in combination with other drugs to include certain other drugs that have been approved elsewhere in the animal drug regulations. This action is being taken to ensure the accuracy and consistency of the regulation because the cross-references were not updated at the time the combination drug uses were approved.

EFFECTIVE DATE: April 17, 1998.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1739.

SUPPLEMENTARY INFORMATION: In § 558.78(d)(3) (21 CFR 558.78(d)(3)) FDA codified a list of combinations in which bacitracin zinc is approved for use with certain drugs that have been approved elsewhere in 21 CFR part 558. Several cross-references to approved combination drug uses were not included in that list. Section 558.78(d)(3) is amended to add those cross-references.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.78 is amended by revising paragraph (d)(3) to read as follows:

§ 558.78 Bacitracin zinc.

* * * * *

(d) * * *

(3) Bacitracin zinc may be used as approved in combination as follows:

(i) Amprolium as in § 558.55.

(ii) Amprolium and roxarsone as in § 558.55.

(iii) Amprolium and ethopabate as in § 558.58.

(iv) Amprolium and ethopabate with roxarsone as in § 558.58.

(v) Carbarsone as in § 558.120.

(vi) Clopidol as in § 558.175.

(vii) Clopidol and roxarsone as in § 558.175.

(viii) Decoquinate as in § 558.195.

(ix) Decoquinate and roxarsone as in § 558.195.

(x) Hygromycin B as in § 558.274.

(xi) Hygromycin B and penicillin as in § 558.274.

(xii) Lasalocid sodium and roxarsone as in § 558.311.

(xiii) Monensin as in § 558.355.

(xiv) Monensin and roxarsone as in § 558.355.

(xv) Robenidine as in § 558.515.

(xvi) Salinomycin as in § 558.550.

(xvii) Salinomycin and roxarsone as in § 558.550.

(xviii) Zoalene as in § 558.680.

(xix) Zoalene and arsanilic acid as in § 558.680.

(xx) Zoalene and roxarsone as in § 558.680.

Dated: March 31, 1998.

Andrew J. Beaulieu,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–10251 Filed 4–16–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 814

[Docket No. 98N–0171]

Medical Devices; Humanitarian Use of Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations governing humanitarian use devices. These amendments are being made to implement provisions of the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA). Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule, under FDA's usual procedures for notice and comment, to provide a procedural framework to finalize the rule in the event the agency receives any significant adverse comment and withdraws the direct final rule.

DATES: This rule is effective August 31, 1998. Submit written comments on or before July 1, 1998. Submit written comments on the information collection provisions on or before June 16, 1998. If FDA receives no significant adverse comments within the specified comment period, the agency intends to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends.

ADDRESSES: Submit written comments on the direct final rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joanne R. Less, Center for Devices and Radiological Health (HFZ–403), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20857, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

The Safe Medical Devices Act of 1990 (Pub. L. 101–629) added section 520(m) to the act (21 U.S.C. 360j(m)). Section 520(m) creates an incentive for the development of humanitarian use devices (HUD) for use in the treatment or diagnosis of diseases or conditions affecting a small number of individuals. Section 520(m) authorizes FDA, by regulation, to exempt a HUD from the effectiveness requirements of section 514 and 515 of the act (21 U.S.C. 360d and 360e) (i.e., ''reasonable assurance that the device is effective'') provided that: (1) The device is to be used to treat or diagnose a disease or condition that affects fewer than 4,000 individuals in the United States; (2) the device would not be available to a person with such a disease or condition unless the exemption is granted; (3) no comparable device (other than a device that has been granted such an exemption) is available to treat or diagnose the disease or condition; and (4) the device will not expose patients to an unreasonable or significant risk of illness or injury, and the probable benefit to health from using the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices to alternative forms of treatments.

In the **Federal Register** of June 26, 1996 (61 FR 33232), FDA published a final rule prescribing the procedures for submitting humanitarian device exemption (HDE) applications, amendments, and supplements; procedures for obtaining an extension of the exemption; and the criteria for FDA review and approval of HDE's. This rule amended part 814 (21 CFR part 814) of FDA's regulations.

On November 21, 1997, the President signed into law FDAMA (Pub. L. 105–115). Section 203 of FDAMA made the following changes to section 520(m) of the act:

(1) FDAMA added a new provision to section 520(m) of the act that requires FDA to issue an order approving or denying an HDE within 75 days after receiving the application.

(2) FDAMA provided for an exemption from the requirement that a

HUD may not be used without approval from an institutional review board (IRB) for cases in which a physician determines in an emergency situation that approval cannot be obtained in time to prevent serious harm or death to a patient. In such cases, the physician must, after use of the device, notify the chairperson of the IRB. The notification must include the name of the patient, the date on which the device was used, and the reason for the use.

(3) FDAMA eliminated the requirement that the sponsor of an HDE obtain approval for continued use every 18 months. Instead, FDA may require a sponsor to demonstrate continued compliance with the requirements of section 520(m) of the act, if FDA believes that such a demonstration is necessary to protect the public health, or if FDA has reason to believe that the criteria for exemption are no longer met.

(4) FDAMA added a provision to section 520(m) of the act stating that FDA may suspend or withdraw an HDE approval only after providing notice and an opportunity for an informal hearing.

(5) FDAMA eliminated the ''sunset'' provision in section 520(m) of the act, under which new approvals of HDE's would not have been permitted 5 years after the effective date of the rule originally implementing section 520(m).

Section 203 of FDAMA became effective on February 19, 1998, and FDA is implementing the statute as of that date. FDA is issuing this direct final rule to amend the existing regulations to conform to certain amendments by FDAMA to section 520(m) of the act.

II. Highlights of Part 814—Subpart H—Humanitarian Use Devices

Section 814.100 has been amended to implement new section 520(m)(5) of the act, which provides that FDA may require an HDE applicant to demonstrate continued compliance with the HDE requirements, if such a demonstration is necessary to protect the public health or if FDA has reason to believe that the criteria for exemption are no longer met. FDAMA also allows FDA to withdraw or suspend approval of an HDE after providing notice and an opportunity for an informal hearing if any conditions of the HDE are no longer met.

Section 814.104 has been amended to repeal the sunset provision for submitting an original application, as provided in new section 520(m)(5) of the act.

In addition to the changes required by FDAMA, FDA is amending § 814.104(b)(5) to allow a sponsor who is charging more than $250 per HUD, to submit, in lieu of a report by an independent certified public accountant (CPA), an attestation by a responsible individual of the organization, verifying that the amount charged does not exceed the device's cost of research, development, fabrication, and distribution. The submission of any report or attestation is unnecessary for HUD's for which an HDE applicant is charging $250 per HUD or less because, in most circumstances, a charge for a HUD that is $250 or less is evidence that the charge does not exceed the cost of research, development, fabrication, and distribution. This modification to the regulation will decrease the burden associated with submitting an HDE application for some devices by eliminating the time and cost associated with obtaining a report by a CPA or an attestation by a responsible individual in the organization.

Sections 814.106, 814.108, 814.112, and 814.114 have been revised or amended to comply with a new provision of section 520(m) of the act. This new provision states that FDA will issue an order approving or denying an application 75 days after receiving it. In accordance with the new provision, FDA has adjusted its extension, review, and response timeframes for applications, amendments, and supplements.

Section 814.116 also has been amended to implement the new provision of section 520(m) of the act and to incorporate the 75-day provision. This section is amended to adjust the applicable timeframes in cases where panel review is necessary or an applicant has received a not approvable letter.

The last sentence of § 814.118 has been amended because extensions are no longer required under new section 520(m)(6) of the act.

Section 814.120 has been revised because the 18-month term and 5-year sunset provision were repealed by FDAMA. Under new section 520(m)(6) of the act, § 814.120 has been revised to provide for the temporary suspension of approval of an HDE or an HDE supplement after the sponsor has had an opportunity for an informal hearing under 21 CFR part 16.

Section 814.124 is amended in accordance with section 520(m)(4) of the act, to allow physicians, faced with an emergency situation, to administer a HUD prior to obtaining IRB approval if the physician determines that the wait will cause patient serious harm or death. This section has also been amended to reflect the requirement that physicians who use a HUD in such emergencies must notify the IRB following such use.

Section 814.126 has been amended to incorporate the provision of section 520(m)(5) of the act, which provides FDA the authority to require an HDE applicant to demonstrate continued compliance with the HDE requirements, if FDA believes that such a demonstration is necessary to protect the public health or has reason to believe that the criteria for the HDE exemption are no longer met. FDA believes that it cannot fulfill its statutory obligation to protect the public health unless it obtains certain information about these products on a regular basis. Prior to FDAMA, HDE's were approved for a period of 18 months. Under the amended provision, marketing authorization is no longer temporary. Accordingly, FDA is adding an annual reporting requirement that will permit the agency to obtain sufficient information for the agency to determine whether there is reason to question the continued exemption of the device from the act's effectiveness requirements. The submission of annual reports is consistent with the premarket approval application (PMA) reporting requirements for other marketed devices, but the HDE annual reports will contain additional information because of the unique nature of these device approvals. The information required in these annual reports is the same type of information that was previously required in requests for extensions. If these annual reports or any other information in FDA's possession give FDA reason to believe that a particular device raises public health concerns or that the criteria for exemption are no longer met, the agency may require the HDE holder to submit additional information to demonstrate compliance with the HDE requirements.

III. Rulemaking Action

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described when and how it will employ direct final rulemaking. FDA believes that this rule is appropriate for direct final rulemaking because FDA views this rule as making noncontroversial amendments to an existing regulation, incorporating amendments to section 520(m) of the act made by FDAMA; and FDA anticipates no significant adverse comments. Consistent with FDA's procedures on direct final rulemaking, elsewhere in this issue of the **Federal Register** FDA is publishing a companion proposed rule to amend the existing HUD regulations. The companion proposed rule is identical to the direct final rule. The companion proposed rule provides a procedural framework within which the rule may be finalized in the

event the direct final rule is withdrawn because of any significant adverse comments. The comment period for the direct final rule runs concurrently with the comment period of the companion proposed rule. Any comments received under the companion proposed rule will be considered as comments regarding the direct final rule.

FDA is providing a comment period on the direct final rule of 75 days after April 17, 1998. If the agency receives any significant adverse comments, FDA intends to withdraw this final rule by publication of a notice in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. For example, a comment requesting the inclusion of HDE applications for HUD's intended to benefit patients in the treatment and diagnosis of diseases or conditions that affect more than 4,000 individuals per year in the United States (§ 814.102(a)(5)) will not be considered a significant adverse comment because it is outside the realm of the rule. On the other hand, a comment recommending an additional change to the rule may be considered a significant adverse comment if the comment explains why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

If FDA withdraws the direct final rule, all comments received will be considered under the companion proposed rule in developing a final rule under the usual notice-and-comment procedures under the Administrative Procedure Act (5 U.S.C. 552 *et seq.*). If FDA receives no significant adverse comments during the specified comment period, FDA intends to publish a confirmation notice in the **Federal Register** within 30 days after the comment period ends. FDA intends to make the direct final rule effective 30 days after the date the confirmation notice is published in the **Federal Register**.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impact of this direct final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs of available regulatory alternatives and, when regulatory action is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this direct final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, this direct final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The rule codifies applicable statutory requirements imposed by the FDAMA. Because the rule allows physicians more flexibility without compromising the public health and reduces the requirements imposed on sponsors, it may permit more small competitors to enter the marketplace. The agency certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities. This direct final rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any 1 year.

VI. Paperwork Reduction Act of 1995

This direct final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description and respondent description of the information collection provisions are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Amendments to Humanitarian Use Device Requirements.

Description: Section 520(m) of the act was created as an incentive for the development of HUD's for use in the treatment or diagnosis of diseases or conditions affecting fewer than 4,000 individuals in the United States. FDA is issuing this rule to amend the existing regulations governing HUD's, found in part 814, to conform to the amendments made by FDAMA to section 520(m) of the act.

Section 814.124(a) is amended to allow physicians in emergency situations to administer a HUD prior to obtaining IRB approval. In such situations, the physician is required to provide written notification, including the identification of the patient involved, the date of use, and the reason for use, to the IRB within 5 days after emergency use. FDA anticipates that five physicians will use HUD's in emergency situations before obtaining approval from an IRB. FDA estimates that notifications under this section will take an average of 1 hour per response.

FDA is amending § 814.126(b)(1) to delete the requirement for a final report and to include an annual reporting requirement for HDE holders that will permit the agency to obtain sufficient information for it to determine whether there is reason to question the continued exemption of the device from the act's effectiveness requirements.

FDA estimates that 15 HDE holders will submit annual reports. FDA believes that much of the information will already be in the HDE holder's possession, and the agency estimates that reports will take an average of 120 hours per response.

In addition to the changes required by FDAMA, FDA is amending § 814.104(b)(5) to allow a sponsor who is charging more than $250 per HUD to submit, in lieu of a report by an independent CPA, an attestation by a responsible individual of the organization, verifying that the amount charged does not exceed the device's cost of research, development, fabrication, and distribution. In addition, the amendments to § 814.104(b)(5) waive the requirement for submission of any CPA report or attestation for HUD's for which an HDE applicant is charging $250 or less. FDA anticipates, based on past experience, that 7 of the anticipated 15 HDE holders per year will charge less than $250 per HUD, and thus be exempt from the § 814.104(b)(5) requirement altogether. For the remaining eight HDE holders, FDA anticipates that all will submit attestations in lieu of CPA reports, and estimates that these submissions will require 2 hours to complete.

Section 814.126(b)(2) modifies the current recordkeeping requirement for HDE holders to require that HDE holders retain records indefinitely instead of only for the duration of the period for which the HUD is approved for marketing. FDA believes that this change will not affect the total time required to maintain the records.

Description of Respondents: Business or other for profit organizations.

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

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.104(b)(5)	8	1	8	2	16
814.124(a)	5	1	5	1	5
814.126(b)(1)	15	1	15	120	1,800
Total					1,821

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
814.126(b)(2)	15	1	15	2	30

[1]There are no operating and maintenance costs or capital costs associated with this information collection.

As provided in 5 CFR 1320.5(c)(1), collections of information in a direct final rule are subject to the procedures set forth in 5 CFR 1320.10. Interested persons and organizations may submit comments on the information collection requirements of this direct final rule by June 16, 1998 to the Dockets Management Branch (address above).

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of the direct final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VII. Comments

Interested persons may by July 1, 1998, submit written comments regarding this rule to the Dockets Management Branch (address above). This comment period runs concurrently with the comment period for the companion proposed rule. Two copies of any comment are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. All comments received will be considered comments regarding the proposed rule and this direct final rule. In the event the direct final rule is withdrawn, all comments received regarding the companion proposed rule and the direct final rule will be considered comments on the proposed rule.

List of Subjects 21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 814 is amended as follows:

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

1. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

2. Section 814.100 is amended by revising paragraphs (a)(2) and (d) and by adding new paragraph (e) to read as follows:

§ 814.100 Purpose and scope.

(a) * * *

(2) Marketing approval for the HUD notwithstanding the absence of reasonable assurance of effectiveness that would otherwise be required under sections 514 and 515 of the act.

* * * * *

(d) A person granted an exemption under section 520(m) of the act shall submit an annual report as described in § 814.126(b).

(e) FDA may suspend or withdraw approval of an HDE after providing notice and an opportunity for an informal hearing.

3. Section 814.104 is amended by removing paragraph (b) and redesignating paragraphs (c) through (e) as paragraphs (b) through (d), by revising redesignated paragraph (b)(5) and the first sentence in redesignated paragraph (c), and by revising redesignated paragraph (d) to read as follows:

§ 814.104 Original applications.

* * * * *

(b) * * *

(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 above requirement will be 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. * * *

(d) *Address for submissions and correspondence.* Copies of all original HDE's, amendments and supplements, as well as any correspondence relating to an HDE, shall be sent or delivered 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.

4. Section 814.106 is revised to read as follows:

§ 814.106 HDE amendments and resubmitted HDE's.

An HDE or HDE supplement may be amended or resubmitted upon an applicant's own initiative, or at the request of FDA, for the same reasons and in the same manner as prescribed for PMA's in § 814.37, except that the timeframes set forth in § 814.37(c)(1) and (d) do not apply. If FDA requests an HDE applicant to submit an HDE amendment, and a written response to FDA's request is not received within 75 days of the date of the request, FDA will consider the pending HDE or HDE supplement to have been withdrawn voluntarily by the applicant. Furthermore, if the HDE applicant, on its own initiative or at FDA's request, submits a major amendment as described in § 814.37(c)(1), the review period may be extended up to 75 days.

5. Section 814.108 is revised to read as follows:

§ 814.108 Supplemental applications.

After FDA approval of an original HDE, an applicant shall submit supplements in accordance with the requirements for PMA's under § 814.39, except that a request for a new indication for use of a HUD shall comply with requirements set forth in § 814.110. The timeframes for review of and FDA action on an HDE supplement are the same as those provided in § 814.114 for an HDE.

6. Section 814.112 is amended by revising the introductory text of paragraph (a) and by revising paragraph (b) to read as follows:

§ 814.112 Filing an HDE.

(a) The filing of an HDE means that FDA has made a threshold determination that the application is sufficiently complete to permit substantive review. Within 30 days from the date an HDE is received by FDA, the agency will notify the applicant whether the application has been filed. FDA may refuse to file an HDE if any of the following applies:

* * * * *

(b) The provisions contained in § 814.42(b), (c), and (d) regarding notification of filing decisions, filing dates, the start of the 75-day review period, and applicant's options in response to FDA refuse to file decisions shall apply to HDE's.

7. Section 814.114 is revised to read as follows:

§ 814.114 Timeframes for reviewing an HDE.

Within 75 days after receipt of an HDE that is accepted for filing and to which the applicant does not submit a major amendment, FDA will send the applicant an approval order, an approvable letter, a not approvable letter (under § 814.116), or an order denying approval (under § 814.118).

8. Section 814.116 is amended by revising the last sentence in paragraph (a), adding a sentence to the end of paragraph (a), revising the last sentence of paragraph (d), and adding paragraph (e) to read as follows:

§ 814.116 Procedures for review of an HDE.

(a) * * * If the HDE is referred to a panel, the agency shall follow the procedures set forth under § 814.44, with the exception that FDA will complete its review of the HDE and the advisory committee report and recommendations within 75 days from receipt of an HDE that is accepted for filing under § 814.112 or the date of filing as determined under § 814.106, whichever is later. Within the later of these two timeframes, FDA will issue an approval order under paragraph (b) of this section, an approvable letter under paragraph (c) of this section, a not approvable letter under paragraph (d) of this section, or an order denying approval of the application under § 814.118(a).

* * * * *

(d) * * * The applicant may respond to the not approvable letter in the same manner as permitted for not approvable letters for PMA's under § 814.44(f), with the exception that if a major HDE amendment is submitted, the review period may be extended up to 75 days.

(e) FDA will consider an HDE to have been withdrawn voluntarily if:

(1) The applicant fails to respond in writing to a written request for an amendment within 75 days after the date FDA issues such request;

(2) The applicant fails to respond in writing to an approvable or not approvable letter within 75 days after the date FDA issues such letter; or

(3) The applicant submits a written notice to FDA that the HDE has been withdrawn.

9. Section 814.118 is amended by revising paragraph (e) to read as follows:

§ 814.118 Denial of approval or withdrawal of approval of an HDE.

* * * * *

(e) Unless FDA otherwise determines that continued marketing under the HDE is inconsistent with the intent of section 520(m) of the act, FDA will not withdraw approval of an HDE solely because it is subsequently determined that the disease or condition for which the HUD is intended affects or is manifested in more than 4,000 people in the United States per year.

10. Section 814.120 and the heading is revised to read as follows:

§ 814.120 Temporary suspension of approval of an HDE.

An HDE or HDE supplement may be temporarily suspended for the same reasons and in the same manner as prescribed for PMA's in § 814.47.

11. Section 814.124 is amended by adding three sentences at the end of paragraph (a) to read as follows:

§ 814.124 Institutional Review Board requirements.

(a) * * * If, however, a physician in an emergency situation determines that approval from an IRB cannot be obtained in time to prevent serious harm or death to a patient, a HUD may be administered without prior approval by the IRB located at the facility or by a similarly constituted IRB that has agreed to oversee such use. In such an emergency situation, the physician shall, within 5 days after the use of the device, provide written notification to the chairman of the IRB of such use. Such written notification shall include the identification of the patient involved, the date on which the device was used, and the reason for the use.

12. Section 814.126 is amended by revising the first sentence in paragraph (a) and by revising paragraph (b) to read as follows:

§ 814.126 Postapproval requirements and reports.

(a) An HDE approved under this subpart shall be subject to the postapproval requirements and reports set forth under subpart E of this part, as applicable, with the exception of § 814.82(a)(7). * * *

(b) In addition to the reports identified in paragraph (a) of this section, the holder of an approved HDE shall prepare and submit the following complete, accurate, and timely reports:

(1) *Annual report.* An HDE applicant is required to submit an annual report on the anniversary date of marketing approval. The annual report shall include:

(i) An update of the information required under § 814.102(a) in a separately bound volume;

(ii) An update of the information required under § 814.102(c)(2), (c)(3), and (c)(5);

(iii) The number of devices that have been shipped or sold since initial marketing approval under this subpart H and, if the number shipped or sold exceeds 4,000, an explanation and estimate of the number of devices used per patient. If a single device is used on multiple patients, the applicant shall submit an estimate of the number of patients treated or diagnosed using the device together with an explanation of the basis for the estimate;

(iv) Information describing the applicant's clinical experience with the device since the HDE was initially approved. This information shall include safety information that is known or reasonably should be known to the applicant, medical device reports made under part 803 of this chapter, any data generated from the postmarketing studies, and information (whether published or unpublished) that is known or reasonably expected to be known by the applicant that may affect an evaluation of the safety of the device or that may affect the statement of contraindications, warnings, precautions, and adverse reactions in the device's labeling; and

(v) A summary of any changes made to the device in accordance with supplements submitted under § 814.108. If information provided in annual reports, or any other information in the possession of FDA, gives the agency reason to believe that a device raises public health concerns or that the criteria for exemption are no longer met, the agency may require the HDE holder to submit additional information to demonstrate continued compliance with the HDE requirements.

(2) *Other.* An HDE holder shall maintain records of the names and addresses of the facilities to which the HUD has been shipped, correspondence with reviewing IRB's, as well as any other information requested by a reviewing IRB or FDA.

Dated: March 31, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–9637 Filed 4–16–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

46 CFR Part 4

[CGD 94–027 and CGD 94–030]

RIN 2115–AE82 and 2115–AE89

Notice of Hazardous Conditions/ Immediate Reporting of Casualties

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing a final rule which amends the rules that describe what marine casualties and hazardous conditions require immediate notice. This rule also clarifies notice procedures. The reason for the change is to provide mechanisms that will help prevent another disaster such as the derailment of a passenger train near Mobile, Alabama, in September 1993. The final rule combines the Notice of Hazardous Conditions and the Immediate Reporting of Casualties interim rules that became effective on August 3, 1994. The Notice of Hazardous Conditions interim rule amending 33 CFR part 160 is adopted as final without change.

DATES: This final rule is effective on May 18, 1998.

ADDRESSES: Documents indicated in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Olsen, Project Manager, Office of Investigations and Analysis, (G–MOA–1), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001, telephone (202) 267–1430.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 3, 1994, the Coast Guard published in the **Federal Register** two interim rules entitled Notice of Hazardous Conditions (59 FR 39458) and Immediate Reporting of Casualties (59 FR 39469). The Notice of Hazardous Conditions interim rule amended 33 CFR part 160, and the Immediate Reporting of Casualties interim rule amended 46 CFR part 4. These rules were published as interim rules because the Coast Guard determined that it would be contrary to the public interest to delay publication of rules, which clarified existing law, imposed no new regulatory requirements, and involved no significant change in policy. The Coast Guard combined the interim rules into a single final rule because both were initiated as a result of the derailment of the Amtrak Sunset Limited passenger train near Mobile, AL. The Coast Guard received 15 letters commenting on the rulemaking for Immediate Reporting of Casualties and two additional letters which presented comments on both the rulemaking for Immediate Reporting of Casualties and the rulemaking for Notice of Hazardous Conditions. No public hearing was requested, and none was held as a result of these comments.

Background and Purpose

The derailment of the Amtrak Sunset Limited, a passenger train, on September 22, 1993, with extensive injury and loss of life, resulted in a study by the Coast Guard entitled Review of Marine Safety Issues Related to Uninspected Towing Vessels. This study provided the Commandant of the Coast Guard with a number of