unapproved drug marketed without a required approved drug application is subject to agency enforcement action at any time.

As described in the Marketed Unapproved Drugs CPG, the agency may, at its discretion, exercise its enforcement discretion and identify a period of time during which the agency will not initiate an enforcement action against a *currently marketed* unapproved drug on the grounds that it is an unapproved new drug, to preserve access to medically necessary drugs or ease disruption to affected parties, for instance. The agency notes that there are numerous marketed products that have approved applications or comply with an applicable over-the-counter drug monograph and that are used to treat conditions for which carbinoxamine is commonly used. Based on the facts discussed in this notice, and especially in light of the availability of these products and the special concerns regarding use of carbinoxamine products in children under 2 years of age, FDA intends to implement this notice as follows.

This notice is effective June 9, 2006. For marketed, unapproved carbinoxamine-containing products that have an NDC number that is listed with the agency on the effective date of this notice, however, the agency intends to exercise its enforcement discretion to permit products properly marketed with those NDC numbers a period of continued marketing after June 9, 2006 as follows. Any firm manufacturing such an unapproved drug product containing carbinoxamine that is labeled for use in children less than 2 years of age or marketed as drops for oral administration may not manufacture that product on or after July 10, 2006. Any firm manufacturing any other such unapproved drug product containing carbinoxamine may not manufacture that product on or after September 7, 2006.[3] The agency, however, does not intend to exercise its enforcement discretion as outlined in this paragraph if: (1) The manufacturer of an unapproved product covered by this notice is violating other provisions of the act or (2) it appears that a firm, in response to this notice, increases its manufacture of carbinoxamine drug products above its usual production volume during these periods.[4]

Drug manufacturers should be aware that the agency is exercising its enforcement discretion as described above *only* in regard to drug products containing carbinoxamine that are properly marketed under an NDC number listed with the agency on the date of this notice. Unapproved drug products containing carbinoxamine that are not currently marketed and listed with the agency on the date of this notice must, as of the date of this notice, have approved applications prior to their introduction into interstate commerce.

Firms that have discontinued manufacturing products covered by this notice may want to contact FDA to advise us that they are no longer manufacturing those products. Some firms may have previously discontinued the manufacturing of those products without removing them from the listing of their products under section 510(j) of the act. Other firms may discontinue manufacturing in response to this notice. Firms that wish to notify the agency of product discontinuation should send a letter, signed by the firm's chief executive officer, fully identifying the discontinued product, including its NDC number, and stating that the product has been discontinued and will not be marketed again without FDA approval, to the following address: John Loh, Division of New Drugs and Labeling Compliance (see **ADDRESSES**). Firms should also update the listing of their products under section 510(j) of the act to reflect discontinuation of unapproved carbinoxamine products. FDA plans to rely on its existing records, the results of a subsequent inspection, or other available information when it initiates enforcement action.

In addition to discontinuing the manufacture of products that contain carbinoxamine, FDA cautions firms against reformulating their products into carbinoxamine-free unapproved new drugs that are marketed under the same name or substantially the same name (including a new name that contains the old name). In the Marketed Unapproved Drugs CPG, FDA states that it intends to give higher priority to enforcement actions involving unapproved drugs that are reformulated to evade an FDA enforcement action. In addition, reformulated products marketed under a name previously identified with a different active ingredient or combination of active ingredients have the potential to confuse health care practitioners and harm patients. Depending on the circumstances, these products may be considered misbranded under section 502(a) or 502(i) of the act (21 U.S.C. 352(a) and (i)).

FDA notes that the issuance of this notice does not in any way obligate the agency to issue similar notices or any notice in the future regarding marketed unapproved drugs. Our general approach in dealing with these products in an orderly manner is spelled out in the Marketed Unapproved Drugs CPG. However, this CPG provides notice that any product that is being marketed illegally, and the persons responsible for causing the illegal marketing of the product, are subject to FDA enforcement action at any time.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 502 and 505 (21 U.S.C. 352 and 355)) and under authority delegated to the Deputy Commissioner for Policy (21 CFR 5.20).

Dated: June 6, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–9033 Filed 6–8–06; 8:45 am]

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[3] If a firm continues to manufacture or market a product covered by this notice after the applicable enforcement date has passed, to preserve limited agency resources, FDA may take enforcement action relating to all of the firm's unapproved drugs that require applications at the same time. (See *United States* v. *Sage Pharmaceuticals*, 210 F.3d 475, 479–480 (5th Cir. 2000) (permitting the agency to combine all violations of the act in one proceeding, rather than taking action against a firm with multiple violations of the act in ''piecemeal fashion''.)

[4] We note that the agency does not intend to take action against, or require removal from the market of, carbinoxamine products already in the drug distribution chain on the dates identified in this notice. Such action or removal may be appropriate for other products in other circumstances.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004E–0011]

Determination of Regulatory Review Period for Purposes of Patent Extension; CETROTIDE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CETROTIDE 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 that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit

electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

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 ofextension 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 human drug product 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 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 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 recently approved for marketing the human drug product CETROTIDE (cetrorelix acetate). CETROTIDE is indicated for the inhibition of premature luteinizing hormone surges in women undergoing controlled ovarian stimulation. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CETROTIDE (U.S. Patent No. 5,198,533) from Administrators of the Tulane Educational Fund, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 6, 2004, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CETROTIDE represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CETROTIDE is 2,103 days. Of this time, 1,815 days occurred during the testing phase of the regulatory review period, while 288 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 act) (21 U.S.C. 355(i)) became effective*: November 10, 1994. The applicant claims October 10, 1994, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was November 10, 1994, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: October 29, 1999. The applicant claims October 28, 1999, as the date the new drug application (NDA) for CETROTIDE (NDA 21–197) was initially submitted. However, FDA records indicate that NDA 21–197 was submitted on October 29, 1999.

3. *The date the application was approved*: August 11, 2000. FDA has verified the applicant's claim that NDA 21–197 was approved on August 11, 2000.

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 1,491 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**) written or electronic comments and ask for a redetermination by August 8, 2006. 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 6, 2006. 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.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 2006.

Jane A. Axelrad,

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

[FR Doc. E6–9031 Filed 6–8–06; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0478]

Guidance on Marketed Unapproved Drugs; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Marketed Unapproved Drugs—Compliance Policy Guide.'' The guidance describes how FDA intends to exercise its enforcement discretion with regard to drugs marketed in the United States that do not have required FDA approval for marketing. This document supersedes section 440.100 entitled ''Marketed New Drugs Without Approved NDAs or ANDAs'' (CPG 7132c.02) of the Compliance Policy Guide (CPG). It applies to any new drug required to have FDA approval for marketing, including new drugs covered by the over-the-counter (OTC) review.

DATES: Submit written or electronic 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 (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self addressed adhesive label to assist the office in processing your request. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm.