



November 1, 2016

Susan T. Mayne
Director, Center for Food Safety and Applied Nutrition
c/o Division of Dockets Management (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, MD 20852

Docket ID: FDA-2016-D-2241-0002

Re: Draft Guidance for Industry on Substantiation for Structure/Function Claims in Infant Formula Labels and Labeling

Dear Dr. Mayne:

On behalf of 1,000 Days, I am pleased to express our strong support for the Food and Drug Administration's *Substantiation for Structure/Function Claims Made in Infant Formula Labels and Labeling: Guidance for Industry*, drafted by the Infant Formula and Medical Foods Staff of the Office of Nutrition and Food Labeling in the Center for Food Safety and Applied Nutrition.

1,000 Days is the leading nonprofit organization working in the U.S. and around the world to improve nutrition for mothers and children during the critical 1,000 day window from pregnancy through age 2. We provide evidence-based information and resources to American parents and other audiences and work to make optimal maternal, infant and young child nutrition a policy priority.

We commend the FDA for taking up this important issue and urge stronger oversight of infant formula manufacturers' labeling claims. In light of the fact that there is absolutely no evidence that infant formula improves the health of mothers or babies, we are deeply concerned by the apparent lack of adequate scientific support for structure/function claims on infant formula and believe that stronger oversight is needed. It is troubling that commonly used infant formula structure/function claims have been found to be unsubstantiated. A recent review of the actual evidence base for commonly used structure/function claims about infant formula products' ability to reduce colic, crying and gastrointestinal upset in healthy infants found "a distinct paucity of evidence for the claims as written."¹

We appreciate the FDA's leadership in beginning to address this lack of evidence through the proposed guidance and are supportive of several elements in the draft guidance document. First, we welcome the acknowledgement that "[h]uman milk is the recommended source of nutrition for infants" and the recognition that infant formula is a substitute for human milk. Second, we applaud the recognition that a clear substantiation standard is needed to prevent untruthful and misleading claims in the labeling of



infant formula that are prohibited by law. Third, we strongly support the recommendation that substantiation rely on studies that “provide the most direct evidence for a cause-and-effect relationship” such as “infant feeding intervention studies that are randomized, double-blind, and parallel-controlled.” On this point, we are very supportive of the following study criteria:

- Substantiation of claims made for infant formula “intended for a particular population of infants (e.g., colicky infants) should derive from studies of that population of infants because benefits observed in one infant population may not be generalizable to another infant population.”
- “[A] structure/function benefit demonstrated for one constituent matrix (e.g., cow milk-based formula) may not be generalizable to other matrices (e.g., soy protein isolate-based formula)....” Therefore, studies are to use “the same form and amount of the constituent in the same or similar formula matrix as the infant formula that will bear the claim.”
- The evidence base for claims of structure/function benefits that continue past infancy requires “[f]ollow-up studies” to meet the substantiation standard.

Finally, we strongly support the discussion of the Federal Trade Commission’s (FTC) concurrent authority over infant formula advertising and note that the FTC’s *Policy Statement on Advertising Substantiation* requires that firms substantiate all claims prior to dissemination and, by extension, must be able to adequately document such pre-claim substantiation.²

There is however an opportunity to further strengthen the proposed guidance so that it better protects the public from misleading and dishonest claims on infant formula labels. Parents and caregivers have a right to full and accurate information about the products that they are feeding to infants in their care. We recommend the following revisions to the proposed guidance:

1. Remove the blanket exclusion of breast milk comparison claims from the Introduction of the Proposed Guidance. The Proposed Guidance currently states: “We are aware that infant formula products may also bear labeling claims that suggest that the product contains constituents found in breast milk or that the product is ‘closer’ to breast milk than other formulas. These are not structure/function claims and are not addressed in this guidance.” This statement should be stricken from the final guidance as it is overly broad and does not reflect the use of breast milk comparison claims on formula.

2. Statements about an infant formula product’s similarity to breast milk should be analyzed in the same manner as any other potential express or implied structure/function claim on infant formula labels. As the biological norm for human infants, breast milk provides a child with nutritional and immunological benefits that cannot be replicated in artificial milks (i.e. infant formula). Breastmilk is a living substance that is dynamic in its composition. It contains a range of molecular and live tissue components such as secretory IgA, enzymes, lysozymes, hormones, macrophages and growth factors that are unique to each mother/child dyad and cannot be manufactured.³



Comparisons to breast milk that expressly or impliedly claim that a formula confers the structure/function benefits of breast milk itself are structure/function claims in the same way that claiming a prebiotic has a structure/function benefit in infants. As such, we strongly believe that breast milk comparisons that implicate structure/function benefits in infants should be treated no differently than any other such claim.

3. Revise the Proposed Guidance throughout to clarify that express and implied claims that a formula confers the structure/function benefits of breast milk itself are to be substantiated by studies that use a control group of exclusively breastfed infants. A major error throughout the discussion section of the Proposed Guidance is the lack of even a mention of studies that include a control group of breastfed infants. The discussion of appropriate control groups only envisions studies involving a population of infants fed “a control formula” versus a “test formula.” Yet, formula labels now pair express structure/function claims for a constituent with implied claims that the inclusion of the constituent confers structure/function benefits akin to those conferred by breast milk—the biological norm in infant feeding. Any and all such comparisons to breast milk should be supported by scientifically rigorous studies that include properly conducted studies with control groups of exclusively breastfed infants. Studies should clearly define breastfeeding so as to prevent the use of mixed-fed control groups with results that are not generalizable to exclusively breastfed infants.

4. Product claims relating to the structure/function of lactating women’s bodies should be included. Infant formula affects the structure or function of two human bodies at the same time: lactating women and their infants. Infant formula can completely or partially substitute for the human milk of a lactating woman. The complete or partial substitution of a lactating woman’s human milk supply with infant formula is included in the statutory definition of infant formula and undisputedly affects lactation—a basic bodily function of post-partum women.

However, the proposed guidance limits its discussion to “claimed structure/function benefits in infants.” Infant formula has its own statutory definition that plainly includes products suitable “as a complete or partial substitute for human milk.”⁴ Structure/function claims related to the effect on lactation of complete or partial substitution of human milk with infant formula should be recognized in addition to claims that derive from infant formula’s character as a food used to nourish infants. This is particularly important in light of the fact that post-partum women who do not breastfeed and instead use infant formula are at greater risk for cardiovascular disease, ovarian cancer and breast cancer.⁵

The final guidance should clearly state that supplementation claims are structure/function claims. There are a series of infant formula products labeled as specially designed for “Supplementation” or “Supplementing.” Supplementation claims directly relate to the bodily function of lactation, and formula use affects lactation. For example, Enfamil has a product labeled “Enfamil for Supplementing” that directs consumers to the company’s website, www.enfamil.com, for more information. The website contains a page dedicated to “How Supplementing Helped These Moms Breast-Feed Longer” that makes the following claims about the impact of formula use on lactation:



- “Eight out of 10 new moms say supplementing with formula allowed them to breast-feed longer than nursing alone.”
- “Offering both breast milk and formula may help you stick with breast-feeding surprisingly longer than nursing alone.”
- “In most cases, the optimal time to start supplementing is after the first month so your milk supply gets established.”
- “Milk supply is based on demand. But when you replace just some feedings with formula, your breast milk won’t disappear overnight. It’s also possible to return to exclusive breast-feeding, if you want, by nursing more often and rebuilding milk supply.”⁶

These claims are misleading and lack substantiation. They also directly relate to the bodily function of lactation and are for a food that is statutorily defined to include products that act as a complete or partial substitute for a lactating woman’s human milk. The guidance should make clear that supplementation claims on infant formula will be analyzed as structure/function claims and require substantiation with competent and reliable scientific evidence.

5. Include Full Disclosure of Study Funding, Author Conflicts of Interest and Other Industry Engagement in the Study Evaluation Process and As a Critical Element and Quality Standard for Intervention Studies and Systematic Reviews

The proposed guidance should be revised to include the following additional steps in the “Recommended Process for Evaluating Scientific Evidence”:

- Eliminating studies with inadequate author conflict of interest disclosures.
- Eliminating studies that do not provide full disclosure of funding sources.

“Critical Elements for Intervention Studies” should be revised to include an “Industry Engagement” section that references specific criteria for adequate ethical safeguards for nutrition research such as the International Life Sciences Institute (ILSI) North America Working Group on Guiding Principles’ *Conflict of Interest Guidelines*.⁷ Abbott Nutrition, Mead Johnson and Nestle are all ILSI members and should, at a minimum, be held to the basic conflict of interest guidelines set out by their own organization.

“Quality Considerations for Intervention Studies” should include a quality measure for full transparency of funding sources and require conflict of interest disclosures by study authors. When not met, these quality measures should be used to exclude studies from systematic reviews. Disclosed conflicts of interest and steps taken to limit funder bias should be evaluated to determine the strengths and weaknesses of studies included in systematic reviews.



Finally, we urge the FDA to engage in formal rulemaking to adequately address the public health impact of misleading and confusing infant formula labeling. We are deeply concerned about the adequacy of oversight and enforcement by the FDA of the recommendations in the guidance. Non-binding guidance documents are an important step in the process towards robust oversight of infant formula labeling claims. While we applaud the current effort and fully support the proposed guidance as a useful step forward in the near-term, we believe that the FDA must also pursue formal rulemaking on the issue of structure/function claims on infant formula. Infant formula is a unique product that serves as a substitute for breast milk—a living, changing tissue which confers numerous, irreplaceable health benefits and significant protection against illness for both mother and baby. Accordingly, structure/function claims made about this product need and deserve stricter criteria and more vigorous FDA oversight.

We strongly urge compliance with the guidance and urge the FDA to aggressively monitor compliance, taking enforcement action where necessary. If the FDA believes it lacks the authority to require an enforceable standard for substantiation of structure/function claims, then we encourage the agency to request such authority from Congress. We recommend the FDA consider publically reporting on compliance with the recommendations in the guidance. It could consider a grading system for measuring how and whether manufacturers are complying with the agency's recommendations.,

It is important that the FDA move quickly to finalize the draft guidance and we strongly oppose the request from the Infant Formula Nutrition Council of America (INCA) to extend the comment period. In the interest of consumers and the public health, there is no reason to delay or postpone the comment period or the issuance of a final guidance document.

We hope that the proposed guidance marks the beginning of a concerted effort that includes formal rulemaking to ensure that families have the most accurate and reliable information when making crucial infant feeding decisions. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Lucy Sullivan", with a long horizontal line extending to the right.

Lucy Sullivan
Executive Director
1,000 Days

ENDNOTES

¹ Belamarich PF, Bochner RE, Racine AD. A Critical Review of the Marketing Claims of Infant Formula Products in the United States. Clin Pediatr (Phila). 2016 May; 55(5):437---42.

² United States. (1987). *FTC policy statement regarding advertising substantiation*. Washington, D.C.: Federal Trade Commission. <http://purl.access.gpo.gov/GPO/LPS104180>.

³ Walker M. Still selling out mothers and babies; marketing of breast milk substitutes in the USA. Weston, MA: NABA REAL 2007.

⁴ U.S. Food and Drug Administration. Code of Federal Regulations. Title 21, Volume 2. Sec. 106.3

⁵ Spotlight on infant formula: Coordinated global action needed. McFadden A., Mason F., Baker J., Begin F., Dykes F., Grummer-Strawn L., Kenney-Muir N., (...), Renfrew M.J. (2016) *The Lancet*, 387 (10017), pp. 413-415.

⁶ Mead Johnson Nutrition, Enfamil, How Supplementing Helped These Moms Breast---Feed Longer, <http://www.enfamil.com/articles-and-videos/how-supplementing-helped-these-moms-breast-feed-longer> (last accessed Oct. 11, 2016).

⁷ Alexander N., Rowe S., Brackett R.E., Burton---Freeman B., Hentges E.J., Kretser A., ... Mukherjea R. (2015). Achieving a transparent, actionable framework for public---private partnerships for food and nutrition research. *American Journal Of Clinical Nutrition*, 101(6), 1359---1363; Rowe, S., Alexander, N., Kretser, A., Steele, R., Kretsch, M., Applebaum, R., Falci, K. (2013). Principles for building public---private partnerships to benefit food safety, nutrition, and health research. *Nutrition Reviews*, 71(10), 682---691.