U.S. FOOD & DRUG ADMINISTRATION

OTC Monograph Reform: Deemed Final Orders

Theresa M. Michele, M.D.
Director

Office of Nonprescription Drugs
Center for Drug Evaluation and Research, FDA

December 15, 2021

Objectives

- Provide overview of OTC Monograph Reform
- Discuss OTC Drug Review before and after CARES Act
- Discuss the status of existing OTC monograph drugs after CARES Act
- Overview of the deemed final orders
- Discuss withdrawal of certain regulations
- Discuss OTC Monographs@FDA

OTC Monograph Reform and the CARES Act

OTC Monograph Reform

- On March 27, 2020, the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act) was enacted
- Includes important statutory provisions that reform and modernize the way OTC monograph drugs are regulated in the United States
  - Replaces the rulemaking process with an administrative order process to establish, revise, or amend OTC monographs
- Grants FDA the authority to assess and collect fees from regulated industry

OTC Drug Review Prior to CARES Act

- OTC Drug Review began in 1972 to evaluate OTC drug products marketed before May 11, 1972
- Established Generally Recognized as Safe and Effective (GRASE) conditions for OTC therapeutic drug classes in the form of OTC monograph regulations
- Multi-step, public rulemaking process to establish or revise OTC monographs in the form of regulations
- In effect until the CARES Act passed in March 2020

GRASE Categories Prior to CARES Act

- Active ingredients and other conditions evaluated in the OTC Drug Review were categorized into 3 categories in Advanced Notice of Proposed Rulemaking (ANPR) and Tentative Final Monographs (TFM)
  - Category I: GRASE
  - Category II: not GRASE
  - Category III: insufficient data available to determine if GRASE
- Only GRASE conditions, including active ingredients, are included in published final monographs
  - Category I, II, and III designations are not used in the final monograph
  - “Negative Monograph” listed certain non-GRASE conditions

OTC Drug Review <u>After</u> CARES Act

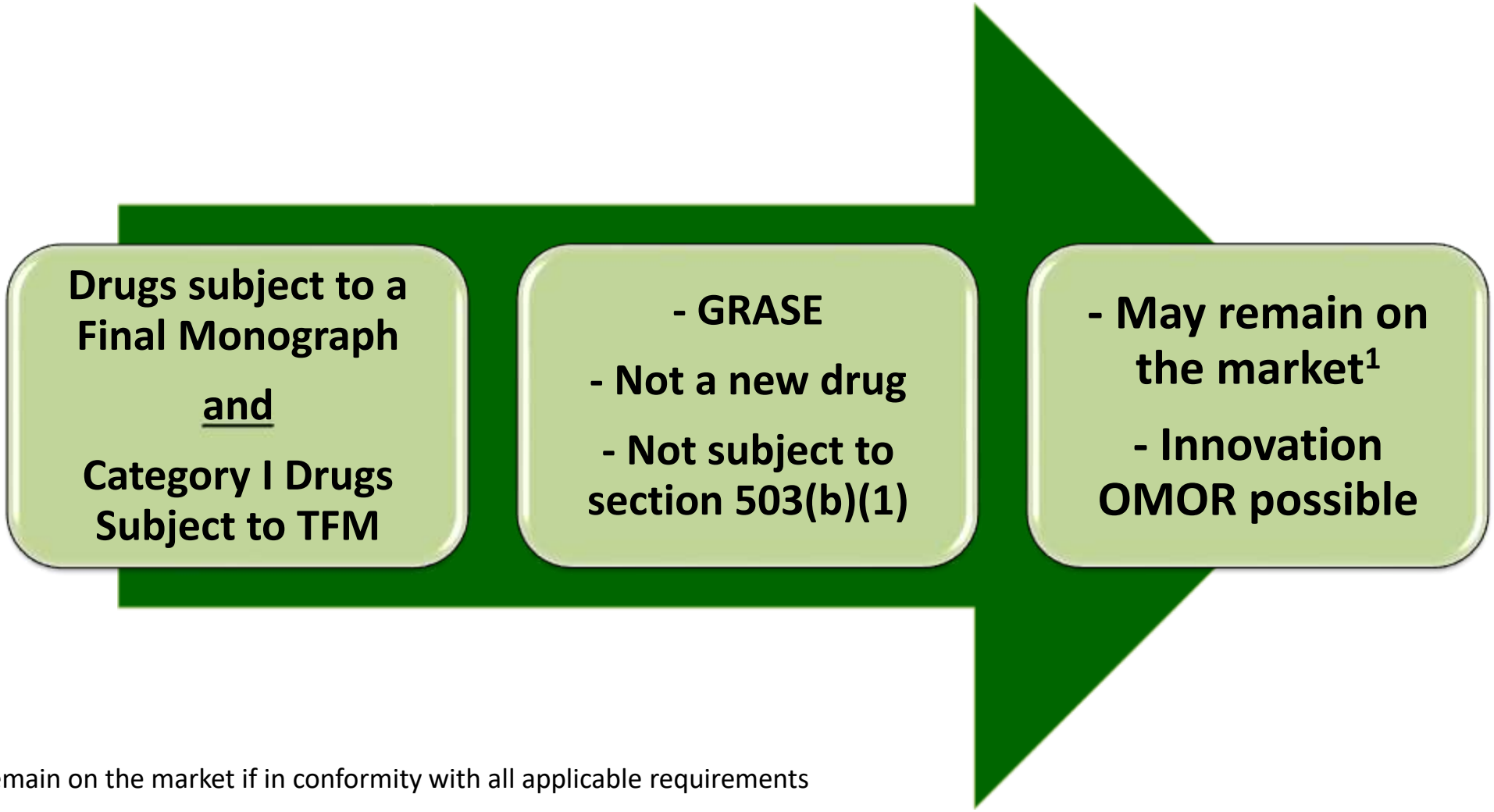
- Replaces the rulemaking process with an administrative order process
- Gives FDA the authority to issue an administrative order that adds, removes or changes GRASE conditions for an OTC drug monograph
- Establishes an expedited process to address safety issues
- Either industry or FDA can initiate the administrative order process

Status of OTC Monograph Drugs <u>After</u> CARES ACT

- The CARES Act addresses the status of existing OTC monograph regulations and drugs, including drugs that were previously subject to TFMs and ANPRs

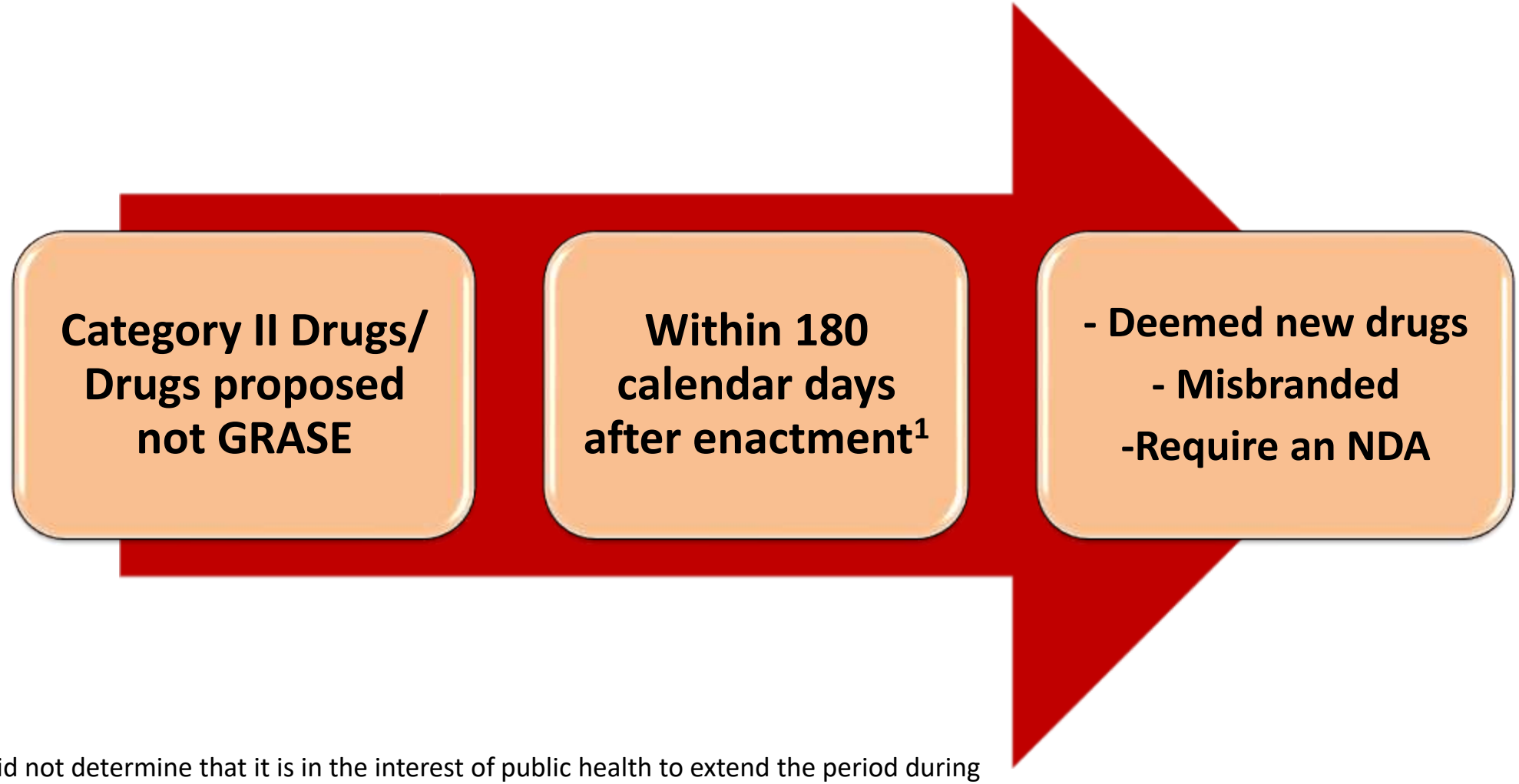
- A drug's current status depends on the monograph status of the drug at the time of enactment of the CARES Act

Drugs Deemed GRASE



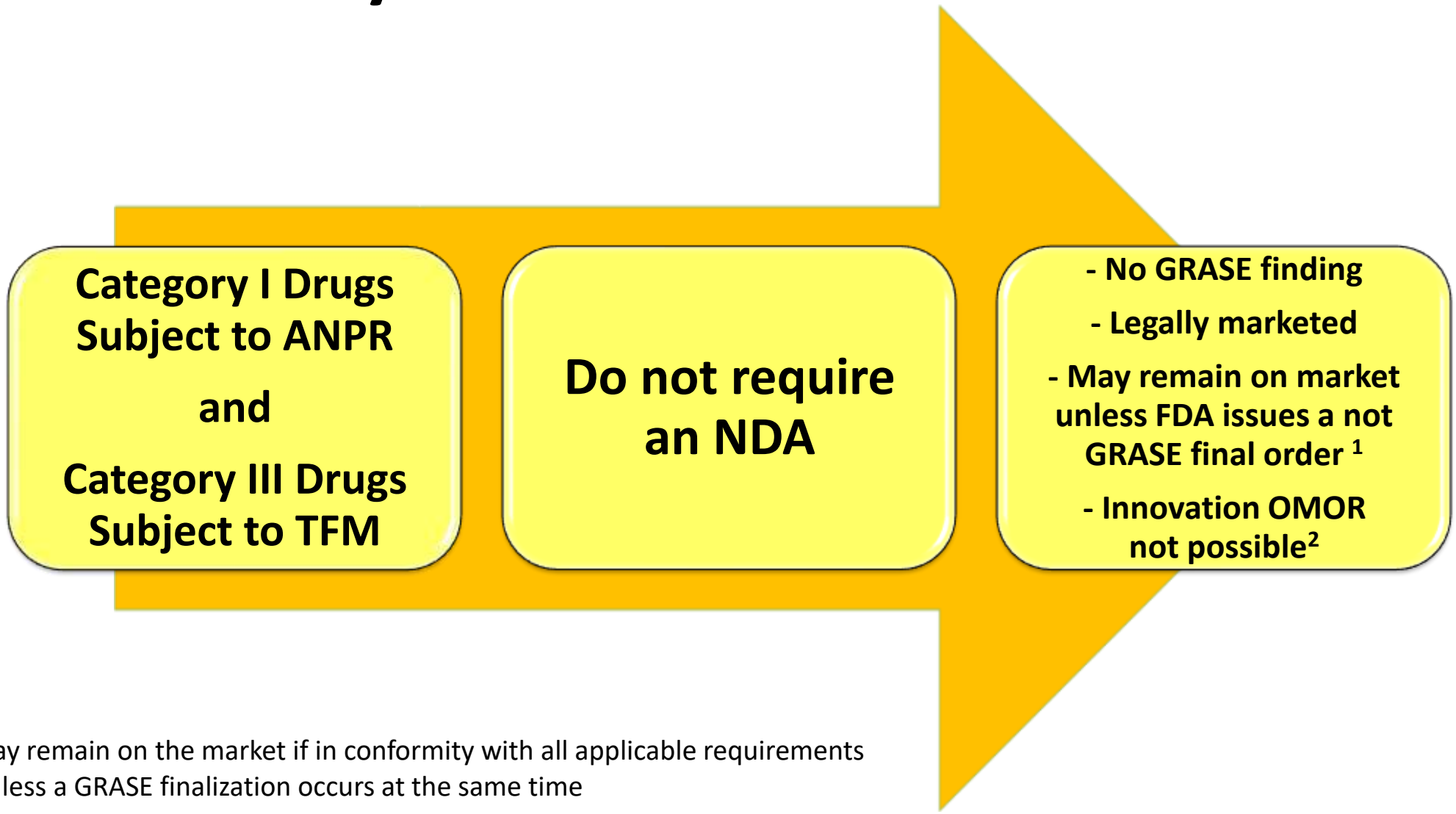
[1]May remain on the market if in conformity with all applicable requirements

Drugs Deemed To Be New Drugs



[1]FDA did not determine that it is in the interest of public health to extend the period during which any Category II drug may be marketed without an approved NDA

Drugs Without a GRASE Determination, But May Remain on the Market



[1]May remain on the market if in conformity with all applicable requirements
[2]Unless a GRASE finalization occurs at the same time

Deemed Final Orders (DFOs)

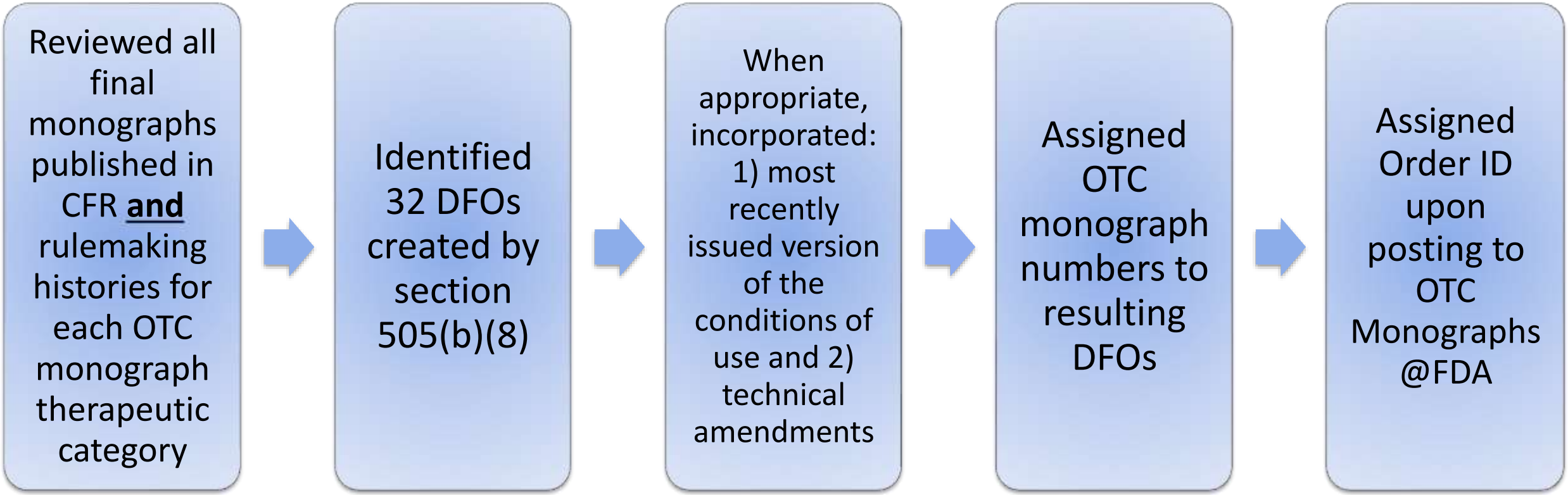
- Congress deemed as final administrative orders
  - Certain OTC monographs (section 505G(b)(8) of the FD&C Act)
  - Regulations establishing requirements for specific nonprescription drugs (section 505G(k)(2) of the FD&C Act)
- As final orders, DFOs may be amended, revoked, or otherwise modified in accordance with the procedures of section 505G of the FD&C Act
  - May be initiated by FDA
  - May be initiated by industry via an OTC monograph order request (OMOR) submission

DFOs for OTC Monographs under 505G(b)(8) of the FD&C Act

DFOs for OTC Monographs under *505G(b)(8)*

- Established by CARES Act; effective March 27, 2020
- Provide the current OTC monograph conditions in effect for each therapeutic category Include drugs in Final Monographs and Category I drugs subject to a TFM that is the most recently applicable proposal/determination
  - Does not include Category I drugs subject to an ANPR or Category III drugs subject to a TFM

DFOs for OTC Monographs Under 505G(b)(8): Process for Making Available



DFO Therapeutic Categories

OTC monograph number	CFR citation in title 21	OTC monograph title
M001	Part 331	Antacid Products for OTC Human Use.
M002	Part 332	Antiflatulent Products for OTC Human Use.
M003	N/A [1]	First Aid Antiseptic Drug products for OTC Human Use.
M004	Part 333, subpart B	First Aid Antibiotic Drug Products for OTC Human Use.
M005	Part 333, subpart C	Topical Antifungal Drug Products for OTC Human Use.
M006	Part 333, subpart D	Topical Acne Drug Products for OTC Human Use.
M007	N/A[1]	Laxative Drug Products for OTC Human Use.
M008	Part 335	Antidiarrheal Drug Products for OTC Human Use.
M009	Part 336	Antiemetic Drug Products for OTC Human Use.
M010	Part 338	Nighttime Sleep Aid Drug Products for OTC Human Use.
M011	Part 340	Stimulant Drug Products for OTC Human Use.
M012	Part 341	Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for OTC Human Use.
M013	Part 343	Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for OTC Human Use.
M014	Part 344	Topical Otic Drug Products for OTC Human Use.
M015	Part 346	Anorectal Drug Product for OTC Human Use.

[1] *Not applicable as there is no relevant CFR citation (i.e., there were no final monographs at the time of enactment of the CARES Act).*

DFO Therapeutic Categories (continued)

OTC monograph number	CFR citation in title 21	OTC monograph title
M016	Part 347	Skin Protectant Drug Products for OTC Human Use.
M017	Part 348	External Analgesic Drug Product for OTC Human Use.
M018	Part 349	Ophthalmic Drug Products for OTC Human Use.
M019	Part 350	Antiperspirant Drug Products for OTC Human Use.
M020	Part 352	Sunscreen Drug Products for OTC Human Use.
M021	Part 355	Anticaries Drug Products for OTC Human Use.
M022	N/A[1]	Oral Health Care Drug Products for OTC Human Use.
M023	N/A[1]	Poison Treatment Drug Products for OTC Human Use.
M024	Part 357, subpart B	Anthelminic Drug Products for OTC Human Use.
M025	Part 357, subpart C	Cholecystokinetic Drug Products for OTC Human Use.
M026	Part 357, subpart I	Deodorant Drug Products for Internal Use for OTC Human Use.
M027	N/A[1]	Orally Administered Menstrual Drug Products for OTC Human Use.
M028	Part 358, subpart B	Wart Remover Drug Products for OTC Human Use.
M029	Part 358, subpart D	Ingrown Toenail Relief Drug Products for OTC Human Use.
M030	Part 358, subpart F	Corn and Callus Remover Drug Products for OTC Human Use.
M031	Part 358, subpart G	Pediculicide Drug Products for OTC Human Use.
M032	Part 358, subpart H	Drug Products for the Control of Dandruff, Seborrheic Dermatitis, and Psoriasis for OTC Human Use.

[1] *Not applicable as there is no relevant CFR citation (i.e., there were no final monographs at the time of enactment of the CARES Act).*

Therapeutic Categories that DO NOT Have a DFO

Topical antiseptic drug products
Digestive aid drug products
Skin bleaching drug products
Weight control drug products
Topical antimicrobial drug products
Vaginal contraceptive drug products

DFOs under 505G(k) of the FD&C Act

DFO under *505G(k)(2)(A)*

The non-monograph conditions in 21 CFR § 310.545, as in effect on the day before the date of enactment of the CARES Act

- Establishes that certain active ingredients in OTC drug products for various uses are not GRASE
- Often called the “negative monograph”

DFO under *505G(k)(2)(B)*

Regulations establishing requirements for specific nonprescription drugs marketed pursuant to section 505G of the FD&C Act

- These regulations may be
  - incorporated into a DFO for an OTC monograph under 505G(b)(8); or
  - posted as a separate, standalone final order
- May also retain in the CFR for non-monograph products if applicable to other drug products

DFO Background and Content

- **Background**
  - Describes the relevant proposed and final rules that constitute the DFO
- **Final Administrative Order**
  - Contains the final order including the OTC monograph, Non-monograph Conditions, or regulation being deemed
  - Include any technical amendments that are determined to be necessary to ensure that they are appropriately harmonized, in terms of terminology and cross-references, with applicable provisions of the FD&C Act, FDA regulations, and any other orders issued under section 505G

DFOs Established by Statute

- There is **no comment** period for DFOs because such orders were established legislatively by operation of the CARES Act

Withdrawal of Regulations

- Under section 505G(k)(3) of the FD&C Act, FDA will:
  - Withdraw regulations establishing final monographs
  - Withdraw certain portions of the regulations governing the OTC Drug Review (i.e., certain sections in 21 CFR Part 330), and
  - Make technical changes to certain regulations in part 330 and other relevant parts of title 21 of the CFR
- Withdrawal or technical changes are effective upon publication through notice in Federal Register (or date specified in such notice)
- Public comment is not required
- FDA intends to issue a notice to withdraw after all the relevant deemed final orders have been posted on ***OTC Monographs@FDA*** portal
- For historical reference only, FDA intends to maintain the "Status of OTC Rulemaking" webpage on FDA's website

Availability of Administrative Orders

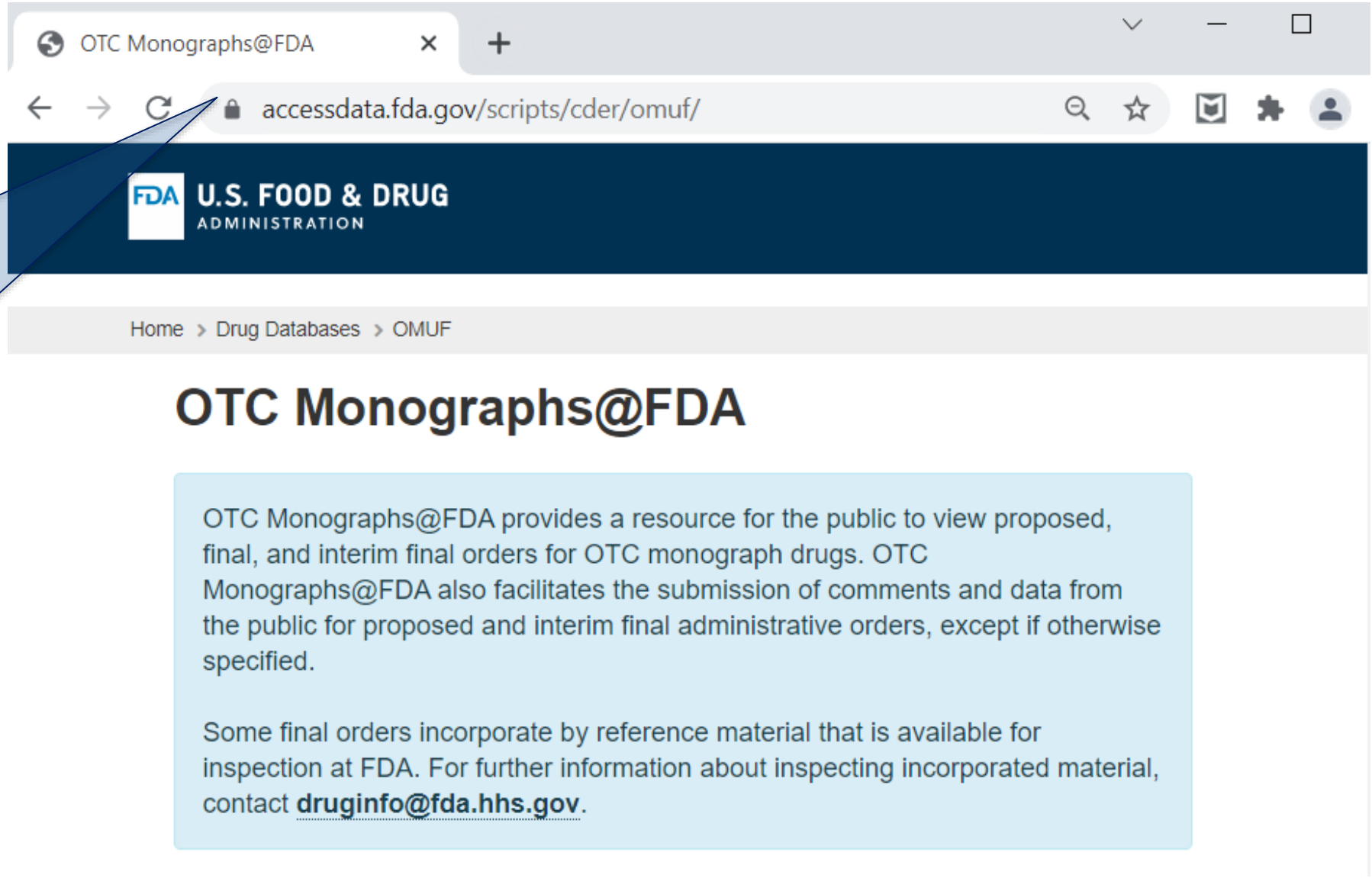
Notice of Availability for DFOs

- FDA issued a notice announcing the process for making available and the availability of DFOs on September 20, 2021
- DFOs will be posted on the portal in batches on a rolling basis until they are all available in the repository
- When a new batch of DFOs becomes available, FDA will announce the availability on FDA's OTC monograph landing page https://www.fda.gov/drugs/over-counter-otc-nonprescription-drugs/over-counter-otc-drug-review-otc-monograph-reform-cares-act

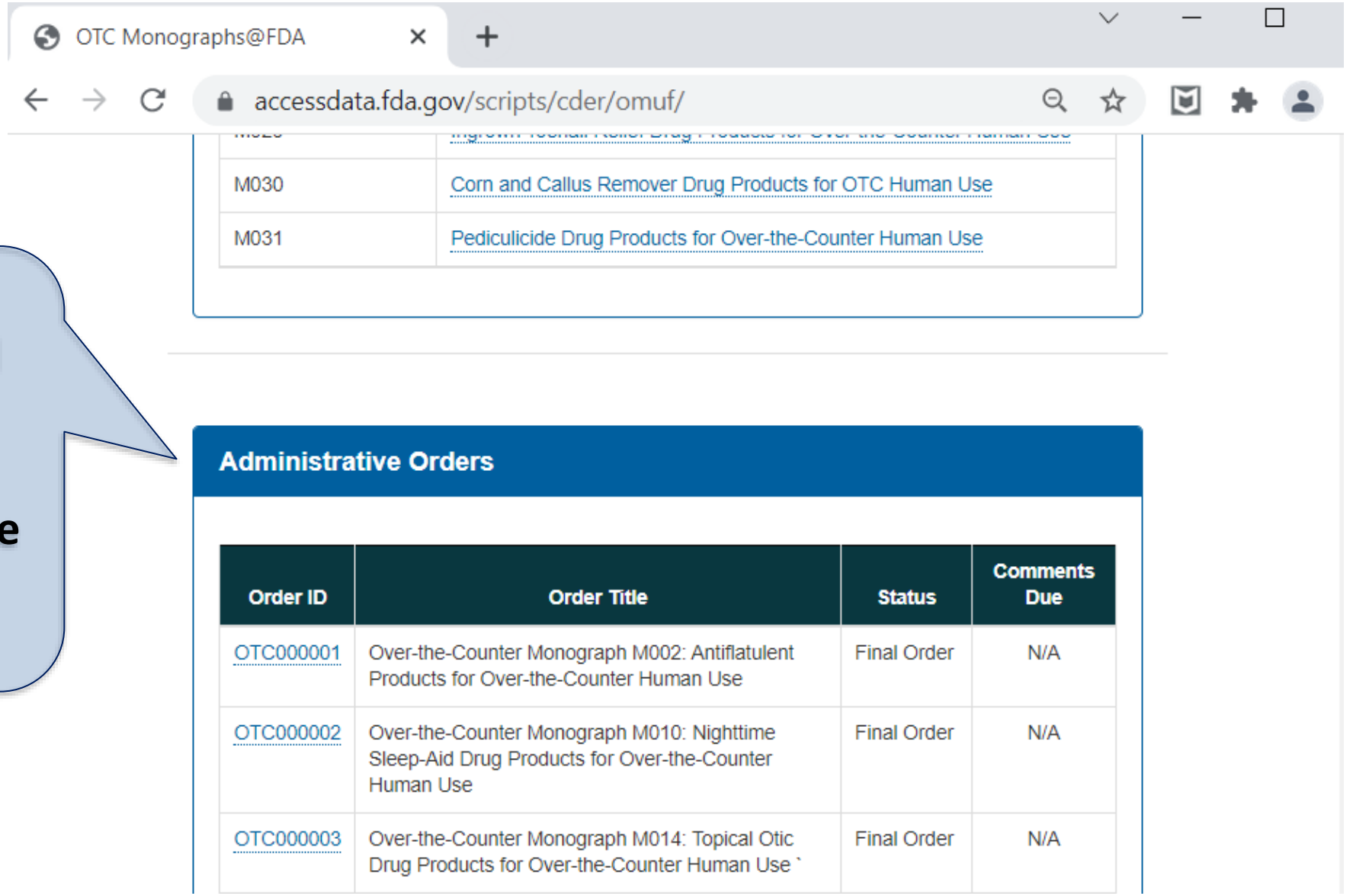
Availability of Administrative Orders: OTC Monographs@FDA

- You may view administrative orders, including DFOs, in the **OTC Monographs@FDA** portal at https://www.accessdata.fda.gov/scripts/cder/omuf/
- FDA is posting these DFOs as a resource to the public
- **OTC Monographs@FDA** facilitates submission of public comments for proposed and interim final administrative orders

Step 1. Enter URL address in your internet browser



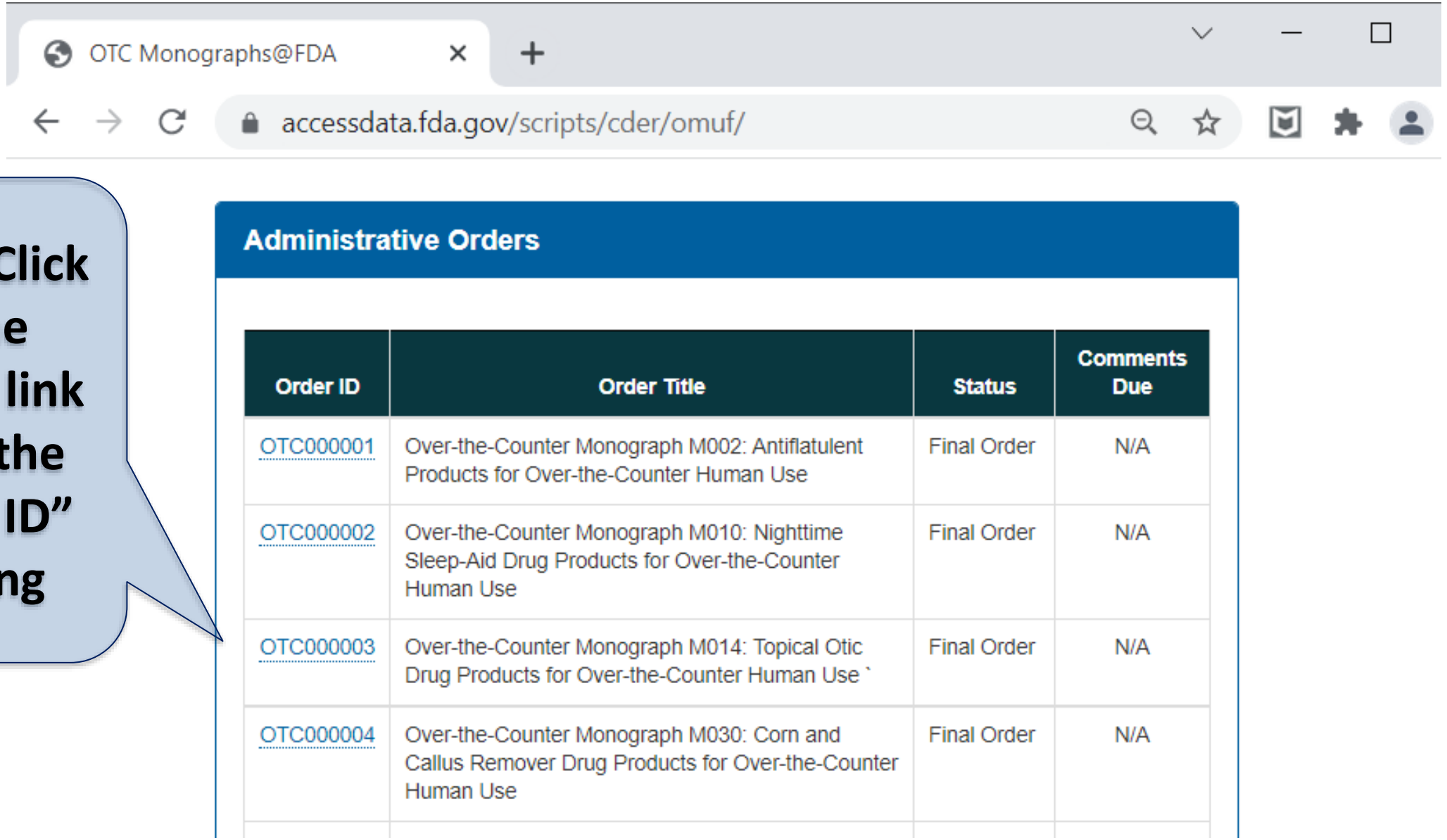
Step 2. Scroll down to box titled Administrative Orders



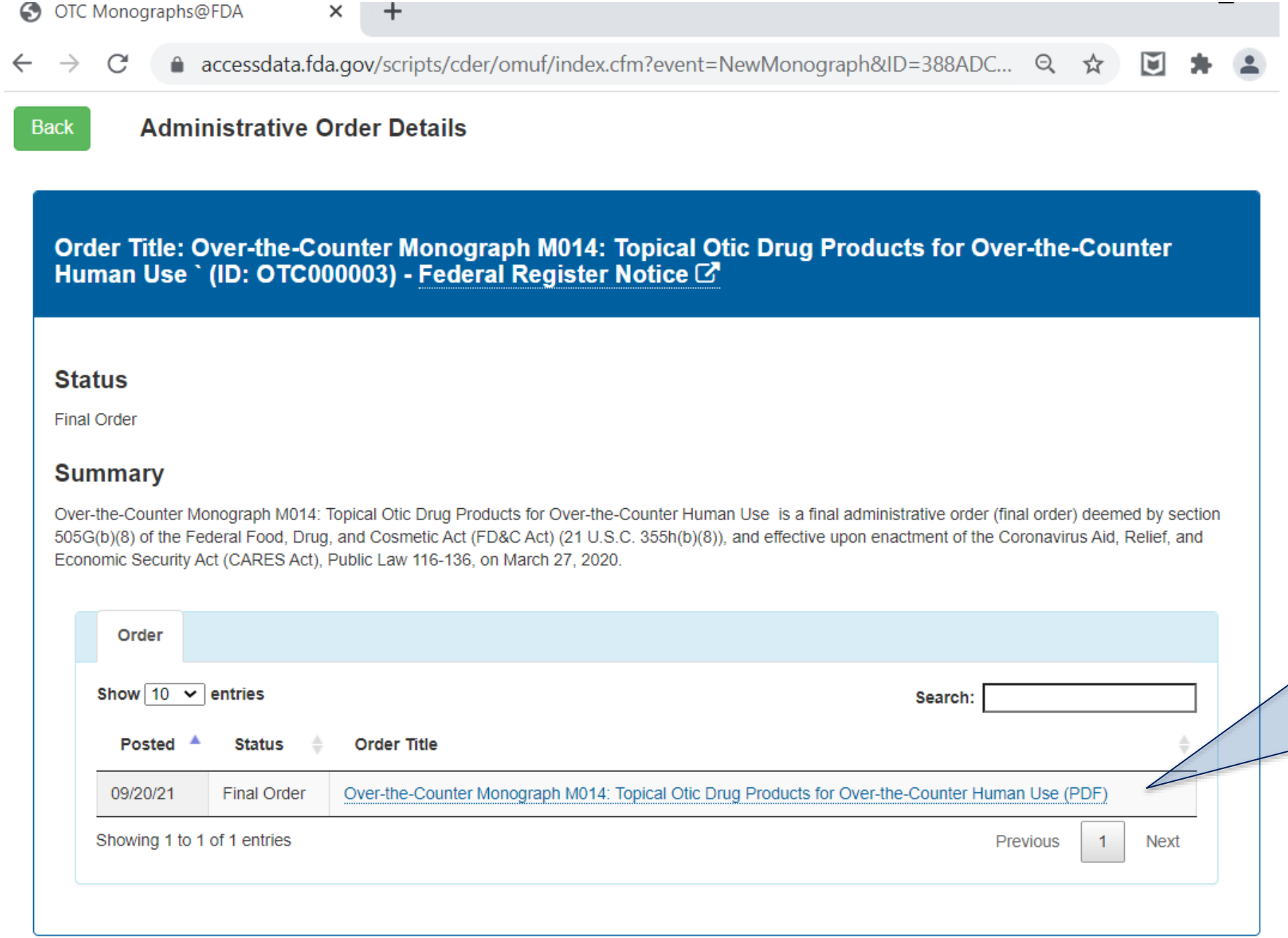
M030	Corn and Callus Remover Drug Products for OTC Human Use
M031	Pediculicide Drug Products for Over-the-Counter Human Use

Administrative Orders

Order ID	Order Title	Status	Comments Due
OTC000001	Over-the-Counter Monograph M002: Antiflatulent Products for Over-the-Counter Human Use	Final Order	N/A
OTC000002	Over-the-Counter Monograph M010: Nighttime Sleep-Aid Drug Products for Over-the-Counter Human Use	Final Order	N/A
OTC000003	Over-the-Counter Monograph M014: Topical Otic Drug Products for Over-the-Counter Human Use `	Final Order	N/A

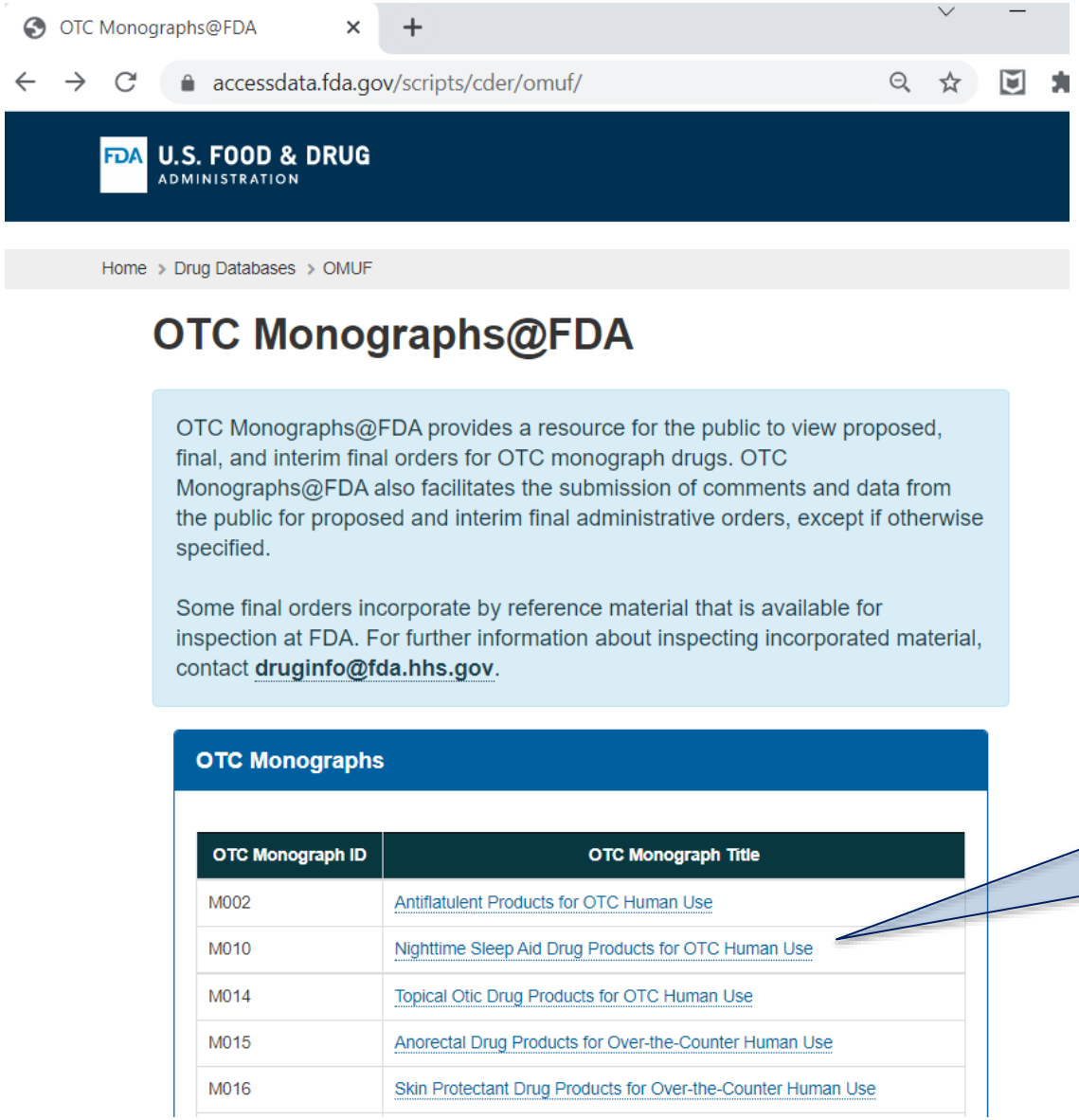


Step 3. Click on the desired link under the "Order ID" heading



Step 4. Click on the link under the "Order Title" heading

Instructions for Accessing OTC Monographs



Click on the desired link under the "OTC Monograph Title" heading

Contact Us

- For Questions on
  - OTC Monograph Reform druginfo@fda.hhs.gov
  - User fees (OMUFA) CDERCollections@fda.hhs.gov
  - Meeting requests monograph-meeting-requests@fda.hhs.gov
  - Small business and industry assistance cdersbia@fda.hhs.gov
- Resources
  - OTC Monograph Reform in the CARES Act https://www.fda.gov/drugs/over-counter-otc-nonprescriptiondrugs/over-counter-otc-drug-review-otc-monograph-reformcares-act
  - Registration and Listing https://www.fda.gov/industry/structuredproduct-labeling-resources/business-operation-qualifier
  - Notice of Availability https://www.federalregister.gov/documents/2021/09/21/2021-20393/final-administrative-orders-for-over-the-counter-monographs-availability

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Questions?


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