

other baby foods are not. There have been no congressional reports asserting elevated levels of heavy metals in infant formulas, as there have been for certain non-formula baby foods. According to both FDA and industry testing, heavy metals are present in infant formula at trace levels that are far lower than those that have been reported in many non-formula baby foods. Indeed, the FDA stated in March 2025 that its recent testing “d[id] not indicate that [heavy metals] are present in infant formula at levels that would trigger a public health concern.”¹

Moreover, the FDA is still in the process of determining action levels for heavy metals in infant formulas—unlike non-formula baby foods, for which certain action levels have already been established. For example, the FDA has already proposed or finalized action levels for lead in non-formula baby foods, and for arsenic in children’s juices and infant rice cereals, but infant formulas are expressly excluded from these guidances.¹ The FDA announced its intent to set formula-specific action levels in March 2025 as part of its Operation Stork Speed—an effort we support. And just recently, the Department of Health and Human Services announced that it will publish a report in April 2026 addressing cadmium, mercury, and lead in infant formula—a precursor to setting federal action levels.

Requiring infant formula manufacturers to post quantitative testing results before the FDA has announced any action levels for formula is more likely to cause unwarranted confusion or alarm than to provide helpful information. Absent FDA guidance, a number like “1 part per billion cadmium” would not communicate anything meaningful to parents about the formula’s safety or compliance with FDA regulations. To date, all states that have adopted similar disclosure statutes for baby foods have chosen to exclude infant formula from those requirements, at least until the FDA issues action levels. California, for example, amended its bill to exclude infant formula, finding “merit to the concern” that posting quantitative test results where “the FDA has [not yet] adopted guidance” could “cause confusion among consumers on how to process the information that is presented.”² This, in turn, could conceivably lead parents and caregivers to resort to alternative feeding options (such as homemade formulas) that do not meet FDA safety and quality standards for complete nutrition in infants and lack the nutrients necessary for infant growth and development, which can be dangerous to infants’ health and wellbeing.

We are also concerned that including infant formula in HB 536 would require infant formula to bear a statement about “toxic element testing.” The word “toxic” is not only inaccurate as it relates to trace levels of heavy metals in infant formula but potentially alarming for parents. Again, the FDA has stated that heavy metals in infant formula do not indicate “a public health concern.” Absent such a demonstrated concern requiring formulas to bear the word “toxic” might mislead parents and caregivers into thinking that these products are unsafe, and/or jeopardizing infant with alternatives that truly are unsafe. We do not recommend any actions that might unjustifiably erode confidence in U.S. infant formula products; inadvertently threaten infants’ health; and further strain the availability of safe infant formula products that meet all FDA regulatory requirements. Further, it is worth noting any product labeling changes required to comply with Vermont law would be functionally required nationwide as retail partners determine product distribution, not infant formula manufacturers. This, too, counsels in favor of keeping the original text of HB 536, which mirrors the approach taken by California, Maryland, Virginia, and Illinois (which represents almost over 20% of the U.S. population).

¹ <https://www.usatoday.com/story/money/2025/03/19/infant-formulas-lead-arsenic-consumer-reports/82372887007/>.

³ See, e.g., FDA, Action Levels for Lead in Processed Food Intended for Babies and Young Children: Guidance for Industry at 3 note 2, <https://www.fda.gov/media/164684/download>.

² California Assembly – Committee on Health, AB 899 Bill Analysis at 11, March 28, 2023, available at https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240AB899

INCA members look forward to working with the FDA to establish action levels for heavy metals in infant formula, and to enhance public awareness about the protective measures already in place across the infant formula industry. INCA believes that this measure is premature and would inadvertently harm not only Vermont's parents and infants but also have this same effect at the national level. The use of the word "toxic" should be avoided to as it would alarm parents as stated previously. We recommend the Committee take time to consider the unintended consequences of the legislation as drafted. INCA members welcome an opportunity to work with you and your staff on HB 536 to ensure that parents and caregivers that rely on infant formula have access to science-based information and continue to trust formula products to meet their child's needs.