

Julie Brewer  
Chief, School Programs Branch  
U.S. Department of Agriculture  
Policy and Program Development Division,  
Child Nutrition Programs, Food and Nutrition Service  
P.O. Box 66740  
St. Louis, MO 63166-6740

Re: RIN 0584-AE25

April 25, 2014

Dear Ms. Brewer:

On behalf of the Public Health Advocacy Institute, we appreciate this opportunity to provide comments on the proposed rule for Local School Wellness Policy Implementation under the Healthy Hunger-Free Kids Act of 2010. We are writing to express our strong support for the proposed rule requiring school districts to address food marketing in their local school wellness policies (LWP). These comments respond to the agency's specific request for comments on "[s]trategies for marketing or displaying company brands, names, logos, or mascots that have some products that meet 'Smart Snack' standards and some products that do not." The stated goal of requiring schools to address food and beverage marketing in their LWPs is to support school nutrition education efforts. These comments focus on in-school marketing and advertising of "copycat products" that are Smarts Snacks compliant but feature marketing that is also used on non-Smart Snacks compliant products. This marketing tactic greatly undermines school nutrition efforts by co-marketing unhealthy products like traditional Doritos® and Cheetos®. We suggest definitions to address the issue of copycat snacks, present examples of copycat snacks from three major food companies, and describe how these products undermine school nutrition efforts.

## RECOMMENDED POLICY LANGUAGE

We encourage the USDA to include product packaging in its final definition of food and beverage marketing and advertising. The USDA's Economic Research Service estimates that 4 cents of each food dollar spent in the U.S. pays for packaging, as compared to 2 cents for other advertising expenses.<sup>1</sup> Food and beverage companies invest heavily in product packaging, because “[m]arketing depends heavily on the visual communications of packaging to inform and persuade consumers both at the point of purchase and at the point of consumption.”<sup>2</sup> We recommend that the final rule contain the following definition:

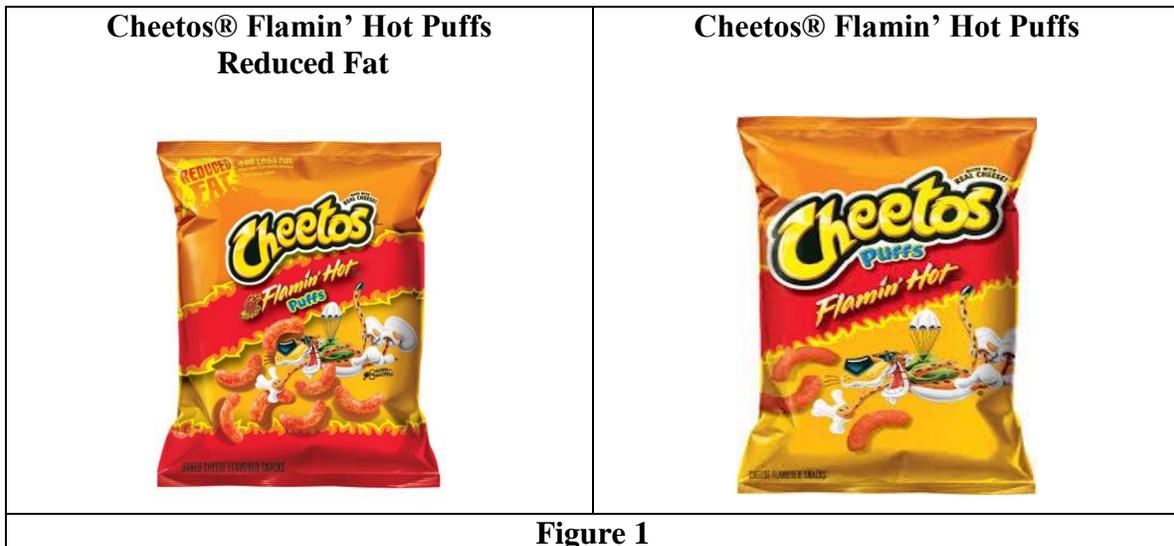
**210.30(b)(1) Food and Beverage Marketing and Advertising:** Food and Beverage Marketing and Advertising means an oral, written, or graphic statement or representation, including a company logo or trademark, made for the purpose of promoting the use or sale of a product by the producer, manufacturer, distributor, seller, or any other entity with a commercial interest in the product. This covers such representations made on product packaging, school controlled-traditional and digital media, and on any property or facility owned or leased by the school district or school (such as school buildings, athletic fields, transportation vehicles, parking lots, or other facilities).

With respect to the proposed requirement that schools include policies for food and beverage marketing in their LWPs, we recommend that the agency limit such marketing to products that meet the Smart Snacks rule and do not co-market unhealthy products. This is necessary to address the issue of copycat products as describe in the next section:

**Policies for Food and Beverage Marketing:** LEAs shall include in their local wellness plans policies that only allow marketing and advertising as defined in Section 210.30(b)(1) of foods and beverages that (1) meet the requirements set forth in the Smart Snacks rule, and that (2) use company brands, product names, logos, spokes-characters or mascots that are only used on food and beverage products that meet Smart Snacks standards (or the more restrictive standards adopted by the LEA, if applicable).

## COPYCAT PRODUCTS

A copycat product uses the same brand name, product name, logo, or mascot on a product or products meeting the Smart Snacks standards that is used on products that do not meet the standards. These products allow food companies to co-market unhealthy products like traditional Doritos® and Cheetos® in schools. For example, PepsiCo. produces and markets to school food service directors a product called *Cheetos® Flamin’ Hot Puffs Reduced Fat*. This product meets the USDA Smart Snack guidelines. However, this product is not widely available for retail purchase outside of schools. Instead, PepsiCo. offers *Cheetos® Flamin’ Hot Puffs*, not reduced fat to the broader public. As you can see in Figure 1 below, the product packaging is almost identical.



PepsiCo. also produces a product called *Doritos® Reduced Fat Nacho Cheese*. While this product meets the Smart Snack guidelines, PepsiCo. also produces *Doritos® Nacho Cheese*, which does not meet the guidelines. The reduced fat product is not widely available outside of schools. Similar to the Cheetos® products in Figure 1, these Doritos® products are packaged almost identically (see Figure 2).



While reformulation of products to meet the Smart Snacks rule is a positive step towards improving children’s diets, we identified a number of copycat products that are not widely available for purchase outside of schools (see Table 1). So even if children wanted to make the healthier choice outside of school, e.g. *Reduced Fat Doritos®*, the product is simply not available for purchase.

In order to identify examples of copycat products specially formulated to meet school nutrition standards that are not widely available for purchase outside of schools we examined the product catalogs for K-12 school snacks from General Mills (<http://www.generalmillsfoodservice.com>), PepsiCo. (<http://www.pepsicoschoolsource.com>), and Campbell’s (<http://campbellsfoodservice.com/?BID=31>). We then, cross-referenced branded products with the product finder for Walmart, a national food retailer (available at [www.walmart.com](http://www.walmart.com)) to determine whether or not the Smart Snacks compliant snacks were widely available for the public to purchase outside of schools.

Table 1 contains examples of copycat products featured in the K-12 school snack catalogs that were not widely available for purchase outside of schools, but use the same brands, logos and spokes-characters as less healthy options that are widely available for

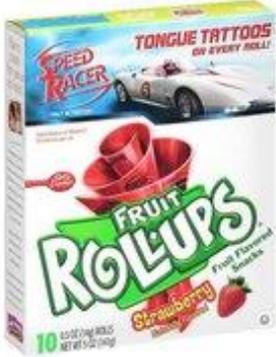
purchase. We provide examples of the less healthy products that were available for purchase to illustrate the differences.

<b>Table 1</b>		
<b>Company &amp; Brand</b>	<b>Product Meeting USDA Smart Snacks Rule</b>	<b>Sample Product Not meeting Smart Snacks Rule for Sale at Walmart</b>
PepsiCo., Cheetos®	Cheetos® Flamin' Hot Puffs Reduced Fat  	Walmart – Offers Cheetos® Flamin' Hot Puffs, reduced fat not available.  
PepsiCo., Reduced Fat Doritos® Nacho Cheese	Doritos® Reduced Fat Nacho Cheese  	Walmart – Offers Doritos® Nacho Cheese, reduced fat not available.  

<p>PepsiCo., Reduced Fat Doritos® Cool Ranch</p>	<p>Doritos® Reduced Fat Cool Ranch</p> 	<p>Walmart – Offers Doritos® Cool Ranch, reduced fat not available.</p> 
<p>PepsiCo., Reduced Fat Doritos® Spicy Sweet Chili</p>	<p>Doritos® Reduced Fat Spicy Sweet Chili</p> 	<p>Walmart – Offers Doritos® Spicy Sweet Chili, reduced fat not available.</p> 
<p>PepsiCo, Quaker® Oatmeal Raisin Breakfast Cookie</p>	<p>Quaker® Oatmeal Raisin Breakfast Cookie</p> 	<p>Walmart – Does not offer Quaker® Breakfast Cookies of any kind available. Similar product: Quaker® Soft Baked Chocolate Almond Oatmeal Cookies.</p> 
<p>PepsiCo, Smartfood® Reduced Fat White Cheddar Flavored Popcorn</p>	<p>Smartfood® Reduced Fat White Cheddar Flavored Popcorn</p> 	<p>Walmart – Offers Smartfood® White Cheddar Cheese, Reduced Fat not available.</p> 

<p>Campbell's, Pepperidge Farm® Goldfish® Made with Whole Grain Pretzel</p>	<p>Pepperidge Farm® Goldfish® Made with Whole Grain Pretzel</p> 	<p>Walmart – Sells Pretzel Baked Snack Crackers, but not the whole grain pretzel goldfish.</p> 
<p>Campbell's, Pepperidge Farm® Goldfish® Giant Grahams – Vanilla</p>	<p>Pepperidge Farm® Goldfish® Giant Grahams – Vanilla</p> 	<p>Walmart – Does not sell this product. Similar Product: Goldfish Grahams: S'mores.</p> 
<p>Campbell's, Pepperidge Farm Goldfish® Giant Grahams – Oats &amp; Honey</p>	<p>Pepperidge Farm® Goldfish® Giant Grahams – Oats &amp; Honey</p> 	<p>Walmart – Does not sell this product.</p>

<p>Campbell's, Pepperidge Farm® Goldfish® Giant Grahams – Cinnamon</p>	<p>Pepperidge Farm® Goldfish® Giant Grahams – Cinnamon</p> 	<p>Walmart – Does not sell this product.</p> 
<p>Campbell's, Pepperidge Farm® Goldfish® Giant Grahams – Chocolate</p>	<p>Pepperidge Farm® Goldfish® Giant Grahams – Chocolate</p> 	<p>Walmart – Does not sell this product.</p>
<p>General Mills, Betty Crocker</p>	<p>Fruit By The Foot Berry Tie Dye Reduced Sugar</p> 	<p>Walmart – Large quantity of Fruit By The Foot products, but none are reduced sugar</p> 

<p>General Mills, Betty Crocker</p>	<p>Reduced Sugar Fruit Roll-Ups</p> 	<p>Walmart – Various traditional Fruit Roll-Ups products</p> 
<p>General Mills, Simply Chex</p>	<p>Strawberry Yogurt (Reduced Fat and Whole Grain)</p> 	<p>Walmart – Various Simply Chex and Chex Mix options but no Strawberry Yogurt Simply Chex</p> 
<p>General Mills, Gardetto's</p>	<p>Gardetto's Reduced Fat Original Recipe</p> 	<p>Walmart – Only Gardetto's Original Recipe, not Reduced Fat</p> 

<p>General Mills, Cinnamon Toast Crunch</p>	<p>25% Less Sugar Cinnamon Toast Crunch Bowlpak</p> 	<p>Walmart – Cinnamon Toast Crunch Cereal</p> 
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### **RATIONALE FOR EXCLUDING COPYCAT PRODUCTS**

Copycat products should be excluded from LWPs for allowable in-school food and beverage marketing because they undermine school nutrition education efforts and overall healthy eating. Copycat products build brand loyalty that drives out-of-school purchase and consumption of products that do not meet the Smart Snacks nutrition criteria. The Institute of Medicine (IOM) has described the harms of unhealthy food marketing to child health. After a systematic review of available evidence of the impact of food marketing on children, the IOM concluded that there is strong evidence that: (1) food advertising influences the short-term food consumption of children 2 to 11 years of age, and (2) food advertising exposure is associated with adiposity in children 2 to 11 years and teens 12 to 18 years of age.<sup>3</sup> In-school co-marketing of unhealthy snacks increases children’s exposure to harmful food marketing that has been linked to adverse health outcomes in children and teens.

## SUMMARY

When marketing to children and teens, food companies use product names, jingles, slogans, logos, and spokes-characters to establish their brands. Characters like Chester Cheetah are designed to evoke a positive correlation between the character and the food product. The IOM found that these techniques greatly influence child food choices. As described in Table 1, major food companies are producing copycat products to be sold in schools that cultivate brand loyalty for unhealthy products outside of school. This problem is compounded by the fact that many of these products are not widely available for purchase outside of schools. This issue can be remedied by including product packaging in the definition of food and beverage marketing and advertising and limiting in-school marketing to products that meet the Smart Snacks rule and do not co-market unhealthy products.

Sincerely,  
Cara Wilking, J.D.  
Senior Staff Attorney  
Public Health Advocacy Institute

## REFERENCES

<sup>1</sup> Patrick Canning, *A Revised and Expanded Food Dollar Series: A Better Understanding of Our Food Costs* 1, 20-21 (Feb. 2011), <http://www.ers.usda.gov/publications/err-economic-research-report/err114.aspx#.UjHTGMaa4ZQ>.

<sup>2</sup> James U. McNeal & Mindy F. Ji, *Children's Visual Memory of Packaging*, 20 J. CONSUMER MARKETING 400, 403 (2003).

<sup>3</sup> Institute of Medicine, *FOOD MARKETING TO CHILDREN AND YOUTH: THREAT OR OPPORTUNITY?* (J. Michael McGinnis, Jennifer Appleton Gootman, Vivica I. Kraak, ed. 2006); Maree Scully et al., *Association between food marketing exposure and adolescents' food choices and eating behaviors*, 58 APPETITE 1 (2012).