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WLF Urges Food and Drug Administration To Abandon Changes To Healthy-Label Rule

(In re Food Labeling: Nutrient Content Claims; Definition of Term “Healthy”)

“The Proposed Rule violates the First Amendment and the Administrative Procedure Act.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged a federal regulator to stay the course and withdraw a Proposed Rule changing regulations governing which foods can be labeled “healthy.” In formal comments filed with the Food and Drug Administration, WLF explains that the Proposed Rule violates both the Constitution and the Administrative Procedure Act (APA).

Nearly thirty years ago, FDA issued regulations governing which foods may be labeled “healthy.” FDA now seeks to amend those regulations. But as WLF argues in its comments, because the Proposed Rule regulates commercial speech, it must satisfy the test the U.S. Supreme Court announced in *Central Hudson*. The Proposed Rule fails every prong of that test as it does not directly and materially advance a substantial governmental interest. And even if it did, it is far broader than necessary to accomplish the stated goals. It thus violates food companies’ First Amendment rights.

Besides the constitutional problem with the Proposed Rule, it also violates the APA. As WLF’s brief explains, it is arbitrary and capricious. FDA says that it is amending the regulations so Americans will eat foods that meet the dietary guidelines. But many foods that fit in a diet that complies with the dietary guidelines cannot be labeled as healthy under the Proposed Rule. In short, the Proposed Rule allows only a fraction of foods that are healthy to be labeled as such. FDA should return to the drawing board if it wants to revise the regulations governing foods labeled as healthy.

Celebrating its 46th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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