

**Proposed Project**

Persistence of Viable Influenza Virus in Aerosols—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

The National Institute for Occupational Safety and Health (NIOSH) is authorized to conduct research to advance the health and safety of workers under Section 20(a)(1) of the 1970 Occupational Safety and Health Act.

Influenza continues to be a major public health concern because of the substantial health burden from seasonal influenza and the potential for a severe pandemic. Although influenza is known to be transmitted by infectious secretions, these secretions can be transferred from person to person in many different ways, and the relative importance of the different pathways is

not known. The likelihood of the transmission of influenza virus by small infectious airborne particles produced during coughing and breathing is particularly unclear. The question of airborne transmission is especially important in healthcare facilities, where influenza patients tend to congregate during influenza season, because it directly impacts the infection control and personal protective measures that should be taken by healthcare workers.

The purpose of this study is to measure the amount of viable influenza virus in airborne particles that are produced by patients when they cough, and the size and quantity of the particles carrying the virus. A better understanding of the amount of potentially infectious material released by patients and the size of the particles carrying the virus will assist in determining the possible role of airborne transmission in the spread of influenza and in devising measures to prevent it.

Volunteer participants will be recruited by a test coordinator using a flyer describing the study. Interested potential participants will be screened using a short health questionnaire to verify that they have influenza-like symptoms and that they do not have any medical conditions that would preclude their participation. Qualified participants who agree to participate in the study will be asked to read and sign an informed consent form. Based on a previous study using similar forms, we estimate that the health questionnaire will require about 5 minutes to complete, and the informed consent form will take about 20 minutes to read and sign. Once the informed consent form is signed, the participant will be asked to cough into an aerosol particle collection system, and the airborne particles produced by the participant during coughing will be collected and tested.

**ESTIMATED ANNUAL BURDEN HOURS**

Type of respondent	Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Initial participants .....	Health questionnaire .....	132	1	5/60	11
Qualified participants .....	Informed Consent form .....	120	1	20/60	40
Total .....	.....	.....	.....	.....	51

Dated: August 27, 2010.

**Maryam I. Daneshvar,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2010-22053 Filed 9-2-10; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration**

[Docket No. FDA-2009-E-0290]

**Determination of Regulatory Review Period for Purposes of Patent Extension; NEURX DIAPHRAGM PACING SYSTEM**

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for NEURX DIAPHRAGM PACING 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 Patents and Trademarks, 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 along with three copies and written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 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. 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 medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. 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 (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 medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device, NEURX DIAPHRAGM PACING SYSTEM. NEURX DIAPHRAGM PACING SYSTEM is indicated to allow patients with stable, high spinal cord injuries and with stimlatable diaphragms to breathe without the assistance of a mechanical ventilator for at least 4 continuous hours a day. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for NEURX DIAPHRAGM PACING SYSTEM (U.S. Patent No. 5,472,438) from Case Western Reserve University, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 17, 2010, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of NEURX DIAPHRAGM PACING SYSTEM 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 NEURX DIAPHRAGM PACING SYSTEM is 5,166 days. Of this time, 4,830 days occurred during the testing phase of the regulatory review period, while 336 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) involving this device became effective:* April 28, 1994. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the act for human tests to begin became effective April 28, 1994.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e):* July 18, 2007. FDA has verified the applicant's claim that the premarket approval application (PMA) for NEURX DIAPHRAGM PACING SYSTEM (PMA H070003) was initially submitted July 18, 2007.

3. *The date the application was approved:* June 17, 2008. FDA has verified the applicant's claim that PMA H070003 was approved on June 17, 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 1,737 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 November 2, 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 March 2, 2011. 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 petitions. It is only necessary to send one set of comments. It is no longer necessary to send three copies of mailed comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 13, 2010.

Jane A. Axelrad,

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

[FR Doc. 2010-22081 Filed 9-2-10; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2009-D-0579]

#### International Conference on Harmonisation; Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex 11 on Capillary Electrophoresis General Chapter; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 11: Capillary Electrophoresis General Chapter." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides the results of the ICH Q4B evaluation of the Capillary Electrophoresis General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. This guidance is in the form of an annex to the core guidance on the Q4B process entitled "Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions" (the core ICH Q4B guidance).

**DATES:** Submit either electronic or written comments on agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993-0002, or the Office of Communication, Outreach and Development (HFM-40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 301-827-1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

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