

**§ 803.53 If I am a manufacturer, in which circumstances must I submit a 5-day report?**

You must submit a 5-day report to us with the information required by § 803.52 in accordance with the requirements of § 803.12(a) no later than 5 work days after the day that you become aware that:

(a) An MDR reportable event necessitates remedial action to prevent an unreasonable risk of substantial harm to the public health. You may become aware of the need for remedial action from any information, including any trend analysis or

(b) We have made a written request for the submission of a 5-day report. If you receive such a written request from us, you must submit, without further requests, a 5-day report for all subsequent events of the same nature that involve substantially similar devices for the time period specified in the written request. We may extend the time period stated in the original written request if we determine it is in the interest of the public health.

**§ 803.56 If I am a manufacturer, in what circumstances must I submit a supplemental or followup report and what are the requirements for such reports?**

If you are a manufacturer, when you obtain information required under this part that you did not provide because it was not known or was not available when you submitted the initial report, you must submit the supplemental information to us within 30 calendar days of the day that you receive this information. You must submit the supplemental or followup report in accordance with the requirements of § 803.12(a). On a supplemental or followup report, you must:

(a) Indicate that the report being submitted is a supplemental or followup report;

(b) Submit the appropriate identification numbers of the report that you are updating with the supplemental information (e.g., your original manufacturer report number and the user facility or importer report number of any report on which your report was based), if applicable; and

(c) Include only the new, changed, or corrected information.

**§ 803.58 Foreign manufacturers.**

(a) Every foreign manufacturer whose devices are distributed in the United States shall designate a U.S. agent to be responsible for reporting in accordance with § 807.40 of this chapter. The U.S. designated agent accepts responsibility for the duties that such designation entails. Upon the effective date of this regulation, foreign manufacturers shall inform FDA, by letter, of the name and address of the U.S. agent designated under this section and § 807.40 of this chapter, and shall update this information as necessary. Such updated information shall be submitted to FDA, within 5 days of a change in the designated agent information.

(b) U.S.-designated agents of foreign manufacturers are required to:

(1) Report to FDA in accordance with §§ 803.50, 803.52, 803.53, and 803.56;

(2) Conduct, or obtain from the foreign manufacturer the necessary information regarding, the investigation and evaluation of the event to comport with the requirements of § 803.50;

(3) Forward MDR complaints to the foreign manufacturer and maintain documentation of this requirement;

(4) Maintain complaint files in accordance with § 803.18; and

(5) Register, list, and submit pre-market notifications in accordance with part 807 of this chapter.

EFFECTIVE DATE NOTE: At 79 FR 8846, Feb. 14, 2014, part 803 was revised. At 79 FR 8855, Feb. 14, 2014, § 803.58 was stayed indefinitely.

**PART 806—MEDICAL DEVICES; REPORTS OF CORRECTIONS AND REMOVALS**

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## § 806.1

## 21 CFR Ch. I (4–1–16 Edition)

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SOURCE: 62 FR 27191, May 19, 1997, unless otherwise noted.

### Subpart A—General Provisions

#### § 806.1 Scope.

(a) This part implements the provisions of section 519(g) of the Federal Food, Drug, and Cosmetic Act (the act) requiring device manufacturers and importers to report promptly to the Food and Drug Administration (FDA) certain actions concerning device corrections and removals, and to maintain records of all corrections and removals regardless of whether such corrections and removals are required to be reported to FDA.

(b) The following actions are exempt from the reporting requirements of this part:

(1) Actions taken by device manufacturers or importers to improve the performance or quality of a device but that do not reduce a risk to health posed by the device or remedy a violation of the act caused by the device.

(2) Market withdrawals as defined in § 806.2(h).

(3) Routine servicing as defined in § 806.2(k).

(4) Stock recoveries as defined in § 806.2(l).

[62 FR 27191, May 19, 1997, as amended at 63 FR 42232, Aug. 7, 1998]

#### § 806.2 Definitions.

As used in this part:

(a) *Act* means the Federal Food, Drug, and Cosmetic Act.

(b) *Agency* or *FDA* means the Food and Drug Administration.

(c) *Consignee* means any person or firm that has received, purchased, or used a device subject to correction or removal.

(d) *Correction* means the repair, modification, adjustment, relabeling, destruction, or inspection (including patient monitoring) of a device without its physical removal from its point of use to some other location.

(e) *Correction or removal report number* means the number that uniquely identifies each report submitted.

(f) *Human cell, tissue, or cellular or tissue-based product (HCT/P) regulated as a*

*device* means an HCT/P as defined in § 1271.3(d) of this chapter that does not meet the criteria in § 1271.10(a) and that is also regulated as a device.

(g) *Importer* means, for the purposes of this part, any person who imports a device into the United States.

(h) *Manufacturer* means any person who manufactures, prepares, propagates, compounds, assembles, or processes a device by chemical, physical, biological, or other procedures. The term includes any person who:

(1) Repackages or otherwise changes the container, wrapper, or labeling of a device in furtherance of the distribution of the device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user or consumer;

(2) Initiates specifications for devices that are manufactured by a second party for subsequent distribution by the person initiating the specifications; or

(3) Manufactures components or accessories which are devices that are ready to be used and are intended to be commercially distributed and are intended to be used as is, or are processed by a licensed practitioner or other qualified person to meet the needs of a particular patient.

(i) *Market withdrawal* means a correction or removal of a distributed device that involves a minor violation of the act that would not be subject to legal action by FDA or that involves no violation of the act, e.g., normal stock rotation practices.

(j) *Removal* means the physical removal of a device from its point of use to some other location for repair, modification, adjustment, relabeling, destruction, or inspection.

(k) *Risk to health* means

(1) A reasonable probability that use of, or exposure to, the product will cause serious adverse health consequences or death; or

(2) That use of, or exposure to, the product may cause temporary or medically reversible adverse health consequences, or an outcome where the probability of serious adverse health consequences is remote.

(l) *Routine servicing* means any regularly scheduled maintenance of a device, including the replacement of

parts at the end of their normal life expectancy, e.g., calibration, replacement of batteries, and responses to normal wear and tear. Repairs of an unexpected nature, replacement of parts earlier than their normal life expectancy, or identical repairs or replacements of multiple units of a device are not routine servicing.

(m) *Stock recovery* means the correction or removal of a device that has not been marketed or that has not left the direct control of the manufacturer, i.e., the device is located on the premises owned, or under the control of, the manufacturer, and no portion of the lot, model, code, or other relevant unit involved in the corrective or removal action has been released for sale or use.

(n) *Unique device identifier (UDI)* means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20 of this chapter. A UDI is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the label of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

(v) For an HCT/P regulated as a device, the distinct identification code required by § 1271.290(c) of this chapter.

[62 FR 27191, May 19, 1997, as amended at 63 FR 42232, Aug. 7, 1998; 78 FR 55821, Sept. 24, 2013]

## Subpart B—Reports and Records

### § 806.10 Reports of corrections and removals.

(a) Each device manufacturer or importer shall submit a written report to FDA of any correction or removal of a device initiated by such manufacturer or importer if the correction or removal was initiated:

(1) To reduce a risk to health posed by the device; or

(2) To remedy a violation of the act caused by the device which may present a risk to health unless the information has already been provided as set forth in paragraph (f) of this section or the corrective or removal action is exempt from the reporting requirements under § 806.1(b).

(b) The manufacturer or importer shall submit any report required by paragraph (a) of this section within 10-working days of initiating such correction or removal.

(c) The manufacturer or importer shall include the following information in the report:

(1) The seven digit registration number of the entity responsible for submission of the report of corrective or removal action (if applicable), the month, day, and year that the report is made, and a sequence number (i.e., 001 for the first report, 002 for the second report, 003 etc.), and the report type designation “C” or “R”. For example, the complete number for the first correction report submitted on June 1, 1997, will appear as follows for a firm with the registration number 1234567: 1234567-6/1/97-001-C. The second correction report number submitted by the same firm on July 1, 1997, would be 1234567-7/1/97-002-C etc. For removals, the number will appear as follows: 1234567-6/1/97-001-R and 1234567-7/1/97-002-R, etc. Firms that do not have a seven digit registration number may use seven zeros followed by the month, date, year, and sequence number (i.e. 0000000-6/1/97-001-C for corrections and 0000000-7/1/97-001-R for removals). Reports received without a seven digit registration number will be assigned a seven digit central file number by the district office reviewing the reports.

(2) The name, address, and telephone number of the manufacturer or importer, and the name, title, address, and telephone number of the manufacturer or importer representative responsible for conducting the device correction or removal.

(3) The brand name and the common name, classification name, or usual name of the device and the intended use of the device.

(4) Marketing status of the device, i.e., any applicable premarket notification number, premarket approval number, or indication that the device is a preamendments device, and the device listing number. A manufacturer or importer that does not have an FDA establishment registration number shall indicate in the report whether it has ever registered with FDA.

(5) The unique device identifier (UDI) that appears on the device label or on the device package, or the device identifier, universal product code (UPC), model, catalog, or code number of the device and the manufacturing lot or serial number of the device or other identification number.

(6) The manufacturer's name, address, telephone number, and contact person if different from that of the person submitting the report.

(7) A description of the event(s) giving rise to the information reported and the corrective or removal actions that have been, and are expected to be taken.

(8) Any illness or injuries that have occurred with use of the device. If applicable, include the medical device report numbers.

(9) The total number of devices manufactured or distributed subject to the correction or removal and the number in the same batch, lot, or equivalent unit of production subject to the correction or removal.

(10) The date of manufacture or distribution and the device's expiration date or expected life.

(11) The names, addresses, and telephone numbers of all domestic and foreign consignees of the device and the dates and number of devices distributed to each such consignee.

(12) A copy of all communications regarding the correction or removal and the names and addresses of all recipients of the communications not provided in accordance with paragraph (c)(11) of this section.

(13) If any required information is not immediately available, a statement as to why it is not available and when it will be submitted.

(d) If, after submitting a report under this part, a manufacturer or importer determines that the same correction or removal should be extended to addi-

tional lots or batches of the same device, the manufacturer or importer shall within 10-working days of initiating the extension of the correction or removal, amend the report by submitting an amendment citing the original report number assigned according to paragraph (c)(1) of this section, all of the information required by paragraph (c)(2), and any information required by paragraphs (c)(3) through (c)(12) of this section that is different from the information submitted in the original report. The manufacturer or importer shall also provide a statement in accordance with paragraph (c)(13) of this section for any required information that is not readily available.

(e) A report submitted by a manufacturer or importer under this section (and any release by FDA of that report or information) does not necessarily reflect a conclusion by the manufacturer, importer, or FDA that the report or information constitutes an admission that the device caused or contributed to a death or serious injury. A manufacturer or importer need not admit, and may deny, that the report or information submitted under this section constitutes an admission that the device caused or contributed to a death or serious injury.

(f) No report of correction or removal is required under this part, if a report of the correction or removal is required and has been submitted under parts 803 or 1004 of this chapter.

[62 FR 27191, May 19, 1997, as amended at 63 FR 42232, Aug. 7, 1998; 69 FR 11311, Mar. 10, 2004; 78 FR 55821, Sept. 24, 2013]

**§ 806.20 Records of corrections and removals not required to be reported.**

(a) Each device manufacturer or importer who initiates a correction or removal of a device that is not required to be reported to FDA under § 806.10 shall keep a record of such correction or removal.

(b) Records of corrections and removals not required to be reported to FDA under § 806.10 shall contain the following information:

(1) The brand name, common or usual name, classification, name and product code if known, and the intended use of the device.

(2) The unique device identifier (UDI) of the device, or the device identifier, universal product code (UPC), model, catalog, or code number of the device and the manufacturing lot or serial number of the device or other identification number.

(3) A description of the event(s) giving rise to the information reported and the corrective or removal action that has been, and is expected to be taken.

(4) Justification for not reporting the correction or removal action to FDA, which shall contain conclusions and any followups, and be reviewed and evaluated by a designated person.

(5) A copy of all communications regarding the correction or removal.

(c) The manufacturer or importer shall retain records required under this section for a period of 2 years beyond the expected life of the device, even if the manufacturer or importer has ceased to manufacture or import the device. Records required to be maintained under paragraph (b) of this section must be transferred to the new manufacturer or importer of the device and maintained for the required period of time.

[62 FR 27191, May 19, 1997, as amended at 63 FR 42233, Aug. 7, 1998; 78 FR 55821, Sept. 24, 2013]

#### **§ 806.30 FDA access to records.**

Each device manufacturer or importer required under this part to maintain records and every person who is in charge or custody of such records shall, upon request of an officer or employee designated by FDA and under section 704(e) of the act, permit such officer or employee at all reasonable times to have access to, and to copy and verify, such records and reports.

[63 FR 42233, Aug. 7, 1998]

#### **§ 806.40 Public availability of reports.**

(a) Any report submitted under this part is available for public disclosure in accordance with part 20 of this chapter.

(b) Before public disclosure of a report, FDA will delete from the report:

(1) Any information that constitutes trade secret or confidential commer-

cial or financial information under § 20.61 of this chapter; and

(2) Any personnel, medical, or similar information, including the serial numbers of implanted devices, which would constitute a clearly unwarranted invasion of personal privacy under § 20.63 of this chapter or 5 U.S.C. 552(b)(6); provided, that except for the information under § 20.61 of this chapter or 5 U.S.C. 552(b)(4), FDA will disclose to a patient who requests a report all the information in the report concerning that patient.

## **PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND INITIAL IMPORTERS OF DEVICES**

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