

§ 720.7 Notification of person submitting cosmetic product ingredient statement.

When Form FDA 2512 is received, FDA will either assign a permanent cosmetic product ingredient statement number or a Food and Drug Administration (FDA) reference number in those cases where a permanent number cannot be assigned. Receipt of the form will be acknowledged by sending the individual signing the statement an appropriate notice bearing either the FDA reference number or the permanent cosmetic product ingredient statement number. If the person submitting Form FDA 2512 has not complied with §§ 720.4 (b)(1) and (b)(2), the person will be notified as to the manner in which the statement is incomplete.

[57 FR 3130, Jan. 28, 1992]

§ 720.8 Confidentiality of statements.

(a) Data and information contained in, attached to, or included with Forms FDA 2512 and FDA 2514, and amendments thereto are submitted voluntarily to the Food and Drug Administration (FDA). Any request for confidentiality of a cosmetic ingredient submitted with such forms or separately will be handled in accordance with the procedure set forth in this section. The request for confidentiality will also be subject to the provisions of § 20.111 of this chapter, as well as to the exemptions in subpart D of part 20 of this chapter and to the limitations on exemption in subpart E of part 20 of this chapter.

(b) Any request for confidentiality of the identity of a cosmetic ingredient should contain a full statement, in a well-organized format, of the factual and legal grounds for that request, including all data and other information on which the petitioner relies, as well as representative information known to the petitioner that is unfavorable to the petitioner's position. The statement of the factual grounds should include, but should not be limited to, scientific or technical data, reports, tests, and other relevant information addressing the following factors that FDA will consider in determining

whether the identity of an ingredient qualifies as a trade secret:

(1) The extent to which the identity of the ingredient is known outside petitioner's business;

(2) The extent to which the identity of the ingredient is known by employees and others involved in petitioner's business;

(3) The extent of measures taken by the petitioner to guard the secrecy of the information;

(4) The value of the information about the identity of the claimed trade secret ingredient to the petitioner and to its competitors;

(5) The amount of effort or money expended by petitioner in developing the ingredient; and

(6) The ease or difficulty with which the identity of the ingredient could be properly acquired or duplicated by others.

(c) The request for confidentiality should also be accompanied by a statement that the identity of the ingredient for which confidentiality is requested has not previously been published or disclosed to anyone other than as provided in § 20.81(a) of this chapter.

(d) FDA will return to the petitioner any request for confidentiality that contains insufficient data to permit a review of the merits of the request. FDA will also advise the petitioner about the additional information that is necessary to enable the agency to proceed with its review of the request.

(e) If, after receiving all of the data that are necessary to make a determination about whether the identity of an ingredient is a trade secret, FDA tentatively decides to deny the request, the agency will inform the person requesting trade secrecy of its tentative determination in writing. FDA will set forth the grounds upon which it relied in making this tentative determination. The petitioner may withdraw the records for which FDA has tentatively denied a request for confidentiality or may submit, within 60 days from the date of receipt of the written notice of the tentative denial, additional relevant information and arguments and request that the agency reconsider its decision in light of both