

**PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)**

**Subpart Q—[Amended]**

■ 1. The authority citation for subpart Q of part 404 continues to read as follows:

**Authority:** Secs. 205(a), 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 421, and 902(a)(5)).

■ 2. Amend § 404.1615 by revising paragraph (c)(3) to read as follows:

**§ 404.1615 Making disability determinations.**

\* \* \* \* \*

(c) \* \* \*

(3) A State agency disability examiner alone if the claim is adjudicated under the quick disability determination process (see § 404.1619) or the compassionate allowance process (see § 404.1602), and the initial or reconsidered determination is fully favorable to you. This paragraph (c)(3) will no longer be effective on December 28, 2018 unless we terminate it earlier by publication of a final rule in the **Federal Register**; or

\* \* \* \* \*

**PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED**

**Subpart J—[Amended]**

■ 3. The authority citation for subpart J of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1614, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c, 1383, and 1383b).

■ 4. Amend § 416.1015 by revising paragraph (c)(3) to read as follows:

**§ 416.1015 Making disability determinations.**

\* \* \* \* \*

(c) \* \* \*

(3) A State agency disability examiner alone if you are not a child (a person who has not attained age 18), and the claim is adjudicated under the quick disability determination process (see § 416.1019) or the compassionate allowance process (see § 416.1002), and the initial or reconsidered determination is fully favorable to you. This paragraph (c)(3) will no longer be effective on December 28, 2018 unless we terminate it earlier by publication of a final rule in the **Federal Register**; or

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 874**

[Docket No. FDA-2016-N-3287]

**Medical Devices; Ear, Nose, and Throat Devices; Classification of the Eustachian Tube Balloon Dilation System**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final order.

**SUMMARY:** The Food and Drug Administration (FDA) is classifying the Eustachian tube balloon dilation system into class II (special controls). The special controls that will apply to the device are identified in this order and will be part of the codified language for the Eustachian tube balloon dilation system’s classification. The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

**DATES:** This order is effective October 24, 2016. The classification was applicable on September 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** Joyce Lin, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2462, Silver Spring, MD, 20993-0002, 301-796-5544, [Joyce.Lin@fda.hhs.gov](mailto:Joyce.Lin@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1). Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of “low-moderate risk” or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA shall classify the device by written order within 120 days. This classification will be the initial classification of the device.

On December 17, 2015, Acclarent, Inc. submitted a request for classification of the ACCLARENT AERA™ Eustachian Tube Balloon Dilation System under section 513(f)(2) of the FD&C Act.

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1). FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the request, FDA determined that the device can be classified into class II with the establishment of special controls. FDA

believes these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on September 16, 2016, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 874.4180.

Following the effective date of this final classification order, any firm

submitting a premarket notification (510(k)) for a Eustachian tube balloon dilation system will need to comply with the special controls named in this final administrative order.

The device is assigned the generic name Eustachian tube balloon dilation system, and it is identified as a prescription device that includes a flexible catheter attached to an

inflatable balloon. The system is intended for use in dilating the cartilaginous portion of the Eustachian tube for treating persistent Eustachian tube dysfunction.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1:

TABLE 1—EUSTACHIAN TUBE BALLOON DILATION SYSTEM RISKS AND MITIGATION MEASURES

Identified risk	Mitigation measure
Introduction of false passages and rupture or damage to carotid artery .....	Non-clinical performance testing. Simulated use testing. Training. Labeling.
Injury to mucosal tissue: • due to misuse of device on patulous Eustachian tube or following skull base surgery • due to catheter mechanical failure • due to balloon rupture • due to mishandling of device with respect to excessive force and/or incorrect positioning	Non-clinical performance testing. Simulated use testing. Shelf life validation. Training. Labeling.
Adverse tissue reaction .....	Biocompatibility evaluation.
Infection .....	Sterilization validation. Shelf life validation. Labeling.

FDA believes that the special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness.

Eustachian tube balloon dilation system devices are not safe for use except under the supervision of a practitioner licensed by law to direct the use of the device. As such, the device is a prescription device and must satisfy prescription labeling requirements (see 21 CFR 801.109, *Prescription devices*).

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k), if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the Eustachian tube balloon dilation system they intend to market.

**II. Analysis of Environmental Impact**

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or

cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**III. Paperwork Reduction Act of 1995**

This final administrative order establishes special controls that refer to previously approved collections of information found in FDA regulations. These collections of information 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 collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

**List of Subjects in 21 CFR Part 874**

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 874 is amended as follows:

**PART 874—EAR, NOSE, AND THROAT DEVICES**

■ 1. The authority citation for part 874 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Add § 874.4180 to subpart E to read as follows:

**§ 874.4180 Eustachian tube balloon dilation system.**

(a) *Identification.* A Eustachian tube balloon dilation system is a prescription device that includes a flexible catheter attached to an inflatable balloon. The system is intended for use in dilating the cartilaginous portion of the Eustachian tube for treating persistent Eustachian tube dysfunction.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be evaluated:

(i) Mechanical testing, including tensile and flexural testing of catheter joints and materials.

(ii) Durability testing, including fatigue and burst pressure testing of the balloon materials and components.

(iii) Inflation and deflation characterization testing, including time and pressure measurements, and leak testing of the balloon.

(iv) Verification testing of safety features built into the device must be performed, including the characterization of catheter geometries

and distal tip insertion limitation mechanisms.

(2) Simulated use testing in a clinically relevant model must demonstrate the reliability of the device to remain mechanically functional throughout the anticipated conditions of use, and validate that the design features limit access to only the cartilaginous portion of the Eustachian tube.

(3) The patient-contacting components of the device must be demonstrated to be biocompatible.

(4) Performance data must demonstrate the sterility of the device.

(5) Performance data must support shelf life by demonstrating continued sterility of the device, package integrity, and device functionality over the identified shelf life.

(6) Training must include simulated use on cadavers to ensure users can follow the instructions for use to allow safe use of the device.

(7) Labeling must include:

(i) Detailed instructions for use.

(ii) A detailed summary of the device technical parameters, including maximum allowed inflation pressure, allowable catheter geometries, and available balloon sizes.

(iii) A shelf life.

Dated: October 18, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016-25602 Filed 10-21-16; 8:45 am]

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Subtitle A and Chapters II, IV, V, VIII, IX, and XX

[Docket No. FR-5976-N-01]

#### Housing Opportunity Through Modernization Act of 2016: Initial Guidance

**AGENCY:** Office of General Counsel, HUD.

**ACTION:** Initial implementation guidance.

**SUMMARY:** On July 29, 2016, President Obama signed into law the Housing Opportunity Through Modernization Act of 2016 (HOTMA). This new statute provides updates and improvements to statutes that authorize and prescribe requirements for multiple HUD programs and the Department of Agriculture's single-family housing guaranteed loan program. The purpose of this document is to advise HUD program participants and interested

members of the public of those statutory provisions that are effective immediately and those provisions that will require further action by HUD to become effective or to be used by HUD program participants.

**DATES:** *Effective Date:* This document is effective October 24, 2016.

**FOR FURTHER INFORMATION CONTACT:** If you have any questions, please contact the following people (none of the phone numbers are toll-free):

*Public Housing, Housing Choice Voucher (including project-based vouchers), and moderate rehabilitation programs:* email [HOTMAquestions@hud.gov](mailto:HOTMAquestions@hud.gov).

*Multifamily Housing programs:* Danielle Garcia, Branch Chief, Assistant Housing Oversight Division, Office of Housing, 202-402-2768.

*HOME Investment Partnerships program:* Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, 202-708-2684.

*Self-Help Homeownership Opportunity Program (SHOP) program:* Jackie Williams, Director, Office of Rural Housing and Economic Development, Office of Community Planning and Development, (202) 708-2290.

*Housing Opportunities for Persons With AIDS (HOPWA) program:* Rita Flegel, Director, Office of HIV/AIDS Housing, Office of Community Planning and Development, 202-402-5374.

*Homeless programs:* Norm Suchar, Director, Office of Special Needs Assistance, Office of Community Planning and Development, 202-708-4300.

The address for all offices is the Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Persons with hearing or speech impairments may access these numbers through TTY by calling the Federal Relay Service, toll-free, at 800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Introduction**

On July 29, 2016, President Obama signed HOTMA into law (Pub. L. 114-201, 130 Stat. 782). HOTMA amends the United States Housing Act of 1937 (1937 Act) and other housing laws to modify multiple HUD programs, along with the Department of Agriculture's Single Family Housing Guaranteed Loan Program. Significant amendments include setting a maximum income level for continued occupancy in public housing, expanding the availability of Family Unification Program vouchers for children aging out of foster care,

changes to the housing quality standards for Section 8 Voucher units, multiple changes to the Project-Based Voucher program, modifying requirements for mortgage insurance for condominiums under the Federal Housing Administration, creating a Special Assistant for Veterans Affairs in HUD, and changing the allocation formula for the Housing Opportunities for Persons With AIDS (HOPWA) program.

##### **II. Implementation, Generally**

HOTMA makes several of its provisions effective upon enactment (July 29, 2016). Other statutory changes made by HOTMA become effective only after the issuance of a notice or regulations by HUD, or at the start of the calendar year following the publication of a notice or regulation. Some provisions require rulemaking to implement, while some are strictly changes in terminology or conforming changes.

This document is intended to:

(1) Advise the public of statutory provisions that are effective immediately and advise of actions that may or should be taken now to comply with the changes (Section III of the document).

(2) Identify those provisions of HOTMA that are not effective until HUD subsequently issues a notice or regulation (Section IV of the document).

This document does not provide a section-by-section analysis of HOTMA, nor does it provide guidance on all sections. However, the guidance in this document, read together with the statutory language,<sup>1</sup> is intended to aid HUD program participants and the public generally in understanding (1) the prompt action HUD recommends be taken now or in the very near future, and (2) the reasons for any deferred action with respect to certain statutory provisions. HUD is committed to working closely with its program participants to see that the changes made by HOTMA are successfully implemented and that these programs are significantly improved to provide assistance to the families HUD serves.

##### **III. Provisions of HOTMA Effective Upon Enactment or Otherwise Already in Effect—No HUD Action Required To Implement**

This section outlines provisions of HOTMA that are effective upon enactment of HOTMA (July 29, 2016) and can be implemented immediately.

<sup>1</sup> The text of HOTMA, along with a summary prepared by the Congressional Research Service, can be found at <https://www.congress.gov/bill/114th-congress/house-bill/3700>.