

# 30 Year FDA Regulatory History Of Alpha-Stim Technology 1981-2011

Alpha-Stim Model No. and 510(k) Or Other Mandated FDA Submission	Date Introduced to Market Or FDA Submission	Hz Options	Current In $\mu$ A	Timer Options
Alpha-Stim 2000 K831144	November, 1981	0.5, 1.0, 1.5, 2.0, 3.5, 8.0, 10, 20, 40, 80, 160, 320	25 - 500	6, 8, 12 seconds, 2, 5, 10 minutes, and continuous
Alpha-Stim 350 K831145 and K881753A	October, 1982	0.5, 3, 5, 8, 10, 20, 40, 80, 120	25 - 500	3, 5, 10, 15, 20 minutes, and continuous
Alpha-Stim CS TENS: K896948 and CES: 903014E	February, 1989	0.5, and 80	10 - 600	3, 10, 20, 60 minutes, and continuous
Alpha-Stim 100 (upgrade of Alpha-Stim CS) See FDA letter of July 25, 1997	February, 1993	0.5, 1.5, and 100	10 - 600	10 seconds on alternating with 2 seconds off, 10, 20, 60 minutes, and continuous
Alpha-Stim SCS (upgrade of Alpha-Stim 100)	Fall of 1997	0.5	10 - 500	20 and 60 minutes
PMA	Submitted November 16, 1995	Still Pending		
515(i)	Submitted August 11, 1998			
515(i)	Submitted August 7, 2009			
515(i) and PMA	2011-2012			

**Note: All the Alpha-Stim devices are battery powered and  
the waveform for each of the above is exactly the same.**

## Chronology of Events

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### FDA's Regulation of Alpha-Stim CES and their dealings with Electromedical Products International, Inc. (EPI)

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**Background:** Alpha-Stim technology was first introduced to the market in 1981 and has been in continuous commercial distribution for 30 years. Over that time period EPI has provided FDA with five 510(k) applications, one mandatory Pre-Market Approval Application (PMA) submitted in 1995 (still pending), and two mandatory reclassification petitions, which are governed by Section 515(i). There have been no reports of any significant adverse side effects over the 30 year research and marketing history of the technology. The Alpha-Stim CS, a third generation product was cleared for interstate marketing and export by FDA under Section 510(k) as a TENS for pain control without incident. Another 510(k) was then submitted for the same product as a cranial electrotherapy stimulator (CES) to expand the claims to include anxiety, depression, and insomnia. In 1993 and 1997 the technology was upgraded to the Alpha-Stim 100 and Alpha-Stim SCS respectively.

On February 23, 1990, a standard 510(k) form letter was issued to EPI, permitting interstate marketing of Alpha-Stim CS for pain control (TENS).

On May 12, 1992, after 22 months of review, an FDA 510(k) letter was issued stating that the Alpha-Stim CS is substantially equivalent to pre-amendment CES devices, but still can not be marketed. FDA also stated that they would stop other firms from marketing CES, which FDA failed to do until 3½ years later, in November of 1995. No other manufacturer's 510(k) letters for CES ever stated that they were prohibited from marketing. This letter was unprecedented as the FDA's regulations and the Food, Drug and Cosmetic Act call for marketing clearance when substantial equivalency is found through the 510(k) process.

On May 19, 1992, EPI's regulatory consultant, James Stout, responded to the FDA May 12, 1992, letter stating that the Alpha-Stim CS will be marketed as allowed by law due to the FDA finding of substantial equivalence, because a search of all sources, including the *Federal Register*, Title 21 of the Code of Federal Regulations, and the Commerce Clearing House Medical Devices Reporter failed to indicate any notice of rulemaking, public hearings, or other legally sufficient procedure to support FDA's arbitrary and capricious determination. No response was received to this marketing notification.

On August 31, 1993 the FDA published a proposed rule in the *Federal Register* to reclassify CES devices. The proposed rule states on page 45866, section B. *Dates New Requirements Apply*, that "...within 90 days after the date of promulgation of any final rule requiring premarket approval for the device, commercial distribution of the device must cease."

On September 13, 1993 Dr. Ray B. Smith, a CES researcher, sent a seven page point-by-point response to the FDA's statements in the *Federal Register*. Dr. Sidney Klawansky, of the Department of Health Policy and Management, Harvard School of Public Health responded to the *Federal Register* on September 14, 1993. Dr. Klawansky et al. completed a Meta-analysis of CES at Harvard which was published in 1995. Harvard scientists who re-examined the literature concluded that CES is safe and effective for treating anxiety. Dr. Harold Stecker, a CES manufacturer, responded to the *Federal Register* on October 27, 1993. FDA refused to meet with Dr. Stecker. On February 4, 1994, FDA responded to a reclassification petition submitted by Dale Densley, another CES manufacturer, stating that FDA refuses to convene an advisory panel of experts.

On March 16, 1994 FDA sent a warning letter to EPI concerning marketing of Alpha-Stim 100 as a CES device and threatening "**action including, but not limited to, seizure, injunction, and/or civil penalties.**" A response was sent to FDA on April 1, 1994 by then EPI attorney Jonathan Emord. FDA responded on April 13, 1994 to Mr. Emord's response stating his response is satisfactory. At this point, EPI stopped marketing its technology for CES applications out of fear of FDA.

On March 24, 1995, Dr. Harold Stecker of Health Directions, a competing CES manufacturer based in Morrisville, Pennsylvania, received a letter from FDA informing them that their CES device "has been cleared" [for marketing] "for the intended use of relieving anxiety, depression, and insomnia". The letter complained about uses for other applications.

Tracey Kirsch, President of EPI, met with Blix Winston, Staff Officer, FDA Division of Small Manufacturers Assistance at a DSMA seminar in Houston. She then sent a letter on March 31, 1995 to FDA confirming a telephone conversation in which Mr. Winston stated that after consulting with Dr. Robert Munsner of FDA, EPI may market for CES without any indications.

On August 7, 1995, the FDA wrongfully listed EPI as "out-of-business" due to EPI's move from California to Texas. For several years thereafter, Alpha-Stim shipments were held at point of entry for weeks by the FDA due to continual confusion over whether or not EPI was "out of business".

On August 24, 1995, FDA published their Final Rule calling for a PMA for CES. On page 43969 under Analysis of Impacts, it states that "...and because firms that distributed this device prior to May 28, 1976, or whose device has been found to be substantially equivalent to the CES device in commercial distribution before May 28, 1976, will be permitted to continue marketing cranial electrotherapy stimulators during FDA's review of the PMA or notice of completion of a PDP, FDA certifies that the final rule will not have a significant economic impact on a substantial number of small entities." [Emphasis added]. EPI's Alpha-Stim product has been found to be substantially equivalent to pre-amendment CES devices.

On October 31, 1995, two FDA inspectors—Kim Grimes (badge 948) and Connie Rabel (badge 1751)—and one dual FDA and Texas Department of Health Inspector—Dennis Rudder (team leader, badge SW0158—conducted an on-site investigation of EPI. The inspection was extremely confrontational and the inspectors abruptly left on two occasions when EPI chose to exercise its rights to have legal counsel present and elected to record the inspection. Mr. Rudder stated that he was sorry that EPI could not run its own business, referring to the fact that EPI's attorney, Mr. Emord, was teleconferencing through the inspection. The inspectors stated they were doing a routine inspection and were investigating a complaint. When asked about the nature of the complaint, the inspectors refused to answer until the end of the inspection when they admitted the complaint was about the marketing of CES, and not an injury. The inspectors informed EPI that it was listed in its records as "out of business". The team of investigators subsequently promised to clear up the matter of EPI being listed as "out of business". The inspectors told EPI that Mr. Winston's assurances to EPI that it could market for CES without any indications had no meaning and that EPI was not permitted to market CES. The company files they expressed an interest in, and most of their questions were regarding, CES. They asked a number of questions about recall procedures, traceability, and current inventory. On several occasions they refused to allow Mr. Emord to speak by shouting loudly over him.

On the third day of the inspection, after leaving abruptly because a newspaper reporter, Mr. Charles McClure, was present, after being given "permission" by their supervisors to have the press present in a public business with a public taxpayer-supported agency, Mr. Rudder physically assaulted Mr. McClure by pushing him in the chest and forcing him back into a wall. Mr. McClure attempt at taking photographs were apparently the reason for the assault. A picture of Mr. Rudder made the headlines of the local newspaper and also made some national

press. Previous to this event, Mr. McClure, and EPI officials had never met. He had been assigned the story by the *Mineral Wells Daily Index's* General Manager, Gary Atkisson. An investigation later ensued concerning Mr. Rudder's actions, and he was handed a minor reprimand by the Texas Department of Health. The FDA has never commented on the matter, despite the fact Mr. Rudder was acting on its behalf.

EPI completed the required PMA application which was submitted to FDA on November 16, 1995 for the Alpha-Stim 100 for use in anxiety. On December 22, 1995, FDA sent EPI a letter stating that FDA refused to file the PMA for evaluation. Dr. and Mrs. Kirsch, and EPI's Science Consultant, Dr. Harry Preuss of Georgetown University, met with FDA, at which time it was discovered that FDA's entire review was conducted by Janine Morris, a mechanical engineer at the Office of Device Evaluation. Mechanical engineers have no training and background in science and psychiatry, and are not qualified experts in the field of CES. Ms. Morris quizzed Dr. Kirsch as to why the PMA did not include a waveform depiction. Dr. Kirsch pointed out the waveform depiction to Ms. Morris that was clearly represented in the PMA. Those in attendance were struck by Ms. Morris's seeming unfamiliarity with the PMA, leading them to question whether she had actually reviewed the PMA prior to the meeting.

On March 20, 1996, EPI sent a response to FDA refuting the conclusions reached in the December 22, 1995 letter. However, FDA phoned Larry Pilot, EPI's legal counsel, to inform him that it continued to refuse to evaluate the PMA. This determination was based on FDA's conclusion that there was no scientific evidence supporting CES.

On December 29, 1995, after a shipment of Alpha-Stim 100's had been held by the FDA, EPI was again informed it was listed in the FDA records as "out of business", despite the numerous assurances EPI had received from FDA that this issue would be resolved.

#### **Memorandum of FDA meeting February 14, 1996**

Following FDA's refusal to file the PMA, EPI requested a second meeting with FDA. The meeting was held on February 14, 1996 at the FDA's Office of Devices Evaluation. The following individuals were in attendance:

Daniel L. Kirsch, Chairman, EPI  
Tracey B. Kirsch, President, EPI  
Jonathan Emord, Counsel, EPI  
Todd Harrison, Counsel, EPI  
Harry Preuss, MD, Scientific Consultant for EPI, from Georgetown University  
Thomas Callahan, Ph.D., Acting Division Director, ODE  
Kathy Lundsten, Dept. of Health Services  
Janine Morris, ODE

Ms. Lundsten advised EPI that the meeting was an "informal" one, and therefore it would not affect EPI's options. Mr. Emord advised the group that EPI was aware that it had 10 days following the meeting to determine its options regarding the PMA. Dr. Preuss pointed out to FDA that he had reviewed the PMA and found that there was very little risk involved with the Alpha-Stim for CES. He also pointed out that physicians and others licensed practitioners must prescribe this form of therapy, and that should ensure proper use.

Ms. Lundsten acknowledged that she had not reviewed the PMA but indicated that there was a "regulatory language problem" between EPI and FDA. She stated that the problem was with EPI's definition of "valid science". She pointed out that the CES studies did not have enough detail and that the underlying data was not available to allow FDA to draw conclusions. Dr. Preuss disagreed and reported that he has seen enough data to draw conclusions, especially in the Gibson (1983) doctoral dissertation, and in most of the other studies the

methods sections contained ample detail to draw conclusions. There was no answer to this from FDA. Ms. Lundsten reported that if EPI provided additional information to FDA then the additional data would be seen as an amendment to the PMA changing the submission date to the date the amendment was received, and that would cause EPI to receive a major deficiency letter for filing a late submission. So any effort to clarify the submission for FDA was met with hostility. This was odd in light of the fact, as mentioned above; Ms. Lundsten admitted that she had not even reviewed the PMA.

EPI pointed out that its technology had been on the market for over 15 years and there were no substantive reports of adverse effects or complaints regarding the Alpha-Stim and CES. Additionally, EPI inquired about how much experience FDA has had with PMA call-ups on technology that has been in commercial distribution for 15 years. Ms. Lundsten reported that they do have experience in this area. Dr. Preuss advised FDA that he was most impressed with the promising positive results reported in the two post marketing surveys conducted by EPI. No response was given again to the presence of these documents.

FDA continued to stand on the fact that they believed there was not enough detail in the studies to draw conclusions. EPI advised them that it did not sponsor any of the studies and therefore, could not implement the type of protocols they were requesting. However, EPI probably does have the ability to contact the researchers and obtain the raw data they are looking for. FDA advised EPI that if it did that it would be considered an amendment to the PMA and therefore would be considered a new filing and we would have to cease marketing because the new filing would not have met the 90 day deadline for the PMA published in the Federal Register. Additionally, they reported that EPI could have put a statement in the PMA allowing them to talk with the researchers to obtain this information, but if EPI added this statement now it would be amending the PMA and the same scenario as above would occur.

Ms. Morris pointed out that there were inconsistencies throughout the application. For instance, EPI reported that Alpha-Stim can be used as both a method of treating anxiety alone or as an adjunct to other therapies. She reported that maybe we could stand on studies as an adjunct therapy for that indication, but there were inconsistencies in the research. Additionally, she noted that EPI needed a patient population across all areas of the target anxiety disorder. She noted that pain was mentioned in the application as well. Dr. Preuss believed that it was clear that the device was to be used for anxiety.

Dr. Callahan advised EPI that it needed to define what it wants and provide protocols and background data.

Ms. Morris advised EPI that it has the option to bring in all data FDA is requesting. EPI could focus on a small study and “tease out” the treatment effect. She noted that how CES was blinded in the studies becomes important. Dr. Kirsch showed FDA the double blinding boxes EPI uses and explained how they worked. FDA responded in generalities about how blinding is important. No clear response to the blinding method was received.

Dr. Callahan left during the middle of the meeting, and after his exit the remaining FDA employee’s behavior became unacceptable, as they made light of the seriousness of the application by laughing at EPI on many occasions. In one instance, Ms. Morris gave EPI an outline of what “she was thinking” when she conducted the administrative review of the application for fileability. Upon review of her outline, it was noted that none of the information on her outline appeared on any guidance document issued by FDA. She advised EPI that the issues on her outline related to valid scientific evidence. Dr. Preuss disagreed. Ms. Lundsten advised us that the problem was in the interpretation of the regulations. She then said that industry does not understand how to interpret them and for that matter neither do they. At that point both FDA ladies laughed at this premise. EPI then advised them that they were putting EPI and an entire industry out of business by their actions and this was in fact serious and important.

Ms. Morris advised EPI that she completed the administrative review and drafted the refuse to file letter that was sent out over Dr. Callahan's name. She advised EPI that it can use studies for supportive information and that it needs to lead FDA through the studies and they should support the indication and labeling. EPI advised FDA that Alpha-Stim's indication was identical to the ones used and approved by FDA for anxiolytic drugs such as Valium and Miltown.

Ms. Morris stated that EPI needs to explain why the measures used in the research are standard acceptable measures. She was unfamiliar with all methods of diagnosing and monitoring anxiety. Further, she acknowledged that she has no expertise in the area of anxiety and this was obvious when she stated that there are 12 types of anxiety. Dr. Kirsch then explained that there are only two types of anxiety, state anxiety and trait anxiety, regardless of the patient population. After all which mood altering psychiatric drugs are approved for specific populations? Ms. Morris stated that FDA could not check these things out unless EPI specified for them to do so. Dr. Preuss mentioned that it was easy to establish these were acceptable criteria by calling another Agency employee with background expertise in this area. He said he confirmed the validity of the subjective tests used in the research by simply asking a qualified psychiatrist at Georgetown University. Ms. Morris reported that the burden of proof was on EPI to explain these issues. Dr. Kirsch stated that he expected FDA would have assigned someone qualified to review this area of medical science, that there was no way we could have presumed the PMA would have been reviewed solely by a mechanical engineer.

Tracey B. Kirsch then advised FDA of a training she recently attended in Houston sponsored by the Small Manufacturers Assistance Division of FDA on the topic of PMA and 510(k) preparation. Mrs. Kirsch pointed out that none of the issues raised by FDA in the refusal to file letter were covered in the training. Most importantly, Mrs. Kirsch pointed out that one of the speakers, Dr. George Koustenis, Acting Director of FDA's Biostatistics Office, explained at the training that all a PMA submission needs is one study with striking results. He advised the 350 industry representatives attending the training session that if you are denied and have one of these studies then FDA's ruling should be appealed. Ms. Morris responded that it could be done with one study, but EPI must convince FDA that it had a study that was "striking". Additionally, she reported that if there was only one study then FDA would be required to conduct an "in-depth review." EPI advised her that it is confident that several of its studies could stand alone, but it would require a qualified, non-biased reviewer to see the obvious trends and consistencies in the research.

Dr. Kirsch showed Ms. Morris the section of the PMA which contained three distinct graphical depiction's of the waveform, one of the items FDA said was lacking, and her response was simply to ask if they contained a key. Dr. Kirsch then pointed out that the first line under the graphics was the key. No comment or apology was offered for her missing this obvious inclusion during the review. Ms. Morris then advised EPI that she had not heard anything in the meeting to cause her to change her mind.

Ms. Lundsten advised EPI it had three options at that point:

1. Informal conference - which, EPI was told, is not informal at all.
2. Consider this meeting an informal conference and respond to the deficiencies. But, this would be considered an amendment and EPI would have to stop marketing.
3. Withdraw the application and resubmit at a later date.

FDA requested EPI provide its decision within the next ten working days.

It was clear throughout this meeting that Ms. Morris had been handling the CES industry through the entire rulemaking process with little knowledge in the field. When asked about EPI's right to a panel of experts to

review the PMA, FDA responded that if such a panel were convened, it would not have anyone that has any experience in our field anyway, although they would be experts in other fields. This is contrary to the FDA rules that specify the experts must know the technology and if FDA could not find any such experts it could ask the submitting firm for advice on impartial experts. At the conclusion of the meeting, FDA stated that the regulations were very strict and that they were only following them and had no authority to make special considerations.

On Tuesday, February 25, 1996, Charles McClure, the reporter who was physically assaulted the previous November, published an investigative article in the *Mineral Wells Daily Index* about EPI's inability to convince the FDA to follow its congressional mandate. He contacted many sources, including Congressman Charles Stenholm (D-TX), who said FDA was unquestionably superseding its congressional boundaries and openly sympathized with EPI's problems with FDA, saying, "they have a very traumatic story to tell."

On April 16, 1996, the Mayor of Mineral Wells, Myron M. Crawford, with the approval of City Council, issued a letter criticizing the FDA for these actions. Having made no real progress, EPI reluctantly began planning to move its operations to Europe.

On May 17, 1996, the Mineral Wells Area Chamber of Commerce Board of Directors unanimously passed a resolution calling on the FDA to conduct a fair and scientific review of the Alpha-Stim 100's therapeutic abilities to help alleviate anxiety, as required by law.

On June 5, 1996, the FDA contacted EPI's attorney, Larry Pilot, suggesting that the company would not be allowed to record a planned meeting with the public taxpayer supported agency "because it may chill the exchange of information."

In June of 1996, another shipment was held at the port of entry by the FDA because EPI was still listed as "out of business". After several days of negotiation with the FDA, Mrs. Kirsch was promised FDA had updated its records and EPI would no longer have to worry about being listed as "out of business".

Tuesday, July 2, Congressman Charles Stenholm (D-TX) visited EPI's facility, greeted by a host of local dignitaries and the press. He was shown a multi-media presentation about Alpha-Stim CES, and said "FDA owes this company a straight answer."

On August 2, 1996, EPI officials met with FDA officials in Washington, D.C. EPI was hopeful FDA would finally agree to follow its congressional mandate, as outlined in the Food, Drug, and Cosmetic Act, and convene a true expert panel to judge the effectiveness of the Alpha-Stim 100 when used for cranial electrotherapy stimulation (CES). EPI had submitted the premarket approval application to the FDA for CES at FDA's request. During the meeting, Dr. Susan Alpert, the FDA's Director of the Office of Device Evaluation, told EPI "there is no safety issue" concerning Alpha-Stim CES. Alpert questioned if there was enough data to prove CES effective. EPI's attorney was curious why, if there was no safety issue, was the Alpha-Stim listed as a Class III device? Alpert said the FDA would contact EPI in 2 weeks with their decision.

On October 7, 1996, more than 2 months after the August 2 meeting, EPI received notification the FDA would file the PMA. The letter from Dr. Susan Alpert, Director of Device Evaluation/Center for Devices and Radiological Health was dated October 1, 1996.

On August 27, 1996, another EPI shipment was held by the FDA at the point of entry. It took EPI two weeks of negotiation with the FDA to release its product. The FDA finally released the shipment of Alpha-Stim 100's for distribution on September 10, 1996. EPI's backlog of orders was growing so large, its distributors were

becoming impatient about the company's ability to fill orders and some left the business. Austin Templer of the FDA's Dallas District Office explained to EPI that the shipment was held up because the computer had listed the product with "PMA on hold." The Alpha-Stim 100 had long been registered with the FDA, which issued a 510(k) as a TENS device for pain control. The PMA deals only with CES registration and has nothing to do with the device's existing 510(k) as a TENS device, which gives EPI the right to market its product for pain control, and therefore the FDA was overstepping its authority in detaining EPI's TENS devices.

On October 9, 1996, EPI was notified by Janine Morris, the same mechanical engineer that had initially rejected the company's PMA, that FDA had destroyed some of the required six copies of the document. Each copy weighed over 18 pounds and cost thousands of dollars to copy. Ms. Morris requested that EPI overnight the documents to FDA. EPI informed her that it could not meet this request on such short notice as making copies was time consuming and expensive. When EPI met with Ms. Morris in February of 1996, it had specifically requested that she hold on to the PMA's.

On October 10, 1996, Ms. Morris informed EPI that the initial review of the PMA had been completed, despite the missing documents, with a list of questions the FDA classified as major deficiencies, which EPI considered minor problems. EPI was told that if it answered FDA's questions, then it would have to stop marketing because FDA would reset the clock on EPI's PMA submission to when the questions were answered, thus meaning EPI would have [theoretically] missed the deadline it worked day and night to meet. Ms. Morris suggested the company quit marketing and pursue full-time research.

On October 19, 1996, the FDA held another EPI shipment at customs.

On October 21, 1996, EPI was informed that an expert panel would convene in Washington, D.C., on December 2, 1996. It takes FDA an average of 33 months for most companies to reach the panel. On October 29, 1996, the FDA informed EPI that the expert panel would now meet December 3, 1996.

On November 12, 1996, Tracey B. Kirsch, EPI President, informed Congressman Charles Stenholm, (D-TX), that the FDA had sent the EPI application to the Division of Neuropharmacological Drug Products (DNPD) for review. The Alpha-Stim 100 is a medical device, not a drug. Dr. Bruce Burlington, Director of the Center for Devices and Radiological Health at FDA, had repeatedly said publicly that devices would not be evaluated as drugs. FDA had apparently made an exception for EPI. Mrs. Kirsch also informed Representative Stenholm that an electrical engineer for FDA provided an article on the relationship between anxiety and depression for the panel's consideration. EPI maintains that electrical engineers are not qualified to render medical decisions.

On November 13, 1996, EPI attorneys said they had been notified of only four members of the "expert panel". No members of the panel had any experience with CES, as required in the FDA guidelines. The PMA is 3 volumes comprised of 18 pounds, 6 ounces of paper, printed on both sides. The "expert panel" would not have a reasonable amount of time to study the PMA before the December 3<sup>rd</sup> meeting. It was at this point that EPI's attorneys reluctantly recommended that EPI file suit against the FDA in federal court.

On November 26, 1996, EPI filed suit against the FDA in federal district court. On November 27, 1996, the FDA postponed the expert panel slated for December 3<sup>rd</sup>. FDA said it did not know when the expert panel would be rescheduled.

On January 7, 1997, EPI's lawsuit was dismissed. The D.C. district court ruled the case should be heard by a federal appeals court. The judge made it clear the dismissal was procedural in nature and indicated there was merit to the suit. EPI planned to re-file the case in the appropriate federal court in an attempt to get the FDA to follow its own rules.

On January 28, 1997, FDA published an announcement in *The Federal Register* of its proposed rule, revoking their 1995 regulation requiring premarket approval applications (PMA) for CES devices. This allowed EPI the opportunity to reclassify CES from Class III status (significant risk) into Class I (general controls) or Class II (special controls). This was the basis for the EPI November, 1996 lawsuit against FDA. So in effect, FDA conceded to EPI's demands by this action. That FDA decision meant Americans could continue to use CES as a non-drug alternative for the treatment of anxiety, insomnia and depression. All comments received by FDA were in favor of the reclassification, including one by Charles H. Kyper, who served as the Assistant Director for Reclassification and Compliance in the FDA's Center for Devices and Radiological Health Office of Device Evaluation from 1990 to 1993. EPI also learned from this February 7, 1997 letter from Mr. Kyper that the FDA decision of May 12, 1992, in which FDA told EPI that its product was essentially equivalent to pre-amendment devices, but that it still could not market, was completely unprecedented, and that Mr. Kyper disagreed with this, and that FDA abandoned this position once Mr. Kyper "cited the statutory provisions and other considerations that negated such a position." However, FDA never informed EPI that it revoked this position, and FDA, as documented here, has continued to illegally harass EPI even though EPI has satisfied all FDA requirements. As Mr. Kyper pointed out in his letter, this has caused EPI great harm, and a tremendous financial burden.

On February 24, 1997, FDA inspector Irma Solis visited Dr. Marshall Voris of the Delos Mind/Body Institute of Dallas, Texas where she sought the research records and devices used by Dr. Voris in his studies of the effect of CES on state and trait anxiety in convicted child molesters. Dr. Voris is an independent researcher. Despite the fact the FDA says it has no authority over researchers, Voris, who was contracted by Dallas County Parole Dept. and the State of Texas for psychological services, was accused by Solis of conducting this research saying that CES devices may now be used for anxiety, but "not in that patient population" of impulse-control parolees. The study was not about parolees, but about state and trait anxiety. On March 18, 1997, FDA inspector Irma Solis again visited Dr. Marshall Voris of the Delos Mind/Body Institute concerning his CES research.

On March 18, 1997, FDA inspector Yehuala A. Gessesse completed a comprehensive three day inspection of the EPI manufacturing plant in China. Originally scheduled as a PMA inspection, EPI's attorneys were unable to stop this unnecessary inspection even after the FDA published the proposed PMA revocation in the *Federal Register*. The inspection went well with only two minor and easily correctable concerns on the part of the FDA. One was that the engineer did not initial a schematic drawing, and the other was that the three digital multi-meters in use were not calibrated by a certified lab, although the FDA inspector, an engineer, did test the equipment and found it to be functioning within specifications. This inspection represented the first time FDA had conducted itself in a fair and reasonable manner in its regulation of EPI in at least 7 years.

On May 5, 1997, FDA inspector Irma Solis issued a Form FDA 483 of Inspectional Observations to Dr. Voris. FDA determined that Dr. Voris had needed their approval to do the anxiety research he conducted. Dr. Voris responded on May 20, 1997 asking, among other things, for an explanation of the legal basis for FDA's conclusion that treating or researching a subgroup of patients diagnosed with anxiety represents a new indication. He offered an example along the FDA line of reasoning that would imply that a commercially available prosthetic heart valve could not be used in a pedophile who is diagnosed with mitral valve disease because that would change the intended use of the heart valve. Because the Form FDA 483 contains allegations that wrongly damage his reputation as a clinical researcher, Dr. Voris demanded a response and an immediate retraction. No reply was received from this demand.

FDA exonerated EPI in writing on June 28, 1997 in a Certificate to Foreign Government No. 69858 stating, in part, that the Alpha-Stim 100 microcurrent stimulator and cranial electrotherapy stimulator may be marketed in,

and legally exported from the United States, and as of the last inspection the EPI plant appeared to be in substantial compliance with current good manufacturing requirements.

FDA further exonerated EPI in writing on July 25, 1997 when a replacement 510(k) letter was sent from Philip J. Phillips, Deputy Director, Office of Device Evaluation, Center for Devices and Radiological Health, allowing EPI to market the Alpha-Stim for anxiety, depression, and insomnia.

FDA finally exonerated Dr. Marshall Voris, and therefore indirectly EPI once more, on September 22, 1997 when it sent Dr. Voris a letter stating that the inspections of his facility were made to ensure that the data in the EPI PMA was scientifically valid. The letter stated that “there were no deviations from the regulations observed during the inspection.”

EPI was then mandated to and did submit a five volume reclassification petition 515(i) to FDA on August 11, 1998 in order to remain on the market after that date, another major regulatory burden on a small business. As of 2011 there has been no response from FDA to the mandated 515(i).

EPI previously removed its manufacturing operations from the United States to China to protect it from FDA, and in 1997, EPI was granted the CE Mark (European approval to market) of approval for pain, anxiety, insomnia and depression. The comprehensive regulatory review by the European Union found Alpha-Stim safe and effective enough to sell directly to the public without a prescription, as has China and every other regulatory body that has examined the Alpha-Stim and its science, except for FDA.

On September 14, 1999, FDA conducted another routine inspection of EPI. This inspection lasted 6 hours (including a lunch break). No 483 notice of violations was issued. Since 1999, FDA has inspected EPI on a bi-annual basis, and no major infractions, or serious injuries from use of Alpha-Stim, have been found by, or reported to, FDA. For ten years EPI continued to market its Alpha-Stim CES technology throughout the United States and the world.

In the April 9, 2009 Federal Register (74 FR 16214), FDA required all manufacturers of CES devices submit information, consisting of all known research and safety data for their devices. As always, EPI complied with this request by providing FDA in August, 2009, 275 pages of research and clinical outcome data showing the safety and efficacy of Alpha-Stim technology. FDA was to take all the information provided and determine if CES should be reclassified as a Class II or Class I device, or if CES manufacturers should go through the more strict, and more expensive, PMA process. The PMA process was put into place as a method of obtaining FDA approval for new devices, so the idea of going through a PMA process for a device that has legally been on the market for over 30 years is a bit unusual, to say the least. Yet on August 8, 2011, (76 FR 152) FDA published its proposed rule related to CES and actually recommended that all CES devices go through the PMA application process.