



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA-2025-N-2106]

Medical Devices; Immunology and Microbiology Devices; Classification of the Device that Detects Nucleic Acid Sequences from Microorganisms Associated with Vaginitis and Bacterial Vaginosis

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is classifying the device that detects nucleic acid sequences from microorganisms associated with vaginitis and bacterial vaginosis into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the device that detects nucleic acid sequences from microorganisms associated with vaginitis and bacterial vaginosis's classification. We are taking this action because we have determined that classifying the device into class II 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 October 28, 2016.

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SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the device that detects nucleic acid sequences from microorganisms associated with vaginitis and bacterial vaginosis as class II (special 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 device 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 (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144)

modified the De Novo application process by adding a second procedure. 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 shall 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 section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining "substantial equivalence"). Instead, sponsors can use the less burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On January 12, 2016, FDA received GeneOhm Sciences Canada, Inc. (BD Diagnostics)'s request for De Novo classification of the BD Max Vaginal Panel. 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 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 that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see section 513(a)(1)(B) of the FD&C Act). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on October 28, 2016, FDA issued an order to the requestor classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 866.3975.¹ We have named the generic type of device “device that detects nucleic acid sequences from microorganisms associated with vaginitis and bacterial vaginosis,” and it is identified as a qualitative in vitro diagnostic device intended for the detection of microbial nucleic acid sequences in vaginal specimens collected from patients with signs and symptoms of vaginitis or bacterial vaginosis. This device is intended to aid in the diagnosis of vaginitis or bacterial vaginosis when used in conjunction with clinical signs and symptoms and other laboratory findings.

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. — Device that Detects Nucleic Acid Sequences from Microorganisms Associated with Vaginitis and Bacterial Vaginosis Risks and Mitigation Measures

Identified Risks to Health	Mitigation Measures
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¹ FDA notes that the “ACTION” caption for this final order is styled as “Final amendment; final order,” rather than “Final order.” Beginning in December 2019, this editorial change was made to indicate that the document “amends” the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register’s (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

Incorrect identification or lack of identification of a pathogenic microorganism by the device can lead to improper patient management	General Controls and special controls (1)
Failure to correctly interpret test results	General controls and special controls (2)

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this final order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. 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 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. 3501-3521). The collections of information in part 860, subpart D, regarding De Novo Classification have been approved under OMB control number 0910-0844; 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, 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 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 21 CFR part 866 continues to read as follows:

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

2. Add § 866.3975 to subpart D to read as follows:

§ 866.3975 Device that detects nucleic acid sequences from microorganisms associated with vaginitis and bacterial vaginosis.

(a) *Identification.* A device that detects nucleic acid sequences from microorganisms associated with vaginitis and bacterial vaginosis is a qualitative in vitro diagnostic device intended for the detection of microbial nucleic acid sequences in vaginal specimens collected from patients with signs and symptoms of vaginitis or bacterial vaginosis. This device is intended to aid in the diagnosis of vaginitis or bacterial vaginosis when used in conjunction with clinical signs and symptoms and other laboratory findings.

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

(1) Design verification and validation must include:

(i) Documentation with a detailed device description of device components; ancillary reagents required but not provided; and explanation of the methodology including primer/probe sequence, design, and rationale for sequence selection.

(ii) Documentation with information that demonstrates the performance characteristics of the device, including:

(A) Limit of Detection;

- (B) Precision (reproducibility);
- (C) Analytical specificity;
- (D) Analytical reactivity (inclusivity);
- (E) Specimen stability; and
- (F) Effects of interfering substances.

(iii) Detailed documentation from a prospective clinical study. As appropriate to the intended use, the prospective clinical study must be performed on an appropriate study population, including women of various ages and ethnicities. The prospective clinical study must compare the device performance to results obtained from well-accepted comparator methods.

(iv) Detailed documentation for device software, including software applications and hardware-based devices that incorporate software.

(2) The labeling required under § 809.10(b) of this chapter must include:

(i) A detailed explanation of the interpretation of results and acceptance criteria;

(ii) For devices with an intended use that includes detection of nucleic acid sequences from bacteria associated with bacterial vaginosis, clinical performance stratified by patient demographics such as race, ethnicity, age, and pregnancy status.

(iii) For devices with an intended use that includes detection of nucleic acid sequences from bacteria associated with bacterial vaginosis, a summary of device results in an asymptomatic population with demographic characteristics appropriate to the intended use population.

(iv) For devices with an intended use that includes detection of either *Candida* species or bacteria associated with bacterial vaginosis, a limitation that *Candida* species and bacterial compositions associated with bacterial vaginosis can be present as part of normal vaginal flora and results should be considered in conjunction with available clinical information.

Deputy Commissioner for Policy, Legislation, and International Affairs.

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