

21 U.S.C. § 321

(g)

(1) The term "drug" means (A) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (B) articles (other than a product that is labeled as a food or dietary supplement) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than a product that is labeled as a food or dietary supplement) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any article specified in clause (A), (B), or (C). ~~A food or dietary supplement for which a claim, subject to sections 343(r)(1)(B) and 343(r)(3) of this title or sections 343(r)(1)(B) and 343(r)(5)(D) of this title, is made in accordance with the requirements of section 343(r) of this title is not a drug solely because the label or the labeling contains such a claim. A food, dietary ingredient, or dietary supplement for which a truthful and not misleading statement is made in accordance with section 343(r)(6) of this title is not a drug under clause (C) solely because the label or the labeling contains such a statement.~~

(ff) The term "dietary supplement" –

(3) does—

(A) include an article that is approved as a new drug under section 355 of this title or licensed as a biologic under section 262 of title 42 and was, prior to or after such approval, certification, or license, marketed as a dietary supplement or as a food ~~unless the Secretary has issued a regulation, after notice and comment, finding that the article, when used as or in a dietary supplement under the conditions of use and dosages set forth in the labeling for such dietary supplement, is unlawful under section 342(f) of this title;~~ and

~~(B) not include—~~

~~(i) an article that is approved as a new drug under [section 355 of this title](#), certified as an antibiotic under [section 357 of this title](#), or licensed as a biologic under [section 262 of title 42](#), or~~

~~(ii) an article authorized for investigation as a new drug, antibiotic, or biological for which substantial clinical investigations have been instituted and for which the existence of such investigations has been made public, which was not before such approval, certification, licensing, or authorization marketed as a dietary supplement or as a food unless the Secretary, in the Secretary's discretion, has issued a regulation, after notice and comment, finding that the article would be lawful under this chapter.^[2]~~

Except for purposes of paragraph (g) and [section 350f of this title](#), a dietary supplement shall be deemed to be a food within the meaning of this chapter.

21 U.S.C. § 343

(r)

(6) For purposes of paragraph (r)(1)(B), a statement for a dietary supplement may be made if—

(A) the statement claims a benefit related to a classical nutrient deficiency disease and discloses the prevalence of such disease in the United States, describes the role of a nutrient or dietary ingredient intended to affect the structure or function in humans, characterizes the documented mechanism by which a nutrient or dietary ingredient acts to maintain such structure or function, or describes general well-being from consumption of a nutrient or dietary ingredient,

(B) the manufacturer of the dietary supplement has substantiation that such statement is truthful and not misleading, and

(C) the statement contains, prominently displayed and in boldface type, the following: “This statement has not been evaluated by the Food and Drug Administration. ~~This product is not intended to diagnose, treat, cure, or prevent any disease.~~”.

A statement under this subparagraph may ~~not~~ claim to diagnose, mitigate, treat, cure, or prevent a specific disease or class of diseases. If the manufacturer of a dietary supplement proposes to make a statement described in the first sentence of this subparagraph in the labeling of the dietary supplement, the manufacturer shall notify the Secretary no later than 30 days after the first marketing of the dietary supplement with such statement that such a statement is being made