

and must pay the Agency for such holiday work at an hourly rate of \$44.40.

Done at Washington, DC, on January 17, 2002.

Margaret O'K. Glavin,

Acting Administrator.

[FR Doc. 02-1751 Filed 1-23-02; 8:45 am]

BILLING CODE 3410-DM-P

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

RIN 3150-AG87

#### List of Approved Spent Fuel Storage Casks: FuelSolutions™ Cask System Revision; Confirmation of Effective Date

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is confirming the effective date of January 28, 2002, for the direct final rule that appeared in the *Federal Register* of November 14, 2001 (66 FR 56982). This direct final rule amended the NRC's regulations by revising the BNFL Fuel Solutions (FuelSolutions™) cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 2 to Certificate of Compliance (CoC) Number 1026. Amendment No. 2 modified the Technical Specifications (TS) to allow the W74 canister to be placed in the transfer cask instead of the spent fuel pool until the affected storage cask is repaired or replaced. The TS was also modified to clarify the description of the other non-fissile material permitted to be stored in the W74 canister and to revise the temperatures to correspond to the liner thermocouples. This document confirms the effective date.

**DATES:** The effective date of January 28, 2002, is confirmed for this direct final rule.

**ADDRESSES:** Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website (<http://ruleforum.llnl.gov>). For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415-5905; e-mail [CAG@nrc.gov](mailto:CAG@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415-8126 (e-mail: [mlh1@nrc.gov](mailto:mlh1@nrc.gov)).

**SUPPLEMENTARY INFORMATION:** On November 14, 2001 (66 FR 56982), the NRC published in the *Federal Register* a direct final rule amending its regulations in 10 CFR 72 to revise the BNFL Fuel Solutions (FuelSolutions™) cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 2 to Certificate of Compliance (CoC) Number 1026. Amendment No. 2 modified the Technical Specifications (TS) to allow the W74 canister to be placed in the transfer cask instead of the spent fuel pool until the affected storage cask is repaired or replaced. The TS were also modified to clarify the description of the other non-fissile material permitted to be stored in the W74 canister and to revise the temperatures to correspond to the liner thermocouples. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 17th day of January, 2002.

For the Nuclear Regulatory Commission,  
**Michael T. Lesar,**  
Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 02-1719 Filed 1-23-02; 8:45 am]

BILLING CODE 7590-01-P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 876

[Docket No. 01P-0304]

#### Medical Devices; Gastroenterology-Urology Devices; Classification of the Ingestible Telemetric Gastrointestinal Capsule Imaging System

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is classifying the ingestible telemetric gastrointestinal capsule imaging system device into class II (special controls). The special

controls that will apply to this device are set forth below. The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the amendments), the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997 (FDAMA). The agency is classifying this device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

**DATES:** This rule is effective February 25, 2002.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Neuland, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1220.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the amendments, generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the FDA regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the *Federal Register* announcing such classification.

On June 11, 2001, FDA received a petition submitted under section 513(f)(2) of the act by Given Imaging, Ltd., through Hogan & Hartson, L.L.P., seeking an evaluation of the automatic class III designation of its GIVEN Diagnostic Imaging System (GIVEN System). In accordance with section 513(f)(1) of the act, FDA issued an order automatically classifying the GIVEN System in class III because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or II. After reviewing information submitted in the petition, FDA determined that the GIVEN System can be classified in class II with the establishment of special controls. This device is intended for visualization of the small bowel mucosa as an adjunctive tool in the detection of abnormalities of the small bowel. FDA believes that class II special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

FDA has identified the following risks to health associated specifically with this type of device: (1) Biocompatibility; (2) electrical and mechanical safety; (3) radio-frequency radiated power and electromagnetic compatibility, including interference with other medical devices and with this device (e.g., interference with image acquisition); (4) functional reliability, including structural integrity and image acquisition; (5) intestinal obstruction or injury; and (6) misinterpretation of the captured images. Therefore, in addition to the general controls of the act, the device is subject to a special controls guidance document entitled "Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging System; Final Guidance for Industry and FDA."

The class II special controls guidance provides information on how to meet premarket (510(k)) submission requirements for the device, including testing standards for biocompatibility, and electrical and mechanical performance. The class II special controls guidance also includes appropriate prescription and patient labeling. FDA believes that adherence to the class II special controls addresses the risks to health identified above and provides a reasonable assurance of the safety and effectiveness of the device.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirement under section 510(k) of the

act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness and, therefore, the device is not exempt from the premarket notification requirements. The device is used for visualization of the small bowel mucosa as an adjunctive tool in the detection of abnormalities of the small bowel. FDA review of key design features, data sets from bench studies and clinical trials, other relevant performance data, and labeling will ensure that acceptable levels of performance for both safety and effectiveness are addressed before marketing clearance. Thus, persons who intend to market this device must submit to FDA a premarket notification submission containing information on the ingestible telemetric gastrointestinal capsule imaging system before marketing the device.

On August 1, 2001, FDA issued an order classifying the GIVEN System and substantially equivalent devices of this generic type into class II under the generic name, ingestible telemetric gastrointestinal capsule imaging system. FDA identifies this generic type of device as an ingestible telemetric gastrointestinal capsule imaging system, which is intended for visualization of the small bowel mucosa as an adjunctive tool in the detection of abnormalities in the small bowel.

FDA is codifying this device by adding § 876.1300. The order also identifies a special control applicable to this device a guidance document entitled "Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging System; Final Guidance for Industry and FDA."

#### II. Electronic Access

In order to receive the guidance entitled "Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging System; Final Guidance for Industry and FDA" via your fax machine, call the CDRH Facts-on-Demand system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. At the first voice prompt press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1385) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the

Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at <http://www.fda.gov/cdrh>. The document entitled "Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging System; Final Guidance for Industry and FDA" is available on the Internet at <http://www.fda.gov/cdrh/ode/guidance/1385.pdf>.

#### III. Environmental Impact

The agency has determined under 21 CFR 25.34(b) 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.

#### IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601-612) (as amended by subtitle D of the Small Business Regulatory 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 it 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. FDA knows of only one manufacturer of this type of device.

Classification of these devices from class III to class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that the final rule will not have a significant impact on a substantial number of small entities. In addition, this final rule will not impose costs of \$100 million or more on either the private sector or State, local, and tribal governments in the aggregate and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act is not required.

#### V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

#### VI. Paperwork Reduction Act of 1995

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 876

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 876 is amended as follows:

#### PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 continues to read as follows:

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

2. Section 876.1300 is added to subpart B to read as follows:

#### § 876.1300 Ingestible telemetric gastrointestinal capsule imaging system.

(a) *Identification.* An ingestible telemetric gastrointestinal capsule imaging system is used for visualization

of the small bowel mucosa as an adjunctive tool in the detection of abnormalities of the small bowel. The device captures images of the small bowel with a wireless camera contained in a capsule. This device includes an ingestible capsule (containing a light source, camera, transmitter, and battery), an antenna array, a receiving/recording unit, a data storage device, computer software to process the images, and accessories.

(b) *Classification.* Class II (special controls). The special control is FDA's guidance, "Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging Systems; Final Guidance for Industry and FDA."

Dated: January 14, 2002.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 02-1722 Filed 1-23-02; 8:45 am]

**BILLING CODE 4160-01-5**

#### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Parts 2 and 15

**RIN 2900-AJ63**

#### Delegations of Authority—Equal Employment Opportunity (EEO) Responsibilities

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document delegates to certain Department of Veterans Affairs (VA) officials authority to supervise and control the operation of the administrative Equal Employment Opportunity (EEO) Discrimination Complaint Processing System; to make procedural decisions to accept or dismiss discrimination complaints; to decide breach of settlement agreement claims; to resolve claims of dissatisfaction with the processing of previously filed discrimination complaints; to make under limited circumstances substantive final agency decisions; and take final agency action following an Equal Employment Opportunity Commission (EEOC) Administrative Judge's decision; and to monitor agency compliance with orders and decisions of the Office of Employment Discrimination Complaint Adjudication (OEDCA) and EEOC. The document also requires that any complaint filed against the Secretary or Deputy Secretary based upon personal actions or decisions by these officials as opposed to ministerial actions will be

transferred to another Federal agency for processing and adjudication on a cost reimbursable basis. This document also makes changes to reflect that the Deputy Assistant Secretary for Resolution Management is responsible for coordinating activities regarding allegations of discrimination on the basis of handicap in programs and activities conducted by VA.

**DATES:** *Effective Date:* January 24, 2002.

#### FOR FURTHER INFORMATION CONTACT:

James S. Jones, Deputy Assistant Secretary for Resolution Management, 202-501-2800.

**SUPPLEMENTARY INFORMATION:** When the Department's EEO complaint resolution process was reorganized several years ago, a cumbersome regulation was promulgated which outlined a transitional process for the transfer of procedural decision making authority from the Office of General Counsel to the Office of Resolution Management (ORM). Since that time, the authority transfer has been completed, and there is no further need for the bifurcated authority in the regulation. It is rescinded by this document, and in its place new regulations delegate a series of authorities to manage the employment discrimination complaint resolution process; to make procedural decisions to accept or dismiss complaints; to decide claims of breach of settlement agreement; to resolve claims of dissatisfaction related to the processing of a previously filed employment discrimination complaint; to make limited substantive final agency decisions and to take final agency action following an EEOC Administrative Judge's decision; to monitor agency compliance with the orders and decisions of OEDCA and EEOC; and to transfer to another federal agency for processing and adjudication any complaints filed against the Secretary or Deputy Secretary based upon their personal actions or decisions rather than ministerial actions.

The Deputy Assistant Secretary for Resolution Management is delegated authority to supervise and control the operation of the administrative EEO discrimination complaint processing within the Department. The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and Regional EEO Officers/Field Managers are delegated authority to accept or dismiss discrimination complaints filed by employees, former employees, and applicants for employment. The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy and Compliance are also