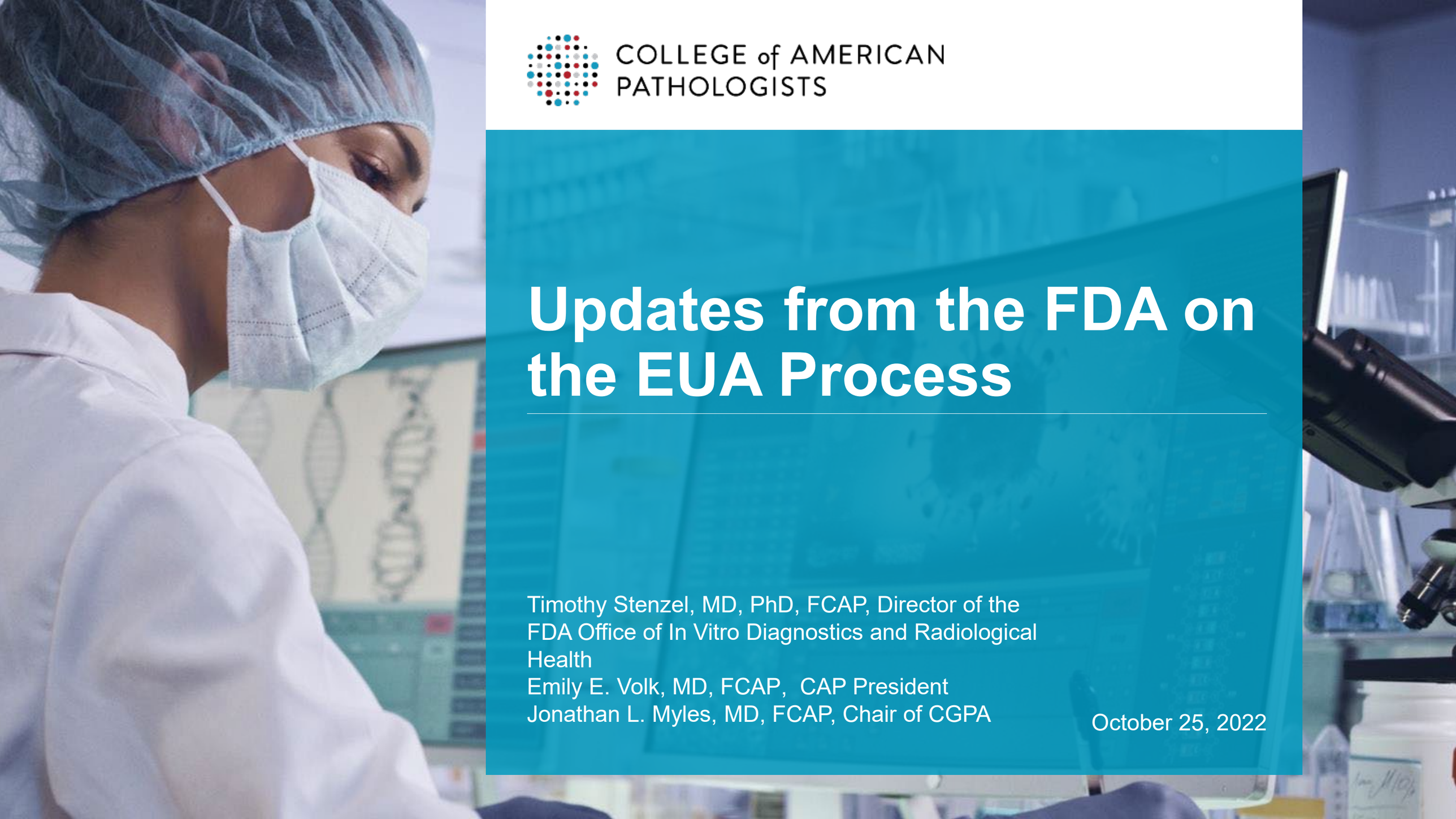


COLLEGE of AMERICAN PATHOLOGISTS

Updates from the FDA on the EUA Process

Timothy Stenzel, MD, PhD, FCAP, Director of the FDA Office of In Vitro Diagnostics and Radiological Health
Emily E. Volk, MD, FCAP, CAP President
Jonathan L. Myles, MD, FCAP, Chair of CGPA

October 25, 2022

Welcome

Emily E. Volk

- President of the College of American Pathologists

Welcome

Timothy Stenzel, MD, PhD, FCAP

- **Director of the FDA Office of In Vitro Diagnostics and Radiological Health**

Welcome

Jonathan L. Myles, MD, FCAP

- **Chair, CAP Council on Government and Professional Affairs**
- **Vice Chair of the CAP Council on Scientific Affairs**

Welcome

Toby Lowe

- **Associate Director for Regulatory Programs in Office of In Vitro Diagnostics and Radiological Health**

Agenda

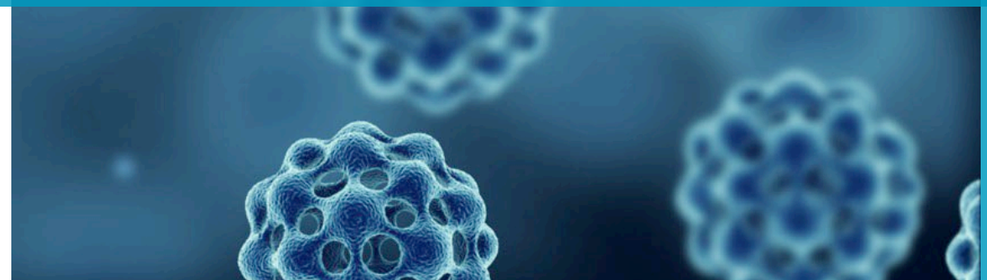
- Welcome and Introduction
- Brief Overview of CAP's Engagement with the Administration
- FDA Emergency Use Authorization
- Monkeypox Virus Testing
- SARS-CoV-2 Testing
- Questions?

Engagement with the Administration

- The CAP has built partnerships with federal agencies.
- Since the pandemic, we've worked to strengthen these relationships further.
- Provided meaningful feedback to agencies on how rules affect laboratories and pathologists.
- Offered our expertise to solve problems and guide future regulation.

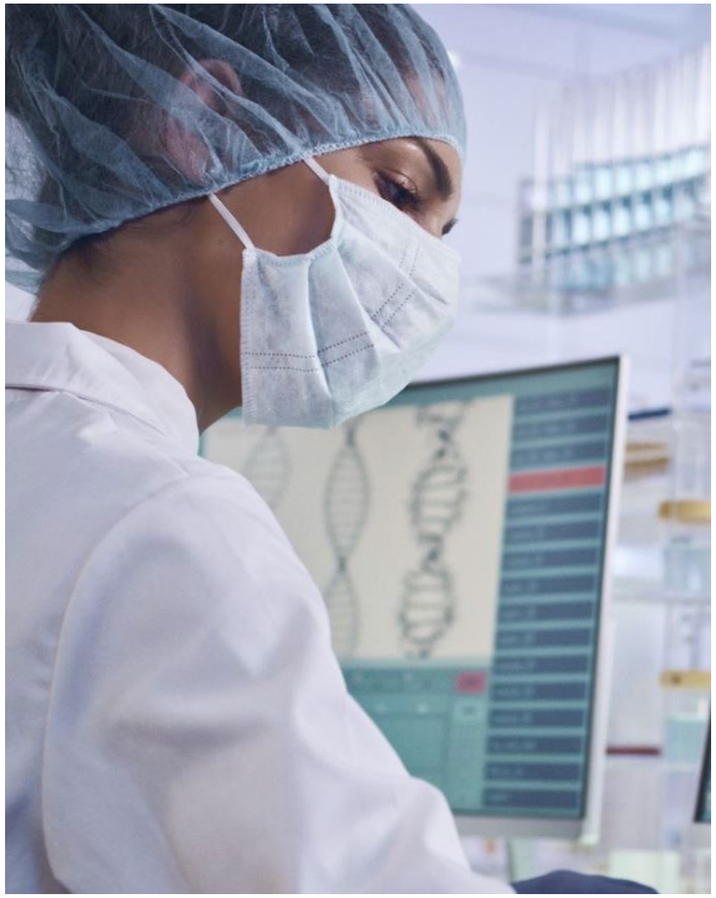
FDA Network of Experts

- 2021: CAP joins the FDA's Network of Experts.
- Network of physician, scientist, and other organizations with the FDA and CDC.
- Provide FDA with rapid access to expertise when needed.



CAP Advocacy with the FDA

- September 19: CAP-FDA meet to discuss monkeypox virus testing.
- Discussed concerns about emergency use authorization (EUA) program.
- Gave additional feedback from CAP members to FDA officials.
- We invited the FDA to talk directly to our members about these issues.



Emergency Use Authorizations for Tests and Specific Policy Guidance

Timothy T. Stenzel, MD, PhD
Office Director

Toby Lowe
Associate Director for Regulatory Programs

Office of In Vitro Diagnostics
(OHT7 – Office of Health Technology 7)
Office of Product Evaluation and Quality (OPEQ)
CDRH | Food and Drug Administration

Public Health Emergency Determinations & Emergency Use Authorization Declarations

- **Public Health Emergency Determination under Public Health Service Act (PHSA):**
  - Under section 319 of the PHSA, the Department of Health and Human Services (HHS) Secretary can **issue a determination** that a "**public health emergency" (PHE) exists** (also referred to as the "PHE declaration") .
  - The PHE declaration is in effect for **90 days** or until the Secretary declares the emergency no longer exists but may be extended by the Secretary in 90-day increments.
  - A section 319 PHE declaration **does not enable FDA to issue EUAs**.

- **Public Health Emergency Determination under the Federal Food, Drug, and Cosmetic Act (FDCA):**
  - Under section 564 of the FDCA, the HHS Secretary can **determine that there is a public health emergency**, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of United States citizens living abroad.

- **Emergency Use Authorization (EUA) Declaration:**
  - On the basis of the PHE determination under section 564 of the FDCA, the HHS Secretary can **declare that circumstances exist justifying the authorization of emergency use** for particular medical products, such as tests and/or vaccines.
  - An **EUA declaration** is not time limited and **continues until the HHS Secretary terminates it**.

Emergency Use Authorization (EUA) Authority

- **Issuance of EUAs under Section 564 of the FDCA**
  - Following determination of PHE under section 564 and declaration that circumstances exist justifying the authorization of emergency use
  - The FDA Commissioner may allow **unapproved** medical products or **unapproved uses** of approved medical products to be **used in an emergency** to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by chemical, biological, radiological, and nuclear (CBRN) threat agents, including emerging infectious diseases, when there are no adequate, approved, and available alternatives.
  - FDA may issue emergency use authorizations (EUAs)

- **Criteria for Issuance:**
  - Serious or life-threatening disease or condition caused by agent
  - Product "**may be effective**" to diagnose, prevent or treat the condition (lower level of evidence than "effectiveness" standard)
  - Known and potential **benefits outweigh** known and potential risks
  - No adequate, approved, and available alternative; unavailable includes insufficient supplies of the approved alternative

IVD Emergency Use Declarations Currently in Effect

- ***Monkeypox*** *– September 7, 2022*
- ***Coronavirus Disease 2019 (COVID-19)*** *– February 4, 2020*
- Zika – February 26, 2016
- Enterovirus D68 (EV-D68) – February 6, 2015
- ***Ebola Virus*** *– August 4, 2014*
- Middle East Respiratory Syndrome Coronavirus (MERS-CoV) – May 29, 2013
- H7N9 Influenza – April 19, 2013

Laboratory Developed Tests (LDTs)

- An LDT is a type of in vitro diagnostic test that is **designed, manufactured, and used within a single site CLIA-certified laboratory** that meets the requirements for high complexity testing.

- The FDA has **generally exercised enforcement discretion (ED)** with respect to LDTs, meaning that, except in certain circumstances, the FDA generally does not exercise its authority to enforce the regulatory requirements for these devices, although it maintains that authority.

- ***During a Public Health Emergency:***
  - FDA has **not applied** this general enforcement discretion approach to **tests used for declared emergencies** under Section 564 of the FDCA.
  - FDA has **generally expected EUAs for LDTs** during all prior declared public health emergencies, starting with H1N1 in 2009 and continuing through the current emergencies.
  - **Specific Enforcement Discretion Policies during PHE:**
    - FDA has considered various factors including the national testing **needs**, **availability** of cleared or authorized tests, and **consequences** of a false result, and has tailored its **specific enforcement discretion** policies accordingly

https://www.fda.gov/medical-devices/emergency-situations-medical-devices/monkeypox-and-medical-devices

Active PHEs – Authorized Tests & Enforcement Policies

- ***Monkeypox***
  - 1 test cleared under 510(k)
  - 2 test authorized under EUAs
  - Specific enforcement policies issued to address public health needs - *Policy for Monkeypox Tests to Address the Public Health Emergency*
    - Enforcement discretion (ED) for certain LDTs, certain modifications to a cleared or authorized test
- ***Coronavirus Disease 2019 (COVID-19)***
  - 437 tests and sample collection devices authorized under EUAs
  - 1 test granted De Novo marketing authorization
  - 3 tests cleared under 510(k)
  - Specific enforcement policies issued and revised to address public health needs at different stages of PHE - *Policy for Coronavirus Disease-2019 Tests During the Public Health Emergency (Revised)*
    - ED for certain LDTs early in PHE; currently for certain mods to cleared/authorized tests
- ***Ebola Virus***
  - 10 tests issued EUAs
  - 2 tests granted De Novo marketing authorization

MPX Diagnostic Tests Developed by Laboratories

- **FDA did *not* expect EUA requests** for *certain* MPX diagnostic tests when the laboratory notifies FDA (within 5 business days of offering test or from date of guidance if already being offered) that their test:
  - **Is developed and performed in a single site CLIA-certified laboratory** certified to perform tests of **high complexity**;
  - Uses molecular **PCR** technology;
  - Uses **lesion swabs samples**; and
  - Is appropriately **validated.**
  - *FDA **accepted notifications for 30 days** after publication of guidance (October 13, 2022).*
- **FDA will *not* expect EUA requests** for *certain* validated modifications to a cleared or authorized MPX diagnostic test with notification to FDA
- Enforcement policies regarding LDTs **do not apply** to tests with home specimen collection or at-home tests or, for MPX dx, to tests using specimen types other than lesion swabs or technologies other than PCR

Modifications to FDA-cleared or EUA-authorized MPX Diagnostic Tests

- FDA **does not intend to object** to implementation, without FDA review, of *certain* **modifications to a cleared or authorized monkeypox molecular diagnostic test** where:
  - The modifications are made by a **high-complexity CLIA-certified laboratory**
  - The laboratory has **validated** the modification
  - Validation demonstrates that **modifications do not adversely affect test performance**
  - Laboratory submits **notification** of validation **to FDA**
  - Use of the test is limited to the high-complexity CLIA-certified laboratory in which the modification was made
  - The modifications **do not change** the **indication for use** (e.g., including new/different extraction kits or instruments that would not be expected to change the indication for use)
  - The modifications **do not change** the **analyte specific reagents** (e.g., the modifications do not change the PCR primers and/or probes or enzymes)

COVID-19 Tests Developed by Laboratories

- **November 15, 2021 – Policy Update**
  - FDA began expecting EUAs for all COVID-19 LDTs
  - Enforcement discretion (ED) during FDA review for LDTs used prior to November 15, 2021, with EUA request submitted by January 15, 2022
  - FDA did not expect EUA requests for certain validated modifications made by a high-complexity CLIA-certified laboratory to an authorized COVID-19 diagnostic test
- **September 27, 2022 – Policy Update**
  - FDA generally expects EUAs (or marketing authorization) for all COVID-19 tests
  - Encouraging traditional review pathways; reducing types of tests prioritized for review under EUA
  - Continuing prior enforcement policy for tests already being offered during ongoing FDA review
  - FDA does not expect EUA requests for certain validated modifications made by a high-complexity CLIA-certified laboratory to an authorized COVID-19 diagnostic test
- *Enforcement policies regarding LDTs **do not apply** to tests with home specimen collection or at-home tests*

*These slides present high level discussion points. Please refer to the guidance document for the details and official policies.

Resources

- Monkeypox
  - https://www.fda.gov/medical-devices/emergency-situations-medical-devices/monkeypox-and-medical-devices
  - Guidance: *Policy for Monkeypox Tests to Address the Public Health Emergency*
  - Questions: MPXDx@fda.hhs.gov
- COVID-19
  - https://www.fda.gov/medical-devices/emergency-situations-medical-devices/coronavirus-covid-19-and-medical-devices
  - Guidance: *Policy for Coronavirus Disease-2019 Tests During the Public Health Emergency (Revised)*
  - Questions: COVID19Dx@fda.hhs.gov
- Virtual Town Hall Series: https://www.fda.gov/medical-devices/workshops-conferences-medical-devices/virtual-town-hall-series-test-development-and-validation-during-public-health-emergencies-monkeypox
- Subscribe to CDRH Email Lists (e.g., Monkeypox and Medical Devices, In Vitro Diagnostics): www.fda.gov/about-fda/center-devices-and-radiological-health/subscribe-cdrh-mailing-lists

Questions

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