

security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

**Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and TN. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

**Backfit Analysis**

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

**Congressional Review Act**

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

**List of Subjects in 10 CFR Part 72**

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

**PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE**

■ 1. The authority citation for part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).  
 Section 72.44(g) also issued under secs. 142(b) and 148(c),(d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

**§ 72.214 List of approved spent fuel storage casks.**

- \* \* \* \* \*
- Certificate Number: 1004.
- Initial Certificate Effective Date: January 23, 1995.
- Amendment Number 1 Effective Date: April 27, 2000.
- Amendment Number 2 Effective Date: September 5, 2000.
- Amendment Number 3 Effective Date: September 12, 2001.
- Amendment Number 4 Effective Date: February 12, 2002.
- Amendment Number 5 Effective Date: January 7, 2004.
- Amendment Number 6 Effective Date: December 22, 2003.
- Amendment Number 7 Effective Date: March 2, 2004.
- Amendment Number 8 Effective Date: December 5, 2005.
- SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.
- Docket Number: 72–1004.
- Certificate Expiration Date: January 23, 2015.
- Model Number: NUHOMS®–24P, –52B, –61BT, –32PT, –24PHB, and –24PTH.
- \* \* \* \* \*

Dated at Rockville, Maryland, this 1st day of September 2005.

For the Nuclear Regulatory Commission.

**Luis A. Reyes,**

*Executive Director for Operations.*

[FR Doc. 05–18662 Filed 9–19–05; 8:45 am]

BILLING CODE 7590–01–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 872**

[Docket No. 2005N–0338]

**Medical Devices; Dental Devices; Classification of Oral Rinse to Reduce the Adhesion of Dental Plaque**

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is classifying the oral rinse to reduce the adhesion of dental plaque device into class II (special controls). The special control that will apply to the device is the guidance document entitled "Class II Special Controls Guidance Document: Oral Rinse to Reduce the Adhesion of Dental Plaque." The agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a guidance document that is the special control for this device.

**DATES:** This rule is effective October 20, 2005. The reclassification was effective March 28, 2005.

**FOR FURTHER INFORMATION CONTACT:** Robert Betz, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283, ext. 125.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (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 Medical Device Amendments of 1976 (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 FDA's 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 document in the **Federal Register** announcing such classification (section 513(f)(2) of the act).

In accordance with section 513(f)(1) of the act, FDA issued an order on January 14, 2005, classifying the Decapinol Oral Rinse into 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 which was subsequently reclassified into class I or class II. On January 24, 2005, Sinclair Pharmaceuticals submitted a petition requesting classification of the Decapinol Oral Rinse under section 513(f)(2) of the act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in 513(a)(1) of the act. Devices are to be classified 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 to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that Decapinol Oral Rinse can be classified into class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will

provide reasonable assurance of the safety and effectiveness of the device.

The device is assigned the generic name oral rinse to reduce the adhesion of dental plaque and is identified as a device intended to reduce the presence of bacterial plaque on teeth and oral mucosal surfaces by physical means. The device type includes those devices that act by reducing the attachment and inhibiting the growth of bacterial plaque.

FDA has identified the following risks to health associated specifically with this type of device: (1) Ineffective plaque reduction, (2) alteration of oral flora, (3) adverse tissue reaction, (4) toxicity, and (5) improper use. The class II special controls guidance document aids in mitigating potential risks by providing recommendations on material characterization; validation of performance characteristics; testing and control methods; biocompatibility testing; and labeling. Therefore, on March 28, 2005, FDA issued an order to the petitioner classifying the device into Class II. FDA is codifying this device by adding § 872.5580.

Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for oral rinse to reduce the adhesion of dental plaque will need to address the issues covered in the special controls guidance. However, the firm need only show that its device meets the recommendations of the guidance, or in some other way provides equivalent assurance of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under 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, however, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of this type of device and, therefore, the device is not exempt from premarket notification requirements. Thus, persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the oral rinse to reduce the adhesion of dental plaque they intend to market.

## II. 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.

## III. 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), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 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. Because classification of this device into 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 certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

## IV. 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 (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) is not required.

FDA also concludes that the special controls guidance document contains information collection provisions that are subject to review and clearance by OMB under the PRA. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of the guidance document entitled "Class II Special Controls Guidance Document: Oral Rinse to Reduce the Adhesion of Dental Plaque"; the notice contains an analysis of the paperwork burden for the guidance.

#### V. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Sinclair Pharmaceuticals, dated January 24, 2005.

#### List of Subjects in 21 CFR Part 872

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 872 is amended as follows:

#### PART 872—DENTAL DEVICES

■ 1. The authority citation for 21 CFR part 872 continues to read as follows:

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

■ 2. Section 872.5580 is added to subpart F to read as follows:

#### § 872.5580 Oral rinse to reduce the adhesion of dental plaque.

(a) *Identification.* The device is assigned the generic name oral rinse to reduce the adhesion of dental plaque and is identified as a device intended to reduce the presence of bacterial plaque on teeth and oral mucosal surfaces by physical means. The device type includes those devices that act by reducing the attachment and inhibiting the growth of bacterial plaque.

(b) *Classification.* Class II (special controls). The special control is FDA's guidance document entitled "Class II Special Controls Guidance Document: Oral Rinse to Reduce the Adhesion of Dental Plaque." See § 872.1(e) for the availability of this guidance document.

Dated: September 9, 2005.

**Linda S. Kahan,**

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

[FR Doc. 05-18656 Filed 9-19-05; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 65

[Docket No. FEMA-D-7579]

#### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the Base (1% annual chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

**DATES:** These modified BFEs are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director reconsider the changes. The modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646-2903.

**SUPPLEMENTARY INFORMATION:** The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National

Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

*Regulatory Classification.* This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 12612, Federalism.* This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

*Executive Order 12778, Civil Justice Reform.* This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

#### List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows: