

SUBCHAPTER A—GENERAL

PART 1—GENERAL ENFORCEMENT REGULATIONS

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AUTHORITY: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 343, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 241, 243, 262, 264.

SOURCE: 42 FR 15553, Mar. 22, 1977, unless otherwise noted.

Subpart A—General Provisions

§ 1.1 General.

(a) The provisions of regulations promulgated under the Federal Food, Drug, and Cosmetic Act with respect to the doing of any act shall be applicable also to the causing of such act to be done.

(b) The definitions and interpretations of terms contained in section 201 of the Federal Food, Drug, and Cosmetic Act shall be applicable also to such terms when used in regulations promulgated under that act.

(c) The definition of *package* in § 1.20 and of *principal display panel* in §§ 101.1, 201.60, 501.1, 701.10 and 801.60 of this chapter; and the requirements pertaining to uniform location, lack of qualification, and separation of the net quantity declaration in §§ 101.105(f), 201.62(e), 501.105(f), 701.13(f) and 801.62(e) of this chapter to type size requirements for net quantity declaration in §§ 101.105(i), 201.62(h), 501.105(i), 701.13(i) and 801.62(h) of this chapter, to initial statement of ounces in the dual declaration of net quantity in §§ 101.105(j) and (m), 201.62(i) and (k), 501.105(j) and (m), 701.13(j) and (m) and 801.62(i) and (k) of this chapter, to initial statement of inches in declaration of net quantity in §§ 201.62(m), 701.13(o) and 801.62(m) of this chapter, to initial statement of square inches in declaration of net quantity in §§ 201.62(n), 701.13(p) and 801.62(n) of this chapter, to prohibition of certain supplemental net quantity statements in §§ 101.105(o), 201.62(o), 501.105(o), 701.13(q) and 801.62(o) of this chapter, and to servings representations in § 501.8 of this chapter are provided for solely by the Fair Packaging and Labeling Act. The other requirements of this part are issued under both the Fair Packaging and Labeling Act and the Federal Food, Drug, and Cosmetic Act, or by the latter act solely, and are not limited in their application by section 10 of the Fair Packaging and Labeling Act.

[42 FR 15553, Mar. 22, 1977, as amended at 58 FR 17085, Apr. 1, 1993]

§ 1.3 Definitions.

(a) *Labeling* includes all written, printed, or graphic matter accompanying an article at any time while such article is in interstate commerce or held for sale after shipment or delivery in interstate commerce.

(b) *Label* means any display of written, printed, or graphic matter on the immediate container of any article, or any such matter affixed to any consumer commodity or affixed to or appearing upon a package containing any consumer commodity.

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§ 1.4 Authority citations.

(a) For each part of its regulations, the Food and Drug Administration includes a centralized citation of all of the statutory provisions that provide authority for any regulation that is included in that part.

(b) The agency may rely on any one or more of the authorities that are listed for a particular part in implementing or enforcing any section in that part.

(c) All citations of authority in this chapter will list the applicable sections in the organic statute if the statute is the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, or the Fair Packaging and Labeling Act. References to an act or a section thereof include references to amendments to that act or section. These citations will also list the corresponding United States Code (U.S.C.) sections. For example, a citation to section 701 of the Federal Food, Drug, and Cosmetic Act would be listed: Sec. 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371).

(d) If the organic statute is one other than those specified in paragraph (c) of this section, the citations of authority in this chapter generally will list only the applicable U.S.C. sections. For example, a citation to section 552 of the Administrative Procedure Act would be listed: 5 U.S.C. 552. The agency may, where it determines that such measures are in the interest of clarity and public understanding, list the applicable sections in the organic statute and the corresponding U.S.C. section in the same manner set out in paragraph (c) of this section. References to an act or a section thereof include references to amendments to that act or section.

(e) Where there is no U.S.C. provision, the agency will include a citation to the U.S. Statutes at Large. Citations to the U.S. Statutes at Large will refer to volume and page.

(f) The authority citations will include a citation to executive delegations (i.e., Executive Orders), if any, necessary to link the statutory authority to the agency.

[54 FR 39630, Sept. 27, 1989]

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Subpart B—General Labeling Requirements

§ 1.20 Presence of mandatory label information.

The term *package* means any container or wrapping in which any food, drug, device, or cosmetic is enclosed for use in the delivery or display of such commodities to retail purchasers, but does not include:

(a) Shipping containers or wrappings used solely for the transportation of any such commodity in bulk or in quantity to manufacturers, packers, processors, or wholesale or retail distributors;

(b) Shipping containers or outer wrappings used by retailers to ship or deliver any such commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; or

(c) Containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231–233), the Act of March 4, 1915 (38 Stat. 1186, as amended; 15 U.S.C. 234–236), the Act of August 31, 1916 (39 Stat. 673, as amended; 15 U.S.C. 251–256), or the Act of May 21, 1928 (45 Stat. 635, as amended; 15 U.S.C. 257–257i).

(d) Containers used for tray pack displays in retail establishments.

(e) Transparent wrappers or containers which do not bear written, printed, or graphic matter obscuring the label information required by this part.

A requirement contained in this part that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or information also appears on the outer container or wrapper of the retail package of the article, or, as stated in paragraph (e) of this section, such information is easily legible by virtue of the transparency of the outer wrapper or container. Where a consumer commodity is marketed in a multiunit retail package bearing the mandatory label information as required by this part and the unit containers are not intended to be sold separately, the net weight placement requirement of

§101.105(f) applicable to such unit containers is waived if the units are in compliance with all the other requirements of this part.

§ 1.21 Failure to reveal material facts.

(a) Labeling of a food, drug, device, or cosmetic shall be deemed to be misleading if it fails to reveal facts that are:

(1) Material in light of other representations made or suggested by statement, word, design, device or any combination thereof; or

(2) Material with respect to consequences which may result from use of the article under: (i) The conditions prescribed in such labeling or (ii) such conditions of use as are customary or usual.

(b) Affirmative disclosure of material facts pursuant to paragraph (a) of this section may be required, among other appropriate regulatory procedures, by

(1) Regulations in this chapter promulgated pursuant to section 701(a) of the act; or

(2) Direct court enforcement action.

(c) Paragraph (a) of this section does not:

(1) Permit a statement of differences of opinion with respect to warnings (including contraindications, precautions, adverse reactions, and other information relating to possible product hazards) required in labeling for food, drugs, devices, or cosmetics under the act.

(2) Permit a statement of differences of opinion with respect to the effectiveness of a drug unless each of the opinions expressed is supported by substantial evidence of effectiveness as defined in sections 505(d) and 512(d) of the act.

§ 1.23 Procedures for requesting variations and exemptions from required label statements.

Section 403(e) of the act (in this part 1, the term *act* means the Federal Food, Drug, and Cosmetic Act) provides for the establishment by regulation of reasonable variations and exemptions for small packages from the required declaration of net quantity of contents. Section 403(i) of the act provides for the establishment by regulation of exemptions from the required declaration of ingredients where such

declaration is impracticable, or results in deception or unfair competition. Section 502(b) of the act provides for the establishment by regulation of reasonable variations and exemptions for small packages from the required declaration of net quantity of contents. Section 602(b) of the act provides for the establishment by regulation of reasonable variations and exemptions for small packages from the required declaration of net quantity of contents. Section 5(b) of the Fair Packaging and Labeling Act provides for the establishment by regulation of exemptions from certain required declarations of net quantity of contents, identity of commodity, identity and location of manufacturer, packer, or distributor, and from declaration of net quantity of servings represented, based on a finding that full compliance with such required declarations is impracticable or not necessary for the adequate protection of consumers, and a further finding that the nature, form, or quantity of the packaged consumer commodity or other good and sufficient reasons justify such exemptions. The Commissioner, on his own initiative or on petition of an interested person, may propose a variation or exemption based upon any of the foregoing statutory provisions, including proposed findings if section 5(b) of the Fair Packaging and Labeling Act applies, pursuant to parts 10, 12, 13, 14, 15, 16, and 19 of this chapter.

§ 1.24 Exemptions from required label statements.

The following exemptions are granted from label statements required by this part:

(a) *Foods.* (1) While held for sale, a food shall be exempt from the required declaration of net quantity of contents specified in this part if said food is received in bulk containers at a retail establishment and is accurately weighed, measured, or counted either within the view of the purchaser or in compliance with the purchaser's order.

(2) Random food packages, as defined in §101.105(j) of this chapter, bearing labels declaring net weight, price per pound or per specified number of pounds, and total price shall be exempt from the type size, dual declaration,

and placement requirements of § 101.105 of this chapter if the accurate statement of net weight is presented conspicuously on the principal display panel of the package. In the case of food packed in random packages at one place for subsequent shipment and sale at another, the price sections of the label may be left blank provided they are filled in by the seller prior to retail sale. This exemption shall also apply to uniform weight packages of cheese and cheese products labeled in the same manner and by the same type of equipment as random food packages exempted by this paragraph (a)(2) except that the labels shall bear a declaration of price per pound and not price per specified number of pounds.

(3) Individual serving-size packages of foods containing less than ½ ounce or less than ½ fluid ounce for use in restaurants, institutions, and passenger carriers, and not intended for sale at retail, shall be exempt from the required declaration of net quantity of contents specified in this part.

(4) Individually wrapped pieces of *penny candy* and other confectionery of less than one-half ounce net weight per individual piece shall be exempt from the labeling requirements of this part when the container in which such confectionery is shipped is in conformance with the labeling requirements of this part. Similarly, when such confectionery items are sold in bags or boxes, such items shall be exempt from the labeling requirements of this part, including the required declaration of net quantity of contents specified in this part when the declaration on the bag or box meets the requirements of this part.

(5)(i) Soft drinks packaged in bottles shall be exempt from the placement requirements for the statement of identity prescribed by § 101.3 (a) and (d) of this chapter if such statement appears conspicuously on the bottle closure. When such soft drinks are marketed in a multiunit retail package, the multiunit retail package shall be exempt from the statement of identity declaration requirements prescribed by § 101.3 of this chapter if the statement of identity on the unit container is not obscured by the multiunit retail package.

(ii) A multiunit retail package for soft drinks shall be exempt from the declaration regarding name and place of business required by § 101.5 of this chapter if the package does not obscure the declaration on unit containers or if it bears a statement that the declaration can be found on the unit containers and the declaration on the unit containers complies with § 101.5 of this chapter. The declaration required by § 101.5 of this chapter may appear on the top or side of the closure of bottled soft drinks if the statement is conspicuous and easily legible.

(iii) Soft drinks packaged in bottles which display other required label information only on the closure shall be exempt from the placement requirements for the declaration of contents prescribed by § 101.105(f) of this chapter if the required content declaration is blown, formed, or molded into the surface of the bottle in close proximity to the closure.

(iv) Where a trademark on a soft drink package also serves as, or is, a statement of identity, the use of such trademark on the package in lines not parallel to the base on which the package rests shall be exempted from the requirement of § 101.3(d) of this chapter that the statement be in lines parallel to the base so long as there is also at least one statement of identity in lines generally parallel to the base.

(v) A multiunit retail package for soft drinks in cans shall be exempt from the declaration regarding name and place of business required by § 101.5 of this chapter if the package does not obscure the declaration on unit containers or if it bears a statement that the declaration can be found on the unit containers and the declaration on the unit containers complies with § 101.5 of this chapter. The declaration required by § 101.5 of this chapter may appear on the top of soft drinks in cans if the statement is conspicuous and easily legible, provided that when the declaration is embossed, it shall appear in type size at least one-eighth inch in height, or if it is printed, the type size shall not be less than one-sixteenth inch in height. The declaration may follow the curvature of the lid of the can and shall not be removed or obscured by the tab which opens the can.

(6)(i) Ice cream, french ice cream, ice milk, fruit sherbets, water ices, quiescently frozen confections (with or without dairy ingredients), special dietary frozen desserts, and products made in semblance of the foregoing, when measured by and packaged in ½-liquid pint and ½-gallon measure-containers, as defined in the “Measure Container Code of National Bureau of Standards Handbook 44,” Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices, Sec. 4.45 “Measure-Containers,” which is incorporated by reference, are exempt from the requirements of §101.105(b)(2) of this chapter to the extent that net contents of 8-fluid ounces and 64-fluid ounces (or 2 quarts) may be expressed as ½ pint and ½ gallon, respectively. Copies are available from the Center for Food Safety and Applied Nutrition (HFS-150), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(ii) The foods named in paragraph (a)(6)(i) of this section, when measured by and packaged in 1-liquid pint, 1-liquid quart, and ½-gallon measure-containers, as defined in the “Measure Container Code of National Bureau of Standards Handbook 44,” Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices, Sec. 4.45 “Measure-Containers,” which is incorporated by reference, are exempt from the dual net-contents declaration requirement of §101.105(j) of this chapter. Copies are available from the Center for Food Safety and Applied Nutrition (HFS-150), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(iii) The foods named in paragraph (a)(6)(i) of this section, when measured by and packaged in ½-liquid pint, 1-liquid pint, 1-liquid quart, ½-gallon, and 1-gallon measured-containers, as defined in the “Measure Container Code of National Bureau of Standards Handbook 44,” Specifications, Tolerances, and Other Technical Requirements for

Weighing and Measuring Devices, Sec. 4.45 “Measure-Containers,” which is incorporated by reference, are exempt from the requirement of §101.105(f) of this chapter that the declaration of net contents be located within the bottom 30 percent of the principal display panel. Copies are available from the Center for Food Safety and Applied Nutrition (HFS-150), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(7)(i) Milk, cream, light cream, coffee or table cream, whipping cream, light whipping cream, heavy or heavy whipping cream, sour or cultured sour cream, half-and-half, sour or cultured half-and-half, reconstituted or recombined milk and milk products, concentrated milk and milk products, skim or skimmed milk, vitamin D milk and milk products, fortified milk and milk products, homogenized milk, flavored milk and milk products, buttermilk, cultured buttermilk, cultured milk or cultured whole buttermilk, low-fat milk (0.5 to 2.0 percent butterfat), and acidified milk and milk products, when packaged in containers of 8- and 64-fluid-ounce capacity, are exempt from the requirements of §101.105(b)(2) of this chapter to the extent that net contents of 8 fluid ounces and 64 fluid ounces (or 2 quarts) may be expressed as ½ pint and ½ gallon, respectively.

(ii) The products listed in paragraph (a)(7)(i) of this section, when packaged in glass or plastic containers of ½-pint, 1-pint, 1-quart, ½-gallon, and 1-gallon capacities are exempt from the placement requirement of §101.105(f) of this chapter that the declaration of net contents be located within the bottom 30 percent of the principal display panel, provided that other required label information is conspicuously displayed on the cap or outside closure and the required net quantity of contents declaration is conspicuously blown, formed, or molded into or permanently applied to that part of the glass or plastic container that is at or above the shoulder of the container.

(iii) The products listed in paragraph (a)(7)(i) of this section, when packaged

in containers of 1-pint, 1-quart, and ½-gallon capacities are exempt from the dual net-contents declaration requirement of § 101.105(j) of this chapter.

(8) Wheat flour products, as defined by §§ 137.105, 137.155, 137.160, 137.165, 137.170, 137.175, 137.180, 137.185, 137.200, and 137.205 of this chapter, packaged:

(i) In conventional 2-, 5-, 10-, 25-, 50-, and 100-pound packages are exempt from the placement requirement of § 101.105(f) of this chapter that the declaration of net contents be located within the bottom 30 percent of the area of the principal display panel of the label; and

(ii) In conventional 2-pound packages are exempt from the dual net-contents declaration requirement of § 101.105(j) of this chapter provided the quantity of contents is expressed in pounds.

(9)(i) Twelve shell eggs packaged in a carton designed to hold 1 dozen eggs and designed to permit the division of such carton by the retail customer at the place of purchase into two portions of one-half dozen eggs each are exempt from the labeling requirements of this part with respect to each portion of such divided carton if the carton, when undivided, is in conformance with the labeling requirements of this part.

(ii) Twelve shell eggs packaged in a carton designed to hold 1 dozen eggs are exempt from the placement requirements for the declaration of contents prescribed by § 101.105(f) of this chapter if the required content declaration is otherwise placed on the principal display panel of such carton and if, in the case of such cartons designed to permit division by retail customers into two portions of one-half dozen eggs each, the required content declaration is placed on the principal display panel in such a manner that the context of the content declaration is destroyed upon division of the carton.

(10) Butter as defined in 42 Stat. 1500 (excluding whipped butter):

(i) In 8-ounce and in 1-pound packages is exempt from the requirements of § 101.105(f) of this chapter that the net contents declaration be placed within the bottom 30 percent of the area of the principal display panel;

(ii) In 1-pound packages is exempt from the requirements of § 101.105(j)(1) of this chapter that such declaration be

in terms of ounces and pounds, to permit declaration of “1-pound” or “one pound”; and

(iii) In 4-ounce, 8-ounce, and 1-pound packages with continuous label copy wrapping is exempt from the requirements of §§ 101.3 and 101.105(f) of this chapter that the statement of identity and net contents declaration appear in lines generally parallel to the base on which the package rests as it is designed to be displayed, provided that such statement and declaration are not so positioned on the label as to be misleading or difficult to read as the package is customarily displayed at retail.

(11) Margarine as defined in § 166.110 of this chapter and imitations thereof in 1-pound rectangular packages, except for packages containing whipped or soft margarine or packages that contain more than four sticks, are exempt from the requirement of § 101.105(f) of this chapter that the declaration of the net quantity of contents appear within the bottom 30 percent of the principal display panel and from the requirement of § 101.105(j)(1) of this chapter that such declaration be expressed both in ounces and in pounds to permit declaration of “1-pound” or “one pound,” provided an accurate statement of net weight appears conspicuously on the principal display panel of the package.

(12) Corn flour and related products, as they are defined by §§ 137.211, 137.215, and §§ 137.230 through 137.290 of this chapter, packaged in conventional 5-, 10-, 25-, 50-, and 100-pound bags are exempt from the placement requirement of § 101.105(f) of this chapter that the declaration of net contents be located within the bottom 30 percent of the area of the principal display panel of the label.

(13)(i) Single strength and less than single strength fruit juice beverages, imitations thereof, and drinking water when packaged in glass or plastic containers of ½-pint, 1-pint, 1-quart, ½-gallon, and 1-gallon capacities are exempt from the placement requirement of § 101.105(f) of this chapter that the declaration of net contents be located within the bottom 30 percent of the principal display panel: *Provided*, That other required label information is conspicuously displayed on the cap or

outside closure and the required net quantity of contents declaration is conspicuously blown, formed, or molded into or permanently applied to that part of the glass or plastic container that is at or above the shoulder of the container.

(ii) Single strength and less than single strength fruit juice beverages, imitations thereof, and drinking water when packaged in glass, plastic, or paper (fluid milk type) containers of 1-pint, 1-quart, and ½-gallon capacities are exempt from the dual net-contents declaration requirement of §101.105(j) of this chapter.

(iii) Single strength and less than single strength fruit juice beverages, imitations thereof, and drinking water when packaged in glass, plastic, or paper (fluid milk type) containers of 8- and 64-fluid-ounce capacity, are exempt from the requirements of §101.105(b)(2) of this chapter to the extent that net contents of 8 fluid ounces and 64 fluid ounces (or 2 quarts) may be expressed as ½ pint (or half pint) and ½ gallon (or half gallon), respectively.

(14) The unit containers in a multi-unit or multicomponent retail food package shall be exempt from regulations of section 403 (e)(1), (g)(2), (i)(2), (k), and (q) of the act with respect to the requirements for label declaration of the name and place of business of the manufacturer, packer, or distributor; label declaration of ingredients; and nutrition information when:

(i) The multiunit or multicomponent retail food package labeling meets all the requirements of this part;

(ii) The unit containers are securely enclosed within and not intended to be separated from the retail package under conditions of retail sale; and

(iii) Each unit container is labeled with the statement “This Unit Not Labeled For Retail Sale” in type size not less than one-sixteenth of an inch in height. The word “Individual” may be used in lieu of or immediately preceding the word “Retail” in the statement.

(b) *Drugs.* Liquid over-the-counter veterinary preparations intended for injection shall be exempt from the declaration of net quantity of contents in terms of the U.S. gallon of 231 cubic inches and quart, pint, and fluid-ounce

subdivisions thereof as required by §201.62 (b), (i), and (j) of this chapter, and from the dual declaration requirements of §201.62(i) of this chapter, if such declaration of net quantity of contents is expressed in terms of the liter and milliliter, or cubic centimeter, with the volume expressed at 68 °F (20 °C).

(c) *Cosmetics.* Cosmetics in packages containing less than one-fourth ounce avoirdupois or one-eighth fluid ounce shall be exempt from compliance with the requirements of section 602(b)(2) of the Federal Food, Drug, and Cosmetic Act and section 4(a)(2) of the Fair Packaging and Labeling Act:

(1) When such cosmetics are affixed to a display card labeled in conformance with all labeling requirements of this part; or

(2) When such cosmetics are sold at retail as part of a cosmetic package consisting of an inner and outer container and the inner container is not for separate retail sale and the outer container is labeled in conformance with all labeling requirements of this part.

[42 FR 15553, Mar. 22, 1977, as amended at 47 FR 946, Jan. 8, 1982; 47 FR 32421, July 27, 1982; 49 FR 13339, Apr. 4, 1984; 54 FR 9033, Mar. 3, 1989; 58 FR 2174, Jan. 6, 1993; 61 FR 14478, Apr. 2, 1996; 66 FR 56035, Nov. 6, 2001]

Subparts C–D [Reserved]

Subpart E—Imports and Exports

§ 1.83 Definitions.

For the purposes of regulations prescribed under section 801(a), (b), and (c) of the Federal Food, Drug, and Cosmetic Act:

(a) The term *owner* or *consignee* means the person who has the rights of a consignee under the provisions of sections 483, 484, and 485 of the Tariff Act of 1930, as amended (19 U.S.C. 1483, 1484, 1485).

(b) The term *district director* means the director of the district of the Food and Drug Administration having jurisdiction over the port of entry through which an article is imported or offered for import, or such officer of the district as he may designate to act in his behalf in administering and enforcing

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the provisions of section 801 (a), (b), and (c).

§ 1.90 Notice of sampling.

When a sample of an article offered for import has been requested by the district director, the collector of customs having jurisdiction over the article shall give to the owner or consignee prompt notice of delivery of, or intention to deliver, such sample. Upon receipt of the notice, the owner or consignee shall hold such article and not distribute it until further notice from the district director or the collector of customs of the results of examination of the sample.

§ 1.91 Payment for samples.

The Food and Drug Administration will pay for all import samples which are found to be in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act. Billing for reimbursement should be made by the owner or consignee to the Food and Drug Administration district headquarters in whose territory the shipment was offered for import. Payment for samples will not be made if the article is found to be in violation of the act, even though subsequently brought into compliance under the terms of an authorization to bring the article into compliance or rendered not a food, drug, device, or cosmetic as set forth in § 1.95.

§ 1.94 Hearing on refusal of admission.

(a) If it appears that the article may be subject to refusal of admission, the district director shall give the owner or consignee a written notice to that effect, stating the reasons therefor. The notice shall specify a place and a period of time during which the owner or consignee shall have an opportunity to introduce testimony. Upon timely request giving reasonable grounds therefor, such time and place may be changed. Such testimony shall be confined to matters relevant to the admissibility of the article, and may be introduced orally or in writing.

(b) If such owner or consignee submits or indicates his intention to submit an application for authorization to relabel or perform other action to bring the article into compliance with

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the act or to render it other than a food, drug, device, or cosmetic, such testimony shall include evidence in support of such application. If such application is not submitted at or prior to the hearing, the district director shall specify a time limit, reasonable in the light of the circumstances, for filing such application.

§ 1.95 Application for authorization to relabel and recondition.

Application for authorization to relabel or perform other action to bring the article into compliance with the act or to render it other than a food, drug, device or cosmetic may be filed only by the owner or consignee, and shall:

(a) Contain detailed proposals for bringing the article into compliance with the act or rendering it other than a food, drug, device, or cosmetic.

(b) Specify the time and place where such operations will be carried out and the approximate time for their completion.

§ 1.96 Granting of authorization to relabel and recondition.

(a) When authorization contemplated by § 1.95 is granted, the district director shall notify the applicant in writing, specifying:

(1) The procedure to be followed;

(2) The disposition of the rejected articles or portions thereof;

(3) That the operations are to be carried out under the supervision of an officer of the Food and Drug Administration or the U.S. Customs Service, as the case may be;

(4) A time limit, reasonable in the light of the circumstances, for completion of the operations; and

(5) Such other conditions as are necessary to maintain adequate supervision and control over the article.

(b) Upon receipt of a written request for extension of time to complete such operations, containing reasonable grounds therefor, the district director may grant such additional time as he deems necessary.

(c) An authorization may be amended upon a showing of reasonable grounds therefor and the filing of an amended application for authorization with the district director.

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(d) If ownership of an article covered by an authorization changes before the operations specified in the authorization have been completed, the original owner will be held responsible, unless the new owner has executed a bond and obtained a new authorization. Any authorization granted under this section shall supersede and nullify any previously granted authorization with respect to the article.

[42 FR 15553, Mar. 22, 1977, as amended at 54 FR 9033, Mar. 3, 1989]

§ 1.97 Bonds.

(a) The bonds required under section 801(b) of the act may be executed by the owner or consignee on the appropriate form of a customs single-entry or term bond, containing a condition for the redelivery of the merchandise or any part thereof upon demand of the collector of customs and containing a provision for the performance of conditions as may legally be imposed for the relabeling or other action necessary to bring the article into compliance with the act or rendering it other than a food, drug, device, or cosmetic, in such manner as is prescribed for such bond in the customs regulations in force on the date of request for authorization. The bond shall be filed with the collector of customs.

(b) The collector of customs may cancel the liability for liquidated damages incurred under the above-mentioned provisions of such a bond, if he receives an application for relief therefrom, upon the payment of a lesser amount or upon such other terms and conditions as shall be deemed appropriate under the law and in view of the circumstances, but the collector shall not act under this regulation in any case unless the district director is in full agreement with the action.

§ 1.99 Costs chargeable in connection with relabeling and reconditioning inadmissible imports.

The cost of supervising the relabeling or other action in connection with an import of food, drugs, devices, or cosmetics which fails to comply with the Federal Food, Drug, and Cosmetic Act shall be paid by the owner or consignee who files an application requesting such action and executes a bond, pursu-

ant to section 801(b) of the act, as amended. The cost of such supervision shall include, but not be restricted to, the following:

(a) Travel expenses of the supervising officer.

(b) Per diem in lieu of subsistence of the supervising officer when away from his home station, as provided by law.

(c) The charge for the services of the supervising officer, which shall include administrative support, shall be computed at a rate per hour equal to 266 percent of the hourly rate of regular pay of a grade GS-11/4 employee, except that such services performed by a customs officer and subject to the provisions of the act of February 13, 1911, as amended (sec. 5, 36 Stat. 901, as amended (19 U.S.C. 267)), shall be calculated as provided in that act.

(d) The charge for the service of the analyst, which shall include administrative and laboratory support, shall be computed at a rate per hour equal to 266 percent of the hourly rate of regular pay of a grade GS-12/4 employee. The rate per hour equal to 266 percent of the equivalent hourly rate of regular pay of the supervising officer (GS-11/4) and the analyst (GS-12/4) is computed as follows:

	Hours
Gross number of working hours in 52 40-hr weeks	2,080
Less:	
9 legal public holidays—New Years Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day	72
Annual leave—26 d	208
Sick leave—13 d	104
<hr/>	
Total	384
Net number of working hours	1,696
Gross number of working hours in 52 40-hr weeks ..	2,080
Working hour equivalent of Government contributions for employee retirement, life insurance, and health benefits computed at 8½ pct. of annual rate of pay of employee	176
<hr/>	
Equivalent annual working hours	2,256
Support required to equal to 1 man-year	2,256
Equivalent gross annual working hours charged to Food and Drug appropriation	4,512

NOTE: Ratio of equivalent gross annual number of working hours charged to Food and Drug appropriation to net number of annual working hours 4,512/1,696=266 pct.

(e) The minimum charge for services of supervising officers and of analysts shall be not less than the charge for 1

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hour, and time after the first hour shall be computed in multiples of 1 hour, disregarding fractional parts less than ½ hour.

§ 1.101 Notification and recordkeeping.

(a) *Scope.* This section pertains to notifications and records required for human drug, biological product, device, animal drug, food, and cosmetic exports under sections 801 or 802 of the Federal Food, Drug, and Cosmetic Act (the act) or (21 U.S.C. 381 and 382) or section 351 of the Public Health Service Act (42 U.S.C. 262).

(b) *Recordkeeping requirements for human drugs, biological products, devices, animal drugs, foods, and cosmetics exported under or subject to section 801(e)(1) of the act.* Persons exporting an article under section 801(e)(1) of the act or an article otherwise subject to section 801(e)(1) of the act shall maintain records as enumerated in paragraphs (b)(1) through (b)(4) of this section demonstrating that the product meets the requirements of section 801(e)(1) of the act. Such records shall be maintained for the same period of time as required for records subject to good manufacturing practice or quality systems regulations applicable to the product, except that records pertaining to the export of foods and cosmetics under section 801(e)(1) of the act shall be kept for 3 years after the date of exportation. The records shall be made available to the Food and Drug Administration (FDA), upon request, during an inspection for review and copying by FDA.

(1) Records demonstrating that the product meets the foreign purchaser's specifications: The records must contain sufficient information to match the foreign purchaser's specifications to a particular export;

(2) Records demonstrating that the product does not conflict with the laws of the importing country: This may consist of either a letter from an appropriate foreign government agency, department, or other authorized body stating that the product has marketing approval from the foreign government or does not conflict with that country's laws, or a notarized certification by a responsible company official in the United States that the product does

not conflict with the laws of the importing country and that includes a statement acknowledging that he or she is subject to the provisions of 18 U.S.C. 1001;

(3) Records demonstrating that the product is labeled on the outside of the shipping package that it is intended for export: This may consist of copies of any labels or labeling statements, such as "For export only," that are placed on the shipping packages or, if the exported product does not have a shipping package or container, on shipping invoices or other documents accompanying the exported product; and

(4) Records demonstrating that the product is not sold or offered for sale in the United States: This may consist of production and shipping records for the exported product and promotional materials.

(c) *Additional recordkeeping requirements for partially processed biological products exported under section 351(h) of the Public Health Service Act.* In addition to the requirements in paragraph (b) of this section, persons exporting a partially processed biological product under section 351(h) of the Public Health Service Act shall maintain, for the same period of time as required for records subject to good manufacturing practice or quality systems regulations applicable to the product, and make available to FDA, upon request, during an inspection for review and copying by FDA, the following records:

(1) Records demonstrating that the product for export is a partially processed biological product and not in a form applicable to the prevention, treatment, or cure of diseases or injuries of man;

(2) Records demonstrating that the partially processed biological product was manufactured in conformity with current good manufacturing practice requirements;

(3) Records demonstrating the distribution of the exported partially processed biological products; and

(4) Copies of all labeling that accompanies the exported partially processed biological product and other records demonstrating that the exported partially processed biological product is intended for further manufacture into a final dosage form outside the United

States; this may include a container label with the statement, "Caution: For Further Manufacturing Use Only" and any package insert.

(d) *Notification requirements for drugs, biological products, and devices exported under section 802 of the act.* (1) Persons exporting a human drug, biological product, or device under section 802 of the act, other than a drug, biological product, or device for investigational use exported under section 802(c) of the act, or a drug, biological product, or device exported in anticipation of marketing authorization under section 802(d) of the act, shall provide written notification to FDA. The notification shall identify:

- (i) The product's trade name;
- (ii) If the product is a drug or biological product, the product's abbreviated or proper name or, if the product is a device, the type of device;
- (iii) If the product is a drug or biological product, a description of the product's strength and dosage form or, if the product is a device, the product's model number; and
- (iv) If the export is to a country not listed in section 802(b)(1) of the act, the country that is to receive the exported article. The notification may, but is not required to, identify countries listed in section 802(b)(1) of the act or state that the export is intended for a listed country without identifying the listed country.

(2) The notification shall be sent to the following addresses:

(i) For biological products and devices regulated by the Center for Biologics Evaluation and Research—Division of Case Management (HFM-610), Office of Compliance and Biologics Quality, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, rm. 200N, Rockville, MD 20852-1448;

(ii) For human drug products—Division of Labeling and Nonprescription Drug Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855-2737;

(iii) For devices—Division of Program Operations (HFZ-305), Center for Devices and Radiological Health, Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850.

(e) *Recordkeeping requirements for products subject to section 802(g) of the act.* (1) Any person exporting a product under any provision of section 802 of the act shall maintain records of all drugs, biological products, and devices exported and the countries to which the products were exported. In addition to the requirements in paragraph (b) of this section, such records include, but are not limited to, the following:

- (i) The product's trade name;
- (ii) If the product is a drug or biological product, the product's abbreviated or proper name or, if the product is a device, the type of device;
- (iii) If the product is a drug or biological product, a description of its strength and dosage form and the product's lot or control number or, if the product is a device, the product's model number;
- (iv) The consignee's name and address; and
- (v) The date on which the product was exported and the quantity of product exported.

(2) These records shall be kept at the site from which the products were exported or manufactured, and be maintained for the same period of time as required for records subject to good manufacturing practice or quality systems regulations applicable to the product. The records shall be made available to FDA, upon request, during an inspection for review and copying by FDA.

[66 FR 65447, Dec. 19, 2001]

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- 2.5 Imminent hazard to the public health.
- 2.10 Examination and investigation samples.
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Subpart B—Human and Animal Foods

- 2.25 Grain seed treated with poisonous substances; color identification to prevent adulteration of human and animal food.
- 2.35 Use of secondhand containers for the shipment or storage of food and animal feed.

Subparts C—E [Reserved]