

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket Nos. FDA–2015–E–3441 and FDA–2015–E–3439]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; OLYSIO

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for OLYSIO 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.

**DATES:** Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 1, 2016. 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 November 28, 2016. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows:

#### Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket No. FDA–2015–E–3441 or FDA–2015–E–3439 for “Determination of Regulatory Review Period for Purposes of Patent Extension; OLYSIO.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of

comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

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 OLYSIO (simeprevir). OLYSIO is indicated for

treatment of chronic hepatitis C infection as a component of a combination antiviral treatment regimen. Subsequent to this approval, the USPTO received patent term restoration applications for OLYSIO (U.S. Patent Nos. 7,671,032 and 8,349,869) from Medivir AB and Janssen R&D Ireland, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated October 15, 2015, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of OLYSIO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

## II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for OLYSIO is 2,006 days. Of this time, 1,766 days occurred during the testing phase of the regulatory review period, while 240 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:* May 28, 2008. FDA has verified the Medivir AB and Janssen R&D Ireland claim that May 28, 2008, is the date the investigational new drug application (IND) became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* March 28, 2013. FDA has verified the applicant's claim that the new drug application (NDA) for OLYSIO (NDA 205123) was initially submitted on March 28, 2013.

3. *The date the application was approved:* November 22, 2013. FDA has verified the applicant's claim that NDA 205123 was approved on November 22, 2013.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension and amendments, the applicants seek 801 or 280 days of patent term extension.

## III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination

(see DATES). 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. To meet its burden, the petition must be timely (see DATES) and 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.

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

Dated: May 24, 2016.

Leslie Kux,

Associate Commissioner for Policy.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2016–N–0001]

#### Advisory Committee; Science Advisory Board to the National Center for Toxicological Research; Renewal

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

**ACTION:** Notice; renewal of advisory committee.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the renewal of the Science Advisory Board to the National Center for Toxicological Research (NCTR) by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Science Advisory Board to the National Center for Toxicological Research for an additional 2 years beyond the charter expiration date. The new charter will be in effect until June 2, 2018.

**DATES:** Authority for the Science Advisory Board to the National Center for Toxicological Research will expire on June 2, 2016, unless the Commissioner formally determines that renewal is in the public interest.

**FOR FURTHER INFORMATION CONTACT:** Donna L. Mendrick, National Center for Toxicological Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 2208, Silver Spring, MD 20993–0002, 301–796–8892, [donna.mendrick@fda.hhs.gov](mailto:donna.mendrick@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Science Advisory Board to the National Center for Toxicological Research. The committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Science Advisory Board to the National Center for Toxicological Research advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility. The Board advises the Director, NCTR, in establishing, implementing, and evaluation the research programs that assist the Commissioner of Food and Drugs in fulfilling his regulatory responsibilities. The Board provides an extra-agency review in ensuring that the research programs at NCTR are scientifically sound and pertinent.

The Committee shall consist of a core of nine voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of toxicological research. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons.

Further information regarding the most recent charter and other information can be found at <http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/ToxicologicalResearch/ucm148166.htm> or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at <http://www.fda.gov/AdvisoryCommittees/default.htm>.