4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA-2015-N-2963]

Medical Devices; Immunology and Microbiology Devices; Classification of Clostridium difficile Toxin Gene Amplification Assay

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying Clostridium difficile (C. difficile) toxin gene amplification assay into class II (special controls). 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.

DATES: This order is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The classification was applicable April 30, 2012.

FOR FURTHER INFORMATION CONTACT: Noel Gerald, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5566, Silver Spring, MD 20993-0002, 301-796-4695.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C 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), 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 FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1). Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification

request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of "low-moderate risk" or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA will classify the device by written order within 120 days. This classification will be the initial classification of the device.

In accordance with section 513(f)(1) of the FD&C Act, FDA issued an order on February 3, 2012, automatically classifying the Portrait Toxigenic C. difficile Assay in class III, because it was not within a type of device which was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, nor which was subsequently reclassified into class I or class II. On March 2, 2012, Great Basin Scientific, Inc., submitted a request for de novo classification of the Portrait Toxigenic C. difficile Assay under section 513(f)(2) of the FD&C Act.

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request for de novo classification in order to classify the device under the criteria for classification set forth in section 513(a)(1). FDA classifies 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 to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the request, FDA determined that the device can be classified into class II with the establishment of special controls. FDA believes these special controls will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on April 30, 2012, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding § 866.3130.

Following the effective date of this final classification administrative order, any firm submitting a premarket notification (510(k)) for a C. difficile toxin gene amplification assay will need to comply with the special controls named in the final administrative order.

The device is assigned the generic name C. difficile toxin gene amplification assay, and it is identified as a device that consists of reagents for the amplification and detection of target sequences in C. difficile toxin genes in fecal specimens from patients suspected of having a C. difficile infection (CDI). The detection of clostridial toxin genes, in conjunction with other laboratory tests, aids in the clinical laboratory diagnosis of CDI caused by C. difficile.

FDA has identified the following risks to health associated with this type of device and the measures required to mitigate these risks:

Table 1.--Identified Risks and Required Mitigations

Identified Risks	Required Mitigations
A false positive test result for an individual may lead to inappropriate use of antibiotics for treatment.	The FDA document entitled "Class II Special Controls Guideline: Toxin Gene Amplification Assays for the Detection of Clostridium difficile," which addresses this risk through: Specific Device Description Requirements Performance Studies Labeling
A false negative test result for an individual may lead to a potential delay in treatment.	The FDA document entitled "Class II Special Controls Guideline: Toxin Gene Amplification Assays for the Detection of Clostridium difficile," which addresses this risk through: Specific Device Description Requirements Performance Studies Labeling
Failure of the test to be used or perform properly.	The FDA document entitled "Class II Special Controls Guideline: Toxin Gene Amplification Assays for the Detection of Clostridium difficile," which addresses this risk through: Labeling
Failure to properly interpret the test results.	The FDA document entitled "Class II Special Controls Guideline: Toxin Gene Amplification Assays for the Detection of Clostridium difficile," which addresses this risk through: Labeling

FDA believes that the measures set forth in the special controls guideline entitled "Class II Special Controls Guideline: Toxin Gene Amplification Assays for the Detection of

Clostridium difficile" are necessary, in addition to general controls, to mitigate the risks to health described in table 1.

A C. difficile toxin gene amplification assay is a prescription device. Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) 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, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this type of device is not exempt from premarket notification requirements. 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 C. difficile toxin gene amplification assay they intend to market.

II. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of 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. Paperwork Reduction Act of 1995

This final administrative order establishes special controls that refer to previously approved collections of information found in other FDA regulations. 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 part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910-0120; the collections of information in 21 CFR part 820 have been

approved under OMB control number 0910-0073; and the collections of information in 21 CFR parts 801 and 809 have been approved under OMB control number 0910-0485.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, 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 866 is amended as follows:

PART 866--IMMUNOLOGY AND MICROBIOLOGY DEVICES

1. The authority citation for 21 CFR part 866 continues to read as follows:

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

2. Add § 866.3130 to subpart D to read as follows:

§ 866.3130 Clostridium difficile toxin gene amplification assay.

(a) Identification. A Clostridium difficile toxin gene amplification assay is a device that consists of reagents for the amplification and detection of target sequences in Clostridium difficile toxin genes in fecal specimens from patients suspected of having Clostridium difficile infection (CDI). The detection of clostridial toxin genes, in conjunction with other laboratory tests, aids in the clinical laboratory diagnosis of CDI caused by Clostridium difficile.

(b) Classification. Class II (special controls). The special controls are set forth in FDA's guideline document entitled: "Class II Special Controls Guideline: Toxin Gene Amplification Assays for the Detection of Clostridium difficile; Guideline for Industry and Food and Drug Administration Staff." See § 866.1(e) for information on obtaining this document.

Dated: August 21, 2015.

Leslie Kux,

Associate Commissioner for Policy.

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