



International
Labour
Organization

Healthy Beginnings
for a Better Society
BREASTFEEDING IN THE WORKPLACE IS POSSIBLE

MODULE 6



Making sense of the Philippine Milk Code

Understanding the provisions of
Executive Order 51 (1986) and its RIRR (2006)

OBJECTIVES

This module aims to raise awareness on why there is a need to regulate certain commercial entities, and how this protects the best interest of infants and mothers.

It discusses important provisions of the Philippine Milk Code of 1986 or Executive Order (EO) 51 and its Revised Implementing Rules and Regulations of 2006 (RIRR) with the goal of helping the general public recognize unlawful marketing practices through illustrations of violations.

This module targets the general public, especially government agencies, employers, labour groups, media and health regulators, health workers and mothers.

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Why is there a need for regulation?

A study in the Philippines found that two factors strongly affect a mother's decision to feed infant formula: advertising exposure, and physicians' recommendations.¹ Milk companies know this, and this is where marketing efforts are being targeted.

Like all commercial companies, the bottom line of milk companies is profit. Each formula milk sale corresponds to a mother who stopped breastfeeding or a baby who is not exclusively breastfed. Conversely, each successful breastfeeding mother is one potential long term consumer lost. The goal of optimal infant feeding will always be in conflict with the goal of milk companies.

The formula milk industry in the Philippines aggressively invests in marketing efforts. Over a period of five years, the milk industry spent US\$480 million in promoting and advertising in the Philippines, in contrast to the US\$130 million it spent in the United States.²

Company representatives used to have free access to health facilities and health workers. It is common knowledge that formula milk companies offer free trips to health workers, sponsor important conferences for medical societies, and, on occasion, take entire groups of *barangay* health workers to resorts for rest and recreation. These practices are part of their aggressive marketing strategy specifically targeted at health workers. To address this phenomenon Executive Order (EO) 51, otherwise known as the Philippine Milk Code of 1986, was enacted.

¹ H.L. Sobel et al., "Is unimpeded marketing for breast milk substitutes responsible for the decline in breastfeeding in the Philippines? An exploratory survey and focus group analysis" in *Social Science & Medicine* (2011, Vol. 73, No. 10), pp. 1445- 1448.

² V. Uy: "Breastfeeding rate in RP at 34 for past 5 years - UNICEF" in *Philippine Daily Inquirer* (7 September 2010).

The Philippine Milk Code of 1986 (Executive Order 51)

The **World Health Assembly Resolution 58.32** urges member states to ensure that financial support and other incentives for programmes and professionals working for the health of infant and young children do not create conflicts of interest.

EO 51 is the result of a collective five-year effort by various government agencies and private health organizations. It incorporates many provisions of the **International Code on Marketing of Breastmilk Substitutes**, which was adopted by the World Health Assembly in May 1981.

It is one of the strongest breastfeeding protection laws in the world, imposing strict regulation upon formula milk marketing and limiting the activities of parent companies that manufacture products within the scope of the law as they relate with health workers and the general public.

EO 51 authorizes the Department of Health to promulgate rules and regulations as necessary to properly implement the Milk Code and accomplish its objectives.

In 2006, the Department of Health issued the **Revised Implementing Rules and Regulations (RIRR)** which must be read along with EO 51.

Marketing strategies of some regulated companies

Due to the regulation brought about by EO 51, companies started to take on more sophisticated approaches to marketing.

For example, Section 32 of the RIRR clearly prohibits milk companies from providing any form of support, logistics or training to health workers. In response to this, some milk companies offer assistance to health workers that are not infant feeding in nature (e.g. sponsoring non-related topics like allergy or specific diseases). Some companies even fund a third party to provide trainings for health workers, including midwives. It must be noted, however, that the law does not distinguish between assistance that are infant feeding in nature and those that are not infant feeding in nature. Accordingly, said promotional activities are prohibited by EO 51 as implemented by Section 32 of the RIRR.

*It must be emphasized that EO 51 regulates the **MARKETING** and not the actual sale of the products covered.*

Marketing includes the following:

- product promotion
 - distribution
 - selling
 - advertising
 - product public relations and
 - information services
-

SPONSORSHIP

*The RIRR defines **sponsorships** as “hosting, initiating, or otherwise providing games, sport or cultural events, charities, dances/balls, conventions, meetings, youth and women seminars or classes, and other like activities, for the purpose of promoting, **directly or indirectly**, their products covered within the scope of this Code”. (Section 5dd, RIRR)*



"The 'halo effect' of having mothers associate the company brand with a health worker, be this a personal recommendation or simply a logo on a pen, is highly valued [by milk companies]."

A guide for health workers to working within
the International Code of Marketing of Breastmilk Substitutes.
UNICEF United Kingdom 2013

Article 5.5 of the International Milk Code also prohibits marketing personnel, in their business capacity, to seek direct or indirect contact of any kind with women and children.

Recognizing what forms unlawful marketing can take is important for the best interest of vulnerable babies and society as a whole.

THE EXPANDED BREASTFEEDING PROMOTION ACT OF 2009 (REPUBLIC ACT 10028)

The Expanded Breastfeeding Promotion Act of 2009 (Republic Act 10028) mandates workplace compliance with EO 51, prohibiting any direct or indirect promotion, marketing and/or sales of products within the scope of the law inside lactation stations or in any event involving women and children whether related to breastfeeding promotion or not.

What is the scope of Executive Order 51³?

EO 51 regulates the marketing of certain products related to infant feeding, and ensures their quality and the appropriateness of information pertaining to their use.

1 Specific products and other products when marketed as partial or total replacement of breastmilk



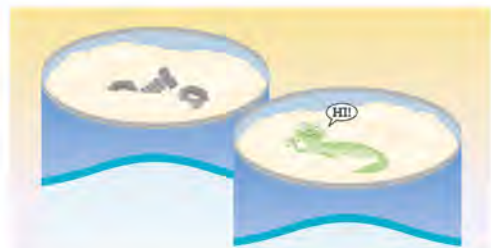
- Breastmilk substitutes including infant formula
- Feeding bottles and teats
- Other milk products
- Foods and beverages
- Bottle-fed complementary foods

} when marketed or otherwise represented to be suitable, with or without modification for use as a partial or total replacement of breastmilk

2 The quality and availability, and information concerning the use of these covered products

The law mandates companies to provide the necessary information about the appropriate use of their products.⁴ However, the following vital information on the use of infant formula is rarely provided on product labelling thereof:

- Infant formula is not a sterile product and is associated with contamination of harmful bacteria like *Enterobacter sakazakii*.⁵
- Among other precautions, the World Health Organization (WHO) and the Food and Agriculture Organization of the United Nations (FAO) emphasizes that water **no cooler than 70°C** should be used to prepare infant feeds from powdered formula.⁶ This temperature will kill harmful bacteria that may be present in powdered formula.



³ Section 3 EO 51

⁴ Section 10a EO 51

⁵ World Health Organization in collaboration with Food and Agriculture Organization of the United Nations: *Safe preparation, storage and handling of powdered infant formula: Guidelines*. (Geneva, WHO, 2007).

⁶ *Ibid.*

Check the labels of formula milk if this information is correctly provided. Common violations include instructions to cool down water before preparing a feed, probably to make infant formula preparation more convenient for the caregiver. This practice will put the infant at risk.

Up to what age is the target market restriction?

The marketing restriction imposed by law was further defined by the Philippine Supreme Court. In *Pharmaceutical and Health Care Association of the Philippines (PHAP*) vs. Health Secretary*, the Supreme Court explicitly ruled that: **“Clearly the coverage of the Milk Code is not dependent on the age of the child but on the kind of product being marketed to the public”**.⁷

This ruling was the result of a challenge to the age limits set by EO 51 and its RIRR.⁸

*“Breastmilk substitute is defined under Section 4(a) [EO 51] as any food being marketed or otherwise presented as a partial or total replacement for breastmilk, whether or not suitable for that purpose. This section conspicuously lacks reference to any particular age-group of children. Hence, the provision of the Milk Code cannot be considered exclusive for children aged 0–12 months. Therefore, by regulating breastmilk substitutes, the Milk Code also intends to protect and promote the nourishment of children more than 12 months old.”*⁹

Under this ruling, the marketing restriction for breastmilk substitutes covers not only those substitutes designated for a specific age group; rather, the restriction was unqualified, and thus referred to any kind of breastmilk substitute, whether for infants or for toddlers. In this regard, the current practice of marketing toddler milk because the product is not covered by EO 51 violates the Supreme Court ruling, which is law.

Whether the companies inadvertently or intentionally violate the law is a question for another day. Suffice to say that toddler milk is branded similarly to its formula milk counterparts, which again circumvents the law on marketing. In fact, this has the effect of marketing infant formula milk to mothers since toddler milk advertisements often promote a range of products that includes infant formula, and hence mothers are unknowingly exposed to this brand of covert advertising.¹⁰

The wisdom of the law in having an unqualified restriction for milk marketing is based on science. From an anthropological perspective, breastfeeding a child for 2.5 to 7.0 years is considered normal for human beings.¹¹ As long as the child wants to and the mother is willing, breastfeeding can be continued throughout childhood. Furthermore, the WHO stated that follow-up milk is not necessary.¹²

* In recent years, there have been changes in the membership composition of PHAP and some of the manufacturers of breastmilk substitutes it represented during the case are no longer affiliated with PHAP.

7 G.R. No. 173034, 9 October 2007.

8 *Ibid.*

9 *Ibid.*

10 N.J. Berry et al.: “It’s all formula to me: women’s understandings of toddler milk ads” in *Breastfeeding Review* (2010, Vol. 18, No. 1), pp. 21–30.

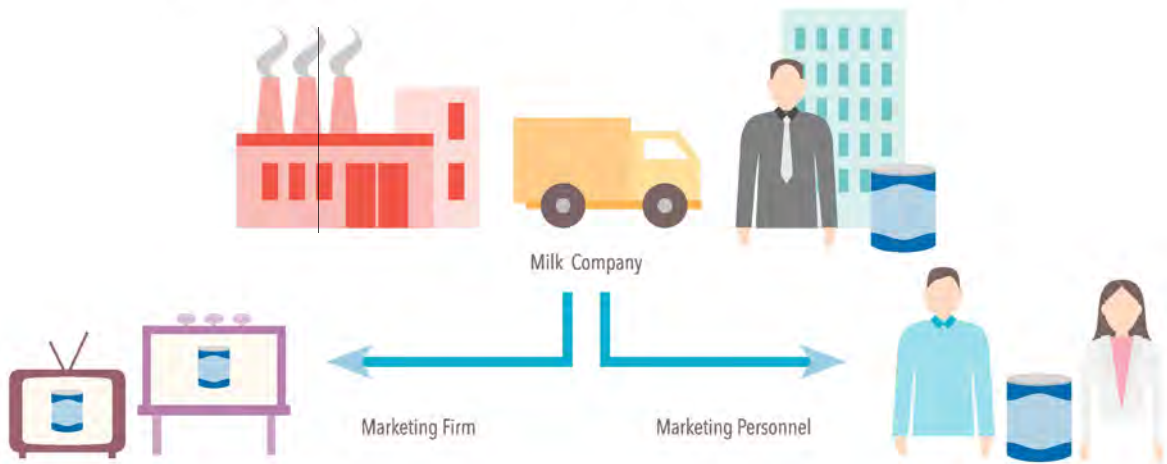
11 K.A. Dettwyler: “When to wean: Biological versus cultural perspectives” in *Clinical Obstetrics and Gynecology*, (2004, Vol. 47, No. 3), pp. 712–723.

12 *Information concerning the use and marketing of follow-up formula*, World Health Organization, 17 July 2013, www.who.int/nutrition/topics/WHO_brief_fufandcode_post_17july.pdf [accessed 12 May 2015].

What entities are being regulated by Executive Order 51?

EO 51 and its RIRR defines entities covered as:

- distributors (Section 4d EO 51, Section 5g RIRR);
- manufacturers (Section 4j EO 51, Section 5r RIRR);
- marketing personnel (Section 4l EO 51, Section 5 RIRR);
- marketing firms (Section 5s RIRR); and
- milk companies, which can be manufacturers or distributors (RIRR Section 5w).



The IAC is a powerful entity which determines whether advertising, promotion or other marketing materials of products covered by EO 51 may be permitted or not. In determining whether an advertising material may be permitted or not, the “total effect” rule should be applied.

“The ‘total effect’ should not directly or indirectly suggest that buying their product would produce better individuals, or resulting in greater love, intelligence, ability, harmony or in any manner bring better health to the baby or other such exaggerated and unsubstantiated claim.” (Section 13 RIRR)

The IAC is composed of representatives from the Department of Health (DOH), the Department of Trade and Industry (DTI), the Department of Justice (DOJ) and the Department of Social Welfare and Development (DSWD).

Under the DOH, the **Food and Drug Administration (FDA)**, formerly the Bureau of Food and Drugs (BFAD), is the designated secretariat of the IAC.

This Committee is integral to the proper implementation of EO 51.

MILK CODE INTER-AGENCY COMMITTEE (IAC)

What sanctions are provided by Executive Order 51?



The liability provided by law for those individuals or entities who engage in the prohibited acts displays how important breastmilk promotion and awareness is to the representatives of the Philippine people. The following sanctions will be imposed upon conviction for any violation of the Code:

ENTITY	PENALTY
Individual	<ul style="list-style-type: none">• Imprisonment of two months to one year and/or• Fine of Php1,000 to Php30,000
Corporation/ Partnership	<ul style="list-style-type: none">• Impose the penalty for individuals on the chairman of the board of directors, president, general manager or partners and/or persons directly responsible• Suspension/revocation of license, permit or authority for pursuit of business
Health Worker	<ul style="list-style-type: none">• Revocation of license, permit or authority for the practice of profession/occupation

Section 46 of the RIRR provides for administrative sanctions not imposed by EO 51 which can include:

1. fine of Php1,000,000.00, recall of the offending product, cancellation of the Certificate of Product Registration, revocation of the License to Operate of concerned company, blacklisting of the company to be furnished the Department of Budget and Management and the Department of Trade and Industry for repeated violations; and
2. penalty of Php2,500 per day for each day the violation continues after being notified by the appropriate body.

Some violations of Executive Order 51

1 Health and nutritional claims, content of materials

All health and nutrition claims for products within the scope of the Code are absolutely prohibited (Section 16, RIRR).

False or misleading information or claims of products within the scope of the Code are prohibited (Section 17, RIRR).



No pictures of babies and children together with their mothers, fathers, siblings, grandparents, other relatives or caregivers (or yayas) shall be used in any advertisements for infant formula and breastmilk supplements (Section 15a, RIRR).



2

Gifts of any sort

What are “gifts of any sort”?

It means any form of financial, personal or commercial reward, inducement, incentives and other favours provided directly or indirectly, with or without company name or logo or product or brand name (Section 5j, RIRR; Section 20, RIRR).

Who are prohibited from giving “gifts of any sort”?

Milk companies/manufacturers, distributors, and representatives of products covered by EO 51 are prohibited from giving any sort of gift (Section 5j and 21, RIRR).

This provision in the Milk Code itself and the RIRR considerably **expands the coverage of the prohibition** beyond the actual formula milk product violating the Code, to the parent company manufacturing them.



Who are prohibited from receiving "gifts of any sort"?

Covered entities cannot give gifts of any sort to any member of the general public, hospitals, and other health facilities, including their personnel and members of their families (Section 21, RIRR).

It can be seen that other violations flow logically from these premises. It must be emphasized that the Code **does not prohibit the actual sale** of covered products, but the **marketing** and misleading advertising thereof.



3

Marketing in the health care system

Milk companies or their representatives are prohibited from using the health workers and the health care system in the dissemination, distribution and promotion of covered products (Section 20, RIRR).

This means there can be no display of marketing materials (e.g. placards, posters, toys, record books) or actual display of products covered by the Code in any healthcare facility.

“Professional service” representatives, “mothercraft nurses” or similar personnel, provided or paid for by manufacturers or distributors is prohibited (Section 7d, EO 51).



4

Marketing to health workers

“No financial or material inducements or gifts of any sort to promote products within the scope of this code shall be offered or given by milk companies nor accepted by health workers and/or members of their families” (Section 18, RIRR).

“No assistance, support, logistics or training from milk companies may be permitted” (Section 32, RIRR).

5

Classes, seminars and other activities

To avoid the use of these venues to market their brands or company names and to protect women and pregnant mothers, companies of covered products are prohibited from conducting or being involved in any breastfeeding promotion or education, production of information materials on breastfeeding, or holding/participating in classes or seminars for women and children and other similar activities whether with the intention to promote covered products or not (Section 22, 34, RIRR).

This prohibition covers activities related to other products used as partial breastmilk substitutes (such as follow-up milk formula and complementary foods). The Code also covers feeding bottles and teats. Thus, manufacturers and distributors of feeding bottles and teats also cannot hold classes for women and children, whether related to infant feeding or not.



6

Point-of-sale advertising

There shall be no point of sale advertising, giving of samples or any promotion devices to induce sales directly to the consumers at the retail level, such as special displays, discount coupons, premiums, rebates, special sales, bonus and tie-in sales, loss-leaders, prices or gifts for the products within the scope of this Code (Section 23, RIRR).



7 Donations

Donations of products, materials, defined and covered under EO 51 and its IRR are strictly prohibited (Section 51, RIRR).

Donations of products and equipment not falling within the scope of EO 51 given by regulated entities, whether in kind or in cash, may only be coursed through the IAC which shall determine if the donation will be accepted or not (Section 52, RIRR).

RA 10028 mandates workplace compliance with EO 51, prohibiting companies with products under the scope of the law from making any donations for lactation stations and activities related to breastfeeding promotion in the workplace.

Donations are also prohibited in times of disasters and calamities.¹³ Indiscriminate distribution of these products put infants at greater risk of illness and death.^{14,15} Provision for the needs of bottle-feeding infants in disaster areas will be met in accordance with guidelines set by the DOH, UNICEF and WHO.



- ¹³ The Department of Health issued Administrative Order 2007-0017 "Guidelines on the Acceptance and Processing of Local and Foreign Donations during Emergencies and Disasters". The order provides that infant formula, breastmilk substitutes, feeding bottles, artificial nipples and teats shall not be items for donation.
- ¹⁴ B. Adhisivam et.al.: "Feeding of infants and children in tsunami affected villages in Pondicherry" in *Indian Pediatrics* (2006, Vol. 43, No. 8, Aug), pp. 724-727.
- ¹⁵ D.B. Hipgrave et.al.: "Donated breast milk substitutes and incidence of diarrhoea among infants and children after the May 2006 earthquake in Yogyakarta and Central Java" in *Public Health Nutrition* (2012, Vol. 15, No. 2, Feb), pp. 307-315.

Monitoring and reporting



A Milk Code monitor¹⁶

- Monitors compliance and problems encountered in the implementation of the Milk Code.
- Submits reports on the status of the Milk Code implementation to the FDA verifies reports of Milk Code violations.
- Monitors the labels and marketing practices of products within the scope of the Code at various distribution centres.
- Carries out monitoring activities at any time, or based on specific reports/suggestions from the FDA in their respective jurisdictions.

Anyone who is committed to protecting and promoting breastfeeding can report a Milk Code violation. To report violations, the following information must be collected using the monitoring form:¹⁷

- a. Date and place where violation was found/seen.
- b. Specific location (health facility, store, TV ad, radio/TV channel).
- c. For printed matters, get sample or a picture of the violation.
- d. For radio/TV ad or programmes, clearly specify airing time, TV channel or radio frequency.
- e. For website based violations, provide web link.
- f. For violative products, e.g. mislabeled or misbranded product, a sample shall be purchased and receipt should be obtained and submitted as part of the evidence.

Submissions should be made to:

The Director
Food and Drug Administration
Civic Drive, Filinvest Corporate City
Alabang, Muntinlupa City
Philippines 1781

Trunkline: (+63) 2 857-1900
Fax: (+63) 2 807-0751 /
(+63) 2 807-8511
E-mail: report@fda.gov.ph

Violations can also be reported online through this website:
<http://www.milkcodephilippines.org/>



¹⁶ About Executive Order No. 51, no author, n.d., www.milkcodephilippines.org [accessed 15 May 2015].

¹⁷ Monitoring Report Form on EO 51. Department of Health Department Circular No. 2009-0228 *Guidelines for the Monitoring of Milk Code Activities*, page 6-8. This form is provided in the additional policy resources listed in **Tool #11**.

Additional resources

The following materials can be used as additional resources for further understanding of the Milk Code:

1. A guide for health workers to working within the International Code of Marketing of Breastmilk Substitutes (UNICEF – United Kingdom 2013)
2. Safe preparation, storage and handling of powdered infant formula Guidelines (WHO/FAO 2007)

Key Points



The Philippine Milk Code of 1986 or EO 51 regulates the marketing of infant milk formula, other milk products, foods and beverages, as well as feeding bottles and teats. The entities covered are milk companies that own and operate the product, including their manufacturers, distributors, marketing firms as well as their representatives.



It covers products marketed as “complete or partial substitute” to breastmilk, regardless of the age of the child.



Anyone who is committed to protecting and promoting breastfeeding can be a Milk Code monitor. Violations can be reported directly to the Food and Drug Administration or through the website <http://www.milkcodephilippines.org>.



