

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 OP-1 IMPLANT. OP-1 IMPLANT is indicated for use as an alternative to the patient's own bone (autograft) in recalcitrant long bone nonunions where autograft is unfeasible and alternative treatments have failed. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for OP-1 IMPLANT (U.S. Patent No. 5,258,494) from Stryker Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 31, 2001, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of OP-1 IMPLANT represented the first permitted commercial marketing or use of the product. 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 OP-1 IMPLANT is 3,627 days. Of this time, 3,485 days occurred during the testing phase of the regulatory review period, while 142 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* November 14, 1991. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective November 14, 1991.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e):* May 29, 2001. The

applicant claims May 25, 2001, as the date the premarket approval application (PMA) for OP-1 IMPLANT (PMA HO10002/A01) was initially submitted. However, FDA records indicate that PMA HO10002/A01 was submitted on May 29, 2001.

3. *The date the application was approved:* October 17, 2001. FDA has verified the applicant's claim that PMA HO10002/A01 was approved on October 17, 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 1,837 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may by submit to the Dockets Management Branch (see ADDRESSES) written or electronic comments and ask for a redetermination by June 2, 2003. 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 September 29, 2003. 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 Dockets Management Branch. Three copies of any 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 Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 7, 2003.

Jane A. Axelrad,

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

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D-0111]

Draft Guidance for Federal Agencies and State and Local Governments; Potassium Iodide Shelf Life Extension; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for Federal agencies and State and local governments entitled "Potassium Iodide Shelf Life Extension." This document is intended to provide guidance to Federal agencies and to State and local governments on testing to extend the shelf life of stockpiled potassium iodide (KI) tablets. The draft guidance discusses FDA recommendations on the requisite testing for KI tablet shelf life extensions, the qualifications of laboratories suitable to conduct the tests, and issues regarding notification of holders of stockpiled KI tablets as well as end users about changes to batch shelf life once testing has been successfully conducted.

DATES: Submit written or electronic comments on the draft guidance by June 2, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of this draft guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: