



4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 890

[Docket No. FDA-2019-N-2675]

Medical Devices; Physical Medicine Therapeutic Devices; Classification of the Internal Therapeutic Massager

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the internal therapeutic massager into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the internal therapeutic massager's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The classification was applicable on November 20, 2012.

FOR FURTHER INFORMATION CONTACT: Vivek Pinto, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2668, Silver Spring, MD, 20993-0002, 301-796-1136, Vivek.Pinto@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the internal therapeutic massager as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as “postamendments devices” because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act to a predicate device that does not require premarket approval (see 21 U.S.C. 360c(i)). We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k) and Part 807 (21 CFR part 807), respectively.

FDA may also classify a device through “De Novo” classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (21 U.S.C. 360c(f)(2)). Section

207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105-115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112-144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act (21 U.S.C. 360c(a)(1)). Although the device was automatically within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application in order to market a

substantially equivalent device (see 21 U.S.C. 360c(i), defining “substantial equivalence”). Instead, sponsors can use the 510(k) process, when necessary, to market their device.

II. De Novo Classification

For this device, FDA issued an order on July 27, 2010, finding the American Health Insurance Plans (AHIP) Internal Trigger Point Wand not substantially equivalent to a predicate not subject to premarket approval. Thus, the device remained in class III in accordance with section 513(f)(1) of the FD&C Act when we issued the order.

On August 20, 2010, National Center for Pelvic Pain Research Devices, Inc. submitted a request for De Novo classification of the AHIP Internal Trigger Point Wand. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on November 20, 2012, FDA issued an order to the requester classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 890.5670. We have named the generic type of device internal therapeutic massager, and it is identified as a hand-held prescription device intended for medical purposes to manually provide

direct pressure applied to localized areas of pain or tenderness in the myofascial tissue associated with chronic pelvic pain syndromes. The device is inserted rectally or vaginally and provides quantitative feedback to the user of the applied force to the target tissue.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

Table 1.--Internal Therapeutic Massager Risks and Mitigation Measures

Identified Risks	Mitigation Measures
Adverse tissue reaction	Biocompatibility evaluation, and Labeling
Tissue bruising, abrasion or tearing	Non-clinical performance testing, and Labeling
Microbial contamination from reusable components	Labeling
Vaginal/rectal cross-contamination	Labeling
Overstretching/weakness of the anal sphincter and vagina	Non-clinical performance testing, and Labeling
Mechanical failure during use	Non-clinical performance testing
User error	Labeling
Electrical shock	Electrical safety testing, and Labeling
Electromagnetic incompatibility	Electromagnetic compatibility testing, and Labeling
Software failure	Software verification, validation, and hazard analysis

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. In order for a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, internal therapeutic massagers are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the

layperson under section 502(f)(1) of the FD&C Act and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met (referring to 21 U.S.C. 352(f)(1)).

Section 510(m)(2) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) if, after notice of our intent to exempt and consideration of comments, we determine by order that premarket notification is not necessary to provide reasonable assurance of safety and effectiveness of the device. We believe this may be such a device. The notice of intent to exempt the device from premarket notification requirements is published elsewhere in this issue of the *Federal Register*.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521). The collections of information in the guidance document “De Novo Classification Process (Evaluation of Automatic Class III Designation)” have been approved under OMB control number 0910-0844; the collections of information in part 820, regarding quality system regulation, have been approved under OMB control number 0910-0073; the collections of information in part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910-0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been

approved under OMB control number 0910-0120; and the collections of information in part 801, regarding labeling, have been approved under OMB control number 0910-0485.

List of Subjects in 21 CFR Part 890

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 890 is amended as follows:

PART 890--PHYSICAL MEDICINE DEVICES

1. Add an authority citation for part 890 to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Add § 890.5670 to subpart F to read as follows:

§ 890.5670 Internal therapeutic massager.

(a) *Identification.* A hand-held internal therapeutic massager device is a prescription device intended for medical purposes to manually provide direct pressure applied to localized areas of pain or tenderness in the myofascial tissue associated with chronic pelvic pain syndromes. The device is inserted rectally or vaginally and provides quantitative feedback to the user of the applied force to the target tissue.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Labeling must include adequate directions for use.

(2) Non-clinical performance testing must demonstrate electromagnetic compatibility (EMC), electrical safety and mechanical safety.

(3) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:

(i) Mechanical durability; and

(ii) Accuracy of the feedback mechanism.

(4) Software verification, validation, and hazard analysis must be performed.

(5) The patient-contacting components of the device must be demonstrated to be biocompatible.

Dated: October 21, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019-23304 Filed: 10/24/2019 8:45 am; Publication Date: 10/25/2019]