

November 17, 2005

Division of Dockets Management (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, Maryland 20852

Docket No. 2001D-0044

Dear Sir/Madam:

The American Association for Clinical Chemistry (AACC) welcomes the opportunity to comment on the Food and Drug Administration's (FDA's) "Draft Guidance for Industry and FDA Staff: Recommendations for Clinical Laboratory Improvement Amendments of 1988 (CLIA) Waiver Applications," which outlines the agency's alternative criteria for waiving tests under the federal laboratory standards. AACC supports the FDA's efforts to clarify the regulatory language and provide manufacturers and clinical laboratories alike with greater insight into how the agency will make waiver decisions. Our specific comments follow:

General Comments

In recent years, technological advances have allowed manufacturers to develop new and simpler devices, which make it easier for individuals with less training to accurately perform tests that were previously performed in more sophisticated laboratories. This technology-based trend is likely to accelerate in the near future. There are great benefits to simple, waived tests, such as the potential for diagnosing and treating the patient earlier and reducing overall health care costs.

However, as we move forward in this dynamic and fast growing area, it is important to remember that no device is "foolproof" and that errors can occur. Therefore, it is imperative that the FDA, the Centers for Medicare and Medicaid Services (CMS) and the Centers for Disease Control and Prevention (CDC)—the federal agencies responsible for administering CLIA'88—remain vigilant in fulfilling their duties by ensuring that laboratories using these devices are complying with existing federal requirements.

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We are particularly concerned by the findings of CMS and its state survey agencies, which indicate that a significant percentage of waiver (and provider performed microscopy) laboratories are not following the manufacturer's instructions—the only substantive requirement they are subject to under CLIA '88—when performing a test. AACC is concerned that these problems could lead to inappropriate patient care. Since CLIA '88 is a jointly administered program, we urge the FDA to coordinate its CLIA activities with the other federal agencies and that you establish means for ensuring appropriate and effective federal oversight of all laboratory testing, including waiver tests.

AACC also recommends that the FDA integrate the test clearance and characterization processes so that the same individual who reviews the device submission also determines its test categorization (including waiver). We believe this change would make the process more efficient while ensuring that the FDA reviewer who is the most knowledgeable about the device (by virtue of reviewing the PMA or 510(k) application) makes the classification decision. More importantly, a single integrated process will prevent duplicate work and prevent inconsistent or conflicting decisions and recommendations.

II. Demonstrating Simple

The Agency recommends that tests for sexually transmitted diseases (STDs) (with HIV being the one exception) be barred from the waived list. AACC agrees with this decision. However, given that each state reports different STDs, we recommend that the FDA create a single, comprehensive list of all the STD tests and make it available to manufacturers so that they know which tests are ineligible for waiver designation.

III. Demonstrating Insignificant Risk of An Erroneous Result

The FDA states that a manufacturer “should demonstrate in your CLIA waiver application that sources of error are controlled or mitigated by fail-safe or failure alert mechanisms. Fail-safe mechanisms are designed with a lock-out function that will ensure that a test system does not provide results when test conduction is inappropriate or the result is based on faulty test functioning. . . . We recommend that test system design incorporate fail-safe mechanisms whenever possible.” AACC supports this approach.

The Association also recommends that all devices approved as waived make available to users a scientifically detailed description of the analytical method. This description does not need to be in the package insert, but should be available on the company's website. A reference to the website address should be included in the package insert. The level of detail should be sufficient that a scientifically knowledgeable user can evaluate the performance of the device.

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IV. Demonstrating Insignificant Risk of An Erroneous Result – Accuracy

The FDA interprets accurate to mean test performance (i.e., the test performs the same in the hands of untrained users as it does in the hands of laboratory professionals when using the device under realistic conditions).” We believe this is an inappropriate use of the term “accurate” as understood by the vast majority of caregivers, policymakers and the public. Using this definition may needlessly confuse caregivers about the correctness of the result. What the FDA is describing under this section is performance comparability, not accuracy. Therefore, we recommend that the Agency describe this process as “producing comparable test results” rather than using the term “accurate.”

V. Labeling for Waived Devices; C. Educational Information

FDA recommends that manufacturers “assist laboratories performing waived tests to become better educated on proper laboratory techniques.” Specifically, the Agency encourages manufacturers to develop training and education programs to promote good laboratory practice among end operators. AACC agrees with this approach.

The Agency further states within the section that operators using waived test systems must have a CLIA certificate of waiver and must follow the test system instructions. AACC agrees with both recommendations. We recommend that the label instructions include, however, an explanation of the differences between “must” and “should” from a regulatory standpoint, since those words, particularly should, are used repeatedly through the document and have different meanings and consequences.

VI. Safeguards for Waived Tests

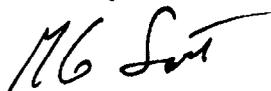
The Agency recommends that manufacturer of waived tests include a brief description of the MedWatch program and its contact information in the product insert. AACC agrees that this information should be included. We recommend that the contact information include the program’s phone number, along with its mailing, e-mail and internet addresses.

FDA has dropped one recommendation from its earlier draft, however, which urged manufacturers to monitor, and be prepared to report to the Agency, how a waived test is performing for the first three years of actual use. AACC suggests that FDA re-instate that provision. We believe this is a reasonable option for assuring the Agency and the public that a device is working properly.

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By way of background, AACC is the principal association of professional laboratory scientists--including MDs, PhDs and medical technologists. AACC's members develop and use chemical concepts, procedures, techniques and instrumentation in health-related investigations and work in hospitals, independent laboratories and the diagnostics industry worldwide. The AACC provides international leadership in advancing the practice and profession of clinical laboratory science and its application to health care. If you have any questions, please call me at (314) 362-1503, or Vince Stine, Director, Government Affairs, at (202) 835-8721.

Sincerely,

A handwritten signature in black ink, appearing to read "MG Scott". The signature is written in a cursive, somewhat stylized font.

Mitchell G. Scott, PhD
President, AACC