

when used in connection with the sale of a dietary supplement to consumers when it—

- (1) is not false or misleading;
- (2) does not promote a particular manufacturer 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 balanced view of the available scientific information on a dietary supplement;
- (4) if displayed in an establishment, is physically separate from the dietary supplements; and
- (5) does not have appended to it any information by sticker or any other method.

(b) Application

Subsection (a) 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), 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. 103-417, § 5, Oct. 25, 1994, 108 Stat. 4328.)

§ 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(i)(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. 105-115, title III, § 306, Nov. 21, 1997, 111 Stat. 2353.)

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 Repealed.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.

§ 344. Emergency permit control

(a) Conditions on manufacturing, processing, etc., as health measure

Whenever the Secretary finds after investigation that the distribution in interstate commerce of any class of food may, by reason of contamination with micro-organisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered interstate commerce, he then, and in such case only,

shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into interstate commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the Secretary as provided by such regulations.

(b) Violation of permit; suspension and reinstatement

The Secretary is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Secretary shall, immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended.

(c) Inspection of permit-holding establishments

Any officer or employee duly designated by the Secretary shall have access to any factory or establishment, the operator of which holds a permit from the Secretary, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

(June 25, 1938, ch. 675, § 404, 52 Stat. 1048.)

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Security Administrator to Secretary of Health, Education, and Welfare [now Health and Human Services], and of Food and Drug Administration in the Department of Agriculture to Federal Security Agency, see notes set out under section 321 of this title.

§ 345. Regulations making exemptions

The Secretary shall promulgate regulations exempting from any labeling requirement of this chapter (1) small open containers of fresh fruits and fresh vegetables and (2) food which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that such food is not adulterated or misbranded under the provisions of this chapter upon removal from such processing, labeling, or repacking establishment. This section does not apply to the labeling requirements of sections 343(q) and 343(r) of this title.

(June 25, 1938, ch. 675, § 405, 52 Stat. 1049; Pub. L. 101-535, § 5(a), Nov. 8, 1990, 104 Stat. 2362.)