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April 15, 2003

Dockets Management Branch
Food and Drug Administration, HFA-305
5630 Fishers Lane, Room 1061
Rockville, MD 20852

Re: Docket Nos. 03D-0060, 99D-1458, 00D-1538, 00D-1542, and 00D-1539; Draft Guidance, "Part 11, Electronic Records, Electronic Signatures – Scope and Application;" Availability of Draft Guidance and Withdrawal of Draft Part 11 Guidance Documents and a Compliance Policy Guide, 68 Federal Register 8775-8776 (February 25, 2003)

Dear Sir or Madam:

Bristol-Myers Squibb is a diversified worldwide health and personal care company with principal businesses in pharmaceuticals, consumer medicines, nutritionals and medical devices. We are a leader in the research and development of innovative therapies for cardiovascular, metabolic and infectious diseases, neurological disorders, and oncology. In 2001 alone, Bristol-Myers Squibb dedicated $2.1 billion for pharmaceutical research and development activities. The company has nearly 6,000 scientists and doctors committed to discover and develop best in class therapeutic and preventive agents that extend and enhance human life. Our current pipeline comprises more than 50 compounds under active development.

For these reasons, we are very interested in and well qualified to comment on this FDA draft guidance regarding the scope and application of Part 11, Electronic Records; Electronic Signatures.

We commend the U.S. FDA for it's initiative in undertaking a re-examination of the Part 11 regulation and fully support this endeavor. We encourage adoption of a risk-based approach where consideration is given to the potential of a system to affect product quality, patient safety, and record integrity. We believe such an approach would be a positive step toward promoting the widest use of electronic technology, compatible with FDA's mission to protect public health. We fully support the FDA's emphasis on maintaining or submitting records in accordance with the underlying predicate rules.

We specifically want to express our support of the FDA's intention to not normally take regulatory action on *legacy systems* that meet the predicate regulations and were operational prior to August 20, 1997. This *enforcement discretion* will help the industry to focus resources toward the implementation of new technology. The resources needed to modify these *legacy systems* to meet all Part 11 requirements seem to far outweigh any benefits gained by these requirements.

Bristol Myers Squibb finds the guidance statements for legacy systems to be clear, and recommends no further Agency guidance be provided on this subject. Doing so may make the guidance overly prescriptive and detract from the Agency's intent to focus industry resources on the implementation of new technology to strengthen product quality and public health.

Additionally, we want to recognize the FDA's intentions to exercise enforcement discretion with respect to the validation, audit trail, record retention, and record copying Part 11 requirements during the time that the FDA re-examines the Part 11 requirements. Certain areas such as record retention and record copying have presented challenges that appear to have no ready and enduring solutions. Allowing for the archival of required records in electronic format; nonelectronic media such as paper, microfilm, and microfiche; or standard file format such as PDF is a reasonable approach that takes into account the speed at which technology changes and the difficulty restoring electronic records after the software becomes obsolete.

While we understand the reasons for the Agency's withdrawal of several Part 11 draft guidances, we acknowledge that some of these contained valuable clarification to the regulation. One example is the Agency's draft guidance regarding time stamps. In general, we found the guidance to be reasonable, providing some practical and achievable solutions for time stamps. Bristol-Myers Squibb is in full agreement with the change in the FDA position regarding time zone and we encourage the Agency to continue to reconsider this issue. The guidance reaffirmed the importance of training and awareness programs and the benefits of good documentation. Additionally, we agree with the Agency that public comments on all of these draft guidances were valuable and we support the use of that information in future decision-making.

Overall, this guidance when finalized will be valuable in addressing concerns over interpretations of certain aspects of the Part 11 regulation. We understand that some of the interpretations have led to a restriction in the use of electronic technology, a delay in technological advances, or significant increases in the cost of compliance without providing a significant benefit to public health. It is apparent that much thought has gone into the preparation of this draft guidance and we find it well written. The dialogue between FDA and industry leading to the creation of this draft guidance has been beneficial and Bristol-Myers Squibb supports ongoing efforts to continue this activity.

There are a few aspects of the draft guidance that may benefit from additional clarification and we have noted these below.

I. Introduction

This section of the draft guidance indicates that a re-examination of the Part 11 regulation will be undertaken. For clarity it is recommended that the date that this re-examination is to begin be included in the final guidance.

Recommendation: To clearly define the start of the re-examination of the actual Part 11 regulation it is recommended that the date the re-examination is to begin be inserted into the final guidance. The third paragraph should be modified to indicate "Effective *<insert date>*, FDA is embarking on a re-examination of Part 11 as it applies to all FDA regulated products."

III.B.1. Narrow Interpretation of Scope

The phrase "merely incidental use of computers" (Line number 154) has been the subject of a variety of interpretations since the Part 11 regulation was put into effect and this has led to some confusion.

Recommendation: To clarify this phrase and expand on its meaning it is recommended that a couple of examples be included in the final guidance. One suggested example is a Master Batch Record (MBR) system, which creates draft documents that are eventually used to create the formula for a batch of product. The system uses both a PC word processor and a mainframe Information Management System (IMS) database. The purpose of the PC portion of the system is to use the word processor's formatting features to create a draft MBR document. The draft document is then uploaded to the IMS database for routing, approval, and release of the finalized MBR document for use on the production floor. While the IMS database process is subject to Part 11 requirements, the PC portion in this example is a merely incidental use of a computer and therefore would not be subject to Part 11.

III.C Approach to Specific Part 11 Requirements

The 21 CFR Part 11 regulation requires controls for closed systems to include "limiting system access to authorized individuals", the "use of operational system checks" and the "use of authority checks". The draft guidance references the NIST Risk Management Guide for Information Technology Systems.

Recommendation: The guidance document, in addressing these security requirements, should acknowledge the use of risk-based assessments as a means of determining the extent system security controls should be applied. The use of risk-based assessments to effectively make such decisions is common practice in industry. Adding this to the guidance will confirm the risk-based approach toward the application of security controls and further complement the NIST reference.

III.C.2 Audit Trail

The section provides good guidance regarding enforcement discretion and the use of documented risk assessments for the effective application of audit trails. However, the last sentence (line 231 – 232), which states "Audit trails are particularly important where the users are expected to create, modify or delete regulated records during normal operations" could imply there is no change in FDA expectations for audit trails.

Recommendation: We do not see the value added by the last statement and it could detract from what we believe to be the Agency's intent to implement audit trail functionality in an effective manner. We recommend this sentence be eliminated from the document.

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

Sincerely,

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