



Bristol-Myers Squibb Company

Worldwide Medicines Group

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David T. Bonk

Vice President & Senior Counsel
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May 1, 2000

**Dockets Management Branch
Food and Drug Administration, HFA-305
5630 Fishers Lane, Room 1061
Rockville, MD 20857**

Re: Docket No. 99N-4783 Administrative Practices and Procedure; Good Guidance Practices, 65 Federal Register Number 30 7321-7330 (February 14, 2000)

Dear Sir or Madam:

The Bristol-Myers Squibb Company (BMS) is a diversified worldwide health and personal care company with principal businesses in pharmaceuticals, consumer medicines, beauty care, nutritionals and medical devices. We are a leader in the development of innovative therapies for cardiovascular, metabolic, oncology, infectious diseases, and neurological disorders.

The Bristol-Myers Squibb Pharmaceutical Research Institute (PRI) is a global research and development organization that employs more than 4,300 scientists worldwide. PRI scientists are dedicated to discovering and developing best in class, innovative, therapeutic and preventive agents, with a focus on ten therapeutic areas of significant medical need. Currently, the PRI pipeline comprises more than 50 compounds under active development. In 1999, pharmaceutical research and development spending totaled \$1.5 billion.

For these reasons, FDA's proposed regulations codifying its policies and procedures for the development, issuance and use of guidance documents are of great interest to Bristol Myers Squibb. We are well qualified to offer the following comments for the Agency's consideration.

Summary of Comments on Proposed Regulations

Regulations implementing the codification of FDA's 1997 Good Guidance Practices in the Food and Drug Administration Modernization Act (FDAMA) will culminate a four year initiative by the Agency to bring clarity to its process of developing, issuing and implementing guidance documents. We commend the FDA for these efforts.

There are several aspects of the proposed regulations, however, that require reconsideration or further illumination to ensure that the objective of transparency is achieved:

1. The proposed regulations fail to provide adequately for a meaningful processes under which the public could participate in the guidance level designation decision before it is made by FDA.

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2. The proposed regulations fail to provide for adequate procedures under which the Agency would act to revise or rescind inappropriate or outdated guidance documents in response to request for such action from the public.

SPECIFIC COMMENTS

1. The Regulations Should Provide An Opportunity For Public Participation and Comment on the Guidance Level Designation Prior To The Designation Decision

Section 701(h)(1)(A) of FDAMA requires FDA to develop guidance documents with public participation. For certain categories of guidance documents (so-called Level 1 guidance documents), FDAMA requires the Agency to ensure public participation in the development of the guidance *before* its implementation unless such prior participation is not feasible or appropriate. These categories include documents that: (1) set forth initial interpretations of a statute or regulation; (2) contain changes in interpretation or policy that are of more than a minor nature; (3) discuss complex scientific issues; or (4) address highly controversial issues. For guidance documents that describe existing practices or minor changes in policy, FDAMA requires the FDA to provide the public with the opportunity to comment upon implementation. These documents are Level 2 guidance documents.

The guidance document level designation is a critical decision. This decision has significant impact on the right of the public to comment as provided by FDAMA. Congress recognized that certain kinds of topics mandated a right to public comment before guidance implementation when such participation would have more direct impact and influence. Although proposed section 10.115 describes accurately the general categories that constitute Level 1 or Level 2 guidance document, the proposed regulation fails to provide procedures by which the public can comment on the appropriate designation either before or after the designation is made.

In the preamble to the proposed regulations, the Agency states that it will determine the level of the guidance based on its “content.” However, in many instances the review of the content or subject of the proposed guidance document would not clearly indicate whether a document would fall within one of categories defined as Level 1. For example, whether the public would consider a proposed change in interpretation or policy to be minor or significant is a highly subjective decision. In addition, FDA’s definition of an “existing practice” for purposes of identifying a Level 2 guidance document could vary greatly from that of industry.

FDA states that it “does not believe that it is necessarily beneficial to systematically receive comment on all of these designations prior to issuance of guidance.” Yet, because Congress specifically provides for the right of the public to comment on certain guidance documents before implementation and a decision by FDA to designate a guidance as Level 2 rather than Level 1 has the effect of cutting off that right, the Agency should implement procedures that give the public an opportunity to comment on the designation decision before it is made. Further, procedures

under proposed section 10.115(o) that would provide the public an opportunity to challenge the Level 2 designation *after* it is made and the guidance is implemented, would fail to protect adequately the statutory rights of the public to comment on Level 1 guidance documents before FDA implements them.

To provide the public with an opportunity to comment before the guidance designation decision is made, we propose the following revisions to the draft regulations (proposed revisions in italics):

Section 10.115(f)(4) should be revised as follows:

- (4) Once a year, FDA will publish, in both the Federal Register and on the Internet, a list of possible topics for future guidance document development or revision during the next year. *This list also will include the proposed guidance level designation for each possible guidance topic. You may comment on this list (e.g. by suggesting alternatives or recommendations about the topics FDA is considering) and the appropriateness of proposed guidance level designations. No guidance level designation will be made by FDA on any topic on the annual list without providing you at least thirty days to comment on the appropriate designation. FDA will consider your comments on the proposed guidance level designation before making a designation decision.*

Section 10.115(g)(4) should be revised to add a new subsection (i):

- (4) FDA will use the following procedure for developing and issuing Level 2 guidance documents:
- (i) *FDA will publish in the Federal Register notice of its intent to issue a Level 2 guidance document on a specified topic. You will have thirty days from the date of the notice to comment in writing on the appropriateness of the proposed guidance level designation. FDA will consider your comments on the proposed guidance level designation before making a designation decision. If upon review of the comments, FDA decides that the proposed guidance topic should be a Level 1 guidance rather than a Level 2 guidance document, FDA will follow the procedures provided by section 10.115(g)(1). Guidance documents that concern topics previously disclosed on an annual list in accordance with section 10.115(f)(4) and for which the public had the opportunity to comment on the proposed level designation will only be subject to the notice procedure of sub-section 10.115(g)(4) if FDA listed the topic on the annual list as a proposed Level 1 guidance.*

2. The Regulations Should Provide Procedures Under Which The Agency Would Revise Or Rescind Inappropriate Or Outdated Guidance Documents

Pursuant to section 10.115(f)(3) of the proposed regulations, the public would have an opportunity to suggest to FDA that it revise an already existing guidance document. This opportunity is important because the public often is in the best position to apprise FDA of an inappropriate or outdated guidance document. The proposed regulations however, do not require

the Agency to respond to the public's requests for revisions to existing proposals.

To encourage public participation in the guidance document process and better ensure that the Agency is responsive to public comment, BMS proposes the following revision to draft section 10.115(f)(3) (proposed revisions in italics):

- (3) You may, at any time, suggest that FDA revise an already existing guidance document. Your suggestion should address why the guidance document should be revised and how it should be revised. *FDA will respond to each such suggestion within ninety days of receipt by either initiating procedures for revising the guidance document in accordance with the suggestion or providing reasons for refusing to initiate such procedures.*

BMS appreciates the opportunity to provide comments and respectfully requests that FDA give consideration to our recommendations. We would be pleased to provide additional pertinent information as may be requested.

Sincerely,

A handwritten signature in black ink that reads "David T. Bonk" followed by a stylized flourish that includes the letters "JM" and "Keane".

David T. Bonk



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Return Requested

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