

§ 814.1

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Subpart H—Humanitarian Use Devices

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SOURCE: 51 FR 26364, July 22, 1986, unless otherwise noted.

Subpart A—General

§ 814.1 Scope.

(a) This part implements section 515 of the act by providing procedures for the premarket approval of medical devices intended for human use.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21, unless otherwise noted.

(c) This part applies to any class III medical device, unless exempt under section 520(g) of the act, that:

(1) Was not on the market (introduced or delivered for introduction into commerce for commercial distribution) before May 28, 1976, and is not substantially equivalent to a device on the market before May 28, 1976, or to a device first marketed on, or after that date, which has been classified into class I or class II; or

(2) Is required to have an approved premarket approval application (PMA) or a declared completed product development protocol under a regulation issued under section 515(b) of the act; or

(3) Was regulated by FDA as a new drug or antibiotic drug before May 28, 1976, and therefore is governed by section 520(1) of the act.

(d) This part amends the conditions to approval for any PMA approved before the effective date of this part. Any condition to approval for an approved PMA that is inconsistent with this part is revoked. Any condition to approval for an approved PMA that is consistent with this part remains in effect.

§ 814.2 Purpose.

The purpose of this part is to establish an efficient and thorough device review process—

(a) To facilitate the approval of PMA's for devices that have been shown to be safe and effective and that otherwise meet the statutory criteria for approval; and

(b) To ensure the disapproval of PMA's for devices that have not been shown to be safe and effective or that do not otherwise meet the statutory criteria for approval. This part shall be construed in light of these objectives.

§ 814.3 Definitions.

For the purposes of this part:

(a) *Act* means the Federal Food, Drug, and Cosmetic Act (sections 201–902, 52 Stat. 1040 *et seq.*, as amended (21 U.S.C. 321–392)).

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

(c) *IDE* means an approved or considered approved investigational device exemption under section 520(g) of the act and parts 812 and 813.

(d) *Master file* means a reference source that a person submits to FDA. A master file may contain detailed information on a specific manufacturing facility, process, methodology, or component used in the manufacture, processing, or packaging of a medical device.

(e) *PMA* means any premarket approval application for a class III medical device, including all information submitted with or incorporated by reference therein. “PMA” includes a new drug application for a device under section 520(1) of the act.

(f) *PMA amendment* means information an applicant submits to FDA to modify a pending PMA or a pending PMA supplement.

(g) *PMA supplement* means a supplemental application to an approved

PMA for approval of a change or modification in a class III medical device, including all information submitted with or incorporated by reference therein.

(h) *Person* includes any individual, partnership, corporation, association, scientific or academic establishment, Government agency, or organizational unit thereof, or any other legal entity.

(i) *Statement of material fact* means a representation that tends to show that the safety or effectiveness of a device is more probable than it would be in the absence of such a representation. A false affirmation or silence or an omission that would lead a reasonable person to draw a particular conclusion as to the safety or effectiveness of a device also may be a false statement of material fact, even if the statement was not intended by the person making it to be misleading or to have any probative effect.

(j) *30-day PMA supplement* means a supplemental application to an approved PMA in accordance with § 814.39(e).

(k) *Reasonable probability* means that it is more likely than not that an event will occur.

(l) *Serious, adverse health consequences* means any significant adverse experience, including those which may be either life-threatening or involve permanent or long term injuries, but excluding injuries that are nonlife-threatening and that are temporary and reasonably reversible.

(m) *HDE* means a premarket approval application submitted pursuant to this subpart seeking a humanitarian device exemption from the effectiveness requirements of sections 514 and 515 of the act as authorized by section 520(m)(2) of the act.

(n) *HUD (humanitarian use device)* means a medical device intended to benefit patients in the treatment or diagnosis of a disease or condition that affects or is manifested in fewer than 4,000 individuals in the United States per year.

[51 FR 26364, July 22, 1986, as amended at 61 FR 15190, Apr. 5, 1996; 61 FR 33244, June 26, 1996]

§ 814.9 Confidentiality of data and information in a premarket approval application (PMA) file.

(a) A “PMA file” includes all data and information submitted with or incorporated by reference in the PMA, any IDE incorporated into the PMA, any PMA supplement, any report under § 814.82, any master file, or any other related submission. Any record in the PMA file will be available for public disclosure in accordance with the provisions of this section and part 20. The confidentiality of information in a color additive petition submitted as part of a PMA is governed by § 71.15.

(b) The existence of a PMA file may not be disclosed by FDA before an approval order is issued to the applicant unless it previously has been publicly disclosed or acknowledged.

(c) If the existence of a PMA file has not been publicly disclosed or acknowledged, data or information in the PMA file are not available for public disclosure.

(d)(1) If the existence of a PMA file has been publicly disclosed or acknowledged before an order approving, or an order denying approval of the PMA is issued, data or information contained in the file are not available for public disclosure before such order issues. FDA may, however, disclose a summary of portions of the safety and effectiveness data before an approval order or an order denying approval of the PMA issues if disclosure is relevant to public consideration of a specific pending issue.

(2) Notwithstanding paragraph (d)(1) of this section, FDA will make available to the public upon request the information in the IDE that was required to be filed in Docket Number 95S-0158 in the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, for investigations involving an exception from informed consent under § 50.24 of this chapter. Persons wishing to request this information shall submit a request under the Freedom of Information Act.

(e) Upon issuance of an order approving, or an order denying approval of any PMA, FDA will make available to the public the fact of the existence of