Facts and Myths about the Interagency Working Group (IWG) Proposed Voluntary Guidelines on Food Marketed to Children

Myth #1: There is no proof that food marketing to kids has caused the obesity epidemic.

Fact: A 2006 Institute of Medicine (IOM) and other studies have found that there is strong evidence that television advertising influences children's food and beverage preferences, purchase requests, and diets. The IOM concluded, "Food and beverage marketing practices geared to children and youth are out of balance with healthful diets and contribute to an environment that puts their health at risk."

Myth #2: The IWG proposal is back door regulation that would ban unhealthy food and most marketing to kids.

Fact: The voluntary guidelines are a report to Congress, not a rulemaking proceeding, so there's no proposed rule or government regulation. In fact, the FTC Improvements Act explicitly *forbids* the FTC from issuing a rule regulating food advertising to children. A report to Congress provides no basis for federal law enforcement action by the FTC or any other participating agencies.

Myth #3: The guidelines are unnecessary—industry is already self-regulating their food marketing to kids.

Fact: To date, seventeen companies have agreed to voluntarily participate in self-regulation through the Council of Better Business Bureaus' Children's Food and Beverage Advertising Initiative (CFBAI), initiated in 2006. While the current self-regulatory approach has led to some reductions in unhealthy food marketing to children and product reformulation, several studies show that the vast majority of marketed products remain high in calories, saturated fat, sodium, or added sugars and/or are low in fruits, vegetables, whole grains, and other key nutrients. ^{ii, iii, iv}

Members of the food and beverage industry cite the decreasing number of TV advertisements for unhealthy foods and beverages as evidence of the progress being made by self-regulation. While the percentage of TV advertisements for unhealthy packaged food products has decreased in recent years, children's exposure to fast-food advertising increased during this time. Further, in 2009, 86 percent of food and beverage ads seen by children featured products high in saturated fat, sugar, or sodium. V

The members of the CFBAI have already shown that adopting guidelines for advertising and marketing foods and beverages to children is not only the right thing to do for American families, but also is achievable from a business standpoint. The proposed IWG guidelines only strengthen this intent; they suggest ways that companies can address some of the weaknesses in self-regulation.

Myth #4: The nutrition guidelines are incongruent with existing nutrition guidelines and would ban marketing of many foods that are widely recognized as healthy.

Fact: The proposed guidelines don't ban anything - they are simply voluntary guidelines that companies can choose to follow, or not. The nutrition guidelines are grounded in the best science and represent the combined nutrition, health, and marketing expertise of FTC, USDA, FDA, and CDC. They are based on the *Dietary Guidelines for Americans* (DGA), the Institute of Medicine's (IOM) Dietary Reference Intakes (DRIs), the IOM's *Nutrition Standards for Foods in Schools: Leading the Way toward Healthier Youth* report, vi and FDA food-labeling rules, which have been in effect since 1994.

Some of the nutritional targets differ somewhat from certain federal guidelines, but that doesn't mean they are in conflict—the proposed nutrition principles translate the DGA to individual products. VII Furthermore, by emphasizing foods that make a meaningful contribution to a healthful diet, the proposed principles stay true to the basic premise of the *Dietary Guidelines for Americans*: that nutrient needs should be met primarily by consuming nutrient-dense foods.

A recent analysis found that "kid-friendly" foods like Yoplait Go-Gurt and Trix yogurt, McDonald's and Burger King chicken tenders kids' meals, Skippy peanut butters, Kellogg's Frosted Mini-Wheats, and Nestle Juicy Juice all meet the IWG nutrition principles. "iii"

Myth #5: The marketing definitions are so broad that in many cases the guidelines would effectively ban marketing to adults as well.

Fact: The proposed guidelines don't ban anything; rather, they provide model guidelines to help inform food marketers. In addition, the guidelines apply only to food that is marketed directly to kids—they don't apply to food marketed to adults.

The IWG proposed marketing definitions are in many ways similar to what companies are using themselves. For example, the IWG proposes that a television program be considered as targeted to children if 30% of the audience is under 12. CFBAI and most companies use 35%.

Myth #6: The proposed guidelines make industry more vulnerable to litigation.

Fact: The IWG guidelines don't give anyone a right to sue. Lawsuits are brought for breaking laws; what law is a company breaking for not following a suggestion in a voluntary guideline? The essential distinction between government regulations and recommendations is that recommendations can be ignored without legal consequence.

The major food and beverage companies have already joined the CFBAI, committing to a set of nutrition standards for food marketed to children. If the government recommends a different set of nutrition standards, the industry will be no more vulnerable to litigation than it is now. There is no legal difference between a company deciding to embrace [or choosing not to follow] nutrition standards coming from CFBAI versus those coming from the government.

Myth #7: The IWG was not supposed to develop recommendations—their charge was only to complete a study.

Fact: The accompanying report to the 2009 Omnibus Appropriations Act was clear: "The Working Group is directed to conduct a study and develop recommendations for guidelines for the marketing of food when such marketing targets children who are 17 years old or younger or when such food represents a significant component of the diets of children." The Act further requires the IWG to consider positive and negative contributions of nutrients and to "determine the scope of the media to which guidelines should apply."

It is apparent from the draft proposal that the Working Group has engaged in a thorough and deliberate review of nutrition science and policy, food marketing activities to children, and various industry and government models governing the nutritional quality of foods marketed to children. Conducting a general study on food marketing to kids was not the intent and would be redundant to the many studies that have already reviewed the evidence and have shown the adverse effects of food marketing on children's diets and health, including studies by the FTC, Institute of Medicine, non-profit organizations, and academic institutions, such as the University of Illinois, Chicago, and Yale University.

Myth #8: The proposed guidelines violate the First Amendment.

Fact: The proposed guidelines are simply a report to Congress. A report is not a law, a regulation, or an order, and it can't be enforced. While we hope the companies will voluntarily choose to adopt the final principles, there's no legal consequence if they don't. Thus, there is no effect on free speech rights.

Myth #9: The IWG was required by Congress to do a cost/benefit analysis of the principles, which they failed to complete. The proposed guidelines are likely to cost America jobs.

Fact: Congress did not require the IWG to complete a cost/benefit analysis. The voluntary principles are part of a report to Congress, not a rulemaking proceeding, thus requirements that govern the process of issuing regulations are not applicable to the voluntary guidelines.

An industry-funded "study" on the possible economic impact of the proposed principles was greatly overstated; they assumed a 20% decline in advertising, but had no data to show such a decline is likely to materialize. Under the voluntary guidelines, there is no reason that a company that *chooses* to implement the nutrition principles would decrease the amount of advertising targeted to kids, rather than simply shifting the mix of products it promotes.

Thus far, companies that have implemented nutrition standards for marketing to children cover three-quarters of the advertising to children, with four companies choosing not to market to children at all. Yet, there has been no decline in overall advertising to children and no negative economic impact on the advertising or food industries.

Creating fear through the prediction of job loss is not a new tactic. Similar predictions were made, and ultimately proven incorrect, about the tobacco industry at the height of the anti-

tobacco movement and by the beverage industry in response to the nickel deposit on bottles. In contrast, the cost of doing nothing is high—obesity costs our country nearly \$150 billion per year, half of which is paid through Medicare and Medicaid.

Myth #10: The IWG wants to ban chocolate Easter bunnies and candy canes.

Fact: The IWG proposal does not ban or prohibit anything. The guidelines recommend companies abstain from marketing candy directly to kids, but don't affect the manufacture or marketing of candy to parents and other adults.

ⁱ McGinnis J. Michael, Gootman JA, Kraak IA. *Food Marketing to Children and Youth: Threat or Opportunity?* The National Academies Press, 2006. Available from: http://www.nap.edu/catalog.php?record_id=11514.

ⁱⁱ Food and Beverage Marketing to Children and Adolescents: An Environment at Odds with Good Health. Robert Wood Johnson Foundation; April 2011. Available from: http://www.rwjf.org/files.

Kunkel D, McKinley C, Wright P. *The Impact of Industry Self-regulation on the Nutritional Quality of Foods Advertised on Television to Children*. Children Now, December 2009. Available from http://www.childrennow.org/uploads/documents/adstudy_2009.pdf.

iv Batada A and Wootan MG. *Better-For-Who? Revisiting Company Promises on Food Marketing to Children*. CSPI, 2009. Available from: http://cspinet.org/new/pdf/pledgereport.pdf.

^v Powell L, Schermbeck R, Szczypka G, Chaloupka F, Braunschweig C. *Trends in the Nutritional Content of TV Food Advertisements Seen by Children in the US: Analyses by Age, Food Categories and Companies.* Archives of Pediatrics and Adolescent Medicine, in press.

vi Institute of Medicine (IOM). *Nutrition Standards for Foods in Schools: Leading the Way toward Healthier Youth.* The National Academies Press, 2007. Available from: http://www.iom.edu/Reports/2007/Nutrition-Standards-for-Foods-in-Schools-Leading-the-Way-toward-Healthier-Youth.aspx.

vii The Federal Trade Commission (FTC), the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and then United States Department of Agriculture (USDA). *Interagency Working Group on Food Marketed to Children: Preliminary Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts*. 2011. Available from: http://www.ftc.gov/os/2011/04/110428foodmarketproposedguide.pdf.

viii Wootan MG, Vickroy L, Pokress BH. *Putting Nutrition into Nutrition Standards for Marketing to Kids*. Center for Science in the Public Interest, 2011. Available from: http://cspinet.org/new/pdf/iwg-report.pdf.