DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0871]

Servo Deldon BV; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Servo Deldon BV has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyethylene glycol monoisotridecyl ether sulfate, sodium salt as a component of coatings on paper and paperboard intended for use in contact with dry food.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4630) has been filed by Servo Deldon BV, c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) to provide for the safe use of polyethylene glycol monoisotridecyl ether sulfate, sodium salt as a component of coatings on paper and paperboard intended for use in contact with dry food.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: October 1, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97E–0367]

Determination of Regulatory Review Period for Purposes of Patent Extension; Normiflo®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Normiflo® 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 Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 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 Commissioner 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 Normiflo® (ardeparin sodium). Normiflo® is indicated for the prevention of deep venous thrombosis which may lead to pulmonary embolism following knee replacement surgery. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Normiflo® (U.S. Patent No. 4,757,057) from Pharmacia & Upjohn Aktiebolag, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated November 7, 1997, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Normiflo® 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 Normiflo® is 3,503 days. Of this time, 1,883 days occurred during the testing phase of the regulatory review period, while 1,620 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* October 22, 1987. The applicant claims September 21, 1987, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 22, 1987, 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 of the act:* December 16, 1992. The applicant claims February 28, 1992, as the date the new drug application (NDA) for Normiflo® (NDA 20–227) was initially submitted. However, FDA records indicate that NDA 20–227 was incomplete. FDA refused this application and notified the applicant of this fact by letter dated April 20, 1992. The completed NDA was then submitted on December 16, 1992, which