May 29, 2020

Mark S. Birenbaum, Ph.D.
Executive Director
American Association of Bioanalysts (AAB)
and the National Independent Laboratory Association (NILA)
906 Olive Street - Suite 1200
St. Louis, MO 63101-1448

Dear Dr. Birenbaum:

We appreciate your letter dated April 20. We agree that serology tests for SARS-CoV-2 antibodies should be accurate, reliable, and reproducible and clarity should be provided regarding when testing is and is not useful.

At the time the Food and Drug Administration (FDA) issued our March 16 policy, a higher level of flexibility was appropriate for antibody tests than for molecular tests that detect the presence of the virus that causes COVID-19, since antibody tests are not meant for use to diagnose active SARS-CoV-2 infection. The flexibility in our March 16 policy allowed for early use of antibody tests to begin to answer critical population-level questions about the prevalence of COVID-19 infections in different communities, and whether the presence of antibodies conveys immunity, and, if so, for how long. Early availability of serology tests has helped generate important information that can inform the future use of serology tests.

To help mitigate the trade-off of helping to ensure early availability and having time to obtain a good understanding of test performance, the FDA's March 16 policy was intended to limit antibody testing to laboratories certified under the Clinical Laboratory Improvement Amendments (CLIA) by the Centers for Medicare and Medicaid Services (CMS) to perform high-complexity testing, and point-of-care settings when covered by such certificates – that is, labs with special clinical and technical expertise –where the tests were properly validated and labeled as outlined in our policy, and the developer notified the FDA. Under CLIA, only those laboratories are permitted to perform tests that have not been FDA authorized. The FDA is aware that several of these labs have conducted their own validation of commercial manufacturers' tests they were interested in and then used those tests that were fit for purpose. Notably, use of antibody tests in other settings, including at home, prior to issuance of an emergency use authorization (EUA) authorizing such use is not permitted under CLIA, and our March 16 policy did not change that. Moreover, it is not accurate for developers to claim their test was authorized by the FDA if an EUA was not granted for the tests, nor should they ever be distributing their test if it has not been properly validated. However, some test developers have falsely claimed their serological tests are FDA approved or authorized. Also, since we issued our March 16 policy, the FDA became aware that a concerning number of commercial serology tests were being promoted inappropriately, including for diagnostic use, or are performing poorly based on an independent evaluation by the National Institutes of Health's National Cancer Institute (NCI).

The March 16 policy did not change that an EUA is a key tool to making critical products for COVID-19, including antibody tests, available in a public health emergency. We continue to encourage all developers to submit EUA requests so the FDA can examine data on the test's performance and make a formal determination of whether to authorize it for emergency use. FDA's issuance of EUAs give labs and health care professionals the confidence that the FDA has reviewed a particular test. As of May 4, 2020, 12 antibody tests had been issued EUAs and over 200 antibody tests were the subject of a pre-EUA or EUA review.

In addition to reviewing data submitted in the form of EUA requests, we also worked with the National Institutes of Health, the Centers for Disease Controls and Prevention, and the Biomedical Advanced Research and Development Authority to help establish a capability at the NCI for the U.S. Government to independently validate certain antibody tests, including antibody tests that were not the subject of an EUA or pre-EUA, as well as those that were under FDA review. The FDA can use the NCI data to inform future decision making, such as whether to authorize the test, guide us in engaging the test developer for additional information to support its test remaining on the market, or take other action regarding tests that do not perform adequately, including to stop their marketing in the U.S. We will make the NCI results available once the FDA has reviewed and determined if any further actions are appropriate for those test kits prior to publication.

Throughout this pandemic, FDA continues to adapt based on real-world experience and data. With 12 serology test authorizations, a robust pipeline of submissions, capacity to evaluate tests at NCI, and indications that greater oversight of commercial serology tests is important to protect the public health, on May 4th, FDA made an important change to the March 16 policy regarding the FDA review of commercial manufacturers' serology tests. Under this revised policy, the FDA outlined the following expectations for antibody test developers: Commercial manufacturers will submit EUA requests, with their validation data, within 10 business days from the date they notified the FDA of their validation testing OR from the date of publication of this policy, whichever is later. Furthermore, the FDA provided performance threshold recommendations for specificity and sensitivity for all serology test developers. Additional details and the reasons for the change are in the updated guidance.

High-complexity laboratories developing their own tests, also called Laboratory Developed Tests or LDTs, must have a CLIA certificate (provided by CMS) to legally develop a serology test. In addition, under the policy outlined by the FDA, they are performing their own validation and providing notification to the FDA, and following other labeling recommendations described in the March 16 policy. Developers of LDTs are still encouraged to seek authorization through an EUA.

In addition to updating the policy, FDA introduced a more streamlined process to support EUA submissions and review. Two voluntary EUA templates for antibody tests have been made available – one for commercial manufacturers, and one for CLIA certified high-complexity labs who decide to seek FDA authorization. These templates are intended to facilitate the preparation and submission of an EUA request and can be used by any interested developer. FDA also issued an umbrella EUA for certain antibody tests that undergo validation at NCI, or another government agency designated by

the FDA. Tests that the FDA confirms meet the performance and labeling criteria included in that EUA may be added under the umbrella EUA, streamlining the submission and review of these important tests.

The May 4th policy change reflects FDA's ongoing assessment of the evolving circumstances and careful balancing of risks and benefits to meet continuing and evolving public health needs as we combat this virus. The FDA will continue to take steps to appropriately balance assurances that an antibody test is accurate and reliable with timely access to such tests as the continually evolving circumstances and public health needs warrant.

Sincerely,

Jeffrey E. Shuren -S
Digitally signed by Jeffrey E. Shuren -S
Date: 2020.06.01 08:58:07 -04'00'

Jeffrey Shuren, M.D., J.D.
Center Director
Center for Devices and Radiological Health
Food and Drug Administration

U.S. Food & Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20903
www.fda.gov