collections of information in 21 CFR part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; 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 888

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 888 is amended as follows:

PART 888—ORTHOPEDIC DEVICES

■ 1. The authority citation for part 888 continues to read as follows:

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

■ 2. Add § 888.3630 to subpart D to read as follows:

§ 888.3630 Resorbable shoulder spacer.

(a) *Identification.* A resorbable shoulder spacer is intended to act as a temporary spacer, creating a physical barrier between tissues in the shoulder, for the treatment of massive irreparable rotator cuff tears.

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

(1) Clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use and include the following:

(i) Evaluation of improvement of shoulder function and reduction of symptoms (*e.g.,* pain and function) for the indications for use; and

(ii) Evaluation of relevant adverse events.

(2) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use and include the following:

(i) Integrity testing of the device, including mechanical and chemical stability; and

(ii) Characterization of the device degradation profile.

(3) Animal performance testing must include evaluation of the following:

(i) Adverse effects, including gross necropsy and histopathology; and

(ii) Device degradation to verify in vitro versus in vivo degradation correlation.

(4) All patient-contacting components of the device must be demonstrated to be biocompatible.

(5) Performance data must support the sterility and pyrogenicity of the device components intended to be sterile.

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

(7) Labeling must include the following:

(i) Instruction for use, including specific instructions regarding device selection and placement;

(ii) A detailed summary of the clinical performance testing with the device, including procedure- and device-related complications or adverse events; and

(iii) A shelf life.

Dated: January 3, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–00012 Filed 1–5–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 890

[Docket No. FDA–2022–N–3131]

Medical Devices; Physical Medicine Devices; Classification of the Electroencephalography-Driven Upper Extremity Powered Exerciser

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the electroencephalography (EEG)-driven upper extremity powered exerciser into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the electroencephalography (EEG)-driven upper extremity powered exerciser's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective January 6, 2023. The classification was applicable on April 23, 2021.

FOR FURTHER INFORMATION CONTACT: Heather Dean, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4214, Silver Spring, MD, 20993–0002, 240–402–9874, *Heather.Dean@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the electroencephalography (EEG)-driven upper extremity powered exerciser as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo

classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On July 23, 2020, FDA received Neurolutions, Inc.'s request for De Novo classification of the Neurolutions IpsiHand Upper Extremity Rehabilitation System. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify 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 that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on April 23, 2021, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 890.5420.[1] We have named the generic type of device electroencephalography (EEG)-driven upper extremity powered exerciser, and it is identified as a non-invasive prescription device intended for rehabilitation by driving movement or exercise of an impaired upper extremity in response to the detection of purpose oriented electrical activity produced by the patient's brain.

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—ELECTROENCEPHALOGRAPHY (EEG)-DRIVEN UPPER EXTREMITY POWERED EXERCISER RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Device provides ineffective treatment, leading to worsening condition	Clinical performance testing, Software verification, validation, and hazard analysis, and Wireless compatibility testing.
Unintended motion leading to injury	Software verification, validation, and hazard analysis.
Thermal injury including burns and shock	Electromagnetic compatibility testing, Electrical safety testing, Battery safety testing, and Labeling.
Adverse tissue reaction	Biocompatibility evaluation, and Labeling.
Cross contamination, leading to infection or adverse tissue reaction	Reprocessing validation, and Labeling.
Pain or discomfort including: • Headache. • Fatigue. • Skin redness.	Labeling, and Clinical performance testing.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, the electroencephalography (EEG)-driven upper extremity powered exerciser is for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met.

III. 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.

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. 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. 3501–3521). The collections of information in 21 CFR part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; 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 890

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 890 is amended as follows:

PART 890—PHYSICAL MEDICINE DEVICES

■ 1. The authority citation for part 890 continues to read as follows:

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

■ 2. Add § 890.5420 to subpart F to read as follows:

§ 890.5420 Electroencephalography (EEG)-driven upper extremity powered exerciser.

(a) *Identification.* An EEG-driven upper extremity powered exerciser is a non-invasive prescription device intended for rehabilitation by driving movement or exercise of an impaired upper extremity in response to the detection of purpose oriented electrical activity produced by the patient's brain.

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

(1) Clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. Testing must capture any adverse events observed during clinical use and must demonstrate that the EEG signal can be translated into intended motion.

(2) Software verification, validation, and hazard analysis must be performed.

(3) Performance data must demonstrate the electromagnetic compatibility, electrical safety, battery safety, and wireless compatibility of the device.

(4) The device components that contact the patient must be demonstrated to be biocompatible.

(5) Performance data must validate the reprocessing instructions for the reusable components of the device.

(6) Labeling must include:

(i) Instructions on fitting the device to the patient;

(ii) Information on how the device operates and the typical sensations experienced during treatment; and

(iii) Reprocessing instructions.

Dated: January 3, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–00007 Filed 1–5–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 890

[Docket No. FDA–2022–N–3184]

Medical Devices; Physical Medicine Devices; Classification of the Virtual Reality Behavioral Therapy Device for Pain Relief

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the virtual reality behavioral therapy device for pain relief into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the virtual reality behavioral therapy device for pain relief's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective January 6, 2023. The classification was applicable on November 16, 2021.

FOR FURTHER INFORMATION CONTACT: Kaitlin Olsen, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4212, Silver Spring, MD 20993–0002, 240–402–9983, *Kaitlin.Olsen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the virtual reality behavioral therapy device for pain relief as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After