

(e) The forbearance from legal action for lack of grandfather protection is an interim procedure designed to encourage appropriate change in formulation and/or labeling during the time period required to review the various classes of OTC drugs. At such time as an applicable OTC drug monograph becomes effective, the interim procedure will automatically be terminated and any appropriate regulatory action will be initiated.

§ 330.13 Conditions for marketing ingredients recommended for over-the-counter (OTC) use under the OTC drug review.

(a) Before the publication in the FEDERAL REGISTER of an applicable proposed monograph, an OTC drug product that contains: (1) An active ingredient limited, on or after May 11, 1972, to prescription use for the indication and route of administration under consideration by an OTC advisory review panel, and not thereafter exempted from such limitation pursuant to § 310.200 of this chapter, or

(2) An active ingredient at a dosage level higher than that available in an OTC drug product on December 4, 1975, shall be regarded as a new drug within the meaning of section 201(p) of the act for which an approved new drug application is required.

(b)(1) An OTC drug product that contains: (i) An active ingredient limited, on or after May 11, 1972, to prescription use for the indication and route of administration under consideration by an OTC advisory review panel, and not thereafter exempted from such limitation pursuant to § 310.200 of this chapter, or

(ii) An active ingredient at a dosage level higher than that available in an OTC drug product on December 4, 1975, which ingredient and/or dosage level is classified by the panel in category I (conditions subject to § 330.10(a)(6)(i)) shall be regarded as a new drug within the meaning of section 201(p) of the act for which an approved new drug application is required if marketed for OTC use prior to the date of publication in the FEDERAL REGISTER of a proposed monograph.

(2) An OTC drug product covered by paragraph (b)(1) of this section which is

marketed after the date of publication in the FEDERAL REGISTER of a proposed monograph but prior to the effective date of a final monograph shall be subject to the risk that the Commissioner may not accept the panel's recommendation and may instead adopt a different position that may require re-labeling, recall, or other regulatory action. The Commissioner may state such position at any time by notice in the FEDERAL REGISTER, either separately or as part of another document; appropriate regulatory action will commence immediately and will not await publication of a final monograph. Marketing of such a product with a formulation or labeling not in accord with a proposed monograph or tentative final monograph also may result in regulatory action against the product, the marketer, or both.

(c) An OTC drug product that contains: (1) An active ingredient limited, on or after May 11, 1972, to prescription use for the indication and route of administration under consideration by an OTC advisory review panel, and not thereafter exempted from such limitation pursuant to § 310.200 of this chapter, or

(2) An active ingredient at a dosage level higher than that available in any OTC drug product on December 4, 1975, which ingredient and/or dosage level is classified by the panel in category II (conditions subject to § 330.10(a)(6)(ii)), may be marketed only after:

(i) The Center for Drug Evaluation and Research or the Commissioner tentatively determines that the ingredient is generally recognized as safe and effective, and the Commissioner states by notice in the FEDERAL REGISTER (separately or as part of another document) that marketing under specified conditions will be permitted;

(ii) The ingredient is determined by the Commissioner to be generally recognized as safe and effective and is included in the appropriate published OTC drug final monograph; or

(iii) A new drug application for the product has been approved.

(d) An OTC drug product that contains: (1) An active ingredient limited, on or after May 11, 1972, to prescription use for the indication and route of administration under consideration by an

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OTC advisory review panel, and not thereafter exempted from such limitation pursuant to § 310.200 of this chapter, or

(2) An active ingredient at a dosage level higher than that available in any OTC drug product on December 4, 1975, which ingredient and/or dosage level is classified by the panel in category III (conditions subject to § 330.10(a)(6)(iii)), may be marketed only after:

(i) The Center for Drug Evaluation and Research or the Commissioner tentatively determines that the ingredient is generally recognized as safe and effective, and the Commissioner states by notice in the FEDERAL REGISTER (separately or as part of another document) that marketing under specified conditions will be permitted;

(ii) The ingredient is determined by the Commissioner to be generally recognized as safe and effective and is included in the appropriate published OTC drug final monograph; or

(iii) A new drug application for the product has been approved.

(e) This section applies only to conditions under consideration as part of the OTC drug review initiated on May 11, 1972, and evaluated under the procedures set forth in § 330.10. Section 330.14(h) applies to the marketing of all conditions under consideration and evaluated using the criteria and procedures set forth in § 330.14.

[41 FR 32582, Aug. 4, 1976, as amended at 47 FR 17739, Apr. 23, 1982; 50 FR 8996, Mar. 6, 1985; 55 FR 11581, Mar. 29, 1990; 67 FR 3074, Jan. 23, 2002]

§ 330.14 Additional criteria and procedures for classifying OTC drugs as generally recognized as safe and effective and not misbranded.

(a) *Introduction.* This section sets forth additional criteria and procedures by which over the counter (OTC) drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any U.S. marketing experience can be considered in the OTC drug monograph system. This section also addresses conditions regulated as a cosmetic or dietary supplement in a foreign country that would be regulated as OTC drugs in the United States. For purposes of this section, “condition” means an ac-

tive ingredient or botanical drug substance (or a combination of active ingredients or botanical drug substances), dosage form, dosage strength, or route of administration, marketed for a specific OTC use, except as excluded in paragraph (b)(2) of this section. For purposes of this part, “botanical drug substance” means a drug substance derived from one or more plants, algae, or macroscopic fungi, but does not include a highly purified or chemically modified substance derived from such a source.

(b) *Criteria.* To be considered for inclusion in the OTC drug monograph system, the condition must meet the following criteria:

(1) The condition must be marketed for OTC purchase by consumers. If the condition is marketed in another country in a class of OTC drug products that may be sold only in a pharmacy, with or without the personal involvement of a pharmacist, it must be established that this marketing restriction does not indicate safety concerns about the condition’s toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use.

(2) The condition must have been marketed OTC for a minimum of 5 continuous years in the same country and in sufficient quantity, as determined in paragraphs (c)(2)(ii), (c)(2)(iii), and (c)(2)(iv) of this section. Depending on the condition’s extent of marketing in only one country with 5 continuous years of marketing, marketing in more than one country may be necessary.

(c) *Time and extent application.* Certain information must be provided when requesting that a condition subject to this section be considered for inclusion in the OTC drug monograph system. The following information must be provided in the format of a time and extent application (TEA):

(1) Basic information about the condition that includes a description of the active ingredient(s) or botanical drug substance(s), pharmacologic class(es), intended OTC use(s), OTC strength(s) and dosage form(s), route(s) of administration, directions for use, and the applicable existing OTC drug monograph(s) under which the condition would be marketed or the request