



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA-2011-N-0103]

RIN 0910-AH98

Microbiology Devices; Classification of In Vitro Diagnostic Devices for *Bacillus* Species
Detection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is issuing a final rule to classify in vitro diagnostic devices for *Bacillus* species (spp.) detection into class II (special controls) and to continue to require a premarket notification (510(k)) to provide a reasonable assurance of safety and effectiveness of the device. FDA is also establishing special controls in a special controls guideline in addition to restricting use and distribution of the devices. An in vitro diagnostic device for *Bacillus* spp. detection is a prescription device used to detect and differentiate among *Bacillus* spp. and presumptively identify *B. anthracis* and other *Bacillus* spp. from cultured isolates or clinical specimens as an aid in the diagnosis of anthrax and other diseases caused by *Bacillus* spp.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]. See further discussion in section V “Implementation Strategy”.

ADDRESSES: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and insert the docket number found in brackets in the heading

of this final rule into the “Search” box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beena Puri, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4502, Silver Spring, MD 20993-0002, 301-796-6202. Beena.Puri@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

- A. Purpose of the Final Rule
- B. Summary of the Major Provisions of the Final Rule
- C. Legal Authority
- D. Costs and Benefits

II. Background

- A. History of this Rulemaking
- B. Summary of Comments to the Proposed Rule

III. Legal Authority

IV. Comments on the Proposed Rule and FDA Response

V. Implementation Strategy

VI. Electronic Access

VII. Economic Analysis of Impacts

VIII. Analysis of Environmental Impact

IX. Paperwork Reduction Act of 1995

X. Consultation and Coordination with Indian Tribal Governments

XI. References

I. Executive Summary

A. *Purpose of the Final Rule*

FDA is classifying in vitro diagnostic devices for *Bacillus* species (spp.) detection (product codes NVQ, NPO, NRL, NHT, and NWZ) into class II (special controls), establishing special controls in a special controls guideline entitled “Class II Special Controls Guideline: In Vitro Diagnostic Devices for *Bacillus* spp. Detection,” restricting the device to prescription use, and restricting distribution of these devices to laboratories that follow public health guidelines that address appropriate biosafety conditions, interpretation of test results, and coordination of findings with public health authorities.

This decision is based upon the recommendations from the Microbiology Devices Advisory Panel (the Panel), public comments received following the publication of the proposed rule, FDA’s experience with these devices. FDA believes that the special controls established and imposed by this final rule and special controls guideline, together with the general controls, will provide a reasonable assurance of safety and effectiveness of the device. Further, FDA believes that the restrictions on use and distribution are required for the safe and effective use of the device.

B. *Summary of the Major Provisions of the Final Rule*

This final rule classifies in vitro diagnostic devices for *Bacillus* spp. detection into class II (special controls), and establishes special controls in a special controls guideline entitled “Class II Special Controls Guideline: In Vitro Diagnostic Devices for *Bacillus* spp. Detection” which address: (1) specific information relating to the devices' intended use, components, testing procedures, specimen storage/shipping conditions, and interpretation/reporting; (2) detailed

descriptive information regarding the studies required to demonstrate appropriate performance and control against assays that may otherwise fail to perform to acceptable standards; (3) specific labeling requirements; and (4) certain information that must be submitted for in vitro diagnostic devices for *Bacillus* spp. detection that use nucleic acid amplification.

This rule also restricts the use and distribution of these devices. Because handling the quality control organisms and those potentially present in the specimen may pose a risk to laboratory workers, FDA is finalizing a restriction on distribution of these products to laboratories that follow public health guidelines that address appropriate biosafety conditions, interpretation of test results, and coordination of findings with public health authorities. Further, FDA is restricting use of these devices to be a prescription device under the terms set forth in 21 CFR 866.3045(d).

C. Legal Authority

FDA is issuing this rule under the authority of the provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act) that apply to medical devices (21 U.S.C. 301 et seq.), including section 513(a) regarding device classes (21 U.S.C. 360c(a)), sections 513(b) and (c) regarding device classification panels (21 U.S.C. 360c(b) and (c)), section 513(d) regarding device classification (21 U.S.C. 360c(d)), and section 520(e) regarding restrictions on the sale, distribution, or use of a device (21 U.S.C. 360j(e)).

D. Costs and Benefits

Quantifiable benefits of this rule are annual cost savings resulting from a reduction in the time burden of inquiries manufacturers submit to FDA. The primary present value of the benefits, over a 20-year time horizon from 2018 to 2038 are estimated to be \$258,054, at a 7

percent discount rate and \$353,393, at a 3 percent discount rate. The primary estimate of the annual benefits is \$22,258 a year.

This rule has a one-time upfront cost for current manufacturers of these devices as they will need to spend time reading the rule and may need to develop new labeling. There is also an annual cost of reading the rule to firms who may submit inquiries in the future. The primary present value of the costs, over a 20-year time horizon, are estimated to be \$12,659 at a 7 percent discount rate and \$14,081 at a 3 percent discount rate. The primary annualized costs are \$1,092 at a 7 percent discount rate and \$887 at a 3 percent discount rate. The total net benefit of the rule is estimated to be \$245,395 at a 7 percent discount rate and \$339,312 at a 3 percent discount rate. The annualized net benefits of this rule are estimated to be \$21,166 at a 7 percent discount rate and \$21,371 at a 3 percent discount rate.

II. Background

A. History of this Rulemaking

In the *Federal Register* of November 17, 2015 (80 FR 71756), FDA issued a proposed rule to classify in vitro diagnostic devices for *Bacillus* spp. detection as class II with special controls, and proposed the draft special controls guideline entitled “Class II Special Controls Guideline: In Vitro Diagnostic Devices for *Bacillus* spp. Detection; Draft Guideline for Industry and Food and Drug Administration Staff” (Ref. 1) and certain restrictions on its use and distribution. The proposed special controls and restrictions were based, in part, upon feedback received from the Panel on March 7, 2002 (Ref. 2). FDA invited interested persons to comment on the proposed regulation and the special controls guideline by February 16, 2016.

B. Summary of Comments to the Proposed Rule

FDA received one comment requesting an exclusive 510(k). This comment is outside the scope of the rule. No comments opposed the proposed classification for in vitro diagnostic devices for *Bacillus* spp. detection.

III. Legal Authority

The FD&C Act (21 U.S.C. 301 et seq.), as amended, established a comprehensive system for the regulation of medical devices intended for human use. The FD&C Act establishes three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness (section 513(a) of the FD&C Act). The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Class I devices are those devices for which the general controls of the FD&C Act (controls authorized by or under the general controls sections of the FD&C Act (sections 501, 502, 510, 516, 518, 519, or 520 (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, or 360j), or any combination of such sections) are sufficient to provide a reasonable assurance of the safety and effectiveness of the device; or those devices for which insufficient information exists to determine that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device or to establish special controls to provide such assurance, but because the devices are not purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, and do not present a potential unreasonable risk of illness or injury, are to be regulated by general controls (section 513(a)(1)(A) of the FD&C Act). Class II devices are those devices for which general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness, and for which there is sufficient information to establish special controls to

provide such assurance, including the promulgation of performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and other appropriate actions as the Agency deems necessary to provide such assurance (section 513(a)(1)(B) of the FD&C Act). Class III devices are those devices for which insufficient information exists to determine that general controls and special controls would provide a reasonable assurance of safety and effectiveness, and are purported or represented for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or present a potential unreasonable risk of illness or injury (section 513(a)(1)(C) of the FD&C Act).

FDA refers to devices that were in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), as “preamendments devices.” Pursuant to section 513(d)(1) of the FD&C Act, FDA classifies these devices after FDA: (1) receives a recommendation from a device classification panel (an FDA advisory committee); (2) publishes the panel’s recommendation for comment, along with a proposed regulation classifying the device; and (3) publishes a final regulation classifying the device (section 513(d)(1) of the FD&C Act). FDA has classified most preamendments devices under these procedures and has followed these procedures to classify in vitro diagnostic devices for *Bacillus* spp. detection.

Section 520(e) of the FD&C Act authorizes FDA to issue regulations imposing restrictions on the sale, distribution, or use of a device, if because of its potentiality for harmful effect or the collateral measures necessary to its use, FDA determines that absent such restrictions, there cannot be a reasonable assurance of its safety and effectiveness. Certain provisions of the FD&C Act related specifically to FDA’s authority over restricted devices. For example, section 502(q) and (r) of the FD&C Act provide that a restricted device distributed or

offered for sale in any state shall be deemed to be misbranded if its advertising is false or misleading or fails to include certain information regarding the device, or it is sold, distributed, or used in violation of regulations prescribed under section 520(e) of the FD&C Act, and section 704(a) of the FD&C Act (21 U.S.C. 374(a)) authorizes FDA to inspect certain records relating to restricted devices. FDA continues to believe that the restrictions as provided in the final rule related to distribution and use are required for the safe and effective use of the device.

IV. Comments on the Proposed Rule and FDA Response

FDA received one comment on the proposed rule by the close of the comment period, requesting an exclusive 510(k). This comment is outside of the scope of the rule. No comments opposed the proposed classification for in vitro diagnostic devices for *Bacillus* spp. detection. In this final rule, FDA is adopting the classification, special controls and the restrictions on use and distribution from its proposed rule published on November 17, 2015 (80 FR 71756).

V. Implementation Strategy

This final rule will become effective 30 days after its date of publication in the *Federal Register*.

The implementation strategy is set forth below for these devices.

- Devices that have not been legally marketed prior to the date of publication of this final rule, or devices that have been legally marketed, but are required to submit a new 510(k) under 21 CFR 807.81(a)(3) because the device is about to be significantly changed or modified: manufacturers must obtain 510(k) clearance and comply with special controls before marketing the new or changed device.
- Devices that have been legally marketed prior to the date of publication of this final rule, and devices for which 510(k) submissions have been submitted before the date of

publication of this final rule: manufacturers are not required to submit a 510(k) to demonstrate compliance with the special controls set forth in sections VI, VII, and IX of the special controls guideline. FDA had proposed that manufacturers of such devices must comply with the underlying requirements for those special controls, as well as the labeling special controls set forth in section VIII of the special controls guideline. FDA is finalizing our classification and is clarifying that for such devices, FDA does not expect submission of documentation to FDA demonstrating compliance with the special controls set forth in sections VI, VII, and IX of the special controls guideline. Further, FDA does not intend to enforce compliance with the labeling special controls set forth in section VIII of the special controls guideline until [INSERT DATE 1 YEAR AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. If a manufacturer markets such a device after [INSERT DATE 1 YEAR AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], and that device does not comply with the labeling special controls set forth in section VIII of the special controls guideline, then FDA would consider taking action against such a manufacturer under its usual enforcement policies. FDA believes that a period of 1 year from the publication date of this final rule is appropriate for manufacturers to come into compliance with such requirements. FDA believes this approach will help ensure the efficient and effective implementation of this final rule.

VI. Electronic Access

Persons interested in obtaining a copy of the final special controls guideline may do so by using the internet. A search capability for all Center for Devices and Radiological Health guidelines and guidance documents is available at

<https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm>. The final special controls guideline is also available at <https://www.regulations.gov>. Persons unable to download an electronic copy of “Class II Special Controls Guideline: In Vitro Diagnostic Devices for *Bacillus* spp. Detection,” may send an email request to CDRH-Guidance@fda.hhs.gov to receive an electronic copy of the document. Please use the document number 1400038 to identify the special controls guideline you are requesting.

VII. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, Executive Order 13771, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). Executive Orders 12866 and 13563 direct us 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). Executive Order 13771 requires that the costs associated with significant new regulations “shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.” We believe that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because of the small impact expected from this rule, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to 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 \$154 million, using the most current (2018) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

Quantifiable benefits of this rule are cost savings resulting from a reduction in the time burden of inquiries manufacturers submit to FDA. The cost savings involve manufacturers, who no longer need to submit as many inquiries related to submissions for these devices, because much of the necessary information is provided by this rule and guideline, and FDA, who no longer needs to use resources to respond to these inquiries. A 20-year time horizon was chosen for this analysis because this industry has been stable and there is no reason to expect disruptions for the foreseeable future. The primary present value of the benefits, over a 20-year time horizon from 2018 to 2038 are estimated to be \$258,054, at a 7 percent discount rate and \$353,393, at a 3 percent discount rate. The primary estimate of the annual benefits, over a 20-year time horizon from 2018 to 2038, are estimated to be \$22,258 a year.

Table 1.--Summary of Benefits, Costs, and Distributional Effects of the Final Rule in 2017 Dollars over a 20-Year Time Horizon

Category		Primary Estimate	Low Estimate	High Estimate	Units			Notes
					Year Dollars	Discount Rate	Period Covered	
Benefits	Annualized Monetized \$/year	\$22,258	\$7,419	\$37,096	2017	7%	20	
		\$22,258	\$7,419	\$37,096	2017	3%	20	
	Annualized Quantified					7%		
						3%		
	Qualitative							
Costs	Annualized Monetized \$/year	\$1,092	\$733	\$1,455	2017	7%	20	
		\$887	\$595	\$1,183	2017	3%	20	
	Annualized Quantified					7%		
						3%		

	Qualitative							
Transfers	Federal Annualized Monetized \$/year					7%		
						3%		
	From/ To	From:			To:			
	Other Annualized Monetized \$/year					7%		
						3%		
	From/To	From:			To:			
Effects	State, Local or Tribal Government: Small Business: Wages: Growth:							

This rule has a one-time upfront cost for current manufacturers of these devices as they may need to develop new labeling. There are seven total products on the market and each labeling redesign is estimated to cost \$1,096. We estimate the total labeling cost to be \$7,674. The six existing manufacturers (one firm has two products) also face a one-time upfront cost of having to read the rule and guideline which we estimate to be \$1,138 for the manufacturers. Finally, there is an annual cost of reading the rule to firms who may submit inquiries in the future. We estimate this annual cost to be \$332. The primary present value of the costs, over a 20-year time horizon from 2018 to 2038, are estimated to be \$12,659 at a 7 percent discount rate and \$14,081 at a 3 percent discount rate. The primary annualized costs, over a 20-year time horizon from 2018 to 2038, are estimated to be \$1,092 at a 7 percent discount rate and \$887 at a 3 percent discount rate. The total net benefit of the rule is estimated to be \$245,395 at a 7 percent discount rate and \$339,312 at a 3 percent discount rate. The annualized net benefits of this rule are estimated to be \$21,166 at a 7 percent discount rate and \$21,371 at a 3 percent discount rate.

In line with Executive Order 13771, in table 2 we estimate present and annualized values of costs and cost savings over an infinite time horizon. Based on these cost savings this final

rule would be considered a deregulatory action under Executive Order 13771. Our primary estimate for the present value of the net costs is -\$319,974 (or a cost savings of \$319,974) at a 7 percent discount rate and -\$729,462 at a 3 percent discount rate in 2016 dollars.

Table 2.--Executive Order 13771 Summary Table (in 2016 Dollars, Over an Infinite Time Horizon)

	Primary (7%)	Lower Bound (7%)	Upper Bound (7%)	Primary (3%)	Lower Bound (3%)	Upper Bound (3%)
Present Value of Costs	\$13,614	\$9,133	\$18,094	\$19,812	\$13,265	\$26,358
Present Value of Cost Savings	\$333,588	\$77,548	\$555,938	\$749,273	\$174,181	\$1,248,789
Present Value of Net Costs	(\$319,974)	(\$68,415)	(\$537,843)	(\$729,462)	(\$160,916)	(\$1,222,430)
Annualized Costs	\$891	\$597	\$1,184	\$577	\$386	\$768
Annualized Cost Savings	\$21,823	\$5,073	\$36,370	\$21,823	\$5,073	\$36,372
Annualized Net Costs	(\$20,933)	(\$4,476)	(\$35,186)	(\$21,246)	(\$4,687)	(\$35,605)

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (Ref. 3) and at

<https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm>

VIII. 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.

IX. Paperwork Reduction Act of 1995

This final rule establishes special controls and restrictions that refer to currently 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 (the PRA) (44 U.S.C. 3501-3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910-0120 and the

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

The labeling referenced in sections VI(A), VIII(A), and VIII(C) of the final special controls guideline do not constitute a "collection of information" under the PRA because the labeling is a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

X. Consultation and Coordination with Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive Order and, consequently, a tribal summary impact statement is not required.

XI. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see ADDRESSES) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at <https://www.regulations.gov>. References without asterisks are not on public display at <https://www.regulations.gov> because they have a copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the *Federal Register*, but websites are subject to change over time.

*1. Final Special Controls Guideline for Industry and Food and Drug Administration Staff, “Class II Special Controls Guideline: In Vitro Diagnostic Devices for *Bacillus* spp. Detection,” issued [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], available at <https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM470760.pdf>.

*2. Transcript of the FDA Microbiology Devices Panel meeting, March 7, 2002 (available at <https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfAdvisory/details.cfm?mtg=348>).

*3. “Preliminary Regulatory Impact Analysis, Initial Regulatory Flexibility Analysis, and Unfunded Mandates Reform Act Analysis for Microbiology Devices; Classification of In Vitro Diagnostic Device for *Bacillus* Species Detection,” available at <https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/UCM477856.pdf>.

4. Abshire, T.G., J.E. Brown, and J.W. Ezzell, “Validation of the Use of Gamma Phage for Identifying *Bacillus anthracis*,” 102nd American Society for Microbiology Annual Meeting (poster #C122), 2001.

*5. Abshire, T.G., et al., “Production and Validation of the Use of Gamma Phage for the Identification of *Bacillus anthracis*,” *Journal of Clinical Microbiology*, vol. 43(9), pp. 4780-8, 2005, available at <https://www.ncbi.nlm.nih.gov/pubmed/16145141>.

*6. Brown, E.R. and W.B. Cherry, “Specific Identification of *Bacillus anthracis* by Means of a Variant Bacteriophage,” *Journal of Infectious Diseases*, vol. 96, p. 34, 1955, available at <https://jid.oxfordjournals.org/content/96/1/34.long>.

*7. Brown, E.R. et al., "Differential Diagnosis of *Bacillus cereus*, *Bacillus anthracis*, and *Bacillus cereus* var. *mycoides*," *Journal of Bacteriology*, vol. 75, p. 499, 1958, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC290100/pdf/jbacter00512-0024.pdf>.

*8. Buck C.A., R.L. Anacker, F.S. Newman, et al., "Phage Isolated from Lysogenic *Bacillus anthracis*," *Journal of Bacteriology*, vol. 85, p. 423, 1963, available at <https://jb.asm.org/content/85/6/1423.full.pdf+html?sid=c14df35d-1d7b-4cac-b55b-2097931a4623>.

9. Parry, J.M., P.C.B. Turnbull, and J.R. Gibson, "A Colour Atlas of *Bacillus* Species," Wolfe Medical Publications Ltd., London, 1983.

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 continues to read as follows:

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

2. Section 866.3045 is added to subpart D to read as follows:

§ 866.3045 In vitro diagnostic device for *Bacillus* spp. detection.

(a) *Identification.* An in vitro diagnostic device for *Bacillus* species (spp.) detection is a prescription device used to detect and differentiate among *Bacillus* spp. and presumptively identify *B. anthracis* and other *Bacillus* spp. from cultured isolates or clinical specimens as an aid in the diagnosis of anthrax and other diseases caused by *Bacillus* spp. This device may consist of *Bacillus* spp. antisera conjugated with a fluorescent dye (immunofluorescent reagents)

used to presumptively identify bacillus-like organisms in clinical specimens; bacteriophage used for differentiating *B. anthracis* from other *Bacillus* spp. based on susceptibility to lysis by the phage; or antigens used to identify antibodies to *B. anthracis* (anti-toxin and anti-capsular) in serum. *Bacillus* infections include anthrax (cutaneous, inhalational, or gastrointestinal) caused by *B. anthracis*, and gastrointestinal disease and non-gastrointestinal infections caused by *B. cereus*.

(b) *Classification*. Class II (special controls). The special controls are set forth in FDA's special controls guideline document entitled "In Vitro Diagnostic Devices for *Bacillus* spp. Detection; Class II Special Controls Guideline for Industry and Food and Drug Administration Staff." For availability of the guideline document, see §866.1(e).

(c) *Restriction on Distribution*. The distribution of these devices is limited to laboratories that follow public health guidelines that address appropriate biosafety conditions, interpretation of test results, and coordination of findings with public health authorities.

(d) *Restriction on Use*. The use of this device is restricted to prescription use and must comply with the following:

(1) The device must be in the possession of:

(i)(A) A person, or his agents or employees, regularly and lawfully engaged in the manufacture, transportation, storage, or wholesale or retail distribution of such device; or

(B) A practitioner, such as a physician, licensed by law to use or order the use of such device; and

(ii) The device must be sold only to or on the prescription or other order of such practitioner for use in the course of his professional practice.

(2) The label of the device shall bear the statement “Caution: Federal law restricts this device to sale by or on the order of a _____”, the blank to be filled with the word "physician" or with the descriptive designation of any other practitioner licensed by the law of the State in which he practices to use or order the use of the device.

(3) Any labeling, as defined in section 201(m) of the Federal Food, Drug, and Cosmetic Act, whether or not it is on or within a package from which the device is to be dispensed, distributed by, or on behalf of the manufacturer, packer, or distributor of the device, that furnishes or purports to furnish information for use of the device contains adequate information for such use, including indications, effects, routes, methods, and frequency and duration of administration and any relevant hazards, contraindications, side effects, and precautions, under which practitioners licensed by law to employ the device can use the device safely and for the purposes for which it is intended, including all purposes for which it is advertised or represented. This information will not be required on so-called reminder-piece labeling which calls attention to the name of the device but does not include indications or other use information.

(4) All labeling, except labels and cartons, bearing information for use of the device also bears the date of the issuance or the date of the latest revision of such labeling.

Dated: March 22, 2019.

Scott Gottlieb,

Commissioner of Food and Drugs.

[FR Doc. 2019-06026 Filed: 3/29/2019 8:45 am; Publication Date: 4/1/2019]