

Extracts from responses to the Food Standard Agency's consultation on Guidance Notes for the Infant Formula and Follow-on Formula Regulations 2007

For full FSA documents see:

<http://www.food.gov.uk/consultations/consulteng/2007/informnewguide07eng>

<http://www.food.gov.uk/consultations/consulteng/2008/informappendiceseng08>

British Retail Consortium

We also feel that the guidance goes beyond the legislation suggesting best practice guidance. The purpose of the guidance should be made clear. We are specifically concerned about paragraph 49 of the guidance which suggests that 'shelf-talkers' and other in-store promotional devices for follow-on formulae are not used in the vicinity of infant formulae. We are especially concerned about the unreasonable suggestion that a follow-on formula has to be located in a different part of the store to infant formula. This is gold plating, as this is not laid down in the legislation. As best practice this proposal is completely unjustified.

Advertising Association

Furthermore, the call for advertisers to submit planned campaigns to the FSA in advance of their implementation seems unnecessary, especially since this service is already available to the industry via its own self-regulatory bodies.

Hipp

We feel there is inadequate guidance on what constitutes 'advertising' and what may actually just be the provision of 'information' about a product. Without such a definition and greater guidance it could be difficult to write 'informative copy' without this possibly being interpreted as 'advertising', and thereby breaking the law. Hipp feel there could be confusion over leaflets, which provide information on both feeding and suitable products that may be used.

The positioning of follow-on formulas in a different part of the store to the infant formulas is unlikely to be practical in retail outlets.

We feel more guidance is needed than has been given in this draft as this is an area where there is a risk of misinterpretation or differing interpretation by different interested

parties. For example, does ‘private correspondence’ and ‘oral communications’ mean that feeding information that has been requested by the customer in these contexts must not include any specific product information that might encourage the customer to use one product over any other?

Also, does the approval of the Secretary of State need to be sought for all existing informational and educational equipment and materials or just for all new materials? [The FSA points out this has been a requirement since the 1995 regulations!!]

Goes beyond the legislation, the requirement for scientific and factual information on advertisements is mandatory, however we consider that any comment about style (ie no subjective or emotive language) is beyond the requirement of these guidance notes.

In addition, subjective language can legitimately be used as part of advertising, providing it does not mislead, is factual, decent, honest and true and does not idealise the use of an infant formula or undermine breastfeeding.

63 Goes beyond the legislation, we believe that parents and carers have a right to request and receive information from a company that makes products being fed to their child. This information is always sent following a request. The statement that the examples quoted are advertising and therefore prohibited is an interpretation that is not warranted by the regulations.

We believe that use of phrases such as ‘to complement breastfeeding’ can be used on formula labels to provide customers with useful information without discouraging them from breastfeeding.

Boots

To state that shelf talkers for follow-on formula must not be used in the vicinity of infant formula is an unnecessary, and to suggest that infant formula must be displayed in another store location to follow-on formula is impractical and unnecessary. These additional restrictions would only exist within the UK not, as the Directive contemplates, harmonised across the European Community.

LACORS

With regard to the 4th bullet point it would be desirable to indicate that all practices should be deemed to be “advertising or promotion” unless they can be demonstrated to fall outside these controls; thus reversing the burden of proof for enforcement authorities.

LACORS assumes that the references to instructions for appropriate preparation will refer to the current DoH recommendation that the minimum water temperature to prepare infant formula is 70 deg C. It would be desirable to add a further reference to the fact that instructions relating to lower temperature are totally unacceptable on the grounds of protecting infant health and well being.

Trading Standards South East

In addition to the advice in paragraph 44, it should be pointed out that Article 5.5 of The International Code states that marketing personnel should not seek direct or indirect contact of any kind with pregnant women or mothers. Companies should be advised to ensure that carelines, websites, baby clubs etc do not contravene this article by, for example, providing details of customers for marketing purposes

ASA

The FSA's interpretation of an advertisement is broader than the Advertising Codes, the ASA has no role in maintaining standards in these areas.

Baby feeding Law Group - This submission was supported by 434 individual responses

FSA response: The provision at Regulation 22 addresses concerns that advertising of follow on formula could be taken as advertising for infant formula and undermine breastfeeding. The independently chaired review of the new controls will assess whether this has been effective and if not we'll consider if further action needs to be taken.

FSA response re monitoring company materials if they are to be allowed: The Department of Health cannot commit to regular monitoring but will work with Local Authorities and PCTs to ensure that materials made available through the health care system are in accordance with the guidance.

FSA response on refusing company produced education materials as policy: Materials to be circulated to mothers or healthcare professionals should conform to DH policy on breastfeeding and the promotion and advertising of Infant and Follow-on formula. The main criteria will be a check on consistency with current DH policies.

FSA response on labeling requirements: Only where there is a specific requirement in the Regulation can the Agency provide guidance on its application.

FSA response on notification system and where problems can be reported: If health workers or others have general concerns about the ingredients used in infant and follow on formula these should be directed to the Agency. If the concerns related to a specific product these should be reported to the Home Authority.

UNICEF UK

We are concerned that this document cannot compensate for the Regulations being unfit for purpose. Our main concern remains that the advertising of follow-on formula is still permitted.

IDFA

18 & 20 The statement 'Failure to follow instructions may make your baby ill' is commonly included on packaging currently. We are not aware of any evidence that the above statement has been inadequate. Similar statements have been used since the mid 1970s.

We do not support the alternative wording proposed in the guidance notes on the grounds that this may be alarmist and not easily understood by the consumer. Such a warning statement could lead consumers to use inappropriate products such as other powdered milk or other liquids (not infant or follow-on formulae) which do not have such warnings.

[FSA response: FSA-funded focus group research found that caregivers were concerned that powder formula was not sterile. Overall, as it poses a potential risk to babies, parents and healthcare professionals agreed that information about non – sterility and what it means should be clearly communicated to parents, so that they can make informed decisions and choices.]

Perception of babies under six months of age is very subjective. Manufacturers always ensure the babies are over the chronological age of six months.