DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
Rockville MD 20857

JUN 3 2003

Joanne Robinette
Director, Regulatory Affairs
Consumer Care Division
Bayer Corporation
36 Columbia Road
PO Box 1910
Morristown NJ 07962

Re: 02P-0357/PSA 1

Dear Ms. Robinette:

This letter responds to your petition submitted on behalf of Bayer HealthCare, Consumer Health Division, dated August 2, 2002. Your petition essentially requests FDA not initiate any enforcement action until after September 1, 2003, that is based on a manufacturer's or distributor's failure to bring its products' labeling into compliance with the United States Pharmacopeia (USP) monograph title change from hydroxypropyl methylcellulose to hypromellose.

In response to your request, we have prepared a guidance for industry entitled *Drug Products Containing Ensulizole, Hypromellose, Meradimate, Octinoxate, and Octisalate: Labeling Enforcement Policy.* We have attached a copy of the guidance to this response and also made it available on our website at http://www.fda.gov/cder/guidance/index.htm. The guidance states, among other things, that we intend to exercise our enforcement discretion by not initiating any enforcement action based on a pharmaceutical firm's failure to bring its products' labeling into compliance, before September 1, 2003, with the USP monograph title changes for hypromellose.

Sincerely yours,

William K. Hubbard
Associate Commissioner
for Policy and Planning

Enclosure

02P-0357

PAV1

Kimberly Topper at least 7 days in advance.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

SUPPLEMENTARY INFORMATION: The International Conference on Harmonisation of Technical Requirements for the Registration of Pharmaceuticals for Human Use (ICH) was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health, Labor and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA). The ICH Steering Committee includes representatives from each of the ICH sponsors and Health Canada, the European Free Trade Area and the World Health Organization. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions.

The current ICH process and structure can be found on the Internet at http://www.ich.org.

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Oral presentations from the public will be scheduled between approximately 12:15 p.m. and 1 p.m. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by June 9, 2003, and submit a brief statement of the general nature of the evidence or arguments they which to present, the names and addresses, phone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

The Agenda for the public meeting will be made available on June 9, 2003, via the internet at http://www.fda.gov/cder/calendar/meeting/ich2003.

Information on the ICH 6 Public Conference in Osaka, Japan on November 12–15, 2003, can be obtained via the Internet at http://www.ich.org/ich6bis.html.

Dated: May 28, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13830 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0197]

Guidance for Industry on Drug Products Containing Ensulizole, Hypromellose, Meradimate, Octinoxate, and Octisalate—Labeling Enforcement Policy; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Drug Products Containing Ensulizole, Hypromellose, Meradimate, Octinoxate, and Octisalate—Labeling Enforcement Policy." This guidance discusses how FDA plans to exercise its enforcement discretion after September 1, 2002, with regard to drug products whose labeling does not use the established names for ensulizole, hypromellose, meradimate, octinoxate, and octisalate.

DATES: General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the 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 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 guidance document.

FOR FURTHER INFORMATION CONTACT: Wayne Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

The FDA is announcing the availability of a guidance for industry entitled "Drug Products Containing Ensulizole, Hypromellose, Meradimate, Octinoxate, and Octisalate—Labeling Enforcement Policy." This guidance explains that the agency intends to exercise enforcement discretion by not initiating any enforcement action, until September 1, 2003, based on a firm's failure to bring its products' labeling into compliance with the United State Pharmacopeia (USP) monograph title changes for ensulizole, hypromellose, meradimate, octinoxate, and octisalate, as required by section 502(e)(1)(A)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)(1)(A)(i)).

As explained in detail in the guidance, a series of events has lead to the development of the guidance. These events include USP monograph title changes, changes to the FDA's monograph for over-the-counter (OTC) sunscreen drug products, and the receipt of two petitions regarding these changes and their effective date (September 1, 2002).

We are issuing this level 1 guidance for immediate implementation, consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this issue. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative

approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the guidance. Two paper copies of any mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: May 19, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03-13828 Filed 6-2-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D-0289]

Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA." This guidance will serve as a special control for eight surgical suture devices. This guidance document describes a means by which surgical sutures may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to amend the classification regulations for eight surgical suture devices previously reclassified into class II to specify a special control for those devices.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ-220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301-443-8818. Submit written comments concerning this guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Anthony D. Watson, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-3090, ext. 164.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA." This guidance document describes a means by which surgical suture devices may comply with the requirement of special controls for class II devices. Designation of this guidance document as a special control means that a manufacturer attempting to establish that its device is substantially equivalent to a predicate class II surgical suture will need to address the recommendations in this special control guidance. However, the firm need only show that its device is as safe and effective as a device that meets guidance recommendations. The firm may use alternative approaches if those approaches address the performance, testing, and labeling issues identified in the guidance. This guidance supercedes "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA" issued on December 19, 2002.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on surgical sutures. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

The guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501-3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910-0120). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910-0485.

IV. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document at any time. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

To receive "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA" by fax, call the CDRH Facts-on-Demand system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1387) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including

Guidance for Industry

Drug Products Containing Ensulizole, Hypromellose, Meradimate, Octinoxate, and Octisalate — Labeling Enforcement Policy

U.S. Department of Health and Human Services
Food and Drug Administration
Center for Drug Evaluation and Research (CDER)
May 2003

Procedural

Guidance for Industry

Drug Products Containing Ensulizole, Hypromellose, Meradimate, Octinoxate, and Octisalate — Labeling Enforcement Policy

Additional copies are available from:

Office of Training and Communications
Division of Communications Management
Drug Information Branch (HFD-210)
5600 Fishers Lane
Rockville, MD 20857
(Tel) 301-827-4573

(Internet) http://www.fda.gov/cder/guidance/index/htm

U.S. Department of Health and Human Services
Food and Drug Administration
Center for Drug Evaluation and Research (CDER)
May 2003

Procedural

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Guidance for Industry[1]

Drug Products Containing Ensulizole, Hypromellose, Meradimate, Octinoxate, and Octisalate — Labeling Enforcement Policy

I. INTRODUCTION

This guidance discusses how FDA plans to exercise its enforcement discretion after September 1, 2002, with regard to drug products whose labeling does not use the established names for ensulizole, hypromellose, meradimate, octinoxate, and octisalate.

II. BACKGROUND

A series of actions related to the need for labeling changes for certain drug products has led to the development of this guidance. The actions are outlined briefly here.

A. USP Monograph Title Changes

In the May and June 2000 *Pharmacopeial Forum,* Volume 26, No. 3, the United States Pharmacopeial Convention proposed changes to several United States Pharmacopeia (USP) monographs. These title changes, which shortened the names of certain substances, were made to harmonize USP usage with World Health Organization (WHO) and, in some cases, *European Pharmacopoeia* usage. These changes were finalized on January 2, 2001, in the 3rd *USP 24-NF 19 Supplement.* The Supplement generally went into effect March 1, 2001. However, the

[1] This guidance has been prepared by the Office of Regulatory Policy in the Center for Drug Evaluation and Research (CDER) at the Food and Drug Administration.

monograph title changes discussed in this guidance were given a delayed effective date of September 1, 2002. The following title changes were made:

- *hydroxypropyl methylcellulose* to *hypromellose*
- *menthyl anthranilate* to *meradimate*
- *octyl methoxycinnate* to *octinoxate*
- *octyl salicylate* to *octisalate*
- *phenylbenzimidazole sulfonic acid* to *ensulizole*

Ensulizole, meradimate, octinoxate, and octisalate are active ingredients used in sunscreen drug products for over-the-counter (OTC) human use. Hypromellose is a widely used inactive ingredient and is used to a lesser extent as an active ingredient in pharmaceutical products.

B. Established Names

Section 502(e)(1)(A) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 352(e)(1)(A)) generally requires the label of a drug product to bear the established name of the drug product's active and inactive ingredients. Section 502(e)(3) (21 U.S.C. 352(e)(3)) defines the established name as:

> (A) the applicable official name designated pursuant to section 508 [of the Act], or (B) if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof in such compendium, or (C) if neither clause (A) nor clause (B) of this subparagraph applies, then the common or usual name, if any, of such drug or of such ingredient * * *.

The USP is one of the official compendia recognized in the Act (section 201(j), 21 U.S.C. 321(j)).

Section 508 of the Act (21 U.S.C. 358) authorizes us to designate an official name for any drug if we determine "that such action is necessary or desirable in the interest of usefulness and simplicity." We do not, however, routinely designate official names for drug products under section 508 of the Act. In the absence of designation by FDA of an official name, the current compendial name will ordinarily be used as the established name (or if there is no compendial name, the common and usual name would be considered to be the established name). See 21 CFR 299.4(e). Because we have not designated official names for these substances, their compendial names (i.e., *ensulizole*, *hypromellose*, *meradimate*, *octinoxate*, and *octisalate*) would be the established names of the substances.

C. Citizen Petitions

On July 26, 2002, the Cosmetic, Toiletry, and Fragrance Association (CTFA) submitted a petition requesting that we publish a rule amending §§ 352.10 and 352.20 to provide a September 1, 2003, effective date for the active ingredient name changes to *ensulizole*,

meradimate, *octinoxate*, and *octisalate*.[2] As an alternative, the CTFA requested that we provide notice to industry that we will exercise enforcement discretion and not enforce the requirement that labeling of drug products subject to the OTC sunscreen monograph bear the new names until September 1, 2003.

On August 2, 2002, Bayer Health Care, Consumer Health Division also submitted a petition essentially requesting us to stay, until September 1, 2003, any enforcement action based on a manufacturer's or distributor's failure to bring its products' labeling into compliance with the USP monograph title change from *hydroxypropyl methylcellulose* to *hypromellose*.[3]

III. EXERCISE OF ENFORCEMENT DISCRETION

As we discuss in further detail in our response to CTFA's petition, we determined that industry could have experienced uncertainty regarding our timing for implementation of the USP name changes for sunscreen products. In addition, we have determined that exercising our enforcement discretion regarding all of the labeling changes discussed in this guidance is appropriate to avoid the need for drug manufacturers and distributors to incur extraordinary expenses in implementing the labeling changes immediately or to cease marketing certain drug products whose labeling cannot be changed in a timely manner. As the petitioners state, these ingredients are found in numerous sunscreen and other pharmaceutical products.

While harmonization of drug names with WHO and the *European Pharmacopoeia* is an important goal of both USP and FDA, this limited use of enforcement discretion should not lead to any significant confusion. Most pharmacists or other individuals who are knowledgeable about inactive ingredients or active ingredients in sunscreen and ophthalmic products are familiar with the names *hydroxypropyl methylcellulose*, *menthyl anthranilate*, *octyl methoxycinnate*, *octyl salicylate*, and *phenylbenzimidazole sulfonic acid*. These names have been used for years, and the continued use of the names for one more year should not cause any significant problems.

Accordingly, we intend to exercise our enforcement discretion by not initiating any enforcement action based on a firm's failure to bring its products' labeling into compliance, before September 1, 2003, with the USP monograph title changes for ensulizole, hypromellose, meradimate, octinoxate, and octisalate.

We note, however, that the USP is currently considering a large number of similar changes. Manufacturers and distributors are responsible for keeping up to date on these changes and any other changes being considered for, or made to, the USP. The *USP-NF* and the *Pharmacopeial Forum* are available by purchase or subscription. The changes will be first proposed in the *Pharmacopeial Forum*. Interested parties have opportunities to comment on proposed changes and request appropriate effective dates. While we intend to exercise our enforcement discretion in relation to the established names discussed in this guidance, manufacturers should

[2] See docket number 78N-0038/PSA3.

[3] See docket number 02P-0357/PSA1.

not assume we will exercise such discretion in the future with respect to other established name changes.