PAHPA Reauthorization and Federal Legal Preparedness Updates

2014 Public Health Law Conference

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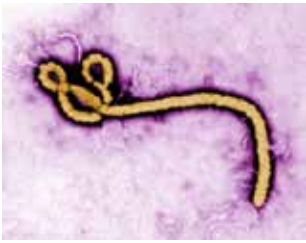

Recent Ebola Headlines

- *Texas Issues Ebola Home Isolation Court Order* (CIDRAP News, Oct. 2)
- *Liberia to Prosecute Man Who Brought Ebola to United States* (NBC News, Oct. 2)
- *Dallas DA Considers Charges Against Foreign Ebola Patient* (CBS Local, Oct. 3)
- *Perry: In Fight against Ebola, U.S. Must Set Up Quarantines at Borders* (CNN, Oct. 6)

- *Who's in Charge of Stopping Ebola?* (CNN, Oct. 3)
- *WHO Declares Ebola Virus Outbreak Public Health Emergency* (WSJ, Aug. 8)

- *Tobacco Plant May Be Key to Ebola Drugs* (CNN, Oct. 3)
- *FDA Allows Expanded Use of Experimental Ebola Drug* (CNN, Sept. 23)
- *FDA Authorizes Emergency Use Of Tekmira's Ebola Treatment* (Bus. Insider, Sept. 22)
- *NIH: Ebola Vaccine to Be Tested in Human Trials Soon* (CNN, Aug. 1)
- *Third Volunteer to Receive Experimental Ebola Vaccine* (CNN, Sept. 4)
- *FDA Grants Emergency Use Authorization for Ebola Assay* (BioWorld, Aug. 8)

Brief History of Public Health Preparedness/Response Legislation

- Public Health Security and Bioterrorism Preparedness and Response Act (Bioterrorism Act) (2002)
- Project BioShield Act (2004)

- Public Readiness and Emergency Preparedness (PREP) Act (2005)
- Pandemic and All-Hazards Preparedness Act (PAHPA) (2006)
- Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA) (2013)

Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA) (2013)

- Enacted March 13, 2013 (Public Law 113-5)
- **Title II.** Optimizing State and Local All-Hazards Preparedness and Response (section 201)
  - Temporary reassignment of state and local personnel during a public health emergency)
- **Title III.** Enhancing Medical Countermeasure Review (sections 301-307)
  - Recognizes FDA's vital role in supporting our nation's public health preparedness and response efforts and advancing the development and availability of MCMs for CBRN emergencies
  - Facilitates MCM product development, emergency preparedness, and rapid response capabilities (e.g., amends EUA authority, establishes authorities related to the emergency use of MCMs, includes provisions to enhance MCM development activities and expertise)

Speakers

- **Elizabeth Sadove, JD**
  - Director, MCM Regulatory Policy; Senior Regulatory Counsel
  - U.S. Food and Drug Administration
- **Joseph Foster, JD**
  - Senior Attorney
  - U.S. Centers for Disease Control and Prevention

(Note: Mr. Foster's presentation is not included in this document.)

THANK YOU!

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U.S. Food and Drug Administration
Medical Countermeasures

PAHPA Reauthorization and Federal Legal Preparedness Updates from FDA

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Office of the Commissioner, FDA

U.S. Food and Drug Administration
Medical Countermeasures Initiative

Office of Counterterrorism and Emerging Threats (OCET)

- Develops and coordinates implementation of FDA policies and planning activities to ensure safe and effective medical products are available to counter chemical, biological, radiological, and nuclear (CBRN) threats, including emerging infectious diseases such as pandemic flu and Ebola
- Collaborates closely with FDA offices (e.g., Centers, OCC, Office of Crisis Management) and external partners government partners (e.g., HHS, DHS, DOD, States/locals) to develop and coordinate preparedness plans and programs to counter emerging threats
- Coordinates FDA’s Medical Countermeasures Initiative (MCMi)
- Leads FDA's MCM emergency use regulatory activities (e.g., EUA, PAHPRA authorities)

MCMi Achievements: Innovative and Collaborative Efforts

- Coordination of and Funding for FDA MCM Activities
  - Increased collaborations through multiple MOUs (e.g., BARDA, DARPA, PHEMCE, WHO, developing one with NIH)
- Promoting product development by enhancing FDA review processes and fostering establishment of clear regulatory pathways
- Building necessary science base for MCM regulatory review
  - New regulatory tools to assess safety and efficacy
  - Intra-event surveillance activities
- Facilitating timely access to MCMs through by establishing effective regulatory policies and mechanisms, through MCM-specific provisions
  - Amendments to the EUA authority
  - Establishment of additional emergency use authorities and flexibilities

Pandemic and All-Hazards Preparedness Reauthorization Act of 2013

- Enacted March 13, 2013 (Public Law 113-5)
- Title III. Enhancing Medical Countermeasure Review (sections 301-307)
  - Supports goals FDA is already aggressively working to advance through MCMi
  - Recognizes FDA's vital role in supporting our nation's public health preparedness and response efforts and advancing the development and availability of MCMs for CBRN emergencies
  - Facilitates MCM product development, emergency preparedness, and rapid response capabilities:
    1) Amends the EUA authority (FD&C Act §564)
    2) Establishes authorities related to the emergency use of MCMs (FD&C Act §§564A and 505-1)
    3) Includes provisions to enhance MCM development activities and expertise

Why are special legal/regulatory mechanisms needed to allow certain MCM activities?

- When an approved product is used during an emergency for its FDA-approved condition of use in the same manner it is used on a day-to-day basis, no additional legal/regulatory mechanisms are needed
- However, some MCMs needed for a response might not be approved, licensed, or cleared by FDA or they might be approved, but not for the use needed
- Some MCMs might be approved for the intended use, but emergency-related activities could otherwise violate provisions of the FD&C Act. For example:
    - Dispensing without individual prescriptions and/or by volunteers or staff who are not licensed health care professionals (e.g., at PODs)
    - Emergency use instructions (e.g., fact sheets) about the MCM, but which are not part of the MCM's FDA-approved labeling, might be given to recipients of the MCM and to the health care professionals administering them
    - With deviations from the approved CGMPs for storage and handling or from the manufacturer's labeled expiration date
- Also, legal protections under the Public Readiness and Emergency Preparedness (PREP) Act may be desired

What are these legal/regulatory mechanisms?

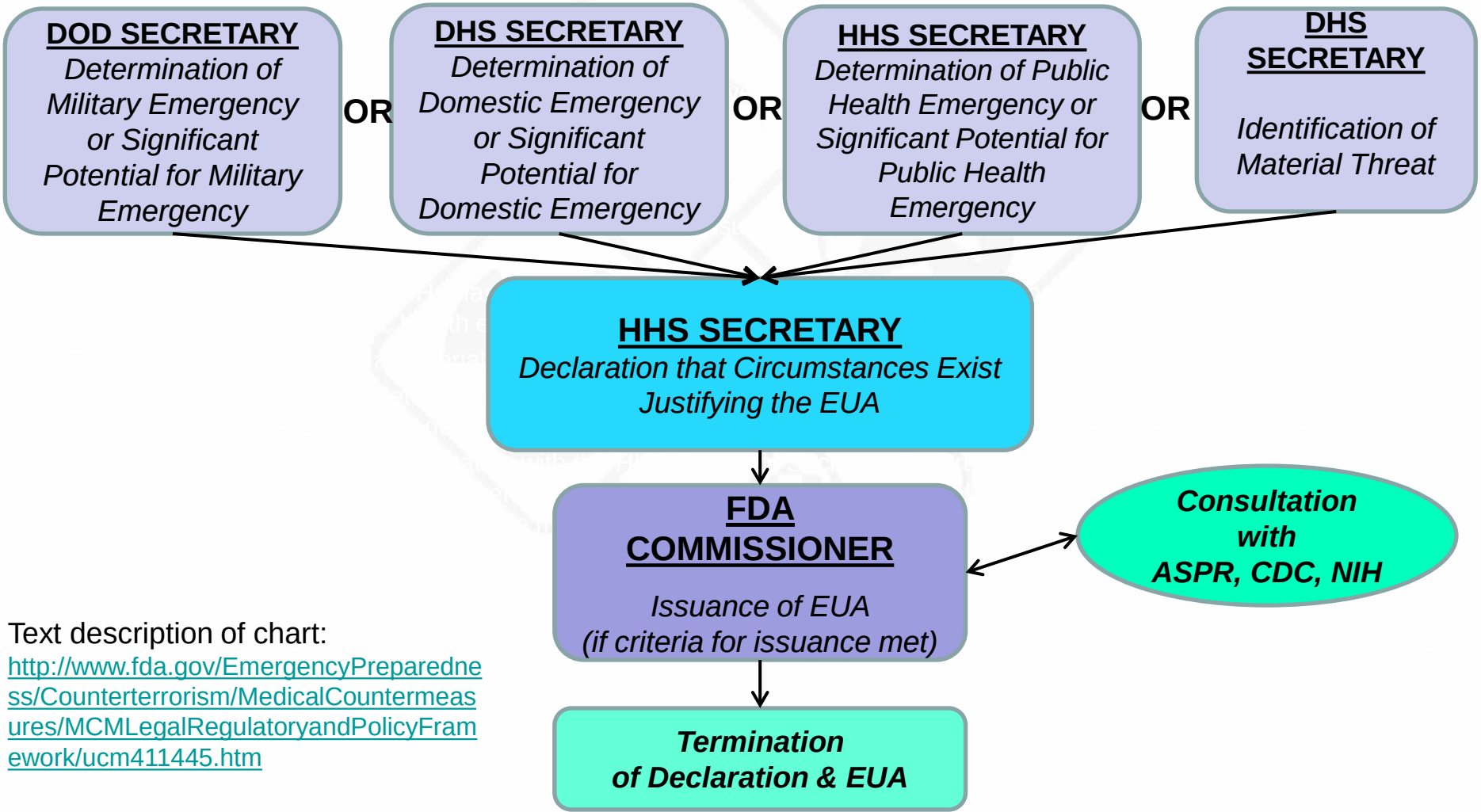
- **Emergency Use Authorization (EUA)**
  - FD&C Act § 564
  - Amended by PAHPRA in 2013
- **Emergency use authorities**
  - FD&C Act §§ 564A, 505-1, and 564B
  - Established by PAHPRA in 2013
- **Expanded access to investigational drugs and devices**
  - FD&C Act § 561
  - Investigational New Drug Application (IND) (21 CFR 312.300-320)
  - Investigational Device Exemption (IDE) (21 CFR 812)

Section 564 EUA Authority:
Brief Summary

- With this authority, FDA can authorize for use in CBRN emergencies the:
  - Use of unapproved MCMs
  - Unapproved use of approved MCMs
- Predicate Determinations (by DHS, DOD or HHS) + Declaration that circumstances exist to justify EUA issuance
- Criteria for issuance:
  - Serious/life-threatening illness/condition caused by CBRN agent
  - Reasonable belief that the product may be effective
  - Product's known/potential benefits outweigh its known/potential risks
  - No adequate, approved, available alternative to the product
- Conditions of authorization such as clarification of roles, fact sheets, recordkeeping

Brief Summary of Process for EUA Issuance

(FD&C Act § 564, as amended by PAHPRA)



Text description of chart:
http://www.fda.gov/EmergencyPreparedness/Counterterrorism/MedicalCountermeasures/MCMLegalRegulatoryandPolicyFramework/ucm411445.htm

EUA Authority:
PAHPRA Amendments

- Gives FDA clearer authority to issue EUAs before an emergency
  - Allows issuance of an EUA without declaring that an "emergency" exists (e.g., the EUA determination can be based on a "significant potential" for a public health emergency or on the identification of a material threat)
  - To allow for staging (moving product in interstate commerce), stockpiling, creating fact sheets, and rapid initial use
  - Criteria for issuance are the same whether the EUA is issued before or during an emergency
- Eliminates 1-year automatic expiration of the HHS declaration that supports EUA issuance
- Expands the time period for collection and analysis of data about an MCM's safety and clinical benefit beyond the effective period of the EUA
- Expressly permits FDA, when issuing an EUA for use of a diagnostic test, to categorize the test to allow it to be used at a point-of-care site (i.e., for purposes of CLIA waiver)

Summary of EUA Activities

Year	MCM	Requester	Status
	Anthrax [*Bacillus anthracis*]		
2005	Anthrax Vaccine Adsorbed (AVA)	DoD	Terminated
2008	Doxycycline hyclate 100 mg oral tablets (in National Postal Model home & workplace kits)	HHS (ASPR/ BARDA)	Amended in 2009, 2010, 2011 (2011 is current)
2011	All oral formulations of doxycycline (mass dispensing)	HHS (CDC)	Current*
	2009 H1N1 Influenza Pandemic		
2009-2010	Antivirals (3)	HHS (CDC)	Terminated
2009-2010	IVDs (18)	Various	Terminated
2009-2010	Disposable N95 Respirators	HHS (CDC)	Terminated

*To be terminated after issuance of doxycycline emergency dispensing order, CGMP waiver, and CDC EUI (sec. 564A of the FD&C Act).

Summary of EUA Activities (cont.)

Year	MCM	Requester	Status
	Novel Influenza A (H7N9) Virus		
2013	CDC Human Influenza Virus Real-Time RT-PCR Diagnostic Panel-Influenza A/H7 (Eurasian Lineage) Assay	HHS (CDC)	Current
2014	Lyra™ Influenza A Subtype H7N9 Assay	Quidel Corporation	Current
2014	A/H7N9 Influenza Rapid Test	Arbor Vita Corporation	Current
	Middle East Respiratory Syndrome Coronavirus [MERS-CoV]		
2013 (reissued in 2014)	CDC Novel Coronavirus 2012 Real-time RT-PCR Assay	HHS (CDC)	Current
	Ebola Virus		
2014 (reissued)	DoD EZ1 Real-time RT-PCR Assay	DoD	Current
2014	CDC Ebola VP40 rRT-PCR Assay	CDC	Current
2014	CDC Ebola NP rRT-PCR Assay	CDC	Current

Additional information on current/terminated EUAs:
http://www.fda.gov/EmergencyPreparedness/Counterterrorism/MedicalCountermeasures/MCMLegalRegulatoryandPolicyFramework/ucm182568.htm

Preparedness Activities

- Pre-EUA activity
  - FDA works with product sponsors and government agencies to facilitate the development of pre-EUA packages that can form the basis of an EUA request and issuance when circumstances justify
  - Pre-EUA packages contain data and information about the safety and efficacy of the product, its intended use under an EUA, and information about the potential emergency situation that might unfold to allow FDA to begin review and assist in development of the conditions of the authorization as well as necessary accompanying information
- Pre-positioning of MCMs under new §564B of the FD&C Act
  - To facilitate rapid deployment during an actual emergency, PAPHRA allows pre-positioning of MCMs by or on behalf of government entities (federal, state, local) in anticipation of FDA approval, clearance, or licensure, or EUA issuance

New Emergency Use Authorities

- For FDA-approved MCMs intended for use during CBRN emergencies, certain activities now are allowed *without FDA issuing an EUA* and without rendering a product unapproved, adulterated, or misbranded
- PAHPRA establishes emergency use authorities for certain approved MCMs to facilitate public health and health care preparedness/response:
  - Emergency dispensing orders [§564A(d)]
  - Expiration dating extensions [§564A(b)]
  - Emergency use instructions [§564A(e)] (*delegated to CDC in Dec. 2013*)
  - CGMP waivers [§564A(c)]
  - REMS waivers [§505-1]
- These authorities preserve otherwise applicable liability protections (e.g., PREP Act) for responders and others involved in MCM planning, preparedness, and response

Additional Resources

- **Medical Countermeasures Initiative (MCMi)**
  - http://www.fda.gov/medicalcountermeasures
- **EUA Website** (*official updates, current & terminated EUAs, questions & answers, guidance, etc*.)
  - http://www.fda.gov/EmergencyPreparedness/Counterterrorism/MedicalCountermeasures/MCMLegalRegulatoryandPolicyFramework/ucm182568.htm
- **MCMi Fiscal Year 2013 Program Update**
  - http://www.fda.gov/emergencypreparedness/counterterrorism/medicalcountermeasures/aboutmcmi/ucm390308.htm
- **PAHPRA Website** (*PAHPRA summary, official updates, etc.*)
  - http://www.fda.gov/EmergencyPreparedness/Counterterrorism/MedicalCountermeasures/MCMLegalRegulatoryandPolicyFramework/ucm359581.htm
- **PAHPRA Questions & Answers** (January 2014)
  - http://www.fda.gov/downloads/EmergencyPreparedness/Counterterrorism/MedicalCountermeasures/UCM380269.pdf