APPENDIX 2:
STATEMENT OF GROUNDS

I. BACKGROUND:

Bio-Rad Laboratories respectfully requests that the Commissioner of Food and Drugs amend 21 CFR §809.10 to permit the use of symbols, or issue new regulation or guidance permitting the use of symbols on product labeling.

As defined in 21 CFR §809.3, In-vitro diagnostic products are 'those reagents, instruments, and systems intended for use in the diagnosis of disease or other conditions, including a determination of the state of health, in order to cure, mitigate, treat, or prevent disease or its sequelae. Such products are intended for use in the collection, preparation, and examination of specimens taken from the human body. These products are devices as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act), and may also be biological products subject to section 351 of the Public Health Service Act.'

21 CFR §809.10 sets out the explicit guidelines for labeling to be placed on In-vitro diagnostic products. The intent of the regulations is to ensure that labeling will be provided in a manner which would ensure proper use in accordance with the product's intended use. A conservative reading of the regulations implies that the use of text is warranted to comply with the regulations. Bio-Rad Laboratories reasonably believes that if these regulations intended to permit the use of symbols in order to replace text, the regulations would expressly provide.

As detailed in below, Bio-Rad Laboratories reasonably believes that the use of symbols to replace text required by 21 CFR §809.10 is warranted due to: 1) Make the product more user friendly by replacing the text on vial and box labeling, 2) Allow for information to be placed on small labels in the form of symbols rather than text, and 3) Allow manufacturers to create labeling that would suffice for global requirements.

II. Issue 1: Permit the use of symbols to make the product more user-friendly

In-vitro diagnostic products have their own specific labeling regulations codified at 21 CFR §809.10. The labeling regulations do not expressly provide for the use of symbols.

It is the contention of Bio-Rad Laboratories that the use of symbols may make the products user-friendly without sacrificing product safety and effectiveness.

Bio-Rad Laboratories reasonably believes that the information required on the labeling is so extensive that it can create the need to reduce the font size in order

to include all the required information, such that the print may be unreadable. Additionally, there is a foreseeable risk that a manufacturer could omit information on the labeling to maintain a readable print size. In either case it may make it difficult for the end-user to correctly interpret and use the product. Such activity may affect the product's safety and effectiveness if it cannot be used properly in accordance with the intended use.

Many products that are not in-vitro diagnostic products currently use symbols on the labeling. In each case, the end-user is generally well aware of meaning of the symbols on such products. The symbols are generally pictures that can be easily recognized and whose meaning is generally apparent from the picture. Where a symbols may not be wholly recognizable from the picture alone, an interpretive guide can be provided in the product insert as an aid to provide definitions to each symbol used in the labeling.

While Bio-Rad Laboratories is not advocating a total abrogation of the labeling regulations, Bio-Rad Laboratories proposes that the Commissioner of Food and Drugs permit the use of symbols to replace certain text required by 21 CFR §809.10(a) and §809.10(b). Accordingly, to help end-users that may not be familiar with such symbols on the labeling, Bio-Rad Laboratories proposes that a legend box be added to product inserts. Such a box would provide a 'translation' of the symbols that have been provided by correlating each symbol with the explanation of the symbol in English. Therefore, all the information required by 21 CFR §809.10 will be present on the labeling; however, a majority of the text could be replaced by a symbol.

III. Issue 2: Allow the use of symbols as an alternative to small label exemption

21 CFR §809.10 mandates a myriad of information to be placed on the box and vial label in order to ensure proper use of the product, although as codified in 21 CFR §809.10(a)(10), allowances are made to not mandate certain text if the immediate product container is too small.

Bio-Rad Laboratories proposes that the Commissioner of Food and Drugs reconsider what information in 21 CFR §809.10(a) be minimally required to be written in text, and then permit manufacturer to replace the other required text with symbols. As such, it may alleviate the need for a small label exemption since all of the information required by 21 CFR §809.109(a) would be present on the labeling.

IV. Issue 3: The use of symbols accords with international labeling regulations

The European Commission has advocated the use of symbols for many years. As seen in the many medical directives released by the European Commission, these directives encourage the use of symbols in place of text. For example, the

Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices provides in Annex I, Section 8.2: 'Where appropriate, the information to be supplied should take the form of symbols. Any symbol and identification colour used must conform to the harmonised standards. In areas for which no standards exist, the symbols and colour used must be described in the documentation supplied with the device.'

Manufacturers today know the economic advantages of selling product internationally in addition to domestically. This often means creating labeling that will suffice for both markets. Since the domestic regulations may be different than international, this can sometimes lead to labeling logistics issues as the manufacturer may be required to create separate labeling for both markets. While the Food and Drug Administration regulates domestically cleared products, in the spirit of global harmonization and mutual recognition, Bio-Rad Laboratories asks the Commissioner of Food and Drugs to allow the use of symbols as a way to marry the domestic and international labeling requirements.

V. Conclusion:

In conclusion, Bio-Rad Laboratories has presented the Commissioner of Food and Drugs with an argument to permit the use of symbols as an alternative means to conform to the in-vitro diagnostic labeling regulations promulgated under 21 CFR §809.10. In support of this argument, Bio-Rad Laboratories proposes that the use of symbols may:

- Make the product more user friendly;
- Offer an alternative to a small label exemption; and,
- Accord with international labeling requirements.

Bio-Rad Laboratories reasonably believes that the use of symbols on the labeling would not be constitute a misbranded product, as defined by Section 502 of the Federal Food, Drug, and Cosmetic Act, nor would it affect the product's safety and effectiveness, because the information required will be present on the labeling, however it will be presented in a different manner.

In order to facilitate the transition from the text to symbols, Bio-Rad Laboratories proposes to provide a legend box in the product insert. This will allow the symbols to be easily recognized, and it will provide the end user with sufficient information to understand the meaning of the symbols provided. Bio-Rad Laboratories is willing to share with the Food and Drug Administration draft labels which have been created using symbols.

Bio-Rad Laboratories urges the Commissioner of Food and Drugs to consider this petition and provide a response within 45 days.