

One Minute Memo®



The Campaign for “Clean” Cosmetics Through Regulation Reform Continues

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Seyfarth Synopsis: Rep. Schakowsky (D-Ill.) proposes latest cosmetics reform bill to enhance the FDA’s oversight of cosmetic products and ensure cosmetics are free of known toxins and contaminants.

While the [Senate’s Personal Care Product Safety Act](#) is pending review, in pushing cosmetic reform along, the House has proposed its own Safe Cosmetics and Personal Care Products Act of 2018 ([HR 6903](#), the “Bill”). The Bill is led by Rep. Janice Schakowsky (D - Illinois), who noted on September 26, 2018 on [Twitter](#), “today I introduced a bill banning toxic ingredients from personal care products.” Currently, the Bill is under review by the House Committee on Energy and Commerce. With a focus on safe ingredients and greater transparency, Rep. Schakowsky issued a [press release](#) further summarizing that the Bill “calls for the full disclosure of all ingredients included in beauty and personal care products including fragrances. It also bans outright toxic ingredients, like carcinogens, in those products.” Rep. Schakowsky hopes to tackle the realization that “cosmetics are one of the least regulated consumer products on the market.”

The Bill tracks the momentum from consumers, and likely Rep. Schakowsky’s constituents, for toxin-free products, which is reflected by retailers’ and manufacturers’ notable “clean” initiatives and commitments to excluding certain ingredients. The Bill proposes that all brand owners, defined as “any entity responsible for bringing a cosmetic to market,” shall pay a fee and register with the Food and Drug Administration (FDA) and inform the FDA of all of its cosmetic products, inclusive of all data and information regarding the safety of its products and product ingredients, warnings, and directions for use of products. Further to brand owners’ obligations, the Bill requires that each product contain a list of all ingredients and identify those deemed to be contaminants. Under the Bill, the term “contaminant” means “unintended substances, such as those that can originate from sources outside the chemical pathway, chemical processes, storage of primary substances, instability of the packaging or harmful by products of the manufacturing process.” Brand owners are also expected to report any adverse events arising from product use and are banned from engaging in animal testing.

While the Bill contains new responsibilities for the cosmetics industry, it also creates a number of new initiatives for the FDA. The Bill calls on the FDA to establish a “safety standard” so that a cosmetic or ingredient provides a reasonable certainty of no harm and protects the public from any known or anticipated adverse health effects. Additionally, the Bill asks that the FDA compile a list of ingredients and categorize them as either “prohibited and restricted,” “safe without limits”, or “priority assessment,” as well as a list of contaminants linked to severe acute reactions. Furthermore, the Bill requires the FDA to devise testing protocols for detecting contaminants in an ingredient or cosmetic product.

The most notable proposed change is expanding the FDA's enforcement authority. Currently, the FDA has no authority to order the recall of a cosmetic, but it can request that a manufacturer or seller recall a product. The Bill, however, provides that the FDA may request a voluntary recall, immediately order a cease of distribution with cause (i.e. serious adverse event, cosmetic misbranded, unregistered brand owner), or issue an emergency recall order if a product presents an imminent threat of serious adverse event. The Bill further sets forth a formal hearing and appeal process for purposes of an ordered recall.

The lengthy bill strikes a balance between greater industry accountability and government involvement alike to oversee the marketing and sale of cosmetic products. While most cosmetic developers have heeded consumers' concerns and are already sensitive to using safe ingredients and communicating the same to consumers, the Bill requires significant government overhaul, which will demand substantial resources dedicated to compliance and enforcement. Without support from Republicans, query whether this beauty Bill will be the one to gain traction in Congress. We will continue to monitor the progress of cosmetic reform and Congress' efforts to keep all things clean, safe and beautiful!

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