In Vitro Diagnostic Products (IVDs) - MDR Requirements, Correction and Removal Reporting Requirements, and Quality System Complaint Requirements
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Moderator: CDR Kim Piermatteo

CDR Kim Piermatteo: Hello and thanks for joining us for today's CDRH Webinar. This is CDR Kim Piermatteo of the United States Public Health Service and I serve as the Education Program Administrator in the Division of Industry and Consumer Education within CDRH. I'll be your moderator for today's webinar.

We are holding this webinar for laboratory manufacturers and other interested stakeholders to discuss how to comply with medical device reporting requirements, correction and removal reporting requirements, and quality system requirements regarding complaint files as part of Stage 1 of the phaseout policy beginning May 6, 2025.

Before I turn it over to our presenter for today, I'd like to provide two administrative reminders; first, please make sure you've joined us through the Zoom app, and not through a web browser to avoid technical issues. And second, the intended audience for this webinar is industry. Trade press reporters are encouraged to consult with the CDRH Trade Press Team at cdrhtradepress@fda.hhs.gov. And members of national media may consult with FDA's Office of Media Affairs at FDAOMA@fda.hhs.gov.

I'd now like to introduce today's presenter, Kimberly Kopecki, Senior Policy Advisor within CDRH's Office of the Center Director. We'll begin with a presentation from Kim and then address previously emailed questions about today's topic.

Thank you all again for joining us, I'll now turn it over to Kim.

Kim Kopecki: Thank you, Kim, for the introduction. And thank you to all the participants who have joined the webinar today regarding Medical Device Reporting requirements (MDRs), Corrections and Removals reporting requirements, and Quality System Complaint file requirements.

As outlined in the preamble to the LDT Final Rule, FDA is phasing out its general enforcement discretion approach for LDTs in stages. The first stage under this phaseout policy begins May 6, 2025, when FDA will expect compliance for IVDs offered as LDTs with MDR requirements, corrections and removals reporting requirements, and complaint files under the Quality System Requirements. In today's webinar, we will be providing information on these terms and how you can meet the Stage 1 requirements.

FDA is concerned that some IVDs offered as LDTs may be posing risks to patients, therefore, FDA seeks to obtain information about potentially harmful IVDs offered as LDTs as soon as feasible, through MDR and corrections and removals reporting requirements. In addition, under the complaint file requirements of the Quality System Regulation, manufacturers are required to document complaints, investigate them, and determine if they require reporting under MDR requirements. Due to the connection between complaint investigations and MDR reporting, FDA determined that compliance with complaint files under the Quality System will also be expected under Stage 1.

Gathering this information early in the phaseout period is particularly important for IVDs that do not have the safeguards associated with compliance with other FDA requirements.

The submission of an MDR itself is not evidence that the device caused or contributed to the adverse outcome or event. Rather, MDRs are a valuable source of information, and one of the postmarket surveillance tools that FDA uses to monitor device performance, detect potential device-related safety issues, and contribute to benefit-risk assessments of these products.

MDRs and reports of corrections and removals can help us understand how a medical device functions through its clinical use, which may benefit the entire device ecosystem, including patients, providers, manufacturers, and FDA. These valuable datasets provide patients and providers with information on the performance of the tests that they utilize. Information from complaints can provide manufacturers with information on their tests that they may not otherwise get, such as design or manufacturing problems, trends in device performance over time (both positive and negative), and feedback which can help to inform future design changes.

Importantly this data is also utilized by FDA to not only identify and follow-up on specific device issues, but also to track and trend data to detect issues across devices, providing visibility to potential far-reaching device concerns.

FDA expects that laboratory compliance with MDR requirements will yield significant public health benefits. Today, clinical laboratories comply with CLIA, which means that complaints are investigated and monitored generally only on a lab-by-lab basis. That approach makes sense in light of CLIA's focus on individual laboratory operations. However, FDA is focused on identifying problems with an IVD itself--such as design or other manufacturing problems--so FDA looks for different types of errors and applies a different analysis to the MDRs that it receives. Among other things, FDA aggregates MDR information across IVD types for tracking and trending, enabling the detection of issues that a single laboratory may never see.

For example, FDA received MDRs regarding incorrect test results due to carryover in automated test systems. Carryover is when a falsely high result is obtained due to a residual analyte from a high concentration sample that was tested immediately prior. Upon review of trends across MDRs and further investigation, FDA found that carryover caused inaccurate results across multiple automated test systems. Based on this finding, FDA worked to ensure that manufacturers of affected automated test systems addressed this issue.

So what does this process look like in action? If an issue with a device is identified by the manufacturer, or a complaint is otherwise brought to their attention, the manufacturers must determine whether the complaint or issue is reportable to FDA through an MDR, and, if it is reportable, report that event to FDA. Similarly, if the manufacturer initiates a correction or removal, the manufacturer must determine whether the correction or removal is reportable to FDA and, if it is reportable, report it. All the records associated with these processes must also be maintained according to the manufacturer's procedures. We will talk more later in this webinar about how manufacturers determine if an event is reportable or not.

Let's start to put this all together and look at the requirements under each Stage 1 requirement, starting with Quality System Complaint requirements.

First, what is a Quality System? A Quality System is the organizational structure, responsibilities, procedures, processes, and resources for implementing quality management. The requirements in the Quality System Regulation govern the methods used in, and the facilities and controls used for, the design, manufacture, packaging, labeling, storage, installation, and servicing of all finished devices intended for human use.

As noted earlier in this presentation, compliance with complaint files, a subset of records requirements under the Quality System Regulation, is expected under Stage 1 of the phaseout policy due to the relationship between complaint files and MDRs. For other Quality System Requirements for which FDA expects compliance they begin in Stage 3 of the phaseout policy.

A Quality System is important because it acts as a mandatory and flexible framework to help manufacturers ensure that their devices consistently meet applicable requirements and specifications. Specifically, it allows manufacturers to develop and follow processes which work for their specific situation, within a framework that ensures quality final devices are provided to patients and providers.

To understand how to comply with complaint file requirements under the Quality System Regulation, it is important to understand the terms utilized. A manufacturer is any person who designs, manufactures, fabricates, assembles, or processes a finished device. Manufacturer includes but is not limited to those who perform the function of contract sterilization, installation, relabeling, remanufacturing, repacking, or specification development, and initial distributors of foreign entities performing these functions. For example, a manufacturer may include a company with facilities that build instruments, a laboratory that makes LDTs, or an entity that specifies that other entities build a test to their specifications.

A complaint is any written, electronic, or oral communication that alleges deficiencies related to the identity, quality, durability, reliability, safety, effectiveness, or performance of a device after it is released for distribution.

Under the Complaint File Requirements, each manufacturer is required to maintain complaint files, and establish procedures for receiving, reviewing, and evaluating complaints by a formally designated unit. It is important to note that complaints can come from anyone at any time, for example this could include an oral comment made by an ordering physician about a specific test.

Once a complaint has been received, the manufacturer must follow their internal written procedures to determine whether the complaint meets the requirements for reporting to FDA as an MDR, and to document their decision and rationale. Complaint files should be reviewed in a consistent and timely manner. We will discuss how to evaluate whether an event is reportable later in this webinar.

A manufacturer must review all complaints that they receive to determine whether an investigation is necessary, this determination must be documented and retained.

Any complaint involving the possible failure of a device, labeling, or packaging to meet any specifications automatically requires investigation, unless a similar complaint has already been investigated and another investigation is not necessary. Again, all evaluations and rationales must be documented and retained, including the rationale for decisions not to conduct an investigation.

For any complaint received and reviewed, the following documentation is required; the name of the device, the date the complaint was received, any identification numbers associated with the device, the name, address, and phone number of the complainant, the nature and details of the complaint, the dates and results of the investigation, if applicable, any corrective action taken, and any reply to the complainant.

Complaints that are deemed to be reportable, as an MDR, must be promptly reviewed, evaluated, and investigated, the files must be easily identified as a reportable event, and must contain information on whether the device failed to meet specifications, whether the device was being used for treatment or diagnosis, and the relationship, if any, of the device to the reported incident or adverse event.

Complaint files must be reasonably accessible to the test developer, for example the laboratory who makes an LDT, in the U.S. When conducting investigations, it is important to have access to other complaint records that could be related.

What we have covered so far includes the requirements for complaint handling under the Quality System Regulation currently in effect. However, on January 31, 2024, FDA issued a final rule amending the device current good manufacturing requirements of the Quality System under 21 CFR 820 to align more closely with the international consensus standard for Quality Management Systems for medical devices used by many other regulatory authorities around the world.

The rule is effective two years after publication on February 2, 2026. These amendments include incorporation by reference to the 2016 edition of the International Organization for Standardization, ISO, 13485 Medical Devices Quality Management Systems – Requirements for Regulatory Purposes. The timeline for implementation of the revised regulation overlaps with the requirements for Quality Systems under the phaseout policy described in the preamble to the LDT Final Rule.

The scope of the QMSR is consistent with and unchanged from the QS regulation. In addition, the QS regulation complaint handling, complaint investigation, and complaint record retention requirements are not substantially different from those set forth in the QMSR. Interested parties may find additional information on FDA's QMSR webpage. When the QMSR becomes effective on February 2, 2026, test developers will be required to comply with the applicable requirements set forth in the QMSR.

You have set up your complaint handling system, you have your procedures, and have received a complaint, how do you determine if it is reportable to FDA?

An event that manufacturers become aware of that reasonably suggests that one of their marketed devices may have caused or contributed to a death or serious injury or has malfunctioned and that the device or a similar device marketed by the manufacturer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

Caused or contributed means a death or serious injury was or may have been attributed to a medical device, a medical device was or may have been a factor in a death or serious injury, including events resulting from failure, malfunction, improper or inadequate design, manufacture, labeling, or user error.

For example, a physician reports that a laboratory glucose value was incorrectly low. The test reported blood glucose of 186 mg/dL while the true result was 725 mg/dL. This error was identified because the patient's symptoms and point of care glucose results did not match the lab result. The physician

reordered another test, and the patient was appropriately treated and recovered. However, even though this patient was not injured, this event would be reportable because if the same problem were to recur and not be detected, that patient could suffer serious injury resulting from untreated high blood glucose.

A serious injury or illness is defined as life threatening, resulting in permanent impairment or damage to the body function or structure, or requiring medical or surgical intervention to prevent permanent impairment of a body structure or function. A device malfunction is the failure of a device to meet its performance specifications, such as labeling claims and intended use, or the failure to otherwise perform as intended. A malfunction becomes reportable when it is likely to cause or contribute to a death or serious injury if the malfunction were to recur.

For example, a laboratory receives a complaint that a potassium test result was falsely low. The error was detected and the patient was not injured. However, the complaint investigation revealed that one of the reagent bottles was not properly sealing, and the reagent, which was within its labeled expiration date, was evaporating. The change in the concentration of the components of this reagent led to the false low result. False low potassium results of the magnitude observed, if undetected, could lead to injury due to improper or missed treatment. This event would therefore be considered a malfunction of the test and would be reportable.

In the case of IVDs offered as LDTs, laboratories are the manufacturer of the test. For a manufacturer, the mandatory reporting requirements are listed here. Specifically, if you are a manufacturer, you must report no later than 30 calendar days after the day that you receive or otherwise become aware of information, from any source, that reasonably suggests that a device you market, may have caused or contributed to a death or serious injury, or has malfunctioned and would be likely cause or contribute to a death or serious injury if the malfunction were to recur.

A manufacturer must report no later than five business days if an MDR reportable event necessitates remedial action to prevent an unreasonable risk of substantial harm, or if FDA makes a written request for submission of a 5-day report.

Additional follow-up reports, or supplements, should be provided to FDA within 30 calendar days when a manufacturer acquires additional or to correct information. Note that the mandatory reporting time frame starts on the day after the manufacturer becomes aware of a reportable event.

If you determine an event to be reportable as an MDR, you need a few items in addition to basic device or manufacturer information before being able to submit. First, you need to request a facility FDA Establishment Identifier, or FEI number, for the facility at which the device was manufactured. This number is utilized by FDA to track inspections and can be requested at no cost from FDA.

You will also need to know your device’s product code. Product codes are utilized for classifying and tracking medical devices and are assigned and maintained by FDA. For each MDR, you will also need to provide at least seven adverse event codes. These codes represent a system of codes, terms, and definitions to describe and categorize medical device reports.

To request an FEI number, you may contact the email address provided on this slide and provide the information listed; the legal name of the firm being registered; whether you are representing the firm as an Agent or third party; any alternate firm names, including those used for "doing business as"

purposes; the physical address of the firm being registered; the designated mailing address for the firm being registered; the name and contact information of the designated contact person at the facility being registered; a comprehensive list of activities conducted at this specific location; any registration numbers associated with other FDA Centers, if applicable; any former names the firm was known by; and any previous addresses linked to the firm.

To support implementation of the policies described in the preamble to the LDT Final Rule, we have created policy-specific product codes for manufacturers to use for IVDs offered as LDTs that are subject to the policies described in the preamble. These product codes were created to differentiate the different compliance expectations for IVDs under each targeted enforcement discretion policy described in the preamble, and those that are subject to the phaseout policy but not subject to a targeted enforcement discretion policy. This will help manufacturers indicate if they are offering their LDT under one of the targeted enforcement discretion policies and help FDA to be consistent with expectations for each test.

Because there is currently no reliable inventory of IVDs offered as LDTs on the market, FDA has not made device specific product codes for IVDs offered as LDTs and is not expecting you to choose a device-specific product code when submitting a report to FDA. However, you are welcome to utilize device specific product codes if they are applicable to your device, in addition to these policy-specific product codes.

Here we have listed the remaining policy-specific product codes.

Adverse Event Codes are divided into seven categories: one - Medical Device Problem, two - Medical Device Component, three - Cause of Investigation – Type of Investigation, four - Cause of Investigation – Investigation Findings, five - Cause of Investigation – Investigation Conclusion, six - Health Effects – Clinical Signs and Symptoms or Conditions, and seven - Health Effects – Health Impact.

Each set of codes is organized in a hierarchical structure, where higher-level codes are more generic, while lower-level codes are more specific. Manufacturers should code to the lowest level possible; in other words, they should choose the most specific term or terms available in each category to describe the event or investigation. Manufacturers may choose more than one code from each set when filing their report.

Once you have that basic information, you can begin the MDR submission process. All MDRs must be submitted through the FDA Electronic Submissions Gateway or ESG, which is a system utilized to accept electronic regulatory submissions. Electronic MDRs are referred to as eMDRs.

There are two methods you may choose to submit an eMDR, a low volume method, and a high-volume method. Submitters are free to choose whichever submission method best meets their needs. The low-volume submission method typically requires more manual action to file each report, but the high-volume submission method typically requires more effort to stand-up. The test report process for setting up the reporting system is also much more intensive for high-volume submitters. While low-volume submitters use eSubmitter, which is supplied by FDA, high-volume submitters generate the files using their own system. Multiple test submissions can be used to validate that a high-volume system is generating the correct file. Once a reporter has decided which submission method to pursue, they should view the corresponding page to begin the enrollment process.

We recommend that you set up your MDR reporting system prior to needing to submit an adverse event report. This process is free of charge, and we have various resources available to help along the way. In the next few slides, we will focus on the submission steps following the low volume process.

For low volume account set up, FDA offers various tutorials and checklists, as provided in this slide. In summary, you will first need to request an ESG WebTrader account. Then, you will download the eSubmitter application and create a test submission to ensure that the system is functioning properly. Once you receive acknowledgement from your test submission that it passed, as shown here, you will email the eMDR helpdesk a copy of that passing acknowledgement, or Ack3, and request approval for a production account.

Once your account has been established, you are able to submit single MDRs to FDA. Upon receiving a reportable complaint, you would create the MDR in eSubmitter, then submit the MDR through your WebTrader account. During this process you will receive three acknowledgments; First, Acknowledgment 1, also known as the Receipt or MDN, Message Disposition Notification, acknowledgment, indicates that the ESG received the eMDR; Acknowledgment 2 indicates that CDRH received the eMDR; Acknowledgment 3 indicates whether the eMDR was successfully loaded into the database. If there are no errors, FDA anticipates that the three acknowledgement letters will be generated the same day or within 24 hours of the submission.

You should also maintain record of the Acknowledgement 3 showing the MDR was successfully submitted within your internal complaint files. It is important to note that based on the mandatory submission timeframes, not all information about an MDR may be known at the time of submission. Manufacturers may therefore need to submit supplemental information as additional information is gathered.

Based on FDA's experience, we have included some helpful tips while using the eSubmitter, such as: only submit a zip file generated by FDA's eSubmitter application; ensure that you send the zip file, and not a folder containing the zip file in WebTrader; the ZIP file generated by eSubmitter should not be altered in any way prior to transmitting to FDA; and eMDR is only reachable through WebTrader; you cannot mail a CD or submit through eSubmitter.

In some instances, a complaint, MDR, or other issue may lead to questions about the performance of a device. Sometimes the manufacturer may initiate a correction or removal of the device, and in certain cases, the correction or removal of the device may be reportable as a recall to FDA. Once a device problem is identified, the manufacturer should investigate the problem to determine next steps.

How does a manufacturer determine if a recall is required? First, what is a recall? Recalls are actions taken by a manufacturer to remove or correct a marketed device that FDA considers in violation of the laws it administers; and against which FDA would initiate legal action.

Removal is the physical removal of a device from its point of use to some other location for repair, modification, adjustment, relabeling, destruction, or inspection. For example, when a lab removes the test from its catalog or from service and notifies customers to dispose of remaining specimen collection kits, it may be a recall.

A correction is the repair, modification, adjustment, relabeling, destruction, or inspection, including patient monitoring, of a device without its physical removal from its point of use to some other location.

Recalls are classified based on the relative degree of health hazard presented by the product being recalled. The definition of risk to health relevant for correction and removal reporting under 21 CFR 806 tracks the definitions of Class I and Class II recalls in 21 CFR 7.3(m). Therefore, reports of corrections and removals are required for Class I and Class II recalls. Under 21 CFR 806, manufacturers need not report events categorized as Class III recalls under 21 CFR 7; only record keeping requirements would apply.

If a manufacturer decides to initiate a device correction or removal that meets the criteria, they must report to FDA. There are certain steps that they should follow to comply with the regulations. The manufacturer should plan a recall strategy, notify stakeholders, including consignees and FDA, plan for what to do with the device for example, modify the test system as appropriate, conduct effectiveness checks, and finally provide status reports to FDA.

A manufacturer is responsible for notifying consignees that a product in their possession, or utilized for their patient's diagnosis, is the subject of a recall. This information should outline the reason for the recall, the risk to patient health, provide instructions for return or correction of the device, and include a way to verify the effectiveness of the notification strategy. In the case of LDTs, consignees may include healthcare providers who have utilized the test, or patients as needed. For example, a notification to a physician not to use a test result, or to consider a test result with caution and order another test, would be instructions for correction of the device. As laboratories, you all are likely familiar with this type of notification from test kit manufacturers when a test you purchase is recalled.

In addition to notifying consignees, a manufacturer must notify FDA via an 806 report. This report can be submitted via email to the relevant recall division or via the eSubmitter tool. FDA encourages manufacturers to submit using the new correction and removal fillable form, as linked here. This form facilitates the reporting requirements of 21 CFR Part 806 for corrections or removals of medical devices, ideal for reports containing up to 20 products. These reports must include the following information: report number, name, address, and telephone of the recalling and manufacturing firm, names and intended use of the product, marketing status, identifying numbers such as catalog & lot number, reason for removal, any associated injuries, actions taken and to be taken, quantity of product distributed, distribution dates, expiration date, consignees' information, and a copy of related communications provided to consignees.

When a recall is reported to FDA, it will be assigned to a Division Recall Coordinator, then CDRH will review and classify the recall, by evaluating the notice to consignees, the risk mitigation strategy, and the potential severity and probability of harm. Once a recall is classified, it is posted on fda.gov.

In summary, recalls are classified based on the relative degree of health hazard presented by the product being recalled, Class I and Class II recalls must be reported to FDA, and recalls may be submitted via email or through eSubmitter.

Next, we will go through two case studies for LDTs, one for an MDR, and one for a recall.

In this case study, the test developer has received a complaint from a clinician stating that their patient's negative test result did not match clinical symptoms. This event is reported to the developer. Upon receipt of this information, the test developer enters the event as a complaint in their complaint handling system, following their internal complaint handling procedures, and begins an investigation into the event. The investigation is performed based on the complaint received to understand the problem. In this case, the investigation includes re-testing. The result of the re-testing shows that the result was inaccurate due to a problem with one of the reagents. For this specific test, the developer determines that treatment based on these inaccurate results may lead to significant health consequences for the patients for example, delay in critical therapy, or inappropriate therapy. Therefore, the developer determines that this event is likely to cause or contribute to a death or serious injury if the malfunction were to recur. The test developer therefore submits a medical device report to FDA.

In this case study, a test developer has an LDT that contains a buffer reagent that was designed and validated with a 3-month expiration date from manufacture, when stored appropriately at room temperature. During daily use of the buffer as part of the LDT, the developer notes that control runs begin to fail. Through investigation, the developer determines that the buffer has been contaminated, even though it has not reached its expiration date. The test developer cannot determine when the buffer contamination began, and they begin to take corrective actions, including, evaluating all test results run while this buffer lot was in use, and correcting any inaccurate results that were reported, discarding the remainder of the contaminated buffer, and redesigning the buffer to include preservatives to better prevent contamination. These corrective actions were taken to address a test which did not meet specifications, in this case for expiration date of the buffer. These actions also reduce health risks related to a delay in reporting results, due to control runs failing, which depending on the intended use of the test will or may cause serious adverse health consequences, for example delay in patient diagnosis and treatment. Therefore, the test developer submits an 806 report to FDA.

The next webinar will be held on September 24, 2024 at 1 PM eastern time. The topic for this webinar will be labeling requirements for in vitro diagnostic products, including LDTs under 21 CFR 809.10(b).

The following slides provide references and resources as mentioned in today's webinar.

This concludes today's webinar regarding Stage 1 of the phaseout policy for compliance of IVDs offered as LDTs with regards to Medical Device Reporting requirements, Corrections and Removals reporting requirements, and Quality System Complaint file requirements, as outlined in the preamble to the LDT Final Rule. We hope this information was helpful in providing information on how to meet the requirements outlined in the phaseout policy.

Thank you again for attending today's webinar, I will now turn it back to Kim Piermatteo.

CDR Kim Piermatteo: Thank you for that presentation, Kim. At this time, we will now transition to some of your previously submitted questions related to today's topic. For this section or segment, I'll read a question aloud and then Kim K. will provide a response. We will not be taking live questions during today's webinar, therefore, please refrain from raising your hand in Zoom. So Kim, let's get started. Our first question is, what is the definition of a finished device?

Kim Kopecki: Thanks Kim. The definition of a finished device under 21 CFR 820.3(*l*) is any device or accessory to any device that is suitable for use or capable of functioning, whether or not it is packaged, labeled, or sterilized.

CDR Kim Piermatteo: Thanks. Alright, our next question is, for an LDT, what is considered manufacturing of the device?

Kim Kopecki: Thanks Kim, that's a great question. As stated in the preamble to the Final LDT Rule, FDA's regulations define manufacturing to include a variety of activities, including design, preparation, propagation, assembly, and processing. Under the regulations, a manufacturer may include any person who manufactures, prepares, propagates, compounds, assembles, or processes a device by chemical, physical, biological, or other procedures, or any person who designs, manufactures, fabricates, assembles, or processes a finished device. So manufacturing includes but is not limited to the functions of contract sterilization, installation, relabeling, remanufacturing, repacking, or specification development.

If a laboratory manufactures a test system, it is a manufacturer, even if it does not manufacture the components of that system such as instruments, software, and reagents. So laboratories do this by sourcing individual components and combining them to assemble a single test system with a specific intended use. So, for example, a laboratory that develops a PCR-based, targeted genetic test for Factor V Leiden thrombophilia must source or manufacture primers and probes and validate a PCR instrument to assemble their test. These primers, probes and instrument together, along with other components, comprise a test system with a specific intended use that is independent of each individual component's intended use. So similarly, when a laboratory develops a test for measurement of hormone levels using mass spectrometry, they must source or manufacture calibrators and qualify a mass spectrometry instrument in order to perform that test.

CDR Kim Piermatteo: Thanks Kim K. Alright, this is Kim P. we are going to go ahead to question three, how does a recall apply if materials and equipment never leave the laboratory?

Kim Kopecki: Thanks Kim, that's an interesting question. So as we noted in the presentation, recalls are actions taken by a manufacturer to remove or correct a marketed device that FDA considers to be in violation of the laws it administers and against which the agency would initiate legal action. So again, a removal is the physical removal of a device from its point of use to some other location for repair, modification, adjustment, relabeling, destruction, or inspection. And a correction is the repair, modification, adjustment, relabeling, destruction, or inspection, including patient monitoring, of a device without its physical removal from its point of use to some other location.

So therefore, an action may constitute a recall whether or not the device is physically removed. So even if materials and equipment never leave a lab, they can be recalled.

CDR Kim Piermatteo: Thanks for that clarification, Kim. OK, so for the next question that we previously received, complaint files are needed after a device is released for distribution. Can you define distribution? If a single laboratory within an Academic Medical Center, or AMC, manufactures and performs a non-kitted test, is that test considered to be distributed?

Kim Kopecki: Yes, thanks Kim. So commercial distribution means on the market. Commercial distribution does not require the physical transfer of an object, nor does it require transfer of title. So because LDTs generally are on the market, they are for commercial distribution. So for example, like manufacturers of other IVDs do, some labs promote their LDTs on their websites and hold or offer them for sale.

So even if a medical product never leaves a physician's office, these medical products if that are used in the diagnosis or treatment of patients even where the product itself is not delivered or transferred to a patient their still considered to be commercially distributed. So therefore, a test that is manufactured and performed in a lab is considered to be commercially distributed.

CDR Kim Piermatteo: Thanks Kim. OK, so for our next question, that question is IVDs falling within the currently marketed or unmet needs policy in the LDT final rule are expected to comply with 21 CFR 820 Subpart M. What requirements are expected under Quality System Records?

Kim Kopecki: Thanks Kim. So the Quality System Record must include, or refer to the location of, procedures and documentation of activities required under Subpart M that are not specific to a particular type of device. So such as the requirement to establish and maintain procedures for receiving, reviewing, and evaluating complaints under 21 CFR 820.198. So as discussed in the final rule, for these categories of IVDs, FDA does not generally expect compliance with section 820.20, 820.22, 820.40, and 820.50.

CDR Kim Piermatteo: Thanks again Kim. OK so for our next question, this is related to CLIA, so what is the difference between the Centers for Medicare & Medicaid Services' CLIA certification and FDA/FD&C Act requirements for complaint records for tests?

Kim Kopecki: Thank you Kim for the question. According to CMS's CLIA Complaints Booklet, CLIA complaint handling requirements relate to an individual laboratory's operations, such as specimen handling errors, quality of testing, lab personnel qualification issues, and record falsification. Whereas FDA's complaint handling requirements focus on investigating and identifying test-specific problems. So that could include problems related to design, manufacturing, and components of a device.

So an investigation into a complaint may reveal that the root cause is related to lab operations or to the test itself, and the corrective actions that a lab takes may differ based on these findings. So to address test-related complaint handling requirements outlined in 21 CFR 820.198, a lab may decide to expand its current complaint handling procedures, which meet CLIA requirements. So all test-related complaints that a lab receives are required to be evaluated for medical device reporting through FDA's MDR system, which allows for a much broader public health surveillance across the lab ecosystem.

CDR Kim Piermatteo: Thanks Kim. OK, so for our last question today, the question is, when a laboratory modifies another manufacturer's cleared or approved test, is the laboratory considered a manufacturer responsible for meeting the medical device reporting or MDR requirements?

Kim Kopecki: Thanks Kim. That's a very interesting question. So when a lab modifies another manufacturer's cleared or approved test, they are the manufacturer of the new test and therefore they must comply with applicable regulatory requirements, including medical device reporting. So for example, this may be the case when a lab includes a modified kit from another manufacturer on their test menu. Hopefully that cleared it up.

CDR Kim Piermatteo: Thanks Kim. OK, so that wraps up our previously submitted questions for today. Again, I'd like to thank everyone who submitted questions in advance of today's webinar, as well as to Kim Kopecki and her team for developing responses to these questions and presenting them to us today.

I'll now turn it back over to Kim K. for her final remarks on today's topic. Kim…

Kim Kopecki: Thanks Kim. So we really hope this information has been useful in helping developers to comply with the requirements for Stage 1 outlined in the phaseout policy. We hope that developers keep in mind that postmarket surveillance of medical devices provides a valuable source of information which benefits really the entire device ecosystem, including patients, providers, manufacturers, and FDA. We expect that laboratory compliance with these requirements will yield significant public health benefits, and we really look forward to working with developers in this area in the very near future. So thank you all for attending and I'll hand it back to Kim.

CDR Kim Piermatteo: Thanks Kim for those final remarks. For your information, those attending today, printable slides of today's presentation are currently available on the CDRH events webpage for this webinar, as well as on our CDRH Learn at the link provided on this slide under the section titled "In Vitro Diagnostics." A recording of today's webinar and a transcript will be posted to the webinar page and CDRH Learn in the next week. And a screen shot of where you can find those in CDRH Learn is provided on this slide as well. If you have additional questions about today's webinar, feel free to reach out to us in DICE at DICE@fda.hhs.gov.

And lastly, as Kim mentioned previously, our next IVD related webinar will be held on September 24th from 1-2:00 PM eastern time. And the topic for this webinar will be Labeling Requirements for In Vitro Diagnostic Products, Including LDTs, Under 21 CFR 809.10(b). You can find information on how to attend this webinar and any of our upcoming webinars on our CDRH Events page and a link to this webpage is provided at the bottom of this slide as well.

So thank you all again for joining us. This concludes today's webinar.

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