



FDA Final Rule on Laboratory Developed Tests

What PHLs Need to Know Now

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APHL Comments on the LDT Proposed Rule

- Agreed that FDA has a role in oversight of LDTs.
- Must consider unintended consequences that could limit access or burden the public health system.
- PHLs must continue to operate and fulfill their unique mission under the final rule.

[APHL comments on the LDT proposed rule](#)

Office of the Center Director
Center for Devices and Radiological Health
Food and Drug Administration
10903 New Hampshire Ave, Bldg. 66
Silver Spring, MD 20993

Re: Comments to Docket: FDA-2023-N-2177, Medical Devices, Laboratory Developed Tests Proposed Rule

On behalf of the Association of Public Health Laboratories (APHL), please accept the following comments concerning the Medical Devices, Laboratory Developed Tests (LDT) Proposed Rule, Docket No. FDA-2023-N-2177.

APHL strongly believes in accurate and quality testing and agrees that the Food and Drug Administration (FDA) has a role in oversight of LDTs to ensure they are producing reliable results for patients and providers; however, the proposed rule and any associated guidance must be carefully crafted and consider all possible impacts to avoid unintended consequences that could limit access to certain tests and place an undue burden on the public health system.

Public health laboratories (PHLs) utilize LDTs to support public health, promote health equity, prevent the spread of disease, conduct surveillance, develop disease treatment and prevention guidelines, and respond to public health emergencies effectively and efficiently. PHLs fulfill these inherently governmental functions by offering LDTs for newborn screening (NBS), infectious diseases, foodborne diseases, emergency preparedness and response, and chemical exposure assessment.

The Medical Devices, Laboratory Developed Tests Proposed Rule has the potential to reduce or eliminate access to specific testing that provides important public health benefits. As the FDA considers input from comments, it is critical to the nation's public health that PHLs continue to operate and fulfill their unique mission under the final rule. APHL has several concerns about the proposed rule language, and we ask that these concerns be addressed in the development of the final rule and any associated guidance.

LDT Final Rule Summary

- IVDs are devices under the Food, Drug, & Cosmetic Act including when the manufacturer is a lab. These IVDs include LDTs.
- Effective July 5, 2024.
- Four-year, five-stage phaseout of general enforcement discretion.
 - Not affected by phaseout: public health surveillance tests.
- Enforcement discretion for:
 - 1976-Type LDTs, human leukocyte antigen tests, and Veterans Health Association, Department of Defense and forensic (law enforcement) tests.
- Targeted enforcement discretion:
 - LDTs in place by May 6, 2024 that are not changed or have limited modifications, FDA-approved tests with limited modifications
 - NYS Clinical Laboratory Evaluation Program (CLEP), unmet needs (lab integrated in a healthcare system), and non-molecular antisera LDTs for rare blood cell antigens.

Phaseout of Enforcement Discretion by IVD Category

Please note that not all categories of IVDs are included in this table borrowed from the FDA website. Those for 564 declarations (public health emergencies) are excluded.

Reference:
<https://www.fda.gov/medical-devices/in-vitro-diagnostics/laboratory-developed-tests#phaseout>

Category of IVD	Stage 1 Medical Device Reporting (21 CFR pt. 803) Reporting of Corrections and Removals (21 CFR pt. 806) Complaint Files (21 CFR 820.198)	Stage 2 Requirements Not Covered In Other Stages, Including: Establishment Registration & Device Listing (21 CFR pts. 607, 807 subpts. A-D) Labeling (21 CFR pts. 801, 809) Investigational Use Requirements (21 CFR pt. 812) ²	Stage 3 Quality System Requirements Other than Complaint Files (21 CFR pt. 820 other than 820.198) (For LDTs, ³ FDA generally will not expect compliance with quality system requirements other than design controls, purchasing controls, acceptance activities, CAPA, and records requirements)	Stages 4 & 5 Premarket Review (21 CFR pt. 807, subpt. E; 21 CFR pt. 860, subpt. D; 21 CFR 814; 21 CFR pt. 601)
Public Health Surveillance tests Section V.A.2 of preamble Results not returned	compliance generally not expected	compliance generally not expected	compliance generally not expected	compliance generally not expected
Currently marketed IVDs offered as LDTs first marketed prior to rule publication date and not modified beyond scope described in preamble Section V.B.3 of preamble LDTs as of May 6, 2024	compliance generally expected beginning May 6, 2025	compliance generally expected beginning May 6, 2026	compliance with 21 CFR 820.180-820.186 generally expected beginning May 6, 2027; compliance generally not expected with other QS requirements (except for complaint files)	compliance generally not expected
Modified version of another manufacturer's 510(k) cleared or De Novo authorized test within the scope described in the preamble Section V.C.4 of preamble LDT due to FDA-approved test modification	compliance generally expected beginning May 6, 2025	compliance generally expected beginning May 6, 2026	compliance* generally expected beginning May 6, 2027	compliance generally not expected
IVDs offered as LDTs within scope of phaseout policy, but that do not fall within a targeted enforcement discretion policy summarized above Section V.C of preamble New LDTs	compliance generally expected beginning May 6, 2025	compliance generally expected beginning May 6, 2026	compliance** generally expected beginning May 6, 2027	compliance generally expected beginning November 6, 2027 for high-risk tests compliance generally expected beginning May 6, 2028 for moderate-risk and low-risk tests

Not affected by the phaseout

Generally, no premarket review; must report – medical devices, corrections/removals, complaints, site registration, labeling, investigational use

Generally, no premarket review; must report – medical devices, corrections/removals, complaints, site registration, labeling, investigational use & other QS requirements

Premarket review needed; must report – medical devices, corrections/removals, complaints, site registration, labeling, investigational use & other QS requirements

Phaseout of Enforcement Discretion by IVD Category

Category of IVD	Stage 1 Medical Device Reporting; Reporting of Corrections and Removals; Complaint Files	Stage 2 Establishment Registration & Device Listing; Labeling	Stage 3 Quality System Requirements (other than complaint files)	Stages 4 & 5 Premarket Review
Public Health Surveillance Results not returned	Compliance generally <u>not</u> expected	Compliance generally <u>not</u> expected	Compliance generally <u>not</u> expected	Compliance generally <u>not</u> expected



Not affected by the phaseout

Phaseout of Enforcement Discretion by IVD Category

Category of IVD	Stage 1 Medical Device Reporting; Reporting of Corrections and Removals; Complaint Files	Stage 2 Establishment Registration & Device Listing; Labeling	Stage 3 Quality System Requirements (other than complaint files)	Stages 4 & 5 Premarket Review
LDTs in place on May 6, 2024	Compliance generally expected May 6, 2025	Compliance generally expected May 6, 2026	Compliance with Records generally expected May 6, 2027; compliance generally <u>not</u> expected for other QS requirements	Compliance generally <u>not</u> expected



Generally, no premarket review; must report – medical device, corrections/removals, complaints, site registration, labeling

Phaseout of Enforcement Discretion by IVD Category

Category of IVD	Stage 1 Medical Device Reporting; Reporting of Corrections and Removals; Complaint Files	Stage 2 Establishment Registration & Device Listing; Labeling	Stage 3 Quality System Requirements (other than complaint files)	Stages 4 & 5 Premarket Review
LDT because of modification of FDA-approved test	Compliance generally expected May 6, 2025	Compliance generally expected May 6, 2026	Compliance generally expected May 6, 2027	Compliance generally <u>not</u> expected



Generally, no premarket review; must report – medical device, corrections/removals, complaints, site registration, labeling & other QS requirements

Phaseout of Enforcement Discretion by IVD Category

Category of IVD	Stage 1 Medical Device Reporting; Reporting of Corrections and Removals; Complaint Files	Stage 2 Establishment Registration & Device Listing; Labeling	Stage 3 Quality System Requirements (other than complaint files)	Stages 4 & 5 Premarket Review
New LDTs	Compliance generally expected May 6, 2025	Compliance generally expected May 6, 2026	Compliance generally expected May 6, 2027	Compliance generally expected November 6, 2027 for high-risk tests; May 6, 2028 for moderate- and low- risk tests



Premarket review needed; must report – medical device, corrections/removals, complaints, site registration, labeling, investigational use & other QS requirements

Concerns and Proposed Solutions - *A pathway for PHLs is needed.*

- Decreased or limited access to tests of public health concern (health threats and emergencies of any size).
 - APHL members informed [comments](#) on draft guidances (enforcement discretion in the absence of PHE and considerations during a PHE).
 - APHL continues to communicate about specific needs (NBS, drug susceptibility, TB, biomonitoring, other emergent needs).
- PHLs have limited resources.
 - Confirm fee waivers, Quality System (QS) requirements (PHLs to meet ISO 13485 standards?)

Concerns and Proposed Solutions - *A pathway for PHLs is needed.*

- LDTs are needed to meeting population, specimen type, or testing volume needs.
 - FDA will allow certain modifications – As long as they don't change:
 - the indications for use,
 - alter the operating principle of the IVD,
 - include significantly different technology, or
 - adversely change the performance or safety specifications of the IVD.
 - Draft guidances or policies are needed on acceptable modifications (final rule: extension of specimen stability and certain alternative specimen types) and validations (more info needed: contrived specimens, uncommon/difficult specimen types).
- Detrimental impact on surveillance and outbreak monitoring.
 - Public health surveillance: aggregate data, test results not returned to patient or provider.

Moving Forward: Continued Communication & Outreach

- FDA will share more guidances, resources and webinars
- LDTquestions@aphl.org
- APHL webpage
 - Key facts, FAQs, phaseout policy information, resources, fillable templates
- APHL LDT Task Force
 - Members sharing what members need to inform APHL's efforts
- Continued communication with members, partner organizations and federal agencies

Resources

- [Final Rule](#) (effective July 5, 2024), [APHL PPT summary](#) (May 2024)
- FDA webinars at [CDRH Learn](#)
 - **August 22, 2024:** [In Vitro Diagnostic Products \(IVDs\) - MDR Requirements, Correction and Removal Reporting Requirements, and Quality System Complaint Requirements](#)
 - **July 16, 2024:** [In Vitro Diagnostic Product \(IVD\): Classification](#)
 - **June 5, 2024:** [Draft Guidances on Enforcement Policy for Certain In Vitro Diagnostic Devices for Immediate Public Health Response in the Absence of a Declaration Under Section 564 \(applicable to LDTs\) and Consideration of Enforcement Policies for Tests During a Section 564 Declared Emergency \(applicable to IVDs\)](#)
 - **May 14, 2024:** [Final rule: Medical Devices; Laboratory Developed Tests](#)

Resources

- FDA webpages
 - **LDT final rule:** [Frequently Asked Questions](#)
 - **Device regulation:** [Overview](#)
 - **Risk Classification:** [In Vitro Diagnostic Product \(IVD\): Classification](#)
- Official regulation: [Food, Drug, & Cosmetic Act | Subchapter H: Medical Devices](#)
- Draft guidances:
 - [Enforcement Policy for Certain In Vitro Diagnostic Devices for Immediate Public Health Response in the Absence of a Declaration Under Section 564](#)
 - [Consideration of Enforcement Policies for Tests During a Section 564 Declared Emergency](#)
- [Proposed Rule](#), [APHL comments on the proposed rule](#) & [guide for commenting](#)

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