## DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration [Docket No. 95D-0377]

## Advertising and Promotion; Draft Guidances; Republication

Note: This document was originally published at 60 FR 62471, Wednesday, December 6, 1995. Certain text in the guidances were inadvertently omitted. For the convenience of the reader, the document is being republished in its entirety.

AGENCY: Food and Drug Administration,

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing two draft guidance documents entitled "Guidance to Industry on Dissemination of Reprints of Certain Published, Original Data" and "Guidance for Industry Funded Dissemination of Reference Texts." These draft guidances are related to the dissemination, by sponsors of human and animal drugs, medical devices, and biological products, of certain reprints of journal articles discussing FDA-approved products, and reference texts (medical textbooks and compendia). The draft guidances describe circumstances under which the agency would exercise its discretion to allow the dissemination of these reprints and reference texts to health care professionals.

**DATES:** Written comments by January 5, 1996.

ADDRESSES: Submit written comments on the draft guidance documents to the Dockets Management Branch (HFA—305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, or FAX at 301–594–3215.

FOR FURTHER INFORMATION CONTACT: Ilisa B. G. Bernstein, Office of Policy (HF-23), Food and Drug Administration, 5600 Fishers Lane, rm. 15–74, Rockville, MD 20857, 301-827-3380, or via internet at IBernste@bangate.fda.gov. SUPPLEMENTARY INFORMATION: Health care professionals have always been able to obtain, from a number of different sources, journal articles and reference texts (i.e., medical textbooks and compendia), that discuss human and animal drugs, medical devices, and biological products. These journal articles and reference texts are commercially available and may be obtained from publishers, libraries, online data bases, colleagues, bookstores, companies upon request, or other sources. Sponsors of human and animal drugs, medical devices, and biological

products frequently have expressed a desire to disseminate reprints of journal articles and reference texts to health care professionals.

FDA traditionally has taken the position that sponsors who wish to distribute articles and reference texts containing information that is inconsistent with the FDA-approved labeling for a product may be in conflict with the Federal Food, Drug, and Cosmetic Act and implementing regulations. The agency's position is based on its mission to help ensure the safety and efficacy of human and animal drugs, medical devices, and biological products. Sponsors seeking approval or clearance to market these products must demonstrate to FDA that the products are safe and effective for their intended use(s). Permitting sponsors to freely disseminate information that is inconsistent with the FDA-approved or cleared use(s) would diminish the incentive for sponsors to perform the clinical studies which are necessary to verify that the product is safe and effective for the unapproved use. Furthermore, information disseminated by a biased source may have a greater potential to mislead the health care professional.

FDA believes that journal articles and reference texts are often useful to health care professionals. Accordingly, the agency has reviewed its policies to determine if modifications can be made without jeopardizing the integrity of the statutorily mandated standard that marketed drugs be safe and effective and have adequate directions for their intended use(s). After careful review, the agency is proposing to modify two of its policies at this time.

First, under one proposed draft guidance, the agency would allow sponsors to disseminate, under certain circumstances, journal articles that report the results of well-controlled studies, provided they represent the peer-reviewed, published version of original efficacy trials used to support approval, licensure, or clearance. Second, under the other proposed draft guidance, the agency would allow sponsors to disseminate, under certain circumstances, reference texts that discuss human or animal drugs, medical devices, or biological products. FDA has prepared two draft guidance documents describing the proposed circumstances under which the agency would exercise its discretion regarding the dissemination of these materials by sponsors.

FDA is particularly interested in receiving comments on whether the reprints discussed in the "Guidance to Industry on Dissemination of Reprints of Certain Published, Original Data" should be from "peer-reviewed" journals. If so, please comment on what constitutes a "peer-reviewed" journal and what benefits would be afforded if these reprints are from "peer-reviewed" journals.

Interested persons may, on or before January 5, 1996, submit to the Dockets Management Branch (address and FAX number above) written comments on the draft guidance documents. Two copies of any comments 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. The draft guidance documents and received comments are available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The texts of the draft guidance documents follow:

Guidance to Industry on Dissemination of Reprints of Certain Published, Original Data<sup>1</sup>

## I. Purpose of Guidance

Sponsors frequently want to disseminate reprints of articles reporting the results of the effectiveness trials that have been relied on by FDA in its approval or clearance of a drug, device, or biologic product. However, such articles may contain effectiveness rates, data, analyses, uses, regimens, or other information that is different from the approved labeling, and might, if disseminated by the sponsor, be considered violative promotional activities.

Nonetheless, the agency intends to allow the dissemination of reprints of articles that represent the peer-reviewed, published version of original efficacy trials, under the circumstances described in section II. below.

II. Circumstances for Dissemination of Certain Journal Articles Discussing FDA-Approved Products

1. The principal subject of the article should be the use(s) or indication(s) that has been approved by FDA. The article should be published in accordance with the regular peer-review procedure of the journal in which it is published, and the article reports the original study that was represented by the sponsor, submitted to FDA, and accepted by the agency as one of the adequate and well controlled studies providing evidence of effectiveness. In the case of a medical device,

<sup>&</sup>lt;sup>1</sup>This guidance does not apply to reprints of articles that discuss the specific prohibited uses of animal drugs listed in the FDA, Center for Veterinary Medicine Compliance Policy Guide 7125.06 or the Animal Medicinal Drug Use Clarification Act implementing regulations. Although this guidance does not create or confer any rights on any person and does not operate to bind FDA in any way, it does represent the agency's current thinking on the dissemination of reprints of certain published, original data. The agency will consider individual circumstances on a case-bycase basis.