

## § 801.116

### § 801.116 Medical devices having commonly known directions.

A device shall be exempt from section 502(f)(1) of the act insofar as adequate directions for common uses thereof are known to the ordinary individual.

### § 801.119 In vitro diagnostic products.

A product intended for use in the diagnosis of disease and which is an in vitro diagnostic product as defined in § 809.3(a) of this chapter shall be deemed to be in compliance with the requirements of this section and section 502(f)(1) of the act if it meets the requirements of § 809.10 of this chapter.

### § 801.122 Medical devices for processing, repacking, or manufacturing.

A device intended for processing, repacking, or use in the manufacture of another drug or device shall be exempt from section 502(f)(1) of the act if its label bears the statement "Caution: For manufacturing, processing, or repacking".

### § 801.125 Medical devices for use in teaching, law enforcement, research, and analysis.

A device subject to § 801.109 shall be exempt from section 502(f)(1) of this act if shipped or sold to, or in the possession of, persons regularly and lawfully engaged in instruction in pharmacy, chemistry, or medicine not involving clinical use, or engaged in law enforcement, or in research not involving clinical use, or in chemical analysis, or physical testing, and is to be used only for such instruction, law enforcement, research, analysis, or testing.

### § 801.127 Medical devices; expiration of exemptions.

(a) If a shipment or delivery, or any part thereof, of a device which is exempt under the regulations in this section is made to a person in whose possession the article is not exempt, or is made for any purpose other than those specified, such exemption shall expire, with respect to such shipment or delivery or part thereof, at the beginning of that shipment or delivery. The causing of an exemption to expire shall be considered an act which results in such de-

## 21 CFR Ch. I (4-1-08 Edition)

vice being misbranded unless it is disposed of under circumstances in which it ceases to be a drug or device.

(b) The exemptions conferred by §§ 801.119, 801.122, and 801.125 shall continue until the devices are used for the purposes for which they are exempted, or until they are relabeled to comply with section 502(f)(1) of the act. If, however, the device is converted, or manufactured into a form limited to prescription dispensing, no exemption shall thereafter apply to the article unless the device is labeled as required by § 801.109.

### § 801.128 Exceptions or alternatives to labeling requirements for medical devices held by the Strategic National Stockpile.

(a) The appropriate FDA Center Director may grant an exception or alternative to any provision listed in paragraph (f) of this section and not explicitly required by statute, for specified lots, batches, or other units of a medical device, if the Center Director determines that compliance with such labeling requirement could adversely affect the safety, effectiveness, or availability of such devices that are or will be included in the Strategic National Stockpile.

(b)(1)(i) A Strategic National Stockpile official or any entity that manufactures (including labeling, packing, relabeling, or repackaging), distributes, or stores devices that are or will be included in the Strategic National Stockpile may submit, with written concurrence from a Strategic National Stockpile official, a written request for an exception or alternative described in paragraph (a) of this section to the Center Director.

(ii) The Center Director may grant an exception or alternative described in paragraph (a) of this section on his or her own initiative.

(2) A written request for an exception or alternative described in paragraph (a) of this section must:

(i) Identify the specified lots, batches, or other units of the medical device that would be subject to the exception or alternative;

(ii) Identify the labeling provision(s) listed in paragraph (f) of this section

that are the subject of the exception or alternative request;

(iii) Explain why compliance with the labeling provision(s) could adversely affect the safety, effectiveness, or availability of the specified lots, batches, or other units of a medical device that are or will be held in the Strategic National Stockpile;

(iv) Describe any proposed safeguards or conditions that will be implemented so that the labeling of the device includes appropriate information necessary for the safe and effective use of the device, given the anticipated circumstances of use of the device;

(v) Provide a draft of the proposed labeling of the specified lots, batches, or other units of the medical device subject to the exception or alternative; and

(vi) Provide any other information requested by the Center Director in support of the request.

(c) The Center Director must respond in writing to all requests under this section. The Center Director may impose appropriate conditions when granting such an exception or alternative under this section.

(d) A grant of an exception or alternative under this section will include any safeguards or conditions deemed appropriate by the Center Director so that the labeling of devices subject to the exception or alternative includes the information necessary for the safe and effective use of the device, given the anticipated circumstances of use.

(e) If the Center Director grants a request for an exception or alternative to the labeling requirements under this section:

(1) The Center Director may determine that the submission and grant of a written request under this section satisfies the provisions relating to premarket notification submissions under § 807.81(a)(3) of this chapter.

(2)(i) For a Premarket Approval Application (PMA)-approved device, the submission and grant of a written request under this section satisfies the provisions relating to submission of PMA supplements under § 814.39 of this chapter; however,

(ii) The grant of the request must be identified in a periodic report under § 814.84 of this chapter.

(f) The Center Director may grant an exception or alternative under this section to the following provisions of this chapter, to the extent that the requirements in these provisions are not explicitly required by statute:

- (1) § 801.1(d);
- (2) § 801.60;
- (3) § 801.61;
- (4) § 801.62;
- (5) § 801.63;
- (6) § 801.109; and
- (7) Part 801, subpart H.

[72 FR 73601, Dec. 28, 2007]

### Subpart E—Other Exemptions

#### § 801.150 Medical devices; processing, labeling, or repacking.

(a) Except as provided by paragraphs (b) and (c) of this section, a shipment or other delivery of a device which is, in accordance with the practice of the trade, to be processed, labeled, or repacked, in substantial quantity at an establishment other than that where originally processed or packed, shall be exempt, during the time of introduction into and movement in interstate commerce and the time of holding in such establishment, from compliance with the labeling and packaging requirements of section 502(b) and (f) of the act if:

(1) The person who introduced such shipment or delivery into interstate commerce is the operator of the establishment where such device is to be processed, labeled, or repacked; or

(2) In case such person is not such operator, such shipment or delivery is made to such establishment under a written agreement, signed by and containing the post office addresses of such person and such operator, and containing such specifications for the processing, labeling, or repacking, as the case may be, of such device in such establishment as will insure, if such specifications are followed, that such device will not be adulterated or misbranded within the meaning of the act upon completion of such processing, labeling, or repacking. Such person and such operator shall each keep a copy of such agreement until 2 years after the final shipment or delivery of such device from such establishment, and shall