

PROMACTA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993-0002, 301-796-3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product PROMACTA (eltrombopag olamine). PROMACTA is indicated the treatment of

thrombocytopenia in patients with chronic immune (idiopathic) thrombocytopenic purpura who have had an insufficient response to corticosteroids, immunoglobulins, or splenectomy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for PROMACTA (U.S. Patent No. 7,160,870) from SmithKline Beecham Corp. (DBA GlaxoSmithKline), and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 29, 2009, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of PROMACTA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for PROMACTA is 1,485 days. Of this time, 1,147 days occurred during the testing phase of the regulatory review period, while 338 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* October 29, 2004. The applicant claims October 28, 2004, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 29, 2004, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* December 19, 2007. FDA has verified the applicant's claim that the new drug application (NDA) 22-291 was submitted on December 19, 2007.

3. *The date the application was approved:* November 20, 2008. FDA has verified the applicant's claim that NDA 22-291 was approved on November 20, 2008.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 347 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may

submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 9, 2010. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 7, 2010. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 23, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010-13905 Filed 6ndash;9-10; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2010-D-0281]

Draft Guidance for Industry and Food and Drug Administration Staff; "Harmful and Potentially Harmful Constituents' in Tobacco Products as Used in Section 904(e) of the Federal Food, Drug, and Cosmetic Act"; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and FDA staff entitled "Harmful and Potentially Harmful Constituents' in Tobacco Products as Used in Section 904(e) of the Federal Food, Drug, and Cosmetic Act." This draft guidance provides written guidance to industry and FDA staff on certain provisions of the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act).

DATES: Although you can comment on any guidance at any time (see 21 CFR

10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 8, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850-3229. Send one self-addressed adhesive label to assist that office in processing your requests or include a fax number to which the draft guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments to <http://www.regulations.gov>. Submit written comments on the draft guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Carol Drew, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850-3229, 877-287-1373.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and FDA staff entitled “Harmful and Potentially Harmful Constituents’ in Tobacco Products as Used in Section 904(e) of the Federal Food, Drug, and Cosmetic Act.” This draft guidance, when finalized, will discuss the meaning of the term “harmful and potentially harmful constituent” for use in implementing section 904(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 387d(e)) as amended by the Tobacco Control Act.

On June 22, 2009, the President signed the Tobacco Control Act (Public Law 111-310) into law. The Tobacco Control Act amended the act (21 U.S.C. 301 *et seq.*) by, among other things, adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. Section 904(e) of the act, as added by the Tobacco Control Act, requires FDA to establish, and periodically revise as appropriate, “a list of harmful and potentially harmful constituents, including smoke constituents, to health

in each tobacco product by brand and by quantity in each brand and subbrand.” The draft guidance discusses the meaning of the term “harmful and potentially harmful constituent” in the context of implementing the listing requirements of section 904(e) of the act.

II. Significance of Guidance

This draft guidance is being issued as a level 1 guidance consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency’s current thinking on certain provisions of the Tobacco Control Act. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.regulations.gov> or <http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm>.

Dated: June 7, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010-14046 Filed 6-8-10; 4:15 pm]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2010-D-0282]

Guidance for Industry and Food and Drug Administration Staff; Use of “Light,” “Mild,” “Low,” or Similar Descriptors in the Label, Labeling, or Advertising of Tobacco Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled “Use of ‘Light,’ ‘Mild,’ ‘Low,’ or Similar Descriptors in the Label, Labeling, or Advertising of Tobacco Products.” This guidance provides information on the Family Smoking Prevention and Tobacco Control Act’s (Tobacco Control Act) requirements related to the use of “light,” “mild,” “low,” or similar descriptors in the label, labeling, or advertising of tobacco products. This guidance document will be implemented immediately, but it remains subject to comment in accordance with the agency’s good guidance practices.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled “Use of ‘Light,’ ‘Mild,’ ‘Low,’ or Similar Descriptors in the Label, Labeling, or Advertising of Tobacco Products” to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850-3229. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments to <http://www.regulations.gov>. Submit written comments concerning this guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Beth Buckler, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1-877-287-1373, e-mail: beth.buckler@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the President signed the Tobacco Control Act (Public Law 111-31) into law. The Tobacco Control Act grants FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.