



July 14, 2011

Federal Trade Commission  
Office of the Secretary  
Room H-113 (Annex W)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**Re: Interagency Working Group on Food Marketed to Children:  
Proposed Nutrition Principles, General Comments, and  
Proposed Marketing Definitions; FTC Project No. P094513**

To Whom It May Concern:

The American Frozen Food Institute (AFFI) appreciates the opportunity to submit these comments to the Interagency Working Group on Food Marketed to Children (IWG) on its *Preliminary Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts* (proposed principles). As the voice of the U.S. frozen food industry, AFFI is the sole national trade association that promotes and represents the interests of all segments of the U.S. frozen food industry. AFFI's more than 500 member companies manufacture and distribute frozen foods throughout the United States and globally. Our members are responsible for approximately 90 percent of the frozen food produced annually in the U.S., valued at more than \$60 billion. Although AFFI's membership comprises many of the largest food companies in the world, the Institute prides itself on also representing the interests of small and mid-sized frozen food companies.

AFFI is a strong supporter of healthy eating initiatives with the goal of improving nutrition and reducing obesity. We share the IWG's desire to improve children's and adolescents' diets and improve their access to nutritious foods. However, we are very concerned by the proposed principles' infringement upon free speech rights protected by the First Amendment. Beyond the First Amendment issues, we also have concerns about the IWG's proposed nutrition principles and marketing definitions for food marketed to children and adolescents. We question both the wisdom of the specific proposed nutrition principles and the approach to and implications of the proposed marketing definitions and resulting restrictions.

Specifically, our comments highlight the following:

- Although termed as “voluntary,” the principles would, in effect, suppress free speech in violation of the First Amendment.
- The proposed nutrition principles are inconsistent with federal nutrition policy, would prohibit marketing for many beneficial foods, like frozen vegetables, and establish an unrealistic timeline for implementation.
- Because the marketing definitions are overly broad, they would effectively ban marketing to many adults and would prohibit corporate sponsorships of activities that encourage healthy eating and physical activity.
- The IWG failed to conduct a “study,” as required by Congress, and would effectively preempt ongoing self-regulatory efforts, which have already demonstrated benefits, if it implements the proposed principles.

AFFI urges the IWG to withdraw the proposed principles and carry out the study required by Congress, taking into account the significant results demonstrated by the food industry’s voluntary efforts over the past several years to help address the obesity epidemic in the U.S. and provide more healthy options for parents and children to chose from.

## **I. The IWG’s Proposal Violates Constitutional Protections for Free Speech.**

The proposed principles would unconstitutionally infringe on free speech rights protected by the First Amendment. The Supreme Court has established strong, well-defined protections for commercial speech. Government regulation that suppresses advertising is prohibited unless the restrictions *directly* advance a substantial governmental interest and the measure is drawn to achieve that interest. Yet, the proposed principles attempt to *indirectly* address the government’s claimed interest in reducing childhood obesity, are overly broad, unnecessarily restrictive, and would infringe on a significant volume of advertising to a sizeable segment of the population.

Courts apply the four-part *Central Hudson* test to assess restrictions on commercial speech. After first assessing whether the expression is protected by the First Amendment, courts consider whether the asserted governmental interest is substantial, the regulation directly advances the governmental interest asserted, and the restriction is not more extensive than necessary to serve that interest. <sup>1/</sup> A restriction on speech is unconstitutional if it fails any one of these requirements. The proposed principles would fail both the third and fourth prongs of that analysis.

The proposed principles fail the third *Central Hudson* prong because there is no basis to conclude that they would directly advance the government’s interest in

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<sup>1/</sup> *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557 (1980).

preventing and reducing childhood obesity. The IWG, without substantiation, asserts its belief that advertising is a significant cause of childhood obesity and that restricting marketing of foods to children would reduce childhood obesity rates. But obesity is a complex problem that is not directly attributable to or caused by any one factor. At its most basic form, obesity is a result of consuming more calories than are burned for a sustained period of time.

The IWG's proposal does not address numerous other issues that materially affect the net caloric balance, such as physical activity, portion size, the overall nutrition profile of a child's diet, individualized factors (such as metabolic rate and family history), and general lifestyle choices. Nor does the IWG establish that foods selected by children because of targeted marketing—as opposed to meals offered at schools and daycare or food bought or prepared by parents or guardians—make up a significant portion of a child's diet or materially affect a child's net caloric intake. Critically, the foods identified by the IWG as contributing to childhood obesity would still be available to children under the proposed rules, only their manufacturers would not be permitted to talk about them. In actuality, decreasing obesity will depend on a number of factors, such as behaviors and lifestyle modifications, including increased physical activity and consuming fewer calories. The IWG cannot show that its proposed restrictions would help remedy the problem or that only allowing marketing of foods that meet its restrictive nutrition requirements will affect childhood obesity rates. Therefore, the proposed principles would fail because there is no evidence that they would significantly advance the government's interest of addressing childhood obesity.

Even assuming that the IWG's proposal would actually affect childhood obesity, the principles would fail to pass constitutional muster under the fourth *Central Hudson* prong because they restrict far more speech than is necessary. There are much less controlling means to advance the goal of reducing childhood obesity, such as the self-regulatory efforts currently being undertaken by the food industry, increased efforts to provide physical activity in schools, and increased access to healthy foods by lower income populations. Rather than considering less severe approaches, the IWG's proposal would restrict advertisers from communicating with significant numbers of adults.

The proposed principles would consider programming to be "marketing to children" even when adults constitute up to 70 or 80 percent of the audience. In fact, certain marketing communications that are seen only by adults may even be prohibited by the proposed principles. A speech restriction that sweeps up four extra persons for every one targeted person is a clear example of an overly broad restriction on speech that would not withstand judicial scrutiny. In his whitepaper on childhood obesity, advertising, and the First Amendment, Professor Martin Redish succinctly summarized the problem with the proposed principles, stating "The regulations thus would employ a hatchet when at most a scalpel would be needed." <sup>2/</sup>

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<sup>2/</sup> Martin H. Redish, *Childhood Obesity, Advertising, and the First Amendment*, at 10 (June 8, 2011) (white paper prepared at the request of General Mills, Inc.).

Two frequently asserted defenses are that the proposal is subject to a different standard because it involves the protection of children and that it is not subject to judicial review because it is voluntary. Neither of these points is tenable. A desire to “protect” children through these restrictions does not cure their constitutional flaws. The Supreme Court very recently reaffirmed that “minors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to them.” <sup>3/</sup> The government’s power to protect children “does not include a free-floating power to restrict the ideas to which children may be exposed.” <sup>4/</sup>

Furthermore, the proposed principles are not truly voluntary. Food companies would have no choice but to adhere to the principles, lest they face *de facto* penalties such as enforcement actions, government investigations, and class action lawsuits. Manufacturers would also be bound, as media outlets would likely decline to run advertisements if they do not adhere to the principles. <sup>5/</sup> Therefore, even though they are promoted as being “voluntary,” the proposed principles would be subject to judicial review because their inherently coercive nature would affect First Amendment freedoms. <sup>6/</sup>

Moreover, we believe that a reviewing court would be particularly skeptical of the IWG’s proposed principles in the current environment. The Supreme Court is strongly protective of the First Amendment and is particularly inclined to review cases of government overreaching. For example, the Court recently struck down restrictions on children’s access to violent video games and on marketers’ use of physician’s prescription histories. <sup>7/</sup> In the later case, Justice Kennedy wrote:

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<sup>3/</sup> *Brown v. Entm’t Merchants Ass’n*, No. 08-1448 at 6-7 (June 27, 2011) (quoting *Erznoznik v. Jacksonville*, 422 U.S. 205, 212-213 (1975) (citation omitted)).

<sup>4/</sup> *Id.* at 7.

<sup>5/</sup> In fact, in its report to the President, the White House Task Force on Childhood Obesity recommended that the media and entertainment industry “develop uniform guidelines to ensure that a higher proportion of advertisements shown on their networks and platforms are for healthy foods and beverages.” *Solving the Problem of Childhood Obesity within a Generation* at 32.

<sup>6/</sup> See, e.g., *Bantam Books v. Sullivan*, 372 U.S. 58, 66-67 (1963) (holding that the government’s practice of notifying publishers that certain books were obscene constituted a violation of the First Amendment, even though the government’s actions were limited to informal sanctions, because its aim was to “achieve the suppression of publications deemed „objectionable”); *Rattner v. Netburn*, 930 F.2d 204, 209 (2d Cir. 1991) (“[W]here comments of a government official can reasonably be interpreted as intimating that some form of punishment or adverse regulatory action will follow the failure to accede to the official’s request, a valid claim [for violation of First Amendment rights] can be stated.”) (quoting *Hammerhead Enterprises, Inc. v. Brezenoff*, 707 F.2d 33, 39 (2d Cir. 1983)).

<sup>7/</sup> *Brown v. Entm’t Merchants Ass’n* No. 08-1448 (June 27, 2011); *Sorrell v. IMS Health Inc.*, No. 10-779 (June 23, 2011).

In an attempt to reverse a disfavored trend in public opinion, a State could not ban campaigning with slogans, picketing with signs, or marching during the daytime. Likewise the State may not seek to remove a popular but disfavored product from the marketplace by prohibiting truthful, nonmisleading advertisements that contain impressive endorsements or catchy jingles. That the State finds expression too persuasive does not permit it to quiet the speech or to burden its messengers.<sup>8/</sup>

He added that the “fear that people would make bad decisions if given truthful information” cannot justify content-based burdens on speech.<sup>9/</sup> Given the Court’s strong reaffirmation of the substantial protection that advertising enjoys under the First Amendment and the limited additional protections permitted for speech aimed at children, the Court is unlikely to look favorably upon the IWG’s proposal.

## **II. The Proposed Nutrition Principles are Flawed.**

AFFI and its members have three primary concerns with the proposed nutrition principles. First, the proposal does not align with current federal nutrition policy, including federal regulations. Second, the proposed principles would prohibit marketing for many beneficial foods that public policy encourages children and adolescents to consume, like frozen vegetables. Finally, the IWG establishes an unrealistic timeline and fails to consider the costs and challenges of reformulation.

### **A. The Proposal Is Inconsistent with Federal Nutrition Programs and Regulations.**

The IWG’s proposed nutrition principles do not align with existing federal food and nutrition programs. Although the IWG states that the proposed principles “should not be interpreted as a change in federal dietary guidance or nutrition policy or as a revision to any regulation defining health claims or nutrient content claims,” their implementation would mark a significant departure from established nutrition policy.<sup>10/</sup> Underlying this inconsistency is the failure of the proposed principles to adhere to the *2010 Dietary Guidelines for Americans* (“Dietary Guidelines” or “DGA”). This is particularly concerning given that the Dietary Guidelines are intended to form the basis of federal nutrition policy and all federal dietary guidance for the public is required to be consistent with the Dietary Guidelines.

The Dietary Guidelines focus on the overall composition of the diet, with less consideration given to the individual foods that may be consumed. Their recommendations encompass two overarching concepts: (1) Maintenance of calorie balance over time to achieve and sustain a healthy weight; and (2) Consumption of

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<sup>8/</sup> *Sorrell v. IMS Health Inc.*, No. 10-779 at 22 (June 23, 2011) (emphasis added).

<sup>9/</sup> *Id.* (quoting *Thompson v. W. States Med. Ctr.*, 535 U. S. 357, 374 (2002)).

<sup>10/</sup> Interagency Working Group on Food Marketed to Children, *Preliminary Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts*, at 6.

nutrient-dense foods and beverages. By focusing on specific foods and imposing detailed nutrient requirements, the IWG's proposed principles do not consider the diet holistically as recommended by the Dietary Guidelines.

The IWG's principles are also inconsistent with the Dietary Guidelines because they apply to children of all ages, whereas the Dietary Guidelines set specific recommendations for sub-populations (ages 1–3, 4–8, 9–13, and 14–18). The proposed sodium restrictions do not comport with the Guidelines because they establish a single, restrictive limit on sodium consumption for all age groups, which is not scientifically supported. The IWG proposal also sets sodium restrictions per food item, main dish or meal, whereas the DGA focus on daily intake as being the most important. Notably, no description of the methods or data used to derive these individual food limits is provided. The Dietary Guidelines set different sodium recommendations by age group. Moreover, the Dietary Guidelines recommend the most restrictive sodium limit, 1500 mg per day, only for certain sub-populations such as individuals over age 50, African Americans, or people with hypertension, diabetes, or chronic kidney disease. This most restrictive limit is recommended for only one subset of children, those ages 1–3. The Dietary Guidelines establish higher sodium levels for children and adolescents above 3 years old, but the proposed principles deviate from the DGA in this regard.

The nutrition guidelines outlined in the IWG proposal imply a one-size-fits-all approach for children ages 2–17 years. The Institute of Medicine recommends providing young children with a variety of healthy foods and age-appropriate portion sizes in meals, snacks and beverages. Some of the proposals provisions would, in effect, limit certain nutrients that are especially vital during certain periods of childhood development. The restrictions on protein rich foods, for example, do not take into consideration the essential fatty acids required for proper neurological growth and development. Furthermore, the one-size-fits-all approach of the nutrient guidelines, fails to take into consideration the changing energy and nutrient needs across the age spectrum of 2–17 years.

Additionally, the IWG's limits are more restrictive than the regulatory definition of "healthy" established by the Food and Drug Administration (FDA). <sup>11/</sup> FDA restricts the "healthy" claim to foods with 480 mg or less of sodium, which significantly exceeds the IWG's proposed levels. Therefore, the proposed principles would ban advertising for numerous foods that federal nutrition regulations define as "healthy." The proposed principles also would prohibit advertising for products FDA has explicitly authorized for promotion using various health claims.

The restrictions on added sugars pose another incongruity with FDA's labeling requirements. FDA has not defined "added sugars," and only requires that "total sugars" be declared on the Nutrition Facts Panel. The restriction on advertising foods based on their added sugar content would cause confusion for advertising outlets, which have no readily established means of verifying whether a food is

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<sup>11/</sup> 21 C.F.R. § 101.65(d)(2).

acceptable to be marketed to children or adolescents. Furthermore, as recently recognized by the Institute of Medicine, “[a]n analytical test that can accurately determine added sugar content is unavailable, leaving the sharing of proprietary product formulations as the only apparent option for monitoring product compliance with established criteria.” [12/](#)

Similar concerns arise because of the focus on “naturally occurring nutrients.” It is impossible to distinguish which nutrients are naturally occurring from the Nutrition Facts Panel, which makes restrictions on this basis impossible to monitor unless companies are required to provide complex proprietary data about each food they intend to advertise. Also, the proposed principles are not clear as to how the exclusion on “naturally occurring” nutrients will function.

Furthermore, the proposed principles fail to align with several other important components of federal nutrition policy, including the National School Lunch and Breakfast programs and the Women, Infants, and Children (WIC) nutrition program. It is especially ironic that many foods currently served and made available to children in schools and that are currently permissible for inclusion in WIC food packages, which are accepted by the U.S. Department of Agriculture (USDA) as nutritious, could not be marketed to children or adolescents under the IWG’s proposal due to its constraining nutrient restrictions.

The nutrition standards outlined in the IWG proposal are also not consistent with the Healthier US School Challenge nutrition guidelines nor the Alliance for a Healthier Generation; both voluntary programs supported by the U.S. Department of Agriculture and First Lady Michelle Obama. These programs provide guidance and incentivize schools to provide healthful meals and a supportive environment that promotes physical activity. Several AFFI members currently support these programs.

Considered as a whole, the IWG’s proposed principles are inconsistent with established federal nutrition policy and would prevent the marketing of foods long recognized as nutritious and healthy to children and adolescents. It is essential for the government to establish consistent federal nutrition standards because conflicting federal guidance will cause confusion among the food industry and consumers. Congress did not intend for the IWG to undertake a wholesale reinvention of nutrition policy, and therefore the proposed principles should be withdrawn.

**B. Marketing for Many “Good For You” Foods, Like Frozen Vegetables, Would be Prohibited by the Proposed Principles.**

The proposed principles would effectively prohibit the marketing to children and adolescents of many foods for which consumption should be encouraged. This

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[12/](#) Institute of Medicine, *Examination of Front-of-Package Nutrition Rating Systems and Symbols: Phase I Report*, October 2010.

result is not supported by nutrition science and directly contradicts the IWG's stated goal of promoting healthy diets. We are especially troubled that the proposed principles would prevent the advertising of certain wholesome, healthy, and nutritious frozen foods to children. In particular, we are concerned about the proposal's impact on the advertising of frozen vegetables.

Frozen vegetables are a vitally important food option for children, and restrictions on the promotion of these vegetables would be detrimental to efforts aimed at improving childhood nutrition. Like fresh vegetables, frozen vegetables deliver key nutrients and contribute to an overall healthy diet. In fact, according to FDA, the nutrient profiles of select raw fruits and vegetables and frozen, single-ingredient versions of the same fruits and vegetables are relatively equivalent. Recent data have shown that the nutrient content level for certain nutrients is actually higher in the frozen version of certain vegetables because they are packed at the peak of freshness. Notably, the 2010 Dietary Guidelines urge the consumption of more vegetables and explicitly reference frozen vegetables as being just as healthy as their fresh counterparts.

However, under the IWG proposed principles, companies may not be able to advertise certain frozen vegetables to children because they may not meet the stringent and unrealistic sodium limitations endorsed by the IWG. In fact, the IWG acknowledges that its sodium level recommendations, along with many other requirements it proposes, cannot be met by numerous products in the marketplace if fully implemented. This is not just a matter of reformulation, because such drastic reductions in sodium can affect acceptability and consumption by children.

It is entirely counterintuitive to prevent advertising of frozen vegetables to children under a scheme that purports to improve childhood nutrition, when the prohibited advertising promotes products the federal government acknowledges are beneficial to childhood nutrition. This is not responsible public policy. Moreover, children are more likely to eat new foods in the presence of familiar ones. Combination vegetable dishes, therefore, may provide a vehicle for the introduction of a greater variety of vegetables and other foods to children. Yet the IWG's proposed principles would prohibit the marketing to children of frozen foods that would make the vegetables more palatable to children and increase their acceptability. Frozen vegetables prepared in a light herb sauce, for example, offer the same nutrients as raw broccoli and may be consumed by kids who would not otherwise eat such vegetables. It defies common sense for the IWG to restrict advertising for foods that can help children transition to acceptance of more healthy choices.

### **C. The Proposed Principles are Unrealistic to Implement.**

AFFI is also concerned that many companies would not be able to reformulate their foods to meet the proposed principles, or could not do so within the IWG's timeframe. In recent years, many of our members have made significant strides in reformulating their products to reduce the levels of undesirable nutrients like *trans* fats and sodium. However, the development, testing, and implementation of



further changes may not be immediately feasible. Making such changes requires significant time and resources. It is unrealistic to expect that companies will be able to affect further modifications to their products in the time accorded by the IWG's proposal.

Furthermore, the IWG does not seem to consider the costs and technical challenges of reformulation. For example, sodium reduction is extremely challenging and complicated. Sodium affects many aspects of foods, including food safety, palatability, and functionality, such as shelf life. Consumers may not choose foods with drastic reductions in sodium levels due to undesirable impacts on taste and appearance. Implementation of such changes also may have the unintended consequence of decreasing the affordability of these products for consumers. Notably, and unfortunately, the expected costs of the IWG's proposal are unknown because the proposal is termed "voluntary" and therefore is immune from a cost-benefit review by the Office of Management and Budget.

### **III. The Proposed Definitions of Marketing Are Unreasonably Broad.**

The definitions of "marketing to children" are overly expansive and would sweep within their coverage a substantial amount of marketing that is primarily directed toward adults. This results in unnecessarily broad restrictions, such as prohibitions on advertising during a television program with 70 to 80 percent adults in the audience. The proposal would capture many types of programming that are intended primarily for adults, such as professional sports broadcasts. Furthermore, the definitions cover a wide range of activities that extend far beyond traditional advertising vehicles like television and radio advertising. The proposals would also affect support of children's charities, athletic activities, and funding for philanthropic healthy-behavior initiatives.

The excessive scope of the proposal is clearly illustrated by the consequences that would result for the Frozen Food Foundation's annual 5K Run Run/Walk. In response to First Lady Michelle Obama's *Let's Move!* initiative, the scope of the race has been expanded in recent years to include children, teens and families. The Fun Run promotes healthy eating and physical activity, two pillars of the *Let's Move!* campaign. The race also provides a safe, family-oriented environment that allows kids to engage in healthy behaviors.

However, events such as these are costly to stage, and require significant underwriting from member companies in the form of event sponsorship. The sponsoring companies produce healthy, nutritious frozen products, but may also have some foods in their product lines that would not meet the IWG's proposed principles.

As part of its sponsorship, one company's brand mascot, a vegetable, is present at the event and interacts with children by playing games and taking photos. The mascot communicates the positive message that vegetables are "cool."

Were the IWG's proposal to be implemented, the Frozen Food Foundation would no longer be in a position to hold this event due to the prohibition on our sponsors' involvement. This result is counterproductive. The Frozen Food Foundation's 5K encourages positive behavior by exposing children to positive activities, role models, and messages about the benefits of healthy eating and physical activity in a supervised, safe environment. The IWG should consider whether it is sound public policy to cause such collateral effects.

Additionally, the definitions established in the child marketing study conducted by the Federal Trade Commission (FTC) in 2006 are complicated and difficult to apply, making feasible implementation of the IWG's proposal an impossibility. Rather than engage in a complex assessment of each potential advertisement being considered, food companies are more likely to shy away from any marketing that could approach the boundaries of being considered child or adolescent marketing. Companies are rightfully concerned about the risks of enforcement actions, litigation, or negative publicity from behaviors that are too close to the line.

#### **IV. The IWG Should Withdraw the Proposed Principles.**

The IWG should withdraw its proposed principles and instead focus on ways to effect change through more cooperative efforts. In addition to the unconstitutionality of the proposal, another underlying need for withdrawal is the IWG's failure to address its Congressional mandate. Congress directed the IWG to "conduct a study and develop recommendations for standards for the marketing of food." <sup>13/</sup> In developing its recommendations, the IWG is directed to consider "the positive and negative contributions of nutrients, ingredients, and food . . . in the diets of such children" and "evidence concerning the role of consumption of nutrients, ingredients, and foods in preventing or promoting the development of obesity among such children." The IWG has yet to conduct a study and its proposed standards have not adequately considered these issues, which is reflected by the proposed principles' reliance on outdated assumptions and data. Before attempting to establish standards, the IWG should have conducted a comprehensive study of the issue as directed by Congress.

Furthermore, rather than continuing to develop its overly restrictive proposed principles, the IWG could work to support more cooperative approaches that have a greater chance of effectively changing the nutrition profiles of foods marketed to children and adolescents. Self-regulatory efforts are already effecting great change in this regard, but would be effectively preempted by the IWG's proposal. For example, the Council of Better Business Bureaus' Children's Food and Beverage Advertising Initiative (CFBAI) has resulted in an improved nutritional profile of

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<sup>13/</sup> Omnibus Appropriations Act, 2009 (H.R. 1105), Financial Services and General Government, Explanatory Statement, Title V, Independent Agencies, 983-84.

foods shown in child-directed advertising, which are lower in calories, fats, sugars, and sodium and contain more positive nutrients than just a few years ago. [14/](#)

Given the release of the 2010 Dietary Guidelines, the CFBAI and its participants today announced the development of new category-specific uniform nutrition criteria to replace existing company-specific nutrition standards, which help companies meet the new objectives of the Dietary Guidelines. CFBAI and its participants have committed to put the new criteria into effect no later than December 31, 2013.

CFBAI's success and continued development is attributable to incentives for reformulation and innovation, which have been supported by a lively debate about this issue in the public arena. Consumers are now demanding more nutritious foods and are choosing not to purchase foods with less positive nutrition profiles. This encourages a healthy level of competition within the food industry, with companies competing to be the best on the basis of nutrition.

The incentive to reformulate products as a point of differentiation from competitors would be eliminated if the IWG's principles were implemented, because the proposed principles would only permit advertising for the "best" foods. Companies will only have an incentive to reformulate products if doing so is feasible and realistic. However, because there would effectively be no means of informing consumers of product improvements (unless they meet the proposed principles' restrictive standards), manufacturers would have no reason to produce incrementally "better for you" versions of a product.

## **V. Conclusion.**

As discussed above, the courts are unlikely to look favorably upon the IWG's prohibition of free speech. Justice Stevens once noted that bans on commercial speech "not only hinder consumer choice, but also impede debate over central issues of public policy." [15/](#) We agree that obesity is a serious problem that must be addressed, but the IWG's approach would foreclose public discourse about the issue by prohibiting a large amount of marketing behavior. In contrast, the self-regulatory efforts that are currently in place allow the debate to continue while encouraging competition on the basis of nutrition. Notably, in its recent decision striking down California's restrictions on the sale of violent video games to minors, the Supreme Court lauded the video game industry's voluntary self-regulatory efforts. [16/](#)

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[14/](#) *The Children's Food & Beverage Advertising Initiative in Action: A Report on Compliance and Implementation During 2009* (December 2010).

[15/](#) *44 Liquormart v. Rhode Island*, 517 U.S. 484, 503 (1996).

[16/](#) *Brown v. Entm't Merchants Ass'n*, No. 08-1448 at 15-16 (June 27, 2011) ("This system does much to ensure that minors cannot purchase seriously violent games on their own, and that parents who care about the matter can readily evaluate the games their children bring home.").

In closing, we reiterate our concerns that the proposed principles would not remedy the problem of childhood obesity but rather would serve only to restrict free speech and limit the nutrition information available to consumers when making purchasing decisions. AFFI and its members firmly believe the federal government should not attempt to define "good" and "bad" food, nor regulate marketing based on the category in which it believes a particular product falls. We respectfully request, therefore, that the IWG withdraw the proposed principles, carry out the study required by Congress, taking into consideration the results of the industry's latest efforts, and report to Congress on these results.  
Respectfully submitted,

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John T. Allan, III., MS  
Director of Regulatory and International Affairs