[LEGAL NOTICE NO. 54]

FOOD SAFETY ACT 2003

MARKETING CONTROLS (FOODS FOR INFANTS AND YOUNG CHILDREN) REGULATIONS 2010

TABLE OF PROVISIONS

Marketing Controls (Foods for Infants and Young Children) Regulations 2010

IN exercise of the powers conferred upon the Board by sections 13(4), 14(3) and 70 of the Food Safety Act 2003, the Board hereby makes these Regulations.

PART I — PRELIMINARY

Citation and Commencement

1.—(1) These Regulations may be cited as the Marketing Controls (Foods for Infants and Young Children) Regulations 2010.

(2) These Regulations is deemed to have come into force on 1st May 2010.

Purpose

2. The purpose of these Regulations is to ensure safe and adequate nutrition for infants and young children by promoting and protecting breastfeeding and by regulating the marketing of designated products intended for use by infants and young children. These Regulations apply to designated products imported into, packed in, or produced and processed in Fiji for domestic distribution and consumption or export/re-export.

Interpretation

3.—(1) In these Regulations, unless the context indicates otherwise—

"Act" means the Food Safety Act 2003;

"Advertise" shall mean to make any representation by any means whatsoever for the purpose of promoting the sale or use of a designated product, including but not limited to—

(a) written or spoken publication in any manner including on or by television, radio, film, electronic transmission including the internet, video or telephone;

(b) display of signs, billboards, or notices; or

(c) exhibition of pictures or models;

The word "advertisement" has a corresponding meaning in addition to the interpretation assigned to it under the Act.

"Artificial feeding" means feeding with any food which replaces breast milk;

"Authorised officers" mean persons appointed by the Board constituted under section 33 of the Act;

"Brand name" means a name given by the manufacturer, importer or distributor to a product or range of products;

"Claim" means any representation which states, suggests or implies that a food has particular qualities whether relating to its origin, nutritional properties, nature, processing, composition or any other quality;

"Complementary food" means any food suitable or represented as suitable as an addition to breast milk, infant formula or follow-up formula for infants

from the age of 6 months up to the age of 24 months. For the purposes of Regulations 4, 6, 7 and 8, the term 'complementary food' includes any ready-to-use therapeutic food used in the management of acute malnutrition in children;

"Container" means any packaging of food for delivery as a single item, whether by completely or partially enclosing the food and includes wrappers. A container may enclose several units or types of packages when offered to the consumer;

"Designated product" means—

(a) infant formula;

(b) follow-up formula;

(c) any other food marketed or otherwise represented as suitable for feeding children up to the age of 5 years;

(d) any appliance that replaces breastfeeding, including but not limited to a feeding bottle, cup with spout or pacifier; and

(e) such other food or appliance as the Minister of Health may, by notice in the *Gazette*, declare to be a "designated product" for the purposes of these Regulations;

"Distributor" means a person, corporation or other entity engaged in the business, whether wholesale or retail, of importing or marketing any designated product;

"Feeding bottle" means an appliance with an artificial teat, which is used to feed infants or young children;

"Follow-up formula" means, in the absence of a Standard under the Act and its regulations, a milk or milk-like product of animal or vegetable origin formulated industrially in accordance with the Codex Alimentarius Standard for Follow-up Formula and marketed or otherwise represented as suitable for feeding infants above 6 months of age and young children. For the purposes of Regulations 4, 5, 6, 7 and 8, the term "follow-up formula" includes any formula for special medical purposes or dietary requirements for children above 6 months, therapeutic milk for acutely malnourished children, and milk for children between 1 to 3 years and older;

"Gift" means something given free of charge and includes, but is not limited to, samples of a designated product, meals or refreshments, diaries, stationery, calendars, clocks, cot tags, stickers, growth charts, prescription pads, tongue depressors or any other promotional item of whatever value;

"Health care facility" means a public or private institution or organisation or private medical practitioner engaged directly or indirectly in the provision of health care or in health care education. It also includes day-care centres, nurseries, infant or child-care facilities other than orphanages;

"Health professional" means a health worker with a professional degree, diploma or licence, such as a medical practitioner, dietician, registered nurse, midwives or such other person as may be specified by the Minister of Health by a notice in the *Gazette*;

"Health worker" means a person providing or in training to provide health care services in a health care facility, whether professional or non-professional including voluntary unpaid workers;

"Infant" means a child from birth up to the age of 12 months;

"Infant formula" means a milk or milk-like product of animal or vegetable origin formulated industrially in accordance with the Standard on Infant Formula in the Twenty-third Schedule of the Food and Safety Regulations 2009 and for the purposes of Regulations 4, 5, 6, 7 and 8, includes any formula for special medical purposes or dietary requirements and any therapeutic milk for acutely malnourished children;

"Logo" means an emblem, picture or symbol by means of which a manufacturer, distributor or a product is identified;

"Manufacturer" includes a person engaged in the business of manufacturing a designated product whether directly, through an agent, or through a person controlled by or under an agreement with such person;

"Market" means to promote, distribute, sell, or advertise a designated product and includes product public relations and information services;

"Pacifier" means an artificial teat for babies to suck;

"Promote" means to employ any method of directly or indirectly encouraging a person to purchase or use a designated product;

"Sample" shall, in addition to the meaning assigned in the Act, mean a single or small quantity of a designated product provided without cost;

"Sponsorship" means any financial or in-kind assistance to a person, group, activity or programme and the word "sponsor" has a corresponding meaning;

"Young child" means a child from the age of 12 months up to the age of five years.

PART II—INFORMATION AND EDUCATION

Information and educational materials about infant and young feeding

4. In accordance with section 14 sub-section (3) of the Act, information and educational materials, whether written, audio or visual, which refer to infant and young child feeding shall—

(a) contain only correct and current information and shall not use any pictures or text that encourage artificial feeding, or the use of feeding bottles or that discourage breastfeeding;

(b) not give an impression or create a belief that a designated product is equivalent to, comparable with or superior to breast milk or to breastfeeding;

(c) not contain the brand name or logo of any designated product nor of any manufacturer or distributor of a designated product; provided that this clause shall not be applicable to information about designated products intended for health professionals as authorised by Regulation 6;

(d) not contain any claim or representation that states or suggests that a particular relationship exists between the product or constituent thereof and health, including the physiological role of a nutrient in growth, development or normal functions of the body of an infant or young child; and

(e) clearly and conspicuously explain each of the following points –

(i) the benefits and superiority of breastfeeding;
(ii) the value of exclusive breastfeeding for six months followed by sustained breastfeeding for two years or beyond;
(iii) how to initiate and maintain exclusive and sustained breastfeeding;
(iv) why it is difficult to reverse a decision not to breastfeed;
(v) the importance of introducing complementary foods from the age of six months;
(vi) how and why any early introduction of artificial feeding, the use of a feeding bottle or the early introduction of complementary foods negatively affects breastfeeding; and;
(vii) that complementary food and other foods for young children can easily be prepared at home using local ingredients.

Information and educational materials about infant formula, follow-up formula, feeding bottles and other appliances.

5. If the material referred to in Regulation 4 includes the topic of artificial feeding or the use of a feeding bottle or other appliances, it must also include the following points—

(a) instructions for the proper preparation and use of the product including cleaning and sterilisation of feeding appliances;
(b) how to feed infants with a cup;
(c) the health risks of artificial feeding, the use of a feeding bottle and improper preparation of the product;
(d) explanations that powdered formula milk is not sterile and that to minimise the risk of serious illness, formula must be prepared using boiled water that has been cooled to no less than 70°C. Only one feed at a time must be prepared and any unused milk must be discarded; and
(e) the approximate financial cost of feeding an infant with such a product in the recommended quantities.

Information for health professionals

6. Manufacturers or distributors may only give materials about designated products to health professionals, if such materials—

(a) are restricted to scientific and factual matters regarding the technical aspects and methods of use of the product;
(b) provide references to independent, published and peer-reviewed studies to support any representation or claim that states or suggests that a particular relationship exists between the product or a constituent thereof and health, growth or development; and
(c) are otherwise in accordance with Regulations 4 and 5.

PART III—PROHIBITIONS

Promotion

7.—(1) Notwithstanding the prohibition in section 15 of the Act, no manufacturer or distributor or any other person shall promote any designated product whether or not

there is reference to a brand name. Prohibited promotional practices include but are not limited to—

(a) advertising;
(b) sales devices such as special displays, discount coupons, premiums, rebates, special sales, loss-leaders, tie-in sales, prizes or gifts;
(c) giving of one or more samples of a designated product to any person; and
(d) donation or distribution of information or education material referring to infant or young child feeding or performance of educational functions related to infant or young child feeding except as provided in Regulation 6.

(2) No manufacturer or distributor or any other person shall—

(a) donate or provide at lower than the published wholesale price where one exists, and in its absence, lower than 80 percent of the retail price, any quantity of a designated product to a health worker or a health care facility;
(b) donate to or distribute within a health care facility gifts, equipment, services or any other materials which refer to or may promote the use of a designated product;
(c) offer or give any gift, contribution or benefit to a health worker or to associations of health workers engaged in maternal and child health, including but not limited to sponsorship, fellowships, research grants or funding for meetings, seminars, continuing education courses or conferences;
(d) sponsor events, contests, telephone counselling lines or campaigns related to reproductive health, pregnancy, childbirth, infant or young child feeding or related topics; or
(e) include the volume of sales of designated products when calculating employee remuneration or bonuses, nor set quotas for sales of designated products.

(3) No health worker engaged in maternal and child health shall—

(a) accept any gift, contribution or benefit, financial or otherwise, of whatever value from a manufacturer or distributor;
(b) accept or give samples of designated products to any person; or
(c) demonstrate the use of infant formula or follow-up formula except to individual mothers or members of their families in very special cases of need, and in such cases, shall give a clear explanation of the risks of the use of the products as well as the other information required by Part II.

PART IV—LABELLING

Prohibitions related to labels of all designated products

8.—(1) No manufacturer or distributor or any other person shall offer for sale or sell a designated product if the container or label affixed thereto includes—

(a) any photograph, drawing or other graphic representation other than for illustrating methods of preparation; and
(b) any nutrition, health or functional claim notwithstanding the generality of Regulation 25 of the Food and Safety Regulations 2009.

(2) In addition to the requirements under section 13 of the Act and Part V of the Food and Safety Regulations 2009, no manufacturer or distributor or any other person shall offer for sale or sell a designated product, other than a feeding bottle, teat, cup with spout or pacifier unless the container or label affixed thereto indicates in a clear, conspicuous and easily readable manner, the following particulars—

(a) instructions for appropriate preparation and use, in words and/or in easily understood graphics;

(b) the age after which the product is recommended in numeric figures which, in the case of a complementary food, shall not be less than six months;

(c) a warning about the health risks of improper preparation and of introducing the product prior to the recommended age;

Prohibitions related to labels of infant formula and follow-up formula

9.—(1) No manufacturer or distributor or any other person shall offer for sale or sell infant formula or follow-up formula unless the container or label affixed thereto, in addition to the requirements of Regulation 8, conforms to the following:

(a) contains the words, "IMPORTANT NOTICE" in capital letters and indicated thereunder, the statement "Breastfeeding is best. Breast milk is the ideal food for the healthy growth and development of infants and young children. It protects against diarrhoea and other illnesses" in characters no less than one-third the size of the characters in the product name, and in no case less than 2mm in height;

(b) contains the word, "Warning" and indicated thereunder, the statement, "Before deciding to supplement or replace breastfeeding with this product, seek the advice of a health professional. It is important for your baby's health that you follow all preparation instructions carefully. If you use a feeding bottle, your baby may refuse to feed from the breast. It is more hygienic to feed from a cup." in characters no less than one-third the size of the characters in the product name, and in no case less than 1.5mm in height;

(c) states under preparation instructions for infant or follow-up formula in powdered form that—

(i) powdered formula may be contaminated with microorganisms during the manufacturing process or may become contaminated during preparation;

(ii) powdered formula milk is not sterile and that to minimise the risk of serious illness, formula must be prepared using boiled water that has been cooled to no less than 70°C; or

(iii) only one feed at a time must be prepared and any unused milk must be discarded.

(d) includes a feeding chart in the preparation instructions;

(e) does not use the terms "maternalised", "humanised" or other terms of like effect or any comparison with breast milk;

(f) does not use text that may tend to discourage breastfeeding; and

(g) specifies the source of the protein and in the case of follow-up formula, states that the product shall not be used for infants less than six months old.

Prohibitions related to labels of full cream milk in powder or liquid form

10. No manufacturer or distributor or any other person shall offer for sale or sell any full cream milk in powder or in liquid milk form unless the container or label affixed thereto contains the words, "This product should not be used as an infant's sole source of nourishment" in characters no less than one-third the size of the characters in the product name, and in no case less than 2mm in height.

Prohibitions related to labels of feeding bottles and teats

11. No manufacturer or distributor or any other person shall offer for sale or sell a feeding bottle or teat unless the package or label affixed thereto, in addition to the requirements of Regulation 8, indicates in a clear, conspicuous and easily readable manner, the following particulars—

(a) the words, "IMPORTANT NOTICE" in capital letters and indicate thereunder, the statement, "Breast milk is the ideal food for the healthy growth and development of infants. If you use a feeding bottle, your baby may refuse to feed from the breast." in characters no less than one-third the size of the characters in the product name, and in no case less than 2mm in height;

(b) the statement, "Warning: It is important for your baby's health that you follow the cleaning and sterilisation instructions very carefully. It is more hygienic to feed from a cup." in characters no less than one-third the size of the characters in the product name, and in no case less than 2mm in height;

(c) instructions for cleaning and sterilisation in words and graphics;

(d) a warning that children should not be left to self-feed for long periods of time because extended contact with sweetened liquids, including infant formula, may cause severe tooth decay; and

(e) the name and national address of the manufacturer, the distributor or both as the case may be.

Prohibitions related to labels of pacifiers

12. No manufacturer or distributor or any other person shall offer for sale or sell a pacifier unless, in addition to the requirements of Regulation 8, it is labelled with the words, "Warning: Use of a pacifier can interfere with breastfeeding" in characters no less than one-third the size of the characters in the product name, and in no case less than 2mm in height.

PART V—CONSISTENCY WITH FOOD AND NUTRITION POLICY

Special Committee

13.—(1) Pursuant to section 30 of the Act, the Food and Safety Advisory Committee shall within 90 days from the date of commencement of these Regulations appoint a special committee to ensure that the administration and enforcement of these Regulations are consistent with the Food and Nutrition Policy.

(2) The Special Committee shall consist of—

(a) The Chairperson shall be the Deputy Secretary of Public Health or his representative;

(b) The Secretary shall be the Chief Dietician;

(c) The Committee Members shall consist of—

(i) the National Advisor, Non Communicable Diseases;
(ii) the Manager, National Food and Nutrition Centre;
(iii) the Chief Health Inspector;
(iv) a representative from the Environmental Health Unit;
(v) the Consultant Paediatrician; and
(vi) the Director of Nursing Services;

(d) The Co-opted members shall consist of a representative from Consumer Council of Fiji (by invitation) and such other persons from other Ministries, agencies, or organisations as the Food Safety Advisory Committee may appoint provided that no person shall be appointed who has any direct or indirect financial interest in any designated product.

(3) The Committee Members shall hold office for a term of three years and shall be eligible for re-nomination.

(4) Any member of the Special Committee may, at any time, resign from his or her office by writing to the Food Safety Advisory Committee or shall vacate his or her office if the Food Safety Advisory Committee so directs. A vacancy shall be filled by a replacement in office other than in the case of a Co-opted member, who may be replaced as provided in sub-section (2) *(d)*.

Functions of the Special Committee

14.—(1) The Special Committee has the following functions—

(a) to advise the Food Safety Advisory Committee on matters relating to the Fiji Food and Nutrition Policy, in particular, on marketing practices which may undermine the promotion, protection and support of breastfeeding;

(b) to monitor or cause the monitoring of compliance including administration and enforcement by Authorised officers of these Regulations by manufacturers, distributors and health workers;

(c) to coordinate monitoring activities and to implement a system for receiving complaints relating to contraventions of these Regulations;

(d) to review reports of contraventions or other matters concerning these Regulations;

(e) to recommend appropriate actions to be taken against any person found to have contravened the provisions of the Act or these Regulations; and

(f) such other powers and functions as may be prescribed.

PART VI—AUTHORISED OFFICERS AND INSPECTIONS

Qualifications of authorised officers and inspection on compliance

15. In accordance with section 33 of the Act, the provisions of Regulations 48, 49 and 50 of the Food and Safety Regulations 2009 shall apply mutatis mutandis for the administration and enforcement of these Regulations.

PART VII—OFFENCES AND PENALTIES

Sanctions

16. In accordance with section 66(3) of the Act and except as otherwise specifically provided for in Schedule 2 thereof for an offence under sections 13 and 15 of the Act, any person who contravenes these Regulations commits an offence and is liable upon conviction to a maximum fine of $2,000 or to imprisonment for 12 months or both.

DATED this 26th day of January 2010.

S. T. SAKETA
Chairman
Central Health Board

N. SHARMA
Minister for Health