

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2020-N-1338]

#### Process for Publishing Emergency Use Authorizations for Medical Devices During Coronavirus Disease 2019

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the process for publishing FDA Emergency Use Authorizations (EUs) for medical devices related to the Coronavirus Disease 2019 (COVID-19) public health emergency. FDA believes that this process will allow the Agency to rapidly publish EUs that have been issued for medical devices under the Federal Food, Drug, and Cosmetic Act.

**DATES:** This process is effective June 2, 2020.

**ADDRESSES:** Submit written requests for single copies of an EUA to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the Authorization may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorizations.

**FOR FURTHER INFORMATION CONTACT:** Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993-0002, 301-796-8510 (this is not a toll free number).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 564 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360bbb-3) allows FDA to strengthen the public health protections against biological, chemical, radiological, or nuclear agent or agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. With this EUA authority, FDA can help ensure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening

diseases or conditions caused by biological, chemical, radiological or nuclear agent or agents when there are no adequate, approved, and available alternatives and other criteria are met.

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of Health and Human Services (HHS) must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces, including personnel operating under the authority of Title 10 or Title 50, United States Code, of attack with (i) a biological, chemical, radiological, or nuclear agent or agents; or (ii) an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces<sup>1</sup>; (3) a determination by the Secretary of HHS 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 U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security under section 319F-2 of the Public Health Service (PHS) Act (42 U.S.C. 247d-6b) sufficient to affect national security or the health and security of U.S. citizens living abroad. Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied.

Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or

<sup>1</sup> In the case of a determination by the Secretary of Defense, the Secretary of HHS shall determine within 45 calendar days of such determination, whether to make a declaration under section 564(b)(1) of the FD&C Act, and, if appropriate, shall promptly make such a declaration.

revocation of an authorization, and an explanation of the reasons for the action. Additionally, under this provision, the Secretary shall make any revisions to an authorization under section 564 of the FD&C Act available on FDA's website.

##### II. Medical Devices for Which the Secretary Has Declared That Circumstances Exist Justifying Their Emergency Use

On February 4, 2020, 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 U.S. citizens living abroad, and that involves the SARS-CoV-2. Pursuant to this determination, the Secretary has made the following declarations that circumstances exist justifying the authorization of emergency use of the following products:

- On February 4, 2020, under section 564(b)(1) of the FD&C Act, the Secretary of HHS declared that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of the virus (SARS-CoV-2), subject to the terms of any authorization issued under section 564 of the FD&C Act. Notice of the determination and declaration of the Secretary was published in the **Federal Register** on February 7, 2020 (85 FR 7316).
- On March 2, 2020, under section 564(b)(1) of the FD&C Act, the Secretary of HHS declared that circumstances exist justifying the authorization of emergency use of personal respiratory protective devices during the COVID-19 outbreak, subject to the terms of any authorization issued under section 564 of the FD&C Act. Notice of the declaration of the Secretary was published in the **Federal Register** on March 10, 2020 (85 FR 13907).
- On March 24, 2020, under section 564(b)(1) of the FD&C Act, the Secretary of HHS declared that circumstances exist justifying the authorization of emergency use of medical devices, including alternative products use as medical devices, due to shortages during the COVID-19 outbreak, subject to the terms of any authorization issued under section 564 of the FD&C Act. Notice of the declaration of the Secretary was published in the **Federal Register** on March 27, 2020 (85 FR 17335).

### III. Electronic Access

An electronic version of this document and the full text of the Authorizations are available on the internet at <https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization>.

### IV. Process for Publishing EUs for Medical Devices During COVID-19

To facilitate publication of each EUA, and each termination or revocation of an EUA under section 564, in accordance with section 564(h)(1) of the FD&C Act, the Agency intends to use the following process:

- Rather than publishing a separate Notice of Availability (NOA) for each COVID-19 related EUA for a medical device, FDA intends to publish periodically a consolidated NOA. This periodic NOA will announce the availability of all the COVID-19 related EUs for medical devices that issued during the relevant period. The consolidated NOA will provide instructions to the public on how to view the EUs, and instructions for persons interested in obtaining a copy of the COVID-19 related EUs.

- COVID-19 related EUs for medical devices will be accessible on the internet at the FDA web page entitled "Emergency Use Authorization," available at <https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization>.

- COVID-19 related EUs for medical devices are also currently accessible on the internet from the FDA web page entitled "Emergency Use Authorizations," available at <https://www.fda.gov/medical-devices/emergency-situations-medical-devices/emergency-use-authorization#COVID19>.

Dated: May 28, 2020.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*  
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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2020-N-1302]

#### **Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; establishment of a public docket; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

**DATES:** The meeting will be held on June 17, 2020, from 10 a.m. to 3:30 p.m. and June 18, 2020, from 10 a.m. to 3:30 p.m.

**ADDRESSES:** Please note that due to the impact of this COVID-19 public health emergency, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm>.

FDA is establishing a docket for public comment on this meeting. The docket number is FDA-2020-N-1302. The docket will close on June 16, 2020. Submit either electronic or written comments on this public meeting by June 16, 2020. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before June 16, 2020. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 16, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before June 10, 2020, will be provided to the subcommittee. Comments received after that date will be taken into consideration by FDA. In the event that

the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

#### *Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA-2020-N-1302 for "Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9