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IN THIS ISSUE

FDA Increases Efforts to Flag Public Warnings, Recalls

FDA Commissioner Scott Gottlieb announced last week that the agency is ramping up its efforts to improve public warnings and recall notifications.

The agency has finalized guidance on when companies should issue public warnings about recalls, including a timeframe for issuing them. The guidance also describes information that should be included in the warnings and circumstances when the agency can issue its own warning if the company's is inadequate.

For example, the guidance urges companies to include information in their warnings that helps consumers identify the recalled product. This can be done with numerical product information (such as lot number, expiration date, serial number); images; packaging information or brand names; the geographic areas and dates of distribution of the product; and a detailed description of the product's defect and resulting health hazard.

(See **Recalls**, *Page 2)*

TGA Puts New Recall Procedures Into Effect

Australia's Therapeutic Goods Administration has implemented new recall procedures that clarify when to quarantine products as well as how to communicate information about recalls.

The new system introduces two new types of recall actions: product defect corrections and product defect alerts. It also clarifies existing processes and explains the roles and responsibilities of the parties involved in recalls.

Under TGA regulations, there are four distinct recall actions:

- A recall removes the device permanently from the market or from use when there are deficiencies or potential deficiencies in safety, quality or performance;

(See **TGA**, *Page 2)*

TGA, *from Page 1*

- A product defect correction is undertaken to correct a specific or potential deficiency and includes repair, modification, adjustment, relabeling or risk mitigation until a permanent correction is made;
- A hazard alert is issued for an implanted device with a deficiency or potential deficiency related to safety, quality, performance or efficacy when implanted devices cannot be recalled;
- A product defect alert allows for informed continued use of a defective but critical product and describes precautionary actions that clinicians or patients may take to mitigate risk.

Class I recalls are required when there is a "reasonable probability" that use of the device will cause serious, permanent or long-term adverse health consequences or death. Devicemakers should immediately recall products that pose an immediate and significant threat, involve actual or potential product tampering, involve human blood or blood components or radiopharmaceuticals, the agency said.

Devicemakers should issue recalls whenever there is a safety, performance issue or quality issue. These could be due to non-compliance with specified standards or legislative or manufacturing requirements.

The TGA clarified that manufacturers can undertake a non-recall action if the device meets all specifications and standards and there are no deficiencies in safety, quality, efficacy, performance or presentation. Non-recall actions include safety alerts, product notifications, quarantine and product withdrawals.

Any action should be taken by the sponsor responsible for the device and it should involve all parties that have a role in the recall. Anyone within the supply chain can identify an issue that requires either a recall or non-recall action, including:

- The manufacturer (through the implementation of their quality management system);
- The Australian sponsor through adverse event reports or complaints;
- The TGA through its post-marketing monitoring and compliance activities;
- Other regulators that notify the TGA through international collaborative activities; and
- Third-party auditors or inspections by regulators.

Once a recall action is initiated, the TGA notifies key stakeholders, including state and territory health departments.

Read the notice here: www.fdanews.com/02-15-19-URPTG.pdf.

Recalls, *from Page 1*

Gottlieb said it may seem like recalls have been increasing, but they are actually at a five-year low, with FY 2018 having a total of 7,420 recalls, compared with 8,225 in FY 2013. The reason they seem to have increased, the commissioner said, is because the FDA has increased its publicizing of them.

In addition to the final guidance, the agency is considering ways to use new technologies to alert consumers if they purchased a product that is recalled, Gottlieb said.

Read the final guidance here: www.fdanews.com/02-07-19-FinalGuidance.pdf. — James Miessler

U.S. Lawmakers Urge Colleagues to Support Permanent Device Tax Repeal

In a "Dear Colleague" letter last week, a bipartisan group of congressional leaders urged the House to permanently repeal the 2.3 percent medical device tax.

The tax, introduced in the Affordable Care Act in 2010, was in effect from 2013 to 2015, followed by two-year pauses passed in both 2016 and 2018. Without congressional intervention this year, it will take effect in 2020.

In the "Dear Colleague" letter, members including Reps. Ron Kind (D-Wisc.), Scott Peters (D-Calif.) and Jackie Walorski (R-Ind.) called on fellow members to support or co-sponsor the Protect Medical Innovation Act of 2019, introduced by Kind, which would permanently repeal the tax.

"If the tax is allowed to go back into effect, it will exacerbate job losses sustained when the tax was in effect. During that period, the U.S. medical technology industry saw its jobs ranks fall by nearly 29,000 according to data from the U.S. Department of Commerce," the letter states. "These workers earn on average $58,000 annually, well above the national average for manufacturing. At a time when we all want to create more high-tech manufacturing jobs, it is all the more important that we put a permanent end to policies like the medical device tax."

Read the full letter here: www.fdanews.com/02-14-19-Device.pdf. — Zack Budryk

BSI Warns Devicemakers to Migrate CE Certificates Before Brexit Deadline

UK-based standards body BSI warned devicemakers that their CE certificates in the UK could become invalid if the UK and EU fail to negotiate a Brexit deal by March 29.

BSI is advising manufacturers to migrate their existing CE certificates from its UK notified body to its Netherlands-based notified body before the deadline.

In an urgent notice to manufacturers, BSI said that when it initiated its contingency plan in August 2016, it "could not have foreseen the lack of political progress" toward a Brexit resolution.

"Given the current political impasse and following requested updates in the last week from both Competent Authorities, BSI warned manufacturers that on March 29, "the UK will become a third country and the CE certificates will lose their validity."

"[O]nce CE certificates lose their validity post March 29, they will not be able to be transferred or migrated to an EU notified body. Products will lose market access, and a new conformity assessment will be required," BSI warned.

The cut-off date for products will be based on whether the product is considered as having been "placed on the market," BSI said. This is not the regulatory definition, but the more traditional definition used for product recall or vigilance.

BSI clarified that a product would be considered "placed on the market" if before March 30 it is physically manufactured and shipped within the supply chain. Product stored at a manufacturer's facility will not be deemed as having been placed on the market.

"We very strongly recommend manufacturers migrate their existing BSI UK notified body (0086) CE certificates to BSI NL notified body (2797) as a matter of urgency," BSI said.

Devicemakers that fail to complete migration of their CEs by March 29, will likely see their market access interrupted, and this "could lead to a prolonged interruption and necessitate a full conformity assessment."

The standards group advised manufacturers to return their migration packs as soon as possible to BSI's migration team, as its wait time for migration is short but it will likely increase as the Brexit deadline nears.

For CE certificates undergoing changes or at the "work in progress" stage, BSI said it would take one of two pathways:

(See **BSI***, Page 4)*

FDA to Exempt Unclassified Devices From Premarket Notification

The FDA is planning to exempt certain unclassified devices from premarket notification requirements, according to an updated guidance from the agency.

The FDA said the devices listed in an updated guidance are "sufficiently well understood and do not require premarket notification (510(k)) to assure their safety and effectiveness. Until the publication of a final rule exempting these devices from 510(k), FDA does not intend to enforce compliance."

The FDA was given authority under the 21st Century Cures Act to exempt Class II and Class I reserved medical devices from premarket approval requirements, and the agency has identified certain unclassified devices that it intends to classify as Class I and Class II devices for which a PMA is not needed. But the devices will not be exempt from other statutory and regulatory requirements, including registration and listing, labeling, GMP requirements and medical device reporting requirements.

Combination products that fall within the same product codes will not be exempt, nor will single-entity products containing any antimicrobial agent, the agency says.

Devicemakers are not expected to submit 510(k)s for the following unclassified devices:

- Ear, nose and throat devices that fall under the following unclassified product codes:
  - EWD – Protector, hearing (insert);
  - EWE – Protector, hearing (circumaural);
  - LEZ – Aids, speech training for the hearing impaired (AC-powered and patient contact); and
  - LFA – Aids, speech training for the hearing impaired (battery-operated or non-patient).;
- Gastroenterology-urology devices that fall under the product code LRL – cushion, hemorrhoid;
- General and plastic surgical devices that fall under product code LKB – Pad, alcohol, device disinfectant;
- Neurological devices that fall under the following product codes:
  - LLN – Device, vibration threshold measurement. This exemption does not apply to devices that provide an interpretation or a clinical implication of the measurement;
  - LQW – Test, temperature discrimination. This exemption does not apply to devices that provide an interpretation or a clinical implication of the measurement.;
- Obstetrical and gynecological devices that fall under the product code LHD – Device, fertility diagnostic, proceptive; and
- Physical medicine devices that fall under the product code LZW – Monitor, spine curvature.

Read the guidance here: www.fdanews.com/02-14-19-Exempt.pdf.

BSI, *from Page 3*

- For projects at the pre-certification recommendation or pre-certification decisionmaking stage, the notified body would migrate the existing certificate to the Netherlands notified body before the end of March. This will alleviate the need to complete the work in BSI UK notified body and complete the migration by March 29.
- For projects already at the UK notified body that have already entered the certificate decisionmaking process, the certificates will be fully processed and certificates issued by UK notified body 0086 and then migrated to NL notified body 2797 within the required timelines.

BSI also advised that it will no longer submit work-in-progress related to CE certificates to the UK notified body decisionmaking process for devicemakers wanting to migrate certificates to the NL notified body.

The UK notified body will accept submissions for manufacturers wanting to place product on the UK market only.

FDA Warns Beverly Hills Surgeon Over Illegal Breast Implant Device

The FDA ordered a Beverly Hills plastic surgeon to stop marketing an implantable pouch that the doctor says can help prevent a nasty side effect for women's breast augmentations.

Mark Berman has been marketing what he calls the Pocket Protector as a way to prevent the tightening of scar tissue. The pouch is made of two sheets of polytetrafluorethylene held together by silicon rubber cement and Berman uses it to line the inside of a breast pocket of his patients.

The FDA claims that Berman has been advertising the device on his web site with such claims as, "Within three months, there's no tissue reaction to the material and it is safely incorporated into one's body essentially as a synthetic scar." The device hasn't been approved by the FDA.

The agency's Feb. 13 letter gave Berman 15 days to cease and desist selling the product. Berman said that he would likely comply but protested that he had done nothing wrong. "A lot of women have been helped by what I do," he said.

This is Berman's second go-round with the FDA. Last year, regulators filed for a permanent injunction to shut down his stem cell clinic that authorities say is unlawfully marketing unapproved products.

Read the warning letter here: www.fdanews.com/02-14-19-Berman.pdf. — Bill Myers

How to Write Effective CAPA Reports

A good CAPA report tells a company's compliance story for four specific audiences: current employees, future employees, regulators and, possibly, lawyers, if a lawsuit eventually results from a product problem.

It's important to organize CAPA reports and supporting documents in a way that makes them easy to read and follow. Use of short sentences, small words and a lot of white space between paragraphs makes it easier for readers to follow and to get through quickly, which is important to investigators who may be trying to draw conclusions within a relatively short time.

Use headings and subheadings, with just a few paragraphs under each subheading. This, again, allows the reader to skim fairly quickly and get a sense of the level of detail and control in the CAPA investigation and process. Companies can include more detailed and supporting information in appendices so the reader can review them more closely later. The additional information can include charts and graphs.

Some hallmarks of a good report include:

- Inclusion of pertinent facts, which can be checked or independently verified by observation. Some examples of facts include statements of normal activities in a company's SOPs, or the date and time that a complaint about a product was logged.
- Inclusion of substantiated statements, which provides justification for the reader to believe what is written.
- Exclusion of unsubstantiated statements that lack any such justification, such as "the device is safe and effective" or "the cause of the problem was user error."
- Use of the active voice. When companies write reports in the active voice, it is easier for the FDA to see who did what, when, where, why and how.
- No passive voice. Passive voice makes it easier to say what happened without assigning responsibility or specific time frames. Statements like "complaints were received," "the investigation took place," or "the corrective action was taken" will not provide enough detail to satisfy the FDA.

Use of active, rather than passive voice may seem a minor issue. In fact, many companies routinely write their documents in the passive voice. However, use of the passive voice can result in an FDA investigator not understanding the root causes for the failure and not being able to follow the compliance story easily. This can lead to a knee-jerk conclusion that the company is not operating in a state of control, which can, in turn, lead to a closer scrutiny that is bound to turn up additional problems.

Excerpted from the FDAnews management report: *Creating QSR-Compliant CAPA Systems: A Practical Guide for Devicemakers*.

U.S. EU Agree to Work Together on UDI Standards

The U.S. and the EU have pledged to cooperate to ensure that electronic database specifications for unique device identifiers (UDIs) are in alignment, according to a report by the European Commission.

The two jurisdictions will develop a plan for a bilateral test of compatibility of respective UDI databases to go with ongoing efforts within the International Medical Device Regulators Forum, according to the commission's Executive Working Group.

Regulatory issues have taken center stage in the work of the EWG — formed in July when President Trump and EU President Jean-Claude Juncker agreed to resolve trade issues —, and a "meaningful set of short- and medium-term deliverables" were highlighted in an interim report released late last month. The report pointed to IMDRF efforts to create a globally harmonized approach to a UDI system, to facilitate the identification and tracking of medical devices.

IMDRF released preliminary guidance in August 2018 to support global convergence, covering general labeling principles for devices and IVDs, including labeling for single-use devices, software as a medical device, and devices and IVDs intended for use by lay persons. When fully implemented, the labels of most devices will include a UDI in human- and machine-readable form (*IDDM*, Aug. 3, 2018).

The EWG also said it would also take steps to make use of audit reports under the medical devices single audit program (MDSAP), another IMDRF initiative. The single audit program became operational in 2017. At present Australia, Brazil, Canada, Japan and the U.S are members of the MDSAP consortium.

"The EU has also indicated its readiness to negotiate an international agreement to reduce the costs of conformity assessment in transatlantic trade provided that the right conditions are met," the EWG reported.

Read the full EWG report here: www.fdanews.com/02-14-19-EWG.pdf.

FDA Issues Guidance on Requests For Feedback After Inspections

The FDA on Friday issued draft guidance on requests for nonbinding feedback from the agency after inspections of device facilities.

Under the Food, Drug and Cosmetic Act, the agency is required to provide nonbinding feedback on inspection observations. Sponsors who have received a Form 483 may request feedback no later than 15 business days after the 483 is issued.

If the company is also submitting a response to a 483, the agency recommends including the response and feedback request as two documents in the same submission. The request should be submitted to the same agency contact identified to receive the response to the 483.

Feedback requests should include full information on the establishment and the inspection dates, as well as a justification of the request under the FD&C Act. The justification may relate to specific FDA observation, multiple observations or all observations.

"Requestors should explain in detail how each individual observation meets one or more of the eligibility criteria within the justification," the agency says.

The request should include proposed actions, including a detailed description and timeline. If none of the eligibility criteria are met, the statute does not require FDA to provide nonbinding feedback regarding proposed action.

Read the draft guidance here: www.fdanews.com/02-15-19-Feedback.pdf. — Zack Budryk

APPROVALS

Delcath's Hepatic Delivery System Approved in Brazil

Delcath received medical device approval from Brazil's National Health Surveillance Agency for its Chemosat hepatic delivery system.

The platform delivers chemosaturation therapy to the liver, making it possible to administer melphalan hydrochloride, a chemotherapeutic agent, to the liver while limiting toxicity.

The system isolates the liver's blood flow using catheters and lowers the agent's concentration after it leaves the target organ using proprietary filters.

FDA Approves Grifols' Babesia Test

The FDA approved Grifols' Procleix Babesia assay for use on the company's Procleix Panther system, a fully automated blood screener for use by blood banks.

The Spanish devicemaker's assay detects ribosomal RNA from four Babesia species — B. microti, B. duncani, B. divergens and B. venatorum. Babesia is a malaria-like parasite that can infect red blood cells.

The approval was based on a successful multi-center clinical trial by the American Red Cross, Creative Testing Solutions, and the Rhode Island Blood Center.

FDA Clears First-in-Class Insulin Pump

The FDA granted de novo marketing clearance to Tandem Diabetes Care's t:Slim X2 insulin pump, a new type of interoperable pump that allows patients to control their diabetes management.

The alternate controller enabled (ACE) infusion pump can be used with compatible medical devices, including automated insulin dosing systems, continuous glucose monitors, blood glucose meters or other electronic devices used for diabetes management.

The FDA's action creates a new regulatory classification, so future ACE insulin pumps will be able to go through the 510(k) review process.

Altona Gains CE-IVD Mark For Hep C Diagnostic Kit

Altona Diagnostics received the CE Mark for its AltoStar hepatitis C virus reverse transcription polymerase chain reaction (RT-PCR) diagnostic kit.

The kit uses real-time PCR technology to detect and quantify virus-specific RNA with genotypes one to six.

(See **Approvals**, *Page 8)*

Approvals, *from Page 7*

The diagnostic device is for use with the AltoStar automation system and Bio-Rad Laboratories' CFX96 real-time PCR detection system.

Orchestrate Orthodontics' 3D Printing Software Cleared for Marketing

Orchestrate Orthodontics' 3D Treatment Planning Software System received 510(k) clearance from the FDA for use in manufacturing clear aligner appliances.

The software works with a range of scanners and 3D manufacturing equipment and will accept any scanner that produces an STL file for 3D printing.

The system allows dentists to design and produce their own orthodontic clear aligner appliances. Treatment planning and simulations can be shared with patients through an online web viewer.

OrthoFix's Cervical Disk Approved

The FDA approved OrthoFix's artificial M6-C cervical disk, the orthopedic and spine regenerative device company announced.

The disc replaces an intervertebral disc damaged by cervical disc degeneration and is designed to restore physiologic motion in the patient's spine.

The device uses an artificial viscoelastic and annulus fiber design to imitate the structure of a natural disc and is designed to enable shock absorption.

FDA Clears Wearable Patient Monitoring Device

Current Health's vital sign monitor, a wireless device that can be worn on the patient's upper arm, gained 510(k) clearance from the FDA.

The device monitors a patient's vital signs, including pulse rate, oxygen saturation, movement, posture and temperature, and notifies a healthcare professional when a variable goes above defined parameters.

The monitor non-invasively measures the patient's vital signs up to every two seconds and transmits the data to the electronic health record.

FDA Approves Cook Medical's Dissection Endovascular Device

The FDA approved Cook Medical's Zenith dissection endovascular system for repairing a part of the aorta.

The device offers physicians an alternative to open surgery for repairing Type B dissections of the lower thoracic aorta, an area of the aorta that is located in the thorax. It will be on sale in the U.S. "in the coming months," the company said.

The Zenith system is composed of a proximal stent-graft and a distal bare stent and is less invasive than open surgery.

Teleflex Gains Premarket Approval For Vascular Closure Device

Teleflex's MANTA, a vascular closure device, received premarket approval by the FDA, and the company plans to launch the device this year.

MANTA is indicated for closing femoral artery access sites while reducing time to hemostasis after the use of sheaths in endovascular catheterization procedures.

The company said a clinical trial of the device successfully hit all primary and secondary endpoints and showed that the product achieves fast, reliable biomechanical closure with rapid hemostasis.

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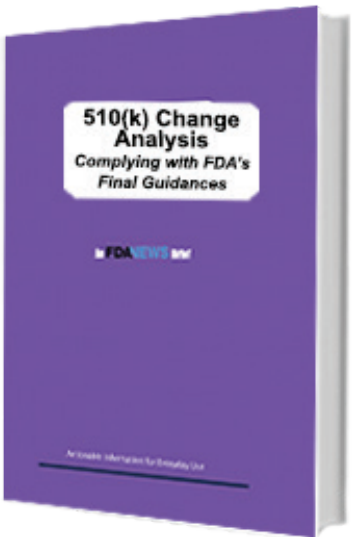

510(k) Change Analysis: *Complying with FDA's Final Guidances*

510(k) Change Analysis: *Complying with FDA's Final Guidances* breaks down the guidances finalized in October, 2017 — *Deciding When to Submit a 510(k) for a Change to an Existing Device* and *Deciding When to Submit a 510(k) for a Software Change to an Existing Device* — and provides a step-by-step method for making the right call for submitting a new 510(k) application. Expert-developed spreadsheets walk you through the questions you must ask and lead you to the proper conclusion.

After reading this book, you'll understand:

- What kinds of changes trigger the need for a new 510(k) application and which don't
- How to evaluate the effect of the change on the device's safety and effectiveness
- How to assess the risk the change may introduce
- The components of risk as described in ISO 14971
- How to follow the complex flowcharts the guidances present
- How to develop a risk matrix
- How to document the decision-making process, including justifying a decision not to file a new 510(k)

In addition to the decision-making spreadsheets that all but do the work for you, the report includes copies of both guidances and an example of a change analysis effort.

Order your copy of the **510(k) Change Analysis** brief for step-by-step instruction on deciding whether you need to submit a new 510(k) if you change an existing device.

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FDANEWS

Complaint Management for Devicemakers: *From Receiving and Investigating to Analyzing Trends*

Complaint management is essential to a functioning quality management system.

Understanding the FDA's Quality System Regulation isn't enough — you must also master ISO 13485:2016 and the new EU MDR. They all require devicemakers to conduct trending in some form or another. But none of them tell you HOW.

This new edition of the best-selling **Medical Device Complaint Management** fills in that gap for you.

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