Rethinking the Handling of Reports Corrections & Removals

Adam E Saltman MD PhD
Medical Officer, FDA CDRH Office of Compliance
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Why is FDA Rethinking Recalls?

- Goals: Harmonization, consistency, transparency, simplification...
- Does what we do now make sense??
  - Treat all recalls the same, based only on risk
- Example
  - Awesome Firm, Inc., does a recall
  - Bad Firm, Inc., does a recall
  - Should we treat them the same?
    - Resource expenditure, communications, follow-up, audits, etc.
  - If no, what should we do differently?
    - What is the VALUE?

The Next Level of Thinking

- How should these situations be managed?
  - The same?
  - Differently?
- Does discretion play a role?
- Does Least Burdensome apply?
- How should resources be used?

OR

Objectives

- Understand how and when formal factor considerations can help decision-making regarding correction and removal actions
- Examine the role that problem mitigation can play in determining recall strategy, communication, and follow-up
- Consider how a firm's regulatory and quality behavior can influence compliance and enforcement determinations

Definitions and Nomenclature

- Correction or removal
  - 21 CFR 806.2(h): **Correction** means repair, modification, adjustment, relabeling, destruction, or inspection (including patient monitoring) of a device without its physical removal to some other location
  - 21 CFR 806.2(j): **Removal** means the physical removal of a device from its point of use to some other location for repair, modification, adjustment, relabeling, destruction, or inspection.
- Recall
  - 21 CFR 7.3(g): **Recall** means a firm's removal or correction of a marketed product that the FDA considers to be in **violation** of the laws it administers and against which the agency would initiate legal action.

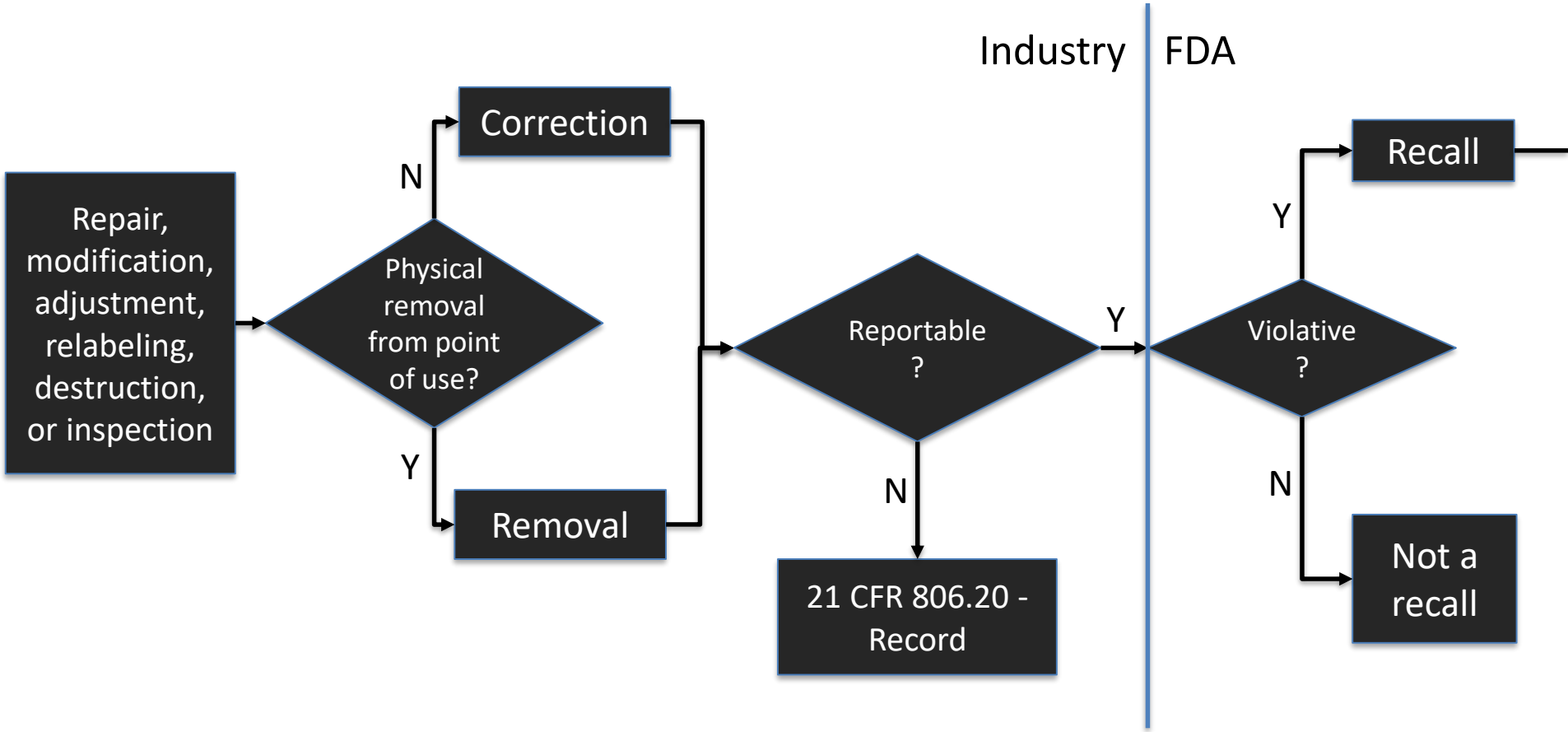
Definitions and Nomenclature

- Risk to health
  - 21 CFR 806.2(k) **Risk to health** means
    - (1) A reasonable probability that use of, or exposure to, the product will cause serious adverse health consequences or death; or
    - (2) That use of, or exposure to, the product may cause temporary or medically reversible adverse health consequences, or an outcome where the probability of serious adverse health consequences is remote

Definitions and Nomenclature

- **Reports** of corrections and removals
  - 21 CFR 806.10(a): Each device manufacturer or importer shall submit a written report to FDA of any correction or removal of a device initiated by such manufacturer or importer if the correction or removal was initiated:
    - (1) **To reduce a risk to health** posed by the device; or
    - (2) **To remedy a violation of the act** caused by the device which **may present a risk to health** unless the information has already been provided as set forth in paragraph (f) of this section or the corrective or removal action is exempt from the reporting requirements under §806.1(b).

Definitions and Nomenclature



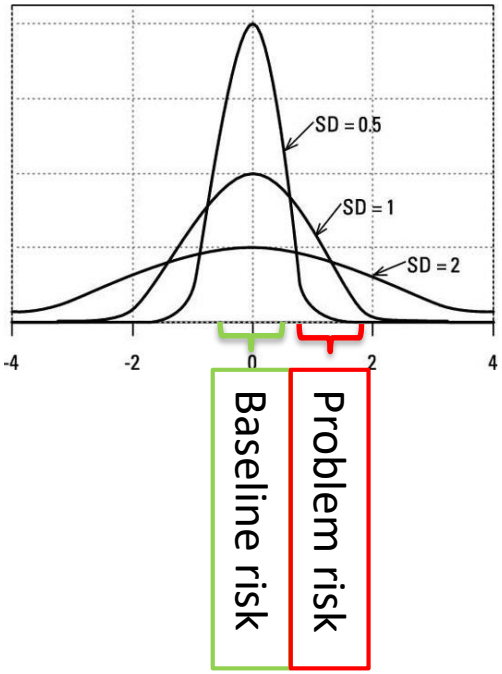
Factor Considerations

- Given: FDA has received a report of a RECALL
- How can problems be differentiated? Benefit/Risk factors
  - What is the device's benefit, and how has it changed?
    - Can it be restored?
  - What is the device's risk, and how has it changed?
    - Can it be reduced?
- How can firms be differentiated? Compliance factors
  - Historical recall performance
  - Current regulatory complexion
- Other important influences
- Where and how should FDA apply these considerations?
  - The anatomy of a recall

Benefit/Risk Factors

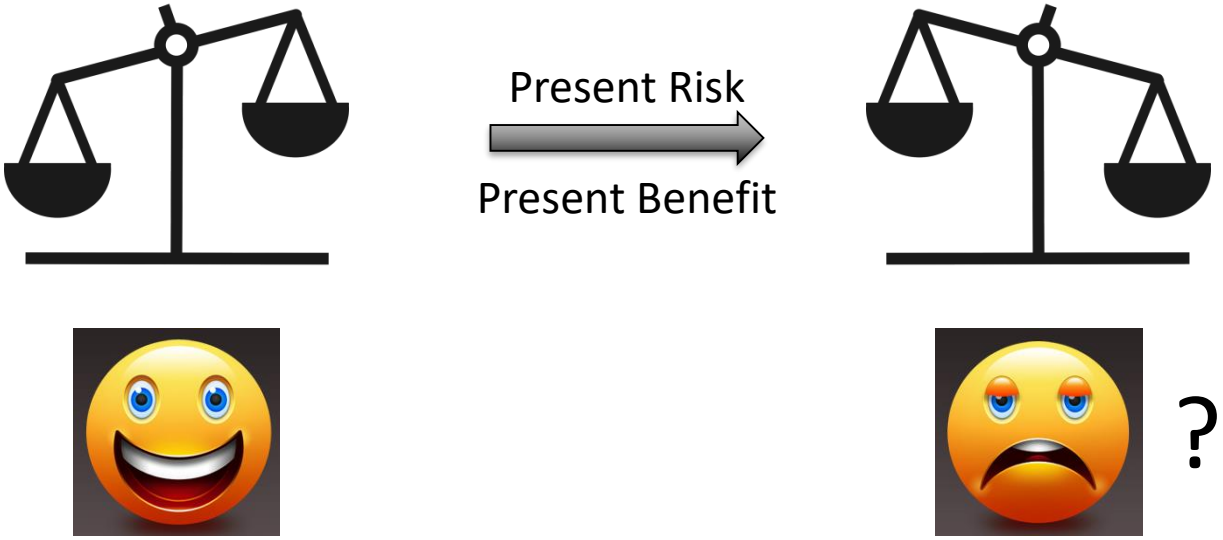
- Benefit: Reduced?
  - Would a user still want it?
  - Can it be restored? How likely?
- Risk: Elevated?
  - Would a user tolerate it?
  - Can it be reduced? How likely?

- Degree of certainty
  - Promised vs achieved/actual



What Is the Benefit/Risk Balance?

- Bottom line: Does the benefit still outweigh the risk?



FDA Guidance for Industry and FDA Staff

- Benefit, risk, “other” factors → Compliance and enforcement
- Goals: Harmonization, transparency, consistency

Factors to Consider Regarding Benefit-Risk in Medical Device Product Availability, Compliance, and Enforcement Decisions

Guidance for Industry and Food and Drug Administration Staff

Document issued on December 27, 2016.

Benefit Factors

- Types
- Magnitude (“severity”)
- Likelihood and duration
- Patient perspective

- The audience: Patients, healthcare providers, caregivers
- Subpopulations
- Medical necessity

Risk Factors

- Types (21 CFR 803.3-Reporting)
- Magnitude ("severity")
- Likelihood and duration
- Patient perspective

} 21 CFR 7.3(m)-Classification

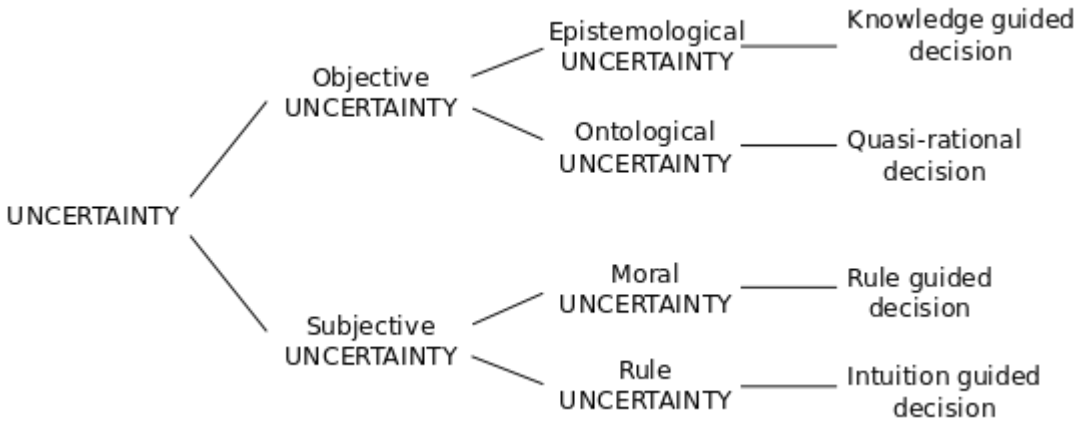
- The audience: Patients, healthcare providers, caregivers
- Subpopulations
- Mitigations
  - Firm: Design, manufacturing
  - User: Environment, skill/training, detection ± correction

Compliance Factors

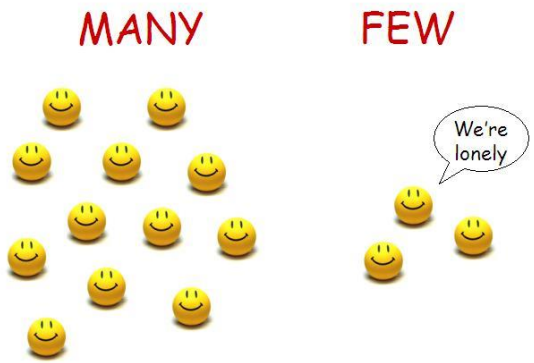
- Historical
  - How has the firm performed doing recalls?
  - How has the firm crafted communication?
  - What are the inspectional history and observations?
- Current
  - Under regulatory action?
  - Inspectional status

Other Important Factors

- Data uncertainty

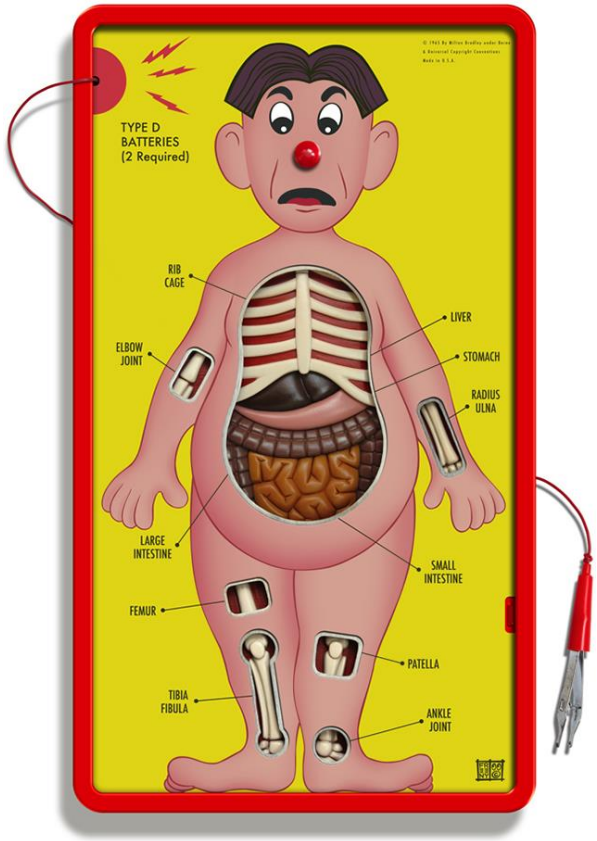


- Systemic problems and class effects



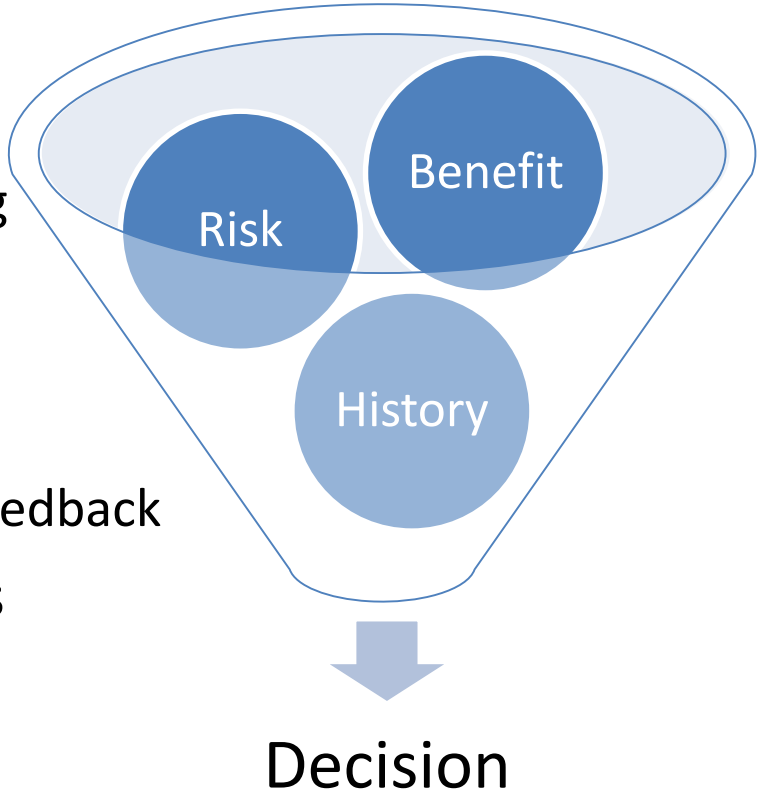
The Anatomy of a Recall

- Health hazard evaluations and recall classification (21 CFR § 7.41)
- Recall strategy
  - Correction or removal (§ 7.42)
  - User communication (§ 7.49)
  - Follow up (§ 7.53)
- FDA press and public notice (§ 7.50)
- Status reports, auditing and termination (§ 7.53, § 7.55)
- Additional regulatory actions

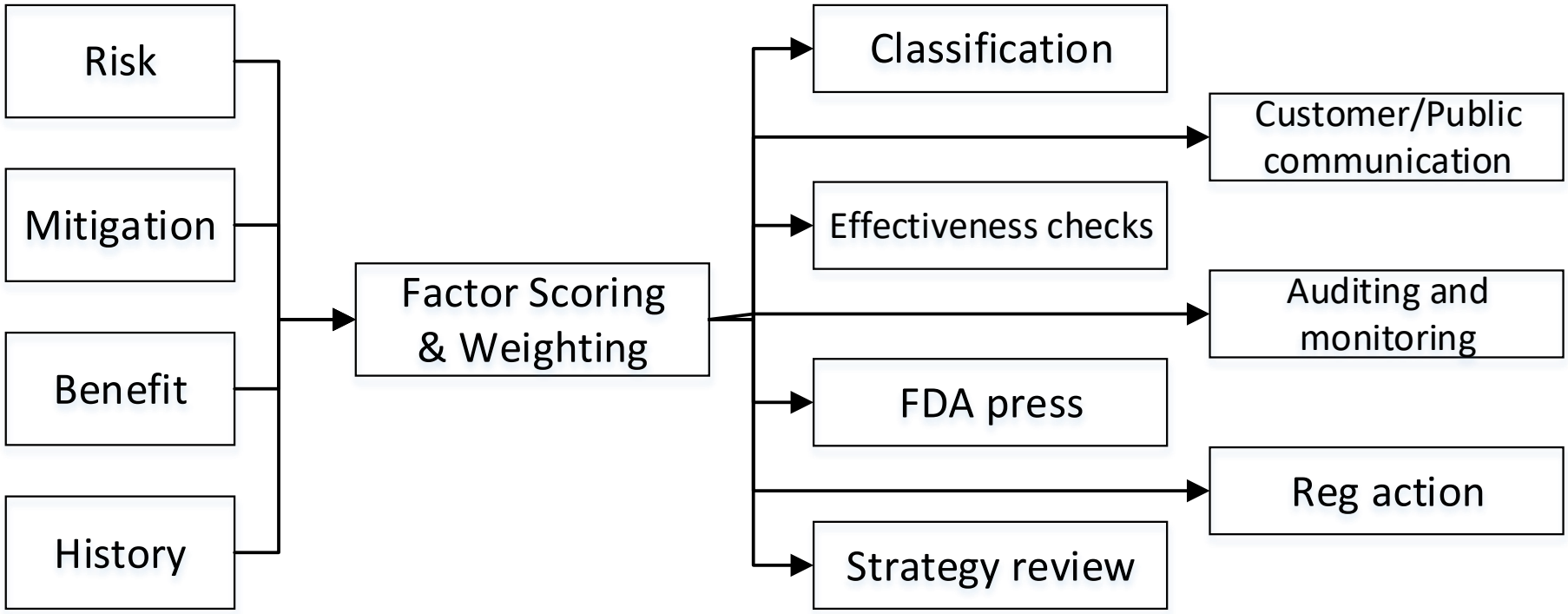


The Advantages of this Approach

- "Overriding" situations are easy
  - Ex.: Uncontrolled, significantly elevated risk = Class 1 recall + maximal monitoring + maximal reporting + independent FDA press
- Continual improvement encouraged
  - Adjust calculations through auditing & feedback
- Developing decision aids for reviewers
  - Not prescriptive



Overarching Process



INPUT FACTORS

RECOMMENDATIONS

Recall-Specific Factors Evaluated

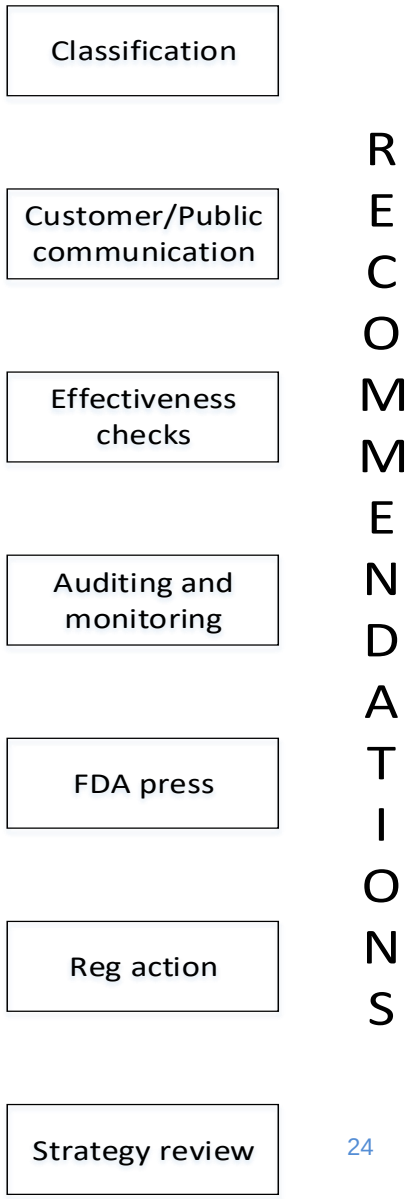
- Benefit
  - Is the benefit reduced? How much?
  - Will users* tolerate reduced benefit? How much?
  - Can users restore the benefit?
  - Is the firm restoring the benefit?
- Risk
  - Is the likelihood/severity of harm increased? How much?
  - Will users tolerate increased risk? How much?
  - Can the user mitigate the harm?
  - Is the firm mitigating the harm?

* “Users” refers to patients, providers, caregivers, and/or bystanders

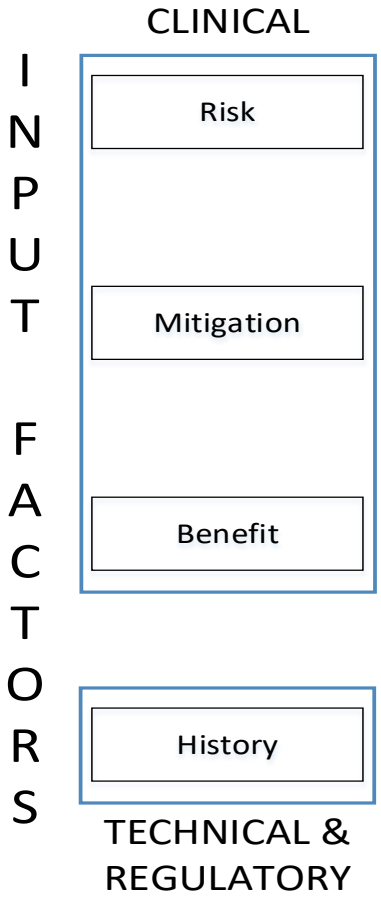
Recall-Specific Factors Evaluated

- History/other
  - Inspectional observations? 2 years ago, 5 years ago
  - Response(s) to observations?
  - Past recall performance
    - Strategy formulation and execution
    - Communication formulation and execution
  - Risk file: Foreseeable harm?
  - Timely recognition and FDA notification (806)?
  - Current regulatory situation
- This may require additional information!!

Inputs and Outputs



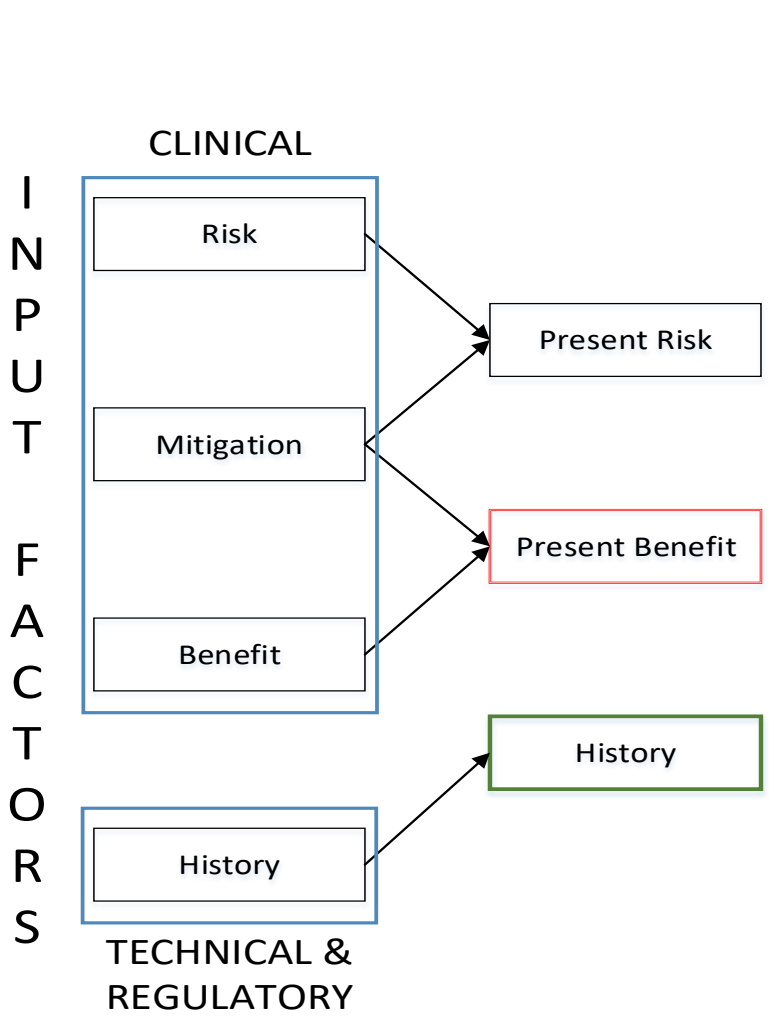
Inputs and Outputs



RECOMMENDATIONS

- Classification
- Customer/Public communication
- Effectiveness checks
- Auditing and monitoring
- FDA press
- Reg action
- Strategy review

Intermediate States



RECOMMENDATIONS

- Classification
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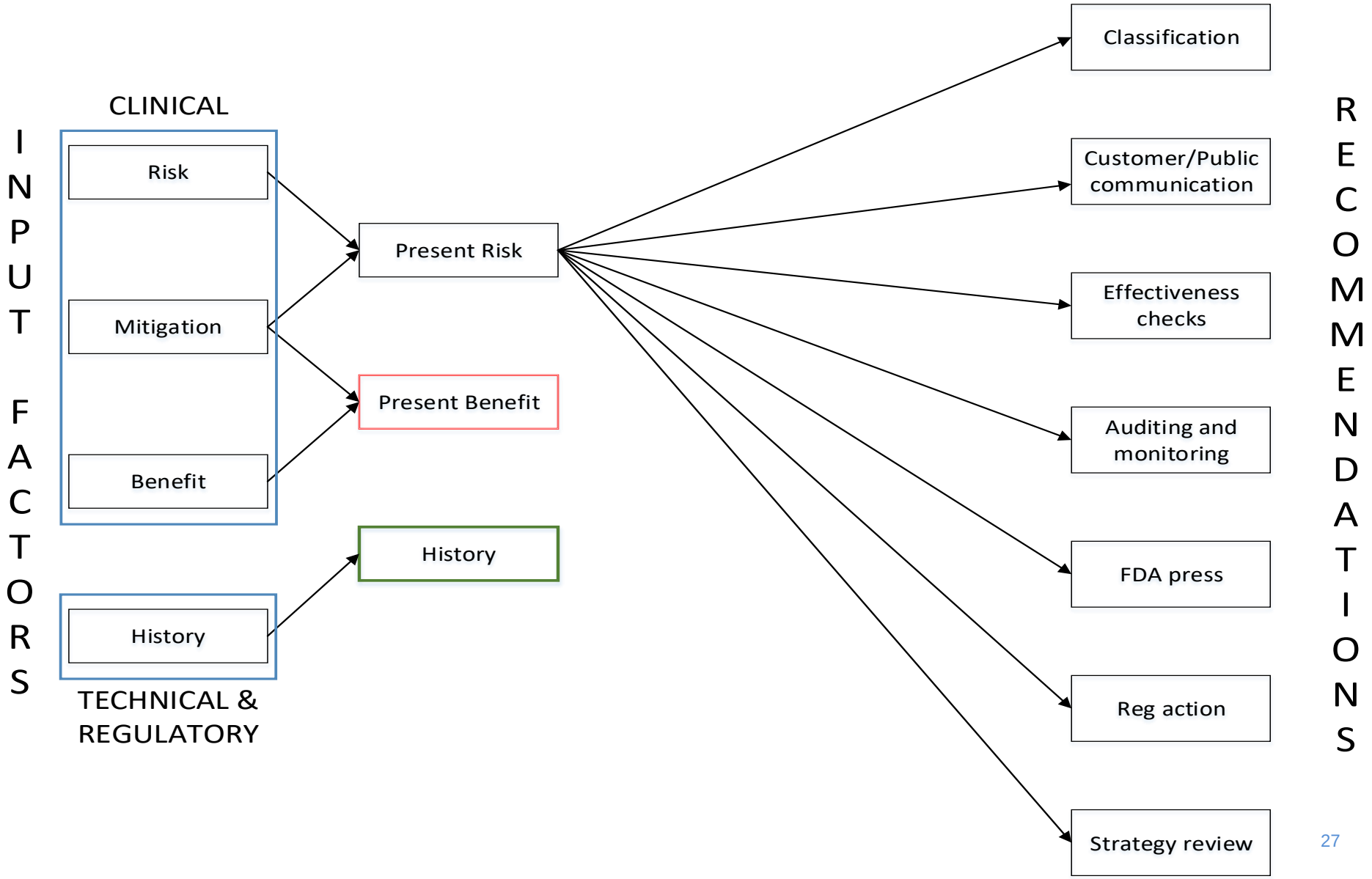
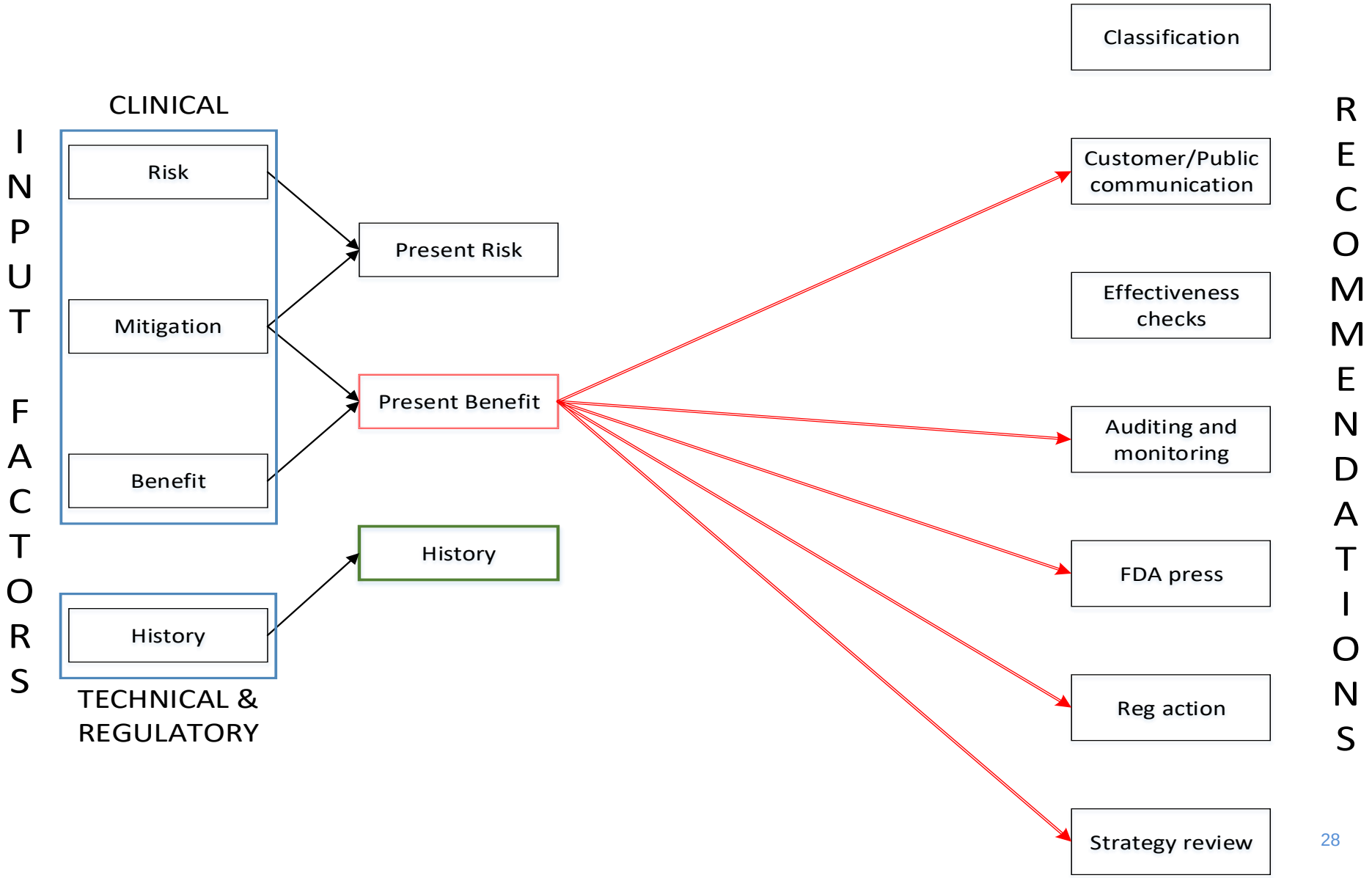
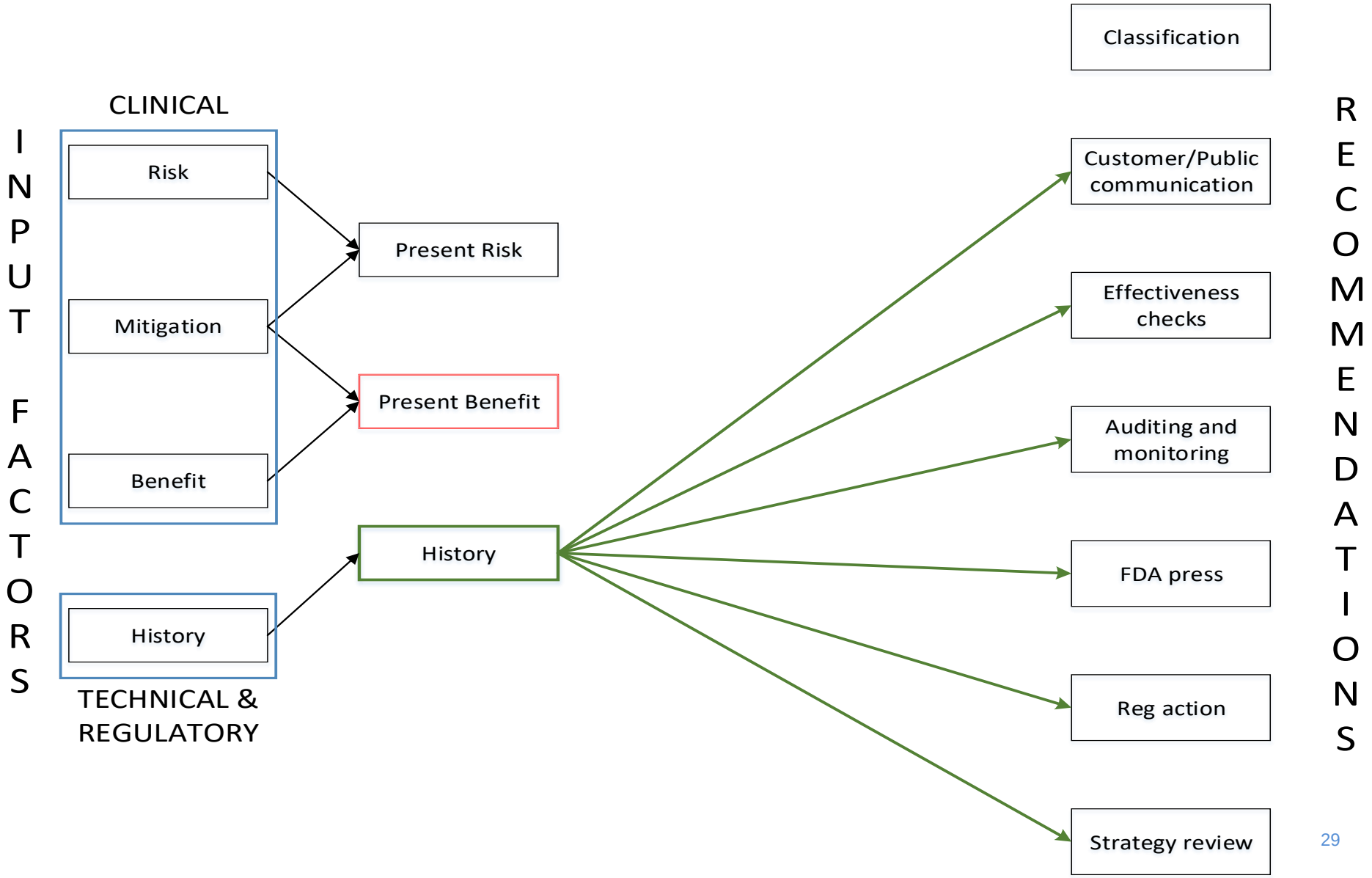
Influence: Present Risk



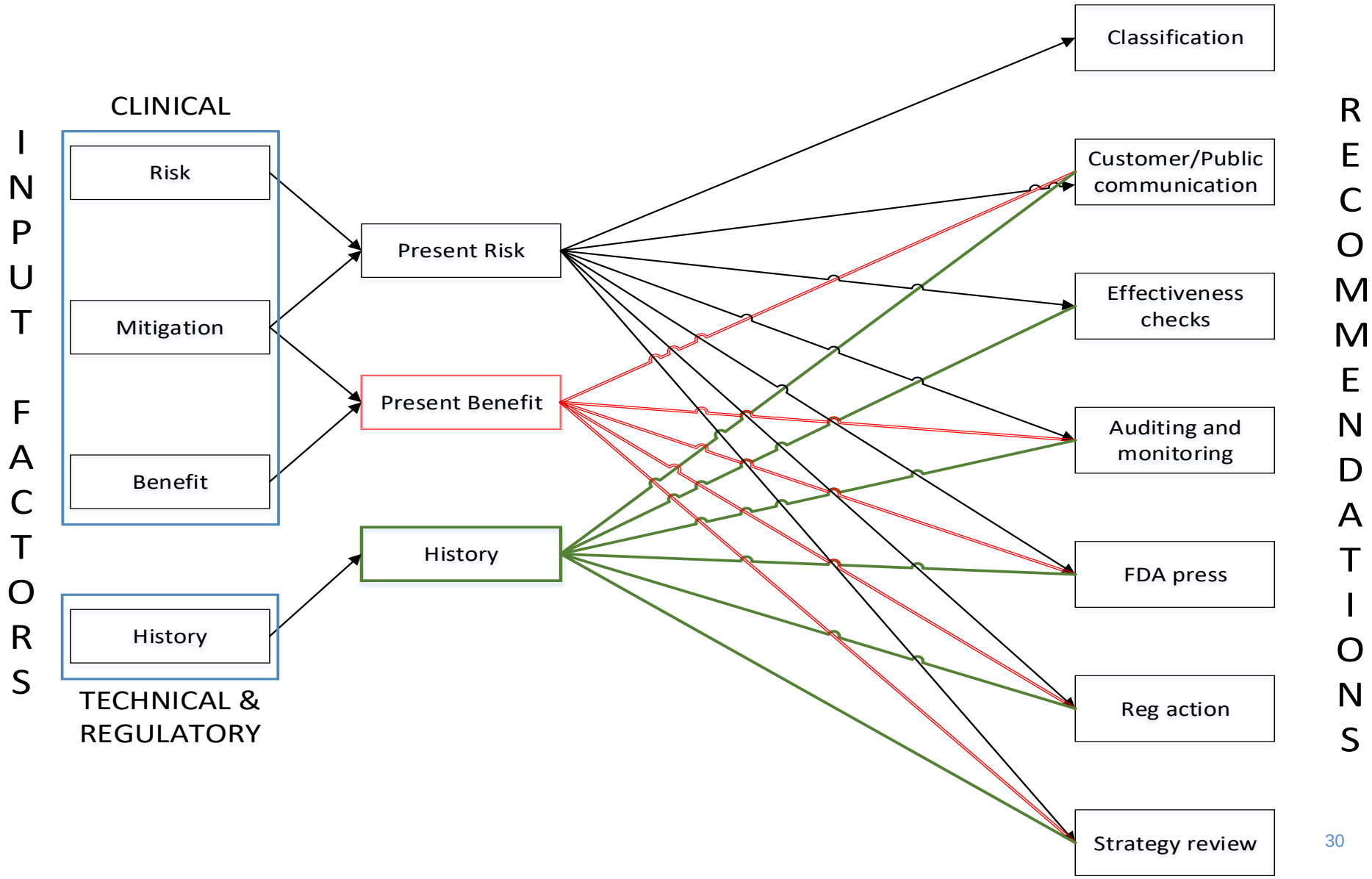
Influence: Present Benefit



Influence: History



Operationalized Framework



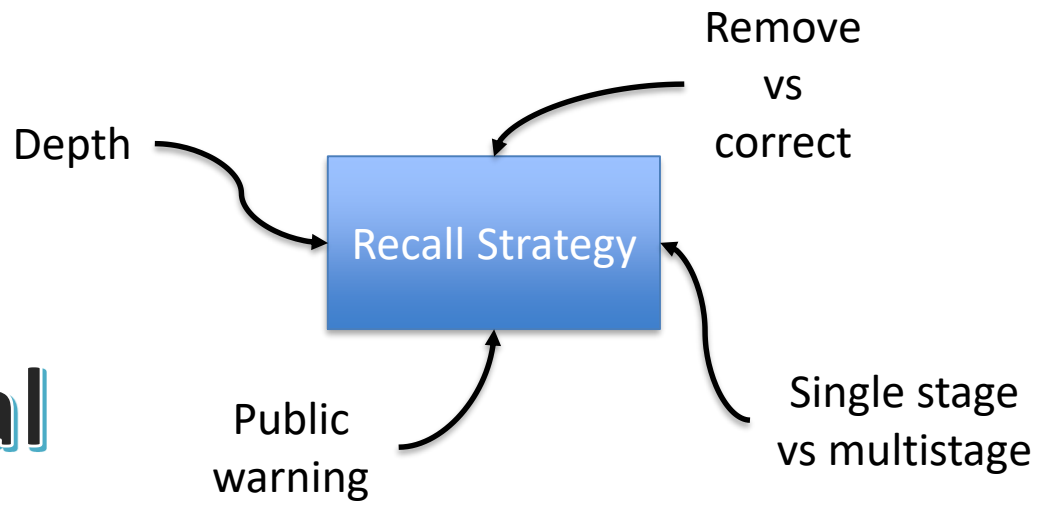
Health Hazard Evaluation and Classification

- 21 CFR § 7.41(b): On the basis of [the Health Hazard Evaluation], FDA will assign the recall a classification ... to indicate the relative degree of health hazard of the product being recalled or considered for recall.
- 21 CFR § 7.3(m): Recall classes
  - (1) Class I is 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**.
  - (2) Class II is 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**.
  - (3) Class III is a situation in which use of, or exposure to, a violative product is **not likely** to cause adverse health consequences.

Risk only

Strategy

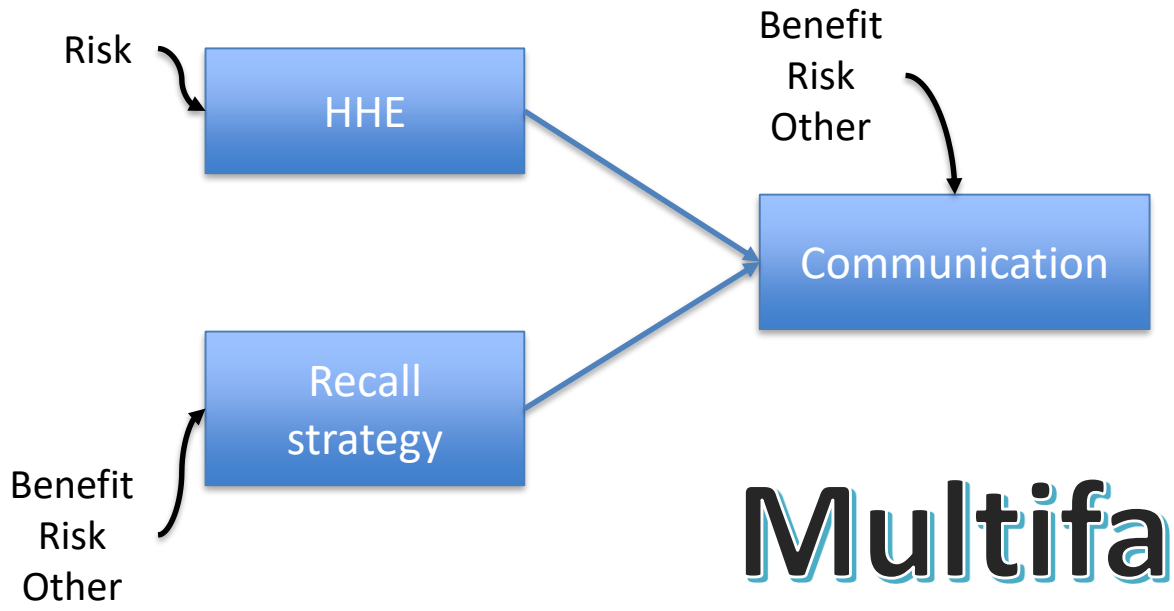
- 21 CFR § 7.42(a)(1): A recall strategy ... will be developed ... by the recalling firm ... **to suit the individual circumstances of the particular recall...**
- 43 Fed. Reg. 26202 1978: The benefits of certain products are an important and relevant factor to consider in a recall situation.



Multifactorial

User and Patient Communication

- 21 CFR § 7.49(a): The format, content, and extent of a recall communication should be **commensurate with the hazard** of the product being recalled **and the strategy** developed for that recall.



Multifactorial

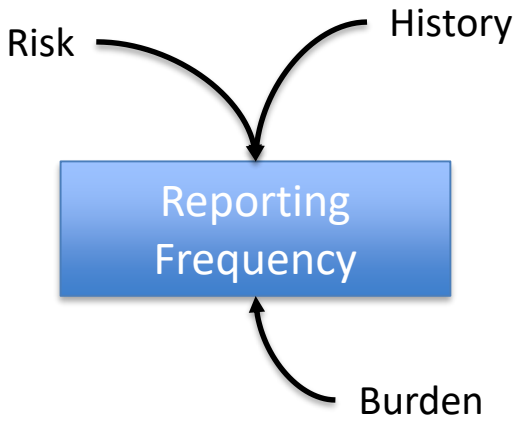
FDA Public Notification

- 21 CFR § 7.50: FDA will intentionally **delay** public notification of recalls … where the agency determines that public notification **may cause unnecessary and harmful anxiety** in patients and that initial consultation between patients and their physicians is essential.
- Notes
  - Separate from the firm's user/public communication
  - Early recall notification is here
  - Final classification posted to weekly Enforcement Report
  - Communication is a core FDA function: Protecting public health

Multifactorial

Status Reports and Monitoring

- 21 CFR § 7.53: The frequency of [periodic recall status reports] will be determined by the **relative urgency of the recall** and will be specified by the FDA in each recall case.



Multifactorial

Termination

- 21 CFR § 7.55(a): A recall will be terminated when FDA determines that **all reasonable efforts** have been made to remove or correct the product in accordance with the recall strategy, and when it is reasonable to assume that the product subject to the recall has been removed and proper disposition or correction has been made **commensurate with the degree of hazard** of the recalled product.

Risk only

High Risk Problem, Excellent History

Scenario

- The device
  - A high-risk, Class 3 medical device
  - Inappropriately shocking patients: Two deaths, several severe injuries. 2.3% failure rate.
- Proposed recall strategy
  - Remove the device from the market
  - Fix the identified design flaw
- The firm
  - Successfully carried out three recalls in the past
  - No open reg actions; two previous inspections NAI
- Acceptable substitutes available

Outcomes

- Classification
  - Class I
- Strategy
  - Review; Likely agree with firm
- Communication
  - FDA will evaluate; if adequate then no separate FDA press
- Effectiveness
  - 100% response required
- Monitoring
  - Every 6 weeks
- Additional regulatory action
  - None contemplated

High Risk Problem, Terrible History

Scenario

- The device
  - A high-risk, Class 3 medical device
  - Inappropriately shocking patients: Two deaths, several severe injuries. 2.3% failure rate.
- Proposed recall strategy
  - Leave the device on the market
  - No root cause identified
- The firm
  - Failed two past recalls
  - Open WL for reporting violations
  - Most recent inspection OAI
- Acceptable substitutes available

Outcomes

- Classification
  - Class I
- Strategy
  - Review; Disagree with firm
- Communication
  - Review and request revisions
  - FDA will craft separate press
- Effectiveness
  - 100% response required
- Monitoring
  - Every 2 weeks
- Additional regulatory actions
  - Directed inspection

Unapproved Device

- A firm has made technical changes to their device without submitting notice to the FDA. The change was discovered on inspection. The device is highly beneficial, and there has been no signal of device problems.
- Problem: No approval or clearance
  - Regulatory violation: Misbranding
  - What is the device benefit? Life-saving/High/low, transient/durable, …
  - What is the risk of use? Serious/reversible/temporary, likely/not, …
  - Is benefit > risk?
  - Options: Continue access while submitting application under time limit, remove device from the market, inspect the firm, …

Proposing an Ineffective Mitigation

- A firm submits a notice of a correction to a malfunctioning valve that prevents blood siphoning back into a pump. 0.1% of the time it doesn't open. Back-up can rupture the tubing and spray blood on users. The firm wants users to test the valve before each use.
- Problem: Incomplete mitigation
  - Regulatory violation: Adulteration
  - What is the device benefit? Life-saving/High/low, transient/durable, …
  - What is the risk of use? Serious/reversible/temporary, likely/not, …
  - Is benefit > risk? Might there be a shortage?
  - Options: Continue access while addressing root case, remove device from the market, inspect the firm, …

Potentially Causing a Shortage

- A firm has identified that newly-printed instructions for use had errors that might mistakenly instruct users. It wants to remove the product from the market and print new instructions, but it is a one-of-a-kind, life-saving device.
- Problem: Shortage concern
  - Regulatory violation: Mislabeling
  - What is the device benefit? Life-saving/High/low, transient/durable, …
  - What is the risk of use? Serious/reversible/temporary, likely/not, …
  - Is benefit > risk? What if shortage possible?
  - Strategy: Discuss with FDA potential approaches

Summary

- Protect the public health!
  - Firms: Recognize and fix problems quickly
  - FDA: Inform the public quickly and appropriately
- Promote the public health!
  - Firms: High quality → fewer device problems + less burden
  - FDA: Recognize and encourage high quality
- Expend resources appropriately!
  - Consider the whole picture: Risk, benefit, history, other factors
  - Get to *Mission Accomplished* while expending resources wisely

THANK YOU!