

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

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Certifier N. Hawkins

[Docket No. 2007D-0137]

**Guidance for Industry and Food and Drug Administration Staff; Class II
Special Controls Guidance Document: Gene Expression Profiling Test
System for Breast Cancer Prognosis; Availability**

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document: Gene Expression Profiling Test System for Breast Cancer Prognosis." This guidance document describes a means by which gene expression profiling test systems for breast cancer prognosis may comply with the requirement of special controls for class II devices. It includes recommendations for validation of performance characteristics and recommendations for product labeling. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify gene expression profiling test systems for breast cancer prognosis into class II (special controls). This guidance document is immediately in effect as the special control for gene expression profiling test systems for breast cancer prognosis, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled “Class II Special Controls Guidance Document: Gene Expression Profiling Test System for Breast Cancer Prognosis” to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Reena Philip, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–1286.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying gene expression profiling test systems for breast cancer prognosis into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as the special control for gene expression profiling test systems for breast cancer prognosis devices. Section 513(f)(2) of the act provides that any person who submits a premarket notification under section

510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1), request FDA to classify the device under the criteria set forth in section 513(a)(1). FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Thus, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's GGP's regulation (§ 10.115). The guidance represents the agency's current thinking on gene expression profiling test systems for breast cancer prognosis. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive "Class II Special Controls Guidance Document: Gene Expression Profiling Test System for Breast Cancer Prognosis," you may either send an e-mail request to dsmica@fda.hhs.gov to receive an electronic copy of the document or send a fax request to 240-276-3151 to receive a hard copy.

Please use the document number 1627 to identify the guidance you are requesting.

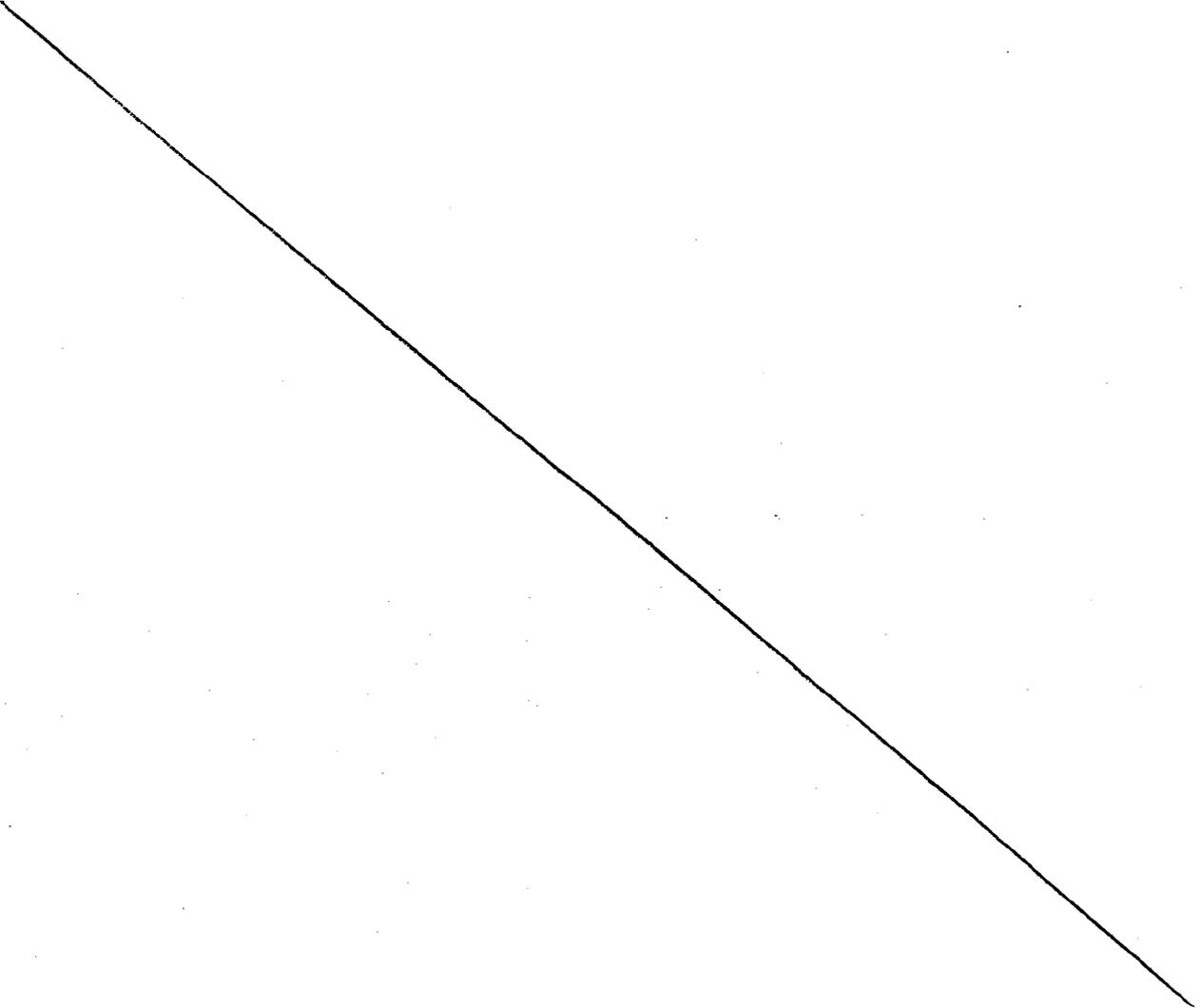
CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at <http://www.fda.gov/cdrh>. A search capability for all CDRH guidance documents is available at <http://www.fda.gov/cdrh/guidance.html>. Guidance documents are also available on the Division of Dockets Management Internet site at <http://www.fda.gov/ohrms/dockets>.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. 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. 3501–3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB Control No. 0910–0120; the collections of information in 21 CFR part 814 have been approved under OMB Control No. 0910–0231; the collections of information in 21 CFR part 809 have been approved under OMB Control No. 0910–0485; and the collections of information in 21 CFR part 820 have been approved under OMB Control No. 0910–0073.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.



Dated: 1 May 07
May 1, 2007

Linda S. Kahan

Linda S. Kahan,
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Dawn P. Hawkins