

any updates to such cosmetic product listing annually.

(6) Submission

A responsible person may submit product listing information as part of a facility registration or separately.

(d) Facility registration and product listing numbers

At the time of the initial registration of any facility under subsection (a)(1) or initial listing of any cosmetic product under (c)(1),¹ the Secretary shall assign a facility registration number to the facility and a product listing number to each cosmetic product. The Secretary shall not make such product listing number publicly available.

(e) Confidentiality

In response to a request under section 552 of title 5, information described in subsection (b)(2)(D) or (c)(4)(A)(i) that is derived from a registration or listing under this section shall be withheld under section 552(b)(3) of title 5.

(f) Suspensions

(1) Suspension of registration of a facility

The Secretary may suspend the registration of a facility if the Secretary determines that a cosmetic product manufactured or processed by a registered facility and distributed in the United States has a reasonable probability of causing serious adverse health consequences or death to humans and the Secretary has a reasonable belief that other products manufactured or processed by the facility may be similarly affected because of a failure that cannot be isolated to a product or products, or is sufficiently pervasive to raise concerns about other products manufactured in the facility.

(2) Notice of suspension

Before suspending a facility registration under this section, the Secretary shall provide—

(A) notice to the facility registrant of the cosmetic product or other responsible person, as appropriate, of the intent to suspend the facility registration, which shall specify the basis of the determination by the Secretary that the facility registration should be suspended; and

(B) an opportunity, within 5 business days of the notice provided under subparagraph (A), for the responsible person to provide a plan for addressing the reasons for possible suspension of the facility registration.

(3) Hearing on suspension

The Secretary shall provide the registrant subject to an order under paragraph (1) or (2) with an opportunity for an informal hearing, to be held as soon as possible but not later than 5 business days after the issuance of the order, or such other time period agreed upon by the Secretary and the registrant, on the actions required for reinstatement of registration and why the registration that is subject to the suspension should be reinstated. The Secretary shall reinstate a registration if the

Secretary determines, based on evidence presented, that adequate grounds do not exist to continue the suspension of the registration.

(4) Post-hearing corrective action plan

If, after providing opportunity for an informal hearing under paragraph (3), the Secretary determines that the suspension of registration remains necessary, the Secretary shall require the registrant to submit a corrective action plan to demonstrate how the registrant plans to correct the conditions found by the Secretary. The Secretary shall review such plan not later than 14 business days after the submission of the corrective action plan or such other time period as determined by the Secretary, in consultation with the registrant.

(5) Vacating of order; reinstatement

Upon a determination by the Secretary that adequate grounds do not exist to continue the suspension actions, the Secretary shall promptly vacate the suspension and reinstate the registration of the facility.

(6) Effect of suspension

If the registration of the facility is suspended under this section, no person shall introduce or deliver for introduction into commerce in the United States cosmetic products from such facility.

(7) No delegation

The authority conferred by this section to issue an order to suspend a registration or vacate an order of suspension shall not be delegated to any officer or employee other than the Commissioner.

(June 25, 1938, ch. 675, § 607, as added Pub. L. 117-328, div. FF, title III, § 3502, Dec. 29, 2022, 136 Stat. 5851.)

Statutory Notes and Related Subsidiaries

CONSTRUCTION; CONFIDENTIALITY

Nothing in section 3502 of Pub. L. 117-328, which enacted this section, to be construed to authorize the disclosure of information that is prohibited from disclosure under section 331(j) of this title or section 1905 of title 18 or that is subject to withholding under section 552(b)(4) of title 5, see section 3503(c)(2) of Pub. L. 117-328, set out as a note under section 364 of this title.

§ 364d. Safety substantiation

(a) Substantiation of safety

A responsible person for a cosmetic product shall ensure, and maintain records supporting, that there is adequate substantiation of safety of such cosmetic product.

(b) Coal-tar hair dye

Subsection (a) shall not apply to coal-tar hair dye that otherwise complies with the requirements of section 361(a) of this title. A responsible person for a coal-tar hair dye shall maintain records related to the safety of such product.

(c) Definitions

For purposes of this section:

(1) Adequate substantiation of safety

The term “adequate substantiation of safety” means tests or studies, research, analyses,

¹ So in original. Probably should be preceded by “subsection”.

or other evidence or information that is considered, among experts qualified by scientific training and experience to evaluate the safety of cosmetic products and their ingredients, sufficient to support a reasonable certainty that a cosmetic product is safe.

(2) Safe

The term “safe” means that the cosmetic product, including any ingredient thereof, is not injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual. The Secretary shall not consider a cosmetic ingredient or cosmetic product injurious to users solely because it can cause minor and transient reactions or minor and transient skin irritations in some users. In determining for purposes of this section whether a cosmetic product is safe, the Secretary may consider, as appropriate and available, the cumulative or other relevant exposure to the cosmetic product, including any ingredient thereof.

(June 25, 1938, ch. 675, §608, as added Pub. L. 117-328, div. FF, title III, §3502, Dec. 29, 2022, 136 Stat. 5854.)

Statutory Notes and Related Subsidiaries

CONSTRUCTION; CONFIDENTIALITY

Nothing in section 3502 of Pub. L. 117-328, which enacted this section, to be construed to authorize the disclosure of information that is prohibited from disclosure under section 331(j) of this title or section 1905 of title 18 or that is subject to withholding under section 552(b)(4) of title 5, see section 3503(c)(2) of Pub. L. 117-328, set out as a note under section 364 of this title.

TALC-CONTAINING COSMETICS

Pub. L. 117-328, div. FF, title III, §3505, Dec. 29, 2022, 136 Stat. 5859, provided that:

“The Secretary of Health and Human Services—

“(1) not later than one year after the date of enactment of this Act [Dec. 29, 2022], shall promulgate proposed regulations to establish and require standardized testing methods for detecting and identifying asbestos in talc-containing cosmetic products; and

“(2) not later than 180 days after the date on which the public comment period on the proposed regulations closes, shall issue such final regulations.”

§ 364e. Labeling

(a) General requirement

Each cosmetic product shall bear a label that includes a domestic address, domestic phone number, or electronic contact information, which may include a website, through which the responsible person can receive adverse event reports with respect to such cosmetic product.

(b) Fragrance allergens

The responsible person shall identify on the label of a cosmetic product each fragrance allergen included in such cosmetic product. Substances that are fragrance allergens for purposes of this subsection shall be determined by the Secretary by regulation. The Secretary shall issue a notice of proposed rulemaking promulgating the regulation implementing this requirement not later than 18 months after December 29, 2022, and not later than 180 days after the date on which the public comment period on

the proposed rulemaking closes, shall issue a final rulemaking. In promulgating regulations implementing this subsection, the Secretary shall consider international, State, and local requirements for allergen disclosure, including the substance and format of requirements in the European Union, and may establish threshold levels of amounts of substances subject to disclosure pursuant to such regulations.

(c) Cosmetic products for professional use

(1) Definition of professional

For purposes of this subsection, the term “professional” means an individual who is licensed by an official State authority to practice in the field of cosmetology, nail care, barbering, or esthetics.

(2) Professional use labeling

A cosmetic product introduced into interstate commerce and intended to be used only by a professional shall bear a label that—

(A) contains a clear and prominent statement that the product shall be administered or used only by licensed professionals; and

(B) is in conformity with the requirements of the Secretary for cosmetics labeling under this chapter and section 1453(a) of title 15.

(June 25, 1938, ch. 675, §609, as added Pub. L. 117-328, div. FF, title III, §3502, Dec. 29, 2022, 136 Stat. 5854.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117-328, div. FF, title III, §3503(b)(2), Dec. 29, 2022, 136 Stat. 5859, provided that: “Section 609(a) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 364e(a)], as added by section 802 [probably should be “section 3502”], shall take effect on the date that is 2 years after the date of enactment of this Act [Dec. 29, 2022].”

CONSTRUCTION; CONFIDENTIALITY

Nothing in section 3502 of Pub. L. 117-328, which enacted this section, to be construed to authorize the disclosure of information that is prohibited from disclosure under section 331(j) of this title or section 1905 of title 18 or that is subject to withholding under section 552(b)(4) of title 5, see section 3503(c)(2) of Pub. L. 117-328, set out as a note under section 364 of this title.

§ 364f. Records

(a) In general

If the Secretary has a reasonable belief that a cosmetic product, including an ingredient in such cosmetic product, and any other cosmetic product that the Secretary reasonably believes is likely to be affected in a similar manner, is likely to be adulterated such that the use or exposure to such product presents a threat of serious adverse health consequences or death to humans, each responsible person and facility shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, upon presentation of appropriate credentials and a written notice to such person, at reasonable times and within reasonable limits and in a reasonable manner, to have access to and copy all records relating to such cosmetic product, and to any other cosmetic product that