

and Tobacco Tax and Trade Bureau (TTB), in accordance with TTB regulations found in Part 70 of Title 27 of the Code of Federal Regulations.

(2) A claim for refund of alcohol excise taxes based on the assignment of a reduced tax rate or tax credit to an importer by a foreign good producer for goods entered or withdrawn from warehouse for consumption on or after January 1, 2023, and submitted pursuant to 26 U.S.C. 5001(c)(4), 5041(c)(7), and 5051(a)(6), must be filed with TTB, in accordance with TTB regulations found in Part 27, subpart P, of Title 27 of the Code of Federal Regulations.

**Robert F. Altneu,**

*Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.*

Approved:

**Thomas C. West Jr.,**

*Deputy Assistant Secretary of the Treasury for Tax Policy.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 882

[Docket No. FDA–2022–N–3188]

#### Medical Devices; Neurological Devices; Classification of the Pediatric Autism Spectrum Disorder Diagnosis Aid

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final amendment; final order.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) is classifying the pediatric Autism Spectrum Disorder (ASD) diagnosis aid into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the pediatric Autism Spectrum Disorder diagnosis aid's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

**DATES:** This order is effective December 30, 2022. The classification was applicable on June 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Mohua Choudhury, Center for Devices

and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4102, Silver Spring, MD 20993–0002, 240–402–3095, *Mohua.Choudhury@fda.hhs.gov*.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Upon request, FDA has classified the pediatric Autism Spectrum Disorder diagnosis aid as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as “postamendments devices” because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through “De Novo” classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After

receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining “substantial equivalence”). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

##### II. De Novo Classification

On November 3, 2020, FDA received Cognoa, Inc.'s request for De Novo classification of the Cognoa ASD Diagnosis Aid. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on June 2, 2021, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 882.1491.<sup>1</sup> We have named the

generic type of device pediatric Autism Spectrum Disorder diagnosis aid, and it is identified as a prescription device that is intended for use as an aid in the diagnosis of Autism Spectrum Disorder in pediatric patients.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—PEDIATRIC AUTISM SPECTRUM DISORDER DIAGNOSIS AID RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Device failure or incorrect analysis leading to: <ul style="list-style-type: none"> <li>False positives resulting in inappropriate patient treatment and potentially delayed diagnosis of a non-ASD condition.</li> <li>False negatives resulting in delayed diagnosis and patient treatment.</li> </ul> Use error or misinterpretation of results resulting in a, false positive or false negative.	Clinical performance testing; Software verification, validation, and hazard analysis; and Labeling.  Usability assessment, and Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, pediatric Autism Spectrum Disorder diagnosis aids are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met.

### III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. 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. 3501–3521). The collections of information in 21 CFR part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801, regarding labeling, have been approved under OMB control number 0910–0485.

#### List of Subjects in 21 CFR Part 882

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 882 is amended as follows:

#### PART 882—NEUROLOGICAL DEVICES

■ 1. The authority citation for part 882 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 882.1491 to subpart B to read as follows:

##### § 882.1491 Pediatric Autism Spectrum Disorder diagnosis aid.

(a) *Identification.* A pediatric Autism Spectrum Disorder diagnosis aid is a

prescription device that is intended for use as an aid in the diagnosis of Autism Spectrum Disorder in pediatric patients.

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

(1) Clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use, including an evaluation of sensitivity, specificity, positive predictive value, and negative predictive value using a reference method of diagnosis and assessment of patient behavioral symptomology.

(2) Software verification, validation, and hazard analysis must be provided. Software documentation must include a detailed, technical description of the algorithm(s) used to generate device output(s), and a cybersecurity assessment of the impact of threats and vulnerabilities on device functionality and user(s).

(3) Usability assessment must demonstrate that the intended user(s) can safely and correctly use the device.

(4) Labeling must include:

(i) Instructions for use, including a detailed description of the device, compatibility information, and information to facilitate clinical interpretation of all device outputs; and  
(ii) A summary of any clinical testing conducted to demonstrate how the device functions as an interpretation of patient behavioral symptomology associated with Autism Spectrum Disorder. The summary must include the following:

(A) A description of each device output and clinical interpretation;

(B) Any performance measures, including sensitivity, specificity,

<sup>1</sup> FDA notes that the “ACTION” caption for this final order is styled as “Final amendment; final order,” rather than “Final order.” Beginning in December 2019, this editorial change was made to

indicate that the document “amends” the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register’s (OFR) interpretations of the Federal Register Act (44

U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

positive predictive value (PPV) and negative predictive value (NPV);

(C) A description of how the cutoff values used for categorical classification of diagnoses were determined; and

(D) Any expected or observed adverse events and complications.

(iii) A statement that the device is not intended for use as a stand-alone diagnostic.

Dated: December 27, 2022.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG–2022–0994]

RIN 1625–AA87

#### Security Zone; Corpus Christi Ship Channel, Corpus Christi, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary, 500-yard radius, moving security zone for a certain vessel carrying Certain Dangerous Cargoes (CDC) within the Corpus Christi Ship Channel and La Quinta Channel. The temporary security zone is needed to protect the vessels, the CDC cargo, and the surrounding waterway. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

**DATES:** This rule is effective without actual notice from December 30, 2022 until January 2, 2023. For the purposes of enforcement, actual notice will be used from December 26, 2022, until December 30, 2022.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email [Anthony.M.Garofalo@uscg.mil](mailto:Anthony.M.Garofalo@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations

COTP Captain of the Port Sector Corpus Christi

DHS Department of Homeland Security

FR Federal Register

NPRM Notice of proposed rulemaking

§ Section

U.S.C. United States Code

## II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this security zone by December 26, 2022 to ensure security of this vessel and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to provide for the security of the vessel.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with the transit of the Motor Vessel (M/V) RIAS BAIXAS KNUTSEN when loaded will be a security concern within a 500-yard radius of the vessel. This rule is needed to provide for the safety and security of the vessels, their cargo, and surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other events of a similar nature while they are transiting within Corpus Christi, TX, from December 26, 2022 through January 2, 2023.

## IV. Discussion of the Rule

The Coast Guard is establishing four 500-yard radius temporary moving security zone around (M/V) RIAS BAIXAS KNUTSEN. The zone for the vessel will be enforced from December 26, 2022, through January 2, 2023. The duration of the zone is intended to protect the vessel and cargo and surrounding waterway from terrorist acts, sabotage or other subversive acts,

accidents, or other events of a similar nature. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

Entry into the security zone is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Corpus Christi. Persons or vessels desiring to enter or pass through the zone must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 361–939–0450. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate for the enforcement times and dates for each security zone.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, duration, and location of the security zone. This rule will impact a small designated area of 500-yards around the moving vessel in the Corpus Christi Ship Channel and La Quinta Channel as the vessel transit the channel over an eight day period. Moreover, the rule allows vessels to seek permission to enter the zone.

### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The