

Public Health Law Webinar: Implications for COVID-19 Vaccination

**Overview of FDA's
Emergency Use Authorization (EUA) Authority**

CSTE

March 18, 2021

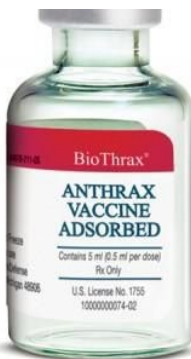
What is a medical countermeasure (MCM)?



- During public health emergencies, MCMs may be needed to prevent or treat diseases or conditions caused by chemical, biological, radiological, or nuclear (CBRN) or emerging infectious disease threats, like Zika virus, Ebola, and SARS-CoV-2
- FDA is responsible for reviewing the safety and effectiveness of MCMs—including drugs, therapeutic biologics, vaccines, and devices, such as diagnostic tests—to counter these threats
- MCMs may have specific statutory definitions:
 - Qualified countermeasures as defined in section 319F–1(a)(2)(A) of the Public Health Service Act (PHS Act) (42 USC. § 247d–6a(a))(2)(A)
 - Qualified pandemic or epidemic products as defined in section 319F–3(i)(7) of the PHS Act (42 USC. § 247d–6d(i)(7))
 - Security countermeasures as defined in section 319F-2(c)(1)(B) of the PHS Act (42 USC § 247d–6b(c)(1)(B))
- Overview of MCM coordination

MCMs

- MCMs include:
 - Biological products (e.g., vaccines, blood products, antibodies)
 - Drugs (e.g., antimicrobial or antiviral drugs, nerve agent treatments)
 - Devices [e.g., clinical diagnostic tests; personal protective equipment (PPE), such as gloves and surgical masks, N95 respirators; ventilators]



What if an MCM is needed for use during a response *before* FDA approval?



- Goal: FDA approval before stockpiling and use during a response
- But that is not always possible
- There might not be any approved products for the threat or condition
- There might be supply shortages of an approved product
- An approved product might need to be used in unapproved ways, for example:
 - In a new patient population (e.g., pediatric, geriatric, pregnant or nursing women, complicated hospitalized patients)
 - For a new threat or condition
 - Without an individual patient prescription
 - With special product information that is not part of the FDA-approved labeling
 - Beyond the labeled expiration date
- Clinical trial environment might not be practical for a large-scale response

MCM Access Tools

- Expanded access mechanisms (FD&C Act § 561):
 - Investigational New Drug Application (IND) (21 CFR Part 312)
 - Investigational Device Exemption (IDE) (21 CFR Part 812)
- Emergency use mechanisms:
 - Emergency Use Authorization (EUA) (FD&C Act § 564)
 - Other emergency use authorities (FD&C Act §§ 564A, 564B):
 - Approved MCMs (§ 564A):
 - Emergency dispensing orders
 - Expiration dating extensions
 - Waivers of certain CGMP and REMS requirements
 - Emergency use instructions (EUI)
 - Holding/stockpiling products for emergency use (§ 564B)
 - 2017 FDA guidance on these authorities:
<https://www.fda.gov/media/97321/download>



Expanded Access Mechanisms: IND/IDE

- IND submission and approval is required before clinical research may begin in humans (e.g., to review protocol, ensure patient protections like informed consent, etc.)
- However, expanded access is a potential pathway for a patient with an immediately life-threatening condition or serious disease or condition to gain access to an investigational medical product (drug, biologic, or medical device) for treatment outside of clinical trials when no comparable or satisfactory alternative therapy options are available

Emergency Use Authorization (EUA) Authority



- Established by Project BioShield Act of 2004
 - Authority delegated to the Commissioner of Food and Drugs (FDA)
 - Section 564 of the FD&C Act (21 U.S.C. 360bbb-3)
 - Part of the post-9/11 Federal Government focus on MCM stockpiling and preparedness for counterterrorism; 1st EUA issued was for anthrax vaccine
- Amended by:
 - PAHPRA (2013) (to provide additional pre-event flexibilities, among other things)
 - 21st Century Cures Act (2016) (to add animal drugs)
 - P.L. 115-92 (2017) (to provide additional flexibilities for DoD)

EUA Authority



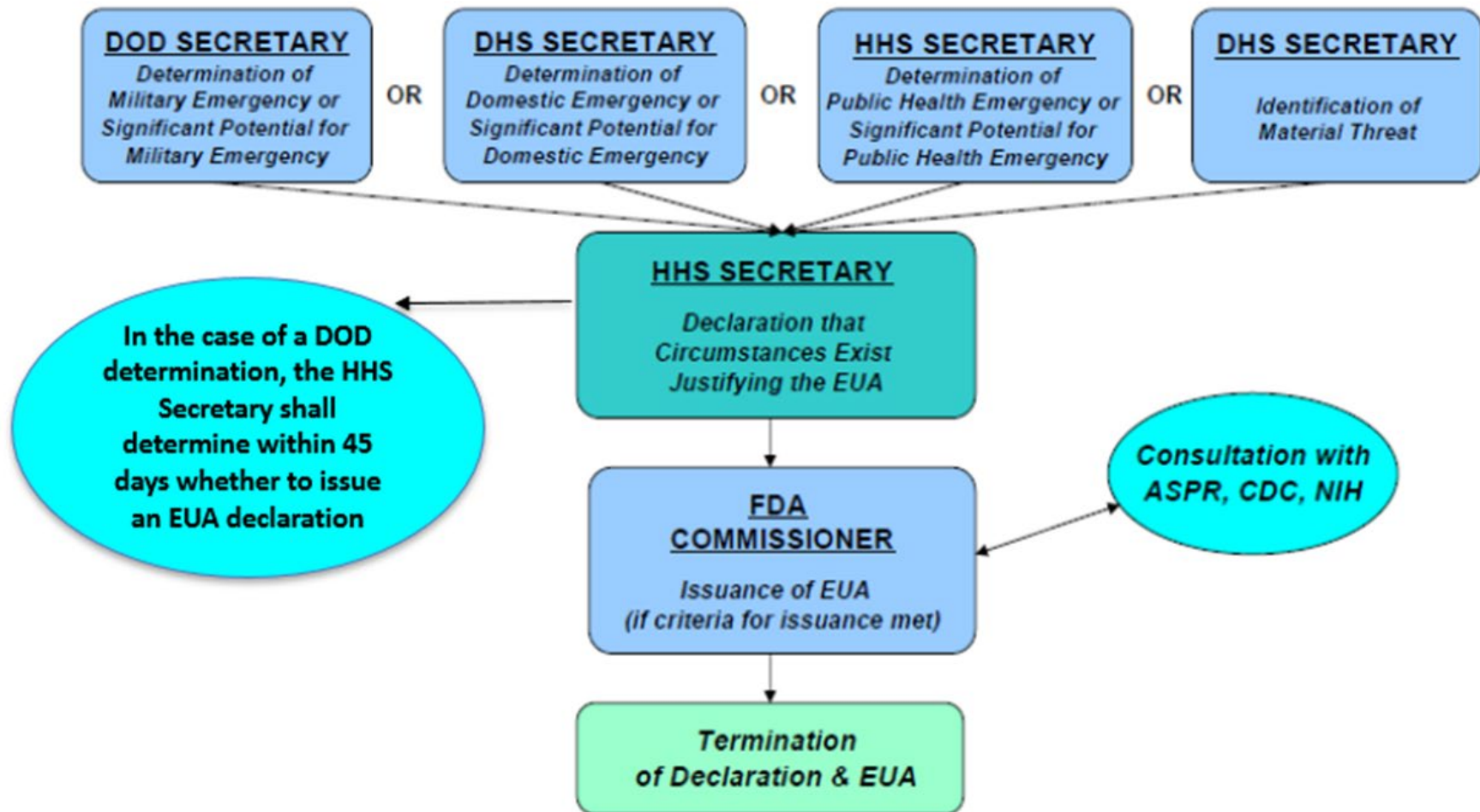
- What is an EUA?
 - A legal mechanism FDA can use to facilitate access to critical medical products during certain defined emergency events
- When scientific evidence is available to support MCM use in a CBRN emergency, issuing an EUA enables response stakeholders to use, or prepare to use, an MCM without violating provisions of the FD&C Act
- With an EUA, FDA can authorize for use in emergencies involving a CBRN agent(s) [and, for DoD, an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to United States military forces] the:
 - Use of unapproved MCMs or
 - Unapproved use of approved MCMs (e.g., for a new indication, such as amoxicillin for anthrax)

EUA Authority



- EUAs are requested by government (e.g., CDC, ASPR, DoD) or industry sponsors; FDA may prioritize requests if needed
- If issued, an EUA can help to ensure availability of applicable PREP Act liability protections for an MCM
- Before FDA issuance, multiple steps with other government partners are required (as outlined on the next slide), including:
 - 1 of 4 types of determinations issued [EUA determination by Secretary of HHS, DoD, or DHS; or material threat determination (MTD) by DHS] and
 - EUA declaration issued by the HHS Secretary

Overview of EUA Issuance Process



What is typically included in an EUA package?



- Letter of authorization (LOA):
 - Addressed to the EUA requester (e.g., the ASPR; the CEO of a diagnostic company); signed by FDA’s Chief Scientist
 - Among other information, includes:
 - Criteria for issuance of authorization
 - Scope of authorization [e.g., “for the prevention of Coronavirus Disease 2019 (COVID-19) for individuals 18 years of age]
 - Conditions of authorization (e.g., reporting of adverse events)
 - Duration of authorization (until the EUA declaration is terminated or EUA is revoked)
- Fact Sheets
 - Healthcare Providers
 - Recipients and Parents/Caregivers
- Instructions for use (if applicable)
- Other labeling, review memo, etc. (if applicable)
- Materials are posted on FDA’s EUA website; notice published in FR

Example of EUA Issuance Process



- **2/4/20: HHS issued an EUA determination**
 - Pursuant to Section 564(b)(1)(C) of the FD&C Act, the Secretary of HHS determined that there is a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad, and that involves the virus that causes COVID-19
- **3/27/20: HHS issued an EUA declaration for drugs and biological products**
 - On the basis of the 2/4/20 HHS EUA determination, the Secretary of HHS declared that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID-19 pandemic, pursuant to Section 564 of the FD&C Act, subject to terms of any authorization issued under that section
- **12/11/20: FDA issued an EUA for Pfizer-BioNTech COVID-19 vaccine**
 - Issuance based on the above determination and declaration, and available scientific data and criteria for issuance
 - Amendments

Criteria for Issuance and Conditions of Authorization



- Criteria for issuance: Based on the totality of scientific evidence available to FDA [Section 564(c)] –
 - Serious or life-threatening illness/condition caused by the agent(s) referred to in the HHS Secretary’s EUA declaration
 - Reasonable belief the product “may be effective” in preventing, diagnosing, or treating serious or life-threatening diseases or conditions caused by the agent(s)
 - Known/potential benefits outweigh known/potential risks
 - “May be effective”: Provides for a lower level of evidence than the “effectiveness” standard FDA uses for product approvals
 - Case-by-case: Recommended safety and effectiveness data requirement can vary depending on the nature of the emergency and product candidate
 - No adequate, approved, and available alternative to the product
- Conditions of authorization: Safeguards specific to each EUA (some are required, some are discretionary to protect the public); listed in the LOA [Section 564(e)]

Examples of FDA's COVID-19 Response Roles



- Collaborating and coordinating with interagency and SLTT partners
- Monitoring for fraudulent product, halting the sale of products with fraudulent claims related to COVID-19
- Actively monitoring medical, veterinary, and food product supply chains
- Facilitating the development of diagnostics, vaccines, therapeutics
- Approving medical products
- Monitoring for adverse events
- Issuing >70 guidance documents to provide updated policies, transparency, and regulatory flexibility
- Public communications
- Facilitating imports of medical products needed for the response
- Facilitating access to MCMs, including through issuing EUAs
- etc...

Summary of COVID-19 EUA Activity



- Therapeutics:

- 10 EUAs for products to treat COVID-19 and serious conditions caused by COVID-19
- One treatment (remdesivir) is currently approved by FDA for the treatment of COVID-19 requiring hospitalization
- Hydroxychloroquine/chloroquine, remdesivir, monoclonal antibodies, convalescent plasma, supportive care (intubation, dialysis), bamlanivimab and etesevimab

- Devices:

- *Testing:* 332 tests & sample collection devices authorized under EUAs (as of 2/26/21)
- *Other:* EUAs for PPE, blood purification devices, PPE decon systems, infusion pumps, ventilators/ventilator accessories, etc.

- Vaccines:

- 3 EUAs issued for COVID-19 vaccines

COVID-19 Vaccine EUAs

The logo for the U.S. Food and Drug Administration (FDA), consisting of the letters "FDA" in white on a blue square background.

- Pfizer-BioNTech
 - Initial issuance: 12/11/2020; reissued (12/23/20 & 2/25/21); amended by granting letter (1/6/21 & 1/22/21)
 - For prevention of COVID-19 disease due to SARS-CoV-2 in individuals 16 years of age and older
 - 2 doses (3 weeks apart)
- Moderna
 - Initial issuance: 12/18/2020; reissued (2/25/21)
 - For prevention of COVID-19 disease in individuals 18 years of age and older
 - 2 doses (1 month apart)
- Janssen
 - Initial issuance: 2/27/21
 - For the prevention of COVID-19 for individuals 18 years of age and older
 - 1 dose
- FDA COVID-19 Vaccines Page: <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines>

Liability Protections: PREP Act

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- Public Readiness & Emergency Preparedness (PREP) Act (2005)
- An HHS (not FDA) authority
- A PREP Act declaration is specifically for the purpose of providing immunity from liability, and is different from, and not dependent on, other emergency declarations
- Authorizes the Secretary of HHS to issue a PREP Act declaration, which provides immunity from liability (except for willful misconduct) for claims:
 - of loss caused, arising out of, relating to, or resulting from administration or use of countermeasures to diseases, threats, and conditions
 - determined by the Secretary to constitute a present, or credible risk of a future public health emergency
 - to entities and individuals involved in the development, manufacture, testing, distribution, administration, and use of such countermeasures
- Immunity is not available for death or serious physical injury caused by willful misconduct



PREP Act

- “Covered countermeasures”
 - Types are defined in law (e.g., “qualified pandemic or epidemic product”)
 - Include medical products that are approved or authorized for emergency use (under EUA, IND/IDE, other emergency use authorities; NIOSH-cleared respirators for COVID)
- Established the Countermeasures Injury Compensation Program (CICP) for product-related injuries (42 CFR part 110)
 - For “serious physical injuries”; payer of last resort
 - Funds must be appropriated by Congress
 - <https://www.hrsa.gov/cicp/>
- Questions about the PREP Act should be directed to HHS

PREP Act

- PREP Act Declarations have been issued for:
 - Anthrax medical countermeasures
 - Acute radiation syndrome medical countermeasures
 - Botulinum toxin medical countermeasures
 - **Medical countermeasures against COVID-19**
 - Ebola disease therapeutics
 - Ebola disease vaccines
 - Marburgvirus and/or Marburg disease countermeasures
 - Nerve agents and certain insecticides countermeasures
 - Pandemic influenza medical countermeasures
 - Smallpox medical countermeasures
 - Zika virus vaccines



Additional Information



- **COVID-19 updates (FDA):** <https://www.fda.gov/emergency-preparedness-and-response/counterterrorism-and-emerging-threats/coronavirus-disease-2019-covid-19>
- **EUA (FDA)**
 - **Main EUA page (including COVID-19 EUAs):** <https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization>
 - **EUA guidance:** <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/emergency-use-authorization-medical-products-and-related-authorities>
- **COVID-19 Vaccine Information (FDA):** <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines>
- **COVID-19 Related Guidances (FDA):** <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-related-guidance-documents-industry-fda-staff-and-other-stakeholders>
- **Medical Countermeasures Initiative (MCMi) email updates (FDA):** <https://www.fda.gov/emergency-preparedness-and-response/counterterrorism-and-emerging-threats/medical-countermeasures-initiative-mcmi>
- **PREP Act (HHS):** <https://www.phe.gov/Preparedness/legal/prepact/Pages/default.aspx>



Thank you!

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