Enhancement or Problem?
Reports and Records
Those Pesky Suppliers

Corrections, Removals, and Recalls

The Guidance

- FDA-CDRH is concerned that some manufacturers may not improve the performance or quality of a device, because FDA might classify it as a recall.

- The guidance, issued on October 15, 2014, is titled *Distinguishing Medical Device Recalls from Medical Device Enhancements*

- It replaces a very controversial draft from Feb. 22, 2013.

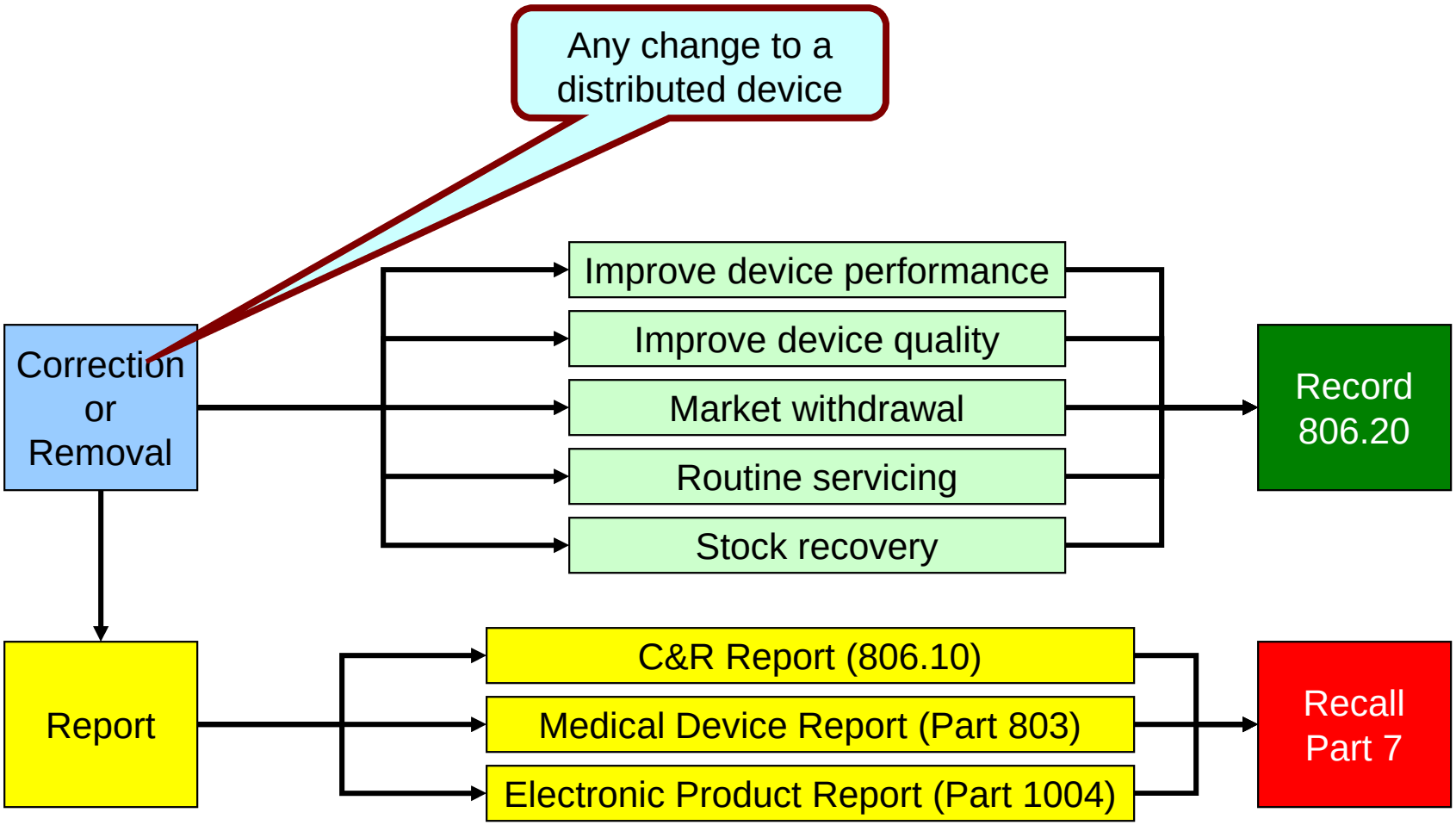
The Law

- A device is adulterated or misbranded if it fails to comply with its specifications, even if the noncompliance is minor. See 21 USC §351(h).

- Marketing an adulterated or misbranded device is a prohibited act. See 21 USC §331(a).

- Conclusion – If you learn that a device you have released for distribution is adulterated or misbranded, you need to take action.

Report or Record



Part 806

- Part 806 requires a report to FDA for each change to a device released for distribution
- There are, however, some exceptions and exemptions
- You need to understand Part 806 and the guidance document

Warning Letter
Medical Positioning Inc.
April 18, 2011

- Failure to provide all the required information when you reported your correction/removal via a MedWatch Report. Specifically, information required by a 21 CFR §806.10(c)(11).

- It should be noted that your firm's field action ("safety correction") was reviewed by the FDA and determined to meet the threshold for a Class II Recall.

- For example, the correction of MPI's RR H.U.T. tables was reported to the FDA through MedWatch #(b)(4). This report did not contain required information regarding the consignees contacted in the correction. During the inspection, the Quality Manager provided a listing of the names and addresses of affected consignees and the phone numbers through which consignees were contacted. **The Quality Manager stated he was unaware of the corrections and removal reporting and recordkeeping requirements.**

Reports and Records

The Issue

- If you change a device that you have shipped to a customer, the default is to report it to FDA under Part 806
- If you change a device because it doesn't meet its specifications or to remedy a violation of the FD&CA, you have to change the devices you have shipped
- There are some exceptions and exemptions where you keep a record instead of reporting

C&R Report Timing

- Submit the report to FDA within 10 working days of initiating the action.
- Neither the regulation nor the draft guidance define initiation.
- You may need to submit an MDR (30 calendar after becoming aware) before making a decision to initial remedial action.
  - Submit a supplemental MDR after deciding to take remedial action.

Reporting Exemptions

- The four exemptions are in 806.1(b)
  - Improve performance or quality
  - Market withdrawals
  - Routine servicing
  - Stock recoveries

- If your correction or removal qualifies as an exemption, then keep a record, but don't report it to FDA.

Improve Performance or Quality

- Actions taken by device manufacturers or importers to improve the performance or quality of a device but that do not reduce a risk to health posed by the device or remedy a violation of the act caused by the device [are exempt from the reporting requirements]. {806.1(b)(1)}

- This definition is analogous to the definition of enhancement in the guidance document.

Market Withdrawal

- *Market withdrawal* means a correction or removal of a distributed device that involves a minor violation of the act that would not be subject to legal action by FDA or that involves no violation of the act, *e.g.,* normal stock rotation practices. {806.2(i)}

Routine Servicing

- *Routine servicing* means any regularly scheduled maintenance of a device, including the replacement of parts at the end of their normal life expectancy, *e.g.,* calibration, replacement of batteries, and responses to normal wear and tear. Repairs of an unexpected nature, replacement of parts earlier than their normal life expectancy, or identical repairs or replacements of multiple units of a device are not routine servicing. {806.2(l)}

Stock Recovery

- *Stock recovery* means the correction or removal of a device that has not been marketed or that has not left the direct control of the manufacturer, *i.e.,* the device is located on the premises owned, or under the control of, the manufacturer, and no portion of the lot, model, code, or other relevant unit involved in the corrective or removal action has been released for sale or use. {806.2(m)}

Reporting Exceptions

- The two exceptions are in 806.1(f)
- No report of correction or removal is required under this part, if a report of the correction or removal is required and has been submitted under parts 803 or 1004 of this chapter.
  - Part 803 is Medical Device Reporting
  - Part 1004 is Repurchase, Repairs, or Replacement of Electronic Products

- The best strategy is to always report under Part 806, since the report content don’t align.

Warning Letter
Mar Cor Purification
April 17, 2014

- Failure to report under 806.10(a)(2)

- Your firm made a decision in June 2013 to service all Millennium HX devices in the field to replace the old valve after receiving multiple complaints of water leaks and water issues; your firm changed suppliers to a new valve in March 2013. Your firm did not submit a written report to FDA of that correction or removal as required by 21 CFR Part 806.

- Your firm made a decision in June 2012 to replace the end cap on the CWP after receiving multiple complaints of the CWP pump causing smoke and/or fire. Your firm determined [redacted] caused resistive heating. Your firm did not submit a written report to FDA of that correction or removal as required by 21 CFR Part 806.

Warning Letter
Aptalis Pharma US, Inc.
October 25, 2013

- Failure to provide justification for not reporting the correction or removal action of your device to FDA under 806.20(b)(4).

- Specifically, your contract manufacturer reworked devices in 2012 and devices in 2013 to correct issues for customers. There was no record of a written justification for not reporting the correction to FDA.

Recalls

Evaluation and Classification

- FDA will convene an *ad hoc* committee of scientists to evaluate and classify the recall

- The committee will consider specific factors and classify the recall as Class I, Class II, or Class III

Classification

- FDA classifies recalls based on the relative degree of health hazard.
- Class I - a situation in which there is a reasonable probability that the use of, or exposure to, a violative product will cause serious adverse health consequences or death.
- Class II - a situation in which use of, or exposure to, a violative product may cause temporary or medically reversible adverse health consequences or where the probability of serious adverse health consequences is remote.
- Class III - a situation in which use of, or exposure to, a violative product is not likely to cause adverse health consequences.
- **Note** that the classification is the opposite of the device risk class

Recall Strategy

- The firm should develop a recall strategy based on the specific circumstances
- FDA will review the strategy and make recommendations as appropriate

Recall Strategy

- The recall strategy includes the following elements:
- Depth of recall – The level in the distribution chain included in the recall
- Public warning – A public warning, reserved for urgent situations, to alert the public when a recalled product presents a serious hazard to health
- Effectiveness checks – Verify that all consignees at the recall depth received the notification and took appropriate action
  - FDA has defined five effectiveness check levels

Recall Communication

- A company promptly notifies the affected direct accounts. The recall communication includes information:
  - That the product in question is subject to a recall.
  - That further distribution or use of any remaining product should cease immediately.
  - Where appropriate, that the direct account should in turn notify its customers who received the product about the recall.
  - Instructions regarding what to do with the product.

Recall Status Reports

- The company makes periodic reports to the district office at regular intervals.
- The report interval will usually be every 2 to 4 weeks.
- The reports are stopped when FDA terminates the recall

Recall Termination

- FDA will terminate the recall after the company makes all reasonable efforts following the recall strategy

- The appropriate FDA district office provides written notification of the recall's termination

Recall
Zimmer, Inc.
January 7, 2015

- Product Description: Osteobond Bone Cement – Bone cement monomer kitted with bone cement powder to create a cement mantle for orthopedic implants.
- Classification: Class II
- Reason for Recall: Samples of product from **Supplier** lot 14D0809 and 14D0808 showed little adhesive transfer between the Tyvek lid and cavity when opened for internal bone cement cure and pairing tests. Visually these samples do not meet the requirements of ZWI 43.109 and corresponding visual aid 55-0000-310-01.

Recall
AlterG, Incorporated
March 12, 2014

- Product Description: Accessory shorts for the AlterG Anti-Gravity treadmill. Use with the AlterG Anti-Gravity Treadmill for rehabilitation.
- Classification: Class II
- Reason for Recall: Unapproved material used by **vendor** in subset of shorts causing them to stretch more than usual and are uncomfortable for patient

The Triad Case

The Triad Group Recall

- On January 5, 2011 the Triad Group announced a voluntary product recall involving ALL LOTS of ALCOHOL PREP PADS, ALCOHOL SWABS, and ALCOHOL SWABSTICKS, including private label products.
- The recall involved both products marked as sterile as well as non-sterile products.
- The Triad Group initiated the recall because of a potential contamination of the products with an objectionable organism, namely *Bacillus cereus*.
- The affected Alcohol Prep Pads, Alcohol Swabs and Alcohol Swabsticks can be identified by either "Triad Group," listed as the manufacturer or a third party:

Cardinal Health	PSS Select	VersaPro
Boca/ Ultilet	Moore Medical	Walgreens
CVS	Conzellin	

- These products were distributed in the United States, Canada, and Europe.

A Simplified Timeline

- August 2, 2006 – FDA Inspection with no 483 and 2 verbal observations
- November 7, 2006 – FDA Inspection with a 1 observation 483, VAI indicated
- July 15, 2009 – FDA Inspection with a 23 observation 483.
- May 18, 2010 – FDA issues a 483 with 14 observations
- January 5, 2011 – Triad Groups initiates recall of alcohol products
- January 7, 2011 – FDA issues a 483 with 47 observations
- April 4, 2011 – U.S. Marshals, at the request of FDA, seized more than $6 million in products held at the Triad Group and H&P Industries Hartland facility. Under the decree, the seized products are condemned and forfeited to the United States.

The Consent Decree

- June 13, 2011

  FDA press release on terms of a consent decree states, “FDA inspections from 2009 to 2011 determined that H&P failed to comply with the FDA’s cGMP regulations, which are intended to assure the safety, quality, and purity of manufactured drugs. Since December 2010, H&P has initiated five voluntary product recalls, including two because of bacterial contamination of their products. The FDA’s most recent inspection of H&P, completed on March 28, 2011, found multiple cGMP violations, including continuing problems with an air handling system, failure to adequately investigate drug products that did not meet specifications, and failure to take appropriate measures to ensure the quality of incoming components.”

- December 20, 2011

  Product released to the Triad Group for reconditioning and destruction

- January 20, 2012

  FDA bills $27,633.78 for inspection and supervisory work

Triad Customers

- The following companies issued press releases related to on or more of the Triad Group recalls.
  - 01/06/2011 - Triad Group
  - 01/08/2011 - Bayer HealthCare
  - 01/10/2011 - Novartis Pharmaceuticals
  - 01/13/2011 - Genentech
  - 01/24/2011 - GlaxoSmithKline
  - 01/25/2011 - Pfizer Inc. and Progenics Pharmaceuticals, Inc.
  - 02/04/2011 - Watson Pharmaceuticals
  - 02/07/2011 - Neuro Resource Group
  - 03/05/2011 - Smith & Nephew
  - 03/17/2011 - Eli Lilly
  - 06/08/2011 - Churchill Medical Systems

What's Missing?

- In the timeline, notice that the FDA never issued a Warning Letter!
- If you rely on Warning Letters only, as many companies do for supplier information, you would have missed the problem.
- In addition, the Triad Group makes both drugs and devices, but some of the inspections only cited the drug GMPs.
- In many cases, the alcohol prep pad, a device, was sold to drug companies.

What To Do?

- Know if your supplier produces devices, drugs, or other FDA regulated products.
- Require your supplier to inform you of every FDA inspection and provide the 483 and EIR.
- Require your supplier to inform you of any correction, removal, recall, *etc*.
- Subscribe to the Weekly Enforcement Report and search it for your major suppliers.
  - http://www.fda.gov/Safety/Recalls/EnforcementReports/default.htm
- Subscribe to the Recalls, Market Withdrawals, & Safety Alerts and search it for your major suppliers.
  - http://www.fda.gov/Safety/Recalls/default.htm

QUESTIONS