

Guidance for Staff, Industry and
U.S./EU Conformity Assessment Bodies

**Implementation Plan for the
Mutual Recognition Agreement
between the European Union and
the United States of America:
Confidence Building
Programme: Overview**

**Medical Device Annex
Version 7 June 29, 2000**

Draft Guidance – Not for Implementation

**This guidance document is being distributed for comment purposes only.
Draft released for comment on October 3, 2000**



**U.S. Department of Health and Human Services
Food and Drug Administration
Center for Devices and Radiological Health
Division of Small Manufacturers Assistance
Office of Health and Industry Programs**

Draft - Not for Implementation

Preface

Public Comment:

For 30 days following the date of publication in the Federal Register of the notice announcing the availability of this guidance, comments and suggestions regarding this document should be submitted to the Docket No. assigned to that notice, Dockets Management Branch, Division of Management Systems and Policy, Office of Human Resources and Management Services, Food and Drug Administration, 5630 Fishers Lane, Room 1061, (HFA-305), Rockville, MD 20852. To expedite the review process, if possible, FDA requests that you send a copy of your comments to the contact person, Christine Nelson by e-mail; mcn@cdrh.fda.gov or in writing to CDRH Liaison for MRA Implementation (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Drive, Rockville, MD 20850. Comments should be identified with the title of this document “Implementation Plan for the Mutual Recognition Agreement between the European Union and the United States of America: Confidence Building Programme: Overview – Medical Device Annex.”

Additional Copies:

Additional copies are available from the World Wide Web, on the CDRH MRA home page: <http://www.fda.gov/cdrh/mra> .

Draft - Not for Implementation

**Guidance for Staff, Industry and
U.S./EU Conformity Assessment Bodies**

**Implementation Plan for the Mutual
Recognition Agreement between the
European Union and the United States of
America:**

**Confidence Building Programme:
Overview¹**

**Medical Device Annex
Version 7 June 29, 2000**

¹ This document is intended to provide guidance. This document was developed by the FDA and the European Commission. This current draft represents the European Commission's (EC's) latest edits. FDA will be providing

comments to the EC and proposing certain changes that are described in the "FDA Concerns" section of this document. This document does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

The document, "Mutual Recognition Agreement between the European Union and the United States of America: Confidence building programme: overview Medical Device Annex," was prepared jointly by the FDA and the European Commission (EC). This current draft, Version 7, dated June 29, 2000, reflects the latest EC edits and has not been accepted by the Food and Drug Administration (FDA). FDA has several concerns that need to be addressed before this document becomes final. FDA's concerns are described below. FDA will provide its comments and any relevant comments received from stakeholders to the European Commission.

This document is not intended to be an international agreement under the Vienna Convention on the Law of Treaties, nor is this document intended to meet the criteria for clearance by the U.S. Department of State under its Circular 175 procedure. Once this guidance document is finalized, FDA will make a good faith effort to carry out the activities, subject, of course, to availability of resources.

FDA Concerns

2. Definitions

The definition for Regulatory Authority (RA) was deleted from the current draft by the EU. We believe this definition needs to be restored, so that people reading and using this document will have a complete understanding of the terminology used herein. The term, "CAs," is used in 7.1 and 7.2 of this document. CA stands for "Competent Authority" but is not defined. We believe that RA or Regulatory Authority is the appropriate term to be used and should be substituted for CA or Competent Authority.

5. Confidence building programme implementation and progress

Stakeholders meetings

FDA proposes adding "consumer representatives" to the list of stakeholders identified in this paragraph. We have made every effort to include consumer representatives in stakeholders' meetings, to keep them informed of progress on the MRA.

7.3. Training exercises

FDA proposes modifying the following sentence with the italicized phrase:

"Training exercises targeted to address the different needs of the authorities and CABs and to provide information at least 12 weeks prior to each exercise *to the maximum extent possible* to allow proper scheduling and allocation of attendees."

This language was in an earlier version of the document. FDA will make every effort to provide 12 weeks advance notification of training. However, we may not always be able to meet this deadline because of scheduling changes and the availability of resources.

7.4 Joint audits in the USA

FDA proposes adding the following paragraph to the right hand column:

"As soon as GHTF SG4 documents are evaluated and accepted for operational use in the EU they will be applied for use under the MRA."

A similar statement is made on the left-hand column for FDA. FDA believes it was an oversight that this statement was omitted from the right hand column.

8.2 Product evaluation reports

The statement in this box is not applicable to FDA, because FDA has already determined what information is to be contained in product evaluation reports [510(k)'s] reviews that CABs submit to FDA. FDA proposes dividing this single box into two boxes and including in the left-hand box the name of the FDA document that describes the information to be included in product evaluation reports.

Addition of web sites:

In addition to the concerns above, FDA has added to this document web sites for each document mentioned. FDA added web sites to make it easier for people who review and comment on this document to gain access to supporting documents referenced here. FDA has made no other changes to this draft document.

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1. Foreword

The MRA states that carrying out the provisions of the sectoral annex on medical devices will:

- further public health protection;
- be an important means of facilitating commerce in medical devices, and
- lead to reduced costs for regulators and manufacturers of both parties.

Recognising that mutual recognition of conformity assessment activities is an important means of enhancing market access between the parties, and of particular interest to small and medium sized businesses;

Recognising that mutual recognition agreements can positively contribute in encouraging greater international harmonization of regulatory approaches;

Having in mind the provisions of the FDA Modernization Act of 1997;

Having in mind the work of the Global Harmonization Task Force and Article 18 of the sectoral annex on medical devices of the MRA;

Having in mind the recommendations from the TransAtlantic Business Dialogue (TABD) conference in Berlin 1999. (see appendix)

This document describes activities and related procedures to realize the intentions of the MRA.

Under the MRA both parties are required to jointly develop a mutually acceptable MRA confidence building programme. The Commission for the European Communities (CEC) and the United States (US) have agreed to develop written procedures for the MRA transitional period. This document describes activities and related procedures to realize the intentions of the MRA in general. Detailed implementation procedures are described in additional documents referenced herein.

2. Definitions

- a) ‘Designating Authority’ (DA) means a body with power to designate, monitor, suspend, remove suspension of, or withdraw conformity assessment bodies as specified in the MRA. (see Article 1 definitions).
- b) ‘Designation’ means the identification by a Designating Authority of a conformity assessment body to perform conformity assessment procedures under the MRA (see Article 1 definitions).
- c) “Importing Party” means a body (CEC and FDA) that has the authority to confirm designated CABs for listing in Appendix 4 of the MRA Medical Device Annex. (see Article 6 of the sectoral annex on medical devices).

Additional definitions may be required for particular elements of the implementation of this programme and will be provided in the documents setting out the relevant implementation procedures.

3. Summary and Timetable

A summary timetable giving projected timings for confidence building programme activities has been developed and is in a separate document (EU-USA timetable for confidence building activities). The timetable will be revised periodically to reflect the completion of tasks and revised timings for activities.

4. Joint Sectoral Committee role

The functions of the JSC include:

- making a joint listing decision on the equivalence of the CABs as to functions under the MRA based on assessments by representatives of the parties. The Joint Committee (JC) will make the formal listing of CABs,
- developing and maintaining the list of equivalent CABs including any limitation in terms of their scope of activities and communicating the list to all authorities and the Joint Committee,
- providing a forum to discuss issues relating to this annex including concerns that a CAB may no longer be equivalent and opportunity to review product coverage,
- considerations on the issue of suspension and
- defining the form content and due date of the annual progress report.

At the beginning of the transitional period the Joint Sectoral Committee will establish a joint confidence building programme designed to provide sufficient evidence of the capabilities of the designated CABs to perform quality system or product evaluations to the specifications of the Parties (Medical Device sectoral annex, Article 7 (1)). This document describes, in overview, the joint confidence building programme. The document “EU-USA timetable for confidence building activities” details a timetable for confidence building activities, as is available separately and this will be reviewed by the JSC and updated as required.

JSC meetings should be used to discuss implementation progress in the confidence building programme and contribute to solving issues of the MRA, such as confidence building activities, the content of CAB reports and broadening of product coverage (see appendix 1 of the medical device annex to the MRA).

JSC meeting dates should be planned and announced at least 6 weeks in advance with the agenda and papers circulated not less than 2 weeks before the meeting.

The JSC will develop as necessary its rule of procedure.

5. Confidence building programme implementation and progress

Joint Sectoral Committee

JSC meetings will be held as required to discuss matters as described in section 4. Joint Sectoral Committee role.

Stakeholders meetings

Meetings or videoconferences will be held every 2/3 months with all stakeholders (i.e., Administrations, Designating Authorities, CABs, and representatives of the industry of both Parties). The purpose of these meetings will be to inform the stakeholders on progress of confidence building activities and to allow for discussions and clarifications. The agenda for these ‘stakeholder’ meetings will be determined in advance between the participants.

Minutes of the meetings to be produced and made available through the organisations involved.

6 Listing of Conformity Assessment Bodies for participation in the confidence building activities

The parties propose CABs to be listed in Appendix 4 using the following criteria and procedure for subsequent confirmation by the importing parties.

EU	US
<p>6.1</p> <p>6.1.1 Designating Authorities of the Member States (listed in Appendix 3) assess and propose EU-CABs for listing in appendix 4 of the Medical Device sectoral annex.</p> <p>6.1.2 European Designating Authorities develop procedures and checklists to</p>	<p>6.1</p> <p>6.1.1 Designating Authority of the US (FDA) will utilise the National Voluntary Conformity Assessment Evaluation (NVCASE) administered by the National Institute of Standards and Technology (NIST) to assess US CAB candidates. Text: http://ts.nist.gov/ts/htdocs/210/216/nvcase.htm</p> <p>The Designating Authority will assess and propose US CABs for</p>

EU	US
<p>support proposals. Using these procedures Designating Authorities develop supporting evidence for their proposed CABs including a 2 – 3 page summary report and completed checklist.</p> <p>6.1.3 Evidence of CABs competence is based upon:</p> <ul style="list-style-type: none"> • Compliance with applicable standards in the EN45000 series or equivalent; • Knowledge of US legislation as laid down in Appendix 1; • Knowledge of applicable FDA guidance documents; • Knowledge of standards recognized by the FDA. <p>6.1.4 Determination of product scope/areas of competence.</p> <p>Key documents</p> <p>(a) Guidance for staff, industry and</p>	<p>listing in appendix 4 of the Medical Device sectoral annex.</p> <p>6.1.2 The FDA will work with NIST or a US based accreditation body to develop procedures and checklists to support proposals. Using these procedures the Designating Authority develops supporting evidence for their proposed CABs including a 2 – 3 page summary report and completed checklist.</p> <p>6.1.3 Evidence of CABs competence is based upon:</p> <ul style="list-style-type: none"> • Compliance with applicable ISO guides (e.g. ISO guides 25, 62 and 65) or equivalent; • Knowledge of EU legislation as laid down in Appendix 1; • Knowledge of harmonized standards for medical devices; • Knowledge of related EU guidance documents for medical devices, MEDDEV series; • EU guidance documents on designation of Notified Bodies • Application of ISO 13485/8 or equivalent. • Knowledge of those medical devices within its scope, sufficient to validate the manufacturer’s decision that the device meets all relevant Essential Requirements listed in Annex 1 of the European Directives, including where the manufacturer has chosen means other than complying with harmonized standards. <p>6.1.4 Determination of product scope/areas of competence.</p>

EU	US
<p>Third Parties and referenced guidance documents, as applicable. Text: http://www.fda.gov/cdrh/modact/eurma.html PDF: http://www.fda.gov/cdrh/modact/eurma.pdf</p> <p>(b) MRAGEN(99) 1-2 MRAUS(99)1 – for 510(k) MRAUS(99)2 – for QA (http://www.fda.gov/cdrh/mra/imp/mra.html) <i><u>Drafting note – document titles to be added.</u></i></p>	<p>Key documents</p> <p>(a) Current version of the document “Designation and Monitoring of Notified Bodies within the Framework of EC Directives on Medical Devices MEDDEV 2.10/2 “ and associated documents.</p> <p>(b) Checklist developed in compliance with the document referenced in (a).</p> <p>(c) GHTF document <u>SG4(99)28</u> “Guidelines for the regulatory auditing of quality systems of medical device manufacturers”. PDF: www.ghtf.org/sg4/inventorysg4/99-28genreq.pdf Word version: www.ghtf.org/ - click on Study Group 4, click on Final Documents.</p>
<p>6.2</p> <p>The parties will verify particular requirements as appropriate, for example conflicts of interests, and in respect of these may request from the DAs supporting evidence prior to the CABs conducting independent quality system audits or product evaluations. A copy of communications with the DAs may be sent to the relevant CAB.</p> <p>Importing party will confirm the proposed CABs for listing or reject them based on documented evidence.</p>	
<p>6.3 Agreement in the JSC on listing of CABs in Appendix 4. The Joint Committee (JC) will make the formal listing of CABs.</p>	

7. Confidence building activities

EU	US
<p>7.1 Seminars to inform the CEC, CAs, DAs and European CABs on the US regulatory system, procedures and requirements. Once per year of transition period.</p>	<p>7.1 Seminars to inform FDA, NIST and US CABs on the EU regulatory system, procedures and requirements. Once per year of transition period.</p>

EU	US
<p>7.2 Workshops designed to provide the CEC CAs DAs and European CABs with information regarding designation and surveillance of EU CABs.</p>	<p>7.2 Workshops designed to provide the FDA, NIST and US CABs with information regarding designation and surveillance of US CABs.</p>
<p>7.3 Training exercises targeted to address the different needs of the authorities and CABs and to provide information at least 12 weeks prior to each exercise to allow proper scheduling and allocation of attendees.</p>	
<p>7.4 Joint inspections in Europe</p> <p>Usually the FDA announces inspections 2-3 months in advance. The FDA may contact the manufacturer to schedule an FDA inspection and provide the manufacturer the opportunity to contract the inspection to an EU CAB. The manufacturer contacts and contracts with the EU CAB of its choice and informs the FDA and the DA that it is prepared to participate in the joint inspection as part of the confidence building activity. Additionally the relevant DA will be contacted by the FDA and invited to observe the inspection.</p> <p>Audits should not be routinely postponed due to the DA’s scheduling problems. However, due to the importance of DA involvement a concerted effort will be made to include a representative of the DA.</p> <p>If accepted by the parties involved the joint inspection takes place following the procedure as described in ‘Procedure for Joint Confidence Building’.</p> <p>Inspections will be carried out in accordance with the provision of the relevant parts of Compliance Program 7382.845 – Inspection of Medical</p>	<p>7.4 Joint audits in the USA</p> <p>The manufacturer contacts and contracts the US CAB of their choice, informs the FDA and the Notified Body chosen indicating that they wish to participate in a joint audit as part of confidence building activity.</p> <p>Additionally the Notified Body chosen will inform its DA.</p> <p>Audits should not be routinely postponed due to the DA’s scheduling problems. However, due to the importance of DA involvement a concerted effort will be made to include a representative of the DA.</p> <p>If accepted by all parties involved, the audit takes place as described in the ‘ Procedure for Joint Confidence Building’.</p> <p>Audits to be carried out in accordance with the provisions of the GHTF document <u>SG4(99)28</u> “Guidelines for the regulatory auditing of quality systems of medical device manufacturers”. PDF: www.ghf.org/sg4/inventorysg4/99-28GenReq.PDF Word version: www.ghf.org/ -</p>

EU	US
<p>Device Manufacturers: PDF: www.fda.gov/cdrh/comp/7382_845.pdf Text: www.fda.gov/cdrh/comp/7382.845.html and Quality System Inspection Technique (QSIT) guidance entitled Guide to Inspection of Quality Systems. PDF: www.fda.gov/ora/inspect_ref/igs/qsit/QSITGUIDE.PDF Text: www.fda.gov/ora/inspect_ref/igs/qsit/QSITGUIDE.HTM These documents incorporate guidance from the GHTF document “Guidelines for the Regulatory Auditing of Quality Systems of Medical Device Manufacturers”. PDF: www.ghf.org/sg4/inventorysg4/99-28GenReq.PDF Word: www.ghf.org/ - click on Study Group 4, click on Final Documents. As soon as the GHTF SG4 documents are evaluated and accepted for operational use by the FDA then it will be applied for use under the MRA.</p> <p>The report and any clarification requested by the FDA to be in English. Any documents collected from the manufacturer may be in the normal operational language used in the manufacturer’s premises. However the use of English would facilitate a more rapid review.</p>	<p>click on Study Group 4, click on Final Documents.</p> <p>The report to be in a language as agreed upon between the NB and its DA, the CAB and the manufacturer. In cases where the NB requests additional information, this information should be in the operational/working language, which is normally, used in the manufacturers premises. In exceptional cases a summary or parts of a document may be translated into the agreed language.</p>
<p>7.4.1 Inspections/audits carried out, as part of the collaborative inspections/audit programme will be considered as valid audits for regulatory purposes.</p>	
<p>7.5 Product evaluation</p> <p>EU manufacturer willing to participate selects and contracts a European CAB of his choice to</p>	<p>7.5 Product evaluation</p> <p>US manufacturer willing to participate selects and contracts a US CAB of his choice to carry out</p>

EU	US
<p>perform 510(k) assessment for the device in question. The CAB carries out product evaluation according to section 513i of the FD&C Act, Text: www.fda.gov/opacom/laws/fdact/fdact5a.htm and under 21 CFR part 807, Text: http://frwebgate3.access.gpo.gov/cgi-bin/waisgate.cgi?WAIISdocID=460874720+30+0+0&WAIISaction=retrieve</p> <p>Using review criteria supplied in FDA guidance documents (http://www.fda.gov/cdrh/guidance.html) and FDA recognised standards (http://www.fda.gov/cdrh/stdsprog.html). CAB management issues the product evaluation report and sends it to the FDA for their final review and as appropriate endorsement. The FDA issues the 510(k) clearance letter.</p> <p>As soon as GHTF SG 1 documents are evaluated and accepted for operational use by the FDA then they will be applied under the MRA.</p> <p>Determination of information to be contained in product evaluation reports should be in accordance with the October 30, 1998 Guidance for Staff, Industry and Third Parties; Implementation of Third Party Program under the FDA Moderization Act of 1997. This document is referenced in the January 6, 1999 final guidance. Text: www.fda.gov/cdrh/thirdparty/apgui</p>	<p>the EC type examination or EC verification for the device in question. CAB carries out the type examination or EC verification according to annex III or annex IV of the European Directive on Medical Devices, based on compliance with the Essential Requirements, and using Harmonized Standards as applicable. The US CAB issues the examination report and sends it to the European Notified Body of the manufacturers' choice. The European Notified Body reviews the report and may clarify any points before issuing the EC type examination certificate annex III or certificate of conformity annex IV.</p> <p>Determination of information to be contained in product evaluation reports:</p> <p>In order to avoid duplicative and redundant documentation, and in compliance with the provision of the European Directives, annex III and annex IV the CAB report should contain the following information:</p> <ol style="list-style-type: none"> a) manufacturer of the product evaluated b) name and identification of the product evaluated c) identification of the Directive and relevant standards against which the product was evaluated. d) Declaration of compliance by the CAB with all the relevant Essential Requirements, indicating where the manufacturer has complied with harmonised standards and where it has used alternative means.

EU	US
<p>de13.html PDF: www.fda.gov/cdrh/thirdparty/Apgui de13.pdf</p> <p>The manufacturer’s 510(k) submission and the CAB review to be in English.</p>	<p>The documents to be in the language as agreed upon between the NB, the CAB and the manufacturer.</p>
<p>7.6 Annual progress reports</p> <p>The content of the progress report will be defined by the JSC and may contain the following;</p> <ul style="list-style-type: none"> • number and type of inspections carried out; • number of 510(k)s performed including information on product evaluated; • training courses carried out and list of participants; • results of workshops on CAB designation and surveillance. 	<p>7.6 Annual progress reports</p> <p>The content of the progress report will be defined by the JSC and may contain the following;</p> <ul style="list-style-type: none"> • number and type of audits carried out; • number of EC type tests and EC verifications performed including information on products evaluated; • training courses carried out and list of participants; • results of workshops on CAB designation and surveillance.

8. Other transition period activities

<p>8.1 Inspection/audit reports.</p> <p>Determine information to be contained in quality system evaluation reports: See “Procedures for Joint Confidence Building”</p>
<p>8.2 Product evaluation reports</p> <p>Determine the information to be contained in product evaluation reports. (To be developed).</p>

8.3 Notification and alert system

Notification and alert system to be developed using the GHTF document on exchange of information between authorities should be used. (Guidance on How to Handle Information Concerning Vigilance Reporting Related to Medical Devices SG2-N8R4). PDF: www.ghtf.org/sg2/inventorysg2/sg2-n8r4.pdf
Word: www.ghtf.org/ - click on Study Group 2, click on Final Documents.

Note: This exchange does not negate the manufacturer's responsibility to report to the appropriate authority in the US or Europe.

8.4 Product coverage concerning product evaluation:

8.4.1 Initial coverage

Deletion of the 4 devices which are excluded due to the requirements of the FDAMA.

Correction of table 1 to include only those Class 1 devices which still require 510(k)s according to the provision of the FDAMA.

Modification of table 2 to include those devices which are eligible under the US Third Party program, [when ever changes occur to this programme](#).

1 year after the coming into force of the MRA the eligible device list will be expanded giving consideration to the EU industry proposal of May 1998.

~~At the end of the third year all devices will be included that are eligible consistent with the FDAMA's Accredited Person Program, the Medical Device Directives and the MRA.~~

Annex

TABD CEO Conference, Berlin conclusions, 30 October 1999

Extract from the Medical Device Sector's Communique

Industry continues to support the swift implementation of the US EU MRA to facilitate trade, reduce regulatory redundancy and costs, and enhance patient and consumer access to medical technologies. Industry is pleased that both regulatory parties have announced their intent to finalize and share with stakeholders a joint implementation plan by early December, 1999. This plan includes procedures and timelines for the confidence building activities, including completion of the confidence building stage by the end of the year 2001. Industry supports the regulators commitment to holding regular meetings (e.g. teleconferences, videoconferences) with stakeholders to ensure clear communication and effective implementation. Industry is pleased that both regulatory parties have endorsed establishment of a working group to develop proposals to realize the benefits of the MRA as expressed in the preamble to the medical device sectoral annex. Such proposals will include the acceptance of a single audit to satisfy multiple regulatory parties' requirements and streamlined documentation, e.g. accepting compliance declaration with international standards and GHTF documents. Industry commits to promote the usage of the MRA among industry.