



4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. FDA-2017-N-6593]

Medical Devices; Clinical Chemistry and Clinical Toxicology Devices; Classification of the Reagents for Molecular Diagnostic Instrument Test Systems

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the reagents for molecular diagnostic instrument test systems into class I (general controls). We are taking this action because we have determined that classifying the device into class I (general controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The classification was applicable on November 19, 2013.

FOR FURTHER INFORMATION CONTACT: Steven Tjoe, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4550, Silver Spring, MD 20993-0002, 301-796-5866, steven.tjoe@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the reagents for molecular diagnostic instrument test systems as class I (general controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as "postamendments devices" because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through "De Novo" classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and

Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105-115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112-144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining "substantial equivalence").

Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On October 4, 2013, Illumina, Inc., submitted a request for De Novo classification of the MiSeqDx Universal Kit 1.0. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class I if general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(A)). After review of the information submitted in the request, we determined that the device can be classified into class I. FDA has determined that general controls will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on November 19, 2013, FDA issued an order to the requestor classifying the device into class I. FDA is codifying the classification of the device by adding 21 CFR 862.3800. We have named the generic type of device reagents for molecular diagnostic instrument test systems, and it is identified as reagents other than analyte specific reagents used as part of molecular diagnostic test systems, such as polymerases, nucleotides and nucleotide mixes, master mixes in which individual reagents are optimized to be used together, and labeled nucleic acid molecules.

FDA has identified the following risks to health associated specifically with this type of device in table 1.

Table 1.--Reagents for Molecular Diagnostic Instrument Test Systems Risks and Mitigation Measures

Identified Risks	Mitigation Measures
Inaccurate test results due to inconsistently manufactured test system reagents	General controls, including current good manufacturing practices

Section 510(l)(1) of the FD&C Act provides that a device within a type that has been classified into class I under section 513 of the FD&C Act is exempt from premarket notification under section 510(k), unless the device is of substantial importance in preventing impairment of human health or presents a potentially unreasonable risk of illness or injury (21 U.S.C. 360(l)(1)). Devices within this type are exempt from the premarket notification requirements under section 510(k), subject to the limitations of exemptions in 21 CFR 862.9.

III. Analysis of Environmental Impact

The Agency has 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.

IV. Paperwork Reduction Act of 1995

This final order refers 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 the guidance document “De Novo Classification Process (Evaluation of Automatic Class III Designation)” have been approved under OMB control number 0910-0844; the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910-0485; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910-0231; 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 part 820, regarding

current good manufacturing practices, have been approved under OMB control number 0910-0073.

List of Subjects in 21 CFR Part 862

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 862 is amended as follows:

PART 862--CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for part 862 continues to read as follows:

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

2. Add § 862.3800 to subpart D to read as follows:

§ 862.3800 Reagents for molecular diagnostic instrument test systems.

(a) *Identification.* Reagents for molecular diagnostic test systems are reagents other than analyte specific reagents used as part of molecular diagnostic test systems, such as polymerases, nucleotides and nucleotide mixes, master mixes in which individual reagents are optimized to be used together, and labeled nucleic acid molecules.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedure in subpart E of part 807 of this chapter, subject to the limitations in § 862.9.

Dated: December 20, 2017.

Leslie Kux,

Associate Commissioner for Policy.

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