

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

42 U.S.C. 247d-6d(a)(4), 247d-6d(b)(2)(C)

The populations of individuals include any individual who uses or is administered the Covered Countermeasures in accordance with this Declaration.

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.

XI. Geographic Area

42 U.S.C. 247d-6d(a)(4), 247d-6d(b)(2)(D)

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.

XII. Effective Time Period

42 U.S.C. 247d-6d(b)(2)(B)

Liability immunity for Covered Countermeasures began on February 27, 2015, and extends for twenty-four (24) months.

XIII. Additional Time Period of Coverage

42 U.S.C. 247d-6d(b)(3)(B) and (C)

I have determined that an additional twelve (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 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**.

Authority: 42 U.S.C. 247d-6d.

Dated: December 1, 2015.

Sylvia M. Burwell,
Secretary.

[FR Doc. 2015-31089 Filed 12-8-15; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Office of the Secretary****Ebola Virus Disease Vaccines—Amendment**

ACTION: Notice of Amendment to the December 3, 2014 Declaration under the Public Readiness and Emergency Preparedness Act.

SUMMARY: The Secretary is amending the Declaration issued pursuant to section 319F-3 of the Public Health Service Act (42 U.S.C. 247d-6d) on December 3, 2014 (79 FR 73314) to extend the effective time period for an additional twelve (12 months) to clarify the list of Covered Countermeasures, and to clarify Covered Persons consistent with the terms of the declaration and republishing the Declaration in its entirety as amended.

DATES: The Amended Declaration is effective as of December 3, 2015.

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 202-205-2882.

SUPPLEMENTARY INFORMATION:**Background**

The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services (the Secretary) 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 Vaccines listed in Section VI of the Declaration, to extend the effective time period for an additional

twelve (12) months; to clarify the identification of Covered Countermeasures, and clarify Covered Persons, 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, & Cosmetic (FD&C) Act to provide new 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. Since March 2014, West Africa has experienced the largest and most complex Ebola outbreak since the virus was discovered in 1976, affecting populations in West African countries and travelers who leave West Africa. The World Health Organization declared the Ebola Virus Disease Outbreak as a Public Health Emergency of International Concern under the framework of the International Health Regulations (2005).

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 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 or that 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 design, 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.

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 United States. 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. We have revised the last category to remove the specific references to emergency use instructions and orders issued under section 564A of the FD&C Act, to clarify that any activities in accordance with that section are covered.

Section VI, Covered Countermeasures

As noted above, section III describes the Secretary’s Recommended Activities for which liability immunity is in effect. This section 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 intended 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 caused 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 when it is subject to an exemption (that is, it is permitted to be used under an Investigational Drug Application or an Investigational Device Exemption) under the FD&C Act and is the object of research for possible use for diagnosis, mitigation, prevention, treatment, or cure, or to limit harm of a pandemic or epidemic or serious or life-threatening condition caused by such a drug or device. A security countermeasure 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 Vaccines that are Covered Countermeasures. The Secretary is amending the list to identify the vaccines without names of manufacturers. This change is intended to clarify that the listed vaccines are Covered Countermeasures regardless of the arrangements made by manufactures for production of the vaccine. The change is intended to clarify existing coverage; it is not intended to be a substantive legal change. In addition, the Secretary changed “BPSC1001 (rVSV-ZEBOV-GP)” to the current name for the same vaccine, “Recombinant Vesicular Stomatitis Virus-vectored vaccine expressing EBOV-Zaire glycoprotein (rVSV-ZEBOV-GP),” for accuracy.

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 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.

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: (a) Present or future federal contracts, cooperative agreements, grants, other transactions, interagency agreements, or memoranda of understanding or other federal agreements; or (b) Activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute, or dispense the Covered Countermeasures following a Declaration of an emergency.

Section VII defines the terms “Authority Having Jurisdiction” and “Declaration of an emergency.” We have specified in the definition that Authorities having jurisdiction include federal, state, local, and tribal authorities and institutions or organizations acting on behalf of those governmental entities.

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 they 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 vaccine, 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: (1) To manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; and (2) to program planners and qualified persons when the countermeasure is either used by or administered to this population or the program planner 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 or 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. 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: (1) To manufacturers and distributors without regard to whether the countermeasure is used by or administered to individuals in the

geographic areas; and (2) 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 is amended to extend the effective time period for different means of distribution of Covered Countermeasures up to an additional twelve (12) 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 Stockpile. 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,” described under XII of the Declaration, plus the “Additional Time Period” described under section XIII of the Declaration.

Section XIII provides for twelve (12) months as the additional time period of coverage after expiration of the Declaration.’ Section XIII also explains the extended coverage that applies to any products obtained for the Strategic National Stockpile 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 align with the requirements for liability immunity provided under the PREP Act. Section XIV, “Countermeasures Injury 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 United States, 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 United States may not be eligible for CICP benefits.

Section XV, Amendments

This is the first amendment to the Declaration issued December 3, 2014 (79 FR 73314). The Secretary may amend any portion of this Declaration through publication in the **Federal Register**.

Republished Declaration

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

This Declaration amends and republishes the December 3, 2014, Declaration for coverage under the Public Readiness and Emergency Preparedness (“PREP”) Act for Ebola Virus Disease Vaccines. To the extent any term of the December 3, 2014, 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, under the conditions stated in this Declaration, the manufacture, testing, development, distribution, administration, and use of the Covered Countermeasures.

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 United States.

In addition, I have determined that the following additional persons are qualified persons: (a) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction, as described in section VII below, to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures, and their officials, agents, employees, contractors and volunteers, following a Declaration of an emergency; (b) any person authorized to prescribe, administer, or dispense the Covered Countermeasures or who is otherwise authorized to perform an activity under an Emergency Use

Authorization in accordance with section 564 of the FD&C Act; (c) any person authorized to prescribe, administer, or dispense Covered Countermeasures in accordance with Section 564A of the FD&C Act.

VI. Covered Countermeasures

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

Covered Countermeasures are the following Ebola Virus Disease Vaccines: (1) Recombinant Replication Deficient Chimpanzee Adenovirus Type 3-Vectorized Ebola Zaire Vaccine (ChAd3–EBO–Z);

(2) Recombinant Vesicular Stomatitis Virus-vectored vaccine expressing EBOV-Zaire glycoprotein (rVSV–ZEBOV–GP), and;

(3) Ad26.ZEBOV/MVA–BN-Filo (MVA–mBN226B).

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:

(a) Present or future Federal contracts, cooperative agreements, grants, other transactions, interagency agreements, memoranda of understanding, or other federal agreements; or,

(b) Activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures following a Declaration of an emergency.

i. The Authority Having Jurisdiction means the public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical (e.g., city, county, tribal, state, or federal boundary lines) or functional (e.g., law enforcement, public health) range or sphere of authority.

ii. A Declaration of emergency means any Declaration by any authorized local, regional, state, or federal official of an emergency specific to events that indicate an immediate need to administer and use the Covered Countermeasures, with the exception of

a federal Declaration in support of an Emergency Use Authorization under section 564 of the FD&C Act unless such Declaration specifies otherwise;

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

42 U.S.C. 247d-6d(a)(4), 247d-6d(b)(2)(C)

The populations of individuals include any individual who uses or is administered the Covered Countermeasures in accordance with this Declaration.

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.

XI. Geographic Area

42 U.S.C. 247d-6d(a)(4), 247d-6d(b)(2)(D)

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.

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 for twenty-four (24) months from that date.

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) twenty-four (24) months from December 3, 2014, 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 twelve (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 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 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 1, 2015.

Sylvia M. Burwell,
Secretary.

[FR Doc. 2015-31088 Filed 12-8-15; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Smallpox Medical Countermeasures—Amendment

ACTION: Notice of Amendment to the October 10, 2008 Declaration under the Public Readiness and Emergency Preparedness Act.

SUMMARY: The Secretary is amending the declaration issued on October 10, 2008, (73 FR 61869) pursuant to section 319F-3 of the Public Health Service Act (42 U.S.C. 247d-6d) to: Include countermeasures authorized for use under sections 564A and 564B of the Federal Food, Drug, and Cosmetic (FD&C) Act (21 U.S.C. 360bbb-3a and 360bbb-3b); clarify the description of covered countermeasures; extend the effective time period of the declaration; reformat the declaration; modify or clarify terms of the declaration; and