



THE COMMITTEE ON ENERGY AND COMMERCE

INTERNAL MEMORANDUM

To: Energy and Commerce Committee Members

October 7, 2011

From: Majority Staff

Re: Food Marketing: Can 'Voluntary' Government Restrictions Improve Children's Health?

On October 12, 2011, at 10:00 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Health and the Subcommittee on Commerce, Manufacturing and Trade will hold a joint hearing entitled "Food Marketing: Can 'Voluntary' Government Restrictions Improve Children's Health?" The following provides background on the hearing.

I. WITNESSES¹

Panel 1

Dr. William Dietz
Director
Division of Nutrition, Physical Activity, and Obesity
Centers for Disease Control and Prevention

Dr. Robert Post
Deputy Director
Center for Nutrition Policy and Promotion
U.S. Department of Agriculture

David C. Vladeck
Director
Bureau of Consumer Protection
Federal Trade Commission

Panel 2

Jim Baughman
Senior Marketing Counsel
Campbell Soup Company

Dan Jaffe
Executive Vice President
Association of National Advertisers

¹ Additional witnesses may be included at a later date.

II. BACKGROUND

The 2009 Consolidated Appropriations Act contained report language forming an Interagency Working Group (IWG), comprised of the Federal Trade Commission (FTC), the Department of Health and Human Services (HHS), and the Department of Agriculture (USDA). The IWG was tasked with conducting a study and issuing a report to Congress concerning standards for marketing food to children.² The IWG was to report the findings of its study and its recommendations to Congress no later than July 15, 2010.

Instead of conducting the prescribed study or providing a timely report to Congress, the IWG issued a document entitled “Preliminary Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts.”³ The IWG asked for public comment on this document. Comments were due on July 14, 2011.

Republican and Democratic Members of Congress sent letters to the FTC, HHS and USDA regarding the impact of the IWG principles.⁴ Included among this group were 22 Republican Energy & Commerce Committee members who sent a letter on September 12, 2011.⁵ This letter included the following questions:

1. When does the IWG intend to complete the study called for by Congress? How will the IWG take account of the study in formulating its recommendations to Congress?
2. How did the IWG select the precise levels of the nutrients to limit per Principle B? Why did the IWG deviate from existing federal nutrition standards?
3. What evidence exists to show that the proposed Nutrition Principles are achievable for most types of food? What evidence exists to show the proposed phase-in periods are adequate?
4. What evidence exists to show that childhood obesity is related to advertising of food that doesn't comply with the proposed Nutrition Principles? Are there examples of advertising restrictions elsewhere that have led to reductions in childhood obesity?
5. What costs would be involved in reformulating food on a widespread scale to meet the proposed Nutrition Principles? How would such costs affect the price of food?
6. If manufacturers cannot successfully reformulate foods to comply with the proposed Nutrition Principles and comply instead with the “voluntary” marketing restrictions, how would the economy be affected? Has the IWG determined the likely impact on advertising revenues? What is the likely impact on television programming, particularly programming intended for children and families? What impact on employment do you expect the proposed Nutrition Principles to have?

² Omnibus Appropriations Act, 2009 (H.R. 1105), Financial Services and General Government, Explanatory Statement, Title V, Independent Agencies, 983-84.

³ Available at <http://ftc.gov/os/2011/04/110428foodmarketproposedguide.pdf>

⁴ See, e.g. <http://shopfloor.org/2011/07/concerns-from-capitol-hill-over-iwg-food-marketing-guidelines/22036>

⁵ Available at <http://republicans.energycommerce.house.gov/Media/file/Letters/112th/091211IWG.pdf>

7. What alternatives to the current proposal has the IWG considered? In particular, what does the IWG expect would happen if the industry is allowed to continue its self-regulatory efforts without “voluntary” government guidelines?
8. Has the IWG determined the secondary economic impacts of the proposed marketing restrictions on American communities and schools, such as reduced financial sponsorships for athletic teams?
9. How does the IWG reach consensus on its recommendations? How does it address differences of opinion?
10. Does the IWG interpret its mandate as giving it the flexibility to recommend against adopting food standards or food marketing restrictions, either for children generally or for some age groups, if it concludes that is the best course? Or does it interpret the mandate as requiring it to recommend some type of standards and restrictions, even if the costs substantially outweigh the benefits?

On September 27, 2011, the IWG replied with a brief letter to the questions and concerns raised by the Committee members.⁶

III. CONCLUSION

Should you have any questions regarding this hearing, please contact Ryan Long or Gib Mullan at (202) 225-2927.

⁶ Available at <http://thehill.com/images/stories/blogs/healthwatch/iwgfood.pdf>