Subpart D—Records and Inspections

§ 821.50 Availability.
(a) Manufacturers, distributors, multiple distributors, and final distributors shall, upon the presentation by an FDA representative of official credentials and the issuance of Form FDA 482 at the initiation of an inspection of an establishment or person under section 704 of the act, make each record and all information required to be collected and maintained under this part and all records and information related to the events and persons identified in such records available to FDA personnel.
(b) Records and information referenced in paragraph (a) of this section shall be available to FDA personnel for purposes of reviewing, copying, or any other use related to the enforcement of the act and this part. Records required to be kept by this part shall be kept in a centralized point for each manufacturer or distributor within the United States.

§ 821.55 Confidentiality.
(a) Any patient receiving a device subject to tracking requirements under this part may refuse to release, or refuse permission to release, the patient’s name, address, telephone number, and social security number, or other identifying information for the purpose of tracking.
(b) Records and other information submitted to FDA under this part shall be protected from public disclosure to the extent permitted under part 20 of this chapter, and in accordance with § 20.63 of this chapter, information contained in such records that would identify patient or research subjects shall not be available for public disclosure except as provided in those parts.
(c) Patient names or other identifiers may be disclosed to a manufacturer or other person subject to this part or to a physician when the health or safety of the patient requires that such persons have access to the information. Such notification will be pursuant to agreement that the record or information will not be further disclosed except as the health aspects of the patient requires. Such notification does not constitute public disclosure and will not trigger the availability of the same information to the public generally.

§ 821.60 Retention of records.
Persons required to maintain records under this part shall maintain such records for the useful life of each tracked device they manufacture or distribute. The useful life of a device is the time a device is in use or in distribution for use. For example, a record may be retired if the person maintaining the record becomes aware of the fact that the device is no longer in use, has been explanted, returned to the manufacturer, or the patient has died.
§ 822.12 Do you have any information that will help me prepare my submission or design my postmarket surveillance plan?
§ 822.13 [Reserved]
§ 822.14 May I reference information previously submitted instead of submitting it again?
§ 822.15 How long must I conduct postmarket surveillance of my device?

Subpart D—FDA Review and Action

§ 822.16 What will you consider in the review of my submission?
§ 822.17 How long will your review of my submission take?
§ 822.18 How will I be notified of your decision?
§ 822.19 What kinds of decisions may you make?
§ 822.20 What are the consequences if I fail to submit a postmarket surveillance plan, my plan is disapproved and I fail to submit a new plan, or I fail to conduct surveillance in accordance with my approved plan?
§ 822.21 What must I do if I want to make changes to my postmarket surveillance plan after you have approved it?
§ 822.22 What recourse do I have if I do not agree with your decision?
§ 822.23 Is the information in my submission considered confidential?

Subpart E—Responsibilities of Manufacturers

§ 822.24 What are my responsibilities once I am notified that I am required to conduct postmarket surveillance?
§ 822.25 What are my responsibilities after my postmarket surveillance plan has been approved?
§ 822.26 If my company changes ownership, what must I do?
§ 822.27 If I go out of business, what must I do?
§ 822.28 If I stop marketing the device subject to postmarket surveillance, what must I do?

Subpart F—Waivers and Exemptions

§ 822.29 May I request a waiver of a specific requirement of this part?
§ 822.30 May I request exemption from the requirement to conduct postmarket surveillance?

Subpart G—Records and Reports

§ 822.31 What records am I required to keep?
§ 822.32 What records are the investigators in my surveillance plan required to keep?
§ 822.33 How long must we keep the records?
§ 822.34 What must I do with the records if the sponsor of the plan or an investigator in the plan changes?
§ 822.4 Does this part apply to me?

If we have ordered you to conduct postmarket surveillance of a medical device under section 522 of the act, this part applies to you. We have the authority to order postmarket surveillance of any class II or class III medical device, including a device reviewed under the licensing provisions of section 351 of the Public Health Service Act, that meets any of the following criteria:

(a) Failure of the device would be reasonably likely to have serious adverse health consequences;

(b) The device is intended to be implanted in the human body for more than 1 year; or

(c) The device is intended to be used to support or sustain life and to be used outside a user facility.

Subpart B—Notification

§ 822.5 How will I know if I must conduct postmarket surveillance?

We will send you a letter (the postmarket surveillance order) notifying you of the requirement to conduct postmarket surveillance. Before we send the order, or as part of the order, we may require that you submit
Food and Drug Administration, HHS

§ 822.6 When will you notify me that I am required to conduct postmarket surveillance?

We will notify you as soon as we have determined that postmarket surveillance of your device is necessary, based on the identification of a surveillance question. This may occur during the review of a marketing application for your device, as your device goes to market, or after your device has been marketed for a period of time.

§ 822.7 What should I do if I do not agree that postmarket surveillance is appropriate?

(a) If you do not agree with our decision to order postmarket surveillance for a particular device, you may request review of our decision by:

(1) Requesting a meeting with the Director, Office of Surveillance and Biometrics, who generally issues the order for postmarket surveillance;

(2) Seeking internal review of the order under §10.75 of this chapter;

(3) Requesting an informal hearing under part 16 of this chapter; or

(4) Requesting review by the Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee.

(b) You may obtain guidance documents that discuss these mechanisms from the Center for Devices and Radiological Health’s (CDRH’s) Web site (http://www.fda.gov/cdrh/ombudsman/dispute.html).

[67 FR 38887, June 6, 2002, as amended at 72 FR 17399, Apr. 9, 2007]

§ 822.8 When, where, and how must I submit my postmarket surveillance plan?

You must submit your plan to conduct postmarket surveillance within 30 days of the date you receive the postmarket surveillance order. For devices regulated by the Center for Biologics Evaluation and Research, send three copies of your submission to the Document Control Center (HFM–99), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. For devices regulated by the Center for Drug Evaluation and Research, send three copies of your submission to the Central Document Room, Center for Drug Evaluation and Research, Food and Drug Administration, 5901–B, Ammendale Rd., Beltsville, MD 20705–1266. For devices regulated by the Center for Devices and Radiological Health, send three copies of your submission to the Document Mail Center, 10903 New Hampshire Ave., Bldg. 66, rm. G609, Silver Spring, MD 20993–0002. When we receive your original submission, we will send you an acknowledgment letter identifying the unique document number assigned to your submission. You must use this number in any correspondence related to this submission.

[75 FR 20915, Apr. 22, 2010]

§ 822.9 What must I include in my submission?

Your submission must include the following:

(a) Organizational/administrative information:

(1) Your name and address;

(2) Generic and trade names of your device;

(3) Name and address of the contact person for the submission;

(4) Premarket application/submission numbers for your device;

(5) Table of contents identifying the page numbers for each section of the submission;

(6) Description of the device (this may be incorporated by reference to the appropriate premarket application/submission);
§ 822.10 What must I include in my surveillance plan?

Your surveillance plan must include a discussion of:
(a) The plan objective(s) addressing the surveillance question(s) identified in our order;
(b) The subject of the study, e.g., patients, the device, animals;
(c) The variables and endpoints that will be used to answer the surveillance question, e.g., clinical parameters or outcomes;
(d) The surveillance approach or methodology to be used;
(e) Sample size and units of observation;
(f) The investigator agreement, if applicable;
(g) Sources of data, e.g., hospital records;
(h) The data collection plan and forms;
(i) The consent document, if applicable;
(j) Institutional Review Board information, if applicable;
(k) The patient followup plan, if applicable;
(l) The procedures for monitoring conduct and progress of the surveillance;
(m) An estimate of the duration of surveillance;
(n) All data analyses and statistical tests planned;
(o) The content and timing of reports.

§ 822.11 What should I consider when designing my plan to conduct postmarket surveillance?

You must design your surveillance to address the postmarket surveillance question identified in the order you received. You should consider what, if any, patient protection measures should be incorporated into your plan. You should also consider the function, operating characteristics, and intended use of your device when designing a surveillance approach.

§ 822.12 Do you have any information that will help me prepare my submission or design my postmarket surveillance plan?

Guidance documents that discuss our current thinking on preparing a postmarket surveillance submission and designing a postmarket surveillance plan are available on the Center for Devices and Radiological Health’s Web site and from the Food and Drug Administration, Center for Devices and Radiological Health, Office of Surveillance and Biometrics, 10903 New Hampshire Ave., Bldg. 66, rm. 3219, Silver Spring, MD 20993–0002. Guidance documents represent our current interpretation of, or policy on, a regulatory issue. They do not establish legally enforceable rights or responsibilities and do not legally bind you or FDA. You may choose to use an approach other than the one set forth in a guidance document, as long as your alternative approach complies with the relevant statutes (laws) and regulations. If you wish, we will meet with you to discuss whether an alternative approach you are considering will satisfy the requirements of the act and regulations.

[75 FR 20915, Apr. 22, 2010]

§ 822.13 [Reserved]

§ 822.14 May I reference information previously submitted instead of submitting it again?

Yes, you may reference information that you have submitted in premarket submissions as well as other postmarket surveillance submissions. You must specify the information to be incorporated and the document number and pages where the information is located.

§ 822.15 How long must I conduct postmarket surveillance of my device?

The length of postmarket surveillance will depend on the postmarket surveillance question identified in our order. We may order prospective surveillance for a period up to 36 months; longer periods require your agreement. If we believe that a prospective period...
Food and Drug Administration, HHS

§ 822.20

of greater than 36 months is necessary to address the surveillance question, and you do not agree, we will use the Medical Devices Dispute Resolution Panel to resolve the matter. You may obtain guidance regarding dispute resolution procedures from the Center for Devices and Radiological Health’s (CDRH) Web site (www.fda.gov/cdrh/ombudsman/). The 36-month period refers to the surveillance period, not the length of time from the issuance of the order.

[72 FR 17400, Apr. 9, 2007]

Subpart D—FDA Review and Action

§ 822.16 What will you consider in the review of my submission?

First, we will determine that the submission is administratively complete.

§ 822.17 How long will your review of my submission take?

We will review your submission within 60 days of receipt.

§ 822.18 How will I be notified of your decision?

We will send you a letter notifying you of our decision and identifying any action you must take.

§ 822.19 What kinds of decisions may you make?

<table>
<thead>
<tr>
<th>If your plan:</th>
<th>Then we will send you:</th>
<th>And you must:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Should result in the collection of useful data that will address the postmarket surveillance question</td>
<td>An approval order, identifying any specific requirements related to your postmarket surveillance</td>
<td>Conduct postmarket surveillance of your device in accordance with the approved plan</td>
</tr>
<tr>
<td>(b) Should result in the collection of useful data that will address the postmarket surveillance question after specific revisions are made or specific information is provided</td>
<td>An approvable letter identifying the specific revisions or information that must be submitted before your plan can be approved</td>
<td>Revise your postmarket surveillance submission to address the concerns in the approvable letter and submit it to us within the specified timeframe. We will determine the timeframe case-by-case, based on the types of revisions or information that you must submit</td>
</tr>
<tr>
<td>(c) Does not meet the requirements specified in this part</td>
<td>A letter disapproving your plan and identifying the reasons for disapproval</td>
<td>Revise your postmarket surveillance submission and submit it to us within the specified timeframe. We will determine the timeframe case-by-case, based on the types of revisions or information that you must submit</td>
</tr>
<tr>
<td>(d) Is not likely to result in the collection of useful data that will address the postmarket surveillance question</td>
<td>A letter disapproving your plan and identifying the reasons for disapproval</td>
<td>Revise your postmarket surveillance submission and submit it to us within the specified timeframe. We will determine the timeframe case-by-case, based on the types of revisions or information that you must submit</td>
</tr>
</tbody>
</table>

§ 822.20 What are the consequences if I fail to submit a postmarket surveillance plan, my plan is disapproved and I fail to submit a new plan, or I fail to conduct surveillance in accordance with my approved plan?

The failure to have an approved postmarket surveillance plan or failure to conduct postmarket surveillance in accordance with the approved plan constitutes failure to comply with section 522 of the act. Your failure would be a prohibited act under section 301(q)(1)(C) of the act, and your device would be misbranded under section 502(t)(3) of the act. We have the authority to initiate actions against products that are adulterated or misbranded,
§ 822.21 What must I do if I want to make changes to my postmarket surveillance plan after you have approved it?

You must receive our approval in writing before making changes in your plan that will affect the nature or validity of the data collected in accordance with the plan. To obtain our approval, you must submit three copies of the request to make the proposed change and revised postmarket surveillance plan to the applicable address listed in § 822.8. You may reference information already submitted in accordance with § 822.14. In your cover letter, you must identify your submission as a supplement and cite the unique document number that we assigned in our acknowledgment letter for your original submission, specifically identify the changes to the plan, and identify the reasons and justification for making the changes. You must report changes in your plan that will not affect the nature or validity of the data collected in accordance with the plan in the next interim report required by your approval order.

§ 822.22 What recourse do I have if I do not agree with your decision?

(a) If you disagree with us about the content of your plan or if we disapprove your plan, or if you believe there is a less burdensome approach that will answer the surveillance question, you may request review of our decision by:

(1) Requesting a meeting with the Director, Office of Surveillance and Biometrics, Center for Devices and Radiological Health (CDRH), who generally issues the order for postmarket surveillance;

(2) Seeking internal review of the order under § 10.75 of this chapter;

(3) Requesting an informal hearing under part 16 of this chapter; or

(4) Requesting review by the Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee.

(b) You may obtain guidance documents that discuss these mechanisms from the Center for Devices and Radiological Health’s (CDRH’s) Web site.

[67 FR 38887, June 6, 2002, as amended at 72 FR 17400, Apr. 9, 2007]

§ 822.23 Is the information in my submission considered confidential?

We consider the content of your submission confidential until we have approved your postmarket surveillance plan. After we have approved your plan, the contents of the original submission and any amendments, supplements, or reports may be disclosed in accordance with the Freedom of Information Act. We will continue to protect trade secret and confidential commercial information after your plan is approved. We will not disclose information identifying individual patients. You may wish to indicate in your submission which information you consider trade secret or confidential commercial.

Subpart E—Responsibilities of Manufacturers

§ 822.24 What are my responsibilities once I am notified that I am required to conduct postmarket surveillance?

You must submit your plan to conduct postmarket surveillance to us within 30 days from receipt of the order (letter) notifying you that you are required to conduct postmarket surveillance of a device.

§ 822.25 What are my responsibilities after my postmarket surveillance plan has been approved?

After we have approved your plan, you must conduct the postmarket surveillance of your device in accordance with your approved plan. This means that you must ensure that:

(a) Postmarket surveillance is initiated in a timely manner;

(b) The surveillance is conducted with due diligence;

(c) The data identified in the plan is collected;
Food and Drug Administration, HHS

(d) Any reports required as part of your approved plan are submitted to us in a timely manner; and
(e) Any information that we request prior to your submission of a report or in response to our review of a report is provided in a timely manner.

§ 822.26 If my company changes ownership, what must I do?
You must notify us within 30 days of any change in ownership of your company. Your notification should identify any changes to the name or address of the company, the contact person, or the designated person (as defined in § 822.3(b)). Your obligation to conduct postmarket surveillance will generally transfer to the new owner, unless you and the new owner have both agreed that you will continue to conduct the surveillance. If you will continue to conduct the postmarket surveillance, you still must notify us of the change in ownership.

§ 822.27 If I go out of business, what must I do?
You must notify us within 30 days of the date of your decision to close your business. You should provide the expected date of closure and discuss your plans to complete or terminate postmarket surveillance of your device. You must also identify who will retain the records related to the surveillance (described in subpart G of this part) and where the records will be kept.

§ 822.28 If I stop marketing the device subject to postmarket surveillance, what must I do?
You must continue to conduct postmarket surveillance in accordance with your approved plan even if you no longer market the device. You may request that we allow you to terminate postmarket surveillance or modify your postmarket surveillance because you no longer market the device. We will make these decisions on a case-by-case basis, and you must continue to conduct the postmarket surveillance unless we notify you that you may stop your surveillance study.

Subpart F—Waivers and Exemptions

§ 822.29 May I request a waiver of a specific requirement of this part?
You may request that we waive any specific requirement of this part. You may submit your request, with supporting documentation, separately or as a part of your postmarket surveillance submission to the address in §822.8.

§ 822.30 May I request exemption from the requirement to conduct postmarket surveillance?
You may request exemption from the requirement to conduct postmarket surveillance for your device or any specific model of that device at any time. You must comply with the requirements of this part unless and until we grant an exemption for your device. Your request for exemption must explain why you believe we should exempt the device or model from postmarket surveillance. You should demonstrate why the surveillance question does not apply to your device or does not need to be answered for the device for which you are requesting exemption. Alternatively, you may provide information that answers the surveillance question for your device, with supporting documentation, to the address in §822.8.

Subpart G—Records and Reports

§ 822.31 What records am I required to keep?
You must keep copies of:
(a) All correspondence with your investigators or FDA, including required reports;
(b) Signed agreements from each of your investigators, if your surveillance plan uses investigators, stating the commitment to conduct the surveillance in accordance with the approved plan, any applicable FDA regulations, and any conditions of approval for your plan, such as reporting requirements;
(c) Your approved postmarket surveillance plan, with documentation of the date and reason for any deviation from the plan;
§ 822.32 What records are the investigators in my surveillance plan required to keep?

Your investigator must keep copies of:

(a) All correspondence between investigators, FDA, the manufacturer, and the designated person, including required reports.
(b) The approved postmarket surveillance plan, with documentation of the date and reason for any deviation from the plan.
(c) All data collected and analyses conducted at that site for postmarket surveillance.
(d) Any other records that we require to be maintained by regulation or by order.

§ 822.33 How long must we keep the records?

You, the designated person, and your investigators must keep all records for a period of 2 years after we have accepted your final report, unless we specify otherwise.

§ 822.34 What must I do with the records if the sponsor of the plan or an investigator in the plan changes?

If the sponsor of the plan or an investigator in the plan changes, you must ensure that all records related to the postmarket surveillance have been transferred to the new sponsor or investigator and notify us within 10 working days of the effective date of the change. You must provide the name, address, and telephone number of the new sponsor or investigator, certify that all records have been transferred, and provide the date of transfer.

§ 822.35 Can you inspect my manufacturing site or other sites involved in my postmarket surveillance plan?

We may review your postmarket surveillance programs during regularly scheduled inspections, inspections initiated to investigate recalls or other similar actions, and inspections initiated specifically to review your postmarket surveillance plan. We may also inspect any other person or site involved in your postmarket surveillance, such as investigators or contractors. Any person authorized to grant access to a facility must permit authorized FDA employees to enter and inspect any facility where the device is held or where records regarding postmarket surveillance are held.

§ 822.36 Can you inspect and copy the records related to my postmarket surveillance plan?

We may, at a reasonable time and in a reasonable manner, inspect and copy any records pertaining to the conduct of postmarket surveillance that are required to be kept by this regulation. You must be able to produce records and information required by this regulation that are in the possession of others under contract with you to conduct the postmarket surveillance. Those who have signed agreements or are under contract with you must also produce the records and information upon our request. This information must be produced within 72 hours of the initiation of the inspection. We generally will redact information pertaining to individual subjects prior to copying those records, unless there are extenuating circumstances.

§ 822.37 Under what circumstances would you inspect records identifying subjects?

We can inspect and copy records identifying subjects under the same circumstances that we can inspect any records relating to postmarket surveillance. We are likely to be interested in such records if we have reason to believe that required reports have not been submitted, or are incomplete, inaccurate, false, or misleading.

§ 822.38 What reports must I submit to you?

You must submit interim and final reports as specified in your approved postmarket surveillance plan. In addition, we may ask you to submit additional information when we believe that the information is necessary for
§ 860.3 Definitions.

For the purposes of this part:
(b) Commissioner means the Commissioner of Food and Drugs, Food and Drug Administration, United States Department of Health and Human Services, or the Commissioner’s designee.
(c) Class means one of the three categories of regulatory control for medical devices, defined below:
(1) Class I means the class of devices that are subject to only the general controls authorized by or under sections 501 (adulteration), 502 (misbranding), 510 (registration), 516 (banned devices), 518 (notification and other remedies), 519 (records and reports), and 520 (general provisions) of the act. A device is in class I if (i) general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device, or (ii) there is insufficient information from which to determine that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device or to establish special controls to provide such assurance, but the device is not life-supporting or life-sustaining or for a use which is of substantial importance in preventing impairment of human health, and