*Contains Nonbinding Recommendations*

# Refuse to Accept Policy for 510(k)s

---

# Guidance for Industry and Food and Drug Administration Staff

**Document issued on: January 30, 2018**

**Document originally issued on May 20, 1994**

**This document supersedes "Refuse to Accept Policy for 510(k)s" issued August 4, 2015.**

For questions about this document regarding CDRH-regulated devices, contact the 510(k) Staff at 301-796-5640.

For questions about this document regarding CBER-regulated devices, contact the Office of Communication, Outreach, and Development (OCOD) at 1-800-835-4709 or 240-402-8010.


**U.S. Department of Health and Human Services**
**Food and Drug Administration**

**Center for Devices and Radiological Health**

**Center for Biologics Evaluation and Research**

# Preface

## Public Comment

You may submit electronic comments and suggestions at any time for Agency consideration to http://www.regulations.gov. Submit written comments to the Division of Dockets Management, Food and Drug Administration, 5630 Fishers Lane, Room 1061, (HFA-305), Rockville, MD, 20852. Identify all comments with the docket number FDA-2012-D-0523. Comments may not be acted upon by the Agency until the document is next revised or updated.

## Additional Copies

Additional copies are available from the Internet. You may also send an e-mail request to CDRH-Guidance@fda.hhs.gov to receive an electronic copy of the guidance. Please use the document number 1793 to identify the guidance you are requesting.

Additional copies are available from the Center for Biologics Evaluation and Research (CBER), Office of Communication, Outreach, and Development (OCOD), 10903 New Hampshire Ave., WO71, Room 3128, Silver Spring, MD 20903, or by calling 1-800-835-4709 or 240-402-8010, by email, ocod@fda.hhs.gov, or from the Internet at https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.

# Refuse to Accept Policy for 510(k)s

---

# Guidance for Industry and Food and Drug Administration Staff

***This guidance represents current thinking of the Food and Drug Administration (FDA or the Agency) on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. To discuss an alternative approach, contact the FDA staff responsible for implementing this guidance as listed on the title page.***

## I. Purpose

The purpose of this document is to explain the procedures and criteria FDA intends to use in assessing whether a 510(k) submission meets a minimum threshold of acceptability and should be accepted for substantive review.

Focusing FDA's review resources on complete submissions will provide a more efficient approach to ensuring that safe and effective medical devices reach patients as quickly as possible. Moreover, with the enactment of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA), the Medical Device User Fee Amendments of 2007 (MDUFA II), the Medical Device User Fee Amendments of 2012 (MDUFA III), and the Medical Device User Fee Amendments of 2017[1] FDA agreed to performance goals based on the timeliness of reviews. Acceptance review therefore takes on additional importance in both encouraging quality submissions from submitters of 510(k) notifications and allowing FDA to appropriately concentrate resources on complete submissions.

Therefore, the current 510(k) Refuse to Accept (RTA) policy includes an early review against specific acceptance criteria and to inform the submitter within the first 15 calendar days after receipt of the submission if the submission is administratively complete, or if not, to identify the missing element(s). In order to enhance the consistency of our acceptance decisions and to help submitters better understand the types of information FDA needs to conduct a substantive review, this guidance, including the checklists included in the appendices, clarify the necessary elements and contents of a complete 510(k) submission. The process we outline is applicable to all devices reviewed through the 510(k) notification process and has been

[1] See Title II of the FDA Reauthorization Act of 2017 (Public Law 115-52).

compiled into checklists for use by FDA review staff.

It is critical to distinguish between the completeness of the regulatory submission, and the quality of the data provided and any studies conducted in support of the submission. The assessment of the completeness of the 510(k) occurs during the acceptance review, while the assessment of the quality of the submitted information occurs during the substantive review. FDA will base acceptance on the objective criteria outlined in the associated Acceptance Checklist and not on the quality of the data.

FDA's guidance documents, including this guidance, do not establish legally enforceable responsibilities. Instead, guidance documents describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited. The use of the word *should* in Agency guidance documents means that something is suggested or recommended, but not required.

# II. Background

The purpose of the 510(k) acceptance review is to assess whether a submission is administratively complete, in that it includes all of the information necessary for FDA to conduct a substantive review and to reach a determination regarding substantial equivalence under section 513(i) of the FD&C Act, 21 U.S.C. § 360c(i). To find a device substantially equivalent under section 513(i) of the FD&C Act, FDA must find that it has the same intended use as the predicate device, and either (1) has the same technological characteristics as the predicate device, or (2) has different technological characteristics, as defined at section 513(i)(1)(B), and the submission contains information, including appropriate clinical or scientific data if necessary, that demonstrates the device is as safe and effective as the predicate and does not raise different questions of safety and effectiveness than the predicate.

The 510(k) regulations at 21 CFR 807.87 to 807.100 provide greater detail regarding the specific information that each premarket notification submission must contain. For example, the submission must include proposed labeling (807.87(e)), a statement regarding the similarities and differences between the device and others of comparable type (807.87(f)), supporting data (807.87(f) and 807.100(b)(2)(ii)(B)), and FDA may request any additional information necessary to determine whether the device is substantially equivalent when the information provided is insufficient to enable such a determination (807.87(l)). Please also refer to our guidance document entitled, "Format for Traditional and Abbreviated 510(k)s" (http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm084365.htm).

Prior guidances and checklists relating to 510(k) RTA policy (i.e., 510(k) Refuse to Accept Policy, dated June 30, 1993, and 510(k) Refuse to Accept Procedures (K94-1) blue book memo, dated May 20, 1994) focused on defining broad issues or principles. Additionally, the checklists associated with these guidances dealt largely with administrative elements but did not address specific content that is essential for 510(k) review. As a result, FDA had accepted many inadequate submissions for review, and FDA staff invested significant time in

constructing extensive letters requesting all of the additional information needed to conduct a substantive review. This approach was an inefficient use of resources and frequently lengthened review times. For additional information see CDRH's "Analysis Of Premarket Review Times Under The 510(k) Program" (http://www.fda.gov/downloads/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDRH/CDRHReports/UCM263386.pdf).

The goal of the guidance titled "Refuse to Accept Policy for 510(k)s," dated December 31, 2012 was to clarify the content needed in traditional, special, and abbreviated 510(k) submissions to allow FDA to conduct a substantive review, thereby enhancing the quality of received 510(k) submissions and improving overall review time. The review process presented in this document is captured in the updated Acceptance Checklists for traditional, special, and abbreviated 510(k) submissions, which FDA staff will use during the acceptance review process.

# III. Scope

The information presented in this document is intended to provide FDA staff with a clear, consistent approach for acceptance review for traditional, special, and abbreviated 510(k) notifications and to outline the RTA policy on 510(k)s.

The acceptance policy does not alter the substantial equivalence decision-making process once the submission has been accepted for review; however, it does alter the start of the FDA review clock for purposes of MDUFA performance goals for those submissions that are not accepted for review. For those submissions accepted during the initial acceptance review (i.e., within the first 15 calendar days of receipt of the submission), the FDA review clock start date is the date of receipt.

This document does not address the monetary aspects or the MDUFA goals associated with 510(k)s. Information pertaining to the fees and payment procedures for submission of a 510(k) notification can be found in FDA's "Guidance for Industry and Food and Drug Administration Staff – User Fees and Refunds for Premarket Notification Submissions (510(k)s)" (http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM345931.pdf ).

# IV. Pre-submission Interaction

For general information regarding the 510(k) regulations under 21 CFR Part 807, submitters should consult CDRH's Division of Industry and Consumer Education (DICE) or CBER's Manufacturers Assistance and Technical Training Branch. Before submitting a 510(k) notification, we encourage submitters, especially those who are less familiar with the 510(k) review program or who have novel issues to address, to interact with the appropriate FDA review staff. Such pre-submission interaction is an important way of improving the quality and completeness of a 510(k). For additional information regarding the Pre-Submission process, please refer to the guidance titled "The Pre-Submission Program and Meetings with Food and Drug Administration Staff." (http://www.fda.gov/downloads/medicaldevices/deviceregulationandguidance/guidancedocuments/ucm311176.pdf).

In addition, other FDA guidance documents and resources provide valuable information for preparing 510(k)s, including:

- "Guidance for Industry and FDA Staff: Format for Traditional and Abbreviated 510(k)s" (http://www.fda.gov/RegulatoryInformation/Guidances/ucm084365.htm)
- "The New 510(k) Paradigm – Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications – Final Guidance" (http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm080189.pdf)
- "The 510(k) Program: Evaluating Substantial Equivalence in Premarket Notifications [510(k)]" (https://www.fda.gov/ucm/groups/fdagov-public/@fdagov-meddev-gen/documents/document/ucm284443.pdf )
- "eCopy Program for Medical Device Submissions" (http://www.fda.gov/downloads/medicaldevices/deviceregulationandguidance/guidancedocuments/ucm313794.pdf)
- "Types of Communication During the Review of Medical Device Submissions" (http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM341948.pdf)
- "Intent to Exempt Certain Unclassified, Class II, and Class I Reserved Medical Devices from Premarket Notification Requirements" (http://www.fda.gov/ucm/groups/fdagov-public/@fdagov-meddev-gen/documents/document/ucm407292.pdf)
- Other applicable device-specific and cross-cutting guidance documents (http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm)
- CDRH Device Advice (http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/default.htm)

# V. 510(k) Refuse to Accept Policies and Procedures

FDA staff will conduct an acceptance review of all traditional, special, or abbreviated 510(k)s based on objective criteria using the applicable Acceptance Checklist (see Appendices A-C) to ensure that the 510(k) is administratively complete. In order for the submission to be accepted, all administrative elements identified as RTA items should be present or a rationale should be provided for those elements determined by the submitter to be not applicable. To aid in the administrative review, it is recommended that submitters complete and submit acceptance checklists with their submissions that identify the location of supporting information for each RTA element.

The acceptance review, which occurs prior to the substantive review, should be conducted and completed within 15 calendar days of FDA receiving the 510(k) notification. An acceptance review will only begin for 510(k) submissions for which the appropriate user fee has been paid and a validated eCopy has been received.[2]

The staff will select the applicable checklist based on the 510(k) type (i.e., traditional, special, or abbreviated). The acceptance review will be conducted on original 510(k) submissions and responses to RTA communications, but not supplements or amendments submitted in response to requests for additional information after a submission has been accepted. The staff should assess whether the submission should be accepted by first answering the preliminary questions below, and then verifying that the submission contains all of the information identified as RTA items in the checklist.

The purpose of the 510(k) acceptance review is to assess whether a submission is administratively complete, in that it includes all of the information necessary for FDA to conduct a substantive review. Therefore, the submission should not be accepted and should receive an RTA designation if one or more of the items noted as RTA items in the checklist are not present and no explanation is provided for the omission(s). However, during the RTA review, FDA staff has discretion to determine whether missing checklist items are needed to ensure that the submission is administratively complete to allow the submission to be accepted. FDA staff also has discretion to request missing checklist items interactively from submitters during the RTA review. Interaction during the RTA review is dependent on FDA staff's determination that outstanding issues are appropriate for interactive review and that adequate time is available for the submitter to provide supporting information and for FDA staff to assess responses.

If one or more items noted as RTA items on the Acceptance Checklist are not present, FDA staff conducting the acceptance review should obtain management concurrence and notify the designated 510(k) contact person electronically[3] that the submission has not been accepted.[4]

---

[2] For additional information, please see the guidance "FDA and Industry Actions on Premarket Notification (510(k)) Submissions: Effect on FDA Review Clock and Goals" available athttps://www.fda.gov/ucm/groups/fdagov-public/@fdagov-meddev-gen/documents/document/ucm089738.pdf.

[3] For additional information about email communications with CBER, please see SOPP 8119: Use of Email for Regulatory Communications, available at http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/ProceduresSOPPs/ucm109645.htm

FDA staff should also provide the submitter with a copy of the completed checklist indicating which item(s) are the basis for the RTA designation.

The 510(k) submitter may respond to the RTA notification by providing the missing information identified in the checklist. The submitter should submit this information to be included in the file under the originally assigned 510(k) number. A new submission and new user fee are not necessary. Nor is it necessary to re-send the entire 510(k) submission, unless FDA notes otherwise (e.g., because the majority of the submission is not in English, or the submission is missing the majority of the items on the checklist). It is sufficient to submit and address only the information requested per the Acceptance Checklist. If a response to the RTA notification is not received within 180 days of the date of RTA notification, FDA will consider the 510(k) to be withdrawn and the submission will be closed in the system.

Upon receipt of the newly submitted information, FDA staff should conduct the acceptance review again following the same procedure within 15 calendar days of receipt of the new information. The subsequent acceptance review will assess whether the new information makes the submission complete according to the checklist criteria for completeness. If the submission is still found to be incomplete, FDA staff should notify the contact person and provide the new checklist indicating the missing item(s).

When a submission is accepted, FDA staff should electronically notify the submission contact person that the 510(k) has been accepted and begin a substantive review of the submission to determine substantial equivalence. Should FDA fail or choose not to complete the acceptance review within the acceptance review period (i.e., within 15 calendar days of receipt), the submitter should be electronically notified that the acceptance review was not completed and the submission is under substantive review. FDA may request any information that may have resulted in an RTA designation during the substantive review.[5] Once a submission has been accepted, FDA may ask for any information during the substantive review that may have been unintentionally overlooked during the acceptance review.

*FDA Review Clock*

As explained in the commitment letter for MDUFA III referenced in Title II of FDASIA, Public Law 112-114, "FDA days begin on the date of receipt of the submission or of the amendment to the submission that enables the submission to be accepted (510(k)) or filed (PMA)."[6] Thus, the FDA review clock does not start when a submission is placed on eCopy or User Fee hold or designated RTA.

---

[4] As outlined in the commitment letter for MDUFA III [158 CONG. REC. S8277-S8281 (daily ed. Corrected December 20, 2012) (Letters from the Secretary of Health and Human Services Re: Medical Device User Fee Program), also available at https://www.fda.gov/downloads/MedicalDevices/NewsEvents/WorkshopsConferences/UCM295454.pdf], the review clock will not start until the 510(k) submission is accepted for review.

[5] In the case of a government closure during the 15-day review period, the review period may be extended by a comparable number of business days that the FDA buildings are closed. If the submitter receives an automated notice that the acceptance review was not completed because the screening period has exceeded 15 days, FDA may send a correction notice to the submitter.

[6] See 158 CONG. REC. S8277-S8281 (daily ed. Corrected December 20, 2012) (Letters from the Secretary of Health and Human Services Re: Medical Device User Fee Program), also available at https://www.fda.gov/downloads/MedicalDevices/NewsEvents/WorkshopsConferences/UCM295454.pdf

510(k) submissions and additional information submitted in response to a RTA designation are received by the respective Center's Document Control Center (DCC). The FDA review clock start date is the DCC receipt date of the most recent submission or additional information that resulted in an acceptance designation for the 510(k), provided the submission user fee has been paid and a validated eCopy has been provided. For example, if the submission is accepted for substantive review on the first acceptance review, the FDA review clock start date is the DCC receipt date of the submission. However, if the submission is designated RTA, the FDA review clock start date is not yet known. In such cases, the clock start date will be the DCC receipt date of the submission including the additional information that results in an acceptance designation (even if FDA later requests information that should have been requested during acceptance review). In the event the acceptance review was not completed within 15 calendar days, the submission will be considered to be under substantive review, and the FDA review clock start date will be the DCC receipt date of the most recently received information for the submission. Once the submission is under substantive review the calendar days used to conduct the acceptance review (i.e., up to 15 days) are included within the 60 calendar days to reach the Substantive Interaction goal as described in the aforementioned commitment letter for MDUFA III.

*Notification of Acceptance Review Result*

The submitter should receive an electronic notification of the acceptance review result within 15 calendar days of DCC receipt (i.e., that the submission has been accepted for substantive review, that the submission is not accepted for review (RTA), or that the submission is now under substantive review because the acceptance review was not completed). This notification will also serve to identify the FDA lead reviewer[7] assigned to the submission. The notification of either the acceptance or RTA designation will be made only with supervisory concurrence of the reviewer's acceptance review determination. The notification of acceptance or RTA designation may occur on any day prior to the 15th calendar day of DCC receipt. However, in the event the acceptance review was not conducted, a notification that an RTA review was not conducted will be sent on the 16th day. The notification will be sent only to the designated contact person identified in the submission. In the case of RTA designation, the notification should be accompanied by the completed checklist indicating the missing elements that resulted in the RTA designation. The completed checklists are considered part of the submission's administrative file and will not be posted publicly. Therefore, it is imperative that the submission identify complete contact information, including the email address to which the notification should be sent.[8]

# VI. Refuse to Accept Principles

In order to use this guidance appropriately, FDA staff should review the following basic principles regarding FDA's review policies and procedures.

[7] In the case of 510(k)s submitted to CBER, whenever the term lead reviewer is used in this guidance, the equivalent CBER contact person is the regulatory project manager (RPM).

[8] CBER will accommodate the use of faxes; submitters may also wish to provide a fax number.

**Acceptance should not be based on a substantive review of the information provided in the 510(k) notification.**

It is important to make the distinction between the acceptance review and the substantive review. The acceptance review is conducted to assess whether the submission contains all of the appropriate elements, as identified in the applicable checklist, in order to begin a substantive review. In assessing whether a 510(k) notification should be accepted, submitted information is not evaluated for adequacy to support a finding of substantial equivalence. The checklist is a tool to ensure that the submission contains the necessary information in order to conduct a substantive review (i.e., FDA should not refuse to accept a submission if information is present but inadequate to support a finding of substantial equivalence). The evaluation of the quality of the content and the substantial equivalence decision making process occur within the substantive review once the file has been accepted.

**FDA staff should determine whether the submitter provided a justification for any alternative approach**

The submitter may provide a rationale for why any criteria in the checklist are not applicable to the device. Likewise, the submitter may provide a rationale for any deviation from a device- specific or cross-cutting guidance document or FDA-recognized standard. It is FDA's expectation that each item in the checklist will be addressed either by including the requested information or providing a rationale for why is it not applicable or why there is a deviation. FDA will not consider a given criterion in the checklist to be "Present" if the submission fails to include either the information requested or a rationale for omission or deviation. If a justification to omit certain information or for taking an alternative approach is provided, FDA will consider the adequacy of that justification or alternative approach during substantive review of the submission. See Acceptance Review section below for examples and further explanation.

**Device-specific and cross-cutting guidance documents, applicable recognized standards, and applicable regulations will be considered when making an RTA determination.**

Before submitting a 510(k), the submitter should consider the currently available guidance documents and standards, as well as applicable regulations for the proposed device in the preparation of the submission. FDA staff and industry are encouraged to refer to the product classification database (https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfPCD/classification.cfm) to assist in identifying any applicable recognized consensus standards and product-specific guidance document(s).

Specifically, the checklist includes questions regarding whether the submission has addressed recommendations regarding the device description, labeling, and performance testing as outlined in a device-specific guidance, special controls or another specific regulation, or a special controls guideline. Note that "addressed" means that the submission includes information pertinent to those recommendations or requirements; assessment of the adequacy of that information in meeting those recommendations or requirements should be assessed during review.

If there is a device-specific guidance, other than a special controls guidance document, the submission includes information to establish that the submitter has addressed the recommendations or otherwise provided an alternative approach intended to address the applicable statutory and/or regulatory criteria.

If there are special controls in a device-specific guideline, guidance document, or regulation applicable to the device, the submission includes information addressing the particular mitigation measures set forth in the special controls guideline, guidance document, or regulation, or uses alternative mitigation measures and provides a rationale to demonstrate that those alternative measures identified by the submitter will provide at least an equivalent assurance of safety and effectiveness.

# VII. The Checklist – Preliminary Questions

Within 15 calendar days of receipt of the 510(k), FDA staff should answer the preliminary questions below, which are included on the first page of the Acceptance Checklists. The preliminary questions are intended to be answered by the lead reviewer as an initial screening of the submission. FDA does not intend for the applicant to have addressed these items in their submission. Depending upon the answers to these preliminary questions, the remainder of the acceptance review may or may not be necessary.

If the responses to the preliminary questions and subsequent consultation with the Center personnel identified below indicate that the 510(k) acceptance review should not continue[9] the 510(k) reviewer or RPM should promptly:

- inform the 510(k) review team (including consulting reviewers), and
- notify the submitter using proper administrative procedures.

The preliminary questions are:

1. **Is the product a device (per section 201(h) of the FD&C Act) or a combination product (per 21 CFR 3.2(e)) with a device constituent part subject to review in a 510(k)?**

   If the product does not appear to meet the definition of a device under section 201(h) of the FD&C Act, or does not appear to be a combination product with a device

[9] FDA will not process a 510(k) unless it meets the following requirements: i) the submission must be sent with the user fee required by section 738 of the FD&C Act, and ii) the firm must submit the correct number of copies per 21 CFR 807.90(c). FDA has issued guidance to implement section 1136 of FDASIA, which added Section 745A(b) of the FDA&C Act ("eCopy Program for Medical Device Submissions," available at https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM313794.pdf). . Since any 510(k) not meeting these two requirements will not be processed by the CDRH Document Mail Center or the CBER RPM, they are not included in the checklist.

constituent part, then the 510(k) lead reviewer should consult with the CDRH Jurisdictional Officer or the CBER Product Jurisdiction Liaison to determine the appropriate action, and inform division management. If FDA staff determines that the product is not a device and is not a combination product with a device constituent part, the 510(k) review team should stop the review and notify the submitter..

2. **Is the submission with the appropriate Center?**

   If the submission is for a single-entity device and appears to be subject to review in a Center different from the one to which it was submitted, or if it is for a combination product with a device constituent part and it appears that a Center different from the one to which it was submitted has the lead, the 510(k) lead reviewer should consult with the CDRH Jurisdictional Officer or the CBER Product Jurisdiction Liaison to determine the appropriate action and inform division management. If the 510(k) is submitted to CDRH and CDRH staff determines that the submission is not subject to CDRH review, or the 510(k) is submitted to CBER and CBER staff determines that the submission is not subject to CBER review, the 510(k) review team should stop the review and notify the submitter.

3. **If a Request for Designation (RFD) was submitted for the device or combination product with a device constituent part and assigned to your center, identify the RFD # and confirm the following:**
   - **Is the device or combination product the same (e.g., design, formulation) as that presented in the RFD submission?**
   - **Are the indications for use for the device or combination product identified in the 510(k) the same as those identified in the RFD submission?**

   An RFD determination is specific to the device or combination product and indications for use for the device or combination product described in the RFD submission. If the device or combination product has been modified or the indications for use have been modified since the RFD, the RFD determination may no longer be applicable and jurisdiction may need to be reevaluated by the Office of Combination Products (OCP). The 510(k) lead reviewer should consult with the CDRH Jurisdictional Officer or the CBER Product Jurisdiction Liaison to determine the appropriate action and inform division management.

4. **Is the submission for a combination product that contains as a constituent part an approved drug that is under exclusive marketing rights? (503(g)(5))**

   If the submission is for a combination product and contains as a constituent part an approved drug that is under exclusive marketing rights, the lead reviewer should contact the CDRH Jurisdictional Officer or CBER Office of Jurisdiction Liaison to determine the appropriate action and inform division management.

5. **Is this device type eligible for a 510(k) submission?**

   FDA staff should determine whether the 510(k) submission is for a device type for which 510(k) is known to be an inappropriate regulatory approach, such as when the device type is Class III type and a PMA is required, or the device type is Class I or II and 510(k)-exempt. If a 510(k) is not appropriate, FDA staff should make this determination during the acceptance review and notify the submitter of the determination. This preliminary question is not intended to identify submissions for which a substantive review is required in order to determine if 510(k) is an inappropriate approach (e.g., device has a new intended use or device has different technological characteristics that raise different questions of safety and effectiveness).

6. **Is there a pending PMA for the same device with the same indications for use?**

   If the submitter has a PMA for the same device with the same indications for use pending, the review team should stop the review. The 510(k) review team should consult division management and other Center resources to determine which premarket review pathway applies to the device and the appropriate processes for addressing the situation. FDA staff should also consult division management and other Center resources if a 510(k) and PMA have been submitted for the same device type by different applicants.

7. **If clinical studies have been submitted, is the submitter the subject of the Application Integrity Policy (AIP)?**[10]

   The lead reviewer should refer to the AIP list (http://www.fda.gov/ICECI/EnforcementActions/ApplicationIntegrityPolicy/ucm134453.htm). If the applicant is on the list, the reviewer should consult the CDRH Office of Compliance/Division of Bioresearch Monitoring (OC/DBM) or CBER Office of Compliance and Biologics Quality/Division of Inspections and Surveillance/ Bioresearch Monitoring Branch (OCBQ/DIS/BMB) to determine the appropriate action.

# VIII. The Checklists – Acceptance Review

*Organizational Elements*
Although missing one or more of the items in the table of Organizational Elements in the Acceptance Checklists, such as a Table of Contents or page numbers, generally will not lead to an RTA decision, we strongly encourage submitters to incorporate these elements in their submissions to streamline FDA review and decision-making. If, however, the submission is

[10] When data in a pending submission have been called into question by certain wrongful acts (fraud, untrue statements of material facts, bribery, or illegal gratuities), FDA intends to defer substantive scientific review of such data until completion of a validity assessment and questions regarding reliability of the data are resolved. (*See* FDA Guide 7150.09 Compliance Policy Guide, Chapter 50 – General Policy – Subject: Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities, 56 FR 46191.)

so disorganized that FDA cannot locate the information needed to assess substantial equivalence, or if the submission is so poorly written (e.g., in broken English) that the information submitted to support substantial equivalence cannot be understood, the submission should receive an RTA decision.

*Elements of a Complete Submission (RTA Items)*
The objective criteria in these checklists outline those elements that are explicitly required by regulation or that are essential to FDA's substantive review of the submission and determination of substantial equivalence under section 513(i) of the FD&C Act. For example, proposed labels, labeling, and instructions are required by 21 CFR 807.87(e)), while a description of the materials, design, and other features of the device is essential to determining whether its technological characteristics are the same as those of the predicate and whether any differences raise different questions of safety and effectiveness under section 513(i) of the FD&C Act.

We have also identified several categories and subcategories of data and information that, when applicable, are critical to supporting a statement indicating the device is similar to and/or different from other products of comparable type under 21 CFR 807.87(f) and the substantial equivalence determination. For example, if the new device has direct or indirect patient-contacting components, a biocompatibility assessment will be essential to evaluating whether the new device is as safe as the predicate with respect to the risk of toxicity it poses to the patient. While testing and data would usually be necessary for such an assessment, this is not always the case (for example if the device under review and the predicate are identical in all relevant respects), and acceptance should be based only on the presence of an item or an explanation why the item is not applicable, not the adequacy of such explanation. If the device has no direct or indirect patient-contacting components, no biocompatibility assessment would be necessary and the biocompatibility items on the checklist would be not applicable.

Because the applicability of these categories is also critical to the substantial equivalence determination, in order to be accepted, all submissions should include a statement indicating whether these categories apply, as outlined in the Acceptance Checklist (e.g., materials, presence of software, whether the device is intended to be used sterile). When performance data are provided, the submission of full test reports describing how the testing was conducted is crucial to FDA's assessment of whether the data support a finding of substantial equivalence.

Where a device-specific guidance document exists for the subject device, the submitter should follow the recommendations included in that document, or the submitter should provide a rationale for addressing the scientific issues discussed in the guidance document using an alternative approach intended to address the applicable statutory and/or regulatory criteria. In the absence of the recommended information and without a rationale for an alternative approach, the submission should be considered incomplete and not accepted. If special controls have been identified or a special controls guideline exists for the device, those controls should be addressed in order for the submission to be accepted, or alternative mitigation measures providing a rationale to demonstrate that those alternative measures will provide at least an equivalent assurance of safety and effectiveness should be identified.

*Applying the Checklist of RTA Items*
Using the Acceptance Checklist appropriate to the submission type (traditional, abbreviated, or special), within 15 calendar days of receipt of the 510(k), FDA staff should answer each question for the elements identified as RTA items. For those items that have an option of "yes," "no," or "not applicable (N/A)" as an answer, the item should receive an answer of "yes" or "N/A" for the 510(k) submission to be accepted for substantive review.

For the first question in each section related to the need for certain performance data (such as biocompatibility, sterilization, software, etc.), FDA staff should indicate whether the submission has addressed one of the options for the 510(k) submission to be accepted for substantive review. For example, the submission should state explicitly that either there are or are not direct or indirect (e.g., through fluid infusion) patient-contacting components in order for the submission to be considered complete and accepted for substantive review.

*Elements marked "Not applicable"*
In developing the checklists, the Agency has considered the general categories and respective subcategories of information that are necessary to conduct a substantive review for the wide range of medical devices that are appropriate for review under 510(k) premarket notification. All such criteria may not be pertinent to a particular device. FDA staff should select "N/A" for those elements that do not apply to the subject device. For example, the requirements for financial certification and disclosure statements (21 CFR 807.87(i)) only apply to submissions with clinical data. If the submission contains no clinical data, FDA staff should select "N/A."

*Adequacy of information*
In order to make the checklist criteria objective, for each RTA item, FDA should consider only the presence or omission of the element or a rationale for the omission of the element or use of an alternative approach during acceptance review. It is likely that FDA staff will encounter scenarios where information is provided, but is incomplete or inadequate. In such instances, FDA staff should answer the question for the respective item as "Yes," but may communicate the inadequacy or request additional information in the course of the substantive review. For example, the submitter may have provided full test reports for all performance testing; however, during the acceptance review, the reviewer may note that the *results* of a particular test may not be sufficient to support a finding of substantial equivalence and additional justification would be needed. The performance testing criterion would be marked "Yes" in the checklist, and the full assessment of the results and communication to the submitter that additional justification is needed should occur during the substantive review.

*Elements marked "No"*
For any acceptance criterion designated as "No," FDA intends to provide an explanation to describe the missing element(s), if needed. This explanation is particularly important for a criterion in which it may not be immediately apparent to the submitter what necessary information, specifically, is not present. For example, the Device Description section includes an element that states "submission addresses device description recommendations outlined in the device- specific guidance document" and a notation of "No" alone may not be

sufficient to inform the submitter of what specific piece(s) of information is missing. FDA staff should include a list or statement of the additional information that is necessary to meet the acceptance criteria. This list or statement can be communicated in the "comment" section on the checklist beside each specific criterion.

*Prior Submissions Relevant to the Submission Under Review*

For certain submissions, the submitter may have made prior submissions for the same device for which FDA provided feedback related to the data or information needed to support substantial equivalence (e.g., a Pre-Submission, IDE, prior NSE determination, prior 510(k) that was deleted or withdrawn). When such prior feedback relevant to determining substantial equivalence of the subject device exists, the new submission should include information to address this prior feedback and the checklists include criteria related to this issue. To address the criterion regarding whether a prior submission (or no prior submission) exists, FDA recommends that submitters provide this information in Section F (prior related submissions section) of the CDRH Premarket Review Submission Cover Sheet form (Form 3514, http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM080872.pdf). Submitters should list prior submission numbers in Section F of this form or state that there were no prior submissions to address this criterion. Please be advised that leaving this section of the form blank will not be considered a statement that there were no prior submissions. This information may also be included in the Cover Letter (i.e., as a statement that there were no prior submissions for the device or a listing of the numbers(s) of the prior submission(s)). Where one or more prior submissions do exist, FDA suggests designating a separate section of the submission that identifies the prior submission(s) by number, includes a copy of the FDA feedback (e.g., letter, meeting minutes), and states how or where in the submission this prior feedback was addressed. Note that the adequacy of how the feedback was addressed should be assessed during the substantive review.

*Combination Product Administrative Items*

The 21st Century Cures Act, which amended section 503(g) of the FD&C Act, requires submitters seeking action on a combination product to identify the product as such [§ 503(g)(8)(C)(v)]. Additionally, per the amended section 503(g)(5), submissions for device-led, device-drug combination products must include the patent certification or statement as described in section 505(b)(2) and provide notice as described in section 505(b)(3) if the combination product contains as a constituent part an approved drug. 21 USC 503(g)(5)(A). Submitters of products that are not combination products, as defined in 21 CFR 3.2(e), should mark "N/A" to question 9 and omit this section pertaining to combination products.

*Submitters of Combination Products That Do Not Contain as a Constituent Part an Approved Drug*

If the combination products do not include as a constituent part an approved drug as defined in section 503(g)(5)(B), submitters of device-led, device-drug combination products should mark "N/A" for question 10.

*Submitters of Combination Products That Contain as a Constituent Part an Approved Drug*

Submitters of combination products containing as a constituent part an approved drug should address question 10 by including patent information. For each relevant patent, the applicant

should include certification to one of the following certifications:

i. That such patent information has not been filed (505(b)(2)(A)(i)).
ii. That such patent has expired (505(b)(2)(A)(ii)).
iii. The date on which the patent will expire (505(b)(2)(A)(iii)).
iv. That such patent is invalid or will not be infringed by the manufacture, use, or sale of the drug constituent part for which this submission is made (505(b)(2)(A)(iv)).

However, for a method of use patent which does not claim a use for which the applicant is seeking approval, the applicant should include a statement per section 505(b)(2)(B) that the method of use patent does not claim such a use.

Applicants including a certification under paragraph iv (505(b)(2)(A)(iv)) should also certify that they will provide notice to the owner of the patent(s) and the holder of the approved application that lists the patent(s) that is/are being challenged. The process for giving notice is provided in section 505(b)(3) of the FD&C Act. Applicants should submit to FDA documentation of the date of receipt of notice by holder of the approved application and patent(s) owner.

*Conversion of Special 510(k) to Traditional 510(k)*

FDA has developed separate checklists to address the differences in content for special and traditional 510(k) submissions. FDA staff will utilize the appropriate checklist based on the file type as designated by the submitter. In the event that the submitter has submitted a special 510(k), but FDA determines that the file should be converted to a traditional 510(k)[11] FDA will notify the contact person designated in the 510(k) submission of the conversion and the rationale for the conversion. If the file is converted from a special to a traditional within the 15 calendar day acceptance review period, the Traditional 510(k) Acceptance Checklist will be used to conduct the acceptance review and the review clock start date will be assigned as outlined in the 510(k) Refuse to Accept Policies and Procedures section above. Given the differences in content requirements for special and traditional 510(k)s, it is likely that the converted submission will result in an RTA designation using the Traditional Acceptance Checklist. FDA staff should provide the completed Acceptance Checklist for traditional submissions indicating which elements are missing. The submitter may respond by providing the identified information and the subsequent acceptance review will proceed with the traditional checklist. If the file is converted from a special to a traditional after the 15 calendar day acceptance review period, any missing information that would have resulted in RTA designation should be obtained during the substantive review.

[11] Please see "Special 510(k) Criteria," items 1-4 of the Acceptance Checklist for Special 510(k)s for potential reasons for conversion.