

THE DO'S AND DON'TS OF RESPONDING TO DEFICIENCIES DURING FDA PREMARKET SUBMISSION REVIEW



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The majority of medical device companies that submit FDA premarket submissions, including 510(k)s and premarket approval (PMA) applications, receive deficiency letters requesting additional information in order for FDA to reach a decision to allow a device to be sold in the United States. Navigating through the FDA submission review process can be challenging, time-consuming, and labor- and resource-intensive.

NSF International provides medical device consulting services through the FDA premarket review process, including regulatory strategy, support with submission issues meetings, and the development of deficiency responses.

The following do's and don'ts serve as a starting point to help navigate the medical device submission review process more effectively and efficiently.

DO'S

- > Whether the list of deficiencies is brief or extensive, any deficiency response should be governed by a comprehensive plan, which should address document review and research, strategy development and implementation, resourcing and timelines.
- > A plan to respond to deficiencies should be developed and managed by a cross-functional team with clear leadership — typically from Regulatory. The plan owners drive the response development and timelines, but each deficiency should have a specific subject-matter expert owner, who is accountable for its completion and/or verification of technical accuracy.
- > Prior to developing a response strategy, review deficiencies alongside the original submission to have a clear understanding of why a deficiency was issued. Understanding where the original submission “fell short” will help you in better responding to the deficiency.
- > If there are any deficiencies that are unclear, you can reach out directly to the FDA lead reviewer to ask for clarification. Although in-depth questions should be raised in a submission issues meeting (Q-Submission), brief interactive requests are appropriate for clarification questions.



- > Understand the risks associated with the information being submitted and formulate how those risks could be mitigated. Risks could include submitting a response that differs from FDA's requests in the deficiencies, having test failures or planning to rely on testing that does not comply with currently recognized standards.
- > Make the deficiency response easy for FDA to follow. Restate each deficiency as stated in the deficiency letter, providing the response directly following the deficiency. Use tables to summarize testing results. Utilize appendices for source documentation, but provide succinct summaries of the source documentation in the body of the deficiency response. Provide appropriate cross-references in the response if you are relying on the same information in different locations.

DON'TS

- > Don't assume the most conservative approach to responding to deficiencies is the best approach. Performing new testing, for example, can be time-consuming and expensive, and you may have a robust justification for leveraging the information you already have in hand. FDA utilizes a "least burdensome approach" in issuing deficiencies and reviewing deficiency responses. In developing a response strategy, consider multiple approaches, where appropriate, and evaluate them based on timing, cost, and regulatory risk.
- > Don't overuse or misuse meetings with FDA. Submitting numerous requests for feedback during the review cycle, providing FDA with your strategy for addressing every deficiency without specific questions, and obtaining a pre-review of your data prior to official submission of your response, are examples of how the pre-submission process should not be used.
- > Although deficiency responses should be comprehensive, do not inundate FDA with unnecessary information. Any updates to the original submission based on deficiency responses should be well-defined and limited in scope. Re-submitting original information (i.e. unchanged information) may confuse FDA and delay your review as FDA will be required to re-review the same information.
- > Do not provide partial responses or promissory notes. FDA will flag this as an incomplete response and will reject the response or decide that it is inadequate (in the case of promissory notes). Doing so will also impact both FDA's and your review clock, and ultimately affect when you will receive your final decision.



ABOUT THE AUTHORS

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