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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. FDA-2026-N-6731]

Medical Devices; Clinical Chemistry and Toxicology Devices; Classification of the Prognostic Test for Development or Progression of Preeclampsia

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying the prognostic test for development or progression of preeclampsia 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 classification of the prognostic test for development or progression of preeclampsia. 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 June 26, 2026. The classification was applicable on May 18, 2023.

FOR FURTHER INFORMATION CONTACT: Joseph Kotarek, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3528, Silver Spring, MD 20993-0002, 301-796-2718, Joseph.Kotarek@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA (the Agency or we) has classified the prognostic test for development or progression of preeclampsia into class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness of the device. 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 into, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (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 classification 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 premarket notification (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 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 May 2, 2022, FDA received BRAHMS GmbH's request for De Novo classification of the B-R-A-H-M-S sFlt-1/PlGF KRYPTOR Test System. 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 of the device, 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 the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on May 18, 2023, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 862.1602.¹ We have named the

¹ FDA notes that the "ACTION" caption for this final order is styled as "Final amendment; final

generic type of device “prognostic test for development or progression of preeclampsia,” and it is identified as an in vitro diagnostic device intended to measure one or more analytes obtained from human samples. A prognostic test

for development or progression of preeclampsia is indicated as an aid in the risk assessment for the development or progression of preeclampsia. This device is not intended for diagnosis of any disease.

FDA has identified the risks to health associated with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—RISKS TO HEALTH AND MITIGATION MEASURES FOR PROGNOSTIC TEST FOR DEVELOPMENT OR PROGRESSION OF PREECLAMPSIA

Identified risks to health	Mitigation measures
Incorrect performance of the test leading to false positive results	Certain design verification and validation activities and documentation. Certain labeling information, including certain limiting statements and performance characteristics.
Incorrect interpretation of test results	Certain design verification and validation activities, including certain licensed practitioner training as part of risk management activities. Certain labeling information, including certain limiting statements.

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 of the device. 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.

Under the FD&C Act, submission of a premarket notification under section 510(k) is required to reasonably assure the safety and effectiveness of class II devices unless FDA determines that the device type should be exempt under section 510(m) of the FD&C Act. At this time FDA has not made this determination for prognostic tests for development or progression of preeclampsia. This device is therefore subject to premarket notification requirements under section 510(k) of the FD&C Act.

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 normally 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 and guidance. 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 regarding quality management system regulation 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 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 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 § 862.1602 to subpart B to read as follows:

§ 862.1602 Prognostic test for development or progression of preeclampsia.

(a) *Identification.* A prognostic test for development or progression of

preeclampsia is an in vitro diagnostic device intended to measure one or more analytes obtained from human samples. A prognostic test for development or progression of preeclampsia is indicated as an aid in the risk assessment for the development or progression of preeclampsia. This device is not intended for diagnosis of any disease.

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

(1) Design verification and validation must include:

(i) Detailed documentation of a study that demonstrates the clinical performance of the device for its intended use, evaluated across multiple intended use sites and broad demographics representative of intended use patients in the United States; or through an alternative approach determined to be appropriate by FDA;

(ii) Detailed documentation of studies that demonstrate the analytical performance of the device for its intended use, including for each analyte and device output. These studies must include precision, reproducibility, metrological accuracy, and analytical specificity studies, or alternative approaches determined to be appropriate by FDA; and

(iii) As part of the risk management activities, documentation of an appropriate licensed practitioner training program on the proper use of the device and proper interpretation of results that must be offered to licensed practitioners, or an alternative approach determined to be appropriate by FDA.

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

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.

(i) Detailed descriptions of the device studies demonstrating the performance of the device, including results; and

(ii) Limiting statements including the following:

(A) The test result is intended as an aid in the management of the patient, and not to be used to replace clinical judgement.

(B) The test result is not to be used to aid in the diagnosis of preeclampsia or conditions resulting from progression of preeclampsia.

(C) The test result is not to be used to aid in decisions of hospital discharge.

(D) The test result is not to be used to aid in decisions of pregnancy delivery.

(E) The test is not intended to inform the healthcare provider about whether or not changes in immediate treatment, including medication or hospitalization, are needed.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA-2026-N-6712]

Medical Devices; Immunology and Microbiology Devices; Classification of the SARS-CoV-2 Serology Test

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying the SARS-CoV-2 serology test into class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness of the device. 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.

DATES: This order is effective June 26, 2026. The classification was applicable on May 5, 2023.

FOR FURTHER INFORMATION CONTACT: Maria Esteve-Gasent, Center for Devices

and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3213, Silver Spring, MD 20993-0002, 301-837-7365, Maria.Esteve-Gasent@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA (the Agency or we) has classified the SARS-CoV-2 serology test into class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness of the device. 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 into, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (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 classification process by adding a second procedure.

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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 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 September 20, 2021, FDA received Ortho-Clinical Diagnostics, Inc.'s request for De Novo classification of the VITROS Immunodiagnostic Products Anti-SARS-CoV-2 IgG Reagent Pack and Calibrator. On September 21, 2021, FDA received Ortho-Clinical Diagnostics, Inc.'s request for De Novo classification of the VITROS Immunodiagnostic Products Anti-SARS-CoV-2 Total Reagent Pack and Calibrator. FDA reviewed both requests in order to classify the devices 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 of