

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 870****[Docket No. 99P-4064]****Medical Devices; Exemptions From Premarket Notification; Class II Devices; Vascular Tunnelers****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Final rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing an order granting in part a petition requesting exemption from the premarket notification requirements for vascular tunnelers with certain limitations. This rule will exempt from premarket notification stainless steel vascular tunnelers of single unit construction. FDA is publishing this order in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: This rule is effective March 3, 2000.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ-404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1190.

SUPPLEMENTARY INFORMATION:**I. Statutory Background**

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Public Law 94-295)), as amended by the Safe Medical Devices Act of 1990 (the SMDA (Public Law 101-629)), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to ensure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a

device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use that is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976, (generally referred to as postamendments devices) are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations, 21 CFR part 807, require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is "substantially equivalent" within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Public Law 105-115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the act provides that 1 day after date of publication of the list under section 510(m)(1) of the act, FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device

that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff." That guidance can be obtained through the Internet on the CDRH home page at <http://www.fda.gov/cdrh> or by facsimile through CDRH Facts-on-Demand at 1-800-899-0381 or 301-827-0111. Specify "159" when prompted for the document shelf number.

III. Petition

On September 14, 1999, FDA received a petition requesting an exemption from premarket notification for the vascular tunneler. Vascular tunnelers are currently classified under 21 CFR 870.3460 as an accessory. In the **Federal Register** of November 17, 1999 (64 FR 62678), FDA published a notice announcing that this petition had been received and providing an opportunity for interested persons to submit comments on the petition by December 17, 1999. FDA has reviewed the petition and has determined that stainless steel vascular tunnelers of single unit construction to be used to place tunnels for vascular grafts meet the criteria for exemption from the notification requirements. This is the only type of vascular tunneler of which FDA presently has any knowledge. The exemption is limited to vascular tunnelers of the type described and is also subject to the general limitations on exemptions from premarket notification for cardiovascular devices as described in 21 CFR 870.9. For example, the exemption will not apply to devices of this type that present new indications, novel designs, or alternative materials.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule will relieve a burden and simplify the marketing of these devices, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 870 is amended as follows:

PART 870—CARDIOVASCULAR DEVICES

1. The authority citation for 21 CFR part 870 continues to read as follows:

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

2. Section 870.3460 is amended by revising paragraph (b) to read as follows:

§ 870.3460 Vascular graft prosthesis of 6 millimeters and greater diameter.

* * * * *

(b) *Classification.* Class II. The stainless steel vascular tunnel of single unit construction to be used to place tunnels for vascular grafts, included as an accessory to the device described in paragraph (a) of this section, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 870.9. All other devices classified in this section are subject to the premarket notification procedures.

Dated: February 24, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8834]

RIN 1545–AU22 and 1545–AX30

Treatment of Distributions to Foreign Persons Under Sections 367(e)(1) and 367(e)(2); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Monday, August 9, 1999 (64 FR 43072), relating to the treatment of distributions to foreign persons under section 367(e)(1) and (2) as added to the Internal Revenue Code by the Tax Reform Act of 1986, which affects U.S. corporations.

DATES: This correction is effective August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Guy A. Bracuti, 202–622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under section 367(e)(1) and (2) of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 8834) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8834), which was

the subject of FR Doc. 99–20092, is corrected as follows:

§ 1.367(e)–1 [Corrected]

1. On page 43076, column 2, § 1.367(e)–1(b)(2), lines 19, 20 and 21 from the bottom of the column, the language “entity (disregarded entity) under § 1.7701–3(b)(1)(ii) or (b)(2)(i)(C) are” is corrected to read “entity separate from its owner (disregarded entity) under § 301.7701–3 of this chapter are”.

2. On page 43076, column 3, § 1.367(e)–1(d)(1), lines 2 and 3 from the bottom of the column, the language “described in paragraph (b)(1) of this section are” is corrected to read “described in section 355 in which the distributing corporation is domestic and the controlled corporation is foreign are”.

§ 1.367(e)–2 [Corrected]

3. On page 43078, column 1, § 1.367(e)–2(b)(1)(ii)(B)(2), lines 7, 8 and 9 from the bottom of the column, the language “allocate \$45 (60×.75) of the recognized capital loss to Asset B and will allocate the remaining \$15 (60 × .25) of” is corrected to read “allocate \$15 (60×.25) of the recognized capital loss to Asset B and will allocate the remaining \$45 (60×.75) of”.

4. On page 43078, column 1, § 1.367(e)–2(b)(1)(ii)(C), lines 16 and 17, the language “shall not offset loss” is corrected to read “shall not be offset by a loss”.

5. On page 43081, column 1, § 1.367(e)–2(b)(2)(iii)(A)(2), line 2, the language “(directly)” is corrected to read “(directly and without regard to paragraph (b)(1)(iii) of this section)”.

6. On page 43081, column 1, § 1.367(e)–2(b)(2)(iii)(A)(3), line 2, the language “(directly)” is corrected to read “(directly and without regard to paragraph (b)(1)(iii) of this section)”.

7. On page 43081, column 1, § 1.367(e)–2(b)(2)(iii)(B), lines 7 through 11, the language “(or was a U.S. real property holding corporation with respect to the foreign distributee corporation during the five year period ending on the date of liquidation)” is corrected to read “(or is a former U.S. real property holding corporation the stock of which is treated as a U.S. real property interest for five years under section 897(c)(1)(A)(ii))”.

8. On page 43081, column 1, § 1.367(e)–2(b)(2)(iii)(C)(2), line 8 from the bottom of the paragraph, the language “disposes of” is corrected to read “disposes of (whether in a recognition or nonrecognition transaction)”.

9. On page 43081, column 1, § 1.367(e)–2(b)(2)(iii)(C)(2), the last three