

## E-ALERT | Food & Drug

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### NATIONAL SALT REDUCTION INITIATIVE ANNOUNCES VOLUNTARY SALT REDUCTION TARGETS FOR FOOD MANUFACTURERS AND RESTAURANTS

The National Salt Reduction Initiative (the “Initiative”) announced on Monday, January 11, is a new voluntary program aimed at reducing salt content in packaged and restaurant foods by twenty percent over the next five years. The Initiative is a New York City-led partnership of seventeen national health organizations and twenty-six cities, states, and related entities. The New York City Department of Health and Mental Hygiene (the “Department”) announced details about the program after holding meetings with industry throughout the last year. The initial set of announced sodium reduction targets are considered proposals; the city plans to accept technical comments until February 1, 2010.<sup>1</sup>

The Initiative focuses on sodium in packaged and restaurant foods because it claims that most of the sodium in Americans’ diets is not contributed by their own addition of salt to food, but rather is already present in foods before they are sold. The program is modeled in part after a voluntary British program which has, according to British authorities, led to the reduction of salt content in some foods by up to forty percent. New York City’s leadership in the Initiative follows its efforts to eliminate trans fats from New York City restaurants and require calorie labeling on menus – measures that were subsequently mirrored in many other jurisdictions across the country. The City’s trans fat program began on a voluntary basis but eventually became compulsory. It is possible that the same thing could happen for the sodium reduction targets for restaurant foods in New York City or in other jurisdictions that might adopt similar limits as mandatory. Given the Federal preemption and Constitutional interstate commerce issues associated with packaged foods, however, it would seem more tenuous for the City or other members of the Initiative to consider requiring sodium limits on packaged foods.

#### Food Category Targets

Manufacturers who wish to comply with the program will need to understand its somewhat complex methodology. The program sets targets for particular categories of food, such as “breads and rolls.” To comply, a manufacturer of breads and rolls would need to first calculate its “sales-weighted mean” of sodium density for this category, which is the milligrams of sodium per every 100 grams of food sold in the category. If the manufacturer sold twenty types of breads and rolls, it would consider the sales data for all twenty products in calculating the sales-weighted mean for the category. Once this figure is calculated, the manufacturer would then need to meet category targets for 2012 and 2014. The Department estimates that the current sales-weighted mean for “bread and rolls” on the market is 485 mg/100g; it has announced proposed targets of 440 mg/100 g in 2012 and 360 mg/100 g in 2014. Category targets would apply to a company’s overall product portfolio in that category. For example, a soup manufacturer could reduce sodium in some of its products in the category and leave others unchanged, as long as its overall soup portfolio met the appropriate target.

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<sup>1</sup> The proposed targets and information about submitting comments can be found on the Department’s Website at <http://www.nyc.gov/html/doh/html/cardio/cardio-salt-initiative.shtml>.

Restaurant items are also grouped into categories with targets for sodium density. Unlike manufactured foods, however, restaurants will also be subject to per-serving maximums. For instance, in 2014, a hamburger should not contain more than 1,200 mg of sodium.

Many details about the program appear to be unsettled. It is unclear whether manufacturers should use a single year of sales data or a range of years to calculate the baseline sales-weighted mean. It is also unclear how manufacturers should project future consumer behavior, especially reactions to new product launches, for purposes of determining the adjustments in sodium content necessary to meet the 2012 and 2014 category targets. Complicating this problem is the tendency for consumers to reject products with lower sodium unless the reductions are gradual. Members of the industry should contact the Department with concerns about the program's guidelines.

### Likely Impact

Despite its voluntary label, the program will likely have an impact in and outside of New York City. Many members of the food industry have expressed their support for the program's goals, though a number of companies have indicated that they will continue to follow their own salt reduction programs. For instance, Campbell Soup Company has already reduced the sodium in more than ninety of its soups, its entire line of V8 products, and many of its Pepperidge Farm breads. A recent Wall Street Journal article reported that ConAgra, Sara Lee Corp., and Unilever have made similar commitments. Health advocacy groups such as the American Heart Association also publicly announced their support of the Initiative and their views that the program could significantly decrease risks for cardiovascular disease.

Manufacturers should monitor the potential for salt reduction programs to gain momentum around the country. As noted above, the City's trans fat and calorie labeling programs spawned many similar programs in other cities and states. On the national level, the Food and Drug Administration (FDA) may find itself under increasing political pressure to adopt or amend its regulations relating to the addition of salt to manufactured foods or sodium labeling. And this pressure may be even further compounded by federal lawmakers' recent attempts to control healthcare costs. The FDA held a public hearing on these issues in November 2007, sparked in large measure by a Citizen's Petition filed by the consumer advocacy group, Center for Science in the Public Interest, whose sodium-related activities gained the support of the American Medical Association. The agency solicited public comment and continues to review the comments it received.

FDA is also one of the sponsors of an Institute of Medicine (IOM) report on reducing sodium intake. IOM convened a committee to review and make recommendations about various ways to reduce salt intake, and its report is due to be released this year. The U.S. Department of Health and Human Services/U.S. Department of Agriculture 2010 revisions to the Dietary Guidelines for Americans are also expected to recommend daily sodium intakes much lower than the 2,300 mg daily limit for most adults that was set forth in the 2005 Dietary Guidelines.

In sum, sodium will likely remain a prominent nutrient of concern in 2010, and food manufacturers and restaurants may face increasing pressure to reduce the levels of sodium in their foods. Covington & Burling LLP will continue to monitor these issues and release client alerts on further developments.

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

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