

sell, dispense, provide customer support for, or distribute OTC hearing aids.

(ii) *Sale of OTC hearing aids is not an exemption.* The servicing, marketing, sale, dispensing, customer support, or distribution of OTC hearing aids does not exempt a person from any State or local government's professional or establishment requirements that are consistent with this section.

(iii) *Representations may create professional obligations.* A person shall not incur specialized obligations by representing as a servicer, marketer, seller, dispenser, customer support representative, or distributor (or an equivalent description) of OTC hearing aids. However, a person representing as any other defined professional or establishment, or as a State licensed dispenser, is subject to applicable State and local requirements even if the person undertakes commercial or professional activities only in relation to OTC hearing aids.

(3) *Private remedies.* This section does not modify or otherwise affect the ability of any person to exercise a private right of action under any State or Federal product liability, tort, warranty, contract, or consumer protection law.

(i) *Incorporation by reference.* ANSI/CTA-2051, "Personal Sound Amplification Performance Criteria," dated January 2017 (ANSI/CTA-2051:2017), is incorporated by reference into this section with the approval of the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Food and Drug Administration and at the National Archives and Records Administration (NARA). Contact the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500. For information on the availability of this material at NARA, email: [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov), or go to: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html). The material may be obtained from Consumer Technology Association (CTA), Technology & Standards Department, 1919 S Eads Street, Arlington, VA 22202; phone: 703-907-7600; fax: (703) 907-7693; email: [standards@ce.org](mailto:standards@ce.org), website: [www.cta.tech](http://www.cta.tech).

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## Subpart C—Administrative Practices and Procedures

### § 800.55 Administrative detention.

(a) *General.* This section sets forth the procedures for detention of medical devices intended for human use believed to be adulterated or misbranded. Administrative detention is intended to protect the public by preventing distribution or use of devices encountered during inspections that may be adulterated or misbranded, until the Food and Drug Administration (FDA) has had time to consider what action it should take concerning the devices, and to initiate legal action, if appropriate. Devices that FDA orders detained may not be used, moved, altered, or tampered with in any manner by any person during the detention period, except as authorized under paragraph (h) of this section, until FDA terminates the detention order under paragraph (j) of this section, or the detention period expires, whichever occurs first.

(b) *Criteria for ordering detention.* Administrative detention of devices may be ordered in accordance with this section when an authorized FDA representative, during an inspection under section 704 of the Federal Food, Drug, and Cosmetic Act (the act), has reason to believe that a device, as defined in section 201(h) of the act, is adulterated or misbranded.

(c) *Detention period.* The detention is to be for a reasonable period that may not exceed 20 calendar days after the detention order is issued, unless the FDA Division Director in whose division the devices are located determines that a greater period is required to seize the devices, to institute injunction proceedings, or to evaluate the need for legal action, in which case the Division Director may authorize detention for 10 additional calendar days. The additional 10-calendar-day detention period may be ordered at the time the detention order is issued or at any time thereafter. The entire detention period may not exceed 30 calendar days, except when the detention period is extended under paragraph (g)(6) of this section. An authorized FDA representative may, in accordance with paragraph (j) of this section, terminate

a detention before the expiration of the detention period.

(d) *Issuance of detention order.* (1) The detention order shall be issued in writing, in the form of a detention notice, signed by the authorized FDA representative who has reason to believe that the devices are adulterated or misbranded, and issued to the owner, operator, or agent in charge of the place where the devices are located. If the owner or the user of the devices is different from the owner, operator, or agent in charge of the place where the devices are detained, a copy of the detention order shall be provided to the owner or user of the devices if the owner's or user's identity can be readily determined.

(2) If detention of devices in a vehicle or other carrier is ordered, a copy of the detention order shall be provided to the shipper of record and the owner of the vehicle or other carrier, if their identities can be readily determined.

(3) The detention order shall include the following information:

(i) A statement that the devices identified in the order are detained for the period shown;

(ii) A brief, general statement of the reasons for the detention;

(iii) The location of the devices;

(iv) A statement that these devices are not to be used, moved, altered, or tampered with in any manner during that period, except as permitted under paragraph (h) of this section, without the written permission of an authorized FDA representative;

(v) Identification of the detained devices;

(vi) The detention order number;

(vii) The date and hour of the detention order;

(viii) The period of the detention;

(ix) The text of section 304(g) of the act and paragraph (g) (1) and (2) of this section;

(x) A statement that any informal hearing on an appeal of a detention order shall be conducted as a regulatory hearing under part 16 of this chapter, with certain exceptions described in paragraph (g)(3) of this section; and

(xi) The mailing address, telephone number, and name of the FDA Division Director.

(e) *Approval of detention order.* A detention order, before issuance, shall be approved by the FDA Division Director in whose division the devices are located. If prior written approval is not feasible, prior oral approval shall be obtained and confirmed by written memorandum within FDA as soon as possible.

(f) *Labeling or marking a detained device.* An FDA representative issuing a detention order under paragraph (d) of this section shall label or mark the devices with official FDA tags that include the following information:

(1) A statement that the devices are detained by the United States Government in accordance with section 304(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 334(g)).

(2) A statement that the devices shall not be used, moved, altered, or tampered with in any manner for the period shown, without the written permission of an authorized FDA representative, except as authorized in paragraph (h) of this section.

(3) A statement that the violation of a detention order or the removal or alteration of the tag is punishable by fine or imprisonment or both (section 303 of the act, 21 U.S.C. 333).

(4) The detention order number, the date and hour of the detention order, the detention period, and the name of the FDA representative who issued the detention order.

(g) *Appeal of a detention order.* (1) A person who would be entitled to claim the devices, if seized, may appeal a detention order. Any appeal shall be submitted in writing to the FDA Division Director in whose division the devices are located within 5 working days of receipt of a detention order. If the appeal includes a request for an informal hearing, as defined in section 201(x) of the act, the appellant shall request either that a hearing be held within 5 working days after the appeal is filed or that the hearing be held at a later date, which shall not be later than 20 calendar days after receipt of a detention order.

(2) The appellant of a detention order shall state the ownership or proprietary interest the appellant has in the detained devices. If the detained devices are located at a place other than

an establishment owned or operated by the appellant, the appellant shall include documents showing that the appellant would have legitimate authority to claim the devices if seized.

(3) Any informal hearing on an appeal of a detention order shall be conducted as a regulatory hearing pursuant to regulation in accordance with part 16 of this chapter, except that:

(i) The detention order under paragraph (d) of this section, rather than the notice under §16.22(a) of this chapter, provides notice of opportunity for a hearing under this section and is part of the administrative record of the regulatory hearing under §16.80(a) of this chapter.

(ii) A request for a hearing under this section should be addressed to the FDA Division Director.

(iii) The last sentence of §16.24(e) of this chapter, stating that a hearing may not be required to be held at a time less than 2 working days after receipt of the request for a hearing, does not apply to a hearing under this section.

(iv) Paragraph (g)(4) of this section, rather than §16.42(a) of this chapter, describes the FDA employees who preside at hearings under this section.

(4) The presiding officer of a regulatory hearing on an appeal of a detention order, who also shall decide the appeal, shall be an Office of Regulatory Affairs Program Director or another FDA official senior to an FDA Division Director who is permitted by §16.42(a) of this chapter to preside over the hearing.

(5) If the appellant requests a regulatory hearing and requests that the hearing be held within 5 working days after the appeal is filed, the presiding officer shall, within 5 working days, hold the hearing and render a decision affirming or revoking the detention.

(6) If the appellant requests a regulatory hearing and requests that the hearing be held at a date later than within 5 working days after the appeal is filed, but not later than 20 calendar days after receipt of a detention order, the presiding officer shall hold the hearing at a date agreed upon by FDA and the appellant. The presiding officer shall decide whether to affirm or revoke the detention within 5 working

days after the conclusion of the hearing. The detention period extends to the date of the decision even if the 5-working-day period for making the decision extends beyond the otherwise applicable 20-calendar-day or 30-calendar-day detention period.

(7) If the appellant appeals the detention order but does not request a regulatory hearing, the presiding officer shall render a decision on the appeal affirming or revoking the detention within 5 working days after the filing of the appeal.

(8) If the presiding officer affirms a detention order, the devices continue to be detained until FDA terminates the detention under paragraph (j) of this section or the detention period expires, whichever occurs first.

(9) If the presiding officer revokes a detention order, FDA shall terminate the detention under paragraph (j) of this section.

(h) *Movement of detained devices.* (1) Except as provided in this paragraph (h), no person shall move detained devices within or from the place where they have been ordered detained until FDA terminates the detention under paragraph (j) of this section or the detention period expires, whichever occurs first.

(2) If detained devices are not in final form for shipment, the manufacturer may move them within the establishment where they are detained to complete the work needed to put them in final form. As soon as the devices are moved for the purpose of the preceding sentence, the individual responsible for their movement shall orally notify the FDA representative who issued the detention order, or another responsible division office official, of the movement of the devices. As soon as the devices are put in final form, they shall be segregated from other devices, and the individual responsible for their movement shall orally notify the FDA representative who issued the detention order, or another responsible division office official, of their new location. The devices put in final form shall not be moved further without FDA approval.

(3) The FDA representative who issued the detention order, or another responsible division office official, may

approve, in writing, the movement of detained devices for any of the following purposes:

- (i) To prevent interference with an establishment's operations or harm to the devices.
- (ii) To destroy the devices.
- (iii) To bring the devices into compliance.
- (iv) For any other purpose that the FDA representative who issued the detention order, or other responsible division office official, believes is appropriate in the case.

(4) If an FDA representative approves the movement of detained devices under paragraph (h)(3) of this section, the detained devices shall remain segregated from other devices and the person responsible for their movement shall immediately orally notify the official who approved the movement of the devices, or another responsible FDA division office official, of the new location of the detained devices.

(5) Unless otherwise permitted by the FDA representative who is notified of, or who approves, the movement of devices under this paragraph, the required tags shall accompany the devices during and after movement and shall remain with the devices until FDA terminates the detention or the detention period expires, whichever occurs first.

(i) *Actions involving adulterated or misbranded devices.* If FDA determines that the detained devices, including any that have been put in final form, are adulterated or misbranded, or both, it may initiate legal action against the devices or the responsible individuals, or both, or request that the devices be destroyed or otherwise brought into compliance with the act under FDA's supervision.

(j) *Detention termination.* If FDA decides to terminate a detention or when the detention period expires, whichever occurs first, an FDA representative authorized to terminate a detention will issue a detention termination notice releasing the devices to any person who received the original detention order or that person's representative and will remove, or authorize in writing the removal of, the required labels or tags.

(k) *Recordkeeping requirements.* (1) After issuance of a detention order

under paragraph (d) of this section, the owner, operator, or agent in charge of any factory, warehouse, other establishment, or consulting laboratory where detained devices are manufactured, processed, packed, or held shall have, or establish, and maintain adequate records relating to how the detained devices may have become adulterated or misbranded, records on any distribution of the devices before and after the detention period, records on the correlation of any in-process detained devices that are put in final form under paragraph (h) of this section to the completed devices, records of any changes in, or processing of, the devices permitted under the detention order, and records of any other movement under paragraph (h) of this section. Records required under this paragraph shall be provided to the FDA on request for review and copying. Any FDA request for access to records required under this paragraph shall be made at a reasonable time, shall state the reason or purpose for the request, and shall identify to the fullest extent practicable the information or type of information sought in the records to which access is requested.

(2) Records required under this paragraph shall be maintained for a maximum period of 2 years after the issuance of the detention order or for such other shorter period as FDA directs. When FDA terminates the detention or when the detention period expires, whichever occurs first, FDA will advise all persons required under this paragraph to keep records concerning that detention whether further recordkeeping is required for the remainder of the 2-year, or shorter, period. FDA ordinarily will not require further recordkeeping if the agency determines that the devices are not adulterated or misbranded or that recordkeeping is not necessary to protect the public health, unless the records are required under other regulations in this chapter (e.g., the good manufacturing practice regulation in part 820 of this chapter).

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