This guidance was written prior to the February 27, 1997 implementation of FDA's Good Guidance Practices, GGP's. It does not create or confer rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. This guidance will be updated in the next revision to include the standard elements of GGP's.

EPA United States Environmental Protection Agency Office of Pesticide Programs

Pesticide Regulation (PR) Notice 94-4

JUNE 30, 1994

PESTICIDE REGULATION (PR) NOTICE 94-4

NOTICE TO MANUFACTURERS, FORMULATORS, PRODUCERS AND REGISTRANTS OF PESTICIDE PRODUCTS

ATTENTION: Persons Responsible for Registration of Pesticides

SUBJECT: Interim Measures for the Registration of Antimicrobial Products/Liquid Chemical Germicides with Medical Device Use Claims Under the Memorandum of Understanding Between EPA and FDA

I. Purpose

This Notice is intended to provide the regulated community with detailed guidance on the interim EPA registration procedures for antimicrobial products affected by the June 4, 1993, Memorandum of Understanding (MOU) between the Environmental Protection Agency (EPA) and the Food and Drug Administration (FDA) as amended. Copies of the signed MOU and its amendment are included with this Notice.

II. Applicability

This Notice applies to all registrants of liquid chemical germicides which bear claims for use on medical devices. While EPA has regulatory authority over all antimicrobial products which bear claims to act against microorganisms on inanimate surfaces, FDA's regulatory purview extends to liquid chemical germicides which are used on medical devices and are therefore considered to be medical devices themselves. Because FDA's regulatory concern focuses on the application of chemical germicides to medical devices, the MOU is relevant only to those antimicrobial pesticides with medical device use claims.

The manner in which FDA determines the required level of processing needed for a medical device is based on Dr. E.H. Spaulding's infection control classification system, as adapted and recommended by the Centers for Disease Control and Prevention (CDC). In this system, medical devices are categorized according to the relative risk associated with their intended use patterns. The three primary categories are (1) critical surfaces which must be sterilized, (2) semi-critical surfaces which should be sterilized but must at least undergo high level disinfection, and (3) non-critical surfaces including medical equipment surfaces which should undergo intermediate or low level disinfection. These definitions are discussed in detail in the MOU.

The MOU divides antimicrobial pesticides into two categories based on label claims and medical device use patterns. The first category is liquid chemical germicides used as sterilants to reprocess reusable critical and semi-critical devices such as heat labile instruments, and endoscopes. The second category is general purpose disinfectants. The products

in this second category are used on non-critical surfaces and dental and medical equipment surfaces such as wheel chairs, dental chairs, and medical beds in hospitals and related institutions. These products can be used for pre-cleaning or decontamination of critical or semi-critical surfaces as long as the label clearly states that this is done prior to the surface being sterilized or disinfected. Because of their intended use pattern, these two categories of antimicrobial pesticides are considered to be medical devices and are thus subject to the conditions of this Notice.

III. Background

Liquid chemical germicides which bear claims for use on medical devices are currently regulated both as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and as medical devices under the Federal Food, Drug, and Cosmetic Act (FFDCA). In an effort to resolve the confusion and burden of dual regulation, a Memorandum of Understanding (MOU) was signed on June 4, 1993 between the Environmental Protection Agency (EPA) and the Food and Drug Administration (FDA). The MOU was amended on June 20, 1994. The objectives of the MOU are to (1) provide a framework under which both Agencies will undertake rulemaking to permanently vest exclusive jurisdiction for certain categories of chemical germicides in one Agency or the other, and (2) serve as interim guidance designed to minimize duplicate regulatory requirements in shared areas of jurisdiction between the two Agencies until the rulemaking is complete.

To briefly summarize the MOU, each Agency has been given primary jurisdiction over one of the two categories of liquid chemical germicides considered to be medical devices. FDA has primary responsibility over liquid chemical sterilants, which includes responsibility for subordinate claims on sterilant products such as tuberculocidal or virucidal claims which support a high level disinfectant use pattern. EPA has primary jurisdiction over the general purpose disinfectants. The MOU calls for both EPA and FDA to initiate rulemaking to give each Agency sole jurisdiction over their designated categories. However, since rulemaking may involve a long term process, the MOU sets forth interim procedures in order to reduce the condition of dual regulatory oversight.

The MOU itself cannot change the statutory responsibilities granted under FIFRA and FFDCA. Therefore, until rulemaking is finalized, both Agencies will continue to share jurisdiction over all liquid chemical germicides used on medical devices and will continue to maintain separate registration and premarket approval procedures. In addition, the June 1993 MOU and this PR Notice have no affect on EPA's authority to take actions based on test results from the ongoing EPA antimicrobial testing program. EPA will still act to remove inefficacious products from the market based on test results from that program. Products so removed from the market, however, must, in addition to meeting other applicable requirements, follow the procedures outlined in the MOU and this PR Notice before they may return to the market.

Although both Agencies must continue to fulfill their statutory responsibilities, the MOU attempts to alleviate the regulatory burden that may be associated with submitting duplicate data packages to both EPA and FDA. Essentially, the interim procedures state that only one Agency needs to review the product performance (efficacy) data which are required to support both an EPA registration and an FDA 510(k) premarket clearance.

The MOU states that the FDA review and acceptance of efficacy data submitted in support of a 510(k) notice will meet EPA's product performance (efficacy) registration requirements for liquid chemical sterilant products. Likewise, the EPA review of product performance (efficacy) data submitted for a general purpose disinfectant will suffice for a 510(k) premarket approval notice. Each Agency will continue to administer any other applicable requirements.

IV. Interim Procedures for Obtaining or Amending an EPA Registration for Liquid Chemical Sterilant Products

As stated in the previous section, FDA will ultimately be responsible for the sole regulation of liquid chemical sterilant products used to reprocess critical and semi-critical devices. FDA will also be solely responsible for the subordinate claims on particular sterilant product labels which support a high level disinfectant use pattern including the hospital disinfectant, tuberculocidal, and virucidal claims. The FDA efficacy and product performance requirements for 510(k) clearance are comparable to EPA's FIFRA Section 3 efficacy registration requirements as listed in the Product Performance Guidelines Subdivision G. Therefore, under the interim provisions of the MOU, EPA will agree that the FDA review and acceptance of the efficacy and product performance data will fulfill EPA's product performance (efficacy) registration requirements under FIFRA.

The following step-by-step procedure describes the EPA interim registration process for liquid chemical sterilants and additional product claims which support a high level disinfectant use pattern for both new registrations and amendments to current registrations. The registrant will submit its registration package to EPA and FDA at the same time so that both Agencies can conduct concurrent reviews.

1. Registrant prepares the full EPA registration package including all toxicology, chemistry, ecological effects, and environmental fate data, proposed labeling, and associated administrative forms. Efficacy/product performance data should not be included in this package.

2. Registrant submits the EPA registration package to EPA for review. EPA will review this application concurrent with FDA's assessment of the 510(k) premarket clearance package.

3. Registrant prepares the full FDA 510(k) premarket clearance package. All efficacy/product performance data will be included in this package and reviewed by FDA. Once the efficacy/product performance data have been reviewed and accepted by FDA, they will satisfy the EPA efficacy/product performance registration data requirements. FDA may have additional requirements beyond EPA's current requirements. These data requirements and label/label insert requirements are published in FDA's Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for Liquid Chemical Germicides, January 31, 1992.

4. Registrant submits the 510(k) premarket clearance package to FDA. Once FDA has completed its review, a copy of the FDA accepted labeling and 510(k) clearance will be transmitted by FDA to EPA.

5. Once EPA has received a copy of the 510(k) clearance from FDA and has completed the review of the FIFRA application package, the registration or amendment will be granted if EPA determines that registration or amendment is appropriate. EPA will include all comments from EPA and/or FDA regarding the proposed labeling in the acceptance letter and all required corrections or additions must be incorporated into the final label before the registered product may be legally released for shipment or sold or distributed. As currently required, five copies of the final printed labeling must be submitted to EPA.

V. Interim Procedures for Obtaining or Amending an EPA Registration for General Purpose Disinfectants

Once rulemaking is complete, EPA will have sole jurisdiction for general purpose disinfectants. The process and requirements to register general purpose disinfectants with the EPA will be the same as they are now, including the requirements for efficacy, toxicology, and chemistry data. Current EPA label requirements remain in effect. However, in order to remain in compliance with FIFRA, the following restrictive label statement must be added to the label of any general purpose disinfectant that is registered for any medical device or medical equipment surface claims:

> "This product is not to be used as a terminal sterilant/high level disinfectant on any surface or instrument that (1) is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body, or (2) contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body. This product may be used to preclean or decontaminate critical or semi-critical medical devices prior to sterilization or high level disinfection".

VI. Label Revision Compliance Dates and Procedures

For products bearing sterilization claims, existing EPA labeling requirements remain in effect. FDA will promulgate a final rule establishing sole jurisdiction over such products. However, to comply with FDA's 510(k) requirements, registrants generally will be required to develop a package insert which clearly prescribes the steps to be followed in achieving high, intermediate, and low level disinfection, as well as provides other appropriate information. Registrants are reminded that this package insert becomes labeling under FIFRA and must comply with EPA labeling requirements at 40 CFR 156.10.

For general purpose disinfectants, EPA has determined that the incorporation of the label statement set forth in Section V above must take place as described below. Registrants of affected products must comply with these label specifications and deadlines in order to remain in compliance with FIFRA.

1. Within 6 months of the date of this Notice each registrant of a general purpose disinfectant product registered for use on any medical device or medical equipment surface (an "affected product") must submit a completed amendment (EPA form number 8570-1) with 5 copies of draft labeling which meets the requirements

of #2(a) and (b) below. In order to expedite processing approval of the amendment application, registrants should clearly identify the submission in connection with this PR Notice by writing the words, "MOU COMPLIANCE PER PR NOTICE 94- " in Section II. of the application form. Applications are to be sent to the following address:

For USPS Submissions:

Document Processing Desk (AMEND)
Office of Pesticide Programs (7504-C)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460-0001

For Courier Deliveries:

Office of Pesticide Programs
Document Processing Desk (AMEND)
Room 266A, Crystal Mall 2
1921 Jefferson Davis Highway
Arlington, Virginia 22202

2. No later than October 1, 1995, the labeling of each affected product sold or distributed by registrants and distributors must:

   a. bear the exact statement set forth in Section V of this Notice and comply with the labeling requirements found in 40 CFR 156.10.

   b. have omitted or obliterated all specific claims of effectiveness, or directions for use on critical or semi-critical surfaces or instruments.

3. No later than October 1, 1997, each affected product sold or distributed by any person other than registrants or distributors must bear labeling which meets the requirements of #2(a) and (b) above.

4. At any time prior to the October 1, 1995 deadline, registrants may add the labeling statement in Section V of this Notice and may omit or obliterate the claims with respect to critical or semi-critical surfaces or instruments without waiting for approval of the amendment application submitted per #1 above.

VII. Effective Date

The procedures described in this notice for affected products are effective immediately. All new registration and amendment applications for products bearing medical device use claims will be processed according to the steps outlined in this Notice. Any registrant not already in compliance with these label specifications must, in order to remain in compliance with FIFRA, submit appropriate registration and label amendments for affected products within the time periods specified in Section VI. Registrants must also make required label changes to affected products by the deadlines specified above in order to remain in compliance with FIFRA.

VIII. For Further Information

For further information contact Michele Wingfield,

Microbiologist, Antimicrobial Program Branch, Registration Division at (703) 305-6653.

/SIGNED/

Stephen L. Johnson, Director
Registration Division

Memorandum of Understanding
Between
The Food and Drug Administration, Public Health Service,
Department of Health and Human Services
and
The Environmental Protection Agency

Notice Regarding Matters of Mutual Responsibility - Regulation of Liquid Chemical Germicides Intended for Use on Medical Devices

I. PURPOSE

This Memorandum of Understanding (MOU) between the Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA) clarifies jurisdiction between the two agencies in the regulation of certain liquid chemical germicides. These liquid chemical germicides are devices under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). This MOU also embodies the agreement of the two agencies to undertake certain rulemakings in order to eliminate duplicative regulation of certain types of liquid chemical germicides. This MOU includes the agencies' interim agreement to simplify and coordinate their regulatory and enforcement activities in shared areas of jurisdiction affecting these types of products pending the conclusion of these rulemakings.

II. STATUTORY AUTHORITIES

A. FDA Authorities

The FD&C Act grants FDA authority to regulate devices as defined in 21 U.S.C. □321(h). Under section 321(h), the term "device" includes an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory that is intended to cure, mitigate, treat, or prevent disease in man, or is intended to affect the structure or any function of the body of man. Liquid chemical germicides intended for use in conjunction with a variety of articles that fit within the statutory definition of "device," such as operating instruments, medical examining tables, hospital scales, and other hospital equipment, also fall within the definition of "device" because they are considered accessories to these devices.

Unless liquid chemical germicides used in conjunction with devices were commercially distributed prior to May 28, 1976,1 manufacturers of these products, under 21 U.S.C. □360(k) [section 510(k) of the FD&C Act] are required to submit a premarket notification to FDA before they market their products. Before these products can be legally marketed, FDA must grant marketing clearance by (1) issuance of an order in response to a section 510(k) submission which exempts the device from the FD&C Act's premarket approval requirements, or (2) approval of a premarket

approval application. In granting marketing clearance by issuance of a section 510(k) order exempting a liquid chemical germicide from premarket approval, FDA must find that the device is "substantially equivalent," as the term is defined in 21 U.S.C. □360c(i)(1)(A), to a predicate device that does not require premarket approval. Section 513 of the FD&C Act authorizes FDA to exempt products from premarket notification requirements for which there is a reasonable assurance of safety and effectiveness. At present, no chemical germicides that are used with devices have been exempted from premarket notification requirements.

In regulating liquid chemical germicides used with devices, FDA is exercising its responsiblilities under the FD&C Act for ensuring that devices are safe and effective for their intended uses. The FD&C Act provides enforcement authority to FDA to pursue regulatory actions, including seizure, injunction, prosecution, and civil penalties.

B. EPA Authorities

Liquid chemical germicides, including those regulated as devices, are also under the authority of the EPA under FIFRA. Before a pesticide product may be lawfully sold or distributed in commerce, the product must be registered by EPA pursuant to FIFRA section 3, or otherwise exempted from the requirements of FIFRA. A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with specified use instructions, precautions, and other terms and conditions. Liquid chemical sterilants are included among the various types of antimicrobial products that are currently subject to FIFRA.

1/ Devices marketed prior to May 28, 1976 are grandfathered from the FD&C Act's premarket notification requirements. Neither FDA nor EPA are aware of any currently marketed products that are exempt under this grandfather provision. Should any exist, they are not covered by this Memorandum of Understanding.

A pesticide product may be registered or remain registered only if it meets the statutory standard for registration. Among other things, a pesticide must perform its intended pesticidal function without causing "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)). "Unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of [the] pesticide" (FIFRA section 2(bb)).

The burden of demonstrating that a pesticide product satisfies the statutory criteria for registration is at all times on the proponents of initial or continued registration. FIFRA section 6 provides EPA with various regulatory tools that the Administrator may use if it appears that the product no longer satisfies the statutory criteria for registration. If appropriate, EPA may require modifications to the terms and conditions of registration, such as deletion of particular uses or revisions to labeling, as an alternative to regulatory outcomes such as cancellation, suspension, or emergency suspension. FIFRA also provides enforcement authority to EPA to pursue actions,

including issuance of stop sale, use, or removal orders when there is reason to believe a pesticide is in violation of FIFRA. Additionally, EPA has authority to seek the assessment of civil administrative penalties as well as institute seizure and criminal actions for violations of FIFRA.

FIFRA section 25(b) authorizes the Administrator to exempt pesticides from FIFRA through regulation if the Administrator determines that the pesticide is "adequately regulated by another Federal agency" or is "of a character which it is unnecessary to be subject to this Act in order to carry out the purposes of this Act."

III. REGULATORY RESPONSIBILITIES AND DEFINITIONS

For the purposes of this agreement, liquid chemical germicides that are used in conjunction with medical devices are divided into two product categories: (1) sterilants and (2) general purpose disinfectants. Sterilants, for purposes of this agreement, means those chemical germicides used to reprocess reusable critical and semicritical devices2. Critical devices are devices that are introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body. These critical devices must be sterile.

2/ This definition is consistent with the definition of these terms used by the Centers for Disease Control and Prevention (CDC). Block, S.S. 1991. Disinfection, Sterilizaton, and Preservation. 4th Edition. Philadelphia, Lea & Febiger. Semicritical devices are those which contact intact mucous membranes but which do not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body. For these devices, sterilization is desirable but not mandatory. These devices must be subjected at least to a high level disinfection3 process using a sterilant, but for a shorter time than that required for sterilization.

The second category of liquid chemical germicides are general purpose disinfectants. General purpose disinfectants, for purposes of this agreement, means those chemical germicides used to reprocess noncritical devices and medical equipment surfaces4. Noncritical devices and medical equipment surfaces must be subjected to intermediate or low level disinfection5.

FDA's priority is to confirm the efficacy and safety of sterilants used to reprocess critical and semicritical devices which pose the greatest risk of disease transmission. This includes assuring that they do not adversely affect device performance or pose a hazard to the patient/user. Historically, EPA has assessed the effective performance of all chemical germicides and addressed health and safety issues presented by their use.

The FD&C Act and FIFRA have overlapping regulatory schemes for liquid chemical germicides used on devices. The objective of this MOU is to minimize redundant regulation of these products by FDA and EPA while assuring that the safety and efficacy requirements of both statutes are met. This affects three areas: data requirements for obtaining approval, procedures for obtaining approval, and compliance.

3/ "High level disinfectant" and "high level disinfection" are terms of art used by the public health community. FDA recognizes "high level disinfectant" as a separate or subcategory of sterilants. EPA does not register "high level disinfectants" as separate antimicrobial pesticides, but instead may register uses of germicides that correspond with uses in FDA's "high level disinfection" category.

4/ This definition is consistent with the definition of the term used by CDC.

5/ "Low and intermediate level disinfectants" are terms of art used by the public health community. FDA recognizes "low and intermediate level disinfection" as subcategories of general purpose disinfectants. EPA does not register low level and intermediate level disinfectants, but has corresponding germicide classes.

In determining whether the FD&C Act's and FIFRA's statutory and regulatory requirements are met, EPA and FDA will utilize the data requirements and performance standards referenced in FDA's current Guidance on the Content and Format of Premarket Notification Submission for Liquid Chemical Germicides, FDA premarket notification regulations at 21 CFR Part 807, Subpart E, EPA data requirements regulations at 40 CFR Part 158, and EPA's Subdivision G, Product Performance Guidelines.

Since the EPA registration requirements for general purpose disinfectants parallel the requirements necessary to receive marketing clearance for general purpose disinfectants under section 510(k) of the FD&C Act, fulfillment of EPA's registration requirements fulfills FDA's section 510(k) requirements for those products.

The EPA efficacy data requirements for liquid chemical sterilants, including those with high level disinfectant uses, are fulfilled by FDA's section 510(k) requirements or premarket approval requirements. Therefore, premarket clearance by FDA fulfills certain EPA registration requirements for liquid chemical sterilants, insofar as efficacy and product performance are concerned. FDA premarket clearance does not satisfy EPA's chemistry, toxicology, and ecological effects requirements.

IV. AGREEMENT

The Administrator of the Environmental Protection Agency and the Commissioner of the Food and Drug Administration agree that until exemptions referred to in Section V occur, the following division of responsibility will govern the activities of the agencies in the regulation of liquid chemical germicides that are intended for use on devices:

A. Regulatory Responsibilities

1. FDA will be primarily responsible for the premarket review of safety and efficacy requirements for liquid chemical germicides that are sterilants6 intended for use on critical or semicritical devices. Examples of critical devices are laparoscopes, surgical instruments, heart-lung oxygenators, and transfer forceps. Examples of semicritical devices are gastrointestinal endoscopes, endotracheal tubes, cystoscopes, anesthesia breathing circuits, and vaginal specula. FDA will also be primarily responsible for premarket review of contact lens solutions.

6/ If a liquid chemical sterilant product has subordinate claims such as tuberculocidal or virucidal, these claims also will be regulated by FDA.

2. EPA will be primarily responsible for premarket review of liquid chemical germicides that are general purpose disinfectants7 intended for use on devices other than critical or semicritical devices. Examples of noncritical devices are wheel chairs, medical beds, stands, certain operating room surfaces, medical lamps, dental units, and stethoscopes.

3. FDA marketing clearance through the section 510(k) process or approval through the premarket approval process of sterilants will satisfy certain requirements for registration under FIFRA Section 3. Upon submission to EPA by the applicant of an order issued by FDA granting marketing clearance or approval for a liquid chemical germicide that is a sterilant, EPA will consider the efficacy data requirements for registration to be satisfied, and will promptly determine whether the other requirements for registration are satisfied.

4. EPA registration of liquid chemical germicides that are used as disinfectants for devices, except sterilants, will satisfy the criteria necessary to establish substantial equivalence as defined in 21 U.S.C. □360c(i)(1)(A). For this category of liquid chemical germicides, submission by the manufacturer to FDA of a copy of the EPA correspondence granting registration will satisfy FDA's requirement for a premarket notification under 21 U.S.C. □360(k). Upon receipt of this information from the manufacturer of a liquid chemical germicide in this category, FDA will issue an order finding the product substantially equivalent to a predicate device that does not require premarket approval. This order will allow the device to be legally marketed without an approved FDA premarket approval application.

7/ Procedures described in Paragraph 4 only apply to liquid chemical germicide products that do not contain any sterilant claims. If a liquid chemical germicide product contains both sterilant and general purpose disinfectant claims, registration will proceed according to the procedures described in Paragraph 3. If the registrant of a general purpose disinfectant product registered by EPA subsequently applies for registration of a sterilant claim, registration of that product must proceed under procedures described in Paragraph 3 and the existing EPA registration will become void upon FDA's clearance of the product.

5. As part of the EPA registration process, EPA will require registrants of liquid chemical germicides, other than sterilants that have received FDA premarketing clearance or approval, to put the following statement on their product labels:

> "This product is not to be used on any surface or instrument that (1) is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body, or (2) contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body."

B. Compliance Responsibilities

1. FDA will be responsible for all sampling and all efficacy testing of liquid chemical sterilants intended for use on critical and semicritical devices and for instituting appropriate enforcement and/or regulatory action against any products that do not comply with the FD&C Act.

   Upon request, EPA will provide FDA with copies of the latest accepted labeling and the name and location of the production site for each product FDA intends to sample.

   To the extent allowed under 21 U.S.C. □ 331j, 21 U.S.C. □360(j)(c), 42 U.S.C. □263g(d), 42 U.S.C. 263i(e), and 21 C.F.R. Part 20, FDA will share all safety and efficacy test results, labeling changes, and upon EPA request, any other information obtained during FDA enforcement/regulatory actions relating to liquid chemical sterilants. EPA may use this information to determine whether the registrant has complied with FIFRA. On the basis of this information, EPA may determine that further regulatory action under FIFRA, including cancellation of the product's registration, is warranted.

2. EPA will be responsible for the sampling and efficacy testing of all general purpose chemical germicides that are intended for use on devices other than critical and semicritical devices, and for instituting appropriate enforcement and/or regulatory action against any such chemical germicide that does not comply with FIFRA. EPA will refer labels and other evidence concerning inefficacious liquid chemical germicides intended for use on medical devices other than critical or semicritical to FDA for complementary action under the FD&C Act.

3. Each agency will provide assistance upon request to support compliance activities and litigation by the other Agency in cases involving liquid chemical germicides that are intended for use on devices. Assistance will be requested in accordance with applicable procedures, statutory and regulatory requirements, including compliance with regulations of 21 CFR Part 20, through the liaison officers listed below. Assistance may include provision of sampling, inspection and audit data, expert witnesses, certified statements, and affidavits.

   Each Agency may consult with the other at any time to determine if the initiation of regulatory and/or enforcement action against a liquid chemical germicide in lieu of or concurrently with the other agency's action is appropriate.

   This Memorandum of Understanding has no effect on any pending investigations or enforcement or regulatory actions undertaken by EPA pursuant to FIFRA or by FDA pursuant to the FD&C Act.

C. Coordination of Activities

To ensure the continued coordinated regulatory, compliance, and enforcement activities for liquid chemical germicides intended for use on devices, an EPA/FDA interagency committee is established. The Directors of the EPA's Registration Division and the Compliance Division, Office of Prevention, Pesticides, and Toxic Substances, and of FDA's Center for Devices and

Radiological Health, Office of Compliance and Surveillance, will serve as joint chairpersons who will designate their respective agency members of the committee. The committee will meet at a minimum of twice each fiscal year.

V. FUTURE RULEMAKINGS TO ELIMINATE DUPLICATIVE AGENCY REVIEW

EPA will initiate a rulemaking proceeding under section 25(b) of FIFRA to exempt liquid chemical sterilant products from regulation under FIFRA. EPA believes that the efficacy data requirements and product performance standards for liquid chemical sterilants are fulfilled by FDA's section 510(k) requirements or premarket approval requirements. When such exemption becomes effective, FDA and EPA will cease to follow procedures described in Paragraph IV, A.3. and these products will be subject solely to the regulatory and enforcement requirements and procedures of FDA, and EPA will no longer register such products. To the extent EPA receives information regarding such products, it will share such information with FDA.

FDA will initiate a rulemaking proceeding to classify liquid chemical germicides used on devices under section 513 of the FD&C Act. FDA believes that EPA's requirements under FIFRA for liquid chemical germicides that are intended for use on medical devices that are not critical or semicritical devices parallel the FD&C Act's requirements under section 510(k) of the Act. Accordingly, FDA will recommend to its classification advisory panel that liquid chemical germicides intended for use on devices that are not critical or semicritical devices be exempted from premarket notification requirements under section 510(k) of the FD&C Act. When any such exemption becomes effective, FDA and EPA will cease to follow the procedures in paragragh IV. A. 4. To the extent FDA obtains any information regarding such products, it will share the information with EPA.

VI. NAME AND ADDRESS OF PARTICIPATING PARTIES

A. Food and Drug Administration
5600 Fishers Lane
Rockville, MD 20857

B. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

VII. LIAISON OFFICERS

A. For the Food and Drug Administration:

Sterilization and Toxicology Project Officer
(currently: Dr. Virginia Chamberlain)
Office of Compliance and Surveillance
Center for Devices and Radiological Health
1390 Piccard Drive
Rockville, MD 20850
Telephone: (301) 427-1131

B. For the Environmental Protection Agency:

Antimicrobial Program Branch Chief
(currently: Juanita Wills)
Registration Division
Antimicrobial Program Branch (H7505C)
401 M Street, S.W.
Washington, DC 20460

Telephone: (703) 305-6661

VIII. PERIOD OF AGREEMENT

This agreement becomes effective upon acceptance by both parties. It may be modified by mutual written consent or terminated by either party upon a thirty (30) day advance written notice to the other party. The parties agree to evaluate the agreement every three (3) years, at which time either party would have the option of renewing, modifying, or canceling the agreement.

APPROVED AND ACCEPTED FOR THE ENVIRONMENTAL PROTECTION AGENCY	APPROVED AND ACCEPTED FOR THE FOOD AND DRUG ADMINISTRATION
By /Signed/ Victor J. Kimm	By /Signed/ Ronald S. Chessmore
Title Acting Assistant Administrator	Title Associate Commisioner for Regulatory Affairs
Date June 4, 1993	Date June 4, 1993

Amendment to the June 4, 1993 Memorandum of Understanding
Between
The Food and Drug Administration, Public Health Service
Department of Health and Human Services
and
The Environmental Protection Agency

Amendment to Notice Regarding Matters of Mutual Responsibility - Regulation of Liquid Chemical Germicides Intended for Use on Medical Devices

I. PURPOSE

This amendment to the June 4, 1993 Memorandum of Understanding (MOU) between the Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA) revises the disclaimer statement required to appear on the labels of all liquid chemical germicides, other than sterilants that have received FDA premarket clearance or approval.

II. BACKGROUND

On June 4, 1993, a MOU was signed between FDA and EPA as an interim measure to abolishing dual regulation of liquid chemical germicides. Under the MOU liquid chemical germicides, considered to be medical devices, are divided into two product categories: (1) sterilants and (2) general purpose disinfectants. FDA has primary jurisdiction over germicides with sterilant claims. This jurisdiction includes sterilant products which also bear subordinate tuberculocidal or virucidal claims supporting their

use pattern as a high level disinfectant. EPA has primary jurisdiction over the general purpose disinfectants. Under the MOU, both FDA and EPA are required to initiate rulemaking so as to give each Agency sole jurisdiction over its assigned category. Until the rulemakings take effect, the MOU sets forth interim procedures designed to ease any possible regulatory burden that was associated with the submission of duplicate data packages to the Agencies.

Among other things, the MOU specified label language to be placed on labels of certain liquid chemical germicides. For the reasons explained below, this amendment substitutes new language for that originally specified in the MOU.

III. AMENDMENT

A. Background

The existing label language specified in Paragraph IV(A)(5) of the MOU, which must appear on the labels of liquid chemical germicides other than sterilants that have received FDA premarketing clearance or approval, is:

> "This product is not to be used on any surface or instrument that (1) is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body, or (2) contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body."

Since the MOU was signed, it has been brought to EPA's and FDA's attention that the present label disclaimer does not allow for the use of general purpose disinfectants as a precleaner for the removal of gross filth on medical devices prior to their sterilization. Included under the "DIRECTIONS FOR USE" on the label of sterilant products, is a statement requiring the thorough cleaning, rinsing, and drying of medical instruments and equipment prior to disinfection and sterilization. This amendment only serves to revise the disclaimer statement currently required on the labels of all liquid chemical germicides, other than sterilants. The revised label disclaimer statement will allow the use of general purpose disinfectants on medical devices, as a precleaner, prior to sterilization.

B. Amended Language

Paragraph IV(A)(5) of the June 4, 1993 Memorandum of Understanding between the Food and Drug Administration, Public Health Service, Department of Health and Human Services, and the Environmental Protection Agency is amended by striking the entire text of Paragraph IV(A)(5) and replacing it with the following:

As part of the EPA registration process, EPA will require registrants of liquid chemical germicides, other than sterilants that have received FDA premarketing clearance or approval, to put the following statement on their product labels:

> "This product is not to be used as a terminal sterilant/high-level disinfectant on any surface or instrument that (1) is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body, or (2) contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body. This product may be used to preclean or

decontaminate critical or semi-critical medical devices prior to sterilization or high-level disinfection."

IV. NAME AND ADDRESS OF PARTICIPATING PARTIES

A. Food and Drug Administration
5600 Fishers Lane
Rockville, MD 20857

B. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

V. LIAISON OFFICERS

A. For the Food and Drug Administration:
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(currently: Dr. Virginia Chamberlain)
Office of Compliance and Surveillance
Center for Devices and Radiological Health
1390 Piccard Drive
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Telephone: (301) 594-4618

B. For the Environmental Protection Agency:
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(currently: Juanita Wills)
Registration Division
Antimicrobial Program Branch (7505C)
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Washington, DC 20460
Telephone: (703) 305-6661

VI. EFFECTIVE DATE of AMENDMENT

This amendment to the June 4, 1993 MOU becomes effective upon acceptance by both parties.

APPROVED AND ACCEPTED FOR THE ENVIRONMENTAL PROTECTION AGENCY	APPROVED AND ACCEPTED FOR THE FOOD AND DRUG ADMINISTRATION
By: /SIGNED/ Daniel M. Barolo	By: /SIGNED/ Ronald M. Johnson
Title: Director	Title: Director
Date: June 2, 1994	Date: June 20, 1994