

in the applicable regulation (monograph) in this chapter except where other standards have been approved in an applicable antibiotic application.

(4) The antibiotic susceptibility device meets the standards of identity, strength, quality, and purity specified in the applicable regulation (monograph) in this chapter except where other standards have been approved in an applicable antibiotic application.

(b) For each antibiotic susceptibility device subject to an exemption under this section, an approved antibiotic application is regarded to be an approved premarket approval application under section 515 of the act.

(c) Nothing in this section prevents a manufacturer from applying for batch certification of an antibiotic susceptibility device as provided in section 507(c) of the act.

(d) All exemptions from batch certification requirements for antibiotic susceptibility devices under this section are subject to the conditions of effectiveness under § 809.6.

[47 FR 39160, Sept. 7, 1982, as amended at 53 FR 11252, Apr. 6, 1988]

**§ 809.6 Conditions on the effectiveness of exemptions of antibiotic susceptibility devices from batch certification requirements.**

(a) If at any time after an exemption from batch certification requirements for an antibiotic susceptibility device has been granted, the Commissioner finds on the basis of new information before the agency with respect to such exempted device evaluated together with the evidence available to the agency when such exemption was granted, that certification of each batch is necessary to ensure its safety and efficacy of use, the Commissioner shall act immediately to revoke all exemptions from batch certification requirements granted for such device.

(b) If the Commissioner finds that the person granted an exemption from batch certification requirements for an antibiotic susceptibility device has failed to comply with the requirements of section 507 of the act and the regulations promulgated thereunder; or if the Commissioner finds that the requirements of § 809.5 have not been met; or if the Commissioner finds that the peti-

tion for exemption from batch certification contains any false statements of fact, the Commissioner may revoke the exemption from batch certification requirements immediately and require batch certification of the device until such person shows adequate cause why the exemption from batch certification requirements should be reinstated.

(c) If the Commissioner repeals or suspends an exemption from batch certification requirements for an antibiotic susceptibility device, a notice to that effect and the reasons therefor will be published in the FEDERAL REGISTER.

(d) Any person who contests the revocation or suspension or denial of reinstatement of an exemption from batch certification requirements for an antibiotic susceptibility device shall have an opportunity for a regulatory hearing before the Food and Drug Administration under part 16 of this chapter.

[47 FR 39160, Sept. 7, 1982]

**Subpart B—Labeling**

**§ 809.10 Labeling for in vitro diagnostic products.**

(a) The label for an in vitro diagnostic product shall state the following information, except where such information is not applicable, or as otherwise specified in a standard for a particular product class or as provided in paragraph (e) of this section. Section 201(k) of the act provides that “a requirement made by or under authority of this act that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.”

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

(2) The intended use or uses of the product.

(3) For a reagent, a declaration of the established name (common or usual name), if any, and quantity, proportion or concentration of each reactive ingredient; and for a reagent derived

from biological material, the source and 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.

(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; and a statement "For In Vitro Diagnostic Use" and any other limiting statements appropriate to the intended use of the product.

(5) For a reagent, 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. For products requiring manipulation, such as reconstitution and/or mixing before use, appropriate storage instructions shall be provided for the reconstituted or mixed product which is to be stored in the original container. 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) For a reagent, a means by which the user may be assured that the product meets appropriate standards of identity, strength, quality and purity at the time of use. This shall be provided, both for the product as provided and for any resultant reconstituted or mixed product, by including on the label one or more of the following:

(i) An expiration date based upon the stated storage instructions.

(ii) A statement of an observable indication of an alteration of the product, e.g., turbidity, color change, precipitate, beyond its appropriate standards.

(iii) Instructions for a simple method by which the user can reasonably determine that the product meets its appropriate standards.

(7) For a reagent, 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. If more than a single determination may be performed using the product, any statement of the number of tests shall be consistent with instructions for use and amount of material provided.

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

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

(i) If it is a multiple unit product, the lot or control number shall permit tracing the identity of the individual units.

(ii) For an instrument, the lot or control number shall permit tracing the identity of all functional subassemblies.

(iii) For multiple unit products which require the use of included units together as a system, all units should bear the same lot or control number, if appropriate, or other suitable uniform identification should be used.

(10) Except that for items in paragraphs (a) (1) through (9) of this section: (i) 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 (a) (2), (3), (4), (5), (6) (ii), (iii) and (7) of this section may appear in the outer container labeling only.

(ii) In any case in which the presence of this information on the immediate container will interfere with the test, the information may appear on the outside container or wrapper rather than on the immediate container label.

(b) Labeling accompanying each product, e.g., a package insert, shall state in one place the following information in the format and order specified below, except where such information is not applicable, or as specified in a standard for a particular product class. The labeling for a multiple-purpose instrument used for diagnostic purposes, and not committed to specific diagnostic procedures or systems, may bear only the information indicated in paragraphs (b) (1), (2), (6), (14), and (15) of this section. The labeling for

a reagent intended for use as a replacement in a diagnostic system may be limited to that information necessary to identify the reagent adequately and to describe its proper use in the system.

(1) The proprietary name and established name, i.e., common or usual name, if any.

(2) The intended use or uses of the product and the type of procedure, e.g., qualitative or quantitative.

(3) Summary and explanation of the test. Include a short history of the methodology, with pertinent references and a balanced statement of the special merits and limitations of this method or product. If the product labeling refers to any other procedure, appropriate literature citations shall be included and the labeling shall explain the nature of any differences from the original and their effect on the results.

(4) The chemical, physical, physiological, or biological principles of the procedure. Explain concisely, with chemical reactions and techniques involved, if applicable.

(5) Reagents:

(i) A declaration of the established name (common or usual name), if any, and quantity, proportion or concentration or each reactive ingredient; and for biological material, the source and 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. A statement indicating the presence of and characterizing any catalytic or nonreactive ingredients, e.g., buffers, preservatives, stabilizers.

(ii) 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; and a statement "For In Vitro Diagnostic Use" and any other limiting statements appropriate to the intended use of the product.

(iii) Adequate instructions for reconstitution, mixing, dilution, etc.

(iv) 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. For products requiring manipulation, such as reconstitution and/or mixing before use, appropriate storage instructions shall be provided for the reconstituted or mixed product. 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.

(v) A statement of any purification or treatment required for use.

(vi) Physical, biological, or chemical indications of instability or deterioration.

(6) Instruments:

(i) Use or function.

(ii) Installation procedures and special requirements.

(iii) Principles of operation.

(iv) Performance characteristics and specifications.

(v) Operating instructions.

(vi) Calibration procedures including materials and/or equipment to be used.

(vii) Operational precautions and limitations.

(viii) Hazards.

(ix) Service and maintenance information.

(7) Specimen collection and preparation for analysis, including a description of:

(i) Special precautions regarding specimen collection including special preparation of the patient as it bears on the validity of the test.

(ii) Additives, preservatives, etc., necessary to maintain the integrity of the specimen.

(iii) Known interfering substances.

(iv) Recommended storage, handling or shipping instructions for the protection and maintenance of stability of the specimen.

(8) Procedure: A step-by-step outline of recommended procedures from reception of the specimen to obtaining results. List any points that may be useful in improving precision and accuracy.

(i) A list of all materials provided, e.g., reagents, instruments and equipment, with instructions for their use.

(ii) A list of all materials required but not provided. Include such details as sizes, numbers, types, and quality.

(iii) A description of the amounts of reagents necessary, times required for

specific steps, proper temperatures, wavelengths, etc.

(iv) A statement describing the stability of the final reaction material to be measured and the time within which it shall be measured to assure accurate results.

(v) Details of calibration: Identify reference material. Describe preparation of reference sample(s), use of blanks, preparation of the standard curve, etc. The description of the range of calibration should include the highest and the lowest values measurable by the procedure.

(vi) Details of kinds of quality control procedures and materials required. If there is need for both positive and negative controls, this should be stated. State what are considered satisfactory limits of performance.

(9) Results: Explain the procedure for calculating the value of the unknown. Give an explanation for each component of the formula used for the calculation of the unknown. Include a sample calculation, step-by-step, explaining the answer. The values shall be expressed to the appropriate number of significant figures. If the test provides other than quantitative results, provide an adequate description of expected results.

(10) Limitation of the procedure: Include a statement of limitations of the procedure. State known extrinsic factors or interfering substances affecting results. If further testing, either more specific or more sensitive, is indicated in all cases where certain results are obtained, the need for the additional test shall be stated.

(11) Expected values: State the range(s) of expected values as obtained with the product from studies of various populations. Indicate how the range(s) was established and identify the population(s) on which it was established.

(12) Specific performance characteristics: Include, as appropriate, information describing such things as accuracy, precision, specificity, and sensitivity. These shall be related to a generally accepted method using biological specimens from normal and abnormal populations. Include a statement summarizing the data upon

which the specific performance characteristics are based.

(13) Bibliography: Include pertinent references keyed to the text.

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

(15) Date of issuance of the last revision of the labeling identified as such.

(c) A shipment or other delivery of an in vitro diagnostic product shall be exempt from the requirements of paragraphs (a) and (b) of this section and from a standard promulgated under part 861 provided that the following conditions are met:

(1) In the case of a shipment or delivery for an investigation subject to part 812, if there has been compliance with part 812; or

(2) In the case of a shipment or delivery for an investigation that is not subject to part 812 (see §812.2(c)), if the following conditions are met:

(i) For a product in the laboratory research phase of development, and not represented as an effective in vitro diagnostic product, all labeling bears the statement, prominently placed: "For Research Use Only. Not for use in diagnostic procedures."

(ii) For a product being shipped or delivered for product testing prior to full commercial marketing (for example, for use on specimens derived from humans to compare the usefulness of the product with other products or procedures which are in current use or recognized as useful), all labeling bears the statement, prominently placed: "For Investigational Use Only. The performance characteristics of this product have not been established."

(d) The labeling of general purpose laboratory reagents (e.g., hydrochloric acid) and equipment (e.g., test tubes and pipettes) whose uses are generally known by persons trained in their use need not bear the directions for use required by §809.10(a) and (b), if their labeling meets the requirements of this paragraph.

(1) The label of a reagent shall bear the following information:

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

(ii) A declaration of the established name (common or usual name), if any,

and quantity, proportion or concentration of the reagent ingredient (e.g., hydrochloric acid: Formula weight 36.46, assay 37.9 percent, specific gravity 1.192 at 60 °F); 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.

(iii) 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.

(iv) 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; and a statement "For Laboratory Use."

(v) 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 information shall be determined by reliable, meaningful, and specific test methods such as those described in §211.166 of this chapter.

(vi) 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.

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

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

(ix) 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 (d)(1)(ii), (iii), (iv), (v), and (vi) of this section may appear in the outer container labeling only.

(2) The label of general purpose laboratory equipment, e.g., a beaker or a pipette, shall bear a statement adequately describing the product, its composition, and physical characteristics if necessary for its proper use.

(e)(1) The labeling for analyte specific reagents (e.g., monoclonal antibodies, deoxyribonucleic acid (DNA) probes, viral antigens, ligands) shall bear the following information:

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

(ii) A declaration of the established name (common or usual name), if any;

(iii) The 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.;

(iv) A statement of the purity and quality of the reagent, including a quantitative declaration of any impurities present and method of analysis or characterization. The requirement for this information may be met by a statement of conformity with a generally recognized and generally available standard that contains the same information, e.g., those established by the American Chemical Society, U.S. Pharmacopeia, National Formulary, and National Research Council. The labeling may also include information concerning chemical/molecular composition, nucleic acid sequence, binding affinity, cross-reactivities, and interaction with substances of known clinical significance;

(v) 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;

(vi) The date of manufacture and 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, date of expiration, 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;

(vii) 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 that accurately reflect the contents of the package. The use of metric designations is encouraged, wherever appropriate;

(viii) The name and place of business of manufacturer, packer, or distributor;

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

(x) For class I exempt ASR's, the statement: "Analyte Specific Reagent. Analytical and performance characteristics are not established"; and

(xi) For class II and III ASR's, the statement: "Analyte Specific Reagent. Except as a component of the approved/cleared test (Name of approved/cleared test), analytical and performance characteristics of this ASR are not established."

(2) 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.

[41 FR 6903, Feb. 13, 1976, as amended at 45 FR 3750, Jan. 18, 1980; 45 FR 7484, Feb. 1, 1980; 47 FR 41107, Sept. 17, 1982; 47 FR 51109, Nov. 12, 1982; 48 FR 34470, July 29, 1983; 62 FR 62259, Nov. 21, 1997]

EFFECTIVE DATE NOTE: At 62 FR 62259, Nov. 21, 1997, § 809.10 was 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), effective Nov. 23, 1998.

### Subpart C—Requirements for Manufacturers and Producers

#### § 809.20 General requirements for manufacturers and producers of in vitro diagnostic products.

(a) [Reserved]

(b) *Compliance with good manufacturing practices.* In vitro diagnostic products shall be manufactured in accordance with the good manufacturing practices requirements found in part 820 of this chapter.

[41 FR 6903, Feb. 13, 1976, as amended at 42 FR 42530, Aug. 23, 1977; 43 FR 31527, July 21, 1978]

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

(a) Analyte specific reagents (ASR's) (§ 864.4020 of this chapter) are restricted devices under section 520(e) of the Federal Food, Drugs, and Cosmetic Act (the act) subject to the restrictions set forth in this section.

(b) ASR's may only be sold to:

(1) In vitro diagnostic manufacturers;

(2) Clinical laboratories regulated under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), as qualified to perform high complexity testing under 42 CFR part 493 or clinical laboratories regulated under VHA Directive 1106 (available from Department of Veterans Affairs, Veterans Health Administration, Washington, DC 20420); and

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

(c) ASR's must be labeled in accordance with § 809.10(e).

(d) Advertising and promotional materials for ASR's:

(1) Shall include the identity and purity (including source and method of acquisition) of the analyte specific reagent and the identity of the analyte;

(2) Shall include the statement for class I exempt ASR's: "Analyte Specific Reagent. Analytical and performance characteristics are not established";

(3) Shall include the statement for class II or III ASR's: "Analyte Specific