

for OTC external use as a hair grower or for hair loss prevention is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) After January 8, 1990, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

[54 FR 28777, July 7, 1989]

§ 310.528 Drug products containing active ingredients offered over-the-counter (OTC) for use as an aphrodisiac.

(a) Any product that bears labeling claims that it will arouse or increase sexual desire, or that it will improve sexual performance, is an aphrodisiac drug product. Anise, cantharides, don qual, estrogens, fennel, ginseng, golden seal, gotu kola, Korean ginseng, licorice, mandrake, methyltestosterone, minerals, nux vomica, Pega Palo, sarsaparilla, strychnine, testosterone, vitamins, yohimbine, yohimbine hydrochloride, and yohimbinum have been present as ingredients in such drug products. Androgens (e.g., testosterone and methyltestosterone) and estrogens are powerful hormones when administered internally and are not safe for use except under the supervision of a physician. There is a lack of adequate data to establish general recognition of the safety and effectiveness of any of these ingredients, or any other ingredient, for OTC use as an aphrodisiac. Labeling claims for aphrodisiacs for OTC use are either false, misleading, or unsupported by scientific data. The following claims are examples of some that have been made for aphrodisiac drug products for OTC use: "acts as an aphrodisiac;" "arouses or increases sexual desire and improves sexual performance;" "helps restore sexual vigor, potency, and performance;" "improves performance, staying power, and sexual potency;" and "builds virility and sexual potency." Based on evidence currently available, any OTC drug product containing ingredients for use as an aphrodisiac cannot be generally recognized as safe and effective.

(b) Any OTC drug product that is labeled, represented, or prompted for use as an aphrodisiac is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act, (the act), for which an approved new drug application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for OTC use as an aphrodisiac is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) After January 8, 1990, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

[54 FR 28786, July 7, 1989]

§ 310.529 Drug products containing active ingredients offered over-the-counter (OTC) for oral use as insect repellents.

(a) Thiamine hydrochloride (vitamin B-1) has been marketed as an ingredient in over-the-counter (OTC) drug products for oral use as an insect repellent (an orally administered drug product intended to keep insects away). There is a lack of adequate data to establish the effectiveness of this, or any other ingredient for OTC oral use as an insect repellent. Labeling claims for OTC orally administered insect repellent drug products are either false, misleading, or unsupported by scientific data. The following claims are examples of some that have been made for orally administered OTC insect repellent drug products: "Oral mosquito repellent," "mosquitos avoid you," "bugs stay away," "keep mosquitos away for 12 to 24 hours," and "the newest way to fight mosquitos." Therefore, any drug product containing ingredients offered for oral use as an insect repellent cannot be generally recognized as safe and effective.

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(b) Any OTC drug product that is labeled, represented, or promoted for oral use as an insect repellent is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug and Cosmetic Act for which an approved new drug application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted OTC for oral use as an insect repellent is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) Any such drug product in interstate commerce after December 17, 1985, that is not in compliance with this section is subject to regulatory action.

[40 FR 25171, June 17, 1985, as amended at 55 FR 11579, Mar. 29, 1990]

§ 310.530 Topically applied hormone-containing drug products for over-the-counter (OTC) human use.

(a) The term "hormone" is used broadly to describe a chemical substance formed in some organ of the body, such as the adrenal glands or the pituitary, and carried to another organ or tissue, where it has a specific effect. Hormones include, for example, estrogens, progestins, androgens, anabolic steroids, and adrenal corticosteroids, and synthetic analogs. Estrogens, progesterone, pregnenolone, and pregnenolone acetate have been present as ingredients in OTC drug products marketed for topical use as hormone creams. However, there is a lack of adequate data to establish effectiveness for any OTC drug use of these ingredients. Therefore, with the exception of those hormones identified in paragraph (e) of this section, any OTC drug product containing an ingredient offered for use as a topically applied hormone cannot be considered generally recognized as safe and effective for its intended use. The intended use of the product may be inferred from the product's labeling, promotional

material, advertising, and any other relevant factor. The use of the word "hormone" in the text of the labeling or in the ingredient statement is an implied drug claim. The claim implied by the use of this term is that the product will have a therapeutic or some other physiological effect on the body. Therefore, reference to a product as a "hormone cream" or any statement in the labeling indicating that "hormones" are present in the product, or any statement that features or emphasizes the presence of a hormone ingredient in the product, will be considered to be a therapeutic claim for the product, or a claim that the product will affect the structure or function of the body, and will consequently cause the product to be a drug.

(b) Any OTC drug product that is labeled, represented, or promoted as a topically applied hormone-containing product for drug use, with the exception of those hormones identified in paragraph (e) of this section, is regarded as a new drug within the meaning of section 201(p) of the act, for which an approved application or abbreviated application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved new drug application or abbreviated new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for OTC use as a topically applied hormone-containing drug product is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) After March 9, 1994, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

(e) This section does not apply to hydrocortisone and hydrocortisone acetate labeled, represented, or promoted for OTC topical use in accordance with part 348 of this chapter.

[58 FR 47610, Sept. 9, 1993]