per year. If the device is for diagnostic purposes, the documentation must demonstrate that fewer than 4,000 patients per year would be subjected to diagnosis by the device in the United States. Authoritative references include literature citations in specialized medical journals, textbooks, specialized medical society proceedings, or governmental statistics publications. When no such studies or literature citations exist, the applicant may be able to demonstrate the prevalence of the disease or condition in the United States by providing credible conclusions from appropriate research or surveys.

(b) *FDA action.* Within 45 days of receipt of a request for HUD designation, FDA will take one of the following actions:

(1) Approve the request and notify the applicant that the device has been designated as a HUD based on the information submitted;

(2) Return the request to the applicant pending further review upon submission of additional information. This action will ensue if the request is incomplete because it does not on its face contain all of the information required under §814.102(a). Upon receipt of this additional information, the review period may be extended up to 45 days; or

(3) Disapprove the request for HUD designation based on a substantive review of the information submitted. FDA may disapprove a request for HUD designation if:

(i) There is insufficient evidence to support the estimate that the disease or condition for which the device is designed to treat or diagnose affects or is manifested in fewer than 4,000 people in the United States per year;

(ii) FDA determines that, for a diagnostic device, 4,000 or more patients in the United States would be subjected to diagnosis using the device per year; or

(iii) FDA determines that the patient population defined in the request is not a medically plausible subset of a larger population.

(c) *Revocation of designation.* FDA may revoke a HUD designation if the agency finds that:

(1) The request for designation contained an untrue statement of material fact or omitted material information; or

(2) Based on the evidence available, the device is not eligible for HUD designation.

(d) *Submission.* The applicant shall submit two copies of a completed, dated, and signed request for HUD designation to: Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

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(a) *United States applicant or representative.* The applicant or an authorized representative shall sign the HDE. If the applicant does not reside or have a place of business within the United States, the HDE shall be countersigned by an authorized representative residing or maintaining a place of business in the United States and shall identify the representative's name and address.

(b) *Contents.* Unless the applicant justifies an omission in accordance with paragraph (d) of this section, an HDE shall include:

(1) A copy of or reference to the determination made by FDA's Office of Orphan Products Development (in accordance with §814.102) that the device qualifies as a HUD;

(2) An explanation of why the device would not be available unless an HDE were granted and a statement that no comparable device (other than another HUD approved under this subpart or a device under an approved IDE) is available to treat or diagnose the disease or condition. The application also shall contain a discussion of the risks and benefits of currently available devices or alternative forms of treatment in the United States;

(3) An explanation of why the probable benefit to health from the use of the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment. Such explanation shall include a description, explanation, or theory of the underlying disease process or condition, and known or postulated mechanism(s) of action of the device in relation to the disease process or condition;

(4) All of the information required to be submitted under § 814.20(b), except that:

(i) In lieu of the summaries, conclusions, and results from clinical investigations required under §§ 814.20(b)(3)(v)(B), (b)(3)(vi), and (b)(6)(ii), the applicant shall include the summaries, conclusions, and results of all clinical experience or investigations (whether adverse or supportive) reasonably obtainable by the applicant that are relevant to an assessment of the risks and probable benefits of the device; and

(ii) In addition to the proposed labeling requirement set forth in § 814.20(b)(10), the labeling shall bear the following statement: Humanitarian Device. Authorized by Federal law for use in the [treatment or diagnosis] of [specify disease or condition]. The effectiveness of this device for this use has not been demonstrated; and

(5) The amount to be charged for the device and, if the amount is more than $250, a report by an independent certified public accountant, made in accordance with the Statement on Standards for Attestation established by the American Institute of Certified Public Accountants, or in lieu of such a report, an attestation by a responsible individual of the organization, verifying that the amount charged does not exceed the costs of the device's research, development, fabrication, and distribution. If the amount charged is $250 or less, the requirement for a report by an independent certified public accountant or an attestation by a responsible individual of the organization is waived.

(c) *Omission of information.* If the applicant believes that certain information required under paragraph (b) of this section is not applicable to the device that is the subject of the HDE, and omits any such information from its HDE, the applicant shall submit a statement that identifies and justifies the omission. The statement shall be submitted as a separate section in the HDE and identified in the table of contents. If the justification for the omission is not accepted by the agency, FDA will so notify the applicant.

(d) *Address for submissions and correspondence.* Copies of all original HDEs amendments and supplements, as well as any correspondence relating to an HDE, must be sent or delivered to the following:

(1) For devices regulated by the Center for Devices and Radiological Health, send this information to the Document Mail Center (HFZ–401), Office of Device Evaluation, Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850.

(2) For devices regulated by the Center for Biologics Evaluation and Research, send this information to the Document Control Center (HFM–99), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448.

(3) For devices regulated by the Center for Drug Evaluation and Research, send this information to the Central Document Control Room, Center for Drug Evaluation and Research, Food and Drug Administration, 5901–B Ammendale Rd., Beltsville, MD 20705–1266.

[61 FR 33244, June 26, 1996, as amended at 63 FR 59220, Nov. 3, 1998; 73 FR 49942, Aug. 25, 2008]

EFFECTIVE DATE NOTE: At 75 FR 16351, Apr. 1, 2010, § 814.104 was amended by revising the last sentence of paragraph (b)(4)(ii); revising the last sentence of paragraph (b)(5); and adding paragraph (b)(6), effective Aug. 16, 2010. For the convenience of the user, the added and revised text is set forth as follows:

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* * * * *

(b) * * *

(4) * * *

(ii) * * * The effectiveness of this device for this use has not been demonstrated.

(5) * * * If the amount charged is $250 or less, the requirement for a report by an independent certified public accountant or an attestation by a responsible individual of the organization is waived; and

(6) Readily available information concerning actual and potential pediatric uses of the device, as required by § 814.20(b)(3)(i).

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