

**§ 878.9 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 with 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;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

[65 FR 2317, Jan. 14, 2000]

### Subpart B—Diagnostic Devices

**§ 878.1800 Speculum and accessories.**

(a) *Identification.* A speculum is a device intended to be inserted into a body cavity to aid observation. It is either nonilluminated or illuminated and may have various accessories.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter, subject to the limitations in § 878.9.

[53 FR 23872, June 24, 1988, as amended at 54 FR 13827, Apr. 5, 1989; 59 FR 63010, Dec. 7, 1994; 66 FR 38802, July 25, 2001]

### Subpart C [Reserved]

### Subpart D—Prosthetic Devices

**§ 878.3250 External facial fracture fixation appliance.**

(a) *Identification.* An external facial fracture fixation appliance is a metal apparatus intended to be used during surgical reconstruction and repair to immobilize maxillofacial bone fragments in their proper facial relationship.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in

subpart E of part 807 of this chapter subject to § 878.9.

[53 FR 23872, June 24, 1988, as amended at 54 FR 13827, Apr. 5, 1989; 65 FR 2317, Jan. 14, 2000]

**§ 878.3300 Surgical mesh.**

(a) *Identification.* Surgical mesh is a metallic or polymeric screen intended to be implanted to reinforce soft tissue or bone where weakness exists. Examples of surgical mesh are metallic and polymeric mesh for hernia repair, and acetabular and cement restrictor mesh used during orthopedic surgery.

(b) *Classification.* Class II.

**§ 878.3500 Polytetrafluoroethylene with carbon fibers composite implant material.**

(a) *Identification.* A polytetrafluoroethylene with carbon fibers composite implant material is a porous device material intended to be implanted during surgery of the chin, jaw, nose, or bones or tissue near the eye or ear. The device material serves as a space-occupying substance and is shaped and formed by the surgeon to conform to the patient's need.

(b) *Classification.* Class II.

**§ 878.3530 Silicone inflatable breast prosthesis.**

(a) *Identification.* A silicone inflatable breast prosthesis is a silicone rubber shell made of polysiloxane(s), such as polydimethylsiloxane and polydiphenylsiloxane, that is inflated to the desired size with sterile isotonic saline before or after implantation. The device is intended to be implanted to augment or reconstruct the female breast.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before November 17, 1999, for any silicone inflatable breast prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before November 17, 1999, been found to be substantially equivalent to a silicone inflatable breast prosthesis that was in commercial distribution before May 28, 1976. Any other silicone inflatable breast prosthesis shall have an ap-

proved PMA or a declared completed PDP in effect before being placed in commercial distribution.

[53 FR 23872, June 24, 1988, as amended at 64 FR 45161, Aug. 19, 1999]

**§ 878.3540 Silicone gel-filled breast prosthesis.**

(a) *Identification*—(1) *Single-lumen silicone gel-filled breast prosthesis.* A single-lumen silicone gel-filled breast prosthesis is a silicone rubber shell made of polysiloxane(s), such as polydimethylsiloxane and polydiphenylsiloxane. The shell either contains a fixed amount cross-linked polymerized silicone gel, filler, and stabilizers or is filled to the desired size with injectable silicone gel at time of implantation. The device is intended to be implanted to augment or reconstruct the female breast.

(2) *Double-lumen silicone gel-filled breast prosthesis.* A double lumen silicone gel-filled breast prosthesis is a silicone rubber inner shell and a silicone rubber outer shell, both shells made of polysiloxane(s), such as polydimethylsiloxane and polydiphenylsiloxane. The inner shell contains fixed amounts of cross-linked polymerized silicone gel, fillers, and stabilizers. The outer shell is inflated to the desired size with sterile isotonic saline before or after implantation. The device is intended to be implanted to augment or reconstruct the female breast.

(3) *Polyurethane covered silicone gel-filled breast prosthesis.* A polyurethane covered silicone gel-filled breast prosthesis is an inner silicone rubber shell made of polysiloxane(s), such as polydimethylsiloxane and polydiphenylsiloxane, with an outer silicone adhesive layer and an outer covering of polyurethane; contained within the inner shell is a fixed amount of cross-linked polymerized silicone gel, fillers, and stabilizers and an inert support structure compartmentalizing the silicone gel. The device is intended to be implanted to augment or reconstruct the female breast.

(b) *Classification.* Class III.

(c) *Date premarket approval application (PMA) is required.* A PMA is required to be filed with the Food and Drug Administration on or before July 9, 1991