DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
9200 Corporate Boulevard
Rockville MD 20850

MAY 20 1997

Dear Sponsor:

As published in the Federal Register of January 29, 1997 (62 FR 4164), Part 813 of the Code of Federal Regulations (CFR) has been removed from Title 21 of the CFR effective March 31, 1997. The Food and Drug Administration (FDA) has taken this action to provide uniformity to investigational device studies. As of March 31, 1997, all investigations of medical devices, including intraocular leses (IOLs), will now be governed by the Investigational Device Exemption (IDE) regulation (21 CFR Part 812).

There are several differences between Parts 812 and 813. These differences affect the information which you will need to provide in your future IDE applications as well as the conduct of your clinical investigation. I wish to inform you of these changes and to offer our suggestions on how to address these issues in your future applications.

The following clarifications are being made in order to familiarize you with the terms and sections contained in Part 812.

- There are additional definitions in Subpart A of Part 812; specifically, Custom Device, Institutional Review Board (IRB), Significant Risk Device, Termination, Transitional Device and Unanticipated Adverse Device Effect. Please note an IOL is a Significant Risk Device under Part 812. Additionally, Unanticipated Adverse Device Effect and Institutional Review Board are synonymous with the Part 813 terms "Adverse Reaction" and "Institutional Review Committee", respectively.

- Subpart B in Parts 812 and 813 describes the application process for an IDE and the administrative actions taken during the application process. In Part 812 (section 812.35(b)), the sponsor is directed to submit to FDA a certification of IRB approval of an investigation or a part of an investigation prior to beginning the investigation at the new site, as well as other details regarding the IRB and sites (section 812.20(b)(6) and (7)). Part 813 had a corresponding requirement (section 813.39(c)), but FDA waived the submission to FDA of IRB approval as detailed in a February 1985 letter to sponsors. This waiver for prior submission to FDA of IRB approval may continue as provided by section 812.10 provided that a summary of the current IRB approvals and investigators is submitted periodically (see page 3 for further information).

- Subpart D in Parts 812 and 813 describes the composition, duties, and functions of IRBs. Whereas Part 813 described these responsibilities in several sections, Part 812 refers to 21 CFR 56 for this information. The IRB's responsibilities are considered similarly described in Parts 56 and 813; and therefore, no new information will be required in your future applications.

- Subpart G in Parts 812 and 813 delineates the record and reporting requirements. Please note the following changes in time requirements for reporting and maintaining records.

  - In Part 812 (section 812.140(d)), sponsors are to maintain records for two years after the latter of the following two dates: the date on which the investigation is terminated or completed, or the date that the records are no longer required for puposes of supporting a premarket approval application or a notice of completion of a product development protocol. Under part 813 (section 813.155(f)(2)), the record maintenance period was five years.

  - In Part 812 (section 812.150(b)(2)), a sponsor shall notify FDA, other reviewing IRBs and participating investigators of any withdrawal of approval of an investigation or part of an investigation by a reviewing IRB within 5 working days after receipt of the withdrawal of approval. Under Part 813 (section 813.153(e)(2)), the sponsor had 30 days.

  - In Part 812, investigators and sponsors are required to report an Unanticipated Adverse Device Effect to their respective oversight parties within 10 working days of first learning of the effect. Under Part 813, the reporting period was within 5 working days.

The following requirements were unique to Part 813 and are continuing to be required under sections 812.20(b)(11) and 812.20(b)(10), respectively.

- Section 813.155(b)(2) required that the sponsor provide an identification card either directly or indirectly to the subject of a clinical study. The identification card will continue to be required.

- Section 813.5(a) stated that the label of an IOL should bear the sterility shelf-life of the lens. This labeling requirement will continue to be required.

The following are additional responsibilities given to investigators and/or sponsors under Part 812.

- Section 812.7(b) prohibits a sponsor or investigator from "commercializing" an investigational device. "Commercialization" is considered charging the subjects or investigators for a device a price larger than that necessary to recover costs of manufacture, research, development, and handling. You may address this issue by stating in your application that the price of your IOL during the clinical investigation will be no larger than that needed to recover the costs of manufacture, research, development, and distribution. You may also justify the price in other ways; e.g., by comparing the price to another legally marketed IOL.

- Under section 812.43(c)(4)(iii), an IOL sponsor has the responsibility to ensure that the requirements for obtaining informed consent are met.

- Section 812.150(a)(5) describes an investigator's responsibilities if an investigational device is used without obtaining informed consent. The investigator must report such use to the sponsor and the reviewing IRB within 5 working days after the use occurs. The sponsor must report this use to FDA within 5 working days of receipt of the notice from the investigator.

- Additional sponsor reporting requirements include notifying reviewing IRBs and participtating investigators within 5 working days of withdrawal of FDA approval (section 812.150(b)(3)) and submitting a current investigator list to FDA at six-month intervals (section 812.150(b)(4)).

If you have any questions concerning the regulation of IOLs under Part 812, please contact Donna Lochner at (301) 594-2053 or Joanne Less, Ph.D., Director of the Investigational Device Exemptions Staff at (301) 594-1190.

Sincerely,

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