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US Regulatory Roundup, March 2022: QMSR Draft Highlights; More Headaches For Philips; Essure Wreaks Havoc

by Shawn M. Schmitt

The US FDA's proposed Quality Management System Regulation, more ventilator recall headaches for Philips, and ongoing problems with Bayer's Essure birth control device topped our list of most-read articles in March.

FDA's Quality Management System Regulation

Now that the US Food and Drug Administration is on track to roll out its new Quality Management System Regulation (QMSR) in the not-too-distant future, device makers around the globe are scratching their heads and wondering what they need to know to make their transition from the current Quality System Regulation (QSR) to the proposed – and eventually final – rule as seamless as possible.

In our most-read story from March, longtime industry experts Kim Trautman and Eric Henry highlighted a handful of things manufacturers should know about the QMSR, the draft of which was released by the FDA in late February. The proposed rule calls for the current QSR to be withdrawn and replaced by the QMSR, which is shorter in length because much of the QSR's requirements are already "substantively similar" to what's found in international quality systems standard ISO 13485:2016. The agency had been harmonizing its decades-old QSR with ISO 13485 since early 2018.

Henry, who's a senior quality & regulatory compliance advisor at the law firm King & Spalding, made the observation that the QMSR is roughly nine pages long while the QSR runs 21 pages. That's because the QMSR is a "gap regulation" that addresses FDA-specific requirements and other things that aren't found in ISO 13485, he said.

"They address gaps and differences and clarifications in those nine pages. 13485 itself has 25 pages of content. So in reality it's probably apples-to-apples. But people are going to take a quick

look at this and say, 'Oh my, it's so short,'" Henry told *Medtech Insight*. "It looks short, but it's pointing to the ISO 13485 standard, which is about equivalent in size to what we had before in the QSR. I guess a lot of us expected a rewrite, and we didn't get that. What we got was a gap analysis, which is fine."

He further explained that risk management will play a bigger role in the QMSR, but this was expected because ISO 13485 places a greater emphasis on risk management concepts than can be found in the current QSR.

"In talking about risk management, the Quality System Regulation – to the frustration of many of us in industry – only spoke of risk management in one place, and that was in relation to design validation in design controls," Henry said. "In no other place was risk management mentioned, although through the [QSR's] preamble, through guidances, the FDA made clear it did expect risk management to permeate the entire life cycle." The QSR preamble is the agency's elaboration on the regulation that was published along with the rule in 1996.

And both Henry and Trautman – an ex-FDA official who was the lead author of the QSR in the 1990s – pointed out that the QMSR will go into effect one year after it's finalized. The draft rule says that's to give device makers enough time to come into compliance. "For some manufacturers their reaction will be, 'Well come on, let's get this going already,'" Henry said. "And for other firms, especially for those companies that are smaller, that are confined to the US market, and that have been operating their quality system for some time just in the US market, or in markets that haven't been subject to 13485, this will be more complicated. And that one year may be hard for them."

But Trautman, who's currently managing director and VP of consulting firm MEDIcept Inc., pointed out that it's actually the FDA that needs time to adjust, more so than companies. "In the draft rule the agency previews some of the work that they expect to do. They preview the fact that they want to update the guide to inspection. So, they want to update QSIT [the Quality System Inspection Technique, used by FDA investigators as they inspect manufacturing facilities]. And they're going to have to update the compliance program. That's also part of it."

In an interview, Trautman also said the agency will have to "update the guidance document for PMAs as to the quality system information that needs to be part of the PMA. But they're definitely already working on it now. They're also going to have to update training of staff."

Still, industry groups and other stakeholders told the FDA in early March that one year simply won't be enough time for device makers to transition to the QMSR, as we reported *in our No. 5 story from last month*.

During an FDA Devices Good Manufacturing Practice (DGMP) Panel meeting on the QMSR on 2

March, Scott Sardeson said it's important for the agency to impose a two-year transition time frame so industry can get its ducks in a row. Sardeson, who's international regulatory affairs and quality compliance director for 3M (and convener of an ISO working group that oversees ISO 13485), said that while it's apparent that some US companies and small firms may need additional time to comply with the QMSR, larger manufacturers will also need an extra year.

"Small companies are going to have maybe some trouble [and] US companies might not know ISO 13485. I think that really needs to be considered as part of the transition, but large companies may have just as much trouble," he said. 3M has "many, many sites all over the world and much would have to be updated. So the one-year transition is quite aggressive. Two years is more adequate when you consider the amount of training and also change in culture you may have to face, whether you're a small company or a large company."

And in our No. 7 offering from March, Morgan Lewis partner Dennis Gucciardo said there are four steps device makers can take now to make sure they're not caught behind the 8 ball once the proposed QMSR is finalized.

The Headaches Just Won't Stop For Philips

Calling the company's efforts to notify customers about its recall of breathing machines "inadequate," the FDA in mid-March sent a letter to *Philips Respironics* that orders the manufacturer to beef up its recall communications, among other directives. *Our reporting on that rare letter from the agency* was also of high interest to *Medtech Insight* readers last month.

Philips in June 2021 recalled millions of bi-level positive airway pressure (BiPAP), continuous positive airway pressure (CPAP), and other mechanical ventilator devices because there's a risk that users of the products could inhale degraded sound abatement foam. The FDA gave the recall a high-risk class I designation roughly a month later.

In a six-page notification order, the FDA's Malvina Eydelman told Philips Respironics' head of quality for sleep and respiratory care, Tom Fallon, that the agency is worried about what it perceives as the company's lackluster notification activities around the recall.

"Throughout the process of the recall, FDA has maintained regular communication with Philips, and on multiple occasions has informed Philips that FDA was concerned that Philips' efforts to notify patients and consumers, health care providers and consignees regarding the recall have been insufficient, and that it is likely that a significant portion of patients and consumers using the recalled products are unaware of the health risks presented by those products," Eydelman wrote.

Eydelman is director of the Office of Ophthalmic, Anesthesia, Respiratory, ENT and Dental Devices (*OHT1*) in the FDA's Office of Product Evaluation and Quality. *OPEQ* resides within the

agency's device center.

"Despite FDA's efforts to encourage Philips to voluntarily expand its communications strategy regarding the recall, and to provide clearer information to the public regarding the health risks posed by the recalled products, FDA has continued to receive communications from patients and consumers who are unaware of the recall," Eydelman's letter said.

The FDA used data from Philips to deduce that only half of users of the recalled devices registered with the company to get a replacement. Philips said last September that it would take a year to repair and replace the devices, and on 10 March the company said it had shipped more than 650,000 replacements to US customers. Eydelman said it's "unclear whether the remaining patients and consumers have not registered because they are unaware of the need to register, or because they do not want or need a replacement device from Philips."

And the hits just keep on coming. The FDA announced on 21 March that Philips recalled some V60 and V60 Plus ventilators because they could stop working if the adhesive used in their manufacturing fails. The agency also labeled this recall action as class I.

The FDA explained *in our No. 9 story from last month* that an expired adhesive was used to put together parts in some of the recalled devices: "If the adhesive fails, it could cause a capacitor support bracket to become loose and potentially damage the capacitors, which could cause the ventilator to stop providing ventilation to the patient. This failure may cause an alarm to notify the health care provider, or it may not sound any alarm at all."

And if the ventilator stops, the patient would be deprived of oxygen – either for as long as it takes a provider to connect an alternate ventilator if the alarm sounds, or possibly for an extended period if it does not. Lack of oxygen can cause serious health consequences or even death, the FDA said. However, no serious injuries or deaths have been reported to date.

Essure Still Causing Problems For Women

While no longer on the market, *Bayer AG*'s Essure birth control device is still causing problems for many women who had it implanted, such as chronic abdominal pain, pelvic pain, and abnormal uterine bleeding.

It's because of these extreme problems that the FDA has continued to monitor patient safety, as we reported *in our No. 6 story from March*. Designed as an alternative to permanent sterilization, the tiny spring-like devices inserted into the fallopian tubes to block the fertilization of eggs received FDA approval in 2002. But Bayer stopped selling Essure in 2018 after a flood of complaints from women with the devices.

The FDA in mid-February posted online its most recent update, "Information for Patients and

Health Care Providers: Essure," based on data from patients who had completed one year of follow-up from the agency's 2020 interim analysis. The next round of results is scheduled for release after all patients complete three years of follow-up.

The agency's update included data from two studies. One study of 1,129 women was broken into two cohorts – those implanted with Essure and those who opted for laparoscopic tubal sterilization (LST), a permanent surgical procedure blocking the fallopian tubes to prevent pregnancy. Another study of 620 women is being conducted to determine the rate of device removal after 10 years.

For the study comparing the Essure and LST groups, the rate of women experiencing chronic lower abdominal and/or pelvic pain in 2021 was 12.5% in the Essure group, compared to 8.7% in the LST group. In 2020, 9.1% of Essure women reported pain, compared to 4.5% of those in the LST group. More women with the Essure device, 20.5%, also reported abnormal uterine bleeding post-procedure in 2021 than those in the LST group, 18.6%. In 2020, 16.3% of Essure women reported uterine bleeding, compared to 10.2% in the LST group.

Our No. 3 offering from March detailed the case of one woman who was implanted with Essure, only to experience severe back pain, cramping and heavy bleeding. Theresa Ingram had the device removed in December 2018 after years of deteriorating health – a time she refers to as "E-hell." She finally underwent a full hysterectomy to have the coils removed.

Other Top Stories

These three articles rounded out our Top 10 list in March:

- *No 4 story*: The chair of the US House Subcommittee on Economic and Consumer Policy is pressing the FDA on why the HeartWare Ventricular Assist Device (HVAD) System was allowed to remain on the market despite repeated red flags.

- *No 8 story*: In a textbook case of "better late than never," industry groups and the FDA came to an agreement on 9 March in the protracted Medical Device User Fee Amendment (MDUFA V) talks.

- *No. 10 story*: An updated international guidance document that offers best practices for cleaning endoscopes says health care providers should, if possible, stop manually disinfecting the notoriously difficult-to-clean devices.

The 10 most popular US regulation and policy stories in March, as determined by reader interest, are listed in the table below.

Rank	Story

1	*10 Things You Need To Know About FDA's Proposed Quality Management System Regulation*
2	*FDA Orders Philips To Bolster Communications Around Recalled Breathing Machines, Calls Notification Efforts 'Inadequate'*
3	*Essure: Out Of Sight, But Not Out Of Mind For Many Women*
4	*House Chair Wants Answers On The FDA's Handling Of Dangerous Device*
5	*Industry To FDA: 1 Year Isn't Enough Time To Transition To New QMSR Rule*
6	*Essure-Related Complications Still A Problem, Latest FDA Data Show*
7	*Compliance Corner: 4 Things You Should Do Now To Prep For FDA's New QMSR Reg*
8	*Pop The Champagne: Medtech Industry, FDA Reach MDUFA V User-Fee Deal*
9	*Expired Adhesive Leads To Class I Recall On Philips Ventilators*
10	*Updated Endoscope Cleaning Guidance Urges Move From Manual Cleansing To Sterilization*