



May 3, 2005

Food and Drug Administration
Division of Dockets Management (HFA-305)
5630 Fishers Lane Room 1061
Rockville, MD 20857

***RE: Docket No 2004N-0527, Medical Devices; Medical Device Reporting;
Companion to Direct Final Rule***

Dear Sir or Madam:

On behalf of AdvaMed, the Advanced Medical Technology Association, I am pleased to submit comments on FDA's proposed amendments to the Medical Device Reporting Regulation, 21 CFR Part 803, intended to revise the regulation into plain language in accordance with the Presidential Memorandum on Plain Language issued June 1, 1998.

AdvaMed is the world's largest association representing manufacturers of medical devices, diagnostic products, and medical information systems. AdvaMed's more than 1,300 members and subsidiaries manufacture nearly 90 percent of the \$75 billion of health care technology products purchased annually in the United States, and more than 50 percent of the \$175 billion purchased annually around the world. AdvaMed members range from the largest to the smallest medical technology innovators and companies. Nearly 70 percent of our members have fewer than \$30 million in sales annually.

Comments

AdvaMed commends FDA for its efforts to revise the Medical Device Reporting (MDR) Regulation into plain language. Often, well-intentioned companies are cited for failing to comply with some of the more complex requirements of the regulation due to their misinterpretation of certain sections. Rewriting the regulation to clarify these requirements should be helpful in this regard.

However, AdvaMed believes that this revision to the MDR Regulation conflicts with a separate proposal by FDA to revise Form 3500A, the form required by the regulation for mandatory reporting of medical device problems.

In the December 27, 2004 Federal Register (69 FR 77256, Docket No. 2004N-0535), FDA published a notice announcing changes to FDA Forms 3500 and 3500A (MedWatch forms). The changes to Form 3500A are significant. They include the addition of several new data

collection elements, the relocation of some existing elements to different sections, and changes to reference identifiers for several sections. Attached is a copy of AdvaMed's previously-submitted comments to Docket No. 2004N-0535 regarding the proposed changes to FDA Form 3500 and 3500A.

FDA is promulgating the changes to Form 3500A in an independent proceeding, and there was apparently no coordination of the proposed form modifications with the efforts to rewrite the MDR regulation. The revised MDR regulation still references the content and layout of the current Form 3500A, and does not correspond to the re-lettering of the proposed new form. See, for example, sections 21 CFR 803.20(a)(2) and 21 CFR 803.52(c).

In addition, the revised MDR regulation does not reflect any of the new data collection elements required by the revised Form 3500A. There is nothing in the rewritten regulation that defines or references any of the new information required on the revised form, for example:

- Product Use Error
- Product Switch
- Product Used During Pregnancy?
- Product Used During Breast Feeding?
- Non-Clinical Setting
- STN
- 7-day report types
- 30-day report types

Furthermore, FDA has not updated the three instruction documents that supplement the MDR regulation and FDA Form 3500A:

- Abbreviated Instructions for FDA Form 3500A Specific to Medical Device Reporting
- Mandatory MedWatch Report Form 3500A: Instructions
- Mandatory MedWatch Report Form 3500A: Codes Manual

These three documents are critical to the medical device industry, as they provide detailed instructions for properly reporting adverse events in compliance with the regulation. They were created to clarify the reporting process and information required for Form 3500A. The proposal to revise the MDR regulation contains no provisions to update these documents as well, creating yet another series of inconsistencies.

Additionally, the proposed rule itself creates ambiguity in the reporting requirements for a 5-day report. Although section 21 CFR 803.53 states such reports must be submitted "no later than 5 work days after the day that you become aware...", an earlier reference to §803.53 in section 21 CFR 803.20(b)(3)(iii) describes the submission of the reports "within 5 work days" of the aware date. Thus, the time frame for 5-day reports is unclear under the proposed rule.

Finally, AdvaMed believes that FDA has missed an opportunity to address some of the issues that have accumulated over the four years since the last revision to the MDR regulation. For example, rewriting the regulation presents an opportunity to harmonize the MDR regulation

with the recommendations of the Global Harmonization Task Force (GHTF) pertaining to the reporting of use errors. Pursuant to the harmonized GHTF recommendations, a use error which did not result in patient death, serious injury, or serious public health concern is not a required reportable event (GHTF, "Medical Device Postmarket Vigilance and Surveillance; Proposal for Reporting of Use Errors with Medical Devices by their Manufacturers or Authorized Representative," N31R8:2003 (February 2003)). This and other relatively straightforward issues have been discussed with FDA in various forums and would have been relatively easy to address in this revision.

Conclusion

In summary, it is clear that there is a lack of coordination among the proposed revision of the MDR regulation, the proposed revisions to FDA Forms 3500 and 3500A, and the absence of corresponding revisions to the related instruction documents. If the revisions to the regulation and forms are allowed to proceed to final rule in their present state, and corresponding updates are not also made to the instruction documents, the conflicts created will result in a Medical Device Reporting Regulation that is likely to be both contradictory and unenforceable.

Recommendation

AdvaMed recommends that the current proposals to revise the MDR regulation and FDA Form 3500A be withdrawn. In their place, FDA should prepare a single proposal coordinating changes to the regulation, the form, and the instruction documents. In that way, FDA can ensure that the requirements set forth in the documents are consistent, and industry will have the opportunity to comment on the true purpose and intent of the requirements.

Again, we appreciate the opportunity to comment on these proposed amendments. If you have any questions, feel free to contact me at 202-434-7220 or fdobscha@advamed.org.

Sincerely,

/s/

Francis X. Dobscha
Director
Technology & Regulatory Affairs

Attachment



March 11, 2005

Food and Drug Administration
Division of Dockets Management (HFA-305)
5630 Fishers Lane Room 1061
Rockville, MD 20857

RE: Docket No 2003N-0535, Agency Information Collection Activities; Proposed Collection; Comment Request; MedWatch: Food and Drug Administration Medical Products Reporting Program

Dear Sir or Madam:

On behalf of AdvaMed, the Advanced Medical Technology Association, I am pleased to submit comments on whether FDA's MedWatch forms (Forms 3500 and 3500A) should be amended to improve the utilization of available space and to allow for information on non-device products to share data fields with items D-10 and D-11.

AdvaMed is the world's largest association representing manufacturers of medical devices, diagnostic products, and medical information systems. AdvaMed's more than 1,300 members and subsidiaries manufacture nearly 90 percent of the \$75 billion of health care technology products purchased annually in the United States, and more than 50 percent of the \$175 billion purchased annually around the world.

AdvaMed members range from the largest to the smallest medical technology innovators and companies. Nearly 70 percent of our members have fewer than \$30 million in sales annually.

General Comments

For the device industry this is the second modification of the MedWatch form in about 2 years. We would like to express to the Agency our dissatisfaction with its approach of modifying the form on separate occasions. It is costly and time consuming to update the systems used to generate computerized forms and would like the Agency to take this into consideration as it contemplates updates to the form. In this situation, we would have preferred FDA to have made all the modifications (those from 2 years ago and the new modifications) at one time.

Specific Comments

In response to the specific questions listed in the *Federal Register*, AdvaMed provides the following responses:

1. The accuracy of FDA's estimate of the burden of proposed collection of information, including the validity of the methodology and assumptions used.

The Estimated Annual Reporting Burden (Table 1) does not include the hours necessary for firms to retrain staff in the over 28 changes to the MedWatch form. These changes include: new choices (for adverse event/product problems, new outcomes, new questions on pregnancy/breast feeding, addition of PMA/510K numbers and a new 30 day report type), deletion of choices (device available for evaluation, device returned), and the rearrangement and relettering of data blocks. Firms using computer generated MedWatch forms must also modify and validate their existing computer systems to reflect the modified form. This type of wholesale change may potentially undermine the effectiveness of current adverse event reporting systems.

2. Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, ... and other forms of information technology.

Firms using computerized forms must plan and budget for software modifications and subsequent validation of the new form. Firms cannot start such activities until an approved, final form is available. AdvaMed requests a 6-month grace period between FDA's promulgation of the final form and the requirement for its implementation by industry to modify and validate computerized systems generating the form and to retrain users of the form.

3. Ways to enhance the quality, utility, and clarity of the information to be collected.

Block B.1. Neither § 803.3 [Federal Register vol. 70(38), p. 9519 (February 28, 2005)] nor § 803.52 (p. 9527) defines "Product Switch," so it is unclear whether this term is relevant to medical device manufacturers. The term should be defined and its applicability to device manufacturers clarified if the applicability is not clear from the definition. The term "Adverse Event" should be "Serious Adverse Event" for consistency with § 803.3. (For further discussion of adverse events, please see the section about Block B.2., below.)

Block B.2. The availability of boxes to classify an adverse event as "Not Serious" or "No Harm" is problematic. An adverse event that is not serious is not reportable under § 803.3. An adverse event that causes "No Harm" is, a fortiori, not reportable and, in fact, an oxymoron. The box, "Important Medical Events," is also of concern because, like the two previous terms, "Important Medical Events" is not discussed in § 803.52. Impliedly, these three categories are not relevant to medical device manufacturers. The regulations should make explicit their lack of applicability. [Section II.A. of the above-referenced Federal Register states, "We do not intend these changes to have any effect on the substantive requirements of part 803."] If "Important Medical Events" is applicable, the regulation should define it. However, the term appears redundant, since the form already captures "death, life-threatening, hospitalization – initial or prolonged, disability or permanent damage, congenital anomaly/birth defect, and required intervention to prevent permanent impairment/damage."

Block H, as discussed in § 803.52, is Block J in the new form. Therefore, FDA should revise § 803.52 to reflect this change.

Block I.6. The regulations do not provide any information regarding the addition of "IDE." § 812.150(b)(1) requires the sponsor to report unanticipated adverse device effects as defined in § 812.3(s). Form 3500A is not suitable for such reports, and adverse events that are not unanticipated have not been reportable on Form 3500A.

Block J.1. This information is redundant with the information in blocks B.1 and B.2.



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Block J.3. The box, “not returned to mfr.” should be retained unless there is a code for devices not returned to the manufacturer. If the box is not retained and there is no code, manufacturers will be required to attach another page merely to state that the device was not returned.

Block J.5. The significance, if any, of changing the title of this block from “Labeled for single use?” to “Indicated for Single Use” is unclear.

AdvaMed has noticed that the planned revision of the MDR regulation (Docket No. 2004N-0527) does not consider any of the proposed changes to the Medwatch 3500A form. This makes the numerous references in the MDR regulation to the 3500A form incorrect. Furthermore, there are no instructions, guidance or explanation concerning new terms such as; Important Medical Events, Not Serious and No Harm. AdvaMed believes that without adequate guidance there will not be any value in the proposed changes to the 3500A form.

Conclusion

AdvaMed feels that the proposed changes to the MedWatch forms have not been completely evaluated as to their burden on respondents. Furthermore, rather than piecemeal changes in the form, AdvaMed would support a more comprehensive look at the 3500A form and the 21CFR803 regulation. The absence of adequate definitions and guidance for new terms, and the lack of coordination with proposed changes to 21CFR803, renders the proposed changes to form 3500A as without utility.

Finally, AdvaMed strongly requests that FDA provide a six (6) month implementation period for any changes to the MedWatch forms, to provide adequate time for validation of computerized forms.

If you have any questions, feel free to contact me at 202-434-7224 or jsecunda@advamed.org.

Sincerely,

Jeffrey Secunda
Associate Vice President
Technology & Regulatory Affairs