U.S. Food and Drug Administration
Investigational Device Exemptions Reports and Records
21 CFR 812
OMB No. 0910-0078
SUPPORTING STATEMENT

Terms of Clearance: None.

A. JUSTIFICATION

1. Circumstances Making the Collection of Information Necessary

Section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) establishes the statutory authority to collect information regarding investigational devices, and establishes rules under which new medical devices may be tested using human subjects in a clinical setting. The Food and Drug Modernization Act of 1997 (FDAMA) added section 520(g)(6) to the FD&C Act and permitted minor changes to be made to either the investigational device or to the clinical protocol without Food and Drug Administration (FDA) approval of an Investigational Device Exemption (IDE) supplement. http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/FDCActChapterVDrugsandDevices/ucm110299.htm

Such testing is conducted to provide clinical data to support a future marketing application, i.e., a premarket approval or premarket notification. Specifically, this section states that the Secretary shall prescribe regulatory procedures and conditions under which new, untested devices intended for human use may be granted an exemption from certain sections of the FD&C Act. Those sections are:

502	Misbranded drugs and devices
510	Registration, listing and premarket notification
514	Performance standards
515	Premarket approval
516	Banned devices
519	Records and reports on devices
520(e)	Restricted devices
520(f)	Good manufacturing practice requirements
706	Listing and certification of color additives.

An Investigational Device Exemption (IDE) allows a device, which would otherwise be subject to provisions of the FD&C Act, such as premarket notification or premarket approval, to be used in investigations involving human subjects in which the safety and effectiveness of the device is being studied. The purpose of 21 CFR part 812 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. The IDE regulation is designed to encourage the development of useful medical devices,

and allow investigators the maximum freedom possible, without jeopardizing the health and safety of the public or violating ethical standards.

The regulation provides for different levels of regulatory control, depending on the level of potential risk the investigational device presents to human subjects. Investigations of significant risk devices, ones that present a potential for serious harm to the rights, safety or welfare of human subjects, are subject to the full requirements of the IDE regulation. Nonsignificant risk device investigations are ones that do not present a potential risk for serious harm, and are subject to the reduced burden of abbreviated requirements.

The regulation also includes provisions for treatment IDEs. The purpose of these provisions is to facilitate the availability, as early in the device development process as possible, of promising new devices to patients with life-threatening or serious conditions for which no comparable or satisfactory alternative therapy is available.

The Food and Drug Administration (FDA) is requesting approval from the Office of Management and Budget (OMB) for the following information collection requirements, contained in 21 CFR part 812.

21 CFR 812.10 – Waivers – Reporting
Allows the sponsor of an IDE to request a waiver to all of the requirements of 21 CFR part 812. FDA uses this information to determine if a waiver of requirements will impact the public's health and safety.

21 CFR 812.20, 812.25, and 812.27 – IDE Applications – Reporting
Requirements for data to be included in an IDE application (812.20). This information is required to file an original IDE application, which is only needed for significant risk devices. The information includes data contents for an investigational plan (812.25) and submission of data relating to previous investigations or testing (812.27).

21 CFR 812.35 and 812.150 – Supplements – Reporting
Requirements for submitting supplements to an IDE. This includes any changes by a sponsor which affects the scientific soundness of the study or the rights, safety, or welfare of the subjects. (Section 812.150 also includes a third-party disclosure requirement, see description below.)

812.36(c) – Treatment IDE Applications – Reporting
Requirements for data to be included in an IDE application for treatment use.

812.36(f) – Treatment IDE Reporting – Reporting
Reporting requirements for sponsors of a treatment IDE. These reports allow FDA to monitor the size and scope of the treatment IDE, assess the sponsor's due diligence in obtaining marketing clearance of the device, and ensure integrity of the controlled clinical trials.

21 CFR 812.140 – Records – Recordkeeping

Lists the recordkeeping requirements for investigators and sponsors. FDA requires this information for tracking and oversight purposes.

21 CFR 812.150 – Reports for Nonsignificant Risk Studies – Third-Party Disclosure
Reporting requirements for investigators and sponsors of nonsignificant risk studies. This information is submitted to FDA and/or to sponsors and reviewing IRBs, as supplemental applications and is needed to assure protection of human subjects and to allow review of the study's progress.

2. Purpose and Use of the Information Collection

The IDE regulation is designed to encourage the development of useful medical devices, and allow investigators the maximum freedom possible, without jeopardizing the health and safety of the public or violating ethical standards. To avoid imposing unnecessary requirements on clinical investigations, the IDE regulation recognizes three categories of medical device investigations: significant risk devices, nonsignificant risk devices, and exempted investigations. A significant risk device is defined as a medical device which presents a potential for serious risk to the health, safety, or welfare of a subject and:

(1) is intended as an implant;
(2) is purported or represented to be for a use in supporting or sustaining a human life;
(3) is for a use of substantial importance in diagnosing, curing, mitigating, or treating disease, or otherwise preventing impairment of human health.

An investigation of a medical device which does not meet the above criteria and which is not exempt from the regulation is a nonsignificant risk device investigation.

An investigation of a significant risk device must meet the full requirements of the IDE regulation. Both FDA and institutional review board (IRB) approval are required. An investigation of a nonsignificant risk device must meet the abbreviated requirements of the IDE regulation. FDA approval is not required, but IRB approval is required. The requirements for an IDE application for significant risk device investigations may be divided into the following categories: original application, amendments, supplemental applications, records, and reports.

A significant risk device investigation requires the submission of an IDE application to FDA. The original application is evaluated by the Center for Devices and Radiological Health to determine whether the proposed investigation will reasonably protect the public health and safety, and whether it will develop reliable scientific data. An environmental analysis report is required by 21 CFR part 25 in accordance with section 102(2)(c) of the National Environmental Policy Act of 1969. FDA has determined that, generally, medical devices do not have an environmental impact. Therefore, FDA anticipates that only rarely will an IDE application require the submission of an environmental analysis report. Supplemental applications are required when a sponsor wishes to make a change in the investigation which affects the scientific soundness of the study or the rights, safety or

welfare of the subjects. Records must be maintained by both sponsors and investigators and reports must be submitted at specified times.

For a nonsignificant risk device investigation, the investigator's and sponsor's recordkeeping and reporting burden is reduced. Pertinent records on the study must be maintained by both parties, and reports are made to sponsors and IRBs. Reports are made to FDA only in certain circumstances, e.g., recall of the device or the occurrence of unanticipated adverse effects.

Under § 812.10, a sponsor may request that FDA waive any requirement within this regulation not required by statute. The waiver request, with supporting documentation, may be separately submitted or included as part of the original IDE application. The requirements of the regulation are applied unless FDA waives the requirement.

This information is used to determine safety and effectiveness of devices in a future marketing application. It also provides a means for FDA to monitor ongoing safety of research subjects and compliance with regulatory requirements.

Respondents include private sector businesses and government agencies. Respondents to this information collection will primarily be medical device manufacturers, investigators, hospitals, health maintenance organizations, and businesses.

The consequences of not gathering this information would be that FDA could not fulfill the intent of the law, which is to protect the public health and welfare.

3. Use of Improved Information Technology and Burden Reduction

In the Federal Register of March 20, 1997, FDA issued a final regulation (21 CFR part 11) that would, under certain circumstances, permit the agency to accept electronic signatures and handwritten signatures executed to electronic records as generally equivalent to paper records and handwritten signatures executed on paper. These regulations would apply to records, when submitted in electronic form, that are required in Title 21 of the Code of Federal Regulations (CFR) such as IDE modifications. The intended effect of this regulation is to permit use of electronic technologies in a manner that is consistent with FDA's overall mission and that preserves the integrity of the agency's enforcement activities.

Section 745A(b) of the FD&C Act, added by section 1136 of the Food and Drug Administration Safety and Innovation Act of 2012 (FDASIA), provides statutory authority to require eCopies after issuance of final guidance (See Public Law No: 112-144). FDA’s implementing guidance describes how device companies should replace one paper copy of a device application with an eCopy and identify the required format and technical requirements of the eCopy. The eCopy requirement does not require or request any information that is not already submitted to the Agency and/or covered under the existing ICR, and therefore does not change the cost or hour burden.

FDA estimates that 100% of the respondents will use electronic means to fulfill the agency's requirement or request.

4. Efforts to Identify Duplication and Use of Similar Information

Investigational medical devices are not regulated by any other Federal agency. Therefore, there is no duplication of effort and similar information is unavailable.

5. Impact on Small Businesses or Other Small Entities

We estimate that approximately 17 percent of respondents are small businesses.

These regulations apply to all firms, institutions or individuals involved in conducting clinical investigations of medical devices, regardless of the size of the organization.

FDA also offers the resources of the Center for Devices and Radiological Health's (CDRH) Division of Industry and Consumer Education (DICE) and the Office of Device Evaluation (ODE) staffs. CDRH established DICE (formerly named Division of Small Manufacturers, International and Consumer Assistance (DSMICA)) as required by the 1976 Amendments to the FD&C Act. DICE's staff provides technical and other nonfinancial assistance to small firms expressly to aid them in complying with the requirements of the FD&C Act. The activities of DICE include participating in and presenting conferences, workshops, and seminars on the application and interpretation of relevant regulations, consulting with individual firms/sponsors, and development and dissemination of educational materials. Staff is available to respond to questions and a toll free telephone number was established to facilitate this communication link. The ODE program office, which includes the IDE staff, is also available to respond to, or meet with persons requesting information or assistance regarding investigational devices.

6. Consequences of Collecting the Information Less Frequently

Respondents will respond to the data collection annually, semi-annually, or occasionally, depending on the nature of the submission and its regulatory requirements in 21 CFR part 812.

This information collection allows FDA to collect data to ensure that the investigational device's use will not present an unreasonable risk for the subject enrolled in the study and will not violate the subject's rights. Applications for IDEs are required only when it is determined that clinical trials should begin. FDA believes that annual IDE and semi-annual treatment use reports are necessary to assure the protection of the public health, because investigational devices by their very nature present the potential for serious health consequences. Supplemental applications for IDE modifications are required in accordance with the law. This reporting is necessary to assure that changes that may affect the public health are identified and dealt with quickly.

If the information was obtained less frequently, it would not be possible to assure protection of the public health from significant risk devices.

7. Special 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

In accordance with 5 CFR 1320.8(d), FDA published a 60 day notice for public comment in the FEDERAL REGISTER of June 11, 2019 (84 FR 27139). No comments were received.

CDRH regularly participates in outreach activities intended to assist industry as well as the clinical and academic communities to improve their understanding and compliance with the regulations. In doing so, the quality of the contents of submissions improves and there is improvement in the way clinical trials are conducted and the data generated is analyzed. This outreach occurs through meetings with professional societies, presentations at scientific meetings and to academic institutions in conjunction with the Office of Human Research Protections (OHRP) at DHHS.

9. Explanation of Any Payment or Gift to Respondents

FDA will not provide any payments or gifts to respondents of this information collection.

10. Assurance of Confidentiality Provided to Respondents

This ICR collects personally identifiable information (PII). FDA collects PII on the study sponsor and investigators participating in the study as described in the IDE regulations. The PII that may be submitted is name, work email address, work address and work telephone number.

FDA further determined that although PII is collected the collection is not subject to the Privacy Act of 1974 and the particular notice and other requirements of the Act do not apply. Specifically, FDA does not use name or any other personal identifier to routinely retrieve records from the information collected.

In preparing this Supporting Statement, FDA staff consulted with the FDA Privacy Office to ensure appropriate handling of information collected. FDA minimized the PII to be collected to protect the privacy of the individuals.

Information in IDEs will only be released in accordance with FDA regulations implementing the Freedom of Information Act, 21 CFR part 20 and the Investigational Device Exemptions regulations, 21 CFR part 812. Information will be protected from inappropriate disclosure.

The information obtained during an investigation may be used to support an application for marketing the device (i.e. premarket approval application or premarket notification). A summary of the safety and effectiveness data from the investigation and other information, except for trade secret, production and distribution information, will be available for public disclosure if the premarket approval application is approved, abandoned, or denied, and if the premarket notification is found substantially equivalent.

11. Justification for Sensitive Questions

The information required does not include questions about sexual behavior, attitude, religious beliefs, or any other matters that are commonly considered private or sensitive in nature.

12. Estimates of Annualized Burden Hours and Costs

12a. Annualized Hour Burden Estimate

Based on the average number of IDE's submitted from fiscal years 2015 through 2017, approximately 229 respondents submitted 275 IDE applications (original applications), resulting in an average of 1 application per respondent, and 654 respondents submitted 3,302 reports and supplements, resulting in an average of 5 reports/supplements per respondent.* There were no waivers or treatment IDEs submitted for that timeframe. We have estimated 1 respondent and 1 response for waivers and treatment IDEs. The annual estimated hour burden is 45,782 (reporting 38,080 + recordkeeping 7,696 + third-party disclosure 6).

* Numbers have been rounded to the nearest whole number.

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

Table 1.--Estimated Annual Reporting Burden

Activity/ 21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Average Burden per Response	Total Hours
Waivers--812.10	1	1	1	1	1
IDE Application--812.20, 812.25, and 812.27	229	1	229	80	18,320
Supplements--812.35 and 812.150	654	5	3,270	6	19,620
Treatment IDE Applications--812.36(c)	1	1	1	120	120
Treatment IDE Reporting--812.36(f)	1	1	1	20	20
Total					38,080

Table 2.--Estimated Annual Recordkeeping Burden

Activity/ 21 CFR Section	No. of Recordkeepers	No. of Records per Recordkeeper	Total Annual Records	Average Burden per Recordkeeping	Total Hours
Original--812.140	229	1	229	10	2,290
Supplemental--812.140	654	5	3,270	1	3,270
Nonsignificant--812.140	356	1	356	6	2,136
Total					7,696

Table 3.--Estimated Annual Third-Party Disclosure Burden

Activity/ 21 CFR Section	No. of Respondents	No. of Disclosures per Respondent	Total Annual Disclosures	Average Burden per Disclosure	Total Hours
Reports for Nonsignificant Risk Studies--812.150	1	1	1	6	6

12b. Annualized Cost Burden Estimate

FDA estimates that the total estimated burden cost to industry relating to this information collection will be $3,296,304, which is the total number of burden hours expended, 45,782, multiplied by an average wage rate of $72 per hour.*

* The estimated wage rate for a Regulatory Affairs Professional is based on The Regulatory Affairs Professional Society (RAPS) average total annual compensation of $150,422 for a U.S. regulatory affairs professional (https://www.raps.org/getattachment/Careers/Scope-of-Practice-Survey/2016-Scope-of-Practice-Compensation-Report-for-the-Regulatory-Profession.pdf.aspx?lang=en-US, p. 11, accessed 10/26/18). The hourly wage rate of $72 assumes a 40-hour work week and is rounded to the nearest dollar.

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

There are no capital costs or operating and maintenance costs for the collection of information.

14. Annualized Cost to the Federal Government

We estimate that 87 full-time equivalents (FTEs) are required to process and review IDE applications (including amendments) and supplements. Based on a cost of $ 270,305 per position (which is the agency's projected average cost of an FTE including benefits*), the estimated annual Federal cost is $23,516,535.

*Based on the Food and Drug Administration fully loaded FTE cost model (domestic) for FY 2018, as provided by agency economists.

15. Explanation for Program Changes or Adjustments

Adjustments:
The estimated annual reporting burden for this extension has decreased to 38,080 hours (previously 38,505 hours) as the result of a decrease in the average number of applications and supplements submitted. For the same reason, the recordkeeping burden has decreased to 7,696 hours (previously 7,800). The previous approved total burden hours of 46,311, have therefore decreased by 529 to 45,782 total burden hours.

16. Plans for Tabulation and Publication and Project Time Schedule

FDA does not intend to publish the results of this information collection.

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

FDA is not seeking 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.