Countermeasure without geographic limitation.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered in any designated geographic area; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered in any designated geographic area, or the program planner or qualified person reasonably could have believed the recipient was in that geographic area.

XII. Effective Time Period

42 U.S.C. 247d–6d(b)(2)(B)

Liability immunity for Covered Countermeasures through means of distribution, as identified in Section VII(a) of this Declaration, other than in accordance with the public health and medical response of the Authority Having Jurisdiction began on December 3, 2014, and extends through December 2, 2018.

Liability immunity for Covered Countermeasures administered and used in accordance with the public health and medical response of the Authority Having Jurisdiction begins with a Declaration and lasts through (1) the final day the emergency Declaration is in effect or (2) through December 2, 2018, whichever occurs first.

XIII. Additional Time Period of Coverage

42 U.S.C. 247d–6d(b)(3)(B) and (C)

I have determined that an additional 12 months of liability protection is reasonable to allow for the manufacturer(s) to arrange for disposition of the Covered Countermeasure, including return of the Covered Countermeasures to the manufacturer, and for Covered Persons to take such other actions as are appropriate to limit the administration or use of the Covered Countermeasures.

Covered Countermeasures obtained for the SNS during the effective period of this Declaration are covered through the date of administration or use pursuant to a distribution or release from the SNS.

XIV. Countermeasures Injury Compensation Program

42 U.S.C. 247d–6e

The PREP Act authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasures, and benefits to certain survivors of individuals who suffer certain serious physical injury as the direct result of the administration or use of the Covered Countermeasures, and benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasures. The causal connection between the countermeasure and the serious physical injury must be supported by compelling, reliable, valid, medical and scientific evidence in order for the individual to be considered for compensation. The CICP is administered by the Health Resources and Services Administration, within the Department of Health and Human Services. Information about the CICP is available at the toll-free number 1–855–266–2427 or http://www.hrsa.gov/cicp/

XV. Amendments

42 U.S.C. 247d–6d(b)(4)

Amendments to this Declaration will be published in the Federal Register.

Authority: 42 U.S.C. 247d–6d.

Dated: December 2, 2016.

Sylvia M. Burwell, Secretary, Department of Health and Human Services.

[FR Doc. 2016–29610 Filed 12–9–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Ebola Virus Disease Therapeutics—Amendment

ACTION: Notice of Amendment to the February 27, 2015, Declaration under the Public Readiness and Emergency Preparedness Act for Ebola Virus Disease Therapeutics.

SUMMARY: The Secretary is amending the February 27, 2015, Declaration issued pursuant to the Public Health Service Act and amended December 9, 2015 (80 FR 76536) to extend the effective time period for additional 24 months, consistent with the terms of this Declaration.

DATES: The Amended Declaration is effective as of February 27, 2017.

FOR FURTHER INFORMATION CONTACT: Nicole Lurie, MD, MSPH, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201; Telephone 202–205–2802.

SUPPLEMENTARY INFORMATION: The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services to issue a Declaration to provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the administration or use of medical countermeasures (Covered Countermeasures), except for claims that meet the PREP Act’s definition of willful misconduct. The Secretary may, through publication in the Federal Register, amend any portion of a Declaration. Using this authority, the Secretary is amending the Declaration that provides liability immunity to Covered Persons for activities related to the Covered Countermeasures, Ebola Virus Disease Therapeutics as listed in Section VI of the Declaration to extend the effective time period for an additional 24 months, consistent with the terms of this Declaration.

The PREP Act was enacted on December 30, 2005, as Public Law 109–148, Division C, Section 2. It amended the Public Health Service (PHS) Act, adding section 319F–3, which addresses liability immunity, and section 319F–4, which creates a compensation program. These sections are codified in the U.S. Code as 42 U.S.C. 247d–6d and 42 U.S.C. 247d–6e, respectively.

The Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA), Public Law 113–5, was enacted on March 13, 2013. Among other things, PAHPRA added sections 564A and 564B to the Federal Food, Drug, and Cosmetic (FD&C) Act to provide authorities for the emergency use of approved products in emergencies and products held for emergency use.

PAHPRA accordingly amended the definitions of “Covered Countermeasures” and “qualified pandemic and epidemic products” in section 319F–3 of the Public Health Service Act (PREP Act provisions), so that products made available under these new FD&C Act authorities could be covered under PREP Act Declarations. PAHPRA also extended the definition of qualified pandemic and epidemic products that may be covered under a PREP Act Declaration to include products or technologies intended to enhance the use or effect of a drug, biological product, or device used against the pandemic or epidemic or against adverse events from these products.

The Ebola virus causes an acute, serious illness that is often fatal. From 2014 to 2015, West Africa experienced the largest and most complex Ebola virus outbreak ever discovered in 1976, affecting populations in multiple West African
countries and travelers from West Africa to the United States (U.S.) and other countries. The World Health Organization (WHO) declared the Ebola Virus Disease Outbreak as a Public Health Emergency of International Concern under the framework of the International Health Regulations (2005). In March 2016, WHO determined that the Ebola outbreak no longer constituted a Public Health Emergency of International Concern, but emphasized the crucial need for continued support to prevent, detect and respond rapidly to any new Ebola outbreak in West Africa. Thus, there is a continuing need for development of vaccines against Ebola Virus Disease.

Unless otherwise noted, all statutory citations below are to the U.S. Code.

Section I. Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

Before issuing a Declaration under the PREP Act, the Secretary is required to determine that a disease or other health condition or threat to health constitutes a public health emergency or that there is a credible risk that the disease, condition, or threat may in the future constitute such an emergency. This determination is separate and apart from a Declaration issued by the Secretary under section 319 of the PHS Act that a disease or disorder presents a public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists, or other Declarations or determinations made under other authorities of the Secretary. Accordingly, in Section I, the Secretary determines that there is a credible risk that the spread of Ebola virus and the resulting disease may constitute a public health emergency.

Section II. Factors Considered

In deciding whether and under what circumstances to issue a Declaration with respect to a Covered Countermeasure, the Secretary must consider the desirability of encouraging the development, clinical testing or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the countermeasure. In Section II, the Secretary states that she has considered these factors.

Section III. Recommended Activities

The Secretary must recommend the activities for which the PREP Act’s liability immunity is in effect. These activities may include, under conditions as the Secretary may specify, the manufacture, testing, development, distribution, administration, or use of one or more Covered Countermeasures (“Recommended Activities”). In Section III, the Secretary recommends activities for which the immunity is in effect under the conditions stated in the Declaration, including the condition that the activities relate to clinical trials permitted to proceed after review by the Food and Drug Administration (FDA) that administer or use the Covered Countermeasure under an investigational new drug application (IND) and that are directly supported by the U.S. The Secretary specifies that the term “directly supported” in this Declaration means that the United States has provided some form of tangible support such as supplies, funds, products, technical assistance, or staffing. This condition is intended to afford liability immunity only to activities related to clinical trials using the Covered Countermeasure being conducted in the U.S. and West Africa that are directly supported by the U.S.

Section IV. Liability Immunity

The Secretary must also state that liability protections available under the PREP Act are in effect with respect to the Recommended Activities. These liability protections provide that, “[s]ubject to other provisions of [the PREP Act], a covered person shall be immune from suit and liability under federal and state law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or use by an individual of a covered countermeasure if a Declaration. . . has been issued with respect to such countermeasure.” In Section IV, the Secretary states that liability protections are in effect with respect to the Recommended Activities.

Section V. Covered Persons

The PREP Act’s liability immunity applies to Covered Persons with respect to administration or use of a Covered Countermeasure. The term “Covered Persons” has a specific meaning and is defined in the PREP Act to include manufacturers, distributors, program planners, and qualified persons, and their officials, agents, and employees, and the U.S. The PREP Act further defines the terms “manufacturer,” “distributor,” “program planner,” and “qualified person” as described below. A manufacturer includes a contractor or subcontractor of a manufacturer; a supplier or licensor of any product, intellectual property, service, research tool or component or other article used in the design, development, clinical testing, investigation or manufacturing of a Covered Countermeasure; and any or all of the parents, subsidiaries, affiliates, successors, and assigns of a manufacturer.

A distributor means a person or entity engaged in the distribution of drug, biologics, or devices, including but not limited to: Manufacturers; repackers; common carriers; contract carriers; air carriers; own-label distributors; private-label distributors; jobbers; brokers; warehouses and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies.

A program planner means a state or local government, including an Indian tribe; a person employed by the state or local government; or other person who supervises or administers a program with respect to the administration, dispensing, distribution, provision, or use of a Covered Countermeasure, including a person who establishes requirements, provides policy guidance, or supplies technical or scientific advice or assistance or provides a facility to administer or use a Covered Countermeasure in accordance with the Secretary’s Declaration. Under this definition, a private-sector employer or community group or other “person” can be a program planner when it carries out the described activities. A qualified person means a licensed health professional or other individual authorized to prescribe, administer, or dispense Covered Countermeasures under the law of the state in which the countermeasure was prescribed, administered, or dispensed; or a person within a category of persons identified as qualified in the Secretary’s Declaration. Under this definition, the Secretary can describe in the Declaration other qualified persons, such as volunteers, who are Covered Persons. Section V describes other qualified persons covered by this Declaration.

The PREP Act also defines the word “person” as used in the Act: A person includes an individual, partnership, corporation, association, entity, or public or private corporation, including a federal, state, or local government agency or department. Section V describes Covered Persons under the Declaration, including Qualified Persons.

Section VI. Covered Countermeasures

As noted above, section III describes the Secretary’s Recommended Activities for which liability immunity is in effect. Section VI identifies the countermeasures for which the Secretary has recommended such activities. The PREP Act states that a
Covered Countermeasure must be: A 
"qualified pandemic or epidemic 
product,” or a “security 
countermeasure,’’ as described 
immediately below; or a drug, biological 
product or device authorized for 
emergency use in accordance with 
sections 564, 564A, or 564B of the FD&C 
Act.

A qualified pandemic or epidemic 
product means a drug or device, as 
defined in the FD&C Act or a biological 
product, as defined in the PHS Act that 
is: (i) Manufactured, used, designed, 
developed, modified, licensed or 
procured to diagnose, mitigate, prevent, 
treat, or cure a pandemic or epidemic or 
limit the harm such a pandemic or 
epidemic might otherwise cause; (ii) 
manufactured, used, designed, 
developed, modified, licensed, or 
procured to diagnose, mitigate, prevent, 
treat, or cure a serious or life-
threatening disease or condition caused 
by such a drug, biological product, or 
device; (iii) or a product or technology 
tended to enhance the use or effect of 
such a drug, biological product, or 
device.

A security countermeasure is a drug 
or device, as defined in the FD&C Act 
or a biological product, as defined in the 
PHS Act that: (i)(a) The Secretary 
determines to be a priority to diagnose, 
mitigate, prevent, or treat harm from any 
biological, chemical, radiological, or 
nuclear agent identified as a material 
threat by the Secretary of Homeland 
Security, or (b) to diagnose, mitigate, 
prevent, or treat harm from a condition 
that may result in adverse health 
consequences or death and may be 
cured by administering a drug, 
biological product, or device against 
such an agent; and (ii) is determined by 
the Secretary of Health and Human 
Services to be a necessary 
countermeasure to protect public health.

To be a Covered Countermeasure, 
qualified pandemic or epidemic 
products or security countermeasures 
also must be approved or cleared under 
the FD&C Act; licensed under the PHS 
Act; or authorized for emergency use 
under sections 564, 564A, or 564B of the 
FD&C Act.

A qualified pandemic or epidemic 
product also may be a Covered 
Countermeasure if it may reasonably be 
determined to qualify for approval or 
licensing within 10 years after the 
Department’s determination that 
procurement of the countermeasure is 
appropriate.

Section VI lists the Ebola Virus 
Disease Therapeutics that are Covered 
Countermeasures. Section VI also refers 
to the statutory definitions of Covered 
Countermeasures to make clear that 
these statutory definitions limit the 
scope of Covered Countermeasures. 
Specifically, the Declaration notes that 
Covered Countermeasures must be 
“qualified pandemic or epidemic 
products, or security countermeasures, 
or drugs, biological products, or devices 
favoring the investigational or 
emergency use, as those terms are 
defined in the PREP Act, the FD&C Act, 
and the Public Health Service Act.”

Section VII, Limitations on Distribution

The Secretary may specify that 
liability immunity is in effect only to 
Covered Countermeasures obtained 
through a particular means of 
distribution. The Declaration states that 
liability immunity is afforded to 
Covered Persons for Recommended 
Activities related to clinical trials 
permitted to proceed after FDA review, 
that administer or use the Covered 
Countermeasure under an IND, and 
directly supported by the U.S., as 
directed in Section III of this 
Declaration, through present or future 
federal contracts, cooperative 
agreements, grants, other transactions, 
terfamily agreements, or memoranda 
of understanding or other federal 
agreements or arrangements.

This limitation is intended to afford 
liability immunity to activities that are 
related to clinical trials permitted to 
proceed after FDA review that 
administer or use the Covered 
Countermeasure under an IND and 
that are directly supported by the U.S.

As stated in Section III of the 
Declaration, the term “directly support” 
means that the U.S. has provided some 
form of tangible support such as 
supplies, funds, products, technical 
assistance, or staffing. As of the date of this 
Declaration, activities primarily are 
those with a direct connection to the 
conduct of clinical trials in the U.S. and 
West Africa, but this Declaration also 
would apply to use in qualifying 
clinical trials outside those areas.

For governmental program planners 
only, liability immunity is afforded only 
to the extent they obtain Covered 
Countermeasures through voluntary 
means, such as (1) donation; (2) 
commercial sale; (3) deployment of 
Covered Countermeasures from federal 
stockpiles; or (4) deployment of 
donated, purchased, or otherwise 
voluntarily obtained Covered 
Countermeasures from state, local, or 
private stockpiles.

This last limitation on distribution is 
intended to deter program planners that 
are government entities from seizing 
privately held stockpiles of Covered 
Countermeasures. It does not apply to 
any other Covered Persons, including 
other program planners who are not 
government entities.

Section VIII, Category of Disease, 
Health Condition, or Threat

The Secretary must identify, for each 
Covered Countermeasure, the categories 
of diseases, health conditions, or threats 
to health for which the Secretary 
recommends the administration or use 
of the countermeasure. In Section VIII, 
the Secretary states that the disease 
threat for which she recommends 
administration or use of the Covered 
Countermeasures is Ebola Virus Disease.

Section IX, Administration of Covered 
Countermeasures

The PREP Act does not explicitly 
define the term “administration” but 
does assign the Secretary the 
responsibility to provide relevant 
conditions in the Declaration. In Section 
IX, the Secretary defines 
“Administration of a Covered 
Countermeasure’’:

Administration of a Covered 
Countermeasure means physical 
provision of the countermeasures to 
recipients, or activities and decisions 
directly relating to public and private 
delivery, distribution, and dispensing of 
the countermeasures to recipients; 
management and operation of 
countermeasure programs; or 
management and operation of locations 
for purpose of distributing and 
dispensing countermeasures.

The definition of “administration’’ 
extends only to physical provision of a 
countermeasure to a recipient, such as 
vaccination or handing drugs to 
patients, and to activities related to 
management and operation of programs 
and locations for providing 
countermeasures to recipients, such as 
decisions and actions involving security 
and queuing, but only insofar as those 
activities directly relate to the 
countermeasure activities. Claims for 
which Covered Persons are provided 
immunity under the Act are losses 
caused by, arising out of, relating to, or 
resulting from the administration to or 
use by an individual of a Covered 
Countermeasure consistent with the 
terms of a Declaration issued under the
Act. Under the Secretary’s definition, these liability claims are precluded if the claims allege an injury caused by physical provision of a countermeasure to a recipient, or if the claims are directly due to conditions of delivery, distribution, dispensing, or management and operation of countermeasure programs at distribution and dispensing sites.

Thus, it is the Secretary’s interpretation that, when a Declaration is in effect, the Act precludes, for example, liability claims alleging negligence by a manufacturer in creating a therapeutic, or negligence by a health care provider in prescribing the wrong dose, absent willful misconduct.

Likewise, the Act precludes a liability claim relating to the management and operation of a countermeasure distribution program or site, such as a slip-and-fall injury or vehicle collision by a recipient receiving a countermeasure at a retail store serving as an administration or dispensing location that alleges, for example, lax security or chaotic crowd control.

However, a liability claim alleging an injury occurring at the site that was not directly related to the countermeasure activities is not covered, such as a slip-and-fall with no direct connection to the countermeasure’s administration or use. In each case, whether immunity is applicable will depend on the particular facts and circumstances.

Section X, Population

The Secretary must identify, for each Covered Countermeasure specified in a Declaration, the population or populations of individuals for which liability immunity is in effect with respect to administration or use of the countermeasure. This section explains which individuals should use the countermeasure or to whom the countermeasure should be administered—in short, those who should be vaccinated or take a drug or other countermeasure. Section X provides that the population includes “any individual who uses or who is administered a Covered Countermeasure in accordance with the Declaration.”

In addition, the PREP Act specifies that liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population and to program planners and qualified persons when the countermeasure is either used by or administered to this population or the program or qualified person reasonably could have believed the recipient was in this population.

Section X includes these statutory conditions in the Declaration for clarity.

Section XI, Geographic Area

The Secretary must identify, for each Covered Countermeasure specified in the Declaration, the geographic area on areas for which liability immunity is in effect with respect to administration or use of the countermeasure, including, as appropriate, whether the Declaration applies only to individuals physically present in the area or, in addition, applies to individuals who have a described connection to the area.

Section XI provides that liability immunity is afforded for the administration or use of a Covered Countermeasure without geographic limitation. This could include claims related to administration or use in West Africa or other locations outside the U.S. It is possible that claims may arise in regard to administration or use of the Covered Countermeasures outside the U.S. that may be resolved under U.S. law.

In addition, the PREP Act specifies that liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to individuals in the geographic areas and to program planners and qualified persons when the countermeasure is either used or administered in the geographic areas or the program planner or qualified person reasonably could have believed the countermeasure was used or administered in the areas. Section XI includes these statutory conditions in the Declaration for clarity.

Section XII, Effective Time Period

The Secretary must identify for each Covered Countermeasure the period or periods during which liability immunity is in effect, designated by dates, milestones, or other description of events, including factors specified in the PREP Act. Section XII identifies the effective time period. The effective time period commences at the start of clinical trials permitted to proceed after FDA review that administer or use the Covered Countermeasure under an IND and that are directly supported by the U.S., as described in Section III of the Declaration. Liability immunity is afforded to claims arising from such administration or use of the Covered Countermeasures after that date that have a causal relationship with any of the Recommended Activities stated in this Declaration. Section XII is amended to extend the effective time period an additional 24 months.

Section XIII, Additional Time Period of Coverage

The Secretary must specify a date after the ending date of the effective period of the Declaration that is reasonable for manufacturers to arrange for disposition of the Covered Countermeasure, including return of the product to the manufacturer, and for other Covered Persons to take appropriate actions to limit administration or use of the Covered Countermeasure. In addition, the PREP Act specifies that for Covered Countermeasures that are subject to a Declaration at the time they are obtained for the Strategic National Stockpile (SNS) under 42 U.S.C. 247d–6b(a), the effective period of the Declaration extends through the time the countermeasure is used or administered pursuant to a distribution or release from the SNS. Liability immunity under the provisions of the PREP Act and the conditions of the Declaration continues during these additional time periods. Thus, liability immunity is afforded during the “Effective Time Period,” plus the “Additional Time Period” described under section XIII of the Declaration.

Section XIII provides for 12 months as the additional time period of coverage after expiration of the Declaration. Section XIII also explains the extended coverage that applies to products obtained for the SNS during the effective period of the Declaration.

Section XIV, Countermeasures Injury Compensation Program

Section 319F–4 of the PREP Act authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to eligible individuals who sustain a serious physical injury or die as a direct result of the administration or use of a Covered Countermeasure. Compensation under the CICP for an injury directly caused by a Covered Countermeasure is based on the requirements set forth in this Declaration, the administrative rules for the Program, and the statute. To show direct causation between a Covered Countermeasure and a serious physical injury, the statute requires “compelling, reliable, valid, medical and scientific evidence.” The administrative rules for the Program further explain the necessary requirements for eligibility under the CICP. Please note that, by statute, requirements for compensation under the CICP may not always align with the requirements for liability immunity provided under the PREP Act.
Compensation Program, explains the types of injury and standard of evidence needed to be considered for compensation under the CICP.

Further, the administrative rules for the CICP specify if countermeasures are administered or used outside the U.S., only otherwise eligible individuals at American embassies, military installations abroad (such as military bases, ships, and camps) or at North Atlantic Treaty Organization (NATO) installations (subject to the NATO Status of Forces Agreement) where American servicemen and servicewomen are stationed may be considered for CICP benefits. Other individuals outside the U.S. may not be eligible for CICP benefits.

Section XV, Amendments

This is the second amendment to the February 27, 2015, Declaration (80 FR 73314). The first amendment was issued December 9, 2015 (80 FR 76536). The Secretary may amend any portion of a Declaration through publication in the Federal Register.

Republished Declaration

Declaration, as Amended, Public Readiness and Emergency Preparedness Act Coverage for Ebola Virus Disease Therapeutics

This Declaration amends and reissues the February 27, 2015 for coverage under the Public Readiness and Emergency Preparedness (PREP) Act for Ebola Virus Disease Therapeutics. To the extent any term of the February 27, 2015, Declaration is inconsistent with any provision of this Republished Declaration, the terms of this Republished Declaration are controlling.

I. Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

42 U.S.C. 247d–6d(b)(1)

I have determined that there is a credible risk that the spread of Ebola virus and the resulting disease or conditions may in the future constitute a public health emergency.

II. Factors Considered

42 U.S.C. 247d–6d(b)(6)

I have considered the desirability of encouraging the design, development, clinical testing, or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the Covered Countermeasures.

III. Recommended Activities

42 U.S.C. 247d–6d(b)(1)

I recommend the manufacture, testing, development, distribution, administration, and use of the Covered Countermeasures under the conditions stated in this Declaration, including the condition that the activities relate to clinical trials permitted to proceed after review by the Food and Drug Administration (FDA) that administer or use the Covered Countermeasure under an IND application and that are directly supported by the U.S. The term “directly supported” in this Declaration means that the U.S. has provided some form of tangible support such as supplies, funds, products, technical assistance, or staffing.

IV. Liability Immunity

42 U.S.C. 247d–6d(a), 247d–6d(b)(1)

Liability immunity as prescribed in the PREP Act and conditions stated in this Declaration is in effect for the Recommended Activities described in Section III.

V. Covered Persons

42 U.S.C. 247d–6d(i)(2), (3), (4). (6), (8)(A) and (B)

Covered Persons who are afforded liability immunity under this Declaration are manufacturers, distributors, program planners, qualified persons, and their officials, agents, and employees, as those terms are defined in the PREP Act, and the U.S. In addition, I have determined that the following additional persons are qualified persons: Any person authorized to prescribe, administer, or dispense the Covered Countermeasures or who is otherwise authorized to perform an activity to carry out clinical trials permitted to proceed after FDA review that administer or use the Covered Countermeasure under an IND and that are directly supported by the United States, as described in Section III of this Declaration.

VI. Covered Countermeasures

42 U.S.C. 247d–6d(c)(1)(B), 42 U.S.C. 247d–6d(i)(1) and (7)

Covered Countermeasures are the following Ebola Virus Disease Therapeutics: ZMapp monoclonal antibody therapeutic.

Covered Countermeasures must be “qualified pandemic or epidemic products,” or “security countermeasures,” or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.

VII. Limitations on Distribution

42 U.S.C. 247d–6d(a)(5) and (b)(2)(E)

I have determined that liability immunity is afforded to Covered Persons only for Recommended Activities involving Covered Countermeasures that are related to clinical trials permitted to proceed after FDA review that administer or use the Covered Countermeasure under an IND and that are directly supported by the United States, as described in Section III of this Declaration, through present or future federal contracts, cooperative agreements, grants, other transactions, interagency agreements, memoranda of understanding, or other federal agreements or arrangements.

I have also determined that for governmental program planners only, liability immunity is afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles.

VIII. Category of Disease, Health Condition, or Threat

42 U.S.C. 247d–6d(b)(2)(A)

The category of disease, health condition, or threat for which I recommend the administration or use of the Covered Countermeasures is Ebola virus disease.

IX. Administration of Covered Countermeasures

42 U.S.C. 247d–6d(a)(2)(B)

Administration of the Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution and dispensing of the countermeasures to recipients, management and operation of countermeasure programs, or management and operation of locations for purpose of distributing and dispensing countermeasures.

X. Population


The populations of individuals eligible for CICP benefits.

The populations of individuals eligible for CICP benefits.

I have also determined that for governmental program planners only, liability immunity is afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles.

The populations of individuals eligible for CICP benefits.

The populations of individuals eligible for CICP benefits.

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The populations of individuals eligible for CICP benefits.

The populations of individuals eligible for CICP benefits.

I have also determined that for governmental program planners only, liability immunity is afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles.

The populations of individuals eligible for CICP benefits.

The populations of individuals eligible for CICP benefits.

I have also determined that for governmental program planners only, liability immunity is afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles.

The populations of individuals eligible for CICP benefits.

The populations of individuals eligible for CICP benefits.

I have also determined that for governmental program planners only, liability immunity is afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles.

The populations of individuals eligible for CICP benefits.

The populations of individuals eligible for CICP benefits.
Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered to this population, or the program planner or qualified person reasonably could have believed the recipient was in this population.

X. Geographic Area

Liability immunity is afforded for the administration or use of a Covered Countermeasure without geographic limitation.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered in any designated geographic area; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered in any designated geographic area, or the program planner or qualified person reasonably could have believed the recipient was in that geographic area.

XI. Effective Time Period
42 U.S.C. 247d–6d(b)(2)(B)

Liability immunity for Covered Countermeasures began on February 27, 2015, and extends through February 26, 2019.

XII. Additional Time Period of Coverage
42 U.S.C. 247d–6d(b)(3)(B) and (C)

I have determined that an additional 12 months of liability protection is reasonable to allow for the manufacture(s) to arrange for disposition of the Covered Countermeasure, including return of the Covered Countermeasures to the manufacturer, and for Covered Persons to take such other actions as are appropriate to limit the administration or use of the Covered Countermeasures.

Covered Countermeasures obtained for the SNS during the effective period of this Declaration are covered through the date of administration or use pursuant to a distribution or release from the SNS.

XIV. Countermeasures Injury Compensation Program
42 U.S.C. 247d–6e

The PREP Act authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to certain individuals or estates of individuals who sustain a covered serious physical injury as the direct result of the administration or use of the Covered Countermeasures, and benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasures. The causal connection between the countermeasure and the serious physical injury must be supported by compelling, reliable, valid, medical and scientific evidence in order for the individual to be considered for compensation. The CICP is administered by the Health Resources and Services Administration, within the Department of Health and Human Services. Information about the CICP is available by telephone at 855–266–2427 (toll-free) or http://www.hrsa.gov/cicp/.

XV. Amendments
42 U.S.C. 247d–6d(b)(4)

Any amendments to this Declaration will be published in the Federal Register.

Dated: December 2, 2016.
Sylvia M. Burwell,
Secretary, Department of Health and Human Services.
[FR Doc. 2016–29609 Filed 12–9–16; 8:45 am]
BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.
Date: January 19, 2017.
Open: 8:30 a.m. to 1:00 p.m.
Agenda: Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs.
Place: Terrace Level Conference Rooms, 5635 Fishers Lane, Rockville, MD 20852.