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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 872**

Display Date 4-21-03  
Publication Date 4-22-03  
Certifier G. Mulry

[Docket No. 02P-0494]

**Medical Devices; Exemption From Premarket Notification; Class II Devices;  
Optical Impression Systems for Computer Assisted Design and  
Manufacturing**

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

**ACTION:** Final rule.

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**SUMMARY:** The Food and Drug Administration (FDA) is publishing an order granting a petition requesting exemption from the premarket notification requirements for data acquisition units for ceramic dental restoration systems. This rule exempts from premarket notification data acquisition units for ceramic dental restoration systems and establishes a guidance document as a special control for this device. FDA is publishing this order in accordance with the Food and Drug Administration Modernization Act of 1997 (FDAMA).

**DATES:** This rule is effective [*insert date of publication in the Federal Register*].

**FOR FURTHER INFORMATION CONTACT:** Kevin Mulry, Center for Devices and Radiological Health (HFZ-480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-827-5283, ext 185.

**SUPPLEMENTARY INFORMATION:**

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**NFR-1**

## **I. Statutory Background**

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, Class II, or Class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Public Law 94–295)), as amended by the Safe Medical Devices Act of 1990 (the SMDA (Public Law 101–629)), devices are to be classified into Class I (general controls) if there is information showing that the general controls of the act are sufficient to assure safety and effectiveness; into Class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into Class III (premarket approval), if there is insufficient information to support classifying a device into Class I or Class II and the device is a life-sustaining or life-supporting device or is for a use that is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices), are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of

the act and the implementing regulations (21 CFR part 807) require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is “substantially equivalent” within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Public Law 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of Class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the act provides that 1 day after date of publication of the list under section 510(m)(1) of the act, FDA may exempt a device on its own initiative, or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

## II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a Class II device. These factors are discussed in the guidance that the agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions From Premarket Notification, Guidance for Industry and CDRH Staff." That guidance can be obtained through the Internet on the CDRH home page at <http://www.fda.gov/cdrh.guidance.html> or by facsimile through CDRH Facts-on-Demand at 1-800-899-0381 or 301-827-0111. Specify "159" when prompted for the document shelf number.

## III. Petition

On October 25, 2002, FDA received a petition requesting an exemption from premarket notification for data acquisition units for ceramic dental restoration systems. These devices are currently classified under § 872.3660 *Impression material* (21 CFR 872.3660) as an accessory. In the **Federal Register** of January 30, 2003 (67 FR 2787), FDA published a notice announcing that this petition had been received and provided opportunity for interested persons to submit comments on the petition by March 3, 2003. FDA did not receive any comments.

FDA has determined that maintaining classification of the data acquisition units in Class II and exempting them from the premarket notification requirements, with the guidance document as a special control, will provide reasonable assurance of the safety and effectiveness of these devices and, therefore, they meet the criteria for exemption from the premarket notification requirements. For precision and clarity, FDA is: (1) Designating these devices

as “optical impression systems for computer assisted design and manufacturing (CAD/CAM);” (2) placing them in new § 872.3661; (3) exempting them from the premarket notification requirements; and (4) establishing the guidance document entitled “Class II Special Controls Guidance Document: Optical Impression Systems for Computer Assisted Design and Manufacturing (CAD/CAM) of Dental Restorations; Guidance for Industry and FDA” as the special control for these devices. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of this guidance document. Following the effective date of this final rule any firm submitting a 510(k) premarket notification for an optical impression system for CAD/CAM will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness. All other devices classified under § 872.3660 will continue to be classified in that section and subject to the same regulatory requirements as before.

For the benefit of the reader, FDA is also adding a § 872.1(e) to direct the reader to the Web site for guidance documents.

#### **IV. Environmental Impact**

The agency has determined under 21 CFR 25.30(h) 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.

## **V. Analysis of Impacts**

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This rule will relieve a burden and simplify the marketing of these devices. The guidance document is based on existing review practices and will not impose any new burdens on these devices. The agency, therefore, certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

## **VI. Paperwork Reduction Act of 1995**

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

### List of Subjects in 21 CFR Part 872

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 872 is amended as follows:

### **PART 872—DENTAL DEVICES**

1. The authority citation for 21 CFR part 872 continues to read as follows:

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

2. Section 872.1 is amended by adding paragraph (e) to read as follows:

**§ 872.1 Scope.**

\* \* \* \* \*

(e) Guidance documents referenced in this part are available on the Internet at <http://www.fda.gov/cdrh.guidance.html>.

3. Section 872.3660 is amended by revising paragraph (b) to read as follows:

**§ 872.3660 Impression material.**

\* \* \* \* \*

(b) *Classification.* Class II (Special Controls).

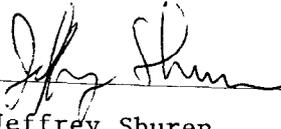
4. Section 872.3661 is added to subpart D to read as follows:

**§ 872.3661 Optical Impression Systems for CAD/CAM.**

(a) *Identification.* An optical impression system for computer assisted design and manufacturing (CAD/CAM) is a device used to record the topographical characteristics of teeth, dental impressions, or stone models by analog or digital methods for use in the computer-assisted design and manufacturing of dental restorative prosthetic devices. Such systems may consist of a camera, scanner, or equivalent type of sensor and a computer with software.

(b) *Classification.* Class II (Special Controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of the chapter subject to the limitations in § 872.9. The special control for these devices is the FDA guidance document entitled “Class II Special Controls Guidance Document: Optical Impression Systems for Computer Assisted Design and Manufacturing (CAD/CAM) of Dental Restorations; Guidance for Industry and FDA.” For the availability of this guidance document, see § 872.1(e).

Dated: 4/16/03  
April 16, 2003.



Jeffrey Shuren,  
Assistant Commissioner for Policy.

[FR Doc. 03-????? Filed ??-??-03; 8:45 am]

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