

HUMANITARIAN DEVICE EXEMPTION

Safe Medical Devices Act 1990

Section 520(21 U.S.C. 360j) is amended by adding at the end the following:
Humanitarian Device Exemption (m)

(1) To the extent consistent with the protection of the public health and safety and with ethical standards, it is the purpose of this subsection to encourage the discovery and use of devices intended to benefit patients in the treatment and diagnosis of diseases or conditions that affect fewer than 4,000 individuals in the United States.

(2) The Secretary may grant a request for an exemption from the effectiveness requirements of sections 514 and 515 for a device for which the Secretary finds that-

(A) the device is designed to treat or diagnose a disease or condition that affects fewer than 4,000 individuals in the United States,

(B) the device would not be available to a person with a disease or condition referred to in subparagraph (A) unless the Secretary grants such an exemption and there is no comparable device, other than under this exemption, available to treat or diagnose such disease or condition, and

(C) the device will not expose patients to an unreasonable or significant risk of illness or injury and the probable benefit to health from the use of the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

(3) No person granted an exemption under paragraph (2) with respect to a device may sell the device for an amount that exceeds the costs of research and development, fabrication, and distribution of the device.

(4) Devices granted an exemption under paragraph (2) may only be used-

(A) in facilities that have established, in accordance with regulations of the Secretary, a local institutional review committee to supervise clinical testing of devices in the facilities, and

(B) if, before the use of a device, an institutional review committee approves the use in the treatment or diagnosis of a disease or condition referred to in paragraph (2)(A).

(5) An exemption under paragraph (2) shall be for a term of 18 months and may only be initially granted in the 5-year period beginning on the date regulations under paragraph (6) take effect. The Secretary may extend such an exemption for a period of 18 months if the Secretary is able to make the findings set forth in paragraph (2) and if the applicant supplies information demonstrating compliance with paragraph (3). An exemption may be extended more than once and may be extended after the expiration of such 5-year period.

(6) Within one year of the date of the enactment of this subsection, the Secretary shall issue regulations to implement this subsection."

(b) EFFECTIVE DATE.-Subsection (m) of section 520 of the Federal Food, Drug, and Cosmetic Act, as added by the amendment made by subsection (a), shall take effect on the effective date of the regulations issued by the Secretary under paragraph (6) of such subsection.

REPORT.-Within 4 years after the issuance of regulations section 520(m)(6) of the Federal Food, Drug, and Cosmetic Act, as added by the amendment made by subsection (a), the Secretary of Health and Human Services shall report to the Congress (1) on the types of devices exempted under such section, (2) an evaluation of the effects of such section, and (3) a recommendation on extension of the section.