

## § 868.1

## 21 CFR Ch. I (4–1–03 Edition)

- 868.5665 Powered percussor.
- 868.5675 Rebreathing device.
- 868.5690 Incentive spirometer.
- 868.5700 Nonpowered oxygen tent.
- 868.5710 Electrically powered oxygen tent.
- 868.5720 Bronchial tube.
- 868.5730 Tracheal tube.
- 868.5740 Tracheal/bronchial differential ventilation tube.
- 868.5750 Inflatable tracheal tube cuff.
- 868.5760 Cuff spreader.
- 868.5770 Tracheal tube fixation device.
- 868.5780 Tube introduction forceps.
- 868.5790 Tracheal tube stylet.
- 868.5795 Tracheal tube cleaning brush.
- 868.5800 Tracheostomy tube and tube cuff.
- 868.5810 Airway connector.
- 868.5820 Dental protector.
- 868.5830 Autotransfusion apparatus.
- 868.5860 Pressure tubing and accessories.
- 868.5870 Nonrebreathing valve.
- 868.5880 Anesthetic vaporizer.
- 868.5895 Continuous ventilator.
- 868.5905 Noncontinuous ventilator (IPPB).
- 868.5915 Manual emergency ventilator.
- 868.5925 Powered emergency ventilator.
- 868.5935 External negative pressure ventilator.
- 868.5955 Intermittent mandatory ventilation attachment.
- 868.5965 Positive end expiratory pressure breathing attachment.
- 868.5975 Ventilator tubing.
- 868.5995 Tee drain (water trap).

### Subpart G—Miscellaneous

- 868.6100 Anesthetic cabinet, table, or tray.
- 868.6175 Cardiopulmonary emergency cart.
- 868.6225 Nose clip.
- 868.6250 Portable air compressor.
- 868.6400 Calibration gas.
- 868.6700 Anesthesia stool.
- 868.6810 Tracheobronchial suction catheter.
- 868.6820 Patient position support.
- 868.6885 Medical gas yoke assembly.

AUTHORITY: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

SOURCE: 47 FR 31142, July 16, 1982, unless otherwise noted.

### Subpart A—General Provisions

#### § 868.1 Scope.

(a) This part sets forth the classification of anesthesiology devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a

device under part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, an anesthesiology device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed only in one subpart.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21, unless otherwise noted.

(e) Guidance documents referenced in this part are available on the Internet at <http://www.fda.gov/cdrh/guidance.html>.

[52 FR 17734, May 11, 1987, as amended at 67 FR 76681, Dec. 13, 2002]

#### § 868.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of

the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

[52 FR 17734, May 11, 1987]

**§ 868.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).**

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of

premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;