§ 866.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

[65 FR 2311, Jan. 14, 2000]
agents. In the disc-agar diffusion technique, bacterial susceptibility is ascertained by directly measuring the magnitude of a zone of bacterial inhibition around the disc on an agar surface. The disc-broth elution technique is associated with an automated rapid susceptibility test system and employs a fluid medium in which susceptibility is ascertained by photometrically measuring changes in bacterial growth resulting when antimicrobial material is eluted from the disc into the fluid medium. Test results are used to determine the antimicrobial agent of choice in the treatment of bacterial diseases.

(b) Classification. Class II (performance standards).

§ 866.1640 Antimicrobial susceptibility test powder.

(a) Identification. An antimicrobial susceptibility test powder is a device that consists of an antimicrobial drug powder packaged in vials in specified amounts and intended for use in clinical laboratories for determining in vitro susceptibility of bacterial pathogens to these therapeutic agents. Test results are used to determine the antimicrobial agent of choice in the treatment of bacterial diseases.

(b) Classification. Class II (performance standards).

§ 866.1645 Fully automated short-term incubation cycle antimicrobial susceptibility system.

(a) Identification. A fully automated short-term incubation cycle antimicrobial susceptibility system is a device that incorporates concentrations of antimicrobial agents into a system for the purpose of determining in vitro susceptibility of bacterial pathogens isolated from clinical specimens. Test results obtained from short-term (less than 16 hours) incubation are used to determine the antimicrobial agent of choice to treat bacterial diseases.

(b) Classification. Class II (performance standards).

Subpart C—Microbiology Devices

§ 866.2050 Staphylococcal typing bacteriophage.

(a) Identification. A staphylococcal typing bacteriophage is a device consisting of a bacterial virus intended for medical purposes to identify pathogenic staphylococcal bacteria through use of the bacteria’s susceptibility to destruction by the virus. Test results are used principally for the collection of epidemiological information.

(b) Classification. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in §866.9.

[47 FR 50823, Nov. 9, 1982, as amended at 54 FR 25045, June 12, 1989; 66 FR 38790, July 25, 2001]

§ 866.2120 Anaerobic chamber.

(a) Identification. An anaerobic chamber is a device intended for medical purposes to maintain an anaerobic (oxygen free) environment. It is used to isolate and cultivate anaerobic microorganisms.

(b) Classification. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in §866.9. The device is also exempt from the good manufacturing practice requirements of the quality system regulation in part 820 of this chapter, with the exception of §820.180, with respect to general requirements concerning records, and