What’s on the table
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The preliminary voluntary principles proposed in April by the Interagency Working Group on Food Marketed to Children have got people talking about kids, advertising, and nutrition.

Congress – in a bipartisan effort led by former Senator Sam Brownback and Senator Tom Harkin – directed the FTC, the Food and Drug Administration, the Centers for Disease Control, and the U.S. Department of Agriculture, to develop recommendations for the nutritional quality of food marketed to kids, ages 2 to 17.

We’ve asked for public input and have begun to read the comments filed by industry, health experts, parents, consumer groups, and others – the deadline’s been extended to Thursday, July 14th – and appreciate their thoughtful contributions to the conversation.

But we’ve also heard amped-up stories claiming to know what this project is “really” about and suggesting that the agencies are trying to ban almost all food marketing to kids and punish food companies that don’t adhere strictly to the principles. Frankly, these folks might want to switch to decaf. Here’s my take on some of the myths that have been percolating about the proposed principles.

**MYTH #1: The FTC plans to sue companies that don’t adopt the Working Group’s proposed nutrition principles.**

Not so. The Working Group’s job is to submit a report to Congress. That’s all. That’s what Congress told the group to do. A report to Congress by an interagency working group provides no basis for law enforcement action by the FTC or by any of the other agencies participating in the Group.

**MYTH #2: The Working Group’s proposal is regulation by the back door.**

Second verse, same as the first. This is a report to Congress, not a rulemaking proceeding, so there’s no proposed government regulation. In fact, the FTC Act explicitly forbids the Commission from issuing a rule restricting food advertising to children. So the FTC couldn’t issue a rule on this subject if it wanted to, which it doesn’t. Simply put, a report like this can’t be a rule – whether it’s delivered to Congress by the front door, the back door, or the kitchen door.
MYTH #3: The Working Group wants to ban the marketing and sale of foods that don’t meet its strict nutrition principles.

False. The proposal doesn’t ban any marketing or any foods at all. It’s voluntary. Companies can continue to market and sell the same products they do now. The proposal simply recommends that the products companies choose to market directly to kids – as opposed to the products marketed to their parents – meet the nutrition principles outlined in the report.

MYTH #4: The proposal violates the First Amendment.

At the risk of being redundant, a report to Congress containing recommended nutrition principles can’t violate the Constitution. A report is not a law, a regulation, or an order, and it can’t be enforced. While we hope companies voluntarily choose to adopt the principles (when finalized), there’s no legal consequence if they don’t. So there’s no effect on their free speech rights.

MYTH #5: The proposal means the end of chocolate Easter Bunnies and Santas.

Some people are confusing the Working Group with the Grinch. It’s true we’re proposing companies not to market candy directly to children. We also recognize and applaud companies like Mars, Hershey, and Cadbury Adams that already voluntarily have stopped advertising to kids. We’re not proposing that companies stop selling holiday and special occasion treats or stop marketing those treats to parents. And we welcome and will carefully consider suggestions as to how the proposed principles might be revised to address holiday and seasonal promotions.

MYTH #6: Toucan Sam will be banished from the Froot Loops box because the proposal doesn’t allow cartoon characters on food packaging. The proposal bans the use of all characters popular with kids in any marketing materials, including product packaging.

Nobody’s saying Toucan Sam has to fly the coop. Ideally, during the next five years it would be great to see the cereal companies voluntarily tweak their formulations to raise the whole grain content and lower the added sugars for cereals marketed to children. That’s not just a wish. In the past three years, cereal companies have made impressive strides toward improving the nutritional profile of their kids’ brands and many already are close to meeting the nutritional goals the proposal has suggested for 2016.

At the same time, we appreciate that the financial stakes for brand equity characters are different from the licensing of movie or TV characters for a short-term promotion. Right now, the proposal doesn’t distinguish between Toucan Sam and, say, Blu the Macaw
from the movie “Rio.” We welcome comments on whether the proposal should draw a distinction between the use of brand-specific characters and third-party licensed characters in food marketing.

**MYTH #7: The nutrition principles are inconsistent with federal nutrition programs and federal labeling regulations. You can’t even market to kids a food that FDA considers “healthy.”**

Federal food and nutrition policy encompasses a variety of guidelines and regulations, many developed for specific purposes and population groups. The 2010 Dietary Guidelines for Americans informs all of these. In developing the proposed nutrition principles, the Working Group was guided by the latest nutrition research supporting the 2010 Dietary Guidelines. It’s significant that a big focus of the 2010 Report of the Dietary Guidelines Advisory Committee was on obesity, with special attention on what kids are eating. This also was the focus of the Working Group’s proposal.

The nutritional targets the Working Group is proposing that industry aim for in the next five years are ambitious and, in certain respects, may differ from specific federal regulations and guidelines, but that doesn’t mean they’re in conflict. The Working Group believes the goals are appropriate, given the voluntary nature of the goals, the proposal’s limited application to marketing aimed directly to children, and the tremendous public health stakes for our kids.

At the same time, the Working Group recognizes there are many approaches to improving the nutritional profile of foods marketed to children. In fact, the proposal specifically asks for comments on an alternative approach based on the food labeling definition for “healthy.”

**MYTH #8: The proposal goes too far by covering all forms of marketing to teens.**

Congress directed the Working Group to make recommendations for all children and adolescents, ages 2 to 17 years, presumably because obesity is prevalent in both age groups and food marketing targeted to both is substantial as well. The Working Group recognizes, however, that applying the same broad restrictions on marketing to both age groups doesn’t take into account developmental differences in how different age groups understand and respond to marketing. The Working Group also recognizes that restrictions on marketing to teens are more likely to result in limits on food marketing that reaches a substantial adult audience. For those reasons, the proposal signals that the Working Group is open to narrowing the scope of marketing covered for teens. In fact, the proposal specifically seeks comment on whether, for the 12 to 17 age group, it would make sense, for example, to apply the principles only to in-school and social media marketing.
MYTH #9: Food and beverage companies will no longer be able to sponsor athletic events in which those under 17 participate, like little league teams, or even the Olympics.

Ideally, the Working Group hopes that, as a result of this proposal, food companies will continue to sponsor athletic events and other school and community programs, but will tie that sponsorship to the healthier products in their portfolios – juice or bottled water instead of soda, for example. Having said that, the Working Group understands that the ultimate goal of the proposal is the health of children. Therefore, the group must also consider any potential negative impact on athletic programs and physical activity opportunities for children. The proposal already signals that the scope of recommended covered marketing activities to teens 12 to 17 is likely to be narrowed in the final report. Sponsorship of high school athletic activities therefore may not be covered. And certainly the Group never intended to restrict sponsorship of Olympic events merely because some athletes may be 17 or younger.

MYTH #10: This proposal represents the government’s attempt to do parents’ job of deciding what to feed their kids.

Not so. Parents, not the government, have to make that decision. For that reason, the proposal is designed to support – not supplant – Moms and Dads. It’s parents’ responsibility to decide what to feed their kids. This proposal is about making that job a little easier. After all, if more of the marketing that kids see is for foods that make up a healthy diet, kids may start asking for healthier foods. Marketing to kids works; that’s why it’s a multi-billion dollar industry. We’re asking marketers to use their creative know-how and marketing power to steer kids to healthful choices. What parent couldn’t use that kind of help?

MYTH #11: None of this will do anything to improve children’s health or reduce obesity. There’s no proof that advertising has caused the obesity epidemic.

The research on this issue has focused on television advertising and doesn’t capture the full impact of the sophisticated integrated marketing campaigns that rely on the Internet, digital marketing, packaging, promotional events, and other techniques in addition to TV.

Even so, the Institute of Medicine conducted a thorough review of the research on the impact of food ads on television and found strong evidence that advertising influences the food and beverage requests and preferences of kids ages 2 to 11, as well as their eating habits. The Institute’s 2006 report also found “strong evidence that exposure to television advertising is associated with adiposity in children ages 2-11 and teens age 12-18 years.”

More important, it doesn’t really matter whether you’re convinced food marketing has played a role in childhood obesity. You should still be able to agree that marketing can
be part of the solution to this very complex problem. In fact, many of the major food producers and marketers already agree. The Council of Better Business Bureau’s Children’s Food and Beverage Advertising Initiative (CFBAI) now has 17 participating companies. Each has pledged to limit the marketing of foods and beverages to children under 12 to products meeting certain nutritional standards. The CFBAI program is proof that voluntary industry efforts can play a role in improving kids’ nutrition and health.

**MYTH #12: The Working Group’s mind is made up. Comments won’t influence the final report.**

That isn’t so. The proposed principles aren’t set in stone. The Working Group wants the expert input of industry, nutrition science, and the public health community. The speakers at the public forum at HHS on May 24th raised some questions that will need to be addressed. Undoubtedly, additional issues will be raised in the comments. We’re counting on stakeholders to file substantive comments that leave the straw men aside and suggest meaningful solutions.