

“(2) RECOMMENDATIONS.—The report described in paragraph (1) shall contain such recommendations, including recommendations for legislation, as the Commission deems appropriate.

“(3) ACTION ON RECOMMENDATIONS.—Within 90 days of the issuance of the report under paragraph (1), the Secretary of Health and Human Services shall publish in the Federal Register a notice of any recommendation of Commission for changes in regulations of the Secretary for the regulation of dietary supplements and shall include in such notice a notice of proposed rulemaking on such changes together with an opportunity to present views on such changes. Such rulemaking shall be completed not later than 2 years after the date of the issuance of such report. If such rulemaking is not completed on or before the expiration of such 2 years, regulations of the Secretary published in 59 FR 395-426 on January 4, 1994, shall not be in effect.”

EXTENSION OF COMPLIANCE DEADLINE FOR CERTAIN FOOD PRODUCTS PACKAGED PRIOR TO AUGUST 8, 1994

Pub. L. 103-261, May 26, 1994, 108 Stat. 705, provided: “That before August 8, 1994, sections 403(q) and 403(r)(2) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 343(q), (r)(2)] and the provision of section 403(i) of such Act added by section 7(2) of the Nutrition Labeling and Education Act of 1990 [Pub. L. 101-535], shall not apply with respect to a food product which is contained in a package for which the label was printed before May 8, 1994 (or before August 8, 1994, in the case of a juice or milk food product if the person responsible for the labeling of such food product exercised due diligence in obtaining before such date labels which are in compliance with such sections 403(q) and 403(r)(2) and such provision of section 403(i)), if, before June 15, 1994, the person who introduces or delivers for introduction such food product into interstate commerce submits to the Secretary of Health and Human Services a certification that such person will comply with this section and will comply with such sections 403(q) and 403(r)(2) and such provision of section 403(i) after August 8, 1994.”

LIMITATIONS ON APPLICATION OF SMALL BUSINESS EXEMPTION

Pub. L. 103-80, §2(a), Aug. 13, 1993, 107 Stat. 773, provided that:

“(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 in accordance with the regulations of the Secretary of Health and Human Services published at 21 C.F.R. 101.9(j)(1)(i) (1993).

“(2) AFTER MAY 8, 1995.—After May 8, 1995, the exemption provided by section 403(q)(5)(D) of the Federal Food, Drug, and Cosmetic Act shall only be available with respect to food when it is sold to consumers.”

PROHIBITION ON IMPLEMENTATION OF PUB. L. 101-535 WITH RESPECT TO DIETARY SUPPLEMENTS

Pub. L. 102-571, title II, §202(a)(1), Oct. 29, 1992, 106 Stat. 4500, 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.”

HEALTH CLAIMS MADE WITH RESPECT TO DIETARY SUPPLEMENTS

Pub. L. 102-571, title II, §202(b), Oct. 29, 1992, 106 Stat. 4501, 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

Pub. L. 102-571, title II, §203, Oct. 29, 1992, 106 Stat. 4502, 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 be promulgated before November 8, 1993 (other than regulations establishing the United States recommended daily allowances specified at section 101.9(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

Pub. L. 101-535, §2(c), Nov. 8, 1990, 104 Stat. 2357, 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

Pub. L. 95-203, §2, Nov. 23, 1977, 91 Stat. 1451, 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.

REPORT TO CONGRESSIONAL COMMITTEES RESPECTING ACTION TAKEN PURSUANT TO FORMER PAR. (o)(2)

Pub. L. 95-203, §4(a)(3), Nov. 23, 1977, 91 Stat. 1453, provided that the Secretary was to report to specified congressional committees any action taken under former par. (o)(2) of this section.

STATE OR TERRITORIAL REQUIREMENTS

Pub. L. 86-537, §2, June 29, 1960, 74 Stat. 251, provided that: “Nothing in the amendments made by the first section of this Act [amending this section] shall affect any requirement of the laws of any State or Territory.”

§ 343-1. National uniform nutrition labeling

(a) Except as provided in subsection (b), 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.

(b) Upon petition of a State or a political subdivision of a State, the Secretary may exempt from subsection (a), under such conditions as may be prescribed by regulation, any State or local requirement that—

(1) would not cause any food to be in violation of any applicable requirement under Federal law,

(2) would not unduly burden interstate commerce, and

(3) is designed to address a particular need for information which need is not met by the requirements of the sections referred to in subsection (a).

(June 25, 1938, ch. 675, §403A, as added Pub. L. 101-535, §6(a), Nov. 8, 1990, 104 Stat. 2362; amended Pub. L. 102-108, §2(b), Aug. 17, 1991, 105 Stat. 549; Pub. L. 103-396, §3(a), Oct. 22, 1994, 108 Stat. 4154; Pub. L. 108-282, title II, §203(c)(2), Aug. 2, 2004, 118 Stat. 908; Pub. L. 111-148, title IV, §4205(c), Mar. 23, 2010, 124 Stat. 576.)

REFERENCES IN TEXT

Section 6(b) of the Nutrition Labeling and Education Act of 1990 [Pub. L. 101-535], referred to in subsec. (a), is set out below.

AMENDMENTS

2010—Subsec. (a)(4). Pub. L. 111-148 substituted “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” 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(g) of this title.”.

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 that is of the type required by section 343(c) of this title and that is applicable to maple syrup.”.

Subsec. (a)(3). Pub. L. 103-396, §3(a)(3), inserted at end “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.”.

1991—Subsec. (a)(5). Pub. L. 102-108 substituted “section 343(r)(5)(B) of this title” 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

Pub. L. 101-535, §10(b), Nov. 8, 1990, 104 Stat. 2366, as amended by Pub. L. 102-571, title I, §107(16), title II, §202(a)(4), Oct. 29, 1992, 106 Stat. 4499, 4501, provided that:

“(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(q) of such Act [21 U.S.C. 343(q)] 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 403A(b) 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 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 (q) or (r), as appropriate, of section 403 of such Act with respect to such dietary supplements.”

Pub. L. 101-535, §6(b), Nov. 8, 1990, 104 Stat. 2363, provided that:

“(1) For the purpose of implementing section 403A(a)(3) [21 U.S.C. 343-1(a)(3)], the Secretary of Health and Human Services shall enter into a contract with a public or nonprofit private entity to conduct a study of—

“(A) State and local laws which require the labeling of food that is of the type required by sections 403(b), 403(d), 403(f), 403(h), 403(i)(1), and 403(k) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 343(b), (d), (f), (h), (i)(1), (k)], and

“(B) the sections of the Federal Food, Drug, and Cosmetic Act referred to in subparagraph (A) and the regulations issued by the Secretary to enforce such sections to determine whether such sections and regulations adequately implement the purposes of such sections.

“(2) The contract under paragraph (1) shall provide that the study required by such paragraph shall be completed within 6 months of the date of the enactment of this Act [Nov. 8, 1990].

“(3)(A) Within 9 months of the date of the enactment of this Act, the Secretary shall publish a proposed list of sections which are adequately being implemented by regulations as determined under paragraph (1)(B) and sections which are not adequately being implemented by regulations as so determined. After publication of the lists, the Secretary shall provide 60 days for comments on such lists.

“(B) Within 24 months of the date of the enactment of this Act, the Secretary shall publish a final list of sections which are adequately being implemented by regulations and a list of sections which are not adequately being implemented by regulations. With respect to a section which is found by the Secretary to be adequately implemented, no State or political subdivision 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 section.

“(C) Within 24 months of the date of the enactment of this Act, the Secretary shall publish proposed revisions to the regulations found to be inadequate under subparagraph (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 issued under subparagraph (A) shall be considered the final list and States and political subdivisions shall be preempted with respect to sections found to be adequate in such proposed list in accordance with subparagraph (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

Pub. L. 101-535, §6(c), Nov. 8, 1990, 104 Stat. 2364, 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 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 provisions of subsection (b) and paragraphs (1) and (2) of this subsection shall not be construed to affect preemption, 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 reviewable under chapter 7 of title 5, United States Code.”

Amendments by Pub. L. 101-535 not to be construed 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 U.S.C. 1031 et seq.), see section 9 of Pub. L. 101-535, set out as a note under section 343 of this title.

DELAYED APPLICABILITY OF CERTAIN PROVISIONS

Pub. L. 102-408, title III, §310, Oct. 13, 1992, 106 Stat. 2090, provided that: “Notwithstanding any other provision of law, section 403A(a)(1) 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 September 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-reviewed 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 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