

shipment or delivery, or any part thereof, from such establishment, become void ab initio if the drug comprising such shipment, delivery, or part is adulterated or misbranded within the meaning of the act when so removed.

(c) An exemption of a shipment or other delivery of a drug under paragraph (a)(2) of this section shall become void ab initio with respect to the person who introduced such shipment or delivery into interstate commerce upon refusal by such person to make available for inspection a copy of the agreement, as required by such paragraph (a)(2) of this section.

(d) An exemption of a shipment or other delivery of a drug under paragraph (a)(2) of this section shall expire:

(1) At the beginning of the act of removing such shipment or delivery, or any part thereof, from such establishment if the drug comprising such shipment, delivery, or part is adulterated or misbranded within the meaning of the act when so removed; or

(2) Upon refusal by the operator of the establishment where such drug is to be processed, labeled, or repacked, to make available for inspection a copy of the agreement, as required by such clause.

(e) Except as provided in paragraphs (g) and (h) of this section, a shipment or other delivery of a drug which is subject to section 507 of the act and which is, in accordance with the practice of the trade, to be processed or repacked in a substantial quantity at an establishment other than that where originally processed or packed shall be exempt from compliance with the labeling requirements of section 502(f) of the act during the time such drug is also exempt from the requirements of section 502(l) of the act or, in the case of a new animal drug, is exempt from certification under section 512(n) of the act under the provisions of § 433.15 or § 433.16 of this chapter.

(f) Except as provided by paragraphs (g) and (h) of this section, a shipment or other delivery of a drug which is subject to section 507 of the act and which is, in accordance with the practice of the trade, to be labeled in substantial quantity at an establishment other than that where originally proc-

essed or packed shall be exempt from compliance with the labeling requirements of section 502 (b), (e) and (f) of the act during the time such drug is also exempt from the requirements of section 502(l) of the act or, in the case of a new animal drug, is exempt from certification under section 512(n) of the act under § 433.12 of this chapter, if the words, statements, and other information required by section 502 (b) and (e) of the act appear on each shipping container of such drug.

(g) In case the person who introduced such shipment or other delivery into interstate commerce is the operator of the establishment where such drug is to be processed, labeled, or repacked, an exemption of such shipment or delivery under paragraph (e) or (f) of this section shall become void at the beginning of the act of removing such shipment or delivery or any part thereof from such establishment if the drug comprising such shipment, delivery, or part is adulterated or misbranded within the meaning of the act when so removed.

(h) In case the person who introduced such shipment or delivery into interstate commerce is not the operator of the establishment where such drug is to be processed, labeled, or repacked, an exemption of a shipment or other delivery of such drug under paragraph (e) or (f) of this section shall expire at the beginning of the act of removing such shipment or delivery or any part thereof from such establishment if the drug comprising such shipment, delivery, or part is adulterated or misbranded within the meaning of the act when so removed.

[41 FR 6911, Feb. 13, 1976]

§ 201.161 Carbon dioxide and certain other gases.

(a) Carbon dioxide, cyclopropane, ethylene, helium, and nitrous oxide gases intended for drug use are exempted from the requirements of § 201.100(b) (2), (3), and (c)(1) provided the labeling bears, in addition to any other information required by the Federal Food, Drug, and Cosmetic Act, the following:

(1) The warning statement "Warning—Administration of (name of gas) may be hazardous or contraindicated.

For use only by or under the supervision of a licensed practitioner who is experienced in the use and administration of (name of gas) and is familiar with the indications, effects, dosages, methods, and frequency and duration of administration, and with the hazards, contraindications, and side effects and the precautions to be taken"; and

(2) Any needed directions concerning the conditions for storage and warnings against the inherent dangers in the handling of the specific compressed gas.

(b) This labeling exemption does not apply to mixtures of any one or more of these gases with oxygen or with each other.

(c) Regulatory action may be initiated with respect to any article shipped within the jurisdiction of the Act contrary to the provisions of this section after 60 days following publication of this section in the FEDERAL REGISTER.

Subpart F—Labeling Claims for Drugs in Drug Efficacy Study

§ 201.200 Disclosure of drug efficacy study evaluations in labeling and advertising.

(a)(1) The National Academy of Sciences—National Research Council, Drug Efficacy Study Group, has completed an exhaustive review of labeling claims made for drugs marketed under new-drug and antibiotic drug procedures between 1938 and 1962. The results are compiled in "Drug Efficacy Study, A Report to the Commissioner of Food and Drugs from the National Academy of Sciences (1969)." As the report notes, this review has made "an audit of the state of the art of drug usage that has been uniquely extensive in scope and uniquely intensive in time" and is applicable to more than 80 percent of the currently marketed drugs. The report further notes that the quality of the evidence of efficacy, as well as the quality of the labeling claims, is poor. Labeling and other promotional claims have been evaluated as "effective," "probably effective," "possibly effective," "ineffective," "ineffective as a fixed combination," and "effective but," and a report for each drug in the

study has been submitted to the Commissioner.

(2) The Food and Drug Administration is processing the reports, seeking voluntary action on the part of the drug manufacturers and distributors in the elimination or modification of unsupported promotional claims, and initiating administrative actions as necessary to require product and labeling changes.

(3) Delays have been encountered in bringing to the attention of the prescribers of prescription items the conclusions of the expert panels that reviewed the promotional claims.

(b) The Commissioner of Food and Drugs concludes that:

(1) The failure to disclose in the labeling of a drug and in other promotional material the conclusions of the Academy experts that a claim is "ineffective," "possibly effective," "probably effective," or "ineffective as a fixed combination," while labeling and promotional material bearing any such claim are being used, is a failure to disclose facts that are material in light of the representations made and causes the drug to be misbranded.

(2) The Academy classification of a drug as other than "effective" for a claim for which such drug is recommended establishes that there is a material weight of opinion among qualified experts contrary to the representation made or suggested in the labeling, and failure to reveal this fact causes such labeling to be misleading.

(c) Therefore, after publication in the FEDERAL REGISTER of a Drug Efficacy Study Implementation notice on a prescription drug, unless exempted or otherwise provided for in the notice, all package labeling (other than the immediate container or carton label, unless such labeling contains information required by § 201.100(c)(1) in lieu of a package insert), promotional labeling, and advertisements shall include, as part of the information for practitioners under which the drug can be safely and effectively used, an appropriate qualification of all claims evaluated as other than "effective" by a panel of the National Academy of Sciences—National Research Council, Drug Efficacy Study Group, if such claims continue to be included in either the labeling or