

person with such a disease or condition unless an exemption is granted because there is no comparable device other than another HUD approved under this exemption that is available to treat or diagnose the disease or condition; and (3) will not expose patients to an unreasonable or significant risk of illness or injury with the probable benefit to health from using the device outweighing the risk of injury or illness from its use. This takes into account the probable risks and benefits of currently available devices or alternative forms of treatment.

The information collected will assist FDA in making determinations on the following: (1) Whether to grant HUD designation of a medical device; (2) exempt an HUD from the effectiveness requirements under sections 514 and 515 of the FD&C Act, provided that the device meets requirements set forth under section 520(m) of the FD&C Act; and (3) whether to grant marketing approval(s) for the HUD. Failure to collect this information would prevent FDA from making a determination on the factors listed previously in this document. Further, the collected information would also enable FDA to

determine whether the holder of an HUD is in compliance with the HUD provisions under section 520(m) of the FD&C Act.

The number of respondents in tables 1, 2, and 3 of this document are an average based on data for the previous 3 years, i.e., fiscal years 2011 through 2013. The number of annual reports submitted under § 814.126(b)(1) in table 1 reflects 32 respondents with approved HUD applications. Likewise, under § 814.126(b)(2) in table 2, the number of recordkeepers is 247.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Activity/21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Request for HUD designation—814.102 .....	16	1	16	40	640
Humanitarian device exemption (HDE) application—814.104 .....	7	1	7	320	2,240
HDE amendments and resubmitted HDEs—814.106 .....	14	5	70	50	3,500
HDE supplements—814.108 .....	112	1	112	80	8,960
Notification of withdrawal of an HDE—814.116(e)(3) .....	8	1	8	1	8
Notification of withdrawal of institutional review board approval—814.124(b) .....	3	1	3	2	6
Periodic reports—814.126(b)(1) .....	32	1	32	120	3,840
<b>Total</b> .....					<b>19,194</b>

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN <sup>1</sup>

Activity/21 CFR Section	Number of recordkeepers	Number of records per recordkeeping	Total annual records	Average burden per recordkeeping	Total hours
HDE Records—814.126(b)(2) .....	247	1	247	2	494

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN <sup>1</sup>

Activity/21 CFR Section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Notification of emergency use—814.124(a) .....	22	1	22	1	22

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 4, 2014.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2012–E–1234]

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

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for STENDRA 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](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 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 STENDRA (avanafil). STENDRA is indicated for the treatment of erectile dysfunction. Subsequent to this approval, USPTO received a patent term restoration application for STENDRA (U.S. Patent No. 6,656,935) from Mitsubishi Tanabe Pharma Corp., and USPTO requested FDA's assistance in determining this patent's eligibility for patent term

restoration. In a letter dated February 13, 2013, FDA advised USPTO that this human drug product had undergone a regulatory review period and that the approval of STENDRA 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 STENDRA is 3,770 days. Of this time, 3,466 days occurred during the testing phase of the regulatory review period, while 304 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 2, 2002. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 2, 2002.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* June 29, 2011. FDA has verified the applicant's claim that the new drug application (NDA) for STENDRA (NDA 202276) was submitted on June 29, 2011.

3. *The date the application was approved:* April 27, 2012. FDA has verified the applicant's claim that NDA 202276 was approved on April 27, 2012.

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 1,686 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 8, 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 4, 2014.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2012-E-1241]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; Xience Prime LI Everolimus Eluting Coronary Stent System

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Xience Prime LI Everolimus Eluting Coronary Stent System 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 medical device.

**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,