

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 2310, Jan. 14, 2000]

### Subpart B—Biological Stains

#### § 864.1850 Dye and chemical solution stains.

(a) *Identification.* Dye and chemical solution stains for medical purposes are mixtures of synthetic or natural dyes or nondye chemicals in solutions used in staining cells and tissues for diagnostic histopathology, cytopathology, or hematology.

(b) *Classification.* Class I (general controls). These devices are exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9. These devices are also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

[45 FR 60583, Sept. 12, 1980, as amended at 54 FR 25044, June 12, 1989; 66 FR 38789, July 25, 2001]

#### § 864.1860 Immunohistochemistry reagents and kits.

(a) *Identification.* Immunohistochemistry test systems (IHC's) are in vitro diagnostic devices consisting of polyclonal or monoclonal antibodies labeled with directions for use and per-

formance claims, which may be packaged with ancillary reagents in kits. Their intended use is to identify, by immunological techniques, antigens in tissues or cytologic specimens. Similar devices intended for use with flow cytometry devices are not considered IHC's.

(b) *Classification of immunohistochemistry devices.* (1) Class I (general controls). Except as described in paragraphs (b)(2) and (b)(3) of this section, these devices are exempt from the premarket notification requirements in part 807, subpart E of this chapter. This exemption applies to IHC's that provide the pathologist with adjunctive diagnostic information that may be incorporated into the pathologist's report, but that is not ordinarily reported to the clinician as an independent finding. These IHC's are used after the primary diagnosis of tumor (neoplasm) has been made by conventional histopathology using nonimmunologic histochemical stains, such as hematoxylin and eosin. Examples of class I IHC's are differentiation markers that are used as adjunctive tests to subclassify tumors, such as keratin.

(2) Class II (special control, guidance document: "FDA Guidance for Submission of Immunohistochemistry Applications to the FDA," Center for Devices and Radiologic Health, 1998). These IHC's are intended for the detection and/or measurement of certain target analytes in order to provide prognostic or predictive data that are not directly confirmed by routine histopathologic internal and external control specimens. These IHC's provide the pathologist with information that is ordinarily reported as independent diagnostic information to the ordering clinician, and the claims associated with these data are widely accepted and supported by valid scientific evidence. Examples of class II IHC's are those intended for semiquantitative measurement of an analyte, such as hormone receptors in breast cancer.

(3) Class III (premarket approval). IHC's intended for any use not described in paragraphs (b)(1) or (b)(2) of this section.

(c) *Date of PMA or notice of completion of a PDP is required.* As of May 28, 1976,