

§ 884.9

21 CFR Ch. I (4-1-03 Edition)

an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under sec-

tion 515 of the act before commercial distribution.

[52 FR 17740, May 11, 1987]

§ 884.9 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 2319, Jan. 14, 2000]

Subpart B—Obstetrical and Gynecological Diagnostic Devices

§ 884.1040 Viscometer for cervical mucus.

(a) *Identification.* A viscometer for cervical mucus is a device that is intended to measure the relative viscoelasticity of cervical mucus collected from a female patient. Measurements of relative viscoelasticity are intended for use as an adjunct in the clinical evaluation of a female with chronic infertility, to determine the time of ovulation and the penetrability of cervical mucus to motile sperm.

(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 § 884.9.

[47 FR 14706, Apr. 6, 1982, as amended at 65 FR 2320, Jan. 14, 2000]

§ 884.1050 Endocervical aspirator.

(a) *Identification.* An endocervical aspirator is a device designed to remove

tissue from the endocervix (mucous membrane lining the canal of the cervix of the uterus) by suction with a syringe, bulb and pipette, or catheter. This device is used to evaluate endocervical tissue to detect malignant and premalignant lesions.

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

§ 884.1060 Endometrial aspirator.

(a) *Identification.* An endometrial aspirator is a device designed to remove materials from the endometrium (the mucosal lining of the uterus) by suction with a syringe, bulb and pipette, or catheter. This device is used to study endometrial cytology (cells).

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

(1) FDA's:

(i) "Use of International Standard ISO 10993 'Biological Evaluation of Medical Devices—Part I: Evaluation and Testing,'" and

(ii) "510(k) Sterility Review Guidance of 2/12/90 (K90-1),"

(2) Labeling:

(i) Indication: Only to evaluate the endometrium, and

(ii) Contraindications: Pregnancy, history of uterine perforation, or a recent cesarean section, and

(3) The sampling component is covered within vagina.

[45 FR 12684-12720, Feb. 26, 1980, as amended at 52 FR 17741, May 11, 1987; 65 FR 17146, Mar. 31, 2000]

§ 884.1100 Endometrial brush.

(a) *Identification.* An endometrial brush is a device designed to remove samples of the endometrium (the mucosal lining of the uterus) by brushing its surface. This device is used to study endometrial cytology (cells).

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

(1) FDA's:

(i) "Use of International Standard ISO 10993 'Biological Evaluation of Medical Devices—Part I: Evaluation and Testing,'" and

(ii) "510(k) Sterility Review Guidance of 2/12/90 (K90-1),"

(2) Labeling:

(i) Indication: Only to evaluate the endometrium, and