

## SUBCHAPTER H—MEDICAL DEVICES

### PART 800—GENERAL

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AUTHORITY: 21 U.S.C. 321, 334, 351, 352, 355, 356, 357, 360e, 360i, 360k, 361, 362, 371.

#### Subpart A [Reserved]

#### Subpart B—Requirements for Specific Medical Devices

##### **§800.10 Contact lens solutions; sterility.**

(a)(1) Informed medical opinion is in agreement that all preparations offered or intended for ophthalmic use, including contact lens solutions, should be sterile. It is further evident that such preparations purport to be of such purity and quality as to be suitable for safe use in the eye.

(2) The Food and Drug Administration concludes that all such preparations, if they are not sterile, fall below their professed standard of purity or quality and may be unsafe. In a statement of policy issued on September 1, 1964, the Food and Drug Administration ruled that liquid preparations offered or intended for ophthalmic use that are not sterile may be regarded as adulterated within the meaning of section 501(c) of the Federal Food, Drug, and Cosmetic Act (the act), and, further, may be deemed misbranded within the meaning of section 502(j) of the act. By this regulation, this ruling is applicable to all preparations for ophthalmic use that are regulated as medical devices, i.e., contact lens solutions. By the regulation in §200.50 of this

chapter, this ruling is applicable to ophthalmic preparations that are regulated as drugs.

(3) The containers shall be sterile at the time of filling and closing, and the container or individual carton shall be so sealed that the contents cannot be used without destroying the seal. The packaging and labeling of these solutions shall also comply with §800.12 on tamper-resistant packaging requirements.

(b) Liquid ophthalmic preparations packed in multiple-dose containers should:

(1) Contain one or more suitable and harmless substances that will inhibit the growth of microorganisms; or

(2) Be so packaged as to volume and type of container and so labeled as to duration of use and with such necessary warnings as to afford adequate protection and minimize the hazard of injury resulting from contamination during use.

(c) Eye cups, eye droppers, and other dispensers intended for ophthalmic use should be sterile, and may be regarded as falling below their professed standard of purity or quality if they are not sterile. These articles, which are regulated as medical devices unless packaged with the drugs with which they are to be used, should be packaged so as to maintain sterility until the package is opened and be labeled, on or within the retail package, so as to afford adequate directions and necessary warnings to minimize the hazard of injury resulting from contamination during use.

[47 FR 50455, Nov. 5, 1982]

##### **§800.12 Contact lens solutions and tablets; tamper-resistant packaging.**

(a) *General.* Unless contact lens solutions used, for example, to clean, disinfect, wet, lubricate, rinse, soak, or store contact lenses and salt tablets or other dosage forms to be used to make any such solutions are packaged in tamper-resistant retail packages, there is the opportunity for the malicious adulteration of these products with

risks both to individuals who unknowingly purchase adulterated products and with loss of consumer confidence in the security of the packages of over-the-counter (OTC) health care products. The Food and Drug Administration has the authority and responsibility under the Federal Food, Drug, and Cosmetic Act (the act) to establish a uniform national standard for tamper-resistant packaging of those OTC products vulnerable to malicious adulteration that will improve the security of OTC packaging and help assure the safety and effectiveness of the products contained therein. A contact lens solution or tablet or other dosage form to be used to make such a solution for retail sale that is not packaged in a tamper-resistant package and labeled in accordance with this section is adulterated under section 501 of the act or misbranded under section 502 of the act, or both.

(b) *Requirement for tamper-resistant package.* Each manufacturer and packer who packages for retail sale a product regulated as a medical device that is a solution intended for use with contact lenses, e.g., for cleaning, disinfecting, wetting, lubricating, rinsing, soaking, or storing contact lenses or tablets or other dosage forms to be used to make any such solution shall package the product in a tamper-resistant package, if this product is accessible to the public while held for sale. A tamper-resistant package is one having an indicator or barrier to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred. To reduce the likelihood of substitution of a tamper-resistant feature after tampering, the indicator or barrier to entry is required to be distinctive by design or by the use of an identifying characteristic (e.g., a pattern, name, registered trademark, logo, or picture). For purposes of this section, the term “distinctive by design” means the package cannot be duplicated with commonly available material or through commonly available processes. A tamper-resistant package may involve an immediate-container and closure system or secondary-container or carton system or any combination of systems intended to provide a visual

indication of package integrity. The tamper-resistant feature shall be designed to and shall remain intact when handled in a reasonable manner during manufacture, distribution, and retail display.

(c) *Labeling.* Each retail package of a product covered by this section is required to bear a statement that is prominently placed so that consumers are alerted to the tamper-resistant feature of the package. The labeling statement is also required to be so placed that it will be unaffected if the tamper-resistant feature of the package is breached or missing. If the tamper-resistant feature chosen to meet the requirement in paragraph (b) of this section is one that uses an identifying characteristic, that characteristic is required to be referred to in the labeling statement. For example, the labeling statement on a bottle with a shrink band could say “For your protection, this bottle has an imprinted seal around the neck.”

(d) *Requests for exemptions from packaging and labeling requirements.* A manufacturer or packer may request an exemption from the packaging and labeling requirements of this section. A request for an exemption is required to be submitted in the form of a citizen petition under §10.30 of this chapter and should be clearly identified on the envelope as a “Request for Exemption from Tamper-resistant Rule.” A petition for an exemption from a requirement of this section is required to contain the same kind of information about the product as is specified for OTC drugs in §211.132(d) of this chapter. This information collection requirement has been approved by the Office of Management and Budget under number 0910-0150.

(e) *Products subject to approved premarket approval applications.* Holders of approved premarket approval applications for products subject to this section are required to submit supplements to provide for changes in packaging to comply with the requirement of paragraph (b) of this section unless these changes do not affect the composition of the container, the torque (tightness) of the container, or the composition of the closure component in contact with the contents (cap liner

or innerseal) as these features are described in the approved premarket approval application. Any supplemental premarket approval application under this paragraph is required to include data sufficient to show that these changes do not adversely affect the product.

(f) *Effective date.* Each product subject to this section is required to comply with the requirements of this section on the dates listed below except to the extent that a product's manufacturer or packer has obtained an exemption from a packaging or labeling requirement:

(1) *Initial effective date for packaging requirements.* (i) The packaging requirement in paragraph (b) of this section is effective on February 7, 1983 for each contact lens solution packaged for retail sale on or after that date, except for the requirement in paragraph (b) of this section for a distinctive indicator or barrier to entry.

(ii) The packaging requirement in paragraph (b) of this section is effective on May 5, 1983 for each tablet that is to be used to make a contact lens solution and that is packaged for retail sale on or after that date.

(2) *Initial effective date for labeling requirements.* The requirement in paragraph (b) of this section that the indicator or barrier to entry be distinctive by design and the requirement in paragraph (c) of this section for a labeling statement are effective on May 5, 1983 for each product subject to this section packaged for retail sale on or after that date, except that the requirement for a specific label reference to any identifying characteristic is effective on February 6, 1984 for each affected product subject to this section packaged for retail sale on or after that date.

(3) *Retail level effective date.* The tamper-resistant packaging requirement of paragraph (b) of this section is effective on February 6, 1984 for each product subject to this section that is held for sale at retail level on or after that date that was packaged for retail sale before May 5, 1983. This does not include the requirement in paragraph (b) of this section that the indicator or barrier to entry be distinctive by design. Products packaged for retail sale

after May 5, 1983, are required to be in compliance with all aspects of the regulations without regard to the retail level effective date.

[47 FR 50455, Nov. 5, 1982; 48 FR 1706, Jan. 14, 1983, as amended at 48 FR 16666, Apr. 19, 1983; 48 FR 37625, Aug. 19, 1983; 53 FR 11252, Apr. 6, 1988]

EFFECTIVE DATE NOTE: A document published at 48 FR 41579, Sept. 16, 1983, stayed the effective date of § 800.12(f)(3) until further notice.

**§ 800.20 Patient examination gloves and surgeons' gloves; sample plans and test method for leakage defects; adulteration.**

(a) *Purpose.* The prevalence of human immunodeficiency virus (HIV), which causes acquired immune deficiency syndrome (AIDS), and its risk of transmission in the health care context, have caused the Food and Drug Administration (FDA) to look more closely at the quality control of barrier devices, such as surgeons' gloves and patient examination gloves (collectively known as medical gloves) to reduce the risk of transmission of HIV and other blood-borne infectious diseases. The Centers for Disease Control (CDC) recommend that health care workers wear medical gloves to reduce the risk of transmission of HIV and other blood-borne infectious diseases. The CDC recommends that health care workers wear medical gloves when touching blood or other body fluids, mucous membranes, or nonintact skin of all patients; when handling items or surfaces soiled with blood or other body fluids; and when performing venipuncture and other vascular access procedures. Among other things, CDC's recommendation that health care providers wear medical gloves demonstrates the proposition that devices labeled as medical gloves purport to be and are represented to be effective barriers against the transmission of blood- and fluid-borne pathogens. Therefore, FDA, through this regulation, is defining adulteration for patient examination and surgeons' gloves as a means of assuring safe and effective devices.

(1) For a description of a patient examination glove, see § 880.6250. Finger cots, however, are excluded from the

test method and sample plans in paragraphs (b) and (c) of this section.

(2) For a description of a surgeons' glove, see §878.4460 of this chapter.

(b) *Test method.* For the purposes of this regulation, FDA's analysis of gloves for leaks will be conducted by a water leak method, using 1,000 milliliters (mL) of water. Each medical glove will be analyzed independently. When packaged as pairs, each glove is considered separately, and both gloves will be analyzed. A defect on one of the gloves is counted as one defect; a defect in both gloves is counted as two defects. Defects are defined as leaks, tears, mold, embedded foreign objects, etc. A leak is defined as the appearance of water on the outside of the glove. This emergence of water from the glove constitutes a watertight barrier failure. Leaks within 1 and ½ inches of the cuff are to be disregarded.

(1) The following materials are required for testing: A 2¾-inch by 15-inch (clear) plastic cylinder with a hook on one end and a mark scored 1½ inches from the other end (a cylinder of another size may be used if it accommodates both cuff diameter and any water above the glove capacity); elastic strapping with velcro or other fastening material; automatic water-dispensing apparatus or manual device capable of delivering 1,000 mL of water; a stand with horizontal rod for hanging the hook end of the plastic tube. The support rod must be capable of holding the weight of the total number of gloves that will be suspended at any one time, e.g., five gloves suspended will weigh about 11 pounds.

(2) The following methodology is used: Examine the sample and identify code/ lot number, size, and brand as appropriate. Examine gloves for defects as follows: carefully remove the glove from the wrapper, box, etc., visually examining each glove for defects. Visual defects in the top 1½ inches of a glove will not be counted as a defect for the purposes of this rule. Visually defective gloves do not require further testing but are to be included in the total number of defective gloves count-

ed for the sample. Attach the glove to the plastic fill tube by bringing the cuff end to the 1½-inch mark and fastening with elastic strapping to make a watertight seal. Add 1,000 mL of room temperature water (i.e., 20 °C to 30 °C) into the open end of the fill tube. The water shall pass freely into the glove. (With some larger sizes of long-cuffed surgeons' gloves, the water level may reach only the base of the thumb. With some smaller gloves, the water level may extend several inches up the fill tube.)

(3) Immediately after adding the water, examine the glove for water leaks. Do not squeeze the glove; use only minimal manipulation to spread the fingers to check for leaks. Water drops may be blotted to confirm leaking. If the glove does not leak immediately, keep the glove/filling tube assembly upright and hang the assembly vertically from the horizontal rod, using the wire hook on the open end of the fill tube (do not support the filled glove while transferring). Make a second observation for leaks 2 minutes after addition of the water to the glove. Use only minimal manipulation of the fingers to check for leaks. Record the number of defective gloves.

(c) *Sample plans.* FDA will collect samples from lots of gloves to perform the test for defects described in paragraph (b) of this section in accordance with FDA's sampling inspection plans which are based on the tables of MIL-STD-105E (the military sampling standard, "Sampling Procedures and Tables for Inspection by Attributes," May 10, 1989). Based on the acceptable quality levels found in this standard, FDA has defined adulteration as follows: 2.5 or higher for surgeons' gloves and 4.0 or higher for patient examination gloves at a general inspection level II. FDA will use single normal sampling for lots of 1,200 gloves or less and multiple normal sampling for all larger lots. For convenience, the sample plans (sample size and accept/reject numbers) are shown in the following tables:

ADULTERATION LEVEL AT 2.5 FOR SURGEONS' GLOVES

Lot size	Sample	Sample size	Number examined	Number defective	
				Accept	Reject
35,001 and above .....	First .....	125	125	2	9
	Second .....	125	250	7	14
	Third .....	125	375	13	19
	Fourth .....	125	500	19	25
	Fifth .....	125	625	25	29
	Sixth .....	125	750	31	33
	Seventh .....	125	875	37	38
35,000 to 10,001 .....	First .....	80	80	1	7
	Second .....	80	160	4	10
	Third .....	80	240	8	13
	Fourth .....	80	320	12	17
	Fifth .....	80	400	17	20
	Sixth .....	80	480	21	23
	Seventh .....	80	560	25	26
10,000 to 3,201 .....	First .....	50	50	0	5
	Second .....	50	100	3	8
	Third .....	50	150	6	10
	Fourth .....	50	200	8	13
	Fifth .....	50	250	11	15
	Sixth .....	50	300	14	17
	Seventh .....	50	350	18	19
3,200 to 1,201 .....	First .....	32	32	0	4
	Second .....	32	64	1	6
	Third .....	32	96	3	8
	Fourth .....	32	128	5	10
	Fifth .....	32	160	7	11
	Sixth .....	32	192	10	12
	Seventh .....	32	224	13	14
1,200 to 501 .....	Single sample .....	.....	80	5	6
500 to 281 .....	Single sample .....	.....	50	3	4
280 to 151 .....	Single sample .....	.....	32	2	3
150 to 51 .....	Single sample .....	.....	20	1	2
50 to 0 .....	Single sample .....	.....	5	0	1

ADULTERATION LEVEL AT 4.0 FOR PATIENT EXAMINATION GLOVES

Lot size	Sample	Sample size	Number examined	Number defective	
				Accept	Reject
10,001 and above .....	First .....	80	80	2	9
	Second .....	80	160	7	14
	Third .....	80	240	13	19
	Fourth .....	80	320	19	25
	Fifth .....	80	400	25	29
	Sixth .....	80	480	31	33
	Seventh .....	80	560	37	38
10,000 to 3,201 .....	First .....	50	50	1	7
	Second .....	50	100	4	10
	Third .....	50	150	8	13
	Fourth .....	50	200	12	17
	Fifth .....	50	250	17	20
	Sixth .....	50	300	21	23
	Seventh .....	50	350	25	26
3,200 to 1,201 .....	First .....	32	32	0	5
	Second .....	32	64	3	8
	Third .....	32	96	6	10
	Fourth .....	32	128	8	13
	Fifth .....	32	160	11	15
	Sixth .....	32	192	14	17
	Seventh .....	32	224	18	19
1,200 to 501 .....	Single sample .....	.....	80	7	8
500 to 281 .....	Single sample .....	.....	50	5	6
280 to 151 .....	Single sample .....	.....	32	3	4
150 to 91 .....	Single sample .....	.....	20	2	3
90 to 26 .....	Single sample .....	.....	13	1	2
25 to 0 .....	Single sample .....	.....	3	0	1

(d) Lots of gloves which are tested and rejected using the test method according to paragraph (b) of this section, are adulterated within the meaning of section 501(c) of the Federal Food, Drug, and Cosmetic Act, and are subject to regulatory action, such as detention of imported products and seizure of domestic products.

[55 FR 51256, Dec. 12, 1990]

### Subpart C—Administrative Practices and Procedures

#### § 800.55 Administrative detention.

(a) *General.* This section sets forth the procedures for detention of medical devices intended for human use believed to be adulterated or misbranded. Administrative detention is intended to protect the public by preventing distribution or use of devices encountered during inspections that may be adulterated or misbranded, until the Food and Drug Administration (FDA) has had time to consider what action it should take concerning the devices, and to initiate legal action, if appropriate. Devices that FDA orders detained may not be used, moved, altered, or tampered with in any manner by any person during the detention period, except as authorized under paragraph (h) of this section, until FDA terminates the detention order under paragraph (j) of this section, or the detention period expires, whichever occurs first.

(b) *Criteria for ordering detention.* Administrative detention of devices may be ordered in accordance with this section when an authorized FDA representative, during an inspection under section 704 of the Federal Food, Drug, and Cosmetic Act (the act), has reason to believe that a device, as defined in section 201(h) of the act, is adulterated or misbranded.

(c) *Detention period.* The detention is to be for a reasonable period that may not exceed 20 calendar days after the detention order is issued, unless the FDA District Director in whose district the devices are located determines that a greater period is required to seize the devices, to institute injunction proceedings, or to evaluate the need for legal action, in which case the District Di-

rector may authorize detention for 10 additional calendar days. The additional 10-calendar-day detention period may be ordered at the time the detention order is issued or at any time thereafter. The entire detention period may not exceed 30 calendar days, except when the detention period is extended under paragraph (g)(6) of this section. An authorized FDA representative may, in accordance with paragraph (j) of this section, terminate a detention before the expiration of the detention period.

(d) *Issuance of detention order.* (1) The detention order shall be issued in writing, in the form of a detention notice, signed by the authorized FDA representative who has reason to believe that the devices are adulterated or misbranded, and issued to the owner, operator, or agent in charge of the place where the devices are located. If the owner or the user of the devices is different from the owner, operator, or agent in charge of the place where the devices are detained, a copy of the detention order shall be provided to the owner or user of the devices if the owner's or user's identity can be readily determined.

(2) If detention of devices in a vehicle or other carrier is ordered, a copy of the detention order shall be provided to the shipper of record and the owner of the vehicle or other carrier, if their identities can be readily determined.

(3) The detention order shall include the following information: (i) A statement that the devices identified in the order are detained for the period shown; (ii) a brief, general statement of the reasons for the detention; (iii) the location of the devices; (iv) a statement that these devices are not to be used, moved, altered, or tampered with in any manner during that period, except as permitted under paragraph (h) of this section, without the written permission of an authorized FDA representative; (v) identification of the detained devices; (vi) the detention order number; (vii) the date and hour of the detention order; (viii) the period of the detention; (ix) the text of section 304(g) of the act and paragraph (g) (1) and (2) of this section; (x) a statement that any informal hearing on an appeal of a detention order shall be conducted as a