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MassMEDIC
Massachusetts Medical Device Industry Council

April 15, 2003

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

Re: Medical Device User Fee and Modernization Act of 2002 (MDUFMA)
Docket Number 02N-0534

Dear Sir/Madam:

Background

The Massachusetts Medical Device Industry Council (MassMEDIC) is pleased to present comments relative to the implementation of the Medical Device User Fee and Modernization Act (MDUFMA). On January 2, 2003, MassMEDIC was invited by FDA to present summary comments in advance of a meeting of the agency's MDUFMA Implementation Steering Committee. These comments, submitted on January 7, focused on three critical areas of MDUFMA implementation, including: bundling of medical device submissions; combination products; and PMA supplement definitions.

The comments forwarded here expand on those previously submitted; provide feedback on additional topics; and generally endorse the positions taken by the Advanced Medical Technology Association (AdvaMed) in its MDUFMA comments.

MassMEDIC is an association of 285 member organizations - medical device and diagnostic manufacturers, suppliers, research institutions and academic health centers - that promotes the unique interests of one of the nation's most significant clusters of medical technology development. Since its establishment in 1996, MassMEDIC has taken a prominent role in supporting federal policies that expedite the delivery of medical technologies to patients and healthcare providers. MassMEDIC actively supported passage of the Food and Drug Modernization Act of 1997 and MDUFMA, enacted last year.

User Fees for Product Reviews

In supporting the establishment of a new user fee program for medical devices, as contained in MDUFMA, MassMEDIC's members recognized FDA's need to generate additional revenue for product review operations. Specifically, MassMEDIC realized that due to current budgetary

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constraints, it was unlikely that the agency would receive sufficient Congressional appropriations to carry out its product review responsibilities in a timely manner.

MassMEDIC strongly believes that the funds provided by industry to the agency in the form of user fees must be used for process improvements directly related to product reviews. MassMEDIC will work closely with members of the Massachusetts Congressional delegation to encourage full funding for the Center for Devices and Radiological Health's implementation of the user fee program.

MDUFMA Implementation Issues

Bundling Medical Device Submissions and Associated Fees

MassMEDIC supports the AdvaMed positions related to bundling with specific emphasis on the great benefit to small and large manufacturers, including:

- Where FDA currently allows bundling for new device applications and changes to existing device applications, the practice should continue and user fees should match the existing review practice.
- When a single review of data is for PMA or BLA purposes, the filings incorporating these data by reference should not be subject to additional user fees.
- Devices submitted for the same platform may be bundled into one submission.
- Multiple assays based on the same technologies that deal with the same disease or have the same intended use may be bundled.
- Reprocessed devices should be handled in the same way as original devices.

MassMEDIC also re-submits these comments on establishing a user fee bundling policy for in vitro diagnostics, originally filed on January 7, 2003:

There are a number of manufacturers of IVD technology that have analyzers intended for in vitro diagnostic analysis which are either proprietary or open-based platforms. These instruments, under most situations of intended use, are defined as Class I devices, which may either be subject to premarket notification (510(k)) or 510(k) exempt. They are subject to the provisions of design control under the QSR regulation.

The specific issue of concern with respect to user fees and development of a bundling policy is that these analyzer are capable of performing analysis on a number diagnostic tests or assays that are provided in kit form. Depending on the intended/indications for use, each of these reagent-based kits can be classified as a Class I, II or III device and may be subject to 510(k), 510(k) due to modifications to the previously cleared test, PMA or PMA supplement. An individual system distributed by an IVD company may have the capability of performing analysis on a 100 or more assays/reagents intended for use on its multi-analyte analyzer. As one can see, this would result in considerable user fee costs for in vitro diagnostic manufacturers in order to place multi-analyte platforms and associated reagents (including subsequent modifications) into commercial

distribution. It is the belief of these manufacturers that this is neither a fair nor equitable application of the provisions of MDUFMA.

The fee schedule should not be established for the each of the multiple 510(k)s, PMAs and their associated amendments or supplements that require FDA clearance or approval. Such an approach would be unduly burdensome and result in disproportionate cost for these manufacturers, with user fees in the hundreds of thousands of dollars. A more fair and equitable approach is recommended. Manufacturers of these systems wish to work with FDA's MDUFMA implementation steering committee to develop a specific plan for applying user fees to a relevant bundling policy.

Combination Products

RE: What types of guiding scientific and policy principles should FDA use in its revisions to the existing Intercenter Agreements that allocate review responsibility for human medical products? And what factors should FDA consider in determining the primary mode of action of a combination product? In instances where the primary mode of action of the combination product cannot be determined with certainty, what other factors should the agency consider in assigning primary jurisdiction? Is there a hierarchy among these additional factors that should be considered in order to ensure adequate review and regulation?

As stated in AdvaMed's MDUFMA comments on combination products, the Federal Food, Drug and Cosmetic Act (FFDCA) "directs the analysis to the composite product by requiring the FDA to 'determine the primary mode of action of the combination product.' MassMEDIC concurs with Advamed in stating, "any interpretation of primary mode of action must be consistent with the FFDCA, FDA regulations, FDA policy pronouncements and precedents." And that "any change in FDA's historical interpretation of its laws and regulations requires notice-and-comment rulemaking."

In cases where primary mode of action is not easily determined, MassMEDIC suggests that the agency "give significant consideration to whether the same product is already approved or cleared by a particular Center for a different use."

MassMEDIC supports AdvaMed's position with regard to concern about FDA's statements that suggest that suggest broader latitude in assigning premarket authorities for combination products. As noted in the AdvaMed comments on this topic, industry concerns with use of device authorities by other Centers were further affirmed recently by the Agency in FDA, Office of the Ombudsman, Combination Products Program, Regulation of Combination Products: FDA Employee Perspectives dated Oct. 2002.

MassMEDIC agrees with the AdvaMed statement "the majority of situations, a single filing for a combination product would be the most appropriate". MassMEDIC members likewise find that separate applications can unnecessarily complicate product review and therefore should be the exception as a submission path. A dialogue between the Agency and the sponsor as to the appropriateness of a separate application versus a single filing should occur before determining

the submission path. MassMEDIC further supports the specific recommendations outlining this dialogue. Lastly, MassMEDIC agrees with the AdvaMed comment that a mixture of postmarket authorities should not be the sole factor in determining a single filing versus separate applications.

As pointed out in the AdvaMed comments, MassMEDIC likewise believes that postmarket decisions should jointly weigh appropriateness and consistency of "like products. Furthermore, very timely decisions on postmarket regulation will greatly enhance the ability of MassMEDIC members to construct suitable postmarket systems and procedures.

Office of Combination Products

MassMEDIC is pleased that MDUFMA upgraded the Office of Combination Products (OCP) from the Ombudsman's Office to the Office of the Commissioner. The Office's new director, Mark Kramer, briefed MassMEDIC members on the function and priorities of the OCP at an informational seminar on February 28. MassMEDIC joins AdvaMed in urging FDA to provide sufficient resources needed to accomplish its mission of reviewing the numerous "complex scientific and clinical issues that arise with combination technologies."

Reprocessing of Single-Use Devices

MassMEDIC strongly supported new requirements for the reprocessing of single-use medical devices (SUDs) as contained in MDUFMA, believing that if not properly cleaned and sterilized these reprocessed devices pose serious health risks such as cross-infection, cross contamination and impaired performance.

MassMEDIC supports AdvaMed's recommendation that reprocessed SUDs be required to undergo extensive validation testing. "The validation requirements for reprocessed SUDS must take into consideration the collection processes, cleaning, sterilization, drying and packaging of the products."

Sec. 301 – Device Labeling

MassMEDIC joins AdvaMed in voicing concern over the implications of Sec. 301 of MDUFMA, recommending that the FDA interpret the provision as it was originally intended by applying the requirements to single-use devices that are reprocessed.

Exemptions from Sec. 301

Many devices should qualify for a waiver of this provision as they are too small, have surface properties that do not allow for the legible printing of the manufacturer's name, abbreviation or symbol, or, in the case of *in vitro diagnostics* (IVDs) devices are not intended to be used directly in or on a patient. IVDs are subject to specific labeling regulations that conform to the requirements of Sec. 301. MassMEDIC believes that FDA should exempt single use, disposable medical products that are not suitable for re-processing from Sec. 301's requirements. In addition, permanent implants

should be exempt from Sec. 301, as they are not re-used or re-processed or in some cases may too small for legible printing.

Sec. 301 Implementation – Industry Compliance Issues

MDUFMA requires compliance with Sec. 301 eighteen months after enactment. MassMEDIC is concerned that this timeframe will pose a burden on industry because:

- Biocompatibility and functionality testing may be required
- New labeling equipment may need to purchased
- Companies may not be able to exhaust current inventories before the provision's effective date.

MassMEDIC joins AdvaMed in urging FDA to make clear that Sec. 301 pertains only to medical devices manufactured after the effective date.

PMA Supplemental Definitions

MassMEDIC endorses the clarifying definitions as proposed by AdvaMed, including:

- Panel-track Supplements
  A supplement that requests: 1) a new indication of that requires substantial clinical data; and 2) a significant change in design or performance that raises different types of safety and effectiveness questions that can only be answered by substantial clinical data.

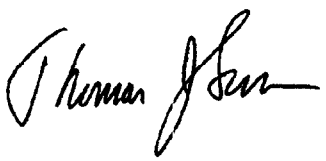
- Real-time Review Supplements
  A real-time review supplement requests a minor change to the design of the device, software, sterilization, packaging, or labeling of the device. The definition of real-time review supplements in MDUFMA inappropriately includes minor changes in manufacturing. Manufacturing changes are subject to the 30-Day Notice provision which is separate and exempt from user fees. It is important that all divisions within the Office of Device Evaluation implement the real-time review program in a consistent manner.

- Express PMA Supplement for Facilities Change
  Any supplement that meets the requirements for an Express PMA Supplement for Facilities Change should continue to qualify, and would not be subject to user fees.

- 180-Day Supplements
  Any supplement that requests a significant change and is not a Panel-track, a 30-Day Notice, 135-Day Supplement, a Real-time Review Supplement, 30-Day Supplement, Express PMA Supplement for Facilities Change, or Special PMA Supplement-Changes Being Effected.

MassMEDIC appreciates the opportunity to offer these comments on MDUFMA and looks forward to working with agency officials to ensure the timely implementation of the act's provisions.

Sincerely,



Thomas J. Sommer
President
MassMEDIC