

agency determines that such notification may cause unnecessary and harmful anxiety in individuals and that initial consultation between individuals and their health professionals is essential.

## PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

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SOURCE: 45 FR 3751, Jan. 18, 1980, unless otherwise noted.

### Subpart A—General Provisions

#### §812.1 Scope.

(a) The purpose of this part is to encourage, to the extent consistent with the protection of public health and safety and with ethical standards, the discovery and development of useful devices intended for human use, and to that end to maintain optimum freedom for scientific investigators in their pursuit of this purpose. This part provides procedures for the conduct of clinical investigations of devices. An approved investigational device exemption (IDE) permits a device that otherwise would be required to comply with a performance standard or to have premarket approval to be shipped lawfully for the purpose of conducting investigations of that device. An IDE approved under §812.30 or considered approved under §812.2(b) exempts a device from the requirements of the following sections of the Federal Food, Drug, and Cosmetic Act (the act) and regulations issued thereunder: Misbranding under section 502 of the act, registration, listing, and premarket notification under section 510, performance standards under section 514, premarket approval under section 515, a banned device regulation under section 516, records and reports under section 519, restricted device requirements under section 520(e), good manufacturing practice requirements under section 520(f) except for the requirements found in §820.30, if applicable (unless the sponsor states an intention to comply with these requirements under §812.20(b)(3) or §812.140(b)(4)(v)) and color additive requirements under section 721.

(b) References in this part to regulatory sections of the Code of Federal

Regulations are to chapter I of title 21, unless otherwise noted.

[45 FR 3751, Jan. 18, 1980, as amended at 59 FR 14366, Mar. 28, 1994; 61 FR 52654, Oct. 7, 1996]

### § 812.2 Applicability.

(a) *General.* This part applies to all clinical investigations of devices to determine safety and effectiveness, except as provided in paragraph (c) of this section.

(b) *Abbreviated requirements.* The following categories of investigations are considered to have approved applications for IDE's, unless FDA has notified a sponsor under § 812.20(a) that approval of an application is required:

(1) An investigation of a device other than a significant risk device, if the device is not a banned device and the sponsor:

(i) Labels the device in accordance with § 812.5;

(ii) Obtains IRB approval of the investigation after presenting the reviewing IRB with a brief explanation of why the device is not a significant risk device, and maintains such approval;

(iii) Ensures that each investigator participating in an investigation of the device obtains from each subject under the investigator's care, informed consent under part 50 and documents it, unless documentation is waived by an IRB under § 56.109(c).

(iv) Complies with the requirements of § 812.46 with respect to monitoring investigations;

(v) Maintains the records required under § 812.140(b) (4) and (5) and makes the reports required under § 812.150(b) (1) through (3) and (5) through (10);

(vi) Ensures that participating investigators maintain the records required by § 812.140(a)(3)(i) and make the reports required under § 812.150(a) (1), (2), (5), and (7); and

(vii) Complies with the prohibitions in § 812.7 against promotion and other practices.

(2) An investigation of a device other than one subject to paragraph (e) of this section, if the investigation was begun on or before July 16, 1980, and to be completed, and is completed, on or before January 19, 1981.

(c) *Exempted investigations.* This part, with the exception of § 812.119, does not

apply to investigations of the following categories of devices:

(1) A device, other than a transitional device, in commercial distribution immediately before May 28, 1976, when used or investigated in accordance with the indications in labeling in effect at that time.

(2) A device, other than a transitional device, introduced into commercial distribution on or after May 28, 1976, that FDA has determined to be substantially equivalent to a device in commercial distribution immediately before May 28, 1976, and that is used or investigated in accordance with the indications in the labeling FDA reviewed under subpart E of part 807 in determining substantial equivalence.

(3) A diagnostic device, if the sponsor complies with applicable requirements in § 809.10(c) and if the testing:

(i) Is noninvasive,

(ii) Does not require an invasive sampling procedure that presents significant risk,

(iii) Does not by design or intention introduce energy into a subject, and

(iv) Is not used as a diagnostic procedure without confirmation of the diagnosis by another, medically established diagnostic product or procedure.

(4) A device undergoing consumer preference testing, testing of a modification, or testing of a combination of two or more devices in commercial distribution, if the testing is not for the purpose of determining safety or effectiveness and does not put subjects at risk.

(5) A device intended solely for veterinary use.

(6) A device shipped solely for research on or with laboratory animals and labeled in accordance with § 812.5(c).

(7) A custom device as defined in § 812.3(b), unless the device is being used to determine safety or effectiveness for commercial distribution.

(d) *Limit on certain exemptions.* In the case of class II or class III device described in paragraph (c)(1) or (2) of this section, this part applies beginning on

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the date stipulated in an FDA regulation or order that calls for the submission of premarket approval applications for an unapproved class III device, or establishes a performance standard for a class II device.

(e) *Investigations subject to IND's.* A sponsor that, on July 16, 1980, has an effective investigational new drug application (IND) for an investigation of a device shall continue to comply with the requirements of part 312 until 90 days after that date. To continue the investigation after that date, a sponsor shall comply with paragraph (b)(1) of this section, if the device is not a significant risk device, or shall have obtained FDA approval under §812.30 of an IDE application for the investigation of the device.

[45 FR 3751, Jan. 18, 1980, as amended at 46 FR 8956, Jan. 27, 1981; 46 FR 14340, Feb. 27, 1981; 53 FR 11252, Apr. 6, 1988; 62 FR 4165, Jan. 29, 1997; 62 FR 12096, Mar. 14, 1997]

#### §812.3 Definitions.

(a) *Act* means the Federal Food, Drug, and Cosmetic Act (sections 201–901, 52 Stat. 1040 *et seq.*, as amended (21 U.S.C. 301–392)).

(b) A custom device means a device within the meaning of section 520(b) of the Federal Food, Drug, and Cosmetic Act.

(c) *FDA* means the Food and Drug Administration.

(d) *Implant* means a device that is placed into a surgically or naturally formed cavity of the human body if it is intended to remain there for a period of 30 days or more. FDA may, in order to protect public health, determine that devices placed in subjects for shorter periods are also “implants” for purposes of this part.

(e) *Institution* means a person, other than an individual, who engages in the conduct of research on subjects or in the delivery of medical services to individuals as a primary activity or as an adjunct to providing residential or custodial care to humans. The term includes, for example, a hospital, retirement home, confinement facility, academic establishment, and device manufacturer. The term has the same meaning as “facility” in section 520(g) of the act.

(f) *Institutional review board (IRB)* means any board, committee, or other group formally designated by an institution to review biomedical research involving subjects and established, operated, and functioning in conformance with part 56. The term has the same meaning as “institutional review committee” in section 520(g) of the act.

(g) *Investigational device* means a device, including a transitional device, that is the object of an investigation.

(h) *Investigation* means a clinical investigation or research involving one or more subjects to determine the safety or effectiveness of a device.

(i) *Investigator* means an individual who actually conducts a clinical investigation, i.e., under whose immediate direction the test article is administered or dispensed to, or used involving, a subject, or, in the event of an investigation conducted by a team of individuals, is the responsible leader of that team.

(j) *Monitor*, when used as a noun, means an individual designated by a sponsor or contract research organization to oversee the progress of an investigation. The monitor may be an employee of a sponsor or a consultant to the sponsor, or an employee of or consultant to a contract research organization. *Monitor*, when used as a verb, means to oversee an investigation.

(k) *Noninvasive*, when applied to a diagnostic device or procedure, means one that does not by design or intention: (1) Penetrate or pierce the skin or mucous membranes of the body, the ocular cavity, or the urethra, or (2) enter the ear beyond the external auditory canal, the nose beyond the nares, the mouth beyond the pharynx, the anal canal beyond the rectum, or the vagina beyond the cervical os. For purposes of this part, blood sampling that involves simple venipuncture is considered noninvasive, and the use of surplus samples of body fluids or tissues that are left over from samples taken for noninvestigational purposes is also considered noninvasive.

(l) *Person* includes any individual, partnership, corporation, association, scientific or academic establishment, Government agency or organizational unit of a Government agency, and any other legal entity.

(m) *Significant risk device* means an investigational device that:

(1) Is intended as an implant and presents a potential for serious risk to the health, safety, or welfare of a subject;

(2) Is purported or represented to be for a use in supporting or sustaining human life and presents a potential for serious risk to the health, safety, or welfare of a subject;

(3) Is for a use of substantial importance in diagnosing, curing, mitigating, or treating disease, or otherwise preventing impairment of human health and presents a potential for serious risk to the health, safety, or welfare of a subject; or

(4) Otherwise presents a potential for serious risk to the health, safety, or welfare of a subject.

(n) *Sponsor* means a person who initiates, but who does not actually conduct, the investigation, that is, the investigational device is administered, dispensed, or used under the immediate direction of another individual. A person other than an individual that uses one or more of its own employees to conduct an investigation that it has initiated is a sponsor, not a sponsor-investigator, and the employees are investigators.

(o) *Sponsor-investigator* means an individual who both initiates and actually conducts, alone or with others, an investigation, that is, under whose immediate direction the investigational device is administered, dispensed, or used. The term does not include any person other than an individual. The obligations of a sponsor-investigator under this part include those of an investigator and those of a sponsor.

(p) *Subject* means a human who participates in an investigation, either as an individual on whom or on whose specimen an investigational device is used or as a control. A subject may be in normal health or may have a medical condition or disease.

(q) *Termination* means a discontinuance, by sponsor or by withdrawal of IRB or FDA approval, of an investigation before completion.

(r) *Transitional device* means a device subject to section 520(l) of the act, that is, a device that FDA considered to be a new drug or an antibiotic drug before May 28, 1976.

(s) *Unanticipated adverse device effect* means any serious adverse effect on health or safety or any life-threatening problem or death caused by, or associated with, a device, if that effect, problem, or death was not previously identified in nature, severity, or degree of incidence in the investigational plan or application (including a supplementary plan or application), or any other unanticipated serious problem associated with a device that relates to the rights, safety, or welfare of subjects.

(t) *Independent ethics committee (IEC)* means an independent review panel that is responsible for ensuring the protection of the rights, safety, and well-being of subjects involved in a clinical investigation and is adequately constituted to ensure that protection. An institutional review board (IRB), as defined in paragraph (f) of this section and subject to the requirements of part 56 of this chapter, is one type of IEC.

[45 FR 3751, Jan. 18, 1980, as amended at 46 FR 8956, Jan. 27, 1981; 48 FR 15622, Apr. 12, 1983; 81 FR 70340, Oct. 12, 2016; 83 FR 7385, Feb. 21, 2018; 83 FR 7385, Feb. 21, 2018]

#### §812.5 Labeling of investigational devices.

(a) *Contents.* An investigational device or its immediate package shall bear a label with the following information: the name and place of business of the manufacturer, packer, or distributor (in accordance with §801.1), the quantity of contents, if appropriate, and the following statement: “CAUTION—Investigational device. Limited by Federal (or United States) law to investigational use.” The label or other labeling shall describe all relevant contraindications, hazards, adverse effects, interfering substances or devices, warnings, and precautions.

(b) *Prohibitions.* The labeling of an investigational device shall not bear any statement that is false or misleading in any particular and shall not represent that the device is safe or effective for the purposes for which it is being investigated.

(c) *Animal research.* An investigational device shipped solely for research on or with laboratory animals shall bear on its label the following statement: “CAUTION—Device for investigational use in laboratory animals

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or other tests that do not involve human subjects.’’

(d) The appropriate FDA Center Director, according to the procedures set forth in § 801.128 or § 809.11 of this chapter, may grant an exception or alternative to the provisions in paragraphs (a) and (c) of this section, to the extent that these provisions are not explicitly required by statute, for specified lots, batches, or other units of a device that are or will be included in the Strategic National Stockpile.

[45 FR 3751, Jan. 18, 1980, as amended at 45 FR 58842, Sept. 5, 1980; 72 FR 73602, Dec. 28, 2007]

### § 812.7 Prohibition of promotion and other practices.

A sponsor, investigator, or any person acting for or on behalf of a sponsor or investigator shall not:

(a) Promote or test market an investigational device, until after FDA has approved the device for commercial distribution.

(b) Commercialize an investigational device by charging the subjects or investigators for a device a price larger than that necessary to recover costs of manufacture, research, development, and handling.

(c) Unduly prolong an investigation. If data developed by the investigation indicate in the case of a class III device that premarket approval cannot be justified or in the case of a class II device that it will not comply with an applicable performance standard or an amendment to that standard, the sponsor shall promptly terminate the investigation.

(d) Represent that an investigational device is safe or effective for the purposes for which it is being investigated.

### § 812.10 Waivers.

(a) *Request.* A sponsor may request FDA to waive any requirement of this part. A waiver request, with supporting documentation, may be submitted separately or as part of an application to the address in § 812.19.

(b) *FDA action.* FDA may by letter grant a waiver of any requirement that FDA finds is not required by the act and is unnecessary to protect the rights, safety, or welfare of human subjects.

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(c) *Effect of request.* Any requirement shall continue to apply unless and until FDA waives it.

### § 812.18 Import and export requirements.

(a) *Imports.* In addition to complying with other requirements of this part, a person who imports or offers for importation an investigational device subject to this part shall be the agent of the foreign exporter with respect to investigations of the device and shall act as the sponsor of the clinical investigation, or ensure that another person acts as the agent of the foreign exporter and the sponsor of the investigation.

(b) *Exports.* A person exporting an investigational device subject to this part shall obtain FDA’s prior approval, as required by section 801(e) of the act or comply with section 802 of the act.

[45 FR 3751, Jan. 18, 1980, as amended at 62 FR 26229, May 13, 1997]

### § 812.19 Address for IDE correspondence.

(a) If you are sending an application, supplemental application, report, request for waiver, request for import or export approval, or other correspondence relating to matters covered by this part, you must send the submission to the appropriate address as follows:

(1) For devices regulated by the Center for Devices and Radiological Health, send it to Food and Drug Administration, Center for Devices and Radiological Health, Document Mail Center, 10903 New Hampshire Ave., Bldg. 66, rm. G609, Silver Spring, MD 20993-0002.

(2) For devices regulated by the Center for Biologics Evaluation and Research, send it to the Food and Drug Administration, Center for Biologics Evaluation and Research, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G112, Silver Spring, MD 20993-0002.

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

(b) You must state on the outside wrapper of each submission what the submission is, for example, an “IDE application,” a “supplemental IDE application,” or a “correspondence concerning an IDE (or an IDE application).”

[71 FR 42048, July 25, 2006, as amended at 75 FR 20915, Apr. 22, 2010; 80 FR 18094, Apr. 3, 2015]

### Subpart B—Application and Administrative Action

#### § 812.20 Application.

(a) *Submission.* (1) A sponsor shall submit an application to FDA if the sponsor intends to use a significant risk device in an investigation, intends to conduct an investigation that involves an exception from informed consent under § 50.24 of this chapter, or if FDA notifies the sponsor that an application is required for an investigation.

(2) A sponsor shall not begin an investigation for which FDA’s approval of an application is required until FDA has approved the application.

(3) A sponsor shall submit three copies of a signed “Application for an Investigational Device Exemption” (IDE application), together with accompanying materials, by registered mail or by hand to the address in § 812.19. Subsequent correspondence concerning an application or a supplemental application shall be submitted by registered mail or by hand.

(4)(i) A sponsor shall submit a separate IDE for any clinical investigation involving an exception from informed consent under § 50.24 of this chapter. Such a clinical investigation is not permitted to proceed without the prior written authorization of FDA. FDA shall provide a written determination 30 days after FDA receives the IDE or earlier.

(ii) If the investigation involves an exception from informed consent under § 50.24 of this chapter, the sponsor shall prominently identify on the cover sheet that the investigation is subject to the requirements in § 50.24 of this chapter.

(b) *Contents.* An IDE application shall include, in the following order:

(1) The name and address of the sponsor.

(2) A complete report of prior investigations of the device and an accurate summary of those sections of the investigational plan described in § 812.25(a) through (e) or, in lieu of the summary, the complete plan. The sponsor shall submit to FDA a complete investigational plan and a complete report of prior investigations of the device if no IRB has reviewed them, if FDA has found an IRB’s review inadequate, or if FDA requests them.

(3) A description of the methods, facilities, and controls used for the manufacture, processing, packing, storage, and, where appropriate, installation of the device, in sufficient detail so that a person generally familiar with good manufacturing practices can make a knowledgeable judgment about the quality control used in the manufacture of the device.

(4) An example of the agreements to be entered into by all investigators to comply with investigator obligations under this part, and a list of the names and addresses of all investigators who have signed the agreement.

(5) A certification that all investigators who will participate in the investigation have signed the agreement, that the list of investigators includes all the investigators participating in the investigation, and that no investigators will be added to the investigation until they have signed the agreement.

(6) A list of the name, address, and chairperson of each IRB that has been or will be asked to review the investigation and a certification of the action concerning the investigation taken by each such IRB.

(7) The name and address of any institution at which a part of the investigation may be conducted that has not been identified in accordance with paragraph (b)(6) of this section.

(8) If the device is to be sold, the amount to be charged and an explanation of why sale does not constitute commercialization of the device.

(9) A claim for categorical exclusion under § 25.30 or § 25.34 or an environmental assessment under § 25.40.

(10) Copies of all labeling for the device.