April 28, 2014

VIA ELECTRONIC SUBMISSION (www.regulations.gov)

To: Julie Brewer, Chief, School Programs Branch, Policy and Program Development Division, Child Nutrition Programs, Food and Nutrition Service


Fr: Children’s Food and Beverage Advertising Initiative, Council of Better Business Bureaus. For more information, contact Maureen Enright, Deputy Director, CFBAI, at menright@council.bbb.org or 703-247-9319.

Introduction and Summary. The Children’s Food and Beverage Advertising Initiative (CFBAI), a voluntary advertising self-regulation program operated by the Council of Better Business Bureaus (CBBB), appreciates the opportunity to comment on USDA’s proposed rule on “Local School Wellness Policy Implementation under the Healthy, Hunger-Free Kids Act of 2010.” Our comment addresses Section 210.30(c)(2)(iii), which would permit marketing on the school campus during the school day of foods and beverages (“foods”) that meet the requirements under § 210.11 (“Smart Snacks” regulations). CFBAI has been setting standards for the advertising of foods to children in elementary schools (and in other locations) since 2006 and our experience with and knowledge about activities in elementary schools may be useful to USDA.

CFBAI’s 17 participants (leading consumer packaged goods companies and quick serve restaurants) agree to not engage in advertising primarily directed to children under age 12 (“child-directed advertising”) or to advertise only foods that meet meaningful nutrition criteria in traditional and emerging and new media that are child-directed. CFBAI also requires that participants agree to not advertise foods to children (even those that meet nutrition criteria) in elementary schools (pre-kindergarten through 6th grade) (“Elementary School Principles”). This restriction is based on the age of the child (the grades mirroring CFBAI’s focus on children under age 12) and our recognition that because elementary schools are a special environment, commercialism should be avoided or minimized.

In creating our Elementary School Principles, CFBAI determined that certain activities should be outside the scope of the restriction on advertising. CFBAI balanced barring direct advertising activities while permitting participant-supported programs that provide significant benefits to schools and students with at most incidental marketing effects.
Accordingly, CFBAI does not prohibit its participants from communicating with adults in schools or from supporting schools and school-based parent organizations with fundraising, grants and donations, public service messaging, and curriculum materials. CFBAI’s approach respects the rights of schools and parents to make decisions regarding these activities based on the best interests of their schools and students.

While we generally support the restriction on advertising of foods in elementary schools that do not meet specified nutrition criteria, our experience may be useful to USDA in determining what activities should be subject to the proposed rule. Currently, as written, the proposed rule could lead to local wellness policies that sweep in many pro-social and parent and school-supported activities that benefit students and where the “advertising” impact is merely incidental. The proposal’s ambiguity could unintentionally chill beneficial corporate support for the nation’s schools, including, ironically, corporate support for healthy lifestyle programs and other anti-obesity initiatives in schools. This could occur even when activities are sponsored at a corporate or brand level (not by a specific food) if the corporation’s name is eponymous or closely associated with certain foods that do not meet the Smart Snacks regulations. USDA may wish to clarify, in the rule as well as in any model policies or guidance that it issues, that “marketing” under § 210.30(c)(2)(iii) does not include activities that support and enrich schools where there is at most an incidental “advertising” impact. In addition, rather than creating a prohibition tied to whether the donor/sponsor’s foods meet the Smart Snacks regulations, USDA may wish to consider adopting provisions or model policies or guidance that restrict undue commercialism (as opposed to nominal or incidental sponsorship identification for transparency’s sake) in conjunction with various beneficial activities, such as donations and sponsorships that are consistent with USDA’s mission (e.g., programs to combat obesity, fight hunger, improve diets, and promote fitness and active lifestyles).

Part I provides background on CBBB and CFBAI. Part II briefly describes the progress CFBAI’s participants are making in improving the foods advertised to children. Part III explains the objectives and coverage of CFBAI’s Elementary School Principles. Part IV explains the potential impact of the proposed rule on various activities and includes examples of participants’ programs and activities that schools participate in or facilitate, and the benefits these programs provide. Part V contains our conclusion.
I. Background

In 2006, CBBB created CFBAI to respond to calls to action from the Federal Trade Commission, the Department of Health and Human Services\(^1\) and the Institute of Medicine\(^2\) for industry self-regulation and for food companies to do more to address food advertising to children because of the rise in childhood obesity.

A. About CBBB

CBBB, a non-profit 501(c)(6) membership organization, is the umbrella organization for local Better Business Bureaus, which are grassroots organizations that foster a fair and honest marketplace and an ethical business environment. CBBB also administers respected self-regulation programs including the National Advertising Division, the Children’s Advertising Review Unit\(^3\) and the CFBAI.

B. About CFBAI

CFBAI’s goal is to be part of a multi-faceted solution to the complex problem of childhood obesity by using advertising to help promote healthier dietary choices and lifestyles among children under age 12.\(^4\) Under CFBAI’s Core Principles, participants commit to not engage in child-directed advertising or to limit their child-directed advertising to healthier or better-for-you foods. As of December 31, 2013, this means foods that meet CFBAI’s category-specific uniform nutrition criteria. Importantly, CFBAI’s Core Principles also require that participants not advertise their foods, even their healthier ones, to children in elementary schools (pre-K through 6th grade). CFBAI’s 17 participants collectively represent about 80% of the food advertising on child-directed television, which is still the primary method for advertising to children. Table 1 lists the participants and the commitment each has made.

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\(^1\) See Perspectives on Marketing, Self-Regulation, & Childhood Obesity (2006).


\(^3\) The advertising industry has long had a set of stringent rules for advertising primarily directed to children under age 12. Since 1974, the Children’s Advertising Review Unit (CARU) has promoted high standards of responsible advertising to children under age 12. CARU’s operational policies are set by the Advertising Self-Regulatory Council, which is a strategic alliance of the advertising industry and BBB. CFBAI focuses on what foods are advertised to children by its participants and CARU focuses on how all products, including foods, are advertised to children. Together CFBAI and CARU provide thoughtful and rigorous oversight of child-directed food marketing.

\(^4\) Self-regulation (see n. 3 above) and government regulation of advertising directed to children historically have focused on children under age 12. (See Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992, 16 C.F.R. Part 308). The literature shows that by age 12 most children understand the persuasive intent of advertising (see, e.g., Food Marketing to Children and Youth at 9, n. 2 above). Thus, CFBAI also is focused on children under age 12.
Table 1. CFBAI Participant Commitments

<table>
<thead>
<tr>
<th>12 Participants Use Nutrition Criteria for Child-Directed Advertising</th>
<th>5 Do Not Engage in Child-Directed Advertising</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burger King Corporation</td>
<td>The Coca-Cola Company</td>
</tr>
<tr>
<td>Campbell Soup Company</td>
<td>Kraft Foods Global, Inc.</td>
</tr>
<tr>
<td>ConAgra Foods, Inc.</td>
<td>McDonald’s USA, LLC</td>
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<tr>
<td>The Dannon Company</td>
<td>Mondelēz Global LLC</td>
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<tr>
<td>General Mills, Inc.</td>
<td>PepsiCo, Inc.</td>
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<tr>
<td>Kellogg Company</td>
<td>Post Foods, LLC</td>
</tr>
<tr>
<td>Unilever United States</td>
<td>Ferrero USA, Inc.</td>
</tr>
<tr>
<td>The Hershey Company</td>
<td>Mars, Incorporated</td>
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</tbody>
</table>

II. Self-Regulation Is Improving the Foods Advertised to Children

The focus of this comment is on sharing CFBAI’s policies regarding advertising in elementary schools to assist USDA in formulating its final rule on limiting “marketing” during the school day to foods that meet the Smart Snack regulations. However, we also want to address the FRN’s statement that “the majority of foods and beverages marketed to children are low in nutritional value and high in sugar and fat.”\(^5\) It is unclear whether this statement refers to foods marketed in schools or foods advertised to children generally.\(^6\) To ensure USDA has accurate and current information regarding the foods advertised to children under 12, we are providing a brief summary of the significant improvements in foods advertised by CFBAI participants to children under age 12.

CFBAI’s participants have reduced calories, sugars, sodium or fat and increased the nutritional density of foods they advertise to children. Using meaningful and science-based nutrition criteria the participants have developed new foods and made hundreds of recipe improvements in foods they advertise to children. For example, foods commonly advertised by CFBAI participants to children have only modest amounts of calories, as shown by our

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\(^5\) 79 FR 10698. The FRN also states that food marketing influences children’s food preferences, dietary intake, and overall health, citing IOM’s *Food Marketing to Children and Youth*. In fact, IOM found that food advertising affects children’s preferences, purchase requests and short term consumption, not “dietary intake” or “overall health.” IOM’s comprehensive review of the multifactorial causes of obesity concluded that “... the current evidence is not sufficient to arrive at any finding about a causal relationship from television advertising to adiposity.” *Food Marketing to Children and Youth* at 8-9.

\(^6\) The two studies cited as the basis for this statement were conducted between 2003-2005, so they do not reflect changes that may have occurred because of CFBAI, the Alliance for a Healthy Generation, or later-adopted school wellness policies. Moreover, these studies are not particularly useful for the purpose of considering practices in elementary schools. Footnote 14 in the FRN refers to a 2006 study of high schools in California (based on 2005 data) and thus does not even address elementary schools. Footnote 15 cites a study based on a 2003-2004 phone survey of elementary, middle and high school officials. The sample size was not large enough to allow for examination of only elementary school responses and thus its results and conclusions cannot be extrapolated to the elementary school environment.
review of food ads on 27.5 hours of programming that aired on Nickelodeon during July and August 2013 (2013 Nickelodeon Snapshot). See Table 2.

<table>
<thead>
<tr>
<th>Beverage (Juice)</th>
<th>Yogurt</th>
<th>Cereal</th>
<th>Snack</th>
<th>Main Dish</th>
<th>Small Meal</th>
<th>Meal</th>
</tr>
</thead>
<tbody>
<tr>
<td>70</td>
<td>100</td>
<td>130</td>
<td>140</td>
<td>160</td>
<td>410</td>
<td>440</td>
</tr>
</tbody>
</table>

CFBAI’s analysis of the nutritional density of foods in the 2013 Nickelodeon Snapshot compared to our findings of a similar snapshot in 2010 illustrates the overall improvement in CFBAI participant foods advertised to kids. The percentage of foods advertised to children containing at least a half-serving of fruits, vegetable, dairy or whole grain increased 56% from 2010 to 2013.

As of December 31, 2013, CFBAI’s participants may advertise to children only foods that meet CFBAI’s category-specific uniform nutrient criteria, which are significantly stronger than the previously used company-specific criteria. The criteria include category-specific maximums for calories and “nutrients to limit” (saturated fat, trans fat, sodium and total sugars), as well as minimums for “nutrition components to encourage.” As a result of the implementation of CFBAI’s uniform nutrition criteria, the participants have made further improvements in foods or stopped advertising foods that do not meet the criteria. But, even before CFBAI’s implementation of its uniform nutrition criteria, the FTC in its December 2012 Review of Food Marketing to Children and Adolescents (which compared foods advertised in 2009 to 2006) recognized the positive impact that CFBAI participants and others in the food industry were having on the landscape of food advertising to children.

III. CFBAI Participants May Not Advertise Foods to Children in Elementary Schools

As noted above, CFBAI requires its participants to not advertise branded foods to children in pre-K through 6th grade, including through the use of food samples or through student-directed items such as posters or tray liners advertising branded foods. Thus, participants do not advertise even their better-for-you or healthier products that meet CFBAI uniform nutrition criteria to children in elementary schools, even though such foods may be

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7 Of the 966 ads, only 24% were for foods, and most were from CFBAI participants. We also found that 79% of the foods advertised by CFBAI participants had had at least one recipe improvement (sometimes multiple changes), or that the food was new and had been developed to meet nutrition criteria since the company had joined CFBAI.
advertised to children in other venues, such as on television. As we have reported in annual Progress Reports since 2008, compliance has been excellent.

Because CFBAI addresses advertising primarily directed to children under age 12, the elementary school commitment applies to schools that include the grades for children under age 12, which are generally grades pre-K through grade 6.8 Historically, government regulation and self-regulation have focused on children under age 12 because their capacity for discerning persuasive intent is still developing.9

In 2009, CFBAI published a Fact Sheet on the Elementary School Advertising Principles to provide greater clarity about the scope of CFBAI’s restriction on advertising branded foods in elementary schools. The Fact Sheet explains that CFBAI takes an expansive view of the scope of the elementary school setting. The Elementary School Principles apply to the school and school grounds and facilities, including classrooms, cafeterias, libraries, hallways, auditoriums, gyms, playgrounds, athletic fields and school buses used to transport children to and from elementary school or to any official, school-sponsored event at an elementary school. This coverage is co-extensive with that of the proposed rule’s definition of “school campus” (“all areas of the property under the jurisdiction of the school that are accessible to students during the school day”).10 The ad restriction applies to the regular and extended school day when children are under the control of the school or third parties on behalf of the school. This means that the Principles cover the time period before or after the official school day as well as the time during transportation to and from school and official school-sponsored events.11 This coverage goes beyond what is called for under USDA's proposal, which defines “school day” as “the period from the midnight before to 30 minutes after the end of the official school day.”12

CFBAI’s Elementary School Principles do not prohibit the participants from offering foods for sale or from engaging in collaborations with schools or school-based groups, including

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8 Some CFBAI participants voluntarily restrict their advertising in middle and high schools. These practices are not part of their CFBAI commitments.
9 See n. 3 and 4, above. It is generally recognized that adolescents are better able to understand and appreciate the persuasive nature of advertising. They have greater cognitive and emotional sophistication than children. Further, as early as age 12, adolescents’ knowledge about advertiser tactics develops in the direction of adult understanding. D.M. Boush, M. Friestad & G.M. Rose, Adolescent Skepticism Toward TV Advertising and Knowledge of Advertiser Tactics, 21 J. Consumer Res. 165, 171 (1994), available at http://www.sfu.ca/cmns/faculty/kline_s/320/06-spring/resources/course%20readings%20folder/AdscepticismBoush.pdf.
11 The Principles do not apply to school events held after the extended school day, such as a “family night,” where parents and elementary school children are attending together.
12 7 C.F.R. § 210.11(a)(5).
fundraising efforts, public service messaging, curricular support or philanthropic efforts. These efforts may include support for school-based community health initiatives, in-kind donations of foods, equipment, or eating utensils such as cups or plates. To encourage transparency, CFBAI allows for sponsorship identification in materials associated with these programs and materials, although the identification may not be the focal point or centerpiece of the message. (CFBAI always has been mindful that sponsorship and company identification must take a backseat to the principal goal of the activity or message.) Communications with adults in schools also are outside CFBAI’s scope.

IV. USDA’s Proposed Rule May Unintentionally or Needlessly Restrict or Chill Activities that Benefit Schools and Children

Although USDA’s proposed regulation does not define “marketing,” language in the FRN indicates that the rule may cover many types of pro-social activities in which schools and companies may collaborate, as “product sales” (including “cash and rebate programs and fundraising”) or “indirect advertising (via corporate sponsored educational materials, teacher training, contests and incentives, grants, gifts or event sponsorships).” This broad language and the lack of clarity in the proposed rule could jeopardize programs and activities that schools have elected to participate in for many years, including programs generating hundreds of millions of dollars or providing significant non-monetary benefits through nutrition and physical activity programs that improve students’ health. Examples include sports and playground equipment earned, won or donated; nutrition education materials created by food and nutrition scientists and supported by organizations such as the National Education Association (NEA) and New York State; and community obesity and wellness clinics with targeted health and wellness goals located in elementary schools. The high level of participation in such programs, in particular label redemption programs, suggests they provide significant benefits. These benefits should be weighed against concerns regarding incidental company, brand or product identification.

To avoid unintended and potentially negative effects, USDA may wish to consider CFBAI’s approach to these pro-social activities — restricting advertising in schools, but not activities where the “advertising” impact is merely incidental. USDA could specify that pro-social programs and materials are excluded from the restrictions on marketing in § 210.30.14

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14 In addition, given the broad language in the FRN purporting to cover all “food and beverage marketing in schools,” USDA may wish to clarify that the regulation is intended to address only communications intentionally
Alternatively, rather than creating a prohibition tied to whether the sponsoring company’s foods meet the Smart Snacks regulations, USDA may wish to consider adopting provisions that restrict undue commercialism (as opposed to nominal sponsorship identification).

**A. Fundraising and donation programs**

1. **Label redemption programs**

The FRN indicates that “product sales” that could be considered marketing subject to limitation include “cash and rebate programs, and fundraising.”\(^{15}\) CFBAI allows participants to offer fundraising opportunities to schools or school-based parent organizations. At the same time, CFBAI seeks to minimize marketing messages seen by students. Several CFBAI participants partner with schools in fundraising programs that involve the redemption of proofs of purchase from packaging for cash awards or school equipment. Typically, the companies sponsoring the redemption programs provide schools with receptacles for collection of these proofs of purchase or product labels. Parent-directed communications, which sometimes are carried home by students, may inform parents that the school (or school-based parent group such as a PTA) participates in the program and provide a list of participating products or instructions on how to submit the packaging certificate or product label. A volunteer (typically a parent at the school) gathers the submissions and remits them to the program. For each validly submitted coupon or label, the school receives a monetary donation or points that may be accrued and exchanged for cash or merchandise. Since the creation of CFBAI, companies have revamped these communications and receptacles to remove any mention of the sponsoring companies or participating brands to advance the program’s goal of minimizing marketing messages in elementary schools. USDA may not intend for such programs to be within the scope of its rule, but the FRN creates uncertainty.\(^{16}\)

\(^{15}\) 79 FR 10699.

\(^{16}\) For example, USDA’s estimate of the financial impact of its proposed marketing policy suggests that it did not take into account the value provided by redemption programs to schools or PTAs. Thus, it may not have viewed them as within the scope of its proposed rule.
General Mills’ Box Tops for Education ("BTFE") is one of the largest school support programs in the U.S. Over 90,000 K-8 schools participate in the BTFE program. During the 2012-2013 year it delivered over $80 million to schools and since its inception in 1996, it has provided more than $600 million to schools nationwide. The program is marketed to parents and other adults. BTFE Program coupons and certificates ("Box Tops") appear on packaging of General Mills food products and products from other companies such as Boise, Hanes, Kimberly-Clark, Reynolds, and SC Johnson. Box Tops, clipped from packages, typically are placed in a BTFE-provided collection bin located at the school.\(^ {17}\) These bins contain no food branding or imagery, as can be seen in Figure 1.

Campbell’s Labels for Education ("LFE") program is another long-standing, popular redemption-based fundraising program that distributes merchandise to schools based on their redemption of points accumulated via proofs of purchase from participating products.\(^ {18}\) The program accepts labels from other companies, including Bic, ConAgra Foods, Dannon, Glad, and Post Foods. As seen in Figure 2, LFE collection bins do not contain product messages or brand depictions.\(^ {19}\) Similarly, parent-directed communications, which may be sent home via student backpacks, bear only LFE identification. Campbell reports that, since LFE’s inception in 1973, 92% of U.S. elementary schools have participated in the program, which has distributed more than $114 million in computers, software, sports and art equipment, musical instruments, library books, and other merchandise.\(^ {20}\)

In addition, the FRN’s ambiguous language could sweep in programs run by third parties, such as Terracycle. Several CFBAI participants, as well other consumer product companies, participate in the Terracycle program, which encourages recycling or “upcycling” of used packages. Terracycle turns used product packages into products such as tote bags, coolers,

\(^ {17}\) Placing bins in schools facilitates collection for the volunteer coordinator and creates a central drop-off point. Box Tops collection sheets, available online or created by the coordinator, can be used to submit the Box Tops. As with the collection bins, they simplify and facilitate the collection program.

\(^ {18}\) The LFE program also helps schools promote healthy eating and healthy lifestyles through its downloadable Health and Wellness Curriculum, discussed in Section IV.B. The nutrition component of these materials is based on USDA’s own MyPlate guidance.

\(^ {19}\) LFE collection receptacles also may be placed by coordinators in public places such as libraries, post offices and grocery stores to encourage broader community involvement.

\(^ {20}\) Through a partnership with Field Trip Factory, LFE points can be redeemed to fund transportation for field trips.
and messenger bags that it sells at retail and on its site. Terracycle, not the companies whose packaging is collected, offers the recycled items for sale. Participating schools and other organizations create receptacles to collect the packaging, ship the packaging to Terracycle, and earn points that they can redeem for cash payments or charity gifts (e.g., providing meals, planting trees, gifting farm animals or providing fresh drinking water). Terracycle program receptacles and signs may include product depictions to ensure that only appropriate items are placed in the receptacles.

The enormous popularity of the BTFE, LFE and other programs strongly indicates that schools find these programs highly beneficial. If they are “food marketing in schools” at all, the marketing component is only incidental. Of course, the programs involve food in the sense that food products – as well as housewares, apparel, and other items – participate in the program. We hope that USDA will provide clarity and exclude from the rule these types of programs with nominal or no corporate branding.

2. Donations and funding

USDA’s FRN notice indicates that the agency’s interpretation of “marketing” may consider donations as a type of “indirect advertising” subject to prohibition by LEAs. Under CFBAI’s Elementary School Principles, charitable donations to elementary schools are not prohibited, but are subject to the requirement that identification of the donor not dominate materials about the donation. Formal charitable gift giving programs, for which corporations may be entitled to charitable tax deductions if they meet applicable regulations, are outside CFBAI’s scope (but are subject to IRS regulations). Either type of donation can provide schools with materials or equipment they need but cannot afford, or with funding for enrichment events that students might otherwise not experience (e.g., underwriting of field trips).

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21 A label redemption program that benefits schools also may take place almost entirely off campus. For example, Dannon conducted its Rally for Recess contest annually for the last five years (the final contest ended in spring 2014). The contest, which was not advertised in schools, involved individuals or schools entering codes online from specially marked packages of Danonino and Danimals and receiving points. Five winning schools received $30,000 each for playground equipment and upgrades. Although the contest promotion does not take place in schools, the winning schools may have a celebration on the day the company presents the reward, at which time the company or brand logos may be seen by students and Dannon yogurts may be served. Because Dannon sells over 200 products, and not every single one would meet the Smart Snacks regulations, this type of promotion which directly benefits schools may be barred if considered “indirect marketing” subject to the rule.

22 The FRN indicates that advertising or marketing on the school campus includes “indirect advertising (via corporate sponsored educational materials, teacher training, contests and incentives, grants, gifts or event sponsorships).” 79 FR 10699.

23 In addition to monetary donations, CFBAI participants may make in-kind donations. For example, they may be asked by schools to donate fresh, ready-to-eat or packaged foods, which may bear product branding or a company name. CFBAI permits such in-kind donations. We believe that participants should not be in the position of being corporate “Scrooges” if they are able and willing to fulfill such requests. At the same time, we do not think that it is
Because of the FRN’s sweeping and ambiguous language, it is unclear whether corporate-supported school-based wellness/physical activity programs or community-based programs with school locations would be barred because not all of the supporting corporation’s foods meet the Smart Snacks regulations. Below we provide examples of current programs whose status is unclear under the FRN and proposed rule.

**Campbell Healthy Communities.** In 2011 the company launched the program with a commitment of $10 million over 10 years to reduce childhood hunger, combat obesity and improve the health of children in its headquarters city of Camden, New Jersey,24 a city with limited food availability and high levels of childhood obesity. Through the Healthy Communities program, Campbell partners with Camden schools, local grocery and corner stores, and community leaders, and funds non-profit organizations including a local YMCA and food bank, The Food Trust, and Soccer for Success, to create sustainable programming, new behavior patterns, and a substantial reduction in BMI among Camden youth by the end of 10 years. The Food Trust tracks and evaluates the program, which has already achieved demonstrable results, including reductions in BMI.25 The Healthy Communities program, with its collaborative, multifactorial approach and targeted evaluation framework, serves USDA’s goal of “nutrition promotion and education . . . to influence lifelong eating behaviors, in a positive manner.”26

**Fuel Up to Play 60.** This [program](#), in which USDA participates, is one of the nation’s largest in-school wellness programs.27 It actively seeks corporate sponsors. Quaker, a PepsiCo brand, recently co-sponsored a “Make Your Move” video contest with Fuel Up To Play 60 that awarded $125,000 to schools to use toward wellness goals. Quaker was

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24 Pepperidge Farm partners with local businesses, government and schools in a similar childhood obesity initiative in Norwalk, Connecticut, “Project L.E.A.N.” A pilot program set in one elementary school has now become permanently integrated in the school’s curriculum after students enrolled in the program significantly improved their BMIs, as well as knowledge of health and nutrition issues. The program has been introduced into a second Norwalk elementary school, with plans to expand to all Norwalk elementary schools.

25 The Food Trust’s [2013 report](#) demonstrated that the program has already helped bring about access to fresh produce and healthy foods; helped kids achieve 175,000 hours of physical activity; provided 193,000 hours of nutrition education to kids through The Food Trust materials (which although sponsored by Campbell include Sesame Street, University of Missouri and USDA MyPlate materials and do not contain any Campbell branding or promotion) and facilitated approximately 170 community meetings with over 2100 community members to cultivate a sense of community ownership and empowerment.

26 79 FR 10695.

27 The National Dairy Council and the National Football League launched Fuel Up to Play 60 in 2011. The program is guided by a Memorandum of Understanding signed by thought leaders in child health, physical activity and education including Secretary of Agriculture Tom Vilsack, Secretary of Education Arnie Duncan, and Health and Human Services Secretary Kathleen Sebelius.
identified as a corporate sponsor in posters made available to school administrators to publicize the contest.

**Hershey’s Track & Field Games.** For many years, *Hershey* has supported this program, which teaches track and field skills to children. The program makes available lesson plans about track and field skills, provides free equipment to qualified organizers such as coaches, community or parent volunteers, and helps organize regional and national track meets across the country. Some of these materials may bear the *Hershey’s Track & Field Games* logo, although there is no product branding or depictions. It is not a school-based program, although coaches or parent volunteers can choose to organize a school-based team, and its materials could be used by or seen in schools.

CFBAI suggests that USDA weigh the benefits of donations, grants and gifts to schools against the incidental, if any, advertising or marketing components of such activities. USDA may wish to exclude such donations, grants or gifts, when any advertising component is incidental, from the definition of “marketing” under § 210.30(c)(2)(iii). Alternatively, rather than creating a prohibition tied to whether the donor/sponsor’s foods meet the Smart Snacks regulations, USDA may wish to consider adopting provisions that restrict undue commercialism (as opposed to incidental sponsorship identification) in conjunction with donations and sponsorships that benefit schools or are consistent with USDA’s goals and mission (e.g., programs to combat obesity, fight hunger, encourage improvement in diet and nutrition, or promote fitness and active lifestyles). Such an approach would recognize that while some companies may have individual brands or products that meet the criteria, others may not. It also would avoid barring corporate or brand level gifts because the corporate or brand name is associated with foods that do not meet the criteria.

**B. Public service messages and curriculum**

CFBAI’s policy regarding public service messages and curriculum restricts marketing messages, but allows participants to provide materials that are helpful to schools and support their educational or enrichment goals. CFBAI recognizes that schools may wish, in their discretion, to provide students with public service messages or curriculum materials that are not available through official school channels, or that the school cannot afford to purchase or create. Companies can play a meaningful role in providing schools with such messaging or materials, which could be about nutrition, diet or physical fitness. These messages could be used in the classroom or in other settings such as auditoriums or
cafeterias. Under CFBAI’s Elementary School Principles, participants can provide schools with such messages or materials which, as a matter of transparency, may identify the sponsor. (Some materials do not include any corporate identification.) The identification may not, however, be the focal point or centerpiece of the message. These materials also may not include any sales messages or depict the participant’s branded foods. In some cases, however, the corporate or brand name may be closely associated with products that may not meet the Smart Snacks regulations (e.g., the identification of Nestlé, but not specific product names or depictions, in its Nestlé/NEA Healthy Steps materials discussed below, or the Hershey Track & Field program). This type of minimal branding does not undermine or overtake the educational or pro-social value of the materials.

We note that CFBAI participants often partner with outside experts or organizations to develop or disseminate these messages and materials. In addition, these materials often include or rely upon official FDA or USDA dietary guidance (e.g., “MyPlate” graphics) to provide nutrition guidance in a fun and child-friendly manner. Examples include:

- **Healthy Steps for Healthy Lives.** Nestlé developed this program in partnership with the NEA to expand nutrition and physical activity resources for teachers. The program has developed a variety of instructional activities tied to national curriculum standards and teaches students about healthy living. Student worksheets and handouts identify the Nestlé and NEA sponsorships in a non-promotional manner.

- **Go With the Whole Grains for Kids.** The General Mills Bell Institute of Health and Nutrition makes these nonbranded curriculum materials available online. The FRN’s “indirect advertising” category includes “corporate sponsored curriculum materials” with no indication that the rule’s coverage would be limited to materials that specifically include sponsorship identification. Thus even materials with no corporate or brand identification could be included in the rule’s scope.

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28 In addition to “materials” used in a school setting, companies also may send volunteers to assist or interact with students (e.g., reading programs or participation in STEM or career day programs), or sponsor or permit field trips to manufacturing facilities or laboratories. The sponsoring company in such circumstances would necessarily be identified. Because the proposed rule may be read as prohibiting such activities, we suggest that USDA clarify that LEAs may permit such activities, or that such activities are not included in the definition of “marketing.”

29 CFBAI’s policy regarding sponsorship identification is similar to the underwriting policies of PBS, which are based on FCC laws and regulations. The PBS Guidelines for On-Air Underwriting Credits apply to identifications placed in programming for children under 12, and provide that underwriters must be identified with on-air credit, but that this credit may not depict or mention the sponsor’s product, although the policy allows for depiction of the underwriter’s mascot or spokes character.

30 The Bell Institute distributes Go With the Whole Grains to school food service directors and health professionals through exhibits and meetings, and through its website ([www.bellinstitute.com](http://www.bellinstitute.com)). It is not currently promoted to teachers or schools, although when the program was launched it was.
Who Grew My Soup? Campbell Soup Company helped develop this book which is intended to encourage vegetable consumption. The New York State Department of Agriculture featured the book during its Agriculture Literacy week in March 2014 and partnered with Campbell to develop a lesson plan and other content based on the book.\(^\text{31}\) Other than recognition of the company’s support on the book’s dedication page, the book does not promote Campbell, yet this nominal identification may bring it within the scope of the rule. The company also makes healthy lifestyle curriculum materials available online through its Labels for Education program materials, which bear the LFE logo rather than the Campbell name or logo. Campbell’s Healthy Communities and Project L.E.A.N. partnerships also include supporting materials for program coordinators, school administrators, parents and teachers. These materials do not include the Campbell name, but Campbell’s involvement is widely known (and hailed).\(^\text{32}\)

CFBAI has taken a balanced approach of permitting sponsorship identification on curriculum and public service messaging. This allows participants to make materials available to schools that they may use at their discretion. USDA may wish to clarify in the rule or any model policies or guidance that “marketing” does not include corporate-sponsored public service messages or curricular support that include no or only nominal sponsorship identification.

**C. Communications with adults**

CFBAI is focused on advertising that is primarily directed to children under age 12. It is not designed to limit communications directed to adults that incidentally may be viewed by children. For example, communications directed to parents may be sent home via student backpacks. In addition to school matters, such as permission slips or menus, such communications might notify parents regarding upcoming fundraising events involving food companies or restaurants, remind parents to send in labels for redemption programs, or send home in-kind reward certificates recognizing student achievement that parents can choose to redeem for certain foods.\(^\text{33}\) If USDA agrees that the rule should not prohibit

\(^\text{31}\) See [http://www.agclassroom.org/ny/programs/literacy.htm](http://www.agclassroom.org/ny/programs/literacy.htm). Related curriculum materials, also developed in collaboration with the state agency, prominently feature USDA MyPlate nutrition guidance.

\(^\text{32}\) School administrators and community leaders have praised the Campbell program and the changes it has made in the lives of students and others in the community.

\(^\text{33}\) CFBAI has not found this type of “incentive” program to be widespread among its participants. Some McDonald’s franchisees provide schools with recognition certificates to send home to parents and guardians. These certificates, which recognize students for academic or other achievements, can be redeemed for a package of Apple Slices or a Happy Meal. The recent JAMA study regarding commercialism in schools hypothesized that in-kind certificates may
fundraising or other activities with incidental or no branding, or that require parental participation, as discussed above, then adult-directed communications about them also should be permitted.

V. Conclusion

We share the goal of wanting healthy children. CFBAI and its participants recognize that children under age 12 merit special protections and that elementary schools are a special environment. Because of the combination of the two, participants in CFBAI must refrain from advertising their foods to children in elementary schools — even their foods that meet meaningful nutrition criteria. At the same time, CFBAI’s principles recognize that the benefits of certain activities that may have an incidental “advertising” impact can outweigh any possible negative impact associated with branding or identification of a corporate sponsor. Companies, endeavoring to be responsible corporate citizens, offer programs that provide significant benefits to children in schools, which schools/parents want and need. Many programs have been in place for years, and some have tens of thousands of schools and millions of families participating in them. CFBAI’s principles also do not place corporations in the position of having to refuse when asked for donations of items they produce or have on hand.

Whether by design or unintentionally, USDA’s proposal may deter corporations from supporting and funding programs that are aligned with USDA’s goals or otherwise greatly benefit schools. In crafting its final rule and model policies or guidance, USDA may find valuable the type of balancing approach CFBAI has employed. Finally, we suggest that USDA’s rule provide a reasonable phase-in implementation period to allow schools and programs to adjust to any changes that may be required.

reflect that access to disposable income is lower for children and that these certificates do not involve immediate purchases but rather are easily delivered to parents with purchasing power. See Commercialism study at 234-242.