Structure/Function Claims
Small Entity Compliance Guide

The Food and Drug Administration has prepared this Small Entity Compliance Guide in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act (P.L. 104-121). This guidance document restates in plain language the legal requirements set forth in a regulation concerning labeling claims for dietary supplements. This is a Level 2 guidance document published for immediate implementation in accordance with FDA's good guidance practices (21 CFR 10.115). The regulations are binding and have the force and effect of law. However, this guidance document represents the agency's current thinking on this subject and does not, itself, create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

SUMMARY

On January 6, 2000, the Food and Drug Administration (FDA) published a final rule in the **Federal Register** defining the types of statements that may be used on the label and in the labeling of dietary supplements without prior review by the agency (65 FR 1000) (http://vm.cfsan.fda.gov/~lrd/fr000106.html). Called structure/function claims, these claims are statements that describe the effect a dietary supplement may have on the structure or function of the body. The regulation also provides criteria to assist you in determining when a statement about a dietary supplement is a disease claim, that is, a claim to diagnose, cure, mitigate, treat, or prevent disease. Disease claims require prior approval by FDA and may be made only for products that are approved drug products or for foods under separate legal provisions that apply to claims called "health claims."

This guidance discusses only the requirements that apply to determining whether a claim is a structure/function claim or a disease claim. It should be noted that other regulations also cover labeling and packaging requirements for dietary supplements. These requirements were published as final rules in the Federal Registers of September 23, 1997 (62 FR 49826) (http://vm.cfsan.fda.gov/~lrd/fr97923a.html), June 5, 1998 (63 FR 306 15) (http://www.fda.gov/ohrms/dockets/98fr/060598b.pdf), and Jan 15, 1997 (62 FR 2218) (access via http://www.access.gpo.gov/su_docs/aces/aces140.html) (see Title 21 of the Code of Federal Regulations (21 CFR) Parts 101 and 111)'.

Questions & Answers

'You can access Title 21 of the Code of Federal Regulations on our website at http://www.cfsan.fda.gov/~dms/reg-2.html

98N-0044 1 GDL 1

98N.0044 GDL 1

The regulation added §101.93(f) and (g) to Title 21 of the Code of Federal Regulations, Part 101. These two sections define what types of claims are structure/function claims and what types of claims are disease claims. In addition to these definitions, the regulation includes criteria that are intended to assist you in determining whether a particular statement is or is not a disease claim. Finally, the preamble to this rule clarifies several legal issues that are important to understand if you use structure/function claims on the labels or in the labeling of your products. They are restated below.

A. Basic Legal Requirements for Structure/Function Claims.

What are structure/function claims?

The Dietary Supplement Health and Education Act of 1994 (DSHEA) added section 403(r)(6) to the Federal Food, Drug, and Cosmetic Act (FD&C Act)[2]. This section of the law states that a dietary supplement may bear certain statements on its label or in its labeling if the claim meets certain requirements. Section 101.93(f) simply restates part of the definition of the types of claims that may be made under section 403(r)(6) of the FD&C Act. Section 101.93(f) reads:

> (f) *Permitted structure/function statements.* Dietary supplement labels or labeling may, subject to the requirements in paragraphs (a) through (e) of this section, bear statements that describe the role of a nutrient or dietary ingredient intended to affect the structure or function in humans or that characterize the documented mechanism by which a nutrient or dietary ingredient acts to maintain such structure or function, provided that such statements are not disease claims under paragraph (g) of this section. If the label or labeling of a product marketed as a dietary supplement bears a disease claim as defined in paragraph (g) of this section, the product will be subject to regulation as a drug unless the claim is an authorized health claim for which the product qualifies.

Are there other claims that can be made for dietary supplements under this section of the law?

Yes. Section 403(r)(6) also states that dietary supplements can use claims about nutrient deficiency diseases (for example, vitamin C and scurvy) or that describe the effect of the dietary supplement on general well-being.

---

[2]You can access the complete FD&C Act and related laws on our website at http://www.fda.gov/opacom/laws/lawtoc.htm.

What requirements must I meet to make any of these types of claims for my dietary supplement?

There are three requirements you must meet. First, the law says you can make these claims if you have substantiation that the claims are truthful and not misleading. You must have this substantiation before you make the claims. Second, you must notify FDA that you are using the claim within 30 days of first marketing your product. Third, the claim must include a mandatory disclaimer statement that is provided for in the law.

Where can I find information on the mandatory disclaimer and the notification I need to send in?

We have published regulations that describe exactly what the disclaimer must say and what you must include in your notification to us and where you must send it in the September 23, 1997 **Federal Register** (62 FR 49859 and 49883, respectively). These requirements can be found in 21 CFR 101.93(b) through (e) and 21 CFR 101.93(a), respectively.

B. When and What You Must Do To Comply With the New Regulation.

When does this rule become effective?

The rule became effective on February 7, 2000, for any products marketed for the first time after publication of the final rule or for any new claims made for an existing product after publication of the final rule (i.e., new claims made after January 6, 2000).

If I have existing inventory, do I need to re-label it now?

Large businesses had until January 7, 2001, to bring existing claims on products into compliance. FDA granted this period for firms to use up their label inventories. Small businesses had until July 7, 2001, to bring existing claims on products into compliance. Any existing inventory not used up after these dates would need to be relabeled.

C. How Do I Determine if a Claim is a Structure/Function Claim or a Disease Claim?

It may not be possible always to draw a bright line between structure/function and disease claims. You should look at the objective evidence in your labeling to assess whether a claim explicitly or implicitly is a disease claim. For example, a statement may not mention a disease but may refer to identifiable characteristic signs or symptoms of a disease such that the intended use of the product to treat

or prevent the disease may be inferred. It is important that you keep in mind two things. First, the context of the statement, decided from information on the label and in other labeling, will determine if the statement is considered to be a disease claim. Second, dietary supplements may not bear disease claims, explicit or implied, unless the claim has undergone premarket review by FDA and has been authorized or approved under the rules for health claims or drugs, as appropriate. To assist you in deciding whether a claim is or isn't a disease claim, the new regulation contains a definition for disease, and then includes 10 criteria intended to help clarify the types of claims that may be made for dietary supplements without prior authorization or approval by FDA. We are providing that disease definition and an explanation of the 10 criteria below.

What is the definition of a disease?

Section 101.93(g) defines disease as:

> ...damage to an organ, part, structure, or system of the body such that it does not function properly (e.g., cardiovascular disease), or a state of health leading to such dysfunctioning (e.g., hypertension); except that diseases resulting from essential nutrient deficiencies (e.g., scurvy, pellagra) are not included in this definition.

What are the criteria for determining if a statement is a disease claim?

There are 10 criteria in the rule that are useful in determining if a statement is a disease claim.

Criterion 1: Claims an effect on a disease or class of diseases (see section E, starting on page 1012 of the preamble to the rule).

A statement is a disease claim if it mentions a specific disease or class of diseases. For example, a claim that a product is "protective against the development of cancer" or "reduces the pain and stiffness associated with arthritis" would be a disease claim.

A statement also is a disease claim if it implies that it has an effect on a specific disease or class of diseases by using descriptions of the disease state. Examples of implied disease claims are "relieves crushing chest pain (angina)," "improves joint mobility and reduces inflammation (rheumatoid arthritis)," or "relief of bronchospasm (asthma)."

Criterion 2: Claims an effect on characteristic signs or symptoms of disease using scientific or lay terminology (see section F, starting on page 1015 of the preamble to the rule).

How can I tell if a particular claimed effect is a sign or symptom of a specific disease?

The test of whether claimed effects are characteristic signs or symptoms depends on 2 questions: (1) Is the condition, to which the signs and symptoms refer, related to a disease; and (2) are the signs and symptoms referred to in the labeling characteristic of the disease and permit the inference that the product is intended to affect that disease.

Does it matter if I don't use every sign or symptom of a condition or if I use layman's terms instead of technical language?

No. The standard focuses on whether the labeling suggests that the product will produce a change in a set of one or more signs or symptoms that are characteristic of the disease. You can meet this standard using technical or layman's language and it isn't necessary that every possible sign or symptom is used.

How can I determine if a claim is about a sign or symptom that is "characteristic" of a disease?

You can look to medical texts and other objective sources of information about disease to determine if a label statement implies treatment or prevention of a disease. Some claims imply disease treatment or prevention because they are so intimately tied to a disease. For example, "inhibits platelet aggregation" or "reduces cholesterol" are such characteristic signs or symptoms associated with stroke and cardiovascular disease and interventions to treat those diseases that any claim about them would be an implied disease claim.

Other signs or symptoms are associated with a wide range of disease and non-disease states and do not necessarily imply an effect on a specific disease. For example, although "improves absentmindedness" might imply treatment of Alzheimer's disease and "relieves stress and frustration" might imply treatment of anxiety disorders, both of these signs also are characteristic of non-disease states. So, if there is no context linking them to a disease, they would be appropriate structure/function claims.

For the claims that always imply disease, is there context that can make them appropriate structure/function claims, since platelet function and blood cholesterol also may be considered to be normal conditions?

Yes. There are many conditions that are "normal," but under certain circumstances are also disease claims. The rule states that such claims (for example, maintaining normal cholesterol levels) may be appropriate structure/function claims and would not imply a disease if the claim made absolutely clear that the claim is referring to structure/function claims that are already normal. This context would remove the inference to an effect on a structure/function that was abnormal (for example, "maintain cholesterol levels that are already in the normal range").

What kinds of words can be used that would not constitute implied claims about signs or symptoms?

No specific adjectives constitute a disease claim. Therefore, words such as "restore," "support," "maintain," "raise," "lower," "promote," "regulate," or "stimulate" might create an implied disease claim if, in the context they are used, they imply an effect on disease. Similarly, words like "prevent," "mitigate," "diagnose," "cure," or "treat" would be disease claims if the context of their use implied an effect on a disease.

Criterion 3: Claims an effect on a condition associated with a natural state or process (see section G, starting on page 1019 of the preamble to the rule).

What is meant by "a natural state or process?"

Some natural states or processes such as aging, menopause, and the menstrual cycle are not themselves diseases, but can be associated with abnormal conditions that are diseases.

What is the determining characteristic when a claim to effect these states is a disease claim?

The conditions associated with these stages or processes can vary from common, relatively mild abnormalities, for which medical attention is not required, to serious conditions that can cause significant or permanent harm if not treated effectively. Two criteria determine if such a condition will be considered a disease: (1) if the condition is uncommon; or (2) if the condition can cause significant or permanent harm. For purposes of the rule, a condition is uncommon if it occurs in fewer than one-half of those experiencing that stage or process. A condition can cause significant or permanent harm if it must be treated effectively to prevent that harm and for which effective treatments are available.

Examples of acceptable structure/function claims are "mild memory loss associated with aging," "noncystic acne," or "mild mood changes, cramps, and edema associated with the menstrual cycle."

Examples of disease claims are "Alzheimer's disease or senile dementias in the elderly," "cystic acne," or "severe depression associated with the menstrual cycle."

Criterion 4: It is an implied disease claim because of the product name, formulation, use of pictures, or other factors (see sections H through M, starting on page 1021 of the preamble to the rule).

1. Claims that are the name of the product.

Two principles form the basis for the distinction between product names that are structure/function claims and those that are disease claims. To be a structure/function claim: (1) the name should not contain the name, or a recognizable portion of the name, of a disease; and (2) the name should not use terms such as "cure," "treat," "correct," "prevent," or other terms that suggest treatment or prevention of a disease. Additionally, context is very important here.

Names such as "CarpalHealth" or "CircuCure" are disease claims because they are implied disease claims for carpal tunnel syndrome and circulatory disorders, respectively. In some cases, whether a product name is a disease claim will depend on context. For example, "Soothing Sleep" could be considered a claim to treat insomnia, a disease, unless other context in the labeling makes clear that the claim relates to a non-disease condition, such as occasional sleeplessness.

2. Claims about product formulation.

Can I claim that my product contains an ingredient that is also used in some drug products?

If the ingredient has been regulated by FDA primarily as a drug (either over-the-counter or prescription) and is well known to consumers for its use or claimed use in preventing or treating a disease, you have made an implied disease claim when you list it in the ingredient list or make a claim that a product contains that ingredient. For example, aspirin, digoxin, and laetrile. Of course, an ingredient that is excluded from the definition of a dietary supplement under section 201(ff)(3) of the FD&C Act because it was approved as a drug before being marketed as a dietary supplement never can be used in a supplement.

3. Claims that use citations of publication titles.

Can I use citations of publications that relate to my product's intended use in labeling if the publication title or the journal name mentions a disease name?

Yes, but some limitations apply. If the citation implies treatment or prevention of a disease, it is a disease claim. Thus, if in the context of the labeling as a whole its presence implies treatment or prevention of disease (for example, by placement on the immediate product label or packaging, inappropriate prominence, or lack of relationship to the product's express claims), the citation is a disease claim.

If the citation is used in labeling, its context determines if it is a disease claim. A citation that is used in the bibliography section of labeling, is included in a balanced discussion of the scientific literature, is not excessively prominent relative to other citations, and provides legitimate support for a structure/function claim made for the product would not be a disease claim.

4. Claims that use the term "disease" or "diseased."

Can I make claims about health promotion and disease prevention?

Yes, you may make general statements about health promotion and disease prevention as long as the statement doesn't imply that your product can diagnose, cure, mitigate, treat, or prevent a disease. In general, if the statement identifies a specific disease or directly references the product or its ingredients, it would imply that the product itself has the effect and would be a disease claim.

An example of an acceptable claim is "a good diet promotes good health and prevents the onset of disease" or "better dietary and exercise patterns can contribute to disease prevention and better health."

An example of a disease claim is "Promotes good health and prevents the onset of disease" because the claim infers that the product itself will achieve the intended effect.

5. Use of pictures, vignettes, symbols, or other means.

Can I use pictures of organs or medical symbols on labels?

In general, any picture or vignette or other symbol can be used if it doesn't imply a disease. For example, pictures of healthy organs would constitute an appropriate structure/function claim while a picture of an abnormal tissue or organ would be an implied disease claim. As with other types of implied claims, it is the context of the total claim that is important.

Are there some symbols that are implied disease claims?

Yes. Some symbols, like the heart symbol, are so widely recognized as symbols for disease treatment and prevention that their use is ordinarily an implied disease claim. Symbols such as EKG tracings are also implied disease claims because they are strongly associated with heart disease and the average consumer cannot distinguish a healthy tracing from an unhealthy one to provide context to remove the implied disease treatment or prevention claim. It would be an unusual circumstance in which the use of these two symbols would not be implied disease claims.

Can the Rx symbol be used without implying that the product is intended to treat disease?

In general, the use of the prescription drug symbol "Rx" or the use of the word "prescription" should not be interpreted automatically as a disease claim because not all prescription drugs are intended for disease conditions (some are for conditions that would not be considered to be diseases). However, the use of these terms on dietary supplements may deceive consumers into thinking they are purchasing a prescription drug without a prescription. Thus, the use of these two terms is misleading and will misbrand the product if, in the context of the labeling as a whole, the terms imply that the product is a prescription drug.

Criterion 5: Claims that a product belongs to a class of products that is intended to diagnose, mitigate, treat, cure, or prevent a disease (see section N, starting on page 1026 of the preamble to the rule).

Certain product class names are so strongly associated with treating and preventing diseases that claiming membership in the product class constitutes a disease claim. Examples of such product classes are analgesics, antibiotics, antidepressants, antimicrobials, antiseptics, antivirals, or vaccines.

However, some product classes may be associated both with diseases and with structure/function effects. In such cases, if it is clear from the context of the claim that the dietary supplement is represented as a member of the product class intended to affect structure/function and not disease, then the claim will not be a disease claim. That is, claiming to be a laxative, an anti-inflammatory, or a diuretic will not be a disease claim if there is context that makes clear that the intended effect of the product is on structure/function and not disease. For example, an appropriate product claim would be "diuretic that relieves temporary water-weight gain."

Criterion 6: Claims to be a substitute for a product that is a therapy for a disease (see section O, starting on page 1027 of the preamble to the rule).

A claim that a product is a substitute for a drug or other therapy for disease, or has fewer side effects than a therapy for disease, is an implied disease claim. Such claims carry with them the clear implication that the dietary supplement is intended for the same disease treatment or prevention purpose as the therapeutic product. However, if a dietary supplement claims to be a substitute for a drug that is not intended to treat or prevent disease (i.e., a drug intended to affect the structure or function of the body), the claim comparing the drug and the dietary supplement would not be a disease claim.

Criterion 7: Claims to augment a therapy or drug intended to diagnose, mitigate, treat, cure, or prevent a disease (see section P, starting on page 1028 of the preamble to the rule).

A claim that a dietary supplement will augment a particular therapy or drug action that is intended to diagnose, mitigate, treat, cure, or prevent disease is a disease claim. A dietary supplement may state that it is useful in providing nutritional support, as long as that claim doesn't imply disease. In general, mentioning the name of a specific therapy, drug, or drug action will associate the claim with the intended use of the therapy, drug, or drug action and be a disease claim.

Criterion 8: Has a role in the body's response to a disease or to a vector of disease (see section Q, starting on page 1028 of the preamble to the rule).

A claim that a dietary supplement fights disease or enhances disease-fighting functions of the body is a disease claim. Under this criterion, context and specificity are important. Claims such as "supports the body's ability to resist infection" and "supports the body's antiviral capabilities" are disease claims because the context of the claim is limited to the disease prevention and treatment capabilities. However, a claim that a product "supports the immune system" is not specific enough to imply prevention of disease because the immune system has both structure/function and disease fighting roles. A general claim of this type doesn't specifically focus the intended use of the product on the disease aspect of the system's function.

Criterion 9: Claims to treat, prevent, or mitigate adverse events associated with a therapy for a disease (see section R, starting on page 1029 of the preamble to the rule).

A claim that a product will affect adverse events associated with a therapy for disease is a disease claim if the adverse event is itself a disease. For example, "to maintain the intestinal flora in people on antibiotics" is a disease claim because the claim implies that the product will prevent pathogenic bacterial overgrowth (a disease condition) associated with antibiotic use. If the adverse event is not a disease, then this type of claim is acceptable. For example, a claim that a product is useful because it counterbalances the effect of a drug in depleting a nutrient or

interfering with the metabolism of a nutrient would be an acceptable structure/function claim.

Criterion 10: Otherwise suggests an effect on a disease or diseases (see section S, starting on page 1029 of the preamble to the rule).

This provision of the regulation is intended to allow for implied disease claims that may not fit into the other nine criteria. This provision recognizes that a claim may be a disease claim based on its wording or on the context in which the claim appears on the product's label or labeling, even if not covered by the other nine criteria.