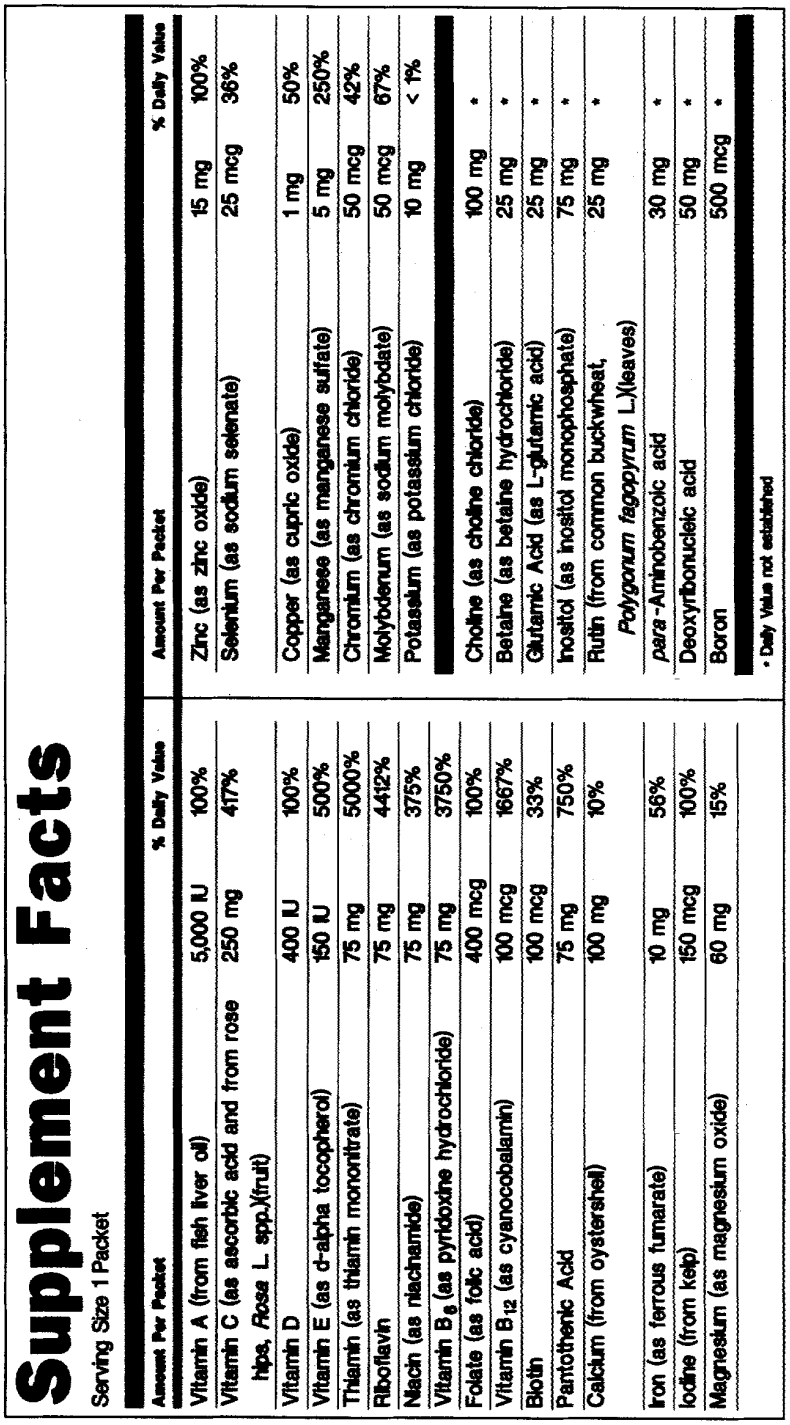
5. On page 67223, in paragraph (e)(11), the sample label is corrected as shown below. The Reference Daily Intakes (RDI's) values in this sample label inadvertently reflected the RDI's for these nutrients that were contained in the proposed rule entitled ''Food Labeling: Reference Daily Intakes'' that published in the Federal Register of January 4, 1994 (59 FR 427). They are being corrected to reflect the RDI's for these nutrients as revised by the final rule of December 28, 1995 (60 FR 67164) entitled ''Food Labeling: Reference Daily Intakes.''



Supplement Facts

Serving Size 1 Packet

Amount Per Packet		% Daily Value
Vitamin A (from fish liver oil)	5,000 IU	100%
Vitamin C (as ascorbic acid and from rose hips, *Rosa* L. spp.)(fruit)	250 mg	417%
Vitamin D	400 IU	100%
Vitamin E (as d-alpha tocopherol)	150 IU	500%
Thiamin (as thiamin mononitrate)	75 mg	5000%
Riboflavin	75 mg	4412%
Niacin (as niacinamide)	75 mg	375%
Vitamin B_6 (as pyridoxine hydrochloride)	75 mg	3750%
Folate (as folic acid)	400 mcg	100%
Vitamin B_{12} (as cyanocobalamin)	100 mcg	1667%
Biotin	100 mcg	33%
Pantothenic Acid	75 mg	750%
Calcium (from oystershell)	100 mg	10%
Iron (as ferrous fumarate)	10 mg	56%
Iodine (from kelp)	150 mcg	100%
Magnesium (as magnesium oxide)	60 mg	15%

Amount Per Packet		% Daily Value
Zinc (as zinc oxide)	15 mg	100%
Selenium (as sodium selenate)	25 mcg	36%
Copper (as cupric oxide)	1 mg	50%
Manganese (as manganese sulfate)	5 mg	250%
Chromium (as chromium chloride)	50 mcg	42%
Molybdenum (as sodium molybdate)	50 mcg	67%
Potassium (as potassium chloride)	10 mg	< 1%
Choline (as choline chloride)	100 mg	*
Betaine (as betaine hydrochloride)	25 mg	*
Glutamic Acid (as L-glutamic acid)	25 mg	*
Inositol (as inositol monophosphate)	75 mg	*
Rutin (from common buckwheat, *Polygonum fagopyrum* L.)(leaves)	25 mg	*
para-Aminobenzoic acid	30 mg	*
Deoxyribonucleic acid	50 mg	*
Boron	500 mcg	*

* Daily Value not established

Other ingredients: Cellulose, stearic acid and silica.

Dated: March 7, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–6028 Filed 3–13–96; 8:45 am]

BILLING CODE 4160–01–C

21 CFR Parts 809 and 864

[Docket No. 96N–0082]

Medical Devices; Classification/ Reclassification; Restricted Devices; Analyte Specific Reagents

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify/reclassify analyte specific reagents (ASR) presenting a low risk to the public health into class I (general controls), and to exempt these class I analyte specific reagents from the premarket notification (510(k)) requirements. FDA is also proposing to designate class I analyte specific reagents as restricted devices under the Federal Food, Drug, and Cosmetic Act (the act), and to establish restrictions on their sale, distribution and labeling. Finally, FDA is proposing that ASR's presenting a high risk be classified into or retained in class III (premarket approval). The scope of products covered by this proposal includes both pre-1976 devices which have not been previously classified, as well as post-1976 devices which are statutorily classified into class III. The intention of this proposal is to regulate these pre- and post-1976 devices in a consistent fashion. Therefore, FDA is proposing classification or reclassification of these products, as applicable.

DATES: Written comments on the proposed rule by June 12, 1996.

Written comments on the information collection requirements should be submitted by April 15, 1996.

ADDRESSES: Written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Steven Gutman, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–3084.

SUPPLEMENTARY INFORMATION: The act (21 U.S.C. 201 *et seq.*) as amended by the Medical Device Amendments of 1976 (Pub. L. 94–295) (the amendments) and the Safe Medical Devices Act of 1990 (Pub. L. 101–629)(SMDA) established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the degree of regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are as follows: Class I, general controls; class II, special controls; class III, premarket approval.

Devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments) are classified under 21 U.S.C. 360c after FDA has: (1) Received a recommendation from a classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. A device that is first offered in commercial distribution after May 28, 1976, and is substantially equivalent to a device classified under this scheme, is also classified into the same class as the device to which it is substantially equivalent.

A device that was not in commercial distribution prior to May 28, 1976, and that is not substantially equivalent to a preamendments device, is classified by statute into class III without any FDA rulemaking proceedings. The agency determines whether new devices are substantially equivalent to previously offered devices by means of the premarket notification procedure in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

I. Background

There has been a growing trend in recent years for more sophisticated clinical laboratories to develop and prepare their own tests that are intended to diagnose various medical conditions, using ingredients that they frequently purchase from biological or chemical suppliers. The ingredients and other materials used in developing these tests may be divided into two groups. The first group is referred to as general purpose reagents, which include the laboratory apparatus, collection systems, and chemicals used broadly in a wide variety of tests. The second group is composed of chemicals or antibodies that may be thought of as the ''active ingredients'' of a test and which are useful only in testing for one specific disease or condition. It is this group of active ingredients that FDA is proposing to identify as ASR's. These in-house developed tests (sometimes referred to as ''home brew'' tests) include a wide variety used in the diagnosis of infectious diseases, cancer, genetic, and various other conditions. FDA currently regulates the safety and effectiveness of diagnostic tests that are traditionally manufactured and commercially marketed as finished products. However, in-house developed tests have not been actively regulated by the Agency and the ingredients used in them generally are not produced under FDA assured manufacturing quality control. Other general controls also have not been applied routinely to these products. FDA is not proposing a comprehensive regulatory scheme over the final tests produced by these laboratories and is focusing instead on the ''active ingredients'' (ASR's) provided to the laboratories. However, at a future date, the agency may reevaluate whether additional controls over the in-house tests developed by such laboratories may be needed to provide an appropriate level of consumer protection. Such controls may be especially relevant as testing for the presence of genes associated with cancer or dementing diseases becomes more widely available. Additional controls might include a broad array of approaches, ranging from full premarket review by FDA to use of third parties to evaluate analytical or clinical performance of the tests. The laboratories producing tests from ASR's and offering the tests as laboratory services are currently regulated by the Health Care Financing Administration (HCFA) under the Clinical Laboratory Improvement Amendments of 1988 (CLIA–88) for compliance with general laboratory standards regarding personnel, proficiency testing, quality control, and quality assurance. However, these HCFA regulations do not include the same product controls provided by FDA. As a result, neither patients nor practitioners have assurance that all ingredients in the laboratory developed tests are of high quality and capable of producing consistent results.

FDA is concerned that the present situation with respect to in-house developed tests, in which these ingredients are essentially unregulated and therefore of unpredictable quality, may create a risk to the public health. FDA also is concerned that continuing uncertainties about the regulatory status of commercially marketed ASR's may create an unpredictable business climate for manufacturers and suppliers. On the other hand, the agency recognizes the clinical importance of in-house developed testing as a mechanism for

providing novel, highly specialized tests in a relatively short time, sometimes for diseases that affect a relatively small proportion of the population.

FDA's primary goals in this rulemaking proceeding are to assure that ASR's are high quality reagents and that performance claims are restricted to those made by the final test developer. In addition, for those select ASR's whose use present a particularly high risk to public health, FDA seeks to ensure a higher and more appropriate level of regulatory review.

To seek public and expert input on these issues, FDA held a meeting of its Immunology Devices Panel (the Panel) on January 22, 1996. In the notice announcing that meeting (61 FR 74–75, January 2, 1996), FDA set forth its preliminary thinking regarding a regulatory framework for ASR's. That framework included placing the majority of ASR's into class I and exempting them from premarket notification requirements; maintaining other general controls, including registration, listing, and compliance with current good manufacturing practice (CGMP) and medical device reporting (MDR) requirements; and restrictions on the sale, distribution or use of these devices. Also, under that framework, a small number of ASR's presenting a high risk to public health would be placed in class III.

At the public session of the Panel meeting, a variety of health professional and industry organizations presented their views. These groups included: American Association for Clinical Chemistry, American Clinical Laboratories Association, Association for Molecular Pathology, College of American Pathologists, Centocor, Inc., Health Industry Manufacturers Association, IBT Reference Laboratory, Joint Council of Immunohistochemical Manufacturers, and Specialty Laboratories Inc. In general, these groups supported the broad outline of the FDA approach (Ref. 1).

II. The Immunology Devices Panel Recommendation

At the January 22, 1996 meeting, the Panel made the following recommendations regarding the classification of analyte specific reagents.

1. *Identification*: The Panel recommended that these devices be identified as follows: ''Analyte specific reagents are antibodies (both monoclonal and polyclonal), specific receptor proteins, nonhuman nucleic acids and fragments of nonhuman nucleic acids and similar biological reagents which, through specific chemical binding or reaction, are intended for diagnostic identification or quantification of specific analytes in a biological specimen.'' (Ref. 1.)

2. *Recommended classifications*: The Panel recommended that most of these devices be classified into Class I (general controls); that these devices be exempted from the premarket notification (510(k)) requirements; and that these devices be subject to the good manufacturing practices regulation as well as to other general controls, including restrictions on their distribution and labeling. The panel also recommended that certain ASR's should be classified into class II or class III, or as regulated by the Center for Biologics Evaluation and Research, because their use presents particularly high risks.

3. *Summary of reasons for recommendation*: The Panel recommended that most analyte specific reagents be classified into class I because they believed that general controls are sufficient to provide reasonable assurance of their safety and effectiveness.The Panel did not believe that premarket review was an appropriate or necessary mechanism for assuring the safe and effective use of these reagents.

The Panel's classification recommendation was based on the applicability of the general controls usually associated with class I products (e.g., registration, listing, CGMP, and MDR) as well as the inclusion of restrictions on distribution, use, and labeling. The Panel believed that compliance with CGMP's by ASR suppliers was essential to ensure the quality and purity of ASR's purchased by clinical laboratories. The Panel also believed that restricting distribution of these ASR's to laboratories certified as high complexity laboratories under CLIA would ensure that these devices would be properly used by qualified health professionals. The Panel also believed that it would be appropriate to require that high complexity laboratories, when reporting results from in-house developed tests using ASR's, include a disclaimer stating that the in-house developed tests had not been reviewed by FDA. The Panel believed that this disclaimer would provide clinicians with additional information to be used in deciding how much weight to place on the test results being reported. Finally, the Panel recommended that manufacturers of ASR's be prohibited from labeling their product with analytical or clinical performance claims. The Panel believed that it would be inappropriate for manufacturers to make specific claims because these products are intended to be used as ingredients in a variety of ways by high complexity laboratories. Under these circumstances, performance would be established by the laboratory using the ASR's.

While the Panel believed that class I designation and exemption from 510(k) was appropriate for most analyte specific reagents, the Panel was of the opinion that there were some instances in which general controls would not be sufficient. They suggested that:

> those analyte specific reagents intended to diagnose communicable diseases or where the Agency has established a recommendation for use of the test in safeguarding the blood supply or establishing the safe use of blood and blood products and/or tests to predict genetic disease or predisposition to disease in healthy or apparently healthy individuals are more properly classified into Class II or III and subject to premarket controls, 510(k) or PMA as applicable to such classifications. (Ref. 1.)

The Panel believed that ASR's used in these settings present risks to the public health that require heightened regulatory control.

4. *Summary of data on which panel recommendation is based*: The Immunology Devices Panel based its recommendation on the Panel members personal knowledge of, and clinical experience with, the devices and presentations by Panel members and interested parties (Ref. 1).

5. *Risks to health*: The primary risk to health presented by these products is that they may be manufactured with variable quality, or be inappropriately labeled, or be used by persons without adequate qualifications. There is also concern that clinicians ordering the tests made from ASR's may be unaware that the clinical performance characteristics of these tests have not been independently reviewed by FDA. The Panel also identified a subset of ASR's whose use posed unique risks to public health because of the substantial clinical impact of the information generated using these devices.

The Panel discussed FDA's approach to regulating ASR's without regard to whether the particular ASR's are pre-1976 or post-1976 devices. FDA believes that the Panel's thinking and conclusions may be reasonably applied to the classification of pre-1976 ASR's as well as to the reclassification of post-1976 ASR's (which, by statute, are already in class III).

III. FDA's Proposed Rule

FDA is proposing that most active ingredients used in preparing in-house developed tests be classified as class I and regulated as follows:

1. The biological or chemical suppliers would have to register with

FDA and provide the agency with a list of the ASR's they are supplying to laboratories for use in developing tests. These suppliers would be required to follow good manufacturing practices, as applicable, in accordance with 21 CFR part 820. The suppliers would also have to report to FDA, under 21 CFR part 803, adverse events that may have been due to their ingredients.

2. These class I devices would be exempt from the premarket notification requirements of section 510(k) of the act. Most recently, in the Federal Register of July 21, 1994 (59 FR 37378), FDA set out its criteria for exempting devices from premarket notification. In part, this document states that a device may be exempted if the following factors apply:

(a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that could affect safety and effectiveness will either: (1) be readily detectable by users by visual examination or other means such as routine testing, before causing harm, e.g., testing of a clinical laboratory reagent with positive and negative controls; or (2) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and any changes in the device would not be likely to result in a change in the device's classification. (59 FR 37378).

FDA believes that these criteria apply to class I analyte specific reagents and that, therefore, they may be exempted from premarket notification.

3. Section 520(e) of the act (21 U.S.C. 360j(e)) provides that FDA may by regulation require that a device be restricted in its sale, distribution, or use only upon the written or oral authorization of a practitioner licensed by law to administer or use such device, or upon such other conditions as FDA may prescribe in the regulation, if, because of its potentiality for harmful effect or the collateral measures necessary to its use, FDA determines that there cannot otherwise be reasonable assurance of its safety and effectiveness. FDA is proposing that use of these active ingredients to produce in-house developed tests be restricted to those clinical laboratories certified under CLIA–88 as ''high-complexity laboratories.'' These laboratories have the expertise and qualifications required to use these active ingredients in making in-house tests, and to assess the performance of the ASR's. FDA believes that these qualifications are necessary to provide reasonable assurance of the safe and effective use of these devices.

4. Under the proposal, the labeling for the active ingredients to be used in these in-house tests would be restricted to describing the identity and purity of the material being sold in addition to most of the standard information already required for general purpose reagents (e.g., net weight; storage instructions). However, under this proposal no specific analytical or clinical performance claims could be made in the labeling or in promotional material. This is because the laboratory producing the test, not the manufacturer of the ingredients, is accountable for use of the ingredient and its performance as part of a test. Also, under section 520(e) of the act, the advertising and promotional material for ASR's would be restricted in a manner consistent with the labeling. As discussed in section IV of this document, FDA invites comments on the Panel's recommendation regarding labeling in test reports from clinical laboratories to health professionals. Finally, FDA is proposing to revise the definition of general purpose reagents to complement and be consistent with the definition being proposed for ASR's.

In addition to the proposed classification of most ASR's in class I, FDA is proposing that certain active ingredients used in in-house developed tests be classified either in class III subject to premarket approval because of the serious health risks associated with their use or in the class of the test in which the ASR is being used, or regulated under other appropriate mechanisms. These include active ingredients used in tests intended to diagnose potentially fatal contagious conditions (e.g., human immunodeficiency virus (HIV) or tuberculosis) or intended to safeguard the blood supply. The proposed restrictions on the distribution, use, and labeling of ASR's in class I would also apply to any ASR placed in class II or class III. As described in section IV of this document, the agency is seeking public input on the Panel's recommendation that this group of reserved ASR's should also include those active ingredients which are intended for use in human genetic testing.

If this proposal is made final, marketing of post-1976 ASR's in class III would need to cease following publication of the final rule until premarket approval applications (PMA's) were submitted and approved. The number of firms and products that would be affected would be a function of how many ASR's are classified in class III in the final rule. FDA believes that, as proposed, only a very few companies and products would be affected. For pre-1976 devices, following publication of a final rule on classification, companies would be required to submit 510(k)'s as an interim measure. Companies would then have a minimum of 30 months to develop safety and effectiveness data necessary to support a PMA.

IV. Unresolved Questions; Request for Comments

A number of important issues were raised during the Panel discussion as specified below. FDA is inviting comments on all of these issues.

1. The Panel expressed concern that the controls recommended by FDA for analyte specific reagents used in in-house developed tests were not sufficiently stringent for the active ingredients used in human genetic testing, and suggested that these ingredients be regulated as class II or class III devices. FDA believes that this recommendation by the panel may be too broad. For example, FDA is not certain that making a distinction among tests that directly identify genetic material (i.e., deoxyribonucleic acid (DNA), which the panel recommended for class II or III) as opposed to transcribed genetic material (i.e., m-RNA) or gene products (i.e.,proteins and post-translationally modified proteins, which the panel recommended for class I) provides a meaningful basis for differing regulatory treatment of ASR's that are used to develop these tests. FDA is therefore soliciting comments on the full range of options available to regulate ASR's intended for use in human genetic testing: From regulating these ASR's as class I exempt products to regulating them as class III devices subject to premarket approval. Intermediate options include regulating a subset of these ASR's as class III devices. For example, FDA could regulate as class III devices only those ASR's used in tests intended for use in overtly healthy people to identify a genetic predisposition to a dementing disease, or to fatal or potentially fatal medical disorders (e.g., cancers or Alzheimer's disease), in situations where penetrance is poorly defined or variable and latency is long (5 years or longer). FDA is soliciting comments on the degree of regulatory control needed for these tests and reasonable bases for distinction , if any, among the ASR's used for human genetic testing.

2. The panel recommended that the definition of ASR's not include human nucleic acids. (See ''Panel Recommendation'' above.) FDA believes that this would be too narrow and has excluded the word ''nonhuman'' from its proposed definition. FDA believes that if ASR's for human genetic sequencing are to be excluded in a final rule from class I exempt status, it would

be preferable to do so by describing the basis for such exclusion in the rule and explicitly reserving those ASR's for class II or III, as has been proposed for ASR's used in tests intended to safeguard the blood supply. FDA also believes that the use of the phrase ''specific analytes'' in the Panel's recommended definition of ASR's is circular and has replaced it in the definition with: ''and quantification of an individual chemical substance or ligand in biological substances.'' FDA invites comments on these changes.

3. FDA is also soliciting comments on the suitability of the term ''analyte-specific reagent'' to describe the active ingredients in in-house developed tests.

4. The Panel recommended that a disclaimer be appended to the test report informing the ordering practitioner of the test results. The disclaimer would inform the practitioner that the test was developed, and its performance characteristics defined, by the laboratory without FDA review. The agency is seeking comment on whether such a disclaimer should be required and, if so, how it should be worded. One possible statement would be: ''This test was developed and its performance characteristics determined by [Laboratory Name]. It has not been reviewed by the U.S. Food and Drug Administration.'' In addition, FDA solicits comments on whether the tests developed by the laboratories using ASR's should be made available only on the order of a physician, or, alternatively, whether ASR's intended for use in tests made directly available to consumers should be regulated in class II or III.

V. Comments

Interested persons may, on or before June 12, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VI. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Transcript of the Immunology Devices Panel of the Medical Devices Advisory Committee meeting, January 22, 1996.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) 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.

VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies 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). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule would not require premarket review of the vast majority of products, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

IX. Paperwork Reduction Act of 1995

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate and other forms of information technology.

Title: Labeling Requirements for Analyte Specific Reagents-Labeling for Laboratories

Description: The proposed rule would amend the labeling requirements for certain in vitro diagnostic products to require that manufacturers of analyte specific reagents provide certain information concerning the reagents to laboratories that will develop tests using the reagents. The proposed regulation would also require that advertising and promotional material for analyte specific reagents include information about the identity and purity of the reagent and not make any claims about analytic or clinical performance. The purpose of the regulation is to assure that laboratories developing tests using these reagents have sufficient information about their identity and purity.

Description of Respondents: Businesses and other for profit organizations.

Estimated Annual Reporting Burden

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours Per Response	Total Hours
809.10(e)	100	1	100	40	4,000
809.30(d)	100	1	100	20	2,000
Total					6,000

There are no capital costs or operating and maintenance costs associated with these information collections.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, FDA has submitted the collections of information contained in the proposed rule to OMB for review. Other organizations and individuals desiring to submit comments regarding the burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. Written comments on the information collection requirements should be submitted by April 15, 1996.

List of Subjects

21 CFR Part 809

Labeling, Medical devices.

21 CFR Part 864

Blood, Medical devices, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 809 and 864 be amended as follows:

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

1. The authority citation for 21 CFR part 809 continues to read as follows:

Authority: Secs. 301, 501, 502, 505, 507, 512, 513, 514, 518, 519, 520, 701, 702, 704, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 352, 352, 355, 357, 360b, 360c, 360d, 360h, 360i, 360j, 371, 372, 374, 381).

2. Section 809.10 is amended in paragraph (a) by adding at the end of the first sentence ''or as provided in paragraph (e) of this section'' and by adding new paragraph (e) to read as follows:

§ 809.10 Labeling for in vitro diagnostic products.

* * * * *

(e) The labeling for analyte specific reagents (e.g., monoclonal antibodies, deoxyribonucleic acid (DNA) probes, viral antigens) shall bear the following information:

(1) The proprietary name and established name (common or usual name), if any, of the reagent.

(2) A declaration of the established name (common or usual name), if any, and quantity, proportion or concentration of the reagent ingredient; and for a reagent derived from biological material, the source and, where applicable, a measure of its activity. The quantity, proportion, concentration or activity shall be stated in the system generally used and recognized by the intended user, e.g., metric, international units, etc.

(3) A statement of the purity and quality of the reagent, including a quantitative declaration of any impurities present. The requirement for this information may be met by a statement of conformity with a generally recognized and generally available standard which contains the same information, e.g., those established by the American Chemical Society, U.S. Pharmacopeia, National Formulary, National Research Council.

(4) A statement of warnings or precautions for users as established in the regulations contained in 16 CFR part 1500 and any other warnings appropriate to the hazard presented by the product.

(5) Appropriate storage instructions adequate to protect the stability of the product. When applicable, these instructions shall include such information as conditions of temperature, light, humidity, and other pertinent factors. The basis for such instructions shall be determined by reliable, meaningful, and specific test methods such as those described in § 211.166 of this chapter.

(6) A declaration of the net quantity of contents, expressed in terms of weight or volume, numerical count, or any combination of these or other terms which accurately reflect the contents of the package. The use of metric designations is encouraged, wherever appropriate.

(7) Name and place of business of manufacturer, packer, or distributor.

(8) A lot or control number, identified as such, from which it is possible to determine the complete manufacturing history of the product.

(9) The statement ''Analytical and performance characteristics are not established.''

(10) In the case of immediate containers too small or otherwise unable to accommodate a label with sufficient space to bear all such information, and which are packaged within an outer container from which they are removed for use, the information required by paragraphs (e)(1) through (e)(6) of this section may appear in the outer container labeling only.

3. New § 809.30 is added to subpart C read as follows:

§ 809.30 Restrictions on the sale, distribution and use of analyte specific reagents.

(a) Analyte specific reagents (§ 864.4020 of this chapter) are restricted devices under section 520(e) of the act subject to the restrictions set forth in this section.

(b) Analyte specific reagents may only be sold to:

(1) In vitro diagnostic manufacturers;

(2) Clinical laboratories certified as high complexity laboratories under 42 CFR part 493; or

(3) Organizations that use the reagents to make tests for purposes other than providing diagnostic information to patients and practitioners, e.g., forensic or underwriting laboratories.

(c) Analyte specific reagents must be labeled in accordance with § 809.10(e).

(d) Advertising and promotional materials for analyte specific reagents:

(1) Shall include the identity and purity of the analyte specific reagent and the identity of the analyte;

(2) Shall include the statement ''Analytical and performance characteristics are not established''; and

(3) Shall not make any statement regarding analytical or clinical performance.

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

4. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

5. Section 864.4010 is amended by revising paragraph (a) to read as follows.

§ 864.4010 General purpose reagent.

(a) A general purpose reagent is a chemical reagent that has general laboratory application, that is used to collect, prepare, and examine specimens from the human body for diagnostic histopathology, cytology, and hematology, and that is not labeled or otherwise intended for a specific diagnostic application. It may be either an individual substance, or multiple substances reformulated, which, when combined with or used in conjunction with an appropriate analyte specific reagent and other general purpose reagents, is part of a diagnostic test procedure or system constituting a finished in vitro diagnostic (IVD) test. General purpose reagents are appropriate for combining with more than one analyte specific reagent in producing such systems and include labware or disposable constituents of tests but do not include laboratory

machinery, automated or powered systems. General purpose reagents include cytological preservatives, decalcifying reagents, fixatives and adhesives, tissue processing reagents, isotonic solutions and pH buffers. Reagents used in tests for more than one individual chemical substance or ligand are general purpose reagents (e.g., TAQ polymerase, substrates for enzyme immunoassay (EIA)).

* * * * *

6. New § 864.4020 is added to subpart E to read as follows:

§ 864.4020 Analyte specific reagents.

(a) *Identification*. Analyte specific reagents are antibodies, both polyclonal and monoclonal, specific receptor proteins, nucleic acid sequences, and similar biological reagents which, through chemical binding or reaction with substances in a specimen, are intended for identification and quantification of an individual chemical substance or ligand in biological specimens.

(b) *Classification*.

(1) Class I (General Controls), except as described in paragraph (b)(2) of this section. These devices are exempt from the premarket notification requirements in part 807, subpart E of this chapter.

(2) These devices are in Class III (Premarket Approval), when:

(i) The analyte is used to develop a test intended to diagnose a contagious condition and the condition is highly likely to result in a fatal outcome and prompt accurate diagnosis offers the opportunity to mitigate the public health impact of the condition (e.g., human immunodeficiency virus (HIV) or tuberculosis); or

(ii) The analyte is used to develop a test intended to diagnose a condition for which FDA has established a recommendation or requirement for the use of the test in safeguarding the blood supply or establishing the safe use of blood and blood products (e.g., hepatitis, syphilis, or blood grouping antisera).

(3) ASR's that meet the criteria in paragraph (b)(2) of this section but are used to develop tests that have been classified by FDA into class I or class II are classified into the same class as the test for which they are being used.

(c) Date PMA or notice of completion of a PDP is required:

(1) Preamendments ASR's; No effective date has been established for the requirement for premarket approval for the device described in paragraph (b)(2) of this section. See § 864.3.

(2) For postamendments ASR's; (effective date of the final rule).

Dated: March 8, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–6160 Filed 3–11–96; 4:01 pm]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–35–95]

RIN 1545–AT82

Allocation of Accrued Benefits Between Employer and Employee Contributions; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (EE–35–95) which was published in the Federal Register on Friday, December 22, 1995 (60 FR 66532), relating to proposed regulations that provide guidance on calculation of an employee's accrued benefit derived from the employee's contributions to a qualified defined pension plan.

FOR FURTHER INFORMATION CONTACT: Janet A. Laufer, (202) 622–4606, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction proposes amendments that reflect changes made to section 411(c)(2) by the Omnibus Budget Reconciliation Act of 1987 and the Omnibus Budget Reconciliation Act of 1989.

Need for Correction

As published, the notice of proposed rulemaking (EE–35–95) contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (EE–35–95), which was the subject of FR Doc. 95–31006, is corrected as follows:

§ 1.411(c)–1 [Corrected]

1. On page 66535, column 1, § 1.411(c)–1 (c)(6)(ii), paragraphs (1) through (8) of *Example 1.*, are correctly designated as paragraphs (A) through (H) of *Example 1*.

2. On page 66535, column 1, § 1.411(c)–1 (c)(6)(ii), newly designated paragraph (D) of *Example 1*., line 4, the language ''determined in paragraph (3) of this *Example*'' is corrected to read ''determined in paragraph (C) of this *Example*''.

3. On page 66535, column 1, § 1.411(c)–1 (c)(6)(ii), newly designated paragraph (D) of *Example 1*., the last line, the language ''$11,913 − 9.196 = $1,295.'' is corrected to read ''$11,913 ÷ 9.196 = $1,295.''.

4. On page 66535, column 1, § 1.411(c)–1 (c)(6)(ii), newly designated paragraph (H) of *Example 1*., second and third lines from the bottom of the column, the language ''contributions, the sum of paragraphs (4) and (7) of this *Example 1*. ($1,295 + $1,654 ='' is corrected to read ''contributions, the sum of paragraphs (D) and (G) of this *Example 1*. ($1,295 + $1,654 =''.

5. On page 66535, column 2, § 1.411(c)–1 (c)(6)(ii), paragraphs (1) through (5) of *Example 2.* are correctly designated as paragraphs (A) through (E) of *Example 2.*

6. On page 66535, column 2, § 1.411(c)–1 (c)(6)(ii), newly designated paragraph (B) of *Example 2.*, last line, the language ''($6,480 from paragraph 2 of *Example 1*).'' is corrected to read ''($6,480 from paragraph (B) of *Example 1*).''.

7. On page 66535, column 2, § 1.411(c)–1 (c)(6)(ii), newly designated paragraph (C) of *Example 2.*, last line, the language ''from paragraph 3 of *Example 1*).'' is corrected to read ''from paragraph (C) of *Example 1*).''.

8. On page 66535, column 2, § 1.411(c)–1 (c)(6)(ii), newly designated paragraph (D) of *Example 2.*, line 4, the language ''determined in paragraph (3) of this *Example*'' is corrected to read ''determined in paragraph (C) of this *Example*''.

9. On page 66535, column 2, § 1.411(c)–1 (c)(6)(ii), newly designated paragraph (D) of *Example 2.*, last line, the language ''($1,295 from paragraph 4 of *Example 1*)'' is corrected to read ''($1,295 from paragraph (D) of *Example 1*)''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–5675 Filed 3–13–96; 8:45 am]

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