



4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-P-0882]

Medical Devices; Exemption from Premarket Notification: Wheelchair Elevator

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has received a petition requesting exemption from the premarket notification requirements for wheelchair elevator devices commonly known as inclined platform lifts and vertical platform lifts. These devices are used to provide a means for a disabled person to move a wheelchair from one level to another. FDA is publishing this notice to obtain comments in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit either electronic or written comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified with the FDA docket number found in brackets in the heading of this document, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301-827-6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions): Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and docket number for this notice. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (1976 amendments) (Public Law 94-295), as amended by the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101-629)), devices are to be classified into class I (general controls) if there is information showing that the general controls of the FD&C Act are sufficient to assure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life sustaining or life supporting device or is for a use which is of substantial importance in preventing impairment of human health or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the FD&C Act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28,

1976 (generally referred to as postamendments devices), are classified through the premarket notification process under section 510(k) of the FD&C Act (21 U.S.C. 360(k)). Section 510(k) of the FD&C Act and the implementing regulations, 21 CFR part 807, require persons who intend to market a new device to submit a premarket notification (510(k)) containing information that allows FDA to determine whether the new device is “substantially equivalent” within the meaning of section 513(i) of the FD&C Act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Public Law 105-115). Section 206 of FDAMA, in part, added a new section 510(m) to the FD&C Act. Section 510(m)(1) of the FD&C Act requires FDA, within 60 days after enactment of FDAMA, to publish in the Federal Register a list of each type of class II device that does not require a report under section 510(k) of the FD&C Act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the FD&C Act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the Federal Register. FDA published that list in the Federal Register of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the FD&C Act provides that, 1 day after date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the Federal Register a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the Federal Register its final determination

regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff." That guidance is available through the Internet at

<http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM080199.pdf> or by sending an email request to dsmica@fda.hhs.gov to receive an electronic copy of the document or send a fax request to 301-847-8149 to receive a hard copy. Please use the document number 159 to identify the guidance you are requesting.

III. Proposed Class II Device Exemptions

FDA has received the following petition requesting an exemption from premarket notification for a class II device: Richard Keller, on behalf of Bruno Independent Living Aids, Inc., for wheelchair elevator devices (commonly known as inclined platform lifts and vertical platform lifts), classified under 21 CFR 890.3930.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see ADDRESSES), either electronic or written comments regarding this document. It is only

necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 25, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

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