

## § 60.26

notification to the applicant, and publish the revision in the FEDERAL REGISTER, including a statement giving the reasons for the revision.

[53 FR 7305, Mar. 7, 1988, as amended at 59 FR 14364, Mar. 28, 1994; 67 FR 9585, Mar. 4, 2002]

### § 60.26 Final action on regulatory review period determinations.

(a) FDA will consider a regulatory review period determination to be final upon expiration of the 180-day period for filing a due diligence petition under § 60.30 unless FDA receives:

(1) New information from PTO records, FDA records, or FDA centers that affects the regulatory review period determination;

(2) A request under § 60.24 for revision of the regulatory review period determination;

(3) A due diligence petition filed under § 60.30; or

(4) A request for a hearing filed under § 60.40.

(b) FDA will notify PTO that the regulatory review period determination is final upon:

(1) The expiration of the 180-day period for filing a due diligence petition; or

(2) If FDA has received a request for a revision, a due diligence petition, or a request for a hearing, upon resolution of the request for a revision, the petition, or the hearing, whichever is later. FDA will send a copy of the notification to the applicant and file a copy of the notification in the docket established for the application in FDA's Dockets Management Branch (HFA-305), rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

[53 FR 7305, Mar. 7, 1988, as amended at 59 FR 14364, Mar. 28, 1994]

### § 60.28 Time frame for determining regulatory review periods.

(a) FDA will determine the regulatory review period for a product within 30 days of the receipt of a written request from PTO for such a determination and a copy of the patent term restoration application.

(b) FDA may extend the 30-day period if:

(1) A related FDA action that may affect the regulatory review period determination is pending; or

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(2) PTO requests that FDA temporarily suspend the determination process; or

(3) PTO or FDA receives new information about the product that warrants an extension of the time required for the determination of the regulatory review period.

(c) This section does not apply to applications withdrawn by the applicant or applications that PTO determines are ineligible for patent term restoration.

## Subpart D—Due Diligence Petitions

### § 60.30 Filing, format, and content of petitions.

(a) Any person may file a petition with FDA, no later than 180 days after the publication of a regulatory review period determination under § 60.20, that challenges FDA's determination by alleging that the applicant for patent term restoration did not act with due diligence in seeking FDA approval of the product during the regulatory review period.

(b) The petition shall be filed in accordance with § 10.20, under the docket number of the FEDERAL REGISTER notice of the agency's regulatory review period determination, and shall be in the format specified in § 10.30. The petition shall contain the information specified in § 10.30 and any additional information required by this subpart. If any provision of § 10.20 or § 10.30 is inconsistent with any provision of this part, FDA will consider the petition in accordance with this part.

(c) The petition shall claim that the applicant did not act with due diligence during some part of the regulatory review period and shall set forth sufficient facts, including dates if possible, to merit an investigation by FDA of whether the applicant acted with due diligence.

(d) The petition shall contain a certification that the petitioner has served a true and complete copy of the petition upon the applicant by certified or registered mail (return receipt requested) or by personal delivery.

[53 FR 7305, Mar. 7, 1988, as amended at 67 FR 9585, Mar. 4, 2002]