Medical Devices: Use of Symbols in Labeling--Glossary to Support the Use of Symbols in Labeling

0910-0740
RIN 0910-AG74

SUPPORTING STATEMENT

Terms of Clearance: n/a

A. Justification

1. Circumstances Making the Collection of Information Necessary

Section 502 of the FD&C Act (21 U.S.C. 352) requires that industry provide clear and understandable labeling for FDA-regulated products. A device is deemed misbranded, among other reasons, if its labeling is false or misleading (section 502(a)), if the required information on the labeling fails to appear in terms that are "likely to be read and understood by the ordinary individual under customary conditions of purchase and use" (section 502(c)), or if its labeling does not bear "adequate directions for use" (section 502(f) of the FD&C Act).

FDA has further defined labeling requirements for devices by regulation, requiring, in part 801 (21 CFR part 801), that "[a]ll words, statements, and other information required by or under authority of the act to appear on the label or labeling shall appear thereon in the English language…" (§ 801.15(c)(1)). The regulation goes on to allow for use of foreign language under certain circumstances, but does not mention the use of graphics, pictures, or symbols to communicate information. Under the current regulation, graphics, pictures, or symbols in labeling that represent required information must be accompanied by explanatory English text adjacent to the symbol in order to "appear thereon in the English language."

FDA is revising parts 660, 801, and 809 to explicitly allow for the use in medical device labeling of stand-alone symbols (not accompanied by explanatory text adjacent to the symbol) established in an SDP-developed standard.

In particular, FDA will allow the use of stand-alone graphical representations of information, or symbols, in the labeling for the medical devices, if the symbol has been established in an SDO-developed standard, provided that such symbol is explained in a symbols glossary that is included in the labeling for the medical device and otherwise complies with section 502 (misbranding) of the FD&C Act.

FDA is also revising its prescription device labeling regulations to authorize the use of the symbol statement "Rx only" in the labeling for prescription devices. However, this not a "collection of information" because it is information originally supplied by the Federal government for the purpose of disclosure to the public (see 5 CFR 1320.3(c)(2)).

2. Purpose and Use of the Information Collection

   The medical device industry has requested permission to use stand-alone symbols in device labeling in order to make the label more user-friendly by replacing small, difficult-to-read text with pictorial information and to harmonize the labeling requirements of U.S. and foreign regulatory bodies.

   Various symbols with accompanying text have been used in health product labeling for several years, both on package labels and within other labeling documents, such as the instructions for use. The rule will continue to allow the use of symbols, including standardized symbols, on device labeling when the symbols are accompanied by explanatory adjacent text.

   The likely respondents for this collection of information are domestic and foreign device manufacturers who plan to use stand-alone symbols on the labels and/or labeling of their devices (private sector for-profit businesses and not-for-profit institutions).
3. Use of Improved Information Technology and Burden Reduction

   This labeling information is reported using paper and electronic means during the product application process for FDA review/approval (under OMB control numbers 0910-0120, 0910-0231, 0910-0078, 0910-0485, and 0910-0338).

   The symbols glossary in this ICR may be provided in either paper or electronic format. We expect that the information will be disclosed electronically approximately 95% of the time.
4. Efforts to Identify Duplication and Use of Similar Information

   Under the final rule revising parts 660, 801, and 809, FDA seeks to harmonize U.S. regulatory requirements with those of the European Commission by allowing stand-alone symbols to be used in medical device labeling if the symbol has been established in an SDO-developed standard, provided that such symbol is explained in a symbols glossary that is included in the labeling for the medical device. As such, choosing to use stand-alone symbols under the rule would potentially reduce the burden associated with designing and re-designing the labels on medical devices that are currently marketed in the United States and the European Union.
5. Impact on Small Businesses or Other Small Entities

   This collection will not have a significant impact on small businesses. The use of stand-alone symbols in device labeling is optional under the final rule. Those device manufacturers who now use labels without symbols, or who use symbols with adjacent explanatory text, may continue to do so. Therefore, medical device manufacturers would use stand-alone symbols as allowed by the final rule only if they expect a positive net benefit.
6. Consequences of Collecting the Information Less Frequently

The regulations generally require that labeling accompany each shipment of a device. If this were not done, the device user may not have the necessary information for the safe and effective use of the device. Therefore, the collection occurs "occasionally." Special

7. Circumstances Relating to the Guidelines of 5 CFR 1320.5

There are no special circumstances for this collection of information.

8. Comments in Response to the Federal Register Notice and Efforts to Consult Outside the Agency

FDA published a proposed rule in the Federal Register of April 19, 2013 (78 FR 23508). We received submissions from 16 commenters, representing a cross-section of individuals, professional and trade associations, and device manufacturers. Almost all comments supported the objectives of the rule in whole or in part. The great majority of comments either suggested changes to specific elements of the proposed rule or requested clarification of matters discussed in the proposed rule. While the majority of comments were not directly related to the information collection, we discuss those that were related to the information collection as follows:

(Comment) Three comments suggested that manufacturers marketing devices that are exempt from adequate directions for use under 21 CFR 801.116 or 801.109(c) would needlessly be burdened under this final rule to create a symbols glossary to explain symbols that they are using voluntarily to display information that is not required "by or under" the Act.

FDA Response: The final rule requires a symbols glossary when a stand-alone symbol is used to provide labeling information "required by or under the authority of the [FD&C] Act." (§ 801.15(c)(1).) The commenters' understanding of FDA authority "by or under" the Act is too narrowly focused on the regulations concerning adequate directions for use under section 502(f)(1).

A device that is "exempt from section 502(f)(1) [of the FD&C Act]" under 21 CFR 801.116 or 801.109(c) may still be required to include certain information in its labeling for other purposes in order to provide a reasonable assurance of the safety and effectiveness of the device. For example, a prescription device that is exempt from section 502(f)(1) must still include, under 21 CFR 801.109(c), "indications, effects, routes, methods, and frequency and duration of administration, and any relevant hazards, contraindications, side effects, and precautions…" in its labeling.

Whether or not a medical device is exempt by regulation from section 502(f)(1), the device is still subject to the other misbranding provisions of section 502. Consequently, we disagree that directions-for-use symbols voluntarily used on devices exempt from adequate directions for use under 21 CFR 801.116 or 801.109(c) should be categorically exempt from the symbols glossary requirement and the final rule.

(Comment) One comment questioned why, if the validation process includes consumer testing, there was no analysis of this cost burden.

FDA Response: The final rule does not impose any new requirements for public participation in the standards development processes of SDOs or for the establishment of symbols in SDO-developed standards. The final rule does not affect the paperwork burden or cost associated with the standards-development process establishing a symbol allowed by the final rule, and therefore, no cost estimate or economic analysis of the process is required.

The final rule establishes certain procedures and conditions for device manufacturers to use a symbol as a stand-alone symbol on medical device labeling, including specifically, that the symbol must be explained in a symbols glossary that is included in the labeling for the device. The proposed and final rules do analyze the paperwork burden and economic cost of these procedures and conditions, including the required symbols glossary.

The burden on persons seeking SDO development of standards establishing symbols, including the validation of those symbols in the standard, is a matter already considered under existing standards-development norms and is otherwise in the control of the relevant SDO. The final rule does not require the interested party to revalidate that the stand-alone symbol meets the requirements of section 502(c) if the symbol is established in an FDA-recognized standard or has been appropriately validated by the SDO. Any validation needed in order to comply with the requirements of section 502(c) of the FD&C Act is pursuant to the requirements of that statute, and is not being imposed by this final rule. Accordingly, there is no validation process required by the final rule, and no cost estimate or economic analysis is called for in the rule.

(Comment) Four comments state that, in the case of stand-alone symbols established in an SDO-developed standard, a symbols glossary "contemporaneously accompanying" the device is unnecessary. Three of these comments specifically refer to the symbols contained in ISO 15223-1 and contend that the symbols glossary requirement does not harmonize with European Medical Device Directive or with ISO 15233 because neither one requires an accompanying symbols glossary. Alternatively, one comment suggested that the final rule should establish a sunset limitation for the symbols glossary requirement, so that, for example, the glossary rule would expire two years after the publication of the final rule.

FDA Response: FDA disagrees with the comments that its symbols glossary requirement is not necessary and does not harmonize with the European Medical Directive or with ISO 15233. The European Medical Device Directive states that "[i]n areas for which no standards exist, the symbols and colours must be described in the documentation supplied with the device." The Directive does not otherwise preclude requiring documentation with such symbols. Many of the symbols contained in ISO 15223-1 explicitly restrict their use as follows: "In Europe, this symbol shall be explained in the information supplied by the manufacturer." FDA is aware of many device manuals containing a

symbols glossary that would comply with this final rule, and has in the past considered this a good practice. Furthermore, the IVD Symbols Guidance recommends that a glossary of terms accompany each IVD to define all the symbols used on that device's label and/or labeling. Following the effective date of this final rule, FDA intends to withdraw the IVD Symbols Guidance.

Concerning the comment recommending a sunset limitation on the symbols glossary requirement, the Agency disagrees. The symbols glossary is intended to allow users to become familiar with the meaning of the symbols and also acts as a reference for users to look up any definitions they may not recall. In these respects, the symbols glossary helps to satisfy, although it does not satisfy on its own, the requirements of section 502(c) of the FD&C Act by making it more likely that users under customary conditions of purchase and use have access to necessary reference materials to help them understand the symbols. Accordingly, we do not believe that a sunset limitation on the symbols glossary requirement is appropriate.

(Comment) Four comments requested FDA to clarify the meaning of the term "contemporaneously accompanies the device" in the symbols glossary requirement of the rule, in particular whether the term includes "all varieties of written or electronic materials that are connected to a manufacturer's marketing and sale of a product, even when the materials are not physically with the medical device." Two of these commenters believe that, in the case of prescription devices, the rule should permit electronic display of the symbols glossary under section 502(f) of the FD&C Act and that such electronic labeling should be treated as accompanying the device for purposes of the rule. One comment urged that a reference in the medical device labeling to an online FDA glossary should satisfy the glossary requirement. Another stated that electronic labeling is an accepted practice for in vitro diagnostics in the European Union.

FDA Response: In the proposed rule, one of the requirements for use of stand-alone symbols was that such symbols be explained in a symbols glossary that contemporaneously accompanies the device. FDA understands that the term "contemporaneously accompanies" in the proposed rule may have prompted confusion, and we are revising the codified language of the final rule to clarify that a stand-alone symbol must be explained in a paper or electronic symbols glossary that is "included in the labeling for the device." We agree that flexibility is possible and appropriate to satisfy the symbols glossary requirement. The new wording permits flexibility in the form of the symbols glossary, as long as the glossary is included in the labeling for the device.

Furthermore, this final rule allows device manufacturers to provide the symbols glossary by electronic means. We have changed the codified to read "the symbol is explained in a paper or electronic symbols glossary that is included in the labeling for the device." (See amended §§ 660.2((c), 660.28, 660.35, 660.45, 660.55, 801.15(c)(1)(iv), and 809.10(a), (b), (c)(2), (d), (e)(1) and (f)). That is, the symbols glossary can be provided by electronic means so long as the glossary is included in the labeling for the device. This change also takes into account the provisions of section 502(f) of the FD&C Act which provides that required labeling for certain prescription devices and certain in vitro diagnostic devices

may be made available solely by electronic means. (See 21 U.S.C. 502(f) ("by electronic means").

In the proposed rule, we inadvertently did not specify that the labeling of the device must direct the purchaser and user as to the location of the symbols glossary in the labeling for the device. Without directions as to the location of the symbols glossary in the labeling, the purpose of the symbols glossary would not be served. Therefore, this final rule provides that the symbol "is explained in a paper or electronic symbols glossary that is included in the labeling for the device and the labeling on or within the package containing the device bears the following statement that is prominent and conspicuous: "The symbols glossary is provided [specify, e.g., in Section X of the package insert, as a separate insert within the package, on the side panel of the package, electronically at (insert link to symbols glossary on manufacturer's website)]."

In the proposed rule, the term "symbols glossary" was defined in the codified as "a compiled listing of each symbol used in the labeling for the device and of the meaning of or explanatory text for the symbol." We are revising the codified language in the final rule to define "symbols glossary" as " compiled listing of: (1) each SDO-established symbol used in the labeling for the medical device; (2) the title and number of the SDO-developed standard containing the symbol, (3) the title of the symbol and its reference number, if any, in the standard; and (4) the meaning or explanatory text for the symbol as provided in the standard (see amended §§ 660.2((c), 660.28, 660.35, 660.45, 660.55, 801.15(c)(1)(iv), and 809.3(c)). In finalizing the rule, we revised the "symbols glossary" definition to accurately identify the SDO-developed standard containing the symbol and the symbol in the standard.

(Comment) One comment argued that a single copy of the glossary should satisfy the rule when the same devices are shipped together in a multi-pack. Another comment argued that replacement parts or disposable components servicing the device with stand-alone symbols in their labeling should be exempt from the glossary rule because the customer would already have received the glossary information with the original purchase of the device.

FDA Response: In both of these situations, the premise is that there is a stand-alone symbol that appears in the labeling for the individual device unit or the replacing component.

Typically, a replacement part for a medical device or disposable component is used later in time than the replaced component. The glossary delivered to the user with the original equipment might no longer be available to explain the meaning of the stand-alone symbol on the labeling for a replacement part. "Any component, part, or accessory" of a device, if its intended use is to service the device, is itself a device (section 201(h) of the FD&C Act, 21 U.S.C. 321(h)). Under the final rule, the symbols glossary requirement therefore applies separately to replacement or disposable components when the labeling for the replacing component bears a stand-alone symbol because the symbols glossary must be included in the labeling for the device.

Additionally, the individual units of a multi-pack shipment, like replacement components, are likely to be used later such that the glossary delivered to the user of a multipack shipment might no longer be retained and available to explain the meaning of the stand-alone symbol on the labeling for the remaining individual units after the multi-pack is broken and the first unit or units are used. Under the final rule, the symbols glossary requirement therefore applies to the individual devices of a multi-pack shipment when the labeling for the individual units bears a stand-alone symbol because the symbols glossary must be included in the labeling for the device.

To reduce the burden of the glossary requirement for individual devices of a multi-pack shipment, manufacturers should consider the final rule's provision for use of an electronic symbols glossary. Such electronic glossary, however, must be included in the labeling for the device.

9. Explanation of Any Payment or Gift to Respondents

There will be no remuneration related to the submission or disclosure of symbols.

10. Assurance of Confidentiality Provided to Respondents

Information that is made available in labeling is, by its nature, public information. Information that is trade secret or confidential is subject to FDA's regulations on the release of information, 21 CFR Part 20.

Confidentiality of data and disclosure regarding the existence of an application to the FDA is governed by 21 CFR 814.9, the Freedom of Information Act (FOIA) (5 U.S.C. 552), and sections 301(j) and 520(c) and (h) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 331(j), 360(c) and (h)). Under FOIA, the public has broad access to government documents. However, FOIA provides certain exemptions from mandatory public disclosure of government records (5 U.S.C. 552(b) (1-9). One such provision, 5 U.S.C. 552(b)(4), exempts "trade secrets and commercial or financial information that is privileged or confidential" from the requirement of public disclosure. Section 520(c) of the Act prohibits FDA from disclosing any information exempted from public disclosure under 5 U.S.C. 552(b)(4). Part 20 of FDA's regulations, 21 CFR Part 20, sets forth FDA's general policy concerning public availability of FDA records.

11. Justification for Sensitive Questions

The information collection does not include any questions that are of a sensitive nature, such as, sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

12. Estimates of Annualized Burden Hours and Costs

12 a. Annualized Hour Burden Estimate

FDA estimates the burden of this collection of information as follows:

Table 1.--Estimated Annual Reporting Burden [1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Glossary	3,000	1	3,000	1	3,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 2.--Third Party Disclosure Burden [1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Glossary	3,000	1	3,000	4	12,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated burden is based on the data in a similar collection for recommended glossary approved under OMB control number 0910-0553 (Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use).

In addition to the proposed third-party disclosure requirements referenced previously, this proposed rule refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information in part 812 have been approved under OMB control number 0910-0078; the collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910-0120; the collections of information in 21 CFR part 814, subpart B have been approved under OMB control number 0910-0231; the collections of information under part 801 and § 809.10 have been approved under OMB control number 0910-0485; and the collections of information in §§ 660.2, 660.28, 660.35, 660.45, and 660.55 have been approved under OMB control number 0910-0338.

12b. Annualized Cost Burden Estimate

There is no annualized cost burden associated with this collection. In fact, our analysis suggests that companies could reap moderate cost savings via switching to using symbols. On average, companies who switch to using symbols could expect to receive an average annual cost savings ranging from $1,000 to $4,000 per UPC. As a result, it is possible that providing medical device manufacturers with the option to use symbols may encourage companies, including small entities, to either start exporting products or export more products.

13. Estimates of Other Total Annual Costs to Respondents and/or Recordkeepers/Capital Costs

There is no capital, start-up, operating or maintenance cost associated with this information collection.

14. Annualized Cost to the Federal Government

This collection is part of the normal operating procedures of CDRH and thus there are no costs associated with this activity.

15. Explanation for Program Changes or Adjustments

This is a new information collection.

16. Plans for Tabulation and Publication and Project Time Schedule

There are no plans to publish the collection of information under these regulations for statistical use unless requested by Congress in accordance with Section 533 of the Act.

17. Reason(s) Display of OMB Expiration Date is Inappropriate

Currently, CDRH is not requesting an exemption for display of the OMB expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

There are no exceptions to the certification.