



EXPIRED INFANT FORMULA GUIDELINES

January 2012

Pursuant to AB 688 (Chapter 681, Statutes of 2011), effective January 1, 2012, language was added to the Health and Safety Code in Part 5 of Division 104 commencing with Section 110286 that prohibits a retailer from selling or offering for sale after the expiration date an over the counter drug. In addition, language was added to the Health and Safety Code in Part 7 of Division 104 (also known as the California Retail Food Code) commencing with Section 114094.5 that prohibits a retail food facility from selling or offering for sale infant formula and baby food after the use by date, if a use by date is required by federal law. This document was compiled by a stakeholder working group comprised of members of the California Retail Food Safety Coalition (CRFSC), the California Conference of Directors of Environmental Health (CCDEH), the California Grocers Association (CGA), and the California Retailers Association (CRA).

These frequently asked questions reflect the current language of AB 688 and are intended to provide guidance to local environmental health agencies and industry as this law is implemented.

Questions and Answers

Who is responsible for enforcing AB 688?

- Local environmental health agencies are responsible for enforcing the “use by” dates on infant formula.
- Local environmental health agencies are **not** responsible for enforcing expiration dates on “over-the-counter” medications. The California Department of Public Health, Food and Drug Branch, is the enforcing agency for “over-the-counter” medication expiration dates.

What are the definitions of baby food and infant formula?

- AB 688 defines “Baby Foods” as having the meaning given to “baby foods” in paragraph (c) of Section 407.81 of Title 40 of the Code of Federal Regulations. See excerpt below:
“(c) The term baby foods shall mean the processing of canned fresh fruits and vegetables, meats, eggs, fruit juices, cereal, formulated entrees, desserts and snacks using fresh, pre-processed, or any combination of these and other food ingredients necessary for the production of infant foods.”
- AB 688 defines “Infant Formula” as having the meaning given to “infant formula” in subdivision (z) of Section 321 of Title 21 of the United States Code. See excerpt below:
“(z) The term “infant formula” means a food which purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.”
- U.S. Food and Drug Administration Infant Formula Consumer Information is available at <http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/InfantFormula/default.htm>

If there is no Federal mandatory “use by” date for baby food, does AB 688 apply?

- AB 688 specifically refers to baby food which has a federally mandated “use by” date on the product. Since current Federal law does not mandate a “use by” date for baby food, AB 688 would not apply to baby food.

What are the penalties for selling infant formula past the “use by” dates?

- The penalty for violating AB 688 is not more than ten dollars per day for each item sold or offered for sale after the “use by” date. The fine shall be calculated based upon the number of days past the “use by” date that the product is found being offered for sale. An enforcement agency may also assess administrative penalties of ten dollars per day for each item sold or offered for sale.
- The above penalties can be assessed in addition to other penalties authorized by law.
- The assessment of penalties allowed by AB 688 is at the discretion of the local environmental health agency.
- Local environmental health agencies are encouraged to warn and educate retailers before assessing fines or penalties.

Will a sales receipt be used solely to determine a violation?

- A sales receipt should not be used solely to determine a violation. There is no mechanism to connect the sale of infant formula identified on a receipt with an individual container of infant formula.

How will local environmental health agencies enforce?

- Local environmental health agencies have the ability to inspect products as part of routine inspections or in response to a complaint. However, AB 688 does not require regular or routine inspection of products by the local environmental health agency.

Will there be an investigation for each complaint?

- Local environmental health agencies have the discretion to respond to complaints in a variety of ways, none of which require each complaint be addressed individually.
- The local environmental health agency should consider the volume of complaints or a pattern of complaints for a specific retailer before initiating enforcement.

How will compliance be assessed during routine inspections?

- Compliance with AB 688 may be checked by inspecting the “use by” date on infant formula which is being offered for sale to the consumer.
- AB 688 does not require the inspection of each individual product being offered for sale as part of a routine inspection.

How will the violation be documented on the inspection report?

- A violation resulting from infant formula documented as being offered for sale to the consumer past the use by date should be documented as a minor violation under Data Field #32 Food Properly Labeled & Honestly Presented for jurisdictions that have modeled their forms after the FDA Model Inspection Form.