BIOTECHNOLOGY INDUSTRY ORGANIZATION

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

RE: Docket No. FDA-2010-N-0274: Federal Register: June 17, 2010 (Volume 75, Number 116) [Page 34463-34464]: Oversight of Laboratory Developed Tests; Public Meeting; Request for Comments

Submitted via email to http://www.regulations.gov

Dear Sir/Madam

The Biotechnology Industry Organization (BIO) appreciates the opportunity to submit comments for the docket of the Food and Drug Administration's (FDA) public meeting to discuss the Oversight of Laboratory Tests (LDTs). BIO recognizes that improvements to the regulatory framework for LDTs are needed to ensure these tests are used effectively to improve healthcare outcomes, and to encourage the development of innovative molecular diagnostics whose utilization is evidence-based.

BIO represents more than 1,200 biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States and in more than 30 other nations. BIO members are involved in the research and development of innovative healthcare, agricultural, industrial and environmental biotechnology technologies, thereby expanding the boundaries of science to benefit society by providing better healthcare, enhanced agriculture, and a cleaner and safer environment. Specifically related to laboratory developed tests, BIO represents companies that develop and manufacture LDTs, test systems, multivariate index assays, and targeted therapeutics that rely upon molecular testing information for optimum safety and efficacy. For this reason, BIO companies should play a key role in working with the FDA as they develop plans regarding the oversight of LDTs.

As part of FDA's request for comments for the public meeting on the oversight of laboratory tests that was held on July 19-20, 2010, BIO respectfully submits the following comments.

General Comments:

LDT regulation in the broad context of genetic testing and personalized medicine

There is interrelationship between LDT oversight and other related regulatory actions and decisions currently being considered, for which guidance documents are in development. Specifically, we note the intersection of LDT regulatory oversight with: Draft guidance documents regarding companion drug/diagnostic technologies, pharmacogenomics, and biomarker qualification. LDTs can be a major factor in all of these areas. For most organizations and companies, a comprehensive understanding of the complete regulatory environment (which will be influenced by these documents) is necessary to plan efficiently and responsibly for and incorporate regulatory expectations into development, manufacturing, and other business practices. It is important to note that there are patient populations dependent upon many currently marketed products that will be affected by changes to the regulatory environment contemplated by the current effort to reform the oversight of LDTs as well as related draft guidance documents. We encourage the agency to consider this interrelationship as it develops guidance on the oversight of LDTs and implements its policies. At a minimum, we encourage open, in-depth, and interactive public forums with stakeholders prior to the publication of any draft guidance as well as during the implementation period.

The FDA should provide a rational narrative or logic map to make clear any new approaches to LDT oversight, to give industry the ability to independently evaluate regulatory requirements for future product planning.

A single, consistent, risk-based framework for regulation of all diagnostic tests should be developed.

A risk-based framework is appropriate for determining the level of regulatory oversight necessary for diagnostics, including LDTs, and regulation of diagnostics should be guided by their potential clinical impact. Low risk diagnostics such as tests for known biomarkers; tests not intended to direct drug prescribing; tests that are part of a set of multiple inputs that direct patient care, rather than the single input; or improved versions of existing tests with previously established clinical utility may be suitable for streamlined review.

We recommend that a formalized structure and rationale be developed for the classification and regulation of all specific subsets of in vitro diagnostics, including all LDTs and commercially available test kits. This process should be informed by the full range of stakeholders, including patient groups, industry, consumer groups, physicians, and other government agencies.

Oversight reform should consider the least burdensome approach and corollary reimbursement system reform.

Increased FDA oversight of LDTs represents a significant extension of the regulatory paradigm. This shift from the current system, under which FDA has exercised enforcement discretion with respect to LDTs while laboratories have continued to be regulated under CLIA, will have an impact on the cost of development and ongoing compliance and could result in the delay of market introduction of important new assays. For some test developers, including small businesses, the increased costs and delay in market introduction may make commercialization of a new test cost-prohibitive. A direct and interactive discussion between industry and FDA about the challenges of adapting to regulatory changes in this emerging scientific area would help ensure that these issues are fully considered and help provide a clear pathway for the least burdensome approach. BIO proposes that FDA partner with industry to coordinate a workshop on the development and commercialization environment of LDTs to identify a least burdensome regulatory approach. Such a forum could highlight the value of innovation in diagnostics and identify policies that support continued innovation and continued availability of safe and effective products.

If FDA oversight reform involves an increased level of regulatory oversight, including requirements that clinical evidence be submitted for advanced diagnostics, then there must be corollary reform at CMS regarding the way advanced diagnostics are reimbursed. CMS coverage and reimbursement decisions are major determinants for all healthcare payer policies. Test developers will not develop tests if they have no potential to recover development costs through appropriate reimbursement. Investors will not invest in test development unless there is a reasonable expectation of profit from the investment.

Oversight of LDTs must take into consideration a companion technology pathway to support coordinated development and simultaneous approval of drug-diagnostic combinations.

A single, consistent regulatory framework should be developed for all diagnostics designed for use with FDA-regulated medicines, whether that test is a commercially available test kit or an LDT. Just as new drugs are subject to a thorough review of safety and efficacy, companion diagnostic tests that direct the prescribing of FDA-regulated medicines should also be evaluated for safety, performance, and clinical utility. To expedite the development of important targeted therapies, the FDA plan to regulate LDTs should include a streamlined drug-diagnostic review process to ensure a coordinated approach across the FDA review centers. The agency should consider establishing a specific combined review process that, to the extent possible, supports coordinated development and simultaneous approval of drug-diagnostic combinations.

A mandatory registry is needed for high- and moderate-risk tests.

Patients and physicians need information about diagnostic test performance and clinical utility in a form that is easy to interpret. A mandatory diagnostic test registry containing information about the analytic

and clinical performance of certain high- and moderate-risk diagnostic tests is needed. This diagnostic information resource could be analogous to the registry of FDA-approved drugs, **Drugs@fda.gov**. Current efforts at the National Institutes of Health to develop a genetic test registry could be expanded to include FDA participation and mandatory registration of qualified tests. However, any such registry should not be limited to genetic tests.

Timeline for Submitting LDTs within a new regulatory framework

We appreciate that FDA has recognized the need for a transition period for laboratories to come into compliance with any new regulatory requirements. BIO encourages FDA to fully consider the large impact of any such change in the regulatory paradigm and the capacity of companies, including emerging diagnostics companies, to gain sufficient understanding of FDA requirements and processes to integrate them into their product development planning and research and manufacturing programs. The adequacy of any contemplated transition times need to be determined in consultation with industry stakeholders.

Conclusion:

BIO greatly appreciates the opportunity to provide these comments to FDA regarding oversight of LDTs, and we look forward to further opportunities to provide feedback. We are united in our goal to provide patients and healthcare providers with safe, accurate, and effective diagnostic tests so as to best serve the needs of the healthcare system.

Respectfully submitted,

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