

SUMMARY TABLE OF RESPONSES TO THE PUBLIC WRITTEN CONSULTATION
Guidance notes for The Infant Formula and Follow-on Formula Regulations 2007- Draft Appendix I,II and V

Please note that this is a summary document - Where possible we have assigned comments *verbatim*, however similar comments may be attributed to more than one respondent, this makes it possible to gauge at a glance the opinion of the majority / minority of respondents.

Respondent	Comments	FSA response
LACORS	<p>LACORS welcomes this FSA initiative to provide guidance on the three specific terms contained within the 2007 Regulations which are phrased in general terms.</p> <p>LACORS has no comments on the text of the proposed guidance and looks forward to seeing the full published guidance in due course</p>	Noted
The Newspaper Society	<p>The phrase 'either directly or indirectly' is likely to impose restrictions on press freedom because it could prevent editorial coverage of public interest matters relating to infant formula and the businesses surrounding them. For example articles criticising one company's infant or follow on formula products on health and safety grounds may indirectly promote the supply or sale of another brand. It is our assertion that the Appendix should follow the approach adopted by the Consumer Protection from Unfair Trading Regulations 2008. Under the Regulations, which prohibit unfair commercial practices, a commercial practice includes advertising undertaken by a trader which "is directly connected with the promotion, sale or supply of a product to or from consumers"(2(1)). This is a much more precise and certain terminology which would reduce the risks of impact on non-commercial references.</p> <p>As the Amended Draft Appendix II stands one gets the impression that, inter alia, any notice, circular, newspaper, magazine, press release would be a</p>	<p>The purpose of the Regulations is not to control independent editorial content and the Agency does not consider that they would be interpreted in that way.</p> <p>Noted</p>

	<p>representation. This is clearly wrong as it confuses the medium in which a representation may appear with the representation itself (i.e. the message). Whilst representations can appear in such mediums, it cannot be said that all such mediums are 'representations'. Indeed in relation to this matter, the wording in the original Draft Appendix II was more appropriate as it stated "infant formula cannot be advertised by means such as those listed below", thereby highlighting the difference between the advertising and the means through which it can be undertaken. It would be critical for Appendix II to make this distinction between a representation and the medium.</p>	
Journal of Family Health Care	<p>We have noted the consultation documents you kindly sent and agree with Amended Appendixes I and II and new Appendix V.</p>	Noted
PPA	<p>Definition of Scientific Publication PPA and AA were worried by the original definition of 'scientific publication' which was extremely narrow and would have had the effect of a ban on advertising infant formula in publications which currently may carry it.</p> <p>Many PPA member publications for healthcare professionals are bound not only by law but also by voluntary in-house guidelines on infant formula advertising which go significantly further than the legislation. They carry advertising which provides factual information to healthcare professionals about choices open to those who perhaps cannot breastfeed.</p> <p>These publications are a valuable resource to healthcare professionals with editorially independent articles on new research and debate in relevant areas. They are of restricted circulation to lists of subscribers, often under the auspices of a professional body. Without the funding provided by formula advertising they</p>	Noted

	<p><i>Regulation 21 means infant formula can be advertised only in scientific publications and trade publications and puts in place controls on the content of such advertisements. These publications may be in print or electronic form.</i></p> <p>PPA and AA also suggest that text giving further clarification of this situation could be included in the appendix relating to the internet which is not part of this further consultation.</p> <p>Interpretation of Advertising and Representation</p> <p>PPA and AA are concerned that genuine editorial content around the issues of breastfeeding could still be considered within the scope of the regulations if these definitions are not clear.</p> <p>It is unacceptable to publishers that editorial content, whether offline or online, is considered to be within the scope of the regulations. Applying the same rules to editorial content would stifle debate on the issues around breastfeeding and would be prejudicial to the freedom of the press.</p> <p>PPA and AA suggest the following amendments to the text to ensure clarity:</p> <ul style="list-style-type: none"> • The relationship between the definition of ‘advertising’ and ‘representation’ is not immediately obvious from the layout of the text. It would be better to merge both appendices in order that this relationship is stated more overtly. • Secondly it is unclear that the non-exhaustive list relates to commercial communications/representations found within the various media which are listed. It is important to make the clarification so that the media listed are not considered to be ‘representations’ in their entirety. 	<p>The purpose of the Regulations is not to control independent editorial content and the Agency does not consider that they would be interpreted in that way.</p> <p>Noted</p> <p>Noted</p>
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- Finally some amendments to the text which make it clear that these rules apply to content of a commercial nature only are necessary.

Content of Advertising

PPA and AA would like to voice their concern over the detailed list of banned practices for the advertising of infant and follow-on formulae which appear in the original draft text of the guidelines. It would be more useful for advertisers if this list took the form of general principles. It would also be more useful if the FSA were to run a series of seminars so that advertisers and the media could understand the rules better, which would improve compliance.

Given that the regulations and subsequent guidance have no lead-in period, both the PPA and AA would like the assurance of the FSA that the review of compliance with new advertising rules over the course of 2008 takes this fact into consideration. Advertising campaigns have long lead times and will often be planned up to six months in advance. Any review should focus on how advertising has changed after the Guidance has been released and any training by the FSA or professional bodies has been given.

Publisher Defence

In the PPA, AA and other organisations' initial submissions concerns were raised about the lack of publisher defence contained in the regulations and the subsequent guidance. PPA has been advised that the provisions laid down in the 2003 Food Act giving a publisher defence when advertising is taken in good faith could apply, as the Food Act is the overarching legislation for the infant and follow-on formula regulations. It would be useful to have some clarification of this matter

The purpose of the Regulations is not to control independent editorial content and the Agency does not consider that they would be interpreted in that way.

This and following comments do not relate to Appendix I, II or V. Responses to the previous consultation on the rest of the guidance will be considered and where appropriate taken into account.

	in the guidance to avoid ambiguity.	
HIPP	<p>In the latest consultation document there are still some interpretation issues that remain unclear.</p> <p>From my understanding of the amended Appendix I and II, it looks like we cannot communicate any Infant formula product information with customers which might influence their decision to buy, or with health professionals who might advise use of a product, other than through scientific journals in the latter case. Maybe I have misunderstood the wording of these new Appendices and perhaps we can still send information on the products provided this has been requested, but I would appreciate your clarification on this matter please.</p> <p>Currently, we give Hipp Organic Infant Milk information in our Breast and Bottle feeding leaflet (which carries an 'Important Notice' and is sent out on request), on our Hipp Website and Hipp Baby Club website (this information is only given once the reader has been through the 'Important Notice' page), and on our Information Sheets for the milks that are generally given to health professionals at exhibitions and when requested by phone, email, mail. Will any of these activities be allowed if these guidance notes are implemented?</p>	Noted
IDFA	<p>Overall we note that there needs to be a clear differentiation between advertising and representation, both of which are already defined in law. It should be made clear that these are guidance notes to assist in interpretation of the law.</p> <p>In responding to this consultation on the guidance notes we ask the FSA to consider the timescales for introduction of the guidance notes as currently in Northern Ireland there is a 'stay' on the legislation, and in England and Wales a court judgment means an amendment to the regulations will follow.</p>	<p>Noted</p> <p>The finalised Guidance notes will take into account the judgement from the judicial review.</p>

	<p><u>Appendix I – Interpretation of Advertising</u> We consider that the term ‘public announcement’ would be more appropriate than ‘representation’. We believe that this revised term has connotations of ‘active’ communication.</p> <p>We are aware that advertising is defined in other pieces of legislation. The detail contained in this Appendix is the interpretation and view of the Food Standards Agency. Whilst a useful addition to other information available on advertising, we believe it needs to be clearly stated that this is guidance and does not constitute legislation.</p> <p><u>Appendix II – Interpretation of Representation</u> Representation is already defined in law and providing further detail here is not necessary. The main purpose of a representation by a company is to provide information, not to directly promote a product.</p> <p>The list that is provided is largely one of different types of media. Whilst infant formula advertising is only permitted in specific types of media that are defined elsewhere, many of these channels could provide information as opposed to advertising. We consider that the detailed list of media that has been provided in the draft guidance notes is not necessary.</p> <p>Specifically we consider that the FSA should not censor or control correspondence between a company and their consumers. The EU Directive does not intend that.</p>	<p>The definition included in Appendix I takes into account definitions in other legislation, most notably the Control of Misleading Advertisements Regulations 1998, which refers to “representation”.</p> <p>The Guidance notes aim to help interpret the requirements the Regulations introduce and provide the Agency’s view on how to comply with those requirements.</p> <p>Noted</p> <p>The Guidance notes help interpret the Regulations, which implement the EC Directive. The Regulations</p>
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	<p>Regarding the comment about ‘price lists’, defining this as advertising would prohibit all Internet mail order sales and catalogue sales of infant formula. The EU Directive does not intend that to be the case and we propose that this wording is deleted.</p> <p>Given the number of media types where infant formula advertising can be placed, it is essential that the definition of advertising in the Guidance Notes is not so wide as to preclude any reference to infant formula in important media. Examples of such media would be correspondence between companies and their customers and consumers as well as oral discussions.</p> <p><u>Appendix V – Scientific Publications</u></p> <p>There is a need for a more accurate and appropriate definition of ‘scientific publication’, to include all publications for healthcare professionals that provide scientific, clinical practice and product information.</p> <p>We request that the target groups for scientific publications be reworded to include specific mention of healthcare professionals for clarity (i.e. ... aimed at academic and/or professionals in a scientific or healthcare field).</p> <p>We consider that the requirement for all scientific publications to have an ISSN to be overly restrictive and inappropriate since this would limit the definition of scientific publication to only ‘serial’ publications. This proposal goes further directive 2006/141/EC and the UK regulations.</p> <p>In addition, the scope of the definition needs to be broadened to include other</p>	<p>control such practices where they constitute advertising.</p> <p>Where such practices constitute advertising they will have to comply with Regulation 21 and 22.</p> <p>The Guidance notes help interpret the Regulations, which implement the EC Directive. The Regulations control such practices where they constitute advertising.</p> <p>The Regulations refer to “<u>scientific publication</u>”.</p> <p>Noted</p> <p>Noted</p> <p>Where they constitute a</p>
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	<p>legitimately produced scientific publications such as those from company sponsored scientific events for healthcare professionals. These are a legitimate source of scientific information.</p> <p>Increasingly, scientific journals are published on line in addition to paper versions. It will be important to ensure that information about infant formula products is still available in on-line scientific publications to ensure healthcare professionals maintain an up to date knowledge base. The guidance notes need to include provisions to manage advertising in on-line publications for healthcare professionals which are password protected and used by healthcare workers only.</p> <p><u>Content of Infant Formula Advertisements</u></p> <p>The statement that scientific and factual information is only that referenced to a peer-reviewed article is overly restrictive. Neither the EU Directive nor the UK law states a requirement for information from peer-reviewed articles only. Statements need not be peer reviewed to be scientifically factual and correct. Statements may represent generally accepted scientific data from sources such as FSA/DH websites. Equally there may be good reason to refer to data on file or results prior to publication.</p> <p>Regarding the comments about nutrition and health claims we request that the words 'In addition' at the start of the paragraph be omitted since if a claim is listed in Annex IV, no further evidence is required.</p>	<p>scientific publication they can advertise infant formula in line with regulation 21</p> <p>Noted</p> <p>The Guidance notes aim to help interpret the requirements the Regulations introduce and provide the Agency's view on how to comply with those requirements.</p> <p>Noted</p>
H. J. Heinz Company Ltd	<p>Although Heinz welcomes the FSA's initiative to try and provide clarity and consistency in relation to the interpretation of the IFFR, it is believed that:</p> <ul style="list-style-type: none"> the definitions of "advertising" and "representation" in Appendices I and II do not distinguish between advertising and educational information and 	<p>Noted</p> <p>Noted</p>

	<p>conflict with the provisions of Regulation 24 of the IFFR. As such, they should be amended to ensure that the definitions are consistent with the other requirements of the IFFR;</p> <ul style="list-style-type: none"> • the guidance in relation to “scientific publications” is not sufficiently precise and details of examples of the suitable scientific fields, and in particular references to the medical, nutritional and public health fields should be included to ensure clarity and consistency; • the requirement for peer-reviewed articles to support advertisements under Regulation 21(2) exceeds what is required by the IFFR and the FSA’s powers and therefore should be deleted; • the provisions of Regulation 21(1)(b) should be interpreted narrowly and only requires that labelling of products for which adverts are made, comply with the provisions of the IFFR. As such, these provisions should also be deleted; • the consultation period of 4 weeks in which to respond to the significant 	<p>Noted</p> <p>The Guidance notes aim to help interpret the requirements the Regulations introduce and provide the Agency’s view on how to comply with those requirements.</p> <p>Regulation 21 (1) (b) applies the labelling provisions in Article 17(1)(e), (2), (3) and (4), regulation 19 and regulation 21(2) and (3) to advertising (ie where regulation 21(1)(b) refers to ‘paragraph (2) and (3)’ it is referring to regulation 21(2) and (3)’.</p> <p>Criterion 1 of the Cabinet Office Code of Practice</p>
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	<p>amendments was not sufficient and not in accordance with the Cabinet Office's Code of Practice on Consultation.</p>	<p>states that a written consultation must be held for a minimum of 12 weeks for at least once during the development of the policy. The previous consultation on the Agency guidance notes on The Infant and Follow-on Formula Regulations 2007, lasted for the full 12 week period.</p>
<p>Breastfeeding Network</p>	<p>We continue to emphasise that both the Infant Formula and Follow-on-Formula Regulations 2007 and these guidance notes need to be as strong as possible in order to protect infant and maternal health. We fully support the Baby Feeding Law Group (BFLG) submission on this consultation.</p> <p>Appendix I – Interpretation of ‘advertising’ Firstly we noticed from the previous version that the part in Appendix 1, which mentioned how advertising influences a purchase or ‘transactional decisions’ has been removed. We are hoping that the reasoning behind this is the assumption that all advertising is aimed at influencing and encouraging a transactional decision and therefore is not necessary to mention it.</p> <p>Amended DRAFT Appendix II – Interpretation of Representation We welcome the inclusion of the following sentence:- <i>“The following list is of specific examples is not a definitive list due to the fact that the nature of advertising is always changing”</i></p> <p>In addition we would also like to see ‘gifts’ specifically included in this section as</p>	<p>Noted</p> <p>Appendix I refers to “sale” of infant formula and Follow-on formula.</p> <p>Noted</p> <p>Appendix II is not intended to</p>

	<p>these are also a representation, worth mentioning. Gifts are clearly aimed at encouraging a sale of that product by:-</p> <ul style="list-style-type: none"> a) Encouraging logo and brand recognition b) Making that company seem favourable and kind in order to induce a sale c) It could be interpreted as a bribe d) Gifts are an attempt at building a relationship with the consumer <p>In addition to the above the Commission Directive 2006/141/EC of 22 December 2006 on infant formulae and follow-on formulae and amending Directive 1999/21/EC, on which the UK Regulations are based, states in Article 14:-</p> <p><i>3. Manufacturers and distributors of infant formulae shall not provide, to the general public or to pregnant women, mothers or members of their families, free or low-priced products, samples or any other promotional gifts, either directly or indirectly via the health care system or health workers.</i></p> <p>This should have been included in the regulations. It is apparent that the UK regulations are now weaker than the directive on some points.</p> <p>We would also like to see “sponsorship” included. The links between sponsorship and advertising must not be overlooked. Sponsorship is a form of advertising. Examples include feeding rooms, exhibitions (such as baby shows), and conferences for health professionals.</p> <p>Finally we would like to draw attention to Recommendation 14 in the National Institute for Health and Clinical Excellence (NICE) Guidelines on Maternal and Child Nutrition:-</p> <p>“Improving the nutrition in pregnant and breastfeeding mothers and children in low</p>	<p>be a definitive list. Where such practices constitute advertising they will have to comply with Regulations 21 and 22. Such practices are also controlled by Regulation 23.</p> <p>This relates to the Regulations rather than Appendix I, II or V.</p> <p>Appendix II is not intended to be a definitive list. The Regulations will control such practices where they constitute advertising. Such practices are also controlled by Regulation 23.</p> <p>Only where there is a specific requirement in the Regulation can the Agency provide Guidance on its application.</p>
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	income households”. We feel that the guidance notes should be brought in to line with the NICE guidance to avoid conflicting messages.	
Baby Feeding Law Group (This response was supported by 297 from supporters of the Breastfeeding Manifesto Coalition)	<p>The BFLG welcomes the Guidance notes and makes the following comments in addition to those supplied by the National Childbirth Trust and the Breastfeeding Network.</p> <p>1 Amended DRAFT Appendix 1 – Interpretation of Advertising</p> <p>We propose the following changes:</p> <p>1.1 <i>The Agency considers the term ‘advertising’ to mean: Any representation that is made in connection with a trade, business, or company in order</i> INSERT: to enhance perception and/or</p> <p>1.2 <i>....promote, either directly or indirectly, the supply, including sale, or transfer of infant and/or follow on formula</i> INSERT: and/or specialised formulas for medical purposes</p> <p>Formulae for special medical purposes: must also be included. Not only are these products marketed aggressively, but they are packaged in a similar way to infant formula, increasing the likelihood that they are used inappropriately, with potentially serious consequences. It is for this reason that the Codex Standard on infant formula includes this safeguard.</p> <p>1.3 Whole brand advertising: It is important that the Guidance notes provide for Trading Standards Officers to pursue complaints against advertisements or advertorials which promote formula feeding or a whole brand – and not just</p>	<p>FSMP advertising is not within the scope of the infant formula and follow on formula Regulations 2007. These are controlled by The Medical Food (England) Regulations 2000</p> <p>Only where there is a specific requirement in the Regulation can the Agency provide</p>

	<p>one particular formula.</p> <p>2 Amended DRAFT Appendix II – Interpretation of Representation</p> <p>2.1 We welcome the fact that the bulleted list is not definitive, but suggest that the following additions might be helpful :</p> <ul style="list-style-type: none"> • <i>press releases and other public relations material</i> DELETE: that can be accessed by consumers. • <i>tickets, timetables and price lists</i> <i>INSERT: on or in pack inserts, stickers or leaflets</i> • <i>product placement in websites</i> <i>INSERT: radio, magazines, television, film or any other media</i> <p>2.2 <i>INSERT:</i></p> <ul style="list-style-type: none"> • <i>ANY point of sale materials including, but not limited to, shelf talkers (if placed adjacent to infant formula or follow-on formula and whether referring to these products or not) price tags, trolley placement.</i> • <i>Items or gifts for babies including but not limited to: bibs, bottles, teats, baby clothes, cots, prams, toys, car shades, balloons, dummies,</i> • <i>Items or gifts for carers including but not limited to: clothing, announcement cards, mugs, measuring jugs, key rings, stationery items,</i> • <i>Items or gifts for health workers or volunteers including but not limited to: pens, pads, blood pressure cuffs, height charts, weight charts, obstetric calendars, thermometers, diary covers, hospital gowns, mugs</i> 	<p>Guidance on its application. The Regulation does not put in place specific controls relating to brand advertising.</p> <p>Appendix II is not intended to be a definitive list. Where such practices constitute advertising they will have to comply with Regulations 21 and 22. Such practices are also controlled by Regulation 23.</p>
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	<p>2.3 Sponsorship of educational materials, resources, Carelines, websites, feeding rooms, mother and baby clubs , conferences etc.</p> <p>The BFLG considers that educational materials and resources, Carelines and other forms of interaction with customers - sponsored or funded by the baby feeding industry – are also a form of advertising which the guidance notes should clearly state are not permitted.</p> <p>We welcome the mention of Carelines in Appendix 11 but suggest that for consistency Paragraph 44 of the Guidance notes is altered. At present it implies only <i>“that carelines, websites or mother and baby clubs, and any advertisements for these means of communication, supply only factual information to consumers and health care professionals.”</i></p> <p>Even though these activities may not appear to be created for advertising purposes they are invariably used to promote and enhance the company’s name, products or services. Sponsorship of this nature is a form of advertising. It is a commercial deal, not a philanthropic gift, and can be set off against a company’s tax liability as money spent wholly and exclusively for the purpose of trade.</p> <p>All these interactions are marketing activities which are banned by the International Code and WHA Resolutions. The Guidance should be all encompassing in this regard and make it clear that these practices are prohibited.</p> <p>It is important to note that there is a significant difference between the text of Regulation 23.2 of the Statutory Instrument and the text of Article 14.3 of the Commission Directive 2006/141/EC and that this has created a loophole which</p>	<p>This comment does not relate to Appendix I, II or V. Responses to the previous consultation on the rest of the guidance will be considered and where appropriate taken into account.</p> <p>Noted. Where such practices constitute advertising they will have to comply with Regulations 21 and 22. Such practices are also controlled by Regulation 23.</p>
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	<p>manufacturers might use to justify the provision of gifts on the pretext that they are not designed to promote the sale of infant formula. The ban on gifts in the EU Directive is much more wide-ranging and should be reflected in the Guidance Notes.</p> <p>NICE Guidance on Maternal Child Nutrition : The BFLG position regarding sponsored education materials is endorsed by Recommendation 14 of the <i>NICE Guidance on Maternal Child Nutrition</i> published in March 2008. This should be incorporated into the Guidance Notes and Regulations to ensure that all parents, those who are breastfeeding and those who choose to use artificial feeding, are protected. The responsibilities of the baby feeding industry should be limited to the manufacture and distribution of safe products which are clearly and appropriately labelled.</p> <p>3 New DRAFT Appendix V – Guidance on scientific publications and information of a scientific or factual nature</p> <p>3.1 The BFLG position, supported by its UK health professional members, is that advertising of breastmilk substitutes, including follow-on formulas and formulas for special medical purposes, does not provide the evidence-based, independent scientific and factual information that is needed to inform professional opinion and that it should be banned in line with Articles 5 and 6 of the International Code and specifically permitted by EU Directive 2006/141/EC.</p> <p>While we welcome the attempt to define what is meant by ‘scientific publication’ and restrict advertising to academic journals, we maintain that this strategy will always be problematic and full of loopholes. It would be far more straightforward and all encompassing to clearly prohibit all advertising for breastmilk substitutes. Many professionals journals are also read by</p>	<p>Only where there is a specific requirement in the Regulation can the Agency provide Guidance on its application.</p>
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	<p>members of the public.</p> <p>It is not clear whether the definition of “a scientific field” includes nursery nurses and child care professionals in general, or also speech therapists, health visitors, homeopaths, naturopaths.</p> <p>If advertisements are permitted at all, the journals in which they appear should include a majority content of peer-reviewed articles and the advertisements should be fully referenced, including a declaration of potential conflicts of interest for all the scientific articles quoted. The journals should not published directly or indirectly by companies that manufacture, sell or have a financial interest in the sales of infant formula or follow on milk.</p> <p>3.2 Content of Infant Formula Advertisements</p> <p>If advertising in professional journals is permitted all the information contained should be scientific and factual, the required warnings and important notices should dominate and the pack shot, headline, claim or other promotional aspect should take up no more than 20% of the area.</p> <p>3.3 Claims</p>	<p>Noted</p> <p>The Guidance notes aim to help interpret the requirements the Regulations introduce and provide the Agency’s view on how to comply with those requirements. They do not intend to specify the exact content of a scientific publication.</p> <p>The Guidance notes aim to help interpret the requirements the Regulations introduce and provide the Agency’s view on how to comply with those requirements. They do not intend to specify the exact content of a scientific publication.</p>
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	<p>The BFLG position is that health or nutrition claims on any breastmilk substitute are marketing tools which are inevitably misleading and deceptive and should not be permitted. We welcome the attempt by the Guidance notes to restrict the use of claims, and to clarify that claims describing a physiological function (such as '<i>prebiotic</i>' or '<i>probiotic</i>') are considered as health claims and as such not permitted. However the central problem with claims remains. By highlighting one or other ingredient out of the context of the other ingredients a false message is conveyed that the whole product has a health advantage over breastfeeding. Even if it is not stated, when an optional ingredient such as LCP or Nucleotide is mentioned (especially when ingredients are widely promoted for adult foods) the impression is automatically conveyed that the product will make children cleverer and or protect them from infection.</p> <p>The BFLG considers that the safeguards regarding new claims outlined in Paragraph 40 of the Guidance Notes offer inadequate protection to infants. The Guidance Notes should clarify that:</p> <ul style="list-style-type: none"> • The Name of the Product should not contain or imply anything which indicates or may be understood by the purchaser to be a claim of any kind or to imply a health advantage. (for example, Staydown, HA, Goodnight Milk) • Any permitted claims should be presented in a non-promotional way placed at the back of the package next to the ingredients list – ideally in the same typeface and text size. • The words: 'HA' or 'Hypoallergenic ' should not appear on the labels of any formula. • The Guidance notes should allow only text that is listed in the Annex and should not permit claims such as '<i>contains LCPmix - a</i> 	<p>This and additional comments do not relate to Appendix I, II or V. Responses to the previous consultation on the rest of the guidance will be considered and where appropriate taken into account.</p>
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	<p><i>patented mixture of long chain polyunsaturated fatty acids’ or “Immunofortis”</i></p> <ul style="list-style-type: none"> • Advertising Standards Authority (ASA) While we agree with Paragraph 41 of the Guidance notes which states that claims about follow-on formula which the ASA have found to be unsubstantiated should NOT be permitted, it is important to ensure that claims which the ASA DOES approve are not (unless they are specifically listed in the Annex). The ASA is not a court of law, nor does it use a procedure involving an independent systematic review of evidence which is the essential safeguard called for by all professional bodies and the scientific Committee for Food. 	
NCT	<p>Amended DRAFT Appendix I – Interpretation of ‘advertising’</p> <p>Suggested text: Any representation that is made in connection with a trade, business, or company in order [<i>Insert to influence buying or using behaviour, attitudes, perceptions or thought patterns or</i>] to promote, either directly or indirectly, the supply, including sale, or transfer of infant and/or follow on formula [<i>Insert (including specialised formula milks for medical purposes) as a product group or any particular brand or type of formula.</i>]</p> <p>Influencing attitudes and perceptions towards baby feeding is one of the main ways that advertising can have an undermining influence on breastfeeding – sometimes years in the future.</p>	<p>Appendix II is not intended to be a definitive list. Where such practices constitute advertising they will have to comply with Regulations 21</p>

	<p>This is necessary, in part, because under the previous Regulations Trading Standards Officers have felt unable to address general advertisements or advertorial promoting formula feeding as it was not promoting one particular formula, but the whole brand.</p> <p>Formulae for special medical purposes must be included as previously, it has been argued that these can be sold at a reduced price, although this would not be legal for infant formula milks. This would obviously increase the likelihood that these products would be used inappropriately, with potentially serious consequences.</p> <p>Amended DRAFT Appendix II – Interpretation of Representation</p> <p>Representation includes any notice, circular, invoice or other document, and any public <i>[use of the word public should not preclude individual communications such as telephone calls, texts, faxes, e-mails]</i> announcement made orally or by any means of producing or transmitting light or sound. The following list of specific examples is not a definitive list due to the fact that the nature of advertising is always changing:</p> <ul style="list-style-type: none"> • newspapers, magazines, brochures, leaflets, circulars, <i>[Insert articles]</i>, direct 	<p>and 22. Such practices are also controlled by Regulation 23.</p> <p>Only where there is a specific requirement in the Regulation can the Agency provide Guidance on its application. The Regulation does not put in place specific controls relating to brand advertising.</p> <p>FSMPs are not within the scope of the infant formula and follow on formula Regulations 2007. These are controlled by The Medical Food (England) Regulations 2000</p> <p>Noted. Appendix II is not intended to be a definitive list. Where such practices constitute advertising they will have to comply with Regulations 21 and 22. Such practices are also controlled by Regulation 23.</p>
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	<p>mailings, e-mails, text transmissions, fax transmissions, catalogues, follow-up literature and other electronic and printed material (including advertorials)</p> <ul style="list-style-type: none"> • publications for healthcare professionals which are not scientific publications • posters and other promotional media in public places, including moving pictures • cinema and video commercials • non-broadcast electronic media, (refer to Appendix III for further guidance with regard to the internet) • television and radio [<i>Insert and any other</i>] broadcast commercials. • Correspondence between a trade, business, or company and their customers, in writing, orally (including telephone calls and company carelines), [<i>Insert presentations, meetings, talks, displays,</i>] electronically or by other means • press releases and other public relations material that can be accessed by consumers. • tickets, timetables and price lists [<i>Insert</i> • <i>on or in pack inserts, stickers or leaflets</i>] • celebrity endorsements in connection with a trade, business, or company • product placement in websites, [<i>Insert radio, magazines, television, film or any other media</i>] 	
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- *Point of sale materials including, but not limited to, shelf talkers (if placed adjacent to infant formula or follow-on formula and whether referring to these products or not) price tags, trolley placement.*
- *Items sold or given including, but not limited to,*
 1. *baby related items such as bibs, bottles, teats, baby clothes, cots, prams, toys, car shades, balloons, dummies,*
 2. *items for parents or carers such as clothing, announcement cards, mugs, measuring jugs, key rings, stationery items,*
 3. *items for health workers or volunteers including pens, pads, blood pressure cuffs, height charts, weight charts, obstetric calendars, thermometers, diary covers, hospital gowns, mugs,]*

New DRAFT Appendix V – Guidance on scientific publications and information of a scientific or factual nature

Scientific Publication

Scientific publications are published periodically (at regular or irregular intervals) and aimed at academic and/or professionals in a scientific field. *[Insert a definition of “a scientific field”. We assume this would not include nursery nurses, or child care professionals in general, but does it include speech therapists, health visitors, homeopaths, naturopaths, some of whom would say that their field includes as much art as science? We would suggest that publications directed specifically to these and similar professions should not be included. Health visitors and midwives have expressed the view that they do not obtain useful information from the advertisements for formula milks and follow on milks currently published in their*

Noted

	<p><i>journals and would prefer that they were not included.]</i> They consist of an aggregation of original articles by different authors published under an umbrella title. Articles include these <i>[Insert a substantial proportion]</i> that report new scientific research or review existing scientific research. They may also include editorials, opinion pieces and book or other reviews dealing with a scientific theme.</p> <p>In addition, they</p> <p><i>[Insert - include a majority content of peer-reviewed articles.]</i> This is essential to ensure that readers are likely to have skills in critical appraisal of articles. Many journals read by professionals and including scientific information are not presenting unbiased information. Such journals can also be read by members of the public without the background information and skills to interpret the information in advertisements.</p> <p><i>[Insert : • scientific articles are referenced]</i></p> <p><i>[Insert: • scientific articles include a declaration of potential conflicts of interest]</i> This is essential and in line with the accepted good practice in journal publications. The problem of conflicts of interest has been recognised in the medical literature since the 1980s.</p>	<p>The Guidance notes aim to help interpret the requirements the Regulations introduce and provide the Agency's view on how to comply with those requirements and does not intend to specify the exact content of a scientific publication.</p> <p>The Guidance notes aim to help interpret the requirements the Regulations introduce and provide the Agency's view on how to comply with those requirements. They do not intend to specify the exact content of a scientific publication.</p> <p>Scientific publications will have their own criteria for dealing with conflicts of interest.</p>
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	<p><i>[Insert: is not available from newsagents]</i></p> <p><i>[Insert: They are not published directly or indirectly by companies that manufacture, sell or have a financial interest in the sales of infant formula or follow on milk.]</i></p> <p>Content of Infant Formula Advertisements</p> <p>Advertisements for infant formula can only include information that is of a scientific and factual nature (Regulation 21 (2)). In the Agency’s view to comply with this requirement it must be possible to support all information provided in infant formula advertisements with an <i>[insert published]</i> article from a peer-reviewed scientific journal.</p> <p><i>[Insert the area of an advertisement consisting of scientific and factual information (not including pack shots, headlines or highlighted claims) should make up at least 75% of the area of the advertisement.]</i></p> <p>In addition, where the information provided in an advertisement constitutes a nutrition or health claim, it must be listed in the first column of Annex IV and the product must meet the conditions specified in the second column. All other nutrition and health claims are prohibited. Paragraphs 26-29 provide information on what constitutes a nutrition or health claim.</p>	<p>The Regulations control the nature of the publication that can include infant formula advertising and not where it is sold.</p> <p>Only where they constitute a scientific publication can they advertise infant formula and must do so in line with Regulation 21</p> <p>The Guidance notes aim to help interpret the requirements the Regulations introduce and provides the Agency’s view on how to comply with those requirements. They do not intend to specify the exact content of a scientific publication.</p>
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