

## §7.1

7.85 Conduct of a presentation of views before report of criminal violation.

7.87 Records related to opportunities for presentation of views conducted before report of criminal violation.

AUTHORITY: 21 U.S.C. 321-393; 42 U.S.C. 241, 262, 263b-263n, 264.

SOURCE: 42 FR 15567, Mar. 22, 1977, unless otherwise noted.

### Subpart A—General Provisions

#### §7.1 Scope.

This part governs the practices and procedures applicable to regulatory enforcement actions initiated by the Food and Drug Administration pursuant to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) and other laws that it administers. This part also provides guidance for manufacturers and distributors to follow with respect to their voluntary removal or correction of marketed violative products. This part is promulgated to clarify and explain the regulatory practices and procedures of the Food and Drug Administration, enhance public understanding, improve consumer protection, and assure uniform and consistent application of practices and procedures throughout the agency.

[43 FR 26218, June 16, 1978, as amended at 65 FR 56476, Sept. 19, 2000]

#### §7.3 Definitions.

(a) *Agency* means the Food and Drug Administration.

(b) *Citation* or *cite* means a document and any attachments thereto that provide notice to a person against whom criminal prosecution is contemplated of the opportunity to present views to the agency regarding an alleged violation.

(c) *Respondent* means a person named in a notice who presents views concerning an alleged violation either in person, by designated representative, or in writing.

(d) *Responsible individual* includes those in positions of power or authority to detect, prevent, or correct violations of the Federal Food, Drug, and Cosmetic Act.

(e) [Reserved]

(f) *Product* means an article subject to the jurisdiction of the Food and Drug Administration, including any

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food, drug, and device intended for human or animal use, any cosmetic and biologic intended for human use, and any item subject to a quarantine regulation under part 1240 of this chapter. *Product* does not include an electronic product that emits radiation and is subject to parts 1003 and 1004 of this chapter.

(g) *Recall* means a firm's removal or correction of a marketed product that the Food and Drug Administration considers to be in violation of the laws it administers and against which the agency would initiate legal action, e.g., seizure. *Recall* does not include a market withdrawal or a stock recovery.

(h) *Correction* means repair, modification, adjustment, relabeling, destruction, or inspection (including patient monitoring) of a product without its physical removal to some other location.

(i) *Recalling firm* means the firm that initiates a recall or, in the case of a Food and Drug Administration-requested recall, the firm that has primary responsibility for the manufacture and marketing of the product to be recalled.

(j) *Market withdrawal* means a firm's removal or correction of a distributed product which involves a minor violation that would not be subject to legal action by the Food and Drug Administration or which involves no violation, e.g., normal stock rotation practices, routine equipment adjustments and repairs, etc.

(k) *Stock recovery* means a firm's removal or correction of a product that has not been marketed or that has not left the direct control of the firm, i.e., the product is located on premises owned by, or under the control of, the firm and no portion of the lot has been released for sale or use.

(l) *Recall strategy* means a planned specific course of action to be taken in conducting a specific recall, which addresses the depth of recall, need for public warnings, and extent of effectiveness checks for the recall.

(m) *Recall classification* means the numerical designation, i.e., I, II, or III, assigned by the Food and Drug Administration to a particular product recall to indicate the relative degree of

health hazard presented by the product being recalled.

(1) Class I is a situation in which there is a reasonable probability that the use of, or exposure to, a violative product will cause serious adverse health consequences or death.

(2) Class II is a situation in which use of, or exposure to, a violative product may cause temporary or medically reversible adverse health consequences or where the probability of serious adverse health consequences is remote.

(3) Class III is a situation in which use of, or exposure to, a violative product is not likely to cause adverse health consequences.

(n) *Consignee* means anyone who received, purchased, or used the product being recalled.

[42 FR 15567, Mar. 22, 1977, as amended at 43 FR 26218, June 16, 1978; 44 FR 12167, Mar. 6, 1979]

#### §7.12 Guaranty.

In case of the giving of a guaranty or undertaking referred to in section 303(c)(2) or (3) of the act, each person signing such guaranty or undertaking shall be considered to have given it.

#### §7.13 Suggested forms of guaranty.

(a) A guaranty or undertaking referred to in section 303(c)(2) of the act may be:

(1) Limited to a specific shipment or other delivery of an article, in which case it may be a part of or attached to the invoice or bill of sale covering such shipment or delivery, or

(2) General and continuing, in which case, in its application to any shipment or other delivery of an article, it shall be considered to have been given at the date such article was shipped or delivered by the person who gives the guaranty or undertaking.

(b) The following are suggested forms of guaranty or undertaking under section 303(c)(2) of the act:

(1) Limited form for use on invoice or bill of sale.

(Name of person giving the guaranty or undertaking) hereby guarantees that no article listed herein is adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, or is an article which may not, under the provisions of sec-

tion 404, 505, or 512 of the act, be introduced into interstate commerce.

(Signature and post-office address of person giving the guaranty or undertaking.)

(2) General and continuing form.

The article comprising each shipment or other delivery hereafter made by (name of person giving the guaranty or undertaking) to, or in the order of (name and post-office address of person to whom the guaranty or undertaking is given) is hereby guaranteed, as of the date of such shipment or delivery, to be, on such date, not adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, and not an article which may not, under the provisions of section 404, 505, or 512 of the act, be introduced into interstate commerce.

(Signature and post-office address of person giving the guaranty or undertaking.)

(c) The application of a guaranty or undertaking referred to in section 303(c)(2) of the act to any shipment or other delivery of an article shall expire when such article, after shipment or delivery by the person who gave such guaranty or undertaking, becomes adulterated or misbranded within the meaning of the act, or becomes an article which may not, under the provisions of section 404, 505, or 512 of the act, be introduced into interstate commerce.

(d) A guaranty or undertaking referred to in section 303(c)(3) of the act shall state that the shipment or other delivery of the color additive covered thereby was manufactured by a signer thereof. It may be a part of or attached to the invoice or bill of sale covering such color. If such shipment or delivery is from a foreign manufacturer, such guaranty or undertaking shall be signed by such manufacturer and by an agent of such manufacturer who resides in the United States.

(e) The following are suggested forms of guaranty or undertaking under section 303(c)(3) of the act:

(1) For domestic manufacturers:

(Name of manufacturer) hereby guarantees that all color additives listed herein were manufactured by him, and (where color additive regulations require certification) are from batches certified in accordance with the applicable regulations promulgated under the Federal Food, Drug, and Cosmetic Act.

(Signature and post-office address of manufacturer.)