



ConAgra Foods, Inc.
One ConAgra Drive
Omaha, NE 68102-5001
402-240-4000

July 14, 2011

SUBMITTED ELECTRONICALLY VIA COMMENTWORKS.COM

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

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

To Whom It May Concern:

ConAgra Foods, Inc. thanks the Interagency Working Group on Food Marketed to Children (“IWG”) for the opportunity to comment on the IWG’s “preliminary proposal for voluntary principles to guide industry self-regulatory efforts to improve the nutritional profile of foods marketed to children.” We share the IWG’s goal of fighting childhood obesity and appreciate IWG’s efforts to study and find workable, effective solutions. That said, we strongly believe the IWG’s proposal sets forth unrealistic, complicated nutrition guidelines and over-reaching, unnecessary marketing restrictions that will not accomplish or further the IWG’s objective but rather cause confusion and undermine the progress achieved to date by industry self-regulation.

We endorse and support the comments submitted by numerous industry associations voicing concerns as to the broad, unrealistic, and over-reaching nature of the IWG’s proposal, including in particular comments submitted by the Children’s Food and Beverage Advertising Initiative (CFBAI) of the Council of Better Business Bureaus (CBBB) and the Grocery Manufacturers Association (GMA). We believe industry self-regulation has shown significant progress in the last few years in improving the nutritional profiles of products advertised to children under 12 and shifting the mix of advertising to more healthful dietary choices and lifestyle messaging. As such, we strongly encourage the IWG to consider the new uniform nutrition criteria announced by the CFBAI today, which we think is a more reasonable set of aspirational criteria than the IWG Nutrition Principles. The new CFBAI uniform nutrition criteria take into consideration the realistic manufacturing capabilities and challenges of the food industry, draw upon and remain consistent with established scientific and regulatory guidelines, and set a significantly high bar for participants to reasonably aspire to reach, all of which will result in further improving the nutritional profile of foods marketed to children under 12.

By proposing its own nutrition principles and marketing restrictions that are so over-reaching and unattainable, the IWG risks derailing industry self-regulation that is already in place, progressing and adding more participants to its ranks. Moreover, given the IWG’s goal of fighting obesity, we were surprised to see that the IWG Nutrition Guidelines fail to address calories or portion size, two aspects commonly associated with weight maintenance and weight loss, but rather focus on food groups and certain nutrients, which, while important to overall health and well-being, have not been proven by IWG

to have a meaningful effect in fighting obesity. Furthermore, while we appreciate that the IWG's proposed guidelines are technically "voluntary," the practical reality, based on our own experiences, is that companies like ConAgra Foods will come under immense pressure to follow the guidelines from a wide variety of sources, including food industry critics, trial lawyers, and likely IWG agencies themselves, such that they will become de facto binding. Indeed, it is hard to imagine any other outcome given the immense amount of resources, time and effort the IWG is expending in developing the guidelines.

Rather than reiterate the same points raised in the CFBAI's and GMA's comments about why the IWG Nutrition Principles are unworkable or how the marketing restrictions are overbroad and unwarranted, the purpose of our separate comment is to highlight our own ongoing efforts in this area, affirm that self-regulation is working and making a difference in children's marketing and nutrition, and describe the specific impact on and barriers to be faced by ConAgra Foods were the IWG guidelines to be adopted as proposed.

Dedication to Responsible Children's Nutrition and Marketing. We first wish to provide some background on our company to show that, like many consumer food companies, ConAgra Foods is a responsible marketer that for a number of years has been taking steps to improve the nutrition profile of its products, including those that particularly appeal to children.

ConAgra Foods is one of North America's leading consumer packaged foods companies, serving grocery retailers, as well as restaurants and other foodservice establishments. *Healthy Choice* and *Chef Boyardee* are just a few of the well-known iconic brands within our portfolio of consumer foods products. ConAgra Foods has a long-established commitment of marketing its products responsibly, including any advertising and promotional activities directed toward children and adolescents.

For a number of years now, and before any dedicated industry efforts in this area, ConAgra Foods has undertaken and completed numerous and significant product reformulations, entailing many hours of time, effort as well as significant cost, to improve the nutritional profile of our products, including products the company has advertised or promoted to children. For example, for our top five *Chef Boyardee* canned pasta products, which account for almost half of the total sales for that brand, we reduced total fat on average almost 30% and sodium on average almost 20% from 2003-2008. Similarly, for our entire *Kid Cuisine* frozen meals line, we reduced total fat between 20-30% and sodium on average almost 20% between 2003 and 2008.

Before ConAgra Foods joined CFBAI in 2007 and implemented its CFBAI pledge in 2008, we began work on meeting the requirements of the CFBAI Core Principles, which included establishing and meeting better-for-you nutrition guidelines for products advertised to children under 12. These guidelines were developed by our nutrition experts following established regulatory and scientific health standards and policies. Implementing these pledge nutrition guidelines required us to reformulate a number of products that we wanted to continue to advertise to children. As a result, ConAgra Foods continued its reformulation efforts in an effort to maximize product compliance with its CFBAI pledge to give the company the ability to continue to advertise the products to children, if it so chooses.

For example, *Chef Boyardee* products underwent further sodium, total fat, and saturated fat reduction projects, as did our *Kid Cuisine* products. Specifically, since 2009, we further reduced sodium on average another 12% across our entire *Chef Boyardee* line, including a 17% reduction on average for our most popular top 4 *Chef Boyardee* products. We also reduced saturated fat an average of 14% (from

Interagency Working Group

July 14, 2011

Page 3

3.5 grams to 3 grams per serving) for those items. Additionally, ConAgra Foods has marketed a *Chef Boyardee* "Forkables" product for a number of years that provides 8 grams of whole grain per serving.

Likewise, for our *Kid Cuisine* line, since 2009, we further reduced sodium by 22%, fat by 15%, and saturated fat by 16%. As a matter of fact, over the last 8 years, we improved the nutritional profile of our *Kid Cuisine* line in a gradual stepwise manner to result in over 40% sodium reduction and approximately 50% saturated fat reduction. With the exception of one meal, our entire line of *Kid Cuisine* meals meets our CFBAI pledge nutrition guidelines.

And we are not finished with improving the nutrition of our food. We continue to explore new opportunities to even further enhance the nutritional profile across our portfolio, including our brands that particularly appeal to children.

In addition to its efforts to reformulate and improve the nutritional profiles of its products (as described above), ConAgra Foods also is committed to responsibly marketing its products, including marketing to children and adolescents. The company is a supporter of the Children's Advertising Review Unit (CARU) of the CBBB and we adhere to CARU's published industry guidelines for advertising to children.

As noted above, in 2007, ConAgra Foods joined the CFBAI, a voluntary industry self-regulation program designed to shift the mix of advertising for foods and beverages directed primarily to children under 12 to healthier dietary choices and healthy lifestyles. In joining, ConAgra Foods submitted to CFBAI a pledge by which the company committed to focusing 100% of its child-directed advertising on products meeting better-for-you nutritional standards developed by the company (based on established scientific and regulatory standards) and approved by CFBAI. We also agreed to refrain from advertising in elementary schools and from product placement in movies or other editorial content primarily directed to children under 12, and to reduce the use of third party licensed characters in foods that do not meet better-for-you criteria. In 2010, ConAgra Foods submitted an updated pledge¹ to CFBAI by which the company further agreed to discontinue all advertising in measured media primarily directed to children under 6, extend its measured media advertising restrictions to other media formats such as video games, DVDs, cellphones and word-of-mouth advertising, and limit its usage of celebrities and movie tie-ins to better-for-you products. Today, CFBAI publicly announced and unveiled a set of uniform nutrition criteria that participants, including ConAgra Foods, will adopt and incorporate into their respective pledges and which represent criteria more stringent than what is currently set forth in participant pledges, including ours.

Additionally, in 2009, ConAgra Foods became a member of the Healthy Weight Commitment Foundation ("Foundation"), a coalition of retailers, food and beverage manufacturers, restaurants, sporting goods and insurance companies, trade associations and non-governmental organizations, and professional sports organizations that is engaged in a national, multi-year effort designed to help reduce obesity – especially childhood obesity – by 2015. Consistent with the company's support of the Foundation's efforts, ConAgra Foods will continue to look to enhance its products, packaging and

¹ ConAgra Foods' current CFBAI pledge (2010) can be found at the following link: <http://www.bbb.org/us/storage/0/Shared%20Documents/CAG%20Amended%20and%20Restated%20Kids%20Pledge%202010.pdf>.

labeling to help make it easier for consumers to manage their calorie intake while preserving or improving overall nutrition quality.

Also in 2009, we announced an aggressive pledge to reduce sodium across our portfolio of consumer foods products, including products marketed to children under 12, by 20% by the end of 2015. Building on efforts that began in 2006, this objective is expected to reduce salt in our products by 8 million pounds each year. Already, significant sodium reductions have been undertaken in many products, including *Chef Boyardee* and *Kid Cuisine*.

Furthermore, we have been actively collaborating with other food and beverage companies through GMA and the Food Marketing Institute (FMI) to develop a voluntary front-of-pack nutrition labeling system to help consumers make informed decisions when they shop. *Nutrition Keys* is a fact-based approach that summarizes important nutrition information from the Nutrition Facts Panel in a clear, simple and easy-to-use format on the front of food and beverage packages. Participating food and beverage companies will place an icon on the front of their products that displays calories, saturated fat, sodium and sugar per serving. In addition, consumers will be provided with important information on essential nutrients including potassium, fiber, vitamin A, vitamin C, vitamin D, calcium, iron and protein. Extensive consumer testing conducted by the International Food Information Council Foundation has demonstrated that the *Nutrition Keys* icon, combined with the Nutrition Facts Panel, will help consumers make informed choices when they shop. We believe this front-of-pack labeling system, which is anticipated to be widely used on many packaged food products including those likely to be consumed by children, will be an especially useful tool for parents to help them make smart purchasing decisions and thus aid in the fight against childhood obesity.

We present the foregoing information to demonstrate our dedication and attention to children's issues, whether it is nutrition or marketing, and to reinforce that we are actively engaged in a number of industry initiatives created to help address childhood obesity.

Products Not Qualifying Under IWG Nutrition Principles. If adopted, the IWG guidelines would significantly restrain ConAgra Foods' ability and right to responsibly market its products, including to children and adolescents. None of the ConAgra Foods products that currently qualify under its CFBAI pledge (described above) would qualify under the IWG Nutrition Principles. Those products include certain *Chef Boyardee* canned pasta products, *Kid Cuisine* frozen meals, and *Peter Pan* peanut butter. All of these products are nutritious and can be part of a healthful diet for children. Furthermore, they are all foods children enjoy that provide the food groups that IWG is trying to encourage, such as vegetables, nuts and seeds, and whole grains.

In fact, the IWG Nutrition Principles are so restrictive that almost no ConAgra Foods product qualifies, including nearly all of our *Healthy Choice* product line, most of the *Hunt's* canned tomato products, and most of the *Orville Redenbacher's* Smart Pop! popcorn, all of which qualify as "healthy" under federal regulatory definitions. It is candidly astounding to us that products the federal government permits to be labeled and promoted as "healthy" would be precluded from being marketed to children under 18. Within our retail portfolio of approximately 750 products, only 5% of our products—including *LaChoy* bamboo shoots, *Rosarita* canned green chiles, and *EggBeaters* liquid egg product --meet the proposed principles. For many of our products that would not qualify, we believe it would be technically infeasible or unreasonably burdensome to successfully reformulate/renovate them to meet the IWG Nutrition Principles without sacrificing taste, consumer acceptance, and quality, among

other important factors. As such, we are justifiably concerned that, were the IWG's guidelines adopted as proposed, our ability to communicate about our products to children and potentially adolescents, particularly those that would qualify as healthy under federal regulations or otherwise can be an important part of a healthful, nutritious diet, would be unduly and unnecessarily restrained.

Reformulation/Renovation Hurdles. One of the biggest concerns that ConAgra Foods has with the IWG Nutrition Principles is its exceedingly low sodium limits and unrealistic time plan for implementing such limits. Sodium reduction is one of the most technically challenging product renovations across the food industry. This challenge is not a matter of simply removing sodium from the product. The product developers must balance crucial factors such as palatability, consumer acceptance, safety (preservative, anti-microbial), texture, anti-staling, structure, costs of salt substitutes that may impact costs to consumer pricing, and availability of salt delivery or salt substitute technology. As a leader in sodium reduction techniques, we simply do not see that the drastically low levels of sodium proposed by IWG within a 5- to 10- year period are technically feasible to sustainably achieve in terms of maintaining product flavor and quality such that consumers would be willing to continue to enjoy the products. Experience has proven that the only way to reduce sodium and maintain consumer acceptance is to do so gradually and incrementally in waves over a period of time longer than the five/ten year phases proposed by the IWG. Moreover, it is a reality that certain foods simply don't taste good when sodium levels drop below certain levels, no matter how accustomed the palate may be to low sodium levels.

Allowing only low sodium on a per RACC basis products to qualify after 2021 will essentially negate entire categories of products, including those products that provide much needed nutrition to children. Moreover, concurrent reductions in sugar and saturated fat make the product renovations exponentially more challenging.

The implausible nutrient thresholds and food groups requirements make development of consumer acceptable products so challenging that the IWG Nutrition Principles inevitably remove the incentive for manufacturers to renovate their products. If the IWG Nutrition Principles are not reasonably aspirational or feasible, we are concerned that they will stifle innovation and competition, and leave consumers with fewer healthier dietary choices. This likely and presumably unintended consequence contravenes the IWG's goal.

Marketing Restrictions. The marketing definitions proposed by the IWG are so overbroad and over-reaching that they would restrict a plethora of communication and activities that go beyond reaching children but instead capture a greater amount of communication intended for parents/adults or toward the family as a whole. For example, the marketing definitions would cover point-of-purchase, in-store marketing, and on-package labeling. We believe that these venues of communications are geared primarily toward the consumer purchaser in the store, which in most cases is the parent/adult, not the child.

Moreover, expanding the marketing definitions to cover the age range of 12-17 (adolescents) would have an even more drastic effect on industry's (including ConAgra Foods') current advertising which does include some marketing to teens. As acknowledged by the IWG, there is little to no data to support that adolescents/teens do not understand advertising. The marketing definitions would clamp down on all advertising in which adolescents make up 20% or more of the audience share. This would inevitably encompass advertising intended to reach adults, rather than adolescents or children. Often

times, when the percentage of adolescents watching is 20% or over, the rest of the audience composition is primarily adults.

In addition, the marketing restrictions arguably would prohibit many desirable, positive activities currently sponsored by brands/products that would not meet the IWG Nutrition Principles. For example, our *Wolf Brand Chili*, which does not qualify under the IWG Nutrition Principles, would likely have to discontinue its label collection program by which it donates cash to schools. In addition, the IWG marketing definitions that restrict philanthropic endeavors and charitable events would greatly curtail ConAgra Foods from effectively executing worthy events, such as our *Child Hunger Ends Here* program, whereby we donate to a network of food banks to help stave off child hunger in the U.S. every time a consumer purchases certain ConAgra Foods products, or *Slim Jim's* "Tribute to the Troops" TV event with the WWE to celebrate, support and donate food to U.S. troops overseas and encourage viewers to do the same. Some of our brands also sponsor healthy lifestyle events that involve promoting physical activity in families (such as Little League baseball sponsorships, family night activity games at minor league baseball games, and Hy-Vee triathlons) and sponsor minor sports league teams that train young athletes for the majors (such as the Chicago Wolves and the Omaha Stormchasers) and hold games and events attended by families, including children and teens. Moreover, our *Lightlife* brand, which donates at least 5% of its net profits to charities that support causes of human dignity, the environment and good health (including children's causes), often sponsors events associated with those causes, such as fundraisers or races where children and teens may be participating. However, under the IWG marketing definitions, all those events would effectively be precluded unless promoted by a food that meets the IWG Nutrition Principles. Furthermore, *Kid Cuisine's* romance copy on its packaging periodically encourages kids to play outdoor games, and its website contains an outdoor game section by which *Kid Cuisine* encourages kids to play outdoor physical activity games such as tag, relay games, etc.² This type of healthy lifestyle messaging would not be permissible as we understand the IWG proposal due to its overbroad marketing restrictions unless the products meet the very restrictive nutrition principles.

Concluding Remarks. We believe that before any realistic and practical recommendation can be issued by the IWG to Congress, the IWG needs to conduct further study of children's nutrition, product renovation/innovation capabilities and challenges, and effects/influence of marketing on children. We also urge that the IWG seek more consistency with current scientific and regulatory standards for food products. We are willing to engage in meaningful collaboration with the IWG (either directly or through our trade associations) to further its endeavor toward a practical and pragmatic recommendation. Until then, we respectfully and strongly recommend that the current IWG proposal be withdrawn due to its impracticality and the unintended consequences—consequences that are counter to the IWG's goals—that we believe the proposal would cause.

Again, we appreciate the opportunity to offer comments on this important matter.

Respectfully submitted,

CONAGRA FOODS, INC.

² See <http://www.kidcuisine.com/games.jsp>.