



Title: Stepwise Method to Determine Device Regulatory Status
Date of Last Revision: 05/09/18, 04/23/18, 04/25/17, 12/15/17
Audience: Researchers

Worksheet

Stepwise Method to Determine Device Regulatory Status	Device 1	Device 2
<p>1. Medical Device [steps i* & ii]? [If YES to any items below, PROCEED to #2 below]</p> <ul style="list-style-type: none"> <input type="checkbox"/> Medical Device; Investigational Device [21 CFR 812.3(g)] – device is the object of the investigation (safety/effectiveness)] <input type="checkbox"/> IVD [Section III.2, and Appendix I] <input type="checkbox"/> MMA [Section V.B, and Section VI.B & VI.C] – recent example Cantab Mobile] <input type="checkbox"/> Software <input type="checkbox"/> Wellness device <input type="checkbox"/> Real-World Evidence [Section B] <p><small>* a device does not have to meet all 3 subparts to the definition of a medical device for it to be considered a medical device</small></p>		
<p>2. Clinical Investigation? [If YES to any items below, PROCEED to #2b below]</p> <ul style="list-style-type: none"> <input type="checkbox"/> Activity/data will be submitted to/held for inspection by the FDA in support of a marketing application [21 CFR 50.1] <input type="checkbox"/> Clinical Investigation [21 CFR 50.3(c)] - any experiment that involves a test article and one or more human subjects and that either is subject to requirements for prior submission to the Food and Drug Administration under section [505(i) or] 520(g) of the act [subject to 21 CFR 812], or is not subject to requirements for prior submission to the Food and Drug Administration under these sections of the act, but the results of which are intended to be submitted later to, or held for inspection by, the Food and Drug Administration as part of an application for a research or marketing permit] <input type="checkbox"/> Use of device to evaluate safety/effectiveness [21 CFR 812.2(a)] <input type="checkbox"/> Investigation [21 CFR 812.3(h)] - determine safety/effectiveness of device] <p>Examples:</p> <ol style="list-style-type: none"> i. Study looking at how well the device works in measuring something ii. Study “uses” device to measure something but study will collect limited validity data just to demonstrate that the measurements made by device are reasonably accurate iii. Study collects only feasibility data on a device 		
<p>a. NO: [If NOT a clinical investigation, STOP here]</p> <p>Examples:</p> <ol style="list-style-type: none"> i. physiology study (no data is collected about device): <ol style="list-style-type: none"> 1. device used to measure physiology 2. use device to elicit a response 3. use device to address a research question 4. use device to measure a clinical outcome ii. used according to label iii. device is not the focus of the study iv. monitor a side effect v. measure treatment progress vi. a low-risk device is used only to address a research question, however the device is home-made [<i>considered a basic physiology activity, but IRB would need to consider case by case</i>] 		

vii. [off-label](#) [note: the term *off-label* applies only to *medical practice*; refers to physicians using devices and approved drugs in a manner inconsistent with the package insert in order to treat patients]

- ✓ [Level of IRB review](#) is determined by overall study risks
- ✓ If [overall level of risk for study is minimal](#), determine whether [Expedited Category #4](#) is applicable

b. **YES** [a clinical investigation]: [Choose **ONE** category for **EACH** device: (i) Exempt from IDE, (ii) Abbreviated IDE, (iii) IDE required]
- [2013 guidance, pages 6-7: <https://www.fda.gov/downloads/regulatoryinformation/guidances/ucm328855.pdf>]

i. Exempt from IDE [[21 CFR 812.2\(c\)](#)]

Common device exempt categories:

1. A device, other than a transitional device (i.e., an inhaler), 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:
 - a. Is noninvasive [[21 CFR 812.3\(k\)](#)]
 - b. Does not require an invasive sampling procedure that presents significant risk
 - c. Does not by design or intention introduce energy into a subject
 - d. Is not used as a diagnostic procedure without confirmation of the diagnosis by another, medically established diagnostic product or procedure

Other device exempt categories:

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 custom device [[21 CFR 812.3\(b\)](#)], unless the device is being used to determine safety or effectiveness for commercial distribution.

Translation (*in other words*): Approved device being used in accordance with its labeling

- ✓ search FDA webpage for [510k](#) or PMA approval notice (the marked indication will be listed)

Transitional Device: a device regulated as a drug before the device laws were passed [[21 CFR 812.3\(r\)](#)]

Criterion [Exempt from IDE]:

1. Approved device used in accordance with approved labeling

Yes to all items below, and provide supporting documentation:

- FDA approved for marketing in the US
- Results are not intended to be reported to the FDA as a well-controlled study in support of a new indication for use or intended to be used to support any other significant change device labeling
- Used in ***accordance with the indications in the approved labeling*** and does not involve a new device indication (new population, condition, area of the body, or significant design change)

2. Other Criterion:

Yes to any items below, with confirmation from FDA/FDA guidance:

- Testing of an **IVD** that is **noninvasive** [21 CFR 812.3(k)], does **not** require invasive procedure that presents risk, does **not** introduce energy into a subject, will **not** be used as a diagnostic w/o confirmation by another medically established procedure/product, and results will **not** be used to make clinical decisions
- Consumer preference testing of a device if the testing is **not** for the purpose of determining safety or effectiveness and does **not** put subjects at risk
- Testing of a modification, or testing of a combination of two or more devices in commercial distribution, if the testing is **not** for the purposes of determining safety or effectiveness and does **not** put subjects at risk
- Custom** device [21 CFR 812.3(b)] intended for use by an individual patient and **not** for the purpose of determining safety or effectiveness
- Testing of off-the-shelf (OTS) software [section 3.4] as part of an Exempt IVD

3. Other Criterion:

- FDA or sponsor has provided documentation indicating that IDE is not required

- ✓ **Level of IRB review** is determined by overall study risks
- ✓ If **overall level of risk for study is minimal**, determine whether **Expedited Category #1** * is applicable [section VIII.A]
- ✓ If the FDA has already made an Exempt determination, the agency's determination is final [section IIIC]

** Circumstances where an IDE application would not be required include those where (i) a NSR device is being reviewed by an IRB under 21 CFR 812.2(b); or (ii) the medical device is cleared/approved for marketing and is being used in accordance with its cleared/approved labeling; or (iii) the research is Exempt from the IDE submission requirements under 21 CFR 812.2(c). Per FDA, some medical devices are Exempt because of their use, but they might not be minimal risk.*

ii. Abbreviated IDE [21 CFR 812.2(b)]

An investigation of a device *other than a significant risk device*, if the device is not a banned device [21 CFR 812.2(b)(1)]

Requires an explanation of why the device is **not** a significant risk device (NSR) [21 CFR 812.2(b)(1)(ii)]

- Significant Risk (SR) - 21 CFR 812.3(m)

- ✓ IDE submission to FDA is **not** required [section III.D.2]
- ✓ Convened IRB **must** review the SR/NSR determination; if the FDA has already made a NSR determination, the agency's determination is final [section III.C]
- ✓ To be eligible for expedited review, device must be NSR **and** the study presents no more than minimal risk to the subject [21 CFR 56.110] [section VIII.A]
- ✓ [NIH NHGRI IDE and Genomics Research \(pdf\)](#): 2017 Guidance

iii. IDE Required [21 CFR 812.20(a)]

Any device found to pose a significant risk (SR) [21 CFR 812.3(m)] of harm by the sponsor, by any reviewing IRB, or by the FDA, must have an IDE [IDE application].

- ✓ IDE submission [section 1] to FDA **is** required [section III.D.1]
- ✓ Convened IRB **must** review the SR/NSR determination; if the FDA has already made a SR determination, the agency's determination is final [section III.C]
- ✓ [NIH NHGRI IDE and Genomics Research \(pdf\)](#): 2017 Guidance