI participants have been improving the nutritional composition of their products and, in some instances, their nutrition criteria. To improve the criteria *systematically* the participants have been conducting a Nutrition Science Review. This review was designed to ensure, as required by the Initiative's core principles, that the standards are consistent with established scientific and/or government standards. Thus, we particularly focused on the DGA 2010, issued in January 2011 (and before it was issued the report of the Advisory Committee for the Dietary Guidelines). The extensive review also included many other government and third-party nutrition standards or recommendations.

As this self-regulation initiative has matured it has undergone many changes. The successful development of uniform nutrition criteria is the latest in a series of significant program developments. These include a substantial expansion of its already rigorous and far-reaching requirements, harmonization of the definition of "child-directed" advertising, and a large increase in the number of participants. These enhancements are reflected in the CFBAI's current Core Principles and Program Statement.³

¹ The new criteria will be incorporated into the CFBAI's Core Principles and Program Statement, and will apply to participants that are engaging in advertising primarily directed to children under 12. Other participants will continue their commitments to not engage in child-directed advertising.

² While most participants are using nutrition standards to govern their child-directed advertising practices, some participants decided to stop engaging in child-directed advertising. These actions reduced greatly, for example, the amount of candy advertising directed to children under 12.

³ Available online at <http://www.bbb.org/us/enhanced-core-principles/>.

Part II of this White Paper provides a short history and background on the CFBAI. Part III outlines the goals and process used to develop the new criteria. Part IV summarizes how we determined what product categories and reference units to use. Part V describes what nutrition components we include in the criteria, why we include them and the rationale for the established limits and requirements. Part VI, "Looking Ahead," contains our implementation and review plans.

Figure 1 CFBAI Category-Specific Uniform Criteria

Product Category	Unit	Nutrients to Limit (NTL)				Nutrition Components to Encourage (NCTE)	Notes
		Calories	Sat Fat	Sodium	Total Sugars		
1. Juices	LSS	≤ 160	0 g	≤ 140 mg	No added sugars	≥ ½ c F/V juices	<ul style="list-style-type: none"> – A serving must contain ≥ 4 fl oz of 100% F/V juice – Sugars limited to those naturally occurring in F/V
2. Dairy products							
– Milks and milk substitutes	8 fl oz	≤ 150	≤ 2 g	≤ 200 mg	≤ 24 g	1 c dairy	<ul style="list-style-type: none"> – For LSS < 8 fl oz, NTL & NCTE to be scaled proportionately – Powder/syrup flavorings mixed with 8 fl oz non-fat milk are allowed ≤ 25 g total sugars as prepared
– Yogurts and yogurt-type products	6 oz	≤ 170	≤ 2 g	≤ 140 mg	≤ 23 g	≥ ½ c dairy <u>and</u> ≥ 10% DV calcium	<ul style="list-style-type: none"> – 6 oz (170 g) is most common single serving size – For LSS < 6 oz, NTL & NCTE to be proportionately lower
– Dairy-based desserts	½ c	≤ 120	≤ 2 g	≤ 110 mg	≤ 20 g	≥ ¼ c dairy <u>and</u> ≥ 10% DV calcium	<ul style="list-style-type: none"> – Serving sizes limited to ½ c – For LSS < ½ c, NTL & NCTE to be scaled proportionately
– Cheese and cheese products	LSS	≤ 80	≤ 3 g	≤ 290 mg	≤ 2 g	≥ ½ c dairy equivalent (provides ≥ 10% DV calcium)	<ul style="list-style-type: none"> – For LSS < 1 oz, NCTE to be scaled to ≥ ¼ c dairy equivalent and ≥ 10% DV calcium
3. Grain, fruit and vegetable products, and items not in other categories	LSS	≤ 150	≤ 1.5 g	≤ 290 mg	≤ 10 g	≥ ½ serving of F/V/D/WG or ≥ 10% DV of any essential nutrient	<ul style="list-style-type: none"> – Subcategories differentiate, on a calorie basis, among products that have a small RACC (i.e., ≤ 30 g or ≤ 2 tbsp) and/or are lighter in density (e.g., g/cup) from those with a larger RACC and/or higher density – Examples of ≤ 150 calorie products: most children's breakfast cereals, crackers, & pretzels – Examples of > 150-200 calorie products: denser breakfast cereals (e.g., shredded wheat), waffles, & vegetable products with sauces
	LSS	> 150-200	≤ 2 g	≤ 360 mg	≤ 12 g		
4. Soups and meal sauces	LSS	≤ 200	≤ 2 g	≤ 480 mg	≤ 6 g	≥ ½ serving of F/V/D/WG or ≥ 10% DV of any essential nutrient	<ul style="list-style-type: none"> – Tomato-based products allowed ≤ 12 g of total sugars/LSS to include sugars naturally occurring in tomatoes & those added to balance product pH
5. Seeds, nuts, and nut butters and spreads	1 oz or 2 tbsp	≤ 220	≤ 3.5 g	≤ 240 mg	≤ 4 g	≥ 1 oz protein equivalent	<ul style="list-style-type: none"> – For LSS < 1 oz or 2 tbsp, NTL & NCTE to be scaled proportionately
6. Meat, fish, and poultry products	LSS	≤ 120	≤ 2 g	≤ 480 mg	≤ 2 g	≥ 1 oz equivalent of meat, fish, or poultry, <u>and</u> ≥ 10% DV of any essential nutrient	<ul style="list-style-type: none"> – For LSS ≤ 1 oz, NTL reduced to ≤ 60 kcal, ≤ 1 g sat fat, ≤ 240 mg sodium and ≤ 1 g total sugars
7. Mixed dishes	LSS	≤ 280	≤ 2.5 g	≤ 540 mg	≤ 10 g	≥ ½ serving of F/V/D/WG or ≥ 10% DV of <i>two</i> essential nutrients	<ul style="list-style-type: none"> – Products include casseroles, burritos, pizzas, & sandwiches that do not meet FDA/USDA definition for <i>main dishes</i> – Items that contain ≤ 200 kcal and meet NTL criteria may qualify if they contain ≥ ½ serving of F/V/D/WG or ≥ 10% DV of any essential nutrient

Product Category	Unit	Nutrients to Limit (NTL)				Nutrition Components to Encourage (NCTE)	Notes
		Calories	Sat Fat	Sodium	Total Sugars		
8. Main dishes and entrées	LSS	≤ 350	≤ 10% kcal	≤ 600 mg	≤ 15 g	≥ 1 serving of F/V/D/WG or ≥ ½ serving of F/V/D/WG and ≥ 10% DV of <i>two</i> essential nutrients	– Items must meet FDA/USDA definition for <i>main dishes</i>
9. Small meals	LSS	≤ 450	≤ 10% kcal	≤ 600 mg	≤ 17/12 g (See notes)	≥ 1½ servings of F/V/D/WG or ≥ 1 serving of F/V/D/WG and ≥ 10% DV of <i>three</i> essential nutrients	– Small meals contain multiple items but do not meet FDA/USDA definition for <i>meals</i> – Meals must meet FDA/USDA definition for <i>meals</i> – Sugars from <u>one</u> qualifying milk/milk substitute, <u>or</u> qualifying yogurt/yogurt-type product, <u>or</u> qualifying fruit (i.e., without added sugars) <u>or</u> qualifying F/V juice are not counted in the 17 g or 20 g total sugars limits
10. Meals (entrée and other items including a beverage)	Meal	≤ 600	≤ 10% kcal	≤ 740 mg	≤ 20/15 g (See notes)	≥ 2 servings of F/V/D/WG or ≥ 1½ servings of F/V/D/WG and ≥ 10% DV of <i>three</i> essential nutrients	– When <u>two</u> qualifying items are present, the sugars from both items are not counted in the total sugars limit, but the limits (to account for all other items) are reduced to 12 g (small meals) and 15 g (meals) – All other NTL criteria for small meals and meals (calorie, sat fat, and sodium limits) must be met

Trans fat. The criteria for *trans* fat is 0 g labeled for all categories. For foods in the meat and dairy categories served as individual foods or as part of composite dishes or meals (e.g., soups, mixed dishes, entrees, meal-type products), naturally occurring *trans* fats are excluded.

Exemptions

- Sugar-free mints and gum.
- The following products also are exempt from the nutrient criteria specified above, except as indicated in notes to Categories 9 & 10:
 - Fruit products without added sugars;
 - Vegetable products without added fats and which meet FDA regulations for “very low sodium;”
 - Beverages, including bottled waters, that meet FDA regulations for “low calorie” and “very low sodium” (diet sodas are excluded from this exemption).

Abbreviations and Glossary

DV: Daily Value.

Essential Nutrients: Those occurring naturally in foods (or that are added to foods to meet standards of identity or to restore nutrients lost in processing), and for which a DV has been established. If fortification is used to meet the criteria, the nutrient must be a DGA 2010 nutrient of concern (calcium, fiber, potassium, vitamin D) or a nutrient that is required to be listed on the Nutrition Facts Panel (iron, vitamins A & C).

F/V/D/WG: Any combination of fruits, vegetables, non/low-fat dairy, and/or whole grains.

LSS: Labeled serving size.

NA: Not applicable.

NCTE: Nutrient components to encourage are F/V/D/WG or Essential Nutrients.

NTL: Nutrients to limit are calories, saturated (sat) fat, *trans* fat, sodium and total sugars.

Qualifying F/V Juice: Any fruit or vegetable juice or blend that contains no added sugars and meets the requirements of Category 1.

Qualifying Flavored Milk/Milk Substitute/Yogurt/Yogurt-type Product: These are products that meet the Category 2 criteria for milk/milk substitutes, or yogurt/yogurt-type products.

RACC: Reference amount customarily consumed.

Serving(s): See USDA Food Group Serving Equivalents.

Total Sugars: Include naturally occurring and added sugars.

II. Background

In 2006 BBB and 10 (now 17) leading food and beverage companies launched the CFBAI.⁴ This Initiative was designed to respond to the FTC's⁵ and Institute of Medicine's (IOM)⁶ calls for self regulation to do more to address concerns about food marketing to children because of the growth in childhood obesity, and supplement BBB's existing children's self-regulation program, the Children's Advertising Review Unit (CARU).⁷ The goal of the Initiative was to shift the mix of child-directed advertising⁸ to encourage healthier dietary choices and healthy lifestyles, as the IOM had recommended. Specifically, IOM had recommended that advertising include products that contain fewer calories and that are lower in fats, sodium and sugars, and higher in nutrient content.

Each company has been responsible for developing an individual commitment (called a "pledge") that addresses the program's [Core Principles](#). For those participants that intended to continue engaging in child-directed advertising, this included establishing nutrition standards, consistent with established scientific and/or government standards and subject to BBB approval, to govern what foods they may advertise to children. The CFBAI has published annual compliance and progress reports that document the development of these standards, the changes that have occurred in advertising to children, and the improvements in the products participants advertise.⁹ It is also noteworthy that a review of the progress made in meeting the IOM Report's recommendations, conducted by leading academics, found that the food industry, through self-regulation, was the only sector that had made "some" progress (higher than all other groups that were evaluated) in implementing the Report's recommendations.¹⁰

III. The Nutrition Science Review

Although we continue to believe that "uniformity" is not essential to drive change, we acknowledge that others believe "uniformity" would be a positive development and a strengthening of the program. Accordingly, we determined in 2010 to explore the development of uniform nutrition criteria as a way to strengthen pledges and bring consistency across all companies participating in the program. At the same time, we believed that it was important to improve the criteria overall in principled and practical ways and not just adopt the least common denominator among the existing standards.

⁴ One participant, Cadbury, has been acquired by Kraft Foods, and its practices soon will be governed by the Kraft Foods pledge. At that point, the official number of participants will be 16.

⁵ The FTC recommendation emerged from a joint FTC/HHS workshop conducted in July 2005 on "Perspectives on Marketing, Self-Regulation and Childhood Obesity," and a follow up report on the workshop that FTC/HHS jointly issued in April 2006. See <http://ftc.gov/os/2006/05/PerspectivesOnMarketingSelf-Regulation&ChildhoodObesityFTCandHHSReportonJointWorkshop.pdf> at 50-51.

⁶ IOM, 2006 (IOM Report).

⁷ CARU is a BBB-administered program whose operational policies are set by the National Advertising Review Council board of directors. Since the 1970s, CARU has promoted responsible children's advertising and has issued Guidelines to help advertisers ensure that children's advertising is not deceptive, unfair or inappropriate for its intended audiences. CARU has updated these Guidelines periodically to reflect marketplace and media developments. To view the guidelines go to www.us.bbb.org/caru.

⁸ This initiative has focused on children under 12, as CARU historically has, because it is this age group that is generally considered the most vulnerable and least sophisticated. While tweens and teens may not yet have the judgment and skills of adults, and do not have all the privileges of adults, our society recognizes that 13 year olds and 7 year olds should not be treated the same. Additionally, adolescents are accorded the right to drive, hold jobs, pay taxes, get married (before age 18 throughout the U.S. with parental consent, and as young as 15 without parental consent in one state), and enlist in the services (at age 17 with permission), and adolescents may be held criminally responsible for their actions. Thus, our focus will continue to be on children under age 12. Although not a CFBAI requirement, many participants have policies on not directing advertising to children under 6 (i.e., when they are a significant percentage of the audience).

⁹ These are available on the CFBAI's website, www.bbb.org/us/children-food-beverage-advertising-initiative.

¹⁰ Kraak *et al.*, 2011.

To inform its activities, the CFBAI and a participant committee, comprising the top nutritionists and scientists from many participants (Nutrition Science Review committee or NSR committee), reviewed dietary recommendations, including the DGA 2010; regulations for nutrition labeling and nutrient content claims for foods and beverages; and recommendations for nutritional criteria for foods marketed directly to children, foods sold in competition with school meals, and school breakfast and school lunch programs; and standards of identity for foods. The NSR committee also was mindful of the Interagency Working Group's (IWG) December 2009 proposed tentative nutrition standards for marketing to children.¹¹ Appendix Table A1 lists the recommendations by governmental agencies, reports published by IOM, and other third-party organization standards that the committee reviewed.¹²

On February 2, 2011 the CFBAI held a Nutrition Science Review Conference for its participants and guests (representatives of the Canadian and EU Pledge programs and food-related trade associations). Leading government and other experts discussed various aspects of the DGA 2010, current IWG thinking on nutrition standards for marketing to children, proposed new requirements for school meals and sodium reduction strategies, and front-of-package nutrition rating systems and symbols (Appendix Table A2).

All of the respected sources that we consulted had commonalities and differences. No one set of criteria provided a complete and realistic roadmap for uniform criteria for the CFBAI's participants with their broad and differing product portfolios. For example, FDA's definition of "healthy" requires many products to have no more than one gram of saturated fat per reference amount customarily consumed (RACC) and no more than 15% of calories from saturated fat. Yet products that virtually everyone would agree are healthy in common parlance, such as low-fat milk, eggs, and peanut butter, naturally contain more than one gram of saturated fat. Another issue with the "healthy" definition is that it does not include calorie, *trans* fat or sugars limits. Thus, use of the "healthy" definition overall was not workable. At the same time, the sodium limits in the definition were useful guideposts for the committee's work.

As a result of the committee's review, the CFBAI and its participants have created nutrition criteria for 10 product categories that have been informed by many relevant sources. The new criteria are generally stronger than the current company-specific standards in at least five ways. First, the new criteria eliminate a product qualifying based solely on meeting a "reduced" claim (i.e., $\geq 25\%$ less sodium). Second, they eliminate a product qualifying solely because it is packaged in a portion controlled, 100-calorie pack. Third, they include calorie (meaning kilocalories or kcal) limits for all categories. Fourth, they include nutrients to limit (NTL) criteria for key items: saturated fat, *trans* fat, sodium and total sugars. Fifth, they include nutrition components to encourage (NCTE) (food groups and/or nutrients) for all product categories. Currently, not every participant has a standard for each item – calories, NTL and NCTE – so the new criteria fill those gaps.

In setting the limits, we were mindful of the current marketplace, including competitive issues, the state of technology and food science, and companies' experiences with product changes and taste preference panels. We also considered whether a somewhat less restrictive limit for a NTL might encourage the development of products or meals that may

¹¹ Although the NSR committee's work was substantially completed by the time the IWG issued its April 2011 request for comment on its Proposed Nutrition Principles for Food Marketed to Children, we also reviewed the revised principles.

¹² Our review focused on U.S. sources. Because nutritional needs, taste preferences, and food availability vary in different countries, the CFBAI's nutrition criteria were designed solely to improve further child-directed advertising by CFBAI participants in the U.S.

include more foods groups to encourage and that may be even more nutritious overall (e.g., inclusion of nutrient-rich milk, with its naturally occurring sodium, rather than 100% juice which has virtually no sodium, with meals that already contain fruit). Accordingly, the criteria for some NTL in some product categories may exceed what any one participant may have set previously but the criteria overall are stricter rather than more lenient. Also some participating companies may elect to adhere to even stricter nutrition criteria than the CFBAI criteria.

Although the criteria are intended primarily to operate in the background to determine whether a product may qualify for advertising to children, as a self-regulation program the NSR committee believed it was important to make the criteria as transparent and user friendly as possible. This could encourage other food (or media) companies in the U.S. to use the criteria to guide their child-directed advertising practices, and make it easier for consumers and interested third-party organizations to evaluate products, particularly with regard to NTL.¹³ Accordingly, these criteria are easier to use and even more transparent than the current standards. For example, the NTL criteria primarily are based on information that is available on Nutrition Facts Panels (NFP). As a result, one significant difference between the new criteria and the current standards is the exclusive use of *total* sugars, rather than *added* sugars as the criteria. Total sugars are listed on required NFPs for products and thus are readily discernable. (Total sugars of course include naturally occurring sugars in dairy and fruits and thus the limits may be higher in some categories than if the limit had been based only on added sugars.) Additionally, the limits for sugars are listed in grams, rather than percentages. This will make the standards easier to understand by replacing the multiple ways sugars limits are currently expressed (e.g., $\leq 25\%$ of kcal added; $\leq 35\%$ total by weight; $\leq 25\%$ total by weight). Finally, while mindful of the use of RACC in some regulatory settings, we determined that tying limits and requirements to a product's labeled serving size, which is based on RACC, would be more consumer friendly, and eliminate the need to refer to the Code of Federal Regulations and to have a calculator to determine what the limits are for nutrients for any particular product as packaged.

In terms of implementation, the participants commit to develop plans to reformulate products they intend to continue to advertise to children under the age of 12 years to meet the new standards by the effective date. However, given the aggressive timeline for implementation,¹⁴ these plans may be met with unexpected circumstances. Rather than adopt a later date for implementation of these standards to account for this possibility, we have provided for a limited extension process. In the event a participant is unable to implement a planned reformulation for a particular product by the effective date due to unexpected circumstances, the participant must advise the program administrator of the circumstances in advance of December 31, 2013 and may request an extension of time, not to exceed twelve months from the effective date, to implement the reformulation for that product. Extensions will not be granted for new product introductions planned for after the effective date.

Finally, the participants recognize that no matter how thoughtful and carefully set, criteria and standards inevitably are subject to criticism because the criteria may both exclude and include products that others find appropriate or distasteful for advertising to children. Although we have made every effort to avoid and minimize such results, we anticipate that

¹³ Currently, to meet those goals, CFBAI publishes a summary of the participants' nutrition standards and a list of the products that meet those standards that participants may wish to show in child-directed advertising. This allows the public to easily understand what the participants are committing to and what those commitments translate into in terms of actual products. The new criteria will make the commitments even clearer.

¹⁴ The timeline for implementation is two and a half years, or 30 months from the announcement of the criteria. Typically, companies' timelines for major strategic changes such as significant product reformulations or dramatic changes in marketing plans are a minimum of three years.

could happen. We urge those interested in food marketing to children to focus on the participants' achievement of strong, category-specific common criteria that will lead to many further improvements in the products advertised to children.

Additionally, we have built in two mechanisms for dealing with such circumstances. One mechanism is intended to deal with individual products that might be problematic. The other is to deal with scientific developments and innovation.

First, as is the case now, participants must advise the program administrator of the products to be advertised in advance and the participants further agree that the administrator will have the right to review and question the inclusion of products that may meet the letter of the criteria but not their spirit. If, in the administrator's judgment, the inclusion of a product undermines the soundness of the program, the administrator will request that the product not be included, and ultimately may terminate the company's participation in the program if an appropriate solution cannot be reached.¹⁵

Second, the participants agree that these criteria will be reviewed systematically from time to time, such as when new Dietary Guidelines for Americans are issued. During such reviews the criteria may be adjusted to take into account any new guidance, or further strengthened, if appropriate, to take into account, for example, new food science technologies to reduce nutrients to limit while retaining taste, flavor, texture and microbiological stability. Additionally, new categories could be developed to reflect innovation and new products in the marketplace.

IV. Product Categories and Reference Units

The new criteria are organized around 10 product categories. Product categories, rather than a broad one-size-fits-all approach, have many advantages. First, criteria can be tailored appropriately to reflect the inherent nutritional nature and functional characteristics of a particular product category and not be unnecessarily high for other categories. For example, regular peanut butters, a healthy food in common parlance, generally contain about three grams of saturated fat per serving. Setting a saturated fat limit for a general category of individual foods that would include peanut butters would be higher than appropriate for other individual foods such as cereals, or would require creating an exemption for peanut butters. Second, category-specific criteria allow limits to be set to create meaningful, but realistic goals for food categories bearing in mind food science and technology challenges as well as the need for a step-wise approach to build consumer acceptance of foods that have lower amounts of fat, sugars and sodium.

There are many different ways to group food and beverage items into product categories and many different considerations to factor in such as typical serving sizes and product density.¹⁶ The CFBAI started with the FDA (and USDA) categorization of foods as individual foods (including meat, poultry, fish, and game meats), main dishes, and meals and the serving sizes or RACCs associated with such categories. We found, however, that some products typically advertised to children did not fit well into the FDA/USDA definitions of entrée/main dish and meal. Accordingly, the CFBAI created 10 product categories with nutrient criteria appropriate for foods within any one category and subcategories that reflect

¹⁵ The contracts between BBB and each participant provide that BBB can terminate participants. Under the contracts, BBB will give participants at least 30 days prior written notice before termination for cause and 60 days prior written notice for termination without cause. (The participants also have the right to terminate their participation upon prior written notice.)

¹⁶ For example, individual food products vary considerably in product density (gram per volume) and/or RACC, e.g., from 30 g for crackers and cheeses to 15–55 g for breakfast cereals and ~1 cup for juices, milks, mixed dishes, and soups. 21 C.F.R. § 101.12.

the inherent nature of various foods (e.g., grain vs. dairy products) and their general calorie and weight/product density/serving size ranges (Table 1).

The dairy products category contains four subcategories—milks and milk substitutes, yogurts and yogurt-type products, dairy-based desserts, and cheese and cheese products—to address important, inherent differences in nutritional content among items within the subcategories.

The category for grain, fruit and vegetable products, and items not in other categories contains two subcategories to address differences in nutritional content related to product density and/or RACC within this category. Group 1 (products ≤ 150 calories) includes, for example, breakfast cereals with a low product density (i.e., < 43 g per cup) and crackers; Group 2 (> 150 to 200 calories) includes cereals with a higher product density (i.e., ≥ 43 g per cup) and grain, fruit, and/or vegetable products with a large RACC (e.g., waffles, and vegetables with sauces).

A small meals category was created for products that contain multiple items and more than one food group and that fall between the weight and/or food group requirements that FDA has established for nutrition labeling and nutrient content claims for main dishes¹⁷ and meals.¹⁸ Also, a category for meat, fish, and poultry products was created even though currently there are no products in this category that are advertised to children. The intent in creating this category was to anticipate reasonably other products companies might consider advertising to children in the future. As noted, categories could be changed or added in the future to reflect marketplace developments and innovation.

The CFBAI decided that certain types of products, when marketed separately, should be exempted from nutrient criteria. These include the following:

1. Fruit products (fresh, canned, dried, refrigerated, or frozen) without added sugars;
2. Vegetable products (fresh, canned, dried, refrigerated, or frozen) without added fats and that meet FDA regulations for “very low sodium” (≤ 35 mg per RACC);¹⁹
3. Beverages, including bottled waters, that meet FDA regulations for “low calorie” (≤ 40 calories per RACC)²⁰ and “very low sodium” (diet sodas are excluded from this exemption); and
4. Sugar-free mints and gum, as these products are essentially calorie free and thus not associated with obesity.

When exempted products are included in a small meal or meal, the calories and nutrient content of the products are factored into the overall nutrient content of the small meal or meal.²¹ Fruit, vegetable, and beverage products that are not exempted must meet the nutrition criteria of the relevant product category, such as juices; milks and milk substitutes; and grain, fruit and vegetable products, and items not in other categories.

Table 1 also lists the units of reference used for each product category, i.e., the unit on which the nutrition criteria and a product’s nutrient content are based. In most cases the labeled serving size (LSS) was chosen as the basis for nutrient criteria instead of the RACC. FDA developed regulations to determine the LSS based on the RACC. In many but not all cases the LSS is the same as or close to the RACC. Therefore the CFBAI decided to base

¹⁷ 21 C.F.R. § 101.13(m).

¹⁸ 21 C.F.R. § 101.13(l).

¹⁹ 21 C.F.R. § 101.61(b)(2).

²⁰ See Appendix Table A3. 21 C.F.R. § 101.60(b)(2).

²¹ There is a limited exemption for the sugars content of exempted fruit (and certain dairy) products when part of a small meal or meal. The conditions of this exemption are discussed in Part V, A, Sugars.

criteria on LSS because that is the amount declared on the NFP and the amount upon which nutrients are disclosed on the NFP. This provides considerable transparency and consistency for consumers or third parties that are interested in understanding how the criteria work. The nutrient criteria for small meals and meals are based on the entire meal.²²

Milks and milk substitutes, yogurts and yogurt-type products, dairy-based desserts, and seeds, nuts, and nut butters and spreads each have a specified unit of measure. For products in these categories, the NTL and NCTE must be scaled appropriately for smaller LSS. The rationale for scaling is that dietary recommendations encourage consumption of dairy products and seeds/nuts while recognizing ongoing concerns about some products in these categories sometimes being too “fatty” or sometimes slightly too “sugary.” With the exception of yogurts, the specified unit closely approximates the RACC. The RACC for yogurts is 225 g (~8 oz) but the vast majority of single serving units on the market today are 6 oz (170 g).²³ Many yogurt products, particularly those designed for and advertised to children, actually have a LSS of 4 oz or less.

TABLE 1 CFBAI Product Categories and Units of Reference

Product Category	Unit	Description/Examples
1. Juices	LSS	Fruit and vegetable juices and blends that contain no added sugars
2. Dairy products		
– Milks and milk substitutes	8 fl oz	Unflavored and flavored milks, soy-based milks
– Yogurts and yogurt-type products	6 oz (170 g)	Plain and fruited yogurts, drinkable yogurts
– Dairy-based desserts	½ cup	Puddings, ice milks, frozen novelties
– Cheese and cheese products	LSS	String cheeses, processed cheese slices
3. Grain, fruit and vegetable products, and items not in other categories	LSS	Group 1: Cereals with lower density and items with a small RACC, such as crackers Group 2: Grain, fruit, and/or vegetable products with a large RACC or higher density
4. Soups and meal sauces	LSS	Soups, pasta sauces
5. Seeds, nuts, and nut butters and spreads	1 oz or 2 tbsp	Pumpkin seeds, almonds, peanuts, and nut butters and spreads
6. Meat, fish, and poultry products	LSS	Lunch meat, fish sticks, chicken
7. Mixed dishes	LSS	Single items such as casseroles, burritos, pizza, and sandwiches that do not meet FDA or USDA definition of main dish products
8. Main dishes and entrées	LSS	Single items that meet FDA or USDA definition of a main dish product
9. Small meals	LSS	Combination of items (e.g., sandwich + fruit + beverage) that does not meet the FDA or USDA definition of meal-type products
10. Meals (entrée and other items including beverage)	Meal	Combination of items that meets FDA or USDA definition of a meal-type product

V. Nutrition Components

Dietary recommendations, public health objectives, and nutrient standards for school meals consistently target reduced consumption of total calories because of concerns about overweight and obesity; saturated fat, *trans* fat, and sodium because of concerns about

²² For these two categories, because of their multiple components, we have structured the criteria to incent the inclusion of food groups to encourage for the side dish and beverage, as explained in Part V.

²³ A LSS of 8 oz is used in the NFP primarily on multi-serve, quart containers of yogurt.

cardiovascular health; and added sugars because of concerns about overall dietary quality, i.e., the relative contribution of calories versus essential nutrients. Accordingly, the CFBAI criteria include limits for these nutrition components. We determined, however, to include limits for *total* sugars, rather than *added* sugars, because limits on total sugars can effectively address concerns about added sugars (see “sugars” discussion below) and total sugars are listed on the NFP and thus are easier to apply and monitor.

The CFBAI did not establish criteria for total fat because expert groups, including the DGA 2010 (at p. 24), have determined that limiting saturated fat and *trans* fat intake is more important in influencing health. Limits on total calories, saturated fat and *trans* fat along with requirements for NCTE are in line with dietary recommendations. Also, not setting a limit for total fat hopefully will encourage the CFBAI participants, consistent with DGA 2010 recommendations (at p. 21), to include products in which saturated and *trans* fat are replaced with mono- and polyunsaturated fats. The CFBAI did not establish criteria for cholesterol because limits on saturated fat effectively limit cholesterol from many food sources.²⁴

The DGA 2010 recommend that Americans, including children, increase their intakes of fruits, a wide variety of vegetables, and fat-free and low-fat milk and milk products; consume at least half of all grains as whole grains by replacing refined grains with whole grains; and choose a variety of protein foods, including seafood, lean meat and poultry, eggs, beans and peas, soy products, and unsalted nuts and seeds (at p. 34). According to the DGA 2010, dietary intake should emphasize foods that provide more potassium, dietary fiber, calcium, and vitamin D, which have been identified as nutrients of public health concern in American diets.

To be consistent with and to promote the DGA 2010, the CFBAI established criteria for NCTE for all product categories. The NCTE requirements include a minimum amount of one or more food groups the DGA 2010 recommended for increased consumption, one or more essential nutrients, and/or a combination of both.

In general, the NTL and NCTE criteria progress from a lower amount to a higher amount as the relative contribution of a product category to the total diet increases, e.g., from an individual item such as a grain, fruit, or vegetable product to a mixed dish, small meal, and meal. Criteria for NTL are “maximum levels” and some individual products in the CFBAI already have nutrient amounts below at least one of the maximum levels for their category. Conversely, criteria for NCTE are minimum requirements, and many products in the CFBAI will exceed the minimum requirements.

A. Nutrition Components to Limit

Calories

Daily energy requirements for children (and adults too) vary considerably based on age, gender, and activity level, from 1200 calories for sedentary boys and girls age 4 years to 2400 calories for active boys age 12 years. The CFBAI relied extensively on the IOM report on *Nutrition Standards for Foods in Schools: Leading the Way Toward Healthier Youth* (IOM

²⁴ Based on its review of the DGA 2010, the IWG did not include recommendations for cholesterol or total fat in its nutrition principles. (IWG 2011 at p. 11). Specifically, it noted that “The 2010 DGA do not include any recommendation for limiting consumption of total fat . . . recognizing that the types of fatty acids consumed are more important in influencing the risk of disease than is the total amount of fat in the diet.” (IWG 2011 at p. 11). Thus the IWG proposed limits for saturated and *trans* fat. Similarly, according to the 2010 Dietary Guidelines “the potential negative effects of dietary cholesterol are relatively small compared to those of saturated fat and *trans* fat.” (IWG 2011 at p. 11).

School Foods report; IOM, 2007) (Appendix Table A3) and the IOM report on *School Meals: Building Blocks for Healthy Children* (IOM School Meals report; IOM, 2010a) (Appendix Table A4) for guidance on developing calorie limits. The recommendations in these reports were compared to the recommendations of other third parties and adjusted up or down to develop calorie criteria specific to each of the 10 CFBAI product categories (Table 2).

While the calorie needs of children vary, as noted, the participants' product advertising, however, is generally not so finely honed and instead is directed broadly at children under 12 (or in many cases at children 6-11). Just as a common serving of cereal (30 g) may be too large for some children and too little for others, 600 calories for meals may exceed the calorie needs of younger children but be insufficient for older or more active children. Accordingly, the calorie limits for meals (breakfast, lunch or dinner) and the other product categories are of necessity based on averages and midpoints.²⁵ They do not replace parental guidance about what is the appropriate amount of food per occasion for any particular child.

TABLE 2 CFBAI Criteria for Calories

Product Category	Calories	Rationale
1. Juices	≤ 160	Calorie content of 248 mL (~8 fl oz). ²⁶ Reflecting the upper calorie content of 100% juices with no added sugars. Most products will contain less ²⁷
2. Dairy products		
– Milks and milk substitutes	≤ 150	Saturated fat, <i>trans</i> fat, and total sugars criteria and specified unit of reference serve to cap calories
– Yogurts and yogurt-type products	≤ 170	Same
– Dairy-based desserts	≤ 120	Same
– Cheese and cheese products	≤ 80	Saturated fat and <i>trans</i> fat criteria serve to cap calories
3. Grain, fruit and vegetable products, and items not in other categories	≤ 150 > 150– 200	Group 1: Below limit of IOM School Foods report recommendation for Tier 1 foods Group 2: Upper limit based on IOM School Foods report recommendation for Tier 1 foods
4. Soups and meal sauces	≤ 200	IOM School Foods report recommendation for Tier 1 foods
5. Seeds, nuts, and nut butters and spreads	≤ 220	Calorie limit in nut butters, spreads, nuts and seeds determined by standard labeled serving size
6. Meat, fish, and poultry products	≤ 120	Based on calories inherent in 2 oz equivalent of meat, fish and poultry products where saturated

²⁵ We did not set minimum calorie limits for the various categories or generally, except that dairy products, meat products, and mixed dishes that contain no more than 200 calories (see Table 6 below) require the scaling of NTL and/or NCTE for items below the calorie caps. We recognize that for most products in other categories there could be range of calorie levels. Overall, the NTL are reasonable whether a product has 110 calories or 150, and the NCTE act as basic guard rails to prevent problems (e.g., a product far below a calorie cap but at the limit of the NTL). Also, some products at the calorie cap will be below the NTL and above the NCTE and the differences are likely to be evened out over a range of products. Thus, we concluded that for most products the complexity of scaling outweighed the benefits. This approach also is consistent with a number of respected third-party standards that set calorie limits, but not minimums (See Appendix Tables A3, A7, A10 and A12). Additionally, as noted above, the administrator may challenge the inclusion of products that do not meet the spirit of the criteria.

²⁶ Some sparkling juice products are packaged in cans with just slightly more than 8 fl oz—i.e., 248 mL.

²⁷ We note that the American Academy of Pediatrics (AAP) recommends limiting 100% juice consumption based on the potential association between 100% juice intake and obesity in children (4-6 oz for 1-6 year olds and 8-12 oz for 7-18 year olds). However, we also note the lack of conclusive evidence linking 100% juice intake to adiposity in children. While a limited number of studies have found a positive association, the association is limited to unusually large amounts of juice (> 12 fl oz/day) and/or apple juice intake only. Longitudinal and nationally representative cross-sectional studies have found no association. (ADA, 2011). Further, per National Health and Nutrition Examination Study (NHANES) data, the average daily intake of 2-11 year olds in the U.S. is just 4.1 fl oz/day, well within AAP's recommendations. (Nicklas *et al.*, 2008). Although the calories in nutrient-rich, dark-colored 100% juices (e.g., grape, pomegranate, etc.) are on the higher side of the calorie range for 100% juices, we believe it is important to include all 100% juices. The IWG proposes neither a calorie nor a serving size limit for 100% juices.

			fat amount is aligned with the regulatory definition of "extra-lean" meat
7. Mixed dishes	≤ 280		IOM School Foods report recommendation for Tier 1 foods adjusted up to account for greater contribution to a meal
8. Main dishes and entrées	≤ 350		Limit for meals adjusted down by 250 calories to allow for additional items to accompany the main dish
9. Small meals	≤ 450		Intermediate to limit for main dishes and meals; midpoint of IOM school breakfast minimum recommendation for ages 5-10 years and maximum for 11-13 years ²⁸
10. Meals (entrée and other items including beverage)	≤ 600		Slightly below midpoint (625 calories) of IOM school lunch minimum recommendation for ages 5-10 years and maximum for 11-13 years ²⁸

Saturated Fat

The NSR committee reviewed FDA's saturated fat criteria for "low," "healthy," "lean," and "extra lean" and disclosure amounts for making nutrient content claims (Appendix Tables A5 and A6). We considered the criteria for low saturated fat (≤ 1 g per RACC and ≤ 15% of calories for individual foods) unrealistic, and criteria based on the FDA disclosure amounts²⁹ for saturated fat overly liberal. For example, products with eggs, nuts and vegetable oils often might naturally contain more than one gram saturated fat and low-fat milk contains 1.5 grams. Therefore the NSR committee considered saturated fat criteria for "lean" and "extra lean" claims as well as recommendations from other sources (Appendix Table A7).³⁰ Table 3 lists the saturated fat criteria for each of the CFBAI product categories and subcategories, and the basic rationale for each limit. Below the table we provide additional information for the two categories with the highest absolute limits of saturated fat (3 and 3.5 grams).

TABLE 3 CFBAI Criteria for Saturated Fat

Product Category	Saturated Fat	Rationale
1. Juices	0 g	Fruit and vegetable juices do not contain saturated fat
2. Dairy products – Milks and milk substitutes	≤ 2 g	Less stringent than "low/healthy" but more stringent than disclosure amount; includes inherent saturated fat content of 1% fat milk plus amount that may be in chocolate flavorings (1.5 to 2 g/8 fl

²⁸ We also considered USDA's proposed regulations for school meals. Because the proposed regulations, which were issued after much of the NSR committee's work was completed, are substantially similar to the IOM School Foods report, we have primarily retained our references to the IOM School Foods report.

²⁹ The IWG proposal notes that the IWG "is open to considering alternatives drawn from federal food labeling regulations defining the nutrient content claim 'healthy,' *federal regulations establishing disclosure levels for certain nutrients in connection with other nutrient content claims*, or the disqualifying nutrient levels used for health claims." IWG 2011 at p. 6 (emphasis added). "Disclosure amounts" (i.e., 20% of the DV) are amounts of a nutrient that FDA considers "high," and was the basis for how the IWG calculated the 13 grams added sugar limit in its December 2009 proposal (and in its April 2011 proposal). Transcript from FTC Forum, titled "Sizing Up Food Marketing and Childhood Obesity." Schneeman at p. 228, lines 16-25 (IWG 2009b). See also n.38 and accompanying text, below, and IWG 2011 at p. 12. FDA requires a company to make a "disclosure" statement calling the consumer's attention to one or more nutrients in a food that may increase the risk of a disease or health condition that is diet related when the company is making a nutrient content claim for the product. The disclosure statement is required when a food contains fat, saturated fat, cholesterol or sodium in excess of specified levels (20% of the Daily Value for those nutrients for individual food products and higher amounts for main dishes and meal products) for the RACC, per labeled serving, or for foods with small serving sizes, per 50 grams. The disclosure statement identifies the nutrient(s) at issue (e.g., "See nutrition information for sodium content").

³⁰ We note that the DGA 2010 recommend consumption of meat and poultry in *lean*, not *extra lean* forms (e.g., at p. 38).

		oz)	
	– Yogurts and yogurt-type products	≤ 2 g	Less stringent than “low/healthy” but more stringent than disclosure amount
	– Dairy-based desserts	≤ 2 g	Less stringent than “low/healthy” but more stringent than disclosure amount
	– Cheese and cheese products	≤ 3 g	Less stringent than “low/healthy” but more stringent than disclosure amount; includes inherent saturated fat content of 2% milk
3.	Grain, fruit and vegetable products, and items not in other categories	≤ 1.5 g	Group 1: Less stringent than “low/healthy” but more stringent than disclosure amount; consistent with IOM School Foods report recommendation (i.e., < 10% of calories based on category calorie cap)
		≤ 2 g	Group 2: Same
4.	Soups and meal sauces	≤ 2 g	Less stringent than “low/healthy” but more stringent than disclosure amount; consistent with IOM School Foods report recommendation (i.e., < 10% of calories based on category calorie cap)
5.	Seeds, nuts, and nut butters and spreads	≤ 3.5 g	Limit based on saturated fat content of peanut butters and peanut <i>spreads</i> formulated without partially hydrogenated vegetable oil
6.	Meat, fish, and poultry products	≤ 2 g	Aligned with FDA/USDA “extra lean” definition
7.	Mixed dishes	≤ 2.5 g	Less stringent than “low/healthy” but more stringent than disclosure amount; consistent with IOM School Foods report recommendation (i.e., < 10% of calories based on category calorie cap)
8.	Main dishes and entrées	≤ 10% kcal	Consistent with “low/healthy” and IOM School Meals report recommendation
9.	Small meals	≤ 10% kcal	Consistent with IOM School Meals report recommendation
10.	Meals (entrée and other items including beverage)	≤ 10% kcal	Consistent with “low/healthy” and IOM School Meals report recommendation

Cheese and Cheese Products (3 g saturated fat limit). 2% milk (reduced-fat) cheese is the benchmark for cheese and cheese products that will qualify under the new criteria. Typically these products are > 50% by weight dairy, providing a meaningful amount of calcium and protein. Although the DGA 2010 recommend consumption of non-fat and low-fat dairy products, mostly in the form of fluid milk and yogurt, the report acknowledges that cheese remains a substantial contributor to dairy intake and little is consumed (or available) in lower-fat forms (at p. 38). In the sections on specific consumer advice and strategies, the DGA suggest, “When selecting cheese, choose low-fat or reduced-fat versions” (at p. 65). Other groups also endorse reduced-fat cheese as a food choice for children. In the Women, Infants, and Children Supplemental Food Program, cheeses that are labeled low, free, reduced, less or light in the nutrients of sodium, fat, or cholesterol are allowed. The IOM School Meals report suggests that “low-fat, reduced-fat and lite cheeses and cheeses made from skim/fat-free milk” should be among the offerings in schools (at p. 191).³¹

The 3 g level of saturated fat represents, in general, a substantial reduction from standard full-fat cheeses. These full-fat cheeses account for about two-thirds of cheese consumption in the U.S., based on 2009 USDA/ERS per capita consumption data; over half of cheeses in this category are “American-style” cheeses (e.g., cheddar cheese), followed by Colby and

³¹ The IOM School Foods report tabulation of competitive food standards across school districts, indicates that many states (including California, Connecticut, Illinois, Louisiana, New Mexico, Rhode Island, and Tennessee) permit the sale of reduced-fat cheeses in schools (at pp. 183-255). This report also notes that the Alliance for a Healthier Generation’s competitive foods guidelines for schools would allow “any reduced-fat or part-skim cheese ≤ 1.5 oz” (at p. 258).

Monterey Jack, with saturated fat at the lower levels of the range for full-fat cheeses. The remaining cheese consumption is mozzarella, already a relatively reduced-fat variety at 4 g saturated fat/serving. For this cheese type the new criterion represents a smaller but still significant reduction in saturated fat.

In conjunction with the relatively low calorie limit for cheese and the nutrient density of the product, the move to a reduced-fat cheese, with lower saturated fat content, represents a significant step in public health terms. Further, palatable reduced-fat cheeses are available in the marketplace with current technologies and provide a reasonable choice as producers develop acceptable lower fat varieties consistent with DGA 2010 goals.

Seeds, Nuts, and Nut Butters and Spreads (3.5 g saturated fat limit). The DGA 2010 encourage consumption of seeds and nuts because of their high level of heart healthy unsaturated fats. However, these foods inherently contain some saturated fatty acids too. Accordingly, for Category 5, the saturated fat level is based on the typical content of peanut butters listed in the USDA National Nutrient Database for Standard Reference Release 23. The saturated fat content of smooth peanut butters ranges from 3.0 to 3.3 g per 2 tablespoons (RACC), which would appear on the NFP as 3.0 and 3.5 g saturated fat per serving.³² Therefore the saturated fat limit for Category 5 was set at no more than 3.5 g per serving to accommodate both standard of identify peanut butters and peanut butter spreads.

Trans Fat

The DGA 2010 recommend that *trans* fatty acid consumption be kept as low as possible (at p. 21), and many third parties recommend that products contain no *trans* fat (Appendix Table A8). However, the DGA 2010 also note that natural *trans* fatty acids are present in meat, milk and milk products and their elimination is not recommended because of potential implications for nutrient adequacy (at p. 26). Rather, consuming fat-free or low-fat milk and milk products and lean meats and poultry will reduce the intake of natural *trans* fat.

Thus the CFBAI criteria for *trans* fat is 0 g labeled (i.e., products must contain less than 0.5 g *trans* fat per LSS). For foods in the meat and dairy categories served as individual foods or as part of composite dishes or meals (e.g., soups, mixed dishes, entrées, meal-type products), naturally occurring *trans* fats are excluded.

It is noteworthy that food industry reformulation efforts in response to scientific recommendations and *trans* fat labeling regulations have led to a dramatic decrease in *trans* fat intake in the U.S. population (from 4.3g/d in 2003 to 1.3g/d). (Doell *et al.*, 2011. See also DGA 2010 at p. 26).

Sodium

Similar to saturated fat, the NSR committee considered FDA sodium criteria for “low,” “healthy,” and disclosure amounts for making nutrient content claims (Appendix Table A9) as well as sodium recommendations from other sources (Appendix Table A10) including the IOM School Meals report (Appendix Table A11). After considering these recommendations

³² The majority of saturated fat in peanut butter and spreads is from peanuts. With peanut butter *spreads*, the hydrogenated or partially hydrogenated vegetable oils (as specified by the standard of identity) that are used as a stabilizing agent to prevent separation are replaced with tropical oils. These oils provide a similar functionality. The saturated fat content of these spreads, however, is within the 3.0 to 3.5 g saturated fat range of typical peanut butters.

along with taste preferences, feasibility, functionality, and microbial safety issues,³³ the CFBAI developed criteria for sodium (Table 4) that are both reasonable and represent significant but gradual step-wise reductions. Gradual sodium reduction is essential for acceptability (IOM 2010b).

In general, the CFBAI limits are reflective of the sodium limits in FDA’s definition of “healthy.” An exception is the criterion for meals. Although the 740 mg sodium criterion is higher than the “healthy” level, it is considerably lower than the disclosure limit FDA set for meals (960 mg), and the limits contained in respected third-party standards, which range from 770 to 1000 mg (See Appendix Table A10).

In addition, after reviewing existing meals and the sodium reduction efforts that already have taken place, and considering future product development we are hopeful that this limit will incent the development of meals that might be even healthier overall. For example, currently some advertised meals meet a 600 mg sodium limit, but include calcium-fortified apple juice, not milk, as part of the meal bundle that also includes apples. Even though there have been and continue to be efforts to reduce the sodium in the entrée and other meal items, the naturally occurring sodium in milk (~120 mg per 8 fl oz) along with the sodium in the entrée could make a meal bundle exceed 600 mg (See Figure 2).³⁴

Figure 2 Sodium Examples: BK Kids Meal



Finally, the need for step-wise reductions and transition periods is well recognized. For example, the need for a transition period to lower sodium limits, particularly for meals, is reflected in the IOM School Meals sodium recommendations of ≤ 640 mg for 5–9 year-olds and ≤ 710 mg for 10–13 year-olds for school lunches to be met by 2020 (IOM, 2010a). In contrast, the CFBAI criteria will be implemented no later than the end of 2013.³⁵

The CFBAI criteria for sodium (and other NTL and NCTE) also will be reviewed when the Dietary Guidelines 2015 are issued along with any data regarding efforts to implement the recommendations of the IOM report on *Strategies to Reduce Sodium Intake in the United*

³³ Sodium reduction is one of the most challenging issues to tackle because sodium is used to add/enhance flavor, improve texture, act as a preservative and serve as a thickener. (IOM 2010b). Finding suitable and affordable alternatives is proving difficult, as is garnering consumer acceptance of lower sodium products.

³⁴ Other meals that might be offered could include meat, fish or poultry products with up to 480 mg sodium. Some meals could include bread, cheese, and condiments, such as ketchup, and even though each individually contains a modest amount of sodium (e.g., breads may contain sodium to retard staling and molding, and other products may include sodium as part of the leavening ingredients), collectively they may add up to nearly 600 mg leaving no room for a beverage, such as milk, that contains sodium.

³⁵ Many of the participants also are otherwise committed to reducing sodium in their product portfolios generally, and several are participating in the National Salt Reduction Initiative.

States (IOM, 2010b), the proposed rule for Nutrition Standards in the National School Lunch and School Breakfast Programs,³⁶ as well as a proposal on non-program foods (formerly “competitive” foods) in schools that is expected towards the end of 2011 in compliance with the December 2010 Healthy, Hunger-Free Kids Act.

TABLE 4 CFBAI Criteria for Sodium

Product Category	Sodium	Rationale
1. Juices	≤ 140 mg	Consistent with “low” sodium
2. Dairy products		
– Milks and milk substitutes	≤ 200 mg	Reflects sodium intrinsic to milk and sodium that is included in flavoring for milks (e.g., from the dutch processing of cocoa); less than “healthy”
– Yogurts and yogurt-type products	≤ 140 mg	Close to sodium content of protein-enriched plain, low-fat yogurts
– Dairy-based desserts	≤ 110 mg	Consistent with “low” sodium
– Cheese and cheese products	≤ 290 mg	Approximates amount for “healthy” based on RACC of 30 g or less (288 rounded to 290)
3. Grain, fruit and vegetable products, and items not in other categories	≤ 290 mg ≤ 360 mg	Group 1: Consistent with amount required for “healthy” for small RACC (288 rounded to 290) Group 2: Less than amount required for “healthy”
4. Soups and meal sauces	≤ 480 mg	Consistent with requirement for “healthy”
5. Seeds, nuts, and nut butters/spreads	≤ 240 mg	Less than amount required for “healthy”
6. Meat, fish, and poultry products	≤ 480 mg	Consistent with requirement for “healthy”
7. Mixed dishes	≤ 540 mg	Intermediary to soups and meal sauces and main dishes
8. Main dishes and entrées	≤ 600 mg	Meets requirement for “healthy”
9. Small meals	≤ 600 mg	Consistent with requirement for “healthy”
10. Meals (entrée and other items including beverage)	≤ 740 mg	Moderately higher than “healthy” but less than disclosure amount

Sugars

Several reports have recommended that Americans reduce their intake of added sugars and many third-party organizations have developed criteria for the amount of total or added sugars in food and beverage products (Appendix Table A12). The primary concern expressed by these reports relates to added sugars’ contribution of calories in certain foods with little or no naturally occurring essential nutrients, leading to decreased nutrient density and in some cases increased energy density. The effect sugar has on energy density varies, depending on whether sugar is replacing another carbohydrate (no change), replacing fat (reduces energy density), or is added to a solution (increases energy density). However, setting criteria for added sugars presents a challenge. Except for products that contain dairy, fruit, and/or vegetable ingredients, most or all of the sugars are added. Thus a total sugars criterion generally captures the concerns associated with added sugars.

Setting limits based on total sugars, rather than added sugars, aligns with FDA’s current nutrition labeling requirements for the NFP. Total sugars are reported on the NFP while added sugars are not. Added sugars content cannot be determined by analytical means because naturally occurring and added sugars are indistinguishable via chemical analysis.

³⁶ 76 Fed. Reg. 2494 (Jan. 13, 2011). See also note 28, above.

Adding to the challenge of setting a sugars criterion is that FDA has not established a Daily Value (“DV”) for either total sugars or added sugars due to a lack of scientific evidence to support a DV. In the absence of a DV, many organizations have adopted standards that limit sugars by using a percentage of total calories or percentage of weight approach. Some percentage-based approaches are for added sugars and others for total sugars. The percentages used also vary by organization (e.g., 10, 25 and 35%). Some participants also have used a percentage approach. We determined, however, that, going forward, it would be preferable to use a different criterion to avoid the problem that recommendations based on a percentage of total calories really reference the amount of sugars in a daily *diet* as opposed to individual *products*, and when applied to products may have incongruous results.³⁷ Accordingly, after reviewing the recommendations and criteria of others for added and total sugars, the CFBAI developed criteria for gram amounts of *total* sugars.

The CFBAI criteria are based on a modification of IWG’s 2009 proposal (and that it retained in its April 2011 proposal; IWG 2011) for an *added* sugars standard of ≤ 13 g added sugars per RACC and per 50 g for foods with a small RACC 30 g or 2 tablespoons (IWG, 2009a; IWG, 2009b).³⁸ Specifically, the CFBAI used the 13 g *added* sugars (per RACC) limit that the IWG developed, rounded it down to 10 g per LSS, and applied it to *total* sugars as a base sugars criterion for individual foods. In determining to use 10 g, we considered its application to products with a small RACC (30 g). For these products, a 13 g added sugars limit means ≤ 8 grams. We deemed this amount impractical for the foreseeable future for small RACC products overall. At the same time we considered 13 g, if the small RACC rule were overlooked, too high. Based on our review of products currently advertised, we determined that 10 g would provide ample challenges for the participants to meet across product lines, and thus, as a judgment call, set 10 g as our base level.³⁹

The 10-g base criterion for individual foods then was adjusted down or up depending on the nature of specific product categories and certain types of products within some categories (Table 5). The 10-g base was adjusted to 15 g for main dishes and a base amount of 20 g for meals, which are 1.5 times and 2 times the amount for individual foods, respectively. This follows the logic FDA used in setting disclosure amounts for individual foods⁴⁰ (20% DV),⁴¹ main dishes (30% DV), and meals (40% DV).⁴² A base amount of 17 g total sugars was set for small meals, which is intermediary to the amount for main dishes and meals.

The total sugars criteria for some product categories were based on other criteria as described in Table 5. For example, the amount of total sugars in milks and yogurts was based on or derived from the IOM School Foods report recommendations and the IOM School Meals report’s recommendation for milk (Appendix Table A12). More detail about the specific limits for key categories is provided below Table 5.

³⁷ For example, a low-calorie beverage (≤ 40 calories) may contain 10 g of added and/or naturally occurring sugars, which would represent 100% of total calories or $\sim 4\%$ of total volume. The same 10 g in a solid food product that contains 120 calories per 40 g would represent 33% of calories and 25% of total weight.

³⁸ See also n.29 and accompanying text, above.

³⁹ A 10 grams total sugars criterion also represents a meaningful decrease from the 12 grams added sugars limit that an advocacy group previously hailed as an appropriate limit for children’s cereals.

⁴⁰ See n.29, above, noting that the IWG is open to alternatives that might be based on “disclosure” amounts.

⁴¹ 58 Fed. Reg. 2478 at 2493 (Jan. 6, 1993).

⁴² *Id.* at 2495.

TABLE 5 CFBAI Criteria for Total Sugars

Product Category	Total Sugars	Rationale
1. Juices	No added sugars	Only naturally occurring sugars in fruits and vegetables allowed
2. Dairy products		
– Milk and milk substitutes	≤ 24 g	Ready to Drink milk: Derived from IOM School Foods report recommendation; adjusted slightly to reflect formulation and marketplace challenges
	≤ 25 g	Powder/syrup flavoring mixed with 8 fl oz non-fat milk are allowed ≤ 25 g total sugars as prepared; based on naturally occurring lactose and added sugars
– Yogurts and yogurt-type products	≤ 23 g	Based on IOM School Foods report recommendation; scaled down from 8 oz to 6 oz (170 g) serving
– Dairy-based desserts	≤ 20 g	Base on minimum amount needed to control ice crystal formation
– Cheese and cheese products	≤ 2 g	Naturally occurring lactose content
3. Grain, fruit and vegetable products, and items not in other categories	≤ 10 g	Group 1: Derived from the IWG added sugars proposal for individual foods
	≤ 12 g	Group 2: Derived from the IWG added sugars proposal for individual foods; consistent with WIC requirements for breakfast cereals
4. Soups and meal sauces	≤ 6 g	Based on IWG added sugars proposal for individual foods
	≤ 12 g	Products containing tomato-based ingredients; allows for naturally occurring sugars as well as added sugars to balance product pH
5. Seeds, nuts, and nut butters/spreads	≤ 4 g	Based on IWG added sugars proposal for individual foods with small RACC and standard peanut butter formulations
6. Meat, fish, and poultry products	≤ 2 g	Based on the functional and flavor role sugars play in these products, primarily as a component of carrier systems for flavorings
7. Mixed dishes	≤ 10 g	Derived from the IWG added sugars proposal for individual foods; intermediary to <i>soups & meal sauces</i> and <i>main dishes</i>
8. Main dishes and entrées	≤ 15 g	Derived from the IWG added sugars proposal for individual foods adjusted for <i>main dishes</i> (1.5x individual foods)
9. Small meals	≤ 17/12 g	Intermediate amount between criteria for <i>main dishes</i> and <i>meals</i> ; <ul style="list-style-type: none"> – Sugars from <u>one</u> qualifying milk/milk substitute, <u>or</u> qualifying yogurt/yogurt-type product, <u>or</u> qualifying fruit (i.e., without added sugars) <u>or</u> qualifying F/V juice are not counted in the 17 g total sugars limit – When <u>two</u> qualifying items are present, the sugars from both items are not counted in the total sugars limit, but the limit (to account for all other items) is reduced to 12 g – All other NTL criteria for small meals (calorie, sat fat, and sodium limits) must be met
10. Meals (entrée and other items including beverage)	≤ 20/15 g	Derived from the IWG added sugars proposal for individual foods adjusted for <i>meals</i> (2x individual foods); <ul style="list-style-type: none"> – Sugars from <u>one</u> qualifying milk/milk substitute, <u>or</u> qualifying yogurt/yogurt-type product, <u>or</u> qualifying fruit (i.e., without added sugars) <u>or</u> qualifying F/V juice are not counted in the 20 g total sugars limit – When <u>two</u> qualifying items are present, the sugars from both items are not counted in the total sugars limit, but the limit (to account for all other items) is reduced to 15 g – All other NTL criteria for meals (calorie, sat fat, and sodium limits) must be met

NOTE: WIC means the Women, Infants, and Children Supplemental Food Program (USDA/FNS, 2009).

Category 2: Dairy Products.

For milk, the IOM School Foods report recommended 22 g total sugars per 8 oz of low-fat or non-fat milk, and the IOM School Meals report did not set a limit on sugars for non-fat flavored milk (but the calories would have to fit into the meal allowance). The CFBAI criteria permit 24 g total sugars for ready-to-drink milk and 25 g for flavored non-fat milk prepared from powder or syrup.⁴³ We determined to allow slightly more sugars than the IOM School Foods report recommended (and bearing in mind the absence of a limit in the School Meals report for flavored non-fat milk) because we understand that even meeting the 24/25 g limits with good tasting flavored milk will be difficult and challenging by the implementation deadline.⁴⁴ The additional two gram allowance also is reasonable considering that flavored milk is a nutrient dense food, and that it is widely acknowledged that most children are not consuming enough milk.

For yogurts, the IOM recommendation was based on 8 oz because that is the RACC. The CFBAI criterion, however, is based on 6 oz, which is the most common single serving unit size commercially available (see unit of reference discussion under Section IV).

For dairy-based desserts, while technical considerations have driven the sugars and saturated fat criteria, meeting them will impose meaningful challenges. This is a broad category, but it is dominated by ice cream and frozen yogurt products. The standard serving size or RACC for these products is ½ cup; typically these products are 50% by weight dairy and provide ¼ cup dairy per portion and are a good source of calcium and vitamin D. The CFBAI set a sugars limit of ≤ 20 g total and a saturated fat limit of ≤ 2 g per LSS, which is the minimum amount of each required technically to produce a frozen dairy dessert.⁴⁵ For reference, typical full-fat ice cream products, which represent the majority of frozen dairy desserts in typical stores, have a range of 4.5 to 10 g for saturated fat and 15 to 25 g for total sugars. Because many products currently do not meet the CFBAI criteria, they will need to be reformulated if companies wish to advertise those products in the future.

Category 3: Grain, fruit and vegetable products, and items not in other categories. As described in Part IV on product categories and Table 1, Category 3 has been divided into two subcategories, ≤ 150 calories and > 150–200 calories. These subcategories provide a differential between lighter/smaller items and denser/larger items. The calorie divide essentially serves as an approximate, but more transparent and easier to understand, surrogate for RACC and small RACC. The sugars limit has been adjusted appropriately with the lower calorie/small RACC subcategory having the 10-g base sugars limit, and the higher calorie/larger RACC foods allowed an additional two grams, for a 12 g limit.

Cereals, which are frequently advertised to children, fall into Category 3. Most child-oriented cereals contain less than 150 calories and have a 30-g RACC and thus fall into the subcategory with a 10 g total sugars limit. Although this criterion is not as low as the IWG proposal of ~ 8 grams for such products, it reflects a significant change from the 12 and 11 gram *added* sugars limits the participants currently use (which itself was a significant

⁴³ For ready-to-drink (RTD) flavored milk, the total sugars limit is ≤ 24 g with the 8 fl oz serving including both milk and the flavoring. For flavored milks prepared from powder/syrup added at the time of preparation, the total sugars limit is ≤ 25 g and the total volume includes the 8 fl of milk and the added powder or syrup flavoring. A serving of RTD flavored milk contains 11 g of naturally occurring lactose from the milk, plus 13 g of added sugar from the flavoring, for 24 g of total sugars. For flavored milk prepared from powder/syrup, there are 12 g of naturally occurring lactose in the 1 cup (8 fl oz) of milk and 13 g of added sugar from the powder/syrup flavoring, for 25 g of total sugars.

⁴⁴ Currently, many flavored milks in the marketplace contain 27-29 g sugars per 8 fl oz.

⁴⁵ The required creamy texture and desired smooth mouth feel are created by both the sugar and saturated fat content. While the sugar plays a key role in lowering the freezing point, the saturated fat helps create the whipped structural network.

change from the 15 and 16 grams of added sugars in some advertised cereals before the CFBAI was launched). The cereal category is notable for how ongoing product reformulations have been driving sugars levels down significantly.⁴⁶

Category 4: Soups and meal sauces. For products in this category the total sugars limit is 6 g, recognizing that such products are usually more savory than sweet. There is an exemption for tomato-based products, which are permitted ≤ 12 g. This level reflects the sugars inherent in tomatoes and that are added to balance the natural acidity of tomatoes.⁴⁷

Categories 9 and 10: Small meals and meals. For the products in these categories, which include multiple components, we considered the plausible sources of natural and added sugars. As a result, we set modest sugars limits, but excluded from the limits sugars in products that the DGA 2010 consider food groups to encourage (low-fat dairy, fruit without added sugars and fruit/vegetable juices or blends with no added sugars) to incent their inclusion. Thus, sugars in a qualifying milk/milk substitute,⁴⁸ or qualifying yogurt/yogurt-type product,⁴⁵ or a qualifying fruit/vegetable juice,⁴⁹ or qualifying fruit (i.e., without added sugars) are not counted towards the total sugars criterion of 17 g for small meals and 20 g for meals. When two such products are included in the meal bundle, the sugars from the second item also are not counted towards the total. In this circumstance, the base amount of total sugars is reduced to 12 g for small meals and 15 g for meals to account for sugars in the remainder of the items. This reduction drives relatively lower sugar in the remaining meal components. The calorie, saturated fat and sodium limits apply to the entire meal bundle, however, thus serving as an additional guard rail on how meal bundles are configured.⁵⁰

This unique approach for small meals and meals was necessary because of the multi-component nature of the products. Consider that fruit ($\frac{1}{2}$ c unsweetened applesauce/12 g sugars) plus flavored milk (24 g sugars/8 fl oz) could add up to 36 g of total sugars. This is a reasonable amount from these nutrient dense foods, but setting a 36 g total sugars limit for a composite small meal or meal would potentially allow excessive added sugars unless additional guardrails were put into place. This was achieved by excluding the sugar content of products providing NCTE, while setting the sugar criterion for the remaining meal components to accommodate the sugars, for example, in tomato sauce, fruit with some sugar added, vegetables, bread, peanut butter, condiments and/or a small treat.

Overall, the use of a gram limitation, based on a total sugars approach, is consistent with the NFPs, and as previously described should be easier for interested third parties and organizations to understand, but does have limitations. Specifically, for small meals and

⁴⁶ The sugars content of child-advertised cereals declined significantly from 2009 to 2011. In 2009, 38% of the cereals in the program contained 12 g sugars and 40% contained ≤ 10 g. In 2011, only 8% contained 12 g sugars, while 84% contained ≤ 10 g sugars. The changes occurred as a result of reformulation and business decisions to remove higher sugars cereals from the participant's list of products that could be advertised to children.

⁴⁷ One way that the safety of foods is maintained is by controlling their acidity or pH level. Tomato products are high acid products (pH < 4.6). This acidity, while important for food safety over the shelf life of these products, makes them sour or tart, reducing their palatability. To counter-act this undesirable taste, sugar is added to the products to help assure consumer acceptability. In general, naturally-occurring sugar in tomatoes can account for up to 60% of the total sugar content of the finished product (e.g., soup, sauce or beverage).

⁴⁸ A qualifying milk/milk substitute and a qualifying yogurt/yogurt-type mean any product that meets the CFBAI Category 2 criteria for such products.

⁴⁹ A qualifying fruit or vegetable juice means any fruit or vegetable juice or blend that contains no added sugars and meets the requirements of Category 1.

⁵⁰ Additionally, meals must meet FDA's definition of "meals," which requires that the product contain at least 10 oz of food, and at least three 40 gram servings of portions of foods or combinations of foods from at least two of four food groups (bread, cereal, rice, and pasta group; fruits and vegetables group; milk, yogurt, and cheese group; meat, poultry, fish, dry beans, eggs, and nuts group). See n. 18, above. These requirements provide yet another bumper on the overall components of a meal.

meals, because the sugars from yogurt, fruit or milk components are excluded, facially the sugars total on the NFP or provided in restaurants may exceed the CFBAI sugars criterion. In those cases, observation and qualitative evaluation of the presence of milk, yogurt or fruit would help to explain the higher sugars content.

B. Nutrition Components to Encourage

The DGA 2010 recommend that Americans, including children, increase their intakes of fruits, a wide variety of vegetables, and fat-free and low-fat milk and milk products; consume at least half of all grains as whole grains by replacing refined grains with whole grains; and choose a variety of protein foods, including seafood, lean meat and poultry, eggs, beans and peas, soy products, and unsalted nuts and seeds (p. 34). Emphasis should be on foods that provide more potassium, dietary fiber, calcium, and vitamin D, which have been identified as nutrients of public health concern in American diets. Many third-party organizations, including the IWG, have incorporated minimum criteria for fruits, vegetables, fat-free or low-fat dairy products, and whole grains for food marketed or served to children (Appendix Table A13).

To be consistent with and to promote the Dietary Guidelines, the CFBAI also has incorporated criteria for NCTE for all product categories (Table 6). Except for products in Categories 5 (nuts, etc.) and 6 (meat products) the NCTE requirement includes a minimum amount of at least a ½ serving of a food group(s) recommended for increased consumption by the Dietary Guidelines,⁵¹ at least one essential nutrient at the 10% DV level, or a combination of both. The CFBAI will use USDA Food Group Serving Equivalents (Bowman *et al.*, 2008; Appendix Table A14) for determining compliance with the NCTE requirement⁵². Essential nutrients include protein, fiber, and vitamins and minerals for which a DV has been established, including those added to meet standards of identity that have an enrichment requirement or to restore naturally occurring nutrients that are lost in processing.⁵³ If the essential nutrient requirement is met through fortification, it must be a nutrient of public health concern as specified in the DGA 2010 (i.e., dietary fiber, potassium, calcium, and vitamin D⁵⁴) or a nutrient required to be listed on the NFP (i.e., iron, vitamin A and vitamin C, in addition to dietary fiber and calcium).⁵⁵ In 1993, in final regulations implementing the

⁵¹ For example, for whole grains a half serving is 8 grams, which the DGA 2010 specifically recognize as a significant contribution to the diet. (Using 8 grams is a more definite and measurable target than ounce equivalents (used by FDA), in which weights vary with food types, especially in combination foods.) The food group requirements may be met through a mixture of food groups so long as they add up to the requisite minimums. Because the serving size of dairy-based desserts is limited to a ½ cup, a ½ serving (½ cup) of dairy for NCTE is not feasible. Instead, such products must contain at least a ¼ cup dairy equivalent and 10% DV calcium per ½ cup serving and proportionately less for smaller servings.

⁵² USDA replaced MyPyramid with MyPlate on June 2, 2011, but did not change the basis or the quantities associated with recommended cups and oz/oz equivalents that were in MyPyramid. Thus, CFBAI will use the MyPyramid Equivalents Database (the name of which has not been yet updated) to translate the amounts of foods into the number of equivalents for major groups and corresponding subgroups. We refer to these as "USDA Food Group Serving Equivalents" for the sake of convenience.

⁵³ Some products are labeled as "enriched" because they meet FDA's definition (called a standard of identity) for a type of food with a name that includes that term (such as enriched bread or enriched rice). For example, a product labeled as "enriched flour" must contain specified amounts of thiamine, riboflavin, niacin, folic acid, and iron. Since the 1930s this has been done for certain foods to replace nutrients that were lost or removed through the normal processing when certain components are removed. For example, non and low-fat milks are generally enriched with vitamins A and D because when milk is "defatted," the A and D naturally found in the milk fat are removed. See *generally*, 21 C.F.R. § 104.20; FDA, 2009.

⁵⁴ Currently, some participants include a requirement that their products contain one or more "short fall" nutrients as specified in the DGA 2005. The DGA 2010 list of nutrients of public health concern differs from the DGA 2005 as magnesium and vitamin E have been dropped and vitamin D added. Thus the new CFBAI criteria will serve to update such company-specific criteria.

⁵⁵ Fortification can contribute significantly to the intake of nutrients. (Berner *et al.*, 2001). Iron enrichment and fortification, for example, have played an important role in helping to reduce the incidence of iron deficiency anemia in key populations (e.g., young children and girls/women of childbearing age). (Sherry *et al.* 2001). For

Nutrition Labeling and Education Act, the FDA identified calcium, iron, vitamin C, and vitamin A as nutrients of public health concern and required the amount of these nutrients to be declared on the NFP.⁵⁶

The NCTE requirements increase as the calorie caps increase and as the role of the food in the overall diet (e.g., mixed dishes, entrees) takes on greater importance. Generally, the NCTE can be met either through inclusion of essential nutrients or food groups. In lower calorie foods, it may not always be feasible to include a meaningful amount of a food group to encourage. Yet such foods, through their essential nutrient content, may contribute meaningfully to a healthy diet. Although fortification has played and continues to play an important role in helping Americans avoid nutrient deficiencies, the essential nutrient requirements are focused on naturally occurring nutrients (and those present through “enrichment”). Qualification through fortification is limited to a handful of key nutrients, as described above. However, products that are a larger contributor to caloric intake must meet minimum food groups to encourage requirements.

In crafting the NCTE, we also were mindful of competition issues. Although the criteria will encourage all participants to promote healthier foods to kids, they provide flexibility on how products may meet the requirements and thus do not unfairly favor one participant over another. Promoting rather than stifling competition among participants encourages the broadest array of quality and healthy product choices at the lowest cost.

TABLE 6 CFBAI Criteria for Nutrition Components to Encourage⁵⁷

Product Category	Criteria
1. Juices	– ≥ ½ cup (4 fl oz) of fruit/vegetable juices ⁵⁸
2. Dairy products	
– Milks and milk substitutes	– 1 cup (8 fl oz) of low-fat or fat-free dairy – For LSS < 8 fl oz, NTL & NCTE to be scaled proportionately
– Yogurts and yogurt-type products	– ≥ ½ cup (4 oz) of low-fat or fat-free dairy, <u>and</u> ≥ 10% DV calcium per 6 oz – For LSS < 6 oz, NTL & NCTE to be proportionately lower
– Dairy-based desserts	– ≥ ¼ cup serving (2 fl oz) of low-fat or fat-free dairy <u>and</u> ≥ 10% DV calcium – For LSS < ½ c, NTL & NCTE to be scaled proportionately
– Cheese and cheese products	– ≥ ½ cup dairy equivalent (provides ≥ 10% DV calcium) – For LSS < 1 oz or 2 tbsp, NTL & NCTE to be scaled to ⅓ cup dairy equivalent and ≥ 10% DV calcium
3. Grain, fruit and vegetable products, and items not in other categories	– ≥ ½ serving of F/V/D/WG, or – ≥ 10% DV of any essential nutrient
4. Soups and meal sauces	– ≥ ½ serving of F/V/D/WG, or – ≥ 10% DV of any essential nutrient
5. Seeds, nuts, and nut	– ≥ 1 oz protein equivalent

example, the WIC program includes RTE cereals (that meet the iron and sugar criteria) to provide iron to the participants. One of the criteria for participants to receive the WIC food package is iron deficiency anemia.

⁵⁶ These same nutrients also are included in FDA’s definition of “healthy” (i.e., an individual food must contain at least 10% DV of one or more of Vitamins A or C, iron, calcium, or fiber). The definition also includes protein as a qualifying nutrient.

⁵⁷ The participants will be required to provide the program administrator with any information relevant to the product’s qualification under the NCTE that is not transparent from the NFP, the ingredient list or packaging (e.g., the amount of whole grains) and that information will be available publicly on the CFBAI website.

⁵⁸ Although the calorie limit for this category is based on an 8 fl oz portion, there are juice products that are 100% juices mixed with water or sparkling water, with no added sugars. The NCTE requires that such products contain a meaningful amount of 100% juices, 4 fl oz. The marketplace also includes products that are blends of 100% fruit and 100% vegetable juices and the NCTE can be met with a combination of such juices to equal 4 fl oz or more, up to the calorie cap.

butters/spreads	– For LSS < 1 oz or 2 tbsp, NTL & NCTE to be scaled proportionately
6. Meat, fish, and poultry products	– ≥ 1 oz equivalent of meat, fish, or poultry <u>and</u> ≥ 10% DV of any essential nutrient – For LSS ≤ 1 oz, NTL reduced to ≤ 60 kcal, ≤ 1 g sat fat, ≤ 240 mg sodium and ≤ 1 g total sugars
7. Mixed dishes	– ≥ ½ serving of F/V/D/WG, or – ≥ 10% DV of <i>two</i> essential nutrients for mixed dishes with 200–280 calories, or – ≥ 10% DV of any essential nutrient for mixed dishes with < 200 calories
8. Main dishes and entrées	– ≥ 1 serving of F/V/D/WG, or – ≥ ½ serving of F/V/D/WG <u>and</u> ≥ 10% DV of <i>two</i> essential nutrients
9. Small meals	– ≥ 1½ servings of F/V/D/WG, or – ≥ 1 serving of F/V/D/WG <u>and</u> ≥ 10% DV of <i>three</i> essential nutrients
10. Meals (entrée and other items including beverage)	– ≥ 2 servings of F/V/D/WG, or – ≥ 1½ servings of F/V/D/WG <u>and</u> ≥ 10% DV of <i>three</i> essential nutrients

NOTE 1: F/V/D/WG means any combination of fruits, vegetables, non-fat or low-fat dairy, and/or whole grains.

NOTE 2: “Any essential nutrient(s)” means those nutrients occurring naturally in foods (or that are added to foods to meet standards of identity or to restore nutrients lost in processing), and for which a DV has been established. If fortification is used to meet the criteria, the nutrient must be a nutrient of concern as specified in the DGA 2010 (calcium, fiber, potassium, vitamin D) or a nutrient required to be listed on the NFP (iron, vitamins A and C) (list excludes nutrients already on prior list).

VI. Looking Ahead

The CFBAI is excited about the additional improvements to and developments for products that will be depicted in child-directed advertising as a result of the new nutrition criteria. The criteria are designed to be meaningful but practical goals. Because they are realistic, the participants have agreed to the additional challenge of attempting to meet the new criteria on a rigorous timeline.

In establishing an implementation deadline we took into account that product development or reformulation, testing, and production take a significant amount of time. We also considered the time needed for shipment (to get new products on shelves) and the lead time needed for media purchases. Based on those considerations, the participants have agreed to be in compliance with the new criteria no later than December 2013.⁵⁹ A considerable amount of change is required for many products to meet the new criteria, and it may not be possible for every product to be reformulated by that date. In that event, the participants have agreed to cease advertising the non-conforming product to children as of January 1, 2014.

The CFBAI intends to review the nutrition criteria periodically to determine whether new or different categories or subcategories are necessary to reflect innovation and new products in the marketplace, and in keeping with our core requirement that nutrition standards be consistent with established scientific and/or government standards. For example, the criteria will be reviewed after the issuance of the Dietary Guidelines for Americans 2015. At that point the participants will have had more than two years worth of experience with the new criteria. If necessary, they will be aligned with any new DGA guidance and if appropriate and feasible, will be strengthened even further.

⁵⁹ As noted, in certain situations, the administrator may grant a limited extension due to a participant encountering unexpected circumstances. See n.14 and accompanying text, above.

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TABLE A1 Sources That Informed Development of CFBAI Nutrition Criteria

Source	Reference(s)
<i>Government</i>	
FDA regulations for nutrition labeling, labeled serving sizes, and nutrient content claims	21 C.F.R. 101 HHS/FDA/CFSAN, 1994
Dietary Guidelines for Americans 2005 (DGA 2005)	HHH/USDA, 2005
Dietary Guidelines for Americans 2010 (DGA 2010)	HHS/USDA, 2010
Report of the 2010 Dietary Guidelines Advisory Committee (DGAC)	DGAC, 2010
HealthierUS School Challenge for Elementary Schools	USDA/FNS, 2007
Interagency Working Group (IWG) on Nutrition Standards for Marketing to Children (slides a; transcript b)	IWG, 2009a IWG, 2009b
IWG on Food Marketed to Children: Preliminary Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts: Request for Comments	IWG, 2011
Healthy People 2020	HHS, 2010
Women, Infants, and Children's Program (WIC)	USDA/FNS, 2009
<i>Institute of Medicine</i>	
Nutrition standards for foods in schools: Leading the way toward healthier youth (IOM School Foods report)	IOM, 2007
School meals: Building blocks for healthy children (IOM School Meals report)	IOM, 2010a
Strategies to reduce sodium intake in the United States	IOM, 2010b
Front-of-package nutrition rating systems and symbols: Phase I report	IOM, 2010c
<i>Other</i>	
Alliance for a Healthier Generation (AHG)	AHG, 2009
American Academy of Pediatrics (AA)	AAP, 2001 AAP, 2006 AAP, 2010
Center for Science in the Public Interest (CSPI)	CSPI, 2005
Disney	Disney, 2006
QUBO	QUBO, 2007

TABLE A2 Presentation Topics and Speakers at the CFBAI Nutrition Science Review held February 2, 2011

Topic	Speaker
A Perspective from Front-of-Pack Examination Work	Dr. Ellen Wartella Chair, IOM Committee on Examination of Front-of-Package Nutrition Ratings Systems and Symbols
A Review of the 2010 Dietary Guidelines and Sodium Reduction Strategies	Dr. Robert C. Post Deputy Director, Center for Nutrition Policy and Promotion, USDA
IWG Current Thinking	Dr. William H. Dietz Director, Division of Nutrition, Physical Activity, and Obesity, CDC
A Perspective Based on Proposed New Requirements for School Meals	Ms. Heather Hopwood Nutritionist, Child Nutrition Division, Food and Nutrition Service, USDA
A Practical Perspective on Dietary Guidance	Dr. Joanne Slavin 2010 Dietary Guidelines Advisory Committee Member

TABLE A3 Third-Party Recommendations or Criteria for Calories

Source	Recommendation or Criteria
FDA "low" claim	≤ 40 calories/RACC (and per 50 g if RACC is small) for individual foods ≤ 120 calories/100 g for main dishes and meals
IOM School Meals report	See Table A3
IOM School Foods report	≤ 200 calories/portion as packaged for Tier 1 foods
HealthierUS School Challenge	Portion sizes for a la carte sales not to exceed serving size of food served in NSLC/SBP ≤ 200 calories for all other items
Alliance for a Healthier Generation	Varies from ≤ 100 calories to ≤ 150 for elementary school
Disney	≤ 110 calories for juice beverages ≤ 170 calories for dairy beverages and yogurts ≤ 200 calories for special occasion sweets ≤ 200 calories for breads and pastries 100-150 calories for snacks 150-200 calories for side dishes 270-360 calories for main dishes 360-560 calories for complete meal (main dish + side dish)
QUBO	≤ 100 calories for snacks and dairy ≤ 200 calories for cereal and prepared foods (side dish) ≤ 300 calories for prepared foods (main dish) ≤ 500 calories for complete meal (main dish + side dish)
CSPI	None specified

TABLE A4 IOM School Meals Report Recommendations for Calories

Ages	Total Daily	Breakfast	Lunch
5-10 years	1800	350-500	550-650
11-13 years	2000	400-550	600-700
Midpoint ^a	1900	450	625

^a Calculated from data presented in the report (IOM, 2010a).

TABLE A5 FDA Saturated Fat Criteria for “Low” and “Healthy” Claims and “Disclosure” Amounts

Product Type	Low	Healthy	Disclosure
Individual foods	≤ 1 g/RACC & ≤ 15% calories	≤ 1 g/RACC & ≤ 15% calories	> 4 g/RACC & LSS
Individual foods, with small RACC	≤ 1 g/RACC & ≤ 15% calories	≤ 1 g/RACC & ≤ 15% calories	> 4 g/50 g (> 2.4 g/30 g or 2 tbsp)
Main dish products	≤ 1 g/100 g & ≤ 10% calories	≤ 1 g/100 g & ≤ 10% calories	> 6 g/LSS
Meal-type products	≤ 1 g/100 g & ≤ 10% calories	≤ 1 g/100 g & ≤ 10% calories	> 8 g/LSS

TABLE A6 FDA/USDA Saturated Fat Criteria for Claims on Meat, Fish, & Poultry

Claim	Criteria
Lean meat, fish, poultry	≤ 4.5 g/RACC & 100 g
Lean meat, fish, poultry main dishes/meals	≤ 4.5 g/100 g & LSS
Lean meat, fish, poultry mixed dishes	≤ 3.5 g/RACC
Extra lean meat, fish, poultry	< 2 g/RACC & 100 g
Extra lean meat, fish, poultry main dishes/meals	< 2 g/100 g & LSS
Healthy meat, fish, poultry	< 2 g/RACC & 100 g

TABLE A7 Third-Party Recommendations or Criteria for Saturated Fat

Source	Recommendation or Criteria
DGA 2010	Consume < 10% of calories from saturated fat by replacing them with monounsaturated and polyunsaturated fatty acids
Healthy People 2020	Target 9.5% of calories for total diet
IOM School Foods report	< 10% of calories for Tier 1 foods
IOM School Meals report	< 10% of calories for school breakfast and school lunch
IWG	≤ 1 g/RACC & ≤ 15% calories (i.e., FDA “low”)
HealthierUS School Challenge	≤ 10% of calories for individual foods Reduced fat (2%), low-fat (1%), or skim milk
Alliance for a Healthier Generation	≤ 10% of calories or ≤ 1 g Any reduced fat or part-skim cheese ≤ 1.5 oz No limit for nuts, nut butters, & seeds
Disney	8.5-10% of calories for main dish, side dish, complete meal ≤ 10% of calories for snacks ≤ 2% milk fat, 0% preferred for dairy beverages and yogurt
QUBO	≤ 2 g for cereal ≤ 3 g for prepared foods (side dish) ≤ 4 g for prepared main dish ≤ 7 g for complete meal (main dish + side dish) None specified for snacks, dairy, juice beverages, breads and pastries
CSPI	≤ 10% of calories from saturated + <i>trans</i> fat

TABLE A8 Third-Party Recommendations or Criteria for *Trans* Fat

Source	Recommendation or Criteria
FDA labeled zero	< 0.5 g/serving
DGA 2010	Keep <i>trans</i> fatty acid consumption as low as possible, especially by limiting foods that contain synthetic sources of <i>trans</i> fat, such as partially hydrogenated oils, and by limiting other solid fats
Healthy People 2020	Solid fats [saturated + <i>trans</i> fats] target 16.7% of calories for total diet
IOM School Foods report	Zero <i>trans</i> fat (\leq 0.5 g per serving) [sic: "zero" <i>trans</i> fat under FDA regulations means < 0.5] as packaged for Tier 1 foods
IOM School Meals report	Nutrition labels [of products used] must specify zero grams of <i>trans</i> fat per serving
IWG	< 0.5 g per RACC and per 50 g for small RACC
HealthierUS School Challenge	None specified
Alliance for a Healthier Generation	0 g
Disney	None specified
QUBO	0 g
CSPI Guidelines	\leq 10% of calories from saturated + <i>trans</i> fat

TABLE A9 FDA Sodium Criteria for Claims

Product Type	Low	Healthy	Disclosure
Individual foods	≤ 140 mg/RACC	≤ 480 mg/RACC & LSS	> 480 mg/RACC & LSS
Individual foods with small RACC	≤ 140 mg/50 g (≤ 84 mg/30 g or 2 tbsp)	≤ 480 mg/50 g (≤ 288 mg/30 g or 2 tbsp)	> 480 mg/50 g (> 288 mg/30 g or 2 tbsp)
Main dish products	≤ 140 mg/100 g	≤ 600 mg/LSS	> 720 mg/LSS
Meal-type products	≤ 140 mg/100 g	≤ 600 mg/LSS	> 960 mg/LSS

TABLE A10 Third-Party Recommendations or Criteria for Sodium

Source	Recommendation or Criteria
DGA 2010	Reduce daily sodium intake to less than 2,300 mg (and further reduce intake to 1,500 mg among certain other groups)
Healthy People 2020	Target 2300 mg per day
IOM School Foods report	≤ 200 mg per portion as packaged for Tier 1 foods
IOM School Meals report	See Table A11
IWG Tentative proposal	≤ 200 mg per portion to be reduced over time to ≤ 140 mg
HealthierUS School Challenge	None specified
Alliance for a Healthier Generation	≤ 230 mg ≤ 480 mg for low-fat and non-fat dairy products ≤ 480 mg for vegetables w/ sauce and soups if contain ≥ specified positive nutrient or ≥ ½ serving (¼ cup) fruit or vegetables
Disney	100-350 mg for snacks 100-350 mg for side dishes 600-800 mg for main dishes < 1000 mg for complete meal (main dish + side dish) None specified for juice beverages, dairy beverages and yogurts, or occasional sweets
QUBO	< 200 mg for snacks, dairy beverages, and yogurts < 250 mg for cereal < 500 mg for prepared foods (side dish) < 800 mg for prepared foods (main dish) < 1300 mg for complete meals (main dish + side dish) Does not apply to juice beverages None specified for breads and pastries
CSPI Guidelines	≤ 230 mg per serving of chips, crackers, cheese, baked goods, French fries, and other snack items ≤ 480 mg per serving for cereal, soups, pastas, and meats ≤ 600 mg for pizza, sandwiches, and main dishes ≤ 770 mg for meals

TABLE A11 IOM School Meals Report Recommendations for Sodium^a

Ages	UL ^b	Breakfast	Lunch
5-10 years	1900 mg ^c	≤ 430 mg	≤ 640 mg
11-13 years	2200 mg	≤ 470 mg	≤ 710 mg
Midpoint ^d	2050 mg	≤ 450 mg	≤ 675 mg

^a To be attained by the year 2020.

^b Tolerable Upper Intake Level (UL).

^c Lowest listed UL for age group.

^d Calculated from data presented in the report (IOM, 2010a).

TABLE A12 Third-Party Recommendations or Criteria for Sugars

Source	Recommendation or Criteria
DGA 2010	Reduce the intake of calories from...added sugars
Healthy People 2020	Target 10.8% of total calories from added sugars
IOM School Foods report	≤ 22 g total sugars per 8 oz portion of (1% fat and non-fat) milk ≤ 30 g total sugars per 8 oz portion as packaged for yogurt
IOM School Meals report	Discretionary sources of calories (e.g., solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, <i>trans</i> fat, and sodium; no sugars limit for flavored milk if non-fat milk and if calories fit into maximum allowed
IWG tentative proposal standards	≤ 13 g added sugars per RACC or per 50 g for small RACC (≤ 7.8 g per 30 g or 2 tbsp)
HealthierUS School Challenge	< 35% total sugar by weight
WIC Program	≤ 21.2 g of sucrose and other sugars per 100 g dry cereal
AAP Healthy Children.org	Choose cereals with less than 10 grams of sugar and at least 2 grams of fiber per serving
Alliance for a Healthier Generation	≤ 35% sugar by weight
Disney	0 g added sugars for juice beverages < 10 g added sugars per oz for cereal 20-25% of calories added sugars for snacks < 35% of calories added sugars for dairy beverages and yogurt < 10% of calories added sugars for side dish < 10% of calories added sugars for main dish < 10% calories added sugars for complete meal (main dish + side dish)
QUBO	< 6 g sugar for snacks, dairy beverages, and yogurts ≤ 12 g sugar for cereal < 5 g sugar for prepared foods (side dish) < 8 g sugar for prepared foods (main dish) < 13 g for complete meals (main dish and side dish) Does not apply to juice beverages None specified for breads and pastries
CSPI Guidelines	< 35% by weight added sugars

TABLE A13 Third Party Recommendations or Criteria for Nutrition Components to Encourage

Source	Recommendation or Criteria
FDA "good source"	≥ 10% to 19% DV
FDA "excellent source"	≥ 20% DV
FDA "healthy"	≥ 10% DV for protein, fiber, calcium, iron, vitamin A, or vitamin C
DGA 2010	Recommendations for fruits; a variety of vegetables; whole grains; fat-free or low-fat milk and milk products; emphasis on foods that provide potassium, dietary fiber, calcium, and vitamin D
Healthy People 2020	Increase fruits to 0.9 cup equivalents per 1000 calories Increase variety and contribution of vegetables to 1.1 cup equivalents per 1000 calories Increase whole grains to 0.6 oz equivalents per 1000 calories Increase calcium to 1300 mg Reduce iron deficiency in young children
IOM School Foods report	Combination products must contain a total of ≥ servings as packaged of fruits, vegetables, or whole grain products per portion
IOM School Meals report	Weekly standards for fruits; various types of vegetables; grains (≥ 50% of which are must be whole grain rich); meats, beans, cheese, yogurt; fat-free or low-fat milk
IWG tentative proposal standards	Standard II Option A: Food must contain ≥ 50% by weight of ≥ 1 of the following: fruit, vegetable whole grain; fat-free or low-fat milk or yogurt; fish; extra lean meat or poultry; eggs; nuts and seeds; or beans Option B: food must contain one or more of the following per RACC (per 50 g if small RACC): 0.5 cups fruit or fruit juice 0.6 cups vegetables or vegetable juice 0.75 oz equivalent of 100% whole grain 0.75 cups milk or yogurt; 1 oz natural cheese; 1.5 oz processed cheese 1.4 oz meat equivalent of fish or extra lean meat or poultry 0.4 cups cooked dry beans 0.7 oz nuts or seeds 1 egg or egg equivalent
HealthierUS School Challenge	Weekly recommendations for fruits; vegetables; entrées; legumes; whole grain foods Daily amounts of low-fat and non-fat milks
Alliance for a Healthier Generation	Any fruit with no added sweeteners or vegetables that are non-fried Any reduced-fat or part skim cheese ≤ 1.5 oz
Disney	Juice beverages that contain ≥ 50% real juice with no added sugar
QUBO	Processed meats (e.g., hot dogs) not acceptable Unprocessed meats, poultry or seafood without added oil or sugar permitted No restrictions for fresh fruits or vegetables; fruits, vegetables, and legumes in other forms accepted if no added sugar or oil No restrictions for condiments (ketchup, mustard, mayonnaise, salsa, salad dressings)
CSPI Guidelines	Beverages that contain ≥ 50% juice and no added sweeteners Low-fat and fat-free milks Water and seltzers without added sweeteners

TABLE A14 USDA Food Group Serving Equivalents

Food Group/Component	1 Serving	½ Serving	¼ Serving
Fruits and vegetables	½ cup	¼ cup	
Fruit and vegetable juices	½ cup (4 fl oz)	¼ cup (2 fl oz)	
Dried fruit	¼ cup	⅛ cup	
Dairy			
Milks	1 cup (8 fl oz)	½ cup (4 fl oz)	¼ cup (2 fl oz)
Cheese, natural	1.5 oz	0.75 oz	
Cheese, processed	2.0 oz	1.0 oz	
Whole grains ^a	16 g	8 g	

^a Whole grains are grains that consist of the entire grain seed, which is made up of three components: the germ, the bran, and the endosperm. Whether cracked, crushed, ground, flaked, or processed in some other manner, a grain remains a whole grain so long as all three components (germ, bran, and endosperm) are retained in approximately the same proportion as the unprocessed grain (IOM, 2010a, at p. 363).



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