“(1) Before May 8, 1995.—Before May 8, 1995, the exemption provided by section 403(q)(5)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)(5)(D)) shall be available as provided by section 403(q)(5)(D) of the Federal Food, Drug, and Cosmetic Act only with respect to food when it is sold to consumers.”

Section 202(a)(1) of Pub. L. 102–571 provided that: ‘‘Notwithstanding any other provision of law and except as provided in subsection (b) [set out as a note below] and in the amendment made by paragraph (2)(A) [amending provisions set out as notes above], the Secretary of Health and Human Services may not implement the Nutrition Labeling and Education Act of 1990 (Public Law 101–535; 104 Stat. 2353) [see Short Title of 1990 Amendments note set out under section 301 of this title] or any amendment made by such Act, earlier than December 15, 1993, with respect to dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances.’’

Section 202(b) of Pub. L. 102–571 provided that: ‘‘Notwithstanding section 403(r)(5)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)(5)(D)) and subsection (a) [enacting provisions set out as notes above and amending provisions set out as notes above and under section 343–1 of this title], the Secretary of Health and Human Services may, earlier than December 15, 1993, approve claims made with respect to dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances that are claims described in clauses (vi) and (x) of section 3(b)(1)(A) of the Nutrition Labeling and Education Act of 1990 (Pub. L. 101–535) (21 U.S.C. 343 note).’’

United States Recommended Daily Allowances of Vitamins or Minerals

Section 203 of Pub. L. 102–571 provided that: ‘‘Notwithstanding any other provision of Federal law, no regulations that require the use of, or are based upon, recommended daily allowances of vitamins or minerals may promulgate before November 8, 1993 (other than regulations establishing the United States recommended daily allowances specified at section 101.6(c)(7)(iv) of title 21, Code of Federal Regulations, as in effect on October 6, 1992, or regulations under section 403(r)(1)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)(1)(A)) that are based on such recommended daily allowances.’’

Consumer Education

Section 2(c) of Pub. L. 101–535 provided that: ‘‘The Secretary of Health and Human Services shall carry out activities which educate consumers about—

‘‘(1) the availability of nutrition information in the label or labeling of food, and

‘‘(2) the importance of that information in maintaining healthy dietary practices.’’

Studies Concerning Carcinogenic and Other Toxic Substances in Food and Impurities in and Toxicity of Saccharin

Section 2 of Pub. L. 95–203 directed Secretary of Health, Education, and Welfare to conduct a study concerning carcinogenic and other toxic substances in food and impurities in and toxicity of saccharin and make a report respecting the carcinogenic and other substances to Committee on Human Resources of the Senate within 12 months of Nov. 23, 1977, and a report respecting saccharin to such committee within 15 months of Nov. 23, 1977.

§ 343–1. National uniform nutrition labeling

(a) Except as provided in subsection (b) of this section, no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce—

(1) any requirement for a food which is the subject of a standard of identity established under section 341 of this title that is not identical to such standard of identity or that is not identical to the requirement of section 343(g) of this title, except that this paragraph does not apply to a standard of identity of a State or political subdivision of a State for maple syrup that is of the type required by sections 341 and 343(g) of this title,

(2) any requirement for the labeling of food of the type required by section 343(c), 343(e), 343(i)(2), 343(w), or 343(x) of this title that is not identical to the requirement of such section, except that this paragraph does not apply to a requirement of a State or political subdivision of a State that is of the type required by section 343(c) of this title and that is applicable to maple syrup,

(3) any requirement for the labeling of food of the type required by section 343(b), 343(d), 343(f), 343(h), 343(i)(1), or 343(k) of this title that is not identical to the requirement of such section, except that this paragraph does not apply to a requirement of a State or political subdivision of a State that is of the type required by section 343(h)(1) of this title and that is applicable to maple syrup,

(4) any requirement for nutrition labeling of food that is not identical to the requirement of section 343(q) of this title, except that this paragraph does not apply to food that is offered for sale in a restaurant or similar retail food establishment that is not part of a chain with 20 or more locations doing business under the same name (regardless of the type of ownership of the locations) and offering for sale substantially the same menu items unless such restaurant or similar retail food establishment complies with the voluntary provision of nutrition information requirements under section 343(q)(5)(H)(ix) of this title, or

(5) any requirement respecting any claim of the type described in section 343(r)(1) of this title made in the label or labeling of food that is not identical to the requirement of section 343(r) of this title, except a requirement respecting a claim made in the label or labeling of food which is exempt under section 343(r)(5)(B) of this title.

Paragraph (3) shall take effect in accordance with section 6(b) of the Nutrition Labeling and Education Act of 1990.
§ 4205(c), Mar. 23, 2010, 124 Stat. 576.)

4154; Pub. L. 108–282, title II, § 203(c)(2), Aug. 2, 2004—Subsec. (a)(4). Pub. L. 108–282 substituted ''except as provided in paragraph (2),'' for ''except a requirement for nutrition labeling of food which is exempt under subclause (i) or (ii) of section 343(q)(5)(A) of this title''.

2004—Subsec. (a)(2). Pub. L. 108–282 substituted ''343(i)(2), 343(w), or 343(x)'' for ''or 343(i)(2)''.

1994—Subsec. (a)(1), Pub. L. 103–396, § 3(a)(1), inserted at end ''except that this paragraph does not apply to a standard of identity of a State or political subdivision of a State for maple syrup that is of the type required by sections 341 and 343(e) of this title''.

1992—Subsec. (a)(2). Pub. L. 103–396, § 3(a)(2), inserted at end ''except that this paragraph does not apply to a requirement of a State or political subdivision of a State to requiring food required by section 343(c) of this title and that is applicable to maple syrup,''.

1991—Subsec. (a)(5). Pub. L. 102–108 substituted ''section 343(y)(5)(B)'' for ''clause (B) of such section''.

Effective Date of 2004 Amendment
Amendment by Pub. L. 108–282 applicable to any food that is labeled on or after Jan. 1, 2006, see section 203(d) of Pub. L. 108–282, set out as a note under section 321 of this title.

Effective Date

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by section 6 [enacting this section] shall take effect.

"(A) With respect to a requirement of a State or political subdivision described in paragraph (1) of section 403A(a) of the Federal Food, Drug, and Cosmetic Act [subsec. (a)(1) of this section], on the date of the enactment of this Act [Nov. 8, 1990].

"(B) With respect to a requirement of a State or political subdivision described in paragraph (2) of section 403A(a) of the Federal Food, Drug, and Cosmetic Act, one year after the date of the enactment of this Act.

"(C) With respect to a requirement of a State or political subdivision described in paragraph (3) of section 403A(a) of the Federal Food, Drug, and Cosmetic Act, as prescribed by section 6(b) of the Nutrition Labeling and Education Act of 1990 [Pub. L. 101–535, set out below],

"(D) With respect to a requirement of a State or political subdivision described in paragraph (4) of section 403A(a) of the Federal Food, Drug, and Cosmetic Act, on the date regulations to implement section 403(r) of such Act take effect, and

"(E) With respect to a requirement of a State or political subdivision described in paragraph (5) of section 403A(a) of the Federal Food, Drug, and Cosmetic Act, on the date regulations to implement section 403(r) of such Act take effect.

"(2) EXCEPTION.—If a State or political subdivision submits a petition under section 403(a)(1) of the Federal Food, Drug, and Cosmetic Act for a requirement described in section 403A(a) of such Act within 18 months of the date of the enactment of this Act, paragraphs (3) through (5) of such section 403A(a) shall not apply with respect to such State or political subdivision requirement until—

"(A) 24 months after the date of the enactment of this Act, or

"(B) action on the petition, whichever occurs later.

"(3) REQUIREMENTS PERTAINING TO CERTAIN CLAIMS.—Notwithstanding subparagraphs (D) and (E) of paragraph (1) and except with respect to claims approved in accordance with section 202(b) of the Dietary Supplement Health and Education Act of 1992 [Pub. L. 102–571, set out as a note under section 343 of this title], the requirements described in paragraphs (4) and (5) of section 403A(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343–1(a)(4) and (5)) that pertain to dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances shall not take effect until the date final regulations take effect to implement subsection (a) or (r), as applicable, of section 403 of such Act with respect to such dietary supplements."
sections which are adequately being implemented by regulations and a list of sections which are not ade-
quately being implemented by regulations. With re-
spect to a section which is found by the Secretary to be ade-
quately implemented, no State or political subdivi-
sion of a State may establish or continue in effect as 
to any food in interstate commerce any requirement 
which is not identical to the requirement of such sec-
tion.

“(C) Within 24 months of the date of the enactment 
of this Act, the Secretary shall publish proposed revi-
sions to the regulations found to be inadequate under 
paragraph (B) and within 30 months of such date 
shall issue final revisions. Upon the effective date of 
such final revisions, no State or political subdivision 
may establish or continue in effect any requirement 
which is not identical to the requirement of the section 
which had its regulations revised in accordance with 
this subparagraph.

“(D)(i) If the Secretary does not issue a final list in 
accordance with subparagraph (B), the proposed list is-
ued under subparagraph (A) shall be considered the 
final list and States and political subdivisions shall be 
preempted with respect to sections found to be ade-
quate in such proposed list in accordance with subpara-
graph (B).

“(ii) If the Secretary does not issue final revisions of 
regulations in accordance with subparagraph (C), the 
proposed revisions issued under such subparagraph 
shall be considered the final revisions and States and 
political subdivisions shall be preempted with respect 
to sections the regulations of which are revised by the 
proposed revisions.

“(E) Subsection (b) of section 403A of the Federal 
Food, Drug, and Cosmetic Act shall apply with respect 
to the prohibition prescribed by subparagraphs (B) and 
(C).”

CONSTRUCTION OF PUB. L. 101–535

Section 6(c) of Pub. L. 101–535 provided that:

“(1) The Nutrition Labeling and Education Act of 1990 
[Pub. L. 101–535, see Short Title of 1990 Amendment 
note set out under section 301 of this title] shall not be 
construed to preempt any provision of State law, unless 
such provision is expressly preempted under section 
403A of the Federal Food, Drug, and Cosmetic Act [this 
section].

“(2) The amendment made by subsection (a) [enacting 
this section] and the provisions of subsection (b) [set 
out as a note above] shall not be construed to apply to 
to any requirement respecting a statement in the labeling 
of food that provides for a warning concerning the safety 
of the food or component of the food.

“(3) The amendment made by subsection (a), the pro-
visions of subsection (b) and paragraphs (1) and (2) of 
this subsection shall not be construed to affect preemp-
tion, express or implied, of any such requirement of a 
State or political subdivision, which may arise under 
the Constitution, any provision of the Federal Food, 
Drug, and Cosmetic Act [this chapter] not amended by 
subsection (a), any other Federal law, or any Federal 
regulation, order, or other final agency action review-
able under chapter 7 of title 5, United States Code.”

Amendments by Pub. L. 101–535 not to be construed to 
to alter the authority of the Secretary of Health and 
Human Services and the Secretary of Agriculture under 
the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 
et seq.), the Federal Meat Inspection Act (21 U.S.C. 601 
et seq.), the Poultry Products Inspection Act (21 U.S.C. 
451 et seq.), and the Egg Products Inspection Act (21 
out as a note under section 343 of this title.

DELAYED APPLICABILITY OF CERTAIN PROVISIONS

2090, provided that: “Notwithstanding any other provi-
sion of law, section 403A(k) of the Federal Food, 
Drug, and Cosmetic Act (21 U.S.C. 343(1)(a)(1)) shall not 
apply with respect to any requirement of any State or 
political subdivision regarding maple syrup until Sep-
tember 1, 1994.”

§ 343–2. Dietary supplement labeling exemptions

(a) In general
A publication, including an article, a chapter in 
a book, or an official abstract of a peer-re-
viewed scientific publication that appears in an 
article and was prepared by the author or the 
editors of the publication, which is reprinted in 
its entirety, shall not be defined as labeling 
when used in connection with the sale of a di-
etary supplement to consumers when it—

(1) is not false or misleading;

(2) does not promote a particular manufac-
turer or brand of a dietary supplement;

(3) is displayed or presented, or is displayed 
or presented with other such items on the 
same subject matter, so as to present a bal-
canced view of the available scientific informa-
ton a dietary supplement;

(4) if displayed in an establishment, is phys-
ically separate from the dietary supplements;

(5) does not have appended to it any infor-
mation by sticker or any other method.

(b) Application
Subsection (a) of this section shall not apply to 
or restrict a retailer or wholesaler of dietary 
supplements in any way whatsoever in the sale 
of books or other publications as a part of the 
business of such retailer or wholesaler.

(c) Burden of proof
In any proceeding brought under subsection 
(a) of this section, the burden of proof shall be 
on the United States to establish that an article 
or other such matter is false or misleading.

(June 25, 1938, ch. 675, § 403B, as added Pub. L. 

§ 343–3. Disclosure

(a) No provision of section 321(n), 343(a), or 348 
of this title shall be construed to require on the 
label or labeling of a food a separate radiation 
disclosure statement that is more prominent 
than the declaration of ingredients required by 
section 343(1)(2) of this title.

(b) In this section, the term “radiation disclosure 
statement” means a written statement 
that discloses that a food has been intentionally 
subject to radiation.

(June 25, 1938, ch. 675, § 403C, as added Pub. L. 
2953.)

EFFECTIVE DATE

Section effective 90 days after Nov. 21, 1997, except as 
otherwise provided, see section 501 of Pub. L. 105–115, 
set out as an Effective Date of 1997 Amendment note 
under section 321 of this title.

§ 343a. Repealed. Pub. L. 106–554, § 1(a)(1) [title V, 
§ 517], Dec. 21, 2000, 114 Stat. 2763, 2763A–73

Section. Pub. L. 95–203, § 4(c), (d), Nov. 23, 1977, 91 
Stat. 1453, 1454, related to distribution of information 
on health risks of saccharin.