

(x) Miscellaneous dermatologic products.

(y) Dentifrices and dental products such as analgesics, antiseptics, etc.

(z) Miscellaneous (all other OTC drugs not falling within one of the above therapeutic categories).

### Subpart B—Administrative Procedures

#### § 330.10 Procedures for classifying OTC drugs as generally recognized as safe and effective and not misbranded, and for establishing monographs.

For purposes of classifying over-the-counter (OTC) drugs as drugs generally recognized among qualified experts as safe and effective for use and as not misbranded drugs, the following regulations shall apply:

(a) *Procedure for establishing OTC drug monographs*—(1) *Advisory review panels.* The Commissioner shall appoint advisory review panels of qualified experts to evaluate the safety and effectiveness of OTC drugs, to review OTC drug labeling, and to advise him on the promulgation of monographs establishing conditions under which OTC drugs are generally recognized as safe and effective and not misbranded. A single advisory review panel shall be established for each designated category of OTC drugs and every OTC drug category will be considered by a panel. The members of a panel shall be qualified experts (appointed by the Commissioner) and may include persons from lists submitted by organizations representing professional, consumer, and industry interests. The Commissioner shall designate the chairman of each panel. Summary minutes of all meetings shall be made.

(2) *Request for data and views.* The Commissioner will publish a notice in the FEDERAL REGISTER requesting interested persons to submit, for review and evaluation by an advisory review panel, published and unpublished data and information pertinent to a designated category of OTC drugs. Data and information submitted pursuant to a published notice, and falling within the confidentiality provisions of 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j), shall be handled by the advisory

review panel and the Food and Drug Administration as confidential until publication of a proposed monograph and the full report(s) of the panel or until the Commissioner places the panel's recommendations on public display at the office of the Division of Dockets Management. Thirty days thereafter such data and information shall be made publicly available and may be viewed at the office of the Division of Dockets Management of the Food and Drug Administration, except to the extent that the person submitting it demonstrates that it still falls within the confidentiality provisions of one or more of those statutes. To be considered, eight copies of the data and/or views on any marketed drug within the class must be submitted, preferably bound, indexed, and on standard sized paper (approximately 8½×11 inches). When requested, abbreviated submissions should be sent. All submissions must be in the following format:

#### OTC DRUG REVIEW INFORMATION

- I. Label(s) and all labeling (preferably mounted and filed with the other data—facsimile labeling is acceptable in lieu of actual container labeling).
- II. A statement setting forth the quantities of active ingredients of the drug.
- III. Animal safety data.
  - A. Individual active components.
    1. Controlled studies.
    2. Partially controlled or uncontrolled studies.
  - B. Combinations of the individual active components.
    1. Controlled studies.
    2. Partially controlled or uncontrolled studies.
  - C. Finished drug product.
    1. Controlled studies.
    2. Partially controlled or uncontrolled studies.
- IV. Human safety data.
  - A. Individual active components.
    1. Controlled studies.
    2. Partially controlled or uncontrolled studies.
  3. Documented case reports. Identify expected or frequently reported side effects.
  4. Pertinent marketing experiences that may influence a determination as to the safety of each individual active component.
  5. Pertinent medical and scientific literature.
    - B. Combinations of the individual active components.
      1. Controlled studies.
      2. Partially controlled or uncontrolled studies.

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3. Documented case reports. Identify expected or frequently reported side effects.

4. Pertinent marketing experiences that may influence a determination as to the safety of combinations of the individual active components.

5. Pertinent medical and scientific literature.

C. Finished drug product.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

3. Documented case reports. Identify expected or frequently reported side effects.

4. Pertinent marketing experiences that may influence a determination as to the safety of the finished drug product.

5. Pertinent medical and scientific literature.

V. Efficacy data.

A. Individual active components.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

3. Documented case reports. Identify expected or frequently reported side effects.

4. Pertinent marketing experiences that may influence a determination on the efficacy of each individual active component.

5. Pertinent medical and scientific literature.

B. Combinations of the individual active components.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

3. Documented case reports. Identify expected or frequently reported side effects.

4. Pertinent marketing experiences that may influence a determination on the efficacy of combinations of the individual active components.

5. Pertinent medical and scientific literature.

C. Finished drug product.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

3. Documented case reports. Identify expected or frequently reported side effects.

4. Pertinent marketing experiences that may influence a determination on the efficacy of the finished drug product.

5. Pertinent medical and scientific literature.

VI. A summary of the data and views setting forth the medical rationale and purpose (or lack thereof) for the drug and its ingredients and the scientific basis (or lack thereof) for the conclusion that the drug and its ingredients have been proven safe and effective for the intended use. If there is an absence of controlled studies in the material submitted, an explanation as to why such studies are not considered necessary must be included.

VII. An official United States Pharmacopeia (USP)-National Formulary (NF) drug

monograph for the active ingredient(s) or botanical drug substance(s), or a proposed standard for inclusion in an article to be recognized in an official USP-NF drug monograph for the active ingredient(s) or botanical drug substance(s). Include information showing that the official or proposed compendial monograph for the active ingredient or botanical drug substance is consistent with the active ingredient or botanical drug substance used in the studies establishing safety and effectiveness and with the active ingredient or botanical drug substance marketed in the OTC product(s) to a material extent and for a material time. If differences exist, explain why.

(3) *Deliberations of an advisory review panel.* An advisory review panel will meet as often and for as long as is appropriate to review the data submitted to it and to prepare a report containing its conclusions and recommendations to the Commissioner with respect to the safety and effectiveness of the drugs in a designated category of OTC drugs. A panel may consult any individual or group. Any interested person may request an opportunity to present oral views to the panel; such request may be granted or denied by the panel. Such requests for oral presentations should be in written form including a summarization of the data to be presented to the panel. Any interested person may present written data and views which shall be considered by the panel. This information shall be presented to the panel in the format set forth in paragraph (a)(2) of this section and within the time period established for the drug category in the notice for review by a panel.

(4) *Standards for safety, effectiveness, and labeling.* The advisory review panel, in reviewing the data submitted to it and preparing its conclusions and recommendations, and the Commissioner, in reviewing the conclusions and recommendations of the panel and the published proposed, tentative, and the final monographs, shall apply the following standards to determine general recognition that a category of OTC drugs is safe and effective and not misbranded:

(i) Safety means a low incidence of adverse reactions or significant side effects under adequate directions for use and warnings against unsafe use as well as low potential for harm which

may result from abuse under conditions of widespread availability. Proof of safety shall consist of adequate tests by methods reasonably applicable to show the drug is safe under the prescribed, recommended, or suggested conditions of use. This proof shall include results of significant human experience during marketing. General recognition of safety shall ordinarily be based upon published studies which may be corroborated by unpublished studies and other data.

(ii) Effectiveness means a reasonable expectation that, in a significant proportion of the target population, the pharmacological effect of the drug, when used under adequate directions for use and warnings against unsafe use, will provide clinically significant relief of the type claimed. Proof of effectiveness shall consist of controlled clinical investigations as defined in §314.126(b) of this chapter, unless this requirement is waived on the basis of a showing that it is not reasonably applicable to the drug or essential to the validity of the investigation and that an alternative method of investigation is adequate to substantiate effectiveness. Investigations may be corroborated by partially controlled or uncontrolled studies, documented clinical studies by qualified experts, and reports of significant human experience during marketing. Isolated case reports, random experience, and reports lacking the details which permit scientific evaluation will not be considered. General recognition of effectiveness shall ordinarily be based upon published studies which may be corroborated by unpublished studies and other data.

(iii) The benefit-to-risk ratio of a drug shall be considered in determining safety and effectiveness.

(iv) An OTC drug may combine two or more safe and effective active ingredients and may be generally recognized as safe and effective when each active ingredient makes a contribution to the claimed effect(s); when combining of the active ingredients does not decrease the safety or effectiveness of any of the individual active ingredients; and when the combination, when used under adequate directions for use and warnings against unsafe use, provides rational concurrent therapy for a

significant proportion of the target population.

(v) Labeling shall be clear and truthful in all respects and may not be false or misleading in any particular. It shall state the intended uses and results of the product; adequate directions for proper use; and warnings against unsafe use, side effects, and adverse reactions in such terms as to render them likely to be read and understood by the ordinary individual, including individuals of low comprehension, under customary conditions of purchase and use.

(vi) A drug shall be permitted for OTC sale and use by the laity unless, because of its toxicity or other potential for harmful effect or because of the method or collateral measures necessary to its use, it may safely be sold and used only under the supervision of a practitioner licensed by law to administer such drugs.

(5) *Advisory review panel report to the Commissioner.* An advisory review panel may submit to the Commissioner a report containing its conclusions and recommendations with respect to the conditions under which OTC drugs falling within the category covered by the panel are generally recognized as safe and effective and not misbranded. Included within this report shall be:

(i) A recommended monograph or monographs covering the category of OTC drugs and establishing conditions under which the drugs involved are generally recognized as safe and effective and not misbranded (Category I). This monograph may include any conditions relating to active ingredients, labeling indications, warnings and adequate directions for use, prescription or OTC status, and any other conditions necessary and appropriate for the safety and effectiveness of drugs covered by the monograph.

(ii) A statement of active ingredients, labeling claims or other statements, or other conditions reviewed and excluded from the monograph on the basis of the panel's determination that they would result in the drug's not being generally recognized as safe and effective or would result in misbranding (Category II).

(iii) A statement of active ingredients, labeling claims or other statements, or other conditions reviewed and excluded from the monograph on the basis of the panel's determination that the available data are insufficient to classify such condition under either paragraph (a)(5) (i) or (ii) of this section and for which further testing is therefore required (Category III). The report may recommend the type of further testing required and the time period within which it might reasonably be concluded.

(6) *Proposed monograph.* After reviewing the conclusions and recommendations of the advisory review panel, the Commissioner shall publish in the FEDERAL REGISTER a proposed order containing:

(i) A monograph or monographs establishing conditions under which a category of OTC drugs or a specific or specific OTC drugs are generally recognized as safe and effective and not misbranded (Category I).

(ii) A statement of the conditions excluded from the monograph on the basis of the Commissioner's determination that they would result in the drug's not being generally recognized as safe and effective or would result in misbranding (Category II).

(iii) A statement of the conditions excluded from the monograph on the basis of the Commissioner's determination that the available data are insufficient to classify such conditions under either paragraph (a)(6)(i) or (ii) of this section (Category III).

(iv) The full report(s) of the panel to the Commissioner. The proposed order shall specify a reasonable period of time within which conditions falling within paragraph (a)(6)(iii) of this section may be continued in marketed products while the data necessary to support them are being obtained for evaluation by the Food and Drug Administration. The summary minutes of the panel meetings shall be made available to interested persons upon request. Any interested person may, within 90 days after publication of the proposed order in the FEDERAL REGISTER, file with the Division of Dockets Management of the Food and Drug Administration written comments in triplicate. Comments may be accompanied

by a memorandum or brief in support thereof. All comments may be reviewed at the office of the Division of Dockets Management between the hours of 9 a.m. and 4 p.m., Monday through Friday. Within 30 days after the final day for submission of comments, reply comments may be filed with the Division of Dockets Management; these comments shall be utilized to reply to comments made by other interested persons and not to reiterate a position. The Commissioner may satisfy this requirement by publishing in the FEDERAL REGISTER a proposed order summarizing the full report of the advisory review panel, containing its conclusions and recommendations, to obtain full public comment before undertaking his own evaluation and decision on the matters involved.

(7) *Tentative final monograph.* (i) After reviewing all comments, reply comments, and any new data and information or, alternatively, after reviewing a panel's recommendations, the Commissioner shall publish in the FEDERAL REGISTER a tentative order containing a monograph establishing conditions under which a category of OTC drugs or specific OTC drugs are generally recognized as safe and effective and not misbranded. Within 90 days, any interested person may file with the Division of Dockets Management, Food and Drug Administration, written comments or written objections specifying with particularity the omissions or additions requested. These objections are to be supported by a brief statement of the grounds therefor. A request for an oral hearing may accompany such objections.

(ii) The Commissioner may also publish in the FEDERAL REGISTER a separate tentative order containing a statement of those active ingredients reviewed and proposed to be excluded from the monograph on the basis of the Commissioner's determination that they would result in a drug product not being generally recognized as safe and effective or would result in misbranding. This order may be published when no substantive comments in opposition to the panel report or new data and information were received by the Food and Drug Administration

under paragraph (a)(6)(iv) of this section or when the Commissioner has evaluated and concurs with a panel's recommendation that a condition be excluded from the monograph. Within 90 days, any interested person may file with the Division of Dockets Management, Food and Drug Administration, written objections specifying with particularity the provision of the tentative order to which objection is made. These objections are to be supported by a brief statement of the grounds therefor. A request for an oral hearing may accompany such objections.

(iii) Within 12 months after publishing a tentative order pursuant to paragraph (a)(7)(i) of this section, any interested person may file with the Division of Dockets Management, Food and Drug Administration, new data and information to support a condition excluded from the monograph in the tentative order.

(iv) Within 60 days after the final day for submission of new data and information, comments on the new data and information may be filed with the Division of Dockets Management, Food and Drug Administration.

(v) New data and information submitted after the time specified in this paragraph but prior to the establishment of a final monograph will be considered as a petition to amend the monograph and will be considered by the Commissioner only after a final monograph has been published in the FEDERAL REGISTER unless the Commissioner finds that good cause has been shown that warrants earlier consideration.

(8) *Oral hearing before the Commissioner.* After reviewing objections filed in response to the tentative final monograph, the Commissioner, if he finds reasonable grounds in support thereof, shall by notice in the FEDERAL REGISTER schedule an oral hearing. The notice scheduling an oral hearing shall specify the length of the hearing and how the time shall be divided among the parties requesting the hearing. The hearing shall be conducted by the Commissioner and may not be delegated.

(9) *Final monograph.* After reviewing the objections, the entire administrative record including all new data and

information and comments, and considering the arguments made at any oral hearing, the Commissioner shall publish in the FEDERAL REGISTER a final order containing a monograph establishing conditions under which a category of OTC drugs or a specific or specific OTC drugs are generally recognized as safe and effective and not misbranded. The monograph shall become effective as specified in the order.

(10) *Administrative record.* (i) All data and information to be considered in any proceeding pursuant to this section shall be submitted in response to the request for data and views pursuant to paragraph (a)(2) of this section, in response to any other notice published in the FEDERAL REGISTER, or accepted by the panel during its deliberations pursuant to paragraph (a)(3) of this section or submitted to the Division of Dockets Management as part of the comments during the 90-day period and 30-day rebuttal comment period permitted pursuant to paragraph (a)(6) of this section or submitted to the Division of Dockets Management during the 12-month period or as part of the comments during the 60-day period permitted pursuant to paragraph (a)(7) of this section.

(ii) The Commissioner shall make all decisions and issue all orders pursuant to this section solely on the basis of the administrative record, and shall not consider data or information not included as part of the administrative record.

(iii) The administrative record shall consist solely of the following material: All notices and orders published in the FEDERAL REGISTER, all data and views submitted in response to the request published pursuant to paragraph (a)(2) of this section, in response to any other notice published in the FEDERAL REGISTER, or accepted by the panel during its deliberations pursuant to paragraph (a)(3) of this section, all minutes of panel meetings, the panel report(s), all comments and rebuttal comments submitted on the proposed monograph and all new data and information submitted pursuant to paragraph (a)(6) of this section, all objections submitted on the tentative final

monograph and all new data and information and comments submitted pursuant to paragraph (a)(7) of this section, the complete record of any oral public hearing conducted pursuant to paragraph (a)(8) of this section, all other comments requested at any time by the Commissioner, all data and information for which the Commissioner has reopened the administrative record, and all other material that the Commissioner includes in the administrative record as part of the basis for the Commissioner's decision.

(11) *Court appeal.* The monograph contained in the final order constitutes final agency action from which appeal lies to the courts. The Food and Drug Administration will request consolidation of all appeals in a single court. Upon court appeal, the Commissioner may, at his discretion, stay the effective date for part or all of the monograph pending appeal and final court adjudication.

(12) *Amendment of monographs.* (i) The Commissioner may propose on the Commissioner's own initiative to amend or repeal any monograph established pursuant to this section. Any interested person may petition the Commissioner for such proposal pursuant to § 10.30 of this chapter. The Commissioner may deny the petition if the Commissioner finds a lack of safety or effectiveness employing the standards in paragraph (a)(4) of this section (in which case the appeal provisions of paragraph (a)(11) of this section shall apply), or the Commissioner may publish a proposed amendment or repeal in the FEDERAL REGISTER if the Commissioner finds general recognition of safety and effectiveness employing the standards in paragraph (a)(4) of this section. Any interested person may, within 90 days after publication of the proposed order in the FEDERAL REGISTER, file with the Division of Dockets Management, Food and Drug Administration, written comments in triplicate. Comments may be accompanied by a memorandum or brief in support thereof. All comments may be reviewed in the Division of Dockets Management between the hours of 9 a.m. and 4 p.m., Monday through Friday. After reviewing the comments, the Commissioner shall publish a final order amending

the monograph established under the provisions of paragraph (a)(9) of this section or withdraw the proposal if comments opposing the amendment are persuasive. A new drug application may be submitted in lieu of, or in addition to, a petition under this paragraph.

(ii) A new drug application may be submitted in lieu of a petition to amend the OTC drug monograph only if the drug product with the condition that is the subject of the new drug application has not been marketed on an interim basis (such as under the provisions of paragraph (a)(6)(iii) of this section), all clinical testing has been conducted pursuant to a new drug application plan, and no marketing of the product with the condition for which approval is sought is undertaken prior to approval of the new drug application. The Food and Drug Administration shall handle a new drug application as a petition for amendment of a monograph, and shall review it on that basis, if the provisions of this paragraph preclude approval of a new drug application but permit the granting of such a petition.

(b) *Regulatory action.* Any product which fails to conform to an applicable monograph after its effective date is liable to regulatory action.

(c) Information and data submitted under this section shall include, with respect to each nonclinical laboratory study contained in the application, either a statement that the study was conducted in compliance with the good laboratory practice regulations set forth in part 58 of this chapter, or, if the study was not conducted in compliance with such regulations, a brief statement of the reason for the non-compliance.

(d) [Reserved]

(e) *Institutional review and informed consent.* Information and data submitted under this section after July 27, 1981, shall include statements regarding each clinical investigation involving human subjects, from which the information and data are derived, that it either was conducted in compliance with the requirements for institutional review set forth in part 56 of this chapter, or was not subject to such requirements in accordance with §§ 56.104 or

56.105, and that it was conducted in compliance with the requirements for informed consent set forth in part 50 of this chapter.

(f) *Financial certification or disclosure statement.* Any clinical data submitted under this section must be accompanied by financial certifications or disclosure statements or both as required by part 54 of this chapter.

[39 FR 11741, Mar. 29, 1974, as amended at 39 FR 39556, Nov. 8, 1974; 42 FR 19141, Apr. 12, 1977; 42 FR 54800, Oct. 11, 1977; 46 FR 8460, 8955, Jan. 27, 1981; 46 FR 14340, Feb. 27, 1981; 46 FR 21360, Apr. 10, 1981; 46 FR 47738, Sept. 29, 1981; 50 FR 7516, Feb. 22, 1985; 55 FR 11581, Mar. 29, 1990; 63 FR 5253, Feb. 2, 1998; 67 FR 3073, Jan. 23, 2002]

**§ 330.11 NDA deviations from applicable monograph.**

A new drug application requesting approval of an OTC drug deviating in any respect from a monograph that has become final shall be in the form required by § 314.50 of this chapter, but shall include a statement that the product meets all conditions of the applicable monograph except for the deviation for which approval is requested and may omit all information except that pertinent to the deviation.

[39 FR 11741, Mar. 29, 1974, as amended at 55 FR 11581, Mar. 29, 1990]

**§ 330.12 Status of over-the-counter (OTC) drugs previously reviewed under the Drug Efficacy Study (DES).**

(a) There were 420 OTC drugs reviewed in the Drug Efficacy Study (a review of drugs introduced to the market through new drug procedures between 1938 and 1962). A careful review has been made of the reports on these drugs to determine those drugs for which implementation may be deferred without significant risk to the public health, pending review by appropriate OTC drug advisory review panels and promulgation of a monograph.

(b) On and after April 20, 1972, a number of notices were published in the FEDERAL REGISTER concerning previously unpublished OTC drugs reviewed by the National Academy of Sciences-National Research Council Drug Efficacy Study Group. Only the evaluations and comments of the pan-

els were published, with no conclusions of the Commissioner of Food and Drugs. Those publications were for the purpose of giving interested persons the benefit of the Academy's opinions. For those products, and also for OTC drug products previously published with the Commissioner's conclusions (except for the products listed in paragraphs (b) (1) and (2) of this section, all requests for data, revised labeling, requests for new drug applications, abbreviated new drug applications, updating supplements, data to support less than effective claims, if any, etc., are deferred, and such OTC drug products are instead subject to the OTC drug review in their appropriate classes pursuant to the procedures established in this subpart.

(1) The requirements of the following DESI announcements are not deferred (the reference document may also pertain to prescription drugs):

(i) Certain Surgical Sutures (DESI 4725), published in the FEDERAL REGISTER of November 11, 1971 (36 FR 21612).

(ii) Absorbable Dusting Powder (DESI 6264), published in the FEDERAL REGISTER of May 25, 1971 (36 FR 9475).

(iii) Certain Insulin Preparations (DESI 4286), published in the FEDERAL REGISTER of April 9, 1971 (36 FR 6842).

(iv) Sulfo-Van Ointment (DESI 2230), published in the FEDERAL REGISTER of October 8, 1970 (35 FR 15860).

(v) Antiperspirants and Deodorants Containing Neomycin Sulfate (DESI 11048) for which an order revoking provisions for certification or release was published in the FEDERAL REGISTER of December 5, 1972 (37 FR 25820) and has been stayed by the filing of objections.

(vi) Thorexin Cough Medicine (DESI 11160) for which a notice of opportunity for hearing was published in the FEDERAL REGISTER of February 2, 1973 (38 FR 3210).

(vii) Antibiotic susceptibility discs (DESI 90235) for which an order providing for certain discs to be certified and removing provisions for certification of other discs was published in the FEDERAL REGISTER of September 30, 1972 (37 FR 20525) and has been