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Testimony of Scott Faber

on

Examining the Public Health Risks of Carcinogens in Consumer Products

Before the

Economic and Consumer Policy Subcommittee

of the

House Committee on Oversight and Government Reform

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Thank you for the opportunity to testify. My name is Scott Faber, and I am the Senior Vice President for Government Affairs for the Environmental Working Group, a national environmental health organization that has been evaluating the safety of consumer products for more than two decades.

Chemicals and contaminants linked to cancer can be found in food, water and many other everyday products. However, no category of consumer products is subject to less government oversight than cosmetics and other personal care products. Although many of the chemicals and contaminants in cosmetics likely pose little risk, exposure to some chemicals and contaminants used in cosmetics and other personal care products has been linked to serious health problems, including cancer. Since 2009, 595 cosmetics manufacturers have reported using 88 chemicals that have been linked to cancer, birth defects, or reproductive harm in more than 73,000 products.¹

Chemicals and contaminants found in cosmetics and other personal care products that have been

¹ Cal. Dep't of Pub. Health, Cal. Safe Cosmetics Program, Current Data Summary, <https://www.cdph.ca.gov/Programs/CCDCPHP/DEODC/OHB/CSCP/Pages/SummaryData.aspx> (last accessed Mar. 8, 2019). The California Safe Cosmetics Act of 2005 requires cosmetic manufacturers to disclose to the California Department of Public Health all products containing ingredients known or suspected to cause cancer, birth defects or other reproductive toxicity as determined by certain authoritative scientific bodies, including the Environmental Protection Agency, the National Toxicology Program and the International Agency for Research on Cancer.



linked to chronic health problems include phthalates,² parabens,³ formaldehyde,⁴ chemicals designed to release formaldehyde,⁵ and 1,4-dioxane.⁶ A full list is attached to my testimony. Repeated use of everyday products containing these and other chemicals and contaminants increases the risk of cancer and other serious health problems.

Nevertheless, only two pages of the 829-page Federal Food, Drug and Cosmetics Act govern cosmetics, and those provisions provide the Food and Drug Administration no financial resources and sharply limit the FDA's authority to regulate chemicals and contaminants that pose chronic risks.⁷ Although Congress has since given FDA the power to ensure that food additives,⁸ color additives⁹ and pesticides¹⁰ pose "no harm" from repeat exposures, Congress has not given FDA the same authority to regulate the chronic risks posed by chemicals and contaminants in cosmetics.

Instead, FDA largely relies upon self-regulation to address the risks posed by the \$86 billion personal care products industry. As FDA Commissioner Scott Gottlieb and Center for Food Safety and Applied Nutrition Director Susan Mayne said last week:

"[C]urrent law does not require cosmetics to be reviewed and approved by the FDA prior to being sold to American consumers . . . [W]hen it comes to cosmetics, companies and individuals who market these products in the U.S. hold the responsibility for the safety and labeling of their products. This means that ultimately a cosmetic manufacturer can

² See Comm. on the Health Risks of Phthalates, Nat'l Research Council of the Nat'l Acad., *Phthalates & Cumulative Risk Assessment: The Tasks Ahead* (2008), <http://www.nap.edu/catalog/12528.html>.

³ See European Comm'n Sci. Comm. on Consumer Safety, *Opinion on Parabens*, Doc. No. SCCS/1348/10 (Dec. 2010, revised Mar. 2011), http://ec.europa.eu/health/scientific_committees/consumer_safety/docs/sccs_o_041.pdf.

⁴ See Nat'l Toxicology Program, *Report on Carcinogens* (14th ed. 2016), <https://ntp.niehs.nih.gov/ntp/roc/content/profiles/formaldehyde.pdf>.

⁵ See DeGroot, Anton, *et al.* (2009). Formaldehyde-Releasers in Cosmetics: Relationship to Formaldehyde Contact Allergy. *Contact Dermatitis*, 61(2), 63-85. <http://www.ncbi.nlm.nih.gov/pubmed/19706047>

⁶ See U.S. Evtl. Prot. Agency, IRIS Toxicological Review of 1-4 Dioxane (Final Report) (2010), <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=205170>.

⁷ Section 601(a) of the FDCA (21 U.S.C. § 361(a)) states that a cosmetic is deemed adulterated if it "bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual." A cosmetic is also adulterated under the 1938 FDCA if packed in unsanitary conditions that may render it "injurious to health" or its container is composed in whole or part of any poisonous or deleterious substance that may render it "injurious to health."

⁸ Food Additives Amendment of 1958, Pub. L. No. 85-929, 72 Stat. 1784.

⁹ Color Additives Amendment of 1960, Pub. L. No. 86-618, 74 Stat. 397.

¹⁰ Food Quality Protection Act of 1996, Pub. L. No. 104-170, 110 Stat. 1489.



decide if they'd like to test their product for safety . . . To be clear, there are currently no legal requirements for any cosmetic manufacturer marketing products to American consumers to test their products for safety.”¹¹

However, industry self-regulation lacks the safeguards provided by FDA reviews. Programs like the Cosmetics Ingredient Review (CIR), which is financed by cosmetics manufacturers and housed inside the industry's trade association, focus on short-term effects, such as allergic reactions, and face significant data gaps about chemical use and toxicity. Many CIR findings are inconsistent with the findings by other regulatory authorities or experts.¹²

As a result, cosmetics and other personal care products have fallen into a regulatory black hole. To date, FDA has regulated only nine ingredients for safety reasons.¹³ By contrast, more than 40 nations have taken steps to ban or restrict more than 1,400 chemicals or contaminants in cosmetics and personal care products, including chemicals linked to cancer, reproductive harm and neurological harm. Other nations have banned long-chain parabens like isopropylparaben and isobutylparaben, banned phthalates like dibutyl phthalate and diethylhexyl phthalate,¹⁴ and restricted the presence of chemicals like formaldehyde¹⁵ and perfluorooctanoic acid (PFOA).¹⁶

In addition to the risks posed by intentionally added ingredients, cosmetics can be contaminated with heavy metals, including arsenic, cadmium, lead, mercury and nickel. Though banned in

¹¹ Statement from FDA Commissioner Scott Gottlieb, M.D., and Susan Mayne, Ph.D., director of the Center for Food Safety and Applied Nutrition, on tests confirming a 2017 finding of asbestos contamination in certain cosmetic products and new steps that FDA is pursuing to improve cosmetics safety (Mar. 5, 2019), <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm632736.htm>.

¹² For example, methylisothiazolinone, iodopropynyl butylcarbamate, and methyltribromo glutaronitrile are preservatives deemed too risky for certain uses by other authorities but were found safe for use at higher concentrations or without similar restrictions by CIR. For a more detailed discussion, visit <https://www.help.senate.gov/imo/media/doc/Faber.pdf>.

¹³ U.S. Food & Drug Admin., Cosmetics, Prohibited & Restricted Ingredients, <https://www.fda.gov/Cosmetics/GuidanceRegulation/LawsRegulations/ucm127406.htm> (last accessed Mar. 7, 2019).

¹⁴ Eur. Comm'n, Annex II: List of Substances Prohibited in Cosmetic Products (last update: 24/04/2018), http://ec.europa.eu/growth/tools-databases/cosing/pdf/COSING_Annex%20II_v2.pdf (last accessed Mar. 8, 2019).

¹⁵ Eur. Comm'n, Annex III: List of Substances Which Cosmetic Products Must Not Contain Except Subject to the Restrictions Laid Down (last update: 24/10/2018), http://ec.europa.eu/growth/tools-databases/cosing/pdf/COSING_Annex%20III_v2.pdf (last accessed Mar. 8, 2019); Eur. Comm'n, Annex V: List of Preservatives Allowed in Cosmetic Products (last update: 23/11/2018), http://ec.europa.eu/growth/tools-databases/cosing/pdf/COSING_Annex%20V_v2.pdf (last accessed Mar. 8, 2019).

¹⁶ Eur. Chemicals Agency, Annex XVII to REACH – Conditions of Restriction: Entry 68 Perfluorooctanoic Acid (PFOA), <https://www.echa.europa.eu/documents/10162/7a04b630-e00a-a9c5-bc85-0de793f6643c> (last accessed Mar. 8, 2019).



more than 50 nations, asbestos can also contaminate cosmetics made with talc,¹⁷ such as facial powders. Although there is no formal estimate of the number of cosmetics products that contain talc,¹⁸ EWG found more than 2,100 products that contain talc as an ingredient in our database of more than 26,000 personal care products. Of these, about 1,200 are loose or pressed powders that could pose a risk of being inhaled.¹⁹

Product Form	Products with Talc
Liquids, Soaps and other Solids	927
Loose Powder	123
Pressed Powder	1,051
Aerosol Spray	18
Total with Talc	2,119
Total Products in Skin Deep®	26,143
<i>Source: Environmental Working Group's Skin Deep® Cosmetics Database</i>	

Even small amounts of asbestos in talc can cause mesothelioma and other diseases many years after exposure. Personal care products which have a detectable amount of asbestos are considered adulterated by FDA, but cosmetics companies that use talc as an ingredient have no duty to test for asbestos and detection methods cannot guarantee that talc is “asbestos-free.” FDA encourages companies to select talc mines to avoid asbestos contamination and to conduct testing, but companies are not obligated to share test results or safety records.

In general, FDA has very little authority to oversee the personal care products industry. Personal care products companies do not have to register with FDA, provide FDA ingredient statements, adopt Good Manufacturing Practices, or GMPs, report adverse events to FDA, or provide FDA access to safety records. FDA does not have the power to suspend registration or order recalls

¹⁷ Geologically, talc and asbestos can be formed from the same parent rock. As a result, mined talc deposits in many parts of the world can be contaminated with asbestos fibers.

¹⁸ Cosmetics companies are not required to register and provide ingredient statements to FDA, so FDA is unable to estimate the number products which contain talc.

¹⁹ Envntl. Working Grp., EWG's Skin Deep® Cosmetics Database, <https://www.ewg.org/skindeep/>.



when products pose the risk of serious adverse health consequences or death. By contrast, manufacturers of food, drugs and medical devices must register with FDA, maintain and give FDA access to records, and report adverse events. If food, drugs or devices are unsafe, FDA can suspend production and product licenses. If unsafe food or devices reach the market, FDA can order a recall and take legal action against drug makers that do not recall their products.²⁰

Since the early 1950s, efforts by Congress to modernize cosmetics law have been defeated by the cosmetics industry.²¹ Since 2015, however, many cosmetics companies have supported giving FDA the authority and resources to review and regulate chemicals and contaminants of concern in cosmetics, and have supported requiring manufacturers to register, provide ingredient statements, adopt GMPs and report adverse events. Companies have also supported giving FDA the power to suspend production of dangerous products and order mandatory recalls.²²

The cosmetics industry has grown dramatically since Congress enacted current cosmetics law almost 80 years ago – from \$1 billion in sales in 1938 to more than \$80 billion in 2016.²³ But

²⁰ *E.g.*, 21 U.S.C. § 350(d) (food); 21 C.F.R. § 807 (devices); 21 U.S.C. § 360 (drugs); 21 C.F.R. §§ 607.65, 1271 (biologics).

²¹ In October 1951, the House of Representatives authorized a Select Committee, led by then-Rep. James Delaney (D-N.Y.) to investigate the use of chemicals, compounds and synthetics in the production of cosmetics and related health effects. *See* H.R. Rep. No. 82-2182. More than a dozen bills to reform cosmetics have been introduced since then. *See, e.g.*, the Cosmetics Safety Act, S. 683, 93rd Cong. (1st Sess. 1973); H.R. 1527, 93rd Cong. (1st Sess. 1973) (requiring that cosmetics containing mercury or any of its compounds bear labeling stating that fact); H.R. 14805, 93rd Cong. (1st Sess. 1974) (authorizing FDA to halt the sales and distribution of food, drugs, and cosmetics adulterated or misbranded in a manner that presents an imminent hazard to the public health); H.R. 6249, 94th Cong. (1st Sess. 1975) (applying the provisions of the FDCA to hair dyes); the Cosmetics Safety Amendments of 1975, S. 1681, 94th Cong. (2nd Sess. 1976); Cosmetics Act, H.R. 1993, 95th Cong. (1st Sess. 1977); Cosmetics Safety Amendments, S. 2365, 95th Cong. (1st Sess. 1977); Food, Drug, and Cosmetics Amendments of 1980, H.R. 2554, 91st Cong. (1st Sess. 1980) (permitting the inspection of a consulting laboratory in which food, drugs, devices, or cosmetics are being processed, packed, or held); the Safe Cosmetics Act of 2010, H.R. 5786, 111th Cong. (2nd Sess. 2010); the Safe Cosmetics Act of 2011, H.R. 2359, 112th Cong. (1st Sess. 2011); Cosmetics Safety Enhancement Act of 2012, H.R. 4262, 112th Cong. (2nd Sess. 2012); Cosmetics Safety Amendments of 2012, H.R. 4395, 112th Cong. (2nd Sess. 2012); Safe Cosmetics and Personal Care Products Act of 2013, H.R. 1385, 113th Cong. (1st Sess. 2013); Personal Care Products Safety Act, S. 1014, 114th Cong. (1st Sess. 2015); Cosmetics Modernization Amendments of 2015, H.R. 4075, 114th Cong. (1st Sess. 2015); Cosmetics Modernization Amendments of 2017, Personal Care Products Safety Act, S. 1113, 115th Cong. (1st Sess. 2017); Personal Care Products Safety Act, S. 726, 116th Cong. (1st Sess. 2019).

²² The following companies support bipartisan cosmetics reform legislation: Amyris (Biossance), Au Naturale, Babo Botanicals, Beautycounter, California Baby, Coalition of Handcrafted Entrepreneurs, Cote, Earth Mama Organics, Éclair Naturals, Estee Lauder Companies, EO Products, Goddess Garden Organics, Handcrafted Soap & Cosmetic Guild, Handmade Cosmetic Alliance, Herban Lifestyle, the Honest Company, Johnson & Johnson, Juice Beauty, L’Oreal, Made Of, Makes 3 Organics, Milk + Honey, MyChelle Dermaceuticals, OSEA, Peet Rivko, Procter & Gamble, Rahua, Revlon, Seventh Generation, Silk Therapeutics, SkinOwl, S.W. Basics, Tenoverten, Unilever, Vapour Organic Beauty.

²³ Statista, *Statistics & Facts on the U.S. Cosmetics and Makeup Industry*, <https://www.statista.com/topics/1008/cosmetics-industry/> (last accessed Mar. 8, 2019).



cosmetics law has not kept pace. Today consumers use a wide variety of personal care products. Each day American women use an average of 12 personal care products that contain 168 different chemicals. Men use an average of six personal care products that contain 85 different chemicals. Most consumers believe that these chemicals are already reviewed by the FDA, and three-fourths of consumers support strict regulation, regardless of party affiliation.²⁴ Reforms like those proposed by Chairman Frank Pallone²⁵ and by Sens. Dianne Feinstein and Susan Collins²⁶ will ensure that these consumer expectations are being met.

Thank you for the opportunity to testify.

²⁴ Mark Mellman & Linda DiVall, Findings From a National Survey of Likely 2016 General Election Voters (Feb. 2016), https://cdn.ewg.org/sites/default/files/u381/cosmetics.pdf?_ga=1.55566627.92668946.1470953450.

²⁵ Press Release, House Comm. on Energy and Commerce, Pallone & Lance Unveil Bipartisan Proposal to Strengthen Cosmetic Product Regulation (Sept. 14, 2016), <https://energycommerce.house.gov/newsroom/press-releases/pallone-lance-unveil-bipartisan-proposal-to-strengthen-cosmetic-product> (retrieved on Mar. 8, 2019).

²⁶ S. 726, The Personal Care Products Safety Act of 2019, available at <https://www.congress.gov/bill/116th-congress/senate-bill/726/text?q=%7B%22search%22%3A%5B%22s.+726%22%5D%7D&r=1&s=1>.