

Dated: June 6, 2014.

**Jill Hartzler Warner,**

*Associate Commissioner for Special Medical Programs.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2012-E-0157]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; Arcapta Neohaler

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Arcapta Neohaler 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 the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Submit electronic comments to <http://www.regulations.gov>. Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to <http://www.regulations.gov> at Docket No. FDA-2013-S-0610.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Management, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6257, Silver Spring, MD 20993-0002, 301-796-7900.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 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 USPTO 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 has approved for marketing the human drug product Arcapta Neohaler (indacaterol maleate). Arcapta Neohaler is indicated for long term, once-daily maintenance bronchodilator treatment of airflow obstruction in patients with chronic obstructive pulmonary disease, including chronic bronchitis and/or emphysema. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Arcapta Neohaler (U.S. Patent No. 6,878,721) from Novartis AG, and USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 9, 2012, FDA advised USPTO that this human drug product had undergone a regulatory review period and that the approval of Arcapta Neohaler represented the first permitted commercial marketing or use of the product. Thereafter, USPTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Arcapta Neohaler is 3,097 days. Of this time, 2,171 days occurred during the testing phase of the regulatory review period, while 926 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 FD&C Act) (21 U.S.C. 355(i)) became effective:* January 9, 2003. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 9, 2003.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 18,

2008. The applicant claims December 19, 2008, as the date the new drug application (NDA) for Arcapta Neohaler (NDA 22-383) was initially submitted. However, FDA records indicate that NDA 22-383 was submitted on December 18, 2008.

3. *The date the application was approved:* July 1, 2011. FDA has verified the applicant's claim that NDA 22-383 was approved on July 1, 2011.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,597 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**) either electronic or written comments and ask for a redetermination by August 11, 2014. 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 9, 2014. 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.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to <http://www.regulations.gov>, Docket No. FDA-2013-S-0610. Comments and petitions that have not been made publicly available on <http://www.regulations.gov> may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 5, 2014.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

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