§ 809.40

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

(e) The laboratory that develops an in-house test using the ASR shall inform the ordering person of the test result by appending to the test report the statement: “This test was developed and its performance characteristics determined by (Laboratory Name). It has not been cleared or approved by the U.S. Food and Drug Administration.” This statement would not be applicable or required when test results are generated using the test that was cleared or approved in conjunction with review of the class II or III ASR.

(f) Ordering in-house tests that are developed using analyte specific reagents is limited under section 520(e) of the act to physicians and other persons authorized by applicable State law to order such tests.

(g) The restrictions in paragraphs (c) through (f) of this section do not apply when reagents that otherwise meet the analyte specific reagent definition are sold to:

(1) In vitro diagnostic manufacturers; or

(2) 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.


§ 809.40 Restrictions on the sale, distribution, and use of OTC test sample collection systems for drugs of abuse testing.

(a) Over-the-counter (OTC) test sample collection systems for drugs of abuse testing (§ 864.3260 of this chapter) are restricted devices under section 520(e) of the Act subject to the restrictions set forth in this section.

(b) Sample testing shall be performed in a laboratory using screening tests that have been approved, cleared, or otherwise recognized by the Food and Drug Administration as accurate and reliable for the testing of such specimens for identifying drugs of abuse or their metabolites.

(c) The laboratory performing the test(s) shall have, and shall be recognized as having, adequate capability to reliably perform the necessary screening and confirmatory tests, including adequate capability to perform integrity checks of the biological specimens for possible adulteration.

(d) All OTC test sample collection systems for drugs of abuse testing shall be labeled in accordance with § 809.10(f) and shall provide an adequate system to communicate the proper interpretation of test results from the laboratory to the lay purchaser.

[65 FR 18234, Apr. 7, 2000]

PART 810—MEDICAL DEVICE RECALL AUTHORITY

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SOURCE: 61 FR 56018, Nov. 20, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 810.1 Scope.

Part 810 describes the procedures that the Food and Drug Administration will follow in exercising its medical device recall authority under section 518(e) of the Federal Food, Drug, and Cosmetic Act.
§ 810.2 Definitions.

As used in this part:


(b) Agency or FDA means the Food and Drug Administration.

(c) Cease distribution and notification strategy or mandatory recall strategy means a planned, specific course of action to be taken by the person named in a cease distribution and notification order or in a mandatory recall order, which addresses the extent of the notification or recall, the need for public warnings, and the extent of effectiveness checks to be conducted.

(d) Consignee means any person or firm that has received, purchased, or used a device that is subject to a cease distribution and notification order or a mandatory recall order. Consignee does not mean lay individuals or patients, i.e., nonhealth professionals.

(e) Correction means repair, modification, adjustment, relabeling, destruction, or inspection (including patient monitoring) of a device, without its physical removal from its point of use to some other location.

(f) Device user facility means a hospital, ambulatory surgical facility, nursing home, or outpatient treatment or diagnostic facility that is not a physician’s office.

(g) Health professionals means practitioners, including physicians, nurses, pharmacists, dentists, respiratory therapists, physical therapists, technologists, or any other practitioners or allied health professionals that have a role in using a device for human use.

(h) Reasonable probability means that it is more likely than not that an event will occur.

(i) Serious, adverse health consequence means any significant adverse experience, including those that may be either life-threatening or involve permanent or long-term injuries, but excluding injuries that are nonlife-threatening and that are temporary and reasonably reversible.

(j) Recall means the correction or removal of a device for human use where FDA finds that there is a reasonable probability that the device would cause serious, adverse health consequences or death.

(k) Removal means the physical removal of a device from its point of use to some other location for repair, modification, adjustment, relabeling, destruction, or inspection.

§ 810.3 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act or event from which the designated period of time begins to run shall not be included. The computation of time is based only on working days.

§ 810.4 Service of orders.

Orders issued under this part will be served in person by a designated employee of FDA, or by certified or registered mail or similar mail delivery service with a return receipt record reflecting receipt, to the named person or designated agent at the named person’s or designated agent’s last known address in FDA’s records.

Subpart B—Mandatory Medical Device Recall Procedures

§ 810.10 Cease distribution and notification order.

(a) If, after providing the appropriate person with an opportunity to consult with the agency, FDA finds that there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, the agency may issue a cease distribution and notification order requiring the person named in the order to immediately:

1. Cease distribution of the device;
2. Notify health professionals and device user facilities of the order; and
3. Instruct these professionals and device user facilities to cease use of the device.

(b) FDA will include the following information in the order:

1. The requirements of the order relating to cessation of distribution and notification of health professionals and device user facilities;
2. Pertinent descriptive information to enable accurate and immediate identification of the device subject to the order, including, where known:
   (i) The brand name of the device;
   (ii) The common name, classification name, or usual name of the device;
§ 810.11 Regulatory hearing.

(a) Any request for a regulatory hearing shall be submitted in writing to the agency employee identified in the order within the timeframe specified by FDA. Under § 16.22(b) of this chapter, this timeframe ordinarily will not be fewer than 3 working days after receipt of the cease distribution and notification order. However, as provided in §16.60(h) of this chapter, the Commissioner of Food and Drugs or presiding officer may waive, suspend, or modify any provision of part 16 under §10.19 of this chapter, including those pertaining to the timing of the hearing. As provided in §16.29(a), the Commissioner or presiding officer may deny a request for a hearing, in whole or in part, if he or she determines that no genuine and substantial issue of fact is raised by the material submitted in the request.

(b) If a request for a regulatory hearing is granted, the regulatory hearing shall be limited to:

(1) Reviewing the actions required by the cease distribution and notification order, determining if FDA should affirm, modify, or vacate the order, and

(2) The total number of units of the device estimated to be distributed to health professionals and device user facilities;

(3) A proposed strategy for complying with the cease distribution and notification order;

(4) Progress reports to be made at specified intervals, showing the names and addresses of health professionals and device user facilities that have been notified, names of specific individuals contacted within device user facilities, and the dates of such contacts; and

(5) The name, address, and telephone number of the person who should be contacted concerning implementation of the order.

(c) FDA may also include in the order a model letter for notifying health professionals and device user facilities of the order and a requirement that notification of health professionals and device user facilities be completed within a specified timeframe. The model letter will include the key elements of information that the agency in its discretion has determined, based on the circumstances surrounding the issuance of each order, are necessary to inform health professionals and device user facilities about the order.

(d) FDA may also require that the person named in the cease distribution and notification order submit any or all of the following information to the agency by a time specified in the order:

(1) The total number of units of the device produced and the timespan of the production;

(2) The total number of units of the device estimated to be in distribution channels;

(3) The total number of units of the device estimated to be distributed to health professionals and device user facilities;

(4) The total number of units of the device estimated to be in the hands of home users;

(5) Distribution information, including the names and addresses of all consignees;

(6) A copy of any written communication used by the person named in the order to notify health professionals and device user facilities;

(7) A proposed strategy for complying with the cease distribution and notification order;

(8) Progress reports to be made at specified intervals, showing the names and addresses of health professionals and device user facilities that have been notified, names of specific individuals contacted within device user facilities, and the dates of such contacts; and

(9) The name, address, and telephone number of the person who should be contacted concerning implementation of the order.

(e) FDA will provide the person named in a cease distribution and notification order with an opportunity for a regulatory hearing on the actions required by the cease distribution and notification order and on whether the order should be modified, or vacated, or amended to require a mandatory recall of the device.

(f) FDA will also provide the person named in the cease distribution and notification order with an opportunity, in lieu of a regulatory hearing, to submit a written request to FDA asking that the order be modified, or vacated, or amended.

(g) FDA will include in the cease distribution and notification order the name, address, and telephone number of an agency employee to whom any request for a regulatory hearing or agency review is to be addressed.

§ 810.11 Regulatory hearing.
addressing an appropriate cease distribution and notification strategy; and

(2) Determining whether FDA should amend the cease distribution and notification order to require a recall of the device that was the subject of the order. The hearing may also address the actions that might be required by a recall order, including an appropriate recall strategy, if FDA later orders a recall.

(c) If a request by the person named in a cease distribution and notification order for a regulatory hearing is granted, the regulatory hearing will be conducted in accordance with the procedures set out in section 201(x) of the act (21 U.S.C. 321(x)) and part 16 of this chapter, except that the order issued under §810.10, rather than a notice under §16.22(a) of this chapter, provides the notice of opportunity for a hearing and is part of the administrative record of the regulatory hearing under §16.60(h) of this chapter; the Commissioner of Food and Drugs or presiding officer may waive, suspend, or modify any provision of part 16 under §10.19 of this chapter, including those pertaining to the timing of the hearing. After the presiding officer prepares a written report of the hearing and the agency issues a final decision based on the report, the presiding officer shall provide the requestor written notification of the final decision to affirm, modify, or vacate the order or to amend the order to require a recall of the device within 15 working days of conducting a regulatory hearing.

§810.12 Written request for review of cease distribution and notification order.

(a) In lieu of requesting a regulatory hearing under §810.11, the person named in a cease distribution and notification order may submit a written request to FDA asking that the order be modified or vacated. Such person shall address the written request to the agency employee identified in the order and shall submit the request within the timeframe specified in the order, unless FDA and the person named in the order agree to a later date.

(b) A written request for review of a cease distribution and notification order shall identify each ground upon which the requestor relies in asking that the order be modified or vacated, as well as addressing an appropriate cease distribution and notification strategy, and shall address whether the order should be amended to require a recall of the device that was the subject of the order and the actions required by such a recall order, including an appropriate recall strategy.

(c) The agency official who issued the cease distribution and notification order shall identify each ground upon which the requestor relies in asking that the order be modified or vacated, as well as addressing an appropriate cease distribution and notification strategy, and shall address whether the order should be amended to require a recall of the device that was the subject of the order and the actions required by such a recall order, including an appropriate recall strategy.
§ 810.13 Mandatory recall order.

(a) If the person named in a cease distribution and notification order does not request a regulatory hearing or submit a request for agency review of the order, or, if the Commissioner of Food and Drugs or the presiding officer denies a request for a hearing, or, if after conducting a regulatory hearing under §810.11 or completing agency review of a cease distribution and notification order under §810.12, FDA determines that the order should be amended to require a recall of the device with respect to which the order was issued, FDA shall amend the order to require such a recall within 15 working days of issuance of a cease distribution and notification order if a regulatory hearing or agency review of the order is not requested, or within 15 working days of denying a request for a hearing, or within 15 working days of completing a regulatory hearing under §810.11, or within 15 working days of receipt of a written request for review of a cease distribution and notification order under §810.12.

(b) In a mandatory recall order, FDA may:

(1) Specify that the recall is to extend to the wholesale, retail, or user level;

(2) Specify a timetable in accordance with which the recall is to begin and be completed;

(3) Require the person named in the order to submit to the agency a proposed recall strategy, as described in §810.14, and periodic reports describing the progress of the mandatory recall, as described in §810.16; and

(4) Provide the person named in the order with a model recall notification letter that includes the key elements of information that FDA has determined are necessary to inform health professionals and device user facilities.

(c) FDA will not include in a mandatory recall order a requirement for:

(1) Recall of a device from individuals;

(2) Recall of a device from device user facilities, if FDA determines that the risk of recalling the device from the facilities presents a greater health risk than the health risk of not recalling the device from use, unless the device can be replaced immediately with an equivalent device.

(d) FDA will include in a mandatory recall order provisions for notification to individuals subject to the risks associated with use of the device. If a significant number of such individuals cannot be identified, FDA may notify such individuals under section 705(b) of the act.

§ 810.14 Cease distribution and notification or mandatory recall strategy.

(a) General. The person named in a cease distribution and notification order issued under §810.10 shall comply with the order, which FDA will fashion as appropriate for the individual circumstances of the case. The person named in a cease distribution and notification order modified under §810.11(e) or §810.12(c) or a mandatory recall order issued under §810.13 shall develop a strategy for complying with the order that is appropriate for the individual circumstances and that takes into account the following factors:

(1) The nature of the serious, adverse health consequences related to the device;

(2) The ease of identifying the device;

(3) The extent to which the risk presented by the device is obvious to a health professional or device user facility; and

(4) The extent to which the device is used by health professionals and device user facilities.

(b) Submission and review. (1) The person named in the cease distribution and notification order modified under §810.11(e) or §810.12(c) or a mandatory recall order shall submit a copy of the proposed strategy to the agency within the timeframe specified in the order.

(2) The agency will review the proposed strategy and make any changes to the strategy that it deems necessary within 7 working days of receipt of the proposed strategy. The person named in the order shall act in accordance with a strategy determined by FDA to be appropriate.

(c) Elements of the strategy. A proposed strategy shall meet all of the following requirements:
§ 810.15 Communications concerning a cease distribution and notification or mandatory recall order.

(a) General. The person named in a cease distribution and notification order issued under §810.10 or a mandatory recall order issued under §810.13 is responsible for promptly notifying each health professional, device user facility, consignee, or individual, as appropriate, of the order. In accordance with §810.10(c) or §810.13(b)(4), FDA may provide the person named in the cease distribution and notification or mandatory recall order with a model letter for notifying each health professional, device user facility, consignee, or individual, as appropriate, of the order. However, if FDA does not provide the person named in the cease distribution and notification or mandatory recall order with a model letter, the person named in a cease distribution and notification order issued under §810.10, or a mandatory recall order issued under §810.13, is responsible for providing such notification. The purpose of the communication is to convey:

(1) That FDA has found that there is a reasonable probability that use of the device would cause a serious, adverse health consequence or death;

(2) That the person named in the order has ceased distribution of the device;

(3) That health professionals and device user facilities should cease use of the device immediately;

(4) Where appropriate, that the device is subject to a mandatory recall order; and

(5) Specific instructions on what should be done with the device.

(b) Implementation. The person named in a cease distribution and notification order, or a mandatory recall order, shall notify the appropriate person(s) of the order by verified written communication, e.g., telegram, mailgram, or fax. The written communication and any envelope in which it is sent or enclosed shall be conspicuously marked, preferably in bold red ink: “URGENT—[DEVICE CEASE DISTRIBUTION AND NOTIFICATION ORDER] or [MANDATORY DEVICE RECALL ORDER].” Telephone calls or other personal contacts may be made in addition to, but
§ 810.16 Cease distribution and notification or mandatory recall order status reports.

(a) The person named in a cease distribution and notification order issued under §810.10 or a mandatory recall order issued under §810.13 shall submit periodic status reports to FDA to enable the agency to assess the person’s progress in complying with the order. The frequency of such reports and the agency official to whom such reports shall be submitted will be specified in the order.

(b) Unless otherwise specified in the order, each status report shall contain the following information:

(1) The number and type of health professionals, device user facilities, consignees, or individuals who have not responded to the communication and the date and method of notification;

(2) The number and type of health professionals, device user facilities, consignees, or individuals who have responded to the communication and the quantity of the device on hand at these locations at the time they received the communication;

(3) The number and type of health professionals, device user facilities, consignees, or individuals notified about the order and the date and method of notification;

(4) The number of devices returned or corrected by each health professional, device user facility, consignee, or individual contacted, and the quantity of products accounted for;

(5) The number and results of effectiveness checks that have been made; and

(6) Estimated timeframes for completion of the requirements of the cease distribution and notification order or mandatory recall order.

(c) The person named in the cease distribution and notification or recall order may discontinue the submission of status reports when the agency terminates the order in accordance with §810.17.

§ 810.17 Termination of a cease distribution and notification or mandatory recall order.

(a) The person named in a cease distribution and notification order issued under §810.10 or a mandatory recall order issued under §810.13 may request termination of the order by submitting a written request to FDA. The person submitting a request shall certify that he or she has complied in full with all of the requirements of the order and
shall include a copy of the most current status report submitted to the agency under §810.16. A request for termination of a recall order shall include a description of the disposition of the recalled device.

(b) FDA may terminate a cease distribution and notification order issued under §810.10 or a mandatory recall order issued under §810.13 when the agency determines that the person named in the order:

(1) Has taken all reasonable efforts to ensure and to verify that all health professionals, device user facilities, consignees, and, where appropriate, individuals have been notified of the cease distribution and notification order, and to verify that they have been instructed to cease use of the device and to take other appropriate action; or

(2) Has removed the device from the market or has corrected the device so that use of the device would not cause serious, adverse health consequences or death.

(c) FDA will provide written notification to the person named in the order when a request for termination of a cease distribution and notification order or a mandatory recall order has been granted or denied. FDA will respond to a written request for termination of a cease distribution and notification or recall order within 30 working days of its receipt.

§ 810.18 Public notice.

The agency will make available to the public in the weekly FDA Enforcement Report a descriptive listing of each new mandatory recall issued under §810.13. The agency will delay public notification of orders when the agency determines that such notification may cause unnecessary and harmful anxiety in individuals and that initial consultation between individuals and their health professionals is essential.

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

Subpart A—General Provisions

Sec. 812.1 Scope.