

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 113

[Docket No. APHIS–2014–0033]

#### In Vitro Tests for Serial Release

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the “In vitro tests for serial release” regulations by removing a footnote that refers to one method to calculate the relative antigen content of inactivated veterinary biological products and relative potency calculation software available from Veterinary Services’ Center for Veterinary Biologics (CVB). CVB will no longer provide or update the software and the written method for using the software will no longer be used. This action will update the regulations.

**DATES:** Effective May 30, 2014.

**FOR FURTHER INFORMATION CONTACT:** Dr. Donna Malloy, Section Leader, Operational Support, Center for Veterinary Biologics Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road, Unit 148, Riverdale, MD 20737–1231; (301) 851–3426.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 9 CFR 113.8 provide criteria for acceptable in vitro potency tests for the serial release of live and inactivated veterinary biological products. As provided in the regulations, the potency of inactivated products is evaluated by comparing the relative antigen content of the product to an unexpired reference using a parallel line immunoassay or another acceptable procedure. The footnote in paragraph (c) of this section refers to

one method that can be used to evaluate the relative antigen content using Supplementary Assay Method (SAM) 318 and relative potency calculation software available from Veterinary Services’ Center for Veterinary Biologics (CVB). CVB is no longer providing or updating the software, and the written method for using the software, described in SAM 318, will no longer be used. Therefore, we are removing that footnote.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders 12866 and 12988. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

#### Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 113 is amended as follows:

#### PART 113—STANDARD REQUIREMENTS

■ 1. The authority citation for part 113 continues to read as follows:

**Authority:** 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

##### § 113.8 [Amended]

■ 2. In § 113.8, paragraph (c), footnote 1 is removed.

##### § 113.100 [Amended]

■ 3. In § 113.100, paragraph (f), footnote 2 is redesignated as footnote 1.

##### § 113.200 [Amended]

■ 4. In § 113.200, paragraph (f), footnote 3 is redesignated as footnote 2.

Done in Washington, DC, this 23rd day of May 2014.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2014–12550 Filed 5–29–14; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 866

[Docket No. FDA–2014–N–0429]

#### Medical Devices; Immunology and Microbiology Devices; Classification of Dengue Virus Serological Reagents

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final order.

**SUMMARY:** The Food and Drug Administration (FDA) is classifying dengue virus serological reagents into class II (special controls). The special controls that will apply to the device are identified in this order, and the codified language for the dengue serological reagents classification will include the identification of the special controls that will apply to this device. The Agency is classifying the device into class II (special controls) because special controls, in addition to general controls, will provide a reasonable assurance of safety and effectiveness of the device.

**DATES:** This order is effective June 30, 2014. The classification was applicable April 8, 2011.

#### FOR FURTHER INFORMATION CONTACT:

Beena Puri, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5553, Silver Spring, MD 20993–0002, 301–796–6202.

#### 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, July 9, 2012), 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) 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. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing this classification.

In accordance with section 513(f)(1) of the FD&C Act, FDA issued an order on October 8, 2010, classifying the InBios DENV Detect IgM Capture ELISA into class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II. On October 20, 2010, InBios International Inc., submitted a request for de novo classification of the InBios DENV Detect IgM Capture ELISA under section 513(f)(2) of the FD&C Act. The

manufacturer recommended that the device be classified into class II.

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) of the FD&C Act. 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.

The device is assigned the generic name dengue virus serological reagents, which are identified as devices that consist of antigens and antibodies for the detection of dengue virus and dengue antibodies in individuals who have signs and symptoms of dengue fever or dengue hemorrhagic fever. The detection aids in the clinical laboratory diagnosis of dengue fever or dengue hemorrhagic fever caused by dengue virus.

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 TO HEALTH AND MITIGATION MEASURES

| Identified risks to health                                                                                                                                                                                                                                                  | Mitigation measures                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A false positive test result for an individual may lead to unnecessary treatment and possibly a less thorough laboratory evaluation for the true cause of illness; a false positive result may lead to unnecessary initiation of mosquito vector control measures.          | Device Description Containing the Information Specified in the Special Control Guideline.<br>Performance Characteristics.<br>Labeling.<br>Postmarket Measures. |
| A false negative test result may lead to inappropriate use of antibiotics or a delay in treatment to prevent death due to dengue hemorrhagic fever or dengue shock syndrome or a false negative result may lead to delay in initiation of mosquito vector control measures. | Device Description Containing the Information Specified in the Special Control Guideline.<br>Performance Characteristics.<br>Labeling.<br>Postmarket Measures. |
| An error in the interpretation of the results .....                                                                                                                                                                                                                         | Labeling.                                                                                                                                                      |

FDA believes that the measures set forth in the special controls guideline entitled “Class II Special Controls Guideline: Dengue Virus Serological Reagents” are necessary, in addition to general controls, to mitigate the risks to health described in table 1.

Therefore, on April 8, 2011, FDA issued an order to the petitioner classifying dengue virus serological

reagents into class II. FDA is codifying this device type by adding § 866.3945).

Following the effective date of this final classification order, any firm submitting a 510(k) premarket notification for this device type will need to comply with the special controls.

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) of the FD&C Act 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 dengue virus nucleic acid amplification test reagents 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 part 801 and 21 CFR 809.10 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. Section 866.3945 is added to subpart D to read as follows:

#### § 866.3945 Dengue virus serological reagents.

(a) *Identification.* Dengue virus serological reagents are devices that consist of antigens and antibodies for the detection of dengue virus and dengue antibodies in individuals who have signs and symptoms of dengue

fever or dengue hemorrhagic fever. The detection aids in the clinical laboratory diagnosis of dengue fever or dengue hemorrhagic fever caused by dengue virus.

(b) *Classification.* Class II (special controls). The special control is FDA's guideline entitled "Class II Special Controls Guideline: Dengue Virus Serological Reagents." For availability of the guideline document, see § 866.1(e).

Dated: May 27, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–12545 Filed 5–29–14; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 866

[Docket No. FDA–2013–N–0544]

#### Microbiology Devices; Reclassification of Nucleic Acid-Based Systems for *Mycobacterium tuberculosis* Complex in Respiratory Specimens

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is reclassifying nucleic acid-based in vitro diagnostic devices for the detection of *Mycobacterium tuberculosis* complex in respiratory specimens from class III (premarket approval) into class II (special controls). FDA is also issuing the special controls guideline entitled "Class II Special Controls Guideline: Nucleic Acid-Based In Vitro Diagnostic Devices for the Detection of *Mycobacterium tuberculosis* Complex in Respiratory Specimens." These devices are intended to be used as an aid in the diagnosis of pulmonary tuberculosis.

**DATES:** This rule is effective June 30, 2014.

**ADDRESSES:** You may submit comments, identified by Docket No. FDA–2013–N–0544, by any of the following methods:

#### Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

#### Written Submissions

Submit written submissions in the following ways:

- Mail/Hand delivery/Courier (for paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**Instructions:** All submissions received must include the Agency name and Docket No. FDA–2013–N–0544 for this rulemaking. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

#### FOR FURTHER INFORMATION CONTACT:

Janice A. Washington, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5554, Silver Spring, MD 20993–0002, 301–796–6207.

#### SUPPLEMENTARY INFORMATION:

##### I. Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act (Pub. L. 108–214), the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), and the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) establish a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) establishes three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under the FD&C Act, FDA clears or approves the three classes of medical devices for commercial distribution in the United States through three