NOTICE OF NONCOMPLIANCE ISSUED PURSUANT TO 42 U.S.C. 282(j)(5)(C)(ii)

VIA UNITED PARCEL SERVICE AND E-MAIL

April 15, 2022

Ocugen
Attention: Vijay Tammara, Ph.D.
Senior Vice President, Global Regulatory and Quality
263 Great Valley Parkway
Malvern, Pennsylvania 19355
vijay.tammara@ocugen.com

Re: Noncompliance with the Requirements for Submission of Clinical Trial Results Information for "A Phase 3 Randomized, Placebo-Controlled, Double-Masked, Multicenter, Safety and Efficacy Study of Brimonidine Tartrate 0.2% Nanoemulsion Eye Drops in Patients with Dry Eye Disease (DED)" (NCT03785340)
FDA Reference Number: CDER-2021-126

Dear Dr. Tammara:

On July 21, 2021, the U.S. Food and Drug Administration (FDA) e-mailed you a letter dated July 20, 2021, alerting you to potential noncompliance with the requirement to submit clinical trial results information to the ClinicalTrials.gov data bank, operated by the National Library of Medicine (a part of the National Institutes of Health), for the above-referenced clinical trial. Ocugen is the "responsible party"[1] for the above-referenced clinical trial, which is an "applicable clinical trial"[2] that is subject to the requirements in section 801 of the Food and Drug Administration Amendments Act of 2007 (FDAAA), including its implementing regulations in 42 CFR part 11. A responsible party for an applicable clinical trial is required to submit to the ClinicalTrials.gov data bank certain results information for the clinical trial; such results information generally must be submitted no later than one year after the primary completion

[1] *See* section 402(j)(1)(A)(ix) of the Public Health Service Act (PHS Act) (42 U.S.C. 282(j)(1)(A)(ix)) and 42 CFR 11.10 for the definition of "responsible party."
[2] *See* section 402(j)(1)(A)(i)-(iii) of the PHS Act (42 U.S.C. 282(j)(1)(A)(i)-(iii)) and 42 CFR 11.10 for the definition of "applicable clinical trial."

date[3] of the applicable clinical trial, unless the responsible party has submitted a timely certification of delay, a request for an extension for good cause, or a request for a waiver of the requirements for submission of results information.[4]

In our previous letter, we requested that your company review its records for this clinical trial and submit all required results information promptly. We also stated that we intended to further review and assess this clinical trial beginning 30 calendar days after you received our previous letter, and that we might take regulatory action if we determined that your company was not in compliance at that time.

FDA has determined that your company failed to submit results information for the applicable clinical trial referenced above, as required under section 402(j) of the Public Health Service Act (PHS Act) (42 U.S.C. 282(j)) and 42 CFR 11.48. Pursuant to section 402(j)(5)(C)(ii) of the PHS Act (42 U.S.C. 282(j)(5)(C)(ii)), FDA is notifying you that your company is not in compliance with FDAAA's results information submission requirements, which include the requirements in 42 CFR part 11, and is providing your company with the opportunity to remedy its noncompliance by submitting the required clinical trial results information within 30 calendar days after you receive this Notice of Noncompliance (Notice).

Because failure to submit clinical trial information required under section 402(j) of the PHS Act (42 U.S.C. 282(j)), including its implementing regulations in 42 CFR part 11, is a prohibited act under section 301(jj)(2) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 331(jj)(2)), FDA may initiate an administrative action seeking a civil money penalty against your company. Pursuant to section 303(f)(3)(A) of the FD&C Act (21 U.S.C. 333(f)(3)(A)), "[a]ny person who violations section 301(jj) [of the FD&C Act (21 U.S.C. 331(jj))] shall be subject to a civil money penalty of not more than $10,000 for all violations adjudicated in a single proceeding."[5]

If your company does not submit the required clinical trial results information in the manner and format specified at http://prsinfo.clinicaltrials.gov or at https://clinicaltrials.gov/ct2/manage-recs/how-report within 30 calendar days after receiving this Notice, FDA may also seek additional civil money penalties against your company.

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[3] *See* 42 CFR 11.10 for the definition of "primary completion date." *See also* section 402(j)(1)(A)(v) of the PHS Act (42 U.S.C. 282(j)(1)(A)(v)), which defines "completion date." As reflected in 42 CFR 11.10, the terms "primary completion date" and "completion date" are synonymous for purposes of 42 CFR part 11.

[4] *See* section 402(j)(3)(E) and (H) of the PHS Act (42 U.S.C. 282(j)(3)(E) and (H)) and 42 CFR part 11, subpart C for results submission requirements.

[5] The civil monetary penalty amounts in this Notice reflect the amounts listed in the statute. These amounts are updated annually to reflect inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101-410, 104 Stat. 890 (1990)) (codified as amended at 28 U.S.C. 2461 note 2(a)), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, November 2, 2015). For the most up-to-date amounts, please see 45 CFR 102.3.

Specifically, section 303(f)(3)(B) of the FD&C Act (21 U.S.C. 333(f)(3)(B)) provides that "[i]f a violation of section 301(jj) [of the FD&C Act (21 U.S.C. 331(jj))] is not corrected within the 30-day period following receipt of a [notice issued] under section 402(j)(5)(C)(ii) [of the PHS Act (42 U.S.C. 282(j)(5)(C)(ii))], the person shall, in addition to any penalty under subparagraph (A), be subject to a civil money penalty of not more than $10,000 for each day of the violation after such period until the violation is corrected."

In addition to civil money penalties, violations of section 301(jj) of the FD&C Act (21 U.S.C. 331(jj)) could result in other regulatory action, such as injunction and/or criminal prosecution, without further notice.

If you have any questions about this Notice, you may call Laurie Muldowney, M.D., at (301) 796-1571. Please have the FDA reference number provided at the top of this Notice available when you call. Alternatively, you may e-mail Dr. Muldowney at CDER-OSI-Advisory@fda.hhs.gov. Please include the FDA reference number with any e-mail communications.

We request that your company submit a written response to FDA within 30 calendar days after you receive this Notice, stating the actions your company has taken in response to this Notice. Please direct your response to the address below and include the FDA reference number in all correspondence relating to this matter.

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Sincerely yours,

Judith McMeekin, Pharm.D.
Associate Commissioner for Regulatory Affairs
Office of Regulatory Affairs
U.S. Food and Drug Administration