

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N-0425]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of January 16, 2004 (69 FR 2602). The document announced the proposed collection of information for substances prohibited from use in animal food or feed; animal proteins prohibited in ruminant feed that had been submitted to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1995. The document was published with the incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF-27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 04-1062, appearing on page 2602 in the **Federal Register** of Friday, January 16, 2004, the following correction is made:

1. On page 2602, in the first column, in the heading of the document, "[Docket No. 2002N-0273]", is corrected to read "[Docket No. 2003N-0425]".

Dated: January 21, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E4-132 Filed 1-27-04; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E-0037]

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

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for LUMIGAN 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 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:

Claudia Grillo, Office of Regulatory Policy (HFD-013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240-453-6699

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 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 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 LUMIGAN (bimatoprost). LUMIGAN is indicated

for the reduction of intraocular pressure in patients with open-angle glaucoma or ocular hypertension who are intolerant of other intraocular pressure lowering medications or insufficiently responsive (failed to achieve target IOP determined after multiple measurements over time) to another intraocular pressure lowering medication. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for LUMIGAN (U.S. Patent No. 5,688,819) from Allergan, 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 4, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of LUMIGAN 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 LUMIGAN is 1,967 days. Of this time, 1,787 days occurred during the testing phase of the regulatory review period, while 180 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:* October 29, 1995. The applicant claims October 28, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 29, 1995, 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:* September 18, 2000. FDA has verified the applicant's claim that the new drug application (NDA) for LUMIGAN (NDA 21-275) was initially submitted on September 18, 2000.

3. *The date the application was approved:* March 16, 2001. FDA has verified the applicant's claim that NDA 21-275 was approved on March 16, 2001.

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 907 days of patent term extension.