CDRH Virtual Town Hall #103
COVID-19 Test Development and Validation
April 26, 2023

Joseph Tartal: Welcome, everyone, to today's Virtual Town Hall number 103 for SARS-COV-2 test developers. This town hall follows the final emergency use authorization EUA transition guidance webinar held last week on April 18th, and that recording will be made available on CDRH Learn. Today, we plan to further discuss the transition as it relates to IVDs and to answer your questions about diagnostic tests. I'm Joe Tartal, Deputy Director within the Division of Industry and Consumer Education in CDRH's Office of Communication and Education, and I will be your moderator for today's Virtual Town Hall.

Our panelists for today's program are Dr. Timothy Stenzel, Director of the Office of In Vitro Diagnostics, which is also referred to as the Office of Health Technology #7, or OHT7 in CDRH's Office of Product Evaluation and Quality or OPEQ. Toby Lowe, Associate Director for Regulatory Programs, also in OHT7, Dr. Kristian Roth, Deputy Director of the Division of Microbiology Devices in OHT7. Ryan Lubert, Regulatory Counsel in OHT7 and Dr. Kathryn Drzewiecki, Policy Advisor in the Office of Policy.

For today's virtual town hall we'll begin with an overview, and then we'll answer your previously emailed questions, and then we'll address your live questions. As a friendly reminder for those of you participating live in today's virtual town hall, please be sure that you have joined us via the Zoom app and not through a web browser to avoid any technical issues.

The presentation and transcript from our last virtual IVD Town Hall, which was held on March 22, 2023, has been posted to CDRH Learn. A screenshot has been provided on this slide of where you can find those materials within CDRH Learn. Please use these valuable resources.

Next up, I'd like to welcome Toby Lowe, who will be opening today's program. Toby, the floor is yours.

Toby Lowe: Thanks, Joe. Thanks, everyone, for joining us. We've been a month or so since we've last had a town hall, and we're glad that we could get this one scheduled to talk about the transition guidances that are now finalized.

If you can go to the next slide show, Joe. We'll go through an overview of the public health emergencies and related authorities, an overview of the COVID 19 transition guidances, and discuss the IVD-specific transition policies and recommendations. You'll note at the bottom of the slide there's a tiny little note that makes the point that these slides are going to go through high level discussion points. The information on the slides are not the complete information, so make sure that you refer to the statute, the regulations, and the guidance documents so that you make sure that you're seeing everything in full context since we'll only be covering some partial details today.

So I'm going to go through some of this background pretty quickly. I want to make sure that we get to plenty of time for questions. So we've talked about this a little bit previously. There are different public health emergency determinations. There's the 319 public health declaration, public health emergency declaration rather, which is under the Public Health Service Act, and that is a 90-day declaration that has been renewed many times since 2020, and it is set to expire on May 11.

The 319 does not enable FDA to issue EUAs. The determination and declaration that do enable FDA to issue EUAs is under the Federal Food, Drug and Cosmetic Act or, the FD&C Act, and that's the determination under Section 564 of the FD&C Act. So you'll hear us talk about the 564 declaration a lot. That is not time limited and it continues until the HHS secretary terminates it.

So going to slide 6. The criteria for issuance are listed out here. I'm not going to read them because I think you're all probably familiar. And it's also important to note that EUAs are temporary, as everyone is aware, and they can be revoked for various circumstances. But generally if they're not revoked, the EUAs will remain in effect for the duration of the EUA declaration under which it was issued.

So next up we have the COVID transition guidances. If you can go to the next slide, Joe. There we go.

So these are the two guidances that we've talked about here before when they were in draft. One is the enforcement policies transition guidance and the other is the EUA transition guidance. The full names are there, with the links, and we generally refer to these collectively as the COVID-19 Transition Guidances. So we're going to touch on aspects of each policy that are most likely to impact IVDs, and both guidance documents include a 180-day transition with different starting points based on the specific policy.

Next slide is talking about the webinar that Joe also mentioned. This was held last week and went through the more detailed general discussion of the guidance documents, so we won't go through all of those details. We'll focus primarily on IVD issues, and the general information will be available when the webinar presentation and transcript are posted.

So next slide, we'll start with the enforcement policies transition guidance. So this one applies to devices that fall within enforcement policies that are listed in the guidance. On this slide, we have the four guidance documents that are listed on what's referred to as list one in the enforcement policy guidance. These are the four that relate to IVDs. There are additional guidances on that list, but they don't relate to IVD, so we didn't put them on this slide to focus the discussion here.

And then it's really important to note at the bottom that the biggest IVD-related guidances that we've talked about on this town hall are out of scope of the enforcement policy guidance. So that's the policy for COVID tests and the policy for evaluating the impact of viral mutations on COVID-19 tests. And we'll go into what does apply to those ones, which is going to be the EUA transition guidance, a little bit further down.

So next slide goes into the different phases of transition for the enforcement policies transition guidance. So this guidance has an implementation date of May 11 of this year, and that's because that is when the 319 public health emergency declaration will expire, and this transition for these enforcement policies is tied to that public health emergency, the 319. We're not going to go into many details for this guidance because there aren't many IVD-specific considerations, but here's a quick overview.

Basically the guidance goes into enforcement policies that are for manufacturers that intend to continue distribution of their devices after the transition period, as well as manufacturers who do not intend to continue distribution, but may have some distributed devices still in use. So we recommend that manufacturers begin preparation now before the implementation date to begin preparing any required marketing submission if you intend to continue distribution of your device beyond Phase 2.

Starting on May 11th, which is coming up real soon, you should start following adverse event reporting requirements if you're not already. And then by August 9th, which is 90 days in, you should begin to follow the requirements under the regulation 21 CFR Part 806 for reports of corrections and removals, and you should have registered and listed by that date if you intend to continue distribution. And then you should make sure to submit your marketing submission early enough to have it accepted before the start of Phase 3 if you intend to continue distribution. Then November 7th is 180 days after the implementation date, and that is when the guidances in List 1 will no longer be in effect. So the enforcement policies in the enforcement policy transition guidance, will be in place to address any remaining devices that may still be in distribution at that point.

So you can go on to the next slide and we'll get into the EUA transition guidance, which is likely what most folks on here are going to be focused on. This is the transition guidance that applies to devices with EUAs issued on the basis of a COVID-19 EUA declaration, and that's the 564 declaration. It does not apply to devices with EUAs that were revoked, and the 180-day transition period begins when we get the advance notice of termination of the 564 declaration, and that has not yet been announced, so we don't know when this transition guidance 180-day transition period will begin.

Going to the next slide, these are the different steps that will take place once we do have that 180-day advance notice, and there are a lot of things that you can begin doing now to prepare. So similar to the enforcement policies transition guidance, this EUA transition guidance includes policies both for manufacturers that intend to continue distribution after the transition period, as well as manufacturers who do not intend to continue distribution, but may have some distributed devices still in use.
So we recommend that as soon as possible prior to the advance notice of termination that you begin to plan for your post-EUA regulatory strategy. You should already be complying with the terms of your devices' EUAs and you should begin preparing any required marketing submissions if you do intend to continue distribution. We've talked a lot on here about using pre-submissions. We do encourage you to begin those discussions with the agency as early as possible.

There are quality system requirements that will kick in after the transition period, and so we do recommend that you start thinking about putting those QS systems in place if you don't already have them. If you intend to continue distribution and you have concerns about that or you have unique compliance considerations, there is a step in the transition where you may request an exemption or a variance from a device QS requirement. If you do intend to do that, you should get that in before the 90-day period, so that first 90 days of the transition period, whenever that starts.

Then the 180-day period between the advanced notice of termination and the EUA termination date is going to be very active. You should be continuing to comply with your EUA, and you should make sure to submit your marketing submission to FDA if you intend to continue distribution, early enough to have it accepted before the EUA termination date.

Once that EUA termination date hits, all EUAs issued under that declaration will be terminated. The enforcement policy in the EUA transition guidance will be in place for devices that have a marketing submission under review by FDA. And otherwise, you'll be expected to discontinue distribution if you have no marketing submission under review or if you receive a negative decision on a marketing submission. And then, as we mentioned, there's also an enforcement policy for devices that are already distributed, and we'll get into that a little bit further.

So next slide here. We have talked also on the previous town halls about leveraging real-world data. We are committed to the use of real-world evidence for regulatory decision making as much as possible. There is a national evaluation system for health technologies, or NEST Implementation Cases project that is starting up for analyzing data from COVID diagnostic tests, including lateral flow assays and lab tests. And interested manufacturers can reach out to get more information about that and to engage with NEST on how to leverage that data.

If you are interested in using real-world data and real-world evidence to help in the transition, you can reach out to us through the COVID mailbox, COVID19dx@fda.hhs.gov , or submit a pre-submission.

Next slide goes into some of the additional considerations related to CLIA. These are also discussed in the EUA transition guidance. As you all know, authorization under EUAs is specified for specific settings, but that is effective only while the EUA declaration is in effect. We recommend that any marketing submission that may need a CLIA categorization decision, such as tests intended for use in moderate complexity labs or in CLIA certificate of waiver settings, be submitted as soon as possible so that we have as much time as possible to review the marketing submission and the CLIA categorization request for a CLIA waiver by application prior to the termination of the EUA declaration. We want to reduce the potential for any disruption in distribution and use. So the policy that we have laid out in the guidance does provide for FDA not objecting to continued distribution and use of tests, consistent with the EUA that was in fact in effect prior to the EUA termination date, but we do encourage laboratories that plan to use those tests to consider the CLIA requirements administered by CMS.

So next slide gets into the policy around devices where the manufacturer does not intend to continue distributing beyond the EUA termination date. And for those, we don't intend to object to the disposition and use of devices that are already distributed. So in simpler terms, we don't intend to request a market removal where those are single-use, non life supporting/non life sustaining devices, which includes IVDs or the COVID tests that we've been focused on here, that were distributed before the EUA termination date and are used before the product expiration date.

You should also make sure that you're aware of any applicable requirements that would go along with the use of those devices, such as the adverse event reporting under 21 CFR Part 803, and you will be expected to comply with those requirements for the duration that they're applicable, which may extend beyond the EUA termination date and when you stop distributing.

The next slide, the guidance does also discuss laboratory developed tests, which are IVDs that are designed, manufactured, and used within a single site laboratory certified under CLIA that meets the requirements to perform tests of high complexity. Generally for LDTs we have exercised enforcement discretion, so we have not generally exercised our authority to enforce regulatory requirements for LDTs, although we do maintain that authority. We have not applied this general enforcement discretion approach to certain LDTs, including those used for declared emergencies under a 564 declaration. So following termination of the 564 EUA declaration for COVID IVDs, we intend to have the same enforcement approach for COVID-19 LDTs as we do for other LDTs.

Next slide gets into one of the examples that's in the EUA transition guidance. So this is hypothetical. These dates are hypothetical. As I've mentioned, we don't know when we'll get the advance notice of the EUA termination date, so these are just completely made up dates and they may not add up exactly

to the 180-day time periods, but this is the example that is included, as I believe it's example 4 in the guidance.

So this is for a molecular diagnostic test kit issued an EUA. And this is supposing that we get the advance notice of termination of the EUA declaration on July 1st. The manufacturer does intend, in this case, to continue distribution beyond the EUA termination date, so they should submit their marketing submission as early as possible to get it accepted by FDA before the EUA declaration is terminated. So this example shows that happening on October 1st. We encourage you to do that as soon as possible. It can be up until shortly before the EUA termination date, but you do want to make sure that you leave enough time for the acceptance review, so that we can finish that up before the termination date. So then this example has January 1st of that following year as the date on which the EUA declaration is terminated. The EUA for this particular device then is no longer in effect, and FDA does not intend to object to continued distribution of the device with the EUA authorized labeling before FDA takes a final action on the marketing submission.

So then the next slide gets into the rest of the different examples of how this could be resolved. So in the case of a positive decision, the example considers that a positive decision is made on February 20th. And at that point, FDA and the manufacturer would engage on the manufacturer's transition implementation plan, which would have been submitted with the marketing submission. And that plan would address how to handle the already distributed devices.

Generally, we would not expect the manufacturer to update device labeling for those devices that were already distributed, but we would expect the manufacturer to update labeling for devices that are in production and those that are in the manufacturer's possession, to update the labeling to the FDA cleared version. And then we would expect the manufacturer, of course, to continue to submit adverse event reports, both for the previously distributed devices and for any new distributed devices.

The alternate resolution of this example is if a negative decision is issued on March 1st. In that case, FDA and the manufacturer again would engage on the manufacturer's transition implementation plan to address already distributed devices. But in this case, no additional devices would be distributed and the manufacturer would be expected to continue to submit adverse event reports, even after stopping distribution. And with that, I believe that is my last slide, and we can go on to questions.

Joseph Tartal: Yep, thank you, Toby, for that valuable information. Great presentation. We'll now answer your previously emailed questions about COVID-19 test development validation and the final emergency use authorization transition guidance documents. As always, we have received some questions that are a little too detailed or test case specific that we will not address on today's call. Further, we are focusing primarily on the transition for today's town hall, and some questions we received are not related to the transition and the transition guidances.

For those questions that we don't address on today's call, we will try to send a response in writing within a few days. If you have submitted a question and do not hear it addressed, please look for a written response. If you do not receive one within a few days, please feel free to reach back out to the COVID19dx@fda.hhs.gov mailbox.

So our first question, we have received several questions about submissions following May 11th, and the transition period for both COVID-19 transition guidances. And I'll try to group a few of these together here to respond to them all together so that we don't have overlap.

So there's four parts of this. What is the FDA's plan regarding devices that are currently under EUA submission review post May 11th? During the transition period for the EUA transition guidances will supplements/amendments be allowed for modifications to the emergency use authorization devices? How do the COVID-19 transition guidances impact manufacturers with ongoing clinical studies for future EUA submissions? And in light of FDA's COVID transition guidances, does the FDA prioritize pre-market submissions? So Toby, I'll be looking to you to respond to this first four-part question.

Toby Lowe: Thanks, Joe. And yeah, we grouped those together since they sort of share a lot of aspects of the response. So as we discussed, the public health emergency under 319 will expire on May 11th and will not be renewed. The 319 and 564 declarations are independent. The 319 public health emergency expiration does not impact the 564 declarations.

The EUA declarations related to COVID-19 under Section 564 of the FD&C Act will continue until the Secretary of HHS ends them. Additionally, as we've discussed and is in the transition plan guidance, we expect 180 day notice before the 564 EUA declarations are terminated.

So while the 564 declaration for COVID-19 IVDs is in place, manufacturers may submit EUA requests, including supplemental EUA requests, and FDA will continue to consider them based on our previously communicated prioritization and considering the public health needs. Once the 564 declaration is terminated, we will no longer be authorized to issue EUAs, and therefore we will not continue review of any EUA requests that are under review at that time. As we've talked about, we don't have a date for the 564 declaration being terminated, and we do expect 180 days notice prior to the termination.

At this point, however, rather than pursuing an EUA or a modification to an EUA, the FDA is encouraging all manufacturers to submit traditional marketing submissions, such as 510(k)s, De Novos, and possibly PMAs, in some cases. If you have an ongoing clinical study or you're otherwise planning for a future EUA request for a COVID-19 test, we recommend that you consider how your clinical study and other validation efforts may also support a traditional marketing submission, since we are encouraging all manufacturers to pursue traditional marketing submissions.

That said, marketing submissions, including 510(k)s and De Novos, are not prioritized in the same way that EUA requests have been. We do aim to review marketing submissions according to the timelines established under the Medical Device User Fee Amendment or MDUFA program. Generally 510(k) applicants can expect submission acceptance review decisions within 15 calendar days, substantive review decisions within 60 days, and final decisions within 90 days. And those days are calculated as what we refer to as FDA days, so days under FDA review, not including any days where the submission might be placed on hold due to a request for additional information from the applicant.

Joseph Tartal: OK. Thank you, Toby, for that information and clarify and ordering out a lot of good information in a nice logical order. So with that, we'll get to our next question, which is, how does the public health emergency termination on May 11th impact LDTs, laboratory developed tests? Can I offer my LDT point of care COVID-19 test after May 11th in alignment with the general enforcement discretion policy for LDTs outside of an EUA declaration? Toby, I'm going to send this question to you.

Toby Lowe: Thanks, Joe. I'm not sure why we had point of care in that question. I'll just clarify that most LDTs are not point of care. But for LDTs in general, FDA has generally exercised enforcement discretion, as we've talked about, meaning that we don't exercise our authority to enforce regulatory requirements for LDTs, although we do have that authority. We don't apply the general enforcement discretion approach to certain LDTs, as I mentioned in the slides, including those used for declared emergencies under 564.

As we've mentioned, the 319 and 564 are independent. The EUA declaration under 564 is continuing, and we expect that 180-day notice before it is terminated. Therefore, even after the PHE, the Public Health Emergency, termination on May 11th, the EUA declaration for COVID-19 IVDs is still in effect, including the EUA requirements for COVID-19 tests, and that does apply for LDTs. This will continue to help assure that COVID-19 tests remain appropriately accurate and reliable, including in the setting of new variants and sub-variants that we continue to see with COVID-19.

Following termination of the EUA declaration, that's the 564 declaration, which we don't have a date yet for that termination, so that 564 declaration for COVID-19 IVDs, once that is terminated, we do intend to have the same enforcement approach for COVID-19 LDTs as we do for other LDTs.

Joseph Tartal: OK, thank you for that comprehensive response. With that, we'll go to our next question. Due to a high prevalence of low positive samples in the clinical study cohort for EUA requests for COVID-19 antigen tests, many sponsors have used a control low positive analysis, where the analysis is stratified the positive percent agreement, PPA, of the investigational device by different percentages of low positive samples, such as 10% and 20%, in the sponsor's clinical study cohort. Can a low positive analysis such as this be used to support a traditional marketing submission such as a 510(k). Kris, I'm going to turn that question over to you.

Kristian Roth: OK, great. Thank you, Joe. So our recommendations to support a traditional marketing submission are different from our recommendations to support an EUA. And at this time, we don't intend to use this type of low positive analysis to support traditional marketing authorizations. Generally, we would expect robust overall performance observed in a prospective clinical study for COVID-19 antigen tests seeking traditional marketing authorization, with a minimum PPA of 80% and a lower bounds of the 95%, confidence interval of 70%.

The special controls that such tests must meet are outlined in the FDA's recently granted De Novo, and that's De Novo number DEN220039. And this De Novo was from the Quidel Corporation for the Sofia 2 SARS Antigen plus FIA.

The low positive analysis used during the EUA authorization for some tests was based on a variety of factors that were kind of unique to the pandemic. This included high prevalence of reported COVID-19 cases, the viral load of the circulating variants at that time, and the frequent use of serial testing or otherwise repeated regular testing, such as workplace or school testing programs. This all led to a determination that the benefits of wide availability of OTC COVID-19 tests outweighed the potential risks of lower sensitivity.

As these factors have now largely shifted with lower prevalence of reported COVID-19 cases, as well as reduced testing, FDA's recommendations for traditional marketing authorization do not include the use of a low positive analysis.

Joseph Tartal: Thank you, Kris, for that response. Good information to know. Going on to our next question. CMS previously announced the end of provider discretionary use once a public health emergency is terminated on May 11th, and will start enforcing label adherence for SARS-COV-2 antigen tests. Does FDA have any recommendations on how clinicians can adhere to serial testing requirements once the public health emergency ends? Toby, I'm giving you this question.

Toby Lowe: Thanks, Joe. So generally, you will refer folks to CMS if they have questions about the CMS policies, but we can talk about how to meet the FDA requirements on these tests. So it's important for all users, including health care providers and laboratories, to follow the EUA authorized instructions for use. However, when the instructions for these antigen tests say to include serial testing, the antigen tests can be mixed and matched.

So the follow on of the serial COVID-19 tests, do not have to be the same as the first test. Additionally, if the patient is negative in the clinic, they can be instructed to perform the follow on tests at home.

Joseph Tartal: OK, thank you for that answer, Toby. We'll move on to our next question. So for the duration of an emergency use authorization for COVID-19 tests, FDA has typically waived the requirements for quality systems, including design controls under 21 CFR 820.30. How should an IVD manufacturer approach meeting the design control requirements after the emergency use authorization termination date with an emergency use authorized test? For this, Ryan, I'm going to turn this question over to you.

Ryan Lubert: Sure. Thanks, Joe. So for this question, as outlined in the EUA transition guidance, the FDA does not intend to object to continued distribution of devices that fall within the scope of the guidance if the manufacturer has submitted a marketing submission and it has been accepted by the FDA before the EUA termination date and where FDA has not taken a final action on the marketing submission. After the EUA termination date and while a marketing submission is under FDA review, FDA expects manufacturers to comply with the quality systems regulations under 21 CFR Part 820 for their EUA-authorized test.

As discussed in the EUA transition guidance, FDA recognizes that there may be situations that raise unique compliance considerations, particularly regarding quality system requirements. FDA intends to take such considerations into account when making case-by-case compliance and enforcement decisions. Because these situations are nuanced and fact specific, some manufacturers who intend to continue distributing their devices after the EUA termination date may wish to have specific discussions with the agency, and we suggest initiating those discussions as soon as possible.

In certain circumstances, some manufacturers who intend to continue distributing their devices after the EUA termination date may choose to request an exemption or variance from a device quality system requirement, and this is outlined in 21 CFR 820.1(e) and section 520 (f)(2) of the FD&C Act. We would note any such exemption or variance should be requested within 90 days of publication of the advance notice of termination of the EUA declaration, and this will help ensure FDA considers your request in time.

Joseph Tartal: Thank you, Ryan, for that answer. And we will move on to our live portion of the program. So with this, let's move on and take and answer live questions. Please select the Raise Hand icon at the bottom of your Zoom screen. When you're called on, please follow the prompt in Zoom and select the blue button to unmute your line, then identify yourself and ask your question. Please remember to limit yourself to asking one question only. If you have additional questions, you may raise your hand again to get back into the queue and I will call on you as time permits.

So with that, let's get to our first question. Kal, I'm unmuting in your line. Please unmute yourself and ask your question.

Kal Mansoor: Hi, good afternoon. Thanks for taking my question. My question is related to antigen multi analytic tests. So given the low prevalence of flu B for the last few years, how does FDA intend to clear 510(k) submissions with prospective samples for COVID and flu A, but not for flu B. In other words, will FDA clear test with only COVID and flu A without flu B? Thank you.

Timothy Stenzel: So this is Tim, and that's a good question. And it is a challenge, and we've been discussing that internally at the FDA and with inter-agency colleagues. We do see value of being able to test and report for flu A for which it's validated. So the circumstances may differ depending on your test type, so I would urge that you submit this question through the q-sub or pre-sub process to our team, and let us know about your device, and we can give you some specific feedback on that. But we do recognize the problem, and we do want to work with developers who can get out there with a flu A test sooner than they might be able to validate the flu A and flu B test. Kris, anything you want to add to my response?

Kristian Roth: I don't. That sounds great, thanks.

Joseph Tartal: And with that, we'll go to our next question. Anjali, I'm unmuting your line. Please unmute yourself and ask your question.

Anjali: Hi, this is Anjali from Color, and I had a question about the unknowable date of when the EUA termination will be. I know that in the past we've talked about how the Zika emergency is still open and others like that. Do you think the same framework will apply for COVID or do you think that it'll be a different framework that's specific to COVID for when that might end?

Timothy Stenzel: I think this is going to be --This is Tim --I think it's going to be different. I think we are going to end the 564. We just need to make sure that when that happens that we have enough tests that have been authorized that we will meet the nation's needs for COVID testing in the future.

Anjali: Thank you.

Joseph Tartal: Thank you for your question. Our next person up is Hur. Hur, I'm unmuting yourself. Please unmute and ask your question.

Hur Koser: Thank you for that, Joe. Actually, my question was partially asked by the first question, multiplex flow assay tests and low prevalence of flu B. My follow up question to that is if such a test is

currently under clinical studies, should it plan to gather sufficient data to meet a marketing submission directly, or will go through an EUA first and immediately following marketing submission. Thank you.

Timothy Stenzel: As Toby mentioned, as long as the 564 is open for IVDs and it meets our priority, we will review them. But we are encouraging developers to move to full marketing applications, so that's up to you. What I would do is if you're planning on still submitting an EUA that you reach out to us through the q-sub pre-sub process, free to developers. And in parallel, discuss what we're going to recommend for your full validation, so that you're working towards both. At this point, we're encouraging full market authorization submissions. We have a lot of tests on the market right now. There is still COVID circulating. We do want, while it's still circulating, which probably won't end, but who knows, we want to make sure that developers have a chance to fully validate their tests for marketing submissions. It is one of the reasons why some of the previous 564s have remained open, and that is that it's difficult to convert to marketing application if cases have decreased. For example, MPOX right now. There's nearly 0 in the US on a daily basis, not quite. And worldwide, actually. So it would really be hard to do full marketing submission. So those 564 authorities for the FDA are really valuable in making sure that there's tests on the market and they stay on the market as long as needed. Thanks.

Hur Koser: Thank you.

Joseph Tartal: OK. Our next question up is Ling. Ling, I'm unmuting yourself. Please ask your question.

Ling: Hi, this is Ling from BD. Thanks for taking my question. It's actually a follow up from the comment about the serial testing adherence asked earlier. A couple of related questions.

The first one, you mentioned that it was OK for clinicians to use a mix and match workflow, where they instruct the patient to use an at home test. Do the clinicians actually need to provide those at home tests or otherwise confirm that the test has been performed, or is it sufficient to just recommend that the patient go home and do that home test? And I guess to follow one from that, will statements on this mix and match workflow be provided anywhere formally, other than in the town hall transcripts, for clinicians and labs to reference? Thank you.

Toby Lowe: So the language in the EUAs is a should language. So we do obviously believe that serial testing is important based on the data, and we've talked about that quite a bit. The expectation from our part is that to follow the EUAs that laboratorians or clinicians would ensure that the individual knows that they should repeat testing and that they should be aware of the language in the EUAs that indicates that a negative is not confirmed without that repeat testing. That language is in the EUAs, and so that's available for users. And we don't get into any more specific details beyond that. But no, we would not expect the clinician or the laboratorian to provide the home test.

Timothy Stenzel: Yeah, so we'll leave this into the space of practice and medicine about we just want it communicated that serial testing is important twice for symptomatic people, three times for asymptomatic people, if the first and second tests, respectively, are negative.

Ling: That's very helpful. Thank you.

Joseph Tartal: With that, we'll get to our next question. Richard, I'm unmuting you. Please ask your question.

Richard Montagna: Well, thank you. I have a general question about the use of real-world data to support a marketing submission for a molecular test. We are interested in using such data to augment what we're currently collecting in a nationwide clinical study, but as per our Q-sub discussions, all of the enrollees are currently being tested with our device against comparators. So my general question I think would apply to everyone, is that like most EUA holders we have access to millions of test results, but none of those would have been at any comparator data. So does FDA have any general guidance as to whether or not such data would be permitted. And if so, how should we go about doing that?

Timothy Stenzel: So we're aware of some of the challenges that exist for IVDs for using real-world evidence in data to support submissions. We abide by the CDRH guidance in this area and we encourage its use whenever possible because we do believe it can reduce the amount of work that a developer might do. There are situations out there that we're aware of, for some devices at least, where comparative testing with an adequate comparator might be available. It might not happen exactly on the same day and the same time. It might be within one day, for example.

So we are encouraging data systems can be developed and deployed in the US so that going forward the real-world evidence can be more easily obtained by developers. And there's a whole project being led by Dr. Sara Brenner in our office on SHIELD project and on point-of-care devices and this issue of connectivity and data reporting with specific devices. If you reach out through the q-sub / pre-sub process and provide us some details about how you would like to use real-world evidence or data for your submission, we'll try to engage with you on that and find a way to help you out.

Richard Montagna: OK. Well, thank you very much. I appreciate that.

Joseph Tartal: Thank you guys. Our next question is from Cameron. Cameron, I'm unmuting your line. Please unmute yourself and ask your question.

Cameron Ball: Hi. Yes, my name is Cam Ball and my question is around electromagnetic compatibility for medical devices. So the FDA issued updated guidance, electromagnetic compatibility of medical devices, on June 6th, 2022. And in the transition guidance for the transition from EUAs is to 510(k) I'm wondering if the FDA will enforce that updated guidance for devices, IVDs that utilize instrumentation?

Timothy Stenzel: So there is a date after which if a submission has been received that we will evaluate that. It really impacts new instruments that haven't been cleared, granted, or approved before or modifications to existing instruments that may impact this analysis. We did a recent webinar that should be posted. Toby, I think that is posted, correct?

Toby Lowe: Yes.

Timothy Stenzel: You can go to that. And then if that doesn't answer your question, certainly follow up to the COVID email box.

Toby Lowe: And I believe the implementation date for that guidance is June 3rd for IVDs.

Timothy Stenzel: So if you're getting your submission before then, it's different than if you get it in after. Before we encourage you to comply, afterwards we're going to do those reviews when appropriate.

Joseph Tartal: Thank you for that response. Thank you, Tim. We have time for one last question. Boboy I'm unmuting you. Please unmute yourself and ask your question.

It looks like they have dropped off. That is the end of our program. So today's virtual town hall presentation and transcript will be posted to CDRH Learn under the section title In-Vitro Diagnostics, and the subsection title Virtual Town Hall Series. If you have additional questions about COVID-19 test development, you may send an email to COVID19dx@fda.hhs.gov.

Thank you very much to everyone who participated today, especially our panelists. So thank you for the great presentation and answering all of your questions, both the pre-sent in, as well as live questions. So thank you Tim, Toby, Kris, Ryan, and Kathryn. This concludes today's virtual town hall. Thank you all for joining us and have a great day.

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