

E-ALERT | Food & Drug

May 13, 2010

PRESIDENT'S TASK FORCE ON CHILDHOOD OBESITY RELEASES REPORT; INCLUDES RECOMMENDATIONS FOR MARKETING FOODS TO CHILDREN

This week, the White House Task Force on Childhood Obesity, launched in connection with the First Lady's Let's Move campaign, released its report, "*Solving the Problem of Childhood Obesity in a Generation.*"¹ The report was issued in response to the President's February 9 memorandum and is based on more than 2,500 public comments and involvement by several federal agencies.² The recommendations included in the report are intended to result in a return to a childhood obesity rate of 5% by 2030, with incremental reductions in the interim.

The recommendations fall within the following priority areas:

Empowering parents and caregivers. The report places significant responsibility on industry in this regard by emphasizing changes in food marketing practices. The report concedes that the "causal link between marketing and increasing childhood obesity rates has yet to be firmly established" but nonetheless echoes certain policymaker and advocate statements made in other forums that urge industry to:

- extend the self-regulatory Children's Food and Beverage Advertising Initiative to all companies that market food and beverage products to children and all forms of marketing to children (e.g., point of purchase and product packaging);
- avoid in-store marketing that promotes "unhealthy" products to children;
- adopt "meaningful, uniform nutrition standards" for food marketing based on the Dietary Guidelines and as part of this effort, "the food and beverage industry should develop aggressive targets and metrics for increasing the proportion of advertisements for healthy foods and beverages across all marketing channels and platforms" and the media should develop guidelines that increase the proportion of advertisements for healthy foods and beverages;
- limit character licensing to food and beverages that are "healthy and consistent with science-based nutrition standards"; and
- provide technology that helps consumers distinguish between television advertisements for healthy and unhealthy foods (e.g., through an on-air labeling system) and limits children's exposure to unhealthy food advertisements (e.g., through parental blocking technologies). If voluntary efforts do not yield substantial results in this area, the FCC could consider new rules on commercial advertising during children's programming. (Although the report also states that

¹ See White House Task Force Report available at http://www.letsmove.gov/tfco_fullreport_may2010.pdf.

² Agencies involved in the Report include the Departments of Agriculture, Defense, Education, Health and Human Services, Housing and Urban Development, Interior, Justice, and Transportation, as well as the Corporation for National and Community Service, the Environmental Protection Agency, the Federal Communications Commission, and the Federal Trade Commission.

rules to limit television advertising would have limited effect on non-child directed programs and exposure to other types of marketing.)

The report notes, but does not discuss in detail or provide new information about, the ongoing efforts of the Interagency Working Group on Food Marketed to Children (or “SNAC PAC”), including the expected release of proposed food marketing standards for public comment.³ The report also acknowledges the FTC’s limited ability to regulate food marketing practices, including the FTC’s failed effort in 1981 and the need to respect freedom of speech interests. However, the report states that companies need a reason to comply with self-regulatory efforts and that “the prospect of regulation or legislation has often served as a catalyst for defining meaningful reform in other industries and may do so in the context of food marketing as well.”

The report also addresses the current development of the 2010 Dietary Guidelines for Americans and recommends that those efforts include understandable consumer messages and a next generation Food Pyramid. In addition, the report recommends that the FDA and USDA collaborate with the food and beverage industry to develop and implement standard front-of-pack nutrition labels – efforts that are already underway at FDA.

Providing healthy food in schools. The report also highlights industry’s role in increasing healthy food options in schools (e.g., reducing “the high levels of added sugars in many flavored milks and yogurts” and promoting healthy foods in school). Schools, for their part, are encouraged to limit school-based marketing of foods that contribute to poor health.

Improving access to healthy, affordable food. The report restates the White House goal of eliminating “food deserts” but also recommends lowering the relative prices of healthier foods, possibly by increasing state and local sales taxes on foods such as soft drinks, candy, snack foods, and fast foods. It also recommends that food companies develop or reformulate food products to be healthier.

Finally the report prioritizes increasing children’s physical activity and providing children a healthy start (e.g., through prenatal care, breastfeeding support, and adherence to limits on television viewing).

* * *

Many of the recommendations, including those identified above, have been discussed with industry prior to, and in the time since, the First Lady’s Let’s Move campaign was announced in February. However, the report’s emphasis on food marketing and the role of private industry adds to the pressure on industry to change the food marketing landscape through changes in self-regulatory efforts.

We will continue to follow these issues closely and will keep you informed about any further developments. Should you have any questions regarding the foregoing, please do not hesitate to contact any of the Covington & Burling attorneys listed below.

³ See Covington E-Alert [“FTC Hosts Forum on Food Marketing to Children: Draft Nutritional Standards for Food Marketing to Kids \(Ages 2-17\) Released.”](#)

If you have any questions concerning the material discussed in this client alert, please contact the following members of our food & drug practice group:

Peter Barton Hutt	202.662.5522	phutt@cov.com
Eugene Lambert	202.662.5422	elambert@cov.com
John Graubert	202.662.5938	jgraubert@cov.com
Miriam Guggenheim	202.662.5235	mguggenheim@cov.com
Daniel Spiegel	202.662.5347	dspiegel@cov.com
Jamillia Ferris	202.662.5058	jferris@cov.com

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

Covington & Burling LLP, an international law firm, provides corporate, litigation and regulatory expertise to enable clients to achieve their goals. This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to unsubscribe@cov.com if you do not wish to receive future emails or electronic alerts.

© 2010 Covington & Burling LLP, 1201 Pennsylvania Avenue, NW, Washington, DC 20004-2401. All rights reserved.