



4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA-2017-N-1917]

Medical Devices; Immunology and Microbiology Devices; Classification of the Assayed Quality Control Material for Clinical Microbiology Assays

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the assayed quality control material for clinical microbiology assays into class II (special controls). The special controls that will apply to the device are identified in this order and will be part of the codified language for the assayed quality control material for clinical microbiology assays' classification. The Agency is classifying the device into class II (special controls) to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This order is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The classification was applicable on March 28, 2016.

FOR FURTHER INFORMATION CONTACT: Ryan Lubert, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4545, Silver Spring, MD, 20993-0002, 240-402-6357, ryan.lubert@fda.hhs.gov.

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, also known as De Novo classification, 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 shall classify the device by written order within 120 days. This classification will be the initial classification of the device.

On December 18, 2015, Bio-Rad Laboratories, Inc., submitted a request for classification of the Amplichek II 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 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, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on March 28, 2016, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 866.3920.

Following the effective date of this final classification order, any firm submitting a premarket notification (510(k)) for an assayed quality control material for clinical microbiology assays will need to comply with the special controls named in this final order. A De Novo classification decreases regulatory burdens. When FDA classifies a device type as class I or II via the De Novo pathway, other manufacturers do not have to submit a De Novo request or premarket approval application to market the same type of device, unless the device has a new intended use or technological characteristics that raise different questions of safety or effectiveness. Instead, manufacturers can use the less burdensome pathway of 510(k), when necessary, to market their device, and the device that was the subject of the original De Novo classification can serve as a predicate device for additional 510(k)s from other manufacturers.

The device is assigned the generic name assayed quality control material for clinical microbiology assays, and it is identified as a device indicated for use in a test system to estimate test precision or to detect systematic analytical deviations that may arise from reagent or analytical instrument variation. This type of device consists of single or multiple microbiological analytes intended for use with either qualitative or quantitative assays.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1:

Table 1.--Assayed Quality Control Material for Clinical Microbiology Assays Risks and Mitigation Measures

Identified Risks to Health	Required Mitigations
Incorrect use of the instrument for non-indicated samples resulting in a delay in diagnosis	Special Control (1) (21 CFR 866.3920(b)(1)); Special Control (3) (21 CFR 866.3920(b)(3)); and Special Control (4) (21 CFR 866.3920(b)(4))
Assessment performance error (false negative)	Special Control (1) (21 CFR 866.3920(b)(1))
Incorrect results due to improper or unexpected performance	Special Control (2) (21 CFR 866.3920(b)(2)) and Special Control (4)(iii) (21 CFR 866.3920(b)(4)(iii))
Failure to correctly operate the instrument	Special Control (1) (21 CFR 866.3920(b)(1))

FDA believes that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. This device

type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification (510(k)), prior to marketing the device, which contains information about the assayed quality control material for clinical microbiology assays they intend to market.

II. Analysis of Environmental Impact

We have 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. Paperwork Reduction Act of 1995

This final 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, and the collections of information in 21 CFR parts 801 and 809, regarding labeling 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 part 866 is revised to read as follows:

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

2. Add § 866.3920 to subpart D to read as follows:

§ 866.3920 Assayed quality control material for clinical microbiology assays.

(a) Identification. An assayed quality control material for clinical microbiology assays is a device indicated for use in a test system to estimate test precision or to detect systematic analytical deviations that may arise from reagent or analytical instrument variation. This type of device consists of single or multiple microbiological analytes intended for use with either qualitative or quantitative assays.

(b) Classification. Class II (special controls). The special controls for this device are:

(1) Premarket notification submissions must include detailed device description documentation and information concerning the composition of the quality control material, including, as appropriate:

- (i) Analyte concentration;
- (ii) Expected values;
- (iii) Analyte source;
- (iv) Base matrix;
- (v) Added components;
- (vi) Safety and handling information; and
- (vii) Detailed instructions for use.

(2) Premarket notification submissions must include detailed documentation, including line data as well as detailed study protocols and a statistical analysis plan used to establish performance, including:

- (i) Description of the process for value assignment and validation.
- (ii) Description of the protocol(s) used to establish stability.

(iii) Line data establishing precision/reproducibility.

(iv) Where applicable, assessment of matrix effects and any significant differences between the quality control material and typical patient samples in terms of conditions known to cause analytical error or affect assay performance.

(v) Where applicable, identify or define traceability or relationship to a domestic or international standard reference material and/or method.

(vi) Where applicable, detailed documentation related to studies for surrogate controls.

(3) Premarket notification submissions must include an adequate mitigation (e.g., real-time stability program) to the risk of false results due to potential modifications to the assays specified in the device's 21 CFR 809.10 compliant labeling.

(4) Your 21 CFR 809.10 compliant labeling must include the following:

(i) The intended use of your 21 CFR 809.10(a)(2) and (b)(2) compliant labeling must include the following:

(A) Assayed control material analyte(s);

(B) Whether the material is intended for quantitative or qualitative assays;

(C) Stating if the material is a surrogate control; and

(D) The system(s), instrument(s), or test(s) for which the quality control material is intended.

(ii) The intended use in your 21 CFR 809.10(a)(2) and (b)(2) compliant labeling must include the following statement: "This product is not intended to replace manufacturer controls provided with the device."

(iii) A limiting statement that reads "Quality control materials should be used in accordance with local, state, federal regulations, and accreditation requirements."

Dated: July 24, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017-15858 Filed: 7/26/2017 8:45 am; Publication Date: 7/27/2017]