

# Asthma Therapy Coalition

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April 7, 2004

## *Via Hand Delivery*

Dockets Management Branch  
U.S. Food and Drug Administration  
Room I-23  
12420 Parklawn Drive  
Rockville, MD 20857  
ATTN: Docket No. 2003P-0029

Re: Comments Regarding Citizen Petition Submitted by U.S. Stakeholders Group on MDI Transition (Docket # 2003P-0029)

The Asthma Therapy Coalition ("ATC" or the "Coalition") respectfully submits these comments in response to the Citizen Petition of the U.S. Stakeholders Group on MDI Transition ("Petitioners"), which requests that the U.S. Food and Drug Administration ("FDA") effectuate the removal of albuterol-containing oral pressurized metered-dose inhalers ("MDIs") from the list of products deemed to be an "essential use" under the federal Clean Air Act. ATC's mission is to promote the broadest availability possible of safe, effective and affordable therapies for asthma sufferers as well as to educate the public and the government about the growing incidence of this disease in the U.S. and the therapeutic options available. It is ATC's position that phasing out the use of chlorofluorocarbon ("CFC") containing albuterol MDIs poses a direct threat to the needs of asthma sufferers in the U.S. who would not otherwise have affordable access to alternative life-saving medications.

As an organization representing the interests of responsible persons, ATC wholly supports the ultimate transition away from ozone-depleting substances ("ODS"). However, given the negligible positive effect that eliminating CFC albuterol MDIs would have on the environment and the unquestionable need of asthma sufferers for affordable rescue inhalers, the Coalition's first priority is to ensure that Americans living with asthma continue to have access to these affordable life-saving therapies. Given the widespread reliance on CFC albuterol MDIs of asthma sufferers nationwide and, in particular, pediatric patients and those with fixed incomes (e.g. patients living in urban areas), FDA, as an Agency established to protect the public health, is obligated to ensure that any decision made to remove albuterol from the list of ODS essential uses be fact-based and economically sound. This means that if a phase-out of CFC albuterol MDIs is inevitable, then FDA's proposed transition must accommodate economic realities and the medical needs of the U.S. asthma population.

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## I. THE COST OF A PREMATURE FDA DECISION TO BAN CFC ALBUTEROL MDIs WOULD FAR OUTWEIGH THE BENEFITS

Although the Petitioners suggest that the immediate removal of albuterol from the list of essential uses will yield significant environmental and public health impacts, they misrepresent the extent of that benefit while ignoring the detrimental economic and health effects that removal of these critical therapies will have on a significant segment of the U.S. populace.

Banning CFC albuterol MDIs in the U.S. will bring minor benefit to the environment relative to other types of CFC and other ODS products. As is well known, CFCs are considered to be detrimental to the ozone layer because they release chlorine to the stratosphere, which then destroys stratospheric ozone. Therefore, scientists monitor the stratospheric chlorine levels (or loading) in order to track trends regarding stratospheric ozone depletion/recovery. Although the Montreal Protocol has been extremely efficacious in reducing the production of ODS, stratospheric chlorine loading is not expected to reach the targeted level or close to it for another half century. Even if all CFC albuterol MDI production were eliminated this year, it would only reduce stratospheric chlorine loading by an insignificant amount. Therefore, the net public health effect of removing albuterol CFC-containing MDIs in the near term would be to reduce stratospheric chlorine levels by an amount that is unlikely to be measurably perceived.<sup>1</sup>

This imperceptible near term environmental impact would be more than countered by the detrimental medical impact in the event FDA takes the alternative course, namely removal of *all* CFC albuterol inhalers from the U.S. marketplace, which poses a significant and near immediate threat to the health of a significant population of asthma sufferers, particularly children and patients in poor communities. These products retail for approximately \$20 less per inhaler than brand MDIs using non-CFC propellants.<sup>2</sup> Furthermore, removal of generic MDIs would raise the cost of asthma treatment by \$500 million annually, amounting to approximately \$5 billion over the next decade until the hydrofluoroalkane ("HFA") non-CFC alternatives, Ventolin® HFA and Proventil® HFA, will come off patent and companies currently marketing CFC albuterol MDIs may be able to re-enter the market with low-cost alternative products. Of far greater concern is the unavoidable consequence that clearly this ban would dramatically increase the costs of rescue inhalers.

Albuterol MDIs have been proven effective in rescuing patients from asthma attacks. From 1995 (i.e., the year generic inhalers entered the market) to 2000, albuterol MDI prescriptions climbed over 20% while asthma mortality declined more than 10%.<sup>3</sup> According to the American Lung Association ("ALA"), close to 20.3 million Americans suffered from asthma

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<sup>1</sup> See United State Environmental Programme/World Meteorological Association Scientific Assessment of Ozone Depletion (July 31, 2002); Alternative Fluorocarbon Environmental Acceptability Study (AFEAS), Production and Sale of Fluorocarbons (2003).

<sup>2</sup> <http://www.drugstore.com/pharmacy/prices/drugprice.asp?ndc=00173032188&trx=1Z5006>

<sup>3</sup> *Trends in Asthma Morbidity and Mortality*, American Lung Association, Epidemiology & Statistics Unit, Research and Scientific Affairs, Table 1 (March 2003) ("ALA Report").

in 2001 and this disease was the cause of over 1.8 million emergency room visits in 2000.<sup>4</sup> Asthma now ranks among the most chronic conditions and one of the fastest growing diseases in the U.S. The fact that the disease is prominent and growing dramatically in our poorest segments of society-- uninsured patients or those covered by Medicaid--magnifies the need for FDA to maintain these affordable multi-source drug products on the market.

These facts raise serious concerns about increasing the cost of a critical rescue medication, to the financial detriment of asthma sufferers and their families as well as to the government. To the extent that sufferers would defer utilizing medications as their costs increase, more serious medical problems will develop. In light of the negligible environmental impact of CFCs, the reliance of millions of asthma sufferers on CFC albuterol MDIs, particularly the indigent population, children, and elderly Americans on fixed incomes, and the prevalence of the disease in poorer and fixed income communities, eliminating the essential use designation would be medically and socially unjustified and even irresponsible. The only alternative is one that presents a significant public health risk. ATC urges the Agency to conduct a careful and scientifically sound evaluation of the environmental, health, and economic ramifications before making any decisions regarding a major pharmaceutical transition.

## II. A BAN ON CFC INHALERS REPRESENTS AN UNPRECEDENTED SWITCH FROM PRIMARY RELIANCE ON A GENERIC PRODUCT TO A BRAND PRODUCT

According to FDA's "Approved Drug Products with Therapeutic Equivalence Evaluations" ("The Orange Book"), eight albuterol MDIs are marketed under approved new drug applications ("NDAs") (i.e., 4 brand products) or abbreviated NDAs ("ANDAs") (i.e., 4 generic products). A ban on CFC albuterol MDIs will leave asthma sufferers to rely on the significantly more expensive non-CFC rescue inhaler alternatives, namely Ventolin® HFA and Proventil® HFA. This action would present an unprecedented switch from primary reliance on a generic product to a branded product and would be inconsistent with the Agency's undeniable mandate under the Drug Price Competition and Patent Term Restoration Act ("Hatch-Waxman Amendments")<sup>5</sup> to promote the affordability of drugs by increasing the availability of generic drugs.<sup>6</sup> In an era where this statute has wholly redefined the dynamics of the pharmaceutical marketplace to enable access to more affordable therapies, a transition towards brand reliance has become unprecedented regulatory reversal that artificially interferes with the normal life cycle of a given drug. Hindering access to lower cost asthma therapies will spur a tremendous financial ripple effect, not to mention the unquantifiable cost of human life. Alternatively, the U.S. healthcare system could spend the same \$5 billion in more impactful areas, including asthma *research and prevention*.

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<sup>4</sup> ALA Report.

<sup>5</sup> Public Law 98-417 (1994).

<sup>6</sup> See Mark B. McClellan, M.D., Ph.D., FDA Commissioner, speech before Food and Drug Law Institute (Apr. 1, 2003).

As the Agency is well aware, cost must be a significant factor in making all of its decisions.<sup>7</sup> Without due consideration to cost here, FDA would not be making a legally sound decision. In this situation, the negligible benefit that reducing CFC emissions from MDIs might have on the environment would not outweigh the public need to curb the cost of effective therapies that are critical to disease management, particularly for asthma sufferers in the nation's poor and minority communities, especially where the federal, state and local governments are the payors, directly or indirectly.

### III. IF A BAN ON CFC ALBUTEROL MDIs IS INEVITABLE, IT SHOULD BE NO SOONER THAN MULTI-SOURCE PRODUCTS MAY ENTER THE MARKET

If the removal of CFC albuterol from the essential use list is inevitable, then ATC urges FDA to establish a reasonable timeframe for phase-out given that the current non-CFC albuterol inhaler market is a duopoly comprised of Ventolin® HFA and Proventil® HFA, which may not come off patent for another decade. Because a market duopoly essentially precludes any real possibility of meaningful competition, it is critical that this timeframe be ample to allow for the availability of multi-source albuterol products. If the Agency elects to ban a multi-source product from the market, the economic consequences may very well be devastating. As stated above, this would yield particularly tragic consequences in light of the prevalence of asthma in low-income communities.

A 2005 phase-out would be unworkable in that it would fail to provide a reasonable amount of time for manufacturers of CFC inhalers to redirect their research and development and marketing efforts towards the development of alternative products for marketing, pull products with post-2005 expiration dates, or recoup significant expenditures already spent in reliance on a supposed ability to market these MDIs for years to come. Moreover, the establishment of an unreasonably short transition period would constitute arbitrary and capricious administrative action in violation of the Administrative Procedure Act.<sup>8</sup> If the Agency acts prematurely, the damage will not be easily remedied. The current market duopoly essentially precludes any real possibility of meaningful competition, making it even more critical that a phase-out period provide ample time for the market entry of affordable multi-source albuterol products.

Finally, it is important to note that comments submitted to this docket rely on the precedent of "the major developed countries," including E.U. members, Japan, Canada, and Australia, in urging FDA to adopt a 2005 phase-out date. However, ATC urges the Agency to recognize that these nations have their own unique regulatory environments and market conditions, and assume its role as one of the world's most progressive bodies that regulates pharmaceuticals by beginning a new precedent that better reflects the economic and public health realities. FDA boasts a long history of independent evaluation and leadership. These issues present a prime opportunity for FDA to recognize that it is empowered to make a more rational and reasoned decision here where the alternative may create a public health emergency.

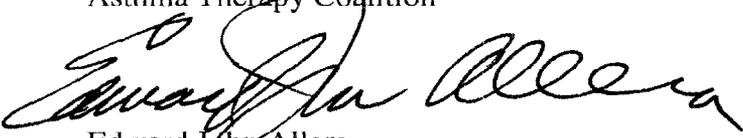
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<sup>7</sup> See, McClellan speech, *supra*.

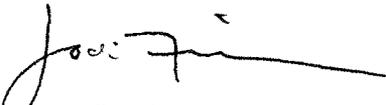
<sup>8</sup> 5 USC § 706(2)(A).

Respectfully submitted,

Asthma Therapy Coalition



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