

where appropriate, of the patient population for which the device is intended. If the indication statements are different from those of the legally marketed device identified in paragraph (a)(3) of this section, the 510(k) summary shall contain an explanation as to why the differences are not critical to the intended therapeutic, diagnostic, prosthetic, or surgical use of the device, and why the differences do not affect the safety and effectiveness of the device when used as labeled; and

(6) If the device has the same technological characteristics (i.e., design, material, chemical composition, energy source) as the predicate device identified in paragraph (a)(3) of this section, a summary of the technological characteristics of the new device in comparison to those of the predicate device. If the device has different technological characteristics from the predicate device, a summary of how the technological characteristics of the device compare to a legally marketed device identified in paragraph (a)(3) of this section.

(b) 510(k) summaries for those premarket submissions in which a determination of substantial equivalence is also based on an assessment of performance data shall contain the following information:

(1) A brief discussion of the nonclinical tests submitted, referenced, or relied on in the premarket notification submission for a determination of substantial equivalence;

(2) A brief discussion of the clinical tests submitted, referenced, or relied on in the premarket notification submission for a determination of substantial equivalence. This discussion shall include, where applicable, a description of the subjects upon whom the device was tested, a discussion of the safety or effectiveness data obtained from the testing, with specific reference to adverse effects and complications, and any other information from the clinical testing relevant to a determination of substantial equivalence; and

(3) The conclusions drawn from the nonclinical and clinical tests that demonstrate that the device is as safe, as effective, and performs as well as or better than the legally marketed de-

vice identified in paragraph (a)(3) of this section.

(c) The summary should be in a separate section of the submission, beginning on a new page and ending on a page not shared with any other section of the premarket notification submission, and should be clearly identified as a "510(k) summary."

(d) Any other information reasonably deemed necessary by the agency.

[57 FR 18066, Apr. 28, 1992, as amended at 59 FR 64295, Dec. 14, 1994]

§ 807.93 Content and format of a 510(k) statement.

(a)(1) A 510(k) statement submitted as part of a premarket notification shall state as follows:

I certify that, in my capacity as (the position held in company by person required to submit the premarket notification, preferably the official correspondent in the firm), of (company name), I will make available all information included in this premarket notification on safety and effectiveness within 30 days of request by any person if the device described in the premarket notification submission is determined to be substantially equivalent. The information I agree to make available will be a duplicate of the premarket notification submission, including any adverse safety and effectiveness information, but excluding all patient identifiers, and trade secret and confidential commercial information, as defined in 21 CFR 20.61.

(2) The statement in paragraph (a)(1) of this section should be signed by the certifier, made on a separate page of the premarket notification submission, and clearly identified as "510(k) statement."

(b) All requests for information included in paragraph (a) of this section shall be made in writing to the certifier, whose name will be published by FDA on the list of premarket notification submissions for which substantial equivalence determinations have been made.

(c) The information provided to requestors will be a duplicate of the premarket notification submission, including any adverse information, but excluding all patient identifiers, and

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trade secret and confidential commercial information as defined in §20.61 of this chapter.

[59 FR 64295, Dec. 14, 1994]

§ 807.94 Format of a class III certification.

(a) A class III certification submitted as part of a premarket notification shall state as follows:

I certify, in my capacity as (position held in company), of (company name), that I have conducted a reasonable search of all information known or otherwise available about the types and causes of safety or effectiveness problems that have been reported for the (type of device). I further certify that I am aware of the types of problems to which the (type of device) is susceptible and that, to the best of my knowledge, the following summary of the types and causes of safety or effectiveness problems about the (type of device) is complete and accurate.

(b) The statement in paragraph (a) of this section should be signed by the certifier, clearly identified as "class III certification," and included at the beginning of the section of the premarket notification submission that sets forth the class III summary.

[59 FR 64296, Dec. 14, 1994]

§ 807.95 Confidentiality of information.

(a) The Food and Drug Administration will disclose publicly whether there exists a premarket notification submission under this part:

(1) Where the device is on the market, i.e., introduced or delivered for introduction into interstate commerce for commercial distribution;

(2) Where the person submitting the premarket notification submission has disclosed, through advertising or any other manner, his intent to market the device to scientists, market analysts, exporters, or other individuals who are not employees of, or paid consultants to, the establishment and who are not in an advertising or law firm pursuant to commercial arrangements with appropriate safeguards for secrecy; or

(3) Where the device is not on the market and the intent to market the device has not been so disclosed, except where the submission is subject to an exception under paragraph (b) or (c) of this section.

(b) The Food and Drug Administration will not disclose publicly the existence of a premarket notification submission for a device that is not on the market and where the intent to market the device has not been disclosed for 90 days from the date of receipt of the submission, if:

(1) The person submitting the premarket notification submission requests in the submission that the Food and Drug Administration hold as confidential commercial information the intent to market the device and submits a written certification to the Commissioner:

(i) That the person considers his intent to market the device to be confidential commercial information;

(ii) That neither the person nor, to the best of his knowledge, anyone else, has disclosed through advertising or any other manner, his intent to market the device to scientists, market analysts, exporters, or other individuals, except employees of, or paid consultants to, the establishment or individuals in an advertising or law firm pursuant to commercial arrangements with appropriate safeguards for secrecy;

(iii) That the person will immediately notify the Food and Drug Administration if he discloses the intent to market the device to anyone, except employees of, or paid consultants to, the establishment or individuals in an advertising or law firm pursuant to commercial arrangements with appropriate safeguards for secrecy;

(iv) That the person has taken precautions to protect the confidentiality of the intent to market the device; and

(v) That the person understands that the submission to the government of false information is prohibited by 18 U.S.C. 1001 and 21 U.S.C. 331(q); and

(2) The Commissioner agrees that the intent to market the device is confidential commercial information.

(c) Where the Commissioner determines that the person has complied with the procedures described in paragraph (b) of this section with respect to a device that is not on the market and where the intent to market the device has not been disclosed, and the Commissioner agrees that the intent to