



May 19, 2021

Jim Kirby, PharmD, BCPS, CDE, FAPhA
Senior Director
The Kroger Co.
555 Race Street
Cincinnati, OH 45202

Device: Kroger Health COVID-19 Test Home Collection Kit

EUA Number: EUA201373

Company: The Kroger Co.

Indication: A direct to consumer (DTC) product for self-collecting anterior nasal swab specimens at home by individuals 16 or older (either unobserved or video-observed) that are sent for testing with an in vitro diagnostic (IVD) molecular test that is indicated for use with the Kroger Health COVID-19 Test Home Collection Kit for self-collection of anterior nasal swab specimens, and the IVD is indicated for testing any individuals, including individuals without symptoms or other reasons to suspect COVID-19.

Authorized Laboratories: Testing is limited to laboratories designated by The Kroger Co. that are certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 U.S.C. §263a, and meet the requirements to perform high complexity tests.

Dear Dr. Kirby:

On June 30, 2020, based on your¹ request the Food and Drug Administration (FDA) issued an Emergency Use Authorization (EUA) for emergency use of the Kroger Health COVID-19 Test Home Collection Kit, pursuant to Section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. §360bbb-3) for use by individuals to self-collect nasal swab specimens at home, video-observed by a healthcare provider, when determined by a healthcare provider to be appropriate based on results of a COVID-19 questionnaire, and for use only with in vitro diagnostic (IVD) molecular tests for the detection of SARS-CoV-2 RNA that are indicated for use with the Kroger Health COVID-19 Test Home Collection Kit. Testing was limited to laboratories designated by The Kroger Co. that were certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 U.S.C. §263a, and met requirements to perform

¹ For ease of reference, this letter will use the term “you” and related terms to refer to The Kroger Co. (Kroger Health is the healthcare arm of The Kroger Co.)

high complexity tests and that ran the specimens collected from the Kroger Health COVID-19 Test Home Collection Kit on an in vitro diagnostic (IVD) molecular test indicated for use with the Kroger Health COVID-19 Test Home Collection Kit for self-collection of nasal swab specimens as described above. Based on your request, FDA reissued the EUA on February 13, 2021.²

On May 10, 2021, you requested to further revise your Emergency Use Authorization (EUA). Based on this request, and having concluded that revising the February 13, 2021, EUA is appropriate to protect the public health or safety under section 564(g)(2)(C) of the Act (21 U.S.C. § 360bbb-3(g)(2)(C)), FDA is reissuing the February 13, 2021, letter in its entirety with the revisions incorporated.³ Pursuant to section 564 of the Act and the Scope of Authorization (Section II) and Conditions of Authorization (Section IV) of this reissued letter, your product⁴ is now authorized for use consistent with the indication described above.

On February 4, 2020, pursuant to section 564(b)(1)(C) of the Federal Food, Drug, and Cosmetic Act (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-19.⁵ Pursuant to section 564 of the Act, and on the basis of such determination, the Secretary of HHS then declared on March 24, 2020, that circumstances exist justifying the authorization of emergency use of medical devices during the COVID-19 outbreak, subject to the terms of any authorization issued under that section.⁶

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 your product, described in the Scope of Authorization Section of this letter (Section II), subject to the terms of this authorization.

I. Criteria for Issuance of Authorization

² On February 13, 2021, the revisions to the June 30, 2020, letter and authorized labeling included: (1) updates to the intended use to add non-prescription direct-to-consumer claims, including unobserved anterior nasal swab collection, (and remove prescription claims), (2) update shipping and human usability performance data and labeling to support the revised intended use, (3) addition of a Fact Sheet for Individuals and additional instructions for unobserved anterior nasal swab collection, and (4) updates to the conditions of authorization to reflect the revised intended use and language used in more recent letters of authorization.

³ The revisions to the February 13, 2021, letter and authorized labeling include: (1) a change to kit registration process for kits sold in physical retail locations, (2) minor editorial changes to the video-observed user instructions, (3) addition of a registration card to be included in kits sold in physical retail locations, (4) addition of Condition C. to include the registration card in shipped kits sold in physical retail locations, (5) addition of Condition T. to conduct a usability assessment to evaluate registration error rates with the process change, and (6) update to the Fact Sheet for Individuals to reflect recent authorizations.

⁴ For ease of reference, this letter will use the term “your product” to refer to the Kroger Health COVID-19 Test Home Collection Kit used for the indication identified above.

⁵ 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. 85 FR 7316 (February 7, 2020).

⁶ 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 17335 (March 27, 2020)

I have concluded that the emergency use of your product meets the criteria for issuance of an authorization under Section 564(c) of the Act, because I have concluded that:

1. The 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 your product may be effective in diagnosing COVID-19 by serving as an appropriate means to collect and transport human specimens so that an authorized laboratory can detect SARS-CoV-2 RNA from the home-collected human specimen, and that the known and potential benefits of your product when used for such use, outweigh the known and potential risks of your product; and
3. There is no adequate, approved, and available alternative to the emergency use of your product.⁷

II. Scope of Authorization

I have concluded, pursuant to Section 564(d)(1) of the Act, that the scope of this authorization is limited to the indication above.

Authorized Product Details

Your product is a direct to consumer product for self-collecting anterior nasal swab specimens at home by individuals 16 or older (either unobserved or video-observed), that are sent for testing with an in vitro diagnostic (IVD) molecular test that is indicated for use with the Kroger Health COVID-19 Test Home Collection Kit for self-collection of anterior nasal swab specimens, and the IVD is indicated for testing any individuals, including individuals without symptoms or other reasons to suspect COVID-19. Testing is limited to laboratories designated by The Kroger Co. that are certified under CLIA and meet the requirements to perform high complexity tests.

When using your product, individuals must follow all specimen collection and mailing instructions provided with the kit. The Kroger Health COVID-19 Test Home Collection Kit includes the following materials or other authorized materials: Kit box, Fact Sheet for Individuals, Patient ID Label (barcoded), medium alcohol prep pads, biohazard bag, absorbent sheet, nasal swab, 3 mL transport medium (0.85% saline) in tube, Patient Instruction Insert, return shipping lab pack with prepaid, addressed return label applied, registration card (included in kits sold in physical retail locations).

All test results are delivered to the user. Individuals with positive or invalid/indeterminate results will be contacted by a healthcare provider.⁸ Your product is intended to enable users to access information about their COVID-19 infection status that could aid with determining if self-isolation or quarantine is appropriate and to assist with healthcare decisions after discussion with a healthcare provider.

⁷ No other criteria of issuance have been prescribed by regulation under Section 564(c)(4) of the Act.

⁸ For this EUA, a healthcare provider (HCP) includes any health professional with prescribing abilities, including, but is not limited to, physicians, nurses, pharmacists, technologists, laboratory directors, and epidemiologists.

The Kroger Health COVID-19 Test Home Collection Kit is not a substitute for visits to a healthcare provider. The information provided by this kit when combined with an authorized test should not be used to start, stop, or change any course of treatment unless advised by your healthcare provider.

The labeling entitled “Kroger Health COVID-19 Test Home Collection Kit” unobserved patient instructions, “Kroger Health COVID-19 Test Home Collection Kit” video-observed patient instructions “Kroger Health COVID-19 Test Home Collection Kit” box label and the EUA Summary (available at <https://www.fda.gov/medical-devices/coronavirus-disease-2019-covid-19-emergency-use-authorizations-medical-devices/vitro-diagnostics-euas>), as well as the registration card, the “The Kroger Co. COVID-19 Lab Accessioning SOP”, and the following fact sheet pertaining to the emergency use, is required to be made available as set forth in the Conditions of Authorization (Section IV), and are collectively referred to as “authorized labeling”:

- Fact Sheet for Individuals: The Kroger Co. - Kroger Health COVID-19 Test Home Collection Kit

The above described product, when accompanied by the authorized labeling provided as set forth in the Conditions of Authorization (Section IV), is authorized to be distributed and used under this EUA, despite the fact that it does not meet certain requirements otherwise required by applicable federal law.

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 your product, when used consistent with the Scope of Authorization of this letter (Section II), outweigh the known and potential risks of your product for such use.

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 your product may be effective in diagnosing COVID-19 by serving as an appropriate means to collect and transport human specimens so that an authorized laboratory can detect SARS-CoV-2 RNA from the home-collected human specimen when used consistent with the Scope of Authorization of this letter (Section II), pursuant to Section 564(c)(2)(A) of the Act.

FDA has reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, and concludes that your product (as described in the Scope of Authorization of this letter (Section II)) meets the criteria set forth in Section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of your product under this EUA must be consistent with, and may not exceed, the terms of this letter, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section IV). 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) of the Act described above and the Secretary of HHS's corresponding declaration under Section 564(b)(1) of the Act, your product is authorized for the indication above.

III. Waiver of Certain Requirements

I am waiving the following requirements for your product during the duration of this EUA:

- Current good manufacturing practice requirements, including the quality system requirements under 21 CFR Part 820 with respect to the design, manufacture, packaging, labeling, storage, and distribution of your product, but excluding Subpart H (Acceptance Activities, 21 CFR 820.80 and 21 CFR 820.86), Subpart I (Nonconforming Product, 21 CFR 820.90), and Subpart O (Statistical Techniques, 21 CFR 820.250).

IV. Conditions of Authorization

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

The Kroger Co. (You) and Authorized Distributor(s)⁹

- A. Your product must comply with the following labeling requirements under FDA regulations: the intended use statement (21 CFR 809.10(a)(2), (b)(2)); adequate directions for use (21 U.S.C. 352(f)), (21 CFR 809.10(b)(5), (7), and (8)); limitations on the use of the device, including information required under 21 CFR 809.10(a)(4); and any available information regarding performance of the device, including requirements under 21 CFR 809.10(b)(12).
- B. You and authorized distributor(s) must make available all instructions related to the self-collection of anterior nasal swab specimens using the Kroger Health COVID-19 Test Home Collection Kit and the Fact Sheet for Individuals both in the shipped kit and on your website.
- C. You and authorized distributor(s) must make available The Kroger Health COVID-19 Test Home Collection Kit registration card in the shipped kits sold in physical retail locations.
- D. You and authorized distributor(s) must inform authorized laboratories and relevant public health authorities of this EUA, including the terms and conditions herein, and any updates made to your product, or the authorized labeling.
- E. Through a process of inventory control, you and authorized distributor(s) must maintain records of the numbers and locations to which your product is distributed.
- F. You and authorized distributor(s) must maintain customer complaint files on record. You will report to FDA any significant complaints about usability or deviations from the established performance characteristics of the product of which you become aware.

⁹ “Authorized Distributor(s)” are identified by you, The Kroger Co., in your EUA submission as an entity allowed to distribute the Kroger Health COVID-19 Test Home Collection Kit.

- G. You and authorized distributor(s) are authorized to make available additional information relating to the emergency use of your product that is consistent with, and does not exceed, the terms of this letter of authorization.

The Kroger Co. (You)

- H. You must notify FDA of any authorized distributor(s) of your product, including the name, address, and phone number of any authorized distributor(s).
- I. You must notify FDA of any authorized laboratories designated by The Kroger Co. to use your product, including the name, address, and phone number of any authorized laboratories.
- J. You must provide authorized distributor(s) and authorized laboratories with a copy of this EUA and communicate to authorized distributor(s) any subsequent revisions that might be made to this EUA and its authorized materials.
- K. You must ensure that the authorized laboratories using your product have a process in place for reporting test results to you, individuals, healthcare providers and relevant public health authorities, as appropriate.
- L. You must maintain records of the authorized laboratories and test usage.
- M. You must collect information on the performance of your product. You must report to FDA any suspected occurrence of false positive and false negative results and significant deviations from the established performance characteristics of your product of which you become aware.
- N. You may request changes to this EUA for your product, including to the Scope of Authorization (Section II in this letter) or to the authorized labeling. Any request for changes to this EUA should be submitted to the Division of Microbiology (DMD)/Office of Health Technology 7 (OHT7)-Office of In Vitro Diagnostics and Radiological Health (OIR)/Office of Product Evaluation and Quality (OPEQ)/Center for Devices and Radiological Health (CDRH) and require appropriate authorization from FDA prior to implementation.
- O. You must comply with the following requirements pursuant to FDA regulations: 21 CFR 820 Subpart H (Acceptance Activities, 21 CFR 820.80 and 21 CFR 820.86), Subpart I (Nonconforming Product, 21 CFR 820.90), and Subpart O (Statistical Techniques, 21 CFR 820.250).
- P. You must have lot release procedures and the lot release procedures, including the study design and statistical power, must ensure that your product released for distribution has the clinical and analytical performance claimed in the authorized labeling.
- Q. If requested by FDA, you must submit lot release procedures to FDA, including sampling protocols, testing protocols, and acceptance criteria, that you use to release lots of your

product for distribution in the U.S. If such lot release procedures are requested by FDA, you must provide it within 48 hours of the request.

- R. You must have a process in place to track adverse events associated with the Kroger Health COVID-19 Test Home Collection Kit, including occurrences of false results, in accordance with 21 CFR Part 803. Serious adverse events, especially unexpected biosafety concerns, must immediately be reported to DMD/OHT7-OIR/OPEQ/CDRH (via email: CDRH-EUA-Reporting@fda.hhs.gov).
- S. You will submit to FDA a summary report within 30 calendar days of this letter summarizing the results of any testing performed using anterior nasal specimens collected with the Kroger Health COVID-19 Test Home Collection Kit during that timeframe, including how many kits were requested and sent for home collection to individuals, how many kits were shipped and returned according to the instructions, how many specimens had to be rejected during accession and the main reasons for rejection, and the positivity rate of the Kroger Health COVID-19 Test Home Collection Kit lot.
- T. You will submit to FDA a usability assessment report within 30 calendar days of this letter to identify and characterize user error rates associated with tests performed by individuals using the new kit registration process from kits sold in physical retail locations collected during that timeframe.
- U. You must have a process in place for reporting all test results to individuals who use the Kroger Health COVID-19 Test Home Collection Kit. This process must include a requirement that all positive and invalid/indefinite results must be reported to individuals who self-collected specimens using the Kroger Health COVID-19 Test Home Collection Kit by a HCP, defined in footnote 8. This process must ensure the Fact Sheet for Individuals relevant to the IVD molecular test used on the specimen is made available to individuals with test results, for example via included weblink.
- V. You must have a healthcare provider available to provide information and counseling to individuals using the Kroger Health COVID-19 Test Home Collection Kit. You will ensure these healthcare providers have the Fact Sheet for Healthcare Providers that is relevant to the IVD molecular test used on the specimen, for reference.

Authorized Laboratories

- W. Authorized laboratories testing specimens self-collected using the using the Kroger Health COVID-19 Test Home Collection Kit must follow “The Kroger Co. COVID-19 Lab Accessioning SOP” when accepting specimens for testing.
- X. Authorized laboratories using your product will use it only in conjunction with COVID-19 IVD molecular tests that are indicated for use with the Kroger Health COVID-19 Test Home Collection Kit.

- Y. Authorized laboratories will collect information on the performance of your product and report to DMD/OHT7-OIR/OPEQ/CDRH (via email: CDRH-EUA-Reporting@fda.hhs.gov) and you (via email: covidtesting@kroger.com or 1-844-KRO-CV19) any suspected occurrence of false positive or false negative results linked to use of your product and significant deviations from the established performance characteristics of your product of which they become aware.
- Z. Authorized laboratories using your product must have a process in place for reporting test results to relevant public health authorities, as appropriate. Authorized laboratories using your product must also have a process in place for reporting test results to you via the agreed upon process, as described in the EUA Summary, for your product.

The Kroger Co. (You), Authorized Distributor(s) and Authorized Laboratories

- AA. You, authorized distributor(s), and authorized laboratories using your product will ensure that any records associated with this EUA are maintained until otherwise notified by FDA. Such records will be made available to FDA for inspection upon request.

Conditions Related to Printed Materials, Advertising and Promotion

- BB. All descriptive printed matter, advertising, and promotional materials relating to the use of your product 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), (q)(1), and (r) of the Act and FDA implementing regulations.
- CC. No descriptive printed matter, advertising, or promotional materials relating to the use of your product may represent or suggest that this test is safe or effective for the detection of SARS-CoV-2.
- DD. All descriptive printed matter, advertising, and promotional materials relating to the use of your product shall clearly and conspicuously state that:
- This product has not been FDA cleared or approved, but has been authorized for emergency use by FDA under an EUA;
 - This product has been authorized only for the home collection and maintenance of nasal swab specimens as an aid in detection of nucleic acid from SARS-CoV-2, not for any other viruses or pathogens; and
 - The emergency use of this product only authorized for the duration of the declaration that circumstances exist justifying the authorization of emergency use of medical devices under Section 564(b)(1) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 360bbb-3(b)(1), unless the declaration is terminated or authorization is revoked sooner.

The emergency use of your product as described in this letter of authorization must comply with the conditions and all other terms of this authorization.

V. Duration of Authorization

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

Sincerely,

RADM Denise M. Hinton
Chief Scientist
Food and Drug Administration

Enclosure