



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-E-0759]

Determination of Regulatory Review Period for Purposes of Patent Extension; IMPROVEST  
AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for IMPROVEST 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 animal 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, Center for Drug Evaluation and Research, 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 animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal 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 an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA has approved for marketing the animal drug product IMPROVEST (gonadotropin releasing factor analog-diphtheria toxoid conjugate). IMPROVEST is indicated for the temporary immunological castration (suppression of testicular function) and reduction of boar taint in intact male pigs intended for slaughter. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for IMPROVEST (U.S. Patent No. 7,534,441) from Pfizer Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 10, 2012, FDA

advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of IMPROVEST represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for IMPROVEST is 2,555 days. Of this time, 2,498 days occurred during the testing phase of the regulatory review period, while 57 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: March 25, 2004. The applicant claims July 18, 2005, as the date the investigational new animal drug application (INAD) became effective. However, FDA records indicate that the INAD effective date was March 25, 2004, which was the received date of the first submission containing a Notice of Claimed Investigational Exemption for a new animal drug.
2. The date the application was initially submitted with respect to the animal drug product under section 512 of the FD&C Act (21 U.S.C. 360b): January 25, 2011. The applicant claims January 24, 2011, as the date the new animal drug application (NADA) for IMPROVEST (NADA 141-322) was initially submitted. However, FDA records indicate that January 24, 2011, was the correspondence date of the cover letter for NADA 141-322 and the application was received by FDA on January 25, 2011.
3. The date the application was approved: March 22, 2011. FDA has verified the applicant's claim that NADA 141-322 was approved on March 22, 2011.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the 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 366 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 [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. 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 [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. 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: May 7, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014-10951 Filed 05/12/2014 at 8:45 am; Publication Date: 05/13/2014]