

Administrative Procedure Act (APA; 5 U.S.C. 551 *et seq.*) and FDA's regulations on good guidance practices (§ 10.115 (21 CFR 10.115)). Under the APA, FDA may use guidance documents to "advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power."<sup>5</sup> Accordingly, FDA's good guidance practice regulations define "guidance documents" to include "documents that relate to . . . enforcement policies." (§ 10.115(b)(2)).

Additionally, the HHS Notice is supported by flawed facts. It cites, for the proposition that the UDI and CPG 440.100 guidance resulted in price increases for certain new drugs, only a single observational study of 26 products, which included pricing estimates that were not inflation-adjusted over the 4-year observational period, which could lead to an overestimation of real price changes.<sup>6</sup> The HHS Notice also erroneously ties the 2015 price increase for the drug DARAPRIM to the UDI. DARAPRIM was approved as a new drug under the FD&C Act in 1953. Following the 1962 FD&C Act amendments, which required drugs to demonstrate not only safety but efficacy, DARAPRIM was found to be effective, in 1971, as part of FDA's review of all new drugs that had been approved only for safety before 1962. DARAPRIM was then fully approved by FDA as a safe and effective drug. For years after its approval, DARAPRIM was an off-patent, off-exclusivity drug eligible for generic competition, but no drug manufacturer sought and obtained approval of a generic version during this period. It was during this period, in 2015, that the holder of the approved application for DARAPRIM significantly raised the price of the drug. FDA recently approved a generic version of this product on February 28, 2020.<sup>7</sup>

Due to the HHS Notice's legal and factual inaccuracies, including those described above, HHS and FDA believe

it is appropriate to withdraw the HHS Notice at this time. The HHS Notice does not accurately reflect the Department's or FDA's thinking because it is inconsistent with the FD&C Act, FDA regulations, and judicial precedent, among other legal authorities, and is not supported by the facts. In addition, the HHS Notice could result in significant harm to public health by suggesting that unsafe or ineffective drugs could circumvent the drug approval process.

Although the withdrawal of FDA's CPG 440.100 guidance does not change the legal obligations that apply to new drugs, or FDA's existing enforcement authority over unapproved new drugs, we recognize that the withdrawal of the CPG may have created confusion for the public, including regulated industry, as to how FDA intends to prioritize its enforcement resources in this area. FDA therefore plans to issue guidance on this topic consistent with good guidance practices. The guidance will provide appropriate updates regarding FDA's enforcement priorities for marketed unapproved new drugs. In the interim, before such guidance is issued, FDA will continue to exercise its existing general approach to prioritizing regulatory and enforcement action, which involves risk-based prioritization in light of all the facts of a given circumstance. Risk-based enforcement best supports FDA's public health priorities.

FDA's longstanding interpretation of the statutory terms "new drug," "grandfathered," and "GRASE" are unchanged and the HHS Notice did not affect the requirements that apply to new drugs under the statutes FDA administers. The HHS Notice did not, and legally could not, provide a new pathway for the legal marketing of unapproved new drugs. Neither HHS nor FDA has the authority to exempt a product or class of products that are new drugs under the FD&C Act from the new drug approval requirements of the FD&C Act. See *Cutler v. Kennedy*, 475 F. Supp. 838, 856 (D.D.C. 1979); *Hoffman-LaRoche v. Weinberger*, 425 F. Supp. 890, 892–894 (D.D.C. 1975).

Dated: May 17, 2021.

**Janet Woodcock,**

*Acting Commissioner of Food and Drugs.*

Dated: May 20, 2021.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2021–N–0335]

### Authorizations of Emergency Use of Certain Biological Products During the COVID–19 Pandemic; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the issuance of two Emergency Use Authorizations (EUs) (the Authorizations) under the Federal Food, Drug, and Cosmetic Act (FD&C Act) for biological products for use during the COVID–19 pandemic. FDA has issued one Authorization for biological products as requested by Eli Lilly and Company and one Authorization for a biological product as requested by Janssen Biotech, Inc. The Authorizations contain, among other things, conditions on the emergency use of the authorized products. The Authorizations follow the February 4, 2020, determination by the Secretary of Health and Human Services (HHS) 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 a novel (new) coronavirus. The virus, now named SARS–CoV–2, causes the illness COVID–19. On the basis of such determination, the Secretary of HHS declared on March 27, 2020, that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID–19 pandemic, pursuant to the FD&C Act, subject to the terms of any authorization issued under that section. The Authorizations, which include an explanation of the reasons for issuance, are reprinted in this document.

**DATES:** The Authorization for Eli Lilly and Company is effective as of February 9, 2021, and the Authorization for Janssen Biotech, Inc. is effective as of February 27, 2021.

**ADDRESSES:** Submit written requests for single copies of the EUs 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 Authorizations may be sent. See the **SUPPLEMENTARY INFORMATION**

<sup>5</sup> See the Attorney General's Manual on the APA (1947), at 30 n.3.

<sup>6</sup> See R. Gupta et al., "The FDA Unapproved Drugs Initiative: An Observational Study of the Consequences for Drug Prices and Shortages in the United States," 23 *Journal of Managed Care & Specialty Pharmacy* 1066 (October 2017) (the Yale Study). Of note, the authors of the Yale Study suggested ways to mitigate unintended consequences of the UDI that did not include terminating the UDI by withdrawing CPG 440.100 guidance or reinterpreting the definition of "new drug."

<sup>7</sup> FDA continues to maintain efforts to improve the efficiency of the generic drug development, review, and approval process, generally, and it prioritizes the review of submissions for generic drugs for which there are fewer than three approved generic versions for the reference listed drug (RLD) and for which there are no blocking patents or exclusivities on the RLD.

section for electronic access to the Authorizations.

**FOR FURTHER INFORMATION CONTACT:**

Michael Mair, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4340, Silver Spring, MD 20993-0002, 301-796-8510 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 564 of the FD&C Act (21 U.S.C. 360bbb-3) allows FDA to strengthen public health protections against biological, chemical, nuclear, and radiological 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, nuclear, or radiological agents when there are no adequate, approved, and available alternatives.

**II. Criteria for EUA Authorization**

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of 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, U.S. Code, of attack with (A) a biological, chemical, radiological, or nuclear agent or agents; or (B) 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 pursuant to 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 revocation of an authorization, and an explanation of the reasons for the action. Under section 564(h)(1) of the FD&C Act, revisions to an authorization shall be made available on the internet website of FDA. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use in an actual or potential emergency when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), 512, or 515 of the FD&C Act (21 U.S.C. 355, 360(k), 360b, and 360e) or section 351 of the PHS Act (42 U.S.C. 262), or conditionally approved under section 571 of the FD&C Act (21 U.S.C. 360ccc). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the applicable circumstances), FDA<sup>2</sup> concludes: (1) That an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including

data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that: (A) The product may be effective in diagnosing, treating, or preventing (i) such disease or condition; or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; (4) in the case of a determination described in section 564(b)(1)(B)(ii), that the request for emergency use is made by the Secretary of Defense; and (5) that such other criteria as may be prescribed by regulation are satisfied.

No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act.

**III. The Authorizations**

The Authorizations follow the February 4, 2020, determination by the Secretary of HHS 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 a novel (new) coronavirus. The virus, now named SARS-CoV-2, causes the illness COVID-19. Notice of the Secretary's determination was provided in the **Federal Register** on February 7, 2020 (85 FR 7316). On the basis of such determination, the Secretary of HHS declared on March 27, 2020, 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 the terms of any authorization issued under that section. Notice of the Secretary's declaration was provided in the **Federal Register** on April 1, 2020 (85 FR 18250). Having concluded that the criteria for issuance of the Authorizations under section 564(c) of the FD&C Act are met, FDA has issued two authorizations for the emergency use of biological products during the COVID-19 pandemic. On February 9, 2021, FDA issued an EUA to Eli Lilly

<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.

<sup>2</sup> The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

and Company for bamlanivimab and etesevimab, administered together, subject to the terms of the Authorization. On February 27, 2021, FDA issued an EUA to Janssen Biotech, Inc. for the Janssen COVID-19 Vaccine, subject to the terms of the Authorization. The initial Authorizations, which are included below in their entirety after section IV of this document (not including the

authorized versions of the fact sheets and other written materials), provide an explanation of the reasons for issuance, as required by section 564(h)(1) of the FD&C Act. Any subsequent reissuances of these Authorizations can be found on FDA's web page: <https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization>.

#### IV. Electronic Access

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

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February 9, 2021

Eli Lilly and Company  
Attention: Christine Phillips, PhD, RAC  
Advisor Global Regulatory Affairs - US  
Lilly Corporate Center  
Drop Code 2543  
Indianapolis, IN 46285

RE: Emergency Use Authorization 094

Dear Ms. Phillips:

This letter is in response to Eli Lilly and Company's ("Lilly") request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for emergency use of bamlanivimab and etesevimab administered together for the treatment of mild to moderate coronavirus disease 2019 (COVID-19), as described in the Scope of Authorization (Section II) of this letter, pursuant to Section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. §360bbb-3).

On February 4, 2020, pursuant to Section 564(b)(1)(C) of the Act, the Secretary of the Department of Health and Human Services (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.<sup>1</sup> On the basis of such determination, the Secretary of HHS on March 27, 2020, 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 Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. § 360bbb-3), subject to terms of any authorization issued under that section.<sup>2</sup>

Bamlanivimab and etesevimab are neutralizing IgG1 monoclonal antibodies that bind to distinct but overlapping epitopes within the receptor binding domain of the spike protein of SARS-CoV-2. They are both investigational drugs and are not currently approved for any indication.

Based on the review of the data from the Phase 2/3 BLAZE-1 trial (NCT04427501), an ongoing randomized, double-blind, placebo-controlled clinical trial, and the Phase 2 BLAZE-4 trial (NCT04634409), an ongoing randomized, double-blind, placebo-controlled clinical trial, it is reasonable to believe that bamlanivimab and etesevimab administered together may be effective

<sup>1</sup> U.S. Department of Health and Human Services, *Determination of a Public Health Emergency and Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act*, 21 U.S.C. § 360bbb-3, February 4, 2020.

<sup>2</sup> U.S. Department of Health and Human Services, *Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act*, 21 U.S.C. § 360bbb-3, 85 FR 18250 (April 1, 2020).

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for the treatment of mild to moderate COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg) with positive results of direct SARS-CoV-2 viral testing, and who are at high risk for progressing to severe COVID-19 and/or hospitalization, and that, when used under the conditions described in this authorization, the known and potential benefits of bamlanivimab and etesevimab administered together outweigh the known and potential risks of such products.

Having concluded that the criteria for issuance of this authorization under Section 564(c) of the Act are met, I am authorizing the emergency use of bamlanivimab for treatment of COVID-19, as described in the Scope of Authorization section of this letter (Section II) and subject to the terms of this authorization.

#### **I. Criteria for Issuance of Authorization**

I have concluded that the emergency use of bamlanivimab and etesevimab for the treatment of COVID-19 when administered as described in the Scope of Authorization (Section II) meets the criteria for issuance of an authorization under Section 564(c) of the Act, because:

1. SARS-CoV-2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus;
2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that bamlanivimab and etesevimab administered together may be effective in treating mild to moderate COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg) with positive results of direct SARS-CoV-2 viral testing, and who are at high risk for progressing to severe COVID-19 and/or hospitalization, and that, when administered as described in the Scope of Authorization (Section II) and used under the conditions described in this authorization, the known and potential benefits of bamlanivimab and etesevimab outweigh the known and potential risks of such product; and
3. There is no adequate, approved, and available alternative to the emergency use of bamlanivimab and etesevimab as described in the Scope of Authorization (Section II) for the treatment of mild to moderate COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg) with positive results of direct SARS-CoV-2 viral testing, and who are at high risk for progressing to severe COVID-19 and/or hospitalization.<sup>3</sup>

#### **II. Scope of Authorization**

I have concluded, pursuant to Section 564(d)(1) of the Act, that the scope of this authorization is limited as follows:

- Distribution of the authorized bamlanivimab and etesevimab will be controlled by the United States (U.S.) Government for use consistent with the terms and conditions of

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<sup>3</sup> No other criteria of issuance have been prescribed by regulation under Section 564(c)(4) of the Act.

this EUA. Lilly will supply bamlanivimab and etesevimab to authorized distributors<sup>4</sup>, who will distribute to healthcare facilities or healthcare providers as directed by the U.S. Government, in collaboration with state and local government authorities as needed;

- The bamlanivimab and etesevimab covered by this authorization will be administered together only by healthcare providers to treat mild to moderate COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg) with positive results of direct SARS-CoV-2 viral testing, and who are at high risk for progressing to severe COVID-19 and/or hospitalization;
- Etesevimab may only be administered together with bamlanivimab<sup>5</sup>;
- Bamlanivimab and etesevimab are not authorized for use in the following patient populations<sup>6</sup>:
  - Adults or pediatric patients who are hospitalized due to COVID-19, or
  - Adults or pediatric patients who require oxygen therapy due to COVID-19, or
  - Adults or pediatric patients who require an increase in baseline oxygen flow rate due to COVID-19 in those patients on chronic oxygen therapy due to underlying non-COVID-19-related comorbidity.
- Bamlanivimab and etesevimab may only be administered together in settings in which health care providers have immediate access to medications to treat a severe infusion reaction, such as anaphylaxis, and the ability to activate the emergency medical system (EMS), as necessary.
- The use of bamlanivimab and etesevimab covered by this authorization must be in accordance with the dosing regimens as detailed in the authorized Fact Sheets.

### Product Description

Bamlanivimab and etesevimab are neutralizing IgG1 monoclonal antibodies that bind to distinct but overlapping epitopes within the receptor binding domain of the spike protein of SARS-CoV-

<sup>4</sup> “Authorized Distributor(s)” are identified by Lilly as an entity or entities allowed to distribute authorized bamlanivimab.

<sup>5</sup> At the time of the issuance of this EUA, bamlanivimab, a monoclonal antibody therapy, is authorized under a separate EUA as a monotherapy for the treatment of mild to moderate COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg) with positive results of direct SARS-CoV-2 viral testing, and who are at high risk for progressing to severe COVID-19 and/or hospitalization. (For a listing of FDA EUAs, see FDA’s website at: [Emergency Use Authorization | FDA](#)). Etesevimab, alone, has not been evaluated as a treatment for patients with COVID-19. Etesevimab may only be administered together with bamlanivimab consistent with the terms and conditions of this authorization.

<sup>6</sup> Treatment with bamlanivimab and etesevimab has not been studied in patients hospitalized due to COVID-19. Monoclonal antibodies, such as bamlanivimab and etesevimab, may be associated with worse clinical outcomes when administered to hospitalized patients with COVID-19 requiring high flow oxygen or mechanical ventilation.

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2. Bamlanivimab injection, 700 mg/20 mL, and etesevimab, 700 mg/20 mL, are sterile, preservative-free clear to opalescent and colorless to slightly yellow to slightly brown solutions to be diluted prior to infusion. One vial of bamlanivimab (20 mL) and two vials of etesevimab (40 mL) are to be added to a prefilled 0.9% sodium chloride infusion bag as described in the healthcare provider fact sheet. The authorized bamlanivimab includes a vial label and/or carton labeling that is clearly marked “For use under Emergency Use Authorization (EUA)”. The authorized etesevimab includes a vial label and/or carton labeling that is clearly marked “For use under Emergency Use Authorization (EUA)” and “MUST ADMINISTER WITH BAMLANIVIMAB.”

Bamlanivimab, injection, 700 mg/20 mL, and etesevimab, injection, 700mg/20 mL vials should be stored in unopened vials under refrigerated temperature at 2°C to 8°C (36°F to 46°F) in the original carton to protect from light until time of use. Diluted bamlanivimab and etesevimab infusion solution can be stored for up to 24 hours at refrigerated temperature (2°C to 8°C [36°F to 46°F]) and up to 7 hours at room temperature (20°C to 25°C [68°F to 77°F]) including infusion time.

Bamlanivimab and etesevimab are authorized for emergency use as described in the Scope of Authorization (Section II) with the following product-specific information required to be made available to healthcare providers and patients, parents, and caregivers, respectively, through Lilly’s website at [www.BAMandETE.com](http://www.BAMandETE.com):

- Fact Sheet for Health Care Providers: Emergency Use Authorization (EUA) of Bamlanivimab and Etesevimab
- Fact Sheet for Patients, Parents and Caregivers: Emergency Use Authorization (EUA) of Bamlanivimab and Etesevimab for Coronavirus Disease 2019 (COVID-19)

I have concluded, pursuant to Section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of bamlanivimab and etesevimab when used for the treatment of COVID-19 and used in accordance with this Scope of Authorization (Section II), outweigh its known and potential risks.

I have concluded, pursuant to Section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that bamlanivimab and etesevimab may be effective for the treatment of COVID-19 when used in accordance with this Scope of Authorization (Section II), pursuant to Section 564(c)(2)(A) of the Act.

Having reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, I have concluded that bamlanivimab and etesevimab (as described in this Scope of Authorization (Section II)) meet the criteria set forth in Section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of your product under an EUA must be consistent with, and may not exceed, the terms of the Authorization, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section III). Subject to the terms of this EUA and under the circumstances set forth in

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the Secretary of HHS's determination under Section 564(b)(1)(C) described above and the Secretary of HHS's corresponding declaration under Section 564(b)(1), bamlanivimab and etesevimab administered together are authorized to treat mild to moderate COVID-19 illness in adults and pediatric patients (12 years of age and older weighing at least 40 kg) with positive results of direct SARS-CoV-2 viral testing, and who are at high risk for progressing to severe COVID-19 illness and/or hospitalization as described in the Scope of Authorization (Section II) under this EUA, despite the fact that it does not meet certain requirements otherwise required by applicable federal law.

### III. Conditions of Authorization

Pursuant to Section 564 of the Act, I am establishing the following conditions on this authorization:

#### Eli Lilly and Company (Lilly) and Authorized Distributors

- A. Lilly and authorized distributor(s) will ensure that the authorized bamlanivimab and etesevimab are distributed, as directed by the U.S. government, and the authorized labeling (i.e., Fact Sheets) will be made available to healthcare facilities and/or healthcare providers consistent with the terms of this letter.
- B. Lilly and authorized distributor(s) will ensure that appropriate storage and cold chain is maintained until the product is delivered to healthcare facilities and/or healthcare providers.
- C. Lilly and authorized distributor(s) will ensure that the terms of this EUA are made available to all relevant stakeholders (e.g., U.S. government agencies, state and local government authorities, authorized distributors, healthcare facilities, healthcare providers) involved in distributing or receiving authorized bamlanivimab and etesevimab. Lilly will provide to all relevant stakeholders a copy of this letter of authorization and communicate any subsequent amendments that might be made to this letter of authorization and its authorized accompanying materials (i.e., Fact Sheets).
- D. Lilly may request changes to this authorization, including to the authorized Fact Sheets for bamlanivimab and etesevimab. Any request for changes to this EUA must be submitted to the Office of Infectious Diseases/Office of New Drugs/Center for Drug Evaluation and Research. Such changes require appropriate authorization prior to implementation.<sup>7</sup>

<sup>7</sup> The following types of revisions may be authorized without reissuing this letter: (1) changes to the authorized labeling; (2) non-substantive editorial corrections to this letter; (3) new types of authorized labeling, including new fact sheets; (4) new carton/container labels; (5) expiration dating extensions; (6) changes to manufacturing processes, including tests or other authorized components of manufacturing; (7) new conditions of authorization to require data collection or study; (8) new strengths of the authorized product, new product sources (e.g., of active pharmaceutical ingredient) or of product components. For changes to the authorization, including the authorized labeling, of the type listed in (3), (6), (7), or (8), review and concurrence is required from the Counter-Terrorism and Emergency Coordination Staff/Office of the Center Director/CDER and the Office of Counterterrorism and Emerging Threats/Office of the Chief Scientist.

- E. Lilly may develop instructional and educational materials to facilitate the emergency use of the authorized bamlanivimab and etesevimab (e.g., materials providing information on product administration and/or patient monitoring) under condition D of this EUA.
- F. Lilly will report to FDA serious adverse events and all medication errors associated with the use of the authorized bamlanivimab and etesevimab that are reported to Lilly using either of the following options.

Option 1: Submit reports through the Safety Reporting Portal (SRP) as described on the [FDA SRP](#) web page.

Option 2: Submit reports directly through the Electronic Submissions Gateway (ESG) as described on the [FAERS electronic submissions](#) web page.

Submitted reports under both options should state: “bamlanivimab and etesevimab use for COVID-19 under Emergency Use Authorization (EUA).” For reports submitted under Option 1, include this language at the beginning of the question “Describe Event” for further analysis. For reports submitted under Option 2, include this language at the beginning of the “Case Narrative” field.

- G. All manufacturing facilities will comply with Current Good Manufacturing Practice requirements.
- H. Lilly will retain an independent third party (i.e., not affiliated with Lilly) to conduct a review of the batch records and any underlying data and associated discrepancies of bamlanivimab drug substance manufactured at Lilly Branchburg, NJ.
- For all batches manufactured prior to the effective date of this authorization, these batches can be released while review is ongoing.
  - For all batches manufactured after the effective date of this authorization, the third party review can be performed concurrent to Lilly’s batch release process.

If the independent review finds, prior to release, a discrepancy with significant potential to affect critical quality attributes, the product must not be released unless and until the issue is satisfactorily resolved. Any discrepancies found by the independent review, whether prior to or after release, must be reported to the Agency in a summary report, submitted every 14 calendar days, and include Lilly’s corrective and preventive action plans for each discrepancy, including whether market action is required. The plans must include an appropriate evaluation of each discrepancy’s potential impact on any released drug substance and associated drug product.

- I. Lilly will retain an independent third-party (i.e., not affiliated with Lilly) to conduct laboratory release testing of bamlanivimab drug substance manufactured at Lilly, Branchburg (excluding bioburden and endotoxin testing). Any discrepancies found by the independent laboratory must be reported to the Agency in a summary report, submitted every 14 calendar days, and include Lilly’s corrective and preventive action plans for each



discrepancy. The plans must include an appropriate evaluation of each discrepancy's potential impact on any released drug substance and associated drug product.

- J. Lilly will submit information to the Agency within three working days of receipt of any information concerning any batch of bamlanivimab or etesevimab (whether the batch is distributed or not), as follows: (1) information concerning any incident that causes the product or its labeling to be mistaken for, or applied to, another article; and (2) information concerning any microbiological contamination, or any significant chemical, physical, or other change in deterioration in the product, or any failure of one or more batches of the product to meet the established specifications. Lilly will include in its notification to the Agency whether the batch, or batches, in question will be recalled. If FDA requests that these, or any other batches, at any time, be recalled, Lilly must recall them.
- K. Lilly will not implement any changes to the description of the product, manufacturing process, facilities and equipment, and elements of the associated control strategy that assure process performance and quality of the authorized product without notification to and concurrence by the Agency as described under condition D.
- L. Lilly will manufacture and test bamlanivimab and etesevimab per the process and methods, including in-process sampling and testing and finishing product testing (release and stability) to meet all specifications as detailed in Lilly's EUA request.
- M. Lilly will individually list bamlanivimab and etesevimab with a unique product NDC under the marketing category of Unapproved Drug- Other. Further, each listing will include each establishment where manufacturing is performed for the drug and the type of operation performed at each such establishment.
- N. Through a process of inventory control, Lilly and authorized distributor(s) will maintain records regarding distribution of the authorized bamlanivimab and etesevimab (i.e., lot numbers, quantity, receiving site, receipt date).
- O. Lilly and authorized distributor(s) will make available to FDA upon request any records maintained in connection with this EUA.

Healthcare Facilities to Whom the Authorized Bamlanivimab and Etesevimab Are Distributed and Healthcare Providers Administering the Authorized Bamlanivimab and Etesevimab

- P. Healthcare facilities and healthcare providers will ensure that they are aware of the letter of authorization, and the terms herein, and that the authorized Fact Sheets are made available to healthcare providers and to patients and caregivers, respectively, through appropriate means, prior to administration of bamlanivimab and etesevimab as described in the Scope of Authorization (Section II) under this EUA.
- Q. Healthcare facilities and healthcare providers receiving bamlanivimab and etesevimab will track serious adverse events that are considered to be potentially attributable to the use of bamlanivimab and etesevimab under this authorization and must report these to FDA in

accordance with the Fact Sheet for Healthcare Providers. Complete and submit a MedWatch form ([www.fda.gov/medwatch/report.htm](http://www.fda.gov/medwatch/report.htm)), or Complete and submit FDA Form 3500 (health professional) by fax (1-800-FDA-0178) (these forms can be found via link above). Call 1-800-FDA-1088 for questions. Submitted reports should state, “bamlanivimab and etesevimab use for COVID-19 under Emergency Use Authorization (EUA)” at the beginning of the question “Describe Event” for further analysis.

- R. Healthcare facilities and healthcare providers will ensure that appropriate storage and cold chain is maintained until the products are administered consistent with the terms of this letter.
- S. Through a process of inventory control, healthcare facilities will maintain records regarding the dispensed authorized bamlanivimab and etesevimab (i.e., lot numbers, quantity, receiving site, receipt date), product storage, and maintain patient information (e.g., patient name, age, disease manifestation, number of doses administered per patient, other drugs administered).
- T. Healthcare facilities will ensure that any records associated with this EUA are maintained until notified by Lilly and/or FDA. Such records will be made available to Lilly, HHS, and FDA for inspection upon request.
- U. Healthcare facilities and providers will report therapeutics information and utilization data as directed by the U.S. Department of Health and Human Services.

Conditions Related to Printed Matter, Advertising and Promotion

- V. All descriptive printed matter, as well as advertising and promotional material, relating to the use of the bamlanivimab and etesevimab under this authorization shall be consistent with the authorized labeling, as well as the terms set forth in this EUA and the applicable requirements set forth in the Act and FDA regulations.
- W. No descriptive printed matter, as well as advertising or promotional material, relating to the use of bamlanivimab and etesevimab under this authorization may represent or suggest that such products are safe or effective when used for the treatment of mild to moderate COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg) with positive results of direct SARS-CoV-2 viral testing, and who are at high risk for progressing to severe COVID-19 and/or hospitalization.
- X. All descriptive printed matter, as well as advertising and promotional material, relating to the use of the bamlanivimab and etesevimab under this authorization clearly and conspicuously shall state that:
  - Bamlanivimab and etesevimab have not been approved, but have been authorized for emergency use by FDA to be administered together for the treatment of mild to moderate COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg) with positive results of direct

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SARS-CoV-2 viral testing, and who are at high risk for progressing to severe COVID-19 and/or hospitalization.

- Bamlanivimab and etesevimab are authorized to be administered together for the treatment of mild to moderate COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg) with positive results of direct SARS-CoV-2 viral testing, and who are at high risk for progressing to severe COVID-19 and/or hospitalization only for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of the bamlanivimab under Section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner.

#### **IV. Duration of Authorization**

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of drugs and biological products during the COVID-19 pandemic is terminated under Section 564(b)(2) of the Act or the EUA is revoked under Section 564(g) of the Act.

Sincerely,

/s/

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RADM Denise M. Hinton  
Chief Scientist  
Food and Drug Administration



February 27, 2021

Janssen Biotech, Inc.  
Attention: Ms. Ruta Walawalkar  
920 Route 202  
Raritan, NJ 08869

Dear Ms. Walawalkar:

This letter is in response to a request from Janssen Biotech, Inc. that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for emergency use of the Janssen COVID-19 Vaccine for the prevention of Coronavirus Disease 2019 (COVID-19) for individuals 18 years of age and older, as described in the Scope of Authorization (Section II) of this letter, pursuant to Section 564 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act or the Act) (21 U.S.C. 360bbb-3).

On February 4, 2020, pursuant to Section 564(b)(1)(C) of the Act, the Secretary of the Department of Health and Human Services (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.<sup>1</sup> On the basis of such determination, the Secretary of HHS on March 27, 2020, 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 Act, subject to terms of any authorization issued under that section.<sup>2</sup>

The Janssen COVID-19 Vaccine is for active immunization to prevent COVID-19 caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in individuals 18 years of age and older. The vaccine contains a recombinant, replication-incompetent human adenovirus serotype 26 (Ad26) vector, encoding the SARS-CoV-2 viral spike (S) glycoprotein, stabilized in its pre-fusion form. It is an investigational vaccine not licensed for any indication.

FDA reviewed safety and efficacy data from an ongoing phase 3 trial which has enrolled 43,783 participants randomized 1:1 to receive Janssen COVID-19 Vaccine or saline control. The trial has enrolled participants 18 years of age and older. FDA's review has considered the safety and effectiveness data as they relate to the request for emergency use authorization. FDA's review of the available safety data from 43,783 participants 18 years of age and older, who were followed

<sup>1</sup> U.S. Department of Health and Human Services, *Determination of a Public Health Emergency and Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act*, 21 U.S.C. § 360bbb-3, February 4, 2020.

<sup>2</sup> U.S. Department of Health and Human Services, *Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act*, 21 U.S.C. § 360bbb-3, 85 FR 18250 (April 1, 2020).

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for a median duration of eight weeks after receiving the vaccine or placebo, did not identify specific safety concerns that would preclude issuance of an EUA. FDA's analysis of the efficacy data from 39,321 participants 18 years of age and older who were SARS-CoV-2 seronegative or who had an unknown serostatus at baseline show that the vaccine was 66.9% effective (95% confidence interval (CI): 59.0, 73.4) and 66.1% effective (95% CI: 55.0, 74.8) in preventing moderate to severe/critical COVID-19 occurring at least 14 days and at least 28 days after vaccination, respectively. Based on these data, and review of manufacturing information regarding product quality and consistency, it is reasonable to believe that the Janssen COVID-19 Vaccine may be effective. Additionally, it is reasonable to conclude, based on the totality of the scientific evidence available, that the known and potential benefits of the Janssen COVID-19 Vaccine outweigh its known and potential risks, for the prevention of COVID-19 in individuals 18 years of age and older. Finally, on February 26, 2021, the Vaccines and Related Biological Products Advisory Committee voted in agreement with this conclusion.

Having concluded that the criteria for issuance of this authorization under Section 564(c) of the Act are met, I am authorizing the emergency use of the Janssen COVID-19 Vaccine for the prevention of COVID-19, as described in the Scope of Authorization section of this letter (Section II) and subject to the terms of this authorization.

#### **I. Criteria for Issuance of Authorization**

I have concluded that the emergency use of the Janssen COVID-19 Vaccine for the prevention of COVID-19 when administered as described in the Scope of Authorization (Section II) meets the criteria for issuance of an authorization under Section 564(c) of the Act, because:

1. SARS-CoV-2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus;
2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that the Janssen COVID-19 Vaccine may be effective in preventing COVID-19, and that, when used under the conditions described in this authorization, the known and potential benefits of the Janssen COVID-19 Vaccine when used to prevent COVID-19 outweigh its known and potential risks; and
3. There is no adequate, approved, and available alternative to the emergency use of the Janssen COVID-19 Vaccine to prevent COVID-19.<sup>3</sup>

#### **II. Scope of Authorization**

I have concluded, pursuant to Section 564(d)(1) of the Act, that the scope of this authorization is limited as follows:

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<sup>3</sup> No other criteria of issuance have been prescribed by regulation under Section 564(c)(4) of the Act.

- Janssen Biotech, Inc. will supply the Janssen COVID-19 Vaccine, either directly or through authorized distributor(s)<sup>4</sup> to emergency response stakeholders<sup>5</sup> as directed by the U.S. government, including the Centers for Disease Control and Prevention (CDC) and/or other designee, for use consistent with the terms and conditions of this EUA;
- The Janssen COVID-19 Vaccine covered by this authorization will be administered by vaccination providers<sup>6</sup> and used only to prevent COVID-19 in individuals ages 18 and older; and
- The Janssen COVID-19 Vaccine may be administered by a vaccination provider without an individual prescription for each vaccine recipient.

### Product Description

The Janssen COVID-19 Vaccine is supplied as a suspension in multi-dose vials. The Janssen COVID-19 Vaccine does not contain a preservative.

Each 0.5 mL dose of the Janssen COVID-19 Vaccine is formulated to contain  $5 \times 10^{10}$  virus particles of the Ad26 vector encoding the S glycoprotein of SARS-CoV-2. Each dose of the Janssen COVID-19 Vaccine also includes the following inactive ingredients 2.19 mg sodium chloride, 0.14 mg citric acid monohydrate, 2.02 mg trisodium citrate dihydrate, 0.16 mg

<sup>4</sup> “Authorized Distributor(s)” are identified by Janssen Biotech, Inc. or, if applicable, by a U.S. government entity, such as the Centers for Disease Control and Prevention (CDC) and/or other designee, as an entity or entities allowed to distribute authorized Janssen COVID-19 Vaccine.

<sup>5</sup> For purposes of this letter, “emergency response stakeholder” refers to a public health agency and its delegates that have legal responsibility and authority for responding to an incident, based on political or geographical boundary lines (e.g., city, county, tribal, territorial, State, or Federal), or functional (e.g., law enforcement or public health range) or sphere of authority to administer, deliver, or distribute vaccine in an emergency situation. In some cases (e.g., depending on a state or local jurisdiction’s COVID-19 vaccination response organization and plans), there might be overlapping roles and responsibilities among “emergency response stakeholders” and “vaccination providers” (e.g., if a local health department is administering COVID-19 vaccines; if a pharmacy is acting in an official capacity under the authority of the state health department to administer COVID-19 vaccines). In such cases, it is expected that the conditions of authorization that apply to emergency response stakeholders and vaccination providers will all be met.

<sup>6</sup> For purposes of this letter, “vaccination provider” refers to the facility, organization, or healthcare provider licensed or otherwise authorized by the emergency response stakeholder (e.g., non-physician healthcare professionals, such as nurses and pharmacists pursuant to state law under a standing order issued by the state health officer) to administer or provide vaccination services in accordance with the applicable emergency response stakeholder’s official COVID-19 vaccination and emergency response plan(s) and who is enrolled in the CDC COVID-19 Vaccination Program. For purposes of this letter, “healthcare provider” also refers to a person authorized by the U.S. Department of Health and Human Services (e.g., under the PREP Act Declaration for Medical Countermeasures against COVID-19) to administer FDA-authorized COVID-19 vaccine (e.g., qualified pharmacy technicians and State-authorized pharmacy interns acting under the supervision of a qualified pharmacist). See, e.g., HHS, *Fourth Amendment to the Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19 and Republication of the Declaration*, 85 FR 79190 (December 9, 2020).

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polysorbate-80, 25.5 mg 2-hydroxypropyl- $\beta$ -cyclodextrin, 2.04 mg ethanol. Each dose may also contain residual amounts of host cell proteins ( $\leq 0.15$  mcg) and/or host cell DNA ( $\leq 3$  ng).

The dosing regimen is a single dose of 0.5 mL.

The manufacture of the authorized Janssen COVID-19 Vaccine is limited to those facilities identified and agreed upon in Janssen's request for authorization.

The Janssen COVID-19 Vaccine vial label and carton labels are clearly marked for "Emergency Use Authorization." The Janssen COVID-19 Vaccine is authorized to be distributed, stored, further redistributed, and administered by emergency response stakeholders when packaged in the authorized manufacturer packaging (i.e., vials and cartons), despite the fact that the vial and carton labels may not contain information that otherwise would be required under the FD&C Act.

The Janssen COVID-19 Vaccine is authorized for emergency use with the following product-specific information required to be made available to vaccination providers and recipients, respectively (referred to as "authorized labeling"):

- Fact Sheet for Healthcare Providers Administering Vaccine (Vaccination Providers): Emergency Use Authorization (EUA) of the Janssen COVID-19 Vaccine to Prevent Coronavirus Disease 2019 (COVID-19)
- Fact Sheet for Recipients and Caregivers: Emergency Use Authorization (EUA) of the Janssen COVID-19 Vaccine to Prevent Coronavirus Disease 2019 (COVID-19) in Individuals 18 Years of Age and Older

I have concluded, pursuant to Section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of the Janssen COVID-19 Vaccine, when used to prevent COVID-19 and used in accordance with this Scope of Authorization (Section II), outweigh its known and potential risks.

I have concluded, pursuant to Section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that the Janssen COVID-19 Vaccine may be effective in preventing COVID-19 when used in accordance with this Scope of Authorization (Section II), pursuant to Section 564(c)(2)(A) of the Act.

Having reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, I have concluded that the Janssen COVID-19 Vaccine (as described in this Scope of Authorization (Section II)) meets the criteria set forth in Section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of the Janssen COVID-19 Vaccine under this EUA must be consistent with, and may not exceed, the terms of the Authorization, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section III). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of HHS's determination under Section 564(b)(1)(C)

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described above and the Secretary of HHS's corresponding declaration under Section 564(b)(1), the Janssen COVID-19 Vaccine is authorized to prevent COVID-19 in individuals 18 years of age and older as described in the Scope of Authorization (Section II) under this EUA, despite the fact that it does not meet certain requirements otherwise required by applicable federal law.

### **III. Conditions of Authorization**

Pursuant to Section 564 of the Act, I am establishing the following conditions on this authorization:

Janssen Biotech, Inc. and Authorized Distributor(s)

- A. Janssen Biotech, Inc. and authorized distributor(s) will ensure that the authorized Janssen COVID-19 Vaccine is distributed, as directed by the U.S. government, including CDC and/or other designee, and the authorized labeling (i.e., Fact Sheets) will be made available to vaccination providers, recipients, and caregivers consistent with the terms of this letter.
- B. Janssen Biotech, Inc. and authorized distributor(s) will ensure that appropriate storage and cold chain is maintained until delivered to emergency response stakeholders' receipt sites.
- C. Janssen Biotech, Inc. will ensure that the terms of this EUA are made available to all relevant stakeholders (e.g., emergency response stakeholders, authorized distributors, and vaccination providers) involved in distributing or receiving the authorized Janssen COVID-19 Vaccine. Janssen Biotech, Inc. will provide to all relevant stakeholders a copy of this letter of authorization and communicate any subsequent amendments that might be made to this letter of authorization and its authorized labeling.
- D. Janssen Biotech, Inc. may develop and disseminate instructional and educational materials (e.g., video regarding vaccine handling, storage/cold-chain management, preparation, disposal) that are consistent with the authorized emergency use of the vaccine as described in the letter of authorization and authorized labeling, without FDA's review and concurrence, when necessary to meet public health needs during an emergency. Any instructional and educational materials that are inconsistent with the authorized labeling are prohibited.



- E. Janssen Biotech, Inc. may request changes to this authorization, including to the authorized Fact Sheets for the Janssen COVID-19 Vaccine. Any request for changes to this EUA must be submitted to the Office of Vaccines Research and Review (OVRR)/Center for Biologics Evaluation and Research (CBER). Such changes require appropriate authorization prior to implementation.<sup>7</sup>
- F. Janssen Biotech, Inc. will report to Vaccine Adverse Event Reporting System (VAERS):
- Serious adverse events (irrespective of attribution to vaccination);
  - Cases of Multisystem Inflammatory Syndrome in adults; and
  - Cases of COVID-19 that result in hospitalization or death, that are reported to Janssen Biotech, Inc.
- These reports should be submitted to VAERS as soon as possible but no later than 15 calendar days from initial receipt of the information by Janssen Biotech, Inc.
- G. Janssen Biotech, Inc. must submit to Investigational New Drug application (IND) number 22657 periodic safety reports at monthly intervals in accordance with a due date agreed upon with the Office of Biostatistics and Epidemiology (OBE)/CBER, beginning after the first full calendar month after authorization. Each periodic safety report is required to contain descriptive information which includes:
- A narrative summary and analysis of adverse events submitted during the reporting interval, including interval and cumulative counts by age groups, special populations (e.g., pregnant women), and adverse events of special interest.
  - A narrative summary and analysis of vaccine administration errors, whether or not associated with an adverse event, that were identified since the last reporting interval
  - Newly identified safety concerns in the interval; and
  - Actions taken since the last report because of adverse experiences (for example, changes made to Healthcare Providers Administering Vaccine (Vaccination Providers) Fact Sheet, changes made to studies or studies initiated).
- H. No changes will be implemented to the description of the product, manufacturing process, facilities, or equipment without notification to and concurrence by the Agency.
- I. All manufacturing facilities will comply with Current Good Manufacturing Practice requirements.

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<sup>7</sup> The following types of revisions may be authorized without reissuing this letter: (1) changes to the authorized labeling; (2) non-substantive editorial corrections to this letter; (3) new types of authorized labeling, including new fact sheets; (4) new carton/container labels; (5) expiration dating extensions; (6) changes to manufacturing processes, including tests or other authorized components of manufacturing; (7) new conditions of authorization to require data collection or study. All changes to the authorization require review and concurrence from OVRR. For changes to the authorization, including the authorized labeling, of the type listed in (3), (6), or (7), review and concurrence is also required from the Preparedness and Response Team (PREP)/Office of the Center Director (OD)/CBER and the Office of Counterterrorism and Emerging Threats/Office of the Chief Scientist.

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- J. Janssen Biotech, Inc. will submit to the EUA file Certificates of Analysis (CoA) for each drug product lot at least 48 hours prior to vaccine distribution. The CoA will include the established specifications and specific results for each quality control test performed on the final drug product lot.
- K. Janssen Biotech, Inc. will submit to the EUA file quarterly manufacturing reports that include a listing of all Drug Substance and Drug Product lots produced after issuance of this authorization. This report must include lot number, manufacturing site, date of manufacture, and lot disposition, including those lots that were quarantined for investigation or those lots that were rejected. Information on the reasons for lot quarantine or rejection must be included in the report. The first report is due June 1, 2021.
- L. Janssen Biotech, Inc. and authorized distributor(s) will maintain records regarding release of Janssen COVID-19 Vaccine for distribution (i.e., lot numbers, quantity, release date).
- M. Janssen Biotech, Inc. and authorized distributor(s) will make available to FDA upon request any records maintained in connection with this EUA.
- N. Janssen Biotech, Inc. will conduct post-authorization observational studies to evaluate the association between Janssen COVID-19 Vaccine and a pre-specified list of adverse events of special interest, along with deaths and hospitalizations, and severe COVID-19. The study population should include individuals administered the authorized Janssen COVID-19 Vaccine under this EUA in the general U.S. population (18 years of age and older), populations of interest such as healthcare workers, pregnant women, immunocompromised individuals, subpopulations with specific comorbidities. The studies should be conducted in large scale databases with an active comparator. Janssen Biotech, Inc. will provide protocols and status update reports to the IND 22657 with agreed-upon study designs and milestone dates.

#### Emergency Response Stakeholders

- O. Emergency response stakeholders will identify vaccination sites to receive authorized Janssen COVID-19 Vaccine and ensure its distribution and administration, consistent with the terms of this letter and CDC's COVID-19 Vaccination Program.
- P. Emergency response stakeholders will ensure that vaccination providers within their jurisdictions are aware of this letter of authorization, and the terms herein and any subsequent amendments that might be made to the letter of authorization, instruct them about the means through which they are to obtain and administer the vaccine under the EUA, and ensure that the authorized labeling [i.e., Fact Sheet for Healthcare Providers Administering Vaccine (Vaccination Providers) and Fact Sheet for Recipients and Caregivers] is made available to vaccination providers through appropriate means (e.g., e-mail, website).

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- Q. Emergency response stakeholders receiving authorized Janssen COVID-19 Vaccine will ensure that appropriate storage and cold chain is maintained.

Vaccination Providers

- R. Vaccination providers will administer the vaccine in accordance with the authorization and will participate and comply with the terms and training required by CDC's COVID-19 Vaccination Program.
- S. Vaccination providers will provide the Fact Sheet for Recipients and Caregivers to each individual receiving vaccination.
- T. Vaccination providers administering the Janssen COVID-19 Vaccine must report the following information associated with the administration of the Janssen COVID-19 Vaccine of which they become aware to VAERS in accordance with the Fact Sheet for Healthcare Providers Administering Vaccine (Vaccination Providers):
- Vaccine administration errors whether or not associated with an adverse event
  - Serious adverse events (irrespective of attribution to vaccination)
  - Cases of Multisystem Inflammatory Syndrome in adults
  - Cases of COVID-19 that result in hospitalization or death

Complete and submit reports to VAERS online at <https://vaers.hhs.gov/reportevent.html>. The VAERS reports should include the words "Janssen COVID-19 Vaccine EUA" in the description section of the report. More information is available at [vaers.hhs.gov](https://vaers.hhs.gov) or by calling 1-800-822-7967. To the extent feasible, report to Janssen Biotech, Inc. by contacting 1-800-565-4008 or by providing a copy of the VAERS form to Janssen Biotech, Inc.; Fax: 215-293-9955, or by email [JNJvaccineAE@its.jnj.com](mailto:JNJvaccineAE@its.jnj.com).

- U. Vaccination providers will conduct any follow-up requested by the U.S. government, including CDC, FDA, or other designee, regarding adverse events to the extent feasible given the emergency circumstances.
- V. Vaccination providers will monitor and comply with CDC and/or emergency response stakeholder vaccine management requirements (e.g., requirements concerning obtaining, tracking, and handling vaccine) and with requirements concerning reporting of vaccine administration data to CDC.
- W. Vaccination providers will ensure that any records associated with this EUA are maintained until notified by FDA. Such records will be made available to CDC, and FDA for inspection upon request.

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Conditions Related to Printed Matter, Advertising, and Promotion

- X. All descriptive printed matter, advertising, and promotional material, relating to the use of the Janssen COVID-19 Vaccine shall be consistent with the authorized labeling, as well as the terms set forth in this EUA, and meet the requirements set forth in section 502(a) and (n) of the FD&C Act and FDA implementing regulations.
- Y. All descriptive printed matter, advertising, and promotional material relating to the use of the Janssen COVID-19 Vaccine clearly and conspicuously shall state that:
- This product has not been approved or licensed by FDA, but has been authorized for emergency use by FDA, under an EUA to prevent Coronavirus Disease 2019 (COVID-19) for use in individuals 18 years of age and older; and
  - The emergency use of this product is only authorized for the duration of the declaration that circumstances exist justifying the authorization of emergency use of the medical product under Section 564(b)(1) of the FD&C Act unless the declaration is terminated or authorization revoked sooner.

**IV. Duration of Authorization**

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of drugs and biological products during the COVID-19 pandemic is terminated under Section 564(b)(2) of the Act or the EUA is revoked under Section 564(g) of the Act.

Sincerely,

/s/

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RADM Denise M. Hinton  
Chief Scientist  
Food and Drug Administration

Enclosures

Dated: May 21, 2021.

**Lauren K. Roth,**  
*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021-11234 Filed 5-26-21; 8:45 am]

**BILLING CODE 4164-01-C**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2020-D-1136]

**Guidance Documents Related to Coronavirus Disease 2019; Availability**

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

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of FDA guidance documents related to the

Coronavirus Disease 2019 (COVID-19) public health emergency (PHE). This notice of availability (NOA) is pursuant to the process that FDA announced, in the **Federal Register** of March 25, 2020, for making available to the public COVID-19-related guidances. The guidances identified in this notice address issues related to the COVID-19 PHE and have been issued in accordance with the process announced in the March 25, 2020, notice. The guidances have been implemented without prior comment, but they remain subject to comment in accordance with the Agency's good guidance practices.

**DATES:** The announcement of the guidances is published in the **Federal Register** on May 27, 2021.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time 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>.