

(2) The 21 CFR 809.10(a) and (b) compliant labeling must include the following limitations:

(i) A limiting statement that this device is not intended to be used a stand-alone device but as an adjunct to other clinical information to aid in the evaluation of patients who are being considered for standard of care neuroimaging.

(ii) A limiting statement that reads “A negative result is generally associated with the absence of acute intracranial lesions. An appropriate neuroimaging method is required for diagnosis of acute intracranial lesions.”

(iii) As applicable, a limiting statement that reads “This device is for use by laboratory professionals in a clinical laboratory setting.”

Dated: June 8, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018-12760 Filed 6-13-18; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 876

[Docket No. FDA-2018-N-1862]

#### Medical Devices; Gastroenterology-Urology Devices; Classification of the Endoscopic Electrosurgical Clip Cutting System

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

**ACTION:** Final order.

**SUMMARY:** The Food and Drug Administration (FDA or we) is classifying the endoscopic electrosurgical clip cutting system into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the endoscopic electrosurgical clip cutting system’s classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients’ access to beneficial innovative devices, in part by reducing regulatory burdens. **DATES:** This order is effective June 14, 2018. The classification was applicable on December 22, 2017.

**FOR FURTHER INFORMATION CONTACT:** Purva Pandya, Center for Devices and Radiological Health, Food and Drug

Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G223, Silver Spring, MD 20993-0002, 240-402-9979, [Purva.Pandya@fda.hhs.gov](mailto:Purva.Pandya@fda.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Upon request, FDA has classified the endoscopic electrosurgical clip cutting system as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients’ access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as “postamendments devices” because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act to a predicate device that does not require premarket approval (see 21 U.S.C. 360c(i)). We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k) and part 807 (21 CFR part 807), respectively).

FDA may also classify a device through “De Novo” classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105-115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112-144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After

receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA shall classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients’ access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s. As a result, other device sponsors do not have to submit a De Novo request or PMA in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining “substantial equivalence”). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

##### II. De Novo Classification

On April 11, 2016, Ovesco Endoscopy AG submitted a request for De Novo classification of the remOVE System. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on December 22, 2017, FDA issued an order to the requester classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 876.4310. We have named the generic type of device endoscopic electrosurgical clip cutting system, and it is identified as a

prescription device that applies electrical energy to fragment metallic clips, which are devices placed in the digestive tract to close gastrointestinal perforations, hemorrhages, or perform resection. The system includes instruments that are then used to

remove the fragmented clips from the digestive tract.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—ENDOSCOPIC ELECTROSURGICAL CLIP CUTTING SYSTEM RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Unintended tissue damage (burns, perforations, bleeding) .....	Animal performance testing, Non-clinical performance testing, Electrical and thermal safety testing, Usability testing, and Labeling.
Electromagnetic interference/Electrical shock .....	Electromagnetic compatibility testing, Electrical safety testing, and Labeling.
Adverse tissue reaction .....	Biocompatibility evaluation.
Infection .....	Sterilization validation, Shelf life testing, and Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. In order for a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. We encourage sponsors to consult with us if they wish to use a non-animal testing method they believe is suitable, adequate, validated, and feasible. We will consider if such an alternative method could be assessed for equivalency to an animal test method. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, endoscopic electrosurgical clip cutting systems are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met (referring to 21 U.S.C. 352(f)(1)).

**III. Analysis of 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. Paperwork Reduction Act of 1995**

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the

Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the guidance document “De Novo Classification Process (Evaluation of Automatic Class III Designation)” have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

**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 part 876 continues to read as follows:

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

■ 2. Add § 876.4310 to subpart E to read as follows:

**§ 876.4310 Endoscopic electrosurgical clip cutting system.**

(a) *Identification.* An endoscopic electrosurgical clip cutting system is a prescription device that applies electrical energy to fragment metallic clips, which are devices placed in the digestive tract to close gastrointestinal

perforations, hemorrhages, or perform resection. The system includes instruments that are then used to remove the fragmented clips from the digestive tract.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:

- (i) Performance bench testing to evaluate the functionality (including stress, compatibility, usability, and reliability) of the device during use;
- (ii) Electrical and thermal safety testing; and
- (iii) Electromagnetic compatibility testing.

(2) Animal testing must evaluate tissue damage, including thermal effects, during the clip removal procedure. This testing must also evaluate usability and effectiveness of the device.

(3) The patient-contacting components of the device must be demonstrated to be biocompatible.

(4) Performance data must demonstrate the sterility of the device components intended to be provided sterile.

(5) Performance data must support shelf life by demonstrating continued sterility of the device (or the sterile components), package integrity, and device functionality over the labeled shelf life.

(6) Labeling of the device must include:

- (i) Instructions for use, and
- (ii) A shelf life for single use components.

Dated: June 8, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018-12794 Filed 6-13-18; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 149

[Docket ID: DOD-2017-OS-0050]

RIN 0790-AJ59

#### Policy on Technical Surveillance Countermeasures

**AGENCY:** Under Secretary of Defense for Intelligence, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule removes DoD's regulation concerning the Technical Surveillance Countermeasures (TSCM) Program. DoD originally determined that rulemaking was required based on the portion of this part that speaks to providing assistance to non-DoD agencies. However, this part places no burden on other agencies. The description of the relationship with other agencies is in accordance with federal law, and this part is unnecessary. Therefore, this part can be removed from the CFR.

**DATES:** This rule is effective on June 14, 2018.

**FOR FURTHER INFORMATION CONTACT:** Richard Davison, 703-697-4850.

**SUPPLEMENTARY INFORMATION:** It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing DoD internal policies and procedures that are publically available on the Department's issuance website.

This part contains internal DoD requirements and thus, does not fiscally impact parties outside of DoD. DoD's internal DoD Instruction 5240.05, "Technical Surveillance Countermeasures (TSCM)," remains in effect exclusively for the management of TSCM in DoD and is available at [http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/524005\\_2014.pdf](http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/524005_2014.pdf).

This rule is not significant under Executive Order (E.O.) 12866, "Regulatory Planning and Review," therefore, E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs" does not apply.

#### List of Subjects in 32 CFR Part 149

Classified information, Investigations.

#### PART 149—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 149 is removed.

Dated: June 11, 2018.

**Shelly E. Finke,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2018-12778 Filed 6-13-18; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2018-0438]

#### Drawbridge Operation Regulation; Newark Bay, Newark, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Lehigh Valley Bridge across the Newark Bay, mile 4.3, at Newark, New Jersey. This temporary deviation is necessary to allow the bridge to remain in the closed-to-navigation position to facilitate repairs.

**DATES:** This deviation is effective from 6 a.m. on July 15, 2018, to 6 p.m. on August 6, 2018.

**ADDRESSES:** The docket for this deviation, USCG-2018-0438 is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Judy Leung-Yee, Bridge Management Specialist, First District Bridge Branch, U.S. Coast Guard, telephone 212-514-4336, email [Judy.K.Leung-Yee@uscg.mil](mailto:Judy.K.Leung-Yee@uscg.mil).

**SUPPLEMENTARY INFORMATION:** Consolidated Rail Corporation, the owner of the bridge, requested a temporary deviation from the normal operating schedule to facilitate A-Frame sheave bearing repairs. The Lehigh Valley Bridge across the Newark Bay, mile 4.3, at Newark, New Jersey is a lift bridge with a vertical clearance in the closed position of 35 feet at mean high water and 39 feet at mean low water. The existing bridge operating

regulations are listed at 33 CFR 117.5 and 117.735.

Under this temporary deviation, the Lehigh Valley Bridge shall remain in the closed position from 6 a.m. on July 15, 2018, to 6 p.m. on July 16, 2018. Should inclement weather occur, the following rain dates may be used: (1) From 6 a.m. on July 22, 2018, to 6 p.m. on July 23, 2018; (2) from 6 a.m. on July 29, 2018, to 6 p.m. on July 30, 2018; or (3) from 6 a.m. on August 5, 2018, to 6 p.m. on August 6, 2018.

The waterway users are seasonal recreational boaters and commercial vessels of various sizes. Coordination with waterway users indicated no objections to this temporary deviation. Vessels able to pass under the bridge in the closed position may do so at any time. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass.

The Coast Guard will inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 11, 2018.

**C.J. Bisignano,**

*Supervisory Bridge Management Specialist, First Coast Guard District.*

[FR Doc. 2018-12774 Filed 6-13-18; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2018-0526]

RIN 1625-AA00

#### Safety Zone, Festival of the Fish, Vermillion River, Vermillion, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters within a 420-foot radius of the launch site located near the mouth of the Vermillion River, Vermillion, OH. This safety zone is