Table of Contents

<table>
<thead>
<tr>
<th>Explanation</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>v</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Title 21:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter I—Food and Drug Administration, Department of Health and Human Services</td>
<td>3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Finding Aids:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Material Approved for Incorporation by Reference</td>
<td>449</td>
</tr>
<tr>
<td>Table of CFR Titles and Chapters</td>
<td>451</td>
</tr>
<tr>
<td>Alphabetical List of Agencies Appearing in the CFR</td>
<td>469</td>
</tr>
<tr>
<td>List of CFR Sections Affected</td>
<td>479</td>
</tr>
</tbody>
</table>
Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 21 CFR 1.1 refers to title 21, part 1, section 1.
Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

- Title 1 through Title 16..........................as of January 1
- Title 17 through Title 27..........................as of April 1
- Title 28 through Title 41..........................as of July 1
- Title 42 through Title 50..........................as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cutoff date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request.
Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1986, consult either the List of CFR Sections Affected, 1949-1963, 1964-1972, or 1973-1985, published in seven separate volumes. For the period beginning January 1, 1986, a “List of CFR Sections Affected” is published at the end of each CFR volume.

INCORPORATION BY REFERENCE

What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

What is a proper incorporation by reference? The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR part 51 are met. Some of the elements on which approval is based are:

(a) The incorporation will substantially reduce the volume of material published in the Federal Register.
(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.
(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR part 51.

Properly approved incorporations by reference in this volume are listed in the Finding Aids at the end of this volume.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table II). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of “Title 3—The President” is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the “Contents” entries in the daily Federal Register.
A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

April 1, 1999.
Title 21—Food and Drugs is composed of nine volumes. The parts in these volumes are arranged in the following order: Parts 1-99, 100-169, 170-199, 200-299, 300-499, 500-599, 600-799, 800-1299 and 1300-end. The first eight volumes, containing parts 1-1299, comprise Chapter I—Food and Drug Administration, Department of Health and Human Services. The ninth volume, containing part 1300 to end, includes Chapter II—Drug Enforcement Administration, Department of Justice, and Chapter III—Office of National Drug Control Policy. The contents of these volumes represent all current regulations codified under this title of the CFR as of April 1, 1999.

Redesignation tables for Chapter I—Food and Drug Administration appear in the Finding Aids section for the volumes containing parts 170-199 and 500-599.

For this volume, Gregory R. Walton was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.
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(This book contains parts 1 to 99)

CHAPTER I—Food and Drug Administration, Department of Health and Human Services ............................................... 1

CROSS REFERENCES: Food Safety and Inspection Service, Department of Agriculture: 9 CFR chapter III.
U.S. Customs Service, Department of the Treasury: See Customs Duties, 19 CFR chapter I.
Internal Revenue Service, Department of the Treasury: See Internal Revenue, 26 CFR chapter I.
Bureau of Alcohol, Tobacco, and Firearms, Department of the Treasury: See Alcohol, Tobacco Products and Firearms, 27 CFR chapter I.
# CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

## SUBCHAPTER A—GENERAL

<table>
<thead>
<tr>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>General enforcement regulations</td>
</tr>
<tr>
<td>14</td>
<td>General administrative rulings and decisions</td>
</tr>
<tr>
<td>20</td>
<td>Product jurisdiction</td>
</tr>
<tr>
<td>24</td>
<td>Delegations of authority and organization</td>
</tr>
<tr>
<td>71</td>
<td>Enforcement policy</td>
</tr>
<tr>
<td>80</td>
<td>Administrative practices and procedures</td>
</tr>
<tr>
<td>114</td>
<td>Electronic records; electronic signatures</td>
</tr>
<tr>
<td>118</td>
<td>Formal evidentiary public hearing</td>
</tr>
<tr>
<td>135</td>
<td>Public hearing before a public board of inquiry</td>
</tr>
<tr>
<td>140</td>
<td>Public hearing before a public advisory committee</td>
</tr>
<tr>
<td>166</td>
<td>Public hearing before the Commissioner</td>
</tr>
<tr>
<td>169</td>
<td>Regulatory hearing before the Food and Drug Administration</td>
</tr>
<tr>
<td>175</td>
<td>Civil money penalties hearings</td>
</tr>
<tr>
<td>187</td>
<td>Standards of conduct and conflicts of interest</td>
</tr>
<tr>
<td>189</td>
<td>Public information</td>
</tr>
<tr>
<td>218</td>
<td>Protection of privacy</td>
</tr>
<tr>
<td>234</td>
<td>Environmental impact considerations</td>
</tr>
<tr>
<td>245</td>
<td>Mutual recognition of pharmaceutical good manufacturing practice reports, medical device quality system audit reports, and certain medical device product evaluation reports: United States and The European Community</td>
</tr>
<tr>
<td>277</td>
<td>Protection of human subjects</td>
</tr>
<tr>
<td>285</td>
<td>Financial disclosure by clinical investigators</td>
</tr>
<tr>
<td>288</td>
<td>Institutional Review Boards</td>
</tr>
<tr>
<td>297</td>
<td>Good laboratory practice for nonclinical laboratory studies</td>
</tr>
<tr>
<td>311</td>
<td>Patent term restoration</td>
</tr>
<tr>
<td>318</td>
<td>Color additives</td>
</tr>
<tr>
<td>Part</td>
<td>Title</td>
</tr>
<tr>
<td>------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>71</td>
<td>Color additive petitions</td>
</tr>
<tr>
<td>73</td>
<td>Listing of color additives exempt from certification</td>
</tr>
<tr>
<td>74</td>
<td>Listing of color additives subject to certification</td>
</tr>
<tr>
<td>80</td>
<td>Color additive certification</td>
</tr>
<tr>
<td>81</td>
<td>General specifications and general restrictions for provisional color additives for use in foods, drugs, and cosmetics</td>
</tr>
<tr>
<td>82</td>
<td>Listing of certified provisionally listed colors and specifications</td>
</tr>
<tr>
<td>83-98</td>
<td>[Reserved]</td>
</tr>
<tr>
<td>99</td>
<td>Dissemination of information on unapproved/new uses for marketed drugs, biologics, and devices</td>
</tr>
</tbody>
</table>

**Editorial Note:** For nomenclature changes to chapter I see 59 FR 14366, Mar. 28, 1994.
SUBCHAPTER A—GENERAL

PART 1—GENERAL ENFORCEMENT REGULATIONS

Subpart A—General Provisions

Sec. 1.1 General.
1.3 Definitions.
1.4 Authority citations.

Subpart B—General Labeling Requirements

1.20 Presence of mandatory label information.
1.21 Failure to reveal material facts.
1.23 Procedures for requesting variations and exemptions from required label statements.
1.24 Exemptions from required label statements.

Subparts C–D [Reserved]

Subpart E—Imports and Exports

1.83 Definitions.
1.90 Notice of sampling.
1.91 Payment for samples.
1.94 Hearing on refusal of admission.
1.95 Application for authorization to relabel and recondition.
1.96 Granting of authorization to relabel and recondition.
1.97 Bonds.
1.99 Costs chargeable in connection with relabeling and reconditioning inadmissible imports.


Source: 42 FR 15553, Mar. 22, 1977, unless otherwise noted.

Subpart A—General Provisions

§ 1.1 General.

(a) The provisions of regulations promulgated under the Federal Food, Drug, and Cosmetic Act with respect to the doing of any act shall be applicable also to the causing of such act to be done.

(b) The definitions and interpretations of terms contained in section 201 of the Federal Food, Drug, and Cosmetic Act shall be applicable also to such terms when used in regulations promulgated under that act.

(c) The definition of package in §1.20 and of principal display panel in §§101.1, 201.60, 501.1, 701.10 and 801.60 of this chapter; and the requirements pertaining to uniform location, lack of qualification, and separation of the net quantity declaration in §§101.105(f), 201.62(e), 501.105(f), 701.13(f) and 801.62(e) of this chapter to type size requirements for net quantity declaration in §§101.105(i), 201.62(h), 501.105(i), 701.13(i) and 801.62(h) of this chapter, to initial statement of ounces in the dual declaration of net quantity in §§101.105(j) and (m), 201.62(j) and (k), 501.105(j) and (m), 701.13(j) and (m) and 801.62(i) and (k) of this chapter, to initial statement of square inches in declaration of net quantity in §§201.62(m), 701.13(o) and 801.62(m) of this chapter, to initial statement of square inches in declaration of net quantity in §§201.62(n), 701.13(p) and 801.62(n) of this chapter, to prohibition of certain supplemental net quantity statements in §§101.105(o), 201.62(o), 501.105(o), 701.13(q) and 801.62(o) of this chapter, and to servings representations in §501.8 of this chapter are provided for solely by the Fair Packaging and Labeling Act. The other requirements of this part are issued under both the Fair Packaging and Labeling Act and the Federal Food, Drug, and Cosmetic Act, or by the latter act solely, and are not limited in their application by section 10 of the Fair Packaging and Labeling Act.


§ 1.3 Definitions.

(a) Labeling includes all written, printed, or graphic matter accompanying an article at any time while such article is in interstate commerce or held for sale after shipment or delivery in interstate commerce.

(b) Label means any display of written, printed, or graphic matter on the immediate container of any article, or any such matter affixed to any consumer commodity or affixed to or appearing upon a package containing any consumer commodity.
§ 1.4 Authority citations.

(a) For each part of its regulations, the Food and Drug Administration includes a centralized citation of all of the statutory provisions that provide authority for any regulation that is included in that part.

(b) The agency may rely on any one or more of the authorities that are listed for a particular part in implementing or enforcing any section in that part.

(c) All citations of authority in this chapter will list the applicable sections in the organic statute if the statute is the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, or the Fair Packaging and Labeling Act. References to an act or a section thereof include references to amendments to that act or section. These citations will also list the corresponding United States Code (U.S.C.) sections. For example, a citation to section 701 of the Federal Food, Drug, and Cosmetic Act would be listed: Sec. 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371).

(d) If the organic statute is one other than those specified in paragraph (c) of this section, the citations of authority in this chapter generally will list only the applicable U.S.C. sections. For example, a citation to section 552 of the Administrative Procedure Act would be listed: 5 U.S.C. 552. The agency may, where it determines that such measures are in the interest of clarity and public understanding, list the applicable sections in the organic statute and the corresponding U.S.C. section in the same manner set out in paragraph (c) of this section. References to an act or a section thereof include references to amendments to that act or section.

(e) Where there is no U.S.C. provision, the agency will include a citation to the U.S. Statutes at Large. Citations to the U.S. Statutes at Large will refer to volume and page.

(f) The authority citations will include a citation to executive delegations (i.e., Executive Orders), if any, necessary to link the statutory authority to the agency.

54 FR 39630, Sept. 27, 1989]
§ 1.24 Exemptions from required label statements.

The following exemptions are granted from label statements required by this part:

(a) Foods. (1) While held for sale, a food shall be exempt from the required declaration of net quantity of contents specified in this part if said food is received in bulk containers at a retail establishment and is accurately weighed, measured, or counted either within the view of the purchaser or in compliance with the purchaser’s order.

(2) Random food packages, as defined in §101.105(j) of this chapter, bearing labels declaring net weight, price per pound or per specified number of pounds, and total price shall be exempt from the type size, dual declaration, declaration is impracticable, or results in deception or unfair competition. Section 502(b) of the act provides for the establishment by regulation of reasonable variations and exemptions for small packages from the required declaration of net quantity of contents. Section 5(b) of the Fair Packaging and Labeling Act provides for the establishment by regulation of reasonable variations and exemptions for small packages from the required declaration of net quantity of contents. Section 5(b) of the Fair Packaging and Labeling Act applies, pursuant to parts 10, 12, 13, 14, 15, 16, and 19 of this chapter.

§ 1.25 Procedures for requesting variations and exemptions from required label statements.

Section 403(e) of the act (in this part 1, the term act means the Federal Food, Drug, and Cosmetic Act) provides for the establishment by regulation of reasonable variations and exemptions for small packages from the required declaration of net quantity of contents. Section 403(i) of the act provides for the establishment by regulation of exemptions from the required declaration of ingredients where such declaration is impracticable, or results in deception or unfair competition. Section 5(b) of the Fair Packaging and Labeling Act provides for the establishment by regulation of reasonable variations and exemptions for small packages from the required declaration of net quantity of contents. Section 5(b) of the Fair Packaging and Labeling Act applies, pursuant to parts 10, 12, 13, 14, 15, 16, and 19 of this chapter.
§ 1.24  

and placement requirements of §101.105 of this chapter if the accurate statement of net weight is presented conspicuously on the principal display panel of the package. In the case of food packed in random packages at one place for subsequent shipment and sale at another, the price sections of the label may be left blank provided they are filled in by the seller prior to retail sale. This exemption shall also apply to uniform weight packages of cheese and cheese products labeled in the same manner and by the same type of equipment as random food packages exempted by this paragraph (a)(2) except that the labels shall bear a declaration of price per pound and not price per specified number of pounds.

(3) Individual serving-size packages of foods containing less than 1/2 ounce or less than 1/2 fluid ounce for use in restaurants, institutions, and passenger carriers, and not intended for sale at retail, shall be exempt from the required declaration of net quantity of contents specified in this part.

(4) Individually wrapped pieces of penny candy and other confectionery of less than one-half ounce net weight per individual piece shall be exempt from the labeling requirements of this part when the container in which such confectionery is shipped is in conformance with the labeling requirements of this part. Similarly, when such confectionery items are sold in bags or boxes, such items shall be exempt from the labeling requirements of this part, including the required declaration of net quantity of contents specified in this part when the declaration on the bag or box meets the requirements of this part.

(5)(i) Soft drinks packaged in bottles shall be exempt from the placement requirements for the statement of identity prescribed by §101.3 (a) and (d) of this chapter if such statement appears conspicuously on the bottle closure. When such soft drinks are marketed in a multiunit retail package, the multiunit retail package shall be exempt from the statement of identity declaration requirements prescribed by §101.3 of this chapter if the statement of identity on the unit container is not obscured by the multiunit retail package.

(ii) A multiunit retail package for soft drinks shall be exempt from the declaration regarding name and place of business required by §101.5 of this chapter if the package does not obscure the declaration on unit containers or if it bears a statement that the declaration can be found on the unit containers and the declaration on the unit containers complies with §101.5 of this chapter. The declaration required by §101.5 of this chapter may appear on the top or side of the closure of bottled soft drinks if the statement is conspicuous and easily legible.

(iii) Soft drinks packaged in bottles which display other required label information only on the closure shall be exempt from the placement requirements for the declaration of contents prescribed by §101.105(f) of this chapter if the required content declaration is blown, formed, or molded into the surface of the bottle in close proximity to the closure.

(iv) Where a trademark on a soft drink package also serves as, or is, a statement of identity, the use of such trademark on the package in lines not parallel to the base on which the package rests shall be exempted from the requirement of §101.3(d) of this chapter that the statement be in lines parallel to the base so long as there is also at least one statement of identity in lines generally parallel to the base.

(v) A multiunit retail package for soft drinks in cans shall be exempt from the declaration regarding name and place of business required by §101.5 of this chapter if the package does not obscure the declaration on unit containers or if it bears a statement that the declaration can be found on the unit containers and the declaration on the unit containers complies with §101.5 of this chapter. The declaration required by §101.5 of this chapter may appear on the top of soft drinks in cans if the statement is conspicuous and easily legible, provided that when the declaration is embossed, it shall appear in type size at least one-eighth inch in height, or if it is printed, the type size shall not be less than one-sixteenth inch in height. The declaration may follow the curvature of the lid of the can and shall not be removed or obscured by the tab which opens the can.
(6)(i) Ice cream, french ice cream, ice milk, fruit sherbets, water ices, quiescently frozen confections (with or without dairy ingredients), special dietary frozen desserts, and products made in semblance of the foregoing, when measured by and packaged in ½-liquid pint and ½-gallon measure-containers, as defined in the “Measure Container Code of National Bureau of Standards Handbook 44,” Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices, Sec. 4.45 “Measure-Containers,” which is incorporated by reference, are exempt from the requirements of §101.105(b)(2) of this chapter to the extent that net contents of 8±fluid ounces and 64±fluid ounces (or 2 quarts) may be expressed as ½ pint and ½ gallon, respectively. Copies are available from the Center for Food Safety and Applied Nutrition (HFS-150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(ii) The foods named in paragraph (a)(6)(i) of this section, when measured by and packaged in 1±liquid pint, 1±liquid quart, and 1±gallon measure-containers, as defined in the “Measure Container Code of National Bureau of Standards Handbook 44,” Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices, Sec. 4.45 “Measure-Containers,” which is incorporated by reference, are exempt from the requirements of §101.105(b)(2) of this chapter to the extent that net contents of 8±fluid ounces and 64±fluid ounces (or 2 quarts) may be expressed as ½ pint and ½ gallon, respectively. Copies are available from the Center for Food Safety and Applied Nutrition (HFS-150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(iii) The foods named in paragraph (a)(6)(i) of this section, when measured by and packaged in ½-liquid pint, 1-liquid quart, and 1-gallon measured-containers, as defined in the “Measure Container Code of National Bureau of Standards Handbook 44,” Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices, Sec. 4.45 “Measure-Containers,” which is incorporated by reference, are exempt from the requirements of §101.105(b)(2) of this chapter to the extent that net contents of 8±fluid ounces and 64±fluid ounces (or 2 quarts) may be expressed as ½ pint and ½ gallon, respectively.

(ii) The products listed in paragraph (a)(7)(i) of this section, when packaged in glass or plastic containers of ½-pint, 1-pint, 1-quart, ½-gallon, and 1-gallon capacities are exempt from the placement requirement of §101.105(f) of this chapter that the declaration of net contents be located within the bottom 30 percent of the principal display panel, provided that other required label information is conspicuously displayed on the cap or outside closure and the required net quantity of contents declaration is conspicuously blown, formed, or molded into or permanently applied to that part of the glass or plastic container that is at or above the shoulder of the container.
§ 1.24 21 CFR Ch. I (4-1-99 Edition)

gallon capacities are exempt from the dual net-contents declaration require-
ment of §101.105(j) of this chapter.

(8) Wheat flour products, as defined by §§ 137.105, 137.155, 137.160, 137.165, 137.170, 137.175, 137.180, 137.185, 137.200, and 137.205 of this chapter, packaged:

(i) In conventional 2-, 5-, 10-, 25-, 50-, and 100-pound packages are ex-
empt from the placement requirement of §101.105(f) of this chapter that the declaration of net contents be located within the bottom 30 percent of the area of the principal display panel of the label; and

(ii) In conventional 2-pound packages are exempt from the dual net-contents declaration requirement of §101.105(j) of this chapter provided the quantity of contents is expressed in pounds.

(9)(i) Twelve shell eggs packaged in a carton designed to hold 1 dozen eggs and designed to permit the division of such carton by the retail customer at the place of purchase into two portions of one-half dozen eggs each are exempt from the labeling requirements of this part with respect to each portion of such divided carton if the carton, when undivided, is in conformance with the labeling requirements of this part.

(ii) Twelve shell eggs packaged in a carton designed to hold 1 dozen eggs are exempt from the placement require-
ments for the declaration of contents prescribed by §101.105(f) of this chapter if the required content declara-
tion is otherwise placed on the prin-
cipal display panel of such carton and

if, in the case of such cartons designed to permit division by retail customers into two portions of one-half dozen eggs each, the required content dec-
laration is placed on the principal display panel in such a manner that the context of the content declaration is destroyed upon division of the carton.

(10) Butter as defined in 42 Stat. 1500

(excluding whipped butter):

(i) In 8-ounce and in 1-pound pack-
ages is exempt from the requirements of §101.105(f) of this chapter that the net contents declaration be placed within the bottom 30 percent of the area of the principal display panel;

(ii) In 1-pound packages is exempt from the requirements of §101.105(j)(1) of this chapter that such declaration be in terms of ounces and pounds, to per-
mit declaration of “1-pound” or “one pound”; and

(iii) In 4-ounce, 8-ounce, and 1-pound packages with continuous label copy wrapping is exempt from the require-
ments of §§101.3 and 101.105(f) of this chapter that the statement of identity and net contents declaration appear in lines generally parallel to the base on which the package rests as it is de-
signed to be displayed, provided that such statement and declaration are not so positioned on the label as to be mis-
leading or difficult to read as the pack-
age is customarily displayed at retail.

(11) Margarine as defined in §166.110 of this chapter and imitations thereof in 1-pound rectangular packages, except for packages containing whipped or soft margarine or packages that contain more than four sticks, are ex-
empt from the requirement of §101.105(f) of this chapter that the decl-
aration of the net quantity of contents appear within the bottom 30 percent of the area of the principal display panel and from

the requirement of §101.105(j)(1) of this chapter that such declaration be ex-
pressed both in ounces and in pounds to
permit declaration of “1-pound” or
“one pound,” provided an accurate
statement of net weight appears con-
spicuously on the principal display
panel of the package.

(12) Corn flour and related products,
as they are defined by §§ 137.211, 137.215, and §§ 137.230 through 137.290 of this chapter, packaged in conventional 5-, 10-, 25-, 50-, and 100-pound bags are ex-
empt from the placement requirement of §101.105(f) of this chapter that the declaration of net contents be located within the bottom 30 percent of the area of the principal display panel of the label.

(13)(i) Single strength and less than
single strength fruit juice beverages, imitations thereof, and drinking water when packaged in glass or plastic con-
tainers of ½-pint, 1-pint, 1-quart, ½-
gallon, and 1-gallon capacities are ex-
empt from the placement requirement of §101.105(f) of this chapter that the declaration of net contents be located within the bottom 30 percent of the area of the principal display panel:

Provided, That other required label information is conspicuously displayed on the cap or outside closure and the required net
quantity of contents declaration is conspicuously blown, formed, or mold-
ed into or permanently applied to that part of the glass or plastic container
that is at or above the shoulder of the container.

(ii) Single strength and less than single strength fruit juice beverages, imita-
tions thereof, and drinking water when packaged in glass, plastic, or paper (fluid milk type) containers of 1-
pint, 1-quart, and 1½-gallon capacities are exempt from the dual net-contents
declaration requirement of §101.105(j) of this chapter.

(iii) Single strength and less than single strength fruit juice beverages, imita-
tions thereof, and drinking water when packaged in glass, plastic, or paper (fluid milk type) containers of 8-
and 64-fluid-ounce capacity, are exempt from the requirements of §101.105(b)(2) of this chapter to the ex-
tent that net contents of 8 fluid ounces and 64 fluid ounces (or 2 quarts) may be expressed as ½ pint (or half pint) and ½
gallon (or half gallon), respectively.

(14) The unit containers in a multi-
unit or multicomponent retail food
package shall be exempt from regula-
tions of section 403 (e)(1), (g)(2), (i), (k), and (q) of the act with respect to
the requirements for label declaration
of the name and place of business of
the manufacturer, packer, or dis-
tributor; label declaration of ingredi-
ents; and nutrition information when:

(i) The multiunit or multicomponent
retail food package labeling meets all
the requirements of this part;

(ii) The unit containers are securely
enclosed within and not intended to be
separated from the retail package
under conditions of retail sale; and

(iii) Each unit container is labeled
with the statement "This Unit Not La-
beled For Retail Sale" in type size not
less than one-sixteenth of an inch in
height. The word "Individual" may be
used in lieu of or immediately pre-
ceding the word "Retail" in the state-
ment.

(b) Drugs. Liquid over-the-counter
veterinary preparations intended for
injection shall be exempt from the de-
claration of net quantity of contents in
terms of the U.S. gallon of 231 cubic
inches and quart, pint, and fluid-ounce
subdivisions thereof as required by
§201.62 (b), (i), and (j) of this chapter,
and from the dual declaration require-
ments of §201.62(i) of this chapter, if
such declaration of net quantity of
contents is expressed in terms of the
liter and milliliter, or cubic centi-
meter, with the volume expressed at 68
°F (20 °C).

(c) Cosmetics. Cosmetics in packages
containing less than one-fourth ounce
avoirdupois or one-eighth fluid ounce
shall be exempt from compliance with
the requirements of section 602(b)(2) of
the Federal Food, Drug, and Cosmetic
Act and section 4(a)(2) of the Fair
Packaging and Labeling Act:

(1) When such cosmetics are affixed
to a display card labeled in confor-
mance with all labeling requirements of
this part; or

(2) When such cosmetics are sold at
retail as part of a cosmetic package
consisting of an inner and outer con-
tainer and the inner container is not
for separate retail sale and the outer
container is labeled in conformance
with all labeling requirements of
this part.

§1.83 Definitions.

For the purposes of regulations pre-
scribed under section 801(a), (b), and (c)
of the Federal Food, Drug, and Cos-
metic Act:

(a) The term owner or consignee
means the person who has the rights of
a consignee under the provisions of sec-
tions 483, 484, and 485 of the Tariff Act
of 1930, as amended (19 U.S.C. 1483, 1484,
1485).

(b) The term district director means
the director of the district of the Food
and Drug Administration having juris-
diction over the port of entry through
which an article is imported or offered
for import, or such officer of the dis-
trict as he may designate to act in his
behalf in administering and enforcing
the provisions of section 801 (a), (b), and (c).

Subpart E—Imports and Exports

§1.83 Definitions.
§ 1.90 Notice of sampling.
When a sample of an article offered for import has been requested by the district director, the collector of customs having jurisdiction over the article shall give to the owner or consignee prompt notice of delivery of, or intention to deliver, such sample. Upon receipt of the notice, the owner or consignee shall hold such article and not distribute it until further notice from the district director or the collector of customs of the results of examination of the sample.

§ 1.91 Payment for samples.
The Food and Drug Administration will pay for all import samples which are found to be in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act. Billing for reimbursement should be made by the owner or consignee to the Food and Drug Administration district headquarters in whose territory the shipment was offered for import. Payment for samples will not be made if the article is found to be in violation of the act, even though subsequently brought into compliance under the terms of an authorization to bring the article into compliance with the act or to render it other than a food, drug, device, or cosmetic, and shall:

(a) Contain detailed proposals for bringing the article into compliance with the act or rendering it other than a food, drug, device, or cosmetic.
(b) Specify the time and place where such operations will be carried out and the approximate time for their completion.

§ 1.95 Application for authorization to relabel and recondition.

Application for authorization to relabel or perform other action to bring the article into compliance with the act or to render it other than a food, drug, device, or cosmetic may be filed only by the owner or consignee, and shall:

(a) Contain detailed proposals for bringing the article into compliance with the act or rendering it other than a food, drug, device, or cosmetic.
(b) Specify the time and place where such operations will be carried out and the approximate time for their completion.

§ 1.96 Granting of authorization to relabel and recondition.

(a) When authorization contemplated by §1.95 is granted, the district director shall notify the applicant in writing, specifying:

(1) The procedure to be followed;
(2) The disposition of the rejected articles or portions thereof;
(3) That the operations are to be carried out under the supervision of an officer of the Food and Drug Administration or the U.S. Customs Service, as the case may be;
(4) A time limit, reasonable in the light of the circumstances, for completion of the operations; and
(5) Such other conditions as are necessary to maintain adequate supervision and control over the article.

(b) Upon receipt of a written request for extension of time to complete such operations, containing reasonable grounds therefor, the district director may grant such additional time as he deems necessary.

(c) An authorization may be amended upon a showing of reasonable grounds therefor and the filing of an amended application for authorization with the district director.

(d) If ownership of an article covered by an authorization changes before the
operations specified in the authorization have been completed, the original owner will be held responsible, unless the new owner has executed a bond and obtained a new authorization. Any authorization granted under this section shall supersede and nullify any previously granted authorization with respect to the article.


§ 1.97 Bonds.

(a) The bonds required under section 801(b) of the act may be executed by the owner or consignee on the appropriate form of a customs single-entry or term bond, containing a condition for the redelivery of the merchandise or any part thereof upon demand of the collector of customs and containing a provision for the performance of conditions as may legally be imposed for the relabeling or other action necessary to bring the article into compliance with the act or rendering it other than a food, drug, device, or cosmetic, in such manner as is prescribed for such bond in the customs regulations in force on the date of request for authorization. The bond shall be filed with the collector of customs.

(b) The collector of customs may cancel the liability for liquidated damages incurred under the above-mentioned provisions of such a bond, if he receives an application for relief therefrom, upon the payment of a lesser amount or upon such other terms and conditions as shall be deemed appropriate under the law and in view of the circumstances, but the collector shall not act under this regulation in any case unless the district director is in full agreement with the action.

(d) The charge for the service of the analyst, which shall include administrative and laboratory support, shall be computed at a rate per hour equal to 266 percent of the equivalent hourly rate of regular pay of a grade GS-12/4 employee. The rate per hour equal to 266 percent of the equivalent hourly rate of regular pay of the supervising officer (GS-11/4) and the analyst (GS-12/4) is computed as follows:

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<thead>
<tr>
<th>Hours</th>
<th>Gross number of working hours in 52 40-hr weeks</th>
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<td>Annual leave—26 d</td>
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<td>Sick leave—13 d</td>
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<td>Total</td>
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Net number of working hours 1,696

Equivalent annual working hours 2,256

Equivalent gross annual number of working hours charged to Food and Drug appropriation 4,512

NOTE: Ratio of equivalent gross annual number of working hours charged to Food and Drug appropriation to net number of annual working hours 4,512/1,696 = 266.

(e) The minimum charge for services of supervising officers and of analysts shall be not less than the charge for 1 hour, and time after the first hour shall be computed in multiples of 1 hour.

§ 1.99 Costs chargeable in connection with relabeling and reconditioning inadmissible imports.

The cost of supervising the relabeling or other action in connection with an import of food, drugs, devices, or cosmetics which fails to comply with the Federal Food, Drug, and Cosmetic Act shall be paid by the owner or consignee who files an application requesting such action and executes a bond, pursuant to section 801(b) of the act, as amended. The cost of such supervision shall include, but not be restricted to, the following:

(a) Travel expenses of the supervising officer.

(b) Per diem in lieu of subsistence of the supervising officer when away from his home station, as provided by law.

(c) The charge for the services of the supervising officer, which shall include administrative support, shall be computed at a rate per hour equal to 266 percent of the hourly rate of regular pay of a grade GS-11/4 employee, except that such services performed by a customs officer and subject to the provisions of the act of February 13, 1911, as amended (sec. 5, 36 Stat. 901, as amended (19 U.S.C. 267)), shall be calculated as provided in that act.

(d) The charge for the service of the analyst, which shall include administrative and laboratory support, shall be computed at a rate per hour equal to 266 percent of the hourly rate of regular pay of a grade GS-12/4 employee. The rate per hour equal to 266 percent of the equivalent hourly rate of regular pay of the supervising officer (GS-11/4) and the analyst (GS-12/4) is computed as follows:

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PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

Subpart A—General Provisions

Sec.
2.5 Imminent hazard to the public health.
2.10 Examination and investigation samples.
2.19 Methods of analysis.

Subpart B—Human and Animal Foods

2.25 Grain seed treated with poisonous substances; color identification to prevent adulteration of human and animal food.
2.35 Use of secondhand containers for the shipment or storage of food and animal feed.

Subparts C–E [Reserved]

Subpart F—Caustic Poisons

2.110 Definition of ammonia under Federal Caustic Poison Act.

Subpart G—Provisions Applicable to Specific Products Subject to the Federal Food, Drug, and Cosmetic Act

2.125 Use of chlorofluorocarbon propellants in self-pressurized containers.


SOURCE: 42 FR 15559, Mar. 22, 1977, unless otherwise noted.

Subpart A—General Provisions

§ 2.5 Imminent hazard to the public health.

(a) Within the meaning of the Federal Food, Drug, and Cosmetic Act an imminent hazard to the public health is considered to exist when the evidence is sufficient to show that a product or practice, posing a significant threat of danger to health, creates a public health situation (1) that should be corrected immediately to prevent injury and (2) that should not be permitted to continue while a hearing or other formal proceeding is being held. The imminent hazard may be declared at any point in the chain of events which may ultimately result in harm to the public health. The occurrence of the final anticipated injury is not essential to establish that an imminent hazard of such occurrence exists.

(b) In exercising his judgment on whether an imminent hazard exists, the Commissioner will consider the number of injuries anticipated and the nature, severity, and duration of the anticipated injury.

§ 2.10 Examination and investigation samples.

(a)(1) When any officer or employee of the Department collects a sample of a food, drug, or cosmetic for analysis under the act, the sample shall be designated as an official sample if records or other evidence is obtained by him or any other officer or employee of the Department indicating that the shipment or other lot of the article from which such sample was collected was introduced or delivered for introduction into interstate commerce, or was in or was received in interstate commerce, or was manufactured within a Territory. Only samples so designated by an officer or employee of the Department shall be considered to be official samples.

(2) For the purpose of determining whether or not a sample is collected for analysis, the term analysis includes examinations and tests.

(3) The owner of a food, drug, or cosmetic of which an official sample is collected is the person who owns the shipment or other lot of the article from which the sample is collected.

(b) When an officer or employee of the Department collects an official sample of a food, drug, or cosmetic for analysis under the act, he shall collect at least twice the quantity estimated by him to be sufficient for analysis, unless:

(1) The amount of the article available and reasonably accessible for sampling is less than twice the quantity so estimated, in which case he shall collect as much as is available and reasonably accessible.

(2) The cost of twice the quantity so estimated exceeds $150.

(3) The sample cannot by diligent use of practicable preservation techniques available to the Food and Drug Administration be kept in a state in which it
could be readily and meaningfully analyzed in the same manner and for the same purposes as the Food and Drug Administration's analysis.

(4) The sample is collected from a shipment or other lot which is being imported or offered for import into the United States.

(5) The sample is collected from a person named on the label of the article or his agent, and such person is also the owner of the article.

(6) The sample is collected from the owner of the article, or his agent, and such article bears no label or, if it bears a label, no person is named thereon.

In addition to the quantity of sample set forth in this paragraph, the officer or employee shall, if practicable, collect such further amount as he estimates will be sufficient for use as trial exhibits.

(c) After the Food and Drug Administration has completed such analysis of an official sample of a food, drug, or cosmetic as it determines, in the course of analysis and interpretation of analytical results, to be adequate to establish the respects, if any, in which the article is adulterated or misbranded within the meaning of the act, or otherwise subject to the prohibitions of the act, and has reserved an amount of the article it estimates to be adequate for use as exhibits in the trial of any case that may arise under the act, based on the sample, if any remains available, shall be provided for analysis, upon written request, by any person named on the label of the article, or the owner thereof, or the attorney or agent of such person or owner, except when:

(1) After collection, the sample or remaining part thereof has become decomposed or otherwise unfit for analysis, or

(2) The request is not made within a reasonable time before the trial of any case under the act, based on the sample to which such person or owner is a party. The person, owner, attorney, or agent who requests the part of sample shall specify the amount desired. A request from an owner shall be accompanied by a showing of ownership, and a request from an attorney or agent by a showing of authority from such person or owner to receive the part of sample. When two or more requests for parts of the same sample are received the requests shall be complied with in the order in which they were received so long as any part of the sample remains available therefor.

(d) When an official sample of food, drug, or cosmetic is the basis of a notice given under section 305 of the act, or of a case under the act, and the person to whom the notice was given, or any person who is a party to the case, has no right under paragraph (c) of this section to a part of the sample, such person or his attorney or agent may obtain a part of the sample upon request accompanied by a written waiver of right under such paragraph (c) from each person named on the label of the article and owner thereof, who has not exercised his right under such paragraph (c). The operation of this paragraph shall be subject to the exceptions, terms, and conditions prescribed in paragraph (c) of this section.

(e) The Food and Drug Administration is authorized to destroy:

(1) Any official sample when it determines that no analysis of such sample will be made;

(2) Any official sample or part thereof when it determines that no notice under section 305 of the act, or no case under the act, is or will be based on such sample;

(3) Any official sample or part thereof when the sample was the basis of a notice under section 305 of the act, and when, after opportunity for presentation of views following such notice, it determines that no other such notice, and no case under the act, is or will be based on such sample;

(4) Any official sample or part thereof when the sample was the basis of a case under the act which has gone to final judgment, and when it determines that no other such case is or will be based on such sample;

(5) Any official sample or part thereof if the article is perishable;

(6) Any official sample or part thereof when, after collection, such sample or part has become decomposed or otherwise unfit for analysis;

(7) That part of any official sample which is in excess of three times the
§ 2.19 Methods of analysis.


In the absence of an AOAC method, the Commissioner will furnish a copy of the particular method, or a reference to the published method, that the Food and Drug Administration will use in its enforcement program. Other methods may be used for quality control, specifications, contracts, surveys, and similar nonregulatory functions, but it is expected that they will be calibrated in terms of the method which the Food and Drug Administration uses in its enforcement program. Use of an AOAC method does not relieve the practitioner of the responsibility to demonstrate that he can perform the method properly through the use of positive and negative controls and recovery and reproducibility studies.


§ 2.25 Grain seed treated with poisonous substances; color identification to prevent adulteration of human and animal food.

(a) In recent years there has developed increasing use of poisonous treatments on seed for fungicidal and other purposes. Such treated seed, if consumed, presents a hazard to humans and livestock. It is not unusual for stocks of such treated food seeds to remain on hand after the planting season has passed. Despite the cautions required by the Federal Seed Act (53 Stat. 1275, as amended 72 Stat. 476, 7 U.S.C. 1551 et seq.) in the labeling of the treated seed, the Food and Drug Administration has encountered many cases where such surplus stocks of treated wheat, corn, oats, rye, barley, and sorghum seed had been mixed with untreated seed and sent to market for food or feed use. This has resulted in livestock injury and in legal actions under the Federal Food, Drug, and Cosmetic Act against large quantities of food adulterated through such admixture of poisonous treated seeds with good food. Criminal cases were brought against some firms and individuals. Where the treated seeds are prominently colored, buyers and users or processors of agricultural food seed for food purposes are able to detect the admixture of the poisonous seed and thus reject the lots; but most such buyers, users, and processors do not have the facilities or scientific equipment to determine the presence of the poisonous chemical at the time crops are delivered, in cases where the treated seeds have not been so colored. A suitable color for this use is one that is in sufficient contrast to the natural color of the food seed as to make admixture of treated, denatured seeds with good food easily apparent, and is so applied that it is not readily removed.

(b) On and after December 31, 1964, the Food and Drug Administration will...
Food and Drug Administration, HHS

§ 2.125

regard as adulterated any interstate shipment of the food seeds wheat, corn, oats, rye, barley, and sorghum bearing a poisonous treatment in excess of a recognized tolerance or treatment for which no tolerance or exemption from tolerance is recognized in regulations promulgated pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act, unless such seeds have been adequately denatured by a suitable color to prevent their subsequent inadvertent use as food for man or feed for animals.

(c) Attention is called to the labeling requirements of the Federal Hazardous Substances Act, where applicable to denatured seeds in packages suitable for household use.

§ 2.35 Use of secondhand containers for the shipment or storage of food and animal feed.

(a) Investigations by the Food and Drug Administration, the National Communicable Disease Center of the U.S. Public Health Service, the Consumer and Marketing Service of the U.S. Department of Agriculture, and by various State public health agencies have revealed practices whereby food and animal feed stored or shipped in secondhand containers have been rendered dangerous to health. Such contamination has been the result of the original use of these containers for the storage and shipment of articles containing or bearing disease organisms or poisonous or deleterious substances.

(b) The Commissioner concludes that such dangerous or potentially dangerous practices include, but are not limited to, the following:

(1) Some vegetable growers and packers employ used poultry crates for shipment of fresh vegetables, including cabbage and celery. Salmonella organisms are commonly present on dressed poultry and in excreta and fluid exudates from dressed birds. Thus wooden crates in which dressed poultry has been iced and packed are potential sources of Salmonella or other enteropathogenic microorganisms that may contaminate fresh vegetables which are frequently consumed without heat treatment.

(2) Some potato growers and producers of animal feeds use secondhand bags for shipment of these articles. Such bags may have originally been used for shipping or storing pesticide-treated seed or other articles bearing or containing poisonous substances. Thus these secondhand bags are potential sources of contamination of the food or animal feed stored or shipped therein.

(c) In a policy statement issued April 11, 1968, the Food and Drug Administration declared adulterated within the meaning of section 402(a) of the Federal Food, Drug, and Cosmetic Act shipments of vegetables or other edible food in used crates or containers that may render the contents injurious to health. This policy statement is extended so that the Food and Drug Administration will regard as adulterated within the meaning of section 402(a) of the act shipments of vegetables, other edible food, or animal feed in used crates, bags, or other containers that may render the contents injurious to health.

Subparts C–E [Reserved]

Subpart F—Caustic Poisons

§ 2.110 Definition of ammonia under Federal Caustic Poison Act.

For the purpose of determining whether an article containing ammonia is subject to the Federal Caustic Poison Act, the ammonia content is to be calculated as NH₃.

Subpart G—Provisions Applicable to Specific Products Subject to the Federal Food, Drug, and Cosmetic Act

§ 2.125 Use of chlorofluorocarbon propellants in self-pressurized containers.

(a) As used in this section:

(1) Chlorofluorocarbon means any fully halogenated chlorofluoroalkane.

(2) Propellant means a liquefied or compressed gas that is used in whole or in part to expel from the same self-pressurized container or from a separate container a liquid or solid material different from the propellant, but the term does not include the use of a chlorofluorocarbon as an aerating
§ 2.125

agent for foamed or sprayed food products.

(b) Chlorofluorocarbons are widely used in products subject to the Federal Food, Drug, and Cosmetic Act, with the principal use being as propellants in self-pressurized containers. Information recently developed indicates that chlorofluorocarbons may reduce the amount of ozone in the stratosphere and thus increase the amount of ultraviolet radiation reaching the earth. An increase in ultraviolet radiation may increase the incidence of skin cancer, change the climate, and produce other effects of unknown magnitude on humans, animals, and plants. Chlorofluorocarbons may also affect the climate by increasing infrared absorption in the atmosphere.

(c) Except as provided in paragraph (e) of this section, any food, drug, device, or cosmetic in a self-pressurized container that contains a chlorofluorocarbon propellant is adulterated and/or misbranded in violation of the act, and any drug product in a self-pressurized container that contains a chlorofluorocarbon propellant is a new drug or a new animal drug.

(d) The use of a chlorofluorocarbon as a propellant in a self-pressurized container of a drug product will not result in the drug product being adulterated and/or misbranded provided a new drug application, a new animal drug application, or in the case of a certifiable antibiotic an antibiotic application for the drug product has been approved, a petition has been filed as provided by paragraph (f) of this section, and paragraph (e) of this section has been amended to specify the use as essential.

(e) The adulteration and misbranding provisions of paragraph (c) of this section shall not apply to the following essential uses of chlorofluorocarbons:

(1) Metered-dose steroid human drugs for nasal inhalation,
(2) Metered-dose steroid human drugs for oral inhalation,
(3) Metered-dose adrenergic bronchodilator human drugs for oral inhalation,
(4) Contraceptive vaginal foams for human use, and
(5) Metered-dose ergotamine tartrate drug products administered by oral inhalation for use in humans.

(6) Intrarectal hydrocortisone acetate for human use.
(7) Polymyxin B sulfate-bacitracin zinc-neomycin sulfate soluble antibiotic powder without excipients, for topical use on humans.
(8) Anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application.
(9) Metered-dose nitroglycerin human drugs administered to the oral cavity.
(10) Metered-dose cromolyn sodium human drugs administered by oral inhalation.
(11) Metered-dose ipratropium bromide for oral inhalation.
(12) Metered-dose atropine sulfate aerosol human drugs administered by oral inhalation.
(13) Metered-dose nedocromil sodium human drugs administered by oral inhalation.
(14) Metered-dosed ipratropium bromide and albuterol sulfate, in combination, administered by oral inhalation for human use.
(15) Sterile aerosol talc administered intrapleurally by thoracoscopy for human use.

(f) Any person may file a petition in accordance with part 10 of this chapter to amend paragraph (e) of this section to specify a use of chlorofluorocarbons in a product as not being subject to the adulteration and misbranding provisions in paragraph (c) of this section. The petition must be supported by an adequate showing that:

(1) There are no technically feasible alternatives to the use of a chlorofluorocarbon in the product,
(2) The product provides a substantial health benefit, environmental benefit, or other public benefit that would not be obtainable without the use of the chlorofluorocarbon, and
(3) The use does not involve a significant release of chlorofluorocarbons into the atmosphere or that the release is warranted in view of the consequence if the use were not permitted.

(g) Any holder of an approved new drug application or new animal drug application for a drug product containing a chlorofluorocarbon in a self-pressurized container, except those drug products listed in paragraph (e) of this section, shall submit to the Food
Food and Drug Administration, HHS

§ 2.125

and Drug Administration on or before October 1, 1978, either a supplemental application providing for a revised formulation complying with the requirements of §314.70 or §514.8 of this chapter or a letter requesting that a new drug application or a new animal drug application for the drug product containing chlorofluorocarbon be withdrawn and that the right to a hearing on the withdrawal of the application is waived.

(h)(1) Each manufacturer of a drug product listed in paragraph (e) of this section that is not covered by an approved new drug application shall submit a new drug application in accord with §314.50 of this chapter on or before June 15, 1978.

(2) An abbreviated new drug application conforming to §314.94 of this chapter is acceptable in lieu of a full new drug application for any product included in the classes of products in paragraph (e) of this section if the product is one that is described under §314.92 of this chapter. A finding has been made that an abbreviated new drug application may be submitted for the following products included in the classes of products listed in paragraph (e) of this section:

(i) Ergotamine tartrate supplied in a metered-dose aerosol form suitable for oral inhalation for the treatment of migraine headaches. Each measured dose must deliver a dose of the active ingredient equivalent to that contained in the product that has been the subject of a separate finding that an abbreviated new drug application is suitable.

(ii) Isoproterenol hydrochloride supplied in a metered-dose aerosol form suitable for oral inhalation for use as an adrenergic bronchodilator. Each measured dose must deliver a dose of the active ingredient equivalent to that contained in the product that has been the subject of a separate finding that an abbreviated new drug application is suitable.

(iii) Epinephrine, epinephrine bitartrate, or epinephrine hydrochloride (racemic) in a metered-dose aerosol form suitable for oral inhalation for use as an adrenergic bronchodilator. Each measured dose must deliver a dose of the active ingredient equivalent to that specified in an OTC proposed or final monograph issued under the provisions of 21 CFR part 330.

(iv) Nonoxynol 9 in an aerosol foam suitable for vaginal administration as a contraceptive foam. The aerosol foam must contain 8 to 12.5 percent of nonoxynol 9.

(i) Any sponsor of an “Investigational New Drug Application” (IND) or “Notice of Claimed Exemption for a New Animal Drug” (INAD) for a drug product containing a chlorofluorocarbon shall:

(1) Amend the IND or INAD on or before December 15, 1978, to revise the formulation removing the chlorofluorocarbon.

(2) Submit the information required under paragraph (f) of this section to amend paragraph (e) of this section to show that the use of chlorofluorocarbon is essential, or

(3) Submit the information required under paragraph (j) of this section requesting that studies with the drug product containing a chlorofluorocarbon propellant be allowed to be performed.

(j) Any sponsor of an IND or INAD who wishes to initiate or continue a study beyond December 15, 1978 on a drug product containing a chlorofluorocarbon shall submit a petition in accordance with part 10 of this chapter requesting that studies be permitted to collect the data to show that the use of the chlorofluorocarbon is an essential use. The petitions must be supported by the following:

(1) A description of the drug product,

(2) An explanation why a chlorofluorocarbon propellant is used in the product rather than another propellant or another dosage form of the product, and

(3) The benefit that the investigational product is believed to have and that the sponsor hopes to demonstrate by the studies.

(k) The Commissioner will initiate action to withdraw approval of an application or terminate an IND or INAD notice in accordance with the applicable provisions of section 505 of the act and parts 312 and 314 of this chapter, or section 512 of the act and parts 511 and 514 of this chapter upon failure of a
holder of an approved new drug application or approved new animal drug application or sponsor of an IND or INAD notice to comply with the applicable provisions of this section.

(l) Food, drug, device, or cosmetic products manufactured or packaged on or after December 15, 1978, and finished products initially introduced into interstate commerce on or after April 15, 1979, shall comply with this regulation.


PART 3—PRODUCT JURISDICTION

Subpart A—Assignment of Agency Component for Review of Premarket Applications

§ 3.1 Purpose.

This regulation relates to agency management and organization and has two purposes. The first is to implement section 503(g) of the act, as added by section 16 of the Safe Medical Devices Act of 1990 (Pub. L. 101-629), by specifying how FDA will determine the organizational component within FDA designated to have primary jurisdiction for the premarket review and regulation of products that are comprised of any combination of a drug and a device; a device and a biological; a biological and a drug; or a drug, a device and a biological. This determination will eliminate, in most cases, the need to receive approvals from more than one FDA component for such combination products. The second purpose of this regulation is to enhance the efficiency of agency management and operations by providing procedures for determining which agency component will have primary jurisdiction for any drug, device, or biological product where such jurisdiction is unclear or in dispute. Nothing in this section prevents FDA from using any agency resources it deems necessary to ensure adequate review of the safety and effectiveness of any product, or the substantial equivalence of any device to a predicate device.

§ 3.2 Definitions.

For the purpose of this part:


(b) Agency component means the Center for Biologics Evaluation and Research, the Center for Devices and Radiological Health, or the Center for Drug Evaluation and Research.

(c) Applicant means any person who submits or plans to submit an application to the Food and Drug Administration for premarket review. For purposes of this section, the terms “sponsor” and “applicant” have the same meaning.

(d) Biological product has the meaning given the term in section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)).

(e) Combination product includes:

(1) A product comprised of two or more regulated components, i.e., drug/device, biologic/device, drug/biologic, or drug/device/biologic, that are physically, chemically, or otherwise combined or mixed and produced as a single entity;

(2) Two or more separate products packaged together in a single package or as a unit and comprised of drug and device products, device and biological
products, or biological and drug products;
(3) A drug, device, or biological product packaged separately that according to its investigational plan or proposed labeling is intended for use only with an approved individually specified drug, device, or biological product where both are required to achieve the intended use, indication, or effect and where upon approval of the proposed product the labeling of the approved product would need to be changed, e.g., to reflect a change in intended use, dosage form, strength, route of administration, or significant change in dose; or
(4) Any investigational drug, device, or biological product packaged separately that according to its proposed labeling is for use only with another individually specified investigational drug, device, or biological product where both are required to achieve the intended use, indication, or effect.

(f) Device has the meaning given the term in section 201(h) of the act.

(g) Drug has the meaning given the term in section 201(g)(1) of the act.

(h) FDA means Food and Drug Administration.

(i) Letter of designation means the written notice issued by the product jurisdiction officer specifying the agency component with primary jurisdiction for a combination product.

(j) Letter of request means an applicant’s written submission to the product jurisdiction officer seeking the designation of the agency component with primary jurisdiction.

(k) Premarket review includes the examination of data and information in an application for premarket review described in sections 505, 510(k), 513(f), 515, or 520(g) or 520(l) of the act or section 351 of the Public Health Service Act of data and information contained in any investigational new drug (IND) application, investigational device exemption (IDE), new drug application (NDA), biological product or establishment license application, device premarket notification, device reclassification petition, and premarket approval application (PMA).

(l) Product means any article that contains any drug as defined in section 201(g)(1) of the act; any device as defined in section 201(h) of the act; or any biologic as defined in section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)).

(m) Product jurisdiction officer is the person or persons responsible for designating the component of FDA with primary jurisdiction for the premarket review and regulation of a combination product or any product requiring a jurisdictional designation under this part.

(n) Sponsor means “applicant” (see §3.2(c)).

[56 FR 58756, Nov. 21, 1991 as amended at 64 FR 398, Jan. 5, 1999]

EFFECTIVE DATE NOTE: At 64 FR 398, Jan. 5, 1999, in §3.2, paragraph (k) was amended by removing “507” and the phrase “antibiotic application”, effective May 20, 1999.

§ 3.3 Scope.

This section applies to:
(a) Any combination product, or
(b) Any product where the agency component with primary jurisdiction is unclear or in dispute.

§ 3.4 Designated agency component.

(a) To designate the agency component with primary jurisdiction for the premarket review and regulation of a combination product, the agency shall determine the primary mode of action of the product. Where the primary mode of action is that of:
(1) A drug (other than a biological product), the agency component charged with premarket review of drugs shall have primary jurisdiction;
(2) A device, the agency component charged with premarket review of devices shall have primary jurisdiction;
(3) A biological product, the agency component charged with premarket review of biological products shall have primary jurisdiction.
(b) The designation of one agency component as having primary jurisdiction for the premarket review and regulation of a combination product does not preclude consultations by that component with other agency components or, in appropriate cases, the requirement by FDA of separate applications.
§ 3.5 Procedures for identifying the designated agency component.

(a)(1) The Center for Biologics Evaluation and Research, the Center for Devices and Radiological Health, and the Center for Drug Evaluation and Research have entered into agreements clarifying product jurisdictional issues. These guidance documents are on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and are entitled “Intercenter Agreement Between the Center for Drug Evaluation and Research and the Center for Devices and Radiological Health,” “Intercenter Agreement Between the Center for Devices and Radiological Health and the Center for Biologics Evaluation and Research,” “Intercenter Agreement Between the Center for Drug Evaluation and Research and the Center for Biologics Evaluation and Research.” The availability of any amendments to these intercenter agreements will be announced by FEDERAL REGISTER notice.

(2) These guidance documents describe the allocation of responsibility for categories of products or specific products. These intercenter agreements, and any amendments thereto, are nonbinding determinations designed to provide useful guidance to the public.

(3) The sponsor of a premarket application or required investigational filing for a combination or other product covered by these guidance documents may contact the designated agency component identified in the intercenter agreement before submitting an application of premarket review or to confirm coverage and to discuss the application process.

(b) For a combination product not covered by a guidance document or for a product where the agency component with primary jurisdiction is unclear or in dispute, the sponsor of an application for premarket review should follow the procedures set forth in § 3.7 to request a designation of the agency component with primary jurisdiction before submitting the application.

§ 3.6 Product jurisdiction officer.

FDA Ombudsman (HF–7), Food and Drug Administration, rm. 14–84, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1306, is the designated product jurisdiction officer.

§ 3.7 Request for designation.

(a) Who should file: the sponsor of:

(1) Any combination product the sponsor believes is not covered by an intercenter agreement; or

(2) Any product where the agency component with primary jurisdiction is unclear or in dispute.

(b) When to file: a sponsor should file a request for designation before filing any application for premarket review, whether an application for marketing approval or a required investigational notice. Sponsors are encouraged to file a request for designation as soon as there is sufficient information for the agency to make a determination.

(c) What to file: an original and two copies of the request for designation must be filed. The request for designation must not exceed 15 pages, including attachments, and must set forth:

(1) The identity of the sponsor, including company name and address, establishment registration number, company contact person and telephone number.

(2) A description of the product, including:

(i) Classification, name of the product and all component products, if applicable;

(ii) Common, generic, or usual name of the product and all component products;

(iii) Proprietary name of the product;

(iv) Identification of any component of the product that already has received premarket approval, is marketed as not being subject to premarket approval, or has received an investigational exemption, the identity of the sponsors, and the status of any discussions or agreements between the sponsors regarding the use of this product as a component of a new combination product.

(v) Chemical, physical, or biological composition;

(vi) Status and brief reports of the results of developmental work, including animal testing;
(vii) Description of the manufacturing processes, including the sources of all components;
(viii) Proposed use or indications;
(ix) Description of all known modes of action, the sponsor’s identification of the primary mode of action, and the basis for that determination;
(x) Schedule and duration of use;
(xi) Dose and route of administration of drug or biologic;
(xii) Description of related products, including the regulatory status of those related products; and
(xiii) Any other relevant information.

(3) The sponsor’s recommendation as to which agency component should have primary jurisdiction, with accompanying statement of reasons.

(d) Where to file: all communications pursuant to this subpart shall be addressed to the attention of the product jurisdiction officer. Such a request, in its mailing cover should be plainly marked “Request for Designation.”

§ 3.8 Letter of designation.

(a) Each request for designation will be reviewed for completeness within 5 working days of receipt. Any request for designation determined to be incomplete will be returned to the applicant with a request for the missing information. The sponsor of an accepted request for designation will be notified of the filing date.

(b) Within 60 days of the filing date of a request for designation, the product jurisdiction officer will issue a letter of designation to the sponsor, with copies to the centers, specifying the agency component designated to have primary jurisdiction for the premarket review and regulation of the product at issue, and any consulting agency components. The product jurisdiction officer may request a meeting with the sponsor during the review period to discuss the request for designation. If the product jurisdiction officer has not issued a letter of designation within 60 days of the filing date of a request for designation, the sponsor’s recommendation of the center with primary jurisdiction, in accordance with §3.7(c), shall become the designated agency component.

(c) Request for reconsideration by sponsor: If the sponsor disagrees with the designation, it may request the product jurisdiction officer to reconsider the decision by filing, within 15 days of receipt of the letter of designation, a written request for reconsideration not exceeding 5 pages. No new information may be included in a request for reconsideration. The product jurisdiction officer shall review and act on the request in writing within 15 days of its receipt.

§ 3.9 Effect of letter of designation.

(a) The letter of designation constitutes an agency determination that is subject to change only as provided in paragraph (b) of this section.

(b) The product jurisdiction officer may change the designated agency component with the written consent of the sponsor, or without its consent to protect the public health or for other compelling reasons. A sponsor shall be given 30 days written notice of any proposed nonconsensual change in designated agency component. The sponsor may request an additional 30 days to submit written objections, not to exceed 15 pages, to the proposed change, and shall be granted, upon request, a timely meeting with the product jurisdiction officer and appropriate center officials. Within 30 days of receipt of the sponsor’s written objections, the product jurisdiction officer shall issue to the sponsor, with copies to appropriate center officials, a written determination setting forth a statement of reasons for the proposed change in designated agency component. A nonconsensual change in the designated agency component requires the concurrence of the Deputy Commissioner for Operations or the Deputy Commissioner for Policy.

§ 3.10 Stay of review time.

Any filing with or review by the product jurisdiction officer stays the review clock or other established time periods for agency action for an application for marketing approval or required investigational notice during the pendency of the review by the product jurisdiction officer.
Subpart B  [Reserved]

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

Subpart A—Delegations of Authority to the Commissioner of Food and Drugs

Sec.
5.10 Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials.
5.11 Reservation of authority.

Subpart B—Redelegations of Authority from the Commissioner of Food and Drugs

5.20 General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration.
5.21 Emergency functions.
5.22 Certification of true copies and use of Department seal.
5.23 Disclosure of official records.
5.24 Authority relating to technology transfer.
5.25 Research, investigation, and testing programs and health information and health promotion programs.
5.26 Service fellowships.
5.27 Patent term extensions for human drug products, medical devices, and food and color additives.
5.28 Cardiac pacemaker devices and pacemaker leads.
5.29 Functions pertaining to safer vaccines.
5.30 Hearings.
5.31 Petitions under part 10.
5.32 Authority relating to determination of product primary jurisdiction.
5.33 Premarket approval of a product that is or contains a biologic, a device, or a drug.
5.34 Authority to select temporary voting members for advisory committees and authority to sign conflict of interest waivers.
5.35 Enforcement activities.
5.36 Certification following inspections.
5.37 Issuance of reports of minor violations.
5.38 Issuance of written notices concerning patent information, current good manufacturing practices and false or misleading labeling of new drugs, new animal drugs, and feeds bearing or containing new animal drugs.
5.39 Redelegation of the Center for Biologics Evaluation and Research Director's program authorities.
5.40 Issuance of Federal Register documents pertaining to the determination of safe levels, notice of need for development of an analytical method, notice of availability of a developed analytical method, and prohibition of certain extralabel drug use.

5.44 Export of unapproved drugs.
5.45 Imports and exports.
5.46 Manufacturer's resident import agents.
5.47 Detention of adulterated or misbranded medical devices.
5.49 Authorization to use alternative evidence for determination of the effectiveness of medical devices.
5.50 Notification to petitioners of determinations made on petitions for reclassification of medical devices.
5.51 Determination of classification of devices.
5.52 Notification to sponsors of deficiencies in petitions for reclassification of medical devices.
5.53 Approval, disapproval, or withdrawal of approval of product development protocols and applications for premarket approval for medical devices.
5.54 Determinations that medical devices present unreasonable risk of substantial harm.
5.55 Orders to repair or replace, or make refunds for, medical devices.
5.56 Recall authority.
5.57 Temporary suspension of a medical device application.
5.58 Orphan products.
5.59 Approval, disapproval, or withdrawal of approval of applications for investigational device exemptions.
5.60 Required and discretionary postmarket surveillance.
5.61 Food standards, food additives, generally recognized as safe (GRAS) substances, color additives, nutrient content claims, and health claims.
5.62 Issuance of initial emergency permit orders and notices of confirmation of effective date of final regulations on food for human and animal consumption.
5.63 Detention of meat, poultry, eggs, and related products.
5.64 Establishing standards and approving accrediting bodies under the National Laboratory Accreditation Program.
5.66 Approval of schools providing food-processing instruction.
5.67 Issuance of notices of opportunity for a hearing on proposals for denial of approval of applications for licenses or revocation of licenses and certain notices of revocation of licenses.
5.68 Issuance and revocation of licenses for the propagation or manufacture and preparation of biological products.
5.69 Notification of release for distribution of biological products.
5.70 Issuance of notice implementing the provisions of the Drug Amendments of 1962.
5.71 Termination of exemptions for new drugs for investigational use in human beings and in animals.
§ 5.10

Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials

(a) The Assistant Secretary for Health has redelegated to the Commissioner of Food and Drugs, with authority to redelegate except when specifically prohibited, all authority delegated to the Assistant Secretary for Health by the Secretary of Health and Human Services, as follows:


(2) Functions vested in the Secretary under section 301 (Research and Investigations); section 307 (International Cooperation); and section 311 (Federal-State Cooperation) of the Public Health Service Act (42 U.S.C. 241, 242, 243), as amended, which relate to the functions of the Food and Drug Administration.

(3) Functions vested in the Secretary under sections 354 through 380F of the Public Health Service Act (42 U.S.C. 355(b) for any proposed and final rules.

Subpart C—Organization

5.100 Officials authorized to make certification under 5 U.S.C. 605(b) for any proposed and final rules.
§ 5.10

263b through 263n), as amended, which relate to electronic product radiation control.

(4) Functions vested in the Secretary under section 361 of the Public Health Service Act (42 U.S.C. 264), as amended, which relate to the law enforcement functions of the Food and Drug Administration concerning the following products and activities: biologicals (including blood and blood products); interstate travel sanitation (except interstate transportation of etiologic agents under 42 CFR 72); food (including milk and food service sanitation and shellfish sanitation); and drugs, devices, cosmetics, electronic products, and other items or products regulated by the Food and Drug Administration.

(5) Functions vested in the Secretary under sections 351 and 352 of part F, subpart 1 of the Public Health Service Act (42 U.S.C. 262 and 263), as amended, Biological Products, insofar as they relate to the functions assigned to the Food and Drug Administration.

(6) Functions vested in the Secretary under section 302(a) of the Public Health Service Act (42 U.S.C. 242(a)), as amended, which relate to the determination and reporting requirements with respect to the medicinal and scientific requirements of the United States for controlled substances.

(7) Functions vested in the Secretary under section 303 of the Public Health Service Act (42 U.S.C. 242(a)), as amended, which relate to the authorization of persons engaged in research on the use and effect of drugs to protect the identity of their research subjects with respect to drugs scheduled under Pub. L. 91-513 for which an investigational new drug application is filed with the Food and Drug Administration and with respect to all drugs not scheduled under Pub. L. 91-513.

(8) Functions vested in the Secretary pertaining to section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1241) which relate to the determination of the safety and effectiveness of drugs or to approve new drugs to be used in the treatment of narcotic addicts.

(9) Functions vested in the Secretary pertaining to section 303(f) of the Controlled Substances Act (21 U.S.C. 823(f)) which relate to the determination of the qualifications and competency of practitioners wishing to conduct research with controlled substances listed in Schedule I of the Act, and the merits of the research protocol.

(10) Functions vested in the Secretary pertaining to provisions of the Controlled Substances Act (21 U.S.C. 801 et seq.) which relate to administration of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(11) Functions vested in the Secretary under section 409(b) of the Federal Meat Inspection Act (21 U.S.C. 679(b)) which relate to the detention of any carcass, part thereof, meat, or meat product of cattle, sheep, swine, goats, or equines.

(12) Functions vested in the Secretary under section 24(b) of the Poultry Products Inspection Act (21 U.S.C. 467(b)) which relate to the detention of any poultry carcass, part thereof, or poultry product.

(13) Functions vested in the Secretary under the Egg Products Inspection Act (21 U.S.C. 1031 et seq.).

(14) Functions vested in the Secretary by amendments to the foregoing statutes subsequent to Reorganization Plan No. 1 of 1953.

(15) Function of issuing all regulations of the Food and Drug Administration, except as provided in §5.11. The reservation of authority contained in Chapter 2-000 of the Department Organization Manual shall not apply.

(16) Functions vested in the Secretary under section 1103 of Executive Order 11490, as amended by Executive Order 11921, which relate to emergency health functions as they pertain to the operations and functional responsibilities assigned to the agency. This authority shall be exercised in accordance with section 102 and pertinent sections of part 30 of Executive Order 11490 and guidelines promulgated by the Federal Preparedness Agency of the General Services Administration; Office of the Secretary, HHS; and Office of the Assistant Secretary for Health.

(17) Function vested in the Secretary of authorizing and approving miscellaneous and emergency expenses of enforcement activities.

(18) Functions vested in the Secretary under the Federal Advisory Committee Act, Public Law 92-463, to
make determinations that advisory committee meetings are concerned with matters listed in 5 U.S.C. 552(b) and therefore may be closed to the public for those committees under the administrative jurisdiction of the Commissioner of Food and Drugs. This authority may be redelegated to a single official who reports directly to the Commissioner of Food and Drugs. This authority is to be exercised in accordance with the requirements of the Federal Advisory Committee Act and only with respect to the following:

(i) Meetings, to the extent that they directly involve review, discussion or consideration of records of the Department which are exempt from disclosure under 5 U.S.C. 552(b) (4), (6), and (7), namely, (a) records containing trade secrets and commercial or financial information obtained from a person and privileged or confidential; (b) personnel, medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (c) investigatory files compiled for law enforcement purposes;

(ii) Meetings to the extent that they involve the review, discussion, and evaluation of specific drugs and devices regulated by FDA which are intended to result in recommendations for regulatory decisions under the Federal Food, Drug, and Cosmetic Act and which are concerned with matters listed in 5 U.S.C. 552(b) (4), (5), and (7);

(iii) Meetings held for the sole purpose of considering and formulating advice which the committee will give or any final report it will render, Provided:

(a) The meetings will involve solely the internal expression of views and judgments of the members and it is essential to close the meeting or portions thereof to protect the free exchange of such views and avoid undue interference with agency or committee operations, and such views if reduced to writing would be protected from mandatory disclosure under 5 U.S.C. 552(b);

(b) The meeting is closed for the shortest time necessary, summarizing the work of the committee during the closed session, and a report, prepared by the executive secretary will be made available promptly to the public.

(c) When feasible, the public is given a timely opportunity to present relevant information and views to the committee; and

(d) Concurrence for closing the meetings for such purpose is obtained from the Office of the General Counsel and the Office of Public Affairs.

(19) Functions vested in the Secretary under the second sentence of section 310(a) and under section 310(b) (Health Conferences and Health Education Information) of the Public Health Service Act (42 U.S.C. 242o), as amended, to call for a conference and invite as many health authorities and officials of State or local public or private agencies or organizations as deemed necessary or proper on subjects related to the functions of the Food and Drug Administration, and to issue information related to health for the use of the public and other pertinent health information for the use of persons and institutions concerned with health services when such information is related to the functions of the Food and Drug Administration.

(20) Functions vested in the Secretary under section 2101 of the Public Health Service Act (42 U.S.C. 219) as amended, to accept offers of gifts, excluding the acceptance of gifts of real property. Only the authority to accept unconditional gifts of personal property valued at $5,000 or less may be redelegated.

(21) Functions vested in the Secretary under section 362 of the Public Health Service Act (42 U.S.C. 265), as amended, which relate to the prohibition of the introduction of foods, drugs, devices, cosmetics, electronic products, and other items or products regulated by the Food and Drug Administration into the United States when it is determined that it is required in the interest of public health when such functions relate to the law enforcement functions of the Food and Drug Administration.

(22) Functions vested in the Secretary under section 1003(b)(3), title X, of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3246(b)(3)) to waive any matching requirements for programs or projects of State and local governments funded
under title X of that act where it is determined that State or local governments concerned cannot reasonably obtain any non-Federal contributions.

(23) Functions vested in the Secretary under section 401(a) of the Lead-Based Paint Poisoning Prevention Act, as amended by Pub. L. 94-317 (42 U.S.C. 4831(a)) relating to the prohibition of the application of lead-based paint to cooking, drinking, or eating utensils.

(24) Functions vested in the Secretary for the health information and health promotion program under title XVII of the Public Health Service Act (42 U.S.C. 300u et seq.), as amended, insofar as the authorities pertain to functions assigned to the Food and Drug Administration. The delegation includes, but is not limited to, the authorities under: section 1702(a) (1) and (3) and section 1704 (1), (2), and (6). The delegation excludes the authority to select all Senior Executive Service, supergrade and equivalent, and Schedule C (GS-12 and above) positions; promulgate regulations; and submit reports to the President.

(25) To administer a Small Business Innovation Research Program under section 9 of the Small Business Act (15 U.S.C. 638), as amended. The delegation excludes the authority to promulgate regulations, establish advisory councils and committees, appoint members to advisory councils and committees, and submit reports to Congress.

(26) Functions vested in the Secretary under sections 982 and 983 of the Consumer-Patient Radiation Health and Safety Act of 1981 (42 U.S.C. 10007 and 10008), as amended. The delegation excludes the authority to promulgate regulations and submit reports to Congress. The authority delegated under section 983 of the Act may only be exercised as it relates to functions assigned to the Food and Drug Administration.

(27) Functions vested in the Secretary under section 156(d)(2)(B), which may not be redelegated to an Office below the Office of the Commissioner of Food and Drugs.

(28) Functions vested in the Secretary under section 1862(h)(1), (2)(A), and (3) of the Social Security Act (42 U.S.C. 1395y(h)(1), (2)(A), and (3)), as amended, which provides for a registry of all cardiac pacemaker devices and pacemaker leads for which payment was made under this title. The approval and issuance of regulations under that section are reserved to the Secretary, as provided in 21 CFR 5.11.

(29) Functions vested in the Secretary under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.) (the Act), as amended, and under Executive Order No. 12591 of April 10, 1987, as they pertain to the functions of the Food and Drug Administration. The delegation excludes the authority to promulgate regulations and submit reports to Congress; under section 11(a)(2) of the Act (15 U.S.C. 3710a(a)(2)) to approve agreements and contracts with invention management organizations; and under section 11(c)(3)(B) of the Act (15 U.S.C. 3710a(c)(3)(B)) to propose necessary statutory changes regarding conflict of interest.

(i) The authorities under sections 11(c)(5)(A) and (B) of the Act (15 U.S.C. 3710a(c)(5)(A) and (B)) to disapprove or require the modification of cooperative research and development agreements and licensing agreements after the agreement is presented to the Commissioner of Food and Drugs by the head of the laboratory concerned, may be redelegated to a senior official in the immediate office of the Commissioner.

(ii) The following authorities may not be redelegated: The authority under section 11(b)(3) of the Act (15 U.S.C. 3710a(b)(3)) to waive a right of ownership which the Federal Government may have to an invention made under a cooperative research and development agreement; the authority under section 11(b)(4) of the Act (15 U.S.C. 3710a(b)(4)) to permit employees or former employees to participate in
Food and Drug Administration, HHS § 5.10

efforts to commercialize inventions they made while in the service of the United States; the authority under section 11(c)(3)(A) of the Act (15 U.S.C. 3710a(c)(3)(A)) to review employee standards of conduct for resolving potential conflicts of interest; the authority under section 13(a)(1) of the Act (15 U.S.C. 3710c(a)(1)) to retain any royalties or other income, except as provided in section 13(a)(2) of the Act (15 U.S.C. 3710c(a)(2)); and the authority under section 13(a)(1)(A)(i) of the Act (15 U.S.C. 3710c(a)(1)(A)(i)) to pay royalties or other income the agency receives on account of an invention to the inventor if the inventor was an employee of the agency at the time the invention was made.

(iii) Any authorities under paragraph (a)(29) of this section delegated by the Commissioner of Food and Drugs may not be further redelegated.

(30) Functions vested in the Secretary under sections 4702, 4703, and 4704 of the Pesticide Monitoring Improvements Act of 1988 (21 U.S.C. 1401-1403) which relate to pesticide monitoring and enforcement information, foreign pesticide information, and pesticide analytical methods. The delegation excludes the authority to submit reports to Congress.

(31) Functions vested in the Secretary under the Government Patent Policy Act of 1980 as amended by the Federal Court Reorganization Act of 1984, as they pertain to the functions of the Food and Drug Administration (FDA). The delegated authorities, to be exercised in compliance with all existing rules and regulations regarding patent and invention rights and responsibilities, are restricted to the extent that 35 U.S.C. 203, as amended, may not be redelegated and that under 35 U.S.C. 207(a), the Assistant Secretary for Health is to be notified of any significant invention, patent, or license, so that the Assistant Secretary for Health may decide whether or not documentation concerning any such invention, patent, or license should be submitted to the Assistant Secretary for Health for signature. All other authorities may be redelegated to officials at the level equivalent to bureau and institute directors.

(i) Disposition of rights, 35 U.S.C. 202(c)(7), as amended: The authority to permit a nonprofit organization to assign the rights to a subject invention in the United States to organizations which do not have as one of their primary functions the management of inventions.

(ii) Disposition of rights, 35 U.S.C. 202(d), as amended: The authority to permit a contractor to grant requests for retention of rights by the inventor.

(iii) Disposition of rights, 35 U.S.C. 202(e), as amended: The authority to transfer or assign whatever rights FDA may acquire in the subject invention in any case when an agency employee is a coinventor of any invention made under a funding agreement with a nonprofit organization or small business firm. Such rights may be transferred or assigned from the FDA employee to the contractor subject to the conditions set forth in this chapter.

(iv) March-in-rights, 35 U.S.C. 203, as amended: The authority to require the contractor to grant nonexclusive, partially exclusive, or exclusive licenses to responsible applicant(s), or the authority for FDA to grant such licenses, provided such action would be in the best interest of FDA, in accordance with all provisions of this section.


(vi) Domestic and foreign protection of federally owned inventions, 35 U.S.C. 207(a) as amended, the authority to:

(A) Apply for, obtain, and maintain patents or other forms of protection in the United States and in foreign countries on inventions in which the Federal Government owns a right, title, or interest;

(B) Grant nonexclusive, exclusive, or partially exclusive licenses under federally owned patent applications, patents, or other forms of protection obtained, royalty-free or for royalties or other consideration, and on such terms and conditions, including the grant to the licensee of the right of enforcement pursuant to the provisions of chapter 29 of title 35 as determined appropriate in the public interest;
(C) Undertake all other suitable and necessary steps to protect and administer rights to federally owned inventions on behalf of the Federal Government either directly or through contract; and

(D) Transfer custody and administration, in whole or in part, to another Federal agency, of the right, title, or interest in any federally owned invention.

(vii) Determination as to domestic rights and notice to employee of determination, 45 CFR 7.3 and 7.7, as amended, authority to:

(A) Leave title to invention in the FDA employee inventor where the Government has insufficient interest in an invention to obtain the entire domestic right, title, and interest therein; and

(B) Notify the FDA employee inventor of the determination in writing.

(32) Functions vested in the Secretary under sections 2312(a)(1) and (2), (b), and (c) (Use of Investigational New Drugs with Respect to Acquired Immunodeficiency Syndrome); 2314(c) (Scientific and Ethical Guidelines for Certain Treatments); and 2317(d) and (e) (Information Services) of title XXIII of the Public Health Service Act (42 U.S.C. 300cc–12(a)(1) and (2), (b) and (c), 300cc–14(c) and 300cc–17(d) and (e), as amended, insofar as these authorities pertain to the functions assigned to the Food and Drug Administration. The delegation excludes the authority to promulgate regulations, submit reports to the Congress, establish advisory committees or national commissions, and appoint members to such committees or commissions.

(33) Functions vested in the Secretary under section 2672(a)(1) and (2) (Provisions Relating to Blood Banks) and section 2672(a)(2) (Information and Training Programs) of the Public Health Service Act (42 U.S.C. 300ff et seq.), as amended, insofar as these authorities pertain to the functions assigned to the Food and Drug Administration. The delegations exclude the authority to promulgate regulations, submit reports to the Congress, establish advisory committees or national commissions, and appoint members to such committees or commissions.

(34) Functions vested in the Secretary under sections 1322(b) and (c) of the Food, Agriculture, Conservation, and Trade Act of 1990 (the National Laboratory Accreditation Program) (7 U.S.C. 138a), as amended hereafter, which relate to setting standards for the National Laboratory Accreditation Program and approving State agencies or private, nonprofit entities as accrediting bodies to implement certification and quality assurance programs in accordance with the requirements of this section. The delegation excludes the authority to submit reports to Congress.

(35) Functions vested in the Secretary under part C, subtitle 2 of title XXI of the Public Health Service Act (42 U.S.C. 300aa–25 et seq.), as amended, and the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. 300aa–1 note), as amended hereafter, as follows:

(i) Section 2125 of the Public Health Service Act (42 U.S.C. 300aa–25)–Recording and reporting of information.

(ii) Section 2127 of the Public Health Service Act (42 U.S.C. 300aa–27)–Mandate for safer childhood vaccines.

(iii) Section 2128 of the Public Health Service Act (42 U.S.C. 300aa–28)–Manufacturer recordkeeping and reporting.

(iv) Section 312 of the National Childhood Vaccine Injury Act of 1986–Related studies.

(v) Section 313 of the National Childhood Vaccine Injury Act of 1986–Study of other vaccine risks.


(vii) The delegation excludes the authority to issue regulations and submit reports to Congress.

(36) Functions vested in the Secretary under section 354(b) through (l) and (n), (o), (q), and (r) of the Public Health Service Act (section 2 of the Mammography Quality Standards Act of 1992 (Pub. L. 102–539)), as amended, which deal with the certification of mammography facilities. The delegation excludes the authority to submit reports to Congress.

(37) Functions vested in the Secretary under section 811(h)(4) of the Controlled Substances Act (Title II of
§ 5.11 Reservation of authority.

(a) Notwithstanding provisions of §5.10 or any previous delegations of authority to the contrary, the Secretary reserves the authority to approve regulations of the Food and Drug Administration, except regulations to which sections 556 and 557 of title 5 U.S.C. apply, which:

(1) Establish procedural rules applicable to a general class of foods, drugs, cosmetics, medical devices, or other subjects of regulation; or

(2) Present highly significant public issues involving the quality, availability, marketability, or cost of one or more foods, drugs, cosmetics, medical devices, or other subjects of regulation.

(b) Nothing in this section precludes the Secretary from approving a regulation, or being notified in advance of an action, to which sections 556 and 557 of title 5 U.S.C. apply, which meets one of the criteria in paragraph (a) of this section.

(c) This reservation of authority is intended only to improve the internal management of the Department of Health and Human Services, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, the Department of Health and Human Services, the Food and Drug Administration, any agency, officer, or employee of the United States, or any person. Regulations issued by the Food and Drug Administration without the approval of the Secretary are to be
conclusively viewed as falling outside the scope of this reservation of authority.

[47 FR 16318, Apr. 16, 1982]

Subpart B—Redelegations of Authority from the Commissioner of Food and Drugs

§ 5.20 General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration.

(a) Final authority of the Commissioner of Food and Drugs is redelegated as set forth in this subpart.

(b) The Deputy Commissioner and the Associate Commissioner for Regulatory Affairs are authorized to perform all of the functions of the Commissioner of Food and Drugs.

(c) During the absence or disability of the Commissioner or in the event of a vacancy in that position, the first official who is available in the following positions, or who has been designated by the Commissioner to act in such position, shall act as Commissioner:

(1) Deputy Commissioner.

(2) Associate Commissioner for Regulatory Affairs.

(3) Associate Commissioner for Management and Operations.

For a planned period of absence, the Commissioner may specify a different order of succession.

(d) Authority delegated to a position by title may be exercised by a person officially designated to serve in that position in an acting capacity or on a temporary basis, unless prohibited by a restriction in the document designating him as “acting” or unless not legally permissible.

(e) The Deputy Commissioner for Operations is authorized to make determinations that advisory committee meetings are concerned with matters listed in 5 U.S.C. 552(b) and may be closed to the public in accordance with §5.10(a)(18).

(f)(1) The Deputy Commissioner for Policy and the Associate Commissioner for Policy Coordination are authorized to perform any of the functions of the Commissioner of Food and Drugs with respect to the issuance of Federal Register notices and proposed and final regulations of the Food and Drug Administration.

(2) The Deputy Commissioner for Policy is authorized to issue responses to the following matters under part 10 of this chapter as follows:

(i) Requests for waiver, suspension, or modification of procedural requirements under §10.19;

(ii) Citizen petitions under §10.30;

(iii) Petitions for reconsideration under §10.33;

(iv) Petitions for stay under §10.35; or

(v) Requests for advisory opinions under §10.85.

(3) With respect to any matter delegated to the Deputy Commissioner for Policy under this paragraph, the Deputy Commissioner for Policy is authorized to perform the functions of the Commissioner under §§10.40, 10.45, 10.50, 10.55, 10.60, 10.65, 10.80, 10.90, and 10.95 and of the Deputy Commissioner under §§10.206(g) and (h) of this chapter.

(4) The Deputy Commissioner for Policy and the Associate Commissioner for Policy Coordination are authorized under the Regulatory Flexibility Act (5 U.S.C. 605(b)) to certify that a proposed or final rule, if issued, will not have a significant economic impact on a substantial number of small entities. The delegation excludes the authority to submit reports to Congress.

(g) The following officials are authorized to perform all the functions of the officials under them in their respective offices:

(1) Deputy Commissioner for Operations.

(2) Deputy Commissioner for Policy.

(3) Deputy Commissioner for External Affairs.

(4) Deputy Commissioner for Management and Systems.

(h)(1) The Chief Mediator and Ombudsman, designated as the User Fee Waiver Officer; the Deputy Chief Mediator and Ombudsman; and the Deputy User Fee Waiver Officer are authorized to perform the functions of the Commissioner under the Prescription Drug User Fee Act of 1992, as amended by the FDA Modernization Act of 1997 (21 U.S.C. 379h(d)), as amended hereafter, relating to waiving or reducing prescription drug user fees except for the functions under 21 U.S.C. 379h(d)(C), which pertains to situations where
“the fees will exceed the anticipated present and future costs.” These authorities may not be further redelegated.

(2) The Deputy Commissioner for Management and Systems and the Director, Office of Financial Management are authorized to perform the functions of the Commissioner under 21 U.S.C. 379h(d)(C), as amended hereafter, to waive or reduce prescription drug user fees in situations where it is determined that “the fees will exceed the anticipated present and future costs.” This authority may not be further redelegated.

(3) The Deputy Commissioner for Operations, designated as the User Fee Appeals Officer, is authorized to hear and decide user fee waiver appeals. The decision of the User Fee Appeals Officer will constitute final agency action on such matters.

(i) Authority delegated in the following sections of this subpart may not be redelegated.

§ 5.22 Certification of true copies and use of Department seal.

(a) The following officials are authorized to certify true copies of or extracts from any books, records, papers, or other documents on file within the Food and Drug Administration, to certify that copies are true copies of the entire file, to certify the complete original record, or to certify the non-existence of records on file within the Food and Drug Administration, and to cause the seal of the Department to be affixed to such certifications:

(1) The Deputy Commissioners.
(2) The Associate and Deputy Associate Commissioners.
(3)(i) The Director, Office of Executive Operations.
(ii) The Director, Executive Secretariat.
(iii) The Director, Program Management Staff.
(4) The Executive Assistant to the Commissioner, Office of the Commissioner.
(5)(i) The Director and Deputy Director, Office of Enforcement, Office of Regulatory Affairs (ORA).
(ii) The Director and Deputy Director, Office of Regional Operations, ORA.
(iii) The Director and Deputy Director, Office of Resource Management, ORA.
(iv) The Director, Division of Management Operations, and Chief, Administrative Management Branch, Office of Resource Management, ORA.
(v) The Director, FDA History Staff, ORA.
(6)(i) The Director, Division of Management Systems and Policy, Office of Management (OM).
(ii) The Chief, Dockets Management Branch, Division of Management Systems and Policy, OM.
(7) The Director, Freedom of Information Staff, Office of Public Affairs.
(8)(i) The Director and Deputy Directors, Center for Biologics Evaluation and Research (CBER).
(ii) The Director, Office of Management, CBER.
(iii) The Directors and Deputy Directors of the Office of Compliance, CBER.
(iv) The Director of Congressional and Public Affairs Staff, Office of the Center Director, CBER.

§ 5.21 Emergency functions.

Each Regional Food and Drug Director is authorized, during any period when normal channels of direction are disrupted between the Food and Drug Administration headquarters and his region, to fully represent the Food and Drug Administration within his region in consonance with the Department of Health and Human Services regional emergency plans and to exercise the authority of the Commissioner for supervision of and direction to all Food and Drug Administration activities and use of resources within his region for continuity and for Federal Emergency Health Service operations. These same officials are authorized to provide in Regional Emergency Plans for the delegation of Food and Drug Administration regional authorities to heads of field activities when such activities are cut off from national and regional headquarters.
§ 5.22

(v) The Chief, Surveillance and Policy Branch and Consumer Safety Officers, Office of Compliance, CBER.

(9)(i) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN).

(ii) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

(iii) The Director, Office of Management Systems, CFSAN.

(iv) The Director, Office of Cosmetics and Colors, CFSAN.

(v) The Director, Office of Plant and Dairy Foods Beverages, CFSAN.

(vi) The Director, Office of Seafood, CFSAN.

(vii) The Director, Office of Special Nutritional, CFSAN.

(viii) The Director, Office of Special Research Skills, CFSAN.

(ix) The Director, Office of Constituent Operations, CFSAN.

(x) The Director, Office of Field Programs, CFSAN.

(xi) The Director, Office of Premarket Approval, CFSAN.

(xii) The Director, Office of Scientific Analysis and Support, CF SAN.

(xiii) The Director, Office of Food Labeling, CFSAN.

(10)(i) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).

(ii) The Associate Director and Deputy Associate Director for Management and Systems, CDRH.

(iii) The Director and Deputy Director, Office of Compliance, CDRH.

(iv) For medical devices assigned to their respective divisions, the Division Directors, Office of Compliance, CDRH.

(v) The Director and Deputy Director, Office of Surveillance and Biometrics (OSB), CDRH, and the Director and Deputy Director, Division of Surveillance Systems (DSS), OSB, CDRH.

(vi) Freedom of Information Officers, CDRH.

(11)(i) The Director and Deputy Directors, Center for Veterinary Medicine (CVM).

(ii) The Director and Deputy Director, Office of Management, CVM.

(iii) The Director and Deputy Director, Office of Surveillance and Compliance, CVM.

(iv) The Director, Division of Compliance, Office of Surveillance and Compliance, CVM.

(v) The Chief, Case Guidance Branch, Division of Compliance, Office of Surveillance and Compliance, CVM.

(12)(i) The Director and Deputy Director, National Center for Toxicological Research (NCTR).

(ii) The Director, Office of Research Support, NCTR.

(13)(i) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(ii) The Director and Deputy Director, Office of Management, CDER.

(iii) The Director and Deputy Director, Office of Compliance, CDER.

(iv) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, and the Director and Deputy Director of the Office of Epidemiology and Biostatistics, Office of Review Management, CDER.

(v) The Directors and Deputy Directors of the Offices of Testing and Research, Generic Drugs, New Drug Chemistry, and Clinical Pharmacology and Biopharmaceutics, Office of Pharmaceutical Science, CDER.

(vi) The Chief, Freedom of Information Staff, Office of Training and Communications, CDER.

(vii) The Directors of the Divisions of Labeling and Nonprescription Drug Compliance, Prescription Drug Compliance and Surveillance, and Manufacturing and Product Quality, Office of Compliance, CDER.

(viii) The Director and Deputy Director, Division of Bioequivalence, Office of Generic Drugs, Office of Pharmaceutical Science, CDER.

(14)(i) Regional Food and Drug Directors.

(ii) District Directors.

(iii) The Director, St. Louis Branch.

(iv) The Director, New York Laboratory Division, Northeast Region.

(v) The Director, Southeast Regional Laboratory, Southeast Region.

(vi) The Director, National Forensic Chemistry Center.

(b) The following officials are authorized to cause the seal of the Department to be affixed to agreements,
Food and Drug Administration, HHS

§ 5.23 Disclosure of official records.

(a) The following officials are authorized to make determinations to disclose official records and information under part 20 of this chapter, except that only the officials listed in paragraph (a)(1) of this section may disclose official records and information under §§20.82 and 20.85 of this chapter, and only officials listed in paragraph (a)(10) of this section may disclose information under § 20.89(c) of this chapter.

(1) Associate and Deputy Associate Commissioners.

(2)(i) The Director, Office of the Executive Assistant.

(ii) The Director, Executive Secretariat.

(iii) The Director, Program Management Staff.

(3) Executive Officer, Office of the Commissioner.


(5) Program officials at all organizational levels down to and including branch level for all Headquarters organizations.

(6) Regional Food and Drug Directors and District Directors.

(7) Director, Winchester Engineering and Analytical Center.

(8) Chiefs of branches Field/District Offices and Centers.

(9) Freedom of Information Officers and other employees engaged in Freedom of Information activities.

(10)(i) The Associate Commissioner for Regulatory Affairs, Deputy Associate Commissioner for Regulatory Affairs, and Director, Office of Enforcement, FDA.

(ii) The Director, Deputy Director, and Associate Director for Policy Coordination and Public Affairs, Center for Biologics Evaluation and Research (CBER), and Director, Division of Congressional and Public Affairs, CBER.

(iii) The Director, Deputy Directors, and Associate Director for Science and Medical Affairs, Center for Drug Evaluation and Research (CDER).

(iv) The Director and Deputy Director for Regulations and Policy, Center for Devices and Radiological Health (CDRH).

(v) The Director, Center for Food Safety and Applied Nutrition (CFSAN), and Deputy Director for Systems and Support, CFSAN.

(vi) The Director and Deputy Director, Center for Veterinary Medicine (CVM).

(vii) The Director, Deputy Director, and Associate Director for Scientific Coordination, National Center for Toxicological Research (NCTR).

(b) The Chief, Product Information Management Branch, Division of Database Management, Office of Management, Center for Drug Evaluation and Research (CDER), is authorized to sign affidavits regarding the presence or absence of records of Registration of Drug Establishments.

(c) The following officials are authorized to sign affidavits regarding the presence or absence of medical device establishment registration records:

(1) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).

(2) The Director and Deputy Director, Office of Compliance, CDRH.

(3) The Director and Deputy, Division of Program Operations, Office of Compliance, CDRH.

(4) The Chief, Information Processing and Automation Branch, Division of Program Operations, Office of Compliance, CDRH.

(5) The Director and Deputy Director, Office of Surveillance and Biometrics.
§ 5.24 Authority relating to technology transfer.

(a) The Associate Commissioner for Regulatory Affairs is authorized to perform the functions of the Commissioner of Food and Drugs as requested by the Commissioner regarding the authority to disapprove or require modification of cooperative research and development agreements and licensing agreements and transmit written explanation of such approval or disapproval to the head of the laboratory concerned under sections 11(c)(5)(A) and (B) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(11) of the Act) as amended.

(b) The following officials are authorized to perform the functions of the Commissioner of Food and Drugs as requested by the Commissioner under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(11) of the Act) as amended, and Executive Order 12591 of April 10, 1987, except to the extent that redelegation of those functions is specifically limited in § 5.10(a)(29) of this part, as they pertain to the functions of their respective organizations, including the authority to perform the functions of laboratory directors under the Act as the heads of their respective Federal laboratories, subject to the discretion of the Commissioner of Food and Drugs to require that agreements entered into under section 11(a) of the Act (15 U.S.C. 3710a(11)) include provisions in accordance with section 11(c)(5)(A) of the Act (15 U.S.C. 3710a(11)(A):

1. The Director, Center for Biologics Evaluation and Research.
2. The Director, Center for Devices and Radiological Health.
3. The Director, Center for Drug Evaluation and Research.
4. The Director, Center for Food Safety and Applied Nutrition.
5. The Director, Center for Veterinary Medicine.
6. The Director, National Center for Toxicological Research.
7. The Associate Commissioner for Regulatory Affairs.

[53 FR 26049, July 11, 1988]

§ 5.25 Research, investigation, and testing programs and health information and health promotion programs.

(a) The following officials are authorized under sections 301, 307, 311, 1701, 1702, 1703, and 1704 of the Public Health Service Act (the Act) to establish research, investigation, and testing programs and health information and health promotion programs, which relate to their assigned functions, and to approve grants for conducting such programs:

1. The Director and Deputy Director, National Center for Toxicological Research.
2. The Director and Deputy Directors, Centers for Devices and Radiological Health (CDRH).
3. The Director and Deputy Director, Center for Biologics Evaluation and Research.
4. The Director and Deputy Directors, Centers for Food Safety and Applied Nutrition.
5. The Director and Deputy Director, Center for Veterinary Medicine.
6. The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).
(7) The Director, Office of Orphan Products Development.
(b) The Director and Deputy Directors, CDRH, are authorized to establish an electronic product radiation control program and to approve grants for conducting the program under section 356 of the Act.
(c) The Associate and Deputy Associate Commissioner for Management and Operations, the Director and Deputy Director of the Division of Contracts and Grants Management of the Office of Management and Operations, the Chief of the State Contracts and Assistance Agreements Branch, and the Chief of the Grants and Assistance Agreements Section of that Division and Office are authorized to sign and issue all notices of grant awards and amendments thereto and sign and issue notices of suspension and termination thereof for grants approved under the authority delegated in paragraphs (a) and (b) of this section.
(d) The Director of the National Center for Toxicological Research is authorized under section 301, as amended by Pub. L. 95-622, of the Public Health Service Act to make available to educational institutions, for biomedical and behavioral research, laboratory animals bred for research purposes of the Center which are not required to support Center research programs.

§ 5.26 Service fellowships.
Under authority of sections 207(g) and 208(f) of the Public Health Service Act (42 U.S.C. 209(g) and 210(f)), and within the limits of an approved service fellowship plan, the following officials are authorized to designate persons to receive service fellowships, appoint service fellows, and determine specific stipend rates for individual actions within the ranges established under an approved service fellowship plan:
(a) Deputy Commissioners.
(b) The Director and Deputy Director, National Center for Toxicological Research (NCTR), and the Director, Office of Management, NCTR.
(c) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director, Office of Systems and Management, CDRH.
(d) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), the Associate Director for Research, CBER, and Office Directors.
(e) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN), and Director, Office of Management Systems, CFSAN.
(f) The Director and Deputy Director, Center for Veterinary Medicine (CVM), and the Director, Office of Management, CVM.
(g) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER), and the Director and Deputy Director, Office of Management, CDER.
(h) The Director, Office of Resource Management, Office of Regulatory Affairs.
(i) The Director, Office of Human Resources Management, Office of Management and Systems.

§ 5.27 Patent term extensions for human drug products, medical devices, and food and color additives.
The Associate Commissioner for Health Affairs is authorized to perform the functions delegated to the Commissioner under section 156 of title 35 U.S. Code (35 U.S.C. 156), except for the holding of informal hearings pursuant to 35 U.S.C. 156(d)(2)(B)(ii).

§ 5.28 Cardiac pacemaker devices and pacemaker leads.
The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), are authorized to perform all the functions of the Commissioner of Food and Drugs with regard
§ 5.29 Functions pertaining to safer vaccines.

The Director, Center for Biologics Evaluation and Research (CBER), and the Associate Director for Policy Coordination and Public Affairs, CBER, are authorized to perform the functions of the Commissioner of Food and Drugs under part C, subtitle 2 of title XXI of the Public Health Service Act (42 U.S.C. 300aa–25 et seq.), as amended, and the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. 300aa–1 note), as amended hereafter, as follows:

(a) Section 2125 of the Public Health Service Act (42 U.S.C. 300aa–25)–Recording and reporting of information.

(b) Section 2127 of the Public Health Service Act (42 U.S.C. 300aa–27)–Mandate for safer childhood vaccines.

(c) Section 2128 of the Public Health Service Act (42 U.S.C. 300aa–28)–Manufacturer recordkeeping and reporting.

(d) Section 312 of the National Childhood Vaccine Injury Act of 1986–Related studies, except that the authority to provide for notice and opportunity for public hearing on the review of vaccines and related illnesses and conditions under sections 312(a) and 312(d) of the National Childhood Vaccine Injury Act of 1986 is not redelegated by the Commissioner.

(e) Section 313 of the National Childhood Vaccine Injury Act of 1986–Study of other vaccine risks, except that the authority to provide for notice and opportunity for public hearing on the establishment of guidelines regarding the risks to children of certain vaccines under section 313(a)(1)(B) and (b) of the National Childhood Vaccine Injury Act of 1986 is not redelegated by the Commissioner.

(f) Section 314 of the National Childhood Vaccine Injury Act of 1986–Review of warnings, use instructions, and precautionary information.

§ 5.30 Hearings.

(a) The following officials are authorized to designate officials to hold informal hearings that relate to their assigned functions under sections 305, 404(b), and 801(a) of the Federal Food, Drug, and Cosmetic Act; section 6 of the Fair Packaging and Labeling Act; section 9(b) of the Federal Caustic Poison Act; and section 5 of the Federal Import Milk Act. Officials so designated are delegated authority vested in the Secretary of Agriculture by 7 U.S.C. 2217 (43 Stat. 803) to administer to take from any person an oath, affirmation, affidavit, or deposition for use in any prosecution or proceeding under, or in enforcement of, any law as cited in this part:

1) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN), and the Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

2) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER); the Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER; and the Director and Deputy Director, Office of Compliance, CDER.

3) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH).

4) The Director and Deputy Director, Center for Veterinary Medicine (CVM).

5) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), and the Directors and Deputy Directors of the Offices of Biological Product Review, Biologics Research, and Compliance, CBER.

6) Regional Food and Drug Directors.

7) District Directors.

8) The Director, St. Louis Branch.

(b) The Director and Deputy Directors, CDRH, are authorized to hold hearings, and to designate other officials to hold informal hearings, under section 360(a) of the Public Health Service Act.

(c) The following officials are authorized to serve as the presiding officer, and to designate other Food and Drug Administration employees to serve as
the presiding officer, at a regulatory hearing and to conduct such a hearing pursuant to the provisions of part 16 of this chapter. An official can serve as the presiding officer in a particular hearing only if he or she satisfies the requirements of § 16.42(b) of this chapter with respect to the action that is the subject of the hearing. Such officials are delegated authority vested in the Secretary of Agriculture by 7 U.S.C. 2217 (43 Stat. 803) to administer or to take from any person an oath, affirmation, or deposition for use in any prosecution or proceeding under, or in enforcement of, any law as cited in this part:

(1) The Associate Commissioner for Health Affairs.
(2) The Director and Deputy Directors, CFSAN.
(3) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER; the Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER; and the Director and Deputy Director, Office of Compliance, CDER.
(4) The Director and Deputy Directors, CDRH.
(5) The Director and Deputy Director, CVM.
(6) The Director and Deputy Director, CBER, and the Directors and Deputy Directors of the Offices of Biological Product Review, Biologics Research, and Compliance, CBER.
(7) Regional Food and Drug Directors.
(8) District Directors.
(9) The Director, St. Louis Branch.
(10) Such other FDA official as is designated by the Commissioner by memorandum in the proceeding.


§ 5.31 Petitions under part 10.  
(a) For drugs assigned to their organizations, the following officials are authorized to grant or deny citizen petitions submitted under § 10.30 of this chapter for a stay of an effective date in §201.59 of this chapter for compliance with certain labeling requirements for human prescription drugs.

(1)(i) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).
(ii) The Directors and Deputy Directors of the Offices of Biological Product Review and Biologics Research, CBER.
(iii) The Directors and Deputy Directors of the divisions in the Offices of Biological Product Review and Biologics Research, CBER.
(2)(i) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).
(iii) The Directors and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.
(iv) The Director and supervisory consumer safety officers, Pilot Drug Evaluation Staff, Office of the Center Director, CDER.
(b) The following officials are authorized to grant or deny citizen petitions submitted under § 10.30 of this chapter requesting in vitro test modifications under § 331.29 of this chapter:

(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER.
(2) The Director, Office of Drug Evaluation V, Office of Review Management, CDER.
(3) The Director and Deputy Director, Division of Over-the-Counter Drug Products, Office of Drug Evaluation V, Office of Review Management, CDER.
(c) The following officials are authorized to grant or deny citizen petitions submitted under § 10.30 of this chapter for a stay of an effective date or for an exemption from the tamper-resistant packaging and labeling requirements set forth in § 211.132, § 700.25, or § 800.12 of this chapter for certain over-the-counter human drug and cosmetic products and medical devices which relate to the assigned functions of the respective organizations:
§ 5.31  

(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER.  
(2) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN), and the Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.  
(3) The Director and Deputy Directors, Center for Devices and Radiological Health.  
(d) The following officials are authorized to grant or deny citizen petitions submitted under §10.30 of this chapter requesting exemption from the general pregnancy-nursing warning for over-the-counter (OTC) drugs required under §201.63 of this chapter, requesting exemption from a general overdose warning required under §330.1(g) of this chapter, and requesting exemption from OTC drug administrative procedures under §330.10 of this chapter:  
(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER.  
(2) The Director, Office of Drug Evaluation V, Office of Review Management, CDER.  
(3) The Director and Deputy Director, Division of Over-the-Counter Drug Products, Office of Drug Evaluation V, Office of Review Management, CDER.  
(e)(1) The following officials are authorized to issue 180-day tentative responses to citizen petitions on food and cosmetic matters under §10.30(e)(2)(iii) of this chapter that relate to the assigned functions of that Center:  
(i) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN).  
(ii) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.  
(iii) The Director, Office of Cosmetics and Colors, CFSAN.  
(iv) The Director, Office of Food Labeling, CFSAN.  
(v) The Director, Office of Premarket Approval, CFSAN.  
(vi) The Director, Office of Plant and Dairy Foods and Beverages, CFSAN.  
(vii) The Director, Office of Seafood, CFSAN.  
(viii) The Director, Office of Special Nutritionals, CFSAN.  
(2) The Director and Deputy Director, Center for Veterinary Medicine (CVM), are authorized to issue 180-day tentative responses to citizen petitions on animal food and drug matters under §10.30(e)(2)(ii) of this chapter that relate to the assigned functions of that Center.  
(3) The Director and Deputy Director, CBER, are authorized to issue 180-day tentative responses to citizen petitions on biological product matters under §10.30(e)(2)(ii) of this chapter that relate to the assigned functions of that Center.  
(4) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER, are authorized to issue 180-day tentative responses to citizen petitions on drug product matters under §10.30(e)(2)(iii) of this chapter that relate to the assigned functions of that Center.  
(5) The Director and Deputy Directors, CDRH, are authorized to issue 180-Day tentative responses to citizen petitions on medical device matters under §10.30(e)(2)(ii) of this chapter that relate to the assigned functions of that Center.  
(f)(1) The Director and Deputy Director, CBER, are authorized to grant or deny citizen petitions submitted under §10.30 of this chapter on drug and biological product matters in program areas where they have been delegated final approval authority in the following sections of this part:  
(i) Section 5.68 Issuance and revocation of licenses for the propagation or manufacture and preparation of biological products;  
(ii) Section 5.69 Notification of release for distribution of biological products;  
(iii) Section 5.71 Termination of exemptions for new drugs for investigational use in human beings or in animals;  
(iv) Section 5.90 Approval of new drug applications and their supplements; and  
(v) Section 5.92 Issuance of notices relating to proposals to refuse approval or to withdraw approval of new drug applications and their supplements.  
(vi) Section 5.99 Issuance of notices relating to proposals and orders for debarment and denial of an application to terminate debarment.
(2) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER, are authorized to grant or deny citizen petitions submitted under §10.30 of this chapter on drug product matters in program areas where they have been delegated final approval authority in the following sections of this part:

(i) Section 5.70 Issuance of notices implementing the provisions of the Drug Amendments of 1962 (DESI);
(ii) Section 5.71 Termination of exemptions for new drugs for investigational use in human beings or in animals;
(iii)-(iv) [Reserved]
(v) Section 5.75 Designation of official master and working standards for antibiotic drugs;
(vi) Section 5.76 Certification of antibiotic drugs;
(vii) Section 5.78 Issuance, amendment, or repeal of regulations pertaining to antibiotic drugs;
(viii) Section 5.80 Approval of new drug applications and their supplements; and
(ix) Section 5.82 Issuance of notices relating to proposals to refuse approval or to withdraw approval of new drug applications and their supplements.
(x) Section 5.99 Issuance of notices relating to proposals and orders for debarment and denial of an application to terminate debarment.

(3) The Director and Deputy Director, Division of Bioequivalence, Office of Generic Drugs, Office of Pharmaceutical Science, CDER, except for those drug products listed in §314.440(b) of this chapter, are authorized to issue responses to citizen petitions submitted under §10.30 of this chapter concerning actions they are authorized to take under §5.99 Issuance of notices relating to proposals and orders for debarment and denial of an application to terminate debarment.

(4) The Director and Deputy Director, Office of Biological Product Review, CBER, for those drug products listed in §314.440(b) of this chapter, are authorized to issue responses to citizen petitions submitted under §10.30 of this chapter seeking a determination of the suitability of an abbreviated new drug application for a drug product.

(5) For drugs assigned to their organization, the following officials are authorized to issue responses to citizen petitions submitted under §10.30 of this chapter from sponsors of an investigational new drug application who request approval to ship in interstate commerce, in accordance with §211.125(j) of this chapter, an investigational new drug for human use containing a chlorofluorocarbon.

(i) The Director and Deputy Director, CBER.
(ii) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER.

(6) The Director and Deputy Director, CVM, are authorized to issue responses to citizen petitions submitted under §10.30 of this chapter from sponsors of an investigational new animal drug application who request approval to ship in interstate commerce, in accordance with §211.125(j) of this chapter, an investigational new animal drug for animal use containing a chlorofluorocarbon.

(7) The Director and Deputy Director, Office of New Animal Drug Evaluation, CVM, are authorized to issue responses to citizen petitions submitted under §10.30 of this chapter, seeking a determination of the suitability of an abbreviated new animal drug application for an animal drug product.

(8) The Director and Deputy Director, CVM, are authorized to grant or deny citizen petitions submitted under §10.30 of this chapter concerning actions they are authorized to take under §5.99 Issuance of notices relating to proposals and orders for debarment and denial of an application to terminate debarment.

(9) The Director and Deputy Directors, CDRH, and the Director, Office of Compliance, CDRH, are authorized to grant or deny citizen petitions submitted under §§10.30 and 821.2(b) of this chapter, requesting an exemption or variance from medical device tracking requirements in part 821 of this chapter.

(h) The Director and the Director of the Office of Compliance, CDER, are each authorized to grant or deny citizen petitions submitted under §10.30 of this chapter requesting an exception or alternative to any requirement in part 211 of this chapter pertaining to current good manufacturing practice for
§ 5.32  Authority relating to determination of product primary jurisdiction.

The FDA ombudsman as product jurisdiction officer is authorized to determine whether the Center for Biologics Evaluation and Research (CBER), the Center for Devices and Radiological Health (CDRH), or the Center for Drug Evaluation and Research (CDER) has primary responsibility for premarket review and regulation of a product that constitutes a combination of a drug, device, or biological product under section 503(g)(1) of the Federal Food, Drug, and Cosmetic Act or that is a drug, device or biologic product where the center with primary jurisdiction is unclear or in dispute.

[56 FR 58759, Nov. 21, 1991]

§ 5.33  Premarket approval of a product that is or contains a biologic, a device, or a drug.

For a product that is or contains a biologic, a device, or a drug, the following officials in the Center for Biologics Evaluation and Research, Center for Devices and Radiological Health, or Center for Drug Evaluation and Research who currently hold delegated premarket approval authority for biologics, devices, or drugs, respectively, are hereby delegated all the authorities necessary for premarket approval of any product that is a biologic, a device, or a drug, or any combination of two or more of these products:

(a) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER) and the Director, Office of Biological Product Review, CBER.

(b) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director, Office of Device Evaluation, CDRH.

(c) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER); and the Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.


§ 5.34  Authority to select temporary voting members for advisory committees and authority to sign conflict of interest waivers.

(a) Each center director is authorized to select members of, and consultants to, scientific and technical FDA advisory committees under that center's management to serve temporarily as voting members on another advisory committee under that center's management when expertise is required that is not available among current voting standing members of a committee or to comprise a quorum when, because of unforeseen circumstances, a quorum is or will be lacking. When additional voting members are added to a committee to provide needed expertise not available among current voting standing members of a committee, a quorum will be based on the total of regular and added members. Authority to select temporary voting members to advisory committees if such voting members are serving on an advisory committee managed by another center has not been redelegated. This authority will continue to be exercised by the Commissioner or his designee.

(b) Each center director is authorized, under 18 U.S.C. 208(b)(1), to sign conflict of interest waivers for special government employees without substantial interest to serve as consultants to advisory committees or in any other capacity within the centers except as advisory committee members.

[58 FR 39142, July 22, 1993]

§ 5.35  Enforcement activities.

(a) Designated officers and employees of the Food and Drug Administration who have been issued the Food and Drug Administration official credentials consisting of Form FDA-200A, Identification Record, and Form FDA-
200B, Specification of General Authority, are authorized:

(1) To conduct examinations, inspections, and investigations; to collect and obtain samples; to have access to and to copy and verify records as authorized by law; to make seizures of items under section 702(e)(5) of the Federal Food, Drug, and Cosmetic Act (the act); and to supervise compliance operations for the enforcement of the act, the Fair Packaging and Labeling Act, the Federal Caustic Poison Act, the Import Milk Act, the Filled Milk Act, the Tea Importation Act, and sections 351 and 354 through 361 of the Public Health Service Act.

(2) To administer oaths and affirmations under section 1 of the act of January 31, 1925 (Ch. 124, 43 Stat. 803); sections 12 to 15 of Reorganization Plan No. IV, effective June 30, 1940; and Reorganization Plan No. 1 of 1953, effective April 11, 1953.

(b) Any officer or employee of the Food and Drug Administration who has been designated by the Commissioner to conduct examinations, investigations, or inspections under the act relating to counterfeit drugs and issued the Food and Drug Administration Official Credential consisting of Form FDA-200D, Special Authority for Criminal Investigators, is authorized to do the following:

(i) Carry firearms;
(ii) Serve and execute search warrants and arrest warrants;
(iii) Execute seizure by process issued pursuant to libel under section 304 of the act;
(iv) Make arrests without warrant for an offense under the act with respect to counterfeit drugs if the offense is committed in the presence of the criminal investigator or, in the case of a felony, if the investigator has probable cause to believe that the person so arrested has committed, or is committing, such offense; and
(v) Make, prior to the institution of libel proceedings under section 304(a)(2) of the act, seizures of drugs or containers or of equipment, punches, dies, plates, stones, labeling, or other things, if they are, or the criminal investigator has reasonable grounds to believe that they are, subject to seizure and condemnation under section 304(a)(2) of the act.

(2) Perform such other functions under the act, or any other law, as the Commissioner of Food and Drugs may prescribe.

(3) To administer oaths and affirmations under section 1 of the act of January 31, 1925 (Ch. 124, 43 Stat. 803); sections 12 to 15 of Reorganization Plan No. IV, effective June 30, 1940; and Reorganization Plan No. 1 of 1953, effective April 11, 1953.

(c) Any officer or employee of the Food and Drug Administration who has been designated by the Commissioner to provide specialized law enforcement support involving criminal investigations under the Federal Food, Drug, and Cosmetic Act (the act), and other duties as assigned by the Commissioner, and issued the Food and Drug Administration Official Credential consisting of Form FDA-200E, Special Authority for Criminal Investigative Specialists, is authorized to receive information as to all matters relating to such act and regulations promulgated under the act.

(d) The Food and Drug Administration's official credentials referred to in paragraphs (a), (b), and (c) of this section are described as follows:

(1) Form FDA-200A entitled "Identification Record" bears a color photograph, a description, and the signature of the holder, an identification number, an expiration date, the Department of Health and Human Services' seal with blue imprint, on the left of the photograph, and the Food and Drug Administration's symbol, on the right of the photograph.

(2) Form FDA-200B entitled "Specification of General Authority" bears the holder's name, his or her general authority, an identification number, an expiration date, the Commissioner's signature, the names of the Department of Health and Human Services, the Public Health Service, and the Food and Drug Administration. The form is superimposed with the Department's seal with blue imprint.

(3) Form FDA-200D, entitled "Special Authority for Criminal Investigators," is in two parts and bears the holder's
§ 5.36 Certification following inspections.

Regional Food and Drug Directors and District Directors are authorized to issue certificates of sanitation under § 1240.20 of this chapter.

[60 FR 15871, Mar. 28, 1995]

§ 5.37 Issuance of reports of minor violations.

(a) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs under section 309 of the Federal Food, Drug, and Cosmetic Act regarding the issuance of written notices or warnings:

(1)(i) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).

(2)(i) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).

(ii) The Director and Deputy Director, Office of Compliance, CDRH.

(iii) For medical devices assigned to their respective divisions, the Division Directors, Office of Compliance, CDRH.

(iv) The Director and Deputy Director, Office of Surveillance and Biometrics (OSB), CDRH, and the Director and Deputy Director, Division of Surveillance Systems (DSS), OSB, CDRH.

(3)(i) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition, (CFSAN).

(ii) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

(iii) The Director, Office of Field Programs, CFSAN.

(iv) The Director, Division of Enforcement, Office of Field Programs, CFSAN.

(4)(i) The Director and Deputy Director, Center for Veterinary Medicine (CVM).

(ii) The Director and Deputy Director, Office of Surveillance and Compliance, CVM.

(iii) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(iv) The Director, Division of Drug Marketing, Advertising, and Communications, Office of Drug Evaluation I, Office of Review Management, CDER.

(5)(i) Regional Food and Drug Directors.

(ii) District Directors.

(iii) Chiefs of District Compliance Branches.

(iv) The Director, St. Louis Branch.

(v) The Director, Northeast Regional Laboratory, Northeast Region.

(vi) The Director, Southeast Regional Laboratory, Southeast Region.
§ 5.39 Redelegation of the Center for Biologics Evaluation and Research Director’s program authorities.

The following officials are authorized to perform all the functions of the Director, Center for Biologics Evaluation and Research (CBER) with regard to program authorities for their respective areas:

(a) Associate Directors, CBER.
(b) Office Directors, CBER.
(c) Division Directors, CBER.

[58 FR 18346, Apr. 9, 1993]
§ 5.40 Issuance of Federal Register documents pertaining to the determination of safe levels, notice of need for development of an analytical method, notice of availability of a developed analytical method, and prohibition of certain extralabel drug use.

The Director and Deputy Director, Center for Veterinary Medicine (CVM) are authorized to issue FEDERAL REGISTER documents pertaining to the determination of safe levels, notice of need for development of an analytical method, notice of availability of a developed analytical method, and prohibition of certain extralabel drug use related to implementation of the Animal Medicinal Drug Use Clarification Act of 1994 (the AMDUCA) (Pub. L. 103-396). This authority may be further redelegated by the Director and Deputy Director, CVM.


§ 5.44 Export of unapproved drugs.

(a) The following officials are authorized, under section 802(b) of the Federal Food, Drug, and Cosmetic Act, to approve or disapprove applications to export unapproved new drugs and biological products and to issue notices of receipt of such applications:

(1) For human drugs assigned to their respective organizations:
   (i) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).
   (ii) The Director and Deputy Director, Office of Compliance, CBER.
   (iii) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).
   (iv) The Director and Deputy Director, Office of Compliance, CDER.

(b) The following officials are authorized, under section 802(f) of the Federal Food, Drug, and Cosmetic Act, to approve or disapprove an application to export a partially processed biological product:

(1) For human drugs assigned to their respective organizations:
   (i) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).
   (ii) The Director and Deputy Director, Office of Compliance, CBER.
   (iii) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).
   (iv) The Director and Deputy Director, Office of Compliance, CDER.

(c) The following officials are authorized, under section 351(h) of the Public Health Service Act, to approve or disapprove an application to export a partially processed biological product:

(1) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).
(2) The Director and Deputy Director, Office of Compliance, CBER.


§ 5.45 Imports and exports.

(a) The Regional Food and Drug Directors, District Directors, and the Director, St. Louis Branch, are authorized, under section 801 of the Federal Food, Drug, and Cosmetic Act (FFDCA), to perform the following functions or to designate officials to:

(1) Request from the Secretary of the Treasury samples of food, drugs (including biological products), devices, or cosmetics imported or offered for import.
(2) Determine whether such articles are in compliance with the FFDCA.
(3) Authorize relabeling or other compliance actions to bring articles into compliance under the FFDCA.
(4) Supervise such compliance actions.

(b) The following officials are authorized, under section 802(f) of the Federal Food, Drug, and Cosmetic Act, to approve or disapprove an application to export a drug (including a biological product) to be used in the prevention or treatment of a tropical disease:

(1) For human drugs assigned to their respective organizations:
   (i) The Director and Deputy Director, Center for Veterinary Medicine (CVM).
   (ii) The Director and Deputy Director, Office of Compliance, CVM.
   (iii) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CVM.
   (iv) The Director and Deputy Director, Office of Compliance, CVM.

Directors; District Directors; and the Director, St. Louis Branch, are authorized, under section 360 of the Public Health Service Act (PHSA), to perform the following functions or to designate officials to:

1. Request from the Secretary of the Treasury samples of electronic products imported or offered for import to determine whether such products are in compliance with the PHSA.
2. Refuse admission of noncomplying products and notify the Secretary of the Treasury of such refusal.
3. Supervise operations to bring noncomplying products into compliance under the PHSA.
4. Refuse or grant permission and time extensions to bring noncomplying products into compliance with the PHSA in accordance with a corrective action plan approved by the Director, Office of Compliance and Surveillance, CDRH.

(c) The following officials are authorized, under section 360B(b) of the PHSA, to exempt persons from issuing a certification, as required by section 358(h) of the PHSA, for electronic products imported into the United States for testing, evaluation, demonstrations, or training, which will not be introduced into commerce and upon completion of their function will be destroyed or exported in accord with U.S. Customs Service's regulations:

1. The Director and Deputy Directors, CDRH.
2. The Director and Deputy Director, Office of Compliance, CDRH.
3. Regional Food and Drug Directors.
4. District Directors.
5. The Director, St. Louis Branch.

(d) The Regional Food and Drug Directors, District Directors, and the Director, St. Louis Branch, are authorized to exercise all of the functions of the Commissioner of Food and Drugs under section 362 of the PHSA that refers to the prohibition of the introduction of foods, drugs, devices, cosmetics, and electronic products and other items or products regulated by the Food and Drug Administration into the United States when it is determined that it is required in the interest of public health, and such functions relate to the law enforcement functions of the Food and Drug Administration.

(e) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs pertaining to exportation of medical devices under section 801(e) of the FFDCA:

1. For medical devices assigned to their respective organization:
   i. The Director and Deputy Directors, CDRH.
   ii. The Director and Deputy Director, Office of Compliance, CDRH.
   iii. The Director and Deputy Director, Division of Program Operations, Office of Compliance, CDRH.
   iv. The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).
   v. The Director and Deputy Director, Office of Compliance, CBER.
2. Regional Food and Drug Directors.
3. District Directors.
4. The Director, St. Louis Branch.

(f) The following officials are authorized to perform the functions of the Commissioner of Food and Drugs, for drugs under their jurisdiction, pertaining to the reimportation of prescription drugs under section 801(d)(2) of the FFDCA for emergency medical care:

1. The Director, Center for Biologics Evaluation and Research (CBER) and the Director, Office of Compliance, CBER.
2. The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER) and the Director and Deputy Director, Office of Compliance, CDER.

§ 5.47

CDRH, are authorized to reject manufacturer's designation of import agents under §1005.25(b) of this chapter.


§ 5.47 Detention of adulterated or misbranded medical devices.

The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs pertaining to detention, under section 304(g) of the Federal Food, Drug, and Cosmetic Act and in accordance with §800.55 of this chapter, of medical devices that may be adulterated or misbranded:

(a) For medical devices assigned to their respective organizations:
   (1) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).
   (2) The Director and Deputy Director, Office of Compliance, CDRH.
   (3) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).
   (4) The Director and Deputy Director, Office of Compliance, CBER.
   (b) Regional Food and Drug Directors.
   (c) District Directors.
   (d) The Director, St. Louis Branch.


§ 5.49 Authorization to use alternative evidence for determination of the effectiveness of medical devices.

The following officials, for medical devices assigned to their respective organizations, may authorize under section 513(a)(3)(B) of the Federal Food, Drug, and Cosmetic Act (the act) the use of valid scientific evidence (other than that prescribed by section 513(a)(3)(A) of the act) for determining the effectiveness of medical devices for the purposes of sections 513, 514, and 515 of the act:

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Biological Evaluation, CBER.
(b) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), and the Director and Deputy Director, Office of Biological Product Review, CBER.


§ 5.50 Notification to petitioners of determinations made on petitions for reclassification of medical devices.

The following officials, for medical devices assigned to their respective organizations, are authorized to notify petitioners of determinations made on petitions for reclassification of medical devices that are classified in class III (premarket approval) by sections 513(f) and 520(l) of the Federal Food, Drug, and Cosmetic Act (the act) and denials of petitions for reclassification of medical devices that are submitted under section 513(e) of the act (except for petitions submitted in response to Federal Register notices initiating standard-setting under section 514(b) of the act or premarket approval under section 515(b) of the act):

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH) and the Director and Deputy Directors, Office of Device Evaluation.
(b) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), and the Director and Deputy Director, Office of Biological Product Review, CBER.


§ 5.51 Determination of classification of devices.

(a) The following officials, for devices assigned to their respective organizations, are authorized to determine the classification of a medical device in commercial distribution prior to May 28, 1976, pursuant to section 513(d) of the Federal Food, Drug, and Cosmetic Act (the act):

(1) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH) and the Director and Deputy Directors, Office of Device Evaluation, CDRH.

(b) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), and the Director and Deputy Director, Office of Biological Evaluation, CDRH.
(2) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).

(b) The following officials, for devices assigned to their respective organizations, are authorized to determine the classification of a medical device first intended for commercial distribution after May 28, 1976, pursuant to section 513(f)(1)(A) of the act:

(1) The Director and Deputy Directors, CDRH, and the Director, Deputy Directors, Chief of the Premarket Notification Section, Division and Deputy Division Directors, Associate Division Directors, and Branch Chiefs, Office of Device Evaluation, CDRH.

(2) The Director and Deputy Director, CBER.

§ 5.52 Notification to sponsors of deficiencies in petitions for reclassification of medical devices.

The following officials, for medical devices assigned to their respective organizations, are authorized to notify sponsors of deficiencies in petitions for reclassification of medical devices submitted under sections 513(f) and 520(i) of the Federal Food, Drug, and Cosmetic Act:

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH) and the Director and Deputy Directors, Office of Device Evaluation, CDRH.

(b) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), and the Director and Deputy Director, Office of Biological Product Review, CBER.

§ 5.53 Approval, disapproval, or withdrawal of approval of product development protocols and applications for premarket approval for medical devices.

(a) The following officials, for medical devices assigned to their respective organizations, are authorized to approve, disapprove, declare as complete or incomplete, or revoke product development protocols for medical devices submitted under section 515(f) of the Federal Food, Drug, and Cosmetic Act (the act):

(1) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), the Director and Deputy Directors, Office of Device Evaluation (ODE), CDRH, and the Division Directors, ODE, CDRH.

(2) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), and the Director and Deputy Director, Office of Biological Product Review, CBER.

(b)(1) The following officials, for medical devices assigned to their respective organizations, are authorized to approve, disapprove, or withdraw approval of applications for premarket approval for medical devices submitted under sections 515 and 520(i) of the act:

(i) The Director and Deputy Directors, CDRH, the Director and Deputy Directors, ODE, CDRH, and the Division Directors, ODE, CDRH.

(ii) The Director and Deputy Director, CBER, and the Director and Deputy Director, Office of Biological Product Review, CBER.

(2) For medical devices assigned to their respective division, the Division Directors, Office of Device Evaluation, CDRH, are authorized to approve, disapprove, or withdraw approval of supplemental premarket applications.

(c) The Director and Deputy Directors, CDRH, for medical devices assigned to their organization, are authorized to issue notices to announce the approval, disapproval, or withdrawal of approval of a device, and to make publicly available a detailed summary of the information on which the decision was based, under sections 515(d), (e), and (g) and 520(h)(1) of the act.

§ 5.54 Determinations that medical devices present unreasonable risk of substantial harm.

The following officials, for medical devices assigned to their respective organizations, are authorized to determine that medical devices present an
§ 5.55 Orders to repair or replace, or make refunds for, medical devices.

The following officials, for medical devices assigned to their respective organizations, are authorized to order repair or replacement of, or refund for, medical devices under section 518(b) and (c) of the Federal Food, Drug, and Cosmetic Act:

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Compliance, CDRH.

(b) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), and the Director and Deputy Director, Office of Compliance, CBER.

(c) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER); and the Director and Deputy Director, Office of Compliance, CDER.

§ 5.56 Recall authority.

The following officials, for medical devices assigned to their respective organizations, are authorized to perform all of the recall functions under section 518(e) of the Federal Food, Drug, and Cosmetic Act, which have been delegated to the Commissioner of Food and Drugs:

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).

(b) The Director and Deputy Director, Office of Compliance, CDRH.

(c) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER); and the Director and Deputy Director, Office of Compliance, CDER.

(d) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), and the Director and Deputy Director, Office of Compliance, CBER.

§ 5.57 Temporary suspension of a medical device application.

The following officials for medical devices assigned to their respective organizations are authorized under section 515(e) of the Federal Food, Drug, and Cosmetic Act, to determine that there is reasonable probability that continuation of the distribution of a device under an approved application would cause serious adverse health consequences or death, and upon making such a determination, to issue an order to temporarily suspend the approval of an application:

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).

(b) The Director and Deputy Director, Office of Compliance, CDRH.

(c) The Director and Deputy Directors, Office of Device Evaluation, CDRH.

(d) The Director, Deputy Center Director for Review Management, and
Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER); the Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER; the Director and Deputy Director, Office of Generic Drugs, Office of Pharmaceutical Science, CDER; and the Director and Deputy Director, Office of Compliance, CDER.

(e) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), and the Director and Deputy Director, Office of Compliance, CBER.

§ 5.58 Orphan products.

(a) The Director, Office of Orphan Products Development, Office of the Commissioner, is authorized to issue notices, and amendments thereto, inviting sponsorship for orphan products (human and animal drugs, biological products, and medical devices) and submission of:

(1) Notices of claimed investigational exemption for a new drug or new drug applications;
(2) Notices of claimed investigational exemption for a new animal drug or new animal drug applications;
(3) Applications for establishment and product licenses for biological products; or
(4) Applications for an investigational device exemption or premarket approval applications for medical devices, as appropriate.

(b) The Director, Office of Orphans Products Development, Office of the Commissioner, is authorized:

(1) To determine whether there is reason to believe that a drug is a drug for a disease or condition that is rare in the United States under section 525(a) of the Federal Food, Drug, and Cosmetic Act (the act) and to designate such drug as a drug for a rare disease or condition under section 526(a) of the act.
(2) To issue holders of approved applications or licenses notice and opportunity for the submission of views under section 527(b)(1) of the act.

(3) To encourage sponsors of an investigational new drug for a rare disease or condition to design protocols for clinical investigations to permit the addition to the investigation of persons with the disease or condition under section 528 of the act.

(c) The following officials are authorized to provide sponsors, under section 525(a) of the act, with recommendations for nonclinical or clinical investigations believed to be necessary for a drug for a rare disease or condition to be approved or licensed:

(1) For drugs under their jurisdiction:
   (i) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).
   (iii) The Directors and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(2) For biological products under their jurisdiction:
   (i) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).
   (ii) The Director and Deputy Director, Office of Biological Product Review, CBER.
   (iii) The Directors and Deputy Directors of the divisions in the Office of Biological Product Review, CBER.

§ 5.59 Approval, disapproval, or withdrawal of approval of applications for investigational device exemptions.

(a) For medical devices assigned to their respective organizations, the following officials are authorized to approve, disapprove, or withdraw approval of applications for investigational device exemptions submitted under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act):

(1) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), the Director

§ 5.60 Required and discretionary postmarket surveillance.

(a) For any device (including any device that is or contains a drug or biological) that was first introduced or delivered for introduction into interstate commerce after January 1, 1991, and that is either a permanent implant, the failure of which may cause serious adverse health consequences or death, a life-sustaining or life-supporting device, or a device that potentially presents a serious risk to human health, any of the following officials is authorized to require a manufacturer of such device to conduct postmarket surveillance:

(1) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).

(2) The Director and Deputy Director, Office of Surveillance and Biometrics, CDRH.

(3) The Director and Deputy Director, Division of Postmarket Surveillance, Office of Surveillance and Biometrics, CDRH.

(4) The Director and Deputy Directors, Division Directors and Associate Division Directors, Office of Device Evaluation, CDRH.

(5) The Chief, Premarket Notification Section; Chief, Premarket Approval Section; Director, Program Operations Staff, Office of Device Evaluation, CDRH.

(6) The Director and Deputy Director, Office of Compliance, CDRH.

(7) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).


(9) The Director and Deputy Director, Office of Compliance, CBER.

(10) The Director and Deputy Director, Office of Biological Product Review, CBER.

(b) For any device (including any device that is or contains a drug or biological), any of the following officials is authorized to require a manufacturer of a device to conduct postmarket surveillance if the official determines that postmarket surveillance of the device is necessary to protect the public health or provide safety or effectiveness data for the device:

(1) The Director and Deputy Directors, CDRH.

(2) The Director and Deputy Director, Office of Surveillance and Biometrics, CDRH.

(3) The Director and Deputy Director, Division of Postmarket Surveillance, Office of Surveillance and Biometrics, CDRH.

(4) The Director and Deputy Directors, Office of Device Evaluation, CDRH.

(5) The Director and Deputy Director, Office of Compliance, CDRH.

(6) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).


(8) The Director and Deputy Director, Office of Compliance, CDER.

(9) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).

(10) The Director and Deputy Director, Office of Compliance, CBER.
§ 5.61 Food standards, food additives, generally recognized as safe (GRAS) substances, color additives, nutrient content claims, and health claims.

(a) (1) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs under section 409 and 721 of the Federal Food, Drug, and Cosmetic Act (the act) regarding the issuance of notices of filing (including notices of extension of, or reopening of, the comment period), and of voluntary withdrawal, of petitions on food additives, generally recognized as safe (GRAS) substances, and color additives that relate to the assigned functions of the respective Center:

(i) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN).
(ii) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.
(iii) The Director, Office of Premarket Approval, CFSAN.
(iv) The Director, Office of Policy, Planning, and Strategic Initiatives, CVM.

(2) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN), and the Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN are authorized to perform all of the functions of the Commissioner of Food and Drugs under section 401 of the act regarding the issuance of notices of temporary permits for foods varying from standards of identity under §130.17 of this chapter:

(i) The Director and Deputy Directors, CFSAN.
(ii) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.
(iii) The Director, Office of Food Labeling, CFSAN.

(b) (1) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN), and the Director, Office of Premarket Approval, CFSAN.

(2) The following officials are authorized to issue 90-day letters to food additive petitioners under section 409(c)(2) of the act that relate to the assigned functions of the Center:

(i) The Director and Deputy Directors, CFSAN.
(ii) The Director, Office of Premarket Approval, CFSAN.
(iii) The Director, Office of Premarket Approval, CVM.

(c) (1) The following officials are authorized to issue 90-day letters to food additive petitioners under section 409(c)(2) of the act that relate to the assigned functions of the Center:

(i) The Director and Deputy Directors, CFSAN.
(ii) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

(2) The following officials are authorized to issue 90-day letters to food additive petitioners under section 409(c)(2) of the act that relate to the assigned functions of the Center:

(i) The Director and Deputy Director, CVM.
(ii) The Director and Deputy Director, Office of Surveillance and Compliance, CVM.

(iii) The Director and Deputy Director, Division of Animal Feeds, Office of Surveillance and Compliance, CVM.

(d) The following officials are authorized to certify batches of color additives under section 721 of the act:

(1) The Director and Deputy Directors, CF SAN.

(2) The Director, Office of Policy, Planning, and Strategic Initiatives, CF SAN.

(3) The Director, Office of Cosmetics and Colors, CF SAN.

(e) The following officials are authorized to issue advance notices of proposed rulemaking pertaining to Codex Alimentarius food standards and notices terminating consideration of such standards when comments fail to support the desirability and need for proposing their adoption, under §130.6 of this chapter:

(1) The Director and Deputy Directors, CF SAN.

(2) The Director, Office of Policy, Planning, and Strategic Initiatives, CF SAN.

(3) The Director, Office of Food Labeling, CF SAN.

(f) The following officials are authorized to issue notices of proposed rulemaking and issue or amend regulations affirming generally recognized as safe (GRAS) status of food substances under §170.35 or §570.35 of this chapter where the affirmations relate to the assigned functions of the respective Center and do not involve novel or controversial issues:

(1) The Director and Deputy Directors, CF SAN, and the Director, Office of Policy, Planning, and Strategic Initiatives, CF SAN.

(2) The Director and Deputy Director, CVM.

(3) The Director and Deputy Director, CF SAN.

(4) The Directors of the Divisions of Petition Control and Product Policy, Office of Premarket Approval, CF SAN.


§ 5.62 Issuance of initial emergency permit orders and notices of confirmation of effective date of final regulations on food for human and animal consumption.

(a) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CF SAN), the Director, Office of Field Programs, CF SAN, and the Director, Division of Enforcement, Office of Field Programs, CF SAN, are authorized to issue initial emergency permit orders under §108.5 of this chapter.

(b) The following officials are authorized to issue notices of confirmation of effective date of final regulations on food matters promulgated under section 701(e) of the Federal Food, Drug, and Cosmetic Act:
(1) The Director and Deputy Directors, CFSAN.
(2) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.
(3) The Director, Office of Food Labeling, CFSAN.
(4) The Director, Office of Special Nutritionals, CFSAN.
(5) The Director, Office of Plant and Dairy Foods and Beverages, CFSAN.
(6) The Director, Office of Seafood, CFSAN.
(7) The Director, Office of Field Programs, CFSAN.
(8) The Director, Office of Premarket Approval, CFSAN.

§ 5.63 Detention of meat, poultry, eggs, and related products.

The Regional Food and Drug Directors and District Directors are authorized to perform and to designate other officials to perform all of the functions of the Commissioner of Food and Drugs under:

(a) Section 409(b) of the Federal Meat Inspection Act (21 U.S.C. 679(b)) which relate to the detention of any carcass, part thereof, meat, or meat product of cattle, sheep, swine, goats, or equines.
(b) Section 24(b) of the Poultry Products Inspection Act (21 U.S.C. 467f(b)) which relate to the detention of any poultry carcass, part thereof, or poultry product.
(c) The Egg Products Inspection Act (21 U.S.C. 1031 et seq.).

§ 5.64 Establishing standards and approving accrediting bodies under the National Laboratory Accreditation Program.

The Director and Deputy Director, Center for Food Safety and Applied Nutrition, are authorized to perform all the functions of the Commissioner of Food and Drugs under sections 1322(b) and (c) of the Food, Agriculture, Conservation, and Trade Act of 1990 (the National Laboratory Accreditation Program) (7 U.S.C. 138a), as amended hereafter; which relate to setting standards for the National Laboratory Accreditation Program and approving State agencies or private, nonprofit entities as accrediting bodies to implement certification and quality assurance programs in accordance with the requirements of these sections. The delegation excludes the authority to submit reports to the Congress.

§ 5.66 Approval of schools providing food-processing instruction.

The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs under § 113.10 of this chapter regarding the approval of schools giving instruction in retort operations, processing systems operations, aseptic processing and packaging system operations, and container closure inspections:

(a) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN).
(b) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.
(c) The Director, Office of Plant and Dairy Foods and Beverages, CFSAN.

§ 5.67 Issuance of notices of opportunity for a hearing on proposals for denial of approval of applications for licenses or revocation of licenses and certain notices of revocation of licenses.

The Director and Deputy Director, Center for Biologics Evaluation and Research are authorized to issue:

(a) Notices of opportunity for a hearing on proposals to deny approval or filing of applications for establishment or product licenses under § 601.4(b) of this chapter.
(b) Notices of opportunity for a hearing on proposals to revoke establishment or product licenses under § 601.5(b) of this chapter.
(c) Notices of revocation, at the manufacturer's request, of establishment or product licenses under §§ 601.5(a) and 601.8 of this chapter.
(d) Notices of revocation when the manufacturer has waived the opportunity for hearing under § 601.7(a) of this chapter.
§ 5.68 Issuance and revocation of licenses for the propagation or manufacture and preparation of biological products.

The following officials are authorized to issue licenses under section 351 of the Public Health Service Act (42 U.S.C. 262) for the propagation or manufacture and preparation of biological products as specified in the act, and to revoke such licenses at the manufacturer’s request:

(a) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).

(b) The Director and Deputy Director, Office of Biological Product Review, CBER.

[49 FR 14934, Apr. 16, 1984, as amended at 54 FR 8318, Feb. 28, 1989]

§ 5.69 Notification of release for distribution of biological products.

The following officials are authorized to issue written notices of release for distribution of licensed biological products under subchapter F (parts 600 through 699) of this chapter:

(a) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).

(b) The Director and Deputy Director, Office of Biological Product Review, CBER.

(c) The Director and Deputy Director, Division of Product Quality Control, Office of Biological Product Review, CBER.


§ 5.70 Issuance of notice implementing the provisions of the Drug Amendments of 1962.

The Director, Deputy Center Director for Review Management, and Deputy Director, Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER), are authorized to issue notices and amendments thereto implementing section 107(c)(3) of the Drug Amendments of 1962 (Pub. L. 87-781) by announcing new or revised efficacy findings on human drugs that are or were subject to the provisions of section 505 of the Federal Food, Drug, and Cosmetic Act.


EFFECTIVE DATE NOTE: At 64 FR 398, Jan. 5, 1999, § 5.70 was amended by removing "sections 505 and 507" and inserting in its place "section 505", effective May 20, 1999.

§ 5.71 Termination of exemptions for new drugs for investigational use in human beings and in animals.

(a) The following officials, for drugs under their jurisdiction, are authorized to perform all the functions of the Commissioner of Food and Drugs on the termination of exemptions for new drugs (including those that are biological products which are subject to the licensing provisions of the Public Health Service Act) for investigational use in human beings under § 312.44 of this chapter and in animals under § 312.160 of this chapter:

(1) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).

(2) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(b) The following officials, for drugs under their jurisdiction, are authorized to terminate exemptions for new drugs for investigational use when sponsors fail to submit an annual progress report under § 312.44(b)(1)(viii) of this chapter:


(2) The Directors and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(3) The Director and Deputy Director, Office of Biological Product Review, CBER.

(4) The Director and Deputy Director, Division of Biological Investigational New Drugs, Office of Biological Product Review.

(c) The following officials, for drugs under their jurisdiction, are authorized to make the findings set forth in § 312.44(b) of this chapter and to notify sponsors and invite correction before
termination action on such exemptions:
(2) The Directors and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.
(3) The Director and Deputy Director, Office of Biological Product Review, CBER.
(4) The Director and Deputy Director, Division of Biological Investigational New Drugs, Office of Biological Product Review.
(d) The following officials are authorized to perform all functions of the Commissioner of Food and Drugs with regard to the termination of new animal drugs for investigational use in animals under §511.1 of this chapter:
(1) The Director and Deputy Director, Center for Veterinary Medicine (CVM).
(2) The Director and Deputy Director, Office of New Animal Drug Evaluation, CVM.

§ 5.75 Designation of official master and working standards for antibiotic drugs.

The following officials are authorized to designate official Food and Drug Administration master and working standards for antibiotic drugs under §430.5 of this chapter:
(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).
(b) The Director and Deputy Director, Office of Testing and Research, Office of Pharmaceutical Science, CDER.
(c) The Director and Deputy Director, Division of Research and Testing, Office of Testing and Research, Office of Pharmaceutical Science, CDER.

§ 5.76 Certification of antibiotic drugs.

The following officials are authorized to certify or reject batches of antibiotic drugs, or any derivative of these drugs, pursuant to sections 507(a) and 512(n) of the Federal Food, Drug, and Cosmetic Act:
(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).
(b) The Director and Deputy Director, Office of Compliance, CDER.
(c) The Director and Deputy Director, Division of Prescription Drug Compliance and Surveillance, Office of Compliance, CDER.
(d) The Team Leader and Assistant, Post-Marketing Surveillance Team, Division of Prescription Drug Compliance and Surveillance, Office of Compliance, CDER.


§ 5.77 Authority to approve and to withdraw approval of a charge for investigational new drugs.

The following officials, for drugs under their jurisdiction, are authorized to perform all the functions of the Commissioner of Food and Drugs to approve a charge and to withdraw approval to charge for investigational drugs in a clinical trial under an investigational new drug application under §312.7(d)(1) of this chapter:
(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).
(b) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).

§ 5.78 Issuance, amendment, or repeal of regulations pertaining to antibiotic drugs.

(a) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs under section 507 of the Federal Food, Drug, and Cosmetic Act (the Act) regarding the issuance, amendment, or repeal of regulations pertaining to antibiotic drugs for human use:

(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(2) The Director, Office of Drug Evaluation I, Office of Review Management, CDER.

(3) The Director, Office of Drug Evaluation IV, Office of Review Management, CDER.

(4) The Director and Deputy Director, Division of Oncologic Drug Products, Office of Drug Evaluation I, Office of Review Management, CDER.

(5) The Director and Deputy Director, Division of Anti-Infective Drug Products, Office of Drug Evaluation IV, Office of Review Management, CDER.

(6) The Director and Deputy Director, Division of Anti-Viral Drug Products, Office of Drug Evaluation IV, Office of Review Management, CDER.

(b) The Director and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER, for drugs under their jurisdiction, are authorized to perform all functions of the Commissioner of Food and Drugs with regard to approval of new drug applications and supplements thereto on drugs for human use that have been submitted under section 505 of the Federal Food, Drug, and Cosmetic Act.

(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(2) The Director and Deputy Director, Division of Oncologic Drug Products, Office of Drug Evaluation I, Office of Review Management, CDER.

(3) The Director and Deputy Director, Division of Anti-Infective Drug Products, Office of Drug Evaluation IV, Office of Review Management, CDER.

(4) The Director and Deputy Director, Division of Anti-Viral Drug Products, Office of Drug Evaluation IV, Office of Review Management, CDER.

(5) The Director and Deputy Director, Office of Compliance, CDER.

(6) The Director and Deputy Directors, Center for Devices and Radiological Health, are authorized to perform all the functions of the Commissioner of Food and Drugs under section 507 of the Act regarding the issuance, amendment, or repeal of regulations pertaining to antibiotic drugs for human use contained in medical devices.

§ 5.80 Approval of new drug applications and their supplements.

(a)(1) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to approval of new drug applications and supplements thereto on drugs for human use, except for those drugs listed in §314.440(b) of this chapter, that have been submitted under section 505 of the Federal Food, Drug, and Cosmetic Act:

(i) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).


(2) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), for drugs listed in §314.440(b) of this chapter, are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to approval of new drug applications and supplements thereto on drugs for human use that have been submitted under section 505 of the Federal Food, Drug, and Cosmetic Act.

(b) The Directors and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER, for drugs under their jurisdiction, are authorized to perform all functions of the Commissioner of Food and Drugs with regard to approval of supplemental applications to approved new drug applications for drugs for human use that have been submitted under §314.70 of this chapter and of new drug applications for drug products other than those that contain new molecular entities (new chemical entities). The applications to which this authorization applies may, in appropriate circumstances, continue to be acted upon by the officials so authorized in §5.10(a) and paragraph (a) of this section.

(c) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to approval of abbreviated new drug applications and supplements thereto for drugs for human use and new drug applications for drugs with a 5S classification whose clinical safety and efficacy may be supported by appropriate literature citations in lieu of
Food and Drug Administration, HHS

§ 5.81

Responses to Drug Enforcement Administration temporary scheduling notices.

The Associate Commissioner for Health Affairs is authorized to provide responses to the Drug Enforcement Administration’s temporary scheduling notices under the Controlled Substances Act, as amended (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 811(h)(4), as amended hereafter). The

submission of data from original proprietary studies, or 505(b)(2) applications under their jurisdiction. The applications to which this authorization applies may, in appropriate circumstances, continue to be acted upon by the officials so authorized in §5.10(a) and paragraph (a) of this section.

(1) For drugs submitted under §§314.50, 314.70, and 314.94 of this chapter, except for those drug products listed in §314.440(b):

(i) The Director and Deputy Director, Office of Generic Drugs (OGD), Office of Pharmaceutical Science, CDER, except that the Director and Deputy Director, OGD are not authorized to approve new drug applications with a 5S classification if clinical studies are needed.

(ii) The Directors and Deputy Directors of the divisions in Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(2)(i) For drug products listed in §314.440(b) and submitted under §§314.50, 314.70, and 314.94 of this chapter:

(ii) The Director and Deputy Director, Office of Biological Product Review, CBER.

(d) The following officials are authorized to perform all functions of the Commissioner of Food and Drugs with respect to approval of supplemental applications to abbreviated new drug applications, 5S applications, or 505(b)(2) applications for drugs for human use that are described in §§314.70(b)(3) and (c)(2)(ii) through (c)(2)(iv) of this chapter. Authority to approve supplements that require in vivo bioavailability studies or in vivo study waiver requests is not included in this paragraph.

(f) The supervisory and team leader chemists in the Divisions of New Drug Chemistry I, II, and III, Office of New Drug Chemistry, Office of Pharmaceutical Science, CDER, are authorized to perform all functions of the Commissioner of Food and Drugs with respect to approval of supplemental applications to new drug applications for drugs for human use that are described in §§314.70(b)(1), (b)(2)(ii) through (b)(2)(ix), (c)(1), and (c)(3) of this chapter. Authority to approve supplements that require in vivo bioavailability information or that require a change in the labeling of the drug, except changes that reflect only the use of a different facility or establishment, are not included in this paragraph. The supplemental applications to which this authorization applies may continue to be acted upon by the officials so authorized in §§5.10(a) and paragraphs (a) and (b) of this section.

§ 5.82 Issuance of notices relating to proposals to refuse approval or to withdraw approval of new drug applications and their supplements.

(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER), are authorized to issue notices of an opportunity for a hearing on proposals to refuse approval or to withdraw approval of new drug applications and abbreviated new drug applications and supplements thereto on drugs for human use, except for those drugs listed in §314.440(b) of this chapter, that have been submitted under section 505 of the Federal Food, Drug, and Cosmetic Act and subpart B of part 314 of this chapter and to issue notices refusing approval or withdrawing approval when opportunity for hearing has been waived.

(b) The Director and Deputy Director, Center for Biologics Evaluation and Research, for those drugs listed in §314.440(b) of this chapter, are authorized to issue notices of an opportunity for a hearing on proposals to refuse approval or to withdraw approval of new drug applications and abbreviated new drug applications and supplements thereto on drugs for human use, except for those drugs submitted pursuant to section 512 of the Federal Food, Drug, and Cosmetic Act (the act).

(b) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to the approval of supplemental applications to approved new animal drugs submitted pursuant to section 512 of the act:

1. The Director, the Deputy Director for Human Food Safety and Consultative Services, and the Deputy Director for Therapeutic and Production Drug Review, Office of New Animal Drug Evaluation, CVM.

2. The Director and Deputy Director, Office of Surveillance and Compliance, CVM.

(c) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to the approval of supplemental applications to new animal drug applications that are described by §514.8(a)(4)(iii), (iv), and (v), and (d)(3) of this chapter.

1. The Director, Division of Human Food Safety, Office of New Animal Drug Evaluation, CVM.

2. The Director, Division of Epidemiology and Surveillance, Office of Surveillance and Compliance, CVM.

(d) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to the approval of medicated feed mill license applications for the manufacture of animal feeds containing new animal drugs pursuant to section 512(m) of the act, as amended by the Animal Drug Availability Act of 1996 (Pub. L. 104-250):

1. The Director and Deputy Director, CVM.

2. The Director, Division of Animal Feeds, Office of Surveillance and Compliance, CVM.

3. The Leader, Medicated Feeds Team, Division of Animal Feeds, Office of Surveillance and Compliance, CVM.

4. The Medicated Feeds Specialist, Medicated Feeds Team, Division of Animal Feeds, Office of Surveillance and Compliance, CVM.

§ 5.83 Approval of new animal drug applications, medicated feed mill license applications and their supplements.

(a) The Director and Deputy Director, Center for Veterinary Medicine (CVM), are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to the approval of new animal drug applications, and supplements thereto, for new animal drugs submitted pursuant to section 512 of the Federal Food, Drug, and Cosmetic Act (the act).

§ 5.84 Issuance of notices, proposals, and orders relating to new animal drugs and medicated feed mill license applications.

(a) The Director and Deputy Director, Center for Veterinary Medicine (CVM), are authorized to:
   (1) Issue notices of opportunity for a hearing on proposals to refuse approval or to withdraw approval of new animal drug applications, and supplements thereto, for drugs for animal use and proposals to refuse approval or to revoke approval of medicated feed mill license applications, and supplements thereto, submitted pursuant to section 512(m) of the Federal Food, Drug, and Cosmetic Act, as amended by the Animal Drug Availability Act of 1996 (Pub. L. 104-250).
   (2) Issue notices refusing or withdrawing approval when opportunity for hearing has been waived; and
   (3) Issue proposals and orders to revoke and amend regulations for new animal drugs for animal use and medicated feed mill licenses, corresponding to said act on such applications.

(b) The Director and Deputy Director, CVM, are authorized to issue notices of availability of Public Master Files containing data acceptable for use in applications for new animal drugs for animal use and feeds bearing or containing new animal drugs.


§ 5.85 Authority to ensure that mammography facilities meet quality standards.

(a) The following officials are authorized to issue, renew, and extend certificates to mammography facilities under section 354(c) of the Public Health Service Act (42 U.S.C. 263b):
   (1) The Director and Deputy Director for Regulations and Policy, CDRH.
   (2) The Director, Office of Health and Industry Programs, CDRH.
   (3) The Director, Division of Mammography Quality and Radiation Programs, Office of Health and Industry Programs, CDRH.

(b) The following officials are authorized to accept an application for a certificate under section 354(d)(1) of the Public Health Service Act:
   (1) The Director and Deputy Director for Regulations and Policy, CDRH.
   (2) The Director, Office of Health and Industry Programs, CDRH.

(c) The following officials are authorized to approve accreditation bodies to accredit mammography facilities under section 354(e)(1)(A) of the Public Health Service Act:
   (1) The Director and Deputy Director for Regulations and Policy, CDRH.
   (2) The Director, Office of Health and Industry Programs, CDRH.
   (3) The Director, Division of Mammography Quality and Radiation Programs, Office of Health and Industry Programs, CDRH.

(d) The following officials are authorized to ensure that accreditation bodies provide satisfactory assurances of compliance under section 354(e)(1)(C) of the Public Health Service Act:
   (1) The Director and Deputy Director for Regulations and Policy, CDRH.
   (2) The Director, Office of Health and Industry Programs, CDRH.
   (3) The Director, Division of Mammography Quality and Radiation Programs, Office of Health and Industry Programs, CDRH.

(e) The Director, CDRH, is authorized to promulgate regulations under which the Director may withdraw approval of accreditation bodies under section 354(e)(2) of the Public Health Service Act.

(f) The following officials are authorized to determine the applicable standards for a facility for accreditation under section 354(e)(3) of the Public Health Service Act:
   (1) The Director and Deputy Director for Regulations and Policy, CDRH.
   (2) The Director, Office of Health and Industry Programs, CDRH.
   (3) The Director, Division of Mammography Quality and Radiation Programs, Office of Health and Industry Programs, CDRH.

(g) The following officials are authorized to ensure that accreditation bodies make on site visits and to determine whether other measures are appropriate under section 354(e)(4)(A) and (e)(4)(B) of the Public Health Service Act.
§ 5.86 Variances from performance standards for electronic products.

The following officials are authorized to grant and withdraw variances and issue notices of availability of any approved variance or any amendment or extension thereof, from the provisions of performance standards for electronic products established in subchapter J of this chapter:

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).
(b) The Director and Deputy Director, Office of Compliance, CDRH.

§ 5.87 Exemption of electronic products from performance standards and prohibited acts.

The following officials are authorized to exempt from performance standards any electronic product intended for use by departments or agencies of the United States under section 358(a)(5) of the Public Health Service Act (the act) and to exempt an electronic product or class of products from all or part of the provisions of section 360B(a) of the act under section 360B(b) of that act:

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).
(b) The Director and Deputy Director, Office of Compliance, CDRH.
§ 5.88 Testing programs and methods of certification and identification for electronic products.

The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Compliance, CDRH, are authorized to review and evaluate industry testing programs under section 358(g) of the Public Health Service Act (the Act), and to approve or disapprove alternate methods of certification and identification to disapprove testing programs upon which certification is based under section 358(h) of the Act.


§ 5.89 Notification of defects in, and repair or replacement of, electronic products.

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Compliance, CDRH, are authorized to perform all functions of the Commissioner of Food and Drugs, relating to notification of defects in, noncompliance of, and repair or replacement of or refund for, electronic products under section 359 of the Public Health Service Act (the act) and under §§ 1003.11, 1003.22, 1003.31, 1004.2, 1004.3, 1004.4, and 1004.6 of this chapter; and Regional Food and Drug Directors, District Directors, and the Director, St. Louis Branch, are authorized to perform all such functions relating to:

(1) Assemblers of diagnostic x-ray systems, as defined in §1020.30(b) of this chapter.

(2) Manufacturers of sunlamp products and ultraviolet lamps intended for use in any sunlamp products, as defined in §1040.20(b) of this chapter.


§ 5.90 Manufacturers requirement to provide data to ultimate purchasers of electronic products.

The Director and Deputy Directors, Center for Devices and Radiological Health, are authorized to require manufacturers to provide performance and technical data to the ultimate purchaser of electronic products under section 360A(c) of the Public Health Service Act.


§ 5.91 Dealer and distributor direction to provide data to manufacturers of electronic products.

The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), the Director and Deputy Director, Office of Compliance, CDRH, and the Division Directors, Office of Compliance, CDRH, are authorized to direct dealers and distributors of electronic products to furnish information on first purchasers of such products to the manufacturer of the product under section 360A(f) of the Public Health Service Act.


§ 5.92 Acceptance of assistance from State and local authorities for enforcement of radiation control legislation and regulations.

The Director and Deputy Directors, Center for Devices and Radiological Health, are authorized to accept assistance from State and local authorities engaged in activities related to health or safety or consumer protection on a reimbursable basis or otherwise, under section 360E of the Public Health Service Act.

§ 5.93 Submission of and effective approval dates for abbreviated new drug applications and certain new drug applications.

The following officials are authorized to perform all of the functions of the Commissioner of Food and Drugs with regard to decisions made under section 505(c)(3)(D), (j)(4)(B)(iv), and (j)(4)(D) of the Federal Food, Drug and Cosmetic Act (the act) concerning the date of submission or the date or effective approval of abbreviated new drug applications including supplements thereto submitted under section 505(j) of the act and of new drug applications including supplements thereto submitted under section 505(b)(1) of the act and described under section 505(b)(2) of the act:

(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(b) The Director and Deputy Director, Division of Bioequivalence, Office of Generic Drugs, Office of Pharmaceutical Science, CDER.


§ 5.94 Extensions or stays of effective dates for compliance with certain labeling requirements for human prescription drugs.

The following officials are authorized to extend or stay an effective date in § 201.59 of this chapter for compliance with certain labeling requirements for human prescription drugs.

(a) For drugs assigned to their organizations:

(1) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).

(2) The Director and Deputy Director, Office of Biological Product Review, CBER.

(3) The Directors and Deputy Directors of the divisions in the Office of Biological Product Review, CBER.

(b) For drugs assigned to their organizations:

(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).


§ 5.95 Submission of and effective approval dates for abbreviated new animal drug applications and certain new animal drug applications.

The following officials are authorized to perform all of the functions of the Commissioner of Food and Drugs with regard to decisions made under section 512(c)(2)(D)(iv) and (c)(2)(F) of the Federal Food, Drug, and Cosmetic Act (the act) concerning the date of submission and the date of effective approval of abbreviated new animal drug applications including supplements thereto submitted under section 512(b)(1) of the act, and of new animal drug applications including supplements thereto submitted under section 512(b)(2) of the act:

(a) The Director and Deputy Director, Center for Veterinary Medicine (CVM).

(b) The Director and Deputy Director, Office of New Animal Drug Evaluation, CVM.

[56 FR 6263, Feb. 15, 1991]

§ 5.98 Authority relating to medical device reporting procedures.

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), the Deputy Director, Office of Surveillance and Biometrics, (OSB), CDRH and the Director and Deputy Director, Division of Surveillance Systems (DSS), OSB, CDRH, are authorized to approve electronic reporting under § 803.14 of this chapter.

(b) The Director and Deputy Directors, CDRH, the Director and Deputy Director, OSB, CDRH, and the Director and Deputy Director, DSS, OSB, CDRH, are authorized to request the submission of additional information under § 803.15 of this chapter.
Subpart C—Organization

§ 5.100 Officials authorized to make certification under 5 U.S.C. 605(b) for any proposed and final rules.

The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to decisions made under the Regulatory Flexibility Act (5 U.S.C. 605(b)), to certify that a proposed or final rule, if issued, will not have a significant economic impact on a substantial number of small entities:

(a) The Associate Commissioner for Regulatory Affairs (ACRA).
(b) The Director, Center for Biologics Evaluation and Research (CBER).
(c) The Director, Center for Drug Evaluation and Research (CDER).
(d) The Director, Center for Devices and Radiological Health (CDRH).
(e) The Director, Center for Food Safety and Applied Nutrition (CFSAN).
(f) The Director, Center for Veterinary Medicine (CVM).
(g) Other FDA Officials authorized to issue Federal Register documents.

§ 5.200

Division of Manufacturing and Product Quality.

Office of Blood Research and Review
Division of Transfusion Transmitted Diseases.
Division of Hematology.
Division of Blood Applications.
Division of Blood Establishment and Products.

Office of Therapeutics Research and Review
Division of Cytokine Biology.
Division of Cellular and Gene Therapies.
Division of Hematologic Products.
Division of Monoclonal Antibodies.
Division of Clinical Trial Design and Analysis.
Division of Application Review and Policy.
Regulatory Information Management Staff.

Office of Vaccines Research and Review
Division of Allergenic Products and Parasitology.
Division of Bacterial Products.
Division of Viral Products.
Division of Vaccines and Related Products Applications.

Office of Communication, Training, and Manufacturers Assistance
Division of Congressional and Public Affairs.
Division of Manufacturers Assistance and Training.

CENTER FOR FOOD SAFETY AND APPLIED NUTRITION. 3

Office of the Center Director
Equal Employment Opportunity Staff.
Office of Policy, Planning, and Strategic Initiatives
Executive Operations Staff.
Office of Programs
Beltsville Technical Operations Staff.

Office of Cosmetics and Colors
Division of Programs and Enforcement Policy.
Division of Science and Applied Technology.

Office of Food Labeling
Division of Programs and Enforcement Policy.
Division of Technical Evaluation.
Division of Science and Applied Technology.

Office of Premarket Approval
Division of Product Policy.

21 CFR Ch. I (4-1-99 Edition)

Division of Petition Control.
Division of Health Effects Evaluation.
Division of Molecular Biological Research and Evaluation.
Division of Product Manufacture and Use.
Office of Plant and Dairy Foods and Beverages
Division of Programs and Enforcement Policy.
Division of Virulence Assessment.
Division of Pesticides and Industrial Chemicals.
Division of Natural Products.
Division of Food Processing and Packaging.

Office of Seafood
Division of Special Programs.
Division of Programs and Enforcement Policy.
Division of Science and Applied Technology.

Office of Special Nutritional Clinical Research and Review Staff.
Division of Programs and Enforcement Policy.
Division of Science and Applied Technology.

Office of Special Research Skills
Division of Toxicology Research.
Division of Microbiological Studies.

Office of Systems and Support
Quality Assurance Staff.

Office of Constituent Operations
Consumer Education Staff.
Legislative Activities Staff.
Industry Activities Staff.

Office of Field Programs
Division of Enforcement and Programs.
Division of HACCP Programs.
Division of Cooperative Programs.

Office of Management Systems
Safety Management Staff.
Division of Information Resources Management.
Division of Planning and Resources Management.

Office of Scientific Analysis and Support
Division of Mathematics.
Division of General Scientific Support.
Division of Market Studies.

CENTER FOR DRUG EVALUATION AND RESEARCH. 4

Office of the Center Director
Advisors and Consultants Staff.

3Mailing address: 200 C St., SW., Washington, DC 20204.

4Mailing address: 1461 Rockville Pike, Rockville MD 20857

66
Food and Drug Administration, HHS

§ 5.200

Equal Employment Opportunity Staff.
Pilot Drug Evaluation Staff.
Executive Operations Staff.
Regulatory Policy Staff.

Office of Management

Special Projects Staff.
Division of Planning, Evaluation, and Resource Management.
Division of Management Services.

Office of Training and Communications

Freedom of Information Staff.
Division of Communications Management.
Division of the Medical Library.
Division of Training and Development.

Office of Compliance

Division of Manufacturing and Product Quality.
Division of Scientific Investigations.
Division of Prescription Drug Compliance and Surveillance.
Division of Labeling and Nonprescription Drug Compliance.

Office of Information Technology

Quality Assurance Staff.
Technology Support Services Staff.
Division of Data Management and Services.
Division of Applications Development and Services.
Division of Infrastructure Management and Services.

Office of Review Management

Advisors and Consultants Staff.

Office of Drug Evaluation I

Division of Cardio-Renal Drug Products.
Division of Drug Marketing, Advertising and Communication.

Division of Neuropharmacological Drug Products.
Division of Oncology Drug Products.

Office of Drug Evaluation II

Division of Metabolic and Endocrine Drug Products.
Division of Pulmonary Drug Products.
Division of Reproductive and Urologic Drug Products.

Office of Drug Evaluation III

Division of Anesthetic, Critical Care, and Addiction Drug Products.
Division of Gastro-Intestinal and Coagulation Drug Products.
Division of Medical Imaging and Radiopharmaceutical Drug Products.

Office of Drug Evaluation IV

Division of Anti-Infective Drug Products.
Division of Anti-Viral Drug Products.
Division of Special Pathogen and Immunologic Drug Products.

Office of Drug Evaluation V

Division of Anti-Inflammatory, Analgesic, and Ophthalmologic Drug Products.
Division of Dermatologic and Dental Drug Products.
Division of Over-The-Counter Drug Evaluation.

Office of Epidemiology and Biostatistics

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Division of Biometrics I.
Division of Pharmacovigilance and Epidemiology.
Division of Biometrics II.
Division of Biometrics III.
Division of Biometrics IV.

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Quality Implementation Staff.
Operations Staff.

Office of Clinical Pharmacology and Biopharmaceutics

Pharmacometrics Staff.
Division of Pharmaceutical Evaluation I.

Division of Pharmaceutical Evaluation II.
Division of Pharmaceutical Evaluation III.

Office of Generic Drugs

Division of Bioequivalence.
Division of Chemistry I.
Division of Chemistry II.
Division of Labeling and Program Support.

Office of New Drug Chemistry

Division of New Drug Chemistry I.

Division of New Drug Chemistry II.
Division of New Drug Chemistry III.

Office of Testing and Research

Regulatory Research and Analysis Staff.
Laboratory of Clinical Pharmacology.
Division of Applied Pharmacology Research.

Mailing address: 9020 Corporate Blvd., Rockville, MD 20850
Mailing address: 7500 Standish Pl., Rockville, MD 20855
Mailing address: 9001 Corporate Blvd., Rockville, MD 20850
Mailing address: Four Research Ct., Rockville, MD 20850
Mailing address: 8301 Muirkind Rd., Rockville, MD 20708

Mailing address: 7520 Standish Pl., Rockville, MD 20857
Division of Testing and Applied Analytical Development. ¹¹
Division of Product Quality Research. ¹¹
Office of Regulatory Affairs ¹²
Contaminants Policy Coordination Staff.
Equal Employment Opportunity Staff.
Strategic Initiatives Staff.
Office of Resource Management
Division of Planning, Evaluation, and Management.
Division of Information Systems.
Division of Human Resource Development.
Division of Management Operations.
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Division of Compliance Management and Operations.
Division of Compliance Policy.
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Division of Federal-State Relations.
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Division of Emergency and Investigational Operations.
Division of Import Operations and Policy.
Office of Criminal Investigations ¹³
Northeast Regional Office. ¹⁴
Pacific Area Office. ¹⁵
Southeast Regional Office. ¹⁶
Southwest Regional Office. ¹⁷
Central Regional Office. ¹⁸
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH. ¹⁹
Office of the Center Director
Environmental Health and Program Assurance Staff.
Equal Employment Opportunity Staff.
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Technology Advancement Staff.

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Evaluation Staff.
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Biomarkers Laboratory Staff.
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Division of Genetic Toxicology.
Division of Biochemical Toxicology.
Division of Nutritional Toxicology.
Division of Biometry and Risk Assessment.
Division of Chemistry.
Division of Microbiology.
Division of Neurotoxicology.
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Veterinary Services Staff.
Information Technology Staff.
Division of Facilities Engineering and Maintenance.
Division of Administrative Services.
CENTER FOR VETERINARY MEDICINE. ²⁰
Office of the Center Director
Office of Management and Communications
Administrative Staff.
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Program Planning and Evaluation Staff.
Information Resources Management Staff.
Office of New Animal Drug Evaluation
Division of Therapeutic Drugs for Food Animals.
Division of Biometrics and Production Drugs.
Division of Therapeutic Drugs for Non-Food Animals.
Division of Human Food Safety.
Division of Manufacturing Technologies.
Office of Surveillance and Compliance
Division of Epidemiology and Surveillance.
Division of Animal Feeds.
Division of Compliance.
Office of Research
Administrative Staff.
Division of Residue Chemistry.
Division of Animal Research.
CENTER FOR DEVICES AND RADILOGICAL HEALTH. ²¹
Office of the Center Director
Equal Employment Opportunity Staff.

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¹²Mailing address: 5600 Fishers Lane, Rockville, MD 20857
¹³Mailing address: 7500 Standish Pl., rm. 250N, Rockville, MD 20855.
¹⁴Mailing address: 850 Third Ave., Brooklyn, NY 11232.
¹⁵Mailing address: 1301 Clay St., Oakland, CA 94612.
¹⁶Mailing address: 60 Eighth St. NE, Atlanta, GA 30309.
¹⁷Mailing address: 7920 Elmbrook Rd., Dallas, TX 75247.
¹⁸Mailing address: 900 U.S. Customhouse, Second Chestnut St., Philadelphia, PA 19106.
¹⁹Mailing address: Jefferson, AR 72079-9502.
²⁰Mailing address: 7500 Standish Pl., MPN-2, Rockville MD 20855
²¹Mailing address: 900 Corporate Blvd., Rockville, MD 20850
Food and Drug Administration, HHS

Office of Systems and Management
Integrity, Committee and Conference Management Staff.
Division of Management Operations.
Financial Resources Staff.
Division of Information Dissemination.
Division of Information Technology Management.
Division of Planning, Analysis and Finance.
Office of Compliance.
Promotion and Advertising Policy Staff.
Division of Program Operations.
Division of Bioresearch Monitoring.
Division of Enforcement I.
Division of Enforcement II.
Division of Enforcement III.
Office of Device Evaluation
Program Operations Staff.
Program Management Staff.
Division of Cardiovascular, Respiratory, and Neurological Devices.
Division of Reproductive, Abdominal, Ear, Nose, and Throat, and Radiological Devices.
Division of General and Restorative Devices.
Division of Clinical Laboratory Devices.
Division of Ophthalmic Devices.
Division of Dental, Infection Control, and General Hospital Devices.
Office of Science and Technology
Division of Mechanics and Materials Science.
Division of Life Sciences.
Division of Physical Sciences.
Division of Electronics and Computer Sciences.
Division of Management, Information, and Support Services.
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Program Operations Staff.
Division of Device User Program and Systems Analysis.
Division of Small Manufacturers Assistance.
Division of Mammography Quality and Radiation Programs.
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Office of Surveillance and Biometrics
Division of Biostatistics.
Division of Postmarket Surveillance.
Division of Surveillance Systems.
Office of Orphan Products Development.
OFFICE OF SCIENCE.
OFFICE OF EXTERNAL AFFAIRS.
Industry and Small Business Liaison Staff.
Medwatch Staff.
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Press Relations Staff.
Communications Staff.
Freedom of Information Staff.
Speechwriting Staff.
Management Staff.
Broadcast Media Staff.
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Medicine Staff.
Health Assessment Policy Staff.
Office of Legislative Affairs
Congressional Affairs Staff I.
Congressional Affairs Staff II.
Special Projects Staff.
Office of Consumer Affairs
Office of AIDS and Special Health Issues
Office of Women’s Health
Office of International Affairs
OFFICE OF MANAGEMENT AND SYSTEMS
Operations Coordination Staff.
Executive Management Staff.
Office of Planning and Evaluation
Planning and Management Communications Staff.
Evaluation and Analysis Staff.
Economics Staff.
Office of Information Resources Management
Planning Resources and Information Systems Management Staff.
Administrative Management Staff.
Division of Information Services and Policy.
Division of Operations and Technology Services.
Division of Software Engineering Services.
Division of Facilities.
Telecommunications and Planning Support.
Office of Financial Management
Division of Financial Systems.
Division of Accounting.
Division of Budget Formulation.
Office of Human Resources and Management Services
Division of Personnel Operations I.
Division of Personnel Operations II.
Division of Employee and Labor Management Relations.
Division of Recruitment and Staffing.
Division of Compensation Benefits and Training.
Division of Management Systems and Policy.
Division of Personnel Operations III.
§ 5.205 Chief Counsel, Food and Drug Administration.

The Chief Counsel to the Commissioner of Food and Drugs is the Associate General Counsel, Food and Drug Division, Office of the General Counsel, Department of Health and Human Services, Room 6-57, 5600 Fishers Lane, Rockville, MD 20857.

[63 FR 18314, Apr. 15, 1998]

§ 5.210 FDA Public Information Offices.

(a) Dockets Management Branch (HFA-305). The Dockets Management Branch Public Room is located in rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Telephone: 301-443-1753.


(c) Press Relations Staff (HFI-40). The Press Offices are located in rm. 15A-07, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301-827-6242; and in rm. 3807, F-B-8, 200 C St. SW., Washington, DC 20204. Telephone 202-245-1141.

[63 FR 18317, Apr. 15, 1998]

21 CFR Ch. I (4-1-99 Edition)
Food and Drug Administration, HHS

PART 7—ENFORCEMENT POLICY

Subpart A—General Provisions

Sec.
7.1 Scope.
7.3 Definitions.
7.12 Guaranty.
7.13 Suggested forms of guaranty.

Subpart B [Reserved]

Subpart C—Recalls (Including Product Corrections)—Guidelines on Policy, Procedures, and Industry Responsibilities

7.40 Recall policy.
7.41 Health hazard evaluation and recall classification.
7.42 Recall strategy.
7.45 Food and Drug Administration-requested recall.
7.46 Firm-initiated recall.
7.49 Recall communications.
7.50 Public notification of recall.
7.53 Recall status reports.
7.55 Termination of a recall.
7.59 General industry guidance.

Subpart D [Reserved]

Subpart E—Criminal Violations

7.84 Opportunity for presentation of views before report of criminal violation.
7.86 Conduct of a presentation of views before report of criminal violation.
7.87 Records related to opportunities for presentation of views conducted before report of criminal violation.


SOURCE: 42 FR 19567, Mar. 22, 1977, unless otherwise noted.

Subpart A—General Provisions

§ 7.1 Scope.

This part governs the practices and procedures applicable to regulatory enforcement actions initiated by the Food and Drug Administration pursuant to the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.) and other laws that it administers. This part also provides guidelines for manufacturers and distributors to follow with respect to their voluntary removal or correction of marketed violative products. This part is promulgated to clarify and explain the regulatory practices and procedures of the Food and Drug Administration, enhance public understanding, improve consumer protection, and assure uniform and consistent application of practices and procedures throughout the agency.

[43 FR 26218, June 16, 1978]

§ 7.3 Definitions.

(a) Agency means the Food and Drug Administration.

(b) Citation or cite means a document and any attachments thereto that provide notice to a person against whom criminal prosecution is contemplated of the opportunity to present views to the agency regarding an alleged violation.

(c) Respondent means a person named in a notice who presents views concerning an alleged violation either in person, by designated representative, or in writing.

(d) Responsible individual includes those in positions of power or authority to detect, prevent, or correct violations of the Federal Food, Drug, and Cosmetic Act.

(e) [Reserved]

(f) Product means an article subject to the jurisdiction of the Food and Drug Administration, including any food, drug, and device intended for human or animal use, any cosmetic and biologic intended for human use, and any item subject to a quarantine regulation under part 1240 of this chapter. Product does not include an electronic product that emits radiation and is subject to parts 1003 and 1004 of this chapter.

(g) Recall means a firm's removal or correction of a marketed product that the Food and Drug Administration considers to be in violation of the laws it administers and against which the agency would initiate legal action, e.g., seizure. Recall does not include a market withdrawal or a stock recovery.
(h) Correction means repair, modification, adjustment, relabeling, destruction, or inspection (including patient monitoring) of a product without its physical removal to some other location.

(i) Recalling firm means the firm that initiates a recall or, in the case of a Food and Drug Administration-requested recall, the firm that has primary responsibility for the manufacture and marketing of the product to be recalled.

(j) Market withdrawal means a firm's removal or correction of a distributed product which involves a minor violation that would not be subject to legal action by the Food and Drug Administration or which involves no violation, e.g., normal stock rotation practices, routine equipment adjustments and repairs, etc.

(k) Stock recovery means a firm's removal or correction of a product that has not been marketed or that has not left the direct control of the firm, i.e., the product is located on premises owned by, or under the control of, the firm and no portion of the lot has been released for sale or use.

(l) Recall strategy means a planned specific course of action to be taken in conducting a specific recall, which addresses the depth of recall, need for public warnings, and extent of effectiveness checks for the recall.

(m) Recall classification means the numerical designation, i.e., I, II, or III, assigned by the Food and Drug Administration to a particular product recall to indicate the relative degree of health hazard presented by the product being recalled.

(1) Class I is a situation in which there is a reasonable probability that the use of, or exposure to, a violative product will cause serious adverse health consequences or death.

(2) Class II is a situation in which use of, or exposure to, a violative product may cause temporary or medically reversible adverse health consequences or where the probability of serious adverse health consequences is remote.

(3) Class III is a situation in which use of, or exposure to, a violative product is not likely to cause adverse health consequences.

(n) Consignee means anyone who received, purchased, or used the product being recalled.

§ 7.13 Suggested forms of guaranty.

(a) A guaranty or undertaking referred to in section 303(c)(2) of the act may be:

(1) Limited to a specific shipment or other delivery of an article, in which case it may be a part of or attached to the invoice or bill of sale covering such shipment or delivery, or

(2) General and continuing, in which case, in its application to any shipment or other delivery of an article, it shall be considered to have been given at the date such article was shipped or delivered by the person who gives the guaranty or undertaking.

(b) The following are suggested forms of guaranty or undertaking under section 303(c)(2) of the act:

(1) Limited form for use on invoice or bill of sale.

(Name of person giving the guaranty or undertaking) hereby guarantees that no article listed herein is adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, or is an article which may not, under the provisions of section 404, 505, or 512 of the act, be introduced into interstate commerce.

(Signature and post-office address of person giving the guaranty or undertaking.)

(2) General and continuing form.

The article comprising each shipment or other delivery hereafter made by (name of person giving the guaranty or undertaking) to, or in the order of (name and post-office address of person to whom the guaranty or undertaking is given) is hereby guaranteed, as of the date of such shipment or delivery, to be, on such date, not adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, and not an article which may not, under the provisions of section 404, 505, or 512 of the act, be introduced into interstate commerce.
Food and Drug Administration, HHS

§ 7.40 Recall policy.

(a) Recall is an effective method of removing or correcting consumer products that are in violation of laws administered by the Food and Drug Administration. Recall is a voluntary action that takes place because manufacturers and distributors carry out their responsibility to protect the public health and well-being from products that present a risk of injury or gross deception or are otherwise defective. This section and §§ 7.41 through 7.59 recognize the voluntary nature of recall by providing guidelines so that responsible firms may effectively discharge their recall responsibilities. These sections also recognize that recall is an alternative to a Food and Drug Administration-initiated court action for removing or correcting violative, distributed products by setting forth specific recall procedures for the Food and Drug Administration to monitor recalls and assess the adequacy of a firm’s efforts in recall.

(b) Recall may be undertaken voluntarily and at any time by manufacturers and distributors, or at the request of the Food and Drug Administration. A request by the Food and Drug Administration that a firm recall a product is reserved for urgent situations and is to be directed to the firm that has primary responsibility for the manufacture and marketing of the product that is to be recalled.

(c) Recall is generally more appropriate and affords better protection for consumers than seizure, when many

(g) A guaranty or undertaking, if signed by two or more persons, shall state that such persons severally guarantee the article to which it applies.

(h) No representation or suggestion that an article is guaranteed under the act shall be made in labeling.

Subpart B [Reserved]

Subpart C—Recalls (Including Product Corrections)—Guidelines on Policy, Procedures, and Industry Responsibilities

SOURCE: 43 FR 26218, June 16, 1978, unless otherwise noted.
§ 7.41 Health hazard evaluation and recall classification.

(a) An evaluation of the health hazard presented by a product being recalled or considered for recall will be conducted by an ad hoc committee of Food and Drug Administration scientists and will take into account, but need not be limited to, the following factors:

(1) Whether any disease or injuries have already occurred from the use of the product.

(2) Whether any existing conditions could contribute to a clinical situation that could expose humans or animals to a health hazard. Any conclusion shall be supported as completely as possible by scientific documentation and/or statements that the conclusion is the opinion of the individual(s) making the health hazard determination.

(3) Assessment of hazard to various segments of the population, e.g., children, surgical patients, pets, livestock, etc., who are expected to be exposed to the product being considered, with particular attention paid to the hazard to those individuals who may be at greatest risk.

(4) Assessment of the degree of seriousness of the health hazard to which the populations at risk would be exposed.

(5) Assessment of the likelihood of occurrence of the hazard.

(b) On the basis of this determination, the Food and Drug Administration will assign the recall a classification, i.e., Class I, Class II, or Class III, to indicate the relative degree of health hazard of the product being recalled or considered for recall.

§ 7.42 Recall strategy.

(a) General. (1) A recall strategy that takes into account the following factors will be developed by the agency for a Food and Drug Administration-requested recall and by the recalling firm for a firm-initiated recall to suit the individual circumstances of the particular recall:

(i) Results of health hazard evaluation.

(ii) Ease in identifying the product.

(iii) Degree to which the product's deficiency is obvious to the consumer or user.

(iv) Degree to which the product remains unused in the marketplace.

(v) Continued availability of essential products.

(2) The Food and Drug Administration will review the adequacy of a proposed recall strategy developed by a recalling firm and recommend changes as appropriate. A recalling firm should conduct the recall in accordance with an approved recall strategy but need not delay initiation of a recall pending review of its recall strategy.

(b) Elements of a recall strategy. A recall strategy will address the following elements regarding the conduct of the recall:

(1) Depth of recall. Depending on the product's degree of hazard and extent of distribution, the recall strategy will specify the level in the distribution chain to which the recall is to extend, as follows:

(i) Consumer or user level, which may vary with product, including any intermediate wholesale or retail level; or

(ii) Retail level, including any intermediate wholesale level; or

(iii) Wholesale level.

(2) Public warning. The purpose of a public warning is to alert the public that a product being recalled presents a serious hazard to health. It is reserved for urgent situations where other means for preventing use of the recalled product appear inadequate. The Food and Drug Administration in consultation with the recalling firm will ordinarily issue such publicity. The recalling firm that decides to issue its own public warning is requested to submit its proposed public warning and plan for distribution of the warning for

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review and comment by the Food and Drug Administration. The recall strategy will specify whether a public warning is needed and whether it will issue as:

(i) General public warning through the general news media, either national or local as appropriate, or

(ii) Public warning through specialized news media, e.g., professional or trade press, or to specific segments of the population such as physicians, hospitals, etc.

(3) Effectiveness checks. The purpose of effectiveness checks is to verify that all consignees at the recall depth specified by the strategy have received notification about the recall and have taken appropriate action. The method for contacting consignees may be accomplished by personal visits, telephone calls, letters, or a combination thereof. A guide entitled "Methods for Conducting Recall Effectiveness Checks" that describes the use of these different methods is available upon request from the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. The recalling firm will ordinarily be responsible for conducting effectiveness checks, but the Food and Drug Administration will assist in this task where necessary and appropriate. The recall strategy will specify the method(s) to be used for and the level of effectiveness checks that will be conducted, as follows:

(i) Level A—100 percent of the total number of consignees to be contacted;

(ii) Level B—Some percentage of the total number of consignees to be contacted, which percentage is to be determined on a case-by-case basis, but is greater that 10 percent and less than 100 percent of the total number of consignees;

(iii) Level C—10 percent of the total number of consignees to be contacted;

(iv) Level D—2 percent of the total number of consignees to be contacted; or

(v) Level E—No effectiveness checks.

§ 7.45 Food and Drug Administration-requested recall.

(a) The Commissioner of Food and Drugs or his designee under §5.20 of this chapter may request a firm to initiate a recall when the following determinations have been made:

(1) That a product that has been distributed presents a risk of illness or injury or gross consumer deception.

(2) That the firm has not initiated a recall of the product.

(3) That an agency action is necessary to protect the public health and welfare.

(b) The Commissioner or his designee will notify the firm of this determination and of the need to begin immediately a recall of the product. Such notification will be by letter or telegram to a responsible official of the firm, but may be preceded by oral communication or by a visit from an authorized representative of the local Food and Drug Administration district office, with formal, written confirmation from the Commissioner or his designee afterward. The notification will specify the violation, the health hazard classification of the violative product, the recall strategy, and other appropriate instructions for conducting the recall.

(c) Upon receipt of a request to recall, the firm may be asked to provide the Food and Drug Administration any or all of the information listed in §7.46(a). The firm, upon agreeing to the recall request, may also provide other information relevant to the agency's determination of the need for the recall or how the recall should be conducted.

§ 7.46 Firm-initiated recall.

(a) A firm may decide of its own volition and under any circumstances to remove or correct a distributed product. A firm that does so because it believes the product to be violative is requested to notify immediately the appropriate Food and Drug Administration district office listed in §5.115 of this chapter. Such removal or correction will be considered a recall only if the Food and Drug Administration regards the product as involving a violation that is subject to legal action, e.g., seizure. In such cases, the firm
§ 7.49 Recall communications.

(a) General. A recalling firm is responsible for promptly notifying each of its affected direct accounts about the recall. The format, content, and extent of a recall communication should be commensurate with the hazard of the product being recalled and the strategy developed for that recall. In general terms, the purpose of a recall communication is to convey:

1. That the product in question is subject to a recall.
2. That further distribution or use of any remaining product should cease immediately.
3. Where appropriate, that the direct account should in turn notify its customers who received the product about the recall.
4. Instructions regarding what to do with the product.

(b) Implementation. A recall communication can be accomplished by telegrams, mailgrams, or first class letters conspicuously marked, preferably in bold red type, on the letter and the envelope: “DRUG [or FOOD, BIOLOGIC, etc.] RECALL [or CORRECTION]”. The letter and the envelope should be also marked: “URGENT” for class I and class II recalls and, when appropriate, for class III recalls. Telephone calls or other personal contacts should ordinarily be confirmed by one of the above methods and/or documented in an appropriate manner.

(c) Contents. (1) A recall communication should be written in accordance with the following guidelines:

(i) Be brief and to the point;
(ii) Identify clearly the product, size, lot number(s), code(s) or serial number(s) and any other pertinent descriptive information to enable accurate and immediate identification of the product;
(iii) Explain concisely the reason for the recall and the hazard involved, if any;
(iv) Provide specific instructions on what should be done with respect to the recalled products; and 

(v) Provide a ready means for the recipient of the communication to report to the recalling firm whether it has any of the product, e.g., by sending a postage-paid, self-addressed postcard or by allowing the recipient to place a collect call to the recalling firm.

(2) The recall communication should not contain irrelevant qualifications, promotional materials, or any other statement that may detract from the message. Where necessary, followup communications should be sent to those who fail to respond to the initial recall communication.

(d) Responsibility of recipient. Consignees that receive a recall communication should immediately carry out the instructions set forth by the recalling firm and, where necessary, extend the recall to its consignees in accordance with paragraphs (b) and (c) of this section.

§ 7.50 Public notification of recall.

The Food and Drug Administration will promptly make available to the public in the weekly FDA Enforcement Report a descriptive listing of each new recall according to its classification, whether it was Food and Drug Administration-requested or firm-initiated, and the specific action being taken by the recalling firm. The Food and Drug Administration will intentionally delay public notification of recalls of certain drugs and devices where the agency determines that public notification may cause unnecessary and harmful anxiety in patients and that initial consultation between patients and their physicians is essential. The report will not include a firm’s product removals or corrections which the agency determines to be market withdrawals or stock recoveries. The report, which also includes other Food and Drug Administration regulatory actions, e.g., seizures that were effected and injunctions and prosecutions that were filed, is available upon request from the Office of Public Affairs (HFI–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

§ 7.53 Recall status reports.

(a) The recalling firm is requested to submit periodic recall status reports to the appropriate Food and Drug Administration district office so that the agency may assess the progress of the recall. The frequency of such reports will be determined by the relative urgency of the recall and will be specified by the Food and Drug Administration in each recall case; generally the reporting interval will be between 2 and 4 weeks.

(b) Unless otherwise specified or inappropriate in a given recall case, the recall status report should contain the following information:

(1) Number of consignees notified of the recall, and date and method of notification.

(2) Number of consignees responding to the recall communication and quantity of products on hand at the time it was received.

(3) Number of consignees that did not respond (if needed, the identity of non-responding consignees may be requested by the Food and Drug Administration).

(4) Number of products returned or corrected by each consignee contacted and the quantity of products accounted for.

(5) Number and results of effectiveness checks that were made.

(6) Estimated time frames for completion of the recall.

(c) Recall status reports are to be discontinued when the recall is terminated by the Food and Drug Administration.

§ 7.55 Termination of a recall.

(a) A recall will be terminated when the Food and Drug Administration determines that all reasonable efforts have been made to remove or correct the product in accordance with the recall strategy, and when it is reasonable to assume that the product subject to the recall has been removed and proper disposition or correction has been made commensurate with the degree of hazard of the recalled product. Written notification that a recall is terminated will be issued by the appropriate Food and Drug Administration district office to the recalling firm.
§ 7.59 General industry guidance.

A recall can be disruptive of a firm's operation and business, but there are several steps a prudent firm can take in advance to minimize this disruptive effect. Notwithstanding similar specific requirements for certain products in other parts of this chapter, the following is provided by the Food and Drug Administration as guidance for a firm's consideration:

(a) Prepare and maintain a current written contingency plan for use in initiating and effecting a recall in accordance with §§ 7.40 through 7.49, 7.53, and 7.55.

(b) Use sufficient coding of regulated products to make possible positive lot identification and to facilitate effective recall of all violative lots.

(c) Maintain such product distribution records as are necessary to facilitate location of products that are being recalled. Such records should be maintained for a period of time that exceeds the shelf life and expected use of the product and is at least the length of time specified in other applicable regulations concerning records retention.

Subpart D  [Reserved]

Subpart E—Criminal Violations

§ 7.84 Opportunity for presentation of views before report of criminal violation.

(a)(1) Except as provided in paragraph (a) (2) and (3) of this section, a person against whom criminal prosecution under the Federal Food, Drug, and Cosmetic Act is contemplated by the Commissioner of Food and Drugs shall be given appropriate notice and an opportunity to present information and views to show cause why criminal prosecution should not be recommended to a United States attorney.

(2) Notice and opportunity need not be provided if the Commissioner has reason to believe that they may result in the alteration or destruction of evidence or in the prospective defendant's fleeing to avoid prosecution.

(3) Notice and opportunity need not be provided if the Commissioner contemplates recommending further investigation by the Department of Justice.

(b) If a statute enforced by the Commissioner does not contain a provision for an opportunity to present views, the Commissioner need not, but may in the Commissioner's discretion, provide notice and an opportunity to present views.

(c) If an apparent violation of the Federal Food, Drug, and Cosmetic Act also constitutes a violation of any other Federal statute(s), and the Commissioner contemplates recommending prosecution under such other statute(s) as well, the notice of opportunity to present views will include all violations.

(d) Notice of an opportunity to present views may be by letter, standard form, or other document(s) identifying the products and/or conduct alleged to violate the law. The notice shall—

(1) Be sent by registered or certified mail, telegram, telex, personal delivery, or any other appropriate mode of written communication;

(2) Specify the time and place where those named may present their views;

(3) Summarize the violations that constitute the basis of the contemplated prosecution;

(4) Describe the purpose and procedure of the presentation; and

(5) Furnish a form on which the legal status of any person named in the notice may be designated.

(e) If more than one person is named in a notice, a separate opportunity for presentation of views shall be scheduled on request. Otherwise, the time and place specified in a notice may be changed only upon a showing of reasonable grounds. A request for any change shall be addressed to the Food and Drug Administration office that issued the notice and shall be received in that
(f) A person who has received a notice is under no legal obligation to appear or answer in any manner. A person choosing to respond may appear personally, with or without a representative, or may designate a representative to appear for him or her. Alternatively, a person may respond in writing. If a person elects not to respond on or before the time scheduled, the Commissioner will, without further notice, decide whether to recommend criminal prosecution to a United States attorney on the basis of the information available.

(g) If a respondent chooses to appear solely by designated representative, that representative shall present a signed statement of authorization. If a representative appears for more than one respondent, the representative shall submit independent documentation of authority to act for each respondent. If a representative appears without written authorization, the opportunity to present views with respect to that respondent may be provided at that time only if the authenticity of the representative's authority is first verified by telephone or other appropriate means.

[44 FR 12167, Mar. 6, 1979]

§ 7.85 Conduct of a presentation of views before report of criminal violation.

(a) The presentation of views shall be heard by a designated Food and Drug Administration employee. Other Food and Drug Administration employees may be present.

(b) A presentation of views shall not be open to the public. The agency employee designated to receive views will permit participation of other persons only if they appear with the respondent or the respondent's designated representative, and at the request of, and on behalf of, the respondent.

(c) A respondent may present any information of any kind bearing on the Commissioner's determination to recommend prosecution. Information may include statements of persons appearing on the respondent's behalf, letters, documents, laboratory analyses, if applicable, or other relevant information or arguments. The opportunity to present views shall be informal. The rules of evidence shall not apply. Any information given by a respondent, including statements by the respondent, shall become part of the agency's records concerning the matter and may be used for any official purpose. The Food and Drug Administration is under no obligation to present evidence or witnesses.

(d) If the respondent holds a “guaranty or undertaking” as described in section 303(c) of the act (21 U.S.C. 333(c)) that is applicable to the notice, that document, or a verified copy of it, may be presented by the respondent.

(e) A respondent may have an oral presentation recorded and transcribed at his or her expense, in which case a copy of the transcription shall be furnished to the Food and Drug Administration office from which the notice issued. The employee designated to receive views may order a presentation of views recorded and transcribed at agency expense, in which case a copy of such transcription shall be provided to each respondent.

(f) If an oral presentation is not recorded and transcribed, the agency employee designated to receive views shall dictate a written summary of the presentation. A copy of the summary shall be provided to each respondent.

(g) A respondent may comment on the summary or may supplement any response by additional written or documentary evidence. Any comment or addition shall be furnished to the Food and Drug Administration office where the respondent's views were presented.

(h)(1) When consideration of a criminal prosecution recommendation involving the same violations is closed by the Commissioner with respect to all persons named in the notice, the
§ 7.87 Records related to opportunities for presentation of views conducted before report of criminal violation.

(a) Records related to a section 305 opportunity for presentation of views constitute investigatory records for law enforcement purposes and may include inter- and intra-agency memos.

(1) Notwithstanding the rule established in §20.21 of this chapter, no record related to a section 305 presentation is available for public disclosure until consideration of criminal prosecution has been closed in accordance with paragraph (b) of this section, except as provided in §20.82 of this chapter. Only very rarely and only under circumstances that demonstrate a compelling public interest will the Commissioner exercise, in accordance with §20.82 of this chapter, the authorized discretion to disclose records related to a section 305 presentation before the consideration of criminal prosecution is closed.

(2) After consideration of criminal prosecution is closed, the records are available for public disclosure in response to a request under the Freedom of Information Act, except to the extent that the exemptions from disclosure in subpart D of part 20 of this chapter are applicable. No statements obtained through promises of confidentiality shall be available for public disclosure.

(b) Consideration of criminal prosecution based on a particular section 305 notice of opportunity for presentation of views shall be deemed to be closed within the meaning of this section and §7.85 when a final decision has been made not to recommend criminal prosecution to a United States attorney based on charges set forth in the notice and considered at the presentation, or when such a recommendation has been finally refused by the United States attorney, or when criminal prosecution has been instituted and the matter and all related appeals have been concluded, or when the statute of limitations has run.

(c) Before disclosure of any record specifically reflecting consideration of a possible recommendation for criminal prosecution of any individual, all names and other information that would identify an individual whose prosecution was considered but not recommended, or who was not prosecuted, shall be deleted, unless the Commissioner concludes that there is a compelling public interest in the disclosure of the names.

(d) Names and other information that would identify a Food and Drug Administration employee shall be deleted from records related to a section 305 presentation of views before public disclosure only under §20.32 of this chapter.

[44 FR 12168, Mar. 6, 1979]
Food and Drug Administration, HHS

§ 10.10 Summaries of administrative practices and procedures.

§ 10.19 Waiver, suspension, or modification of procedural requirements.

Subpart B—General Administrative Procedures

§ 10.20 Submission of documents to Dockets Management Branch; computation of time; availability for public disclosure.

§ 10.25 Initiation of administrative proceedings.

§ 10.30 Citizen petition.

§ 10.35 Administrative stay of action.

§ 10.40 Promulgation of regulations for the efficient enforcement of the law.

§ 10.45 Court review of final administrative action; exhaustion of administrative remedies.

§ 10.50 Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing.

§ 10.55 Separation of functions; ex parte communications.

§ 10.60 Referral by court.

§ 10.65 Meetings and correspondence.

§ 10.70 Documentation of significant decisions in administrative file.

§ 10.75 Internal agency review of decisions.

§ 10.80 Dissemination of draft Federal Register notices and regulations.

§ 10.85 Advisory opinions.

§ 10.90 Food and Drug Administration regulations, guidelines, recommendations, and agreements.

§ 10.95 Participation in outside standard-setting activities.

§ 10.100 Public calendars.

§ 10.105 Representation by an organization.

§ 10.110 Settlement proposals.

Subpart C—Electronic Media Coverage of Public Administrative Proceedings; Guideline on Policy and Procedures

§ 10.200 Scope.

§ 10.203 Definitions.

§ 10.204 General.

§ 10.205 Electronic media coverage of public administrative proceedings.

§ 10.206 Procedures for electronic media coverage of agency public administrative proceedings.


Source: 44 FR 22323, Apr. 13, 1979, unless otherwise noted.
§ 10.3

Agency means the Food and Drug Administration.

Chief Counsel means the Chief Counsel of the Food and Drug Administration.

Commissioner means the Commissioner of Food and Drugs, Food and Drug Administration, U.S. Department of Health and Human Services, or the Commissioner's designee.

Department means the U.S. Department of Health and Human Services.


Ex parte communication means an oral or written communication not on the public record for which reasonable prior notice to all parties is not given, but does not include requests for status reports on a matter.

FDA means the Food and Drug Administration.

Food and Drug Administration employee or Food and Drug Administration representative includes members of the Food and Drug Division of the office of the General Counsel of the Department of Health and Human Services.

Formal evidentiary public hearing means a hearing conducted under part 12.

Interested person or any person who will be adversely affected means a person who submits a petition or comment or objection or otherwise asks to participate in an informal or formal administrative proceeding or court action.

Meeting means any oral discussion, whether by telephone or in person.

Office of the Commissioner includes the offices of the Associate Commissioners but not the centers or the regional or district offices.

Order means the final agency disposition, other than the issuance of a regulation, in a proceeding concerning any matter and includes action on a new drug application, new animal drug application, or biological license.

Participant means any person participating in any proceeding, including each party and any other interested person.

Party means the center of the Food and Drug Administration responsible for a matter involved and every person who either has exercised a right to request or has been granted the right by the Commissioner to have a hearing under part 12 or part 16 or who has waived the right to a hearing to obtain the establishment of a Public Board of Inquiry under part 13 and as a result of whose action a hearing or a Public Board of Inquiry has been established.

Person includes an individual, partnership, corporation, association, or other legal entity.

Petition means a petition, application, or other document requesting the Commissioner to establish, amend, or revoke a regulation or order, or to take or not to take any other form of administrative action, under the laws administered by the Food and Drug Administration.

Presiding officer means the Commissioner or the Commissioner's designee or an administrative law judge appointed as provided in 5 U.S.C. 3105.

Proceeding and administrative proceeding means any undertaking to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action.

Public advisory committee or advisory committee means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup of an advisory committee, that is not composed wholly of full-time employees of the Federal Government and is established or utilized by the Food and Drug Administration to obtain advice or recommendations.

Public Board of Inquiry or Board means an administrative law tribunal constituted under part 13.

Public hearing before a public advisory committee means a hearing conducted under part 14.

Public hearing before a Public Board of Inquiry means a hearing conducted under part 13.

Public hearing before the Commissioner means a hearing conducted under part 15.

Regulations means an agency rule of general or particular applicability and
Food and Drug Administration, HHS

§ 10.20 Submission of documents to Dockets Management Branch; computation of time; availability for public disclosure.

(a) A submission to the Dockets Management Branch of a petition, comment, objection, notice, compilation of information, or any other document is to be filed in four copies except as otherwise specifically provided in a relevant Federal Register notice or in another section of this chapter. The Dockets Management Branch is the agency custodian of these documents.

(b) A submission is to be signed by the person making it, or by an attorney or other authorized representative of that person. Submissions by trade associations are also subject to the requirements of §10.105(b).

(c) Information referred to or relied upon in a submission is to be included in full and may not be incorporated by reference, unless previously submitted in the same proceeding.

1. A copy of an article or other reference or source cited must be included, except where the reference or source is:
   (i) A reported Federal court case;
   (ii) A Federal law or regulation;
   (iii) An FDA document that is routinely publicly available;
   (iv) A recognized medical or scientific textbook that is readily available to the agency; or
   (v) A designated journal listed in §510.95.

2. If a part of the material submitted is in a foreign language, it must be accompanied by an English translation verified to be complete and accurate, together with the name, address, and a brief statement of the qualifications of the person making the translation. A translation of literature or other material in a foreign language is to be accompanied by copies of the original publication.

3. Where relevant information is contained in a document also containing irrelevant information, the irrelevant information is to be deleted thereby be served, and the action is in accordance with law.

Subpart B—General Administrative Procedures

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Subpart B—General Administrative Procedures

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3. Where relevant information is contained in a document also containing irrelevant information, the irrelevant information is to be deleted thereby be served, and the action is in accordance with law.
§ 10.20

and only the relevant information is to be submitted.

(4) Under § 20.63(a) and (b), the names and other information that would identify patients or research subjects are to be deleted from any record before it is submitted to the Dockets Management Branch in order to preclude a clearly unwarranted invasion of personal privacy.

(5) Defamatory, scurrilous, or intemperate matter is to be deleted from a record before it is submitted to the Dockets Management Branch.

(6) The failure to comply with the requirements of this part or with § 12.80 or § 13.20 will result in rejection of the submission for filing or, if it is filed, in exclusion from consideration of any portion that fails to comply. If a submission fails to meet any requirement of this section, the deficiency becomes known to the Dockets Management Branch, the Dockets Management Branch shall not file the submission but return it with a copy of the applicable regulations indicating those provisions not complied with. A deficient submission may be corrected or supplemented and subsequently filed. The office of the Dockets Management Branch does not make decisions regarding the confidentiality of submitted documents. Persons wishing to voluntarily submit information considered confidential shall follow the pre-submission review requirements of § 20.44.

(d) The filing of a submission means only that the Dockets Management Branch has identified no technical deficiencies in the submission. The filing of a petition does not mean or imply that it meets all applicable requirements or that it contains reasonable grounds for the action requested or that the action requested is in accordance with law.

(e) All submissions to the Dockets Management Branch will be considered as submitted on the date they are postmarked or, if delivered in person during regular business hours, on the date they are delivered, unless a provision in this part, an applicable FEDERAL REGISTER notice, or an order issued by an administrative law judge specifically states that the documents must be received by a specified date, e.g., §10.33(g) relating to a petition for reconsideration, in which case they will be considered submitted on the date received.

(f) All submissions are to be mailed or delivered in person to the Dockets Management Branch, Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, except that a submission which is required to be received by the Branch by a specified date may be delivered in person to the FDA building in Washington (Room 6819, 200 C Street SW., Washington, DC 20204) and will be considered as received by the Branch on the date on which it is delivered.

(g) FDA ordinarily will not acknowledge or give receipt for documents, except:

(1) Documents delivered in person or by certified or registered mail with a return receipt requested; and

(2) Petitions for which acknowledgment of receipt of filing is provided by regulation or by customary practice, e.g., § 10.30(c) relating to a citizen petition.

(h) Saturdays, Sundays, and Federal legal holidays are included in computing the time allowed for the submission of documents, except that when the time for submission expires on a Saturday, Sunday, or Federal legal holiday, the period will be extended to include the next business day.

(i) All submissions to the Dockets Management Branch are representations that, to the best of the knowledge, information, and belief of the person making the submission, the statements made in the submission are true and accurate. All submissions are subject to the False Reports to the Government Act (18 U.S.C. 1001) under which a willfully false statement is a criminal offense.

(j) The availability for public examination and copying of submissions to the Dockets Management Branch is governed by the following rules:

(1) Except to the extent provided in paragraphs (j)(2) and (3) of this section, the following submissions, including all supporting material, will be on public display and will be available for public examination between 9 a.m. and 4 p.m., Monday through Friday. Requests for copies of submissions will be
filed and handled in accordance with subpart C of part 20:

(i) Petitions.

(ii) Comments on petitions, on documents published in the Federal Register, and on similar public documents.

(iii) Objections and requests for hearings filed under part 12.

(iv) Material submitted at a hearing under § 12.32(a)(2) and parts 12, 13, and 15.

(v) Material placed on public display under the regulations in this chapter, e.g., agency guidelines filed under § 10.90(b).

(2)(i) Material prohibited from public disclosure under § 20.63 (clearly unwarranted invasion of personal privacy) and, except as provided in paragraph (j)(3) of this section, material submitted with objections and requests for hearing filed under part 12, or at a hearing under part 12 or part 13, or an alternative form of public hearing before a public advisory committee or a hearing under § 12.32(a)(2) or (3), of the following types will not be on public display, will not be available for public examination, and will not be available for copying or any other form of verbatim transcription unless it is otherwise available for public disclosure under part 20:

(a) Safety and effectiveness information, which includes all studies and tests of an ingredient or product on animals and humans and all studies and tests on the ingredient or product for identity, stability, purity, potency, bioavailability, performance, and usefulness.

(b) A protocol for a test or study.

(c) Manufacturing methods or processes, including quality control procedures.

(d) Production, sales distribution, and similar information, except any compilation of information aggregated and prepared in a way that does not reveal confidential information.

(e) Quantitative or semiquantitative formulas.

(f) Information on product design or construction.

(ii) Material submitted under paragraph (j)(2) of this section is to be segregated from all other submitted material and clearly so marked. A person who does not agree that a submission is properly subject to paragraph (j)(2)(i) or (ii) may request a ruling from the Associate Commissioner for Public Affairs whose decision is final, subject to judicial review under § 20.46.

(3) Material listed in paragraph (j)(2)(i) (a) and (b) of this section may be disclosed under a protective order issued by the administrative law judge or other presiding officer at a hearing referenced in paragraph (j)(2)(i). The administrative law judge or presiding officer shall permit disclosure of the data only in camera and only to the extent necessary for the proper conduct of the hearing. The administrative law judge or presiding officer may impose other conditions or safeguards. The limited availability of material under this paragraph does not constitute prior disclosure to the public as defined in § 20.81, and no information subject to a particular order is to be submitted to or received or considered by FDA in support of a petition or other request from any other person.


§ 10.25 Initiation of administrative proceedings.

An administrative proceeding may be initiated in the following three ways:

(a) An interested person may petition the Commissioner to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action. A petition must be either: (1) In the form specified in other applicable FDA regulations, e.g., the form for a color additive petition in § 71, for a food additive petition in § 71, for a new drug application in § 314, for a new animal drug application in § 314, or (2) in the form for a citizen petition in § 10.30.

(b) The Commissioner may initiate a proceeding to issue, amend, or revoke a
§ 10.30 Citizen petition.

(a) This section applies to any petition submitted by a person (including a person who is not a citizen of the United States) except to the extent that other sections of this chapter apply different requirements to a particular matter.

(b) A petition (including any attachments) must be submitted in accordance with §10.20 and in the following form:

(Date) ____________________

Dockets Management Branch, Food and Drug Administration, Department of Health and Human Services, rm. 1–23, 1200 Parklawn Dr., Rockville, MD 20857.

CITIZEN PETITION

The undersigned submits this petition under §____ (relevant statutory sections, if known) of the ______ (Federal Food, Drug, and Cosmetic Act or the Public Health Service Act or any other statutory provision for which authority has been delegated to the Commissioner of Food and Drugs under 21 CFR 5.10) to request the Commissioner of Food and Drugs to ______ (issue, amend, or revoke a regulation or order or take or refrain from taking any other form of administrative action).

A. Action requested

(1) If the petition requests the Commissioner to issue, amend, or revoke a regulation, the exact wording of the existing regulation (if any) and the proposed regulation or amendment requested.

(2) If the petition requests the Commissioner to issue, amend, or revoke an order, a copy of the exact wording of the citation to the existing order (if any) and the exact wording requested for the proposed order.

(3) If the petition requests the Commissioner to take or refrain from taking any other form of administrative action, the specific action or relief requested.

B. Statement of grounds

(A) Claim for categorical exclusion under §§25.30, 25.31, 25.32, 25.33, or §25.34 of this chapter or an environmental assessment under §25.40 of this chapter.

D. Economic impact

(The following information is to be submitted only when requested by the Commissioner following review of the petition: A statement of the effect of requested action on: (1) Cost (and price) increases to industry, government, and consumers; (2) productivity of wage earners, businesses, or government; (3) competition; (4) supplies of important materials, products, or services; (5) employment; and (6) energy supply or demand.)

E. Certification

The undersigned certifies, that, to the best knowledge and belief of the undersigned, this petition includes all information and views on which the petition relies, including all relevant information and views on which the petitioner relies, as well as representative information known to the petitioner which is unfavorable to the petitioner's position.)

A full statement, in a well organized format, of the factual and legal grounds on which the petition relies, including all relevant information and views on which the petitioner relies, as well as representative information known to the petitioner which is unfavorable to the petitioner's position.)

C. Environmental impact

A. Action requested

(1) If the petition requests the Commissioner to issue, amend, or revoke a regulation, the exact wording of the existing regulation (if any) and the proposed regulation or amendment requested.

(2) If the petition requests the Commissioner to issue, amend, or revoke an order, a copy of the exact wording of the citation to the existing order (if any) and the exact wording requested for the proposed order.

(3) If the petition requests the Commissioner to take or refrain from taking any other form of administrative action, the specific action or relief requested.

B. Statement of grounds

A full statement, in a well organized format, of the factual and legal grounds on which the petition relies, including all relevant information and views on which the petitioner relies, as well as representative information known to the petitioner which is unfavorable to the petitioner's position.)

C. Environmental impact

The undersigned certifies, that, to the best knowledge and belief of the undersigned, this petition includes all information and views on which the petition relies, including all relevant information and views on which the petitioner relies, as well as representative data and information known to the petitioner which are unfavorable to the petition.

(Signature) ____________________

Name of petitioner: ____________________

(Mailing address) ____________________

(Telephone number) ____________________

(c) A petition which appears to meet the requirements of paragraph (b) of this section and §10.20 will be filed by
the Dockets Management Branch, stamped with the date of filing, and assigned a docket number. The docket number identifies the file established by the Dockets Management Branch for all submissions relating to the petition, as provided in this part. Subsequent submissions relating to the matter must refer to the docket number and will be filed in the docket file. Related petitions may be filed together and given the same docket number. The Dockets Management Branch will promptly notify the petitioner in writing of the filing and docket number of a petition.

(d) An interested person may submit written comments to the Dockets Management Branch on a filed petition, which comments become part of the docket file. The comments are to specify the docket number of the petition and may support or oppose the petition in whole or in part. A request for alternative or different administrative action must be submitted as a separate petition.

(e)(1) The Commissioner shall, in accordance with paragraph (e)(2), rule upon each petition filed under paragraph (c) of this section, taking into consideration (i) available agency resources for the category of subject matter, (ii) the priority assigned to the petition considering both the category of subject matter involved and the overall work of the agency, and (iii) time requirements established by statute.

(2) Except as provided in paragraph (e)(4) of this section, the Commissioner shall furnish a response to each petitioner within 180 days of receipt of the petition. The response will either:

(i) Approve the petition, in which case the Commissioner shall concurrently take appropriate action (e.g., publication of a Federal Register notice) implementing the approval;

(ii) Deny the petition; or

(iii) Provide a tentative response, indicating why the agency has been unable to reach a decision on the petition, e.g., because of the existence of other agency priorities, or a need for additional information. The tentative response may also indicate the likely ultimate agency response, and may specify when a final response may be furnished.

(3) The Commissioner may grant or deny such a petition, in whole or in part, and may grant such other relief or take other action as the petition warrants. The petitioner is to be notified in writing of the Commissioner's decision. The decision will be placed in the public docket file in the office of the Dockets Management Branch and may also be in the form of a notice published in the Federal Register.

(4) The Commissioner shall furnish a response to each petitioner within 90 days of receipt of a petition filed under section 505(j)(2)(C) of the act. The response will either approve or disapprove the petition. Agency action on a petition shall be governed by §10.45 of this chapter.

(f) If a petition filed under paragraph (c) of this section requests the Commissioner to issue, amend, or revoke a regulation, §10.40 or §10.50 also apply.

(g) A petitioner may supplement, amend, or withdraw a petition in writing without prejudice to resubmission at any time until the Commissioner rules on the petition, unless the petition has been referred for a hearing under parts 12, 13, 14, or 15. After a ruling or referral, a petition may be supplemented, amended, or withdrawn only with the approval of the Commissioner. The Commissioner may approve withdrawal, with or without prejudice against resubmission of the petition.

(h) In reviewing a petition the Commissioner may use the following procedures:

(1) Conferences, meetings, discussions, and correspondence under §10.65.

(2) A hearing under parts 12, 13, 14, or 15.

(3) A Federal Register notice requesting information and views.

(4) A proposal to issue, amend, or revoke a regulation, in accordance with §10.40 or §12.20.

(5) Any other specific public procedure established in this chapter and expressly applicable to the matter.

(i) The record of the administrative proceeding consists of the following:

(1) The petition, including all information on which it relies, filed by the Dockets Management Branch.

87
§ 10.33 Administrative reconsideration of action.

(a) The Commissioner may at any time reconsider a matter, on the Commissioner's own initiative or on the petition of an interested person.

(b) An interested person may request reconsideration of part or all of a decision of the Commissioner on a petition submitted under §10.25. Each request for reconsideration must be submitted in accordance with §10.20 and in the following form no later than 30 days after the date of the decision involved. The Commissioner may, for good cause, permit a petition to be filed after 30 days. In the case of a decision published in the FEDERAL REGISTER, the day of publication is the day of decision.

(Date)

Dockets Management Branch, Food and Drug Administration, Department of Health and Human Services, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

PETITION FOR RECONSIDERATION

[Docket No.]

The undersigned submits this petition for reconsideration of the decision of the Commissioner of Food and Drugs in Docket No.

A. Decision involved

(A concise statement of the decision of the Commissioner which the petitioner wishes to have reconsidered.)
B. Action requested

(The decision which the petitioner requests the Commissioner to make upon reconsideration of the matter.)

C. Statement of grounds

(A full statement, in a well-organized format, of the factual and legal grounds upon which the petitioner relies. The grounds must demonstrate that relevant information and views contained in the administrative record were not previously or not adequately considered by the Commissioner.

(No new information or views may be included in a petition for reconsideration.)

(Signature)

(Name of petitioner) ________________________________

(Mailing address) ________________________________

(Telephone number) ________________________________

(c) A petition for reconsideration relating to a petition submitted under §10.25(a)(2) is subject to the requirements of §10.30(c) and (d), except that it is filed in the same docket file as the petition to which it relates.

(d) The Commissioner shall promptly review a petition for reconsideration. The Commissioner may grant the petition when the Commissioner determines it is in the public interest and in the interest of justice. The Commissioner shall grant a petition for reconsideration in any proceeding if the Commissioner determines all of the following apply:

(1) The petition demonstrates that relevant information or views contained in the administrative record were not previously or not adequately considered.

(2) The petitioner's position is not frivolous and is being pursued in good faith.

(3) The petitioner has demonstrated sound public policy grounds supporting reconsideration.

(4) Reconsideration is not outweighed by public health or other public interests.

(e) A petition for reconsideration may not be based on information and views not contained in the administrative record on which the decision was made. An interested person who wishes to rely on information or views not included in the administrative record shall submit them with a new petition to modify the decision under §10.25(a).

(f) The decision on a petition for reconsideration is to be in writing and placed on public display as part of the docket file on the matter in the office of the Dockets Management Branch. A determination to grant reconsideration will be published in the Federal Register if the Commissioner's original decision was so published. Any other determination to grant or deny reconsideration may also be published in the Federal Register.

(g) The Commissioner may consider a petition for reconsideration only before the petitioner brings legal action in the courts to review the action, except that a petition may also be considered if the Commissioner has denied a petition for stay of action and the petitioner has petitioned for judicial review of the Commissioner's action and requested the reviewing court to grant a stay pending consideration of review. A petition for reconsideration submitted later than 30 days after the date of the decision involved will be denied as untimely unless the Commissioner permits the petition to be filed after 30 days. A petition for reconsideration will be considered as submitted on the day it is received by the Dockets Management Branch.

(h) The Commissioner may initiate the reconsideration of all or part of a matter at any time after it has been decided or action has been taken. If review of the matter is pending in the courts, the Commissioner may request that the court refer the matter back to the agency or hold its review in abeyance pending administrative reconsideration. The administrative record of the proceeding is to include all additional documents relating to such reconsideration.

(i) After determining to reconsider a matter, the Commissioner shall review and rule on the merits of the matter under §10.30(e). The Commissioner may reaffirm, modify, or overrule the prior decision, in whole or in part, and may grant such other relief or take such other action as is warranted.

(j) The Commissioner's reconsideration of a matter relating to a petition submitted under §10.25(a)(2) is subject to §10.30(f) through (h), (j), and (k).

(k) The record of the administrative proceeding consists of the following:

(1) The record of the original petition specified in §10.30(l).
§ 10.35 Administrative stay of action.

(a) The Commissioner may at any time stay or extend the effective date of an action pending or following a decision on any matter.

(b) An interested person may request the Commissioner to stay the effective date of any administrative action. A stay may be requested for a specific time period or for an indefinite time period. A request for stay must be submitted in accordance with §10.20 and in the following form no later than 30 days after the date of the decision involved. The Commissioner may, for good cause, permit a petition to be filed after 30 days. In the case of a decision published in the Federal Register, the day of publication is the date of decision.

(Date)

Dockets Management Branch, Food and Drug Administration, Department of Health and Human Services, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

PETITION FOR STAY OF ACTION

The undersigned submits this petition requesting that the Commissioner of Food and Drugs stay the effective date of the following matter.

A. Decision involved
(The specific administrative action being taken by the Commissioner for which a stay is requested, including the docket number or other citation to the action involved.)

B. Action requested
(The length of time for which the stay is requested, which may be for a specific or indefinite time period.)

C. Statement of grounds
(A full statement, in a well-organized format, of the factual and legal grounds upon which the petitioner relies for the stay.)

(Signature)

(Name of petitioner)

(Mailing address)

(Telephone number)

(c) A petition for stay of action relating to a petition submitted under §10.25(a)(2) is subject to the requirements of §10.30(c) and (d), except that it will be filed in the same docket file as the petition to which it relates.

(d) Neither the filing of a petition for a stay of action nor action taken by an interested person in accordance with any other administrative procedure in this part or in any other section of this chapter, e.g., the filing of a citizen petition under §10.30 or a petition for reconsideration under §10.33 or a request for an advisory opinion under §10.85, will stay or otherwise delay any administrative action by the Commissioner, including enforcement action of any kind, unless one of the following applies:

(1) The Commissioner determines that a stay or delay is in the public interest and stays the action.

(2) A statute requires that the matter be stayed.

(3) A court orders that the matter be stayed.

(e) The Commissioner shall promptly review a petition for stay of action. The Commissioner may grant or deny a petition, in whole or in part; and may grant such other relief or take such other action as is warranted by the petition. The Commissioner may grant a stay in any proceeding if it is in the public interest and in the interest of justice. The Commissioner shall grant a stay in any proceeding if all of the following apply:

(1) The petitioner will otherwise suffer irreparable injury.
(2) The petitioner’s case is not frivolous and is being pursued in good faith.
(3) The petitioner has demonstrated sound public policy grounds supporting the stay.
(4) The delay resulting from the stay is not outweighed by public health or other public interests.
(f) The Commissioner’s decision on a petition for stay of action is to be in writing and placed on public display as part of the file on the matter in the office of the Dockets Management Branch. A determination to grant a stay will be published in the Federal Register if the Commissioner’s original decision was so published. Any other determination to grant or to deny a stay may also be published in the Federal Register.
(g) A petition for a stay of action submitted later than 30 days after the date of the decision involved will be denied as untimely unless the Commissioner permits the petition to be filed after 30 days. A petition for a stay of action is considered submitted on the day it is received by the Dockets Management Branch.
(h) The record of the administrative proceeding consists of the following:
(1) The record of the proceeding to which the petition for stay of action is directed.
(2) The petition for stay of action, including all information on which it relies, filed by the Dockets Management Branch.
(3) All comments received on the petition, including all information submitted as a part of the comments.
(4) The Commissioner’s decision on the petition under paragraph (e) of this section, including all information identified or filed by the Commissioner with the Dockets Management Branch as part of the record supporting the decision.
Any Federal Register notices or other documents resulting from the petition.
(6) All documents filed with the Dockets Management Branch under §10.65(h).

§10.40 Promulgation of regulations for the efficient enforcement of the law.
(a) The Commissioner may propose and promulgate regulations for the efficient enforcement of the laws administered by FDA whenever it is necessary or appropriate to do so. The issuance, amendment, or revocation of a regulation may be initiated in any of the ways specified in §10.25.
(1) This section applies to any regulation: (i) Not subject to §10.50 and part 12, or (ii) if it is subject to §10.50 and part 12, to the extent that those provisions make this section applicable.
(2) A regulation proposed by an interested person in a petition submitted under §10.25(a) will be published in the Federal Register as a proposal if:
(i) The petition contains facts demonstrating reasonable grounds for the proposal; and
(ii) The petition substantially shows that the proposal is in the public interest and will promote the objectives of the act and the agency.
(3) Two or more alternative proposed regulations may be published on the same subject to obtain comment on the different alternatives.
(4) A regulation proposed by an interested person in a petition submitted under §10.25(a) may be published together with the Commissioner’s preliminary views on the proposal and any alternative proposal.
(b) Except as provided in paragraph (e) of this section, each regulation must be the subject of a notice of proposed rulemaking published in the Federal Register. (1) The notice will contain:
(i) The name of the agency;
(ii) The nature of the action, e.g., proposed rule, or notice;
(iii) A summary in the first paragraph describing the substance of the document in easily understandable terms;
(iv) Relevant dates, e.g., comment closing date, and proposed effective date(s);
(v) The name, business address, and phone number of an agency contact person who can provide further information to the public about the notice;
(vi) An address for submitting written comments;
§ 10.40

(vii) Supplementary information about the notice in the form of a preamble that summarizes the proposal and the facts and policy underlying it, includes references to all information on which the Commissioner relies for the proposal (copies or a full list of which are a part of the docket file on the matter in the office of the Dockets Management Branch), and cites the authority under which the regulation is proposed;

(viii) Either the terms or substance of the proposed regulation or a description of the subjects and issues involved;

(ix) A reference to the existence or lack of need for an environmental impact statement under §25.52 of this chapter; and

(x) The docket number of the matter, which identifies the docket file established by the Dockets Management Branch for all relevant submissions.

(2) The proposal will provide 60 days for comment, although the Commissioner may shorten or lengthen this time period for good cause. In no event is the time for comment to be less than 10 days.

(3) After publication of the proposed rule, any interested person may request the Commissioner to extend the comment period for an additional specified period by submitting a written request to the Dockets Management Branch stating the grounds for the request. The request is submitted under §10.35 but should be headed “REQUEST FOR EXTENSION OF COMMENT PERIOD.”

(i) A request must discuss the reason comments could not feasibly be submitted within the time permitted, or that important new information will shortly be available, or that sound public policy otherwise supports an extension of the time for comment. The Commissioner may grant or deny the request or may grant an extension for a time period different from that requested. An extension may be limited to specific persons who have made and justified the request, but will ordinarily apply to all interested persons.

(ii) A comment time extension of 30 days or longer will be the subject either of a letter or memorandum filed with the Dockets Management Branch or of a notice published in the FEDERAL REGISTER.

(4) A notice of proposed rulemaking will request that four copies of comments be submitted to the Dockets Management Branch, except that individuals may submit single copies. Comments will be stamped with the date of receipt and will be numbered chronologically.

(5) Persons submitting comments critical of a proposed regulation are encouraged to include their preferred alternative wording.

(c) After the time for comment on a proposed regulation has expired, the Commissioner will review the entire administrative record on the matter, including all comments and, in a notice published in the FEDERAL REGISTER, will terminate the proceeding, issue a new proposal, or promulgate a final regulation.

(1) The quality and persuasiveness of the comments will be the basis for the Commissioner’s decision. The number or length of comments will not ordinarily be a significant factor in the decision unless the number of comments is material where the degree of public interest is a legitimate factor for consideration.

(2) The decision of the Commissioner on the matter will be based solely upon the administrative record.

(3) A final regulation published in the FEDERAL REGISTER will have a preamble stating: (i) The name of the agency, (ii) the nature of the action e.g., final rule, notice, (iii) a summary first paragraph describing the substance of the document in easily understandable terms, (iv) relevant dates, e.g., the rule’s effective date and comment closing date, if an opportunity for comment is provided, (v) the name, business address, and phone number of an agency contact person who can provide further information to the public about the notice, (vi) an address for the submission of written comments when they are permitted, (vii) supplementary information about the regulation in the body of the preamble that
contains references to prior notices relating to the same matter and a summary of each type of comment submitted on the proposal and the Commissioner’s conclusions with respect to each. The preamble is to contain a thorough and comprehensible explanation of the reasons for the Commissioner’s decision on each issue.

(4) The effective date of a final regulation may not be less than 30 days after the date of publication in the Federal Register, except for:

(i) A regulation that grants an exemption or relieves a restriction; or
(ii) A regulation for which the Commissioner finds, and states in the notice good cause for an earlier effective date.

(d) The provisions for notice and comment in paragraphs (b) and (c) of this section apply only to the extent required by the Administrative Procedure Act (5 U.S.C. 551, 552, and 553). As a matter of discretion, however, the Commissioner may voluntarily follow those provisions in circumstances in which they are not required by the Administrative Procedure Act.

(e) The requirements of notice and public procedure in paragraph (b) of this section do not apply in the following situations:

(1) When the Commissioner determines for good cause that they are impracticable, unnecessary, or contrary to the public interest. In these cases, the notice promulgating the regulation will state the reasons for the determination, and provide an opportunity for comment to determine whether the regulation should subsequently be modified or revoked. A subsequent notice based on those comments may, but need not, provide additional opportunity for public comment.

(2) Food additive and color additive petitions, which are subject to the provisions of §12.20(b)(2).

(3) New animal drug regulations, which are promulgated under section 512(i) of the act.

(f) In addition to the notice and public procedure required under paragraph (b) of this section, the Commissioner may also subject a proposed or final regulation, before or after publication in the Federal Register, to the following additional procedures:

(1) Conferences, meetings, discussions, and correspondence under §10.65.
(2) A hearing under parts 12, 13, 14, or 15.
(3) A notice published in the Federal Register requesting information and views before the Commissioner determines whether to propose a regulation.

(4) A draft of a proposed regulation placed on public display in the office of the Dockets Management Branch. If this procedure is used, the Commissioner shall publish an appropriate notice in the Federal Register stating that the document is available and specifying the time within which comments on the draft proposal may be submitted orally or in writing.

(5) A revised proposal published in the Federal Register, which proposal is subject to all the provisions in this section relating to proposed regulations.

(6) A tentative final regulation or tentative revised final regulation placed on public display in the office of the Dockets Management Branch and, if deemed desirable by the Commissioner, published in the Federal Register. If the tentative regulation is placed on display only, the Commissioner shall mail a copy of the tentative final regulation and the Federal Register notice to each person who submitted comments on the proposed regulation if one has been published.

(7) A final regulation published in the Federal Register that provides an opportunity for the submission of further comments, in accordance with paragraph (e)(1) of this section.

(8) Any other public procedure established in this chapter and expressly applicable to the matter.

(g) The record of the administrative proceeding consists of all of the following:

(1) If the regulation was initiated by a petition, the administrative record specified in §10.30(i).
§ 10.45 Court review of final administrative action; exhaustion of administrative remedies.

(a) This section applies to court review of final administrative action taken by the Commissioner, including action taken under §§10.25 through 10.40 and §16.1(b), except action subject to §10.50 and part 12.

(b) A request that the Commissioner take or refrain from taking any form of administrative action must first be the subject of a final administrative decision based on a petition submitted under §10.25(a) or, where applicable, a hearing under §16.1(b) before any legal action is filed in a court complaining of the action or failure to act. If a court action is filed complaining of the action or failure to act before the submission of the decision on a petition under §10.25(a) or, where applicable, a hearing under §16.1(b), the Commissioner shall request dismissal of the court action or referral to the agency for an initial determination on the grounds of a failure to exhaust administrative remedies, the lack of final agency action as required by 5 U.S.C. 701 et seq., and the lack of an actual controversy as required by 28 U.S.C. 2201.

(c) A request that administrative action be stayed must first be the subject of an administrative decision based upon a petition for stay of action submitted under §10.35 before a request is made that a court stay the action. If a court action is filed requesting a stay of administrative action before the Commissioner’s decision on a petition submitted in a timely manner pursuant to §10.35, the Commissioner shall request dismissal of the court action or referral to the agency for an initial determination on the grounds of a failure to exhaust administrative remedies, the lack of final agency action as required by 5 U.S.C. 701 et seq., and the lack of an actual controversy as required by 28 U.S.C. 2201. If a court action is filed requesting a stay of administrative action after a petition for a
stay of action is denied because it was submitted after expiration of the time period provided under § 10.35, or after the time for submitting such a petition has expired, the Commissioner will request dismissal of the court action on the ground of a failure to exhaust administrative remedies.

(d) The Commissioner's final decision constitutes final agency action (reviewable in the courts under 5 U.S.C. 701 et seq. and, where appropriate, 28 U.S.C. 2201) on a petition submitted under § 10.25(a), on a petition for reconsideration submitted under § 10.33, on a petition for stay of action submitted under § 10.35, on an advisory opinion issued under § 10.85, on a guideline issued under § 10.90, on a matter involving administrative action which is the subject of an opportunity for a hearing under § 16.1(b) of this chapter, or on the issuance of a final regulation published in accordance with § 10.40, except that the agency's response to a petition filed under section 505(j)(2)(C) of the act and § 314.93 of this chapter will not constitute final agency action until any petition for reconsideration submitted by the petitioner is acted on by the Commissioner.

(1) It is the position of FDA except as otherwise provided in paragraph (d)(2) of this section, that:

(i) Final agency action exhausts all administrative remedies and is ripe for preenforcement judicial review as of the date of the final decision, unless applicable law explicitly requires that the petitioner take further action before judicial review is available;

(ii) An interested person is affected by, and thus has standing to obtain judicial review of final agency action; and

(iii) It is not appropriate to move to dismiss a suit for preenforcement judicial review of final agency action on the ground that indispensable parties are not joined or that it is an unconsented suit against the United States if the defect could be cured by amending the complaint.

(2) The Commissioner shall object to judicial review of a matter if:

(i) The matter is committed by law to the discretion of the Commissioner, e.g., a decision to recommend or not to recommend civil or criminal enforcement action under sections 302, 303, and 304 of the act; or

(ii) Review is not sought in a proper court.

(e) An interested person may request judicial review of a final decision of the Commissioner in the courts without first petitioning the Commissioner for reconsideration or for a stay of action, except that in accordance with paragraph (c) of this section, the person shall request a stay by the Commissioner under § 10.35 before requesting a stay by the court.

(f) The Commissioner shall take the position in an action for judicial review under 5 U.S.C. 701 et seq., whether or not it includes a request for a declaratory judgment under 28 U.S.C. 2201, or in any other case in which the validity of administrative action is properly challenged, that the validity of the action must be determined solely on the basis of the administrative record specified in §§ 10.30(i), 10.33(k), 10.35(n), 10.40(g), and 16.80(a) or the administrative record applicable to any decision or action under the regulations referenced in § 16.1(b), and that additional information or views may not be considered. An interested person who wishes to rely upon information or views not included in the administrative record shall submit them to the Commissioner with a new petition to modify the action under § 10.25(a).

(g) The Commissioner requests that all petitions for judicial review of a particular matter be filed in a single U.S. District court. If petitions are filed in more than one jurisdiction, the Commissioner will take appropriate action to prevent a multiplicity of suits in various jurisdictions, such as:

(1) A request for transfer of one or more suits to consolidate separate actions, under 28 U.S.C. 1404(a) or 28 U.S.C. 2112(a);

(2) A request that actions in all but one jurisdiction be stayed pending the conclusion of one proceeding;

(3) A request that all but one action be dismissed pending the conclusion of one proceeding, with the suggestion that the other plaintiffs intervene in that one suit; or

(4) A request that one of the suits be maintained as a class action in behalf of all affected persons.
§ 10.50  Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing.

(a) The Commissioner shall promulgate regulations and orders after an opportunity for a formal evidentiary public hearing under part 12 whenever all of the following apply:

1. The subject matter of the regulation or order is subject by statute to an opportunity for a formal evidentiary public hearing.

2. The person requesting the hearing has a right to an opportunity for a hearing and submits adequate justification for the hearing as required by §§12.20 through 12.22.

(b) The Commissioner may order a formal evidentiary public hearing on any matter whenever it is in the public interest to do so.
would be adversely affected by administrative action an opportunity for a formal evidentiary public hearing as listed below. The list imparts no right to a hearing where the statutory section provides no opportunity for a hearing.

(1) Section 401 on any action for the amendment or repeal of any definition and standard of identity for any dairy product (including products regulated under parts 131, 133, and 135 of this chapter) or maple sirup (regulated under §168.140 of this chapter).

(2) Section 403(j) on regulations for labeling of foods for special dietary uses.

(3) Section 404(a) on regulations for emergency permit control.

(4) Section 406 on tolerances for poisonous substances in food.

(5) Section 409 (c), (d), and (h) on food additive regulations.

(6) Section 501(b) on tests or methods of assay for drugs described in official compendia.

(7) Section 502(d) on regulations designating habit forming drugs.

(8) Section 502(h) on regulations designating requirements for drugs liable to deterioration.

(9) Section 502(n) on prescription drug advertising regulations.

(10) [Reserved]

(11) Section 507(f) on regulations for antibiotic drug certification.

(12) Section 512(n)(5) on regulations for animal antibiotic drugs and certification requirements.

(13) Section 721 (b) and (c) on regulations for color additive listing and certification.

(14) Section 4(a) of the Fair Packaging and Labeling Act on food, drug, device, and cosmetic labeling.

(15) Section 5(c) of the Fair Packaging and Labeling Act on additional economic regulations for food, drugs, devices, and cosmetics.

(16) Section 505 (d) and (e) on new drug applications.

(17) Section 512 (d), (e) and (m) (3) and (4) on new animal drug applications.

(18) Section 515(g) on device premarket approval applications and product development protocols.

(19) Section 351(a) of the Public Health Service Act on plant and product licenses for a biologic.

(20) Section 306 on debarment, debarment period and considerations, termination of debarment under section 306(d)(3), suspension, and termination of suspension.


EFFECTIVE DATE NOTE: At 64 FR 398, Jan. 5, 1999, in §10.50, paragraph (a)(2) was amended by removing “314.300”, and paragraph (c)(11) was removed and reserved, effective May 20, 1999.

§ 10.55 Separation of functions; ex parte communications.

(a) This section applies to any matter subject by statute to an opportunity for a formal evidentiary public hearing, as listed in §10.50(c), and any matter subject to a hearing before a Public Board of Inquiry under part 13.

(b) In the case of a matter listed in §10.50(c) (1) through (10) and (12) through (15):

(1) An interested person may meet or correspond with any FDA representative concerning a matter prior to publication of a notice announcing a formal evidentiary public hearing or a hearing before a Public Board of Inquiry; the provisions of §10.65 apply to the meetings and correspondence; and

(2) Upon publication of a notice announcing a formal evidentiary public hearing or a hearing before a Public Board of Inquiry, the following separation of functions apply:

(i) The center responsible for the matter is, as a party to the hearing, responsible for all investigative functions and for presentation of the position of the center at the hearing and in any pleading or oral argument before the Commissioner. Representatives of the center may not participate or advise in any decision except as witness or counsel in public proceedings. There is to be no other communication between representatives of the center and representatives of the office of the Commissioner concerning the matter before the decision of the Commissioner. The Commissioner may, however, designate representatives of a center to advise the office of the Commissioner, or designate members of
that office to advise a center. The designation will be in writing and filed with the Dockets Management Branch no later than the time specified in paragraph (b)(2) of this section for the application of separation of functions. All members of FDA other than representatives of the involved center (except those specifically designated otherwise) shall be available to advise and participate with the office of the Commissioner in its functions relating to the hearing and the final decision.

(ii) The Chief Counsel for FDA shall designate members of the office of General Counsel to advise and participate with the center in its functions in the hearing and members who are to advise the office of the Commissioner in its functions related to the hearing and the final decision. The members of the office of General Counsel designated to advise the center may not participate or advise in any decision of the Commissioner except as counsel in public proceedings. The designation is to be in the form of a memorandum filed with the Dockets Management Branch and made a part of the administrative record in the proceeding. There may be no other communication between those members of the office of General Counsel designated to advise the office of the Commissioner and any other persons in the office of General Counsel or in the involved center with respect to the matter prior to the decision of the Commissioner. The Chief Counsel may assign new attorneys to advise either the center or the office of the Commissioner at any stage of the proceedings. The Chief Counsel will ordinarily advise and participate with the office of the Commissioner in its functions relating to the hearing and the final decision.

(iii) The office of the Commissioner is responsible for the agency review and final decision of the matter, with the advice and participation of anyone in FDA other than representatives of the involved center and those members of the office of General Counsel designated to assist in the center’s functions in the hearing.

(c) In a matter listed in §10.50(c) (11) and (16) through (19), the provisions relating to separation of functions set forth in §§314.200(f), 514.200, and 601.7(a) are applicable before publication of a notice announcing a formal evidentiary public hearing or a hearing before a Public Board of Inquiry. Following publication of the notice of hearing, the rules in paragraph (b)(2) of this section apply.

(d) Except as provided in paragraph (e) of this section, between the date that separation of functions applies under paragraph (b) or (c) of this section and the date of the Commissioner’s decision on the matter, communication concerning the matter involved in the hearing will be restricted as follows:

(1) No person outside the agency may have an ex parte communication with the presiding officer or any person representing the office of the Commissioner concerning the matter in the hearing. Neither the presiding officer nor any person representing the office of the Commissioner may have any ex parte communication with a person outside the agency concerning the matter in the hearing. All communications are to be public communications, as witness or counsel, under the applicable provisions of this part.

(2) A participant in the hearing may submit a written communication to the office of the Commissioner with respect to a proposal for settlement. These communications are to be in the form of pleadings, served on all other participants, and filed with the Dockets Management Branch like any other pleading.

(3) A written communication contrary to this section must be immediately served on all other participants and filed with the Dockets Management Branch by the presiding officer at the hearing, or by the Commissioner, depending on who received the communication. An oral communication contrary to this section must be immediately recorded in a written memorandum and similarly served on all other participants and filed with the Dockets Management Branch. A person, including a representative of a participant in the hearing, who is involved in an oral communication contrary to this section, must, if possible, be made available for cross-examination during the hearing with respect to
the substance of that conversation. Rebuttal testimony pertinent to a written or oral communication contrary to this section will be permitted. Cross-examination and rebuttal testimony will be transcribed and filed with the Dockets Management Branch.

(e) The prohibitions specified in paragraph (d) of this section apply to a person who knows of a notice of hearing in advance of its publication from the time the knowledge is acquired.

(f) The making of a communication contrary to this section may, consistent with the interests of justice and the policy of the underlying statute, result in a decision adverse to the person knowingly making or causing the making of such a communication.

§ 10.65 Meetings and correspondence.

(a) In addition to public hearings and proceedings established under this part and other sections of this chapter, meetings may be held and correspondence may be exchanged between representatives of FDA and an interested person outside FDA on a matter within the jurisdiction of the laws administered by the Commissioner. Action on meetings and correspondence does not constitute final administrative action subject to judicial review under §10.45.

(b) The Commissioner may conclude that it would be in the public interest to hold an open public meeting to discuss a matter (or class of matters) pending before FDA, at which any interested person may participate.

(1) The Commissioner shall give public notice through the public calendar described in §10.100(a) of the time and place of the meeting and of the matters to be discussed, and may also publish notice of the meeting.

(2) The meeting will be informal, i.e., any interested person may attend and participate in the discussion without prior notice to the agency unless the notice of the meeting specifies otherwise.

(3) No official transcript or recording of the meeting will be made unless it appears to the agency that it will be useful. A written memorandum summarizing the substance of the meeting will be prepared by an FDA representative in all cases.

(c) A meeting with a person outside the Department, including a person in the executive or legislative branch of the Federal Government, concerning a pending court case, administrative hearing, or other regulatory action or decision, which involves more than a brief description of the matter, is to be summarized in a written memorandum, which is filed in the administrative file on the matter.

(d) Every person outside the Federal Government may request and obtain a private meeting with a representative of FDA in agency offices to discuss a matter.

(1) The person requesting a meeting may be accompanied by a reasonable number of employees, consultants, or other persons with whom there is a commercial arrangement within the
meaning of §20.81(a). Neither FDA nor any other person may require the attendance of a person who is not an employee of the executive branch of the Federal Government without the agreement of the person requesting the meeting. Any person may attend by mutual consent of the person requesting the meeting and FDA.

(2) FDA will determine which representatives of the Agency will attend the meeting. The person requesting the meeting may request but not require or preclude the attendance of a specific FDA employee.

(3) Whenever appropriate (e.g., the meeting involves a matter covered by paragraph (c) of this section or other important matter, a decision on an issue, or statements or advice or conclusions to which future reference may be desirable), a written memorandum summarizing the substance of the meeting will be prepared by an FDA representative.

(4) A person who wishes to attend a private meeting, but who either is not permitted to attend by the person requesting the meeting or by FDA or who cannot attend because the meeting is conducted by telephone, may obtain a separate meeting with FDA to discuss the same matter or an additional matter.

(e) FDA employees have a responsibility to meet with all segments of the public to promote the objectives of the laws administered by the Agency. In pursuing this responsibility the following general policy applies where agency employees are invited by persons outside the Federal Government to attend or participate in meetings outside agency offices as representatives of the Agency.

(1) A person outside the executive branch may invite an agency representative to attend or participate in a meeting outside agency offices. The agency representative is not obligated to attend or participate, but may do so where it is in the public interest and will promote the objectives of the act.

(2) The agency representative may request that the meeting be open if that would be in the public interest. The agency representative may decline to participate in a meeting held as a private meeting if that will best serve the public interest.

(3) An agency representative may not knowingly participate in a meeting which is closed on the basis of sex, race, or religion.

(4) A meeting, whether open or closed, is subject to paragraph (d)(3) of this section with respect to memoranda summarizing the substance of the meeting.

(f) Representatives of FDA may initiate a meeting or correspondence with any person outside the Federal Government on any matter concerning the laws administered by the Commissioner.

(1) A meeting initiated by FDA representatives which involves a small number of interested persons, for example, a meeting with a petitioner or with two manufacturers of a particular product which requires additional testing or with a trade association employee to discuss an industry labeling problem, may be a private meeting. A meeting initiated by FDA representatives which involves a large number of interested persons, for example, 10 manufacturers of an ingredient in a discussion of appropriate testing or labeling, must be held as an open conference or meeting under paragraph (b) of this section.

(2) Whenever appropriate (e.g., the meeting involves a matter covered by paragraph (c) of this section or another important matter, a decision on an issue, or statements or advice or conclusions to which future reference may be desirable), a written memorandum summarizing the substance of the meeting will be prepared by an FDA representative.

(g) A person who participates in a meeting described in paragraphs (b) through (f) of this section may also prepare and submit to FDA for inclusion in the administrative file a written memorandum summarizing the substance of the meeting.

(h) Memoranda of meetings prepared by an FDA representative or by any other person and all correspondence which relate to a matter pending before the agency will promptly be filed in the administrative file of the proceeding.
(i) A meeting with a representative of Congress relating to a pending or potential investigation, inquiry, or hearing by a congressional committee or a Member of Congress will be summarized in a written memorandum which is to be forwarded to the Food and Drug Administration, Office of Legislative Affairs. This provision does not restrict the right of an agency employee to participate in the meeting.

(j) A meeting of an advisory committee is subject to the requirements of part 14.

(k) Under 42 U.S.C. 263l(a)(8), a log or summary is to be made of all meetings between representatives of FDA and industry and other interested parties to implement the Radiation Control for Health and Safety Act of 1968.

§ 10.70 Documentation of significant decisions in administrative file.

(a) This section applies to every significant FDA decision on any matter under the laws administered by the Commissioner, whether it is raised formally, for example, by a petition or informally, for example, by correspondence.

(b) FDA employees responsible for handling a matter are responsible for insuring the completeness of the administrative file relating to it. The file must contain:

(1) Appropriate documentation of the basis for the decision, including relevant evaluations, reviews, memos, opinions of consultants, minutes of meetings, and other pertinent written documents; and

(2) The recommendations and decisions of individual employees, including supervisory personnel, responsible for handling the matter.

(i) The recommendations and decisions are to reveal significant controversies or differences of opinion and their resolution.

(ii) An agency employee working on a matter and, consistent with the prompt completion of other assignments, an agency employee who has worked on a matter may record individual views on that matter in a written memorandum, which is to be placed in the file.

(c) A written document placed in an administrative file must:

(1) Relate to the factual, scientific, legal or related issues under consideration;

(2) Be dated and signed by the author;

(3) Be directed to the file, to appropriate supervisory personnel, and to other appropriate employees, and show all persons to whom copies were sent;

(4) Avoid defamatory remarks, intemperate remarks, undocumented charges, or irrelevant matters (e.g., personnel complaints);

(5) If it records the views, analyses, recommendations, or decisions of an agency employee in addition to the author, be given to the other employees; and

(6) Once completed (i.e., typed in final form, dated, and signed) not be altered or removed. Later additions to or revisions of the document must be made in a new document.

(d) Memoranda or other documents that are prepared by agency employees and are not in the administrative file have no status or effect.

(e) FDA employees working on a matter have access to the administrative file on that matter, as appropriate for the conduct of their work. FDA employees who have worked on a matter have access to the administrative file on that matter so long as attention to their assignments is not impeded. Reasonable restrictions may be placed upon access to assure proper cataloging and storage of documents, the availability of the file to others, and the completeness of the file for review.

§ 10.75 Internal agency review of decisions.

(a) A decision of an FDA employee, other than the Commissioner, on a matter, is subject to review by the employee’s supervisor under the following circumstances:

(1) At the request of the employee.

(2) On the initiative of the supervisor.

(3) At the request of an interested person outside the agency.

(4) As required by delegations of authority.

(b) The review will be made by consultation between the employee and the supervisor or by review of the administrative file on the matter, or
§ 10.80 Dissemination of draft Federal Register notices and regulations.

(a) A representative of FDA may discuss orally or in writing with an interested person ideas and recommendations for notices or regulations. FDA welcomes assistance in developing ideas for, and in gathering the information to support, notices and regulations.

(b) Notices and proposed regulations. (1) Once it is determined that a notice or proposed regulation will be prepared, the general concepts may be discussed by a representative of FDA with an interested person. Details of a draft of a notice or proposed regulation may be discussed with a person outside the executive branch only with the specific permission of the Commissioner. The permission must be in writing and filed with the Dockets Management Branch.

(2) A draft of a notice or proposed regulation or its preamble, or a portion of either, may be furnished to an interested person only if it is made available to all interested persons by a notice published in the Federal Register. A draft of a notice or proposed regulation made available in this manner may, without the prior permission of the Commissioner, be discussed with an interested person to clarify and resolve questions raised and concerns expressed about the draft.

(c) After publication of a notice or proposed regulation in the Federal Register, and before preparation of a draft of the final notice or regulation, a representative of FDA may discuss the proposal with an interested person as provided in paragraph (b)(2) of this section.

(d) Final notices and regulations. (1) Details of a draft of a final notice or regulation may be discussed with an interested person outside the executive branch only with the specific permission of the Commissioner. The permission must be in writing and filed with the Dockets Management Branch.

(2) A draft of a final notice or regulation or its preamble, or any portion of either, may be furnished to an interested person outside the executive branch only if it is made available to all interested persons by a notice published in the Federal Register, except

§ 10.80

both. The review will ordinarily follow the established agency channels of supervision or review for that matter.

(2) A sponsor, applicant, or manufacturer of a drug or device regulated under the act or the Public Health Service Act (42 U.S.C. 262), may request review of a scientific controversy by an appropriate scientific advisory panel as described in section 515(g)(2)(B) of the act. The reason(s) for any denial of a request for such review shall be briefly set forth in writing to the requester. Persons who receive a Center denial of their request under this section may submit a request for review of the denial. The request should be sent to the Chief Mediator and Ombudsman.

(c) An interested person outside the agency may request internal agency review of a decision through the established agency channels of supervision or review. Personal review of these matters by center directors or the office of the Commissioner will occur for any of the following purposes:

(1) To resolve an issue that cannot be resolved at lower levels within the agency (e.g., between two parts of a center or other component of the agency, between two centers or other components of the agency, or between the agency and an interested person outside the agency);

(2) To review policy matters requiring the attention of center or agency management;

(3) In unusual situations requiring an immediate review in the public interest;

(4) As required by delegations of authority.

(d) Internal agency review of a decision must be based on the information in the administrative file. If an interested person presents new information not in the file, the matter will be returned to the appropriate lower level in the agency for reevaluation based on the new information.

[44 FR 22323, Apr. 13, 1979, as amended at 50 FR 8994, Mar. 6, 1985; 63 FR 63862, Nov. 18, 1998]
as otherwise provided in paragraphs (g) and (j) of this section. A draft of a final notice or regulation made available to an interested person in this manner may, without the prior permission of the Commissioner, be discussed as provided in paragraph (b)(2) of this section.

(i) The final notice or regulation and its preamble will be prepared solely on the basis of the administrative record.

(ii) If additional technical information from a person outside the executive branch is necessary to draft the final notice or regulation or its preamble, it will be requested by FDA in general terms and furnished directly to the Dockets Management Branch to be included as part of the administrative record.

(iii) If direct discussion by FDA of a draft of a final notice or regulation or its preamble is required with a person outside the executive branch, appropriate protective procedures will be undertaken to make certain that a full and impartial administrative record is established. Such procedures may include either:

(a) The scheduling of an open public meeting under §10.65(b) at which interested persons may participate in review of and comment on the draft document; or

(b) The preparation of a tentative final regulation or tentative revised final regulation under §10.40(f)(6), on which interested persons will be given an additional period of time for oral and written comment.

(e) After a final regulation is published, an FDA representative may discuss any aspect of it with an interested person.

(f) In addition to the requirements of this section, the provisions of §10.55 apply to the promulgation of a regulation subject to §10.50 and part 12.

(g) A draft of a final food additive color additive, or new animal drug regulation may be furnished to the petitioner for comment on the technical accuracy of the regulation. Every meeting with a petitioner relating to the draft will be recorded in a written memorandum, and all memoranda and correspondence will be filed with the Dockets Management Branch as part of the administrative record of the regulation under the provisions of §10.65.

(h) In accordance with 42 U.S.C. 263f, the Commissioner shall consult with interested persons and with the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC) before prescribing any performance standard for an electronic product. Accordingly, the Commissioner shall publish in the Federal Register an announcement when a proposed or final performance standard, including any amendment, is being considered for an electronic product, and any draft of any proposed or final standard will be furnished to an interested person upon request and may be discussed in detail.

(i) The provisions of §10.65 apply to meetings and correspondence relating to draft notices and regulations.

(j) The provisions of this section restricting discussion and disclosure of draft notices and regulations do not apply to situations covered by §§20.83 through 20.89.


Effective Date Note: At 64 FR 398, Jan. 5, 1999, in §10.80, paragraph (g) was amended by removing the phrase "or a proposed or final antibiotic regulation", effective May 20, 1999.

§ 10.85 Advisory opinions.

(a) An interested person may request an advisory opinion from the Commissioner on a matter of general applicability.

(1) The request will be granted whenever feasible.

(2) The request may be denied if:

(i) The request contains incomplete information on which to base an informed advisory opinion;

(ii) The Commissioner concludes that an advisory opinion cannot reasonably be given on the matter involved;

(iii) The matter is adequately covered by a prior advisory opinion or a regulation;

(iv) The request covers a particular product or ingredient or label and does not raise a policy issue of broad applicability; or

(v) The Commissioner otherwise concludes that an advisory opinion would not be in the public interest.
§ 10.85

(b) A request for an advisory opinion is to be submitted in accordance with §10.20, is subject to the provisions of §10.30 (c) through (l), and must be in the following form:

(Date) __________________________

Dockets Management Branch, Food and Drug Administration, Department of Health and Human Services, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

REQUEST FOR ADVISORY OPINION

The undersigned submits this request for an advisory opinion of the Commissioner of Food and Drugs with respect to ——— (the general nature of the matter involved).

A. Issues involved.

(A concise statement of the issues and questions on which an opinion is requested.)

B. Statement of facts and law.

(A full statement of all facts and legal points relevant to the request.)

The undersigned certifies that, to the best of his/her knowledge and belief, this request includes all data, information, and views relevant to the matter, whether favorable or unfavorable to the position of the undersigned, which is the subject of the request.

(Signature)

(Person making request)

(Mailing address)

(Telephone number)

(c) The Commissioner may respond to an oral or written request to the agency as a request for an advisory opinion, in which case the request will be filed with the Dockets Management Branch and be subject to this section.

(d) A statement of policy or interpretation made in the following documents, unless subsequently repudiated by the agency or overruled by a court, will constitute an advisory opinion:

(1) Any portion of a Federal Register notice other than the text of a proposed or final regulation, e.g., a notice to manufacturers or a preamble to a proposed or final regulation.

(2) Trade Correspondence (T.C. Nos. 1-431 and 1A-8A) issued by FDA between 1938 and 1946.

(3) Compliance policy guides issued by FDA beginning in 1968 and codified in the Compliance Policy Guides manual.

(4) Other documents specifically identified as advisory opinions, e.g., advisory opinions on the performance standard for diagnostic X-ray systems, issued before July 1, 1975, and filed in a permanent public file for prior advisory opinions maintained by the Freedom of Information Staff (HFI-35).

(5) Guidelines issued by FDA under §10.90(b).

(e) An advisory opinion represents the formal position of FDA on a matter and except as provided in paragraph (f) of this section, obligates the agency to follow it until it is amended or revoked. The Commissioner may not recommend legal action against a person or product with respect to an action taken in conformity with an advisory opinion which has not been amended or revoked.

(f) In unusual situations involving an immediate and significant danger to health, the Commissioner may take appropriate civil enforcement action contrary to an advisory opinion before amending or revoking the opinion. This action may be taken only with the approval of the Commissioner, who may not delegate this function. Appropriate amendment or revocation of the advisory opinion involved will be expedited.

(g) An advisory opinion may be amended or revoked at any time after it has been issued. Notice of amendment or revocation will be given in the same manner as notice of the advisory opinion was originally given or in the Federal Register, and will be placed on public display as part of the file on the matter in the office of the Dockets Management Branch. The Dockets Management Branch shall maintain a separate chronological index of all advisory opinions filed. The index will specify the date of the request for the advisory opinion, the date of the opinion, and identification of the appropriate file.

(h) Action undertaken or completed in conformity with an advisory opinion which has subsequently been amended or revoked is acceptable to FDA unless the Commissioner determines that substantial public interest considerations preclude continued acceptance. Whenever possible, an amended or revoked advisory opinion will state when action previously undertaken or completed does not remain acceptable, and any transition period that may be applicable.
§ 10.90 Food and Drug Administration regulations, guidelines, recommendations, and agreements.

(a) Regulations. FDA regulations are promulgated in the FEDERAL REGISTER under §10.40 or §10.50 and codified in the Code of Federal Regulations. Regulations may contain provisions that will be enforced as legal requirements, or which are intended only as guidelines and recommendations, or both. The dissemination of draft notices and regulations is subject to §10.80.

(b) Guidelines. FDA guidelines are included in the public file of guidelines established by the Dockets Management Branch, under this paragraph, unless they have been published as regulations under paragraph (a) of this section.

(i) Guidelines establish principles or practices of general applicability and do not include decisions or advice on particular situations. Guidelines relate to performance characteristics, preclinical and clinical test procedures, manufacturing practices, product standards, scientific protocols, compliance criteria, ingredient specifications, labeling, or other technical or policy criteria. Guidelines state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA for a subject matter which falls within the laws administered by the Commissioner.

(ii) A person may rely upon a guideline with assurance that it is acceptable to FDA, or may follow different procedures or standards. When different procedures or standards are chosen, a person may, but is not required to, discuss the matter in advance with FDA to prevent the expenditure of money and effort on activity that may later be determined to be unacceptable.

(iii) Use of testing guidelines established by FDA assures acceptance of a test as scientifically valid, if properly conducted, but does not assure approval of any ingredient or product so tested. Test results or other available information may require disapproval or additional testing.

(2) A guideline represents the formal position of FDA on a matter and, except as provided in paragraph (b)(3) of this section, obligates the agency to follow it until it is amended or revoked. The Commissioner may not recommend legal action against a person or product with respect to an action taken in conformity with a guideline issued under this section that has not been amended or revoked.

(3) In unusual situations involving an immediate and significant danger to health, the Commissioner may take appropriate civil enforcement action contrary to a guideline before amending or revoking the guideline as provided in paragraph (b)(5) of this section. This action may be taken only with the approval of the Commissioner, who may not delegate that function. Amendment or revocation of the guideline involved will be expedited.

(4) A guideline will be included in the public file upon approval of the guideline by the Commissioner or relevant center director and publication of a notice of its availability. The notice will state (i) the title of the guideline, (ii)
§ 10.90

the subject matter it covers, and (iii) the office or individual responsible for maintaining the guideline.

(5) A guideline may be amended or revoked by the Commissioner or relevant center director and publication of a notice of the amendment or revocation. The notice will state (i) the title of the guideline, (ii) the subject matter it covers, and (iii) the office or individual responsible for maintaining the guideline. All original guidelines and subsequent amendments will be retained in the public file permanently so that a complete record of the development of each guideline is available.

(6) Action undertaken or completed in conformity with a guideline which has subsequently been amended or revoked will remain acceptable to FDA unless the Commissioner determines that substantial public interest considerations preclude continued acceptance. This determination may be made at the time of or after amendment or revocation of the guideline. Whenever possible, notice of an amended or revoked guideline will state when it has been determined that action previously undertaken or completed in conformity with a prior guideline does not remain acceptable, and any transition period that may be applicable.

(7) The notice of a guideline or of an amended or revoked guideline will state that an interested person may submit written comments on the guideline. Four copies of comments are to be sent to the Dockets Management Branch for inclusion in the public file on the guideline. The comments will be considered in determining whether further amendments to or reinstatement of a guideline are warranted.

(8) A guideline may be used in administrative or court proceedings to illustrate acceptable and unacceptable procedures or standards, but not as a legal requirement.

(9) A statement relating to acceptable procedures or standards given by an FDA employee orally, or in writing but not under §10.85 of this section, is an informal communication that represents the best judgment of that employee at that time but does not constitute a guideline, does not necessarily represent the formal position of FDA, and does not bind or otherwise obligate the agency to the views expressed.

(10) Because of the large number of analytical methods involved in FDA activities, their length and complexity and the volume and frequency of amendment, paragraph (b)(4) of this section does not apply to analytical methods except to the extent that the Commissioner concludes that particular analytical methods should be included in the public file for a particular purpose. FDA analytical methods are available for public disclosure under part 20.

(11) The dissemination of draft guidelines is subject to the same provisions as the dissemination of draft notices and regulations under §10.90.

(c) Recommendations. In addition to the guidelines subject to paragraph (b) of this section, FDA often formulates and disseminates recommendations about matters which are authorized by, but do not involve direct regulatory action under, the laws administered by the Commissioner, e.g., model State and local ordinances, or personnel practices for reducing radiation exposure, issued under 42 U.S.C. 243 and 263d(b). These recommendations may, in the discretion of the Commissioner, be handled under the procedures established in paragraph (b) of this section, except that the recommendations will be included in a separate public file of recommendations established by the Dockets Management Branch and will be separated from the guidelines in the notice of availability published in the Federal Register, or be published in the Federal Register as regulations under paragraph (a) of this section.

(d) Agreements. Formal agreements, memoranda of understanding, or other similar written documents executed by FDA and another person will be included in the public file on agreements established by the Freedom of Information Staff (HFI-35) under §20.108. A document not included in the public file is deemed to be rescinded and has no force or effect whatever.

§ 10.95 Participation in outside standard-setting activities.

(a) General. This section applies to participation by FDA employees in standard-setting activities outside the agency. Standard-setting activities include matters such as the development of performance characteristics, testing methodology, manufacturing practices, product standards, scientific protocols, compliance criteria, ingredient specifications, labeling, or other technical or policy criteria. FDA encourages employee participation in outside standard-setting activities that are in the public interest.

(b) Standard-setting activities by other Federal Government agencies. (1) An FDA employee may participate in these activities after approval of the activity under procedures specified in the current agency Staff Manual Guide.

(2) Approval forms and all pertinent background information describing the activity will be included in the public file on standard-setting activities established by the Freedom of Information Staff.

(3) If a member of the public is invited by FDA to present views to, or to accompany, the FDA employee at a meeting, the invitations will be extended to a representative sampling of the public, including consumer groups, industry associations, professional societies, and academic institutions.

(4) An FDA employee appointed as the liaison representative to an activity shall refer all requests for information about or participation in the activity to the group or organization responsible for the activity.

(c) Standard-setting activities by State and local government agencies and by United Nations organizations and other international organizations and foreign governments pursuant to treaty. (1) An FDA employee may participate in these activities after approval of the activity under procedures specified in the current agency Staff Manual Guide.

(2) Approval forms and all pertinent background information describing the activity will be included in the public file on standard-setting activities established by the Freedom of Information Staff (HF1-35).

(3) The availability for public disclosure of records relating to the activity will be governed by part 20.

(4) If a member of the public is invited by FDA to present views to, or to accompany, the FDA employee at a meeting, the invitation will be extended to a representative sampling of the public, including consumer groups, industry associations, professional societies, and academic institutions.

(5) An FDA employee appointed as the liaison representative to an activity shall refer all requests for information about or participation in the activity to the group or organization responsible for the activity.

(d) Standard-setting activities by private groups and organizations. (1) An FDA employee may engage in these activities after approval of the activity under procedures specified in the current agency Staff Manual Guide. A request for official participation must be made by the group or organization in writing, must describe the scope of the activity, and must demonstrate that the minimum standards set out in paragraph (d)(5) of this section are met. Except as provided in paragraph (d)(7) of this section, a request that is granted will be the subject of a letter from the Commissioner or the center director to the organization stating—

(i) Whether participation by the individual will be as a voting or nonvoting liaison representative;

(ii) That participation by the individual does not connote FDA agreement with, or endorsement of, any decisions reached; and

(iii) That participation by the individual precludes service as the deciding official on the standard involved if it should later come before FDA. The deciding official is the person who signs a document ruling upon the standard.

(2) The letter requesting official FDA participation, the approval form, and the Commissioner’s or center director’s letter, together with all pertinent background information describing the activities involved, will be included in the public file on standard-setting activities established by the Freedom of Information Staff (HF1-35).

(3) The availability for public disclosure of records relating to the activities will be governed by part 20.
§ 10.95

(4) An FDA employee appointed as the liaison representative to an activity shall refer all requests for information about or participation in the activity to the group or organization responsible for the activity.

(5) The following minimum standards apply to an outside private standard-setting activity in which FDA employees participate:

(i) The activity will be based upon consideration of sound scientific and technological information, will permit revision on the basis of new information, and will be designed to protect the public against unsafe, ineffective, or deceptive products or practices.

(ii) The activity and resulting standards will not be designed for the economic benefit of any company, group, or organization, will not be used for such antitrust violations as fixing prices or hindering competition, and will not involve establishment of certification or specific approval of individual products or services.

(iii) The group or organization responsible for the standard-setting activity must have a procedure by which an interested person will have an opportunity to provide information and views on the activity and standards involved, without the payment of fees, and the information and views will be considered. How this is accomplished, including whether the presentation will be in person or in writing, will be decided by the group or organization responsible for the activity.

(6) Membership of an FDA employee in an organization that also conducts a standard-setting activity does not invoke the provisions of this section unless the employee participates in the standard-setting activity. Participation in a standard-setting activity is subject to this section.

(7) The Commissioner may determine in writing that, because direct involvement by FDA in a particular standard-setting activity is in the public interest and will promote the objectives of the act and the agency, the participation is exempt from the requirements of paragraph (d)(i) (ii) and/or (iii) of this section. This determination will be included in the public file on standard-setting activities established by the Freedom of Information Staff and in any relevant administrative file. The activity may include the establishment and validation of analytical methods for regulatory use, drafting uniform laws and regulations, and the development of recommendations concerning public health and preventive medicine practices by national and international organizations.

(8) Because of the close daily cooperation between FDA and the associations of State and local government officials listed below in this paragraph, and the large number of agency employees who are members of or work with these associations, participation in the activities of these associations is exempt from paragraphs (d)(1) through (7) of this section, except that a list of the committees and other groups of these associations will be included in the public file on standard-setting activities established by the Freedom of Information Staff (HF 1–35):

(i) American Association of Food Hygiene Veterinarians (AAHVF).

(ii) American Public Health Association (APHA).

(iii) Association of American Feed Control Officials, Inc. (AAFCO).

(iv) Association of Food and Drug Officials (AFDO).

(v) Association of Official Analytical Chemists (AOAC).

(vi) Association of State and Territorial Health Officials (ASTHO).

(vii) Conference for Food Protection (CFP).

(viii) Conference of State Health and Environmental Managers (COSHEM).

(ix) Conference of Radiation Control Program Directors (CRCPD).

(x) International Association of Milk, Food, and Environmental Sanitation, Inc. (IAMFES).

(xi) Interstate Shellfish Sanitation Conference (ISSC).

(xii) National Association of Boards of Pharmacy (NABP).

(xiii) National Association of Departments of Agriculture (NADA).

(xiv) National Conference on Interstate Milk Shipments (NCIMS).

(xv) National Conference of Local Environmental Health Administrators (NCLEHA).

(xvi) National Conference on Weights and Measures (NCWW).
§ 10.105 Representation by an organization.

(a) An organization may represent its members by filing petitions, comments, and objections, and otherwise participating in an administrative proceeding subject to this part.

(b) A petition, comment, objection, or other representation by an organization will not abridge the right of a member to take individual action of a similar type, in the member’s own name.
§ 10.110

(c) It is requested that each organization participating in FDA administrative proceedings file annually with the Dockets Management Branch a current list of all of the members of the organization.

(d) The filing by an organization of an objection or request for hearing under §§12.20 through 12.22 does not provide a member a legal right with respect to the objection or request for hearing that the member may individually exercise. A member of an organization wishing to file an objection or request for hearing must do so individually.

(e) In a court proceeding in which an organization participates, the Commissioner will take appropriate legal measures to have the case brought or considered as a class action or otherwise as binding upon all members of the organization except those specifically excluded by name. Regardless of whether the case is brought or considered as a class action or as otherwise binding upon all members of the organization except those specifically excluded by name, the Commissioner will take the position in any subsequent suit involving the same issues and a member of the organization that the issues are precluded from further litigation by the member under the doctrines of collateral estoppel or res judicata.

§ 10.110 Settlement proposals.

At any time in the course of a proceeding subject to this part, a person may propose settlement of the issues involved. A participant in a proceeding will have an opportunity to consider a proposed settlement. Unaccepted proposals of settlement and related matters, e.g., proposed stipulations not agreed to, will not be admissible in evidence in an FDA administrative proceeding. FDA will oppose the admission in evidence of settlement information in a court proceeding or in another administrative proceeding.

Subpart C—Electronic Media Coverage of Public Administrative Proceedings; Guideline on Policy and Procedures

SOURCE: 49 FR 14726, Apr. 13, 1984, unless otherwise noted.

§ 10.200 Scope.

This guideline describes FDA’s policy and procedures applicable to electronic media coverage of agency public administrative proceedings. It is a guideline intended to clarify and explain FDA’s policy on the presence and operation of electronic recording equipment at such proceedings and to assure uniform and consistent application of practices and procedures throughout the agency.

§ 10.203 Definitions.

(a) Public administrative proceeding as used in this guideline means any FDA proceeding which the public has a right to attend. This includes a formal evidentiary public hearing as set forth in part 12, a public hearing before a Public Board of Inquiry as set forth in part 13, a public hearing before a Public Advisory Committee as set forth in part 14, a public hearing before the Commissioner as set forth in part 15, a regulatory hearing before FDA as set forth in part 16, consumer exchange meetings, and Commissioner’s public meetings with health professionals.

(b) Advance notice as used in this guideline means written or telephone notification to FDA’s Office of Public Affairs (Press Relations Staff) of intent to electronically record an agency public administrative proceeding.

(c) Electronic recording as used in this guideline means any visual or audio recording made by videotape recording equipment or moving film camera, and/or other electronic recording equipment.

§ 10.204 General.

(a) FDA has for many years willingly committed itself to a policy of openness. In many instances FDA has sought to make the open portions of agency public administrative proceedings more accessible to public participation. Similarly, FDA has sought, whenever possible, to allow full written media access to its proceedings, so that members of the press would have the opportunity to provide first-hand reports. However, because electronic media coverage presents certain difficulties that are easier to resolve with advance notice to the agency and all participants, FDA believes that codification of its policy will facilitate and further increase media access to its public administrative proceedings. The agency intends to refer to this guideline when notices of hearing, or individual advisory committee meetings, are published in the Federal Register. Thus, all parties to a proceeding will be on notice that the proceeding may be recorded electronically and any person interested in videotaping or otherwise recording the proceeding will be notified that there are established procedures to be followed.

(b) The designated presiding officer of a public administrative proceeding retains the existing discretionary authority set forth in specific regulations pertaining to each type of administrative proceeding to regulate the conduct of the proceeding over which he or she presides. The responsibilities of the presiding officer, established elsewhere in parts 10 through 16, include an obligation to be concerned with the timely conduct of a hearing, the limited availability of certain witnesses, and reducing disruptions to the proceeding which may occur. Each proceeding varies, and the presiding officer cannot anticipate all that might occur. Discretionary authority to regulate conduct at a proceeding has traditionally been granted to presiding officers to enable them to fulfill their responsibility to maintain a fair and orderly hearing conducted in an expeditious manner.

(c) This guideline provides the presiding officer with a degree of flexibility in that it sets forth the agency’s policy as well as the procedures that presiding officers should ordinarily follow, but from which they may depart in particular situations if necessary, subject to the presumption of openness of public proceedings to electronic media coverage. The presiding officer’s discretion to establish additional procedures or to limit electronic coverage is to be exercised only in the unusual circumstances defined in this guideline. Even though a presiding officer may establish additional procedures or limits as may be required in a particular situation, he or she will be guided by the policy expressed in this guideline in establishing these conditions. The presiding officer may also be less restrictive, taking into account such factors as the duration of a hearing and the design of the room.

(d) If a portion or all of a proceeding is closed to the public because material is to be discussed that is not disclosable to the public under applicable laws, the proceeding also will be closed to electronic media coverage.

(e) The agency requests advance notice of intent to record a proceeding electronically to facilitate the orderly conduct of the proceeding. Knowledge of anticipated media coverage will allow the presiding officer to make any special arrangements required by the circumstances of the proceeding. The agency believes that this guideline establishes sufficiently specific criteria to promote uniformity.

(f) The agency would like to allow all interested media representatives to videotape a proceeding in which they have an interest. However, should space limitations preclude a multitude of cameras, the presiding officer may require pool sharing. In such a case, pool sharing arrangements of the resulting videotape should be made between those allowed to film and those who were excluded. Arrangements for who is designated to present the pool and a method of distributing the resulting film or tape may be determined by the established networks’ pooling system. However, the agency has a strong commitment to ensuring that media representatives other than the major networks also be able to obtain a copy of the tape at cost. FDA is concerned that if the network pool representative wishes to record only a short portion of a proceeding, but an
§ 10.205 Electronic media coverage of public administrative proceedings.

(a) A person may record electronically any open public administrative proceeding, subject to the procedures specified in this guideline. The procedures include a presumption that agency public proceedings are open to the electronic media. Whenever possible, FDA will permit all interested persons access to record agency public administrative proceedings. Restrictions other than those listed in §10.206 will be imposed only under exceptional circumstances.

(b) A videotape recording of an FDA public administrative proceeding is not an official record of the proceeding. The only official record is the written transcript of the proceeding, which is taken by the official reporter.

§ 10.206 Procedures for electronic media coverage of agency public administrative proceedings.

(a) To facilitate the agency’s response to media needs, a person intending to videotape an FDA public administrative proceeding should, whenever possible, provide advance notice to the Press Relations Staff (HFI-20), Office of Public Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, in writing or by telephone (telephone 301-443-4177), at least 48 hours in advance of the proceeding. The Press Relations Staff will inform the presiding officer that the proceeding will be attended by representatives of the electronic media, and ascertain whether any special provisions in addition to those set forth in this subpart are required by the presiding officer. If so, the Press Relations Staff will function as a liaison between the presiding officer and the person intending to record the proceeding in facilitating any procedures in addition to those outlined in this subpart. The presiding officer will not deny access for failure to provide a 48-hour advance notice. Any advance notice may describe the intended length of recording if known, the amount and type of equipment to be used, and any special needs such as interviews.

(b) Cameras should be completely set up before a proceeding is scheduled to

excluded party wishes to record the entire proceeding, confusion will result. The agency expects the interested media representatives to negotiate a suitable agreement among themselves before commencement of the proceeding. For example, the network pool representatives might agree to record a portion of the proceeding up to a break in the proceeding, at which time, while the network representative is disassembling equipment, another media representative might set up to continue recording. If an agreement cannot be reached before the proceeding, the agency will use the time of receipt of any advance notice to determine the representation for each category of media, e.g., one network reporter, one independent reporter. The agency recommends that parties intending to videotape provide as much advance notice as possible, so that the agency may best respond to the needs of the electronic media.

(g) To ensure the timely conduct of agency hearings and to prevent disruptions, equipment is to be stationary during a proceeding and should be set up and taken down when the proceeding is not in progress. As noted previously, the presiding officer may, at his or her discretion, be less restrictive if appropriate.

(h) The agency recognizes that electronic media representatives may desire only short footage of a proceeding, a facsimile of the proceeding, and/or interview opportunities and may be unnecessarily restricted by requirements for setting up before a proceeding and then waiting until a break in the proceeding before being permitted to take down their equipment. To accommodate this possibility, FDA’s Press Relations Staff will attempt to make arrangements to respond to such needs by, for example, requesting that the presiding officer provide a break shortly after commencement of the proceeding to permit take down of equipment.

(i) The agency is making a full commitment to allowing, whenever possible, electronic coverage of its public administrative proceedings subject to the limited restrictions established in this guideline.
begin or during a break in the proceeding and should remain standing in the area designated for electronic media equipment. Cameras may be taken down only during breaks or after the hearing is over. Roving cameras will not be permitted during the proceeding. Any artificial lighting should be unobtrusive. Microphones, like cameras, should be in place before the start of a proceeding and may be taken down as indicated in this paragraph.

(c) When space in the hearing room is limited, the presiding officer may restrict the number of cameras or the equipment present. Should such a restriction become necessary, the pool arrangements are the responsibility of the participating media. The agency encourages the network pool to make copies of the tape, film, or other product available at cost to nonpool participants. However, if this is not possible, the agency may need to use the time of receipt of any advance notice to determine the representation for each category, e.g., one network reporter, one independent reporter, etc.

(d) Off the record portions of a proceeding may not be videotaped.

(e) Before or during the proceeding, the presiding officer may establish other conditions specific to the proceeding for which the request is being made. These conditions may be more or less restrictive than those stated in this guideline, except that the presiding officer shall observe the agency’s presumption of openness of its public proceedings to the electronic media. Only a substantial and clear threat to the agency’s interests in order, fairness, and timeliness authorizes the presiding officer to impose additional restrictions. This threat must outweigh the public interest in electronic media coverage of agency proceedings. Additional restrictions shall be narrowly drawn to the particular circumstances. The following factors are listed to assist presiding officers in determining whether the agency’s interest is sufficiently compelling to call for the unusual step of imposing additional restrictions. Generally this step is justified when one of the following factors is met:

1. Electronic recording would result in a substantial likelihood of disruption that clearly cannot be contained by the procedures established in paragraphs (a) through (d) of this section.
2. Electronic recording would result in a substantial likelihood of prejudicial impact on the fairness of the proceeding or the substantive discussion in a proceeding.
3. There is a substantial likelihood that a witness’ ability to testify may be impaired due to unique personal circumstances such as the age or psychological state of the witness or the particularly personal or private nature of the witness’ testimony, if the witness’ testimony were electronically recorded.

(f) Before the proceeding, the Press Relations Staff will, upon request, provide written copies of any additional conditions imposed by the presiding officer (as described in paragraph (e) of this section) to requesting members of the media. Any appeals should be made in accordance with paragraph (h) of this section.

(g) The presiding officer retains authority to restrict or discontinue videotaping or other recording of a proceeding, or parts of a proceeding, should such a decision become necessary. The presiding officer’s responsibility to conduct the hearing includes the right and duty to remove a source of substantial disruption. In exercising his or her authority, the presiding officer shall observe the presumption that agency public proceedings are open to the electronic media. The presiding officer shall exercise his or her discretion to restrict or discontinue electronic coverage of a public proceeding, or portions of a public proceeding, only if he or she determines that the agency’s interest in the fair and orderly administrative process is substantially threatened. A clear and substantial threat to the integrity of agency proceedings must clearly outweigh the public interest in electronic media coverage of the proceedings before additional restrictions are imposed on the electronic media during the course of the proceedings. The factors noted in paragraph (e) of this section indicate the kind of substantial threat to the agency’s interests that may require imposing additional restrictions during the course of the proceedings. If additional
requirements are established during the hearing, the presiding officer shall notify immediately the Deputy Commissioner of Food and Drugs of that fact by telephone and submit a written explanation of the circumstances that necessitated such an action within 24 hours or sooner if requested by the Deputy Commissioner. In the absence or unavailability of the Deputy Commissioner, the presiding officer shall notify the Associate Commissioner for Regulatory Affairs.

(h) A decision by a presiding officer, made either before the proceeding or during the course of a proceeding, to establish requirements in addition to the minimum standards set forth in this guideline may be appealed by any adversely affected person who intends to record the proceeding electronically. Appeals may be made in writing or by phone to the Deputy Commissioner or, in his or her absence, to the Associate Commissioner for Regulatory Affairs. The filing of an appeal, whether before or during a proceeding, does not require the presiding officer to interrupt the proceeding. However, the Deputy Commissioner or, in his or her absence, the Associate Commissioner for Regulatory Affairs will resolve an appeal as expeditiously as possible so as to preserve, to the extent possible, the reporters’ opportunity to record the proceedings.

§ 11.2 Implementation.

(a) For records required to be maintained but not submitted to the agency, persons may use electronic records in lieu of paper records or electronic signatures in lieu of traditional signatures, in whole or in part, provided that the requirements of this part are met.

(b) For records submitted to the agency, persons may use electronic records in lieu of paper records or electronic signatures in lieu of traditional signatures, in whole or in part, provided that:

(1) The requirements of this part are met; and

(2) The document or parts of a document to be submitted have been identified in public docket No. 92S-0251 as being the type of submission the agency accepts in electronic form. This docket will identify specifically what types of documents or parts of documents are acceptable for submission in electronic form without paper records and the agency receiving unit(s) (e.g., specific center, office, division, branch) to which such submissions may be made. Documents to agency receiving unit(s) not specified in the public docket will not be considered as official if they are submitted in electronic form; paper forms of such documents will be considered as official and must accompany any electronic records. Persons are expected to consult with the intended agency receiving unit for details on how (e.g., method of transmission, media, file formats, and technical protocols) and whether to proceed with the electronic submission.

§ 11.3 Definitions.

(a) The definitions and interpretations of terms contained in section 201 of the act apply to those terms when used in this part.

(b) The following definitions of terms also apply to this part:


2. Agency means the Food and Drug Administration.

3. Biometrics means a method of verifying an individual's identity based on measurement of the individual's physical feature(s) or repeatable action(s) where those features and/or actions are both unique to that individual and measurable.

4. Closed system means an environment in which system access is controlled by persons who are responsible for the content of electronic records that are on the system.

5. Digital signature means an electronic signature based upon cryptographic methods of originator authentication, computed by using a set of rules and a set of parameters such that the identity of the signer and the integrity of the data can be verified.

6. Electronic record means any combination of text, graphics, data, audio, pictorial, or other information representation in digital form that is created, modified, maintained, archived, retrieved, or distributed by a computer system.

7. Electronic signature means a computer data compilation of any symbol or series of symbols executed, adopted, or authorized by an individual to be the legally binding equivalent of the individual's handwritten signature.

8. Handwritten signature means the scripted name or legal mark of an individual handwritten by that individual and executed or adopted with the present intention to authenticate a writing in a permanent form. The act of signing with a writing or marking instrument such as a pen or stylus is preserved. The scripted name or legal mark, while conventionally applied to paper, may also be applied to other devices that capture the name or mark.

9. Open system means an environment in which system access is not controlled by persons who are responsible for the content of electronic records that are on the system.

Subpart B—Electronic Records

§ 11.10 Controls for closed systems.

Persons who use closed systems to create, modify, maintain, or transmit electronic records shall employ procedures and controls designed to ensure the authenticity, integrity, and, when appropriate, the confidentiality of electronic records, and to ensure that the signer cannot readily repudiate the
§ 11.30 Controls for open systems.

Persons who use open systems to create, modify, maintain, or transmit electronic records shall employ procedures and controls designed to ensure the authenticity, integrity, and, as appropriate, the confidentiality of electronic records from the point of their creation to the point of their receipt. Such procedures and controls shall include those identified in § 11.10, as appropriate, and additional measures such as document encryption and use of appropriate digital signature standards to ensure, as necessary under the circumstances, record authenticity, integrity, and confidentiality.

§ 11.30 Controls for open systems.

(k) Use of appropriate controls over systems documentation including:
(1) Adequate controls over the distribution of, access to, and use of documentation for system operation and maintenance.
(2) Revision and change control procedures to maintain an audit trail that documents time-sequenced development and modification of systems documentation.

§ 11.50 Signature manifestations.

(a) Signed electronic records shall contain information associated with the signing that clearly indicates all of the following:
(1) The printed name of the signer;
(2) The date and time when the signature was executed; and
(3) The meaning (such as review, approval, responsibility, or authorship) associated with the signature.

(b) The items identified in paragraphs (a)(1), (a)(2), and (a)(3) of this section shall be subject to the same controls as for electronic records and shall be included as part of any human readable form of the electronic record (such as electronic display or printout).

§ 11.70 Signature/record linking.

Electronic signatures and handwritten signatures executed to electronic records shall be linked to their respective electronic records to ensure that the signatures cannot be excised, copied, or otherwise transferred to falsify an electronic record by ordinary means.
Subpart C—Electronic Signatures

§ 11.100 General requirements.

(a) Each electronic signature shall be unique to one individual and shall not be reused by, or reassigned to, anyone else.

(b) Before an organization establishes, assigns, certifies, or otherwise sanctions an individual’s electronic signature, or any element of such electronic signature, the organization shall verify the identity of the individual.

(c) Persons using electronic signatures shall, prior to or at the time of such use, certify to the agency that the electronic signatures in their system, used on or after August 20, 1997, are intended to be the legally binding equivalent of traditional handwritten signatures.

(1) The certification shall be submitted in paper form and signed with a traditional handwritten signature, to the Office of Regional Operations (HFC-100), 5600 Fishers Lane, Rockville, MD 20857.

(2) Persons using electronic signatures shall, upon agency request, provide additional certification or testimony that a specific electronic signature is the legally binding equivalent of the signer’s handwritten signature.

§ 11.200 Electronic signature components and controls.

(a) Electronic signatures that are not based upon biometrics shall:

(1) Employ at least two distinct identification components such as an identification code and password.

(i) When an individual executes a series of signings during a single, continuous period of controlled system access, the first signing shall be executed using all electronic signature components; subsequent signings shall be executed using at least one electronic signature component that is only executable by, and designed to be used only by, the individual.

(ii) When an individual executes one or more signings not performed during a single, continuous period of controlled system access, each signing shall be executed using all of the electronic signature components.

(2) Be used only by their genuine owners; and

(3) Be administered and executed to ensure that attempted use of an individual’s electronic signature by anyone other than its genuine owner requires collaboration of two or more individuals.

(b) Electronic signatures based upon biometrics shall be designed to ensure that they cannot be used by anyone other than their genuine owners.

§ 11.300 Controls for identification codes/passwords.

Persons who use electronic signatures based upon use of identification codes in combination with passwords shall employ controls to ensure their security and integrity. Such controls shall include:

(a) Maintaining the uniqueness of each combined identification code and password, such that no two individuals have the same combination of identification code and password.

(b) Ensuring that identification code and password issuances are periodically checked, recalled, or revised (e.g., to cover such events as password aging).

(c) Following loss management procedures to electronically deauthorize lost, stolen, missing, or otherwise potentially compromised tokens, cards, and other devices that bear or generate identification code or password information, and to issue temporary or permanent replacements using suitable, rigorous controls.

(d) Use of transaction safeguards to prevent unauthorized use of passwords and/or identification codes, and to detect and report in an immediate and urgent manner any attempts at their unauthorized use to the system security unit, and, as appropriate, to organizational management.

(e) Initial and periodic testing of devices, such as tokens or cards, that bear or generate identification code or password information to ensure that they function properly and have not been altered in an unauthorized manner.
PART 12—FORMAL EVIDENTIARY
PUBLIC HEARING

Subpart A—General Provisions

Sec.
12.1 Scope.

Subpart B—Initiation of Proceedings

12.20 Initiation of a hearing involving the issuance, amendment, or revocation of a regulation.
12.21 Initiation of a hearing involving the issuance, amendment, or revocation of an order.
12.22 Filing objections and requests for a hearing on a regulation or order.
12.23 Notice of filing of objections.
12.24 Ruling on objections and requests for hearing.
12.26 Modification or revocation of regulation or order.
12.28 Denial of hearing in whole or in part.
12.30 Judicial review after waiver of hearing on a regulation.
12.32 Request for alternative form of hearing.
12.35 Notice of hearing; stay of action.
12.37 Effective date of a regulation.
12.38 Effective date of an order.

Subpart C—Appearance and Participation

12.40 Appearance.
12.45 Notice of participation.
12.50 Advice on public participation in hearings.

Subpart D—Presiding Officer

12.60 Presiding officer.
12.62 Commencement of functions.
12.70 Authority of presiding officer.
12.75 Disqualification of presiding officer.
12.78 Unavailability of presiding officer.

Subpart E—Hearing Procedures

12.80 Filing and service of submissions.
12.82 Petition to participate in forma pauperis.
12.83 Advisory opinions.
12.85 Disclosure of data and information by the participants.
12.87 Purpose; oral and written testimony; burden of proof.
12.89 Participation of nonparties.
12.90 Conduct at oral hearings or conferences.
12.91 Time and place of prehearing conference.
12.92 Prehearing conference procedure.
12.93 Summary decisions.
12.94 Receipt of evidence.
12.95 Official notice.
12.96 Briefs and argument.

12.97 Interlocutory appeal from ruling of presiding officer.
12.98 Official transcript.
12.99 Motions.

Subpart F—Administrative Record

12.100 Administrative record of a hearing.
12.105 Examination of record.

Subpart G—Initial and Final Decisions

12.120 Initial decision.
12.125 Appeal from or review of initial decision.
12.130 Decision by Commissioner on appeal or review of initial decision.
12.139 Reconsideration and stay of action.

Subpart H—Judicial Review

12.140 Review by the courts.
12.159 Copies of petitions for judicial review.


S OURCE: 44 FR 22339, Apr. 13, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 12.1 Scope.

The procedures in this part apply when—
(a) A person has a right to an opportunity for a hearing under the laws specified in §10.50; or
(b) The Commissioner concludes that it is in the public interest to hold a formal evidentiary public hearing on any matter before FDA.

Subpart B—Initiation of Proceedings

§ 12.20 Initiation of a hearing involving the issuance, amendment, or revocation of a regulation.

(a) A proceeding under section 409(f), 502(n), 512(n)(5), 701(e), or 721(d) of the act or section 4 or 5 of the Fair Packaging and Labeling Act may be initiated—
(1) By the Commissioner on the Commissioner's own initiative, e.g., as provided in §170.15 for food additives; or
(2) By a petition—
(i) In the form specified elsewhere in this chapter, e.g., the form for a color additive petition in §71.1; or
(ii) If no form is specified, by a petition under §10.30.

(b) If the Commissioner receives a petition under paragraph (a)(2) of this section, the Commissioner will—

(1) If it involves any matter subject to section 701(e) of the act or section 4 or 5 of the Fair Packaging and Labeling Act, and meets the requirements for filing, follow the provisions of §10.40(b) through (f);

(2) If it involves a color additive or food additive, and meets the requirements for filing in §§71.1, 71.6, 71.7, and 71.100, publish a notice of filing of the petition within 30 days after the petition is filed instead of a notice of proposed rulemaking.

(c) The Commissioner may issue, amend, or revoke an antibiotic regulation without the requirements of notice and public procedure in §10.40(b) or delayed effective date in §10.40(c)(4), on the Commissioner’s own initiative or as a result of a petition containing the required evidence of safety and effectiveness in the circumstances described in §10.40(e)(1).

(d) The notice promulgating the regulation will describe how to submit objections and requests for hearing.

(e) On or before the 30th day after the date of publication of a final regulation, or of a notice withdrawing a proposal initiated by a petition under §10.25(a), a person may submit to the Commissioner written objections and a request for a hearing. The 30-day period may not be extended except that additional information supporting an objection may be received after 30 days upon a showing of inadvertent omission and hardship, and if review of the objection and request for hearing will not thereby be impeded. If, after a final color additive regulation is published, a petition or proposal relating to the regulation is referred to an advisory committee in accordance with section 721(b)(5)(C) of the act, objections and requests for a hearing may be submitted on or before the 30th day after the date on which the order confirming or modifying the Commissioner’s previous order is published.

[44 FR 22339, Apr. 13, 1979, as amended at 64 FR 390, Jan. 5, 1999]

EFFECTIVE DATE NOTE: At 64 FR 390, Jan. 5, 1999, in §12.20, paragraph (a) introductory text was amended by removing “507(f),”, paragraph (a)(2)(i) was amended by removing the phrase “or for an antibiotic petition in §431.50”, and paragraph (c) was removed and reserved, effective May 20, 1999.

§ 12.22 Filing objections and requests for a hearing on a regulation or order.

(a) Objections and requests for a hearing under §12.20(d) must be submitted to the Dockets Management Branch and will be accepted for filing if they meet the following conditions:


§ 12.21 Initiation of a hearing involving the issuance, amendment, or revocation of an order.

(a) A proceeding under section 505(d) or (e), 512(d), (e), (m) (3) or (4), of section 515(g)(1) of the act, or section 351(a) of the Public Health Service Act, may be initiated—

(1) By the Commissioner on the Commissioner’s own initiative;

(2) By a petition in the form specified elsewhere in this chapter, e.g., §314.50 for new drug applications, §514.1 for new animal drug applications, §514.2 for applications for animal feeds, or §601.3 for licenses for biologic products;

(3) By a petition under §10.30.

(b) A notice of opportunity for hearing on a proposal to deny or revoke approval of all or part of an order will be published together with an explanation of the grounds for the proposed action. The notice will describe how to submit requests for hearing. A person subject to the notice has 30 days after its issuance to request a hearing. The 30-day period may not be extended.

(c) The Commissioner may use an optional procedure specified in §10.30(h) to consider issuing, amending, or revoking an order.

(d) In a proceeding under sections 505(e), 512(e) or (m), or 515(e) of the act in which a party wishes to apply for reimbursement of certain expenses under the Equal Access to Justice Act (5 U.S.C. 504 and 504 note), FDA will follow the Department of Health and Human Services’ regulations in 45 CFR part 13.

§ 12.23 Notice of filing of objections.

As soon as practicable after the expiration of the time for filing objections to and requests for hearing on agency action involving the issuance, amendment, or revocation of a regulation under sections 502(n), 701(e), or 721(d) of the act or sections 4 or 5 of the Fair Packaging and Labeling Act, the Commissioner shall publish a notice in the FEDERAL REGISTER specifying those parts of the regulation that have been stayed by the filing of proper objections and, if no objections have been filed, stating that fact. The notice does not constitute a determination that a hearing is justified on any objections or requests for hearing that have been filed. When to do so will cause no undue delay, the notice required by this section may be combined with the notices described in §§ 12.28 and 12.35.

§ 12.24 Ruling on objections and requests for hearing.

(a) As soon as possible the Commissioner will review all objections and requests for hearing filed under § 12.22 and determine—

(1) Whether the regulation should be modified or revoked under §12.26;

(2) Whether a hearing has been justified; and

(3) Whether, if requested, a hearing before a Public Board of Inquiry under part 13 or before a public advisory committee under part 14 or before the Commissioner under part 15 has been justified.

(b) A request for a hearing will be granted if the material submitted shows the following:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law.

(1) They are submitted within the time specified in §12.20(e).

(2) Each objection is separately numbered.

(3) Each objection specifies with particularity the provision of the regulation or proposed order objected to.

(4) Each objection on which a hearing is requested specifically so states. Failure to request a hearing on an objection constitutes a waiver of the right to a hearing on that objection.

(5) Each objection for which a hearing is requested includes a detailed description and analysis of the factual information to be presented in support of the objection. Failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection.

(i) A copy of any report, article, survey, or other written document relied upon must be submitted, except if the document is—

(a) An FDA document that is routinely publicly available;

(b) A recognized medical or scientific textbook that is readily available to the agency; or

(c) A designated journal listed in §510.95.

(ii) A summary of the nondonumentary testimony to be presented by any witnesses relied upon must be submitted.

(b) Requests for hearing submitted under §12.21 will be submitted to the Dockets Management Branch and will be accepted for filing if they meet the following conditions:

(1) They are submitted on or before the 30th day after the date of publication of the notice of opportunity for hearing.

(2) They comply with §§314.200, 514.200, or 601.7(a).

(c) If an objection or request for a public hearing fails to meet the requirements of this section and the deficiency becomes known to the Dockets Management Branch, the Dockets Management Branch shall return it with a copy of the applicable regulations, indicating those provisions not complied with. A deficient objection or request for a hearing may be supplemented and subsequently filed if submitted within the 30-day time period specified in §12.20(e) or §12.21(b).

(d) If another person objects to a regulation issued in response to a petition submitted under §12.20(a)(2), the petitioner may submit a written reply to the Dockets Management Branch.


§ 12.25 Notice of filing of objections.

As soon as practicable after the expiration of the time for filing objections to and requests for hearing on agency action involving the issuance, amendment, or revocation of a regulation under sections 502(n), 701(e), or 721(d) of the act or sections 4 or 5 of the Fair Packaging and Labeling Act, the Commissioner shall publish a notice in the FEDERAL REGISTER specifying those parts of the regulation that have been stayed by the filing of proper objections and, if no objections have been filed, stating that fact. The notice does not constitute a determination that a hearing is justified on any objections or requests for hearing that have been filed. When to do so will cause no undue delay, the notice required by this section may be combined with the notices described in §§ 12.28 and 12.35.

§ 12.24 Ruling on objections and requests for hearing.

(a) As soon as possible the Commissioner will review all objections and requests for hearing filed under §12.22 and determine—

(1) Whether the regulation should be modified or revoked under §12.26;

(2) Whether a hearing has been justified; and

(3) Whether, if requested, a hearing before a Public Board of Inquiry under part 13 or before a public advisory committee under part 14 or before the Commissioner under part 15 has been justified.

(b) A request for a hearing will be granted if the material submitted shows the following:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law.

(1) They are submitted within the time specified in §12.20(e).

(2) Each objection is separately numbered.

(3) Each objection specifies with particularity the provision of the regulation or proposed order objected to.

(4) Each objection on which a hearing is requested specifically so states. Failure to request a hearing on an objection constitutes a waiver of the right to a hearing on that objection.

(5) Each objection for which a hearing is requested includes a detailed description and analysis of the factual information to be presented in support of the objection. Failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection.

(i) A copy of any report, article, survey, or other written document relied upon must be submitted, except if the document is—

(a) An FDA document that is routinely publicly available;

(b) A recognized medical or scientific textbook that is readily available to the agency; or

(c) A designated journal listed in §510.95.

(ii) A summary of the nondonumentary testimony to be presented by any witnesses relied upon must be submitted.

(b) Requests for hearing submitted under §12.21 will be submitted to the Dockets Management Branch and will be accepted for filing if they meet the following conditions:

(1) They are submitted on or before the 30th day after the date of publication of the notice of opportunity for hearing.

(2) They comply with §§314.200, 514.200, or 601.7(a).

(c) If an objection or request for a public hearing fails to meet the requirements of this section and the deficiency becomes known to the Dockets Management Branch, the Dockets Management Branch shall return it with a copy of the applicable regulations, indicating those provisions not complied with. A deficient objection or request for a hearing may be supplemented and subsequently filed if submitted within the 30-day time period specified in §12.20(e) or §12.21(b).

(d) If another person objects to a regulation issued in response to a petition submitted under §12.20(a)(2), the petitioner may submit a written reply to the Dockets Management Branch.

(2) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions.

(3) The data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person. A hearing will be denied if the Commissioner concludes that the data and information submitted are insufficient to justify the factual determination urged, even if accurate.

(4) Resolution of the factual issue in the way sought by the person is adequate to justify the action requested. A hearing will not be granted on factual issues that are not determinative with respect to the action requested, e.g., if the Commissioner concludes that the action would be the same even if the factual issue were resolved in the way sought, or if a request is made that a final regulation include a provision not reasonably encompassed by the proposal. A hearing will be granted upon proper objection and request when a food standard or other regulation is shown to have the effect of excluding or otherwise affecting a product or ingredient.

(5) The action requested is not inconsistent with any provision in the act or any regulation in this chapter particularizing statutory standards. The proper procedure in those circumstances is for the person requesting the hearing to petition for an amendment or waiver of the regulation involved.

(6) The requirements in other applicable regulations, e.g., §§10.20, 12.21, 12.22, 314.200, 514.200, and 601.7(a), and in the notice promulgating the final regulation or the notice of opportunity for hearing are met.

(c) In making the determination in paragraph (a) of this section, the Commissioner may serve upon the person by registered mail a proposed order denying a hearing. The person has 30 days after receipt of the proposed order to demonstrate that the submission justifies a hearing.


Effective Date Note: At 64 FR 399, Jan. 5, 1999, in §12.24, paragraphs (b)(6) and (c) were amended by removing “314.300”, effective May 20, 1999.

§12.26 Modification or revocation of regulation or order.

If the Commissioner determines upon review of an objection or request for hearing that the regulation or order should be modified or revoked, the Commissioner will promptly take such action by notice in the Federal Register. Further objections to or requests for hearing on the modification or revocation may be submitted under §§12.20 through 12.22 but no further issue may be taken with other provisions in the regulation or order. Objections and requests for hearing that are not affected by the modification or revocation will remain on file and be acted upon in due course.

§12.28 Denial of hearing in whole or in part.

If the Commissioner determines upon review of the objections or requests for hearing that a hearing is not justified, in whole or in part, a notice of the determination will be published.

(a) The notice will state whether the hearing is denied in whole or in part. If the hearing is denied in part, the notice will be combined with the notice of hearing required by §12.35, and will specify the objections and requests for hearing that have been granted and denied.

(1) Any denial will be explained. A denial based on an analysis of the information submitted to justify a hearing will explain the inadequacy of the information.

(2) The notice will confirm or modify or stay the effective date of the regulation or order involved.

(b) The record of the administrative proceeding relating to denial of a public hearing in whole or in part on an
§ 12.30 Judicial review after waiver of hearing on a regulation.

(a) A person with a right to submit objections and a request for hearing under §12.20(d) may submit objections and waive the right to a hearing. The waiver may be either an explicit statement, or a failure to request a hearing, as provided in 12.22(a)(4).

(b) If a person waives the right to a hearing, the Commissioner will rule upon the person's objections under §§12.24 through 12.28. As a matter of discretion, the Commissioner may also order a hearing on the matter under any of the provisions of this part.

(c) If the Commissioner rules adversely on a person's objection, the person may petition for judicial review in a U.S. Court of Appeals under the act.

(1) The record for judicial review is the record designated in §12.28(b)(1).

(2) The time for filing a petition for judicial review begins as of the date of publication of the Commissioner's ruling on the objections.
§ 12.32 Request for alternative form of hearing.

(a) A person with a right to request a hearing may waive that right and request one of the following alternatives:

(1) A hearing before a Public Board of Inquiry under part 13.

(2) A hearing before a public advisory committee under part 14.

(3) A hearing before the Commissioner under part 15.

(b) The request—

(1) May be on the person’s own initiative or at the suggestion of the Commissioner.

(2) Must be submitted in the form of a citizen petition under § 10.30 before publication of a notice of hearing under § 12.35 or a denial of hearing under § 12.28; and

(3) Must be—

(i) In lieu of a request for a hearing under this part; or

(ii) If submitted after or with a request for hearing, in the form of a waiver of the right to request a hearing conditioned on an alternative form of hearing. Upon acceptance by the Commissioner, the waiver becomes binding and may be withdrawn only by waiving any right to any form of hearing unless the Commissioner determines otherwise.

(c) When more than one person requests and justifies a hearing under this part, an alternative form of hearing may be used only if all the persons concur and waive their right to request a hearing under this part.

(d) The Commissioner will determine whether an alternative form of hearing should be used, and if so, which alternative is acceptable, after considering the requests submitted and the appropriateness of the alternatives for the issues raised in the objections. The Commissioner’s acceptance is binding unless, for good cause, the Commissioner determines otherwise.

(e) The Commissioner will publish a notice of an alternative form of hearing setting forth the following information:

(1) The regulation or order that is the subject of the hearing.

(2) A statement specifying any part of the regulation or order that has been stayed by operation of law or in the Commissioner’s discretion.

(3) The time, date, and place of the hearing, or a statement that such information will be contained in a later notice.

(4) The parties to the hearing.

(5) The issues at the hearing. The statement of issues determines the scope of the hearing.

(f) If the hearing will be conducted by a Public Board of Inquiry, the time within which—

(i) The parties should submit nominees for the Board under § 13.10(b);

(ii) A notice of participation under § 12.45 should be filed; and

(iii) Participants should submit written information under § 13.25. The notice will list the contents of the portions of the administrative record relevant to the issues at the hearing before the Board. The portions listed will be placed on public display in the office of the Dockets Management Branch before the notice is published. Additional copies of material already submitted under § 13.25 need not be included with any later submissions.

(g) If a hearing before a public advisory committee or a hearing before the Commissioner is used as an alternative form of hearing, all submissions will be made to the Dockets Management Branch, and § 10.20(j) governs their availability for public examination and copying.

(h) This section does not affect the right to an opportunity for a hearing before a public advisory committee under section 515(g)(2) of the act regarding device premarket approval applications and product development protocols. Advisory committee hearing procedures are found in part 14.
§ 12.35 Notice of hearing; stay of action.

(a) If the Commissioner determines upon review of the objections and requests for hearing that a hearing is justified on any issue, the Commissioner will publish a notice setting forth the following:

(1) The regulation or order that is the subject of the hearing.

(2) A statement specifying any part of the regulation or order that has been stayed by operation of law or in the Commissioner’s discretion.

(3) The parties to the hearing.

(4) The issues of fact on which a hearing has been justified.

(5) A statement of any objections or requests for hearing for which a hearing has not been justified, which are subject to §12.28.

(6) The presiding officer, or a statement that the presiding officer will be designated in a later notice.

(7) The time within which notices of participation should be filed under §12.45.

(8) The date, time, and place of the prehearing conference, or a statement that the date, time, and place will be announced in a later notice. The prehearing conference may not commence until after the time expires for filing the notice of participation required by §12.45(a).

(9) The time within which participants should submit written information and views under §12.85. The notice will list the contents of the portions of the administrative record relevant to the issues at the hearing. The portions listed will be placed on public display in the office of the Dockets Management Branch before the notice is published. Additional copies of material already submitted under §12.85 need not be included with any later submissions.

(b) The statement of the issues determines the scope of the hearing and the matters on which evidence may be introduced. The issues may be revised by the presiding officer. A participant may obtain interlocutory review by the Commissioner of a decision by the presiding officer to revise the issues to include an issue on which the Commissioner has not granted a hearing or to eliminate an issue on which a hearing has been granted.

(c) A hearing is deemed to begin on the date of publication of the notice of hearing.

[44 FR 22339, Apr. 13, 1979, as amended at 47 FR 26375, June 18, 1982]

§ 12.37 Effective date of a regulation.

(a) If no objections are filed and no hearing is requested on a regulation under §12.20(e), the regulation is effective on the date specified in the regulation as promulgated.

(b) The Commissioner shall publish a confirmation of the effective date of the regulation. The Federal Register document confirming the effective date of the regulation may extend the time for compliance with the regulation.

§ 12.38 Effective date of an order.

(a) If a person who is subject to a notice of opportunity for hearing under §12.21(b) does not request a hearing, the Commissioner will—

(1) Publish a final order denying or withdrawing approval of an NDA, NADA, device premarket approval application, or biologics license, in whole or in part, or revoking a device product development protocol or notice of completion, or declaring that such a protocol has not been completed, and stating the effective date of the order; and

(2) If the order involves withdrawal of approval of an NADA, forthwith revoke, in whole or in part, the applicable regulation, under section 512(i) of the act.

(b) If a person who is subject to a notice of opportunity for hearing under §12.21(b) requests a hearing and others do not, the Commissioner may issue a final order covering all the drug or device products at once or may issue more than one final order covering different drug or device products at different times.

Subpart C—Appearance and Participation

§ 12.40 Appearance.

(a) A person who has filed a notice of participation under §12.45 may appear in person or by counsel or other representative in any hearing and, subject
§ 12.45 Notice of participation.

(a) Within 30 days after publication of the notice of hearing under § 12.35, a person desiring to participate in a hearing is to file with the Dockets Management Branch under § 10.20 a notice of participation in the following form:

(Date)
Dockets Management Branch, Food and Drug Administration, Department of Health and Human Services, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

NOTICE OF PARTICIPATION

Docket No. ——

Under 21 CFR part 12, please enter the participation of:

(Name)
(Street address)
(City and State)
(Telephone number)

Service on the above will be accepted by:

(Name)
(Street address)
(City and State)
(Telephone number)

The following statements are made as part of this notice of participation:

A. Specific interests. (A statement of the specific interest of the person in the proceeding, including the specific issues of fact concerning which the person desires to be heard. This part need not be completed by a party to the proceeding.)

B. Commitment to participate. (A statement that the person will present documentary evidence or testimony at the hearing and will comply with the requirements of 21 CFR 12.85, or, in the case of a hearing before a Public Board of Inquiry, with the requirements of 21 CFR 13.25.)

(Signed)

(b) An amendment to a notice of participation should be filed with the Dockets Management Branch and served on all participants.

(c) No person may participate in a hearing who has not filed a written notice of participation or whose participation has been stricken under paragraph (e) of this section.

(d) The presiding officer may permit the late filing of a notice of participation upon a showing of good cause.

(e) The presiding officer may strike the participation of a person for non-participation in the hearing or failure to comply with any requirement of this subpart, e.g., disclosure of information as required by § 12.85 or the prehearing order issued under § 12.92. Any person whose participation is stricken may petition the Commissioner for interlocutory review.


§ 12.50 Advice on public participation in hearings.

(a) Designated agency contact. All inquiries from the public about scheduling, location, and general procedures should be addressed to the Deputy Commissioner for Policy (HF–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or telephone 301–443–3480. The staff of the Associate Commissioner for Regulatory Affairs will attempt to respond promptly to all inquiries from members of the public, as well as to simple requests for information from participants in hearings.

(b) Hearing schedule changes. Requests by hearing participants for changes in the schedule of a hearing or for filing documents, briefs, or other pleadings should be made in writing directly to the Administrative Law Judge (HF–3), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(c) Legal advice to individuals. FDA does not have the resources to provide legal advice to members of the public concerning participation in hearings. Furthermore, to do so would compromise the independence of the Commissioner’s office and invite charges of improper interference in the hearing process. Accordingly, the Deputy Commissioner for Policy (HF–22) will not answer questions about the strengths or weaknesses of a party’s position at a hearing, litigation strategy, or similar matters.

(d) Role of the office of the Chief Counsel. Under no circumstances will the office of the Chief Counsel of FDA directly provide advice about a hearing to any person who is participating or
may participate in the hearing. In every hearing, certain attorneys in the office are designated to represent the center or centers whose action is the subject of the hearing. Other members of the office, including ordinarily the Chief Counsel, are designated to advise the Commissioner on a final decision in the matter. It is not compatible with these functions, nor would it be professionally responsible, for the attorneys in the office of the Chief Counsel also to advise other participants in a hearing, or for any attorney who may be called on to advise the Commissioner to respond to inquiries from other participants in the hearing, for such participants may be urging views contrary to those of the center involved or to what may ultimately be the final conclusions of the Commissioner. Accordingly, members of the office of the Chief Counsel, other than the attorneys responsible for representing the center whose action is the subject of the hearing, will not answer questions about the hearing from any participant or potential participant.

(e) Communication between participants and attorneys. Participants in a hearing may communicate with the attorneys responsible for representing the center whose action is the subject of the hearing, in the same way that they may communicate with counsel for any other party in interest about the presentation of matters at the hearing. It would be inappropriate to bar discussion of such matters as stipulations of fact, joint presentation of witnesses, or possible settlement of hearing issues. Members of the public, including participants at hearings, are advised, however, that all such communications, including those by telephone, will be recorded in memoranda that can be filed with the Dockets Management Branch.

Subpart D—Presiding Officer

§ 12.60 Presiding officer.

The presiding officer in a hearing will be the Commissioner, a member of the Commissioner’s office to whom the responsibility for the matter involved has been delegated, or an administrative law judge qualified under 5 U.S.C. 3105.

§ 12.62 Commencement of functions.

The functions of the presiding officer begin upon designation and end upon the filing of the initial decision.

§ 12.70 Authority of presiding officer.

The presiding officer has all powers necessary to conduct a fair, expeditious, and orderly hearing, including the power to—

(a) Specify and change the date, time, and place of oral hearings and conferences;

(b) Establish the procedures for use in developing evidentiary facts, including the procedures in §12.92(b) and to rule on the need for oral testimony and cross-examination under §12.87(b);

(c) Prepare statements of the areas of factual disagreement among the participants;

(d) Hold conferences to settle, simplify, or determine the issues in a hearing or to consider other matters that may expedite the hearing;

(e) Administer oaths and affirmations;

(f) Control the course of the hearing and the conduct of the participants;

(g) Examine witnesses and strike their testimony if they fail to respond fully to proper questions;

(h) Rule on, admit, exclude, or limit evidence;

(i) Set the time for filing pleadings;

(j) Rule on motions and other procedural matters;

(k) Rule on motions for summary decision under §12.93;

(l) Conduct the hearing in stages if the number of parties is large or the issues are numerous and complex;

(m) Waive, suspend, or modify any rule in this subpart under §10.19 if the presiding officer determines that no party will be prejudiced, the ends of justice will be served, and the action is in accordance with law;

(n) Strike the participation of any person under §12.45(e) or exclude any person from the hearing under §12.90, or take other reasonable disciplinary action; and

(o) Take any action for the fair, expeditious, and orderly conduct of the hearing.
§ 12.75 Disqualification of presiding officer.

(a) A participant may request the presiding officer to disqualify himself/herself and withdraw from the proceeding. The ruling on any such request may be appealed in accordance with §12.97(b).

(b) A presiding officer who is aware of grounds for disqualification shall withdraw from the proceeding.

§ 12.78 Unavailability of presiding officer.

(a) If the presiding officer is unable to act for any reason, the Commissioner will assign the powers and duties to another presiding officer. The substitution will not affect the hearing, except as the new presiding officer may order.

(b) Any motion based on the substitution must be made within 10 days.

Subpart E—Hearing Procedures

§ 12.80 Filing and service of submissions.

(a) Submissions, including pleadings in a hearing, are to be filed with the Dockets Management Branch under §10.20 except that only two copies need be filed. To determine compliance with filing deadlines in a hearing, a submission is considered submitted on the date it is actually received by the Dockets Management Branch. When this part allows a response to a submission and prescribes a period of time for the filing of the response, an additional 3 days are allowed for the filing of the response if the submission is served by mail.

(b) The person making a submission shall serve copies of it on the other participants. Submissions of documentary data and information are not required to be served on each participant, but any accompanying transmittal letter, pleading, summary, statement of position, certification under paragraph (d) of this section, or similar document must be served on each participant.

(c) Service is accomplished by mailing a submission to the address shown in the notice of participation or by personal delivery.

(d) All submissions are to be accompanied by a certificate of service, or a statement that service is not required.

(e) No written submission or other portion of the administrative record may be held in confidence, except as provided in §12.105.

§ 12.82 Petition to participate in forma pauperis.

(a) A participant who believes that compliance with the filing and service requirements of this section constitutes an unreasonable financial burden may submit to the Commissioner a petition to participate in forma pauperis.

(b) The petition will be in the form specified in §10.30 except that the heading will be “Request to Participate in Forma Pauperis, Docket No. ——.” Filing and service requirements for the petition are described in paragraph (c) of this section, whether or not the petition is granted. The petition must demonstrate that either: (1) The person is indigent and a strong public interest justifies participation, or (2) the person’s participation is in the public interest because it can be considered of primary benefit to the general public.

(c) The Commissioner may grant or deny the petition. If the petition is granted, the participant need file only one copy of each submission with the Dockets Management Branch. The Dockets Management Branch will make sufficient additional copies for the administrative record, and serve a copy on each other participant.

§ 12.83 Advisory opinions.

Before or during a hearing, a person may, under §10.85, request the Commissioner for an advisory opinion on whether any regulation or order under consideration in the proceeding applies to a specific situation.

§ 12.85 Disclosure of data and information by the participants.

(a) Before the notice of hearing is published under §12.35, the director of the center responsible for the matters involved in the hearing shall submit the following to the Dockets Management Branch:

(1) The relevant portions of the administrative record of the proceeding.
§ 12.87 Purpose; oral and written testimony; burden of proof.

(a) The objective of a formal evidentiary hearing is the fair determination of relevant facts consistent with the right of all interested persons to participate and the public interest in promptly settling controversial matters affecting the public health and welfare.

(b) Accordingly, the evidence at a hearing is to be developed to the maximum extent through written submissions, including written direct testimony, which may be in narrative or in question-and-answer form.

(1) In a hearing, the issues may have general applicability and depend on general facts that do not concern particular action of a specific party, e.g., the safety or effectiveness of a class of drug products, the safety of a food or color additive, or a definition and standard of identity for a food; or the issues may have specific applicability to past action and depend upon particular facts concerning only that party, e.g., the applicability of a grandfather clause to a particular brand of a drug or the failure of a particular manufacturer to meet required manufacturing and processing specifications or other general standards.
(i) If the proceeding involves general issues, direct testimony will be submitted in writing, except on a showing that written direct testimony is insufficient for a full and true disclosure of relevant facts and that the participant will be prejudiced if unable to present oral direct testimony. If the proceeding involves particular issues, each party may determine whether, and the extent to which, each wishes to present direct testimony orally or in writing.

(ii) Oral cross-examination of witnesses will be permitted if it appears that alternative means of developing the evidence are insufficient for a full and true disclosure of the facts and that the party requesting oral cross-examination will be prejudiced by denial of the request or that oral cross-examination is the most effective and efficient means to clarify the matters at issue.

(2) Witnesses shall give testimony under oath.

(c) Except as provided in paragraph (d) of this section, in a hearing involving issuing, amending, or revoking a regulation or order, the originator of the proposal or petition or of any significant modification will be, within the meaning of 5 U.S.C. 556(d), the proponent of the regulation or order, and will have the burden of proof. A participant who proposes to substitute a new provision for a provision objected to has the burden of proof in relation to the new provision.

(d) At a hearing involving issuing, amending, or revoking a regulation or order relating to the safety or effectiveness of a drug, device, food additive, or color additive, the participant who is contending that the product is safe or effective or both and who is requesting approval or contesting withdrawal of approval has the burden of proof in establishing safety or effectiveness or both and thus the right to approval. The burden of proof remains on that participant in an amendment or revocation proceeding.


§ 12.89 Participation of nonparties.
(a) A nonparty participant may—
(1) Attend all conferences (including the prehearing conference), oral proceedings, and arguments;
(2) Submit written testimony and documentary evidence for inclusion in the record;
(3) File written objections, briefs, and other pleadings; and
(4) Present oral argument.
(b) A nonparty participant may not—
(1) Submit written interrogatories; and
(2) Conduct cross-examination.
(c) A person whose petition is the subject of the hearing has the same right as a party.
(d) A nonparty participant will be permitted additional rights if the presiding officer concludes that the participant's interests would not be adequately protected otherwise or that broader participation is required for a full and true disclosure of the facts, but the rights of a nonparty participant may not exceed the rights of a party.


§ 12.90 Conduct at oral hearings or conferences.
All participants in a hearing will conduct themselves with dignity and observe judicial standards of practice and ethics. They may not indulge in personal attacks, unseemly wrangling, or intemperate accusations or characterizations. Representatives of parties shall, to the extent possible, restrain clients from improprieties in connection with any proceeding. Disrespectful, disorderly, or contumacious language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct during any hearing, constitute grounds for immediate exclusion from the proceeding by the presiding officer.

§ 12.91 Time and place of prehearing conference.
A prehearing conference will commence at the date, time, and place announced in the notice of hearing, or in a later notice, or as specified by the presiding officer in a notice modifying
§ 12.92 Prehearing conference procedure.

(a) Participants in a hearing are to appear at the prehearing conference prepared to discuss and resolve all matters specified in paragraph (b) of this section.

(1) To expedite the hearing, participants are encouraged to prepare in advance for the prehearing conference. Participants should cooperate with each other, and request information and begin preparation of testimony at the earliest possible time. Failure of a participant to appear at the prehearing conference or to raise matters that could reasonably be anticipated and resolved at that time will not delay the progress of the hearing, and constitutes a waiver of the rights of the participant regarding such matters as objections to the agreements reached, actions taken, or rulings issued by the presiding officer and may be grounds for striking the participation under § 12.45.

(2) Participants shall bring to the prehearing conference the following specific information, which will be filed with the Dockets Management Branch under § 12.80:

(i) Any additional information to supplement the submission filed under § 12.85, which may be filed if approved under § 12.85(c).

(ii) A list of all witnesses whose testimony will be offered, orally or in writing, at the hearing, with a full curriculum vitae for each. Additional witnesses may later be identified, with the approval of the presiding officer, on a showing that the witness was not reasonably available at the time of the prehearing conference or the relevance of the witness’ views could not reasonably have been foreseen at that time.

(iii) All prior written statements including articles and any written statement signed or adopted, or a recording or transcription of an oral statement made, by persons identified as witnesses if—

(a) The statement is available without making request of the witness or any other person;

(b) The statement relates to the subject matter of the witness’ testimony; and

(c) The statement either was made before the time the person agreed to become a witness or has been made publicly available by the person.

(b) The presiding officer will conduct a prehearing conference for the following purposes:

(1) To determine the areas of factual disagreement to be considered at the hearing. The presiding officer may hold conferences off the record in an effort to reach agreement on disputed factual questions.

(2) To identify the most appropriate techniques for developing evidence on issues in controversy and the manner and sequence in which they will be used, including, where oral examination is to be conducted, the sequence in which witnesses will be produced for, and the time and place of, oral examination. The presiding officer may consider—

(i) Submission of narrative statements of position on factual issues in controversy;

(ii) Submission of evidence or identification of previously submitted evidence to support such statements, such as affidavits, verified statements of fact, data, studies, and reports;

(iii) Exchange of written interrogatories directed to particular witnesses;

(iv) Written requests for the production of additional documentation, data, or other relevant information;

(v) Submission of written questions to be asked by the presiding officer of a specific witness; and

(vi) Identification of facts for which oral examination and/or cross-examination is appropriate.

(3) To group participants with substantially like interests for presenting evidence, making motions and objections, including motions for summary
decision, filing briefs, and presenting oral argument.
(4) To hear and rule on objections to admitting into evidence information submitted under §12.85.
(5) To obtain stipulations and admissions of facts.
(6) To take other action that may expedite the hearing.

(c) The presiding officer shall issue, orally or in writing, a prehearing order reciting the actions taken at the prehearing conference and setting forth the schedule for the hearing. The order will control the subsequent course of the hearing unless modified by the presiding officer for good cause.

§ 12.93 Summary decisions.
(a) After the hearing commences, a participant may move, with or without supporting affidavits, for a summary decision on any issue in the hearing. Any other participant may, within 10 days after service of the motion, which time may be extended for an additional 10 days for good cause, serve opposing affidavits or countermove for summary decision. The presiding officer may set the matter for argument and call for the submission of briefs.

(b) The presiding officer will grant the motion if the objections, requests for hearing, other pleadings, affidavits, and other material filed in connection with the hearing, or matters officially noticed, show that there is no genuine issue as to any material fact and that a participant is entitled to summary decision.

(c) Affidavits should set forth facts that would be admissible in evidence and show affirmatively that the affiant is competent to testify to the matters stated. When a properly supported motion for summary decision is made, a participant opposing the motion may not rest upon mere allegations or denials or general descriptions of positions and contentions; affidavits or other responses must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(d) Should it appear from the affidavits of a participant opposing the motion that for sound reasons stated, facts essential to justify the opposition cannot be presented by affidavit, the presiding officer may deny the motion for summary decision, order a continuance to permit affidavits or additional evidence to be obtained, or issue other just order.

(e) If on motion under this section a summary decision is not rendered upon the whole case or for all the relief asked, and evidentiary facts need to be developed, the presiding officer will issue an order specifying the facts that appear without substantial controversy and directing further evidentiary proceedings. The facts so specified will be deemed established.

(f) A participant may obtain interlocutory review by the Commissioner of a summary decision of the presiding officer.

§ 12.94 Receipt of evidence.
(a) A hearing consists of the development of evidence and the resolution of factual issues as set forth in this subpart and in the prehearing order.

(b) All orders, transcripts, written statements of position, written direct testimony, written interrogatories and responses, and any other written material submitted in the proceeding is a part of the administrative record of the hearing, and will be promptly placed on public display in the office of the Dockets Management Branch, except as provided in §12.105.

(c) Written evidence, identified as such, is admissible unless a participant objects and the presiding officer excludes it on objection of a participant or on the presiding officer’s own initiative.

(1) The presiding officer may exclude written evidence as inadmissible only if—

(i) The evidence is irrelevant, immaterial, unreliable, or repetitive;

(ii) Exclusion of part or all of the written evidence of a participant is necessary to enforce the requirements of this subpart; or

(iii) The evidence was not submitted as required by §12.85.

(2) Items of written evidence are to be submitted as separate documents, sequentially numbered, except that a voluminous document may be submitted in the form of a cross-reference to the documents filed under §12.85.
§ 12.95

(3) Written evidence excluded by the presiding officer as inadmissible remains a part of the administrative record, as an offer of proof, for judicial review.

(d) Testimony, whether on direct or on cross-examination, is admissible as evidence unless a participant objects and the presiding officer excludes it.

(1) The presiding officer may exclude oral evidence as inadmissible only if—

(i) The evidence is irrelevant, immaterial, unreliable, or repetitive; or

(ii) Exclusion of part or all of the evidence is necessary to enforce the requirements of this part.

(2) If oral evidence is excluded as inadmissible, the participant may take written exception to the ruling in a brief to the Commissioner, without taking oral exception at the hearing. Upon review, the Commissioner may reopen the hearing to permit the evidence to be admitted if the Commissioner determines that its exclusion was erroneous and prejudicial.

(e) The presiding officer may schedule conferences as needed to monitor the program of the hearing, narrow and simplify the issues, and consider and rule on motions, requests, and other matters concerning the development of the evidence.

(f) The presiding officer will conduct such proceedings as are necessary for the taking of oral testimony, for the oral examination of witnesses by the presiding officer on the basis of written questions previously submitted by the parties, and for the conduct of cross-examination of witnesses by the parties. The presiding officer shall exclude irrelevant or repetitious written questions and limit oral cross-examination to prevent irrelevant or repetitious examination.

(g) The presiding officer shall order the proceedings closed for the taking of oral testimony relating to matters specified in §10.20(j)(3).

§ 12.95

Official notice.

(a) Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of any other matter peculiarly within the general knowledge of FDA as an expert agency.

(b) If official notice is taken of a material fact not appearing in the evidence of record, a participant, on timely request, will be afforded an opportunity to show the contrary.

§ 12.96

Briefs and arguments.

(a) Promptly after the taking of evidence is completed, the presiding officer will announce a schedule for the filing of briefs. Briefs are to be filed ordinarily within 45 days of the close of the hearing. Briefs must include a statement of position on each issue, with specific and complete citations to the evidence and points of law relied on. Briefs must contain proposed findings of fact and conclusions of law.

(b) The presiding officer may, as a matter of discretion, permit oral argument after the briefs are filed.

(c) Briefs and oral argument are to refrain from disclosing specific details of written and oral testimony and documents relating to matters specified in §10.20(j)(2)(i)(a) and (b), except as specifically authorized in a protective order issued under §10.20(j)(3).

§ 12.97

Interlocutory appeal from ruling of presiding officer.

(a) Except as provided in paragraph (b) of this section and in §§12.25(b), 12.45(e), 12.93(f), and 12.99(d), when an interlocutory appeal is specifically authorized by this subpart, rulings of the presiding officer are not appealable to the Commissioner before the Commissioner’s consideration of the entire record of the hearing.

(b) A ruling of the presiding officer is subject to interlocutory appeal to the Commissioner if the presiding officer certifies on the record or in writing that immediate review is necessary to prevent exceptional delay, expense, or prejudice to any participant, or substantial harm to the public interest.
Food and Drug Administration, HHS § 12.100

(c) When an interlocutory appeal is made to the Commissioner, a participant may file a brief with the Commissioner only if specifically authorized by the presiding officer or the Commissioner, and if such authorization is granted, within the period the Commissioner directs. If a participant is authorized to file a brief, any other participant may file a brief in opposition, within the period the Commissioner directs. If no briefs are authorized, the appeal will be presented as an oral argument to the Commissioner. The oral argument will be transcribed. If briefs are authorized, oral argument will be heard only at the discretion of the Commissioner.

§ 12.98 Official transcript.

(a) The presiding officer will arrange for a verbatim stenographic transcript of oral testimony and for necessary copies of the transcript.

(b) One copy of the transcript will be placed on public display in the office of the Dockets Management Branch upon receipt.

(c) Except as provided in §12.105, copies of the transcript may be obtained by application to the official reporter and payment of costs thereof or under part 20.

(d) Witnesses, participants, and counsel have 30 days from the time the transcript becomes available to propose corrections in the transcript of oral testimony. Corrections are permitted only for transcription errors. The presiding officer shall promptly order justified corrections.

§ 12.99 Motions.

(a) A motion on any matter relating to the proceeding is to be filed under §12.80, and must include a draft order, except one made in the course of an oral hearing before the presiding officer.

(b) A response may be filed within 10 days of service of a motion. The time may be shortened or extended by the presiding officer for good cause shown.

(c) The moving party has no right to reply, except as permitted by the presiding officer.

(d) The presiding officer shall rule upon the motion and may certify that ruling to the Commissioner for interlocutory review.

Subpart F—Administrative Record

§ 12.100 Administrative record of a hearing.

(a) The record of a hearing consists of—

1. The order or regulation or notice of opportunity for hearing that gave rise to the hearing;

2. All objections and requests for hearing filed by the Dockets Management Branch under §§ 12.20 through 12.22;

3. The notice of hearing published under §12.35;

4. All notices of participation filed under §12.45;

5. All Federal Register notices pertinent to the proceeding;

6. All submissions filed under §12.82, e.g., the submissions required by §12.85, all other documentary evidence and written testimony, pleadings, statements of position, briefs, and other similar documents;

7. All documents of which official notice is taken under §12.95;

8. All pleadings filed under §12.96;

9. All documents relating to any motion for summary decision under §12.93;

10. All documents relating to any interlocutory appeal under §12.97;

11. All transcripts prepared under §12.98; and

12. Any other document relating to the hearing and filed with the Dockets Management Branch by the presiding officer or any participant;

(b) The record of the administrative proceeding is closed—

1. With respect to the taking of evidence, when specified by the presiding officer; and

2. With respect to pleadings, at the time specified in §12.96(a) for the filing of briefs.

(c) The presiding officer may reopen the record to receive further evidence at any time before the filing of the initial decision.
§ 12.105 Examination of record.

Documents in the record will be publicly available in accordance with §10.20(j). Documents available for examination or copying will be placed on public display in the office of the Dockets Management Branch promptly upon receipt in that office.

Subpart G—Initial and Final Decisions

§ 12.120 Initial decision.

(a) The presiding officer shall prepare and file an initial decision as soon as possible after the filing of briefs and oral argument.

(b) The initial decision must contain—

(1) Findings of fact based upon relevant, material, and reliable evidence of record;

(2) Conclusions of law;

(3) A discussion of the reasons for the findings and conclusions, including a discussion of the significant contentions made by any participant;

(4) Citations to the record supporting the findings and conclusions;

(5) An appropriate regulation or order supported by substantial evidence of record and based upon the findings of fact and conclusions of law; and

(6) An effective date for the regulation or order.

(c) The initial decision must refrain from disclosing specific details of matters specified in §10.20(j)(2)(i) (a) and (b), except as specifically authorized in a protective order issued pursuant to §10.20(j)(3).

(d) The initial decision is to be filed with the Dockets Management Branch and served upon all participants. Once the initial decision is filed with the Dockets Management Branch, the presiding officer has no further jurisdiction over the matter, and any motions or requests filed with the Dockets Management Branch will be decided by the Commissioner.

(e) The initial decision becomes the final decision of the Commissioner by operation of law unless a participant files exceptions with the Dockets Management Branch under §12.125(a) or the Commissioner files a notice of review under §12.125(f).

(f) Notice that an initial decision has become the decision of the Commissioner without appeal to or review by the Commissioner will be published in the Federal Register, or the Commissioner may publish the decision when it is of widespread interest.

§ 12.125 Appeal from or review of initial decision.

(a) A participant may appeal an initial decision to the Commissioner by filing exceptions with the Dockets Management Branch, and serving them on the other participants, within 60 days of the date of the initial decision.

(b) Exceptions must specifically identify alleged errors in the findings of fact or conclusions of law in the initial decision, and provide supporting citations to the record. Oral argument before the Commissioner may be requested in the exceptions.

(c) Any reply to the exceptions is to be filed and served within 60 days of the end of the period for filing exceptions.

(d) The Commissioner may extend the time for filing exceptions under paragraph (a) of this section or replies to exceptions under paragraph (c) of this section only upon a showing by a participant of extraordinary circumstances. Such an extension shall be requested by filing a written request with the Commissioner’s Executive Secretariat (HF–40) and serving copies of the request on the Dockets Management Branch (HFA–305), the Chief Counsel (GCF–1), and all hearing participants.

(e) If the Commissioner decides to hear oral argument, the participants will be informed of the date, time, and place, the amount of time allotted to each participant, and the issues to be addressed.

(f) Within 10 days following the expiration of the time for filing exceptions (including any extensions), the Commissioner may file with the Dockets Management Branch, and serve on the participants, a notice of the Commissioner’s determination to review the initial decision. The Commissioner may invite the participants to file briefs or present oral argument on the
Food and Drug Administration, HHS

matter. The time for filing briefs or presenting oral argument will be specified in that or a later notice.

[44 FR 22339, Apr. 13, 1979, as amended at 53 FR 29453, Aug. 5, 1988]

§ 12.130 Decision by Commissioner on appeal or review of initial decision.

(a) On appeal from or review of the initial decision, the Commissioner has all the powers given to make the initial decision. On the Commissioner’s own initiative or on motion, the Commissioner may remand the matter to the presiding officer for any further action necessary for a proper decision.

(b) The scope of the issues on appeal is the same as the scope of the issues at the public hearing unless the Commissioner specifies otherwise.

(c) As soon as possible after the filing of briefs and any oral argument, the Commissioner will issue a final decision in the proceeding, which meets the requirements established in §12.120 (b) and (c).

(d) The Commissioner may adopt the initial decision as the final decision.

(e) Notice of the Commissioner’s decision will be published in the FEDERAL REGISTER, or the Commissioner may publish the decision when it is of widespread interest.

§ 12.139 Reconsideration and stay of action.

Following notice or publication of the final decisions, a participant may petition the Commissioner for reconsideration of any part or all of the decision under §10.33 or may petition for a stay of the decision under §10.35.

Subpart H—Judicial Review

§ 12.140 Review by the courts.

(a) The Commissioner’s final decision constitutes final agency action from which a participant may petition for judicial review under the statutes governing the matter involved. Before requesting an order from a court for a stay of action pending review, a participant shall first submit a petition for a stay of action under §10.35.

(b) Under 28 U.S.C. 2112(a), FDA will request consolidation of all petitions related to a particular matter.

§ 12.159 Copies of petitions for judicial review.

The Chief Counsel for FDA has been designated by the Secretary as the officer on whom copies of petitions for judicial review are to be served. This officer is responsible for filing the record on which the final decision is based. The record of the proceeding is certified by the Commissioner.

PART 13—PUBLIC HEARING BEFORE A PUBLIC BOARD OF INQUIRY

Subpart A—General Provisions

§ 13.1 Scope.

Sec.
13.1 Scope.
13.5 Notice of a hearing before a Board.
13.10 Members of a Board.
13.15 Separation of functions; ex parte communications; administrative support.

Subpart B—Hearing Procedures

13.20 Submissions to a Board.
13.25 Disclosure of data and information by the participants.
13.30 Proceedings of a Board.

Subpart C—Records of a Hearing Before a Board

13.40 Administrative record of a Board.
13.45 Examination of administrative record.
13.50 Record for administrative decision.


Source: 44 FR 22348, Apr. 13, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 13.1 Scope.

The procedures in this part apply when—

(a) The Commissioner concludes, as a matter of discretion, that it is in the public interest to hold a public hearing before a Public Board of Inquiry (Board) with respect to any matter before FDA;

(b) Under specific sections of this chapter a matter before FDA is subject to a hearing before a Board; or

(c) Under §12.32, a person who has a right to an opportunity for a formal evidentiary public hearing waives that opportunity and requests that a Board
§ 13.5 Notice of a hearing before a Board.

If the Commissioner determines that a Board should be established to conduct a hearing on any matter, a notice of hearing will be published in the FEDERAL REGISTER setting forth the following information:

(a) If the hearing is under §13.1(a) or (b), all applicable information described in §12.32(e).

(1) Any written document that is to be the subject matter of the hearing will be published as a part of the notice, or the notice will refer to it if the document has already been published in the FEDERAL REGISTER or state that the document is available from the Dockets Management Branch or an agency employee designated in the notice.

(2) For purposes of a hearing under §13.1(a) or (b), all participants who file a notice of participation under §12.32(e)(ii) are deemed to be parties and entitled to participate in selection of the Board under §13.15(b).

(b) If the hearing is in lieu of a formal evidentiary hearing, as provided in §13.1(c), all of the information described in §12.32(e).

[44 FR 22348, Apr. 13, 1979, as amended at 47 FR 26375, June 18, 1982]

§ 13.10 Members of a Board.

(a) All members of a Board are to have medical, technical, scientific, or other qualifications relevant to the issues to be considered, are subject to the conflict of interest rules applicable to special Government employees, and are to be free from bias or prejudice concerning the issues involved. A member of a Board may be a full-time or part-time Federal Government employee or may serve on an FDA advisory committee but, except with the agreement of all parties, may not currently be a full-time or part-time employee of FDA or otherwise act as a special Government employee of FDA.

(b) Within 30 days of publication of the notice of hearing, the director of the center of FDA responsible for a matter before a Board, the other parties to the proceeding, and any person whose petition was granted and is the subject of the hearing, shall each submit to the Dockets Management Branch the names and full curricula vitae of five nominees for members of the Board. Nominations are to state that the nominee is aware of the nomination, is interested in becoming a member of the Board, and appears to have no conflict of interest.

(1) Any two or more persons entitled to nominate members may agree upon a joint list of five qualified nominees.

(2) The lists of nominees must be submitted to the persons entitled to submit a list of nominees under this paragraph but not to all participants. Within 10 days of receipt of the lists of nominees, such persons may submit comments to the Dockets Management Branch on whether the nominees of the other persons meet the criteria established in paragraph (a) of this section. A person submitting comments to the Dockets Management Branch shall submit them to all persons entitled to submit a list of nominees.

(3) The lists of nominees and comments on them are to be held in confidence by the Dockets Management Branch as part of the administrative record of the proceeding and are not to be made available for public disclosure, and all persons who submit or receive them shall similarly hold them in confidence. This portion of the administrative record remains confidential but is available for judicial review in the event that it becomes relevant to any issue before a court.

(c) After reviewing the lists of nominees and any comments, the Commissioner will choose three qualified persons as members of a Board. One member will be from the lists of nominees submitted by the director of the center and by any person whose petition was granted and is the subject of the hearing. The second will be from the lists of nominees submitted by the other parties. The Commissioner may choose the third member from any source. That member is the Chairman of the Board.

(1) If the Commissioner is unable to find a qualified person with no conflict of interest from among a list of nominees or if additional information is
needed, the Commissioner will request the submission of the required additional nominees or information.

(2) If a person fails to submit a list of nominees as required by paragraph (b) of this section, the Commissioner may choose a qualified member without further consultation with that person.

(3) The Commissioner will announce the members of a Board by filing a memorandum in the record of the proceeding and sending a copy to all participants.

(d) Instead of using the selection method in paragraphs (b) and (c) of this section, the director of the center, the other parties to the proceeding, and any person whose petition was granted and is the subject of the hearing, may, with the approval of the Commissioner, agree that a standing advisory committee listed in §14.80 constitutes the Board for a particular proceeding, or that another procedure is to be used for selection of the members of the Board, or that the Board consists of a larger number of members.

(e) The members of a Board serve as consultants to the Commissioner and are special Government employees or Government employees. A Board functions as an administrative law tribunal in the proceeding and is not an advisory committee subject to the requirements of the Federal Advisory Committee Act or part 14.

(f) The Chairman of the Board has the authority of a presiding officer set out in §12.70.

§ 13.25 Disclosure of data and information by the participants.

(a) The proceeding of a Board are subject to the provisions of §10.55 relating to separation of functions and ex parte communications. Representatives of the participants in any proceeding before a Board, including any members of the office of the Chief Counsel of FDA assigned to advise the center responsible for the matter, may have no contact with the members of the Board, except as participants in the proceeding, and may not participate in the deliberations of the Board.

(b) Administrative support for a Board is to be provided only by the office of the Commissioner and the office of the Chief Counsel for FDA.


Subpart B—Hearing Procedures

§ 13.20 Submissions to a Board.

(a) Submissions are to be filed with the Dockets Management Branch under §10.20.

(b) The person making a submission shall serve copies of it on each participant in the proceeding, except as provided in §§13.10(b)(2) and 13.45. Submissions of documentary data and information need not be sent to each participant, but any accompanying transmittal letter, summary, statement of position, certification under paragraph (d) of this section, or similar document must be.

(c) A submission must be mailed to the address shown in the notice of appearance or personally delivered.

(d) All submissions are to be accompanied by a certificate of service, or a statement that service is not required.

(e) No written submission or other portion of the administrative record may be held in confidence, except as provided in §§13.10(b)(2) and 13.45.

(f) A participant who believes that compliance with the requirements of this section constitutes an unreasonable financial burden may submit to the Commissioner a petition to participate in forma pauperis in the form and manner specified in §12.82.

§ 13.25 Disclosure of data and information by the participants.

(a) Before the notice of hearing is published under §13.5, the director of the center responsible for the matters involved in the hearing must submit to the Dockets Management Branch—

(1) The relevant portions of the existing administrative record of the proceeding. Portions of the administrative record not relevant to the issues in the hearing are not part of the administrative record;

(2) A list of all persons whose views will be presented orally or in writing at the hearing;
(3) All documents in the director’s files containing factual information, whether favorable or unfavorable to the director’s position, which relate to the issues involved in the hearing. Files means the principal files in the center in which documents relating to the issues in the hearing are ordinarily kept, e.g., the food additive master file and the food additive petition in the case of issues concerning a food additive, or the new drug application in the case of issues concerning a new drug. Internal memoranda reflecting the deliberative process, and attorney work product and material prepared specifically for use in connection with the hearing, are not required to be submitted;

(4) All other documentary information relied on; and

(5) A signed statement that, to the best of the director’s knowledge and belief, the submission complies with this section.

(b) Within the time prescribed in the notice of hearing published under § 13.5, each participant shall submit to the Dockets Management Branch all information specified in paragraph (a)(2) through (5) of this section and any objections that the administrative record filed under paragraph (a)(1) of this section is incomplete. With respect to the information specified in paragraph (a)(3) of this section, participants are to exercise reasonable diligence in identifying documents in files comparable to those described in that paragraph.

(c) The submissions required by paragraphs (a) and (b) of this section may be supplemented later in the proceeding, with the approval of the Board, on a showing that the views of the persons or the material contained in the supplement was not known or reasonably available when the initial submission was made or that the relevance of the views of the persons or the material contained in the supplement could not reasonably have been foreseen.

(d) The failure to comply substantially and in good faith with this section in the case of a participant constitutes a waiver of the right to participate further in the hearing and in the case of a party constitutes a waiver of the right to a hearing.

(e) The Chairman rules on questions relating to this section. Any participant dissatisfied with a ruling may petition the Commissioner for interlocutory review.

§ 13.30 Proceedings of a Board.

(a) The purpose of a Board is to review medical, scientific, and technical issues fairly and expeditiously. The proceedings of a Board are conducted as a scientific inquiry rather than a legal trial.

(b) A Board may not hold its first hearing until after all participants have submitted the information required by §13.25.

(c) The Chairman calls the first hearing of the Board. Notice of the time and location of the first hearing is to be published at least 15 days in advance and the hearing will be open to the public. All participants will have an opportunity at the first hearing to make an oral presentation of the information and views which in their opinion are pertinent to the resolution of the issues being considered by a Board. A participant’s presentation may be made by more than one person. The Chairman determines the order of the presentation. Participants may not interrupt a presentation, but members of the Board may ask questions. At the conclusion of a presentation, each of the other participants may briefly comment on the presentation and may request that the Board conduct further questioning on specified matters. Members of the Board may then ask further questions. Any other participant may be permitted to ask questions if the Chairman determines that it will help resolve the issues.

(d) The hearing is informal and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views may be made or considered, but other participants may comment upon or rebut all such information and views. No participant may interrupt the presentation of another participant for any reason.
(e) Within the time specified by the Board after its first hearing, participants may submit written rebuttal information and views in accordance with §13.20. The Chairman will then schedule a second hearing, if requested and justified by a participant. A second hearing, and any subsequent hearing, will be called only if the Chairman concludes that it is needed to fully and fairly present information that cannot otherwise adequately be considered and to properly resolve the issues. Notice of the time and location of any hearing is to be published at least 15 days in advance. The hearing is open to the public.

(f) A Board may consult with any person who it concludes may have information or views relevant to the issues.

(1) The consultation may occur only at an announced hearing of a Board. Participants have the right to suggest, or, with the permission of the Chairman, ask questions of the consultant and present rebuttal information and views, as provided in paragraphs (c) and (d) of this section except that written statements may be submitted to the Board with the consent of all participants.

(2) A participant may submit a request that the Board consult with a specific person who may have information or views relevant to the issues. The request will state why the person should be consulted and why the person’s views cannot be furnished to the Board by means other than having FDA arrange for the person’s appearance. The Board may, in its discretion, grant or deny the request.

(g) All hearings are to be transcribed. All hearings are open to the public, except that a hearing under §10.20(j)(3) is closed to all persons except those persons making and participating in the presentation and Federal Government executive branch employees and special Government employees. At least a majority of Board members are to be present at every hearing. The executive sessions of a Board, during which a Board deliberates on the issues, are to be closed and are not transcribed. All members of the Board shall vote on the report of the Board.

(h) All legal questions are to be referred to the Chief counsel for FDA for resolution. The Chief Counsel’s advice on any matter of procedure or legal authority is to be transmitted in writing and made a part of the record or presented in open session and transcribed.

(i) At the conclusion of all public hearings the Board will announce that the record is closed to receiving information. The Board will provide an opportunity for participants to submit written statements of their positions, with proposed findings and conclusions, and may, in its discretion, provide an opportunity for participants to summarize their positions orally.

(j) The Board will prepare a decision on all issues. The decision is to include specific findings and references supporting and explaining the Board’s conclusions, and a detailed statement of the reasoning on which the conclusions are based. Any member of the Board may file a separate report stating additional or dissenting views.

Subpart C—Records of a Hearing Before a Board

§ 13.40 Administrative record of a Board.

(a) The administrative record of a hearing before a Board consists of the following:

(1) All relevant Federal Register notices.

(2) All written submissions under §13.20.

(3) The transcripts of all hearings of the Board.

(4) The initial decision of the Board.

(b) The record of the administrative proceeding is closed—

(1) Relevant to receiving information and data, at the time specified in §13.30(i); and

(2) Relevant to pleadings, at the time specified in §13.30(i) for filing a written statement of position with proposed findings and conclusions.

(c) The Board may, in its discretion, reopen the record to receive further evidence at any time before filing an initial decision.
§ 13.45 Examination of administrative record.

(a) The availability for public examination and copying of each document which is a part of the administrative record of the hearing is governed by §10.20(j). Each document available for public examination or copying is placed on public display in the office of the Dockets Management Branch promptly upon receipt in that office.

(b) Lists of nominees and comments submitted on them under §13.10(b)(3) are not subject to disclosure unless they become an issue in a court proceeding.

§ 13.50 Record for administrative decision.

The administrative record of the hearing specified in §13.40(a) constitutes the exclusive record for decision.

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

Subpart A—General Provisions.

Sec.
14.1 Scope.
14.5 Purpose of proceedings before an advisory committee.
14.7 Administrative remedies.
14.10 Applicability to Congress.
14.15 Committees working under a contract with FDA.

Subpart B—Meeting Procedures

14.20 Notice of hearing before an advisory committee.
14.22 Meetings of an advisory committee.
14.25 Portions of advisory committee meetings.
14.27 Determination to close portions of advisory committee meetings.
14.29 Conduct of a hearing before an advisory committee.
14.30 Chairman of an advisory committee.
14.31 Consultation by an advisory committee with other persons.
14.33 Compilation of materials for members of an advisory committee.
14.35 Written submissions to an advisory committee.
14.39 Additional rules for a particular advisory committee.

Subpart C—Establishment of Advisory Committees

14.40 Establishment and renewal of advisory committees.
14.55 Termination of advisory committees.

Subpart D—Records of Meetings and Hearings Before Advisory Committees

14.60 Minutes and reports of advisory committee meetings.
14.61 Transcripts of advisory committee meetings.
14.65 Public inquiries and requests for advisory committee records.
14.70 Administrative record of a public hearing before an advisory committee.
14.75 Examination of administrative record and other advisory committee records.

Subpart E—Members of Advisory Committees

14.80 Qualifications for members of standing policy and technical advisory committees.
14.82 Nominations of voting members of standing advisory committees.
14.84 Nominations and selection of non-voting members of standing technical advisory committees.
14.86 Rights and responsibilities of non-voting members of advisory committees.
14.90 Ad hoc advisory committee members.
14.95 Compensation of advisory committee members.

Subpart F—Standing Advisory Committees

14.100 List of standing advisory committees.

Subpart G—Technical Electronic Products Radiation Safety Standards Committee

14.120 Establishment of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC).
14.122 Functions of TEPRSSC.
14.125 Procedures of TEPRSSC.
14.127 Membership of TEPRSSC.
14.130 Conduct of TEPRSSC meetings; availability of TEPRSSC records.

Subpart H—Color Additive Advisory Committees

14.140 Establishment of a color additive advisory committee.
14.142 Functions of a color additive advisory committee.
14.145 Procedures of a color additive advisory committee.
14.147 Membership of a color additive advisory committee.
14.155 Fees and compensation pertaining to a color additive advisory committee.
§ 14.1 Scope.
(a) This part governs the procedures when any of the following applies:
(1) The Commissioner concludes, as a matter of discretion, that it is in the public interest for a standing or ad hoc policy or technical public advisory committee (advisory committee or committee) to hold a public hearing and to review and make recommendations on any matter before FDA and for interested persons to present information and views at an oral public hearing before the advisory committee.
(2) Under specific provisions in the act or other sections of this chapter, a matter is subject to a hearing before an advisory committee.
(b) In determining whether a group is a public advisory committee as defined in §10.3(a) and thus subject to this part and to the Federal advisory Committee Act, the following guidelines will be used:
(1) An advisory committee may be a standing advisory committee or an ad hoc advisory committee. All standing advisory committees are listed in §14.100.
(2) An advisory committee may be a policy advisory committee or a technical advisory committee. A policy advisory committee advises on broad and general matters. A technical advisory committee advises on specific technical or scientific issues, which may relate to regulatory decisions before FDA.
(3) An advisory committee includes any of its subgroups when the subgroup is working on behalf of the committee. Section 14.40(d) describes when a subgroup will be established as an advisory committee separate from the parent committee.
(4) A committee composed entirely of full-time Federal Government employees is not an advisory committee.
(5) An advisory committee ordinarily has a fixed membership, a defined purpose of providing advice to the agency on a particular subject, regular or periodic meetings, and an organizational structure, for example, a chairman and staff, and serves as a source of independent expertise and advice rather than as a representative of or advocate for a particular interest group.
for any particular interest. The following groups are not advisory committees:

(i) A group of persons convened on an ad hoc basis to discuss a matter of current interest to FDA, but which has no continuing function or organization and does not involve substantial special preparation.

(ii) A group of two or more FDA consultants meeting with the agency on an ad hoc basis.

(iii) A group of experts who are employed by a private company or a trade association which has been requested by FDA to provide its views on a regulatory matter pending before FDA.

(iv) A consulting firm hired by FDA to provide advice regarding a matter.

(6) An advisory committee that is utilized by FDA is subject to this subpart even though it was not established by FDA. In general, a committee is utilized when FDA requests advice or recommendations from the committee on a specific matter in order to obtain an independent review and consideration of the matter, and not when FDA is merely seeking the comments of all interested persons or of persons who have a specific interest in the matter.

(i) A committee formed by an independent scientific or technical organization is utilized if FDA requests advice of that committee rather than of the parent organization, or if the circumstances show that the advice given is that of the committee and not of the parent organization. A committee formed by an independent scientific or technical organization is not utilized if FDA requests advice of the organization rather than of a committee and if the recommendations of any committee formed in response to the request are subject to substantial independent policy and factual review by the governing body of the parent organization.

(ii) A committee is not utilized by FDA if it provides only information, as contrasted with advice or opinions or recommendations.

(iii) FDA is charged with seeking out the views of all segments of the public on enforcement of the laws administered by the Commissioner. The fact that a group of individuals or a committee meets regularly with FDA, for example, a monthly meeting with consumer representatives, does not make that group or committee an advisory committee. Thus, this subpart does not apply to routine meetings, discussions, and other dealings, including exchanges of views, between FDA and any committee representing or advocating the particular interests of consumers, industry, professional organizations, or others.

(7) The inclusion of one or two FDA consultants who are special Government employees on an internal FDA committee does not make that committee an advisory committee.

(8) A Public Board of Inquiry established under part 13, or other similar group convened by agreement between the parties to a regulatory proceeding pending before FDA to review and prepare an initial decision on the issues in lieu of a formal evidentiary public hearing, is acting as an administrative law tribunal and is not an advisory committee.

(9) An open public conference or meeting conducted under §10.65(b) is not an advisory committee meeting.

(10) An FDA committee that primarily has operational responsibility rather than that of providing advice and recommendations is not an advisory committee, for example, the Research Involving Human Subjects Committee (RIHSC).

(c) This part applies only when a committee convenes to conduct committee business. Site visits, social gatherings, informal discussions by telephone or during meals or while traveling or at other professional functions, or other similar activities do not constitute a meeting.

(d) An advisory committee that is utilized but not established by FDA is subject to this part only to the extent of such utilization, and not concerning any other activities of such committee.

(e) Any conference or meeting between an employee of FDA and a committee or group which is not an advisory committee shall be subject to §10.65 or other provisions specifically applicable to the committee or group, for example, part 13 for a Public Board of Inquiry.

(f) This part applies to all FDA advisory committees, except to the extent
that specific statutes require otherwise for a particular committee, for example, TEPRSSC, the Board of Tea Experts, and advisory committees established under the Medical Device Amendments of 1976.


§ 14.5 Purpose of proceedings before an advisory committee.

(a) An advisory committee is utilized to conduct public hearings on matters of importance that come before FDA, to review the issues involved, and to provide advice and recommendations to the Commissioner.

(b) The Commissioner has sole discretion concerning action to be taken and policy to be expressed on any matter considered by an advisory committee.

§ 14.7 Administrative remedies.

A person who alleges noncompliance by the Commissioner or an advisory committee with any provision of this part or the Federal Advisory Committee Act may pursue the following administrative remedies:

(a) If the person objects to any action, including a failure to act, other than denial of access to an advisory committee document, the person shall submit a petition in the form and in accordance with the requirements of §10.30. The provisions of §10.45 relating to exhaustion of administrative remedies are applicable.

(b) If the person objects to a denial of access to an advisory committee document, administrative review is in accordance with the procedures established by the Department of Health and Human Services under 45 CFR 5.34.

[44 FR 22351, Apr. 13, 1979, as amended at 55 FR 1404, Jan. 16, 1990]

§ 14.10 Applicability to Congress.

This part applies to Congress, individual Members of Congress, and other employees or representatives of Congress in the same way that they apply to any other member of the public, except that disclosure of advisory committee records to Congress is governed by §20.87.

§ 14.15 Committees working under a contract with FDA.

(a) FDA may enter into contracts with independent scientific or technical organizations to obtain advice and recommendations on particular matters, and these organizations may in turn undertake such work through existing or new committees. Whether a particular committee working under such a contract is an advisory committee subject to the Federal Advisory Committee Act and this subpart depends upon application of the criteria and principles in §14.1(b).

(b) The following minimum standards apply to any committee of an independent scientific or technical organization which is working under a contract initially executed with FDA after July 1, 1975, but which is determined not to be an advisory committee:

(1) The committee shall give public notice of its meetings and agenda, and provide interested persons an opportunity to submit relevant information and views in writing at any time, and orally at specified times. The notice may be published in the FEDERAL REGISTER or disseminated by other reasonable means. It is in any event to be filed with the Dockets Management Branch not less than 15 days before the meeting. The time for oral presentations and the extent to which the committee meets in open session other
§ 14.20 Notice of hearing before an advisory committee.

(a) Before the first of each month, and at least 15 days in advance of a meeting, the Commissioner will publish a notice in the Federal Register of all advisory committee meetings to be held during the month. Any advisory committee meetings for that month called after the publication of the general monthly notice are to be announced in the Federal Register on an individual basis at least 15 days in advance. The Commissioner may authorize an exception to these notice requirements in an emergency or for other reasons requiring an immediate meeting of an advisory committee, in which case public notice will be given at the earliest time and in the most accessible form feasible including, whenever possible, publication in the Federal Register.

(b) The Federal Register notice will include—

(1) The name of the committee;
(2) The date, time, and place of the meeting;
(3) The general function of the committee;
(4) A list of all agenda items, showing whether each will be discussed in an open or closed portion of the meeting;
(5) If any portion of the meeting is closed, a statement of the time of the open and closed portions;
(6) The nature of the subjects to be discussed during, and the reasons for closing, any closed portion of the meeting;
(7) The time set aside for oral statements and other public participation;
(8) The name, address, and telephone number of the advisory committee executive secretary and any other agency employee designated as responsible for the administrative support for the advisory committee;
(9) A statement that written submissions may be made to the advisory committee through the executive secretary at any time, unless a cutoff date has been established under §14.35(d)(2);
(10) When a notice is published in the Federal Register less than 15 days before a meeting, an explanation for the lateness of the notice; and

(c) If a public hearing before an advisory committee is used in lieu of a formal evidentiary public hearing under §14.1(a)(3), an initial notice of hearing is to be published separately in the Federal Register containing all the information described in §12.32(e). This procedure may be used for any other hearing before an advisory committee when the Commissioner concludes, as a matter of discretion, that it would be informative to the public.

(d) A list of advisory committee meetings will be distributed to the press by the Associate Commissioner for Public Affairs.

(e) All advisory committee meetings are to be included on the public calendar described in §10.100(a).

[44 FR 22351, Apr. 13, 1979, as amended at 47 FR 26375, June 1, 1982; 54 FR 9035, Mar. 3, 1989]
(1) If any matter is added to the agenda after its publication in the Federal Register under §14.20(b)(4), an attempt is to be made to inform persons known to be interested in the matter, and the change is to be announced at the beginning of the open portion of the meeting.

(2) The advisory committee meeting is to be conducted in accordance with the approved final agenda insofar as practical.

(b) Advisory committee meetings will be held at places that are reasonably accessible to the public. All advisory committee meetings will be held in Washington, DC, or Rockville, MD, or the immediate vicinity, unless the Commissioner receives and approves a written request from the advisory committee for a different location. A different location may be approved when one or more of the following applies:

(1) The total cost of the meeting to the Government will be reduced.

(2) A substantial number of the committee members will be at the location at no expense to FDA for other reasons, e.g., for a meeting of a professional association.

(3) It is a central location more readily accessible to committee members.

(4) There is a need for increased participation available at that location.

(5) The committee wishes to review work or facilities in a specific location.

(6) The committee is concerned with matters that functionally or historically occur in some other location, e.g., the Board of Tea Experts and the Science Advisory Board of the National Center for Toxicological Research will generally hold meetings in Brooklyn, NY, and in the Little Rock, AR, vicinity, respectively.

(c) Advisory committee members may, with the approval of FDA, conduct onsite visits relevant to their work.

(d) Unless the committee charter provides otherwise, a quorum for an advisory committee is a majority of the current voting members of the committee, except as provided in §14.125(c) for TEPRSSC. Any matter before the advisory committee is to be decided by a majority vote of the voting members present at the time, except that the designated Federal official may require that any final report be voted upon by all current voting members of the committee. Any current voting member of the committee may file a separate report with additional or minority views.

(e) If space is available, any interested person may attend any portion of any advisory committee meeting which is not closed.

(f) Whenever feasible, meetings are to be held in government facilities or other facilities involving the least expense to the public. The size of the meeting room is to be reasonable, considering such factors as the size of the committee, the number of persons expected to attend a meeting, and the resources and facilities available.

(g) The Commissioner may authorize a meeting to be held by conference telephone call. For these meetings, a speaker phone will be provided in a conference room located in Washington, DC, or Rockville, MD, or the immediate vicinity, to permit public participation in open portions of the meetings, as provided in §§14.25 and 14.29. These meetings generally will be brief, and authorized—

(1) For the purpose of taking final votes or otherwise confirming actions taken by the committee at other meetings; or

(2) Where time does not permit a meeting to be held at a central location.

(h) Any portion of a meeting will be closed by the committee chairman only when matters are to be discussed which the Commissioner has determined may be considered in closed session under §14.27(b). If a portion of the meeting is closed, the closed portion will be held after the conclusion of the open portion whenever practicable.

(i) Any committee member may take notes during meetings and report and discuss committee deliberations after a meeting is completed and before official minutes or a report are available, within the rules and regulations adopted by FDA and by the advisory committee with the concurrence of FDA, including all of the following:

(1) There may be no attribution of individual views expressed in a closed session or revealing of numerical votes.

(2) There may be no reporting or discussion of any particular matter if the
§ 14.25 Portions of advisory committee meetings.

An advisory committee meeting has the following portions:

(a) The open public hearing. Every committee meeting includes an open portion, which constitutes a public hearing during which interested persons may present relevant information or views orally or in writing. The hearing is conducted in accordance with §14.29.

(b) The open committee discussion. A committee discusses any matter pending before it in an open portion of its meeting unless the meeting has been closed for that matter under §14.27. To the maximum extent feasible, consistent with the policy expressed in §14.27, a committee conducts its discussion of pending matters in an open portion. No public participation is permissible during this portion of the meeting except with the consent of the committee chairman.

(c) The closed presentation of data. Information prohibited from public disclosure under part 20 and the regulations referenced therein is presented to the committee in a closed portion of its meeting. However, if information is in the form of a summary that is not prohibited from public disclosure, the presentation is to be made in an open portion of a meeting.

(d) The closed committee deliberations. Deliberations about matters before an advisory committee may be held in a closed portion of a meeting only upon an appropriate determination by the Commissioner under §14.27.

§ 14.27 Determination to close portions of advisory committee meetings.

(a) No committee meeting may be entirely closed. A portion of a meeting may be closed only in accordance with a written determination by the Commissioner under this section.

(b) The executive secretary or other designated agency employee shall prepare the initial request for a determination to close a portion of a meeting, specifying the matter(s) to be discussed during the closed portion and the reasons why the portion should be closed. The Commissioner, based upon this request and with the concurrence of the Chief Counsel, will determine whether to close a portion of a meeting. The reasons for closing a portion of a meeting will be announced in the Federal Register notice of the meeting under §14.20 in accordance with the following rules:

(1) Any determination to close a portion of a meeting restricts the closing to the shortest possible time consistent with the policy in this section.

(2) A portion of a meeting may be closed only if the Commissioner determines that the closing is permitted under 5 U.S.C. 552b(c), and that the closing is necessary.

(3) Portions of meetings may ordinarily be closed if they concern the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs.
§ 14.29 Conduct of a hearing before an advisory committee.

(a) For each meeting, the open portion for public participation, which constitutes a public hearing under §14.29(a), will be at least 1 hour, unless public participation does not last that long, and may last for whatever longer time the committee chairman determines will facilitate the work of the committee. The Federal Register notice published under §14.20 will designate the time specifically reserved for the hearing, which is ordinarily the first portion of the meeting. Further
§ 14.30 Chairman of an advisory committee.

(a) The advisory committee chairman has the authority to conduct hearings and meetings, including the authority to adjourn a hearing or meeting if the chairman determines that adjournment is in the public interest, to discontinue discussion of a matter, to conclude the open portion of a meeting, or to take any other action to further a fair and expeditious hearing or meeting.

(b) If the chairman is not a full-time employee of FDA, the executive secretary or other designated agency employee, or alternate, is to be the designated Federal employee who is assigned to the advisory committee. The designated Federal employee is also authorized to adjourn a hearing or meeting if the employee determines adjournment to be in the public interest.

§ 14.31 Consultation by an advisory committee with other persons.

(a) A committee may confer with any person who may have information or views relevant to any matter pending before the committee.

(b) An interested person may submit to the committee a written request that it confer with specific persons about any matter pending before the committee. The request is to contain
adequate justification. The committee may, in its discretion, grant the request.

(c) A committee may confer with a person who is not a Federal Government executive branch employee only during the open portions of a meeting. The person may, however, submit views in writing to the committee as part of the administrative record under §14.70. The person may participate at the closed portions of a meeting only if appointed as a special Government employee by the Commissioner as provided in paragraph (e) of this section. This paragraph (c) is not intended to bar the testimony of a person during a closed portion of a meeting about matters prohibited from public disclosure under §§14.25(c) and 14.27(c).

(d) To prevent inadvertent violation of Federal conflict of interest laws and laws prohibiting disclosure of trade secrets (18 U.S.C. 208, 21 U.S.C. 331(j), 18 U.S.C. 1905), Federal executive branch employees who are not employees of the Department may not confer, testify, or otherwise participate (other than as observers) at any portion of an advisory committee meeting unless they are appointed as special Government employees by the Commissioner under paragraph (e) of this section. This paragraph does not apply to Federal executive branch employees who are appointed as members of TEPRSSC, as provided in §14.127.

(e) The Commissioner may appoint persons as special Government employees to be consultants to an advisory committee. Consultants may be appointed to provide expertise, generally concerning a highly technical matter, not readily available from the members of the committee. Consultants may be either from outside the Government or from agencies other than the Food and Drug Administration. Reports, data, information, and other written submissions made to a public advisory committee by a consultant are part of the administrative record itemized in §14.70.

§ 14.35 Written submissions to an advisory committee.

(a) Ten copies of written submissions to a committee are to be sent to the executive secretary unless an applicable Federal Register notice or other regulations in this chapter specify otherwise. Submissions are subject to the provisions of §10.20, except that it is not necessary to send copies to the Dockets Management Branch.

(b) At the request of a committee, or on the Commissioner's own initiative, the Commissioner may issue in the Federal Register a notice requesting the submission to the committee of written information and views pertinent to a matter being reviewed by the committee. The notice may specify the manner in which the submission should be made.

§ 14.39 Additional rules for a particular advisory committee.

(a) In addition to these rules, an advisory committee may, with the concurrence of the designated Federal employee, adopt additional rules which are not inconsistent with this subpart or with other legal requirements.

(b) Any additional rules will be included in the minutes of the meeting when adopted and in the materials compiled under §14.33 and will be available for public disclosure under §14.65(c).

Subpart C—Establishment of Advisory Committees

§ 14.40 Establishment and renewal of advisory committees.

(a) An advisory committee may be established or renewed whenever it is necessary or appropriate for the committee to hold a public hearing and to review and make recommendations on any matter pending before FDA. Except for committees established by statute, before a committee is established or renewed it must first be approved by the Department pursuant to 45 CFR part 11 and by the General Services Administration.

(b) When an advisory committee is established or renewed, the Commissioner will issue a FEDERAL REGISTER notice certifying that the establishment or renewal is in the public interest and stating the structure, function, and purposes of the committee and, if it is a standing advisory committee, shall amend §14.100 to add it to the list of standing advisory committees. A notice of establishment will be published at least 15 days before the filing of the advisory committee charter under paragraph (c) of this section. A notice of renewal does not require the 15-day notice.

(c) No committee may meet or take action until its charter is prepared and filed as required by section 9(c) of the Federal Advisory Committee Act. This requirement is to be met by an advisory committee utilized by FDA, even though it is not established by the agency, prior to utilization.

(d) The regulations of the Department cited in paragraph (a) of this section provide that the charter of a parent committee may incorporate information concerning activities of a subgroup. In such instances, a subgroup will not be established as a committee distinct from the parent committee.
However, a subgroup will be established as a separate committee when the charter of the parent committee does not incorporate the activities of the subgroup, or when the subgroup includes members who are not all drawn from the parent committee.

(e) An advisory committee not required to be established by law will be established or utilized only if it is in the public interest and only if its functions cannot reasonably be performed by other existing advisory committees or by FDA.

(f) An advisory committee must meet the following standards:

(1) Its purpose is clearly defined.

(2) Its membership is balanced fairly in terms of the points of view represented in light of the functions to be performed. Although proportional representation is not required, advisory committee members are selected without regard to race, color, national origin, religion, age, or sex.

(3) It is constituted and utilizes procedures designed to assure that its advice and recommendations are the result of the advisory committee's independent judgment.

(4) Its staff is adequate. The Commissioner designates an executive secretary and alternate for every advisory committee, who are employees of FDA. The executive secretary is responsible for all staff support unless other agency employees are designated for this function.

(5) Whenever feasible, or required by statute, it includes representatives of the public interest.


§ 14.55 Termination of advisory committees.

(a) Except as provided in paragraph (c) of this section, a standing advisory committee is terminated when it is no longer needed, or not later than 2 years after its date of establishment unless it is renewed for an additional 2-year period. A committee may be renewed for as many 2-year periods as the public interest requires. The requirements for establishment of a committee under § 14.40 also apply to its renewal.

(b) FDA will issue a FEDERAL REGISTER notice announcing the reasons for terminating a committee and, if it is a standing committee, amending §14.100 to delete it from the list.

(c) TEPRSSC is a permanent statutory advisory committee established by section 358(f)(1)(A) of the Public Health Service Act (42 U.S.C. 263ff(f)(1)(A), as added by the Radiation Control for Health and Safety Act of 1968, and is not subject to termination and renewal under paragraph (a) of this section, except that a new charter is prepared and filed at the end of each 2-year period as provided in §14.40(c). Also, the statutory medical device classification panels established under section 513(b)(1) of the act and part 860, and the statutory medical device good manufacturing practice advisory committees established under section 520(f)(3) of the act, are specifically exempted from the normal 2-year duration period.

(d) The Board of Tea Experts is a permanent statutory advisory committee established by the Tea Importation Act (21 U.S.C. 42) and is not subject to termination and renewal under paragraph (a) of this section, except that a new charter is prepared and filed at the end of each 2-year period as provided in §14.40(c).

(e) Color additive advisory committees are required to be established under the circumstances specified in section 721(b)(5) (C) and (D) of the act. A color additive advisory committee is subject to the termination and renewal requirements of the Federal Advisory Committee Act and of this part.

Subpart D—Records of Meetings and Hearings Before Advisory Committees

§ 14.60 Minutes and reports of advisory committee meetings.

(a) The Executive secretary or other designated agency employee prepares detailed minutes of all advisory committee meetings, except that less detailed minutes may be prepared for open portions of meetings which under §14.61, must be transcribed or recorded by the agency. Their accuracy is approved by the committee and certified by the chairman. The approval and certification may be accomplished by mail or by telephone.
§ 14.61 Transcripts of advisory committee meetings.

(a) The agency will arrange for a transcript or recording to be made for each portion of a meeting.

(b) A transcript or recording of an open portion of a meeting made by FDA is to be included in the record of the committee proceedings.

(c) A transcript or recording of any closed portion of a meeting made by FDA will not be included in the administrative record of the committee proceedings. The transcript or recording will be retained as confidential by FDA, and will not be discarded or erased.

(d) Any transcript or recording of a meeting or portion thereof which is publicly available under this section will be available at actual cost of duplication, which will be, where applicable, the fees established in §20.42. FDA may furnish the requested transcript or recording for copying to a private contractor who shall charge directly for the cost of copying under §20.51.

(e) A person attending any open portion of a meeting may, consistent with the orderly conduct of the meeting, record or otherwise take a transcript of the meeting. This transcription will not be part of the administrative record.

(f) Only FDA may make a transcript or recording of a closed portion of a meeting.

§ 14.65 Public inquiries and requests for advisory committee records.

(a) Public inquiries on general committee matters, except requests for records, are to be directed to: Committee Management Officer (HFA–306), Office of Management and Operations, Food and Drug Administration, Department of Health and Human Services, 5600 Fishers Lane, Rockville, MD 20857.

(b) Public inquiries on matters relating to a specific committee, except requests for records, are to be directed to the executive secretary or the designated agency employee listed in the
§ 14.70 Administrative record of a public hearing before an advisory committee.

(a) Advice or recommendations of an advisory committee may be given only on matters covered in the administrative record of the committee’s proceedings. Except as specified in other FDA regulations, the administrative record consists of all the following items relating to the matter:

1. Any transcript or recording of an open portion of a meeting.
2. The minutes of all portions of all meetings, after any deletions under §14.60(b)(4).
3. All written submissions to and information considered by the committee.
4. All reports made by the committee.
5. Any reports prepared by a consultant under §14.31(e).

(b) The record of the proceeding is closed at the time the advisory committee renders its advice or recommendations or at any earlier time specified by the committee or in other sections in this chapter.

§ 14.75 Examination of administrative record and other advisory committee records.

(a) The administrative record and other committee records are available for public disclosure under part 20, except as provided in paragraph (b) of this section, at the following times:

1. The written information for consideration by the committee at any meeting: at the same time it is made available to the committee.
2. The transcript or recording of any open portion of a meeting: as soon as it is available.
3. The minutes of any open portion of a meeting: after they have been approved by the committee and certified by the chairman.
4. The brief summary of any closed portion of a meeting prepared under §14.60(c): as soon as it is available.
5. All written information or views submitted to the committee at an open portion of a meeting: as soon as they are submitted.
6. The minutes or portions thereof of a closed portion of a meeting:
   i. For a matter not directed to be maintained as confidential under §14.22(i)(2): After the advice or report of the committee relevant to those minutes or portions thereof is acted upon by the Commissioner, or upon a determination by the Commissioner that such minutes or portions thereof may be made available for public disclosure without undue interference with agency or advisory committee operations.
   ii. For a matter directed to be maintained as confidential under §14.22(i)(2): After the advice or report of the committee relevant to those minutes or portions thereof is acted upon by the Commissioner, or upon a determination by the Commissioner that such minutes or portions thereof may be made available for public disclosure without undue interference with agency or advisory committee operations. Such formal advice or report may be retained as confidential while it is under active advisement.
7. Any other committee records relating to the matter, except transcripts and recordings of closed portions of meetings: After the advice or report of the committee relevant to those records is acted upon by the Commissioner, or upon a determination by the Commissioner that the records may be made available for public disclosure without undue interference with agency or committee operations.

(b) The following information contained in the administrative record is not available for public examination or copying except as provided in §12.32(g):

1. Material provided to the committee by FDA that is exempt from public disclosure under part 20 and the regulations referenced there.
2. Material provided to the advisory committee by a person making a presentation described in §14.25(c) and...
which is prohibited from public disclosure under part 20 and the regulations referenced there.

(c) The Dockets Management Branch (HFA-305) will maintain a file for each committee containing the following principal records for ready access by the public:

(1) The committee charter.
(2) A list of committee members and their curricula vitae.
(3) The minutes of committee meetings.
(4) Any formal advice or report of the committee.


Subpart E—Members of Advisory Committees

§ 14.80 Qualifications for members of standing policy and technical advisory committees.

(a) Members of a policy advisory committee—

(1) Shall have diverse interests, education, training, and experience; specific technical expertise is not a requirement;
(2) Are subject to the conflict of interest laws and regulations either as special Government employees or as members of the uniformed services, including the Commissioned Corps of the Public Health Service (the Commissioner has determined that, because members representing particular interests, e.g., a representative of labor, industry, consumers, or agriculture, are included on advisory committees specifically for the purpose of representing these interests, any financial interest covered by 18 U.S.C. 208(a) in the class which the member represents is irrelevant to the services which the Government expects from them and thus is hereby exempted under 18 U.S.C. 208(b) as too remote and inconsequential to affect the integrity of their services); and
(3) Shall be voting members.

(b) Technical advisory committee.

Voting members of technical advisory committees—

(1) Shall have expertise in the subject matter with which the committee is concerned and have diverse professional education, training, and experience so that the committee will reflect a balanced composition of sufficient scientific expertise to handle the problems that come before it; and
(ii) Except for members of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC), are subject to the conflict of interest laws and regulations either as special Government employees or as members of the uniformed services, including the Commissioned Corps of the Public Health Service.

(2) The Commissioner shall, when required by statute, and may when not required by statute, provide for nonvoting members of a technical advisory committee to serve as representatives of and liaison with interested organizations. Nonvoting members—

(i) Shall be selected by the interested organizations, as provided in §14.84; technical expertise in the subject matter with which the committee is involved is not a requirement; and
(ii) May be special Government employees subject to the conflict of interest laws and regulations, except as provided in §14.84(e).

(2) The Commissioner shall, when required by statute, and may when not required by statute, provide for nonvoting members of a technical advisory committee to serve as representatives of and liaison with interested organizations. Nonvoting members—

(i) Shall be selected by the interested organizations, as provided in §14.84; technical expertise in the subject matter with which the committee is involved is not a requirement; and
(ii) May be special Government employees subject to the conflict of interest laws and regulations, except as provided in §14.84(e).

(c) A person may serve as a voting or nonvoting member on only one FDA advisory committee unless the Commissioner determines in writing that dual membership will aid the work of the committees involved and is in the public interest.

(d) Members of FDA advisory committees, and the chairman, are appointed from among those nominated under §§14.82 and 14.84 and from any other sources by the Secretary, or, by delegation of authority, by the Assistant Secretary for Health, or the Commissioner.

(e) Members appointed to an advisory committee serve for the duration of the committee, or until their terms of appointment expire, they resign, or they are removed from membership by the Commissioner.

(f) A committee member may be removed from membership for good cause. Good cause includes excessive absenteeism from committee meetings, a demonstrated bias that interferes with the ability to render objective advice, failure to abide by the procedures established in this subpart, or violation
of other applicable rules and regulations, e.g., for nonvoting members, the provisions of §14.86(c).

(g) Consultants appointed under §14.31(e) are not members of advisory committees.


§ 14.82 Nominations of voting members of standing advisory committees.

(a) The Commissioner will publish one or more notices in the Federal Register each year requesting nominations for voting members of all existing standing advisory committees. The notice will invite the submission of nominations for voting members from both individuals and organizations.

(b) The notice announcing the establishment of a new committee under §14.40(b) will invite the submission of nominations for voting members.

(c) A person may nominate one or more qualified persons to an advisory committee. Nominations will specify the advisory committee for which the nominee is recommended and will include a complete curriculum vitae of the nominee. Nominations are to state that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest that would preclude membership.

(d) Voting members serve as individuals and not as representatives of any group or organization which nominated them or with which they may be affiliated.

§ 14.84 Nominations and selection of nonvoting members of standing technical advisory committees.

(a) This section applies when the Commissioner concludes that a technical advisory committee should include nonvoting members to represent consumer interests, except as provided in paragraph (c)(5) of this section, the Commissioner publishes a notice in the Federal Register requesting nominations for each specific committee, or subcommittee, for which nonvoting members are to be appointed.

(1) A period of 30 days will be permitted for submission of nominations for that committee or subcommittee. Interested persons may nominate one or more qualified persons to represent consumer interests. Although nominations from individuals will be accepted, individuals are encouraged to submit their nominations through consumer organizations as defined in paragraph (c)(3) of this section. Nominations of qualified persons for general consideration as nonvoting members of unspecified advisory committees or subcommittees may be made at any time. All nominations are to be submitted in writing to the Office of Consumer Affairs (HFE-40), Food and Drug Administration, Rm. 16-85, 5600 Fishers Lane, Rockville, MD 20857.

(2) A complete curriculum vitae of any nominee is to be included. Nominations must state that the nominee is aware of the nomination, is willing to serve as a member of an advisory committee, and appears to have no conflict of interest. The nomination must state whether a nominee is interested only in a particular advisory committee or subcommittee, or whether the nominee is interested in becoming a member of any advisory committee or subcommittee. Nominations that do not comply with the requirements of this paragraph will not be considered.

(3) The Office of Consumer Affairs will compile a list of organizations whose objectives are to promote, encourage, and contribute to the advancement of consumer education and to the resolution of consumer problems. All organizations listed are entitled to vote upon the nominees. The list will include organizations representing the public interest, consumer advocacy groups, and consumer/health branches of Federal, State, and local governments. Any organization that
§ 14.86 Rights and responsibilities of nonvoting members of advisory committees.

(a) A nonvoting member of an advisory committee selected to represent

meets the criteria may be included on such list on request.

(4) The executive secretary, or other designated agency employee, will review the list of nominees and select three to five qualified nominees to be placed on a ballot. Names not selected will remain on a list of eligible nominees and be reviewed periodically by the Office of Consumer Affairs to determine continued interest. Upon selection of the nominees to be placed on the ballot, the curriculum vitae for each of the nominees will be sent to each of the organizations on the list compiled under paragraph (c)(3) of this section, together with a ballot to be filled out and returned within 30 days. After the time for return of the ballots has expired, the ballots will be counted and the nominee who has received the highest number of votes will be selected as the nonvoting member representing consumer interests for that particular advisory committee or subcommittee. In the event of a tie, the Commissioner will select the winner by lot from among those tied for the highest number of votes.

(5) If a member representing consumer interests resigns or is removed before termination of the committee on which the member is serving, the following procedures will be used to appoint a replacement to serve out the term of the former member:

(i) The Commissioner will appoint the runner-up, in order of number of ballots received, on the original ballot submitted under paragraph (c)(4) of this section to fill the vacancy. If the runner-up is no longer willing to serve as a member, then the next runner-up will be appointed.

(ii) If none of the nominees on the original ballot is willing to serve, or if there was only one nominee on the original ballot, the Office of Consumer Affairs will contact by telephone eligible individuals whose names have been submitted in the past as candidates for membership as representatives of consumer interests. A list of persons who are interested in serving on an advisory committee will then be prepared. The curriculum vitae of these persons, together with a ballot, will be sent to a representative number of consumer organizations that have been determined to be eligible to vote for consumer representatives in accordance with paragraph (c)(3) of this section. After 4 days have elapsed, the Office of Consumer Affairs will contact the consumer organizations by telephone and elicit their votes. The candidate who has received the highest number of votes will be selected. In the event of a tie, the Commissioner will select the winner by lot from among those tied for the highest number of votes.

(d) To select a nonvoting member to represent industry interests, the Commissioner will publish, for each committee for which the Commissioner has determined to appoint a nonvoting member, a notice requesting that, within 30 days, any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests send a letter stating that interest to the FDA employee designated in the notice. After 30 days, a letter will be sent to each organization that has expressed an interest, attaching a complete list of all such organizations, and stating that it is their responsibility to consult with each other in selecting, within 60 days after receipt of the letter, a single nonvoting member to represent industry interests for that committee. If no individual is selected within 60 days, the Commissioner will select the nonvoting member representing industry interests.

(e) The Commissioner has determined that, because nonvoting members representing consumer and industry interests are included on advisory committees specifically for the purpose of representing such interests and have no vote, any financial interest covered by 18 U.S.C. 208(a) in the class which the member represents is irrelevant to the services the Government expects from them and thus is hereby exempted under 18 U.S.C. 208(b) as too remote and inconsequential to affect the integrity of their services.

Food and Drug Administration, HHS

and serve as a liaison with interested
individuals, associations, and organiza-
tions has the same rights as any other
committee member except that—

(1) A nonvoting member may vote
only on procedural matters such as ad-
ditional rules adopted under §14.39(a),
approval of minutes under §14.60(a), de-
cisions on transcripts under §14.61(b),
and future meeting dates;

(2) A nonvoting member who is a rep-
resentative of industry interest may
have access to data and information
that constitute a trade secret or con-
fidential commercial or financial infor-
mation as defined in §20.61 only if the
person has been appointed as a special
Government employee under §14.80(b).

(b) A nonvoting member of an advi-
sory committee is subject to, and shall
abide by, all rules and regulations
adopted by FDA and the committee.

(c) It is the responsibility of the non-
voting consumer and industry members
of an advisory committee to represent
the consumer and industry interests in
all deliberations.

(1) A nonvoting member does not rep-
resent any particular organization or
group, but rather represents all inter-
ested persons within the class which
the member is selected to represent.
Accordingly, an interested person with-
in the class represented by that non-
voting member may, upon request,
have access to all written statements
or oral briefings concerning the com-
mittee prepared by the nonvoting
member for distribution to any person
outside the committee. When docu-
ments are prepared with non-Govern-
ment funds, persons desiring copies
may be required to pay a reasonable fee
to cover printing and similar costs.

(3) The nonvoting member reviews all
official committee minutes to assure
their completeness and accuracy.

(3) The nonvoting member acts as a
liaison between the committee and the
interested persons whom that member
represents, and transmits requests for
information from the committee and
relevant information and views to the
committee. The nonvoting member
takes the initiative in contacting in-
terested persons whom the member
represents to seek out relevant infor-
mation and views and to relate the
progress of the advisory committee.

(4) A nonvoting industry member rep-
resents all members of the industry,
and not any particular association,
company, product, or ingredient. If a
matter comes before the committee
that directly or indirectly affects the
company employing the nonvoting in-
dustry member, the member shall so
inform the committee but need not be
absent during the discussion or decline
to participate in the discussion. a non-
voting industry member may not dis-
cuss the company's position as such,
but may discuss any matter in general
terms. All presentations and discus-
sions of scientific data and their inter-
pretation on behalf of a company will
occur in open session, except as pro-
vided in §14.29(c).

(5) A nonvoting member of an advi-
sory committee may not make any
presentation to that advisory com-
mittee during a hearing conducted by
that committee.

(6) Although a nonvoting member
serves in a representative capacity, the
nonvoting member shall exercise re-
straint in performing such functions
and may not engage in unseemly advoc-
cacy or attempt to exert undue influ-
ence over the other members of the
committee.

(d) A nonvoting member of an advi-
sory committee may be removed by the
Commissioner for failure to comply
with this section as well as §14.80(f).

§ 14.95 Compensation of advisory com-
mittee members.

In selecting members of an ad hoc ad-
visory committee, the Commissioner
may use the procedures in §§14.82 and
14.84 or any other procedure deemed ap-
propriate.

§ 14.90 Ad hoc advisory committee
members.

(a)(1) Except as provided in para-
graphs (a) (2) and (3) of this section, all
voting advisory committee members
shall, and nonvoting members may, be
appointed as special Government em-
ployees and receive a consultant fee
and be reimbursed for travel expenses,
including per diem in lieu of subsist-
ence, unless such compensation and re-
imbursement are waived.

(2) Members of the Technical Elec-
tronic Product Radiation Safety
§ 14.100 Standards Committee (TEPRSSC) are not appointed as special Government employees. Any member of TEPRSSC who is not a Federal employee or member of the uniformed services, including the Commissioned Corps of the Public Health Service, shall receive a consultant fee and be reimbursed for travel expenses, including per diem in lieu of subsistence, unless such compensation and reimbursement are waived.

(3) Voting and nonvoting advisory committee members who are members of the uniformed services, including the Commissioned Corps of the Public Health Service, provide service on Food and Drug Administration advisory committees as part of their assigned functions, are not appointed as special government employees, but are reimbursed by the Food and Drug Administration for travel expenses.

(b) Notwithstanding the member’s primary residence, an advisory committee member, while attending meetings of the full committee or a subcommittee, will be paid whether the meetings are held in the Washington, DC, area or elsewhere.

(c) A committee member who participates in any agency-directed assignment will be paid at an hourly rate when doing assigned work at home, a place of business, or in an FDA facility located within the member’s commuting area, and at a daily rate when required to travel outside of that commuting area to perform the assignment. A committee member will not be paid for time spent on normal preparation for a committee meeting.

(i) An agency-directed assignment is an assignment that meets the following criteria:

(a) An analysis of the risks and benefits of the use of a class of drugs or a report on a specific problem generated by an IND or NDA;

(b) The performance of similar investigations or analysis of complex industry submissions to support advisory committee deliberations other than normal meeting preparation;

(c) The preparation of a statistical analysis leading to an estimate of toxicologically safe dose levels; and

(d) The design or analysis of animal studies of toxicity, mutagenicity, teratogenicity, or carcinogenicity.

(ii) The performance of an IND or NDA review or similar review.

(2) A committee member who undertakes a special assignment, the end product of which does not represent the end product of the advisory committee, but rather of the committee member’s own assignment, can be compensated. Should this preparatory work by members collectively result in an end product of the committee, this is to be considered normal meeting preparation and committee members are not to be compensated for this work.

(d) Salary while in travel status is authorized when a committee member’s ordinary pursuits are interrupted for the substantial portion of an additional day beyond the day or days spent in performing those services, and as a consequence the committee member loses some regular compensation. This applies on weekends and holidays if the special Government employee loses income that would otherwise be earned on that day. For travel purposes, a substantial portion of a day is defined as 50 percent of the working day, and the traveler will be paid at a daily rate.


Subpart F—Standing Advisory Committees

§ 14.100 List of standing advisory committees.

Standing advisory committees and the dates of their establishment are as follows:

(a) Office of the Commissioner—(1) Board of Tea Experts.

(i) Date established: March 2, 1897.

(ii) Function: Advises on establishment of uniform standards of purity, quality, and fitness for consumption of all tea imported into the United States under 21 U.S.C. 42.

(2) Science Board to the Food and Drug Administration.

(i) Date established: June 26, 1992.
Food and Drug Administration, HHS

(ii) Function: The board shall provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency sponsored intramural and extramural scientific research programs.

(b) Center for Biologics Evaluation and Research—(1) Allergenic Products Advisory Committee.
   (i) Date established: July 9, 1984.
   (ii) Function: Reviews and evaluates data on the safety and effectiveness of allergenic biological products intended for use in the diagnosis, prevention, or treatment of human disease.

(2) Biological Response Modifiers Advisory Committee.
   (i) Date established: October 28, 1988.
   (ii) Function: Reviews and evaluates data on the safety and effectiveness of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.

(3) Blood Products Advisory Committee.
   (i) Date established: May 13, 1980.
   (ii) Function: Reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

(4) [Reserved]

(5) Vaccines and Related Biological Products Advisory Committee.
   (i) Date established: December 31, 1979.
   (ii) Function: Reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

(6) Transmissible Spongiform Encephalopathies Advisory Committee.
   (i) Date established: June 21, 1995.
   (ii) Function: Reviews and evaluates available scientific data concerning the safety of products which may be at risk for transmission of spongiform encephalopathies having an impact on the public health.

(c) Center for Drug Evaluation and Research—(1) Anesthetic and Life Support Drugs Advisory Committee.
   (i) Date established: May 1, 1978.
   (ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

(2) Anti-Infective Drugs Advisory Committee.
   (i) Date established: October 7, 1980.

(3) Antiviral Drugs Advisory Committee.
   (i) Date established: February 15, 1989.
   (ii) Function: Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

(4) Arthritis Advisory Committee.
   (i) Date established: April 5, 1974.
   (ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

(5) Cardiovascular and Renal Drugs Advisory Committee.
   (i) Date established: August 27, 1970.
   (ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

(6) Dermatologic and Ophthalmic Drugs Advisory Committee.
   (i) Date established: October 7, 1980.
   (ii) Function: Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of dermatologic and ophthalmic disorders.

(7) Drug Abuse Advisory Committee.
§ 14.100

(i) Date established: May 31, 1978.
(ii) Function: Advises on the scientific and medical evaluation of information gathered by the Department of Health and Human Services and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

(8) Endocrinologic and Metabolic Drugs Advisory Committee.
(i) Date established: August 27, 1970.
(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in endocrine and metabolic disorders.

(9) Advisory Committee for Reproductive Health Drugs.
(i) Date established: March 23, 1978.
(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics, gynecology, and related specialties.

(10) Gastrointestinal Drugs Advisory Committee.
(i) Date established: March 3, 1978.
(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal diseases.

(11) Oncologic Drugs Advisory Committee.
(i) Date established: September 1, 1978.
(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in treatment of cancer.

(12) Peripheral and Central Nervous System Drugs Advisory Committee.
(i) Date established: June 4, 1974.
(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in neurological disease.

(13) Psychopharmacologic Drugs Advisory Committee.
(i) Date established: June 4, 1974.
(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of psychiatry and related fields.

(14) Pulmonary-Allergy Drugs Advisory Committee.
(i) Date established: February 17, 1972.
(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

(15) Medical Imaging Drugs Advisory Committee.
(i) Date established: August 30, 1967.
(ii) Function: Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

(16) Advisory Committee for Pharmaceutical Science.
(i) Date established: January 22, 1990.

(17) Nonprescription Drugs Advisory Committee.
(i) Date established: August 27, 1991.
(ii) Functions: The committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases.

(18) Pharmacy Compounding Advisory Committee.
(i) Date established: February 12, 1998.
(ii) Function: Provides advice on scientific, technical, and medical issues concerning drug compounding by pharmacists and licensed practitioners.

(d) Center for Devices and Radiological Health—(1) Medical Devices Advisory Committee.
(i) Date established: October 27, 1990.
(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.
Food and Drug Administration, HHS

§ 14.125

Subpart G—Technical Electronic Products Radiation Safety Standards Committee

§ 14.120 Establishment of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC).

The Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC), consisting of 15 members, is established in accordance with the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f(f)(1)(A)) to provide consultation before the Commissioner prescribes any performance standard for an electronic product.

§ 14.122 Functions of TEPRSSC.

(a) In performing its function of advising the Commissioner, TEPRSSC—

(1) May propose electronic product radiation safety standards to the Commissioner for consideration;

(2) Provides consultation to the Commissioner on all performance standards proposed for consideration under 42 U.S.C. 263f; and

(3) May make recommendations to the Commissioner on any other matters it deems necessary or appropriate in fulfilling the purposes of the act.

(b) Responsibility for action on performance standards under 42 U.S.C. 263f rests with the Commissioner, after receiving the advice of TEPRSSC.

§ 14.125 Procedures of TEPRSSC.

(a) When the Commissioner is considering promulgation of a performance standard for an electronic product, or an amendment of an existing standard, before issuing a proposed regulation in the Federal Register the Commissioner will submit to TEPRSSC the proposed standard or amendment under consideration, together with other relevant information to aid TEPRSSC in its deliberations.

(b) The agenda and other material to be considered at any meeting will be sent to members whenever possible at least 2 weeks before the meeting.

(c) Ten members constitute a quorum, provided at least three members are present from each group specified in 42 U.S.C. 263f(f)(1)(A) and in § 14.127(a), i.e., Government, industry, and the public.

[54 FR 9036, Mar. 3, 1989]
§ 14.127  

(d) The chairman of TEPRSSC will ordinarily submit a report to the Commissioner of the committee's consideration of any proposed performance standard for an electronic product within 60 days after consideration. If the chairman believes that more time is needed, the chairman will inform the Director of the Center for Devices and Radiological Health in writing, in which case an additional 30 days will be allowed to make the report.

(e) Sections 14.1 through 14.7 apply to TEPRSSC, except where other provisions are specifically included in §§ 14.120 through 14.130.


§ 14.127 Membership of TEPRSSC.

(a) The Commissioner will appoint the members after consultation with public and private organizations concerned with the technical aspect of electronic product radiation safety. TEPRSSC consists of 15 members, each of whom is technically qualified by training and experienced in one or more fields of science or engineering applicable to electronic product radiation safety, as follows:

1. Five members selected from government agencies, including State and Federal Governments.
2. Five members selected from the affected industries after consultation with industry representatives.
3. Five members selected from the general public, of whom at least one shall be a representative of organized labor.

(b) The Commissioner will appoint a committee member as chairman of TEPRSSC.

(c) Appointments of members are for a term of 3 years or as specified by the Commissioner.

1. The chairman is appointed for a term concurrent with the chairman's term as a member of TEPRSSC. If the chairmanship becomes vacant without adequate notice, the executive secretary may appoint a committee member as temporary chairman pending appointment of a new chairman by the Commissioner.
2. Members may not be reappointed for a second consecutive full term.

(d) A person otherwise qualified for membership is not eligible for selection as a member of TEPRSSC from Government agencies or the general public if the Commissioner determines that the person does not meet the requirements of the conflict of interest laws and regulations.

(e) Retention of membership is conditioned upon the following:

1. Continued status as a member of the group from which the member was selected as specified in paragraph (a) of this section.
2. Absence of any conflict of interest during the term of membership as specified in paragraph (d) of this section.
3. Active participation in TEPRSSC activities.
4. Appointment as a member of TEPRSSC is conditioned on certification that the prospective member:
   1. Agrees to the procedures and criteria specified in this subpart.
   2. Has no conflict of interest as specified in paragraph (d) of this section.
   3. Will notify the executive secretary of TEPRSSC before any change in representative status on TEPRSSC which may be contrary to the conditions of the appointment.
5. Members of TEPRSSC who are not full-time officers or employees of the United States receive compensation under § 14.95, in accordance with 42 U.S.C. 210(c).

§ 14.130 Conduct of TEPRSSC meeting; availability of TEPRSSC records.

(a) In accordance with 42 U.S.C. 263f(f)(1)(B), all proceedings of TEPRSSC are recorded, and the record of each proceeding is available for public inspection.

(b) All proceedings of TEPRSSC are open except when the Commissioner has determined, under § 14.27, that a portion of a meeting may be closed.

Subpart H—Color Additive Advisory Committees

§ 14.140 Establishment of a color additive advisory committee.

The Commissioner will establish a color additive advisory committee under the following circumstances:

(a) The Commissioner concludes, as a matter of discretion, that it would be
Food and Drug Administration, HHS

§ 14.142 Functions of a color additive advisory committee.

(a) A color additive advisory committee reviews all available information relating to the matter referred to it, including all information contained in any pertinent color additive petition and in FDA files. All information reviewed is placed on public display and is available for review at the office of the Dockets Management Branch.

(b) The Commissioner specifies to the color additive advisory committee, in writing, the issues on which review and recommendations are requested.

(c) The date of the first meeting of a color additive advisory committee, following receipt of the administrative record by each of the committee members, is designated as the beginning of the period allowed for consideration of the matter by the committee. Within 60 days after the first meeting, unless the time is extended as provided in paragraph (d) of this section, the chairman of the committee shall certify to the Commissioner the report containing the recommendations of the committee, including any minority report. The report states the recommendations of the committee and the reasons or basis for them. The report includes copies of all material considered by the committee in addition to the administrative record furnished to it.

(d) If the chairman concludes that the color additive advisory committee needs additional time, the chairman shall so inform the Commissioner in writing and may certify the report of the committee to the Commissioner within 90 days instead of 60 days.

in the public interest for a color additive advisory committee to review and make recommendations about the safety of a color additive on which important issues are pending before FDA and for interested persons to present information and views at an oral public hearing before a color additive advisory committee.

(b) There is an issue arising under section 721(b)(5)(B) of the act concerning the safety of a color additive, including its potential or actual carcinogenicity, that requires the exercise of scientific judgment and a person who would be adversely affected by the issuance, amendment, or repeal of a regulation listing a color additive requests that the matter, or the Commissioner as a matter of discretion determines that the matter should, be referred to a color additive advisory committee.

(1) Paragraph (b) does not apply to any issue arising under the transitional provisions in section 203 of the Color Additive Amendments of 1960 relating to provisional listing of commercially established colors. A color additive advisory committee to consider any such matter will be established under paragraph (a) of this section.

(2) A request for establishment of a color additive advisory committee is to be made in accordance with §10.30. The Commissioner may deny any petition if inadequate grounds are stated for establishing a color additive advisory committee. A request for establishment of a color additive advisory committee may not rest on mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires scientific judgment and justifies a hearing before a color additive advisory committee. When it conclusively appears from the request for a color additive advisory committee that the matter is premature or that it does not involve an issue arising under section 721(b)(5)(B) of the act or that there is no genuine and substantial issue of fact requiring scientific judgment, or for any other reason a color additive advisory committee is not justified, the Commissioner may deny the establishment of a color additive advisory committee.

(3) Establishment of a color additive advisory committee on the request of an interested person is conditioned upon receipt of the application fee specified in §14.155.

(4) Any person adversely affected may request referral of the matter to a color additive advisory committee at any time before, or within 30 days after, publication of an order of the Commissioner acting upon a color additive petition or proposal.
§ 14.145  Procedures of a color additive advisory committee.

(a) A color additive advisory committee is subject to all the requirements of the Federal Advisory Committee Act and this part.

(b) All interested persons have a right to consult with the color additive advisory committee reviewing a matter and to submit information and views to a color additive advisory committee, in accordance with the procedures in this part.

§ 14.147  Membership of a color additive advisory committee.

(a) The members of a color additive advisory committee are selected in the following manner:

(1) If a color additive advisory committee is established for purposes that do not include review of an issue arising under section 721(b)(5)(B) of the act, or is established on the initiative of the Commissioner, the Commissioner may use the procedure in paragraph (a)(2) of this section to select the members or may use an existing standing advisory committee listed in § 14.100, or may establish a new advisory committee under this subpart. Once the Commissioner has established a color additive advisory committee and has referred to it a matter relating to a color additive, no interested person may subsequently request that an additional or different color additive advisory committee be established to review and make recommendations about that color additive.

(2) If the Commissioner established a color additive advisory committee to review an issue arising under section 721(b)(5)(B) of the act on the request of an interested person, it shall be established under the following requirements:

(i) Except as provided in paragraph (a)(2) (ii) and (iii) of this section, the Commissioner will request the National Academy of Sciences to select the members of a color additive advisory committee from among experts qualified in the subject matter to be reviewed by the committee, and of adequately diversified professional backgrounds. The Commissioner will appoint one of the members as the chairman.

(ii) If the National Academy of Sciences is unable or refuses to select the members of a color additive advisory committee, the Commissioner will select the members.

(iii) If the Commissioner and the requesting party agree, section 721(b)(5)(D) of the act may be waived and the matter may be referred to any standing advisory committee listed in § 14.100 or to any advisory committee established under any other procedure that is mutually agreeable. Once the Commissioner has established a color additive advisory committee and has referred to it a matter relating to a color additive, no interested person may subsequently request that an additional or different color additive advisory committee be established to review and make recommendations about that color additive.

(b) Members of a color additive advisory committee are subject to the requirements of the Federal Advisory Committee Act and this subpart, except that no member of a color additive advisory committee may by reason of such membership alone be a special government employee or be subject to the conflict of interest laws and regulations.

§ 14.155  Fees and compensation pertaining to a color additive advisory committee.

(a) When a matter is referred to a color additive advisory committee, all related costs, including personal compensation of committee members, travel, materials, and other costs, are borne by the person requesting the referral, such costs to be assessed on the basis of actual cost to the government. The compensation of such costs includes personal compensation of committee members at a rate not to exceed $128.80 per member per day.

(b) In the case of a request for referral to a color additive advisory committee, a special advance deposit is to be made in the amount of $2,500. Where required, further advances in increments of $2,500 each are to be made.
upon request of the Commissioner. All deposits for referrals to a color advisory committee in excess of actual expenses will be refunded to the depositor.

(c) All deposits and fees required by this section are to be paid by money order, bank draft, or certified check drawn to the order of the Food and Drug Administration, collectable at par in Washington, D.C. All deposits and fees are to be forwarded to the Associate Commissioner for Management and Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, and after appropriate record of them is made, they will be transmitted to the Treasurer of the United States for deposit in the special account “Salaries and Expenses, Certification, Inspection, and Other Services, Food and Drug Administration.”

(d) The Commissioner may waive or refund such fees in whole or in part when, in the Commissioner’s judgment, such action will promote the public interest. Any person who believes that payment of these fees will be a hardship may petition the Commissioner under §10.30 to waive or refund the fees.

Subpart I—Advisory Committees for Human Prescription Drugs

§ 14.160 Establishment of standing technical advisory committees for human prescription drugs.

The standing technical advisory committees for human prescription drugs are established to advise the Commissioner:

(a) Generally on the safety and effectiveness, including the labeling and advertising, and regulatory control of the human prescription drugs falling within the pharmacologic class covered by the advisory committee and on the scientific standards appropriate for a determination of safety and effectiveness in that class of drugs.

(b) Specifically on any particular matter involving a human prescription drug pending before FDA, including whether the available information is adequate to support a determination that:

1. A particular IND study may properly be conducted;

2. A particular drug meets the statutory standard for proof of safety and effectiveness necessary for approval or continued approval for marketing; or

3. A particular drug is properly classified as a new drug, an old drug, or a banned drug.

§ 14.171 Utilization of an advisory committee on the initiative of FDA.

(a) Any matter involving a human prescription drug under review within the agency may, in the discretion of the Commissioner, be the subject of a public hearing and continuing or periodic review by the appropriate standing technical advisory committee for human prescription drugs. The Commissioner’s determinations on the agenda of the committee are based upon the priorities of the various matters pending before the agency which fall within the pharmacologic class covered by that committee.

(b) High priority for such hearing and review by the appropriate standing technical advisory committee for human prescription drugs are given to the following types of human prescription drugs:

1. Investigational drugs which are potential therapeutic advances over currently marketed products from the standpoint of safety or effectiveness, or which pose significant safety hazards, or which present narrow benefit-risk considerations requiring a close judgmental decision on approval for marketing, or which have a novel delivery system or formulation, or which are the subject of major scientific or public controversy, or which may be subject to special regulatory requirements such as a limitation on clinical trials, a patient followup requirement, postmarketing Phase IV studies, distributional controls, or boxed warnings.

2. Marketed drugs for which an important new use has been discovered or which pose newly discovered safety hazards, or which are the subject of major scientific or public controversy, or which may be subject to important regulatory actions such as withdrawal of approval for marketing, boxed warnings, distributional controls, or newly required scientific studies.

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1. Investigational drugs which are potential therapeutic advances over currently marketed products from the standpoint of safety or effectiveness, or which pose significant safety hazards, or which present narrow benefit-risk considerations requiring a close judgmental decision on approval for marketing, or which have a novel delivery system or formulation, or which are the subject of major scientific or public controversy, or which may be subject to special regulatory requirements such as a limitation on clinical trials, a patient followup requirement, postmarketing Phase IV studies, distributional controls, or boxed warnings.

2. Marketed drugs for which an important new use has been discovered or which pose newly discovered safety hazards, or which are the subject of major scientific or public controversy, or which may be subject to important regulatory actions such as withdrawal of approval for marketing, boxed warnings, distributional controls, or newly required scientific studies.
§ 14.172 Utilization of an advisory committee at the request of an interested person.

Any interested person may request, under §10.30, that a specific matter relating to a particular human prescription drug be submitted to an appropriate advisory committee for a hearing and review and recommendations. The request must demonstrate the importance of the matter and the reasons why it should be submitted for a hearing at that time. The Commissioner may grant or deny the request.

§ 14.174 Advice and recommendations in writing.

Advice and recommendations given by a committee on a specific drug or a class of drugs are ordinarily in the form of a written report. The report may consist of the approved minutes of the meeting or a separate written report. The report responds to the specific issues or questions which the Commissioner has addressed to the advisory committee, and states the basis of the advice and recommendations of the committee.

PART 15—PUBLIC HEARING BEFORE THE COMMISSIONER

Subpart A—General Provisions

Sec.
15.1 Scope.

Subpart B—Procedures for Public Hearing Before the Commissioner

15.20 Notice of a public hearing before the Commissioner.
15.21 Notice of participation; schedule for hearing.
15.25 Written submissions.
15.30 Conduct of a public hearing before the Commissioner.

Subpart C—Records of a Public Hearing Before the Commissioner

15.40 Administrative record.
15.45 Examination of administrative record.


SOURCE: 44 FR 22366, Apr. 13, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 15.1 Scope.

The procedures in this part apply when:
(a) The Commissioner concludes, as a matter of discretion, that it is in the public interest to permit persons to present information and views at a public hearing on any matter pending before the Food and Drug Administration.

(b) The act or regulation specifically provides for a public hearing before the Commissioner on a matter, e.g., §330.10(a)(10) relating to over-the-counter drugs and sections 520 (b) and (f)(1)(B), and 521 of the act relating to proposals to allow persons to order custom devices, to proposed device good manufacturing practice regulations, and to proposed exemptions from pre-emption of State and local device requirements under §808.25(e).

(c) A person who has right to an opportunity for a formal evidentiary public hearing under part 12 waives that opportunity and instead requests under §12.32 a public hearing before the Commissioner, and the Commissioner, as a matter of discretion, accepts the request.

Subpart B—Procedures for Public Hearing Before the Commissioner

§15.20 Notice of a public hearing before the Commissioner.

(a) If the Commissioner determines that a public hearing should be held on a matter, the Commissioner will publish a notice of hearing in the Federal Register setting forth the following information:

(1) If the hearing is under §15.1 (a) or (b), the notice will state the following:

(i) The purpose of the hearing and the subject matter to be considered. If a written document is to be the subject matter of the hearing, it will be published as part of the notice, or reference made to it if it has already been published in the Federal Register, or the notice will state that the document is available from an agency office identified in the notice.

(ii) The time, date, and place of the hearing, or a statement that the information will be contained in a subsequent notice.

(2) If the hearing is in lieu of a formal evidentiary public hearing under §15.1(c), all of the information described in §12.32(e).

(b) The scope of the hearing is determined by the notice of hearing and any regulation under which the hearing is held. If a regulation, e.g., §330.10(a)(10), limits a hearing to review of an existing administrative record, information not already in the record may not be considered at the hearing.

(c) The notice of hearing may require participants to submit the text of their presentations in advance of the hearing if the Commissioner determines that advance submissions are necessary for the panel to formulate useful questions to be posed at the hearing under §15.30(e). The notice may provide for the submission of a comprehensive outline as an alternative to the submission of the text if the Commissioner determines that submission of an outline will be sufficient.

[44 FR 22366, Apr. 13, 1979, as amended at 47 FR 26375, June 18, 1982]

§15.21 Notice of participation; schedule for hearing.

(a) The notice of hearing will provide persons an opportunity to file a written notice of participation with the Dockets Management Branch within a specified period of time containing the information specified in the notice, e.g., name of participant, address, phone number, affiliation, if any, topic of presentation and approximate amount of time requested for the presentation. If the public interest requires, e.g., a hearing is to be conducted within a short period of time or is to be primarily attended by individuals without an organizational affiliation, the notice may name a specific FDA employee and telephone number to whom an oral notice of participation may be given or provide for submitting notices of participation at the time of the hearing. A written or oral notice of participation must be received by the designated person by the close of business of the day specified in the notice.

(b) Promptly after expiration of the time for filing a notice, the Commissioner will determine the amount of time allotted to each person and the approximate time that oral presentation is scheduled to begin. If more than one hearing is held on the same
subject, a person will ordinarily be allotted time for a presentation at only one hearing.

(c) Individuals and organizations with common interests are urged to consolidate or coordinate their presentations and to request time for a joint presentation. The Commissioner may require joint presentations by persons with common interests.

(d) The Commissioner will prepare a hearing schedule showing the persons making oral presentations and the time allotted to each person, which will be filed with the Dockets Management Branch and mailed or telephoned before the hearing to each participant.

(e) The hearing schedule will state whether participants must be present by a specified time to be sure to be heard in case the absence of participants advances the schedule.

§ 15.25 Written submissions.

A person may submit information or views on the subject of the hearing in writing to the Dockets Management Branch, under §10.20. The record of the hearing will remain open for 15 days after the hearing is held for any additional written submissions, unless the notice of the hearing specifies otherwise or the presiding officer rules otherwise.

§ 15.30 Conduct of a public hearing before the Commissioner.

(a) The Commissioner or a designee may preside at the hearing, except where a regulation provides that the Commissioner will preside personally. The presiding officer may be accompanied by other FDA employees or other Federal Government employees designated by the Commissioner, who may serve as a panel in conducting the hearing.

(b) The hearing will be transcribed.

(c) Persons may use their allotted time in whatever way they wish, consistent with a reasonable and orderly hearing. A person may be accompanied by any number of additional persons, and may present any written information or views for inclusion in the record of the hearing, subject to the requirements of §15.25. The presiding officer may allot additional time to any person when the officer concludes that it is in the public interest, but may not reduce the time allotted for any person without the consent of the person.

(d) If a person is not present at the time specified for the presentation, the persons following will appear in order, with adjustments for those appearing at their scheduled time. An attempt will be made to hear any person who is late at the conclusion of the hearing. Other interested persons attending the hearing who did not request an opportunity to make an oral presentation will be given an opportunity to make an oral presentation at the conclusion of the hearing, in the discretion of the presiding officer, to the extent that time permits.

(e) The presiding officer and any other persons serving on a panel may question any person during or at the conclusion of the presentation. No other person attending the hearing may question a person making a presentation. The presiding officer may, as a matter of discretion, permit questions to be submitted to the presiding officer or panel for response by them or by persons attending the hearing.

(f) The hearing is informal in nature, and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views may be made or considered, but other participants may comment upon or rebut all such information and views. No participant may interrupt the presentation of another participant at any hearing for any reason.

(g) The hearing may end early only if all persons scheduled for a later presentation have already appeared or it is past the time specified in the hearing schedule, under §15.21(e), by which participants must be present.

(h) The Commissioner or the presiding officer may, under §10.19, suspend, modify, or waive any provision of this part.

Subpart C—Records of a Public Hearing Before the Commissioner

§ 15.40 Administrative record.

(a) The administrative record of a public hearing before the Commissioner consists of the following:
§ 16.1 Scope.

The procedures in this part apply when:
(a) The Commissioner is considering any regulatory action, including a refusal to act, and concludes, as a matter of discretion, on the Commissioner's initiative or at the suggestion of any person, to offer an opportunity for a regulatory hearing to obtain additional information before making a decision or taking action.

(b) The act or a regulation provides a person with an opportunity for a hearing on a regulatory action, including proposed action, and the act or a regulation either specifically provides an opportunity for a regulatory hearing under this part or provides an opportunity for a hearing for which no procedures are specified by regulation. Listed below are the statutory and regulatory provisions under which regulatory hearings are available:

1. Statutory provisions:
   (1) Section 304(g) of the act relating to the administrative detention of devices (see §800.55(g) of this chapter).
   (2) Section 515(e)(1) of the act relating to the proposed withdrawal of approval of a device premarket approval application.
   (3) Section 515(e)(3) of the act relating to the temporary suspension of approval of a premarket approval application.
   (4) Section 515(f)(6) of the act relating to a proposed order revoking a device product development protocol or declaring a protocol not completed.
   (5) Section 515(f)(7) of the act relating to revocation of a notice of completion of a product development protocol.
   (6) Section 516 of the act relating to a proposed banned device regulations (see §805.21(d) of this chapter).
   (7) Section 518(b) of the act relating to a determination that a device is subject to a repair, replacement, or refund order or that a correction plan, or revised correction plan, submitted by a manufacturer, importer, or distributor is inadequate.

2. Regulatory provisions:
§ 16.5

Section 518(e) of the act relating to a cease distribution and notification order or mandatory recall order concerning a medical device for human use.

Section 520(f)(2)(D) of the act relating to exemptions or variances from device current good manufacturing practice requirements (see § 820.1(d)).

Section 520(g)(4) and (g)(5) of the act relating to disapproval and withdrawal of approval of an application from an investigational device exemption (see §§ 812.19(c), 812.30(c), 813.30(d), and 813.39(c) of this chapter).

(2) Regulatory provisions:

§ 56.121(a), relating to disqualifying an institutional review board or an institution.

§ 71.37(a), relating to use of food containing a color additive.

§ 80.31(b), relating to refusal to certify a batch of a color additive.

§ 80.34(b), relating to suspension of certification service for a color additive.

§ 89.401(c), relating to a due diligence determination concerning the conduct of studies necessary for a supplemental application for a new use of a drug or device.

§ 130.17(1), relating to a temporary permit to vary from a food standard.

§ 170.17(b), relating to use of food containing an investigational food additive.

§ 202.1(j)(5), relating to approval of prescription drug advertisements.

§ 312.70, relating to whether an investigator is entitled to receive investigational new drugs.

§ 312.70(d) and 312.44, relating to termination of an IND for a sponsor.

§ 312.600(b), relating to termination of an IND for tests in vitro and in laboratory research animals for a sponsor.

§ 431.52, relating to suspension of certification service for an antibiotic drug.

§ 433.12(d), relating to exemption from certification for an antibiotic drug.

§ 433.13(b), relating to an exemption from labeling for a certifiable antibiotic drug.

§ 433.14(b), relating to an exemption from manufacturing use for a certifiable antibiotic drug.

§ 433.15(b), relating to an exemption for processing for a certifiable antibiotic drug.

§ 433.16(b), relating to an exemption for repackaging for a certifiable antibiotic drug.

§ 511.1(b)(5), relating to use of food containing an investigational new animal drug.

§ 511.1(c)(1), relating to termination of an INAD for an investigator.

§ 511.1(c) (4) and (d), relating to termination of an INAD for a sponsor.

§ 514.210, relating to suspension of certification service for a veterinary antibiotic drug.

§ 814.46(c) relating to withdrawal of approval of a device premarket approval application.

§ 900.7, relating to approval, reapproval, or withdrawal of approval of mammography accreditation bodies or rejection of a proposed fee for accreditation.

§ 900.14, relating to suspension or revocation of a mammography certificate.

§ 1003.11(a)(3), relating to the failure of an electronic product to comply with an applicable standard or to a defect in an electronic product.

§ 1003.31(d), relating to denial of an exemption from notification requirements for an electronic product which fails to comply with an applicable standard or has a defect.

§ 1004.6, relating to plan for repurchase, repair, or replacement of an electronic product.

§ 1210.30, relating to plan for repurchase, repair, or replacement of an electronic product.

§ 1270.15(e), relating to the retention, recall, and destruction of human tissue.


§ 16.5 Inapplicability and limited applicability.

(a) This part does not apply to the following:

(1) An informal presentation of views before reporting a criminal violation under section 305 of the act and section 3 of the Federal Import Milk Act and § 1210.31

(2) A hearing on a refusal of admission of a food, drug, device, or cosmetic under section 801(a) of the act and § 1.94, or of an electronic product under section 306(a) of the Public Health Service Act and § 1005.20.

(3) Factory inspections, recalls (except mandatory recalls of medical devices intended for human use), regulatory letters, and similar compliance activities related to law enforcement.

(b) If a regulation provides a person with an opportunity for hearing and
specifies some procedures for the hearing but not a comprehensive set of procedures, the procedures in this part apply to the extent that they are supplementary and not in conflict with the other procedures specified for the hearing. Thus, the procedures in subpart A of part 108 relating to emergency permit control are supplemented by the nonconflicting procedures in this part, e.g., the right to counsel, public notice of the hearing, reconsideration and stay, and judicial review.


**Subpart B—Initiation of Proceedings**

§ 16.22 Initiation of regulatory hearing.

(a) A regulatory hearing is initiated by a notice of opportunity for hearing from FDA. The notice will—

(1) Be sent by mail, telegram, telex, personal delivery, or any other mode of written communication;

(2) Specify the facts and the action that are the subject of the opportunity for a hearing;

(3) State that the notice of opportunity for hearing and the hearing are governed by this part; and

(4) State the time within which a hearing may be requested, and state the name, address, and telephone number of the FDA employee to whom any request for hearing is to be addressed.

(5) Refer to FDA's guideline on electronic media coverage of its administrative proceedings (21 CFR part 10, subpart C).

(b) A person offered an opportunity for a hearing has the amount of time specified in the notice, which may not be less than 3 working days after receipt of the notice, within which to request a hearing. The request may be filed by mail, telegram, telex, personal delivery, or any other mode of written communication, addressed to the designated FDA employee. If no response is filed within that time, the offer is deemed to have been refused and no hearing will be held.

(c) If a hearing is requested, the Commissioner will designate a presiding officer, and the hearing will take place at a time and location agreed upon by the party requesting the hearing, the FDA, and the presiding officer or, if agreement cannot be reached, at a reasonable time and location designated by the presiding officer.

(d) A notice of opportunity for hearing under this section will not operate to delay or stay any administrative action, including enforcement action by the agency unless the Commissioner, as a matter of discretion, determines that delay or a stay is in the public interest.

[44 FR 22367, Apr. 13, 1979, as amended at 49 FR 32173, Aug. 13, 1984]

§ 16.24 Regulatory hearing required by the act or a regulation.

(a) A regulatory hearing required by the act or a regulation under §16.1(b) will be initiated in the same manner as other regulatory hearings subject to the additional procedures in this section.

(b) [Reserved]

(c) The notice will state whether any action concerning the matter that is the subject of the opportunity for hearing is or is not being taken pending the hearing under paragraph (d) of this section.

(d) The Commissioner may take such action pending a hearing under this section as the Commissioner concludes is necessary to protect the public health, except where expressly prohibited by statute or regulation. A hearing to consider action already taken, and not stayed by the Commissioner, will be conducted on an expedited basis.

(e) The hearing may not be required to be held at a time less than 2 working days after receipt of the request for hearing.

(f) Before the hearing, FDA will give to the party requesting the hearing reasonable notice of the matters to be considered at the hearing, including a comprehensive statement of the basis for the decision or action taken or proposed that is the subject of the hearing and a general summary of the information that will be presented by FDA at the hearing in support of the decision or action. This information may be given orally or in writing, in the discretion of FDA.
§ 16.26

(g) FDA and the party requesting the hearing will, if feasible, at least 1 day before the hearing provide to each other written notice of any published articles or written information to be presented at or relied on at the hearing. A copy will also be provided in advance if the other participant could not reasonably be expected to have or be able to obtain a copy. If written notice or a copy is not provided, the presiding officer may, if time permits, allow the party who did not receive the notice or copy additional time after the close of the hearing to make a submission concerning the article or information.

[44 FR 22367, Apr. 13, 1979, as amended at 47 FR 26375, June 18, 1982; 54 FR 9037, Mar. 3, 1989]

§ 16.26 Denial of hearing and summary decision.

(a) A request for a hearing may be denied, in whole or in part, if the Commissioner or the FDA official to whom the authority to make the final decision on the matter has been delegated under part 5 determines that no genuine and substantial issue of fact has been raised by the material submitted. If the Commissioner or his or her delegate determines that a hearing is not justified, written notice of the determination will be given to the parties explaining the reason for denial.

(b) After a hearing commences, the presiding officer may issue a summary decision on any issue in the hearing if the presiding officer determines from the material submitted in connection with the hearing, or from matters officially noticed, that there is no genuine and substantial issue of fact respecting that issue. For the purpose of this paragraph, a hearing commences upon the receipt by FDA of a request for hearing submitted under §16.22(b).

(c)(1) The Commissioner or the delegate under §16.40 is not precluded by this section from prior participation in the investigation or action that is the subject of the hearing. If there has been prior participation, the Commissioner or the delegate should, if feasible, designate a presiding officer for the hearing who is not a subordinate. Thus, if the Commissioner’s authority to make a final decision has been delegated to a center director, the presiding officer may be an official in another center or the office of the Commissioner. The exercise of general supervisory responsibility, or the designation of the presiding officer, does not constitute prior participation in the investigation or action that is the subject of the hearing so as to preclude the Commissioner or delegate from designating a subordinate as the presiding officer.

(2) The party requesting a hearing may make a written request to have the Commissioner or the delegate...
§ 16.60 Hearing procedure.

(a) A regulatory hearing is public, except when the Commissioner determines that all or part of a hearing should be closed to prevent a clearly unwarranted invasion of personal privacy; to prevent the disclosure of a trade secret or confidential commercial or financial information that is not available for public disclosure under §20.61; or to protect investigatory records compiled for law enforcement purposes that are not available for public disclosure under §20.64.

(1) The Commissioner may determine that a regulatory hearing is closed either on the Commissioner’s initiative or on a request by the party asking for a regulatory hearing, in the request for the hearing.

(2) If the hearing is a private hearing, no persons other than the party requesting the hearing, counsel and witnesses, and an employee or consultant or other person subject to a commercial arrangement as defined in §20.81(a) and FDA representatives with a direct professional interest in the subject matter of the proceeding are entitled to attend.

(3) If the hearing is a public hearing, it will be announced on the public calendar described in §10.100(a) whenever feasible, and any interested person who attends the hearing may participate to the extent of presenting relevant information.

(b) A regulatory hearing will be conducted by a presiding officer. Employees of FDA will first give a full and complete statement of the action which is the subject of the hearing, together with the information and reasons supporting it, and may present any oral or written information relevant to the hearing. The party requesting the hearing may then present any oral or written information relevant to the hearing. All parties may confront and conduct reasonable cross-examination of any person (except for the presiding officer and counsel for the parties) who makes any statement on the matter at the hearing.

(c) The hearing is informal in nature, and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views will be made or considered, but any other party may comment upon or rebut all such data, information, and views.

(d) The presiding officer may order the hearing to be transcribed. The party requesting the hearing may have the hearing transcribed, at the party’s expense, in which case a copy of the transcript is to be furnished to FDA. Any transcript of the hearing will be
§ 16.62 Right to counsel.

Any party to a hearing under this part has the right at all times to be advised and accompanied by counsel.

Subpart E—Administrative Record and Decision

§ 16.80 Administrative record of a regulatory hearing.

(a) The administrative record of the regulatory hearing consists of the following:

(1) The notice of opportunity for hearing and the response.

(2) All written information and views submitted to the presiding officer at the hearing or after if specifically permitted by the presiding officer.

(3) Any transcript of the hearing.

(4) The presiding officer’s report of the hearing and comments on the report under §16.60(e).

(5) All letters and memoranda of meetings or communications between participants and the presiding officer or the Commissioner referred to in §16.44(c).

(b) The record of the regulatory hearing is closed to the submission of information and views, at the close of the hearing, unless the presiding officer specifically permits additional time for a further submission.

§ 16.85 Examination of administrative record.

Part 20 governs the availability for public disclosure of each document that is a part of the administrative record of a regulatory hearing.

§ 16.95 Administrative decision and record for decision.

(a) With respect to a regulatory hearing at the Commissioner’s initiative under §16.1(a), the Commissioner shall consider the administrative record of the hearing specified in §16.80(a) together with all other relevant information and views available to FDA in determining whether regulatory action should be taken and, if so, in what form.

(b) With respect to a regulatory hearing required by the act or a regulation under §16.1(b)—

(1) The administrative record of the hearing specified in §16.80(a) constitutes the exclusive record for decision;

(2) On the basis of the administrative record of the hearing, the Commissioner shall issue a written decision stating the reasons for the Commissioner’s administrative action and the basis in the record; and

(3) For purposes of judicial review under §10.45, the record of the administrative proceeding consists of the record of the hearing and the Commissioner’s decision.

Subpart F—Reconsideration and Stay

§ 16.119 Reconsideration and stay of action.

After any final administrative action that is the subject of a hearing under this part, any party may petition the Commissioner for reconsideration of
Food and Drug Administration, HHS

any part or all of the decision or action under §10.33 or may petition for a stay of the decision or action under §10.35.

[44 FR 22367, Apr. 13, 1979, as amended at 54 FR 9037, Mar. 3, 1989]

Subpart G—Judicial Review

§ 16.120 Judicial review.

Section 10.45 governs the availability of judicial review concerning any regulatory action which is the subject of a hearing under this part.

PART 17—CIVIL MONEY PENALTIES HEARINGS

Sec.
17.1 Scope.
17.3 Definitions.
17.5 Complaint.
17.7 Service of complaint.
17.9 Answer.
17.11 Default upon failure to file an answer.
17.13 Notice of hearing.
17.15 Parties to the hearing.
17.17 Summary decisions.
17.18 Interlocutory appeal from ruling of presiding officer.
17.19 Authority of the presiding officer.
17.20 Ex parte contacts.
17.21 Prehearing conferences.
17.23 Discovery.
17.25 Exchange of witness lists, witness statements, and exhibits.
17.27 Hearing subpoenas.
17.28 Protective order.
17.29 Fees.
17.30 Computation of time.
17.31 Form, filing, and service of papers.
17.32 Motions.
17.34 Determining the amount of penalties and assessments.
17.35 Sanctions.
17.37 Witnesses.
17.39 Evidence.
17.40 The administrative record.
17.43 Posthearing briefs.
17.45 Initial decision.
17.47 Appeals.
17.48 Harmless error.
17.51 Judicial review.
17.54 Deposit in the Treasury of the United States.


Source: 60 FR 38626, July 27, 1995, unless otherwise noted.

§ 17.1 Scope.

This part sets forth practices and procedures for hearings concerning the administrative imposition of civil money penalties by FDA. Listed below are the statutory provisions that as of August 28, 1995, authorize civil money penalties that are governed by these procedures.

(a) Section 303(b)(2) through (b)(4) of the Federal Food, Drug, and Cosmetic Act (the act) authorizing civil money penalties for certain violations of the act that relate to prescription drug marketing practices.

(b) Section 303(g) of the act authorizing civil money penalties for certain violations of the act that relate to medical devices.

(c) Section 307 of the act authorizing civil money penalties for certain actions in connection with an abbreviated new drug application or certain actions in connection with a person or individual debarred under section 306 of the act.

(d) Section 351(d)(2)(B) of the Public Health Service Act (the PHS Act) authorizing civil money penalties for violations of biologic recall orders.

(e) Section 354(h)(2) of the PHS Act, as amended by the Mammography Quality Standards Act of 1992, authorizing civil money penalties for failure to obtain a certificate, failure to comply with established standards, among other things.

(f) Section 2128 of the PHS Act authorizing civil money penalties for intentionally destroying, altering, falsifying, or concealing any record or report required to be prepared, maintained, or submitted by vaccine manufacturers pursuant to that section of the PHS Act.

§ 17.3 Definitions.

The following definitions are applicable in this part:

(a) For specific acts giving rise to civil money penalty actions brought under 21 U.S.C. 333(g)(1):

(1) Significant departure, for the purpose of interpreting 21 U.S.C. 333(g)(1)(B)(i), means a departure from requirements that is either a single major incident or a series of incidents that collectively are consequential.
§ 17.5

(2) Knowing departure, for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(i), means a departure from a requirement taken: (a) With actual knowledge that the action is such a departure, or (b) in deliberate ignorance of a requirement, or (c) in reckless disregard of a requirement.

(3) Minor violations, for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(ii), means departures from requirements that do not rise to a level of a single major incident or a series of incidents that are collectively consequential.

(4) Defective, for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(iii), includes any defect in performance, manufacture, construction, components, materials, specifications, design, installation, maintenance, or service of a device, or any defect in mechanical, physical, or chemical properties of a device.

(b) Person or respondent includes an individual, partnership, corporation, association, scientific or academic establishment, government agency or organizational unit thereof, or other legal entity, or as may be defined in the act or regulation pertinent to the civil penalty action being brought.

(c) Presiding officer means an administrative law judge qualified under 5 U.S.C. 3105.

(d) Any term that is defined in the act has the same definition for civil money penalty actions that may be brought under that act.

(e) Any term that is defined in Title 21 of the Code of Federal Regulations has the same definition for civil money penalty actions that may arise from the application of the regulation(s).

(f) Any term that is defined in the PHS Act has the same definition for civil money penalty actions that may be brought under that act.

(g) Departmental Appeals Board (DAB) means the Departmental Appeals Board of the Department of Health and Human Services.

§ 17.7

(a) Service of a complaint may be made by:

(1) Certified or registered mail or similar mail delivery service with a return receipt record reflecting receipt; or

(2) Delivery in person to:

(i) An individual respondent; or

(ii) An officer or managing or general agent in the case of a corporation or unincorporated business.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by:

(1) Affidavit or declaration under penalty of perjury of the individual serving the complaint by personal delivery;

(2) A United States Postal Service or similar mail delivery service return receipt record reflecting receipt; or
§ 17.13 Answer.

(a) The respondent may request a hearing by filing an answer with the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, within 30 days of service of the complaint. Unless stated otherwise, an answer shall be deemed to be a request for hearing.

(b) In the answer, the respondent:

(1) Shall admit or deny each of the allegations of liability made in the complaint; allegations not specifically denied in an answer are deemed admitted;

(2) Shall state all defenses on which the respondent intends to rely;

(3) Shall state all reasons why the respondent contends that the penalties and assessments should be less than the requested amount; and

(4) Shall state the name, address, and telephone number of the respondent’s counsel, if any.

(c) If the respondent is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the respondent shall, before the expiration of 30 days from service of the complaint, file a request for an extension of time within which to file an answer that meets the requirements of paragraph (b) of this section. The presiding officer may, for good cause shown, grant the respondent up to 30 additional days within which to file an answer that meets the requirements of paragraph (b) of this section.

(d) The respondent may, on motion, amend its answer to conform with the evidence as justice may require.

§ 17.11 Default upon failure to file an answer.

(a) If the respondent does not file an answer within the time prescribed in § 17.9 and if service has been effected as provided in § 17.7, the presiding officer shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under the relevant statute, the presiding officer shall issue an initial decision within 30 days of the time the answer was due, imposing:

(1) The maximum amount of penalties provided for by law for the violations alleged; or

(2) The amount asked for in the complaint, whichever amount is smaller.

(b) Except as otherwise provided in this section, by failing to file a timely answer, the respondent waives any right to a hearing and to contest the amount of the penalties and assessments imposed under paragraph (a) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(c) If, before such a decision becomes final, the respondent files a motion seeking to reopen on the grounds that extraordinary circumstances prevented the respondent from filing an answer, the initial decision shall be stayed pending a decision on the motion.

(d) If, on such motion, the respondent can demonstrate extraordinary circumstances excusing the failure to file an answer in a timely manner, the presiding officer may withdraw the decision under paragraph (a) of this section, if such a decision has been issued, and shall grant the respondent an opportunity to answer the complaint as provided in § 17.9(a).

(e) If the presiding officer decides that the respondent’s failure to file an answer in a timely manner is not excused, he or she shall affirm the decision under paragraph (a) of this section, and the decision shall become final and binding upon the parties 30 days after the presiding officer issues the decision on the respondent’s motion filed under paragraph (c) of this section.

§ 17.13 Notice of hearing.

After an answer has been filed, the Center shall serve a notice of hearing on the respondent. Such notice shall include:

(a) The date, time, and place of a prehearing conference, if any, or the date, time, and place of the hearing if there is not to be a prehearing conference;

(b) The nature of the hearing and the legal authority and jurisdiction under which the hearing is to be held;
§ 17.15 Parties to the hearing.

(a) The parties to the hearing shall be the respondent and the Center(s) with jurisdiction over the matter at issue. No other person may participate.

(b) The parties may at any time prior to a final decision by the entity deciding any appeal agree to a settlement of all or a part of the matter. The settlement agreement shall be filed in the docket and shall constitute complete or partial resolution of the administrative case as so designated by the settlement agreement. The settlement document shall be effective upon filing in the docket and need not be ratified by the presiding officer or the Commissioner of Food and Drugs.

(c) The parties may be represented by counsel, who may be present at the hearing.

§ 17.17 Summary decisions.

(a) At any time after the filing of a complaint, a party may move, with or without supporting affidavits (which, for purposes of this part, shall include declarations under penalty of perjury), for a summary decision on any issue in the hearing. The other party may, within 30 days after service of the motion, which may be extended for an additional 10 days for good cause, serve opposing affidavits or countermove for summary decision.

The presiding officer may set the matter for argument and call for the submission of briefs.

(b) The presiding officer shall grant the motion if the pleadings, affidavits, and other material filed in the record, or matters officially noticed, show that there is no genuine issue as to any material fact and that the party is entitled to summary decision as a matter of law.

(c) Affidavits shall set forth only such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated. When a motion for summary decision is made and supported as provided in this regulation, a party opposing the motion may not rest on mere allegations or denials or general descriptions of positions and contentions; affidavits or other responses must set forth specific facts showing that there is a genuine issue of material fact for the hearing.

(d) If, on motion under this section, a summary decision is not rendered on all issues or for all the relief asked, and if additional facts need to be developed, the presiding officer will issue an order specifying the facts that appear without substantial controversy and directing further evidentiary proceedings on facts still at issue. The facts specified not to be at issue shall be deemed established.

(e) Except as provided in §17.18, a party may not obtain interlocutory review by the entity deciding the appeal (currently the DAB) of a partial summary decision of the presiding officer. A review of final summary decisions on all issues may be had through the procedure set forth in §17.47.

§ 17.18 Interlocutory appeal from ruling of presiding officer.

(a) Except as provided in paragraph (b) of this section, rulings of the presiding officer may not be appealed before consideration on appeal of the entire record of the hearing.

(b) A ruling of the presiding officer is subject to interlocutory appeal to the entity deciding the appeal (currently the DAB) if the presiding officer certifies on the record or in writing that immediate review is necessary to prevent exceptional delay, expense, or prejudice to any participant, or substantial harm to the public interest.

(c) When an interlocutory appeal is made, a participant may file a brief on the appeal only if specifically authorized by the presiding officer or the entity deciding the appeal (currently the DAB), and if such authorization is granted, only within the period allowed by the presiding officer or the entity deciding the appeal. If a participant is authorized to file a brief, any other participant may file a brief in opposition, within the period allowed by the
entity deciding the appeal (currently the DAB). The deadline for filing an interlocutory appeal is subject to the discretion of the presiding officer.

§ 17.19 Authority of the presiding officer.
(a) The presiding officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.
(b) The presiding officer has the authority to:
(1) Set and change the date, time, and place of the hearing on reasonable notice to the parties;
(2) Continue or recess the hearing in whole or in part for a reasonable time;
(3) Require parties to attend conferences for settlement, to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;
(4) Administer oaths and affirmations;
(5) Issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence that relates to the matter under investigation;
(6) Rule on motions and other procedural matters;
(7) Regulate the scope and timing of discovery consistent with §17.23;
(8) Regulate the course of the hearing and the conduct of the parties;
(9) Examine witnesses;
(10) Upon motion of a party for good cause shown, the presiding officer may allow a witness to be recalled for additional testimony;
(11) Receive, rule on, exclude, or limit evidence;
(12) Upon motion of a party or on the presiding officer’s own motion, take official notice of facts;
(13) Upon motion of a party, decide cases, in whole or in part, by summary decision when there is no genuine issue of material fact;
(14) Conduct any conference, argument, or hearing on motions in person or by telephone;
(15) Consolidate related or similar proceedings or sever unrelated matters;
(16) Limit the length of pleadings;
(17) Waive, suspend, or modify any rule in this part if the presiding officer determines that no party will be prejudiced, the ends of justice will be served, and the action is in accordance with law;
(18) Issue protective orders pursuant to §17.28; and
(19) Exercise such other authority as is necessary to carry out the responsibilities of the presiding officer under this part.
(c) The presiding officer does not have the authority to find Federal statutes or regulations invalid.

§ 17.20 Ex parte contacts.
No party or person (except employees of the presiding officer’s office) shall communicate in any way with the presiding officer on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 17.21 Prehearing conferences.
(a) The presiding officer may schedule prehearing conferences as appropriate.
(b) Upon the motion of any party, the presiding officer shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.
(c) The presiding officer may use a prehearing conference to discuss the following:
(1) Simplification of the issues;
(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;
(3) Stipulations and admissions of fact as to the contents and authenticity of documents;
(4) Whether the parties can agree to submission of the case on a stipulated record;
(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of the other party) and written argument;
(6) Limitation of the number of witnesses;
(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;
§ 17.23

(8) Discovery and scheduling dates for completion of discovery;
(9) The date, time, and place for the hearing; and
(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

d) The presiding officer shall issue an order containing all matters agreed upon by the parties or ordered by the presiding officer at a prehearing conference.

§ 17.23 Discovery.

(a) No later than 60 days prior to the hearing, unless otherwise ordered by the presiding officer, a party may make a request to another party for production, inspection, and copying of documents that are relevant to the issues before the presiding officer. Documents must be provided no later than 30 days after the request has been made.

(b) For the purpose of this part, the term "documents" includes information, reports, answers, records, accounts, papers and other data and documentary evidence. Nothing contained in this section may be interpreted to require the creation of a document, except that requested data stored in an electronic data storage system must be produced in a form readily accessible to the requesting party.

(c) Requests for documents, requests for admissions, written interrogatories, depositions, and any forms of discovery, other than those permitted under paragraphs (a) and (e) of this section, are not authorized.

(d)(1) Within 10 days of service of a request for production of documents, a party may file a motion for a protective order.

(2) The presiding officer may grant a motion for a protective order, in whole or in part, if he or she finds that the discovery sought:
(i) Is unduly costly or burdensome,
(ii) Will unduly delay the proceeding, or
(iii) Seeks privileged information.

(3) The burden of showing that a protective order is necessary shall be on the party seeking the order.

(4) The burden of showing that documents should be produced is on the party seeking their production.

(e) The presiding officer shall order depositions upon oral questions only upon a showing that:
(1) The information sought cannot be obtained by alternative methods, and
(2) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

§ 17.25 Exchange of witness lists, witness statements, and exhibits.

(a) At least 30 days before the hearing, or by such other time as is specified by the presiding officer, the parties shall exchange witness lists, copies of prior written statements of proposed witnesses, and copies of proposed hearing exhibits, including written testimony.

(b)(1) If a party objects to the proposed admission of evidence not exchanged in accordance with paragraph (a) of this section, the presiding officer will exclude such evidence if he or she determines that the failure to comply with paragraph (a) of this section should result in its exclusion.

(2) Unless the presiding officer finds that extraordinary circumstances justified the failure to make a timely exchange of witness lists under paragraph (a) of this section, he or she must exclude from the party's hearing evidence the testimony of any witness whose name does not appear on the witness list.

(c) Unless a party objects within 5 days prior to the hearing, documents...
§ 17.27 Hearing subpoenas.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may, when authorized by law, request that the presiding officer issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

c) A party seeking a subpoena shall file a written request therefor not less than 20 days before the date fixed for the hearing unless otherwise allowed by the presiding officer, upon a showing by the party of good cause. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

e) The party seeking the subpoena shall serve it in the manner prescribed for service of a complaint in §17.7.

(f) If a party or the individual to whom the subpoena is directed believes a subpoena to be unreasonable, oppressive, excessive in scope, or unduly burdensome, or if it wishes to raise any other objection or privilege recognized by law, the party or individual may file a motion to quash the subpoena within 10 days after service or on or before the time specified in the subpoena for compliance if it is less than 10 days after service. Such a filing will state the basis for the motion to quash. The presiding officer may quash or modify the subpoena or order it implemented, as justice may require.

§ 17.28 Protective order.

(a) A party or a prospective witness may file a motion for a protective order with respect to discovery sought by a party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) When issuing a protective order, the presiding officer may make any order which justice requires to protect a party or person from oppression or undue burden or expense, or to protect trade secrets or confidential commercial information, as defined in §20.61 of this chapter, information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, or other information that would be withheld from public disclosure under 21 CFR part 20. Such orders may include, but are not limited to, one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery provided for by this part other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That the contents of discovery or evidence be sealed;

(6) That the information not be disclosed to the public or be disclosed only in a designated way; or

(7) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

§ 17.29 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in a United States District Court. A check for witness fees and mileage shall accompany the subpoena when served.

§ 17.30 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act or event, and includes the last day of the period, unless either such day is a Saturday, Sunday, or Federal holiday, in which event the time includes the next business day.
§ 17.31

(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and Federal holidays shall be excluded from the computation.

(c) When a document has been served or issued by placing it in the mail, an additional 5 days will be added to the time permitted for any response.

§ 17.31 Form, filing, and service of papers.

(a) Form. (1) Documents filed with the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, shall include an original and two copies.

(2) The first page of every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the Office of the Chief Counsel, and designation of the pleading or paper (e.g., “motion to quash subpoena”).

(3) Every pleading shall be signed by, and shall contain the address and telephone number of, the party or the person on whose behalf the pleading was filed, or his or her counsel.

(4) Pleadings or papers are considered filed when they are received by the Dockets Management Branch.

(b) Service. A party filing a document with the Dockets Management Branch under this part shall, no later than the time of filing, serve a copy of such document on every other party. Service upon any party of any document, other than service of a complaint, shall be made by delivering a copy personally or by placing a copy of the document in the United States mail or express delivery service, postage prepaid and addressed, to the party’s last known address. When a party is represented by counsel, service shall be made on such counsel in lieu of the actual party.

(c) Proof of service. A certificate of the individual serving the document by personal delivery or by mail, setting forth the time and manner of service, shall be proof of service.

§ 17.32 Motions.

(a) Any application to the presiding officer for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, delivered to the presiding officer, and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The presiding officer may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the presiding officer, any party may file a response to such motion.

(d) The presiding officer may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

§ 17.33 The hearing and burden of proof.

(a) The presiding officer shall conduct a hearing on the record to determine whether the respondent is liable for a civil money penalty and, if so, the appropriate amount of any such civil money penalty considering any aggravating or mitigating factors.

(b) In order to prevail, the Center must prove respondent’s liability and the appropriateness of the penalty under the applicable statute by a preponderance of the evidence.

(c) The respondent must prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the presiding officer, who may order closure only to protect trade secrets or confidential commercial information, as defined in §20.61 of this chapter, information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, or other information that would be withheld from public disclosure under part 20 of this chapter.
Food and Drug Administration, HHS

§ 17.34 Determining the amount of penalties and assessments.

(a) When determining an appropriate amount of civil money penalties and assessments, the presiding officer and the Commissioner of Food and Drugs or entity designated by the Commissioner to decide the appeal (currently the DAB) shall evaluate any circumstances that mitigate or aggravate the violation and shall articulate in their opinions the reasons that support the penalties and assessments imposed.

(b) The presiding officer and the entity deciding the appeal shall refer to the factors identified in the statute under which the penalty is assessed for purposes of determining the amount of penalty.

(c) Nothing in this section shall be construed to limit the presiding officer or the entity deciding the appeal from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 17.35 Sanctions.

(a) The presiding officer may sanction a person, including any party or counsel for:

(1) Failing to comply with an order, subpoena, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including, but not limited to, those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with a discovery order, including discovery and subpoena provisions of this part, the presiding officer may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(3) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) The presiding officer may exclude from participation in the hearing any legal counsel, party, or witness who refuses to obey an order of the presiding officer. In the case of repeated refusal, the presiding officer may grant judgment to the opposing party.

(e) If a party fails to prosecute or defend an action under this part after service of a notice of hearing, the presiding officer may dismiss the action or may issue an initial decision imposing penalties and assessments.

(f) The presiding officer may refuse to consider any motion, request, response, brief, or other document that is not filed in a timely fashion or in compliance with the rules of this part.

(g) Sanctions imposed under this section may be the subject of an interlocutory appeal as allowed in §17.18(b), provided that no such appeal will stay or delay a proceeding.

§ 17.37 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) Direct testimony shall be admitted in the form of a written declaration submitted under penalty of perjury. Any such written declaration must be provided to all other parties along with the last known address of the witness. Any prior written statements of witnesses proposed to testify at the hearing shall be exchanged as provided in §17.25(a).

(c) The presiding officer shall exercise reasonable control over the manner and order of questioning witnesses and presenting evidence so as to:

(1) Make the examination and presentation effective for the ascertainment of the truth;

(2) Avoid undue consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The presiding officer shall permit the parties to conduct such cross-examination as may be required for a full disclosure of the facts.
(e) At the discretion of the presiding officer, a witness may be cross-examined on relevant matters without regard to the scope of his or her direct examination. To the extent permitted by the presiding officer, a witness may be cross-examined on relevant matters with regard to the scope of his or her direct examination. To the extent permitted by the presiding officer, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the presiding officer may order witnesses excluded so that they cannot hear the testimony of the other witnesses. This rule does not authorize exclusion of:

1. A party who is an individual;
2. In the case of a party that is not an individual, an officer or employee of the party designated to be the party's sole representative for purposes of the hearing; or
3. An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by a party engaged in assisting counsel for the party.

(g) If a witness' testimony is submitted in writing prior to cross-examination, the cross-examining party need not subpoena the witness or pay for his or her travel to the hearing. The sponsoring party is responsible for producing the witness at its own expense, and failure to do so shall result in the striking of the witness' testimony.

§ 17.39 Evidence.

(a) The presiding officer shall determine the admissibility of evidence.

(b) Except as provided in this part, the presiding officer shall not be bound by the "Federal Rules of Evidence." However, the presiding officer may apply the "Federal Rules of Evidence" when appropriate, e.g., to exclude unreliable evidence.

(c) The presiding officer shall exclude evidence that is not relevant or material.

(d) Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Relevant evidence may be excluded if it is privileged under Federal law.

(f) Evidence of furnishing or offering or promising to furnish, or accepting or offering or promising to accept, a valuable consideration in settling or attempting to settle a civil money penalty assessment which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the civil money penalty or its amount. Evidence of conduct or statements made in settlement negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of settlement negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness or opposing a contention of undue delay.

(g) The presiding officer may in his or her discretion permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the presiding officer pursuant to § 17.28.

§ 17.41 The administrative record.

(a) The hearing will be recorded and transcribed. Witnesses, participants, and counsel have 30 days from the time the transcript becomes available to propose corrections in the transcript of oral testimony. Corrections are permitted only for transcription errors. The presiding officer shall promptly order justified corrections. Transcripts may be obtained following the hearing from the Dockets Management Branch at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits, and other evidence admitted at the hearing and all papers and requests filed in the proceeding constitute the administrative record for the decision by the presiding officer and the entity.
designated by the Commissioner of Food and Drugs to decide the appeal, currently the DAB.

(c) The administrative record may be inspected and copied (upon payment of a reasonable fee) by anyone unless otherwise ordered by the presiding officer, who shall upon motion of any party order otherwise when necessary to protect trade secrets or confidential commercial information, as defined in §20.61 of this chapter, information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, or other information that would be withheld from public disclosure under part 20.

§ 17.43 Posthearing briefs.

Any party may file a posthearing brief. The presiding officer shall fix the time for filing such briefs (which shall be filed simultaneously), which shall not exceed 60 days from the date the parties received the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The presiding officer may permit the parties to file responsive briefs. No brief may exceed 30 pages (exclusive of proposed findings and conclusions) unless the presiding officer has previously found that the issues in the proceeding are so complex, or the administrative record is so voluminous, as to justify longer briefs, in which case the presiding officer may set a longer page limit. Proposed findings of fact and conclusions of law shall not exceed 30 pages unless the presiding officer has previously found that the issues in the proceeding are so complex, or the administrative record is so voluminous, as to justify longer proposed findings and conclusions, in which case the presiding officer may set a longer page limit.

§ 17.45 Initial decision.

(a) The presiding officer shall issue an initial decision based only on the administrative record. The decision shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

1. Whether the allegations in the complaint are true, and, if so, whether respondent's actions identified in the complaint violated the law;
2. Whether any affirmative defenses are meritorious; and
3. If the respondent is liable for penalties or assessments, the appropriate amount of any such penalties or assessments, considering any mitigating or aggravating factors that he or she finds in the case.

(c) The presiding officer shall serve the initial decision or the decision granting summary decision on all parties within 90 days after the time for submission of posthearing briefs and responsive briefs (if permitted) has expired. If the presiding officer believes that he or she cannot meet the 90-day deadline, he or she shall notify the Commissioner of Food and Drugs or other entity designated by the Commissioner to decide the appeal of the reason(s) therefor, and the Commissioner or that entity may then set a new deadline.

(d) Unless the initial decision or the decision granting summary decision of the presiding officer is timely appealed, the initial decision or the decision granting summary decision shall constitute the final decision of FDA and shall be final and binding on the parties 30 days after it is issued by the presiding officer.

§ 17.47 Appeals.

(a) Either the Center or any respondent may appeal an initial decision, including a decision not to withdraw a default judgment, or a decision granting summary decision to the Commissioner of Food and Drugs or other entity the Commissioner designates to decide the appeal. The Commissioner has currently designated the Departmental Appeals Board (DAB) to decide appeals under this part. Parties may appeal to the DAB by filing a notice of appeal with the DAB, rm. 637-D, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC 20201, and the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, in accordance with this section.
§ 17.48

(b)(1) A notice of appeal may be filed at any time within 30 days after the presiding officer issues an initial decision or decision granting summary decision.

(2) The Commissioner or the entity designated by the Commissioner to hear appeals may, within his or her discretion, extend the initial 30-day period for an additional period of time if the Center or any respondent files a request for an extension within the initial 30-day period and shows good cause.

(c) A notice of appeal shall be accompanied by a written brief of no greater length than that allowed for the posthearing brief. The notice must identify specific exceptions to the initial decision, must support each exception with citations to the record, and must explain the basis for each exception.

(d) The opposing party may file a brief of no greater length than that allowed for the posthearing brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief, unless such time period is extended by the Commissioner or the entity designated by the Commissioner to hear appeals on request of the opposing party for good cause shown. Any brief in opposition to exceptions shall be filed with the Dockets Management Branch and the DAB (addresses above).

(e) The appellant may file a reply brief not more than 10 pages in length within 10 days of being served with appellee's brief.

(f) There is no right to appear personally before the Commissioner of Food and Drugs or other entity deciding the appeal (currently the DAB).

(g) The entity deciding the appeal will consider only those issues raised before the presiding officer, except that the appellee may make any argument based on the record in support of the initial decision or decision granting summary decision.

(h) If on appeal the entity deciding the appeal considers issues not adequately briefed by the parties, the entity may ask for additional briefing. However, no such additional briefs will be considered unless so requested.

(i) If any party demonstrates to the satisfaction of the entity deciding the appeal (currently the DAB) that additional evidence not presented at the hearing is relevant and material and that there were reasonable grounds for the failure to adduce such evidence at the hearing, the entity deciding the appeal may remand the matter to the presiding officer for consideration of the additional evidence.

(j) The Commissioner of Food and Drugs or other entity deciding the appeal (currently the DAB) will issue a decision on the appeal within 60 days, if practicable, of the due date for submission of the appellee's brief. In the decision, the entity deciding the appeal may decline to review the case, affirm the initial decision or decision granting summary decision (with or without an opinion), or reverse the initial decision or decision granting summary decision, or increase, reduce, reverse, or remand any civil money penalty determined by the presiding officer in the initial decision. If the entity deciding the appeal declines to review the case, the initial decision or the decision granting summary decision shall constitute the final decision of FDA and shall be final and binding on the parties 30 days after the declination by the entity deciding the appeal.

(k) The standard of review on a disputed issue of fact is whether the initial decision is supported by substantial evidence on the whole record. The standard of review on a disputed issue of law is whether the initial decision is erroneous.

§ 17.48 Harmless error.

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in any act done or omitted by the presiding officer or by any of the parties is grounds for vacating, modifying, or otherwise disturbing an otherwise appropriate ruling or order or act, unless refusal to take such action appears to the presiding officer or the Commissioner of Food and Drugs or other entity deciding the appeal (currently the DAB) to be inconsistent with substantial justice. The presiding officer and the entity deciding the appeal at every stage of the proceeding will disregard
any error or defect in the proceeding that does not affect the substantial rights of the parties.

§ 17.51 Judicial review.

(a) The final decision of the Commissioner of Food and Drugs or other entity deciding the appeal (currently the DAB) constitutes final agency action from which a respondent may petition for judicial review under the statutes governing the matter involved. Although the filing of a petition for judicial review does not stay a decision under this part, a respondent may file a petition for stay of such decision under §10.35 of this chapter.

(b) The Chief Counsel of FDA has been designated by the Secretary of Health and Human Services as the officer on whom copies of petitions for judicial review are to be served. This officer is responsible for filing the record on which the final decision is based. The record of the proceeding is certified by the entity deciding the appeal (currently the DAB).

(c) Exhaustion of an appeal to the entity deciding the appeal (currently the DAB) is a jurisdictional prerequisite to judicial review.

§ 17.54 Deposit in the Treasury of the United States.

All amounts assessed pursuant to this part shall be delivered to the Director, Division of Financial Management (HFA-100), Food and Drug Administration, rm. 11-61, 5600 Fishers Lane, Rockville, MD 20857, and shall be deposited as miscellaneous receipts in the Treasury of the United States.

PART 19—STANDARDS OF CONDUCT AND CONFLICTS OF INTEREST

Subpart A—General Provisions

Sec.
19.1 Scope.
19.5 Reference to Department regulations.
19.6 Code of ethics for government service.
19.10 Food and Drug Administration Conflict of Interest Review Board.

Subpart B—Reporting of Violations

19.21 Duty to report violations.

Subpart C—Disqualification Conditions

19.45 Temporary disqualification of former employees.
19.55 Permanent disqualification of former employees.


Source: 42 FR 15615, Mar. 22, 1977, unless otherwise noted.

Subpart A—General Provisions

§ 19.1 Scope.

This part governs the standards of conduct for, and establishes regulations to prevent conflicts of interest by, all Food and Drug Administration employees.

§ 19.5 Reference to Department regulations.

(a) The provisions of 45 CFR part 73, establishing standards of conduct for all Department employees, are fully applicable to all Food and Drug Administration employees, except that such regulations shall be applicable to special government employees, i.e., consultants to the Food and Drug Administration, only to the extent stated in subpart L of 45 CFR part 73.

(b) The provisions of 45 CFR part 73a supplement the Department standards of conduct and apply only to Food and Drug Administration employees except special government employees.

§ 19.6 Code of ethics for government service.

The following code of ethics, adopted by Congress on July 11, 1958, shall apply to all Food and Drug Administration employees:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:
1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day’s labor for a full day’s pay, giving to the performance of his duties his earnest effort and best thought.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
§ 19.10

5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

9. Expose corruption wherever discovered.

10. Uphold these principles, ever conscious that public office is a public trust.

§ 19.10 Food and Drug Administration Conflict of Interest Review Board.

(a) The Commissioner shall establish a permanent five-member Conflict of Interest Review Board, which shall review and make recommendations to the Commissioner on all specific or policy matters relating to conflicts of interest arising within the Food and Drug Administration that are forwarded to it by: (1) The Associate Commissioner for Management and Operations or (2) anyone who is the subject of an adverse determination by the Associate Commissioner for Management and Operations on any matter arising under the conflict of interest laws, except a determination of an apparent violation of law. The Director, Division of Ethics and Program Integrity, Office of Management and Operations, shall serve as executive secretary of the Review Board.

(b) It shall be the responsibility of every Food and Drug Administration employee with whom any specific or policy issue relating to conflicts of interest is raised, or who otherwise wishes to have any such matter resolved, to forward the matter to the Associate Commissioner for Management and Operations for resolution, except that reporting of apparent violations of law are governed by § 19.21.

(c) All general policy relating to conflicts of interest shall be established in guidelines pursuant to the provisions of § 10.90(b) of this chapter and whenever feasible shall be incorporated in regulations in this subpart.

(d) All decisions relating to specific individuals shall be placed in a public file established for this purpose by the Freedom of Information Staff, e.g., a determination that a consultant may serve on an advisory committee with specific limitations or with public disclosure of stock holdings, except that such determination shall be written in a way that does not identify the individual in the following situations:

1. A determination that an employee must dispose of prohibited financial interests or refrain from incompatible outside activities in accordance with established Department or agency regulations.

2. A determination that a proposed consultant is not eligible for employment by the agency.

3. A determination that public disclosure of any information would constitute an unwarranted invasion of personal privacy in violation of § 20.63 of this chapter.


Subpart B—Reporting of Violations

§ 19.21 Duty to report violations.

(a) The Office of Internal Affairs, Office of the Commissioner, is responsible for obtaining factual information for the Food and Drug Administration on any matter relating to allegations of misconduct, impropriety, conflict of interest, or other violations of Federal statutes by agency personnel.

(b) Any Food and Drug Administration employee who has factual information showing or who otherwise believes that any present or former Food and Drug Administration employee has violated or is violating any provision of this subpart or of 45 CFR parts 73 or 73a or of any statute listed in appendix A to 45 CFR part 73 should report such information directly to the Office of Internal Affairs. Any such reports shall be in writing or shall with the assistance of the Office of Internal Affairs, be reduced to writing, and shall be promptly investigated.
Any report pursuant to paragraph (b) of this section and any records relating to an investigation of such reports shall be maintained in strict confidence in the files of the Office of Internal Affairs, shall be exempt from public disclosure, and may be reviewed only by authorized Food and Drug Administration employees who are required to do so in the performance of their duties.


Subpart C—Disqualification Conditions

§ 19.45 Temporary disqualification of former employees.

Within 1 year after termination of employment with the Food and Drug Administration, no former Food and Drug Administration employee, including a special government employee, shall appear personally before the Food and Drug Administration or other federal agency or court as agent or attorney for any person other than the United States in connection with any proceeding or matter in which the United States is a party or has a direct and substantial interest and which was under his official responsibility at any time within one year preceding termination of such responsibility. The term official responsibility means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct government action.

§ 19.55 Permanent disqualification of former employees.

No former Food and Drug Administration employee, including a special government employee, shall knowingly act as agent or attorney for anyone other than United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise as a Food and Drug Administration employee.

PART 20—PUBLIC INFORMATION

Subpart A—Official Testimony and Information

Sec. 20.1 Testimony by Food and Drug Administration employees.
20.2 Production of records by Food and Drug Administration employees.
20.3 Certification and authentication of Food and Drug Administration records.

Subpart B—General Policy

20.20 Policy on disclosure of Food and Drug Administration records.
20.21 Uniform access to records.
20.22 Partial disclosure of records.
20.23 Request for existing records.
20.24 Preparation of new records.
20.25 Retroactive application of regulations.
20.26 Indexes of certain records.
20.27 Submission of records marked as confidential.
20.28 Food and Drug Administration determinations of confidentiality.
20.29 Prohibition on withdrawal of records from Food and Drug Administration files.
20.30 Food and Drug Administration Freedom of Information Staff.
20.31 Retention schedule of requests for Food and Drug Administration records.
20.32 Disclosure of Food and Drug Administration employee names.

Subpart C—Procedures and Fees

20.40 Filing a request for records.
20.41 Time limitations.
20.42 Fees to be charged.
20.43 Waiver or reduction of fees.
20.44 Presubmission review of request for confidentiality of voluntarily submitted data or information.
20.45 Situations in which confidentiality is uncertain.
20.46 Judicial review of proposed disclosure.
20.47 Denial of a request for records.
20.48 Nonspecific and overly burdensome requests.
20.49 Referral to primary source of records.
20.50 Availability of records at National Technical Information Service.
20.51 Use of private contractor for copying.
20.52 Request for review without copying.
20.53 Indexing trade secrets and confidential commercial or financial information.
§ 20.1

Subpart D—Exemptions
20.60 Applicability of exemptions.
20.61 Trade secrets and commercial or financial information which is privileged or confidential.
20.62 Inter- or intra-agency memoranda or letters.
20.63 Personnel, medical, and similar files, disclosure of which constitutes a clearly unwarranted invasion of personal privacy.
20.64 Records or information compiled for law enforcement purposes.

Subpart E—Limitations on Exemptions
20.80 Applicability of limitations on exemptions.
20.81 Data and information previously disclosed to the public.
20.82 Discretionary disclosure by the Commissioner.
20.83 Disclosure required by court order.
20.84 Disclosure to consultants, advisory committees, State and local government officials commissioned pursuant to 21 U.S.C. 372(a), and other special government employees.
20.85 Disclosure to other Federal government departments and agencies.
20.86 Disclosure in administrative or court proceedings.
20.87 Disclosure to Congress.
20.88 Communications with State and local government officials.
20.89 Communications with foreign government officials.
20.90 Disclosure to contractors.
20.91 Use of data or information for administrative or court enforcement action.

Subpart F—Availability of Specific Categories of Records
20.100 Applicability; cross-reference to other regulations.
20.101 Administrative enforcement records.
20.102 Court enforcement records.
20.103 Correspondence.
20.104 Summaries of oral discussions.
20.105 Testing and research conducted by or with funds provided by the Food and Drug Administration.
20.106 Studies and reports prepared by or with funds provided by the Food and Drug Administration.
20.107 Food and Drug Administration manuals.
20.108 Agreements between the Food and Drug Administration and other departments, agencies, and organizations.
20.109 Data and information obtained by contract.
20.110 Data and information about Food and Drug Administration employees.

§ 20.1

Testimony by Food and Drug Administration employees.

(a) No officer or employee of the Food and Drug Administration or of any other office or establishment in the Department of Health and Human Services, except as authorized by the Commissioner of Food and Drugs pursuant to this section or in the discharge of his official duties under the laws administered by the Food and Drug Administration, shall give any testimony before any tribunal pertaining to any function of the Food and Drug Administration, shall give any testimony before any tribunal pertaining to any function of the Food and Drug Administration or with respect to any information acquired in the discharge of his official duties.

(b) Whenever a subpoena, in appropriate form, has been lawfully served upon an officer or employee of the Food and Drug Administration commanding the giving of any testimony, such officer or employee shall, unless otherwise authorized by the Commissioner, appear in response thereto and respectfully decline to testify on the grounds that it is prohibited by this section.

(c) A person who desires testimony from any employee may make written request therefor, verified by oath, directed to the Commissioner setting forth his interest in the matter sought to be disclosed and designating the use to which such testimony will be put in
the event of compliance with such request: Provided. That a written request therefor made by a health, food, or drug officer, prosecuting attorney, or member of the judiciary of any State, Territory, or political subdivision thereof, acting in his official capacity, need not be verified by oath. If it is determined by the Commissioner, or any other officer or employee of the Food and Drug Administration whom he may designate to act on his behalf for the purpose, that such testimony will be in the public interest and will promote the objectives of the act and the agency, the request may be granted. Where a request for testimony is granted, one or more employees of the Food and Drug Administration may be designated to appear, in response to a subpoena, and testify with respect thereto.

§ 20.2 Production of records by Food and Drug Administration employees.

(a) Any request for records of the Food and Drug Administration, whether it be by letter or by a subpoena duces tecum or by any other writing, shall be handled pursuant to the procedures established in subpart B of this part, and shall comply with the rules governing public disclosure established in subparts C, D, E, and F of this part and in other regulations cross-referenced in § 20.100(c).

(b) Whenever a subpoena duces tecum, in appropriate form, has been lawfully served upon an officer or employee of the Food and Drug Administration commanding the production of any record, such officer or employee shall appear in response thereto, respectfully decline to produce the record on the ground that it is prohibited by this section, and state that the production of the record(s) involved will be handled by the procedures established in this part.

§ 20.3 Certification and authentication of Food and Drug Administration records.

(a) Upon request, the Food and Drug Administration will certify the authenticity of copies of records that are requested to be disclosed pursuant to this part or will authenticate copies of records previously disclosed.

(b) A request for certified copies of records or for authentication of records shall be sent in writing to the Freedom of Information Staff (HFI-35), Food and Drug Administration, Room 12A-16, 5600 Fishers Lane, Rockville, MD 20857.


Subpart B—General Policy

§ 20.20 Policy on disclosure of Food and Drug Administration records.

(a) The Food and Drug Administration will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the property rights of persons in trade secrets and confidential commercial or financial information, and the need for the agency to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.

(b) Except where specifically exempt pursuant to the provisions of this part, all Food and Drug Administration records shall be made available for public disclosure.

(c) Except as provided in paragraph (d) of this section, all nonexempt records shall be made available for public disclosure upon request regardless whether any justification or need for such records have been shown.

(d) Under § 21.71 of this chapter, a statement of the purposes to which the record requested is to be put, and a certification that the record will be so used, may be requested when:

(1) The requested record is contained in a Privacy Act Record System as defined in § 21.3(c) of this chapter;

(2) The requester is a person other than the individual who is the subject of the record that is so retrieved or a person acting on his behalf; and

(3) The disclosure is one that is discretionary, i.e., not required under this part.

§ 20.21 Uniform access to records.

Any record of the Food and Drug Administration that is disclosed in an authorized manner to any member of the public is available for disclosure to all members of the public, except that:

(a) Data and information subject to the exemptions established in § 20.61 for
trade secrets and confidential commercial or financial information, and in §20.63 for personal privacy, shall be disclosed only to the persons for the protection of whom these exemptions exist.

(b) The limited disclosure of records permitted in §7.87(c) of this chapter for section 305 hearing records, in §20.80(b) regarding certain limitations on exemptions, in §20.103(b) for certain correspondence, and in §20.104(b) for certain summaries of oral discussions, shall be subject to the special rules stated therein.

(c) Disclosure of a record about an individual, as defined in §21.3(a) of this chapter, that is retrieved by the individual's name or other personal identifier and is contained in a Privacy Act Record System, as defined in §21.3(c) of this chapter, shall be subject to the special requirements of part 21 of this chapter. Disclosure of such a record to an individual who is the subject of the record does not invoke the rule established in this section that such records shall be made available for disclosure to all members of the public.


§ 20.22 Partial disclosure of records.

If a record contains both disclosable and nondisclosable information, the nondisclosable information will be deleted and the remaining record will be disclosed unless the two are so intricably intertwined that it is not feasible to separate them or release of the disclosable information would compromise or impinge upon the nondisclosable portion of the record.

§ 20.23 Request for existing records.

(a) Any written request to the Food and Drug Administration for existing records not prepared for routine distribution to the public shall be deemed to be a request for records pursuant to the Freedom of Information Act, whether or not the Freedom of Information Act is mentioned in the request, and shall be governed by the provisions of this part.

(b) Records or documents prepared by the Food and Drug Administration for routine public distribution, e.g., pamphlets, speeches, and educational materials, shall be furnished free of charge upon request as long as the supply lasts. The provisions of this part shall not be applicable to such requests except when the supply of such material is exhausted and it is necessary to reproduce individual copies upon specific request.

(c) All existing Food and Drug Administration records are subject to routine destruction according to standard record retention schedules.

§ 20.24 Preparation of new records.

(a) The Freedom of Information Act and the provisions of this part apply only to existing records that are reasonably described in a request filed with the Food and Drug Administration pursuant to the procedures established in subpart C of this part.

(b) The Commissioner may, in his discretion, prepare new records in order to respond adequately to a request for information when he concludes that it is in the public interest and promotes the objectives of the act and the agency.

§ 20.25 Retroactive application of regulations.

The provisions of this part apply to all records in Food and Drug Administration files.

§ 20.26 Indexes of certain records.

(a) Indexes shall be maintained, and revised at least quarterly, for the following Food and Drug Administration records:

(1) Final orders published in the Federal Register with respect to every denial or withdrawal of approval of a new drug application or a new animal drug application for which a public hearing has been requested.

(2) Statements of policy and interpretation adopted by the agency and still in force and not published in the Federal Register.

(3) Administrative staff manuals and instructions to staff that affect a member of the public.

(b) A copy of each such index is available at cost from the Freedom of Information Staff (HFI-35), Food and Drug Administration.
Food and Drug Administration, HHS

193

§ 20.27 Submission of records marked as confidential.

Marking records submitted to the Food and Drug Administration as confidential, or with any other similar term, raises no obligation by the Food and Drug Administration to regard such records as confidential, to return them to the person who has submitted them, to review them pursuant to the procedures established in §20.44, to withhold them from disclosure to the public, or to advise the person submitting them when a request for their public disclosure is received or when they are in fact disclosed.

§ 20.28 Food and Drug Administration determinations of confidentiality.

A determination that data or information submitted to the Food and Drug Administration will be held in confidence and will not be available for public disclosure shall be made only in the form of a regulation published or cross-referenced in this part or by a written determination pursuant to the procedure established in §20.44.

§ 20.29 Prohibition on withdrawal of records from Food and Drug Administration files.

Except pursuant to the procedure established in §20.44 for presubmission review of records, no person may withdraw records submitted to the Food and Drug Administration. All Food and Drug Administration records shall be retained by the agency until disposed of pursuant to routine record disposal procedures.

§ 20.30 Food and Drug Administration Freedom of Information Staff.

(a) The Office responsible for agency compliance with the Freedom of Information Act and this part is:

Freedom of Information Staff (HF1-35), Food and Drug Administration, Room 12A-16, 5600 Fishers Lane, Rockville, MD 20857.

(b) All requests for agency records shall be sent in writing to this office.

§ 20.31 Retention schedule of requests for Food and Drug Administration records.

(a) Unless unusual circumstances dictate otherwise, the Food and Drug Administration shall maintain and dispose of files of requests and responses furnished thereto within the time limits authorized by GSA General Records Schedule 14, FPMR 101-11-4, January 10, 1977, as follows:

1. Files created by the receipt of and response to freedom of information requests, except denials and/or appeals, may be destroyed 2 years from date of final response.

2. Files created by a freedom of information request which was wholly or partially denied may be destroyed 5 years after the denial letter was issued.

3. Files created by a freedom of information request which was wholly or partially denied and which denial was subsequently appealed to the Department of Health and Human Services may be destroyed 4 years after final determination by FDA or 3 years after final adjudication by courts, whichever is later.

(b) This destruction schedule will automatically be revised whenever the time limits pertaining to these records are revised by the GSA General Records Schedule.

§ 20.32 Disclosure of Food and Drug Administration employee names.

The names of Food and Drug Administration employees will not be deleted from disclosable records except where such deletion is necessary to prevent disclosure of an informant or danger to the life or physical safety of the employee or under other extraordinary circumstances.

Subpart C—Procedures and Fees

§ 20.40 Filing a request for records.

(a) All requests for Food and Drug Administration records shall be filed in
§ 20.41 Time limitations.

(a) All time limitations prescribed pursuant to this section shall begin as of the time at which a request for records is logged in by the Freedom of Information Staff pursuant to §20.40(c). An oral request for records shall not begin any time requirement. A written request for records sent elsewhere within the agency shall not begin any time requirement until it is redirected to the Freedom Information Staff and is logged in there in accordance with §20.40(c).

(b) Within 10 working days (excepting Saturdays, Sundays, and legal public holidays) after a request for records is logged in at the Freedom of Information Staff, a letter shall be sent to the persons making the request determining whether, or to the extent which, the agency will comply with the request, and, if any records are denied, the reasons therefor.

(1) If all of the records requested have been located and a final determination has been made with respect to disclosure of all of the records requested, the letter shall so state.

(2) If all of the records have not been located or a final determination has not yet been made with respect to disclosure of all of the records requested, e.g., because it is necessary to consult the person affected pursuant to §20.45, the letter shall state the extent to which the records involved shall be disclosed pursuant to the rules established in this part.

(3) In the following unusual circumstances, the time for sending this letter may be extended for up to an additional 10 working days by written notice to the person making the request setting forth the reasons for such extension and the time within which a determination is expected to be dispatched:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Freedom of Information Staff.

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or
§ 20.42 Fees to be charged.

(a) Categories of requests. Paragraphs (a)(1) through (3) of this section state, for each category of request, the type of fees that the Food and Drug Administration will generally charge. However, for each of these categories, the fees may be limited, waived, or reduced for the reasons given in paragraphs (b) and (c) of this section and in §20.43 or for other reasons.

(1) Commercial use request. If the request is for a commercial use, the Food and Drug Administration will charge for the costs of search, review, and duplication.

(2) Educational and scientific institutions and news media. If the request is from an educational institution or a noncommercial scientific institution, operated primarily for scholarly or scientific research, or a representative of the news media, and the request is not for a commercial use, the Food and Drug Administration will charge only for the duplication of documents. Also, the Food and Drug Administration will not charge the copying costs for the first 100 pages of duplication.

(3) Other requests. If the request is not the kind described in paragraph (a)(1) or (a)(2) of this section, then the Food and Drug Administration will charge only for the search and the duplication. Also, the Food and Drug Administration will not charge for the first 2 hours of search time or for the copying costs of the first 100 pages of duplication.

(b) General provisions. (1) The Food and Drug Administration may charge search fees even if the records found are exempt from disclosure or if no records are found.

(2) If, under paragraph (a)(3) of this section, there is no charge for the first 2 hours of search time, and those 2 hours are spent on a computer search, then the 2 free hours are the first 2 hours of the operator's own operation. If the operator spends less than 2 hours on the search, the total search fees will be reduced by the average hourly rate for the operator's time, multiplied by 2.

(3) If, under paragraph (a)(2) or (a)(3) of this section, there is no charge for the first 100 pages of duplication, then those 100 pages are the first 100 pages of photocopies of standard size pages, or the first 100 pages of computer printout. If this method to calculate the fee reduction cannot be used, then the total duplication fee will be reduced by the normal charge for photocopying a standard size page, multiplied by 100.

(4) No charge will be made if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee.

(5) If it is determined that a requester (acting either alone or together with others) is breaking down a single request into a series of requests in order to avoid (or reduce) the fees charged, all these requests may be aggregated for purposes of calculating the fees charged.

(6) Interest will be charged on unpaid bills beginning on the 31st day following the day the bill was sent. Provisions in 45 CFR part 30, the Department of Health and Human Services regulations governing claims collection, will be used in assessing interest, administrative costs, and penalties, and in taking actions to encourage payment.

(c) Fee schedule. The Food and Drug Administration charges the following fees:

(1) Manual searching for or reviewing of records. When the search or review is performed by employees at grade GS–1 through GS–8, an hourly rate based on the salary of a GS–5, step 7, employee; when done by a GS–9 through GS–14, an hourly rate based on the salary of a GS–12, step 4, employee; and when done by a GS–15 or above, an hourly rate based on the salary of a GS–15, step 7, employee. In each case, the hourly rate will be computed by taking the current
hourly rate for the specified grade and step, adding 16 percent of that rate to cover benefits, and rounding to the nearest whole dollar. As of January 1, 1993, these rates were $12, $24, and $43 respectively. When a search involves employees at more than one of these levels, the Food and Drug Administration will charge the rate appropriate for each.

(2) Computer searching and printing. The actual cost of operating the computer plus charges for the time spent by the operator, at the rates given in paragraph (c)(1) of this section.

(3) Photocopying standard size pages. $0.10 per page. Freedom of Information Officers may charge lower fees for particular documents where:
   (i) The document has already been printed in large numbers;
   (ii) The program office determines that using existing stock to answer this request, and any other anticipated Freedom of Information requests, will not interfere with program requirements; and
   (iii) The Freedom of Information Officer determines that the lower fee is adequate to recover the prorated share of the original printing costs.

(4) Photocopying odd-size documents (such as punchcards or blueprints), or reproducing other records (such as tapes). The actual costs of operating the machine, plus the actual cost of the materials used, plus charges for the time spent by the operator, at the rates given in paragraph (c)(1) of this section.

(5) Certifying that records are true copies. This service is not required by the Freedom of Information Act. If the Food and Drug Administration agrees to provide certification, there is a $10 charge per certification.

(6) Sending records by express mail, certified mail, or other special methods. This service is not required by the Freedom of Information Act. If the Food and Drug Administration agrees to provide this service, actual costs will be charged.

(7) Performing any other special service in connection with a request to which the Food and Drug Administration has agreed. Actual costs of operating any machinery, plus actual cost of any materials used, plus charges for the time of the Food and Drug Administration's employees, at the rates given in paragraph (c)(1) of this section.

(d) Procedures for assessing and collecting fees—(1) Agreement to pay. The Food and Drug Administration generally assumes that a requester is willing to pay the fees charged for services associated with the request. The requester may specify a limit on the amount to be spent. If it appears that the fees will exceed the limit, the Food and Drug Administration will consult the requester to determine whether to proceed with the search.

(2) Advance payment. If a requester has failed to pay previous bills in a timely fashion, or if the Food and Drug Administration's initial review of the request indicates that the charges will exceed $250, the requester will be required to pay past due fees and/or the estimated fees, or a deposit, before the search for the requested records begins. In such cases, the requester will be notified promptly upon receipt of the request, and the administrative time limits prescribed in §20.41 will begin only after there is an agreement with the requester over payment of fees, or a decision that fee waiver or reduction is appropriate.

(3) Billing and payment. Ordinarily, the requester will be required to pay all fees before the Food and Drug Administration will furnish the records. At its discretion, the Food and Drug Administration may send the requester a bill along with or following the records. For example, the Food and Drug Administration may do this if the requester has a history of prompt payment. The Food and Drug Administration may also, at its discretion, aggregate the charges for certain time periods in order to avoid sending numerous small bills to frequent requesters, or to businesses or agents representing requesters. For example, the Food and Drug Administration might send a bill to such a requester once a month. Fees should be paid in accordance with the instructions furnished by the person who responds to the request.

[59 FR 533, Jan. 5, 1994]

§ 20.43 Waiver or reduction of fees.

(a) Standard. The Associate Commissioner for Public Affairs will waive or
reduce the fees that would otherwise be charged if disclosure of the information meets both of the following tests:

(1) Is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government; and

(2) It is not primarily in the commercial interest of the requester. These two tests are explained in paragraphs (b) and (c) of this section.

(b) Public interest. Disclosure of information satisfies the first test only if it furthers the specific public interest of being likely to contribute significantly to public understanding of Government operations or activities, regardless of any other public interest it may further. In analyzing this question, the Food and Drug Administration will consider the following factors:

(1) Whether the records to be disclosed pertain to the operations or activities of the Federal Government;

(2) Whether disclosure of the records would reveal any meaningful information about Government operations or activities that is not already public knowledge;

(3) Whether disclosure will advance the understanding of the general public as distinguished from a narrow segment of interested persons. Under this factor, the Food and Drug Administration may consider whether the requester has such knowledge or expertise as may be necessary to understand the information, and whether the requester’s intended use of the information would be likely to disseminate the information to the public. An unsupported claim to be doing research for a book or article does not demonstrate that likelihood, while such a claim by a representative of the news media is better evidence; and

(4) Whether the contribution to public understanding will be a significant one, i.e., will the public’s understanding of the Government’s operations be substantially greater as a result of the disclosure.

(c) Not primarily in the requester’s commercial interest. If disclosure passes the test of furthering the specific public interest described in paragraph (b) of this section, the Food and Drug Administration will determine whether disclosure also furthers the requester’s commercial interest and, if so, whether this effect outweighs the advancement of that public interest. In applying this test, the Food and Drug Administration will consider the following factors:

(1) Whether disclosure would further a commercial interest of the requester, or of someone on whose behalf the requester is acting. Commercial interests include interests relating to business, trade, and profit. Both profit and non-profit-making corporations have commercial interests, as well as individuals, unions, and other associations. The interest of a representative of the news media in using the information for news dissemination purposes will not be considered a commercial interest.

(2) If disclosure would further a commercial interest of the requester, whether that effect outweighs the advancement of the public interest as defined in paragraph (b) of this section.

(d) Deciding between waiver and reduction. If the disclosure of the information requested passes both tests described in paragraphs (b) and (c) of this section, the Food and Drug Administration will normally waive fees. However, in some cases the Food and Drug Administration may decide only to reduce the fees. For example, the Food and Drug Administration may do this when disclosure of some but not all of the requested records passes the tests.

(e) Procedure for requesting a waiver or reduction. A requester must request a waiver or reduction of fees at the same time as the request for records. The requester should explain why a waiver or reduction is proper under the factors set forth in paragraphs (a) through (d) of this section. Only the Associate Commissioner for Public Affairs may make the decision whether to waive or reduce the fees. If the Food and Drug Administration does not completely grant the request for a waiver or reduction, the denial letter will designate a review official. The requester may appeal the denial to that official. The appeal letter should address reasons for
§ 20.44

Presubmission review of request for confidentiality of voluntarily submitted data or information.

(a) Any person who is considering submission of data or information voluntarily to the Food and Drug Administration may forward to the Director of the Center involved, or to the Associate Commissioner for Regulatory Affairs, a request for presubmission review of the records involved to determine whether the Food and Drug Administration will or will not make part or all of them available for public disclosure upon request if they are submitted. Any such request shall state why the data or information involved fall within an exemption from public disclosure set out in subpart D of this part and shall enclose the records involved.

(b) Pending a determination upon such request, the records involved shall be held confidentially and separately by the Food and Drug Administration and shall not be received as part of Food and Drug Administration files.

(c) Pursuant to such a request, the Food and Drug Administration shall make a determination whether part or all of the records involved will be made available for public disclosure upon request if they are submitted. A determination of confidentiality will be made only if it is concluded that the data or information involved fall within an exemption from public disclosure set out in subpart D of this part and are relevant to and important for agency activity.

(d) After a determination is made pursuant to this section, the Food and Drug Administration shall receive as part of its files the records for which a request for confidentiality has been granted and shall so mark or designate those records. The person requesting the presubmission review shall have the option of submitting or withdrawing the records for which a request for confidentiality has been denied. No copy or summary of records withdrawn pursuant to this section, or any correspondence or memoranda or records relating thereto, shall be retained in Food and Drug Administration files.

(e) A determination of confidentiality pursuant to this section is subject to the limitations established in subpart E of this part except that the data or information involved shall not be subject to discretionary release pursuant to §20.82. Such a determination of confidentiality by the Food and Drug Administration means that the Food and Drug Administration will not make the data or information involved available for public disclosure unless ordered to do so by a court.

(f) A determination based upon a presubmission review pursuant to this section shall be made in writing and shall be signed only by the Associate Commissioner for Public Affairs.

(g) Data and information that may be required to be submitted to the Food and Drug Administration but that are submitted voluntarily instead are not subject to the provisions of this section and will be handled as if they had been required to be submitted.

(h) No request under this section shall be accepted if the status of the records involved is already determined by §20.111 or by any other regulation published or cross-referenced in this part.

§ 20.45 Situations in which confidentiality is uncertain.

In situations where the confidentiality of data or information is uncertain and there is a request for public disclosure, the Food and Drug Administration will consult with the person who has submitted or divulged the data or information or who would be affected by disclosure before determining whether or not such data or information is available for public disclosure.

§ 20.46 Judicial review of proposed disclosure.

Where the Food and Drug Administration consults with a person who will be affected by a proposed disclosure of data or information contained in Food and Drug Administration records pursuant to §20.45, and rejects the person's request that part or all of the records...
not be made available for public disclosure, the decision constitutes final agency action that is subject to judicial review pursuant to 5 U.S.C. chapter 7. The person affected will be permitted 5 days after receipt of notification of such decision within which to institute suit in a United States District Court to enjoin release of the records involved. If suit is brought, the Food and Drug Administration will not disclose the records involved until the matter and all related appeals have been concluded.

§ 20.47 Denial of a request for records.
(a) A denial of a request for records, in whole or in part, shall be signed by the Associate Commissioner for Public Affairs.
(b) The name and title or position of each person who participated in the denial of a request for records shall be set forth in the letter denying the request. This requirement may be met by attaching a list of such individuals to the letter.
(c) A letter denying a request for records, in whole or in part, shall state the reasons for the denial and shall state that an appeal may be made to the Assistant Secretary for Health, Department of Health and Human Services, pursuant to the provisions of 45 CFR 5.34.
(d) Minor deletions of nondisclosable data and information from disclosable records shall not be deemed to be a denial of a request for records.

§ 20.48 Nonspecific and overly burdensome requests.
The Food and Drug Administration will make every reasonable effort to comply fully with all requests for disclosure of nonexempt records. Nonspecific requests or requests for a large number of documents that require the deployment of a substantial amount of agency man-hours to search for and compile will be processed taking into account the staff-hours required, the tasks from which these resources must be diverted, the impact that this diversion will have upon the agency's consumer protection activities, and the public policy reasons justifying the requests. A decision on the processing of such a request for information shall be made after balancing the public benefit to be gained by the disclosure against the public loss that will result from diverting agency personnel from their other responsibilities. In any situation in which it is determined that a request for voluminous records would unduly burden and interfere with the operations of the Food and Drug Administration, the person making the request will be asked to be more specific and to narrow the request, and to agree on an orderly procedure for the production of the requested records, in order to satisfy the request without disproportionate adverse effects on agency operations.

§ 20.49 Referral to primary source of records.
Upon receipt of a request for a record or document which is contained in Food and Drug Administration files but which is available elsewhere at a lower cost, the person requesting the record or document shall be referred to the primary source of the record or document.

§ 20.50 Availability of records at National Technical Information Service.
The Food and Drug Administration is furnishing a number of records to the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22162, which reproduces and distributes such information to the public at cost. A single copy of each such record shall be available for public review at the Food and Drug Administration. All persons requesting copies of such records shall be answered by referring the person requesting the records to NTIS.

§ 20.51 Use of private contractor for copying.
The Food and Drug Administration may furnish requested records to a private contractor for copying after deletion of all nondisclosable data and information. Under these circumstances, the Food and Drug Administration will
§ 20.52 Request for review without copying.
(a) A person requesting disclosure of records shall be permitted an opportunity to review them without the necessity for copying them where the records involved contain only disclosable data and information. Under these circumstances, the Food and Drug Administration will charge only for the costs of searching for the records.
(b) Where a request is made for review of records without copying, and the records involved contain both disclosable and nondisclosable information, the records containing nondisclosable information shall first be copied with the nondisclosable information blocked out and the Food and Drug Administration will charge for the costs of searching and copying.

§ 20.53 Indexing trade secrets and confidential commercial or financial information.
Whenever the Food and Drug Administration denies a request for a record or portion thereof on the grounds that the record or portion thereof is exempt from public disclosure as trade secret or confidential commercial or financial data and information under §20.61, and the person requesting the record subsequently contests the denial in the courts, the Food and Drug Administration will so inform the person affected, i.e., the person who submitted the record, and will require that such person intervene to defend the exempt status of the record. If a court requires the Food and Drug Administration to itemize and index such records, the Food and Drug Administration will so inform the person affected and will require that such person undertake the itemization and indexing of the records. If the affected person fails to intervene to defend the exempt status of the records and to itemize and index the disputed records, the Food and Drug Administration will take this failure into consideration in deciding whether that person has waived such exemption so as to require the Food and Drug Administration to promptly make the records available for public disclosure.


Subpart D—Exemptions

§ 20.60 Applicability of exemptions.
(a) The exemptions established in this subpart shall apply to all Food and Drug Administration records, except as provided in subpart E of this part. Accordingly, a record that is ordinarily available for public disclosure in accordance with the provisions in subpart F of this part or of another regulation cross-referenced in §20.100(c) is not available for such disclosure to the extent that it falls within an exemption contained in this subpart, except as provided by the limitations on exemptions specified in subpart E of this part. For example, correspondence that is ordinarily disclosable under §20.103 is not disclosable to the extent that it contains trade secrets exempt from disclosure under §20.61 and is not subject to discretionary release under §20.82.
(b) Where application of one or more exemptions results in a record being disclosable in part and nondisclosable in part, the rule established in §20.22 shall apply.

§ 20.61 Trade secrets and commercial or financial information which is privileged or confidential.
(a) A trade secret may consist of any commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process.
(b) Commercial or financial information that is privileged or confidential means valuable data or information which is used in one's business and is of a type customarily held in strict confidence or regarded as privileged and not disclosed to any member of the public by the person to whom it belongs.
(c) Data and information submitted or divulged to the Food and Drug Administration which fall within the definitions of a trade secret or confidential commercial or financial information are not available for public disclosure.

(d) A person who submits records to the Government may designate part or all of the information in such records as exempt from disclosure under exemption 4 of the Freedom of Information Act. The person may make this designation either at the time the records are submitted to the Government or within a reasonable time thereafter. The designation must be in writing. Where a legend is required by a request for proposals or request for quotations, pursuant to 48 CFR 352.215-12, then that legend is necessary for this purpose. Any such designation will expire 10 years after the records were submitted to the Government.

(e) The procedures in this paragraph apply to records on which the submitter has designated information as provided in paragraph (d) of this section. These procedures also apply to records that were submitted to the Food and Drug Administration when the agency has substantial reason to believe that information in the records could reasonably be considered exempt under exemption 4 of the Freedom of Information Act. Certain exceptions to these procedures are set forth in paragraph (f) of this section.

(1) When the Food and Drug Administration receives a request for such records and determines that disclosure may be required, the Food and Drug Administration will make reasonable efforts to notify the submitter about these facts. The notice will include a copy of the request, and it will inform the submitter about the procedures and time limits for submission and consideration of objections to disclosure. If the Food and Drug Administration must notify a large number of submitters, notification may be done by posting or publishing a notice in a place where the submitters are reasonably likely to become aware of it.

(2) The submitter has 5 working days from receipt of the notice to object to disclosure of any part of the records and to state all bases for its objections.

(3) The Food and Drug Administration will give consideration to all bases that have been stated in a timely manner by the submitter. If the Food and Drug Administration decides to disclose the records, the Food and Drug Administration will notify the submitter in writing. This notice will briefly explain why the agency did not sustain the submitter’s objections. The Food and Drug Administration will include with the notice a copy of the records about which the submitter objected, as the agency proposes to disclose them. The notice will state that the Food and Drug Administration intends to disclose the records 5 working days after the submitter receives the notice unless a U.S. District Court orders the agency not to release them.

(4) If a requester files suit under the Freedom of Information Act to obtain records covered by this paragraph, the Food and Drug Administration will promptly notify the submitter.

(5) Whenever the Food and Drug Administration sends a notice to a submitter under paragraph (e)(1) of this section, the Food and Drug Administration will notify the requester that the Food and Drug Administration is giving the submitter a notice and an opportunity to object. Whenever the Food and Drug Administration sends a notice to a submitter under paragraph (e)(3) of this section, the Food and Drug Administration will notify the requester of this fact.

(f) The notice requirements in paragraph (e) of this section do not apply in the following situations:

(1) The Food and Drug Administration decided not to disclose the records;

(2) The information has previously been published or made generally available;

(3) Disclosure is required by a regulation issued after notice and opportunity for public comment, that specifies narrow categories of records that are to be disclosed under the Freedom of Information Act, but in this case a submitter may still designate records as described in paragraph (d) of this section, and in exceptional cases, the Food and Drug Administration may, at its discretion, follow the notice procedures in paragraph (e) of this section;
§ 20.62 Inter- or intra-agency memoranda or letters.

All communications within the Executive Branch of the Federal government which are in written form or which are subsequently reduced to writing may be withheld from public disclosure except that factual information which is reasonably segregable in accordance with the rule established in §20.22 is available for public disclosure.

§ 20.63 Personnel, medical, and similar files, disclosure of which constitutes a clearly unwarranted invasion of personal privacy.

(a) The names or other information which would identify patients or research subjects in any medical or similar report, test, study, or other research project shall be deleted before the record is made available for public disclosure.

(b) The names and other information which would identify patients or research subjects should be deleted from any record before it is submitted to the Food and Drug Administration. If the Food and Drug Administration subsequently needs the names of such individuals, a separate request will be made.

(c) Requests for deletion of business or product names prior to disclosure of any record to the public shall not be granted on the ground of privacy, but such deletion may be justified under another exemption established in this subpart, e.g., the exemption for trade secrets and confidential commercial or financial information under §20.61.

(d) Names of individuals conducting investigations, studies, or tests on products or ingredients shall not be deleted prior to disclosure of any record to the public unless extraordinary circumstances are shown.

(e) A request for all records relating to a specific individual will be denied as a clearly unwarranted invasion of personal privacy unless accompanied by the written consent of the individual named.

(f) The names and any information that would identify the voluntary reporter or any other person associated with an adverse event involving a human drug, biologic, or medical device product shall not be disclosed by the Food and Drug Administration or by a manufacturer in possession of such reports in response to a request, demand, or order. Information that would identify the voluntary reporter or persons identified in the report includes, but is not limited to, the name, address, institution, or any other information that would lead to the identities of the reporter or persons identified in a report. This provision does not affect disclosure of the identities of reporters required by a Federal statute or regulation to make adverse event reports. Disclosure of the identities of such reporters is governed by the applicable Federal statutes and regulations.

(1) Exceptions. (i) Identities may be disclosed if both the voluntary reporter and the person identified in an adverse event report or that person’s legal representative consent in writing to disclosure, but neither FDA nor any manufacturer in possession of such reports shall be required to seek consent for disclosure from the voluntary reporter or the person identified in the adverse event report or that person’s legal representative; or (ii) Identities of the voluntary reporter and the person who experienced the reported adverse event may be disclosed pursuant to a court order in the course of medical malpractice litigation involving both parties; or (iii) The
report, excluding the identities of any other individuals, shall be disclosed to the person who is the subject of the report upon request.

(2) Preemption. No State or local governing entity shall establish or continue in effect any law, rule, regulation, or other requirement that permits or requires disclosure of the identities of the voluntary reporter or other person identified in an adverse event report except as provided in this section.

§ 20.64 Records or information compiled for law enforcement purposes.

(a) Records or information compiled for law enforcement purposes may be withheld from public disclosure pursuant to the provisions of this section to the extent that disclosure of such records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person to a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis; and information furnished by a confidential source in the case of a record compiled by the Food and Drug Administration or any other criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

(b) Records include all records relating to regulatory enforcement action, including both administrative and court action, which have not been disclosed to any member of the public, including any person who is the subject of the investigation.

(c) Any record which is disclosed to any person, including any person who is the subject of a Food and Drug Administration investigation, and any data or information received from any person who is the subject of a Food and Drug Administration investigation relating to such investigation, is available for public disclosure at that time in accordance with the rule established in §20.21, except that:

(1) Disclosure of such records shall be subject to the other exemptions established in this subpart and to the limitations on exemptions established in subpart E of this part.

(2) The record of a section 305 hearing shall be available for public disclosure only in accordance with the provisions of §7.87 of this chapter.

(d) Records for law enforcement purposes shall be subject to the following rules:

(1) No such record is available for public disclosure prior to the consideration of regulatory enforcement action based upon that record's being closed, except as provided in §20.82. The Commissioner will exercise his discretion to disclose records relating to possible criminal prosecution pursuant to §20.82 prior to consideration of criminal prosecution being closed only very rarely and only under circumstances that demonstrate a compelling public interest.

(2) After the consideration of regulatory enforcement action is closed, such records shall be made available for public disclosure except to the extent that other exemptions from disclosure in this subpart are applicable. No statements of witnesses obtained through promises of confidentiality are available for public disclosure.

(3) The consideration of regulatory enforcement action based upon a particular record shall be deemed to be closed within the meaning of this section:

(i) If it relates to administrative action, when a final decision has been
made not to take such action or such action has been taken and the matter has been concluded.

(ii) If it relates to court action, when a final decision has been made not to recommend such action to a United States attorney based upon that record, or a recommendation has been finally refused by a United States attorney, or court action has been instituted and the matter and all related appeals have been concluded, or the statute of limitations runs.

(iii) If it relates to both administrative and court action, when the events described in both paragraph (d)(3)(i) and (ii) of this section have occurred.

(4) Prior to disclosure of any record specifically reflecting consideration of possible criminal prosecution of any individual, all names and other information that would identify an individual who was considered for criminal prosecution but who was not prosecuted shall be deleted unless the Commissioner concludes that there is a compelling public interest in the disclosure of such names.

(e) Names and other information that would identify a Food and Drug Administration employee shall be deleted from records prior to public disclosure only pursuant to §20.32.


Subpart E—Limitations on Exemptions

§ 20.80 Applicability of limitations on exemptions.

(a) The limitations on exemptions established in this subpart shall apply to all Food and Drug Administration records, except as specifically provided herein. Accordingly, a record that is ordinarily exempt from public disclosure in accordance with the provisions in subpart D of this part is available for such disclosure to the extent that it falls within a limitation on the exemption contained in this subpart. For example, an investigatory record that is ordinarily exempt from disclosure under §20.64 is disclosable to Congress in accordance with the provisions of §20.87.

(b) Disclosure of a record to any member of the public pursuant to the provisions in §20.81, data and information previously disclosed to the public, in §20.82, discretionary disclosure by the Commissioner, and in §20.83, disclosure pursuant to a court order, shall involve the rule established in §20.21 that the record shall be made available for disclosure to all members of the public who request it. Disclosure of a record only to the limited categories of persons and under the conditions specified in §20.84, special government employees, in §20.85, other Federal government departments and agencies in §20.86, in camera disclosure in administrative or court proceedings, in §20.87(b), Congress, in §20.88, State and local government officials, in §20.89, foreign government officials, and in §20.90, contractors, which does not result in disclosure of the record to any member of the public in an authorized manner, shall not invoke the rule established in §20.21.

(c) Disclosure to government employees and special government employees of records exempt from public disclosure shall subject those persons to the same restrictions with respect to the disclosure of such records as any Food and Drug Administration employee.

(d) In the case of a record in a Privacy Act Record System, as defined in §21.3(c) of this chapter:

(1) The availability to an individual, as defined in §21.3(a), of a record about himself that is retrieved by the individual’s name or other personal identifier and is contained in a Privacy Act Record System shall be subject to the special requirements of part 21 of this chapter (the privacy regulations) and shall not be subject to the exemptions in subpart D of this part except that where the system is exempt and the requested record is not available under §21.61 of this chapter, the provisions of this part shall apply.

(2) The availability of a record about an individual to persons other than the individual who is the subject of the record shall be subject to the special requirements of part 21, subpart G, of this chapter (restrictions on disclosure in the privacy regulations), and shall not be subject to the limitations on exemptions in this subpart except as provided in part 21, subpart G, of this chapter.
§ 20.81 Data and information previously disclosed to the public.

(a) Any Food and Drug Administration record that is otherwise exempt from public disclosure pursuant to subpart D of this part is available for public disclosure to the extent that it contains data or information that have previously been disclosed in a lawful manner to any member of the public, other than an employee or consultant or pursuant to other commercial arrangements with appropriate safeguards for secrecy.

(1) For purposes of this section, an individual shall be deemed to be a consultant only if disclosure of the information was necessary in order to perform that specific consulting service and the purpose of the disclosure was solely to obtain that service. The number of consultants who have received such information shall have been limited to the number reasonably needed to perform that particular consulting service.

(2) For purposes of this section, other commercial arrangements shall include licenses, contracts, and similar legal relationships between business associates.

(3) For purposes of this section, data and information disclosed to clinical investigators or members of institutional review committees, whether required by regulations of the Food and Drug Administration, or made voluntarily, if accompanied by appropriate safeguards to assure secrecy and otherwise in accordance with this section, are not deemed to have been previously disclosed to any member of the public within the meaning of paragraph (a) of this section.

(b) Any data or information furnished to the Food and Drug Administration for a presubmission review pursuant to the procedure established in §20.44 shall be accompanied by a statement that the information has not previously been published or disclosed to anyone other than as provided in paragraph (a) of this section.

(c) Any statement relating to prior public disclosure is subject to the False Reports to the Government Act, 18 U.S.C. 1001.


§ 20.82 Discretionary disclosure by the Commissioner.

(a) Except as provided in paragraph (b) of this section, the Commissioner may, in his discretion, disclose part or all of any Food and Drug Administration record that is otherwise exempt from disclosure pursuant to subpart D of this part. The Commissioner shall exercise his discretion to disclose such records whenever he determines that such disclosure is in the public interest, will promote the objectives of the act and the agency, and is consistent with the rights of individuals to privacy, the property rights of persons in trade secrets, and the need for the agency to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.

(b) The Commissioner shall not make available for public disclosure any record that is:

(1) Exempt from public disclosure pursuant to §20.61.

(2) Exempt from public disclosure pursuant to §20.63.


(4) Contained in a Privacy Act Record System where disclosure would constitute a clearly unwarranted invasion of personal privacy or is otherwise in violation of 5 U.S.C. 552a(b), as applied in part 21, subpart G, of this chapter (restrictions on disclosure in the privacy regulations).

(c) Discretionary disclosure of a record pursuant to this section shall invoke the requirement that the record shall be disclosed to any person who requests it pursuant to §20.21, but shall not set a precedent for discretionary disclosure of any similar or related record and shall not obligate the Commissioner to exercise his discretion to disclose any other record that is exempt from disclosure.

§ 20.83 Disclosure required by court order.

(a) Records of the Food and Drug Administration which the Commissioner has determined are not available for public disclosure, either in the form of a regulation published or cross-referenced in this part or by a written determination pursuant to the procedure
§ 20.84 Disclosure to consultants, advisory committees, State and local government officials commissioned pursuant to 21 U.S.C. 372(a), and other special government employees.

Data and information otherwise exempt from public disclosure may be disclosed to Food and Drug Administration consultants, advisory committees, State and local government officials commissioned pursuant to 21 U.S.C. 372(a), and other special government employees for use only in their work with the Food and Drug Administration. Such persons are thereafter subject to the same restrictions with respect to the disclosure of such data and information as any other Food and Drug Administration employee.

§ 20.85 Disclosure to other Federal government departments and agencies.

Any Food and Drug Administration record otherwise exempt from public disclosure may be disclosed to other Federal government departments and agencies, except that trade secrets and confidential commercial or financial information prohibited from disclosure by 21 U.S.C. 331(j), 21 U.S.C. 360(j)(c), 42 U.S.C. 263g(d) and 42 U.S.C. 263(e) may be released only as provided by those sections. Any disclosure under this section shall be pursuant to a written agreement that the record shall not be further disclosed by the other department or agency except with the written permission of the Food and Drug Administration.


§ 20.86 Disclosure in administrative or court proceedings.

Data and information otherwise exempt from public disclosure may be revealed in Food and Drug Administration administrative proceedings pursuant to parts 10, 12, 13, 14, 15, 17, and 19 of this chapter or court proceedings, where data or information are relevant. The Food and Drug Administration will take appropriate measures, or request that appropriate measures be taken, to reduce disclosure to the minimum necessary under the circumstances.


§ 20.87 Disclosure to Congress.

(a) All records of the Food and Drug Administration shall be disclosed to Congress upon an authorized request.

(b) An authorized request for Food and Drug Administration records by Congress shall be made by the chairman of a committee or subcommittee of Congress acting pursuant to committee business.

(c) An individual member of Congress who requests a record for his own use or on behalf of any constituent shall be subject to the same rules in this part that apply to any other member of the public.


§ 20.88 Communications with State and local government officials.

(a) A State or local government official commissioned by the Food and Drug Administration pursuant to 21 U.S.C. 372(a) shall have the same status with respect to disclosure of Food and Drug Administration records as any special government employee.

(b) Communications with State and local government officials with respect to law enforcement activities undertaken pursuant to a contract between the Food and Drug Administration and such officials shall be subject to the
rules for public disclosure established in §20.64.

(c) Communications with State and local government officials who are not commissioned pursuant to 21 U.S.C. 372(a) or under a contract to perform law enforcement activities shall have the same status as communications with any member of the public, except that:

(1) Investigatory records compiled for law enforcement purposes by State and local government officials who perform counterpart functions to the Food and Drug Administration at the State and local level, and trade secrets and confidential commercial or financial information obtained by such officials, which are voluntarily disclosed to the Food and Drug Administration as part of cooperative law enforcement and regulatory efforts, shall be exempt from public disclosure to the same extent to which the records would be so exempt pursuant to §§20.61 and 20.64, as if they had been prepared by or submitted directly to Food and Drug Administration employees, except that investigatory records shall be exempt from disclosure for a longer period of time if the State or local government officials so require as a condition of their furnishing the information to the Food and Drug Administration.

(2) Disclosure of investigatory records compiled for law enforcement purposes by the Food and Drug Administration to State and local government officials who perform counterpart functions to the Food and Drug Administration at the State and local level as part of cooperative law enforcement and regulatory efforts does not invoke the rule established in §20.21 that such records shall be made available for disclosure to all members of the public.

(d)(1) The Commissioner of Food and Drugs, or any other officer or employee of the Food and Drug Administration whose designation is made pursuant to 21 U.S.C. 372(a) or under a contract to perform law enforcement activities shall have the same status as communications with any member of the public, except that:

(i) The State government agency has provided both a written statement establishing its authority to protect confidential commercial information from public disclosure and a written commitment not to disclose any such information provided without the written permission of the Commissioner or the written confirmation by the Food and Drug Administration that the information no longer has confidential status; and

(ii) The Commissioner of Food and Drugs or the Commissioner's designee makes one or more of the following determinations:

(A) The sponsor of the product application has provided written authorization for the disclosure;

(B) Disclosure would be in the interest of public health by reason of the State government's possessing information concerning the safety, effectiveness, or quality of a product or information concerning an investigation, or by reason of the State government being able to exercise its regulatory authority more expeditiously than the Food and Drug Administration; or

(C) The disclosure is to a State government scientist visiting the Food and Drug Administration on the agency's premises as part of a joint review or long-term cooperative training effort authorized under section 708 of the Federal Food, Drug, and Cosmetic Act (the act), the review is in the interest of public health, the Food and Drug Administration retains physical control over the information, the Food and Drug Administration requires the visiting State government scientist to sign a written commitment to protect the confidentiality of the information, and the visiting State government scientist provides a written assurance that he or she has no financial interest in the regulated industry of the type that would preclude participation in the review of the matter if the individual were subject to the conflict of interest rules applicable to the Food and Drug Administration advisory committee members under §14.80(b)(1) of this chapter. Subject to all the foregoing conditions, a visiting State government scientist may have access to trade secret information, entitled to protection under section 301(j) of the
§ 20.89 Communications with foreign government officials.

Communications with foreign government officials shall have the same status as communications with any member of the public, except that:

(a) Investigatory records compiled for law enforcement purposes by foreign government officials who perform counterpart functions to the Food and Drug Administration in a foreign country, and trade secrets and confidential commercial or financial information obtained by such officials, which are voluntarily disclosed to the Food and Drug Administration in the context of cooperative enforcement and regulatory efforts, shall be exempt from public disclosure to the same extent to which the records would be exempt pursuant to §§20.61 and 20.64, as if they had been prepared by or submitted directly to Food and Drug Administration employees, except that investigatory records shall be exempt from disclosure for a longer period of time if the foreign government officials so require as a condition of their furnishing the information to the Food and Drug Administration.

(b) Disclosure of investigatory records compiled for law enforcement purposes by the Food and Drug Administration to foreign government officials who perform counterpart functions to the Food and Drug Administration in a foreign country as part of
cooperative law enforcement efforts does not invoke the rule established in §20.21 that such records shall be made available for disclosure to all members of the public.

(c)(1) The Commissioner of Food and Drugs, or any other officer or employee of the Food and Drug Administration whom the Commissioner may designate to act on his or her behalf for the purpose, may authorize the disclosure of confidential commercial information submitted to the Food and Drug Administration or incorporated into agency-prepared records, to foreign government officials who perform counterpart functions to the Food and Drug Administration as part of cooperative law enforcement or regulatory efforts, provided that:

(i) The foreign government agency has provided both a written statement establishing its authority to protect confidential commercial information from public disclosure and a written commitment not to disclose any such information provided without the written permission of the sponsor or written confirmation by the Food and Drug Administration that the information no longer has confidential status; and

(ii) The Commissioner of Food and Drugs or the Commissioner’s designee makes one or more of the following determinations:

(A) The sponsor of the product application has provided written authorization for the disclosure;

(B) Disclosure would be in the interest of public health by reason of the foreign government’s possessing information concerning the safety, efficacy, or quality of a product or information concerning an investigation; or

(C) The disclosure is to a foreign scientist visiting the Food and Drug Administration on the agency’s premises as part of a joint review or long-term cooperative training effort authorized under section 708 of the act, the review is in the interest of public health, the Food and Drug Administration retains physical control over the information, the Food and Drug Administration requires the visiting foreign scientist to sign a written commitment to protect the confidentiality of the information, and the scientist provides a written assurance that he or she has no financial interest in the regulated industry of the type that would preclude participation in the review of the matter if the individual were subject to the conflict of interest rules applicable to the Food and Drug Administration advisory committee members under §14.80(b)(1) of this chapter. Subject to all of the foregoing conditions, visiting foreign scientists may have access to trade secret information, entitled to protection under section 301(j) of the Federal Food, Drug, and Cosmetic Act (the act), in those cases where such disclosures would be a necessary part of the joint review or training.

(2) Except as provided under paragraph (c)(1)(ii)(C) of this section, this provision does not authorize the disclosure to foreign government officials of other countries of trade secret information concerning manufacturing methods and processes prohibited from disclosure by section 301(j) of the act, unless pursuant to an express written authorization provided by the submitter of the information.

(3) Any disclosure under this section of information submitted to the Food and Drug Administration or incorporated into agency-prepared records does not invoke the rule established in §20.21 that such records shall be made available to all members of the public.

(d)(1) The Deputy Commissioner for Policy, or any other officer or employee of the Food and Drug Administration whom the Deputy Commissioner for Policy may designate to act on his or her behalf for the purpose, may authorize the disclosure to, or receipt from, an official of a foreign government agency of nonpublic, predecisional documents concerning the Food and Drug Administration’s or the other government agency’s regulations or other regulatory requirements, or other nonpublic information relevant to either agency’s activities, as part of cooperative efforts to facilitate global harmonization of regulatory requirements, cooperative regulatory activities, or implementation of international agreements, provided that:

(i) The foreign government agency has provided both a written statement establishing its authority to protect such nonpublic documents from public disclosure and a written commitment
§ 20.90 Disclosure to contractors.

(a) Data and information otherwise exempt from public disclosure may be disclosed to contractors with the Food and Drug Administration and their employees for use only in their work for the Food and Drug Administration. Contractors and their employees are thereafter subject to the same legal restrictions and penalties with respect to the disclosure of such data and information as Food and Drug Administration employees.

(b) A written agreement between the Food and Drug Administration and any contractor shall be entered into before data and information otherwise exempt from public disclosure may be disclosed to the contractor. The contractor shall agree to establish and follow security precautions considered by the Food and Drug Administration to be necessary to ensure proper and confidential handling of the data and information. The written agreement shall include, where appropriate, provisions establishing:

(1) Restrictions on access to the data and information by the contractor, its employees, or other persons;

(2) Physical storage requirements;

(3) Requirements for the handling and accountability of the data and information by the contractor and its employees;

(4) Limitations on reproduction, transmission, and disclosure of the data and information;

(5) A requirement of advance approval by the Food and Drug Administration of the use by the contractor of subcontractors, vendors, or suppliers;

(6) Procedures to be followed when the contractor employs time-shared computer operations;

(7) Methods of destroying source documents or related waste material; and

(8) The period during which the contractor may retain such data and information.

§ 20.91 Use of data or information for administrative or court enforcement action.

Nothing in this part or this chapter shall prevent the Food and Drug Administration from using any data or information, whether obtained voluntarily or involuntarily and whether or not it is available for public disclosure, as the basis for taking any administrative or court enforcement action within its jurisdiction. Data and information otherwise exempt from public disclosure are nevertheless available for public disclosure to the extent necessary to effectuate such action, e.g., the brand name, code designation, and distribution information are released when a product is recalled.

Subpart F—Availability of Specific Categories of Records

§ 20.100 Applicability; cross-reference to other regulations.

(a) The provisions set forth in this subpart or cross-referenced in paragraph (c) of this section state the way in which specific categories of Food and Drug Administration records are...
handled upon a request for public disclosure. The exemptions established in subpart D of this part and the limitations on exemptions established in subpart E of this part shall be applicable to all Food and Drug Administration records, as provided in §§20.60 and 20.80. Accordingly, a record that is ordinarily available for public disclosure in accordance with this part or under other regulations is not available for such disclosure to the extent that it falls within an exemption contained in subpart D of this part except as provided by the limitations on exemptions specified in subpart E of this part.

(b) The Commissioner, on his own initiative or on the petition of any interested person, may amend this subpart or promulgate and cross-reference additional regulations to state the status of additional categories of documents to settle pending questions or to reflect court decisions.

(c) In addition to the provisions of this part, rules on the availability of the following specific categories of Food and Drug Administration records are established by regulations in this chapter:

(1) Section 305 hearing records, in §7.87(c) of this chapter.

(2) Flavor ingredient records and notes, in §101.22(i)(4)(iv) of this chapter.

(3) Environmental assessments; finding of no significant impact, in §25.51 of this chapter, or draft and final environmental impact statements, in §25.52 of this chapter.

(4) Color additive petitions, in §71.15 of this chapter.

(5) Food standard temporary permits, in §130.17(k) of this chapter.

(6) Information on thermal processing of low-acid foods packaged in hermetically sealed containers, in §108.35(l) of this chapter.

(7) Food additive petitions, in §§171.1(h) and 571.1(h) of this chapter.

(8) Action levels for natural and unavoidable defects in food for human use, in §110.110(e) of this chapter.

(9) Drug establishment registrations and drug listings, in §207.37 of this chapter.

(10) Investigational new animal drug notices, in §514.12 of this chapter.

(11) New animal drug application files, in §514.11 of this chapter.

(12) Investigational new animal drug notice and a new animal drug application file for an antibiotic drug, in §514.10 of this chapter.

(13) Methadone patient records, in §291.505(g) of this chapter.

(14) Investigational new drug notice, in §312.130 of this chapter.

(15) Labeling for and lists of approved new drug applications, in §314.430 of this chapter.

(16) Master file for a new drug application, in §312.420 of this chapter.

(17) New drug application file, in §314.430 of this chapter.

(18) Data and information submitted for in vitro diagnostic products, in §809.4 of this chapter.

(19) Data and information submitted for OTC drug review, in §330.10(a)(2) of this chapter.

(20) Investigational new drug notice for an antibiotic drug, in §431.70 of this chapter.

(21) Antibiotic drug file, in §314.430 of this chapter.

(22) Data and information submitted for biologics review, in §601.25(b)(2) of this chapter.

(23) Investigational new drug notice for a biological product, in §601.50 of this chapter.

(24) Applications for establishment and product licenses for biological products, in §601.51 of this chapter.

(25) Cosmetic establishment registrations, in §710.7 of this chapter.

(26) Cosmetic product ingredient and cosmetic raw material composition statements, §720.8 of this chapter.

(27) Cosmetic product experience reports, in §730.7 of this chapter.

(28) Device premarket notification submissions, in §807.95 of this chapter.

(29) Electronic product information, in §§1002.4 and 1002.42 of this chapter.

(30) Investigational device exemptions in §813.38 of this chapter.

(31) Data and information submitted to the Commissioner or to classification panels in connection with the classification or reclassification of devices intended for human use, in §808.5 of this chapter.
§ 20.101 Administrative enforcement records.

(a) All records and documents filed in the courts are available for public disclosure unless the court orders otherwise. The Food and Drug Administration will make available for public disclosure such records or documents if the agency can determine that it has an accurate copy of the actual record or document filed in the court. If the Food and Drug Administration cannot determine whether it has an accurate copy of such a record or document, the person requesting a copy shall be referred to the court involved.

(b) After a recommendation for court action has been finally refused by a United States attorney, the correspondence with the United States attorney and the Department of Justice with respect to that recommendation, including the pleadings recommended for filing with the court, is available for public disclosure. Prior to disclosure of any record specifically reflecting consideration of possible criminal prosecution of any individual, all names and other information that would identify an individual who was considered for criminal prosecution but who was not prosecuted shall be deleted unless the Commissioner concludes that there is a compelling public interest in the disclosure of such names.

§ 20.102 Court enforcement records.

(a) All records and documents relating to administrative enforcement action disclosed to any member of the public, including the person who is the subject of such action, are available for public disclosure at the time such disclosure is first made. Such records include correspondence with companies following factory inspection, recall or detention requests, notice of refusal of admission of an imported product, regulatory letters, information letters, Forms FD-483 and FD-2275 furnished to companies after factory inspection, and similar records.

(b) To the extent that any of such records fall within the exemption for investigatory records established in §20.64, the Commissioner determines that they are subject to discretionary release pursuant to §20.82.

(c) Records relating to administrative enforcement action that are not disclosed to any member of the public constitute investigatory records that are subject to the rules for disclosure established in §20.64. For example, an establishment inspection report is an investigatory record and thus subject to §20.64 except insofar as the Commissioner exercises his discretion to release it pursuant to §20.62.

§ 20.103 Correspondence.

(a) All correspondence to and from members of the public, members of Congress, organization or company officials, or other persons, except members of the Executive Branch of the
Federal Government and special government employees, is available for public disclosure.

(b) Any such correspondence is available for public disclosure at the time that it is sent or received by the Food and Drug Administration unless a different time for such disclosure is specified in other rules established or cross-referenced in this part, e.g., correspondence relating to an IND notice or an NDA in § 314.430 of this chapter.

§ 20.104 Summaries of oral discussions.

(a) All written summaries of oral discussions, whether in person or by telephone, with members of the public, members of Congress, organization or company officials, or other persons, except members of the Executive Branch of the Federal government or special government employees, are available for public disclosure.

(b) Any such summary is available for public disclosure at the time that it is prepared by the Food and Drug Administration unless a different time for such disclosure is specified in other rules established or cross-referenced in this part, e.g., summaries of oral discussions relating to a food additive petition in § 171.1(h)(3) of this chapter.

(c) If more than one summary of an oral discussion exists in a Food and Drug Administration file, all such summaries shall be disclosed in response to any request for such summary.

§ 20.105 Testing and research conducted by or with funds provided by the Food and Drug Administration.

(a) Any list that may be prepared by the Food and Drug Administration of testing and research being conducted by or with funds provided by the Food and Drug Administration is available for public disclosure.

(b) Any contract relating to agency testing and research, and any progress report relating thereto, is available for public disclosure.

(c) The results of all testing or research conducted by or with funds provided by the Food and Drug Administration, such as toxicological testing, compliance assays, methodology studies, and product testing, are available for public disclosure when the final report is complete and accepted by the responsible Food and Drug Administration official, after deletion of any information that would reveal confidential investigative techniques and procedures, e.g., the use of “markers” to document adulteration of a product. If such results are disclosed in an authorized manner to any member of the public before the final report is available, they are immediately available for public disclosure to any member of the public who requests them.

(d) Access to all raw data, slides, worksheets, and other similar working materials shall be provided at the same time that the final report is disclosed.

§ 20.106 Studies and reports prepared by or with funds provided by the Food and Drug Administration.

(a) The following types of reports and studies prepared by or with funds provided by the Food and Drug Administration are available for public disclosure upon their acceptance by the responsible agency official:

(1) Quarterly and annual reports of the agency.

(2) External investigations or review of agency needs and performance.

(3) Surveys, compilations, and summaries of data and information.

(4) Consumer surveys.

(5) Compliance surveys.

(6) Compliance programs, except that names of specific firms, the location of specific activities, and details about sampling numbers or sizes shall be deleted until implementation of the program is completed.

(7) Work plans prepared by Food and Drug Administration centers, field offices, and other components, except that names of specific firms, the location of specific activities, and details about sampling numbers or sizes shall be deleted until implementation of the plan is completed.

(b) The following types of reports and studies prepared by or with funds provided by the Food and Drug Administration are not available for public disclosure:

(1) Internal audits of agency needs and performance.
§ 20.107 Food and Drug Administration manuals.

(a) All Food and Drug Administration Staff Manuals and instructions to staff that affect a member of the public are available for public disclosure. An index of all such manuals is available at the Food and Drug Administration’s Freedom of Information Public Room in accordance with §20.26.

(b) Manuals relating solely to internal personnel rules and practices are not available for public disclosure except to the extent that the Commissioner determines that they should be disclosed pursuant to §20.82.

(c) All Food and Drug Administration action levels which are used to determine when the agency will take regulatory action against a violative product, limits of sensitivity and variability of analytical methods which are used in determining whether a product violates the law, and direct reference levels above which Food and Drug Administration field offices may request legal action directly to the office of the General Counsel, are available for public disclosure.

§ 20.108 Agreements between the Food and Drug Administration and other departments, agencies, and organizations.

(a) All written agreements and understandings signed by the Food and Drug Administration and other departments, agencies, and organizations are available for public disclosure except to the extent that they remain subject to an exemption established in subpart D of this part, e.g., they relate to law enforcement matters as provided in §20.88(b).

(b) A permanent file of all such agreements and understandings is available for public review during working hours in the Food and Drug Administration’s Freedom of Information Public Room.

(c) All such agreements and understandings shall be published in the Federal Register, except those agreements and memoranda of understanding currently in effect between FDA and State or local government agencies.

§ 20.109 Data and information obtained by contract.

(a) All data and information obtained by the Food and Drug Administration by contract, including all progress reports pursuant to a contract, are available for public disclosure when accepted by the responsible agency official except to the extent that they remain subject to an exemption established in subpart D of this part, e.g., they relate to law enforcement matters as provided in §20.88(b).

(b) Upon the awarding of a contract by the Food and Drug Administration, the technical proposal submitted by the successful offeror will be available for public disclosure. All cost proposals and the technical proposals of unsuccessful offerors submitted in response to a request for proposals are exempt
§ 20.110 Data and information about Food and Drug Administration employees.

(a) The name, title, grade, position description, salary, work address, and work telephone number for every Food and Drug Administration employee are available for public disclosure. The home address and home telephone number of any such employee are not available for public disclosure.

(b) Statistics on the prior employment experience of present agency employees, and subsequent employment of past agency employees, are available for public disclosure.

§ 20.111 Data and information submitted voluntarily to the Food and Drug Administration.

(a) The provisions of this section shall apply only to data and information submitted voluntarily to the Food and Drug Administration, whether in the course of a factory inspection or at any other time, and not as a part of any petition, application, master file, or other required submission or request for action. Data and information that may be required to be submitted to the Food and Drug Administration but that are submitted voluntarily instead are not subject to the provisions of this section and will be handled as if they had been required to be submitted.

(b) A determination that data or information submitted voluntarily will be held in confidence and will not be available for public disclosure shall be made only in the form of a regulation published or cross-referenced in this part or by a written determination pursuant to the procedure established in § 20.44.

(c) The following data and information submitted voluntarily to the Food and Drug Administration are available for public disclosure unless extraordinary circumstances are shown:

(1) All safety, effectiveness, and functionality data and information for a marketed ingredient or product, except as provided in §330.10(a)(2) of this chapter for OTC drugs.

(2) A protocol for a test or study, unless it is shown to fall within the exemption established in §20.61 for trade secrets and confidential commercial or financial information.

(3) Adverse reaction reports, product experience reports, consumer complaints, and other similar data and information shall be disclosed as follows:

(i) If submitted by a consumer or user of the product, the record is available for public disclosure after deletion of names and other information that would identify the person submitting the information.

(ii) If submitted by the manufacturer of the product, the record is available for public disclosure after deletion of:

(a) Names and any information that would identify the person using the product.

(b) Names and any information that would identify any third party involved with the report, such as a physician or hospital or other institution.

(c) Names and any other information that would identify the manufacturer or the brand designation of the product, but not the type of product or its ingredients.

(iii) If submitted by a third party, such as a physician or hospital or other institution, the record is available for public disclosure after deletion of:

(a) Names and any information that would identify the person using the product.

(b) Names and any information that would identify any third party involved with the report, such as a physician or hospital or other institution.

(iv) If obtained through a Food and Drug Administration investigation, the record shall have the same status as the initial report which led to the investigation, i.e., it shall be disclosed in accordance with paragraph (c)(3)(i) through (iii) of this section.

(v) Any compilation of data, information, and reports prepared in a way that does not reveal data or information which is not available for public disclosure under this section is available for public disclosure.

(vi) If a person requests a copy of any such record relating to a specific individual or a specific incident, such request will be denied unless accompanied by the written consent to such
§ 20.112 Voluntary drug experience reports submitted by physicians and hospitals.

(a) A voluntary drug experience report to the Food and Drug Administration on FDA Form 3500 shall be handled in accordance with the rules established in §20.111(c)(3)(iii).

(b) If a person requests a copy of any such record relating to a specific individual or a specific incident, such request will be denied unless accompanied by the written consent to such disclosure of the person who submitted the report to the Food and Drug Administration and the individual who is the subject of the report.


§ 20.113 Voluntary product defect reports.

Voluntary reports of defects in products subject to the jurisdiction of the Food and Drug Administration are available for public disclosure:

(a) If the report is submitted by the manufacturer, after deletion of data and information falling within the exemptions established in §20.61 for trade secrets and confidential commercial or financial information and in §20.63 for personal privacy.

(b) If the report is submitted by any person other than the manufacturer, after deletion of names and other information that would identify the person submitting the report and any data or information falling within the exemptions established in §20.63 for personal privacy.

Food and Drug Administration, HHS

§ 20.114 Data and information submitted pursuant to cooperative quality assurance agreements.

Data and information submitted to the Food and Drug Administration pursuant to a cooperative quality assurance agreement shall be handled in accordance with the rules established in §20.111.

§ 20.115 Product codes for manufacturing or sales dates.

Data or information in Food and Drug Administration files which provide a means for deciphering or decoding a manufacturing date or sales date or use date contained on the label or in labeling or otherwise used in connection with a product subject to the jurisdiction of the Food and Drug Administration are available for public disclosure.

§ 20.116 Drug and device listing information.

Information submitted to the Food and Drug Administration pursuant to section 510 (a)-(j) of the act shall be subject only to the special disclosure provisions established in §§207.37 and 807.37 of this chapter.

[42 FR 42526, Aug. 23, 1977]

§ 20.117 New drug information.

(a) The following computer printouts are available for public inspection in the Food and Drug Administration’s Freedom of Information Public Room:

(1) A numerical listing of all new drug applications and abbreviated new drug applications approved since 1938, showing the NDA number, the trade name, the applicant, the approval date, and, where applicable, the date the approval was withdrawn and the date the Food and Drug Administration was notified that marketing of the product was discontinued.

(2) A numerical listing of all new drug applications and abbreviated new drug applications approved since 1938 which are still approved, showing the same information as is specified in paragraph (a)(1) of this section except that it does not show a withdrawal date.

(3) A listing of new drug applications, abbreviated new drug applications, which were approved since 1938 and which are still approved, covering marketed prescription drug products except prescription drug products covered by applications deemed approved under the Drug Amendments of 1962 and not yet determined to be effective in the Drug Efficacy Study Implementation program. The listing includes the name of the active ingredient, the type of dosage form, the route of administration, the trade name of the product, the name of the application holder, and the strength or potency of the product. The listing also includes, for each active ingredient in a particular dosage form for which there is more than one approved application, an evaluation of the therapeutic equivalence of the drug products covered by such applications.

(b) Other computer printouts containing IND and NDA information are available to the extent that they do not reveal data or information prohibited from disclosure under §§20.61, 312.130, and 314.430 of this chapter.


Effective Date Note: At 64 FR 399, Jan. 5, 1999, in §20.117, paragraph (a)(3) was amended by removing the phrase “antibiotic applications,” effective May 20, 1999.

§ 20.118 Advisory committee records.

All advisory committee records shall be handled in accordance with the rules established in parts 10, 12, 13, 14, 15, 16, and 19 of this chapter.

§ 20.119 Lists of names and addresses.

Names and addresses of individuals in Food and Drug Administration records shall not be sold or rented. Names and addresses shall not be disclosed if disclosure is prohibited as a clearly unwarranted invasion of personal privacy, e.g., lists of names and home addresses of Food and Drug Administration employees, which shall not be disclosed under §20.110.
PART 21—PROTECTION OF PRIVACY

Subpart A—General Provisions

Sec. 21.1 Scope.
21.3 Definitions.
21.10 Policy concerning records about individuals.

Subpart B—Food and Drug Administration Privacy Act Record Systems

21.20 Procedures for notice of Food and Drug Administration Privacy Act Record Systems.
21.21 Changes in systems and new systems.

Subpart C—Requirements for Specific Categories of Records

21.30 Records of contractors.
21.31 Records stored by the National Archives and Records Administration.
21.32 Personnel records.
21.33 Medical records.

Subpart D—Procedures for Notification of and Access to Records in Privacy Act Record Systems

21.40 Procedures for submitting requests for notification and access.
21.41 Processing of requests.
21.42 Responses to requests.
21.43 Access to requested records.
21.44 Verification of identity.
21.45 Fees.

Subpart E—Procedures for Requests for Amendment of Records

21.50 Procedures for submitting requests for amendment of records.
21.51 Responses to requests for amendment of records.
21.52 Administrative appeals of refusal to amend records.
21.53 Notation and disclosure of disputed records.
21.54 Amended or disputed records received from other agencies.

Subpart F—Exemptions

21.60 Policy.
21.61 Exempt systems.
21.65 Access to records in exempt systems.

Subpart G—Disclosure of Records in Privacy Act Record Systems to Persons Other Than the Subject Individual

21.70 Disclosure and intra-agency use of records in Privacy Act Record Systems; no accounting required.


Source: 42 FR 15626, Mar. 22, 1977, unless otherwise noted.

(a) This part establishes procedures to implement the Privacy Act of 1974 (5 U.S.C. 552a). It applies to records about individuals that are maintained, collected, used, or disclosed by the Food and Drug Administration and contained in Privacy Act Record Systems.

(b) This part does not:

1. Apply to Food and Drug Administration record systems that are not Privacy Act Record Systems or make available to an individual records that may include references to him but that are not retrieved by his name or other personal identifier, whether or not contained in a Privacy Act Record System, part 20 of this chapter (the public information regulations) and other regulations referred to therein determine when records are made available in such cases.

2. Make any records available to persons other than (i) individuals who are the subjects of the records, (ii) persons accompanying such individuals under §21.43, (iii) persons provided records pursuant to individual consent under §21.72, or (iv) persons acting on behalf of such individuals as legal guardians under §21.75. Part 20 of this chapter (the public information regulations) and other regulations referred to therein determine when records are made available to members of the public generally.

Subpart G of this part limits the provisions of part 20 of this chapter with respect to disclosures of records about individuals from Privacy Act Record Systems to persons other than individuals who are the subjects of the records.
Food and Drug Administration, HHS

§ 21.10 Policy concerning records about individuals.

Information about individuals in Food and Drug Administration records shall be collected, maintained, used, and disseminated so as to protect the right to privacy of the individual to the fullest possible extent consistent with laws relating to disclosure of information to the general public and the law enforcement responsibilities of the

(3) Make available information compiled by the Food and Drug Administration in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such information to any member of the public, including any subject individual or party to such litigation or proceeding shall be governed by applicable constitutional principles, rules of discovery, and part 20 of this chapter (the public information regulations).

(4) Apply to personnel records maintained by the Division of Human Resources Management, Food and Drug Administration, except as provided in §21.32. Such records are subject to regulations of the Office of Personnel Management in 5 CFR parts 293, 294, and 297.


§ 21.3 Definitions.

As used in this part:
(a) Individual means a natural living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. Individual does not include sole proprietorships, partnerships, or corporations engaged in the production or distribution of products regulated by the Food and Drug Administration or with which the Food and Drug Administration has business dealings. Any such business enterprise that is identified by the name of one or more individuals is not an individual within the meaning of this part. Employees of regulated business enterprises are considered individuals. Accordingly, physicians and other health professionals who are engaged in business as proprietors of establishments regulated by the Food and Drug Administration are not considered individuals; however, physicians and other health professionals who are engaged in clinical investigations, employed by regulated enterprises, or the subjects of records concerning their own health, e.g., exposure to excessive radiation, are considered individuals. Food and Drug Administration employees, consultants, and advisory committee members, State and local officials, and consumers are considered individuals.
(b) Records about individuals means items, collections, or groupings of information about individuals contained in Privacy Act Record Systems, including, but not limited to education, financial transactions, medical history, criminal history, or employment history, that contain names or personal identifiers.
(c) Privacy Act Record System means a system of records about individuals under the control of the Food and Drug Administration which information is retrieved by individual names or other personal identifiers. The term includes such a system of records whether subject to a notice published by the Food and Drug Administration, the Department, or another agency. Where records are retrieved only by personal identifiers other than individual names, a system of records is not a Privacy Act Record System if the Food and Drug Administration cannot, by reference to information under its control, or by reference to records of contractors that are subject to this part under §21.30, ascertain the identity of individuals who are the subjects of the records.
(d) Personal identifiers includes individual names, identifying numbers, symbols, or other identifying designations assigned to individuals. Personal identifiers does not include names, numbers, symbols, or other identifying designations that identify products, establishments, or actions.
(e) Personnel records means any personal information maintained in a Privacy Act Record System that is needed for personnel management programs or processes such as staffing, employee development, retirement, and grievances and appeals.
(f) Department means Department of Health and Human Services.
§ 21.20

agency, and administrative and program management needs.

Subpart B—Food and Drug Administration Privacy Act Record Systems

§ 21.20 Procedures for notice of Food and Drug Administration Privacy Act Record Systems.

(a) The Food and Drug Administration shall issue in the FEDERAL REGISTER on or before August 30 of each year a notice concerning each Privacy Act Record System as defined in §21.3(c) that is not covered by a notice published by the Department, the Office of Personnel Management, or another agency.

(b) The notice shall include the following information:

(1) The name and location(s) of the system.
(2) The categories of individuals about whom records are maintained in the system.
(3) The categories of records maintained in the system.
(4) The authority for the system.
(5) Each routine use of the records contained in the system (i.e., use outside the Department of Health and Human Services that is compatible with the purpose for which the records were collected and described in the notice) including the categories of users and the purposes of such use.
(6) The policies and practices of the Food and Drug Administration regarding storage, retrievability (i.e., how the records are indexed and what intragency uses are made of the records), access controls, retention, and disposal of the records in that system.
(7) The title and business address of the official who is responsible for the system of records.
(8) The notification procedure, i.e., the address of the FDA Privacy Act Coordinator, whom any individual can contact to seek notification whether the system contains a record about him/her.
(9) The record access and contest procedures, which shall be the same as the notification procedure except that a reference shall be included to any exemption from access and contest.
(10) Where any records in the system are subject to an exemption under §21.61, a reference to this exemption.
(11) The categories of sources of records in the system.


§ 21.21 Changes in systems and new systems.

(a) The Food and Drug Administration shall notify the designated Department official, the Office of Management and Budget (Information Systems Division), and the Congress of proposals to change or establish Privacy Act Record Systems in accordance with procedures of the Department and the Office of Management and Budget.

(b) The Food and Drug Administration shall issue a notice, in accordance with paragraph (d) of this section and §21.20(b), of any change in a Privacy Act Record System which:

(1) Increases the number or types of individuals about whom records are maintained;
(2) Expands the type or amount of information about individuals that is maintained;
(3) Increases the number of categories of agencies or other persons who may have access to those records;
(4) Alters the manner in which the records are organized so as to change the nature or scope of those records, such as the combining of two or more existing systems;
(5) Modifies the way in which the system operates or its location(s) in a manner that alters the process by which individuals can exercise their rights under this part, such as the ways in which they seek access or request amendment of a record; or
(6) Changes the equipment configuration on which the system is operated so as to create the potential for greater access, such as adding a telecommunications capability.

(c) The Food and Drug Administration shall issue a notice of its intention to establish new Privacy Act Record Systems in accordance with paragraph (d) of this section and §21.20(b).

(d) Notices under paragraphs (b) and (c) of this section shall be published in the FEDERAL REGISTER for comment at
least 30 days prior to implementation of the proposed changes or establishment of new systems. Interested persons shall have the opportunity to submit written data, views, or arguments on such proposed new uses or systems.

Subpart C—Requirements for Specific Categories of Records

§ 21.30 Records of contractors.

(a) Systems of records that are required to be operated, or as a matter of practical necessity must be operated, by contractors to accomplish Food and Drug Administration functions, from which information is retrieved by individual names or other personal identifiers, may be subject to the provisions of this part. If the contract is agreed to on or after September 27, 1975, the criminal penalties set forth in 5 U.S.C. § 552a(i) are applicable to such contractor, and any employee of such contractor, for disclosures prohibited in § 21.71 or for maintenance of a system of records without notice as required in § 21.20.

(b) A contract is considered to accomplish a Food and Drug Administration function if the proposal or activity it supports is principally operated on behalf of and is under the direct management of the Food and Drug Administration. Systems of records from which information is retrieved by individual names or other personal identifiers and that are operated under contracts to accomplish Food and Drug Administration functions are deemed to be maintained by the agency and shall be subject to the procedures and requirements of this part.

(c) A contract is not considered to accomplish a Food and Drug Administration function if the program or activity it supports is not principally operated on behalf of, or is not under the direct management of, the Food and Drug Administration. For example, this part does not apply to systems of records:

(1) Operated under contract with the Food and Drug Administration by State or local government agencies, or organizations representing such agencies, when such agencies or organizations are also performing State or local government functions.

(2) Operated by contractors with the Food and Drug Administration by individuals or organizations whose primary function is delivery of health services, such as hospitals, physicians, pharmacists, and other health professionals, and that report information concerning products, e.g., injuries or product defects, to the Food and Drug Administration. Before such contractors submit information to the Food and Drug Administration, the names and other personal identifiers of patients or research subjects in any medical or similar report, test, study, or other research project shall be deleted, unless the contract provides otherwise. If the Food and Drug Administration subsequently needs the names of such individuals, a separate request will be made.

(3) Relating to individuals whom the contractor employs, or with whom the contractor otherwise deals, in the course of providing goods and services to the Food and Drug Administration.

(4) Operated under grants.

(d) The requirements of this part shall apply when a contractor who operates a system of records not subject to this part reports to the Food and Drug Administration information that is a system of records about individuals from which personal information is retrieved by names or other personal identifiers. Where the information would be a new Privacy Act Record System, or a change in an existing Privacy Act Record System of a type described in § 21.21, the Food and Drug Administration shall comply with the requirements of § 21.21.

(e) The Food and Drug Administration will review all contracts before award to determine whether operation of a system from which information is retrieved by individual names or other personal identifiers will be required of the contractor, by the terms of the contract or as a matter of practical necessity. If such operation will be required, the solicitation and contract shall include the following clause, or a clause of similar effect:

Whenever the contractor or any of his employees is required by this contract to operate a system of records from which information is retrieved by individual names or
§ 21.31 Other personal identifiers in order to accomplish a Food and Drug Administration function, the contractor and every employee is considered to be an employee of the Food and Drug Administration and shall operate such system of records in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), regulations of the Food and Drug Administration in 21 CFR part 21, and rules of conduct that apply to Food and Drug Administration employees who work with such systems of records. The contractor and his employees are subject to the criminal penalties set forth in 5 U.S.C. 552a(i) for violations of the Privacy Act.

§ 21.31 Records stored by the National Archives and Records Administration.

(a) Food and Drug Administration records that are stored, processed, and serviced by the National Archives and Records Administration in accordance with 44 U.S.C. 3103 shall be considered to be maintained by the Food and Drug Administration. The National Archives and Records Administration shall not disclose the record except to authorized Food and Drug Administration employees.

(b) Each Food and Drug Administration record pertaining to an identifiable individual that was transferred to the National Archives of the United States as a record determined by the National Archives to have sufficient historical or other value to warrant its continued preservation shall be considered to be maintained by the National Archives and shall not be subject to the provisions of this part.


§ 21.32 Personnel records.

(a) Present and former Food and Drug Administration employees desiring access to personnel records about themselves should consult system notices applicable to the agency’s personnel records that are published by the Office of Personnel Management and the Department as well as any notice issued by the Food and Drug Administration.

(b)(1) The procedures of the Office of Personnel Management at 5 CFR parts 293, 294, and 297 rather than the procedures in §21.33 and subparts D through F of this part, govern systems of personnel records about Food and Drug Administration employees that are subject to notice published by the Office of Personnel Management, i.e., systems that:

(i) The Office of Personnel Management maintains.

(ii) Are maintained by the Division of Human Resources Management, Food and Drug Administration.

(iii) Are maintained by Department Regional Offices, concerning field employees.

(2) The Office of Personnel Management’s procedures may, if necessary, be supplemented in the Food and Drug Administration Staff Manual Guide. Current Food and Drug Administration employees should mail or deliver written requests under the Privacy Act for access to personnel records described in this paragraph to the Office of Personnel Management in accordance with 5 CFR 297.106, the Director, Division of Human Resources Management (HFA-400), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the personnel officer in the servicing HHS Regional Personnel Office. An employee may consult with or direct his or her request to the FDA Privacy Act Coordinator (HFI-30). Requests for access to personnel records of former employees that are located in Federal Records Centers should be directed to the Office of Personnel Management. Requests under the Privacy Act for amendment of personnel records should be directed to these same officials who are responsible for access to personnel records under this paragraph.

(3) With respect to records subject to paragraph (b)(1) of this section:

(i) Refusal to grant access to a record, or refusal to amend a record upon request of an employee, shall only be made by the Associate Commissioner for Management and Operations or his or her designate; and

(ii) Appeals of refusals under paragraph (b)(3)(i) of this section may be made to the Office of Personnel Management in accordance with 5 CFR 297.108(g)(3) and 297.113(b).

(c) Any other Privacy Act Record Systems that contain personnel records, or records that otherwise concern agency employees, that are maintained by offices of the Food and Drug Administration...
Food and Drug Administration, HHS

§ 21.33

Administration rather than the Division of Human Resources Management but which are not subject to the Department's notice for personnel records in operating offices are subject to this part, except that refusals under this part to grant access to or amend records about present or former employees shall be made by the Associate Commissioner for Management and Operations rather than the Associate Commissioner for Public Affairs.

(d) The following procedures shall govern requests under the Privacy Act for personnel records that are maintained by the operating offices of the Food and Drug Administration in which employees work:

(1) An employee shall upon request be told whether records about him are maintained. An employee shall be given access to records about himself that are subject to this paragraph in response to an oral or written request and through informal procedures, rather than the procedures specified in §§ 21.40 through 21.43.

(2) Employee identity may be verified, if necessary, by an FDA ID card rather than in accordance with § 21.44.

(3) Generally no fee shall be charged for records requested under this paragraph. However, in cases where the records requested are voluminous, a fee may be charged in accordance with § 21.45.

(4) Records that are subject to this paragraph shall be available for access to an individual, except to the extent that access is refused by the Associate Commissioner for Management and Operations or his or her designate on the grounds that the record is subject to an exemption under § 21.61 or 5 CFR 297.111.

(5) Requests under the Privacy Act for amendment of records subject to this paragraph should be directed to the Director, Division of Human Resources Management (HFA–400). Such requests shall be reviewed in accordance with subpart E of this part. Refusal to amend a record subject to this paragraph (d)(5) shall only be made by the Associate Commissioner for Management and Operations or his or her designate.

Appeals of refusals under paragraph (d) (4) or (5) of this section may be made to the Commissioner of Food and Drugs, except where the Associate Commissioner for Management and Operations or his or her designate indicates with his or her refusal that the appeal should be made to the Office of Personnel Management.

(7) Disclosures of records subject to this paragraph are subject to subpart G of this part.


§ 21.33 Medical records.

(a) In general, an individual is entitled to have access to any medical records about himself in Privacy Act Record Systems maintained by the Food and Drug Administration.

(b) The Food and Drug Administration may apply the following special procedures in disclosing medical records to an individual:

(1) The agency may review the records to determine whether disclosure of the record to the individual who is the subject of the records might have an adverse effect on him. If it is determined that disclosure is not likely to have an adverse effect on the individual, the record shall be disclosed to him. If it is determined that disclosure is very likely to have an adverse effect on the individual, he may be requested to designate, in writing, a representative to whom the record shall be disclosed. Such representative may be a physician, other health professional, or other responsible person who would be willing to review the record and discuss it with the individual.

(2) The availability of the record may be subject to any procedures for disclosure to an individual of medical records about himself under part 20 of this chapter, in addition to or in lieu of the procedures in paragraph (b)(1), that are not inconsistent with § 21.42(f).
§ 21.40

Subpart D—Procedures for Notification of and Access to Records in Privacy Act Record Systems

§ 21.40 Procedures for submitting requests for notification and access.

(a) An individual may request that the Food and Drug Administration notify him whether a Privacy Act Record System contains records about him that are retrieved by reference to his name or other personal identifier. An individual may at the same time, or after receiving notification that such a record about him exists, requests that he be given access to the record.

(b) An individual desiring notification or access to records shall mail or deliver a request for records in any Food and Drug Administration Privacy Act Records System to the FDA Privacy Act Coordinator (HFI–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(c) Requests shall be in writing and shall name the Privacy Act Record System or Systems concerning which the individual requests notification of whether there are records about him that are retrieved by reference to his name or other personal identifier. To help assure a prompt response, an individual should indicate that he is making a "Privacy Act Request" on the envelope and in a prominent manner in the letter.

(d) An individual who merely wishes to be notified whether a Privacy Act Record System contains a record about him ordinarily need not provide any verification of his identity other than his name. The mere fact that the Food and Drug Administration has a record about an individual in any of its Privacy Act Records Systems would not be likely to constitute a clearly unwarranted invasion of personal privacy. Where mere disclosure of the fact that a record about the individual exists would be a clearly unwarranted invasion of personal privacy, further verification of the identity of the individual shall be required.

(e) An individual who requests that he be given access to a copy of records about himself, if any exist, should indicate whether he prefers (1) to have copies of any such records mailed to him in accordance with §21.43(a)(1), which may involve a fee under §21.45, including information to verify his identity under §21.44 or (2) to use the procedures for access in person under §21.43(a)(2).

(f) A request for notification and access may be submitted under this subpart concerning any Privacy Act Record System that is exempt under §21.61, as indicated in the notice for the system. An individual seeking access to records under §21.65(b)(2) to investigatory records compiled for law enforcement purposes other than criminal law enforcement purposes should submit a description of the right, benefit, or privilege that he believes he was denied as the result of the Food and Drug Administration's maintenance of the records. Where the system is exempt under §21.61, and access to the requested records is not granted under §21.65, the request shall be handled under the provisions of part 20 of this chapter (the public information regulations).


§ 21.41 Processing of requests.

(a) An individual or his guardian under §21.75 shall not be required to show any justification or need to obtain notification under §21.42 or access to a record under §21.43.

(b) The Food and Drug Administration will determine whether a request by an individual for records about himself is appropriately treated as a request under this subpart, or under the provision of part 20 of this chapter (the public information regulations), or both. Where appropriate, the Food and Drug Administration will consult with the individual concerning the appropriate treatment of the request.

(c) The FDA Privacy Act Coordinator (HFI–30) in the Freedom of Information Staff shall be responsible for the handling of Privacy Act requests received by the Food and Drug Administration. Requests mailed or delivered to any other office shall be promptly redirected to the FDA Privacy Act Coordinator. Where this procedure would unduly delay the agency's response, however, the agency employee who received the request should consult with
§ 21.42 Responses to requests.

(a) The FDA shall respond to an individual’s request for notification as to whether a Privacy Act Record System contains records about him that are retrieved by his name or other personal identifier by sending a letter under this paragraph.

(1) If there are no records about the individual that are retrieved by his name or other personal identifier in the named Privacy Act Record System, or the requester is not an “individual” under §21.3(a), the letter shall so state. Where appropriate, the letter shall indicate that the Food and Drug Administration’s public information regulations in part 20 of this chapter prescribe general rules governing the availability of information to members of the public, and that a request may be made in accordance with part 20 of this chapter for records that are not retrieved by the requester’s name or other personal identifier from a Privacy Act Record System.

(2) If there are records about the individual that are retrieved by his name or other personal identifier in the named Privacy Act Record System, but the system is not exempt from individual access and contest under §21.61, or the system is exempt but access is allowed or required under §21.65, the letter shall inform him that the records exist and shall either:

(i) Enclose a copy of the records under §21.43(a)(1) or indicate that the records will be sent under separate cover, where there has been adequate verification of the identity of the individual under §21.44 and the fees under §21.45 do not exceed $25, or
(ii) Inform the individual of the procedures to obtain access to the records by mail or in person under §21.43(a)(2), as well as the approximate dates by which the requested records can be provided (if the records are not then available), the locations at which access in person may be had, and the information needed, if any, to verify the identity of the individual under §21.44.

(3) If the named Privacy Act Record System contains records about the individual that are retrieved by his name or other personal identifier, and the system is exempt from individual access and contest under §21.61 and access is not allowed or required under §21.65, the letter should inform him that the records are exempted from access and contest by §21.61. The letter shall also inform him if the records sought are not available because they were compiled in reasonable anticipation of court litigation or formal administrative proceedings or are otherwise not available under §21.61. Where appropriate, the letter shall also indicate whether the records are available under part 20 of this chapter (the public information regulations), and it may disclose the records in accordance with part 20.

(4) If the named Privacy Act Record System contains records about the individual that are retrieved by his name or other personal identifier, but a final determination has not yet been made with respect to disclosure of all of the records covered by the request, e.g., because it is necessary to consult another person or agency having an interest in the confidentiality of the records, the letter shall explain the circumstances and indicate when a final answer will be given.

(b) Except as provided in §21.32, access to a record may only be denied by the Associate Commissioner for Public Affairs or his or her designate, if access to any record is denied wholly or in substantial part, the letter shall state the right of the individual to appeal to the Commissioner of Food and Drugs.

(c) If a request for a copy of the records will result in a fee of over $50, the Food and Drug Administration shall require advance deposit as well as payment of any amount not yet received as a result of any previous request by the individual for a record about himself, under this subpart or part 20 of this chapter (the public information regulations) before the records are made available. If the fee is less than $50, prepayment shall not be required unless payment has not yet been received for records disclosed as a result of a previous request for a record about himself under this subpart or part 20 of this chapter.


§ 21.43 Access to requested records.

(a) Access may be granted to requested records by:

(1) Mailing a copy of the records to the requesting individual, or

(2) Permitting the requesting individual to review the records in person between 9 a.m. and 4 p.m. at the office of the FDA Privacy Act Coordinator, at the Freedom of Information Staff Public Room at the address shown in §20.30 of this chapter, or at any Food and Drug Administration field office listed in §5.115 of this chapter, or at another location or time upon which the Food and Drug Administration and the individual agree. Where appropriate, the letter shall also indicate whether the records are available under part 20 of this chapter (the public information regulations), and it may disclose the records in accordance with part 20.

(4) If the named Privacy Act Record System contains records about the individual that are retrieved by his name or other personal identifier, but a final determination has not yet been made with respect to disclosure of all of the records covered by the request, e.g., because it is necessary to consult another person or agency having an interest in the confidentiality of the records, the letter shall explain the circumstances and indicate when a final answer will be given.

(b) Except as provided in §21.32, access to a record may only be denied by the Associate Commissioner for Public Affairs or his or her designate, if access to any record is denied wholly or in substantial part, the letter shall state the right of the individual to appeal to the Commissioner of Food and Drugs.

(c) If a request for a copy of the records will result in a fee of more than $25, the letter shall specify or estimate the fee involved. Where the individual has requested a copy of any records about him and copying the records would result in a fee of over $50, the Food and Drug Administration shall require advance deposit as well as payment of any amount not yet received as a result of any previous request by the individual for a record about himself, under this subpart or part 20 of this chapter (the public information regulations) before the records are made available. If the fee is less than $50, prepayment shall not be required unless payment has not yet been received for records disclosed as a result of a previous request for a record about himself under this subpart or part 20 of this chapter.

or discussion in such other individual's presence.
(c) The Food and Drug Administration will make every reasonable effort to assure that records made available under this section can be understood by the individual, such as by providing an oral or written explanation of the records.


§ 21.44 Verification of identity.

(a) An individual seeking access to records in a Privacy Act Record System may be required to comply with reasonable requirements to enable the Food and Drug Administration to determine his identity. The identification required shall be suitable considering the nature of the records sought. No identification shall be required to receive access to information that is required to be disclosed to any member of the public under part 20 of this chapter (the public information regulations).

(b) An individual who appears in person for access to records about himself shall be required to provide at least one document to identify himself, e.g., driver's license, passport, or alien or voter registration card to verify his identity. If an individual does not have any such document or requests access to records about himself without appearing in person under circumstances in which his identity cannot be verified from the request itself, he shall be required to certify in writing that he is the individual he claims to be and that he understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense subject to a $5,000 fine.

(c) In making requests under § 21.75, a parent of a minor child or legal guardian of an incompetent individual may be required to verify his relationship to the minor child or the incompetent individual, in addition to verifying his own identity, by providing a copy of the minor's birth certificate, a court order, or other evidence of guardianship.

(d) Where an individual seeks access to particularly sensitive records, such as medical records, the individual may be required to provide additional information beyond that specified in paragraph (b) or (c) of this section, such as the individual's years of attendance at a particular educational institution, rank attained in the uniformed services, date or place of birth, names of parents, an occupation, or the specific times the individual received medical treatment.

§ 21.45 Fees.

(a) Where applicable, fees for copying records shall be charged in accordance with the schedule set forth in this section. Fees may only be charged where an individual has requested that a copy be made of a record to which he is granted access. No fee may be charged for making a search of a Privacy Act Record System whether the search is manual, mechanical, or electronic. Where a copy of the record must be made to provide access to the record, e.g., computer printout where no screen reading is available, the copy shall be made available to the individual without cost. Where a medical record is made available to a representative designated by the individual under §21.33, no fee will be charged.

(b) The fee schedule is as follows:
(1) Copying of records susceptible to photocopying—$0.10 per page.
(2) Copying of records not susceptible to photocopying, e.g., punch cards or magnetic tape—actual cost to the Government.
(3) No charge will be made if the total amount of copying for an individual does not exceed $25.

(c) When a fee is to be assessed, the individual shall be notified prior to the processing of the copies, and be given an opportunity to amend his request. Payment shall be made by check or money order made payable to the "Food and Drug Administration," and shall be sent to the Accounting Branch (HFA-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Advance deposit shall be required where the total amount exceeds $50.

Subpart E—Procedures for Requests for Amendment of Records

§21.50 Procedures for submitting requests for amendment of records.

(a) An individual who received access to a record about himself under subpart D of this part may request that the record be amended if he believes that the record or an item of information is not accurate, relevant to a Food and Drug Administration purpose, timely, or complete.

(b) Amendments under this subpart shall not violate existing statute, regulation, or administrative procedure.

(1) This subpart does not permit alteration of evidence presented in the course of judicial proceedings or Food and Drug Administration adjudicatory or rule making proceedings or collateral attack upon that which has already been the subject of any such proceedings.

(2) If the accuracy, relevancy, timeliness, or completeness of the records may be contested in any other pending or imminent agency proceeding, the Food and Drug Administration may refer the individual to the other proceeding as the appropriate means to obtain relief. If the accuracy, relevancy, timeliness, or completeness of a record is, or has been, an issue in another agency proceeding, the request under this section shall be disposed of in accordance with the decision in the other proceeding, absent unusual circumstances.

(c) Requests to amend records shall be submitted, in writing, to the FDA Privacy Act Coordinator in accordance with §21.40(b). Such requests shall include information sufficient to enable the Food and Drug Administration to locate the record, a brief description of the items of information requested to be amended, and the reasons why the record should be amended together with any appropriate documentation or arguments in support of the requested amendment. An edited copy of the record showing the described amendment may be included. Verification of identity should be provided in accordance with §21.44.

(d) Written acknowledgement of the receipt of a request to amend a record shall be provided within 10 working days to the individual who requested the amendment. Such acknowledgement may request any additional information needed to verify identity or make a determination. No acknowledgement need be made if the request can be reviewed, processed, and the individual notified of the agency’s agreement with the request or refusal within the 10-day period.


§21.51 Responses to requests for amendment of records.

(a) The Food and Drug Administration shall take one of the following actions on a request for amendment of records as promptly as possible:

(1) Amend any portion of the record which the agency has determined, based upon a preponderance of the evidence, is not accurate, relevant to a Food and Drug Administration purpose, timely, or complete, and, in accordance with paragraph (d)(3) of this section, inform the individual and previous recipients of the record that has been amended of the amendment.

(2) Inform the individual of its refusal to amend any portion of the record in the manner requested, the reason for the refusal, and the opportunity for administrative appeal to the Commissioner of Food and Drugs. Except as provided in §21.32, such refusal may only be issued by the Associate Commissioner for Public Affairs or his or her designate.

(3) Where another agency was the source of and has control of the record, refer the request to that agency.

(b) The agency may, for good cause, extend the period for taking action an additional 30 working days if notice is provided to the individual explaining the circumstances of the delay.

(c) The officials charged with reviewing a record to determine how to respond to a request to amend it, shall assess its accuracy, relevance to a Food and Drug Administration purpose, timeliness, or completeness. The determination shall be made in the light of the purpose for which the records or system is used, the agency's need for the record, and the possible adverse consequences to the individual.
§ 21.53 Notation and disclosure of disputed records.

When an individual has filed a statement of disagreement under §21.52(b)(2), the Food and Drug Administration shall:

(a) Mark any portion of the record that is disputed to assure that the record will clearly show that portion is disputed whenever the record is disclosed.

(b) In any subsequent disclosure under §21.70 or §21.71(a), provide a copy of the statement of disagreement and, if the Food and Drug Administration deems it appropriate, a concise statement of the agency’s reasons for not making the amendment(s) requested. While the individual shall have access to any such statement, it shall not be subject to a request for amendment under §21.50.

(c) If an accounting was made under §21.71(d) and (e) of a disclosure of the record under §21.71(a), provide to all previous recipients of the record a copy of the statement of disagreement and the agency statement, if any.
§ 21.54 Amended or disputed records received from other agencies.

Whenever the Food and Drug Administration is notified that a record that it received from another agency was amended or is the subject of a statement of disagreement, the Food and Drug Administration shall:

(a) Discard the record, or clearly note the amendment or the fact of disagreement in its copy of the record, and

(b) Refer persons who subsequently request the record to the agency that provided it.

(c) If an accounting was made under § 21.71 (d) and (e) of the disclosure of the record under § 21.71(a), inform all previous recipients of the record about the amendment or provide to them the statement of disagreement and the agency statement, if any.

Subpart F—Exemptions

§ 21.60 Policy.

It is the policy of the Food and Drug Administration that record systems should be exempted from the Privacy Act only to the extent essential to the performance of law enforcement functions under the laws that are administered and enforced by the Food and Drug Administration or that govern the agency.

§ 21.61 Exempt systems.

(a) Investigatory records compiled for law enforcement purposes, including criminal law enforcement purposes, in the Food and Drug Administration Privacy Act Record Systems listed in paragraph (b) of this section are exempt from the following provisions of the Privacy Act (5 U.S.C. 552a) and of this part:

(1) Such records are exempt from 5 U.S.C. 552a(c)(3) and § 21.71(e)(4), requiring that an individual be provided with the accounting of disclosures of records about himself from a Privacy Act Record System.

(2) Except where access is required under 5 U.S.C. 552a(k)(2) and § 21.65(a)(2), (such records are exempt from 5 U.S.C. 552a(d)(1) through (4) and (f)) and §§ 21.40 through 21.54, requiring procedures for an individual to be given notification of and access to records about himself in a Privacy Act Record System and to be allowed to challenge the accuracy, relevance, timeliness, and completeness of such records.

(3) Such records are exempt from 5 U.S.C. 552a(e)(4)(G) and (H) and § 21.20(b)(1) requiring inclusion in the notice for the system of information about agency procedures for notification, access, and contest.

(4) Such records are exempt from 5 U.S.C. 552a(e)(3) requiring that individuals asked to supply information be provided a form outlining the authority for the request, the purposes for which the information will be used, the routine uses in the notice for the Privacy Act Record System, and the consequences to the individual of not providing the information, but only with respect to records compiled by the Food and Drug Administration in a criminal law enforcement investigation where the conduct of the investigation would be prejudiced by such procedures.

(b) Records in the following Food and Drug Administration Privacy Act Record Systems that concern individuals who are subject to Food and Drug Administration enforcement action and consist of investigatory records compiled for law enforcement purposes, including criminal law enforcement purposes, are exempt under 5 U.S.C. 552a(j)(2) and (k)(2) from the provisions enumerated in paragraph (a) of this section:


(2) Regulated Industry Employee Enforcement Records—HHS/DA/ACMO/09-10-002.

(3) Employee Conduct Investigative Records—HHS/DA/ACMO/09-10-0013.

(c) The system described in paragraph (b)(3) of this section includes investigatory records compiled solely for the purpose of determining suitability, eligibility, or qualification for Federal civilian employment, military service, Federal contracts, and access to classified information. These records are exempt from disclosure under 5 U.S.C. 552a(k)(5) to the extent that the disclosure would reveal the identity of a source who furnished information to the Government under a promise of
confidentiality, which must be an express promise if the information was furnished after September 27, 1975. Any individual who is refused access to a record that would reveal a confidential source shall be advised in a general way that the record includes information that would reveal a confidential source.


§ 21.65 Access to records in exempt systems.

(a) Where a Privacy Act Record System is exempt and the requested records are unavailable under §21.61, an individual may nevertheless make a request under §21.40 for notification concerning whether any records about him exist and request access to such records where they are retrieved by his name or other personal identifier.

(b) An individual making a request under paragraph (a) of this section:

(1) May be given access to the records where available under part 20 of this chapter (the public information regulations) or the Commissioner may, in his discretion, entertain a request under any or all of the provisions of §§21.40 through 21.54; and

(2) Shall be given access upon request if the records requested are subject to 5 U.S.C. 552a(k)(2) and not to 5 U.S.C. 552a(j)(2) (i.e., because they consist of investigatory material compiled for law enforcement purposes other than criminal law enforcement purposes) and maintenance of the records resulted in denial to the individual of any right, benefit, or privilege to which he would otherwise be entitled by Federal law, or for which he would otherwise be eligible. An individual given access to a record under this paragraph (b)(2) is not entitled to seek amendment under subpart E of this part. The FDA may refuse to disclose a record that would reveal the identity of a source who furnished information to the Government under a promise of confidentiality, which must be an express promise if the information was furnished on or after September 27, 1975. Any individual refused access to a record that would reveal a confidential source shall be advised in a general way that the record contains information that would reveal a confidential source.

(c) The Commissioner shall not make available any record that is prohibited from public disclosure under §20.82(b) of this chapter.

(d) Discretionary disclosure of a record pursuant to paragraph (b)(1) of this section shall not set a precedent for discretionary disclosure of a similar or related record and shall not obligate the Commissioner to exercise his discretion to disclose any other record in a system that is exempt under §21.61.

Subpart G—Disclosure of Records in Privacy Act Record Systems to Persons Other Than the Subject Individual

§ 21.70 Disclosure and intra-agency use of records in Privacy Act Record Systems; no accounting required.

(a) A record about an individual which is contained in a Privacy Act Record System may be disclosed:

(1) To the individual who is the subject of the record, or his legal guardian under §21.75;

(2) To a third party pursuant to a written request by, or within a written consent of, the individual to whom the record pertains, or his legal guardian under §21.75;

(3) To any person:

(i) Where the names and other identifying information are first deleted, and under circumstances in which the recipient is unlikely to know the identity of the subject of the record;

(ii) Where disclosure is required by part 20 of this chapter (the public information regulations); or

(4) Within the Department of Health and Human Services to officers and employees who have a need for the record in the performance of their duties in connection with the laws administered and enforced by the Food and Drug Administration or that govern the agency. For purposes of this section, officers or employees of the Department shall include the following categories of individuals, who shall thereafter be subject to the same restrictions with respect to disclosure as any Food and
§ 21.71 Disclosure of records in Privacy Act Record Systems; accounting required.

(a) Except as provided in §21.70, a record about an individual that is contained in a Privacy Act Record System shall not be disclosed by any method of communication except under any of the following circumstances, which are subject to the limitations of paragraphs (b) and (c) of this section and to the accounting requirement of paragraph (d) of this section:

1. To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;
2. Required under section 552 of the Freedom of Information Act;
3. For a routine use as described in the routine use section of each specific system notice;
4. To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the U.S. Code;
5. To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and that the record is to be transferred in a form that is not individually identifiable;
6. To the National Archives and Records Administration of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or to the Archivist of the United States or his or her designee for evaluation to determine whether the record has such value;
7. To another agency or to an instrumentality of any government jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;
8. To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;
9. To either House of Congress or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;
10. To the Comptroller General, or any of his or her authorized representatives in the course of the performance of the duties of the General Accounting Office;
11. Pursuant to the order of a court of competent jurisdiction;
12. To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d)). (This “Special Disclosure” statement does not apply to any FDA system of records.)

(b) The Food and Drug Administration may in its discretion refuse to make a disclosure permitted under paragraph (a) of this section, if the disclosure would in the judgment of the agency, invade the privacy of the individual or be inconsistent with the purpose for which the information was collected.

(c) The Food and Drug Administration may require any person requesting a disclosure of a record under paragraph (a) of this section to provide:

1. Information about the purposes to which the disclosed record is to be put, and
2. A written statement certifying that the record will be used only for the stated purposes and will not be further disclosed without the written permission of the Food and Drug Administration.

Under 5 U.S.C. 552a(i)(3), any person who knowingly or willfully requests or
obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000. Such person may also be subject to prosecution under the False Reports to the Government Act, 18 U.S.C. 1001.

(d) An accounting shall be made, in accordance with paragraph (e) of this section, of any disclosure under paragraph (a) of this section of a record that is not a disclosure under §21.70.

(e) Where an accounting is required under paragraph (d) of this section, the Food and Drug Administration shall:

1. Record the name and address of the person or agency to whom the disclosure is made and the date, nature, and purpose of the disclosure. The accounting shall not be considered a Privacy Act Record System.

2. Retain the accounting for 5 years or for the life of the record, whichever is longer, following the disclosure.

3. Notify those recipients listed in the accounting of amendments or disputes concerning the records previously disclosed to them pursuant to §21.51(d)(3), §21.53(c), or §21.54(c).

4. Except when the record is exempt from individual access and contest under §21.61 or to the extent that the accounting describes a transfer for a law enforcement purpose pursuant to paragraph (a)(7) of this section, make the accounting available to the individual to whom the record pertains, in accordance with procedures of subpart D of this part.

5. A single accounting may be used to cover disclosure(s) that consist of a continuing dialogue between two agencies over a prolonged period, such as discussion of an enforcement action between the Food and Drug Administration and the Department of Justice. In such cases, a general notation may be made that, as of a certain date, contract was initiated, to continue until resolution of the matter.

6. Where appropriate, the letter disclosing the information shall indicate that the Food and Drug Administration has not reviewed the record to assure that it is accurate, relevant, timely, and complete.

§ 21.73 Accuracy, completeness, timeliness, and relevance of records disclosed from Privacy Act Record Systems.

(a) The Food and Drug Administration shall make reasonable efforts to assure that a record about an individual in a Privacy Act Record System is accurate, relevant to a Food and Drug Administration purpose, timely, and complete before such record is disclosed under §21.71.

(b) Paragraph (a) of this section shall not apply to disclosures that are required under part 20 of this chapter (the public information regulations) or made to other Federal Government departments and agencies. Where appropriate, the letter disclosing the information shall indicate that the Food and Drug Administration has not reviewed the record to assure that it is accurate, relevant, timely, and complete.

§ 21.72 Individual consent to disclosure of records to other persons.

(a) Individuals may consent to disclosure of records about themselves to other persons in several ways, for example:

1. An individual may give consent at the time that the information is collected for disclosure for specific purposes or to specific persons.

2. An individual may give consent for disclosure of his records to a specific person.

3. An individual may request the Food and Drug Administration to transcribe a specific record for submission to another person.

(b) In each case the consent shall be in writing and shall specify the individual, organizational unit, or class of individuals or organizational units to whom the record may be disclosed, which record may be disclosed, and, if applicable, for what time period. A blanket consent to release all of an individual’s records to unspecified individuals or organizational units will not be honored. Verification of the identity of the individual and, where applicable, of the person to whom the record is to be disclosed shall be made in accordance with §21.44. Consent documents shall be retained for a period of at least 2 years. If such documents are used as a means of accounting for the disclosure, they shall be retained as provided in §21.71(e)(2).
§ 21.74 Providing notice that a record is disputed.
Whenever an individual has filed a statement of disagreement with the Food and Drug Administration concerning a refusal to amend a record under § 21.51(a)(2) or with another agency that provides the record to the Food and Drug Administration, the Food and Drug Administration shall in any subsequent disclosure under this subpart provide a copy of the statement of disagreement and a concise statement by the agency, if one has been prepared, of the reasons for not making the amendment(s) requested.

§ 21.75 Rights of legal guardians.
For the purposes of this part, the parent of any individual who is a minor or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or by a court of competent jurisdiction may act on behalf of the individual.

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

Subpart A—General Provisions
Sec.
25.1 Purpose.
25.5 Terminology.
25.10 Policies and NEPA planning.

Subpart B—Agency Actions Requiring Environmental Consideration
25.15 General procedures.
25.16 Public health and safety emergencies.
25.20 Actions requiring preparation of an environmental assessment.
25.21 Extraordinary circumstances.
25.22 Actions requiring the preparation of an environmental impact statement.

Subpart C—Categorical Exclusions
25.30 General.
25.31 Human drugs and biologics.
25.32 Foods, food additives, and color additives.
25.33 Animal drugs.
25.34 Devices and electronic products.

Subpart D—Preparation of Environmental Documents
25.40 Environmental assessments.
25.41 Findings of no significant impact.
25.42 Environmental impact statements.
25.43 Records of decision.
25.44 Lead and cooperating agencies.
25.45 Responsible agency official.

Subpart E—Public Participation and Notification of Environmental Documents
25.50 General information.
25.51 Environmental assessments and findings of no significant impact.
25.52 Environmental impact statements.

Subpart F—Other Requirements
25.60 Environmental effects abroad of major agency actions.


SOURCE: 62 FR 40592, July 29, 1997, unless otherwise noted.

Subpart A—General Provisions

§ 25.1 Purpose.
The National Environmental Policy Act of 1969 (NEPA), as amended, directs that, to the fullest extent possible, the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in NEPA. All agencies of the Federal Government shall comply with the procedures in section 102(2) of NEPA except where compliance would be inconsistent with other statutory requirements. The regulations in this part implement section 102(2) of NEPA in a manner that is consistent with FDA's authority under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act. This part also supplements the regulations for implementing the procedural provisions of NEPA that were published by the Council on Environmental Quality (CEQ) in 40 CFR parts 1500 through 1508 and the procedures included in the “HHS General Administration Manual, part 30: Environmental Protection” (45 FR 76519 to 76534, November 19, 1980).

§ 25.5 Terminology.
(a) Definitions that apply to the terms used in this part are set forth in the CEQ regulations under 40 CFR part
1508. The terms and the sections of 40 CFR part 1508 in which they are defined follow:

1. Categorical exclusion (40 CFR 1508.4).
2. Cooperating agency (40 CFR 1508.5).
3. Cumulative impact (40 CFR 1508.7).
4. Effects (40 CFR 1508.8).
5. Environmental assessment (EA) (40 CFR 1508.9).
7. Environmental impact statement (EIS) (40 CFR 1508.11).
11. Lead agency (40 CFR 1508.16).
15. NEPA process (40 CFR 1508.21).
17. Proposal (40 CFR 1508.23).

(b) The following terms are defined solely for the purpose of implementing the supplemental procedures provided by this part and are not necessarily applicable to any other statutory or regulatory requirements:

1. Abbreviated application applies to an abbreviated new drug application and an abbreviated new animal drug application.
2. Active moiety means the molecule or ion, excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds), or other noncovalent derivative (such as a complex chelate or clathrate) of the molecule responsible for the physiological or pharmacological action of the drug substance.
3. Agency means the Food and Drug Administration (FDA).
4. Increased use of a drug or biologic product may occur if the drug will be administered at higher dosage levels, for longer duration or for different indications than were previously in effect, or if the drug is a new molecular entity. The term "use" also encompasses disposal of FDA-regulated articles by consumers.
5. Responsible agency official means the agency decisionmaker designated in part 5 of this chapter.
6. The following acronyms are used in this part:
   1. CEQ—Council on Environmental Quality.
   2. CGMP—Current good manufacturing practice.
   3. EA—Environmental assessment.
   4. EIS—Environmental impact statement.
   7. FONSI—Finding of no significant impact.
   8. GLP—Good laboratory practice.
   9. GRAS—Generally recognized as safe.
   10. HACCP—Hazard analysis critical control point.
   11. IDE—Investigational device exemption.
   12. IND—Investigational new drug application.
   13. INAD—Investigational new animal drug application.
   14. NADA—New animal drug application.
   15. NDA—New drug application.
   17. OTC—Over-the-counter.
   18. PDP—Product development protocol.
   19. PMA—Premarket approval application.

§ 25.10 Policies and NEPA planning.

(a) All FDA's policies and programs will be planned, developed, and implemented to achieve the policies declared by NEPA and required by CEQ's regulations to ensure responsible stewardship of the environment for present and future generations.

(b) Assessment of environmental factors continues throughout planning.
and is integrated with other program planning at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to avoid potential conflicts.

(c) For actions initiated by the agency, the NEPA process will begin when the agency action under consideration is first identified. For actions initiated by applicants or petitioners, NEPA planning begins when FDA receives from an applicant or petitioner an EA or a claim that a categorical exclusion applies, or when FDA personnel consult with applicants or petitioners on the NEPA-related aspects of their requested actions. FDA may issue a public call for environmental data or otherwise consult with affected individuals or groups when a contemplated action in which it is or may be involved poses potential significant environmental effects.

(d) Environmental documents shall concentrate on timely and significant issues, not amass needless detail.

(e) If a proposed action for which an EIS will be prepared involves possible environmental effects that are required to be considered under statutes or Executive Orders other than those referred to under “Authority” in this part, these effects shall be considered in the NEPA review, consistent with 40 CFR 1502.25 and the HHS General Administration Manual, part 30: Environmental Protection.

Subpart B—Agency Actions Requiring Environmental Consideration

§ 25.15 General procedures.

(a) All applications or petitions requesting agency action require the submission of an EA or a claim of categorical exclusion. A claim of categorical exclusion shall include a statement of compliance with the categorical exclusion criteria and shall state that to the applicant’s knowledge, no extraordinary circumstances exist. Failure to submit an adequate EA for an application or petition requesting action by the agency of a type specified in §25.20, unless the agency can determine that the action qualifies for exclusion under §§25.30, 25.31, 25.32, 25.33, or 25.34, is sufficient grounds for FDA to refuse to file or approve the application or petition. An EA adequate for filing is one that addresses the relevant environmental issues. An EA adequate for approval is one that contains sufficient information to enable the agency to determine whether the proposed action may significantly affect the quality of the human environment.

(b) The responsible agency officials will evaluate the information contained in the EA to determine whether it is accurate and objective, whether the proposed action may significantly affect the quality of the human environment, and whether an EIS will be prepared. If significant effects requiring the preparation of an EIS are identified, FDA will prepare an EIS for the action in accordance with the procedures in subparts D and E of this part. If significant effects requiring the preparation of an EIS are not identified, resulting in a decision not to prepare an EIS, the responsible agency official will prepare a FONSI in accordance with §25.41.

(c) Classes of actions that individually or cumulatively do not significantly affect the quality of the human environment ordinarily are excluded from the requirement to prepare an EA or an EIS. The classes of actions that qualify as categorical exclusions are set forth in §§25.30, 25.31, 25.32, 25.33, or 25.34.

(d) A person submitting an application or petition of a type subject to categorical exclusion under §§25.30, 25.31, 25.32, 25.33, or 25.34, is not required to submit an EA if the person states that the action requested qualifies for a categorical exclusion, citing the particular categorical exclusion that is claimed, and states that to the applicant’s knowledge, no extraordinary circumstances exist.

§ 25.16 Public health and safety emergencies.

There are certain regulatory actions that, because of their immediate importance to the public health or safety, may make full adherence to the procedural provisions of NEPA and CEQ’s
§ 25.21 Extraordinary circumstances.
As required under 40 CFR 1508.4, FDA will require at least an EA for any specific action that ordinarily would be excluded if extraordinary circumstances indicate that the specific proposed action may significantly affect the quality of the human environment (see 40 CFR 1508.27 for examples of significant impacts). Examples of such extraordinary circumstances include:

(a) Actions for which available data establish that, at the expected level of exposure, there is the potential for serious harm to the environment; and

(b) Actions that adversely affect a species or the critical habitat of a species determined under the Endangered Species Act or the Convention on International Trade in Endangered Species of Wild Flora and Fauna to be endangered or threatened or wild flora or fauna that are entitled to special protections.

Food and Drug Administration, HHS

regulations impossible. For such actions, the responsible agency official shall consult with CEQ about alternative arrangements before the action is taken, or after the action is taken, if time does not permit prior consultation with CEQ.

§ 25.20 Actions requiring preparation of an environmental assessment.
Any proposed action of a type specified in this section ordinarily requires at least the preparation of an EA, unless it is an action in a specific class that qualifies for exclusion under §§25.30, 25.31, 25.32, 25.33, or 25.34:

(a) Major recommendations or reports made to Congress on proposals for legislation in instances where the agency has primary responsibility for the subject matter involved.

(b) Destruction or other disposition of articles condemned after seizure or whose distribution or use has been enjoined, unless categorically excluded in §§25.30(d) or 25.32(h).

(c) Destruction or other disposition of articles following detention or recall at agency request, unless categorically excluded in §§25.30(d) or 25.32(h).

(d) Disposition of FDA laboratory waste materials, unless categorically excluded in §25.30(m).

(e) Intramural and extramural research supported in whole or in part through contracts, other agreements, or grants, unless categorically excluded in §25.30(e) or (f).

(f) Establishment by regulation of labeling requirements, a standard, or a monograph, unless categorically excluded in §§25.30(k) or 25.31(a), (b), (c), (h), (i), or (j), or §25.32(a) or (p).

(g) Issuance, amendment, and enforcement of FDA regulations, or an exemption or variance from FDA regulations, unless categorically excluded in §25.30(h), (i), or (j), or §25.32(e), (g), (n), or (p).

(h) Withdrawal of existing approvals of FDA-approved articles, unless categorically excluded in §§25.31(d) or (k), 25.32(m), or 25.33(g) or (h).

(i) Approval of food additive petitions and color additive petitions, approval of requests for exemptions for investigational use of food additives, and granting of requests for exemption from regulation as a food additive, unless categorically excluded in §25.32(b), (c), (l), (j), (k), (l), (o), (q), or (r).

(j) Establishment of a tolerance for unavoidable poisonous or deleterious substances in food or in packaging materials to be used for food.

(k) Affirmation of a food substance as GRAS for humans or animals, on FDA’s initiative or in response to a petition, under parts 182, 184, 186, or 582 of this chapter and establishment or amendment of a regulation for a pre-sanctioned food ingredient, as defined in §§170.3(l) and 181.5(a) of this chapter, unless categorically excluded in §25.32(f), (k), or (r).

(l) Approval of NDA’s, abbreviated applications, applications for marketing approval of a biologic product, supplements to such applications, and actions on IND’s, unless categorically excluded in §25.31(a), (b), (c), (e), or (l).

(m) Approval of NADA’s, abbreviated applications, supplements, and actions on INAD’s, unless categorically excluded under §25.33(a), (c), (d), or (e).

(n) Approval of PMA’s for medical devices, notices of completion of PDP’s for medical devices, authorizations to commence clinical investigation under an approved PDP, or applications for an IDE, unless categorically excluded in §25.34.
§ 25.22 Actions requiring the preparation of an environmental impact statement.

(a) There are no categories of agency actions that routinely significantly affect the quality of the human environment and that therefore ordinarily require the preparation of an EIS.

(b) EIS’s are prepared for agency actions when evaluation of data or information in an EA or otherwise available to the agency leads to a finding by the responsible agency official that a proposed action may significantly affect the quality of the human environment.

Subpart C—Categorical Exclusions

§ 25.30 General.

The classes of actions listed in this section and §§ 25.31 through 25.34 are categorically excluded and, therefore, ordinarily do not require the preparation of an EA or an EIS:

(a) Routine administrative and management activities, including inspections, and issuance of field compliance programs, program circulars, or field investigative assignments.

(b) Recommendation for an enforcement action to be initiated in a Federal court.

(c) Agency requests for initiation of recalls.

(d) Destruction or disposition of any FDA-regulated article condemned after seizure or the distribution or use of which has been enjoined or following detention or recall at agency request if the method of destruction or disposition of the article, including packaging material, is in compliance with all Federal, State, and local requirements.

(e) Extramural contracts, other agreements, or grants for statistical and epidemiological studies, surveys and inventories, literature searches, and report and manual preparation, or any other studies that will not result in the production or distribution of any substance and, therefore, will not result in the introduction of any substance into the environment.

(f) Extramural contracts, other agreements, and grants for research for such purposes as to develop analytical methods or other test methodologies.

(g) Activities of voluntary Federal-State cooperative programs, including issuance of model regulations proposed for State adoption.

(h) Issuance, amendment, or revocation of procedural or administrative regulations and guidelines, including procedures for submission of applications for product development, testing and investigational use, and approval.

(i) Corrections and technical changes in regulations.

(j) Issuance of CGMP regulations, HACCP regulations, establishment standards, emergency permit control regulations, GLP regulations, and issuance or denial of permits, exemptions, variances, or stays under these regulations.

(k) Establishment or repeal by regulation of labeling requirements for marketed articles if there will be no increase in the existing levels of use or change in the intended uses of the product or its substitutes.

(l) Routine maintenance and minor construction activities such as:

(1) Repair to or replacement of equipment or structural components (e.g., door, roof, or window) of facilities controlled by FDA;

(2) Lease extensions, renewals, or succeeding leases;

(3) Construction or lease construction of 10,000 square feet or less of occupiable space;

(4) Relocation of employees into existing owned or currently leased space;

(5) Acquisition of 20,000 square feet or less of occupiable space in a structure that was substantially completed before the issuance of solicitation for offers; and

(6) Acquisition of between 20,000 square feet and 40,000 square feet of occupiable space if it constitutes less than 40 percent of the occupiable space in a structure that was substantially completed before the solicitation for offers.

(m) Disposal of low-level radioactive waste materials (as defined in the Nuclear Regulatory Commission regulations at 10 CFR 61.2) and chemical
Food and Drug Administration, HHS

waste materials generated in the laboratories serviced by the contracts administered by FDA, if the waste is disposed of in compliance with all applicable Federal, State, and local requirements.

§ 25.31 Human drugs and biologics.

The classes of actions listed in this section are categorically excluded and, therefore, ordinarily do not require the preparation of an EA or an EIS:

(a) Action on an NDA, abbreviated application, application for marketing approval of a biologic product, or a supplement to such applications, or action on an OTC monograph, if the action does not increase the use of the active moiety.

(b) Action on an NDA, abbreviated application, or a supplement to such applications, or action on an OTC monograph, if the action increases the use of the active moiety, but the estimated concentration of the substance at the point of entry into the aquatic environment will be below 1 part per billion.

(c) Action on an NDA, abbreviated application, application for marketing approval of a biologic product, or a supplement to such applications, or action on an OTC monograph, for substances that occur naturally in the environment when the action does not alter significantly the concentration or distribution of the substance, its metabolites, or degradation products in the environment.

(d) Withdrawal of approval of an NDA or an abbreviated application.

(e) Action on an IND.

(f) Testing and release by the Center for Biologics Evaluation and Research of lots or batches of a licensed biologic product.

(g) Establishment of bioequivalence requirements for a human drug or a comparability determination for a biologic product subject to licensing.

(h) Issuance, revocation, or amendment of a standard for a biologic product.

(i) Revocation of a license for a biologic product.

(j) Action on an application for marketing approval for marketing of a biologic product for transfusible human blood or blood components and plasma.


Effective Date Note: At 64 FR 399, Jan. 5, 1999, § 25.31 was amended by removing paragraph (f) and redesignating paragraph (g) as paragraph (f), and by removing paragraph (h), and by redesignating paragraphs (i) through (l) as paragraphs (g) through (j), effective May 20, 1999. For the convenience of the user, the superseded text is set forth as follows:

§ 25.31 Human drugs and biologics.

   *   *   *   *   *

(f) Testing and certification of batches of an antibiotic.

   *   *   *   *   *

(h) Issuance, revocation, or amendment of a monograph for an antibiotic drug.

   *   *   *   *   *

§ 25.32 Foods, food additives, and color additives.

The classes of actions listed in this section are categorically excluded and, therefore, ordinarily do not require the preparation of an EA or an EIS:

(a) Issuance, amendment, or repeal of a food standard.

(b) Action on a request for exemption for investigational use of a food additive if the food additive to be shipped under the request is intended to be used for clinical studies or research.

(c) Approval of a color additive petition to change a provisionally listed color additive to permanent listing for use in food, drugs, devices, or cosmetics.

(d) Testing and certification of batches of a color additive.

(e) Issuance of an interim food additive regulation.

(f) Affirmation of a food substance as GRAS for humans or animals on FDA's initiative or in response to a petition, under parts 182, 184, 186, or 582 of this chapter, and establishment or amendment of a regulation for a prior-sanctioned food ingredient, as defined in §§170.3(l) and 181.5(a) of this chapter, if the substance or food ingredient is already marketed in the United States for the proposed use.
§ 25.33 Animal drugs.

The classes of actions listed in this section are categorically excluded and, therefore, ordinarily do not require the preparation of an EA or an EIS:

(a) Action on an NADA, abbreviated application, or a supplement to such applications, if the action does not increase the use of the drug. Actions to which this categorical exclusion applies may include:
   (1) An animal drug to be marketed under the same conditions of approval as a previously approved animal drug;
   (2) A combination of previously approved animal drugs;
   (3) A new premix or other formulation of a previously approved animal drug;
   (4) Changes specified in §514.8 (a)(5), (a)(6), or (d) of this chapter;
   (5) A change of sponsor;
   (6) A previously approved animal drug to be contained in medicated feed blocks under §510.455 of this chapter or as a liquid feed supplement under §558.5 of this chapter; or
   (7) Approval of a drug for use in animal feeds if such drug has been approved under §514.2 or §514.9 of this chapter for other uses.

(b) [Reserved]

(c) Action on an NADA, abbreviated application, or a supplement to such applications, for substances that occur naturally in the environment when the action does not alter significantly the concentration or distribution of the substance, its metabolites, or degradation products in the environment.

§ 25.33 Animal drugs.

The classes of actions listed in this section are categorically excluded and, therefore, ordinarily do not require the preparation of an EA or an EIS:

(a) Action on an NADA, abbreviated application, or a supplement to such applications, if the action does not increase the use of the drug. Actions to which this categorical exclusion applies may include:
   (1) An animal drug to be marketed under the same conditions of approval as a previously approved animal drug;
   (2) A combination of previously approved animal drugs;
   (3) A new premix or other formulation of a previously approved animal drug;
   (4) Changes specified in §514.8 (a)(5), (a)(6), or (d) of this chapter;
   (5) A change of sponsor;
   (6) A previously approved animal drug to be contained in medicated feed blocks under §510.455 of this chapter or as a liquid feed supplement under §558.5 of this chapter; or
   (7) Approval of a drug for use in animal feeds if such drug has been approved under §514.2 or §514.9 of this chapter for other uses.

(b) [Reserved]

(c) Action on an NADA, abbreviated application, or a supplement to such applications, for substances that occur naturally in the environment when the action does not alter significantly the concentration or distribution of the substance, its metabolites, or degradation products in the environment.
Food and Drug Administration, HHS

§ 25.40

(d) Action on an NADA, abbreviated application, or a supplement to such applications, for:

(1) Drugs intended for use in nonfood animals;

(2) Anesthetics, both local and general, that are individually administered;

(3) Nonsystemic topical and ophthalmic animal drugs;

(4) Drugs for minor species, including wildlife and endangered species, when the drug has been previously approved for use in another or the same species where similar animal management practices are used; and

(5) Drugs intended for use under prescription or veterinarian's order for therapeutic use in terrestrial species.

(e) Action on an INAD.

(f) Action on an application submitted under section 512(m) of the act.

(g) Withdrawal of approval of an NADA or an abbreviated NADA.

(h) Withdrawal of approval of a food additive petition that reduces or eliminates animal feed uses of a food additive.

§ 25.34 Devices and electronic products.

The classes of actions listed in this section are categorically excluded and, therefore, ordinarily do not require the preparation of an EA or an EIS:

(a) Action on a device premarket notification submission under subpart E of part 807 of this chapter.

(b) Classification or reclassification of a device under part 860 of this chapter.

(c) Issuance, amendment, or repeal of a standard for a class II medical device or an electronic product, and issuance of exemptions or variances from such a standard.

(d) Approval of a PMA or a notice of completion of a PDP or amended or supplemental applications or notices for a class III medical device if the device is of the same type and for the same use as a previously approved device.

(e) Changes in the PMA or a notice of completion of a PDP for a class III medical device that do not require submission of an amended or supplemental application or notice.

(f) Issuance of a restricted device regulation if it will not result in increases in the existing levels of use or changes in the intended uses of the product or its substitutes.

(g) Action on an application for an IDE or an authorization to commence a clinical investigation under an approved PDP.

(h) Issuance of a regulation exempting from preemption a requirement of a State or political subdivision concerning a device, or a denial of an application for such exemption.

Subpart D—Preparation of Environmental Documents

§ 25.40 Environmental assessments.

(a) As defined by CEQ in 40 CFR 1508.9, an EA is a concise public document that serves to provide sufficient evidence and analysis for an agency to determine whether to prepare an EIS or a FONSI. The EA shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E) of NEPA, of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted. An EA shall be prepared for each action not categorically excluded in §§ 25.30, 25.31, 25.32, 25.33, or 25.34. The EA shall focus on relevant environmental issues relating to the use and disposal from use of FDA-regulated articles and shall be a concise, objective, and well-balanced document that allows the public to understand the agency's decision. If potentially adverse environmental impacts are identified for an action or a group of related actions, the EA shall discuss any reasonable alternative course of action that offers less environmental risk or that is environmentally preferable to the proposed action. The use of a scientifically justified tiered testing approach, in which testing may be stopped when the results suggest that no significant impact will occur, is an acceptable approach.

(b) Generally, FDA requires an applicant to prepare an EA and make necessary corrections to it. Ultimately, FDA is responsible for the scope and
§ 25.41 Findings of no significant impact.

(a) As defined by the CEQ regulations (40 CFR 1508.13), a FONSI is a document prepared by a Federal agency stating briefly why an action, not otherwise excluded, will not significantly affect the human environment and for which, therefore, an EIS will not be prepared. A FONSI includes the EA or a summary of it and a reference to any other related environmental documents.

(b) The agency official(s) responsible for approving the FONSI will sign the document, thereby establishing that the official(s) approve(s) the conclusion not to prepare an EIS for the action under consideration.

§ 25.42 Environmental impact statements.

(a) As defined by CEQ regulations (40 CFR 1508.11) and section 102(2)(C) of NEPA, an EIS should be a clear, concise, and detailed written statement describing:

(1) The environmental impacts of a proposed action;
(2) Any adverse effects that cannot be avoided if the action is implemented;
(3) Alternatives to the action;
(4) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and
(5) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented.

(b) The CEQ regulations (40 CFR 1501.7 and part 1502) describe the process for determining the scope of an EIS and provide detailed requirements for the preparation of draft and final EIS’s. CEQ format and procedures for preparing EIS shall be followed.

(c) Under the conditions prescribed in 40 CFR 1502.9, the agency will prepare a supplement for a draft or final EIS and introduce the supplement into the administrative record.

§ 25.43 Records of decision.

(a) In cases requiring environmental impact statements, at the time of its decision, the agency shall prepare a concise public record of decision.

(b) The record of decision shall:

(1) State what the decision was;
(2) Identify and discuss alternatives considered by the agency in reaching its decision;
(3) State whether all practicable means to avoid or minimize environmental harm have been adopted, and if not, why not; and
(4) Summarize the program for monitoring and enforcing the practicable means adopted to avoid or minimize the environmental harm.

§ 25.44 Lead and cooperating agencies.

For actions requiring the preparation of an EIS, FDA and other affected Federal agencies will agree which will be...
the lead agency and which will be the cooperating agencies. The responsibilities of lead agencies and cooperating agencies are described in the CEQ regulations (40 CFR 1501.5 and 1501.6, respectively). If an action affects more than one center within FDA, the Commissioner of Food and Drugs will designate one of these units to be responsible for coordinating the preparation of any required environmental documentation.

§ 25.45 Responsible agency official.

(a) The person designated in part 5 of this chapter as the responsible agency official for the underlying action is responsible for preparing environmental documents or ensuring that they are prepared.

(b) The responsible agency official will weigh any environmental impacts of each alternative course of action, including possible mitigation measures, and will balance environmental impacts with the agency's objectives in choosing an appropriate course of action. The weighing of any environmental impacts of alternatives in selecting a final course of action will be reflected in the agency's record of formal decisionmaking as required by 40 CFR 1505.2.

Subpart E—Public Participation and Notification of Environmental Documents

§ 25.50 General information.

(a) To the extent actions are not protected from disclosure by existing law applicable to the agency's operation, FDA will involve the public in preparing and implementing its NEPA procedures and will provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents.

(b) Many FDA actions involving investigations, review, and approval of applications, and premarket notifications for human drugs, animal drugs, biologic products, and devices are protected from disclosure under the Trade Secret Act, 18 U.S.C. 1905, and 301(j) of the act. These actions are also protected from disclosure under FDA's regulations including part 20, §§ 312.130(a), 314.430(b), 314.11(b), 314.12(a), 601.50(a), 601.51(a), 807.95(b), 812.38(a), and 814.9(b) of this chapter. Even the existence of applications for human drugs, animal drugs, biologic products, and devices is protected from disclosure under these regulations. Therefore, unless the existence of applications for human drugs, animal drugs, biologic products, or premarket notification for devices has been made publicly available, the release of the environmental document before approval of human drugs, animal drugs, biologic products, and devices is inconsistent with statutory requirements imposed on FDA. Appropriate environmental documents, comments, and responses will be included in the administrative record to the extent allowed by applicable laws.

§ 25.51 Environmental assessments and findings of no significant impact.

(a) Data and information that are protected from disclosure by 18 U.S.C. 1905 or 21 U.S.C. 331(j) or 360j(c) shall not be included in the portion of environmental documents that is made public. When such data and information are pertinent to the environmental review of a proposed action, an applicant or petitioner shall submit such data and information separately in a confidential section and shall summarize the confidential data and information in the EA to the extent possible.

(b) FONSI's and EA's will be available to the public in accordance with 40 CFR 1506.6 as follows:

(1) When the proposed action is the subject of a notice of proposed rulemaking or a notice of filing published in the Federal Register, the notice shall state that no EIS is necessary and that the FONSI and the EA are available for public inspection at FDA's Dockets Management Branch. If the responsible agency official is unable to complete environmental consideration of the proposed action before a notice of filing of a food or color additive petition is required to be published under the act, and if the subsequent environmental analysis leads to the conclusion that no EIS is necessary, the final regulation rather than the notice of filing shall state that no EIS is necessary and that the FONSI and the EA
§ 25.52 Environmental impact statements.

(a) If FDA determines that an EIS is necessary for an action involving investigations or approvals for drugs, animal drugs, biologic products, or devices, an EIS will be prepared but will become available only at the time of the approval of the product. Disclosure will be made in accordance with 40 CFR 1506.6 and part 20 of this chapter. The EIS will in all other respects conform to the requirements for EIS’s as specified in 40 CFR part 1502 and 1506.6(f).

(b) Comments on the EIS may be submitted after the approval of the drug, animal drug, biologic product, or device. Those comments can form the basis for the agency to consider beginning an action to withdraw the approval of applications for a drug, animal drug, or biologic product, or to withdraw premarket notifications or premarket approval applications for devices.

(c) In those cases where the existence of applications and premarket notifications for drugs, animal drugs, biologic products, or devices has already been disclosed before the agency approves the action, the agency will make diligent effort (40 CFR 1506.6) to involve the public in preparing and implementing the NEPA procedures for EIS’s while following its own disclosure requirements including those list-

21 CFR Ch. I (4-1-99 Edition)

§ 25.60 Environmental effects abroad of major agency actions.

(a) In accordance with Executive Order 12114, “Environmental Effects Abroad of Major Federal Actions” of January 4, 1979 (44 FR 1957, January 9, 1979), the responsible agency official, in analyzing actions under his or her program, shall consider the environmental effects abroad, including whether the actions involve:

(1) Potential environmental effects on the global commons and areas outside the jurisdiction of any nation, e.g., oceans and the upper atmosphere.

(2) Potential environmental effects on a foreign nation not participating with or otherwise involved in an FDA activity.

(3) The export of products (or emissions) that in the United States are prohibited or strictly regulated because their effects on the environment create a serious public health risk.

(4) Potential environmental effects on natural and ecological resources of global importance designated under the Executive Order.

(b) Before deciding on any action falling into the categories specified in paragraph (a) of this section, the responsible agency official shall determine, in accordance with section 2-3 of the Executive Order, whether such actions may have a significant environmental effect abroad.

(c) If the responsible agency official determines that an action may have a significant environmental effect abroad, the responsible agency official shall determine, in accordance with section 2-4 (a) and (b) of the Executive Order, whether the subject action calls for:

(1) An EIS;
(2) A bilateral or multilateral environmental study; or
(3) A concise environmental review.
(d) In preparing environmental documents under this subpart, the responsible official shall:
(1) Determine, as provided in section 2-5 of the Executive Order, whether proposed actions are subject to the exemptions, exclusions, and modification in contents, timing, and availability of documents.
(2) Coordinate all communications with foreign governments concerning environmental agreements and other arrangements in implementing the Executive Order.

PART 26—MUTUAL RECOGNITION OF PHARMACEUTICAL GOOD MANUFACTURING PRACTICE REPORTS, MEDICAL DEVICE QUALITY SYSTEM AUDIT REPORTS, AND CERTAIN MEDICAL DEVICE PRODUCT EVALUATION REPORTS: UNITED STATES AND THE EUROPEAN COMMUNITY

Sec. 26.0 General.
Subpart A—Specific Sector Provisions for Pharmaceutical Good Manufacturing Practices

26.1 Definitions.
26.2 Purpose.
26.3 Scope.
26.4 Product coverage.
26.5 Length of transition period.
26.6 Equivalence assessment.
26.7 Participation in the equivalence assessment and determination.
26.8 Other transition activities.
26.9 Equivalence determination.
26.10 Regulatory authorities not listed as currently equivalent.
26.11 Start of operational period.
26.12 Nature of recognition of inspection reports.
26.13 Transmission of postapproval inspection reports.
26.14 Transmission of preapproval inspection reports.
26.15 Monitoring continued equivalence.
26.16 Suspension.
26.17 Role and composition of the Joint Sectoral Committee.
26.18 Regulatory collaboration.
26.19 Information relating to quality aspects.
26.20 Alert system.

26.21 Safeguard clause.

APPENDIX A TO SUBPART A OF PART 26—LIST OF APPLICABLE LAWS, REGULATIONS, AND ADMINISTRATIVE PROVISIONS.
APPENDIX B TO SUBPART A OF PART 26—LIST OF AUTHORITIES.
APPENDIX C TO SUBPART A OF PART 26—INDICATIVE LIST OF PRODUCTS COVERED BY SUBPART A.
APPENDIX D TO SUBPART A OF PART 26—CRITERIA FOR ASSESSING EQUIVALENCE FOR POST- AND PREAPPROVAL.
APPENDIX E TO SUBPART A OF PART 26—ELEMENTS TO BE CONSIDERED IN DEVELOPING A TWO-WAY ALERT SYSTEM.

Subpart B—Specific Sector Provisions for Medical Devices

26.31 Purpose.
26.32 Scope.
26.33 Product coverage.
26.34 Regulatory authorities.
26.35 Length and purpose of transition period.
26.36 Listing of CAB’s.
26.37 Confidence building activities.
26.38 Other transition period activities.
26.40 Start of the operational period.
26.41 Exchange and endorsement of quality system evaluation reports.
26.42 Exchange and endorsement of product evaluation reports.
26.43 Transmission of quality system evaluation reports.
26.44 Transmission of product evaluation reports.
26.45 Monitoring continued equivalence.
26.46 Listing of additional CAB’s.
26.47 Role and composition of the Joint Sectoral Committee.
26.48 Harmonization.
26.49 Regulatory cooperation.
26.50 Alert system and exchange of postmarket vigilance reports.

APPENDIX A TO SUBPART B OF PART 26—RELEVANT LEGISLATION, REGULATIONS, AND PROCEDURES.
APPENDIX B TO SUBPART B OF PART 26—SCOPE OF PRODUCT COVERAGE.
APPENDICES C–F TO SUBPART B OF PART 26 [RESERVED]

Subpart C—“Framework” Provisions

26.60 Definitions.
26.61 Purpose of this part.
26.62 General obligations.
26.63 General coverage of this part.
26.64 Transitional arrangements.
26.65 Designating authorities.
26.66 Designation and listing procedures.
26.67 Suspension of listed conformity assessment bodies.
26.68 Withdrawal of listed conformity assessment bodies.
§ 26.0 General.

This part substantially reflects relevant provisions of the framework agreement and its sectoral annexes on pharmaceutical good manufacturing practices (GMP's) and medical devices of the "Agreement on Mutual Recognition Between the United States of America and the European Community" (the MRA), signed in London May 18, 1998. For codification purposes, certain provisions of the MRA have been modified for use in this part. This modification is done for purposes of clarity only and shall not affect the text of the MRA concluded between the United States and the European Community (EC), or the rights and obligations of the United States or the EC under that agreement. Whereas the parties to the MRA are the United States and EC, this part is relevant only to the Food and Drug Administration's (FDA's) implementation of the MRA, including the sectoral annexes reflected in subparts A and B of this part. This part does not govern implementation of the MRA by the EC, which will implement the MRA in accordance with its internal procedures, nor does this part address implementation of the MRA by other concerned U.S. Federal agencies. For purposes of this part, the terms "party" or "parties," where relevant to FDA's implementation of the MRA, should be considered as referring to FDA only. If the parties to the MRA subsequently amend or terminate the MRA, FDA will modify this part accordingly, using appropriate administrative procedures.

Subpart A—Specific Sector Provisions for Pharmaceutical Good Manufacturing Practices

§ 26.1 Definitions.

(a) Enforcement means action taken by an authority to protect the public from products of suspect quality, safety, and effectiveness or to assure that products are manufactured in compliance with appropriate laws, regulations, standards, and commitments made as part of the approval to market a product.

(b) Equivalence of the regulatory systems means that the systems are sufficiently comparable to assure that the process of inspection and the ensuing inspection reports will provide adequate information to determine whether respective statutory and regulatory requirements of the authorities have been fulfilled. Equivalence does not require that the respective regulatory systems have identical procedures.

(c) Good Manufacturing Practices (GMP's). [The United States has clarified its interpretation that under the MRA, paragraph (c)(1) of this section has to be understood as the U.S. definition and paragraph (c)(2) as the EC definition.]

(1) GMP's mean the requirements found in the legislations, regulations, and administrative provisions for methods to be used in, and the facilities or controls to be used for, the manufacturing, processing, packing, and/or holding of a drug to assure that such drug meets the requirements as to safety, and has the identity and strength, and meets the quality and purity characteristics that it purports or is represented to possess.

(2) GMP's are that part of quality assurance which ensures that products are consistently produced and controlled to quality standards. For the purpose of this subpart, GMP's include, therefore, the system whereby the manufacturer receives the specifications of the product and/or process from the marketing authorization/
product authorization or license holder
or applicant and ensures the product is
made in compliance with its specifica-
tions (qualified person certification in
the EC).

(d) Inspection means an onsite evalu-
ation of a manufacturing facility to de-
termine whether such manufacturing
facility is operating in compliance
with GMP’s and/or commitments made
as part of the approval to market a
product.

(e) Inspection report means the writ-
ten observations and GMP’s compli-
ance assessment completed by an au-
thority listed in Appendix B of this
subpart.

(f) Regulatory system means the body
of legal requirements for GMP’s, in-
spections, and enforcements that en-
sure public health protection and legal
authority to assure adherence to these
requirements.

[63 FR 60141, Nov. 6, 1998; 64 FR 16348, Apr. 5,
1999]

§ 26.2 Purpose.

The provisions of this subpart govern
the exchange between the parties and
normal endorsement by the receiving
regulatory authority of official good
manufacturing practices (GMP’s) in-
spection reports after a transitional pe-
riod aimed at determination of the
equivalence of the regulatory systems
of the parties, which is the cornerstone
of this subpart.

§ 26.3 Scope.

(a) The provisions of this subpart
shall apply to pharmaceutical inspec-
tions carried out in the United States
and Member States of the European
Community (EC) before products are
marketed (hereafter referred to as
“preapproval inspections”) as well as
during their marketing (hereafter re-
ferred to as “postapproval inspec-
tions”).

(b) Appendix A of this subpart names
the laws, regulations, and administra-
tive provisions governing these inspec-
tions and the good manufacturing prac-
tices (GMP’s) requirements.

(c) Appendix B of this subpart lists
the authorities participating in activi-
ties under this subpart.

(d) Sections 26.65, 26.66, 26.67, 26.68,
26.69, and 26.70 of subpart C of this part
do not apply to this subpart.

§ 26.4 Product coverage.

(a) The provisions of this subpart will
apply to medicinal products for human
or animal use, intermediates and start-
ing materials (as referred to in the Eu-
ropean Community (EC)) and to drugs
for human or animal use, biological
products for human use, and active
pharmaceutical ingredients (as referred
to in the United States), only to the
extent they are regulated by the au-
thorities of both parties as listed in
Appendix B of this subpart.

(b) Human blood, human plasma,
human tissues and organs, and veteri-
nary immunologicals (under 9 CFR
101.2, “veterinary immunologicals” are
referred to as “veterinary biologicals”) are
excluded from the scope of this sub-
part. Human plasma derivatives (such
as immunoglobulins and albumin), in-
vestigational medicinal products/new
drugs, human radiopharmaceuticals,
and medicinal gases are also excluded
during the transition phase; their situ-
ation will be reconsidered at the end of
the transition period. Products regu-
lated by the Food and Drug Adminis-
tration’s Center for Biologics Evalua-
tion and Research as devices are not
covered under this subpart.

(c) Appendix C of this subpart con-
tains an indicative list of products cov-
ered by this subpart.

§ 26.5 Length of transition period.

A 3-year transition period will start
immediately after the effective date
described in § 26.80(a).

§ 26.6 Equivalence assessment.

(a) The criteria to be used by the par-
ties to assess equivalence are listed in
Appendix D of this subpart. Informa-
tion pertaining to the criteria under
European Community (EC) competence
will be provided by the EC.

(b) The authorities of the parties will
establish and communicate to each
other their draft programs for assess-
ing the equivalence of the respective
regulatory systems in terms of quality
assurance of the products and con-
sumer protection. These programs will
be carried out, as deemed necessary by
§ 26.7 Participation in the equivalence assessment and determination.

The authorities listed in Appendix B of this subpart will actively participate in these programs to build a sufficient body of evidence for their equivalence determination. Both parties will exercise good faith efforts to complete equivalence assessment as expeditiously as possible to the extent the resources of the authorities allow.

§ 26.8 Other transition activities.

As soon as possible, the authorities will jointly determine the essential information which must be present in inspection reports and will cooperate to develop mutually agreed inspection report format(s).

§ 26.9 Equivalence determination.

(a) Equivalence is established by having in place regulatory systems covering the criteria referred to in Appendix D of this subpart, and a demonstrated pattern of consistent performance in accordance with these criteria. A list of authorities determined as equivalent shall be agreed to by the Joint Sectoral Committee at the end of the transition period, with reference to any limitation in terms of inspection type (e.g., postapproval or preapproval) or product classes or processes.

(b) The parties will document insufficient evidence of equivalence, lack of opportunity to assess equivalence or a determination of nonequivalence, in sufficient detail to allow the authority being assessed to know how to attain equivalence.

§ 26.10 Regulatory authorities not listed as currently equivalent.

Authorities not currently listed as equivalent, or not equivalent for certain types of inspections, product classes or processes may apply for reconsideration of their status once the necessary corrective measures have been taken or additional experience is gained.

§ 26.11 Start of operational period.

(a) The operational period shall start at the end of the transition period and its provisions apply to inspection reports generated by authorities listed as equivalent for the inspections performed in their territory.

(b) In addition, when an authority is not listed as equivalent based on adequate experience gained during the transition period, the Food and Drug Administration (FDA) will accept for normal endorsement (as provided in §26.12) inspection reports generated as a result of inspections conducted jointly by that authority on its territory and another authority listed as equivalent, provided that the authority of the Member State in which the inspection is performed can guarantee enforcement of the findings of the inspection report and require that corrective measures be taken when necessary. FDA has the option to participate in these inspections, and based on experience gained during the transition period, the parties will agree on procedures for exercising this option.

(c) In the European Community (EC), the qualified person will be relieved of responsibility for carrying the controls laid down in Article 22 paragraph 1(b) of Council Directive 75/319/EEC (see Appendix A of this subpart) provided that these controls have been carried out in the United States and that each batch/lot is accompanied by a batch certificate (in accordance with the World Health Organization Certification Scheme on the Quality of Medicinal Products) issued by the manufacturer certifying that the product complies with requirements of the marketing authorization and signed by the person responsible for releasing the batch/lot.
§ 26.12 Nature of recognition of inspection reports.

(a) Inspection reports (containing information as established under §26.8), including a good manufacturing practice (GMP) compliance assessment, prepared by authorities listed as equivalent, will be provided to the authority of the importing party. Based on the determination of equivalence in light of the experience gained, these inspection reports will normally be endorsed by the authority of the importing party, except under specific and delineated circumstances. Examples of such circumstances include indications of material inconsistencies or inadequacies in an inspection report, quality defects identified in the postmarket surveillance or other specific evidence of serious concern in relation to product quality or consumer safety. In such cases, the authority of the importing party may request clarification from the authority of the exporting party which may lead to a request for reinspection. The authorities will endeavor to respond to requests for clarification in a timely manner.

(b) Where divergence is not clarified in this process, an authority of the importing country may carry out an inspection of the production facility.

§ 26.13 Transmission of postapproval inspection reports.

Postapproval good manufacturing practice (GMP) inspection reports concerning products covered by this subpart will be transmitted to the authority of the importing country within 60-calendar days of the request. Should a new inspection be needed, the inspection report will be transmitted within 90-calendar days of the request.

§ 26.14 Transmission of preapproval inspection reports.

(a) A preliminary notification that an inspection may have to take place will be made as soon as possible.

(b) Within 15-calendar days, the relevant authority will acknowledge receipt of the request and confirm its ability to carry out the inspection. In the European Community (EC), requests will be sent directly to the relevant authority, with a copy to the European Agency for the Evaluation of Medicinal Products (EMEA). If the authority receiving the request cannot carry out the inspection as requested, the requesting authority shall have the right to conduct the inspection.

(c) Reports of preapproval inspections will be sent within 45-calendar days of the request that transmitted the appropriate information and detailed the precise issues to be addressed during the inspection. A shorter time may be necessary in exceptional cases and these will be described in the request.

§ 26.15 Monitoring continued equivalence.

Monitoring activities for the purpose of maintaining equivalence shall include review of the exchange of inspection reports and their quality and timeliness; performance of a limited number of joint inspections; and the conduct of common training sessions.

§ 26.16 Suspension.

(a) Each party has the right to contest the equivalence of a regulatory authority. This right will be exercised in an objective and reasoned manner in writing to the other party.

(b) The issue shall be discussed in the Joint Sectoral Committee promptly upon such notification. Where the Joint Sectoral Committee determines that verification of equivalence is required, it may be carried out jointly by the parties in a timely manner, under §26.6.

(c) Efforts will be made by the Joint Sectoral Committee to reach unanimous consent on the appropriate action. If agreement to suspend is reached in the Joint Sectoral Committee, an authority may be suspended immediately thereafter. If no agreement is reached in the Joint Sectoral Committee, the matter is referred to the Joint Committee as described in §26.73. If no unanimous consent is reached within 30 days after such notification, the contested authority will be suspended.

(d) Upon the suspension of authority previously listed as equivalent, a party...
§ 26.17

is no longer obligated to normally endorse the inspection reports of the suspended authority. A party shall continue to normally endorse the inspection reports of that authority prior to suspension, unless the authority of the receiving party decides otherwise based on health or safety considerations. The suspension will remain in effect until unanimous consent has been reached by the parties on the future status of that authority.

§ 26.17 Role and composition of the Joint Sectoral Committee.

(a) A Joint Sectoral Committee is set up to monitor the activities under both the transitional and operational phases of this subpart.

(b) The Joint Sectoral Committee will be cochaired by a representative of the Food and Drug Administration (FDA) for the United States and a representative of the European Community (EC) who each will have one vote. Decisions will be taken by unanimous consent.

(c) The Joint Sectoral Committee’s functions will include:

(1) Making a joint assessment, which must be agreed by both parties, of the equivalence of the respective authorities;

(2) Developing and maintaining the list of equivalent authorities, including any limitation in terms of inspecting type or products, and communicating the list to all authorities and the Joint Committee;

(3) Providing a forum to discuss issues relating to this subpart, including concerns that an authority may be no longer equivalent and opportunity to review product coverage; and

(4) Consideration of the issue of suspension.

(d) The Joint Sectoral Committee shall meet at the request of either party and, unless the cochairs otherwise agree, at least once each year. The Joint Committee will be kept informed of the agenda and conclusions of meetings of the Joint Sectoral Committee.

§ 26.18 Regulatory collaboration.

(a) The parties and authorities shall inform and consult one another, as permitted by law, on proposals to introduce new controls or to change existing technical regulations or inspection procedures and to provide the opportunity to comment on such proposals.

(b) The parties shall notify each other in writing of any changes to Appendix B of this subpart.

§ 26.19 Information relating to quality aspects.

The authorities will establish an appropriate means of exchanging information on any confirmed problem reports, corrective actions, recalls, rejected import consignments, and other regulatory and enforcement problems for products subject to this subpart.

§ 26.20 Alert system.

(a) The details of an alert system will be developed during the transitional period. The system will be maintained in place at all times. Elements to be considered in developing such a system are described in Appendix E of this subpart.

(b) Contact points will be agreed between both parties to permit authorities to be made aware with the appropriate speed in case of quality defect, recalls, counterfeiting, and other problems concerning quality, which could necessitate additional controls or suspension of the distribution of the product.

§ 26.21 Safeguard clause.

Each party recognizes that the importing country has a right to fulfill its legal responsibilities by taking actions necessary to ensure the protection of human and animal health at the level of protection it deems appropriate. This includes the suspension of the distribution, product detention at the border of the importing country, withdrawal of the batches and any request for additional information or inspection as provided in § 26.12.

Appendix A to Subpart A of Part 26—List of Applicable Laws, Regulations, and Administrative Provisions

1. For the European Community (EC):

Copies of EC documents may be obtained from the European Document Research, 1100 17th St. NW., suite 301, Washington, DC 20036.
Food and Drug Administration, HHS

EC documents may be viewed on the European Commission Pharmaceuticals Units web site at “http://dg3.eudra.org.”


Council Regulation EEC No 2309/93 of 22 July 1993 laying down Community procedures for the authorization and supervision of medicinal products for human and veterinary use and establishing an European Agency for the Evaluation of Medicinal Products.


Guide to Good Distribution Practice (94/C 63/03).

Current version of the Guide to Good Manufacturing Practice, Rules Governing Medicinal Products in the European Community, Volume IV.

2. For the United States:

[Copies of FDA documents may be obtained from the Government Printing Office, 1510 H St. NW., Washington, DC 20005. FDA documents, except the FDA Compliance Program Guidance Manual, may be viewed on FDA’s Internet web site at “http://www.FDA.gov.”]


APPENDIX B TO SUBPART A OF PART 26—LIST OF AUTHORITIES

1. For the United States: In the United States, the regulatory authority is the Food and Drug Administration.

2. For the European Community: In the European Community, the regulatory authorities are the following:

Belgium: Inspection g éneÂrale de la Pharmacie, Algemene Farmaceutische Inspectie.

Germany: Bundesministerium f ür Gesundheit für immunologicals: Paul-Ehrlich-Institut, Federal Agency for Sera and Vaccines.


Spain: For medicinal products for human use: Ministerio de Sanidad y Consumo, Subdirección General de Control Farmacéutico. For medicinal products for veterinary use: Ministerio de Agricultura, Pesca y Alimentación (MAPA), Dirección General de la Producción Agraria.


Ireland: Irish Medicines Board.

Italy: For medicinal products for human use: Ministero della Sanità, Dipartimento Farmaci e Farmacovigilanza. For medicinal products for veterinary use: Ministero della Sanità, Dipartimento alimenti e nutrizione e sanità pubblica veterinaria-Div. IX.

Luxembourg: Division de la Pharmacie et des Medicaments.

Netherlands: Staat der Nederlanden.

Austria: Bundesministerium für Arbeit, Gesundheit und Soziales.

Portugal: Instituto da Farmacia e do Medicamento (INFARMED).

Finland: LääkeaitoLäkemedelsverket (National Agency for Medicines).

Sweden: Läkemedelsverket-Medical Products Agency.


European Community: Commission of the European Communities. European Agency for the Evaluation of Medicinal Products (EMEA).

APPENDIX C TO SUBPART A OF PART 26—INDICATIVE LIST OF PRODUCTS COVERED BY SUBPART A

Recognizing that precise definition of medicinal products and drugs are to be found in
the legislation referred to above, an indicative list of products covered by this arrangement is given below:

—human medicinal products including prescription and nonprescription drugs;
—human biologicals including vaccines, and immunologicals;
—veterinary pharmaceuticals, including prescription and nonprescription drugs, with the exclusion of veterinary immunologicals (Under 9 CFR 101.2 "veterinary immunologicals" are referred to as "veterinary biologicals");
—premixes for the preparation of veterinary medicated feeds (EC), Type A medicated articles for the preparation of veterinary medicated feeds (United States);
—intermediate products and active pharmaceutical ingredients or bulk pharmaceuticals (United States)/starting materials (EC).

APPENDIX D TO SUBPART A OF PART 26—CRITERIA FOR ASSESSING EQUIVALENCE FOR POST- AND PREAPPROVAL

I. Legal/Regulatory authority and structures and procedures providing for post- and preapproval:

A. Appropriate statutory mandate and jurisdiction.
B. Ability to issue and update binding requirements on GMP's and guidance documents.
C. Authority to make inspections, review and copy documents, and to take samples and collect other evidence.
D. Ability to enforce requirements and to remove products found in violation of such requirements from the market.
E. Substantive current good manufacturing requirements.
F. Accountability of the regulatory authority.
G. Inventory of current products and manufacturers.
H. System for maintaining or accessing inspection reports, samples and other analytical data, and other firm/product information relating to matters covered by subpart A of this part.

II. Mechanisms in place to assure appropriate professional standards and avoidance of conflicts of interest.

III. Administration of the regulatory authority:

A. Standards of education/qualification and training.
B. Effective quality assurance systems measures to ensure adequate job performance.
C. Appropriate staffing and resources to enforce laws and regulations.

IV. Conduct of inspections:

A. Adequate prespection preparation, including appropriate expertise of investigator/team, review of firm/product and databases, and availability of appropriate inspection equipment.
B. Adequate conduct of inspection, including statutory access to facilities, effective response to refusals, depth and competence of evaluation of operations, systems and documentation; collection of evidence; appropriate duration of inspection and completeness of written report of observations to firm management.
C. Adequate postinspection activities, including completeness of inspectors' report, inspection report review where appropriate, and conduct of followup inspections and other activities where appropriate, assurance of preservation and retrieval of records.

V. Execution of regulatory enforcement actions to achieve corrections, designed to prevent future violations, and to remove products found in violation of requirements from the market.

VI. Effective use of surveillance systems:

A. Sampling and analysis.
B. Recall monitoring.
C. Product defect reporting system.
D. Routine surveillance inspections.
E. Verification of approved manufacturing process changes to marketing authorizations/approved applications.

VII. Additional specific criteria for preapproval inspections:

A. Satisfactory demonstration through a jointly developed and administered training program and joint inspections to assess the regulatory authorities' capabilities.
B. Preinspection preparation includes the review of appropriate records, including site plans and drug master file or similar documentation to enable adequate inspections.
C. Ability to verify chemistry, manufacturing, and control data supporting an application is authentic and complete.
D. Ability to assess and evaluate research and development data as scientifically sound, especially transfer technology of pilot, scale up and full scale production batches.
E. Ability to verify conformity of the onsite processes and procedures with those described in the application.
F. Review and evaluate equipment installation, operational and performance qualification data, and evaluate test method validation.
APPENDIX E TO SUBPART A OF PART 26—
ELEMENTS TO BE CONSIDERED IN DEVELOPING A TWO-WAY ALERT SYSTEM

1. Documentation
   —Definition of a crisis/emergency and under what circumstances an alert is required
   —Standard Operating Procedures (SOP's)
   —Mechanism of health hazards evaluation and classification
   —Language of communication and transmission of information

2. Crisis Management System
   —Crisis analysis and communication mechanisms
   —Establishment of contact points
   —Reporting mechanisms

3. Enforcement Procedures
   —Followup mechanisms
   —Corrective action procedures

4. Quality Assurance System
   —Pharmacovigilance programme
   —Surveillance/monitoring of implementation of corrective action

5. Contact Points
   For the purpose of subpart A of this part, the contact points for the alert system will be:

   A. For the European Community:

   B. For the United States:

Subpart B—Specific Sector Provisions for Medical Devices

§ 26.31 Purpose.
   (a) The purpose of this subpart is to specify the conditions under which a party will accept the results of quality system-related evaluations and inspections and premarket evaluations of the other party with regard to medical devices as conducted by listed conformity assessment bodies (CAB's) and to provide for other related cooperative activities.
   (b) This subpart is intended to evolve as programs and policies of the parties evolve. The parties will review this subpart periodically, in order to assess progress and identify potential enhancements to this subpart as Food and Drug Administration (FDA) and European Community (EC) policies evolve over time.

§ 26.32 Scope.
   (a) The provisions of this subpart shall apply to the exchange and, where appropriate, endorsement of the following types of reports from conformity assessment bodies (CAB's) assessed to be equivalent:
      (1) Under the U.S. system, surveillance/postmarket and initial/preapproval inspection reports;
      (2) Under the U.S. system, premarket (510(k)) product evaluation reports;
      (3) Under the European Community (EC) system, quality system evaluation reports; and
      (4) Under the EC system, EC type examination and verification reports.
   (b) Appendix A of this subpart names the legislation, regulations, and related procedures under which:
      (1) Products are regulated as medical devices by each party;
      (2) CAB's are designated and confirmed; and
      (3) These reports are prepared.
   (c) For purposes of this subpart, equivalence means that: CAB's in the EC are capable of conducting product and quality systems evaluations against U.S. regulatory requirements in a manner equivalent to those conducted by FDA; and CAB's in the United States are capable of conducting product and quality systems evaluations against EC regulatory requirements in a manner equivalent to those conducted by EC CAB's.

§ 26.33 Product coverage.
   (a) There are three components to this subpart each covering a discrete range of products:
(1) Quality System Evaluations. U.S.-type surveillance/postmarket and initial/preapproval inspection reports and European Community (EC)-type quality system evaluation reports will be exchanged with regard to all products regulated under both U.S. and EC law as medical devices.

(2) Product Evaluation. U.S.-type premarket (510(k)) product evaluation reports and EC-type-testing reports will be exchanged only with regard to those products classified under the U.S. system as Class I/Class II-Tier 2 medical devices which are listed in Appendix B of this subpart. 

(3) Postmarket Vigilance Reports. Postmarket vigilance reports will be exchanged with regard to all products regulated under both U.S. and EC law as medical devices.

(b) Additional products and procedures may be made subject to this subpart by agreement of the parties.

§ 26.34 Regulatory authorities.

The regulatory authorities shall have the responsibility of implementing the provisions of this subpart, including the designation and monitoring of conformity assessment bodies (CAB's). Regulatory authorities will be specified in Appendix C of this subpart. Each party will promptly notify the other party in writing of any change in the regulatory authority for a country. 

§ 26.35 Length and purpose of transition period.

There will be a 3-year transition period immediately following the date described in §26.80(a). During the transition period, the parties will engage in confidence-building activities for the purpose of obtaining sufficient evidence to make determinations concerning the equivalence of conformity assessment bodies (CAB’s) of the other party with respect to the ability to perform quality system and product evaluations or other reviews resulting in reports to be exchanged under this subpart.

§ 26.36 Listing of CAB’s.

Each party shall designate conformity assessment bodies (CAB’s) to participate in confidence building activities by transmitting to the other party a list of CAB’s which meet the criteria for technical competence and independence, as identified in Appendix A of this subpart. The list shall be accompanied by supporting evidence. Designated CAB’s will be listed in Appendix D of this subpart for participation in the confidence building activities once confirmed by the importing party. Nonconfirmation would have to be justified based on documented evidence.

§ 26.37 Confidence building activities.

(a) At the beginning of the transitional period, the Joint Sectoral Group will establish a joint confidence building program calculated to provide sufficient evidence of the capabilities of the designated conformity assessment bodies (CAB’s) to perform quality system or product evaluations to the specifications of the parties.

(b) The joint confidence building program should include the following actions and activities:

(1) Seminars designed to inform the parties and CAB’s about each party’s regulatory system, procedures, and requirements;

(2) Workshops designed to provide the parties with information regarding requirements and procedures for the designation and surveillance of CAB’s;

(3) Exchange of information about reports prepared during the transition period;

(4) Joint training exercises; and

(5) Observed inspections.

(c) During the transition period, any significant problem that is identified with a CAB may be the subject of cooperative activities, as resources allow and as agreed by the regulatory authorities, aimed at resolving the problem.

(d) Both parties will exercise good faith efforts to complete the confidence building activities as expeditiously as possible to the extent that the resources of the parties allow.

(e) Both the parties will each prepare annual progress reports which will describe the confidence building activities undertaken during each year of the transition period. The form and content of the reports will be determined by the parties through the Joint Sectoral Committee.
§ 26.38 Other transition period activities.
(a) During the transition period, the parties will jointly determine the necessary information which must be present in quality system and product evaluation reports.
(b) The parties will jointly develop a notification and alert system to be used in case of defects, recalls, and other problems concerning product quality that could necessitate additional actions (e.g., inspections by the parties of the importing country) or suspension of the distribution of the product.

(a) In the final 6 months of the transition period, the parties shall proceed to a joint assessment of the equivalence of the conformity assessment bodies (CAB’s) that participated in the confidence building activities. CAB’s will be determined to be equivalent provided they have demonstrated proficiency through the submission of a sufficient number of adequate reports. CAB’s may be determined to be equivalent with regard to the ability to perform any type of quality system or product evaluation covered by this subpart and with regard to any type of product covered by this subpart. The parties shall develop a list contained in Appendix E of this subpart of CAB’s determined to be equivalent, which shall contain a full explanation of the scope of the equivalency determination, including any appropriate limitations, with regard to performing any type of quality system or product evaluation.
(b) The parties shall allow CAB’s not listed for participation in this subpart, or listed for participation only as to certain types of evaluations, to apply for participation in this subpart once the necessary measures have been taken or sufficient experience has been gained, in accordance with §26.46.
(c) Decisions concerning the equivalence of CAB’s must be agreed to by both parties.

§ 26.40 Start of the operational period.
(a) The operational period will start at the end of the transition period after the parties have developed the list of conformity assessment bodies (CAB’s) found to be equivalent. The provisions of §§26.40, 26.41, 26.42, 26.43, 26.44, 26.45, and 26.46 will apply only with regard to listed CAB’s and only to the extent of any specifications and limitations contained on the list with regard to a CAB.
(b) The operational period will apply to quality system evaluation reports and product evaluation reports generated by CAB’s listed in accordance with this subpart for the evaluations performed in the respective territories of the parties, except if the parties agree otherwise.

§ 26.41 Exchange and endorsement of quality system evaluation reports.
(a) Listed European Community (EC) conformity assessment bodies (CAB’s) will provide FDA with reports of quality system evaluations, as follows:
(1) For preapproval quality system evaluations, EC CAB’s will provide full reports; and
(2) For surveillance quality system evaluations, EC CAB’s will provide abbreviated reports.
(b) Listed U.S. CAB’s will provide to the EC Notified Body of the manufacturer’s choice:
(1) Full reports of initial quality system evaluations;
(2) Abbreviated reports of quality systems surveillance audits.
(c) If the abbreviated reports do not provide sufficient information, the importing party may request additional clarification from the CAB.
(d) Based on the determination of equivalence in light of the experience gained, the quality system evaluation reports prepared by the CAB’s listed as equivalent will normally be endorsed by the importing party, except under specific and delineated circumstances. Examples of such circumstances include indications of material inconsistencies or inadequacies in a report, quality defects identified in postmarket surveillance or other specific evidence of serious concern in relation to product quality or consumer safety. In such cases, the importing party may request clarification from the exporting party which may lead to a request for reinspection. The parties will endeavor to respond to requests for clarification in a timely manner.
§ 26.42 Exchange and endorsement of product evaluation reports.

(a) European Community (EC) conformity assessment bodies (CAB’s) listed for this purpose will, subject to the specifications and limitations on the list, provide to FDA 510(k) premarket notification assessment reports prepared to U.S. medical device requirements.

(b) U.S. CAB’s will, subject to the specifications and limitations on the list, provide to the EC Notified Body of the manufacturer’s choice, type examination, and verification reports prepared to EC medical device requirements.

(c) Based on the determination of equivalence in light of the experience gained, the product evaluation reports prepared by the CAB’s listed as equivalent will normally be endorsed by the importing party, except under specific and delineated circumstances. Examples of such circumstances include indications of material inconsistencies, inadequacies, or incompleteness in a product evaluation report, or other specific evidence of serious concern in relation to product safety, performance, or quality. In such cases, the importing party may request clarification from the exporting party which may lead to a request for a reevaluation. The parties will endeavor to respond to requests for clarification in a timely manner. Endorsement remains the responsibility of the importing party.

§ 26.43 Transmission of quality system evaluation reports.

Quality system evaluation reports covered by §26.41 concerning products covered by this subpart shall be transmitted to the importing party within 60-calendar days of a request by the importing party. Should a new inspection be requested, the time period shall be extended by an additional 30-calendar days. A party may request a new inspection, for cause, identified to the other party. If the exporting party cannot perform an inspection within a specified period of time, the importing party may perform an inspection on its own.

§ 26.44 Transmission of product evaluation reports.

Transmission of product evaluation reports will take place according to the importing party’s specified procedures.

§ 26.45 Monitoring continued equivalence.

Monitoring activities will be carried out in accordance with §26.69.

§ 26.46 Listing of additional CAB’s.

(a) During the operational period, additional conformity assessment bodies (CAB’s) will be considered for equivalence using the procedures and criteria described in §§26.36, 26.37, and 26.39, taking into account the level of confidence gained in the overall regulatory system of the other party.

(b) Once a designating authority considers that such CAB’s, having undergone the procedures of §§26.36, 26.37, and 26.39, may be determined to be equivalent, it will then designate those bodies on an annual basis. Such procedures satisfy the procedures of §26.66(a) and (b).

(c) Following such annual designations, the procedures for confirmation of CAB’s under §26.66(c) and (d) shall apply.

§ 26.47 Role and composition of the Joint Sectoral Committee.

(a) The Joint Sectoral Committee for this subpart is set up to monitor the activities under both the transitional and operational phases of this subpart.

(b) The Joint Sectoral Committee will be cochaired by a representative of the Food and Drug Administration (FDA) for the United States and a representative of the European Community (EC) who will each have one vote. Decisions will be taken by unanimous consent.

(c) The Joint Sectoral Committee’s functions will include:

(1) Making a joint assessment of the equivalence of conformity assessment bodies (CAB’s);

(2) Developing and maintaining the list of equivalent CAB’s, including any limitation in terms of their scope of activities and communicating the list
to all authorities and the Joint Committee described in subpart C of this part;
(3) Providing a forum to discuss issues relating to this subpart, including concerns that a CAB may no longer be equivalent and opportunity to review product coverage; and
(4) Consideration of the issue of suspension.

§ 26.48 Harmonization.
During both the transitional and operational phases of this subpart, both parties intend to continue to participate in the activities of the Global Harmonization Task Force (GHTF) and utilize the results of those activities to the extent possible. Such participation involves developing and reviewing documents developed by the GHTF and jointly determining whether they are applicable to the implementation of this subpart.

§ 26.49 Regulatory cooperation.
(a) The parties and authorities shall inform and consult with one another, as permitted by law, of proposals to introduce new controls or to change existing technical regulations or inspection procedures and to provide the opportunity to comment on such proposals.
(b) The parties shall notify each other in writing of any changes to Appendix A of this subpart.

§ 26.50 Alert system and exchange of postmarket vigilance reports.
(a) An alert system will be set up during the transition period and maintained thereafter by which the parties will notify each other when there is an immediate danger to public health. Elements of such a system will be described in an Appendix F of this subpart. As part of that system, each party shall notify the other party of any confirmed problem reports, corrective actions, or recalls. These reports are regarded as part of ongoing investigations.
(b) Contact points will be agreed between both parties to permit authorities to be made aware with the appropriate speed in case of quality defect, batch recalls, counterfeiting and other problems concerning quality, which could necessitate additional controls or suspension of the distribution of the product.

APPENDIX A TO SUBPART B OF PART 26—RELEVANT LEGISLATION, REGULATIONS, AND PROCEDURES.
1. For the European Community (EC) the following legislation applies to § 26.42(a) of this subpart:
[Copies of EC documents may be obtained from the European Document Research, 1100 17th St. NW., suite 301, Washington, DC 20036.]
   Annex 2 (with the exception of section 4)
   Annex 4
   Annex 2 (with the exception of section 4)
   Annex 3
   Annex 4
   Annex 5
   Annex 6
2. For the United States, the following legislation applies to § 26.32(a):
[Copies of FDA documents may be obtained from the Government Printing Office, 3510 H St. NW., Washington, DC 20005. FDA documents may be viewed on FDA’s Internet website at "http://www.fda.gov".]
   b. The Public Health Service Act, 42 U.S.C. 201 et seq.
   c. Regulations of the United States Food and Drug Administration found at 21 CFR, in particular, Parts 800 to 1299.
APPENDIX B TO SUBPART B OF PART 26—SCOPE OF PRODUCT COVERAGE

1. Initial Coverage of the Transition Period
Upon entry into force of this subpart as described in §26.80 (it is understood that the date of entry into force will not occur prior to June 1, 1998, unless the parties decide otherwise), products qualifying for the transitional arrangements under this subpart include:
   a. All Class I products requiring premarket evaluations in the United States—see Table 1.
   b. Those Class II products listed in Table 2.

2. During the Transition Period
The parties will jointly identify additional product groups, including their related accessories, in line with their respective priorities as follows:
   a. Those for which review may be based primarily on written guidance which the parties will use their best efforts to prepare expeditiously; and
   b. Those for which review may be based primarily on international standards, in order for the parties to gain the requisite experience.

The corresponding additional product lists will be phased in on an annual basis. The parties may consult with industry and other interested parties in determining which products will be added.

3. Commencement of the Operational Period
   a. At the commencement of the operational period, product coverage shall extend to all Class I/II products covered during the transition period.
   b. FDA will expand the program to categories of Class II devices as is consistent with the results of the pilot, and with FDA’s ability to write guidance documents if the device pilot for the third party review of medical devices is successful. The MRA will cover to the maximum extent feasible all Class II devices listed in Table 3 for which FDA-accredited third party review is available in the United States.

4. Unless explicitly included by joint decision of the parties, this part does not cover any U.S. Class II-tier 3 or any Class III product under either system.

[T The lists of medical devices included in these tables are subject to change as a result of the Food and Drug Administration Modernization Act of 1997.]

| TABLE 1.—CLASS I PRODUCTS REQUIRING PREMARKET EVALUATIONS IN THE UNITED STATES, INCLUDED IN SCOPE OF PRODUCT COVERAGE AT BEGINNING OF TRANSITION PERIOD¹ |
| --- | --- |
| 21 CFR Section No. | Regulation Name |
| Product Code—Device Name | |
| Anesthesiology Panel (21 CFR Part 868) | |
| 868.1910 | Esophageal Stethoscope |
| 868.5620 | BZW—Stethoscope, Esophageal |
| 868.5640 | BYP—Mouthpiece, Breathing |
| 868.5675 | CCQ—Nebulizer, Medicinal, Nonventilatory (Atomizer) |
| 868.5700 | Rebreathing Device |
| 868.6810 | BYL—Tent, Oxygen |
| 872.3400 | Dental Operative Unit and Accessories |
| 872.3700 | ELY—Mercy |
| 872.4200 | Dental Handpiece and Accessories |
| 872.6640 | EIA—Unit, Operative Dental |
### TABLE 1.—CLASS I PRODUCTS REQUIRING PREMARKET EVALUATIONS IN THE UNITED STATES, INCLUDED IN SCOPE OF PRODUCT COVERAGE AT BEGINNING OF TRANSITION PERIOD

#### Ear, Nose, and Throat Panel (21 CFR Part 874)

<table>
<thead>
<tr>
<th>21 CFR Section No.</th>
<th>Regulation Name</th>
<th>Product Code—Device Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>874.1070</td>
<td>Short Increment Sensitivity Index (SISI) Adapter</td>
<td>ETR—Adapter, Short Increment Sensitivity Index (SISI)</td>
</tr>
<tr>
<td>874.1500</td>
<td>Gustometer</td>
<td>ETR—Gustometer</td>
</tr>
<tr>
<td>874.1800</td>
<td>Air or Water Caloric Stimulator</td>
<td>KHH—Stimulator, Caloric-Air, ETP—Stimulator, Caloric-Water</td>
</tr>
<tr>
<td>874.1925</td>
<td>Toynbee Diagnostic Tube</td>
<td>ETK—Tube, Toynbee Diagnostic</td>
</tr>
<tr>
<td>874.3300</td>
<td>Hearing Aid</td>
<td>LRB—Face Plate Hearing Aid</td>
</tr>
<tr>
<td>874.4100</td>
<td>Epistaxis Balloon</td>
<td>EMX—Balloon, Epistaxis</td>
</tr>
<tr>
<td>874.5300</td>
<td>ENT Examination and Treatment Unit</td>
<td>ETF—Unit, Examining/Treatment, ENT</td>
</tr>
<tr>
<td>874.5550</td>
<td>Powered Nasal Irrigator</td>
<td>KMA—Irrigator, Powered Nasal</td>
</tr>
<tr>
<td>874.5840</td>
<td>Antistammering Device</td>
<td>KTH—Device, Anti-Stammering</td>
</tr>
</tbody>
</table>

#### Gastroenterology—Urology Panel (21 CFR Part 876)

<table>
<thead>
<tr>
<th>21 CFR Section No.</th>
<th>Regulation Name</th>
<th>Product Code—Device Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>876.5160</td>
<td>Urological Clamp for Males</td>
<td>FHA—Clamp, Penile</td>
</tr>
<tr>
<td>876.5210</td>
<td>Enema Kit</td>
<td>FCE—Kit, Enema, (for Cleaning Purpose)</td>
</tr>
<tr>
<td>876.5250</td>
<td>Urine Collector and Accessories</td>
<td>FAQ—Bag, Urine Collection, Leg, for External Use</td>
</tr>
</tbody>
</table>

#### General Hospital Panel (21 CFR Part 880)

<table>
<thead>
<tr>
<th>21 CFR Section No.</th>
<th>Regulation Name</th>
<th>Product Code—Device Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>880.5270</td>
<td>Neonatal Eye Pad</td>
<td>FOK—Pad, Neonatal Eye</td>
</tr>
<tr>
<td>880.5420</td>
<td>Pressure Infusor for an I.V. Bag</td>
<td>K2O—Infusor, Pressure, for I.V. Bags</td>
</tr>
<tr>
<td>880.5680</td>
<td>Pediatric Position Holder</td>
<td>FRP—Holder, Infant Position</td>
</tr>
<tr>
<td>880.6250</td>
<td>Patient Examination Glove</td>
<td>L2B—Finger Cat</td>
</tr>
<tr>
<td>880.6375</td>
<td>Patient Lubricant</td>
<td>KMJ—Lubricant, Patient</td>
</tr>
</tbody>
</table>

#### Neurology Panel (21 CFR Part 882)

<table>
<thead>
<tr>
<th>21 CFR Section No.</th>
<th>Regulation Name</th>
<th>Product Code—Device Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>882.1030</td>
<td>Ataxiograph</td>
<td>GWW—Ataxiograph</td>
</tr>
<tr>
<td>882.1420</td>
<td>Electroencephalogram (EEG) Signal Spectrum Analyzer</td>
<td>GWS—Analyzer, Spectrum, Electroencephalogram Signal</td>
</tr>
<tr>
<td>882.4060</td>
<td>Ventricular Cannula</td>
<td>HCD—Cannula, Ventricular</td>
</tr>
<tr>
<td>882.4545</td>
<td>Shunt System Implantation Instrument</td>
<td>GYK—Instrument, Shunt System Implantation</td>
</tr>
<tr>
<td>882.4650</td>
<td>Neurosurgical Suture Needle</td>
<td>HAS—Needle, Neurosurgical Suture</td>
</tr>
<tr>
<td>882.4750</td>
<td>Skull Punch</td>
<td>GXX—Punch, Skull</td>
</tr>
</tbody>
</table>

#### Obstetrics and Gynecology Panel

| (None)             |                  |                          |

#### Ophthalmology Panel (21 CFR Part 886)

<table>
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<tr>
<th>21 CFR Section No.</th>
<th>Regulation Name</th>
<th>Product Code—Device Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>886.1780</td>
<td>Retinoscope</td>
<td>HKM—Retinoscope, Battery-Powered</td>
</tr>
<tr>
<td>886.1940</td>
<td>Tonometer Sterilizer</td>
<td>HKZ—Sterilizer, Tonometer</td>
</tr>
<tr>
<td>886.4070</td>
<td>Powered Corneal Burr</td>
<td>HQS—Burr, Corneal, AC-Powered</td>
</tr>
</tbody>
</table>
TABLE 1.—CLASS I PRODUCTS REQUIRING PREMARKET EVALUATIONS IN THE UNITED STATES, INCLUDED IN SCOPE OF PRODUCT COVERAGE AT BEGINNING OF TRANSITION PERIOD—Continued

<table>
<thead>
<tr>
<th>21 CFR Section No.</th>
<th>Regulation Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>886.4370</td>
<td>HOG—Burr, Corneal, Battery-Powered</td>
</tr>
<tr>
<td></td>
<td>HRG—Engine, Trephine, Accessories, AC-Powered</td>
</tr>
<tr>
<td></td>
<td>HFR—Engine, Trephine, Accessories, Battery-Powered</td>
</tr>
<tr>
<td></td>
<td>HLD—Engine, Trephine, Accessories, Gas-Powered</td>
</tr>
<tr>
<td></td>
<td>Keratome</td>
</tr>
<tr>
<td>886.5850</td>
<td>HNO—Keratome, AC-Powered</td>
</tr>
<tr>
<td></td>
<td>HMY—Keratome, Battery-Powered</td>
</tr>
<tr>
<td></td>
<td>Sunglasses (Nonprescription)</td>
</tr>
<tr>
<td></td>
<td>HQY—Sunglasses (Nonprescription Including Photosensitive)</td>
</tr>
</tbody>
</table>

Orthopedic Panel (21 CFR Part 888)

| 888.1500           | Goniometer |
|                    | KGX—Goniometer, AC-Powered |
|                    | Calipers for Clinical Use |
|                    | KTZ—Caliper |

Physical Medicine Panel (21 CFR Part 890)

| 890.3850           | Mechanical Wheelchair |
|                    | LBE—Stroller, Adaptive |
|                    |IOR—Wheelchair, Mechanical |
| 890.5180           | Manual Patient Rotation Bed |
| 890.5710           | INY—Bed, Patient Rotation, Manual |

Radiology Panel (21 CFR Part 892)

| 892.1110           | IYX—Camera, Scintillation (Gamma) |
| 892.1300           | Nuclear Rectilinear Scanner |
| 892.1320           | Nuclear Uptake Probe |
| 892.1330           | Nuclear Whole Body Scanner |
| 892.1410           | JAM—Scanner, Whole Body, Nuclear |
| 892.1890           | Nuclear Electrocardiograph Synchronizer |
| 892.1910           | Radiographic Film Illuminator |
| 892.1960           | Radiographic Intensifying Screen |
| 892.1970           | Radiographic ECG/Respirator Synchronizer |
| 892.5650           | Manual Radionuclide Applicator System |

General and Plastic Surgery Panel (21 CFR Part 878)

| 878.4200           | Introduction/Drainage Catheter and Accessories |
|                    | KGZ—Accessories, Catheter |
|                    | GCE—Adaptor, Catheter |
|                    | FGY—Cannula, Injection |
|                    | GBA—Catheter, Balloon Type |
|                    | GBZ—Catheter, Cholangiography |
|                    | GBQ—Catheter, Continuous Irrigation |
|                    | GBY—Catheter, Eustachian, General & Plastic Surgery |
|                    | JCY—Catheter, Infusion |
|                    | GBX—Catheter, Irrigation |
|                    | GBP—Catheter, Multiple Lumen |
|                    | GBO—Catheter, Nephrostomy, General & Plastic Surgery |
|                    | GBV—Catheter, Pediatric, General & Plastic Surgery |
|                    | GBW—Catheter, Peritoneal |
|                    | GBS—Catheter, Ventricular, General & Plastic Surgery |
|                    | GCO—Connector, Catheter |
|                    | GCC—Dilator, Catheter |
|                    | GCB—Needle, Catheter |

Removable Skin Clip

Surgeon’s Gloves

KGO—Surgeon’s Gloves
### TABLE 1.—CLASS I PRODUCTS REQUIRING PREMARKET EVALUATIONS IN THE UNITED STATES, INCLUDED IN SCOPE OF PRODUCT COVERAGE AT BEGINNING OF TRANSITION PERIOD¹—Continued

<table>
<thead>
<tr>
<th>21 CFR Section No.</th>
<th>Regulation Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>878.4680</td>
<td>Nonpowered, Single Patient, Portable Suction Apparatus</td>
</tr>
<tr>
<td></td>
<td>GCY—Apparatus, Suction, Single Patient Use, Portable, Nonpowered</td>
</tr>
<tr>
<td>878.4760</td>
<td>Removable Skin Staple</td>
</tr>
<tr>
<td></td>
<td>GDT—Staple, Removable (Skin)</td>
</tr>
<tr>
<td>878.4820</td>
<td>AC-Powered, Battery-Powered, and Pneumatically Powered Surgical Instrument Motors and Accessories/Attachments</td>
</tr>
<tr>
<td></td>
<td>GFG—Bit, Surgical</td>
</tr>
<tr>
<td></td>
<td>GFA—Blade, Saw, General &amp; Plastic Surgery</td>
</tr>
<tr>
<td></td>
<td>DWH—Blade, Saw, Surgical, Cardiovascular</td>
</tr>
<tr>
<td></td>
<td>BRZ—Board, Arm (With Cover)</td>
</tr>
<tr>
<td></td>
<td>GFE—Brush, Dermabrasion</td>
</tr>
<tr>
<td></td>
<td>GFF—Bur, Surgical, General &amp; Plastic Surgery</td>
</tr>
<tr>
<td></td>
<td>KDG—Chisel (Osteotome)</td>
</tr>
<tr>
<td></td>
<td>GFD—Dermatome</td>
</tr>
<tr>
<td></td>
<td>GFC—Driver, Surgical, Pin</td>
</tr>
<tr>
<td></td>
<td>GFB—Head, Surgical, Hammer</td>
</tr>
<tr>
<td></td>
<td>GEY—Motor, Surgical Instrument, AC-Powered</td>
</tr>
<tr>
<td></td>
<td>GET—Motor, Surgical Instrument, Pneumatic Powered</td>
</tr>
<tr>
<td></td>
<td>DWI—Saw, Electrically Powered</td>
</tr>
<tr>
<td></td>
<td>KFK—Saw, Pneumatically Powered</td>
</tr>
<tr>
<td>878.4960</td>
<td>Air or AC-Powered Operating Chair and Air or AC-Powered Operating Chair &amp; Accessories</td>
</tr>
<tr>
<td></td>
<td>GBB—Chair, Surgical, AC-Powered</td>
</tr>
<tr>
<td></td>
<td>FQO—Table, Operating-Room, AC-Powered</td>
</tr>
<tr>
<td></td>
<td>GDC—Table, Operating-Room, Electrical</td>
</tr>
<tr>
<td></td>
<td>FWW—Table, Operating-Room, Pneumatic</td>
</tr>
<tr>
<td></td>
<td>JEA—Table, Surgical with Orthopedic Accessories, AC-Powered</td>
</tr>
<tr>
<td>880.5090</td>
<td>Liquid Bandage</td>
</tr>
<tr>
<td></td>
<td>KMF—Bandage, Liquid</td>
</tr>
</tbody>
</table>

¹Descriptive information on product codes, panel codes, and other medical device identifiers may be viewed on FDA’s Internet Web Site at “http://www.fda.gov/cdrh/prodcode.html”.

### TABLE 2.—CLASS II MEDICAL DEVICES INCLUDED IN SCOPE OF PRODUCT COVERAGE AT BEGINNING OF TRANSITION PERIOD (UNITED STATES TO DEVELOP GUIDANCE DOCUMENTS IDENTIFYING U.S. REQUIREMENTS AND EUROPEAN COMMUNITY (EC) TO IDENTIFY STANDARDS NEEDED TO MEET EC REQUIREMENTS)¹

<table>
<thead>
<tr>
<th>Panel</th>
<th>21 CFR Section No.</th>
<th>Regulation Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>RA</td>
<td>892.1000</td>
<td>Magnetic Resonance Diagnostic Device</td>
</tr>
<tr>
<td></td>
<td>MOS—COIL, Magnetic Resonance, Specialty</td>
<td></td>
</tr>
<tr>
<td></td>
<td>LNH—System, Nuclear Magnetic Resonance Imaging</td>
<td></td>
</tr>
<tr>
<td></td>
<td>LNI—System, Nuclear Magnetic Resonance Spectroscopic</td>
<td></td>
</tr>
</tbody>
</table>

#### Diagnostic Ultrasound:

<table>
<thead>
<tr>
<th>Panel</th>
<th>21 CFR Section No.</th>
<th>Regulation Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>RA</td>
<td>892.1540</td>
<td>Nonfetal Ultrasonic Monitor</td>
</tr>
<tr>
<td>RA</td>
<td>892.1550</td>
<td>JAF—Monitor, Ultrasonic, Nonfetal</td>
</tr>
<tr>
<td>RA</td>
<td>892.1560</td>
<td>IYN—System, Imaging, Pulsed Doppler, Ultrasonic</td>
</tr>
<tr>
<td>RA</td>
<td>892.1570</td>
<td>IYO—System, Imaging, Pulsed Echo, Ultrasonic</td>
</tr>
<tr>
<td>RA</td>
<td>892.1580</td>
<td>Diagnostic Ultrasonic Transducer</td>
</tr>
<tr>
<td></td>
<td>ITX—Transducer, Ultrasonic, Diagnostic</td>
<td></td>
</tr>
</tbody>
</table>

#### Diagnostic X-Ray Imaging Devices (except mammographic x-ray systems):

<table>
<thead>
<tr>
<th>Panel</th>
<th>21 CFR Section No.</th>
<th>Regulation Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>RA</td>
<td>892.1600</td>
<td>Angiographic X-Ray System</td>
</tr>
<tr>
<td></td>
<td>IZI—System, X-Ray, Angiographic</td>
<td></td>
</tr>
<tr>
<td>RA</td>
<td>892.1650</td>
<td>Image-Intensified Fluoroscopic X-Ray System</td>
</tr>
<tr>
<td></td>
<td>MOB—Solid State X-Ray Imager (Flat Panel/Digital Imager)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>JAA—System, X-Ray, Fluoroscopic, Image-Intensified</td>
<td></td>
</tr>
</tbody>
</table>
### TABLE 2. — CLASS II MEDICAL DEVICES INCLUDED IN SCOPE OF PRODUCT COVERAGE AT BEGINNING OF TRANSITION PERIOD (UNITED STATES TO DEVELOP GUIDANCE DOCUMENTS IDENTIFYING U.S. REQUIREMENTS AND EUROPEAN COMMUNITY (EC) TO IDENTIFY STANDARDS NEEDED TO MEET EC REQUIREMENTS) — Continued

<table>
<thead>
<tr>
<th>Panel</th>
<th>21 CFR Section No.</th>
<th>Regulation Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>RA</td>
<td>892.1680</td>
<td>Stationary X-Ray System</td>
</tr>
<tr>
<td>RA</td>
<td>892.1720</td>
<td>Mobile X-Ray System</td>
</tr>
<tr>
<td>RA</td>
<td>892.1740</td>
<td>Tomographic X-Ray System</td>
</tr>
<tr>
<td>RA</td>
<td>892.1750</td>
<td>Computed Tomography X-Ray System</td>
</tr>
<tr>
<td>ECG-Related Devices:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CV</td>
<td>870.2340</td>
<td>Electrocardiograph</td>
</tr>
<tr>
<td>CV</td>
<td>870.2350</td>
<td>Electrocardiograph Lead Switching Adaptor</td>
</tr>
<tr>
<td>CV</td>
<td>870.2360</td>
<td>Electrocardiograph Electrode</td>
</tr>
<tr>
<td>CV</td>
<td>870.2370</td>
<td>Electrocardiograph Surface Electrode Tester</td>
</tr>
<tr>
<td>NE</td>
<td>882.1400</td>
<td>Electromyelograph</td>
</tr>
<tr>
<td>HO</td>
<td>880.5725</td>
<td>Infusion Pump (external only)</td>
</tr>
<tr>
<td>Ophthalmic Instruments:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OP</td>
<td>886.1570</td>
<td>Ophthalmoscope</td>
</tr>
<tr>
<td>OP</td>
<td>886.1780</td>
<td>Retinoscope</td>
</tr>
<tr>
<td>OP</td>
<td>886.1850</td>
<td>AC-Powered Silt-Lamp Biomicroscope</td>
</tr>
<tr>
<td>OP</td>
<td>886.4150</td>
<td>Vitreous Aspiration and Cutting Instrument</td>
</tr>
<tr>
<td>OP</td>
<td>886.4670</td>
<td>Phacoemulsification System</td>
</tr>
<tr>
<td>SU</td>
<td>878.4580</td>
<td>Surgical Lamp</td>
</tr>
<tr>
<td>NE</td>
<td>882.5890</td>
<td>Transcutaneous Electrical Nerve Stimulator for Pain Relief</td>
</tr>
<tr>
<td>CV</td>
<td>870.1120</td>
<td>Blood Pressure Cuff</td>
</tr>
</tbody>
</table>

**ECG-Related Devices:**
- CV 870.2340 Electrocardiograph
- DPS—Electrocardiograph
- MLC—Monitor, ST Segment
- CV 870.2350 Electrocardiograph Lead Switching Adaptor
- DHW—Adaptor, Lead Switching, Electrocardiograph
- CV 870.2360 Electrocardiograph Electrode
- DIX—Electrode, Electrocardiograph
- CV 870.2370 Electrocardiograph Surface Electrode Tester
- KRC—Test, Electrode, Surface, Electrocardiographic
- NE 882.1400 Electromyelograph
- GWO—Electromyelograph
- HO 880.5725 Infusion Pump (external only)
- MRZ—Accessories, Pump, Infusion
- FRN—Pump, Infusion
- LZF—Pump, Infusion, Analytical Sampling
- MEB—Pump, Infusion, Elastomeric
- LZN—Pump, Infusion, Enteral
- MHD—Pump, Infusion, Gallstone Dissolution
- LZG—Pump, Infusion, Insulin
- MEA—Pump, Infusion, PCA

**Ophthalmic Instruments:**
- OP 886.1570 Ophthalmoscope
- HLJ—Ophthalmoscope, AC-Powered
- HUJ—Ophthalmoscope, Battery-Powered
- OP 886.1780 Retinoscope
- HUL—Retinoscope, AC-Powered
- OP 886.1850 AC-Powered Silt-Lamp Biomicroscope
- HJ—Biomicroscope, Silt-Lamp, AC-Powered
- OP 886.4150 Vitreous Aspiration and Cutting Instrument
- MMC—Dilator, Expansive Iris (Accessory)
- HGE—Instrument, Vitreous Aspiration and Cutting, AC-Powered
- HIE—Instrument, Vitreous Aspiration and Cutting, Battery-Powered
- MLZ—Vitrectomy, Instrument Cutter
- OP 886.4670 Phacoemulsification System
- SU 878.4580 Surgical Lamp
- HBI—Illuminator, Fiberoptic, Surgical Field
- FFI—Illuminator, Nonremote
- FTG—Illuminator, Remote
- HUE—Lamp, Fluorescein, AC-Powered
- FGP—Lamp, Operating-Room
- FTD—Lamp, Surgical
- GBC—Lamp, Surgical, Incandescent
- FTA—Light, Surgical, Accessories
- FSZ—Light, Surgical, Carrier
- FSY—Light, Surgical, Ceiling Mounted
- FSX—Light, Surgical, Connector
- FSW—Light, Surgical, Endoscopic
- FST—Light, Surgical, Fiberoptic
- FSS—Light, Surgical, Floor Standing
- FSQ—Light, Surgical, Instrument
- NE 882.5890 Transcutaneous Electrical Nerve Stimulator for Pain Relief
- GJZ—Stimulator, Nerve, Transcutaneous, For Pain Relief

**Noninvasive Blood Pressure Measurement Devices:**
- CV 870.1120 Blood Pressure Cuff
- DXQ—Cuff, Blood-Pressure
### TABLE 2.—CLASS II MEDICAL DEVICES INCLUDED IN SCOPE OF PRODUCT COVERAGE AT BEGINNING OF TRANSITION PERIOD (UNITED STATES TO DEVELOP GUIDANCE DOCUMENTS IDENTIFYING U.S. REQUIREMENTS AND EUROPEAN COMMUNITY (EC) TO IDENTIFY STANDARDS NEEDED TO MEET EC REQUIREMENTS)1—Continued

<table>
<thead>
<tr>
<th>Panel</th>
<th>21 CFR Section No.</th>
<th>Regulation Name</th>
<th>Product Code—Device Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>CV</td>
<td>870.1130</td>
<td>Noninvasive Blood Pressure Measurement System (except nonoscillometric)</td>
<td>DXN—System, Measurement, Blood-Pressure, Noninvasive</td>
</tr>
<tr>
<td></td>
<td>880.6880</td>
<td>Steam Sterilizer (greater than 2 cubic feet)</td>
<td>FLE—Sterilizer, Steam</td>
</tr>
<tr>
<td>HO</td>
<td>880.2910</td>
<td>Clinical Electronic Thermometer (except tympanic or pacifier)</td>
<td>FLL—Thermometer, Electronic, Clinical</td>
</tr>
<tr>
<td></td>
<td>880.5630</td>
<td>Nebulizer</td>
<td>CAF—Nebulizer (Direct Patient Interface)</td>
</tr>
</tbody>
</table>

**Clinical Thermometers:**

<table>
<thead>
<tr>
<th>Panel</th>
<th>21 CFR Section No.</th>
<th>Regulation Name</th>
<th>Product Code—Device Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>HO</td>
<td>880.2910</td>
<td>Clinical Electronic Thermometer (except tympanic or pacifier)</td>
<td>FLL—Thermometer, Electronic, Clinical</td>
</tr>
<tr>
<td>AN</td>
<td>880.5630</td>
<td>Nebulizer</td>
<td>CAF—Nebulizer (Direct Patient Interface)</td>
</tr>
</tbody>
</table>

**Hypodermic Needles and Syringes (except antistick and self-destruct):**

<table>
<thead>
<tr>
<th>Panel</th>
<th>21 CFR Section No.</th>
<th>Regulation Name</th>
<th>Product Code—Device Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>HO</td>
<td>880.5570</td>
<td>Hypodermic Single Lumen Needle</td>
<td>MMK—Container, Sharpes</td>
</tr>
<tr>
<td></td>
<td>880.5860</td>
<td>Piston Syringe</td>
<td>FMF—Syringe, Piston</td>
</tr>
</tbody>
</table>

**Selected Dental Materials:**

<table>
<thead>
<tr>
<th>Panel</th>
<th>21 CFR Section No.</th>
<th>Regulation Name</th>
<th>Product Code—Device Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>DE</td>
<td>872.3060</td>
<td>Gold-Based Alloys and Precious Metal Alloys for Clinical Use</td>
<td>EJT—Alloy, Gold Based, For Clinical Use</td>
</tr>
<tr>
<td></td>
<td>872.3200</td>
<td>Resin Tooth Bonding Agent</td>
<td>EJS—Alloy, Precious Metal, For Clinical Use</td>
</tr>
<tr>
<td></td>
<td>872.3275</td>
<td>Dental Cement</td>
<td>EMA—Cement, Dental</td>
</tr>
<tr>
<td></td>
<td>872.3660</td>
<td>Impression Material</td>
<td>ELM—Material, Impression</td>
</tr>
<tr>
<td></td>
<td>872.3690</td>
<td>Tooth Shade Resin Material</td>
<td>EBF—Material, Tooth Shade, Resin</td>
</tr>
<tr>
<td></td>
<td>872.3710</td>
<td>Base Metal Alloy</td>
<td>EJH—Metal, Base</td>
</tr>
</tbody>
</table>

**Latex Condoms:**

<table>
<thead>
<tr>
<th>Panel</th>
<th>21 CFR Section No.</th>
<th>Regulation Name</th>
<th>Product Code—Device Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>OB</td>
<td>884.5300</td>
<td>Condom</td>
<td>HIS—Condom</td>
</tr>
</tbody>
</table>

1 Descriptive information on product codes, panel codes, and other medical device identifiers may be viewed on FDA’s Internet Web Site at “http://www.fda.gov/cdrh/prodcode.html”.

### TABLE 3.—MEDICAL DEVICES FOR POSSIBLE INCLUSION IN SCOPE OF PRODUCT COVERAGE DURING OPERATIONAL PERIOD1

<table>
<thead>
<tr>
<th>Product Family</th>
<th>21 CFR Section No.</th>
<th>Device Name</th>
<th>Tier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anesthesiology Panel</td>
<td>868.5160</td>
<td>Gas machine for anesthesia or analgesia</td>
<td>2</td>
</tr>
<tr>
<td>Anesthesia Devices</td>
<td>868.5270</td>
<td>Breathing system heater</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>868.5440</td>
<td>Portable oxygen generator</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>868.5450</td>
<td>Respiratory gas humidifier</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>868.5630</td>
<td>Nebulizer</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>868.5710</td>
<td>Electrically powered oxygen tent</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>868.5880</td>
<td>Anesthetic vaporizer</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>868.1040</td>
<td>Powered Algseimeter</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>868.1075</td>
<td>Argon gas analyzer</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>868.1400</td>
<td>Carbon dioxide gas analyzer</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>868.1430</td>
<td>Carbon monoxide gas analyzer</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>868.1500</td>
<td>Enflurane gas analyzer</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>868.1620</td>
<td>Halothane gas analyzer</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>868.1640</td>
<td>Helium gas analyzer</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>868.1670</td>
<td>Neon gas analyzer</td>
<td>2</td>
</tr>
</tbody>
</table>
### Table 3.—Medical Devices for Possible Inclusion in Scope of Product Coverage During Operational Period

<table>
<thead>
<tr>
<th>Product Family</th>
<th>21 CFR Section No</th>
<th>Device Name</th>
<th>Tier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nitrogen gas analyzer</td>
<td>868.1690</td>
<td>Nitrogen gas analyzer</td>
<td>2</td>
</tr>
<tr>
<td>Nitrous oxide gas analyzer</td>
<td>868.1700</td>
<td>Nitrous oxide gas analyzer</td>
<td>2</td>
</tr>
<tr>
<td>Oxygen gas analyzer</td>
<td>868.1720</td>
<td>Oxygen gas analyzer</td>
<td>2</td>
</tr>
<tr>
<td>Oxygen uptake computer</td>
<td>868.1730</td>
<td>Oxygen uptake computer</td>
<td>2</td>
</tr>
<tr>
<td>Electrical peripheral nerve stimulator</td>
<td>868.2775</td>
<td>Electrical peripheral nerve stimulator</td>
<td>2</td>
</tr>
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<td>Pressure plethysmograph</td>
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### Table 3.—Medical Devices for Possible Inclusion in Scope of Product Coverage During Operational Period

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<td>Angiographic Diagnostic X-Ray</td>
<td>892.1820</td>
<td>Pneumoencephalographic chair</td>
<td>2</td>
</tr>
<tr>
<td>Angiographic Diagnostic X-Ray</td>
<td>892.1850</td>
<td>Radiographic film cassette</td>
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</tr>
<tr>
<td>Angiographic Diagnostic X-Ray</td>
<td>892.1860</td>
<td>Radiographic film cassette changer</td>
<td>1</td>
</tr>
<tr>
<td>Angiographic Diagnostic X-Ray</td>
<td>892.1870</td>
<td>Radiographic film/cassette changer programmer</td>
<td>2</td>
</tr>
</tbody>
</table>
## Table 3.—Medical Devices for Possible Inclusion in Scope of Product Coverage During Operational Period¹—Continued

<table>
<thead>
<tr>
<th>Product Family</th>
<th>21 CFR Section No</th>
<th>Device Name</th>
<th>Tier</th>
</tr>
</thead>
<tbody>
<tr>
<td>CT Scanner</td>
<td>892.1900</td>
<td>Automatic radiographic film processor</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>892.1980</td>
<td>Radiologic table</td>
<td>1</td>
</tr>
<tr>
<td>Radiation Therapy</td>
<td>892.5050</td>
<td>Medical charged-particle radiation therapy system</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>892.5300</td>
<td>Medical neutron radiation therapy system</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>892.5700</td>
<td>Remote controlled radionuclide applicator system</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>892.5710</td>
<td>Radiation therapy beam-shaping block</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>892.5730</td>
<td>Radionuclide brachytherapy source</td>
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<td>Nuclear Medicine</td>
<td>892.1170</td>
<td>Bone densitometer</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>892.1200</td>
<td>Emission computed tomography system</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>892.1310</td>
<td>Nuclear tomography system</td>
<td>1</td>
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<td></td>
<td>892.1390</td>
<td>Radionuclide rebreathing system</td>
<td>2</td>
</tr>
<tr>
<td>General/Plastic Surgery Panel</td>
<td>878.4630</td>
<td>Ultraviolet lamp for dermatologic disorders</td>
<td>2</td>
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<tr>
<td>Surgical Lamps</td>
<td>890.5500</td>
<td>Infrared lamp</td>
<td>2</td>
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<td>Electrosurgical Cutting</td>
<td>878.4810</td>
<td>Surgical lamp</td>
<td>2</td>
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<td>Equipment</td>
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<td>Laser surgical instrument for use in general and plastic surgery and in dermatology</td>
<td>2</td>
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<td></td>
<td>878.4400</td>
<td>Electrosurgical cutting and coagulation device and accessories</td>
<td>2</td>
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<tr>
<td>Miscellaneous</td>
<td>878.4780</td>
<td>Powered suction pump</td>
<td>2</td>
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</table>

¹Descriptive information on product codes, panel codes, and other medical device identifiers may be viewed on FDA’s Internet Web Site at “http://www.fda.gov/cdrh/prodcode.html”.

### §26.60 Definitions

(a) The following terms and definitions shall apply to this subpart only:

1. Designating Authority means a body with power to designate, monitor, suspend, remove suspension of, or withdraw conformity assessment bodies as specified under this part.

2. Designation means the identification by a designating authority of a conformity assessment body to perform conformity assessment procedures under this part.

3. Regulatory Authority means a government agency or entity that exercises a legal right to control the use or sale of products within a party’s jurisdiction and may take enforcement action to ensure that products marketed within its jurisdiction comply with legal requirements.

(b) Other terms concerning conformity assessment used in this part shall have the meaning given elsewhere in this part or in the definitions contained in “Guide 2: Standardization and Related Activities—General Vocabulary of the International Organization for Standardization (ISO)” and the
§ 26.61 Purpose of this part.

This part specifies the conditions by which each party will accept or recognize results of conformity assessment procedures, produced by the other party’s conformity assessment bodies (CAB’s) or authorities, in assessing conformity to the importing party’s requirements, as specified on a sector-specific basis in subparts A and B of this part, and to provide for other related cooperative activities. The objective of such mutual recognition is to provide effective market access throughout the territories of the parties with regard to conformity assessment for all products covered under this part. If any obstacles to such access arise, consultations will promptly be held. In the absence of a satisfactory outcome of such consultations, the party alleging its market access has been denied may, within 90 days of such consultation, invoke its right to terminate the “Agreement on Mutual Recognition Between the United States of America and the European Community,” from which this part is derived, in accordance with §26.80.

§ 26.62 General obligations.

(a) The United States shall, as specified in subparts A and B of this part, accept or recognize results of specified procedures, used in assessing conformity to specified legislative, regulatory, and administrative provisions of the United States, produced by the other party’s conformity assessment bodies (CAB’s) and/or authorities.

(b) The European Community (EC) and its Member States shall, as specified in subparts A and B of this part, accept or recognize results of specified procedures, used in assessing conformity to specified legislative, regulatory, and administrative provisions of the EC and its Member States, produced by the other party’s CAB’s and/or authorities.

(c) Where sectoral transition arrangements have been specified in subparts A and B of this part, the obligations in paragraphs (a) and (b) of this section will apply following the successful completion of those sectoral transition arrangements, with the understanding that the conformity assessment procedures utilized assure conformity to the satisfaction of the receiving party, with applicable legislative, regulatory, and administrative provisions of that party, equivalent to the assurance offered by the receiving party’s own procedures.

§ 26.63 General coverage of this part.

(a) This part applies to conformity assessment procedures for products and/or processes and to other related cooperative activities as described in this part.

(b) Subparts A and B of this part may include:

(1) A description of the relevant legislative, regulatory, and administrative provisions pertaining to the conformity assessment procedures and technical regulations;

(2) A statement on the product scope and coverage;

(3) A list of designating authorities;

(4) A list of agreed conformity assessment bodies (CAB’s) or authorities or a source from which to obtain a list of such bodies or authorities and a statement of the scope of the conformity assessment procedures for which each has been agreed;

(5) The procedures and criteria for designating the CAB’s;

(6) A description of the mutual recognition obligations;

(7) A sectoral transition arrangement;

(8) The identity of a sectoral contact point in each party’s territory; and
Food and Drug Administration, HHS

§ 26.67 Suspension of listed conformity assessment bodies.

The following procedures shall apply with regard to the suspension of a conformity assessment body (CAB) listed in subpart B of this part.

(a) A party shall notify the other party of its contestation of the technical competence or compliance of a CAB listed in subpart B of this part and the contesting party's intent to suspend such CAB. Such contestation shall be exercised when justified in an objective and reasoned manner in writing to the other party;

(b) The CAB shall be given prompt notice by the other party and an opportunity to present information in order to refute the contestation or to correct the deficiencies which form the basis of the contestation;

(c) Any such contestation shall be discussed between the parties in the Joint Sectoral Committee described in subpart B of this part. If there is no Joint Sectoral Committee, the contesting party shall refer the matter directly to the Joint Committee. If agreement to suspend is reached by the Joint Sectoral Committee or, if there is no Joint Sectoral Committee, by the Joint Committee, the CAB shall be suspended;

(d) Where the Joint Sectoral Committee or Joint Committee decides that verification of technical competence or compliance is required, it
§ 26.68 Withdrawal of listed conformity assessment bodies.

The following procedures shall apply with regard to the withdrawal from subpart B of this part of a conformity assessment body (CAB):

(a) A party proposing to withdraw a CAB listed in subpart B of this part shall forward its proposal in writing to the other party;

(b) Such CAB shall be promptly notified by the other party and shall be provided a period of at least 30 days from receipt to provide information in order to refute or to correct the deficiencies which form the basis of the proposed withdrawal;

(c) Within 60 days following receipt of the proposal, the other party shall indicate its position regarding either its confirmation or its opposition. Upon confirmation, the withdrawal from the list in subpart B of this part of the CAB shall take effect;

(d) In the event the other party opposes the proposal to withdraw by supporting the technical competence and compliance of the CAB, the CAB shall not at that time be withdrawn from the list of CAB’s in subpart B of this part. In this instance, the Joint Sectoral Committee or Joint Committee may decide to carry out a joint verification of the body concerned. After the completion of such verification, the proposal for withdrawal of the CAB may be resubmitted to the other party; and

(e) Subsequent to the withdrawal of a CAB listed in subpart B of this part, a party shall continue to accept the results of conformity assessment procedures performed by that CAB prior to suspension, unless a regulatory authority of the party decides otherwise based on health, safety, and environmental considerations or failure to satisfy other requirements within the scope of subpart B of this part.

§ 26.69 Monitoring of conformity assessment bodies.

The following shall apply with regard to the monitoring of conformity assessment bodies (CAB’s) listed in subpart B of this part:

(a) Designating authorities shall assure that their CAB’s listed in subpart B of this part are capable and remain capable of properly assessing conformity of products or processes, as applicable, and as covered in subpart B of this part. In this regard, designating authorities shall maintain, or cause to maintain, ongoing surveillance by means of regular audit or assessment;

(b) The parties undertake to compare methods used to verify that the CAB’s listed in subpart B of this part comply with the relevant requirements of subpart B of this part. Existing systems for the evaluation of CAB’s may be used as part of such comparison procedures;

(c) Designating authorities shall consult as necessary with their counterparts, to ensure the maintenance of confidence in conformity assessment procedures. With the consent of both
§ 26.70 Conformity assessment bodies.

Each party recognizes that the conformity assessment bodies (CAB's) listed in subpart B of this part fulfill the conditions of eligibility to assess conformity in relation to its requirements as specified in subpart B of this part. The parties shall specify the scope of the conformity assessment procedures for which such bodies are listed.

§ 26.71 Exchange of information.

(a) The parties shall exchange information concerning the implementation of the legislative, regulatory, and administrative provisions identified in subparts A and B of this part.

(b) Each party shall notify the other party of legislative, regulatory, and administrative changes related to the subject matter of this part at least 60 days before their entry into force. Where considerations of safety, health or environmental protection require more urgent action, a party shall notify the other party as soon as practicable.

(c) Each party shall promptly notify the other party of any changes to its designating authorities and/or conformity assessment bodies (CAB's).

(d) The parties shall exchange information concerning the procedures used to ensure that the listed CAB's under their responsibility comply with the legislative, regulatory, and administrative provisions outlined in subpart B of this part.

(e) Regulatory authorities identified in subparts A and B of this part shall consult as necessary with their counterparts, to ensure the maintenance of confidence in conformity assessment procedures and to ensure that all technical requirements are identified and are satisfactorily addressed.

§ 26.72 Sectoral contact points.

Each party shall appoint and confirm in writing contact points to be responsible for activities under subparts A and B of this part.

§ 26.73 Joint Committee.

(a) A Joint Committee consisting of representatives of the United States and the European Community (EC) will be established. The Joint Committee shall be responsible for the effective functioning of the “Agreement on Mutual Recognition Between the United States of America and the European Community,” from which this part is derived.

(b) The Joint Committee may establish Joint Sectoral Committees comprised of appropriate regulatory authorities and others deemed necessary.

(c) The United States and the EC shall each have one vote in the Joint Committee. The Joint Committee shall make its decisions by unanimous consent. The Joint Committee shall determine its own rules and procedures.

(d) The Joint Committee may consider any matter relating to the effective functioning of that agreement. In particular it shall be responsible for:

(1) Listing, suspension, withdrawal and verification of conformity assessment bodies (CAB’s) in accordance with that agreement;

(2) Amending transitional arrangements in the sectoral annexes to that agreement;

(3) Resolving any questions relating to the application of that agreement not otherwise resolved in the respective Joint Sectoral Committees;

(4) Providing a forum for discussion of issues that may arise concerning the implementation of that agreement;

(5) Considering ways to enhance the operation of that agreement;

(6) Coordinating the negotiation of additional sectoral annexes to that agreement; and

(7) Considering whether to amend that agreement in accordance with § 26.80.

(e) When a party introduces new or additional conformity assessment procedures affecting a sectoral annex to that agreement, the parties shall discuss the matter in the Joint Committee with a view to bringing such
new or additional procedures within the scope of that agreement and the relevant sectoral annex.

§ 26.74 Preservation of regulatory authority.

(a) Nothing in this part shall be construed to limit the authority of a party to determine, through its legislative, regulatory, and administrative measures, the level of protection it considers appropriate for safety; for protection of human, animal, or plant life or health; for the environment; for consumers; and otherwise with regard to risks within the scope of the applicable subpart A or B of this part.

(b) Nothing in this part shall be construed to limit the authority of a regulatory authority to take all appropriate and immediate measures whenever it ascertain that a product may:

(1) Compromise the health or safety of persons in its territory;

(2) Not meet the legislative, regulatory, or administrative provisions within the scope of the applicable subpart A or B of this part;

(3) Otherwise fail to satisfy a requirement within the scope of the applicable subpart A or B of this part. Such measures may include withdrawing the products from the market, prohibiting their placement on the market, restricting their free movement, initiating a product recall, and preventing the recurrence of such problems, including through a prohibition on imports. If the regulatory authority takes such action, it shall inform its counterpart authority and the other party within 15 days of taking such action, providing its reasons.

§ 26.75 Suspension of recognition obligations.

Either party may suspend its obligations under subpart A or B of this part, in whole or in part, if:

(a) A party suffers a loss of market access for the party’s products within the scope of subpart A or B of this part as a result of the failure of the other party to fulfill its obligations under this part;

(b) The adoption of new or additional conformity assessment requirements as referenced in §26.73(e) results in a loss of market access for the party’s products within the scope of subpart B of this part because conformity assessment bodies (CAB’s) designated by the party in order to meet such requirements have not been recognized by the party implementing the requirements; or

(c) The other party fails to maintain legal and regulatory authorities capable of implementing the provisions of this part.

§ 26.76 Confidentiality.

(a) Each party agrees to maintain, to the extent required under its laws, the confidentiality of information exchanged under this part.

(b) In particular, neither party shall disclose to the public, nor permit a conformity assessment body (CAB) to disclose to the public, information exchanged under this part that constitutes trade secrets, confidential commercial or financial information, or information that relates to an ongoing investigation.

(c) A party or a CAB may, upon exchanging information with the other party or with a CAB of the other party, designate the portions of the information that it considers to be exempt from disclosure.

(d) Each party shall take all precautions reasonably necessary to protect information exchanged under this part from unauthorized disclosure.

§ 26.77 Fees.

Each party shall endeavor to ensure that fees imposed for services under this part shall be commensurate with the services provided. Each party shall ensure that, for the sectors and conformity assessment procedures covered under this part, it shall charge no fees with respect to conformity assessment services provided by the other party.

§ 26.78 Agreements with other countries.

Except where there is written agreement between the parties, obligations contained in mutual recognition agreements concluded by either party with a party not a party to the agreement from which this part is derived (a third party) shall have no force and effect with regard to the other party in terms
§ 26.79 Territorial application.

The agreement from which this part is derived shall apply, on the one hand, to the territories in which the Treaty establishing the European Community (EC) is applied, and under the conditions laid down in that Treaty and, on the other hand, to the territory of the United States.

§ 26.80 Entry into force, amendment, and termination.

(a) The “Agreement on Mutual Recognition Between the United States of America and the European Community,” from which this part is derived, including its sectoral annexes on telecommunication equipment, electromagnetic compatibility, electrical safety, recreational craft, pharmaceutical Good Manufacturing Practices (GMP) inspections, and medical devices shall enter into force on the first day of the second month following the date on which the parties have exchanged letters confirming the completion of their respective procedures for the entry into force of that agreement.

(b) That agreement including any sectoral annex may, through the Joint Committee, be amended in writing by the parties to that agreement. Those parties may add a sectoral annex upon the exchange of letters. Such annex shall enter into force 30 days following the date on which those parties have exchanged letters confirming the completion of their respective procedures for the entry into force of the sectoral annex.

(c) Either party to that agreement may terminate that agreement in its entirety or any individual sectoral annex thereof by giving the other party to that agreement 6-months notice in writing. In the case of termination of one or more sectoral annexes, the parties to that agreement will seek to achieve by consensus to amend that agreement, with a view to preserving the remaining Sectoral Annexes, in accordance with the procedures in this section. Failing such consensus, that agreement shall terminate at the end of 6 months from the date of notice.

(d) Following termination of that agreement in its entirety or any individual sectoral annex thereof, a party to that agreement shall continue to accept the results of conformity assessment procedures performed by conformity assessment bodies under that agreement prior to termination, unless a regulatory authority in the party decides otherwise based on health, safety and environmental considerations or failure to satisfy other requirements within the scope of the applicable sectoral annex.

§ 26.81 Final provisions.

(a) The sectoral annexes referred to in § 26.80(a), as well as any new sectoral annexes added pursuant to § 26.80(b), shall form an integral part of the “Agreement on Mutual Recognition Between the United States of America and the European Community,” from which this part is derived.

(b) For a given product or sector, the provisions contained in subparts A and B of this part shall apply in the first place, and the provisions of subpart C of this part in addition to those provisions. In the case of any inconsistency between the provisions of subpart A or B of this part and subpart C of this part, subpart A or B shall prevail, to the extent of that inconsistency.

(c) The agreement from which this part is derived shall not affect the rights and obligations of the parties under any other international agreement.

(d) In the case of subpart B of this part, the parties shall review the status of such subpart at the end of 3 years from the date described in § 26.80(a).

PART 50—PROTECTION OF HUMAN SUBJECTS

Subpart A—General Provisions

Sec.

50.1 Scope.

50.3 Definitions.

Subpart B—Informed Consent of Human Subjects

50.20 General requirements for informed consent.

50.23 Exception from general requirements.
§ 50.1

50.24 Exception from informed consent requirements for emergency research.
50.25 Elements of informed consent.
50.27 Documentation of informed consent.


SOURCE: 45 FR 36390, May 30, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 50.1 Scope.

(a) This part applies to all clinical investigations regulated by the Food and Drug Administration under sections 505(i) and 520(g) of the Federal Food, Drug, and Cosmetic Act, as well as clinical investigations that support applications for research or marketing permits for products regulated by the Food and Drug Administration, including food and color additives, drugs for human use, medical devices for human use, biological products for human use, and electronic products. Additional specific obligations and commitments of, and standards of conduct for, persons who sponsor or monitor clinical investigations involving particular test articles may also be found in other parts (e.g., parts 312 and 812). Compliance with these parts is intended to protect the rights and safety of subjects involved in investigations filed with the Food and Drug Administration pursuant to sections 406, 409, 502, 503, 505, 510, 513–516, 518–520, 721, and 801 of the Federal Food, Drug, and Cosmetic Act and sections 351 and 354–360F of the Public Health Service Act.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21, unless otherwise noted.


EFFECTIVE DATE NOTE: At 64 FR 399, Jan. 5, 1999, §50.1 was amended by removing “, 507(d).” from the first sentence of paragraph (a), and by removing “507,” from the last sentence of paragraph (a), effective May 20, 1999.

§ 50.3 Definitions.

As used in this part:

(b) Application for research or marketing permit includes:
(1) A color additive petition, described in part 71.
(2) A food additive petition, described in parts 171 and 571.
(3) Data and information about a substance submitted as part of the procedures for establishing that the substance is generally recognized as safe for use that results or may reasonably be expected to result, directly or indirectly, in its becoming a component of or otherwise affecting the characteristics of any food, described in §§170.30 and 570.30.

(4) Data and information about a food additive submitted as part of the procedures for food additives permitted to be used on an interim basis pending additional study, described in §180.1.

(5) Data and information about a substance submitted as part of the procedures for establishing a tolerance for unavoidable contaminants in food and food-packaging materials, described in section 406 of the act.

(6) An investigational new drug application, described in part 312 of this chapter.

(7) A new drug application, described in part 334.

(8) Data and information about the bioavailability or bioequivalence of drugs for human use submitted as part of the procedures for issuing, amending, or repealing a bioequivalence requirement, described in part 320.

(9) Data and information about an over-the-counter drug for human use submitted as part of the procedures for classifying these drugs as generally recognized as safe and effective and not misbranded, described in part 330.

(10) Data and information about a prescription drug for human use submitted as part of the procedures for classifying these drugs as generally recognized as safe and effective and not misbranded, described in this chapter.

(11) Data and information about an antibiotic drug submitted as part of the procedures for issuing, amending, or repealing regulations for these drugs, described in §314.300 of this chapter.
(12) An application for a biological product license, described in part 601.

(13) Data and information about a biological product submitted as part of the procedures for determining that licensed biological products are safe and effective and not misbranded, described in part 601.

(14) Data and information about an in vitro diagnostic product submitted as part of the procedures for establishing, amending, or repealing a standard for these products, described in part 809.

(15) An Application for an Investigational Device Exemption, described in part 812.

(16) Data and information about a medical device submitted as part of the procedures for classifying these devices, described in section 513.

(17) Data and information about a medical device submitted as part of the procedures for establishing, amending, or repealing a standard for these devices, described in section 514.

(18) An application for premarket approval of a medical device, described in section 515.

(19) A product development protocol for a medical device, described in section 515.

(20) Data and information about an electronic product submitted as part of the procedures for establishing, amending, or repealing a standard for these products, described in section 358 of the Public Health Service Act.

(21) Data and information about an electronic product submitted as part of the procedures for obtaining a variance from any electronic product performance standard, as described in §1010.4.

(22) Data and information about an electronic product submitted as part of the procedures for granting, amending, or extending an exemption from a radiation safety performance standard, as described in §1010.5.

(c) Clinical investigation means any experiment that involves a test article and one or more human subjects and that either is subject to requirements for prior submission to the Food and Drug Administration under section 505(i) or 520(g) of the act, or is not subject to requirements for prior submission to the Food and Drug Administration under these sections of the act, but the results of which are intended to be submitted later to, or held for inspection by, the Food and Drug Administration as part of an application for a research or marketing permit. The term does not include experiments that are subject to the provisions of part 58 of this chapter, regarding nonclinical laboratory studies.

(d) Investigator means an individual who actually conducts a clinical investigation, i.e., under whose immediate direction the test article is administered or dispensed to, or used involving, a subject, or, in the event of an investigation conducted by a team of individuals, is the responsible leader of that team.

(e) Sponsor means a person who initiates a clinical investigation, but who does not actually conduct the investigation, i.e., under whose immediate direction the test article is administered or dispensed to or used involving, a subject under the immediate direction of another individual. A person other than an individual (e.g., corporation or agency) that uses one or more of its own employees to conduct a clinical investigation it has initiated is considered to be a sponsor (not a sponsor-investigator), and the employees are considered to be investigators.

(f) Sponsor-investigator means an individual who both initiates and actually conducts, alone or with others, a clinical investigation, i.e., under whose immediate direction the test article is administered or dispensed to, or used involving, a subject. The term does not include any person other than an individual, e.g., corporation or agency.

(g) Human subject means an individual who is or becomes a participant in research, either as a recipient of the test article or as a control. A subject may be either a healthy human or a patient.

(h) Institution means any public or private entity or agency (including Federal, State, and other agencies). The word facility as used in section 520(g) of the act is deemed to be synonymous with the term institution for purposes of this part.

(i) Institutional review board (IRB) means any board, committee, or other group formally designated by an institution to review biomedical research involving humans as subjects, to approve the initiation of and conduct
§ 50.20 General requirements for informed consent.

Except as provided in §§50.23 and 50.24, no investigator may involve a human being as a subject in research covered by these regulations unless the investigator has obtained the legally effective informed consent of the subject or the subject’s legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject’s legal rights, or releases or appears to release the investigator, the sponsor, the institution, or its agents from liability for negligence.

[46 FR 8951, Jan. 27, 1981, as amended at 64 FR 10942, Mar. 8, 1999]
in advance of using the test article, the determinations of the clinical investigator shall be made and, within 5 working days after the use of the article, be reviewed and evaluated in writing by a physician who is not participating in the clinical investigation.

(c) The documentation required in paragraph (a) or (b) of this section shall be submitted to the IRB within 5 working days after the use of the test article.

(d)(1) The Commissioner may also determine that obtaining informed consent is not feasible when the Assistant Secretary of Defense (Health Affairs) requests such a determination in connection with the use of an investigational drug (including a biological product) in a specific protocol under an investigational new drug application (IND) sponsored by the Department of Defense (DOD). DOD’s request for a determination that obtaining informed consent from military personnel is not feasible must be limited to a specific military operation involving combat or the immediate threat of combat. The request must also include a written justification supporting the conclusions of the physician(s) responsible for the medical care of the military personnel involved and the investigator(s) identified in the IND that a military combat exigency exists because of special military combat (actual or threatened) circumstances in which, in order to facilitate the accomplishment of the military mission, preservation of the health of the individual and the safety of other personnel requires that a particular treatment be provided to a specified group of military personnel, without regard to what might be any individual’s personal preference for no treatment or for some alternative treatment. The written request must also include a statement that a duly constituted institutional review board has reviewed and approved the use of the investigational drug without informed consent. The Commissioner may find that informed consent is not feasible only when withholding treatment would be contrary to the best interests of military personnel and there is no available satisfactory alternative therapy.

(2) In reaching a determination under paragraph (d)(1) of this section that obtaining informed consent is not feasible and withholding treatment would be contrary to the best interests of military personnel, the Commissioner will review the request submitted under paragraph (d)(1) of this section and take into account all pertinent factors, including, but not limited to:

(i) The extent and strength of the evidence of the safety and effectiveness of the investigational drug for the intended use;

(ii) The context in which the drug will be administered, e.g., whether it is intended for use in a battlefield or hospital setting or whether it will be self-administered or will be administered by a health professional;

(iii) The nature of the disease or condition for which the preventive or therapeutic treatment is intended; and

(iv) The nature of the information to be provided to the recipients of the drug concerning the potential benefits and risks of taking or not taking the drug.

(3) The Commissioner may request a recommendation from appropriate experts before reaching a determination on a request submitted under paragraph (d)(1) of this section.

(4) A determination by the Commissioner that obtaining informed consent is not feasible and withholding treatment would be contrary to the best interests of military personnel will expire at the end of 1 year, unless renewed at DOD’s request, or when DOD informs the Commissioner that the specific military operation creating the need for the use of the investigational drug has ended, whichever is earlier. The Commissioner may also revoke this determination based on changed circumstances.


Effective Date Note: At 64 FR 399, Jan. 5, 1999, in §50.23, paragraph (d)(1) was amended by removing the phrase “(including an antibiotic or biological product)” and adding in its place the phrase “(including a biological product),” effective May 20, 1999.
§ 50.24 Exception from informed consent requirements for emergency research.

(a) The IRB responsible for the review, approval, and continuing review of the clinical investigation described in this section may approve that investigation without requiring that informed consent of all research subjects be obtained if the IRB (with the concurrence of a licensed physician who is a member of or consultant to the IRB and who is not otherwise participating in the clinical investigation) finds and documents each of the following:

(1) The human subjects are in a life-threatening situation, available treatments are unproven or unsatisfactory, and the collection of valid scientific evidence, which may include evidence obtained through randomized placebo-controlled investigations, is necessary to determine the safety and effectiveness of particular interventions.

(2) Obtaining informed consent is not feasible because:

(i) The subjects will not be able to give their informed consent as a result of their medical condition;

(ii) The intervention under investigation must be administered before consent from the subjects’ legally authorized representatives is feasible; and

(iii) There is no reasonable way to identify prospectively the individuals likely to become eligible for participation in the clinical investigation.

(3) Participation in the research holds out the prospect of direct benefit to the subjects because:

(i) Subjects are facing a life-threatening situation that necessitates intervention;

(ii) Appropriate animal and other preclinical studies have been conducted, and the information derived from those studies and related evidence support the potential for the intervention to provide a direct benefit to the individual subjects; and

(iii) Risks associated with the investigation are reasonable in relation to what is known about the medical condition of the potential class of subjects, the risks and benefits of standard therapy, if any, and what is known about the risks and benefits of the proposed intervention or activity.

(4) The clinical investigation could not practicably be carried out without the waiver.

(5) The proposed investigational plan defines the length of the potential therapeutic window based on scientific evidence, and the investigator has committed to attempting to contact a legally authorized representative for each subject within that window of time and, if feasible, to asking the legally authorized representative contacted for consent within that window rather than proceeding without consent. The investigator will summarize efforts made to contact legally authorized representatives and make this information available to the IRB at the time of continuing review.

(6) The IRB has reviewed and approved informed consent procedures and an informed consent document consistent with §50.25. These procedures and the informed consent document are to be used with subjects or their legally authorized representatives in situations where use of such procedures and documents is feasible. The IRB has reviewed and approved procedures and information to be used when providing an opportunity for a family member to object to a subject’s participation in the clinical investigation consistent with paragraph (a)(7)(v) of this section.

(7) Additional protections of the rights and welfare of the subjects will be provided, including, at least:

(i) Consultation (including, where appropriate, consultation carried out by the IRB) with representatives of the communities in which the clinical investigation will be conducted and from which the subjects will be drawn;

(ii) Public disclosure to the communities in which the clinical investigation will be conducted and from which the subjects will be drawn, prior to initiation of the clinical investigation, of plans for the investigation and its risks and expected benefits;

(iii) Public disclosure of sufficient information following completion of the clinical investigation to apprise the community and researchers of the study, including the demographic characteristics of the research population, and its results;
(iv) Establishment of an independent data monitoring committee to exercise oversight of the clinical investigation; and

(v) If obtaining informed consent is not feasible and a legally authorized representative is not reasonably available, the investigator has committed, if feasible, to attempting to contact within the therapeutic window the subject’s family member who is not a legally authorized representative, and asking whether he or she objects to the subject’s participation in the clinical investigation. The investigator will summarize efforts made to contact family members and make this information available to the IRB at the time of continuing review.

(b) The IRB is responsible for ensuring that procedures are in place to inform, at the earliest feasible opportunity, each subject, or if the subject remains incapacitated, a legally authorized representative of the subject, or if such a representative is not reasonably available, a family member, of the subject’s inclusion in the clinical investigation, the details of the investigation and other information contained in the informed consent document. The IRB shall also ensure that there is a procedure to inform the subject, or if the subject remains incapacitated, a legally authorized representative of the subject, or if such a representative is not reasonably available, a family member, that he or she may discontinue the subject’s participation at any time without penalty or loss of benefits to which the subject is otherwise entitled. If a legally authorized representative or family member is told about the clinical investigation and the subject’s condition improves, the subject is also to be informed as soon as feasible. If a subject is entered into a clinical investigation with waived consent and the subject dies before a legally authorized representative or family member can be contacted, information about the clinical investigation is to be provided to the subject’s legally authorized representative or family member, if feasible.

(c) The IRB determinations required by paragraph (a) of this section and the documentation required by paragraph (e) of this section are to be retained by the IRB for at least 3 years after completion of the clinical investigation, and the records shall be accessible for inspection and copying by FDA in accordance with §56.115(b) of this chapter.

(d) Protocols involving an exception to the informed consent requirement under this section must be performed under a separate investigational new drug application (IND) or investigational device exemption (IDE) that clearly identifies such protocols as protocols that may include subjects who are unable to consent. The submission of those protocols in a separate IND/IDE is required even if an IND for the same drug product or an IDE for the same device already exists. Applications for investigations under this section may not be submitted as amendments under §§312.30 or 812.35 of this chapter.

(e) If an IRB determines that it cannot approve a clinical investigation because the investigation does not meet the criteria in the exception provided under paragraph (a) of this section or because of other relevant ethical concerns, the IRB must document its findings and provide these findings promptly in writing to the clinical investigator and to the sponsor of the clinical investigation. The sponsor of the clinical investigation must promptly disclose this information to FDA and to the sponsor’s clinical investigators who are participating or are asked to participate in this or a substantially equivalent clinical investigation of the sponsor, and to other IRB’s that have been, or are, asked to review this or a substantially equivalent investigation by that sponsor.

[61 FR 51528, Oct. 2, 1996]

§ 50.25 Elements of informed consent.

(a) Basic elements of informed consent. In seeking informed consent, the following information shall be provided to each subject:

(1) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject’s participation, a description of the procedures to be followed, and identification of any procedures which are experimental.
§ 50.27 Documentation of informed consent.

(a) Except as provided in §56.109(c), informed consent shall be documented by the use of a written consent form approved by the IRB and signed and dated by the subject or the subject’s legally authorized representative at the time of consent. A copy shall be given to the person signing the form.

(b) Except as provided in §56.109(c), the consent form may be either of the following:

(1) A written consent document that embodies the elements of informed consent required by §50.25. This form may be read to the subject or the subject’s legally authorized representative at the time of consent. A copy shall be given to the person signing the form.

(2) A short form written consent document stating that the elements of informed consent required by §50.25 have been presented orally to the subject or the subject’s legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the IRB shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed by the subject or the representative. However, the witness shall...
Food and Drug Administration, HHS

§ 54.2 Definitions.

For the purposes of this part:
(a) Compensation affected by the outcome of clinical studies means compensation that could be higher for a favorable outcome than for an unfavorable outcome, such as compensation that is explicitly greater for a favorable result or compensation to the investigator in the form of an equity interest in the sponsor of a covered study or in the form of compensation tied to sales of the product, such as a royalty interest.
(b) Significant equity interest in the sponsor of a covered study means any ownership interest, stock options, or other financial interest whose value cannot be readily determined through reference to public prices (generally, interests in a nonpublicly traded corporation), or any equity interest in a publicly traded corporation that exceeds $50,000 during the time the clinical investigator is carrying out the study and for 1 year following completion of the study.
(c) Proprietary interest in the tested product means property or other financial interest in the product including, but not limited to, a patent, trademark, copyright or licensing agreement.
(d) Clinical investigator means only a listed or identified investigator or sub-investigator who is directly involved in the treatment or evaluation of research subjects. The term also includes the spouse and each dependent child of the investigator.
(e) Covered clinical study means any study of a drug or device in humans submitted in a marketing application or reclassification petition subject to this part that the applicant or FDA relies on to establish that the product is effective (including studies that show
equivalence to an effective product) or any study in which a single investigator makes a significant contribution to the demonstration of safety. This would, in general, not include phase I tolerance studies or pharmacokinetic studies, most clinical pharmacology studies (unless they are critical to an efficacy determination), large open safety studies conducted at multiple sites, treatment protocols, and parallel track protocols. An applicant may consult with FDA as to which clinical studies constitute "covered clinical studies" for purposes of complying with financial disclosure requirements.

(f) Significant payments of other sorts means payments made by the sponsor of a covered study to the investigator or the institution to support activities of the investigator that have a monetary value of more than $25,000, exclusive of the costs of conducting the clinical study or other clinical studies, (e.g., a grant to fund ongoing research, compensation in the form of equipment or retainers for ongoing consultation or honoraria) during the time the clinical investigator is carrying out the study and for 1 year following the completion of the study.

(g) Applicant means the party who submits a marketing application to FDA for approval of a drug, device, or biologic product. The applicant is responsible for submitting the appropriate certification and disclosure statements required in this part.

(h) Sponsor of the covered clinical study means the party supporting a particular study at the time it was carried out.

§ 54.4 Certification and disclosure requirements.

For purposes of this part, an applicant must submit a list of all clinical investigators who conducted covered clinical studies to determine whether the applicant's product meets FDA's marketing requirements, identifying those clinical investigators who are full-time or part-time employees of the sponsor of each covered study. The applicant must also completely and accurately disclose or certify information concerning the financial interests of a clinical investigator who is not a full-time or part-time employee of the sponsor for each covered clinical study. Clinical investigators subject to investigational new drug or investigational device exemption regulations must provide the sponsor of the study with sufficient accurate information needed to allow subsequent disclosure or certification. The applicant is required to submit for each clinical investigator who participates in a covered study, either a certification that none of the financial arrangements described in §54.2 exist, or disclose the nature of those arrangements to the agency. Where the applicant acts with due diligence to obtain the information required in this section but is unable to do so, the applicant shall certify that despite the applicant's due diligence in attempting to obtain the information, the applicant was unable to obtain the information and shall include the reason.

(a) The applicant (of an application submitted under sections 505, 506, 510(k), 513, or 515 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act) that relies in whole or in part on clinical studies shall submit, for each clinical investigator who participated in a covered clinical study, either a certification described in paragraph (a)(1) of this section or a disclosure statement described in paragraph (a)(3) of this section.

(1) Certification: The applicant (of an application submitted under sections 505, 506, 510(k), 513, or 515 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act) that relies in whole or in part on clinical studies shall submit, for each clinical investigator who participated in a covered clinical study, either a certification described in paragraph (a)(1) of this section or a disclosure statement described in paragraph (a)(3) of this section.

(2) Certification: The applicant covered by this section shall submit for all clinical investigators (as defined in §54.2(d)), to whom the certification applies, a completed Form FDA 3454 attesting to the absence of financial interests and arrangements described in paragraph (a)(3) of this section. The
form shall be dated and signed by the chief financial officer or other responsible corporate official or representative.

(2) If the certification covers less than all covered clinical data in the application, the applicant shall include in the certification a list of the studies covered by this certification.

(3) Disclosure Statement: For any clinical investigator defined in §54.2(d) for whom the applicant does not submit the certification described in paragraph (a)(1) of this section, the applicant shall submit a completed Form FDA 3455 disclosing completely and accurately the following:

(i) Any financial arrangement entered into between the sponsor of the covered study and the clinical investigator involved in the conduct of a covered clinical trial, whereby the value of the compensation to the clinical investigator for conducting the study could be influenced by the outcome of the study;

(ii) Any significant payments of other sorts from the sponsor of the covered study, such as a grant to fund ongoing research, compensation in the form of equipment, retainer for ongoing consultation, or honoraria;

(iii) Any proprietary interest in the tested product held by any clinical investigator involved in a study;

(iv) Any significant equity interest in the sponsor of the covered study held by any clinical investigator involved in any clinical study; and

(v) Any steps taken to minimize the potential for bias resulting from any of the disclosed arrangements, interests, or payments.

(b) The clinical investigator shall provide to the sponsor of the covered study sufficient accurate financial information to allow the sponsor to submit complete and accurate certification or disclosure statements as required in paragraph (a) of this section. The investigator shall promptly update this information if any relevant changes occur in the course of the investigation or for 1 year following completion of the study.

(c) Refusal to file application. FDA may refuse to file any marketing application described in paragraph (a) of this section that does not contain the information required by this section or a certification by the applicant that the applicant has acted with due diligence to obtain the information but was unable to do so and stating the reason.

EFFECTIVE DATE NOTE: At 64 FR 399, Jan. 5, 1999, in §54.4, paragraph (a) was amended by removing "507.", effective May 20, 1999.

§ 54.5 Agency evaluation of financial interests.

(a) Evaluation of disclosure statement. FDA will evaluate the information disclosed under §54.4(a)(2) about each covered clinical study in an application to determine the impact of any disclosed financial interests on the reliability of the study. FDA may consider both the size and nature of a disclosed financial interest (including the potential increase in the value of the interest if the product is approved) and steps that have been taken to minimize the potential for bias.

(b) Effect of study design. In assessing the potential of an investigator's financial interests to bias a study, FDA will take into account the design and purpose of the study. Study designs that utilize such approaches as multiple investigators (most of whom do not have a disclosable interest), blinding, objective endpoints, or measurement of endpoints by someone other than the investigator may adequately protect against any bias created by a disclosable financial interest.

(c) Agency actions to ensure reliability of data. If FDA determines that the financial interests of any clinical investigator raise a serious question about the integrity of the data, FDA will take any action it deems necessary to ensure the reliability of the data including:

(1) Initiating agency audits of the data derived from the clinical investigator in question;

(2) Requesting that the applicant submit further analyses of data, e.g., to evaluate the effect of the clinical investigator's data on overall study outcome;

(3) Requesting that the applicant conduct additional independent studies.
§ 54.6

to confirm the results of the questioned study; and
(4) Refusing to treat the covered clinical study as providing data that can be the basis for an agency action.

§ 54.6 Recordkeeping and record retention.

(a) Financial records of clinical investigators to be retained. An applicant who has submitted a marketing application containing covered clinical studies shall keep on file certain information pertaining to the financial interests of clinical investigators who conducted studies on which the application relies and who are not full or part-time employees of the applicant, as follows:

(1) Complete records showing any financial interest or arrangement as described in § 54.4(a)(3)(i) paid to such clinical investigators by the sponsor of the covered study.

(2) Complete records showing significant payments of other sorts, as described in § 54.4(a)(3)(ii), made by the sponsor of the covered clinical study to the clinical investigator.

(3) Complete records showing any financial interests held by clinical investigators as set forth in § 54.4(a)(3)(iii) and (a)(3)(iv).

(b) Requirements for maintenance of clinical investigators’ financial records.

(1) For any application submitted for a covered product, an applicant shall retain records as described in paragraph (a) of this section for 2 years after the date of approval of the application.

(2) The person maintaining these records shall, upon request from any properly authorized officer or employee of FDA, at reasonable times, permit such officer or employee to have access to and copy and verify these records.

PART 56—INSTITUTIONAL REVIEW BOARDS

Subpart A—General Provisions

§ 56.101 Scope.

§ 56.102 Definitions.

§ 56.103 Circumstances in which IRB review is required.

§ 56.104 Exemptions from IRB requirement.

§ 56.105 Waiver of IRB requirement.
Food and Drug Administration, HHS

§ 56.102 Definitions.

As used in this part:


(b) Application for research or marketing permit includes:

1. A color additive petition, described in part 71.

2. Data and information regarding a substance submitted as part of the procedures for establishing that a substance is generally recognized as safe for a use which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, described in §170.35.

3. A food additive petition, described in part 171.

4. Data and information regarding a food additive submitted as part of the procedures regarding food additives permitted to be used on an interim basis pending additional study, described in §180.1.

5. Data and information regarding a substance submitted as part of the procedures for establishing a tolerance for unavoidable contaminants in food and food-packaging materials, described in section 406 of the act.

6. An investigational new drug application, described in part 312 of this chapter.

7. A new drug application, described in part 314.

8. Data and information regarding the bioavailability or bioequivalence of drugs for human use submitted as part of the procedures for obtaining an exemption from notification of a radiation safety defect or failure of compliance with a radiation safety performance standard, described in subpart D of part 1003.

9. Data and information regarding an over-the-counter drug for human use submitted as part of the procedures for classifying such drugs as generally recognized as safe and effective and not misbranded, described in part 330.

10. An application for a biological product license, described in part 601.

11. Data and information regarding a biological product submitted as part of the procedures for determining that licensed biological products are safe and effective and not misbranded, described in part 601.

12. An Application for an Investigational Device Exemption, described in parts 812 and 813.

13. Data and information regarding a medical device for human use submitted as part of the procedures for classifying such devices, described in part 860.

14. Data and information regarding a medical device for human use submitted as part of the procedures for establishing, amending, or repealing a standard for such device, described in part 861.

15. An application for premarket approval of a medical device for human use, described in section 515 of the act.

16. A product development protocol for a medical device for human use, described in section 515 of the act.

17. Data and information regarding an electronic product submitted as part of the procedures for establishing, amending, or repealing a standard for such products, described in section 358 of the Public Health Service Act.

18. Data and information regarding an electronic product submitted as part of the procedures for obtaining a variance from any electronic product performance standard, as described in §1010.4.

19. Data and information regarding an electronic product submitted as part of the procedures for obtaining an exemption from a radiation safety performance standard, as described in §1010.5.

20. Data and information regarding an electronic product submitted as part of the procedures for obtaining an exemption from notification of a radiation safety defect or failure of compliance with a radiation safety performance standard, described in subpart D of part 1003.

(c) Clinical investigation means any experiment that involves a test article
and one or more human subjects, and that either must meet the requirements for prior submission to the Food and Drug Administration under section 505(i) or 520(g) of the act, or need not meet the requirements for prior submission to the Food and Drug Administration under these sections of the act, but the results of which are intended to be later submitted to, or held for inspection by, the Food and Drug Administration as part of an application for a research or marketing permit. The term does not include experiments that must meet the provisions of part 58, regarding nonclinical laboratory studies. The terms research, clinical research, clinical study, study, and clinical investigation are deemed to be synonymous for purposes of this part.

(d) Emergency use means the use of a test article on a human subject in a life-threatening situation in which no standard acceptable treatment is available, and in which there is not sufficient time to obtain IRB approval.

(e) Human subject means an individual who is or becomes a participant in research, either as a recipient of the test article or as a control. A subject may be either a healthy individual or a patient.

(f) Institution means any public or private entity or agency (including Federal, State, and other agencies). The term facility as used in section 520(g) of the act is deemed to be synonymous with the term institution for purposes of this part.

(g) Institutional Review Board (IRB) means any board, committee, or other group formally designated by an institution to review, to approve the initiation of, and to conduct periodic review of, biomedical research involving human subjects. The primary purpose of such review is to assure the protection of the rights and welfare of the human subjects. The term has the same meaning as the phrase institutional review committee as used in section 520(g) of the act.

(h) Investigator means an individual who actually conducts a clinical investigation (i.e., under whose immediate direction the test article is administered or dispensed to, or used involving, a subject) or, in the event of an investigation conducted by a team of individuals, is the responsible leader of that team.

(i) Minimal risk means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

(j) Sponsor means a person or other entity that initiates a clinical investigation, but that does not actually conduct the investigation, i.e., the test article is administered or dispensed to, or used involving, a subject under the immediate direction of another individual. A person other than an individual (e.g., a corporation or agency) that uses one or more of its own employees to conduct an investigation that it has initiated is considered to be a sponsor (not a sponsor-investigator), and the employees are considered to be investigators.

(k) Sponsor-investigator means an individual who both initiates and actually conducts, alone or with others, a clinical investigation, i.e., under whose immediate direction the test article is administered or dispensed to, or used involving, a subject. The term does not include any person other than an individual, e.g., it does not include a corporation or agency. The obligations of a sponsor-investigator under this part include both those of a sponsor and those of an investigator.

(l) Test article means any drug for human use, biological product for human use, medical device for human use, human food additive, color additive, electronic product, or any other article subject to regulation under the act or under sections 351 or 354-360F of the Public Health Service Act.

(m) IRB approval means the determination of the IRB that the clinical investigation has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and Federal requirements.


EFFECTIVE DATE NOTE: At 64 FR 399, Jan. 5, 1999, in §56.102 was amended by removing
paragraph (b)(10), by redesignating paragraphs (b)(11) through (b)(21) as paragraphs (b)(10) through (b)(20), and by removing "507(d)," from the first sentence of paragraph (c), effective May 20, 1999. For the convenience of the user, the superseded text is set forth as follows:

§ 56.102 Definitions.

(b) * * * * * * * * * * *
(10) Data and information regarding an antibiotic drug submitted as part of the procedures for issuing, amending, or repealing regulations for such drugs, described in §314.300 of this chapter.

§ 56.103 Circumstances in which IRB review is required.

(a) Except as provided in §§56.104 and 56.105, any clinical investigation which must meet the requirements for prior submission (as required in parts 312, 812, and 813) to the Food and Drug Administration shall not be initiated unless that investigation has been reviewed and approved by, and remains subject to continuing review by, an IRB meeting the requirements of this part.

(b) Except as provided in §§56.104 and 56.105, the Food and Drug Administration may decide not to consider in support of an application for a research or marketing permit any data or information that has been derived from a clinical investigation that has not been approved by, and that was not subject to initial and continuing review by, an IRB meeting the requirements of this part. The determination that a clinical investigation may not be considered in support of an application for a research or marketing permit does not, however, relieve the applicant for such a permit of any obligation under any other applicable regulations to submit the results of the investigation to the Food and Drug Administration.

(c) Compliance with these regulations will in no way render inapplicable pertinent Federal, State, or local laws or regulations.

§ 56.104 Exemptions from IRB requirement.

The following categories of clinical investigations are exempt from the requirements of this part for IRB review:

(a) Any investigation which commenced before July 27, 1981 and was subject to requirements for IRB review under FDA regulations before that date, provided that the investigation remains subject to review of an IRB which meets the FDA requirements in effect before July 27, 1981.

(b) Any investigation commenced before July 27, 1981 and was not otherwise subject to requirements for IRB review under Food and Drug Administration regulations before that date.

(c) Emergency use of a test article, provided that such emergency use is reported to the IRB within 5 working days. Any subsequent use of the test article at the institution is subject to IRB review.

(d) Taste and food quality evaluations and consumer acceptance studies, if wholesome foods without additives are consumed or if food is consumed that contains a food ingredient at or below the level found to be safe, or agricultural, chemical, or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

§ 56.105 Waiver of IRB requirement.

On the application of a sponsor or sponsor-investigator, the Food and Drug Administration may waive any of the requirements contained in these regulations, including the requirements for IRB review, for specific research activities or for classes of research activities, otherwise covered by these regulations.

Subpart B—Organization and Personnel

§ 56.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to
§ 56.108  

promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, cultural backgrounds, and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review the specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards or professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women, or handicapped or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with those subjects.

(b) Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes, and no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

(c) Each IRB shall include at least one member whose primary concerns are in the scientific area and at least one member whose primary concerns are in nonscientific areas.

(d) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

(e) No IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

(f) An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of complex issues which require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.


Subpart C—IRB Functions and Operations

§ 56.108  IRB functions and operations.

In order to fulfill the requirements of these regulations, each IRB shall:

(a) Follow written procedures: (1) For conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution; (2) for determining which projects require review more often than annually and which projects need verification from sources other than the investigator that no material changes have occurred since previous IRB review; (3) for ensuring prompt reporting to the IRB of changes in research activity; and (4) for ensuring that changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except where necessary to eliminate apparent immediate hazards to the human subjects.

(b) Follow written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the Food and Drug Administration of: (1) Any unanticipated problems involving risks to human subjects or others; (2) any instance of serious or continuing noncompliance with these regulations or the requirements or determinations of the IRB; or (3) any suspension or termination of IRB approval.

(c) Except when an expedited review procedure is used (see §56.110), review proposed research at convened meetings at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved,
§ 56.109 IRB review of research.

(a) An IRB shall review and have authority to approve, require modifications in (to secure approval), or disapprove all research activities covered by these regulations.

(b) An IRB shall require that information given to subjects as part of informed consent is in accordance with § 50.25. The IRB may require that information, in addition to that specifically mentioned in § 50.25, be given to the subjects when in the IRB’s judgment the information would meaningfully add to the protection of the rights and welfare of subjects.

(c) An IRB shall require documentation of informed consent in accordance with § 50.27 of this chapter, except as follows:

(1) The IRB may, for some or all subjects, waive the requirement that the subject, or the subject’s legally authorized representative, sign a written consent form if it finds that the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside the research context; or

(2) The IRB may, for some or all subjects, find that the requirements in § 50.24 of this chapter for an exception from informed consent met.

(d) In cases where the documentation requirement is waived under paragraph (c)(1) of this section, the IRB may require the investigator to provide subjects with a written statement regarding the research.

(e) An IRB shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity. If the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing. For investigations involving an exception to informed consent under § 50.24 of this chapter, an IRB shall promptly notify in writing the investigator and the sponsor of the research when an IRB determines that it cannot approve the research because it does not meet the criteria in the exception provided under § 50.24(a) of this chapter or because of other relevant ethical concerns. The written notification shall include a statement of the reasons for the IRB’s determination.

(f) An IRB shall conduct continuing review of research covered by these regulations at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research.

(g) An IRB shall provide in writing to the sponsor of research involving an exception to informed consent under § 50.24 of this chapter a copy of information that has been publicly disclosed under § 50.24(a)(7)(ii) and (a)(7)(iii) of this chapter. The IRB shall provide this information to the sponsor promptly so that the sponsor is aware that such disclosure has occurred. Upon receipt, the sponsor shall provide copies of the information disclosed to FDA.

§ 56.111 Criteria for IRB approval of research.

(a) In order to approve research covered by these regulations the IRB shall determine that all of the following requirements are satisfied:

(1) Risks to subjects are minimized: (i) By using procedures which are consistent with sound research design and which do not unnecessarily expose subjects to risk, and (ii) whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may be expected to result. In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies that subjects would receive even if not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (for example, the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, handicapped, or mentally disabled persons, or economically or educationally disadvantaged persons.

(4) Informed consent will be sought from each prospective subject or the subject’s legally authorized representative, in accordance with and to the extent required by part 50.

(b) When some or all of the subjects, such as children, prisoners, pregnant women, handicapped, or mentally disabled persons, or economically or educationally disadvantaged persons, are likely to be vulnerable to coercion or undue influence additional safeguards have been included in the study to protect the rights and welfare of these subjects.

[46 FR 8975, Jan. 27, 1981, as amended at 56 FR 28029, June 18, 1991]

§ 56.112 Review by institution.

Research covered by these regulations that has been approved by an IRB may be subject to further appropriate review and approval or disapproval by officials of the institution. However, those officials may not approve the research if it has not been approved by an IRB.
§ 56.113 Suspension or termination of IRB approval of research.

An IRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the IRB's action and shall be reported promptly to the investigator, appropriate institutional officials, and the Food and Drug Administration.

§ 56.114 Cooperative research.

In complying with these regulations, institutions involved in multi-institutional studies may use joint review, reliance upon the review of another qualified IRB, or similar arrangements aimed at avoidance of duplication of effort.

Subpart D—Records and Reports

§ 56.115 IRB records.

(a) An institution, or where appropriate an IRB, shall prepare and maintain adequate documentation of IRB activities, including the following:

(1) Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to subjects.

(2) Minutes of IRB meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the IRB; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.

(3) Records of continuing review activities.

(4) Copies of all correspondence between the IRB and the investigators.

(5) A list of IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., sufficient to describe each member's chief anticipated contributions to IRB deliberations; and any employment or other relationship between each member and the institution; for example: full-time employee, part-time employee, a member of governing panel or board, stockholder, paid or unpaid consultant.

(6) Written procedures for the IRB as required by § 56.108(a) and (b).

(7) Statements of significant new findings provided to subjects, as required by § 50.25.

(b) The records required by this regulation shall be retained for at least 3 years after completion of the research, and the records shall be accessible for inspection and copying by authorized representatives of the Food and Drug Administration at reasonable times and in a reasonable manner.

(c) The Food and Drug Administration may refuse to consider a clinical investigation in support of an application for a research or marketing permit if the institution or the IRB that reviewed the investigation refuses to allow an inspection under this section.

[46 FR 8975, Jan. 27, 1981, as amended at 56 FR 28029, June 18, 1991]

Subpart E—Administrative Actions for Noncompliance

§ 56.120 Lesser administrative actions.

(a) If apparent noncompliance with these regulations in the operation of an IRB is observed by an FDA investigator during an inspection, the inspector will present an oral or written summary of observations to an appropriate representative of the IRB. The Food and Drug Administration may subsequently send a letter describing the noncompliance to the IRB and to the parent institution. The agency will require that the IRB or the parent institution respond to this letter within a time period specified by FDA and describe the corrective actions that will be taken by the IRB, the institution, or both to achieve compliance with these regulations.
§ 56.121 Disqualification of an IRB or an institution.

(a) Whenever the IRB or the institution has failed to take adequate steps to correct the noncompliance stated in the letter sent by the agency under §56.120(a), and the Commissioner of Food and Drugs determines that this noncompliance may justify the disqualification of the IRB or of the parent institution, the Commissioner will institute proceedings in accordance with the requirements for a regulatory hearing set forth in part 16.

(b) The Commissioner may disqualify an IRB or the parent institution if the Commissioner determines that:

1. The IRB has refused or repeatedly failed to comply with any of the regulations set forth in this part, and
2. The noncompliance adversely affects the rights or welfare of the human subjects in a clinical investigation.

(c) If the Commissioner determines that disqualification is appropriate, the Commissioner will issue an order that explains the basis for the determination and that prescribes any actions to be taken with regard to ongoing clinical research conducted under the review of the IRB. The Food and Drug Administration will send notice of the disqualification to the IRB and the parent institution. Other parties with a direct interest, such as sponsors and clinical investigators, may also be sent a notice of the disqualification. In addition, the agency may elect to publish a notice of its action in the Federal Register.

(d) The Food and Drug Administration will not approve an application for a research permit for a clinical investigation that is to be conducted at a disqualified institution, and it may refuse to consider in support of a marketing permit the data from a clinical investigation that was reviewed by a disqualified IRB as conducted at a disqualified institution, unless the IRB or the parent institution is reinstated as provided in §56.123.

§ 56.122 Public disclosure of information regarding revocation.

A determination that the Food and Drug Administration has disqualified an institution and the administrative record regarding that determination are disclosable to the public under part 20.

§ 56.123 Reinstatement of an IRB or an institution.

An IRB or an institution may be reinstated if the Commissioner determines, upon an evaluation of a written submission from the IRB or institution that explains the corrective action that the institution or IRB plans to take, that the IRB or institution has provided adequate assurance that it will operate in compliance with the
standards set forth in this part. Notification of reinstatement shall be provided to all persons notified under § 56.121(c).

§ 56.124 Actions alternative or additional to disqualification.

Disqualification of an IRB or of an institution is independent of, and neither in lieu of nor a precondition to, other proceedings or actions authorized by the act. The Food and Drug Administration may, at any time, through the Department of Justice institute any appropriate judicial proceedings (civil or criminal) and any other appropriate regulatory action, in addition to or in lieu of, and before, at the time of, or after, disqualification. The agency may also refer pertinent matters to another Federal, State, or local government agency for any action that that agency determines to be appropriate.

PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

Subpart A—General Provisions

Sec.
58.1 Scope.
58.3 Definitions.
58.10 Applicability to studies performed under grants and contracts.
58.15 Inspection of a testing facility.

Subpart B—Organization and Personnel

58.29 Personnel.
58.31 Testing facility management.
58.33 Study director.
58.35 Quality assurance unit.

Subpart C—Facilities

58.41 General.
58.43 Animal care facilities.
58.45 Animal supply facilities.
58.47 Facilities for handling test and control articles.
58.49 Laboratory operation areas.
58.51 Specimen and data storage facilities.

Subpart D—Equipment

58.61 Equipment design.
58.63 Maintenance and calibration of equipment.

Subpart E—Testing Facilities Operation

58.81 Standard operating procedures.
58.83 Reagents and solutions.

Food and Drug Administration, HHS

§ 58.1 Scope.

(a) This part prescribes good laboratory practices for conducting nonclinical laboratory studies that support or are intended to support applications for research or marketing permits for products regulated by the Food and Drug Administration, including food and color additives, animal food additives, human and animal drugs, medical devices for human use, biological products, and electronic products. Compliance with this part is intended...

(b) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21, unless otherwise noted.


EFFECTIVE DATE NOTE: At 64 FR 399, Jan. 5, 1999, in § 58.1, paragraph (a) was amended by removing “507,” effective May 20, 1999.

§ 58.3 Definitions.

As used in this part, the following terms shall have the meanings specified:


(b) Test article means any food additive, color additive, drug, biological product, electronic product, medical device for human use, or any other article subject to regulation under the act or under sections 351 and 354-360F of the Public Health Service Act.

(c) Control article means any food additive, color additive, drug, biological product, electronic product, medical device for human use, or any article other than a test article, feed, or water that is administered to the test system in the course of a nonclinical laboratory study for the purpose of establishing a basis for comparison with the test article.

(d) Nonclinical laboratory study means in vivo or in vitro experiments in which test articles are studied prospectively in test systems under laboratory conditions to determine their safety. The term does not include studies utilizing human subjects or clinical studies or field trials in animals. The term does not include basic exploratory studies carried out to determine whether a test article has any potential utility or to determine physical or chemical characteristics of a test article.

(e) Application for research or marketing permit includes:

(1) A color additive petition, described in part 71.

(2) A food additive petition, described in parts 171 and 571.

(3) Data and information regarding a substance submitted as part of the procedures for establishing that a substance is generally recognized as safe for use, which use results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, described in §§170.35 and 570.35.

(4) Data and information regarding a food additive submitted as part of the procedures regarding food additives permitted to be used on an interim basis pending additional study, described in §180.1.

(5) An investigational new drug application, described in part 312 of this chapter.

(6) A new drug application, described in part 314.

(7) Data and information regarding an over-the-counter drug for human use, submitted as part of the procedures for classifying such drugs as generally recognized as safe and effective and not misbranded, described in part 330.

(8) Data and information about a substance submitted as part of the procedures for establishing a tolerance for unavoidable contaminants in food and food-packaging materials, described in parts 109 and 509.

(9) Data and information regarding an antibiotic drug submitted as part of the procedures for issuing, amending, or repealing regulations for such drugs, described in §314.300 of this chapter.

(10) A Notice of Claimed Investigational Exemption for a New Animal Drug, described in part 311.

(11) A new animal drug application, described in part 314.

(12) [Reserved]

(13) An application for a biological product license, described in part 601.

(14) An application for an investigational device exemption, described in part 812.

(15) An Application for Premarket Approval of a Medical Device, described in section 515 of the act.
(16) A Product Development Protocol for a Medical Device, described in section 515 of the act.

(17) Data and information regarding a medical device submitted as part of the procedures for classifying such devices, described in part 860.

(18) Data and information regarding a medical device submitted as part of the procedures for establishing, amending, or repealing a performance standard for such devices, described in part 861.

(19) Data and information regarding an electronic product submitted as part of the procedures for obtaining an exemption from notification of a radiation safety defect or failure of compliance with a radiation safety performance standard, described in subpart D of part 1003.

(20) Data and information regarding an electronic product submitted as part of the procedures for establishing, amending, or repealing a standard for such product, described in section 358 of the Public Health Service Act.

(21) Data and information regarding an electronic product submitted as part of the procedures for obtaining a variance from any electronic product performance standard as described in §1010.4.

(22) Data and information regarding an electronic product submitted as part of the procedures for granting, amending, or extending an exemption for study. Test system also includes appropriate groups or components of the system not treated with the test or control articles.

(f) Sponsor means:

(1) A person who initiates and supports, by provision of financial or other resources, a nonclinical laboratory study;

(2) A person who submits a nonclinical study to the Food and Drug Administration in support of an application for a research or marketing permit;

(3) A testing facility, if it both initiates and actually conducts the study.

(g) Testing facility means a person who actually conducts a nonclinical laboratory study, i.e., actually uses the test article in a test system. Testing facility includes any establishment required to register under section 510 of the act that conducts nonclinical laboratory studies and any consulting laboratory described in section 704 of the act that conducts such studies. Testing facility encompasses only those operational units that are being or have been used to conduct nonclinical laboratory studies.

(h) Person includes an individual, partnership, corporation, association, scientific or academic establishment, government agency, or organizational unit thereof, and any other legal entity.

(i) Test system means any animal, plant, microorganism, or subparts thereof to which the test or control article is administered or added for study. Test system also includes appropriate groups or components of the system not treated with the test or control articles.

(j) Specimen means any material derived from a test system for examination or analysis.

(k) Raw data means any laboratory worksheets, records, memoranda, notes, or exact copies thereof, that are the result of original observations and activities of a nonclinical laboratory study and are necessary for the reconstruction and evaluation of the report of that study. In the event that exact transcripts of raw data have been prepared (e.g., tapes which have been transcribed verbatim, dated, and verified accurate by signature), the exact copy or exact transcript may be substituted for the original source as raw data. Raw data may include photographs, microfilm or microfiche copies, computer printouts, magnetic media, including dictated observations, and recorded data from automated instruments.

(l) Quality assurance unit means any person or organizational element, except the study director, designated by testing facility management to perform the duties relating to quality assurance of nonclinical laboratory studies.

(n) Batch means a specific quantity or lot of a test or control article that has been characterized according to §58.105(a).

(o) Study initiation date means the date the protocol is signed by the study director.
§ 58.10 Applicability to studies performed under grants and contracts.

When a sponsor conducting a nonclinical laboratory study intended to be submitted to or reviewed by the Food and Drug Administration utilizes the services of a consulting laboratory, contractor, or grantee to perform an analysis or other service, it shall notify the consulting laboratory, contractor, or grantee that the service is part of a nonclinical laboratory study that must be conducted in compliance with the provisions of this part.

§ 58.15 Inspection of a testing facility.

(a) A testing facility shall permit an authorized employee of the Food and Drug Administration, at reasonable times and in a reasonable manner, to inspect the facility and to inspect (and in the case of records also to copy) all records and specimens required to be maintained regarding studies within the scope of this part. The records inspection and copying requirements shall not apply to quality assurance unit records of findings and problems, or to actions recommended and taken.

(b) The Food and Drug Administration will not consider a nonclinical laboratory study in support of an application for a research or marketing permit if the testing facility refuses to permit inspection. The determination that a nonclinical laboratory study will not be considered in support of an application for a research or marketing permit does not, however, relieve the applicant for such a permit of any obligation under any applicable statute or regulation to submit the results of the study to the Food and Drug Administration.

§ 58.19 Testing facility management.

For each nonclinical laboratory study, testing facility management shall:

(a) Designate a study director as described in § 58.33, before the study is initiated.

Subpart B—Organization and Personnel

§ 58.29 Personnel.

(a) Each individual engaged in the conduct of or responsible for the supervision of a nonclinical laboratory study shall have education, training, and experience, or combination thereof, to enable that individual to perform the assigned functions.

(b) Each testing facility shall maintain a current summary of training and experience and job description for each individual engaged in or supervising the conduct of a nonclinical laboratory study.

(c) There shall be a sufficient number of personnel for the timely and proper conduct of the study according to the protocol.

(d) Personnel shall take necessary personal sanitation and health precautions designed to avoid contamination of test and control articles and test systems.

(e) Personnel engaged in a nonclinical laboratory study shall wear clothing appropriate for the duties they perform. Such clothing shall be changed as often as necessary to prevent microbiological, radiological, or chemical contamination of test systems and test and control articles.

(f) Any individual found at any time to have an illness that may adversely affect the quality and integrity of the nonclinical laboratory study shall be excluded from direct contact with test systems, test and control articles and any other operation or function that may adversely affect the study until the condition is corrected. All personnel shall be instructed to report to their immediate supervisors any health or medical conditions that may reasonably be considered to have an adverse effect on a nonclinical laboratory study.

§ 58.31 Testing facility management.

For each nonclinical laboratory study, testing facility management shall:

(a) Designate a study director as described in § 58.33, before the study is initiated.
(b) Replace the study director promptly if it becomes necessary to do so during the conduct of a study.
(c) Assure that there is a quality assurance unit as described in §58.35.
(d) Assure that test and control articles or mixtures have been appropriately tested for identity, strength, purity, stability, and uniformity, as applicable.
(e) Assure that personnel, resources, facilities, equipment, materials, and methodologies are available as scheduled.
(f) Assure that personnel clearly understand the functions they are to perform.
(g) Assure that any deviations from these regulations reported by the quality assurance unit are communicated to the study director and corrective actions are taken and documented.

§ 58.33 Study director.
For each nonclinical laboratory study, a scientist or other professional of appropriate education, training, and experience, or combination thereof, shall be identified as the study director. The study director has overall responsibility for the technical conduct of the study, as well as for the interpretation, analysis, documentation and reporting of results, and represents the single point of study control. The study director shall assure that:
(a) The protocol, including any change, is approved as provided by §58.120 and is followed.
(b) All experimental data, including observations of unanticipated responses of the test system are accurately recorded and verified.
(c) Unforeseen circumstances that may affect the quality and integrity of the nonclinical laboratory study are noted when they occur, and corrective action is taken and documented.
(d) Test systems are as specified in the protocol.
(e) All applicable good laboratory practice regulations are followed.
(f) All raw data, documentation, protocols, specimens, and final reports are transferred to the archives during or at the close of the study.


§ 58.35 Quality assurance unit.
(a) A testing facility shall have a quality assurance unit which shall be responsible for monitoring each study to assure management that the facilities, equipment, personnel, methods, practices, records, and controls are in conformance with the regulations in this part. For any given study, the quality assurance unit shall be entirely separate from and independent of the personnel engaged in the direction and conduct of that study.
(b) The quality assurance unit shall:
(1) Maintain a copy of a master schedule sheet of all nonclinical laboratory studies conducted at the testing facility indexed by test article and containing the test system, nature of study, date study was initiated, current status of each study, identity of the sponsor, and name of the study director.
(2) Maintain copies of all protocols pertaining to all nonclinical laboratory studies for which the unit is responsible.
(3) Inspect each nonclinical laboratory study at intervals adequate to assure the integrity of the study and maintain written and properly signed records of each periodic inspection showing the date of the inspection, the study inspected, the phase or segment of the study inspected, the person performing the inspection, findings and problems, action recommended and taken to resolve existing problems, and any scheduled date for reinspection. Any problems found during the course of an inspection which are likely to affect study integrity shall be brought to the attention of the study director and management immediately.
(4) Periodically submit to management and the study director written status reports on each study, noting any problems and the corrective actions taken.
(5) Determine that no deviations from approved protocols or standard operating procedures were made without proper authorization and documentation.
(6) Review the final study report to assure that such report accurately describes the methods and standard operating procedures, and that the reported results accurately reflect the raw data of the nonclinical laboratory study.

(7) Prepare and sign a statement to be included with the final study report which shall specify the dates inspections were made and findings reported to management and to the study director.

(c) The responsibilities and procedures applicable to the quality assurance unit, the records maintained by the quality assurance unit, and the method of indexing such records shall be in writing and shall be maintained. These items including inspection dates, the study inspected, the phase or segment of the study inspected, and the name of the individual performing the inspection shall be made available for inspection to authorized employees of the Food and Drug Administration.

(d) A designated representative of the Food and Drug Administration shall have access to the written procedures established for the inspection and may request testing facility management to certify that inspections are being implemented, performed, documented, and followed-up in accordance with this paragraph.

(Information collection requirements approved by the Office of Management and Budget under control number 0910-0203)

§ 58.43 Animal care facilities.

(a) A testing facility shall have a sufficient number of animal rooms or areas, as needed, to assure proper: (1) Separation of species or test systems, (2) isolation of individual projects, (3) quarantine of animals, and (4) routine or specialized housing of animals.

(b) A testing facility shall have a number of animal rooms or areas separate from those described in paragraph (a) of this section to ensure isolation of studies being done with test systems or test and control articles known to be biohazardous, including volatile substances, aerosols, radioactive materials, and infectious agents.

(c) Separate areas shall be provided, as appropriate, for the diagnosis, treatment, and control of laboratory animal diseases. These areas shall provide effective isolation for the housing of animals either known or suspected of being diseased, or of being carriers of disease, from other animals.

(d) When animals are housed, facilities shall exist for the collection and disposal of all animal waste and refuse or for safe sanitary storage of waste before removal from the testing facility. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, disease hazards, and environmental contamination.


§ 58.45 Animal supply facilities.

There shall be storage areas, as needed, for feed, bedding, supplies, and equipment. Storage areas for feed and bedding shall be separated from areas housing the test systems and shall be protected against infestation or contamination. Perishable supplies shall be preserved by appropriate means.


§ 58.47 Facilities for handling test and control articles.

(a) As necessary to prevent contamination or mixups, there shall be separate areas for:

(1) Receipt and storage of the test and control articles.

(2) Mixing of the test and control articles with a carrier, e.g., feed.

(3) Storage of the test and control article mixtures.

(b) Storage areas for the test and control article and test and control article mixtures shall be separate from areas
Food and Drug Administration, HHS

housing the test systems and shall be adequate to preserve the identity, strength, purity, and stability of the articles and mixtures.

§ 58.49 Laboratory operation areas.

Separate laboratory space shall be provided, as needed, for the performance of the routine and specialized procedures required by nonclinical laboratory studies.

[52 FR 33780, Sept. 4, 1987]

§ 58.51 Specimen and data storage facilities.

Space shall be provided for archives, limited to access by authorized personnel only, for the storage and retrieval of all raw data and specimens from completed studies.

Subpart D—Equipment

§ 58.61 Equipment design.

Equipment used in the generation, measurement, or assessment of data and equipment used for facility environmental control shall be of appropriate design and adequate capacity to function according to the protocol and shall be suitably located for operation, inspection, cleaning, and maintenance.

[52 FR 33780, Sept. 4, 1987]

§ 58.63 Maintenance and calibration of equipment.

(a) Equipment shall be adequately inspected, cleaned, and maintained. Equipment used for the generation, measurement, or assessment of data shall be adequately tested, calibrated and/or standardized.

(b) The written standard operating procedures required under §58.81(b)(11) shall set forth in sufficient detail the methods, materials, and schedules to be used in the routine inspection, cleaning, maintenance, testing, calibration, and/or standardization of equipment, and shall specify, when appropriate, remedial action to be taken in the event of failure or malfunction of equipment. The written standard operating procedures shall designate the person responsible for the performance of each operation.

(c) Written records shall be maintained of all inspection, maintenance, testing, calibrating and/or standardizing operations. These records, containing the date of the operation, shall describe whether the maintenance operations were routine and followed the written standard operating procedures. Written records shall be kept of non-routine repairs performed on equipment as a result of failure and malfunction. Such records shall document the nature of the defect, how and when the defect was discovered, and any remedial action taken in response to the defect.

(Information collection requirements approved by the Office of Management and Budget under control number 0915-0203)


Subpart E—Testing Facilities Operation

§ 58.81 Standard operating procedures.

(a) A testing facility shall have standard operating procedures in writing setting forth nonclinical laboratory study methods that management is satisfied are adequate to insure the quality and integrity of the data generated in the course of a study. All deviations in a study from standard operating procedures shall be authorized by the study director and shall be documented in the raw data. Significant changes in established standard operating procedures shall be properly authorized in writing by management.

(b) Standard operating procedures shall be established for, but not limited to, the following:

(1) Animal room preparation.
(2) Animal care.
(3) Receipt, identification, storage, handling, mixing, and method of sampling of the test and control articles.
(4) Test system observations.
(5) Laboratory tests.
(6) Handling of animals found moribund or dead during study.
(7) Necropsy of animals or postmortem examination of animals.
(8) Collection and identification of specimens.
(9) Histopathology.
(10) Data handling, storage, and retrieval.
§ 58.83 Reagents and solutions.

All reagents and solutions in the laboratory shall be labeled to indicate identity, titer or concentration, storage requirements, and expiration date. Deteriorated or outdated reagents and solutions shall not be used.

§ 58.90 Animal care.

(a) There shall be standard operating procedures for the housing, feeding, handling, and care of animals.

(b) All newly received animals from outside sources shall be isolated and their health status shall be evaluated in accordance with acceptable veterinary medical practice.

(c) At the initiation of a nonclinical laboratory study, animals shall be free of any disease or condition that might interfere with the purpose or conduct of the study. If, during the course of the study, the animals contract such a disease or condition, the diseased animals shall be isolated, if necessary. These animals may be treated for disease or signs of disease provided that such treatment does not interfere with the study. The diagnosis, authorizations of treatment, description of treatment, and each date of treatment shall be documented and shall be retained.

(d) Warm-blooded animals, excluding suckling rodents, used in laboratory procedures that require manipulations and observations over an extended period of time or in studies that require the animals to be removed from and returned to their home cages for any reason (e.g., cage cleaning, treatment, etc.), shall receive appropriate identification. All information needed to specifically identify each animal within an animal-housing unit shall appear on the outside of that unit.

(e) Animals of different species shall be housed in separate rooms when necessary. Animals of the same species, but used in different studies, should not ordinarily be housed in the same room when inadvertent exposure to control or test articles or animal mixup could affect the outcome of either study. If such mixed housing is necessary, adequate differentiation by space and identification shall be made.

(f) Animal cages, racks and accessory equipment shall be cleaned and sanitized at appropriate intervals.

(g) Feed and water used for the animals shall be analyzed periodically to ensure that contaminants known to be capable of interfering with the study and reasonably expected to be present in such feed or water are not present at levels above those specified in the protocol. Documentation of such analyses shall be maintained as raw data.

(h) Bedding used in animal cages or pens shall not interfere with the purpose or conduct of the study and shall be changed as often as necessary to keep the animals dry and clean.

(i) If any pest control materials are used, the use shall be documented. Cleaning and pest control materials that interfere with the study shall not be used.

(Information collection requirements approved by the Office of Management and Budget under control number 0910-0203)


Subpart F—Test and Control Articles

§ 58.105 Test and control article characterization.

(a) The identity, strength, purity, and composition or other characteristics which will appropriately define the test or control article shall be determined for each batch and shall be documented. Methods of synthesis, fabrication, or derivation of the test and control articles shall be documented by the sponsor or the testing facility. In
Food and Drug Administration, HHS

§ 58.120 Protocol.

(a) Each study shall have an approved written protocol that clearly indicates the objectives and all methods for the conduct of the study. The protocol shall contain, as applicable, the following information:

(1) A descriptive title and statement of the purpose of the study.

(2) Identification of the test and control articles by name, chemical abstract number, or code number.

(3) The name of the sponsor and the name and address of the testing facility at which the study is being conducted.

(4) The number, body weight range, sex, source of supply, species, strain, substrain, and age of the test system.

(5) The procedure for identification of the test system.

(6) A description of the experimental design, including the methods for the control of bias.

(7) A description and/or identification of the diet used in the study as well as solvents, emulsifiers, and/or other materials used to solubilize or suspend the test or control articles before mixing.
§ 58.130 Conduct of a nonclinical laboratory study.

(a) The nonclinical laboratory study shall be conducted in accordance with the protocol.

(b) The test systems shall be monitored in conformity with the protocol.

(c) Specimens shall be identified by test system, study, nature, and date of collection. This information shall be located on the specimen container or shall accompany the specimen in a manner that precludes error in the recording and storage of data.

(d) Records of gross findings for a specimen from postmortem observations should be available to a pathologist when examining that specimen histopathologically.

(e) All data generated during the conduct of a nonclinical laboratory study, except those that are generated by automated data collection systems, shall be recorded directly, promptly, and legibly in ink. All data entries shall be dated on the date of entry and signed or initialed by the person entering the data. Any change in entries shall be made so as not to obscure the original entry, shall indicate the reason for such change, and shall be dated and signed or identified at the time of the change. In automated data collection systems, the individual responsible for direct data entry shall be identified at the time of data input. Any change in automated data entries shall be made so as not to obscure the original entry, shall indicate the reason for change, shall be dated, and the responsible individual shall be identified.

(Information collection requirements approved by the Office of Management and Budget under control number 0910-0203)


Subparts H-I [Reserved]

Subpart J—Records and Reports

§ 58.185 Reporting of nonclinical laboratory study results.

(a) A final report shall be prepared for each nonclinical laboratory study and shall include, but not necessarily be limited to, the following:

1. Name and address of the facility performing the study and the dates on which the study was initiated and completed.

2. Objectives and procedures stated in the approved protocol, including any changes in the original protocol.

3. Statistical methods employed for analyzing the data.

4. The test and control articles identified by name, chemical abstracts number or code number, strength, purity, and composition or other appropriate characteristics.

5. Stability of the test and control articles under the conditions of administration.

6. A description of the methods used.

7. A description of the test system used. Where applicable, the final report shall include the number of animals used, sex, body weight range, source of supply, species, strain and substrain, age, and procedure used for identification.
(8) A description of the dosage, dosage regimen, route of administration, and duration.

(9) A description of all circumstances that may have affected the quality or integrity of the data.

(10) The name of the study director, the names of other scientists or professionals, and the names of all supervisory personnel, involved in the study.

(11) A description of the transformations, calculations, or operations performed on the data, a summary and analysis of the data, and a statement of the conclusions drawn from the analysis.

(12) The signed and dated reports of each of the individual scientists or other professionals involved in the study.

(13) The locations where all specimens, raw data, and the final report are to be stored.

(14) The statement prepared and signed by the quality assurance unit as described in §58.35(b)(7).

(15) The final report shall be signed and dated by the study director.

(b) Corrections or additions to a final report shall be in the form of an amendment by the study director. The amendment shall clearly identify that part of the final report that is being added to or corrected and the reasons for the correction or addition, and shall be signed and dated by the person responsible.


§ 58.195 Retention of records.

(a) Record retention requirements set forth in this section do not supersede the record retention requirements of any other regulations in this chapter.

(b) Except as provided in paragraph (c) of this section, documentation records, raw data and specimens pertaining to a nonclinical laboratory study and required to be made by this part shall be retained in the archives for whichever of the following periods is shortest:

(1) A period of at least 2 years following the date on which an application for a research or marketing permit, in support of which the results of the nonclinical laboratory study were submitted, is approved by the Food and Drug Administration. This requirement does not apply to studies supporting investigational new drug applications (IND’s) or applications for investigational device exemptions (IDE’s), records of which shall be governed by the provisions of paragraph (b)(2) of this section.

(2) A period of at least 5 years following the date on which the results of the study were submitted to the Food and Drug Administration in support of an application for a research or marketing permit.

(3) In other situations (e.g., where the nonclinical laboratory study does not result in the submission of the study in support of an application for a
§ 58.200 Purpose.

(a) The purposes of disqualification are:

(1) To permit the exclusion from consideration of completed studies that were conducted by a testing facility which has failed to comply with the requirements of the good laboratory practice regulations until it can be adequately demonstrated that such noncompliance did not occur during, or did not affect the validity or acceptability of data generated by, a particular study; and

(2) To exclude from consideration all studies completed after the date of disqualification until the facility can satisfy the Commissioner that it will conduct studies in compliance with such regulations.

(b) The determination that a nonclinical laboratory study may not be considered in support of an application for a research or marketing permit does not, however, relieve the applicant for such a permit of any obligation under any other applicable regulation to submit the results of the study to the Food and Drug Administration.

§ 58.202 Grounds for disqualification.

The Commissioner may disqualify a testing facility upon finding all of the following:

(a) The testing facility failed to comply with one or more of the regulations set forth in this part (or any other regulations regarding such facilities in this chapter);

(b) The noncompliance adversely affected the validity of the nonclinical laboratory studies; and

(c) Other lesser regulatory actions (e.g., warnings or rejection of individual studies) have not been or will probably not be adequate to achieve compliance with the good laboratory practice regulations.

§ 58.204 Notice of and opportunity for hearing on proposed disqualification.

(a) Whenever the Commissioner has information indicating that grounds exist under § 58.202 which in his opinion
justify disqualification of a testing facility, he may issue to the testing facility a written notice proposing that the facility be disqualified.

(b) A hearing on the disqualification shall be conducted in accordance with the requirements for a regulatory hearing set forth in part 16 of this chapter.

§ 58.206 Final order on disqualification.

(a) If the Commissioner, after the regulatory hearing, or after the time for requesting a hearing expires without a request being made, upon an evaluation of the administrative record of the disqualification proceeding, makes the findings required in §58.202, he shall issue a final order disqualifying the facility. Such order shall include a statement of the basis for that determination. Upon issuing a final order, the Commissioner shall notify (with a copy of the order) the testing facility of the action.

(b) If the Commissioner, after a regulatory hearing or after the time for requesting a hearing expires without a request being made, upon an evaluation of the administrative record of the disqualification proceeding, does not make the findings required in §58.202, he shall issue a final order terminating the disqualification proceeding. Such order shall include a statement of the basis for that determination. Upon issuing a final order the Commissioner shall notify the testing facility and provide a copy of the order.

§ 58.210 Actions upon disqualification.

(a) Once a testing facility has been disqualified, each application for a research or marketing permit, whether approved or not, containing or relying upon any nonclinical laboratory study conducted by the disqualified testing facility may be examined to determine whether such study was or would be essential to a decision. If it is determined that a study was or would be essential, the Food and Drug Administration shall also determine whether the study is acceptable, notwithstanding the disqualification of the facility. Any study done by a testing facility before or after disqualification may be presumed to be unacceptable, and the person relying on the study may be required to establish that the study was not affected by the circumstances that led to the disqualification, e.g., by submitting validating information. If the study is then determined to be unacceptable, such data will be eliminated from consideration in support of the application; and such elimination may serve as new information justifying the termination or withdrawal of approval of the application.

(b) No nonclinical laboratory study begun by a testing facility after the date of the facility’s disqualification shall be considered in support of any application for a research or marketing permit, unless the facility has been reinstated under §58.219. The determination that a study may not be considered in support of an application for a research or marketing permit does not, however, relieve the applicant for such a permit of any obligation under any other applicable regulation to submit the results of the study to the Food and Drug Administration.

§ 58.213 Public disclosure of information regarding disqualification.

(a) Upon issuance of a final order disqualifying a testing facility under §58.206(a), the Commissioner may notify all or any interested persons. Such notice may be given at the discretion of the Commissioner whenever he believes that such disclosure would further the public interest or would promote compliance with the good laboratory practice regulations set forth in this part. Such notice, if given, shall include a copy of the final order issued under §58.206(a) and shall state that the disqualification constitutes a determination by the Food and Drug Administration that nonclinical laboratory studies performed by the facility will not be considered by the Food and Drug Administration in support of any application for a research or marketing permit. If such notice is sent to another Federal Government agency, the Food and Drug Administration will recommend that the agency also consider whether or not it should accept nonclinical laboratory studies performed by the testing facility. If such notice is sent to any other person, it
§ 58.215 Alternative or additional actions to disqualification.

(a) Disqualification of a testing facility under this subpart is independent of, and neither in lieu of nor a precondition to, other proceedings or actions authorized by the act. The Food and Drug Administration may, at any time, institute against a testing facility and/or against the sponsor of a nonclinical laboratory study that has been submitted to the Food and Drug Administration any appropriate judicial proceedings (civil or criminal) and any other appropriate regulatory action, in addition to or in lieu of, and prior to, simultaneously with, or subsequent to, disqualification. The Food and Drug Administration may also refer the matter to another Federal, State, or local government law enforcement or regulatory agency for such action as that agency deems appropriate.

(b) The Food and Drug Administration may refuse to consider any particular nonclinical laboratory study in support of an application for a research or marketing permit, if it finds that the study was not conducted in accordance with the good laboratory practice regulations set forth in this chapter, without disqualifying the testing facility that conducted the study or undertaking other regulatory action.

§ 58.217 Suspension or termination of a testing facility by a sponsor.

Termination of a testing facility by a sponsor is independent of, and neither in lieu of nor a precondition to, proceedings or actions authorized by this subpart. If a sponsor terminates or suspends a testing facility from further participation in a nonclinical laboratory study that is being conducted as part of any application for a research or marketing permit that has been submitted to any Center of the Food and Drug Administration (whether approved or not), it shall notify that Center in writing within 15 working days of the action; the notice shall include a statement of the reasons for such action. Suspension or termination of a testing facility by a sponsor does not relieve it of any obligation under any other applicable regulation to submit the results of the study to the Food and Drug Administration.


§ 58.219 Reinstatement of a disqualified testing facility.

A testing facility that has been disqualified may be reinstated as an acceptable source of nonclinical laboratory studies to be submitted to the Food and Drug Administration if the Commissioner determines, upon an evaluation of the submission of the testing facility, that the facility can adequately assure that it will conduct future nonclinical laboratory studies in compliance with the good laboratory practice regulations set forth in this part and, if any studies are currently being conducted, that the quality and integrity of such studies have not been seriously compromised. A disqualified testing facility that wishes to be so reinstated shall present in writing to the Commissioner reasons why it believes it should be reinstated and a detailed description of the corrective actions it has taken or intends to take to assure that the acts or omissions which led to its disqualification will not recur. The Commissioner may condition reinstatement upon the testing facility being found in compliance with the good laboratory practice regulations upon an inspection. If a testing facility is reinstated, the Commissioner shall so notify the testing facility and all organizations and persons who were notified, under §58.213 of the disqualification of the testing facility. A determination that a testing facility has been reinstated is disclosable to the public under part 20 of this chapter.
§ 60.1 Scope.

(a) This part sets forth procedures and requirements for the Food and Drug Administration's review of applications for the extension of the term of certain patents under 35 U.S.C. 156. Patent term restoration is available for certain patents related to drug products (as defined in 35 U.S.C. 156(f)(2)), and to medical devices, food additives, or color additives subject to regulation under the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act. Food and Drug Administration actions in this area include:

(1) Assisting the United States Patent and Trademark Office in determining eligibility for patent term restoration;

(2) Determining the length of a product's regulatory review period;

(3) If petitioned, reviewing and ruling on due diligence challenges to the Food and Drug Administration's regulatory review period determinations; and

(4) Conducting hearings to review initial Food and Drug Administration findings on due diligence challenges.

(b) References in this part to the Code of Federal Regulations are to chapter I of title 21, unless otherwise noted.

[53 FR 7305, Mar. 7, 1988, as amended at 57 FR 56261, Nov. 27, 1992]

§ 60.2 Purpose.

(a) The purpose of this part is to establish a thorough yet efficient process for the Food and Drug Administration review of patent term restoration applications. To achieve this purpose, the regulations are intended to:

(1) Facilitate determinations of patent term restoration eligibility and regulatory review period length, and

(2) Ensure that parties interested in due diligence challenges will have an opportunity to participate in that process, including informal hearings.

(b) The regulations are intended to complement those promulgated by the United States Patent and Trademark Office to implement those parts of the law which are under that agency's jurisdiction. These regulations shall be construed in light of these objectives.

§ 60.3 Definitions.

(a) The definitions contained in 35 U.S.C. 156 apply to those terms when used in this part.

(b) The following definitions of terms apply to this part:


(2) Active ingredient means any component that is intended to furnish...
pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man or of animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect.

(3) Applicant means any person who submits an application or an amendment or supplement to an application under 35 U.S.C. 156 seeking patent term restoration.


(5) Clinical investigation or study means any experiment that involves a test article and one or more subjects and that is either subject to requirements for prior submission to the Food and Drug Administration under section 505(i), 512(j), or 520(g) of the Federal Food, Drug, and Cosmetic Act, or is not subject to the requirements for prior submission to FDA under those sections of the Federal Food, Drug, and Cosmetic Act, but the results of which are intended to be submitted later to, or held for inspection by, FDA as part of an application for a research or marketing permit. The term does not include experiments that are subject to the provisions of part 58 regarding nonclinical laboratory studies.

(6) Color additive means any substance that meets the definition in section 201(t) of the Act and which is subject to premarketing approval under section 721 of the Act.

(7) Due diligence petition means a petition submitted under § 60.30(a).

(8) FDA means the Food and Drug Administration.

(9) Food additive means any substance that meets the definition in section 201(s) of the Act and which is subject to premarketing approval under section 409 of the Act.

(10) Human drug product means the active ingredient of a new drug or human biologic product (as those terms are used in the Act and the Public Health Service Act), including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient.

(11) Marketing applicant means any person who submits an application for premarketing approval by FDA under:

(i) Section 505(b) of the Act or section 351 of the Public Health Service Act (human drug products);

(ii) Section 515 of the Act (medical devices);

(iii) Section 409 or 721 of the Act (food and color additives); or

(iv) Section 512 of the Act (animal drug products).

(12) Marketing application means an application for:

(i) Human drug products submitted under section 505(b) of the Act or section 351 of the Public Health Service Act;

(ii) Medical devices submitted under section 515 of the Act;

(iii) Food and color additives submitted under section 409 or 721 of the Act; or


(13) Medical device means any article that meets the definition in section 201(h) of the Act and which is subject to premarketing approval under section 515 of the Act.

(14) Product means a human drug product, animal drug product, medical device, food additive, or color additive, as those terms are defined in this section.

(15) PTO means the United States Patent and Trademark Office.

(16) Animal drug product means the active ingredient of a new animal drug (as that term is used in the Act) that is not primarily manufactured using recombinant deoxyribonucleic acid (DNA), recombinant ribonucleic acid (RNA), hybridoma technology, or other processes involving site-specific genetic manipulation techniques, including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient.

[53 FR 7305, Mar. 7, 1988, as amended at 57 FR 56263, Nov. 27, 1992; 64 FR 399, Jan. 5, 1999]

Effective Date Note: At 64 FR 399, Jan. 5, 1999, §60.3 was amended by removing "507(d)," from paragraph (b)(5); by removing the phrase ", antibiotic drug," from paragraph (b)(10); and by removing "or 507" from
Food and Drug Administration, HHS

§ 60.20  FDA action on regulatory review period determinations.

(a) FDA will consult its records and experts to verify the dates contained in the application and to determine the length of the product's regulatory review period under §60.22. The application shall contain information relevant to the determination of the regulatory review period as stated in the "Guidelines for Extension of Patent Term Under 35 U.S.C. 156" published on October 9, 1984, in PTO's Official Gazette and as required by 37 CFR chapter I.

(b) After determining the length of the regulatory review period, FDA will notify PTO in writing of its determination, send a copy of this determination to the applicant, and file a copy of the determination in the docket established for the application in FDA's Dockets Management Branch (HFA-305), rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

(c) FDA will also publish the regulatory review period determination in the Federal Register. The notice will include the following:

(1) The name of the applicant;

(2) The trade name and generic name (if applicable) of the product;

(3) The number of the patent for which an extension of the term is sought;

(4) The approved indications or uses for the product;

(5) Providing the U.S. Patent and Trademark Office with any other information relevant to the U.S. Patent and Trademark Office's determination of whether a patent related to a product is eligible for patent term restoration.

Subpart C—Regulatory Review Period Determinations

§ 60.20  FDA action on regulatory review period determinations.

(a) FDA will consult its records and experts to verify the dates contained in the application and to determine the length of the product's regulatory review period under §60.22. The application shall contain information relevant to the determination of the regulatory review period as stated in the "Guidelines for Extension of Patent Term Under 35 U.S.C. 156" published on October 9, 1984, in PTO's Official Gazette and as required by 37 CFR chapter I.

(b) After determining the length of the regulatory review period, FDA will notify PTO in writing of its determination, send a copy of this determination to the applicant, and file a copy of the determination in the docket established for the application in FDA's Dockets Management Branch (HFA-305), rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

(c) FDA will also publish the regulatory review period determination in the Federal Register. The notice will include the following:

(1) The name of the applicant;

(2) The trade name and generic name (if applicable) of the product;

(3) The number of the patent for which an extension of the term is sought;

(4) The approved indications or uses for the product;
§ 60.22 Regulatory review period determinations.

In determining a product's regulatory review period, which consists of the sum of the lengths of a testing phase and an approval phase, FDA will review the information in each application using the following definitions of the testing phase and the approval phase for that class of products.

(a) For human drugs:
(1) The testing phase begins on the date an exemption under section 505(i) of the Act becomes effective (or the date an exemption under former section 507(d) of the Act became effective) for the approved human drug product and ends on the date a marketing application under section 351 of the Public Health Service Act or section 505 of the Act is initially submitted to FDA (or was initially submitted to FDA under former section 507 of the Act), and
(2) The approval phase begins on the date a marketing application under section 351 of the Public Health Service Act or section 505(b) of the Act is initially submitted to FDA (or was initially submitted under former section 507 of the Act) and ends on the date the application is approved.

(b) For food and color additives:
(1) The testing phase begins on the date a major health or environmental effects test is begun and ends on the date a petition relying on the test and requesting the issuance of a regulation for use of the additive under section 409 or 721 of the Act is initially submitted to FDA and ends upon whichever of the following occurs last:
   (i) The regulation for the additive becomes effective; or
   (ii) Objections filed against the regulation that result in a stay of effectiveness are resolved and commercial marketing is permitted; or
   (iii) Proceedings resulting from objections to the regulation, after commercial marketing has been permitted and later stayed pending resolution of the proceedings, are finally resolved and commercial marketing is permitted.

(c) For medical devices:
(1) The testing phase begins on the date a clinical investigation on humans is begun and ends on the date an application for premarket approval of the device or a notice of completion of a product development protocol is initially submitted under section 515 of the Act. For purposes of this part, a clinical investigation is considered to begin on whichever of the following dates applies:
   (i) If an investigational device exemption (IDE) under section 520(g) of the Act is required, the effective date of the exemption.
   (ii) If an IDE is not required, but institutional review board (IRB) approval under section 520(g)(3) of the Act is required, the IRB approval date.
   (iii) If neither an IDE nor IRB approval is required, the date on which the device is first used with human subjects as part of a clinical investigation to be filed with FDA to secure premarket approval of the device.

(2) The approval phase either:
   (i) Begins on the date an application for premarket approval of the device is initially submitted under section 515 of the Act and ends on the date the application is approved; or
   (ii) Begins on the date a notice of completion of a product development protocol is initially submitted under section 515 of the Act and ends on the date the protocol is declared to be completed.

(d) For animal drugs:
(1) The testing phase begins on the date a major health or environmental effects test is begun or the date on
which the agency acknowledges the filling of a notice of claimed investigational exemption for a new animal drug, whichever is earlier, and ends on the date a marketing application under section 512 of the Act is initially submitted to FDA.

(2) The approval phase begins on the date a marketing application under section 512 of the Act is initially submitted to FDA and ends on the date the application is approved.

(e) For purposes of this section, a "major health or environmental effects test" may be any test which:

(1) Is reasonably related to the evaluation of the product's health or environmental effects, or both;

(2) Produces data necessary for marketing approval; and

(3) Is conducted over a period of no less than 6 months duration, excluding time required to analyze or evaluate test results.

(f) For purposes of determining the regulatory review period for any product, a marketing application, a notice of completion of a product development protocol, or a petition is initially submitted on the date it contains sufficient information to allow FDA to commence review of the application. A marketing application, a notice of completion of a product development protocol, or a petition is approved on the date FDA sends the applicant a letter informing it of the approval or, by order declares a product development protocol to be completed, or, in the case of food and color additives, on the effective date of the final rule listing the additive for use as published in the Federal Register or, in the case of a new animal drug in a Category II Type A medicated article, on the date of publication in the Federal Register of the notice of approval pursuant to section 522(i) of the Act. For purposes of this section, the regulatory review period for an animal drug shall mean either the regulatory review period relating to the drug's approval for use in nonfood-producing animals or the regulatory review period relating to the drug's approval for use in food-producing animals, whichever is applicable.

[53 FR 7305, Mar. 7, 1988, as amended at 57 FR 56262, Nov. 27, 1992; 64 FR 400, Jan. 5, 1999]
§ 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, 1224 Parklawn Dr., Rockville, MD 20857.

[53 FR 7305, Mar. 7, 1988, as amended at 59 FR 14364, Mar. 28, 1994]
Food and Drug Administration, HHS

§ 60.32 Applicant response to petition.

(a) The applicant shall file with FDA a written response to the petition no later than 30 days after the applicant’s receipt of a copy of the petition.

(b) The applicant’s response may present additional facts and circumstances to address the assertions in the petition, but shall be limited to the issue of whether the applicant acted with due diligence during the regulatory review period. The applicant’s response may include documents that were not in the original patent extension application.

(c) If the applicant does not respond to the petition, FDA will decide the matter on the basis of the information submitted in the patent term restoration application, due diligence petition, and FDA records.

§ 60.34 FDA action on petitions.

(a) Within 90 days after FDA receives a petition filed under §60.30(a), the agency will either deny the petition under paragraph (b) or (c) of this section or investigate and determine under §60.36 whether the applicant acted with due diligence during the regulatory review period. FDA will publish its due diligence determination in the Federal Register, notify PTO of the due diligence determination in writing, and send copies of the notice to PTO, the applicant, and the petitioner.

(b) FDA may deny a due diligence petition without considering the merits of the petition if:

1. The petition is not filed in accordance with §60.30.
2. The petition is not filed in accordance with §10.20;
3. The petition does not contain the information required by §10.30;
4. The petition fails to contain information or allegations upon which it may reasonably be determined that the applicant did not act with due diligence during the applicable regulatory review period; or
5. The petition fails to allege a sufficient total amount of time during which the applicant did not exercise due diligence such that, even if the petition were granted, the petition would not affect the maximum patent extension the applicant sought in the application.

§ 60.36 Standard of due diligence.

(a) In determining the due diligence of an applicant, FDA will examine the facts and circumstances of the applicant’s actions during the regulatory review period to determine whether the applicant exhibited that degree of attention, continuous directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period. FDA will take into consideration all relevant factors, such as the amount of time between the approval of an investigational exemption or research permit and the commencement of a clinical investigation and the amount of time required to conduct a clinical investigation.

(b) For purposes of this part, the actions of the marketing applicant shall be imputed to the applicant for patent term restoration. The actions of an agent, attorney, contractor, employee, licensee, or predecessor in interest of the marketing applicant or applicant for patent term restoration shall be imputed to the applicant for patent term restoration.

Subpart E—Due Diligence Hearings

§ 60.40 Request for hearing.

(a) Any person may request, not later than 60 days after the publication under §60.34(a) of FDA’s due diligence determination, that FDA conduct an informal hearing on the due diligence determination.

(b) The request for a hearing under this section shall:
§ 60.42 Notice of hearing.

Ten days before the hearing, FDA will notify the requesting party, the applicant, and the petitioner, orally or in writing, of the date, time, and location of the hearing. The agency will provide the requesting party, the applicant, and the petitioner with an opportunity to participate as a party in the hearing.

§ 60.44 Hearing procedures.

The due diligence hearing shall be conducted in accordance with this part, supplemented by the nonconflicting procedures in part 16. During the due diligence hearing, the applicant and the petitioner shall enjoy all the rights and privileges accorded a person requesting a hearing under part 16. The standard of due diligence set forth in §60.36 will apply in the due diligence hearing. The party requesting the due diligence hearing shall have the burden of proof at the hearing.

§ 60.46 Administrative decision.

Within 30 days after the completion of the due diligence hearing, the Commissioner will affirm or revise the determination made under §60.34(a) and will publish the due diligence redetermination in the Federal Register, notify PTO of the redetermination, and send copies of the notice to PTO and to the requesting party, the applicant, and the petitioner.
the act, that is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source and that, when added or applied to a food, drug, or cosmetic or to the human body or any part thereof, is capable (alone or through reaction with another substance) of imparting a color thereto. Substances capable of imparting a color to a container for foods, drugs, or cosmetics are not color additives unless the customary or reasonably foreseeable handling or use of the container may reasonably be expected to result in the transmittal of the color to the contents of the package or any part thereof. Food ingredients such as cherries, green or red peppers, chocolate, and orange juice which contribute their own natural color when mixed with other foods are not regarded as color additives; but where a food substance such as beet juice is deliberately used as a color, as in pink lemonade, it is a color additive. Food ingredients as authorized by definitions and standards of identity prescribed by regulations pursuant to section 401 of the act are color additives, where the ingredients are specifically designated in the definitions and standards of identity as permitted for use for coloring purposes. An ingredient of an animal feed whose intended function is to impart, through the biological processes of the animal, a color to the meat, milk, or eggs of the animal is a color additive and is not exempt from the requirements of the statute. This definition shall apply whether or not such ingredient has nutritive or other functions in addition to the property of imparting color. An ingested drug the intended function of which is to impart color to the human body is a color additive. For the purposes of this part, the term color includes black, white, and intermediate grays, but substances including migrants from packaging materials which do not contribute any color apparent to the naked eye are not color additives.

(g) For a material otherwise meeting the definition of color additive to be exempt from section 721 of the act, on the basis that it is used (or intended to be used) solely for a purpose or purposes other than coloring, the material must be used in a way that any color imparted is clearly unimportant insofar as the appearance, value, marketability, or consumer acceptability is concerned. (It is not enough to warrant exemption if conditions are such that the primary purpose of the material is other than to impart color.)

(h) The exemption that applies to a pesticide chemical, soil or plant nutrient, or other agricultural chemical, where its coloring effect results solely from its aiding, retarding, or otherwise affecting directly or indirectly, the growth or other natural physiological processes of produce of the soil, applies only to color developed in such product through natural physiological processes such as enzymatic action. If the pesticide chemical, soil or plant nutrient, or other agricultural chemical itself acts as a color or carries as an ingredient a color, and because of this property colors the produce of the soil, it is a color additive and is not exempt.

(i) Safe means that there is convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive.

(j) The term straight color means a color additive listed in parts 73, 74, and 81 of this chapter, and includes lakes and such substances as are permitted by the specifications for such color.

(k) The term mixture means a color additive made by mixing two or more straight colors, or one or more straight colors and one or more diluents.

(l) The term lake means a straight color extended on a substratum by adsorption, coprecipitation, or chemical combination that does not include any combination of ingredients made by simple mixing process.

(m) The term diluent means any component of a color additive mixture that is not of itself a color additive and has been intentionally mixed therein to facilitate the use of the mixture in coloring foods, drugs, or cosmetics or in coloring the human body. The diluent may serve another functional purpose in the foods, drugs, or cosmetics, as for example sweetening, flavoring, emulsifying, or stabilizing, or may be a
§ 70.5 General restrictions on use of color additives.

(a) Color additives for use in the area of the eye. No listing or certification of a color additive shall be considered to authorize the use of any such color additive in any article intended for use in the area of the eye unless such listing or certification of such color additive specifically provides for such use. Any color additive used in or on any article intended for use in the area of the eye, the listing or certification of which color additive does not provide for such use, shall be considered to be a color additive not listed under parts 73, 74, and 81 of this chapter, even though such color additive is certified and/or listed for other uses.

(b) Color additives for use in injections. No listing or certification of a color additive shall be considered to authorize the use of any such color additive in any article intended for use in injections unless such listing or certification of such color additive specifically provides for such use. Any color additive used in or on any article intended for use in injections, the listing or certification of which color additive does not provide for such use, shall be considered to be a color additive not listed under parts 73, 74, and 81 of this chapter.
§ 70.10 Color additives in standardized foods and new drugs.

(a) Standardized foods. (1) Where a petition is received for issuance or amendment of a regulation establishing a definition and standard of identity for a food under section 401 of the act, which proposes the inclusion of a color additive in the standardized food, the provisions of the regulations in part 71 of this chapter shall apply with respect to the information that must be submitted with respect to the safety of the color additive (if such information has not previously been submitted and safety of the color additive for the intended use has not already been established), and the petition must show also that the use of the color additive in the standardized food would be in conformance with section 401 of the act or with the terms of a temporary permit issued under §130.17 of this chapter.

(2) If a petition for a definition and standard of identity contains a proposal for a color additive regulation, and the petitioner fails to designate it as such, the Commissioner, upon determining that the petition includes a proposal for a color additive regulation, shall so notify the petitioner and shall thereafter proceed in accordance with the regulations in part 71 of this chapter.

(b) New drugs. (1) Where an application for a new drug is received and this application proposes, for coloring purposes only, the inclusion of a color additive, the provisions of the regulations in part 71 of this chapter shall apply with respect to the information that must be submitted about the safety of the color additive, if such information has not previously been submitted and safety of the color additive for the intended use has not already been established.

(2) If an application for a new drug inferentially contains a proposal for a color additive regulation, and the applicant fails to designate it as such, the Commissioner, upon determining that the application includes a proposal for a color additive regulation, shall so notify the applicant and shall thereafter proceed in accordance with the regulations in part 71 of this chapter.

(3) Where a petition for a color additive must be filed in accordance with paragraph (b)(2) of this section, the date of filing of the color additive petition shall be considered as the date of filing of the new-drug application.

[42 FR 15636, Mar. 22, 1977, as amended at 64 FR 400, Jan. 5, 1999]

Effect Date Note: At 64 FR 400, Jan. 5, 1999, §70.10 was amended by revising the section heading; by revising the heading of paragraph (b); and by removing the phrases ‘or for certification of an antibiotic drug’ from the first sentence of paragraph (b)(1), “or certification of an antibiotic drug” from the first sentence of paragraph (b)(2), and “or the request for certification of the antibiotic drug” from paragraph (b)(3), effective May 20, 1999. For the convenience of the user, the superseded text is set forth as follows:

§ 70.10 Color additives in standardized foods, new drugs, and antibiotics.

* * * * *
§ 70.11 Related substances.

(a) Different color additives may cause similar or related pharmacological or biological effects, and, in the absence of evidence to the contrary, those that do so will be considered to have additive toxic effects.

(b) Food additives may also cause pharmacological or biological effects similar or related to such effects caused by color additives, and, in the absence of evidence to the contrary, those that do so will be considered as having additive toxic effects.

(c) Pesticide chemicals may also cause pharmacological or biological effects similar or related to such effects caused by color additives, and, in the absence of evidence to the contrary, those that do so will be considered to have additive toxic effects.

(d) In establishing tolerances for color additives, the Commissioner will take into consideration, among other things, the amount of any common component permitted in other color additives, in food additives, and in pesticide chemical residues as well as the similar biological activity (such as cholinesterase inhibition) produced by such substance.

§ 70.19 Fees for listing.

(a) Each petition for the listing of a color additive shall be accompanied by a deposit of $3,000.00 if the proposal is for listing the color additive for use generally in or on foods, in or on drugs, and in or on cosmetics.

(b) If the petition for the listing is for use in or on foods only, the deposit shall be $3,000.00.

(c) If the petition for the listing is for use in or on drugs and/or cosmetics only, the deposit shall be $2,600.00.

(d) The provisions of paragraphs (a), (b), and (c) of this section shall be applicable, whether or not the proposal contemplates any tolerances, limitations, or other restrictions placed upon the use of the color additive.

(e) If a petition proposing the issuance of a regulation is withdrawn before it is finally accepted for filing, the deposit, less a $600.00 fee for clerical handling and administrative and technical review, shall be returned to the petitioner.

(f) If a petition proposing the issuance of a regulation is withdrawn within 30 days after filing, the deposit, less $1,800.00 if the petition is covered by paragraph (a) or (b) of this section, and less $1,600.00, if the petition is covered by paragraph (c) of this section, shall be returned to the petitioner.

(g) When a petition is withdrawn after filing and resubmitted within 6 months, it shall be accompanied by a deposit of $1,800.00 for a petition filed under paragraph (a) or (b) of this section, and $1,600.00 for a petition filed under paragraph (c) of this section. If a petition is resubmitted after 6 months, it shall be accompanied by the deposit that would be required if it were being submitted for the first time.

(h) When the resubmission pertains to a petition that had been withdrawn before acceptance for filing, a new advance deposit shall be made in full as prescribed in paragraph (a), (b), or (c) of this section.

(i) After a color additive has been listed, any request for an amendment or additional tolerance shall be accompanied by a deposit of $1,800.00 for use in the items specified in paragraphs (a) and (b) of this section, or $1,600.00 for use in items specified in paragraph (c) of this section.

(j) The fee for services in listing a diluent under § 80.35 for use in color additive mixtures shall be $250.00.

(k) Objections and request for public hearing under section 721(d) of the act or section 203(d)(2)(C) of Pub. L. 86-618 (74 Stat. 404; 21 U.S.C. 379e, note) shall be accompanied by a filing fee of $250.00.

(l) In the event of a referral of a petition under this section to an advisory committee, all costs related thereto (including personal compensation of committee members, travel materials, and other costs) shall be borne by the person or organization requesting the referral, such costs to be assessed on the basis of actual cost to the Government: Provided, That the compensation of such costs shall include personal compensation of advisory committee members at a rate not to exceed $75.00 per member per day.
Subpart B—Packaging and Labeling

§ 70.20 Packaging requirements for straight colors (other than hair dyes).

Straight colors shall be packaged in containers which prevent changes in composition. Packages shall be sealed so that they cannot be opened without breaking the seal. An unavoidable change in moisture content caused by the ordinary and customary exposure that occurs in good storage, packing, and distribution practice is not considered a change in composition. If the packaging material is a food additive it shall be authorized by an appropriate regulation in parts 170 through 189 of this chapter.

§ 70.25 Labeling requirements for color additives (other than hair dyes).

(a) General labeling requirements. All color additives shall be labeled with sufficient information to assure their safe use and to allow a determination of compliance with any limitations imposed by this part and parts 71, 73, 74, 80, and 81 of this chapter. In addition to all other information required by the act, labels for color additives, except those in a form suitable for coloring the human body, shall state:

(1) The name of the straight color or the name of each ingredient comprising the color additive, if it is a mixture.

(2) A statement indicating general limitations for the use of the color additive, such as “for food use only”; “for food, drug, and cosmetic use”; “for use in drugs for external application only.”

(3) Where regulations issued impose quantitative limitations for a general or specific use of a straight color, the amount of each such straight color in terms of weight per unit/volume or percent by weight.

(4) An expiration date if stability data require it.
§ 70.40 Safety factors to be considered.

In accordance with section 721(b)(5)(A)(iii) of the act, the following safety factor will be applied in determining whether the proposed use of a color additive will be safe: Except where evidence is submitted which justifies use of a different safety factor, a safety factor of 100 to 1 will be used in applying animal experimentation data to man; that is, a color additive for use by man will not be granted a tolerance that will exceed 1/100th of the maximum no-effect level for the most susceptible experimental animals tested. The various species of experimental animals used in the tests shall conform to good pharmacological practice.

§ 70.42 Criteria for evaluating the safety of color additives.

(a) In deciding whether a petition is complete and suitable for filing and in reaching a decision on any petition filed, the Commissioner will apply the “safe-for-use” principle. This will require the presentation of all needed scientific data in support of a proposed listing to assure that each listed color additive will be safe for its intended use or uses in or on food, drugs, or cosmetics. The Commissioner may list a color additive for use generally in or on food, in or on drugs, or in or on cosmetics when he finds from the data presented that such additive is suitable and may safely be employed for such general use; he may list an additive only for more limited use or uses for which it is proven suitable and may safely be employed; and he is authorized to prescribe broadly the conditions under which the additive may be safely employed for such use or uses. This may allow the use of a particular dye, pigment, or other substance with certain diluents, but not with others, or at a higher concentration with some than with others.

(b) The safety for external color additives will normally be determined by tests for acute oral toxicity, primary irritation, sensitization, subacute dermal toxicity on intact and abraded skin, and carcinogenicity by skin application. The Commissioner may waive any of such tests if data before him otherwise establish that such test is not required to determine safety for the use proposed.

(c) Upon written request describing the proposed use of a color additive and the proposed experiments to determine its safety, the Commissioner will advise a person who wishes to establish the safety of a color additive whether he believes the experiments planned will yield data adequate for an evaluation of the safety of the additive.

§ 70.45 Allocation of color additives.

Whenever, in the consideration of a petition or a proposal to list a color additive or to alter an existing listing, the data before the Commissioner fail to show that it would be safe to list the color additive for all the uses proposed
or at the levels proposed, the Commissioner will notify the petitioner and other interested persons by publication in the Federal Register that it is necessary to allocate the safe tolerance for the straight color in the color additive among the competing needs. This notice shall call for the presentation of data by all interested persons on which the allocation can be made in accordance with section 721(b)(8) of the act. The time for acting upon the petition shall be stayed until such data are presented, whereupon the time limits shall begin to run anew. As promptly as possible after presentation of the data, the Commissioner will, by order, announce the allocation and the tolerance limitations.

§ 70.50 Application of the cancer clause of section 721 of the act.

(a) Color additives that may be ingested. Whenever (1) the scientific data before the Commissioner (either the reports from the scientific literature or the results of biological testing) suggest the possibility that the color additive including its components or impurities has induced cancer when ingested by man or animal; or (2) tests which are appropriate for the evaluation of the safety of additives in food suggest that the color additive, including its components or impurities, induces cancer in man or animal, the Commissioner shall determine whether, based on the judgment of appropriately qualified scientists, cancer has been induced and whether the color additive, including its components or impurities, was the causative substance. If it is his judgment that the data do not establish these facts, the cancer clause is not applicable to preclude external drug and cosmetic uses, and if the data as a whole establish that the color additive will be safe under conditions that can be specified in the regulations, it may be listed for such use. But if, in the judgment of the Commissioner, based on information from qualified scientists, cancer has been induced, no regulation may issue which permits its use in external drugs and cosmetics.

(b) Color additives that will not be ingested. Whenever the scientific data before the Commissioner suggest the possibility that the color additive, including its components or impurities, has induced cancer in man or animals by routes other than ingestion, the Commissioner shall determine whether, based on the judgment of appropriately qualified scientists, the test suggesting the possibility of carcinogenesis is appropriate for the evaluation of the color additive for a use which does not involve ingestion, cancer has been induced, and the color additive, including its components or impurities, was the causative substance. If it is his judgment that the data do not establish these facts, the cancer clause is not applicable to preclude external drug and cosmetic uses, and if the data as a whole establish that the color additive will be safe under conditions that can be specified in the regulations, it may be listed for such use. But if, in the judgment of the Commissioner, based on information from qualified scientists, cancer has been induced, no regulation may issue which permits its use in external drugs and cosmetics.

(c) Color additives for use as an ingredient of feed for animals that are raised for food production. Color additives that are an ingredient of the feed for animals raised for food production and that have the potential to contaminate human food with residues whose consumption could present a risk of cancer to people must satisfy the requirements of subpart E of part 500 of this chapter.


§ 70.51 Advisory committee on the applicability of the anticancer clause.

All requests for and procedures governing any advisory committee on the anticancer clause shall be subject to the provisions of part 14 of this chapter, and particularly subpart H of that part.

§ 70.55 Request for scientific studies.

The Commissioner will consider requests by any interested person who desires the Food and Drug Administration to conduct scientific studies to support a petition for a regulation for
a color additive. If favorably acted upon, such studies will be limited to pharmacological investigations, studies of the chemical and physical structure of the color additive, and methods of analysis of the pure color additive (including impurities) and its identification and determination in foods, drugs, or cosmetics, as the case may be. All requests for such studies shall be accompanied by the fee prescribed in §70.19.

PART 71—COLOR ADDITIVE PETITIONS

Subpart A—General Provisions

Sec.
71.1 Petitions.
71.2 Notice of filing of petition.
71.4 Samples; additional information.
71.6 Extension of time for studying petitions; substantive amendments; withdrawal of petitions without prejudice.
71.15 Confidentiality of data and information in color additive petitions.
71.18 Petition for exemption from certification.

Subpart B—Administrative Action on Petitions

71.20 Publication of regulation.
71.22 Deception as a basis for refusing to issue regulations; deceptive use of a color additive for which a regulation has issued.
71.25 Condition for certification.
71.26 Revocation of exemption from certification.
71.27 Listing and exemption from certification on the Commissioner’s initiative.
71.30 Procedure for filing objections to regulations.
71.37 Exemption of color additives for investigational use.


SOURCE: 42 FR 15639, Mar. 22, 1977, unless otherwise noted.

Subpart A—General Provisions

§71.1 Petitions.

(a) Any interested person may propose the listing of a color additive for use in or on any food, drug, or cosmetic or for coloring the human body. Such proposal shall be made in a petition in the form prescribed in paragraph (c) of this section. The petition shall be submitted in triplicate. If any part of the material submitted is in a foreign language, it shall be accompanied by an accurate and complete English translation. The petitioner shall state the post-office address in the United States to which published notices or orders issued or objections filed pursuant to section 721 of the act may be sent.

(b) Pertinent information may be incorporated in, and will be considered as part of, a petition on the basis of specific reference to such information submitted to and retained in the files of the Food and Drug Administration. However, any reference to unpublished information furnished by a person other than the applicant will not be considered unless use of such information is authorized in a written statement signed by the person who submitted the information. Any reference to published information offered in support of a color additive petition should be accompanied by reprints or photostatic copies of such references.

(c) Petitions shall include the following data and be submitted in the following form:

Name of petitioner __________________________
Post-office address __________________________
Name of color additive and proposed use __________________________
Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204

Dear Sir:

Petitioner submits this pursuant to section 721(b)(1) of the Federal Food, Drug, and Cosmetic Act requesting listing by the Commissioner of the color additive —— as suitable and safe for use in or on —— subject to the conditions that ——. (Petitioner may propose a listing for general use in food, drugs, or cosmetics or, if such general listing is not believed suitable and safe, the petitioner shall describe the conditions under which he believes the additive can be safely used and for which it will be suitable. These conditions may include tolerance limitations, specifications as to the manner in which the additive may be added or used, and directions and other labeling or packaging safeguards that should be applied. The level of use proposed should not be higher than reasonably required to accomplish the intended color effect.)
Attached hereto in triplicate and constituting a part of this petition are the following:

A. The name and all pertinent information concerning the color additive, including chemical identity and composition of the color additive, its physical, chemical, and biological properties, and specifications prescribing its component(s) and identifying and limiting the reaction byproducts and other impurities.

The petition shall contain a description of the chemical and physical tests relied upon to identify the color additive and shall contain a full description of the methods used in, and the facilities and controls used for, the production of the color additive. These shall establish that it is a substance of reproducible composition. Alternative methods and controls and variations in methods and controls, within reasonable limits, that do not affect the characteristics of the substance or the reliability of the controls may be specified.

The petition shall supply a list of all substances used in the synthesis, extraction, or other method of preparation of any straight color, regardless of whether they undergo chemical change in the process. Each substance should be identified by its common or usual name and its complete chemical name, using structural formulas when necessary for specific identification. If any proprietary preparation is used as a component, the proprietary name should be followed by a complete quantitative statement of composition. Reasonable alternatives for any listed substance may be specified.

If the petitioner does not himself perform any of the manufacturing, processing, and packing operations for a color additive, the petitioner shall identify each person who will perform a part of such operations and designate the part.

The petition shall include stability data, and, if the data indicate that it is needed to insure the identity, strength, quality, or purity of the color additive, the expiration period that will be employed as well as any packaging and labeling precautions needed to preserve stability.

B. The amount of the color additive proposed for use and the color effect intended to be achieved, together with all directions, recommendations, and suggestions regarding the proposed use, as well as specimens of the labeling proposed for the color additive. If the color effect results or may reasonably be expected to result from use of the color additive in packaging material, the petitioner shall show how this may occur and what residues may reasonably be anticipated.

Typewritten or other draft-labeling copy will be accepted for consideration of the petition provided final printed labeling identical in content to the draft copy is submitted as soon as available, and prior to the marketing of the color additive. The printed labeling shall conform in prominence and conspicuousness with the requirements of the act.

If the color additive is one for which a tolerance limitation is required to assure its safety, the level of use proposed should be no higher than the amount reasonably required to accomplish the intended physical or other technical effect, even though the safety data may support a higher tolerance. If the safety data will not support the use of the amount of the color additive reasonably needed to accomplish the desired color effect, the requested tolerance will not be established. Petitioners are expected to propose the use of color additives in accordance with sound color chemistry.

C.1 A description of practicable methods to determine the pure color and all intermediates, subsidiary colors, and other components of the color additive.

2. A description of practicable methods to determine the amount of the color additive in any raw, processed, and/or finished food, drug, or cosmetic in which use of the color additive is proposed. (The tests proposed shall be those that can be used for food, drug, or cosmetic control purposes and can be applied with consistent results by any properly equipped laboratory and trained personnel.)

3. A description of methods for identification and determination of any substance formed in or on such food, drug, or cosmetic because of the use of the color additive. (If it is the petitioner's view that any such method would not be needed, under the terms of section 721(b)(5)(A)(iv), a statement shall be submitted in lieu of methods as to the basis for such view.)

D. Full reports of investigation made with respect to the safety of the color additive.

(A petition will be regarded as incomplete unless it includes full reports of adequate tests reasonably applicable to show whether or not the color additive will be safe for its intended use. The reports ordinarily should include detailed data derived from appropriate animal and other biological experiments in which the methods used and the results obtained are clearly set forth. The petition shall not omit without explanation any data that would influence the evaluation of the safety of the color additive.)

E. Complete data which will allow the Commissioner to consider, among other things, the probable consumption of, and/or other relevant exposure from the additive and of any substance formed in or on food, drugs, or cosmetics because of such additive: and the cumulative effect, if any, of such additive in the diet of man or animals, taking into account the same or any chemically or pharmacologically related substance or substances in the diet including, but not limited to food additives and pesticide chemicals for
which tolerances or exemptions from tolerances have been established.

F. Proposed tolerances and other limitations on the use of the color additive, if tolerances and limitations are required in order to insure its safety. A petitioner may include a proposed regulation.

G. If exemption from batch certification is requested, the reasons why it is believed such certification is not necessary (including supporting data to establish the safety of the intended use).

H. If submitting a petition to alter an existing regulation issued pursuant to section 721(b) of the act, full information on each proposed change must be submitted. The petition may omit statements made in the original petition concerning which no change is proposed. A supplemental petition must be submitted for any change beyond the variations provided for in the original petition and the regulation issued on the basis of the original petition.

I. The prescribed fee of $------ for admitting the color additive to listing is enclosed (unless there is an advance deposit adequate to cover the fee).

Yours very truly,
(Petitioner)

By------(Indicate authority)

J. The petitioner is required to submit either a claim for categorical exclusion under §25.30 or 25.32 of this chapter or an environmental assessment under §25.40 of this chapter.

(d) The petitioner will be notified of the date on which his petition is filed; and an incomplete petition, or one that has not been submitted in triplicate, will be retained but not filed. A petition shall be retained but shall not be filed if any of the data listed in the above form are lacking or are not set forth so as to be readily understood or if the prescribed fee has not been submitted. The petitioner will be notified in what respects his petition is incomplete.

(e) The petition must be signed by the petitioner or by his attorney or authorized agent, who is a resident of the United States.

(f) The data specified under the several lettered headings should be submitted on separate sheets or sets of sheets, suitably identified. If such data have already been submitted with an earlier application, the present petition may incorporate it by specific reference to the earlier petition.

(g) If nonclinical laboratory studies are involved, petitions filed with the Commissioner under section 721(b) of the act shall include with respect to each nonclinical study contained in the petition, either a statement that the study was conducted in compliance with the good laboratory practice regulations set forth in part 58 of this chapter, or, if the study was not conducted in compliance with such regulations, a brief statement of the reason for the noncompliance.

(h) [Reserved]

(i) If clinical investigations involving human subjects are involved, petitions filed with the Commissioner under section 721(b) of the act shall include statements regarding each such clinical investigation contained in the petition that it either was conducted in compliance with the requirements for institutional review set forth in part 56 of this chapter, or was not subject to such requirements in accordance with §§56.104 or 56.105, and that it was conducted in compliance with the requirements for informed consent set forth in part 50 of this chapter.


§ 71.2 Notice of filing of petition.

(a) Except where the petition involves a new drug, the Commissioner, within 15 days after receipt, will notify the petitioner of acceptance or nonacceptance of a petition, and if not accepted the reasons therefor. If accepted, the date of the notification letter sent to the petitioner becomes the date of filing for the purposes of section 721(d)(1) of the act. If the petitioner desires, he may supplement a deficient petition after being notified regarding deficiencies. If the supplementary material or explanation of the petition is deemed acceptable, petitioner shall be notified. The date of such notification becomes the date of filing. If the petitioner does not wish to supplement or explain the petition and requests in writing that it be filed as submitted, the petition shall be filed and the petitioner so notified. The date of such notification becomes the date of filing.
Where the petition involves a new drug, notification to the petitioner will be made in accordance with §70.10(b)(3) of this chapter.

(b) The Commissioner will cause to be published in the Federal Register within 30 days from the date of filing of such petition a notice of the filing, the name of the petitioner, and a brief description of the proposal in general terms. A copy of the notice will be mailed to the petitioner when the original document is signed.

[42 FR 15639, Mar. 22, 1977, as amended at 64 FR 400, Jan. 5, 1999]

EFFECTIVE DATE NOTE: At 64 FR 400, Jan. 5, 1999, in §71.2, paragraph (a) was amended by removing the phrase “or certifiable antibiotic” from the last sentence, effective May 20, 1999.

§ 71.6 Extension of time for studying petitions; substantive amendments; withdrawal of petitions without prejudice.

(a) Extension of time for studying petitions. If the Commissioner determines that additional time is needed to study and investigate the petition, he shall by written notice to the petitioner extend the 90-day period for not more than 180 days after the filing of the petition.

(b) Substantive amendments. After a petition has been filed, the petitioner may submit additional information or data in support thereof. In such cases, if the Commissioner determines that the additional information or data amounts to a substantive amendment, the petition as amended will be given a new filing date, and the time limitation will begin to run anew. If nonclinical laboratory studies are involved, additional information and data submitted in support of filed petitions shall include, with respect to each nonclinical laboratory study contained in the petition, either a statement that the study was conducted in compliance with the requirements set forth in part 58 of this chapter, or, if the study was not conducted in compliance with such regulations, a brief statement of the reason for the noncompliance. If clinical investigations involving human subjects are involved, additional information or data submitted in support of filed petitions shall include statements regarding each such clinical investigation from which the information or data are derived, that it either was conducted in compliance with the requirements for institutional review set forth in part 56 of this chapter, or was not subject to such requirements in accordance with §56.104 or §56.105, and that it was conducted in compliance with the requirements for informed consent set forth in part 50 of this chapter.

(c) Withdrawal of petitions without prejudice. (1) In some cases the Commissioner may notify the petitioner that the petition, while technically complete, is inadequate to justify the establishment of a regulation or the
§ 71.15 Confidentiality of data and information in color additive petitions.

(a) The following data and information in a color additive petition are available for public disclosure, unless extraordinary circumstances are shown, after the notice of filing of the petition is published in the Federal Register, or, if the petition is not promptly filed because of deficiencies in it, after the petitioner is informed that it will not be filed because of the deficiencies involved:

1. All safety and functionality data and information submitted with or incorporated by reference in the petition.

2. A protocol for a test or study, unless it is shown to fall within the exemption established in § 20.61 of this chapter.

3. Adverse reaction reports, product experience reports, consumer complaints, and other similar data and information, after deletion of:

   (i) Names and any information that would identify the person using the product.

   (ii) Names and any information that would identify any third party involved with the report, such as a physician or hospital or other institution.

4. A list of all ingredients contained in a color additive, whether or not it is in descending order of predominance. A particular ingredient or group of ingredients shall be deleted from any such list prior to public disclosure if it is shown to fall within the exemption established in § 20.61 of this chapter, and a notation shall be made that any such ingredient list is incomplete.

5. An assay method or other analytical method, unless it serves no regulatory or compliance purpose and is shown to fall within the exemption established in § 20.61 of this chapter.

6. All records showing the Food and Drug Administration’s testing of or action on a particular lot of a certifiable color additive.

(b) The following data and information in a color additive petition are not available for public disclosure unless they have been previously disclosed to the public as defined in § 20.81 of this chapter or they relate to a product or ingredient that has been abandoned and they no longer represent a trade secret or confidential commercial or financial information as defined in § 20.61 of this chapter:

1. Manufacturing methods or processes, including quality control procedures.

2. Production, sales, distribution, and similar data and information, except that any compilation of such data and information aggregated and prepared in a way that does not reveal data or information which is not available for public disclosure under this provision is available for public disclosure.

3. Quantitative or semiquantitative formulas.

(c) All correspondence and written summaries of oral discussions relating to a color additive petition are available for public disclosure in accordance with the provisions of part 20 of this chapter when the color additive regulation is published in the Federal Register.

(d) For purposes of this regulation, safety and functionality data include all studies and tests on a color additive on animals and humans and all studies and tests on a color additive for identity, stability, purity, potency, performance, and usefulness.
§ 71.18 Petition for exemption from certification.

A manufacturer, packer, or distributor of a color additive or color additive mixture may petition for an exemption from certification pursuant to part 10 of this chapter. Any such petition shall show why such certification is not necessary for the protection of public health.

Subpart B—Administrative Action on Petitions

§ 71.20 Publication of regulation.

The Commissioner will forward for publication in the Federal Register, within 90 days after filing of the petition (or within 180 days if the time is extended as provided for in section 721(d)(1) of the act):

(a) A regulation listing in part 73 or 74 of this chapter the color additive on the appropriate list or lists as provided under section 721(b)(1).

(1) Such a regulation may list the color additive for use generally in or on foods, drugs, or cosmetics or for use in coloring the human body, as the case may be, or may prescribe the conditions under which the color additive may be safely used (including, but not limited to, specifications as to the particular food, drug, or cosmetic or classes of food, drugs, or cosmetics in or on which such color additive may be used, or for the material intended for coloring the human body; the maximum quantity of any straight color or diluent that may be used or permitted to remain in or on such food, drug, or cosmetic or article intended for coloring the human body; the manner in which such color additive may be added to or used in or on such food, drug, or cosmetic or for coloring the human body; and any directions or other labeling or packing requirements for such color additives deemed necessary to assure the safety of such use).

(2) Such regulations shall list the color additive only for the use or uses for which it has been found suitable and for which it may safely be employed. Alternatively, the Commissioner shall by order deny the petition, and notify the petitioner of such order and the reasons therefor.

(b) Whenever the Commissioner finds that batch certification is not necessary for the protection of the public health he will, by order, exempt the color additive from the certification procedure. In determining whether certification of a color additive is necessary, the Commissioner will consider the composition of the additive, its manufacturing process, possible impurities, its toxic potential, control and analytical procedures necessary to assure compliance with the listing specifications, and the variability of its composition.

§ 71.22 Deception as a basis for refusing to issue regulations; deceptive use of a color additive for which a regulation has issued.

The Commissioner shall refuse to issue a regulation listing a color additive, if in his judgment the data before him show that such proposed use would promote deception of the consumer or would result in misbranding or adulteration within the meaning of the act. Such a finding shall be by order published in the Federal Register subject to the filing of objections and a request for a hearing by adversely affected parties. The issuance of a regulation for a color additive authorizing its use generally in or on a food, drug, or cosmetic shall not be construed as authorization to use the color additive in a manner that may promote deception or conceal damage or inferiority. The use of a color additive to promote deception or conceal damage or inferiority shall be considered as the use of a color additive for which no regulation has issued pursuant to section 721(b) of the act, even though the regulation is effective for other uses.

§ 71.25 Condition for certification.

(a) When the Commissioner cannot conclude from the information before him that there is a basis for exempting a color additive from the requirement of batch certification, he will so order by appropriate listing in part 74 of this chapter. The Commissioner’s order shall state in detail the specifications that shall be met by the color additive.

(b) Each order shall state a period of time after which use of a color additive subject to batch certification but not
§ 71.26 from a batch certified by procedure prescribed in this section would result in adulteration of the product in which it is used.

§ 71.26 Revocation of exemption from certification.
If information becomes available to the Commissioner that a color additive that has been granted exemption from certification should not, for the protection of the public health, be so exempted, such exemption will be canceled by a notice published in the Federal Register.

§ 71.27 Listing and exemption from certification on the Commissioner's initiative.
Where a petition for a regulation to list a color additive has not been received and the Commissioner has available facts which demonstrate that a color additive should be listed and/or that certification procedure is not necessary in order to protect the public health, he may list such color additive by appropriate regulation and listing in part 73 or 74 of this chapter.

§ 71.30 Procedure for filing objections to regulations.
(a) Objections and hearings relating to color additive regulations under section 721 (b) and (c) of the act shall be governed by parts 10, 12, 13, 14, 15, 16, and 19 of this chapter.
(b) The fees specified in § 70.19 of this chapter shall be applicable.

§ 71.37 Exemption of color additives for investigational use.
(a) A shipment or other delivery of a color additive or of a food, drug, or cosmetic containing such a color additive for investigational use by experts qualified to determine safety shall be exempt from the requirements of section 402(c), 501(a), or 601(e) of the act, provided that the color additive or the food, drug, or cosmetic containing the color additive bears a label which states prominently, “Caution—Contains new color additive—For investigational use only.” No animals used in such investigations, or their products, such as milk or eggs, shall be used for food purposes, unless the sponsor or the investigator has submitted to the Commissioner data demonstrating that such use will be consistent with the public health, and the Commissioner, proceeding as he would in a matter involving section 409(i) of the act, has notified the sponsor or investigator that the proposed disposition for food is authorized. Any person who contests a refusal to grant such authorization shall have an opportunity for a regulatory hearing before the Food and Drug Administration pursuant to part 16 of this chapter.
(b) The person who introduced such shipment or who delivers the color additive or a food, drug, or cosmetic containing such an additive into interstate commerce shall maintain adequate records showing the name and post-office address of the expert to whom the color additive is shipped, date, quantity, and batch or code mark of each shipment and delivery for a period of 2 years after such shipment and delivery. Upon the request of a properly authorized employee of the Department, at reasonable times, he shall make such records available for inspection and copying.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Subpart A—Foods

Sec.
73.30 Annatto extract.
73.35 Astaxanthin.
73.40 Dehydrated beets (beet powder).
73.50 Ultramarine blue.
73.55 Canthaxanthin.
73.65 Caramel.
73.90 β-Apo-8′-carotenal.
73.95 β-Carotene.
73.100 Cochineal extract; carmine.
73.140 Toasted partially defatted cooked cottonseed flour.
73.160 Ferrous gluconate.
73.165 Ferrous lactate.
73.169 Grape color extract.
73.170 Grape skin extract (enocianina).
73.200 Synthetic iron oxide.
73.250 Fruit juice.
73.275 Vegetable juice.
73.276 Dried algae meal.
73.295 Tagetes (Aztec marigold) meal and extract.
73.300 Carrot oil.
73.315 Corn endosperm oil.
§ 73.1 Diluents in color additive mixtures for food use exempt from certification.

The following substances may be safely used as diluents in color additive mixtures for food use exempt from certification, subject to the condition that each straight color in the mixture has
§ 73.1  
been exempted from certification or, if not so exempted, is from a batch that has previously been certified and has not changed in composition since certification. If a specification for a particular diluent is not set forth in this part 73, the material shall be of a purity consistent with its intended use.

(a) General use. (1) Substances that are generally recognized as safe under the conditions set forth in section 201(s) of the act.

(2) Substances meeting the definitions and specifications set forth under subchapter B of this chapter, and which are used only as prescribed by such regulations.

(3) The following:

<table>
<thead>
<tr>
<th>Substances Definitions and specifications</th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calcium disodium EDTA (calcium disodium ethylenediamine-tetraacetate)</td>
<td>Contains calcium disodium ethylenediamine-tetraacetate dihydrate (CAS Reg. No. 6766-87-6) as set forth in the Food Chemicals Codex, 3d ed., p. 50, 1981.</td>
</tr>
<tr>
<td>Castor oil</td>
<td>As set forth in U.S.P. XVI</td>
</tr>
<tr>
<td>Dioctylsodium sulfosuccinate</td>
<td>As set forth in sec. 172.810 of this chapter.</td>
</tr>
<tr>
<td>Disodium EDTA (disodium ethylenediamine-tetraacetate)</td>
<td>Contains disodium ethylenediamine-tetraacetate dihydrate (CAS Reg. No. 6381-92-6) as set forth in the Food Chemicals Codex, 3d ed., p. 104, 1981.</td>
</tr>
</tbody>
</table>

(b) Special use—(1) Diluents in color additive mixtures for marking food—(i) Inks for marking food supplements in tablet form, gum, and confectionery. Items listed in paragraph (a) of this section and the following:

<table>
<thead>
<tr>
<th>Substances Definitions and specifications</th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcohol, SDA±3A</td>
<td>As set forth in 26 CFR pt. 212</td>
</tr>
<tr>
<td>n-Butyl alcohol</td>
<td>As set forth in N.F. XI</td>
</tr>
<tr>
<td>Cetyl alcohol</td>
<td>As set forth in N.F. XI</td>
</tr>
<tr>
<td>Cyclohexane</td>
<td>As set forth in sec. 172.868 of this chapter.</td>
</tr>
<tr>
<td>Ethyl cellulose</td>
<td></td>
</tr>
<tr>
<td>Ethylene glycol monoethyl ether</td>
<td>As set forth in sec. 172.840 of this chapter.</td>
</tr>
<tr>
<td>Isobutyl alcohol</td>
<td></td>
</tr>
<tr>
<td>Isopropyl alcohol</td>
<td></td>
</tr>
<tr>
<td>Polyethylene sorbitan monolaurate (polysorbate 60)</td>
<td>As set forth in sec. 172.840 of this chapter.</td>
</tr>
<tr>
<td>Polyvinyl acetate</td>
<td>Molecular weight, minimum 2,000.</td>
</tr>
<tr>
<td>Polyvinylpyrrolidone</td>
<td>As set forth in sec. 173.55 of this chapter.</td>
</tr>
<tr>
<td>Rosin and rosin derivatives</td>
<td>As set forth in sec. 172.615 of this chapter.</td>
</tr>
<tr>
<td>Shellac, purified</td>
<td></td>
</tr>
</tbody>
</table>

(ii) Inks for marking fruit and vegetables. Items listed in paragraph (a) of this section and the following:

<table>
<thead>
<tr>
<th>Substances Definitions and specifications</th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acetone</td>
<td>As set forth in N.F. XI</td>
</tr>
</tbody>
</table>
### § 73.30 Annatto extract.

(a) Identity. (1) The color additive annatto extract is an extract prepared from annatto seed, Bixa orellana L., using any one or an appropriate combination of the food-grade extractants listed in paragraph (a)(1)(i) and (ii) of this section:

(i) Alkaline aqueous solution, alkaline propylene glycol, ethyl alcohol or alkaline solutions thereof, edible vegetable oils or fats, monoglycerides, and diglycerides from the glycerolysis of edible vegetable oils or fats. The alkaline alcohol or aqueous extracts may be treated with food-grade acids to precipitate annatto pigments, which are separated from the liquid and dried, with or without intermediate recrystallization, using the solvents listed in paragraph (a)(1)(ii) of this section. Food-grade alkalis or carbonates may be added to adjust alkalinity.

(ii) Acetone, ethylene dichloride, hexane, isopropyl alcohol, methyl alcohol, methyl chloride, trichloroethylene.

(2) Diluents in color additive mixtures for coloring shell eggs. Items listed in paragraph (a) of this section and the following, subject to the condition that there is no penetration of the color additive mixture or any of its components through the eggshell into the egg:

- Alcohol, denatured, formula 23A (26 CFR part 212), Internal Revenue Service.
- Damar gum (resin).
- Diethylene glycol distearate.
- Dioctyl sodium sulfosuccinate.
- Ethyl cellulose (as identified in § 172.868 of this chapter).
- Ethylene glycol distearate.
- Japan wax.
- Limed rosin.
- Naphtha.
- Pentaerythritol ester of fumaric acid-rosin adduct.
- Polyethylene glycol 6000 (as identified in § 172.820 of this chapter).
- Polyvinyl alcohol.
- Rosin and rosin derivatives (as identified in § 172.820 of this chapter).

(3) Miscellaneous special uses. Items listed in paragraph (a) of this section and the following:

<table>
<thead>
<tr>
<th>Substances</th>
<th>Definitions and specifications</th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Polyvinylpyrrolidone</td>
<td>As set forth in sec. 173.55 of this chapter.</td>
<td>In or as food-tablet coatings; limit, not more than 0.1 pct in the finished food; labeling of color additive mixtures containing polyvinylpyrrolidone shall bear adequate directions for use that will result in a food meeting this restriction.</td>
</tr>
</tbody>
</table>
§ 73.35  

(b) Specifications. Annatto extract, including pigments precipitated therefrom, shall conform to the following specifications:

(1) Arsenic (as As), not more than 3 parts per million; lead as Pb, not more than 10 parts per million.

(2) When solvents listed under paragraph (a)(1)(ii) of this section are used, annatto extract shall contain no more solvent residue than is permitted of the corresponding solvents in spice oleoresins under applicable food additive regulations in parts 170 through 189 of this chapter.

(c) Uses and restrictions. Annatto extract may be safely used for coloring foods generally, in amounts consistent with good manufacturing practice, except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act unless added color is authorized by such standards.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom and intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter. Labels shall bear information showing that the color is derived from annatto seed.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.35 Astaxanthin.

(a) Identity. (1) The color additive astaxanthin is 3, 3'-dihydroxy-β, β-carotene-4, 4'-dione.

(2) Astaxanthin may be added to the fish feed only as a component of a stabilized color additive mixture. Color additive mixtures for fish feed use made with astaxanthin may contain only those diluents that are suitable and are listed in this subpart as safe for use in color additive mixtures for coloring foods.

(b) Specifications. Astaxanthin shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Physical state, solid.  
0.05 percent solution in chloroform, complete and clear.  
Absorption maximum wavelength 484–493 nanometers (in chloroform).  
Residue on ignition, not more than 0.1 percent.  
Total carotenoids other than astaxanthin, not more than 4 percent.  
Lead, not more than 5 parts per million.  
Arsenic, not more than 2 parts per million.  
Mercury, not more than 1 part per million.  
Heavy metals, not more than 10 parts per million.  
Assay, minimum 96 percent.

(c) Uses and restrictions. Astaxanthin may be safely used in the feed of salmonid fish in accordance with the following prescribed conditions:

(1) The color additive is used to enhance the pink to orange-red color of the flesh of salmonid fish.

(2) The quantity of color additive in feed is such that the color additive shall not exceed 80 milligrams per kilogram (72 grams per ton) of finished feed.

(d) Labeling requirements. (1) The labeling of the color additive and any premixes prepared therefrom shall bear expiration dates for the sealed and open container (established through generally accepted stability testing methods), other information required by §70.25 of this chapter, and adequate directions to prepare a final product complying with the limitations prescribed in paragraph (c) of this section.

(2) The presence of the color additive in finished fish feed prepared according to paragraph (c) of this section shall be declared in accordance with §501.4 of this chapter.

(3) The presence of the color additive in salmonid fish that have been fed feeds containing astaxanthin shall be declared in accordance with §§101.22(k)(2) and 101.100(a)(2) of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

[60 FR 18738, Apr. 13, 1995]
§ 73.40 Dehydrated beets (beet powder).  
(a) Identity. (1) The color additive dehydrated beets is a dark red powder prepared by dehydrating sound, mature, good quality, edible beets.
(2) Color additive mixtures made with dehydrated beets may contain as diluents only those substances listed in this subpart as safe and suitable for use in color additive mixtures for coloring foods.
(b) Specifications. The color additive shall conform to the following specifications:
   - Volatile matter, not more than 4 percent.
   - Acid insoluble ash, not more than 0.5 percent.
   - Lead (as Pb), not more than 10 parts per million.
   - Arsenic (as As), not more than 1 part per million.
   - Mercury (as Hg), not more than 1 part per million.
(c) Uses and restrictions. Dehydrated beets may be safely used for the coloring of foods generally in amounts consistent with good manufacturing practice, except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act, unless the use of added color is authorized by such standards.
(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.
(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.50 Ultramarine blue.  
(a) Identity. The color additive ultramarine blue is a blue pigment obtained by calcining a mixture of kaolin, sulfur, sodium carbonate, and carbon at temperatures above 700 °C. Sodium sulfate and silica may also be incorporated in the mixture in order to vary the shade. The pigment is a complex sodium aluminum sulfosilicate having the approximate formula \( \text{Na}_7\text{Al}_6\text{Si}_6\text{O}_{24}\text{S}_3 \).
(b) Specifications. Ultramarine blue shall conform to the following specifications:
   - Lead (as Pb), not more than 10 parts per million.
   - Arsenic (as As), not more than 1 part per million.
   - Mercury (as Hg), not more than 1 part per million.
(c) Uses and restrictions. The color additive ultramarine blue may be safely used for coloring salt intended for animal feed subject to the restriction that the quantity of ultramarine blue does not exceed 0.5 percent by weight of the salt.
(d) Labeling requirements. The color additive shall be labeled in accordance with the requirements of § 70.25 of this chapter.
(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.75 Canthaxanthin.  
(a) Identity. (1) The color additive canthaxanthin is \( \beta \)-carotene-4,4'-dione.
(2) Color additive mixtures for food use made with canthaxanthin may contain only those diluents that are suitable and that are listed in this subpart as safe for use in color additive mixtures for coloring foods.
(b) Specifications. Canthaxanthin shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:
   - Physical state, solid.
   - 1 percent solution in chloroform, complete and clear.
   - Melting range (decomposition), 207 °C. to 212 °C. (corrected).
   - Loss on drying, not more than 0.2 percent.
   - Residue on ignition, not more than 0.2 percent.
   - Total carotenoids other than trans-canthaxanthin, not more than 5 percent.
   - Lead, not more than 10 parts per million.
   - Arsenic, not more than 3 parts per million.
   - Mercury, not more than 1 part per million.
   - Assay, 96 to 101 percent.
(c) Uses and restrictions. (1) The color additive canthaxanthin may be safely
§ 73.85 Caramel.

(a) Identity. (1) The color additive caramel is the dark-brown liquid or solid material resulting from the carefully controlled heat treatment of the following food-grade carbohydrates:

Dextrose.
Invert sugar.
Lactose.
Malt sirup.
Molasses.
Starch hydrolysates and fractions thereof.
Sucrose.

(2) The food-grade acids, alkalis, and salts listed in this subparagraph may be employed to assist caramelization, in amounts consistent with good manufacturing practice.

(i) Acids:
Acetic acid.
Citric acid.
Phosphoric acid.
Sulfuric acid.
Sulfurous acid.

(ii) Alkalis:
Ammonium hydroxide.
Calcium hydroxide U.S.P.
Potassium hydroxide.
Sodium hydroxide.

(iii) Salts: Ammonium, sodium, or potassium carbonate, bicarbonate, phosphate (including dibasic phosphate and monobasic phosphate), sulfate, and sulfite.

(3) Polyglycerol esters of fatty acids, identified in §172.854 of this chapter, may be used as antifoaming agents in amounts not greater than that required to produce the intended effect.

(4) Color additive mixtures for food use made with caramel may contain only diluents that are suitable and

(4) The presence of the color additive in salmonid fish that have been fed feeds containing canthaxanthin shall be declared in accordance with §§101.22(b), (c), and (k)(2), and 101.100(a)(2) of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

that are listed in this subpart as safe in color additive mixtures for coloring foods.

(b) Specifications. Caramel shall conform to the following specifications:

Lead (as Pb), not more than 10 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 0.1 part per million.

(c) Uses and restrictions. Caramel may be safely used for coloring foods generally, in amounts consistent with good manufacturing practice, except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act unless added color is authorized by such standards.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom and intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§73.95 β-Carotene.

(a) Identity. (1) The color additive is β-carotene prepared synthetically or obtained from natural sources.

(2) Color additive mixtures for food use made with β-carotene may contain only diluents that are suitable and that are listed in this subpart as safe in color additive mixtures for coloring foods.

(b) Specifications. β-carotene shall conform to the following specifications:

Physical state, solid.
1 percent solution in chloroform, clear.
Melting point (decomposition), 136 °C–140 °C (corrected).
Loss of weight on drying, not more than 0.2 percent.
Residue on ignition, not more than 0.2 percent.
Lead (as Pb), not more than 10 parts per million.
Arsenic (as As), not more than 3 parts per million.
Assay (spectrophotometric), 96-101 percent.

(c) Uses and restrictions. The color additive β-carotene may be safely used for coloring foods generally, subject to the following restrictions:

(1) The quantity of β-carotene does not exceed 15 milligrams per pound of solid or semisolid food or 15 milligrams per pint of liquid food.

(2) It may not be used to color foods for which standards of identity have been promulgated under section 401 of the act unless added color is authorized by such standards.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom and intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.
§ 73.100  Cochineal extract; carmine.

(a) Identity. (1) The color additive cochineal extract is the concentrated solution obtained after removing the alcohol from an aqueous-alcoholic extract of cochineal (Dactylopius coccus costa (Coccus cacti L.)). The coloring principle is chiefly carminic acid.

(2) The color additive carmine is the aluminum or calcium-aluminum lake on an aluminum hydroxide substrate of the coloring principles, chiefly carminic acid, obtained by an aqueous extraction of cochineal (Dactylopius coccus costa (Coccus cacti L.)).

(3) Color additive mixtures for food use made with cochineal extract or carmine may contain only diluents that are suitable and that are listed in this subpart as safe in color additive mixtures for coloring foods.

(b) Specifications. (1) Cochineal extract shall conform to the following specifications:

- pH, not less than 5.0 and not more than 5.5 at 25°C.
- Protein (N × 6.25), not more than 2.2 percent.
- Total solids, not less than 5.7 and not more than 6.3 percent.
- Methyl alcohol, not more than 150 parts per million.
- Lead (as Pb), not more than 10 parts per million.
- Arsenic (as As), not more than 1 part per million.
- Carminic acid, not less than 1.8 percent.

(2) Carmine shall conform to the following specifications:

- Volatile matter (at 135°C for 3 hours), not more than 2.0 percent.
- Ash, not more than 12.0 percent.
- Lead (as Pb), not more than 10 parts per million.
- Arsenic (as As), not more than 1 part per million.

(c) Uses and restrictions. Carmine and cochineal extract may be safely used for coloring foods in amounts consistent with good manufacturing practice, except that they may not be used to color foods for which standards of identity have been promulgated under section 401 of the act unless added color is authorized by such standards.

(d) Labeling requirements. The label of the color additives and any mixtures intended solely or in part for coloring purposes prepared therefrom shall conform to the requirements of §70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.140  Toasted partially defatted cooked cottonseed flour.

(a) Identity. (1) The color additive toasted partially defatted cooked cottonseed flour is a product prepared as follows: Food quality cottonseed is delinted and decorticated; the meats are screened, aspirated, and rolled; moisture is adjusted, the meats heated, and the oil expressed; the cooked meats...
are cooled, ground, and reheated to obtain a product varying in shade from light to dark brown.

(2) Color additive mixtures for food use made with toasted partially defatted cooked cottonseed flour may contain only diluents that are suitable and that are listed in this subpart as safe in color additive mixtures for coloring foods.

(b) Specifications. Toasted partially defatted cooked cottonseed flour shall conform to the following specifications:

- Arsenic: It contains no added arsenic compound and therefore may not exceed a maximum natural background level of 0.2 part per million total arsenic, calculated as As.
- Lead (as Pb), not more than 10 parts per million.
- Free gossypol content, not more than 450 parts per million.

(c) Uses and restrictions. The color additive toasted partially defatted cooked cottonseed flour may be safely used for coloring foods generally, in amounts consistent with good manufacturing practice, except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act, unless added color is authorized by such standards.

(d) Labeling. The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.165 Ferrous lactate.

(a) Identity. The color additive ferrous lactate is the ferrous lactate defined in §184.1311 of this chapter.

(b) Specifications. Ferrous lactate shall meet the specifications given in the Food Chemicals Codex, 4th ed. (1996), pp. 154 to 155, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) Uses and restrictions. Ferrous lactate may be safely used in amounts consistent with good manufacturing practice for the coloring of ripe olives.

(d) Labeling. The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the Federal Food, Drug, and Cosmetic Act (the act).

§ 73.165 Ferrous gluconate.

(a) Identity. The color additive ferrous gluconate is the ferrous gluconate defined in the Food Chemicals Codex, 3d Ed. (1981), which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (a) of this section.

(b) Specifications. Ferrous gluconate shall meet the specifications given in the Food Chemicals Codex, 3d Ed. (1981), which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (a) of this section.

(c) Uses and restrictions. Ferrous gluconate may be safely used in amounts consistent with good manufacturing practice for the coloring of ripe olives.

(d) Labeling. The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the Federal Food, Drug, and Cosmetic Act (the act).
§ 73.169 Grape color extract.

(a) Identity. (1) The color additive grape color extract is an aqueous solution of anthocyanin grape pigments made from Concord grapes or a dehydrated water soluble powder prepared from the aqueous solution. The aqueous solution is prepared by extracting the pigments from precipitated lees produced during the storage of Concord grape juice. It contains the common components of grape juice, namely anthocyanins, tartrates, malates, sugars, and minerals, etc., but not in the same proportion as found in grape juice. The dehydrated water soluble powder is prepared by spray drying the aqueous solution containing added malto-dextrin.

(2) Color additive mixtures for food use made with grape color extract may contain only those diluents listed in this subpart as safe and suitable in color additive mixtures for coloring foods.

(b) Specifications. Grape color extract shall conform to the following specifications:

Pesticide residues, not more than permitted in or on grapes by regulations promulgated under section 408 of the Federal Food, Drug, and Cosmetic Act. Lead (as Pb), not more than 10 parts per million. Arsenic (as As), not more than 1 part per million.

(c) Uses and restrictions. Grape color extract may be safely used for the coloring of nonbeverage food, except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act, unless the use of added color is authorized by such standards.

(d) Labeling. The color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to the other information required by the act, labeling in accordance with the provisions of § 70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches are exempt from the certification requirements of section 722(c) of the Act.

[46 FR 47532, Sept. 29, 1981]

§ 73.170 Grape skin extract (enocianina).

(a) Identity. (1) The color additive grape skin extract (enocianina) is a purplish-red liquid prepared by the aqueous extraction (steeping) of the fresh deseeded marc remaining after grapes have been pressed to produce grape juice or wine. It contains the common components of grape juice; namely, anthocyanins, tartaric acid, tannins, sugars, minerals, etc., but not in the same proportions as found in grape juice. During the steeping process, sulphur dioxide is added and most of the extracted sugars are fermented to alcohol. The extract is concentrated by vacuum evaporation, during which practically all of the alcohol is removed. A small amount of sulphur dioxide may be present.

(2) Color additive mixtures for food use made with grape skin extract (enocianina) may contain only those diluents listed in this subpart as safe and suitable in color additive mixtures for coloring foods.

(b) Specifications. Grape skin extract (enocianina) shall conform to the following specifications:

Pesticide residues, not more than permitted in or on grapes by regulations promulgated under section 408 of the Federal Food, Drug, and Cosmetic Act. Lead (as Pb), not more than 10 parts per million. Arsenic (as As), not more than 1 part per million.

(c) Uses and restrictions. Grape skin extract (enocianina) may be safely used for the coloring of still and carbonated drinks and aces, beverage bases, and alcoholic beverages subject to the following restrictions:

(1) It may not be used to color foods for which standards of identity have been promulgated under section 401 of the act unless artificial color is authorized by such standards.

(2) Its use in alcoholic beverages shall be in accordance with the provisions of parts 4 and 5, title 27 CFR.

(d) Labeling requirements. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter. The common or usual name of the color additive is "grape
§ 73.200 Synthetic iron oxide.

(a) Identity. (1) The color additive synthetic iron oxide consists of any one or any combination of synthetically prepared iron oxides, including the hydrated forms. It is free from admixture with other substances.

(2) Color additive mixtures for food use made with synthetic iron oxide may contain only those diluents that are suitable and that are listed in this subpart as safe for use in color additive mixtures for coloring foods.

(b) Specifications. (1) Synthetic iron oxide for human food use shall conform to the following specifications:

<table>
<thead>
<tr>
<th>Substance</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arsenic (as As)</td>
<td>Not more than 3 parts per million</td>
</tr>
<tr>
<td>Lead (as Pb)</td>
<td>Not more than 10 parts per million</td>
</tr>
<tr>
<td>Mercury (as Hg)</td>
<td>Not more than 1 part per million</td>
</tr>
</tbody>
</table>

(2) Synthetic iron oxide for dog and cat food use shall conform to the following specifications:

<table>
<thead>
<tr>
<th>Substance</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arsenic (as As)</td>
<td>Not more than 5 parts per million</td>
</tr>
<tr>
<td>Lead (as Pb)</td>
<td>Not more than 20 parts per million</td>
</tr>
<tr>
<td>Mercury (as Hg)</td>
<td>Not more than 3 parts per million</td>
</tr>
</tbody>
</table>

(c) Uses and restrictions. (1) Synthetic iron oxide may be safely used for the coloring of sausage casings intended for human consumption in an amount not exceeding 0.10 percent by weight of the finished food.

(2) Synthetic iron oxide may be safely used for the coloring of dog and cat foods in an amount not exceeding 0.25 percent by weight of the finished food.

(d) Labeling requirements. The label of the color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.250 Fruit juice.

(a) Identity. (1) The color additive fruit juice is prepared either by expressing the juice from mature varieties of fresh, edible fruits, or by the water infusion of the dried fruit. The color additive may be concentrated or dried. The definition of fruit juice in this paragraph is for the purpose of identity as a color additive only and shall not be construed as a standard of identity under section 401 of the act. However, where a standard of identity for a particular fruit juice has been promulgated under section 401 of the act, it shall conform to such standard.

(2) Color additive mixtures made with fruit juice may contain as diluents only those substances listed in this subpart as safe and suitable in color additive mixtures for coloring foods.

(b) Uses and restrictions. Fruit juice may be safely used for the coloring of foods generally, in amounts consistent with good manufacturing practice, except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act, unless the use of added color is authorized by such standards.

(c) Labeling. The color additive and any mixtures intended solely or in part for coloring purposes prepared therefrom shall bear, in addition to the other information required by the act, labeling in accordance with the provisions of § 70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.260 Vegetable juice.

(a) Identity. (1) The color additive vegetable juice is prepared either by expressing the juice from mature varieties of fresh, edible vegetables, or by...
§ 73.275 Dried algae meal.

(a) Identity. The color additive dried algae meal is a dried mixture of algae cells (genus Spongiococcum, separated from its culture broth), molasses, corn steep liquor, and a maximum of 0.3 percent ethoxyquin. The algae cells are produced by suitable fermentation, under controlled conditions, from a pure culture of the genus Spongiococcum.

(b) Uses and restrictions. The color additive dried algae meal may be safely used in chicken feed in accordance with the following prescribed conditions:

(1) The color additive is used to enhance the yellow color of chicken skin and eggs.

(2) The quantity of the color additive incorporated in the feed is such that the finished feed:

(i) Is supplemented sufficiently with xanthophyll and associated carotenoids so as to accomplish the intended effect described in paragraph (b)(1) of this section; and

(ii) Meets the tolerance limitation for ethoxyquin in animal feed prescribed in §573.380 of this chapter.

(c) Labeling. The label of the color additive and any premixes prepared therefrom shall bear in addition to the information required by §70.25 of this chapter:

(1) A statement of the concentrations of xanthophyll and ethoxyquin contained therein.

(2) Adequate directions to provide a final product complying with the limitations prescribed in paragraph (b) of this section.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.295 Tagetes (Aztec marigold) meal and extract.

(a) Identity. (1) The color additive tagetes (Aztec marigold) meal is the dried, ground flower petals of the Aztec marigold (Tagetes erecta L.) mixed with not more than 0.3 percent ethoxyquin.

(2) The color additive tagetes (Aztec marigold) extract is a hexane extract of the flower petals of the Aztec marigold (Tagetes erecta L.). It is mixed with an edible vegetable oil, or with an edible vegetable oil and a hydrogenated edible vegetable oil, and not more than 0.3 percent ethoxyquin. It may also be mixed with soy flour or corn meal as a carrier.

(b) Specifications. (1) Tagetes (Aztec marigold) meal is free from admixture with other plant material from Tagetes erecta L. or from plant material or flowers of any other species of plants.
(2) Tagetes (Aztec marigold) extract shall be prepared from tagetes (Aztec marigold) petals meeting the specifications set forth in paragraph (b)(1) of this section and shall conform to the following additional specifications:

<table>
<thead>
<tr>
<th>Specification</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Melting point</td>
<td>53.5±55.0°C</td>
</tr>
<tr>
<td>Iodine value</td>
<td>132±145</td>
</tr>
<tr>
<td>Saponification value</td>
<td>175-200</td>
</tr>
<tr>
<td>Acid value</td>
<td>0.60-1.20</td>
</tr>
<tr>
<td>Titer</td>
<td>35.5°C-37.0°C</td>
</tr>
<tr>
<td>Unsaponifiable matter</td>
<td>23.0 percent-27.0 percent</td>
</tr>
<tr>
<td>Hexane residue</td>
<td>Not more than 25 p.p.m.</td>
</tr>
</tbody>
</table>

All determinations, except the hexane residue, shall be made on the initial extract of the flower petals (after drying in a vacuum oven at 60°C for 24 hours) prior to the addition of the oils and ethoxyquin. The hexane determination shall be made on the color additive after the addition of the vegetable oils, hydrogenated vegetable oils, and ethoxyquin.

(c) Uses and restrictions. The color additives tagetes (Aztec marigold) meal and extract may be safely used in chicken feed in accordance with the following prescribed conditions:

1. The color additives are used to enhance the yellow color of chicken skin and eggs.
2. The quantity of the color additives incorporated in the feed is such that the finished feed:
   i. Is supplemented sufficiently with xanthophyll and associated carotenoids so as to accomplish the intended effect described in paragraph (c)(1) of this section; and
   ii. Meets the tolerance limitation for ethoxyquin in animal feed prescribed in §73.380 of this chapter.

(d) Labeling requirements. The label of the color additive and any premixes prepared therefrom shall bear, in addition to the information required by §70.25 of this chapter:

1. A statement of the concentrations of xanthophyll and ethoxyquin contained therein.
2. Adequate directions to provide a final product complying with the limitations prescribed in paragraph (c) of this section.

§ 73.315 Corn endosperm oil.

(a) Identity. (1) The color additive corn endosperm oil is a reddish-brown liquid composed chiefly of glycerides, fatty acids, sitosterols, and carotenoid pigments obtained by isopropyl alcohol and hexane extraction from the gluten
§ 73.340 Paprika oleoresin.

(a) Identity. (1) The color additive paprika oleoresin is the combination of flavor and color principles obtained from paprika (Capsicum annuum L.) by extraction, using any one or a combination of the following solvents:
   - Acetone
   - Ethyl alcohol
   - Ethylene dichloride
   - Methanol
   - Methylene chloride
   - Hexane
   - Isopropyl alcohol
   - Methyl alcohol
   - Trichloroethylene

   The definition of paprika oleoresin in this paragraph is for the purpose of identity as a color additive only, and shall not be construed as setting forth an official standard for paprika under section 401 of the act.

(b) Uses and restrictions. Paprika oleoresin may contain as diluents only those substances listed in this subpart as safe and suitable in color additive mixtures for coloring foods.

(c) Labeling. The color additive and any mixtures intended solely or in part for coloring purposes prepared therefrom shall bear, in addition to the information required by the act, labeling in accordance with the provisions of § 70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.345 Paprika.

(a) Identity. (1) The color additive paprika is the ground dried pod of mild capsicum (Capsicum annuum L.). The definition of paprika in this paragraph is for the purpose of identity as a color additive only and shall not be construed as setting forth an official standard for paprika under section 401 of the act.

(b) Uses and restrictions. Paprika may contain as diluents only those substances listed in this subpart as safe and suitable in color additive mixtures for coloring foods.

(c) Labeling. The color additive and any mixtures made with paprika may contain as diluents only those substances listed in this subpart as safe and suitable in color additive mixtures for coloring foods.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.
corresponding solvents in spice oleoresins under applicable food additive regulations in parts 170 through 189 of this chapter.

(c) Uses and restrictions. Paprika oleoresin may be safely used for the coloring of foods generally in amounts consistent with good manufacturing practice, except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act, unless the use of added color is authorized by such standards.

(d) Labeling. The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.500 Saffron.

(a) Identity. (1) The color additive saffron is the dried stigma of Crocus sativus L. The definition of saffron in this paragraph is for the purpose of identity as a color additive only, and shall not be construed as setting forth an official standard for saffron under section 401 of the act.

(2) Color additive mixtures made with saffron may contain as diluents only those substances listed in this subpart as safe and suitable in color additive mixtures for coloring foods.

(b) Uses and restrictions. Saffron may be safely used for the coloring of foods generally, in amounts consistent with good manufacturing practice, except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act, unless the use of added color is authorized by such standards.

(c) Labeling. The color additive and any mixtures intended solely or in part for coloring purposes prepared therefrom shall bear, in addition to the other information required by the act, labeling in accordance with the provisions of § 70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.575 Titanium dioxide.

(a) Identity. (1) The color additive titanium dioxide is synthetically prepared TiO₂, free from admixture with other substances.

(2) Color additive mixtures for food use made with titanium dioxide may have been promulgated under section 401 of the act, unless the use of added color is authorized by such standards.
§ 73.600 Turmeric

(a) Identity. (1) The color additive turmeric is the ground rhizome of Curcuma longa L. The definition of turmeric in this paragraph is for the purpose of identity as a color additive only, and shall not be construed as setting forth an official standard for turmeric under section 401 of the act.

(2) Color additive mixtures made with turmeric may contain as diluents only those substances listed in this subpart as safe and suitable in color additive mixtures for coloring foods.

(b) Uses and restrictions. Turmeric may be safely used for the coloring of foods generally, in amounts consistent with good manufacturing practice, except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act, unless the use of added color is authorized by such standards.

(c) Labeling. The color additive and any mixtures intended solely or in part for coloring purposes prepared therefrom shall bear, in addition to the other information required by the act, labeling in accordance with the provisions of §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.660 Turmeric oleoresin.

(a) Identity. (1) The color additive turmeric oleoresin is the combination of flavor and color principles obtained from turmeric (Curcuma longa L.) by extraction using any one or a combination of the following solvents:

- Acetone
- Ethyl alcohol
- Ethylene dichloride
- Methylene chloride
- Hexane
- Methanol
- Isopropyl alcohol
- Trichloroethylene

The definition of turmeric oleoresin in this paragraph is for the purpose of identity as a color additive only, and shall not be construed as setting forth an official standard for turmeric oleoresin under section 401 of the act.

(2) Color additive mixtures made with turmeric oleoresin may contain as diluents only those substances listed in this subpart as safe and suitable in color additive mixtures for coloring foods.

(b) Specifications. Turmeric oleoresin shall contain no more residue of the solvents listed under paragraph (a)(1)
of this section than is permitted for the corresponding solvents in spice oleoresins under applicable food additive regulation in parts 170 through 189 of this chapter.

(c) Uses and restrictions. Turmeric oleoresin may be safely used for the coloring of foods generally, in amounts consistent with good manufacturing practice, except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act, unless the use of added color is authorized by such standards.

(d) Labeling. The color additive and any mixtures intended solely or in part for coloring purposes prepared therefrom shall bear, in addition to the other information required by the act, labeling in accordance with the provisions of §70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

<table>
<thead>
<tr>
<th>Substances</th>
<th>Definitions and specifications</th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cetyl alcohol</td>
<td>As set forth in N.F. XI.</td>
<td></td>
</tr>
<tr>
<td>Isopropyl alcohol</td>
<td>As set forth in sec. 172.836 of this chapter.</td>
<td></td>
</tr>
<tr>
<td>Polyethylene (20) sorbitan monostearate (Polysorbate 60). Polyethylene (20) sorbitan tristearate (Polysorbate 60). Polysorbate 80</td>
<td>As set forth in sec. 172.836 of this chapter. As set forth in sec. 172.838 of this chapter. As set forth in sec. 172.840 of this chapter.</td>
<td></td>
</tr>
<tr>
<td>Polyvinyl-pyrollidone</td>
<td>As set forth in sec. 173.55 of this chapter.</td>
<td></td>
</tr>
<tr>
<td>Sorbitan monostearate. Sorbitan tristearate.</td>
<td>As set forth in sec. 172.842 of this chapter.</td>
<td></td>
</tr>
<tr>
<td>Sorbitan trioleate.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(2) Special use; inks for branding pharmaceutical forms. Items listed in paragraph (a)(1) of this section, §73.1(b)(1)(i), and the following:

Ethyl lactate
Polyoxyethylene sorbitan monolaurate (20)

(b) Externally applied drugs. Diluents listed in paragraph (a)(1) of this section and the following:

<table>
<thead>
<tr>
<th>Substances</th>
<th>Definitions and specifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benzyl alcohol</td>
<td>As set forth in N.F. XI.</td>
</tr>
</tbody>
</table>
§ 73.1015 Chromium-cobalt-aluminum oxide.

(a) Identity. The color additive chromium-cobalt-aluminum oxide is a blue-green pigment obtained by calcining a mixture of chromium oxide, cobalt carbonate, and aluminum oxide. It may contain small amounts (less than 1 percent each) of oxides of barium, boron, silicon, and nickel.

(b) Specifications. Chromium-cobalt-aluminum oxide shall conform to the following specifications:

Chromium, calculated as Cr₂O₃, 34-37 percent.
Cobalt, calculated as CoO, 29-34 percent.

Aluminum, calculated as Al₂O₃, 29-35 percent.
Lead (as Pb), not more than 30 parts per million.
Arsenic (as As), not more than 3 parts per million.
Total oxides of aluminum, chromium, and cobalt not less than 97 percent.

Lead and arsenic shall be determined in the solution obtained by boiling 10 grams of the chromium-cobalt-aluminum oxide for 15 minutes in 50 milliliters of 0.5 N hydrochloric acid.

(c) Uses and restrictions. The color additive chromium-cobalt-aluminum oxide may be safely used for coloring linear polyethylene surgical sutures, United States Pharmacopeia (U.S.P.), for use in general surgery, subject to the following restrictions:

(1) For coloring procedure, the color additive is blended with the polyethylene resin. The mixture is heated to a temperature of 500°-550°F. and extruded through a fixed orifice. The filaments are cooled, oriented by drawing, and set by annealing.

(2) The quantity of the color additive does not exceed 2 percent by weight of the suture material.

(3) The dyed suture shall conform in all respects to the requirements of the U.S.P. XX (1980).

(4) When the sutures are used for the purpose specified in their labeling, there is no migration of the color additive to the surrounding tissue.

(5) If the suture is a new drug, an approved new drug application, pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act, is in effect for it.

(d) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.1025 Ferric ammonium citrate.

(a) Identity. The color additive ferric ammonium citrate consists of complex chelates prepared by the interaction of ferric hydroxide with citric acid in the

Aluminum, calculated as Al₂O₃, 29-35 percent.
Lead (as Pb), not more than 3 parts per million.
Arsenic (as As), not more than 3 parts per million.
Total oxides of aluminum, chromium, and cobalt not less than 97 percent.

Lead and arsenic shall be determined in the solution obtained by boiling 10 grams of the chromium-cobalt-aluminum oxide for 15 minutes in 50 milliliters of 0.5 N hydrochloric acid.

(c) Uses and restrictions. The color additive chromium-cobalt-aluminum oxide may be safely used for coloring linear polyethylene surgical sutures, United States Pharmacopeia (U.S.P.), for use in general surgery, subject to the following restrictions:

(1) For coloring procedure, the color additive is blended with the polyethylene resin. The mixture is heated to a temperature of 500°-550°F. and extruded through a fixed orifice. The filaments are cooled, oriented by drawing, and set by annealing.

(2) The quantity of the color additive does not exceed 2 percent by weight of the suture material.

(3) The dyed suture shall conform in all respects to the requirements of the U.S.P. XX (1980).

(4) When the sutures are used for the purpose specified in their labeling, there is no migration of the color additive to the surrounding tissue.

(5) If the suture is a new drug, an approved new drug application, pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act, is in effect for it.

(d) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

presence of ammonia. The complex chelates occur in brown and green forms, are deliquescent in air, and are reducible by light.

(b) Specifications. Ferric ammonium citrate shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Iron (as Fe), not less than 14.5 percent and not more than 18.5 percent.
Lead (as Pb), not more than 20 ppm.
Arsenic (as As), not more than 3 ppm.

(c) Uses and restrictions. Ferric ammonium citrate may be safely used in combination with pyrogallol (as listed in §73.1375), for coloring plain and chromic catgut sutures for use in general and ophthalmic surgery subject to the following conditions:

(1) The dyed suture shall conform in all respects to the requirements of the United States Pharmacopeia XX (1980).

(2) The level of the ferric ammonium citrate-pyrogallol complex shall not exceed 3 percent of the total weight of the suture material.

(3) When the sutures are used for the purposes specified in their labeling, there is no migration of the color additive to the surrounding tissue.

(4) If the suture is a new drug, an approved new drug application, pursuant to section 505 of the act, is in effect for it.

(d) Labeling. The labeling of the color additive and any mixtures prepared therefrom and intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter. Labels shall bear information showing that the color is derived from annatto seed. The requirements of §70.25(a) of this chapter that all ingredients shall be listed by name shall not be construed as requiring the declaration of residues of solvents listed in §73.30(a)(1)(ii) of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.1070 Calcium carbonate.

(a) Identity. (1) The color additive calcium carbonate is a fine, white, synthetically prepared powder consisting essentially of precipitated calcium carbonate (CaCO₃).

(2) Color additive mixtures for drug use made with calcium carbonate may contain only those diluents listed in this subpart as safe and suitable for use in color additive mixtures for coloring ingested drugs.

(b) Uses and restrictions. Annatto extract may be safely used for coloring drugs generally, including those intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(c) Labeling. The label of the color additive and any mixtures prepared therefrom and intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter. Labels shall bear information showing that the color is derived from annatto seed. The requirements of §70.25(a) of this chapter that all ingredients shall be listed by name shall not be construed as requiring the declaration of residues of solvents listed in §73.30(a)(1)(ii) of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.


§ 73.1030 Annatto extract.

(a) Identity and specifications. (1) The color additive annatto extract shall conform in identity and specifications to the requirements of §73.30(a)(1) and (b).

(2) Color additive mixtures for drug use made with annatto extract may contain only those diluents that are suitable and that are listed in this subpart as safe in color additive mixtures for coloring ingested drugs.

(b) Uses and restrictions. Annatto extract may be safely used for coloring drugs generally, including those intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(c) Labeling. The label of the color additive and any mixtures prepared therefrom and intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter. Labels shall bear information showing that the color is derived from annatto seed. The requirements of §70.25(a) of this chapter that all ingredients shall be listed by name shall not be construed as requiring the declaration of residues of solvents listed in §73.30(a)(1)(ii) of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.


§ 73.1075 Canthaxanthin.
(a) Identity and specifications. (1) The color additive canthaxanthin shall conform in identity and specifications to the requirements of §73.75(a)(1) and (b).
(2) Color additive mixtures for ingested drug use made with canthaxanthin may contain only those diluents that are suitable and that are listed in this subpart as safe in color additive mixtures for coloring ingested drugs.
(b) Uses and restrictions. Canthaxanthin may be safely used for coloring ingested drugs generally in amounts consistent with good manufacturing practice.
(c) Labeling requirements. The label of the color additive and of any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.
(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.1085 Caramel.
(a) Identity and specifications. (1) The color additive caramel shall conform in identity and specifications to the requirements of §73.85(a)(1), (2), and (3) and (b).
(2) The diluents in color additive mixtures for drug use containing caramel shall be limited to those listed in this subpart as safe and suitable in color additive mixtures for coloring drugs.
(b) Uses and restrictions. Caramel may be used for coloring ingested and topically applied drugs generally in amounts consistent with good manufacturing practice.
(c) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirement of section 721(c) of the act.

[42 FR 15643, Mar. 22, 1977, as amended at 42 FR 33722, July 1, 1977]

§ 73.1100 Cochineal extract; carmine.
(a) Identity and specifications. (1) The color additives cochenille extract and carmine shall conform in identity and specifications to the requirements of §73.100(a)(1) and (2) and (b).
(2) The diluents in color additive mixtures for drug use containing cochenille extract may contain only those diluents that are suitable and that are listed in this subpart as safe in color additive mixtures for coloring drugs.
(b) Uses and restrictions. Cochenille extract and carmine may be safely used for coloring ingested and externally applied drugs in amounts consistent with good manufacturing practice.
(c) Labeling requirements. The label of the color additives and any mixtures intended solely or in part for coloring purposes prepared therefrom shall conform to the requirements of §70.25 of this chapter.

[42 FR 15643, Mar. 22, 1977]
§ 73.1125 Potassium sodium copper chlorophyllin (chlorophyllin-copper complex).

(a) Identity. (1) The color additive potassium sodium copper chlorophyllin is a green to black powder obtained from chlorophyll by replacing the methyl and phytol ester groups with alkali and replacing the magnesium with copper. The source of the chlorophyll is dehydrated alfalfa.

(2) Color additive mixtures for drug use made with potassium sodium copper chlorophyllin may contain only those diluents that are suitable and that are listed in this subpart as safe for use in color additive mixtures for coloring drugs.

(b) Specifications. Potassium sodium copper chlorophyllin shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

- Moisture, not more than 5.0 percent.
- Nitrogen, not more than 5.0 percent.
- pH of 1 percent solution, 9 to 11.
- Total copper, not less than 4 percent and not more than 6 percent.
- Free copper, not more than 0.25 percent.
- Iron, not more than 0.5 percent.
- Lead (as Pb), not more than 20 parts per million.
- Arsenic (as As), not more than 3 parts per million.
- 1,3-dihydroxy-2-propanone, not less than 98 percent.

(c) Uses and restrictions. Potassium sodium copper chlorophyllin may be safely used for coloring dentifrices that are drugs at a level not to exceed 0.1 percent. Authorization for this use shall not be construed as waiving any of the requirements of section 505 of the act with respect to the drug in which it is used.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

§ 73.1150 Dihydroxyacetone.

(a) Identity. (1) The color additive dihydroxyacetone is 1,3-dihydroxy-2-propanone.

(2) Color additive mixtures for drug use made with dihydroxyacetone may contain only those diluents that are listed in this subpart as safe and suitable in color additive mixtures for coloring externally applied drugs.

(b) Specifications. Dihydroxyacetone shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

- Volatile matter (at 34.6 °C for 3 hours at a pressure of not more than 30 mm. mercury), not more than 0.5 percent.
- Residue on ignition, not more than 0.4 percent.
- Lead (as Pb), not more than 20 parts per million.
- Arsenic (as As), not more than 3 parts per million.
- Iron (as Fe), not more than 25 parts per million.
- 1,3-dihydroxy-2-propanone, not less than 98 percent.

(c) Uses and restrictions. Dihydroxyacetone may be safely used in amounts consistent with good manufacturing practice in externally applied drugs intended solely or in part to impart a color to the human body. Authorization for this use shall not be construed as waiving any of the requirements of section 505 of the act with respect to the drug in which it is used.

(d) Labeling requirements. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.
§ 73.1162 Bismuth oxychloride.

(a) Identity. (1) The color additive bismuth oxychloride is a synthetically prepared white or nearly white amorphous or finely crystalline, odorless powder consisting principally of BiOCl.

(2) Color additive mixtures for drug use made with bismuth oxychloride may contain only those diluents that are suitable and that are listed in this subpart as safe in color additive mixtures for coloring externally applied drugs.

(b) Specifications. The color additive bismuth oxychloride shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

Volatile matter, not more than 0.5 percent.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

Mercury (as Hg), not more than 1 part per million.

Bismuth oxychloride, not less than 98 percent.

(c) Uses and restrictions. The color additive bismuth oxychloride may be safely used in coloring externally applied drugs, including those intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(d) Labeling. The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with the provisions of § 70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from certification requirements of section 721(c) of the act.

§ 73.1200 Synthetic iron oxide.

(a) Identity. (1) The color additive synthetic iron oxide consists of any one or any combination of synthetically prepared iron oxides, including the hydrated forms. It is free from admixture with other substances.

(2) Color additive mixtures for drug use made with synthetic iron oxide may contain only those diluents listed in this subpart as safe in color additive mixtures for coloring drugs.

(b) Specifications. Synthetic iron oxide shall conform to the following specifications, all on an “as is” basis:

Arsenic (as As), not more than 3 parts per million.

Lead (as Pb), not more than 10 parts per million.

Mercury (as Hg), not more than 3 parts per million.

(c) Uses and restrictions. The color additive synthetic iron oxide may be safely used to color ingested or topically applied drugs generally subject to the restriction that if the color additive is used in drugs ingested by man the amount consumed in accordance with labeled or prescribed dosages shall not exceed 5 milligrams, calculated as elemental iron, per day.

(d) Labeling requirements. The label of the color additive and any mixtures intended solely or in part for coloring purposes prepared therefrom shall conform to the requirements of § 70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from certification requirements of section 721(c) of the act.

§ 73.1298 Ferric ammonium ferrocyanide.

(a) Identity. (1) The color additive ferric ammonium ferrocyanide is the blue pigment obtained by oxidizing under acidic conditions with sodium dichromate the acid digested precipitate resulting from mixing solutions of ferrous sulfate and sodium ferrocyanide in the presence of ammonium sulfate. The oxidized product is filtered, washed, and dried. The pigment consists principally of ferric ammonium ferrocyanide with smaller amounts of ferric ferrocyanide and ferric sodium ferrocyanide.

(2) Color additive mixtures for drug use made with ferric ammonium ferrocyanide may contain only those
§ 73.1326 Chromium hydroxide green.

(a) Identity. (1) The color additive chromium hydroxide green is principally hydrated chromic sesquioxide \( \text{Cr}_2\text{O}_3\times \text{H}_2\text{O} \).

(2) Color additive mixtures for drug use made with chromium hydroxide green may contain only those diluents listed in this subpart as safe and suitable for use in color additive mixtures for coloring drugs.

(b) Specifications. Ferric ammonium ferrocyanide shall conform to the following specifications and shall be free of impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

- Oxalic acid or its salts, not more than 0.1 percent.
- Water soluble matter, not more than 3 percent.
- Water soluble cyanide, not more than 10 parts per million.
- Volatile matter, not more than 4 percent.
- Lead (as Pb), not more than 20 parts per million.
- Arsenic (as As), not more than 3 parts per million.
- Nickel (as Ni), not more than 200 parts per million.
- Cobalt (as Co), not more than 200 parts per million.
- Mercury (as Hg), not more than 1 part per million.
- Total iron (as Fe corrected for volatile matter), not less than 33 percent and not more than 39 percent.

(c) Uses and restrictions. Ferric ammonium ferrocyanide may be safely used in amounts consistent with good manufacturing practice to color externally applied drugs, including those intended for use in the area of the eye.

(d) Labeling requirements. The label of the color additive and of any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

[43 FR 54235, Nov. 21, 1978]

§ 73.1299 Ferric ferrocyanide.

(a) Identity. (1) The color additive ferric ferrocyanide is a ferric hexacyanoferrate pigment characterized by the structural formula \( \text{Fe}_4\text{Fe(CN)}_6\times \text{XH}_2\text{O} \), which may contain small amounts of ferric sodium ferrocyanide and ferric potassium ferrocyanide.

(2) Color additive mixtures for drug use made with ferric ferrocyanide may contain only those diluents listed in this subpart as safe and suitable for use in color additive mixtures for coloring drugs.

(b) Specifications. Ferric ferrocyanide shall conform to the following specifications and shall be free of impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

- Water soluble cyanide, not more than 10 parts per million.
- Lead (as Pb), not more than 20 parts per million.
- Arsenic (as As), not more than 3 parts per million.
- Nickel (as Ni), not more than 200 parts per million.
- Cobalt (as Co), not more than 200 parts per million.
- Mercury (as Hg), not more than 1 part per million.
- Oxalic acid, not more than 0.1 percent.
- Water soluble matter, not more than 3 percent.
- Volatile matter, not more than 10 percent.
- Total iron (as Fe corrected for volatile matter), not less than 37 percent and not more than 45 percent.

(c) Uses and restrictions. Ferric ammonium ferrocyanide may be safely used in amounts consistent with good manufacturing practice to color externally applied drugs, including those intended for use in the area of the eye.

(d) Labeling requirements. The label of the color additive and of any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from certification requirements of section 721(c) of the act.

§ 73.1327 Chromium oxide greens.

(a) Identity. (1) The color additive chromium oxide greens is principally chromic sesquioxide (Cr₂O₃).

(2) Color additive mixtures for drug use made with chromium oxide greens may contain only those diluents listed in this subpart as safe and suitable for use in color additive mixtures for coloring drugs.

(b) Specifications. The color additive chromium oxide greens shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Chromium in 2% NaOH extract, not more than 0.075% as Cr₂O₃ (based on sample weight).
Arsenic (as As), not more than 3 parts per million.
Lead (as Pb), not more than 20 parts per million.
Mercury (as Hg), not more than 1 part per million.
Cr₂O₃, not less than 95%.

(c) Uses and restrictions. Chromium oxide greens is safe for use in coloring externally applied drugs, including those intended for use in the area of eye, in amounts consistent with good manufacturing practice.

(d) Labeling. The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with §70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from certification pursuant to section 721(c) of the act.

[42 FR 36451, July 15, 1977]

§ 73.1329 Guanine.

(a) Identity. (1) The color additive guanine is the crystalline material obtained from fish scales and consists principally of the two purines, guanine and hypoxanthine. The guanine content will vary from 75 to 97 percent, and the hypoxanthine will vary from 3 to 25 percent, depending on the particular fish and tissue from which the crystals are derived.

(2) Color additive mixtures for drug use made with guanine may contain only those diluents listed in this subpart as safe and suitable for use in color additive mixtures for coloring drugs.

(b) Specifications. The color additive guanine shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Water soluble matter, not more than 2.5%.
Chromium in 2% NaOH extract, not more than 0.1% as Cr₂O₃ (based on sample weight).
Arsenic (as As), not more than 3 parts per million.
Lead (as Pb), not more than 20 parts per million.
Mercury (as Hg), not more than 1 part per million.
Cr₂O₃, not less than 75%.

Guanine, not less than 75 percent.
Hypoxanthine, not more than 25 percent.
Ash (ignition at 800 °C), not more than 2 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Assay, not less than 96 percent total purines.
Mercury (as Hg), not more than 1 part per million.

(c) Uses and restrictions. Guanine is safe for use in coloring externally applied drugs, including those intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(d) Labeling. The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with §70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.


§ 73.1400 Pyrophyllite.

(a) Identity. The color additive pyrophyllite is a naturally occurring mineral substance consisting predominantly of a hydrous aluminum silicate, Al₂O₃·4SiO₂·H₂O, intimately mixed with lesser amounts of finely divided silica, SiO₂. Small amounts, usually less than 3 percent, of other silicates, such as potassium aluminum silicate, may be present. Pyrophyllite may be identified and semiquantitatively determined by its characteristic X-ray powder diffraction pattern and by its optical properties.

(b) Specifications. Pyrophyllite shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Melting point, between 130° and 133 °C.
Residue on ignition, not more than 0.1 percent.
Lead (as Pb), not more than 20 ppm (parts per million).
Arsenic (as As), not more than 3 ppm.

(c) Uses and restrictions. Pyrophyllite may be safely used in combination with ferric ammonium citrate (as listed in §73.1025), for coloring plain and chromic catgut sutures for use in general and ophthalmic surgery, subject to the following restrictions:

(1) The dyed suture shall conform in all respects to the requirements of the United States Pharmacopeia XX (1980).
(2) The level of the ferric ammonium citrate-pyrophyllite complex shall not exceed 3 percent of the total weight of the suture material.
(3) When the sutures are used for the purposes specified in their labeling, there is no migration of the color additive to the surrounding tissues.
(4) If the suture is a new drug, an approved new drug application, pursuant to section 505 of the act, is in effect for it.

(d) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.1410

(c) Uses and restrictions. Pyrophyllite may be safely used in amounts consistent with good manufacturing practice to color drugs that are to be externally applied.

(d) Labeling requirements. The labeling of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.1410 Logwood extract.

(a) Identity. The color additive logwood extract is a reddish brown-to-black solid material extracted from the heartwood of the leguminous tree Haematoxylon campechianum. The active colorant substance is principally hematein. The latent coloring material is the unoxidized or leuco form of hematein called hematoxylon. The leuco form is oxidized by air.

(b) Specifications. Logwood extract shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Volatilé matter (at 110 °C), not more than 15 percent.
Sulfated ash, not more than 20 percent.
Hematin, not less than 5 percent and not more than 20 percent.
Lead (as Pb), not more than 70 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.

(c) Use and restrictions. Logwood extract may be safely used to color nylon 66 (the copolymer of hexamethylene-diamine and adipic acid), nylon 6 (the polymer of e-caprolactam), or silk non-absorbable sutures for use in general and ophthalmic surgery subject to the following restrictions:

1. The quantity of color additive does not exceed 1.0 percent by weight of the suture.

2. When the sutures are used for the purposes specified in their labeling, there is no migration of the color additive to the surrounding tissue.

3. If the suture is a new drug, an approved new drug application, pursuant to section 505 of the act, is in effect for it.

(d) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.


§ 73.1496 Mica.

(a) Identity. (1) The color additive mica is a white powder obtained from the naturally occurring mineral, muscovite mica, consisting predominantly of a potassium aluminum silicate, $K_2Al_4(Al_2Si_6O_{20})(OH)_4$ or, alternatively, $H_2KAl_3(SiO_4)_3$. Mica may be identified and semiquantitatively determined by its characteristic X-ray diffraction pattern and by its optical properties.

2. Color additive mixtures for drug use made with mica may contain only those diluents listed in this subpart as safe and suitable for use in color additive mixtures for coloring drugs.

(b) Specifications. Mica shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

Fineness, 100 percent shall pass through a 100-mesh sieve.
Loss on ignition at 600-650 °C, not more than 2 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.

(c) Use and restrictions. Mica may be safely used in amounts consistent with good manufacturing practice to color dentifrices and externally applied drugs, including those for use in the area of the eye.
§ 73.1645 Aluminum powder.

(a) Identity. (1) The color additive aluminum powder shall be composed of finely divided particles of aluminum prepared from virgin aluminum. It is free from admixture with other substances.

(2) Color additive mixtures for external drug use made with aluminum powder may contain only those diluents listed in this subpart as safe and suitable in color additive mixtures for coloring externally applied drugs.

(b) Specifications. Aluminum powder shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

- Fineness, 100 percent shall pass through a 200-mesh screen and 95 percent shall pass through a 325-mesh screen.
- Mercury, not more than 1 part per million.

§ 73.1575 Titanium dioxide.

(a) Identity and specifications. (1) The color additive titanium dioxide shall conform in identity and specifications to the requirements of §73.575(a)(1) and (b).

(2) Color additive mixtures for drug use made with titanium dioxide may contain only those diluents that are suitable and that are listed in this subpart as safe in color additive mixtures for coloring drugs, and the following:

- Silicon dioxide, SiO₂ and/or aluminum oxide, Al₂O₃ as dispersing aids—no more than 2 percent total.

(b) Uses and restrictions. The color additive titanium dioxide may be used for coloring ingested and externally applied drugs generally, in amounts consistent with good manufacturing practice. External application includes use in the area of the eye.

(c) Labeling. The label of the color additive and any mixtures prepared therefrom and intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of the chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.1650 Talc.

(a) Identity. (1) The color additive talc is a finely powdered, native, hydrous magnesium silicate sometimes containing a small proportion of aluminum silicate.

(2) Color additive mixtures for drug use made with talc may contain only those diluents listed in this subpart as safe and suitable for use in color additive mixtures for coloring drugs.

(b) Specifications. Talc shall meet the specifications for talc in the United States Pharmacopeia XX (1980) and the following:

- Lead (as Pb), not more than 20 parts per million.
- Arsenic (as As), not more than 3 parts per million.

Lead and arsenic shall be determined in the solution obtained by boiling 10 grams of the talc for 15 minutes in 50 milliliters of 0.5N hydrochloric acid.

(c) Uses and restrictions. Talc may be safely used in amounts consistent with good manufacturing practice to color drugs generally.

(d) Labeling requirements. The label of the color additive and of any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.1646  
Arsenic, not more than 3 parts per million.  
Lead, not more than 20 parts per million.  
Aluminum, not less than 99 percent.

(c) Uses and restrictions. Aluminum powder is safe for use in externally applied drugs, including those intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(d) Labeling. The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with §70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from certification pursuant to section 721(c) of the act.

[42 FR 38563, July 29, 1977]

§ 73.1647  
Bronze powder.

(a) Identity. (1) The color additive bronze powder is a very fine metallic powder prepared from alloys consisting principally of virgin electrolytic copper and zinc with small amounts of the virgin metals aluminum and tin. It contains small amounts of stearic or oleic acid as lubricants.

(2) Color additive mixtures for drug use made with bronze powder may contain only those diluents listed in this subpart as safe and suitable for use in color additive mixtures for coloring externally applied drugs.

(b) Specifications. Bronze powder shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Stearic or oleic acid, not more than 5 percent.
Cadmium (as Cd), not more than 15 parts per million.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Aluminum (as Al), not more than 0.5 percent.
Tin (as Sn), not more than 0.5 percent.
Copper (as Cu), not more than 95 percent and not less than 70 percent.
Zinc (as Zn), not more than 30 percent.

Maximum particle size $45\mu$ (95 percent minimum).

Aluminum, zinc, tin, and copper content shall be based on the weight of the dried powder after being thoroughly washed with ether.

(c) Uses and restrictions. Bronze powder may be safely used in color externally applied drugs, including those intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(d) Labeling. The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Exemption from certification. Certification of the color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

[42 FR 33723, July 1, 1977]
(c) Uses and restrictions. Copper powder may be safely used in coloring externally applied drugs, including those intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(d) Labeling. The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification pursuant to section 721(c) of the act.

[42 FR 37537, July 22, 1977]

§ 73.2030 Annatto

(a) Identity and specification. The color additive annatto shall conform in identity and specification to the requirements for annatto extract in §73.30(a)(1) and (b).

(b) Use and restriction. The color additive annatto may be safely used in coloring cosmetics generally, including cosmetics intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(c) Labeling. The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with the provisions of §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

[42 FR 36994, July 19, 1977]

§ 73.2085 Caramel

(a) Identity and specifications. The color additive caramel shall conform in identity and specifications to the requirements of §73.85(a)(1), (2), and (3) and (b).

(b) Use and restrictions. Caramel is safe for use in coloring cosmetics generally, including cosmetics applied to the area of the eye, in amounts consistent with good manufacturing practice.

(c) Labeling requirements. The label of the color additive and any mixtures intended solely or in part for coloring
§ 73.2087 Carmine.

(a) Identity and specifications. The color additive carmine shall conform in identity and specifications to the requirements of §73.100(a)(2) and (b)(2).

(b) Use and restrictions. Carmine may be safely used in cosmetics generally, including cosmetics intended for use in the area of the eye, in amounts consistent with good manufacturing practices.

(c) Labeling. The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with the provisions of §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification pursuant to section 721(c) of the act.

[42 FR 33722, July 1, 1977]

§ 73.2095 β-Carotene.

(a) Identity and specifications. The color additive β-carotene shall conform in identity and specifications to the requirements of §73.95(a)(1) and (b).

(b) Uses and restrictions. The color additive β-carotene may be safely used in coloring cosmetics generally, including cosmetics intended for use in the area of the eye, in amounts consistent with good manufacturing practices.

(c) Labeling. The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with the provisions of §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification pursuant to section 721(c) of the act.

[42 FR 32228, June 24, 1977]
§ 73.2120 Disodium EDTA-copper.

(a) Identity. The color additive disodium EDTA-copper is disodium [(N,N'-1,2-ethanediylbis[N-(carboxymethyl)glycinato]) (4-)-N,N',O,O',O,N,O'] cuprate (2-).

(b) Specifications. Disodium EDTA-copper shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

- Total copper, not less than 13.5 percent.
- Total (ethylene-dinitrilo) tetracetic acid, not less than 62.5 percent.
- Free copper, not more than 100 parts per million.
- Free disodium salt of (ethylene-dinitrilo) tetracetic acid, not more than 1.0 percent.
- Moisture, not more than 15 percent.
- Water insoluble matter, not more than 0.2 percent.
- Lead (as Pb), not more than 20 parts per million.
- Arsenic (as As), not more than 3 parts per million.

(c) Uses and restrictions. Disodium EDTA-copper may be safely used in amounts consistent with good manufacturing practices in the coloring of shampoos which are cosmetics.

(d) Labeling requirements. The labeling of the color additive shall conform to the requirements of §70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.2125 Potassium sodium copper chlorophyllin (chlorophyllin-copper complex).

(a) Identity and specifications. The color additive potassium sodium copper chlorophyllin shall conform in identity and specifications to the requirements of §73.1125(a)(1) and (b).

(b) Uses and restrictions. Potassium sodium copper chlorophyllin may be safely used for coloring dentifrices that are cosmetics subject to the following conditions:

1. It shall not be used at a level in excess of 0.1 percent.
2. It may be used only in combination with the following substances:
   - Water.
   - Glycerin.
   - Sodium carboxymethylcellulose.
   - Tetrasodium pyrophosphate.
   - Sorbitol.
   - Magnesium phosphate, tribasic.
   - Calcium carbonate.
   - Calcium phosphate, dibasic.
   - Sodium N-lauroyl sarcosinate.
   - Artificial sweeteners that are generally recognized as safe or that are authorized under subchapter B of this chapter.
   - Flavors that are generally recognized as safe or that are authorized under subchapter B of this chapter.
   - Preservatives that are generally recognized as safe or that are authorized under subchapter B of this chapter.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.2150 Dihydroxyaceton e.

(a) Identity and specifications. The color additive dihydroxyacetone shall conform in identity and specifications to the requirements of §73.1150(a)(1) and (b).

(b) Uses and restrictions. Dihydroxyacetone may be safely used in amounts consistent with good manufacturing practice in externally applied cosmetics intended solely or in part for coloring purposes and are exempt from the requirements of section 721(c) of the act.

(c) Labeling requirements. The labeling of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the requirements of section 721(c) of the act.
§ 73.2162 Bismuth oxychloride.

(a) Identity and specifications. (1) The color additive bismuth oxychloride shall conform in identity and specifications to the requirements of § 73.1162(a)(1) and (b).

(2) Color additive mixtures of bismuth oxychloride may contain the following diluents:

(i) For coloring cosmetics generally, only those diluents listed under § 73.1001(a)(1);

(ii) For coloring externally applied cosmetics, only those diluents listed in § 73.1001(b) and, in addition, nitrocellulose.

(b) Uses and restrictions. The color additive bismuth oxychloride may be safely used in coloring cosmetics generally, including cosmetics intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(c) Labeling. The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with the provisions of § 70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.2180 Guaiazulene.

(a) Identity. (1) The color additive, guaiazulene, is principally 1,4-dimethyl-7-isopropyl-azulene.

(2) Color additive mixtures of guaiazulene for cosmetic use may contain the following diluent:

Polyethylene glycol-40 castor oil (PEG-40 castor oil).

Saponification No., 60 to 70.

Hydroxyl No., 63 to 78.

Acid No., 2.

Specific gravity, 1.05 to 1.07.

(b) Specifications. Guaiazulene shall conform to the following specifications and shall be free from impurities, other than those named, to the extent that such other impurities may be avoided by good manufacturing practice.

Melting point, 30.5 °C to 31.5 °C.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

Mercury (as Hg), not more than 1 part per million.

Total color, not less than 99 percent.

(c) Uses and restrictions. Guaiazulene may be safely used in externally applied cosmetics in amounts consistent with good manufacturing practice.

(d) Labeling. The label for the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive for the prescribed use is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.2190 Henna.

(a) Identity. The color additive henna is the dried leaf and petiole of Lawsonia alba Lam. (Lawsonia inermis L.). It may be identified by its characteristic odor and by characteristic plant histology.

(b) Specifications. Henna shall conform to the following specifications:

It shall not contain more than 10 percent of plant material from Lawsonia alba Lam. (Lawsonia inermis L.) other than the leaf and petiole, and shall be free from admixture with material from any other species of plant.

Moisture, not more than 10 percent.

Total ash, not more than 15 percent.

Acid-insoluble ash, not more than 5 percent.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

(c) Uses and restrictions. The color additive henna may be safely used for coloring hair only. It may not be used for coloring the eyelashes or eyebrows, or generally in the area of the eye.

(d) Labeling. The label for henna shall bear the information required by § 70.25 of this chapter and the following statements or their equivalent:

"Do not use in the area of the eye."

"Do not use on cut or abraded scalp."

(e) Exemption from certification. Certification of this color additive for the prescribed use is not necessary for the
Food and Drug Administration, HHS

§ 73.2326 Chromium hydroxide green.

(a) Identity and specifications. The color additive chromium hydroxide green shall conform in identity and specifications to the requirements of §73.1326(a)(1) and (b).

(b) Uses and restrictions. Chromium hydroxide green is safe for use in coloring externally applied cosmetics, including those intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(c) Labeling. The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from certification under section 721(c) of the act.

[43 FR 54396, Nov. 21, 1978]
73.2327 (d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from certification pursuant to section 721(c) of the act.

[42 FR 36452, July 15, 1977]

73.2327 Chromium oxide greens.

(a) Identity and specifications. The color additive chromium oxide greens shall conform in identity and specifications to the requirements of §73.1327 (a)(1) and (b).

(b) Uses and restrictions. The color additive chromium oxide greens may be safely used in externally applied cosmetics, including cosmetics intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(c) Labeling requirements. The color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with the provisions of §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification pursuant to section 721(c) of the act.

[42 FR 37537, July 22, 1977]

§ 73.2396 Lead acetate.

(a) Identity. The color additive lead acetate is the trihydrate of lead (2+) salt of acetic acid. The color additive has the chemical formula Pb (OOCCH3)2·3H2O.

(b) Specifications. Lead acetate shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Water-insoluble matter, not more than 0.02 percent.

pH (30 percent solution weight to volume at 25° C), not less than 4.7 and not more than 5.8.

Arsenic (as As), not more than 3 parts per million.

Lead acetate, not less than 99 percent.

Mercury (as Hg), not more than 1 part per million.

(c) Uses and restrictions. The color additive lead acetate may be safely used in cosmetics intended for coloring hair on the scalp only, subject to the following restrictions:

(1) The amount of the lead acetate in the cosmetic shall be such that the lead content, calculated as Pb, shall not be in excess of 0.6 percent (weight to volume).

(2) The cosmetic is not to be used for coloring mustaches, eyebrows, or hair on parts of the body other than the scalp.

(d) Labeling requirements. (1) The label of the color additive lead acetate shall conform to the requirements of §70.25 of this chapter, and bear the following statement or equivalent:

Wash thoroughly if the product comes into contact with the skin.
(2) The label of the cosmetic containing the color additive lead acetate, in addition to other information required by the act, shall bear the following cautionary statement, conspicuously displayed thereon:

CAUTION: Contains lead acetate. For external use only. Keep this product out of children’s reach. Do not use on cut or abraded scalp. If skin irritation develops, discontinue use. Do not use to color mustaches, eye-lashes, eyebrows, or hair on parts of the body other than the scalp. Do not get in eyes. Follow instructions carefully and wash hands thoroughly after each use.

(e) Exemption for certification. Certification of this color additive for the prescribed use is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

[45 FR 72117, Oct. 31, 1980]

§ 73.2400 Pyrophyllite.

(a) Identity and specifications. The color additive pyrophyllite shall conform in identity and specifications to the requirements of §73.1400 (a)(1) and (b).

(b) Uses and restrictions. Pyrophyllite may be safely used for coloring externally applied cosmetics, in amounts consistent with good manufacturing practice.

(c) Labeling requirements. The labeling of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to all applicable requirements of law, including the requirements of §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification pursuant to section 721(c) of the act.

[42 FR 38561, July 29, 1977]

§ 73.2496 Mica.

(a) Identity and specifications. The color additive mica shall conform in identity and specifications to the requirements of §73.1496(a)(1) and (b).

(b) Uses and restrictions. Mica is safe for use in coloring cosmetics generally, including cosmetics applied to the area of the eye, in amounts consistent with good manufacturing practice.

(c) Labeling. The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with of §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification pursuant to section 721(c) of the act.

[42 FR 38561, July 29, 1977]
§ 73.2575  Titanium dioxide.

(a) Identity and specifications. The color additive titanium dioxide shall conform in identity and specifications to the requirements on §73.575 (a)(1) and (b).

(b) Uses and restrictions. The color additive titanium dioxide may be safely used in cosmetics, including cosmetics intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(c) Labeling requirements. The color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any other information required by law, labeling in accordance with the provisions of §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.2645  Aluminum powder.

(a) Identity and specifications. The color additive aluminum powder shall conform in identity and specifications to the requirements of §73.1645 (a)(1) and (b).

(b) Uses and restrictions. Aluminum powder may be safely used in coloring externally applied cosmetics, including cosmetics intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(c) Labeling. The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with the provisions of §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.2647  Copper powder.

(a) Identity and specifications. The color additive copper powder shall conform in identity and specifications to the requirements of §73.1647 (a)(1) and (b).

(b) Uses and restrictions. Copper powder may be safely used in coloring cosmetics generally, including cosmetics intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(c) Labeling. The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with the provisions of §70.25 of this chapter.

(d) Exemption from certification. Certification of the color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

§ 73.2725  Ultramarines.

(a) Identity. The color additives, ultramarines (blue, green, pink, red, and violet) are pigments obtained by calcining at temperatures above 700 °C. a mixture of kaolin, sulfur, sodium carbonate, silicious matter, sodium sulfate, and carbonaceous matter, but not
Food and Drug Administration, HHS

§ 73.2991

necessarily all these substances, to produce a single color. The ultramarines are complex sodium aluminum sulfosilicates having a typical formula Na(AlSiO)S with proportions of each element varying with each color.

(b) Specifications. The ultramarines shall conform to the following specifications and shall be free from impurities other than those named, to the extent that such other impurities may be avoided by good manufacturing practice.

Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.

(c) Uses and restrictions. The ultramarine pigments may be safely used for coloring externally applied cosmetics, including cosmetics intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(d) Labeling requirements. The color additives and any mixtures prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any other information required by law, labeling in accordance with §70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from certification pursuant to section 721(c) of the act.

§ 73.2775 Manganese violet.

(a) Identity. The color additive manganese violet is a violet pigment obtained by reacting phosphoric acid, ammonium dihydrogen orthophosphate, and manganese dioxide at temperatures above 450 °F. The pigment is a manganese ammonium pyrophosphate complex having the approximate formula: Mn(III)NH₄P₂O₇.

(b) Specifications. Manganese violet shall conform to the following specifications and shall be free from impurities other than those named, to the extent that such other impurities may be avoided by good manufacturing practice:

- Ash (at 600 °C), not less than 81 percent.
- Volatile matter at 135 °C for 3 hours, not more than 1 percent.
- Water soluble substances, not more than 6 percent.
- pH of filtrate of 10 grams color additive (shaken occasionally for 2 hours with 100 milliliters of freshly boiled distilled water), not more than 4.7 and not less than 2.5.
- Lead (as Pb), not more than 20 parts per million.
- Arsenic (as As), not more than 3 parts per million.
- Mercury (as Hg), not more than 1 part per million.
- Total color, based on Mn content in "as is" sample, not less than 93 percent.

(c) Uses and restrictions. Manganese violet is safe for use in coloring cosmetics generally, including cosmetics applied to the area of the eye, in amounts consistent with good manufacturing practice.

(d) Labeling. The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with §70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from certification pursuant to section 721(c) of the act.

§ 73.2991 Zinc oxide.

(a) Identity and specifications. The color additive zinc oxide shall conform in identity and specifications to the requirements of §73.1991 (a)(1) and (b).

(b) Uses and restrictions. Zinc oxide may be safely used in cosmetics, including cosmetics intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(c) Labeling. The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not
§ 73.3100 1,4-Bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester copolymers.

(a) Identity. The color additives are 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester (CAS Reg. No. 109561-07-1) copolymerized either with glyceryl methacrylate, methyl methacrylate, and ethylene glycol dimethacrylate monomers, or with N,N-dimethyl acrylamide, methyl methacrylate, and ethylene glycol dimethacrylate monomers to form the contact lens material.

(b) Uses and restrictions. (1) The substances listed in paragraph (a) of this section may be used in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(c) Labeling. The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) Exemption from certification. Certification of these color additives is not necessary for the protection of the public health and therefore the color additive is exempt from the certification requirements of section 721(c) of the act.

[61 FR 51586, Oct. 3, 1996]

§ 73.3106 1,4-Bis[4-(2-methacryloxyethyl)phenylamino]anthraquinone copolymers.

(a) Identity. The color additive is 1,4-bis[4-(2-methacryloxyethyl)phenylamino]anthraquinone (CAS Reg. No. 121888-69-5), copolymerized with hydroxyethyl methacrylate monomer, or a blend of hydroxyethyl methacrylate and N-vinyl pyrrolidone monomers, or a blend of 3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate (CAS Reg. No. 134072-99-4) and N-vinyl pyrrolidone monomers to form the contact lens material.

(b) Uses and restrictions. (1) The substances listed in paragraph (a) of this section may be used in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization and compliance with this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act (the act). A person intending to introduce a device containing 1,4-bis[4-(2-methylphenylamino)-9,10-anthracenedione listed under this section into commerce shall submit to the Food and Drug Administration either a premarket notification in accordance with subpart E of part 807 of this chapter, if the device is not subject to premarket approval, or submit and receive approval of an original or supplemental premarket approval application if the device is subject to premarket approval.

(c) Labeling. The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore the color additive is exempt from the certification requirements of section 721(c) of the act.

[49 FR 30066, July 26, 1984]
§ 73.3107 Carbazole violet.

(a) Identity. The color additive is carbazole violet (Pigment Violet 23) (CAS Reg. No. 6358-30-1, Colour Index No. 51319).

(b) Use and restrictions. (1) The substance listed in paragraph (a) of this section may be used as a color additive in contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization for this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) with respect to the contact lens in which the color additive is used.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health and, therefore, the color additives are exempt from the certification requirements of section 721(c) of the act.

[53 FR 41324, Oct. 21, 1988]

§ 73.3110 Chlorophyllin-copper complex, oil soluble.

(a) Identity. The color additive is chlorophyllin-copper complex, oil soluble. The chlorophyllin is obtained by extraction from a mixture of fescue and rye grasses. The chlorophyllin is acid-treated to remove chelated magnesium which is replaced with hydrogen, which is turn is replaced with copper. This mixture is diluted to a 5 percent concentration with a mixture of palm oil, peanut oil, and hydrogenated peanut oil.

(b) Specifications. The color additive chlorophyllin-copper complex, oil soluble (5 percent in palm oil, peanut oil, and hydrogenated peanut oil), shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by current good manufacturing practice:

- Moisture, not more than 0.5 percent.
- Nitrogen, not less than 0.2 percent and not more than 0.3 percent.
- Total copper, not less than 0.2 percent and not more than 0.4 percent.
- Free copper, not more than 200 parts per million.
- Lead, not more than 20 parts per million.
- Arsenic, not more than 5 parts per million.
- Sulfated ash, not more than 2.5 percent.
- Total color, not less than 4.5 percent and not more than 5.5 percent.

(c) Use and restrictions. (1) The color additive chlorophyllin-copper complex, oil soluble (5 percent in palm oil, peanut oil, and hydrogenated peanut oil), may be safely used to color polymethylmethacrylate bone cement. Chlorophyllin-copper complex may be used at levels that do not exceed 0.003 percent by weight of the bone cement.

(2) Authorization for this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the polymethylmethacrylate bone cement in which chlorophyllin-copper complex, oil soluble, is used.

(d) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore the color additive is exempt from the certification requirements of section 721(c) of the act.

[48 FR 56370, Dec. 21, 1983]

§ 73.3110a Chromium-cobalt-aluminum oxide.

(a) Identity. The color additive chromium-cobalt-aluminum oxide (Pigment...
§ 73.3111  Blue 36 (CAS Reg. No. 68187-11-1, Colour Index No. 77343) shall conform in identity and specifications to the requirements of §73.1015 (a) and (b).

(b) Uses and restrictions. (1) The substance listed in paragraph (a) of this section may be used as a color additive in contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization for this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) with respect to the contact lens in which the color additive is used.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore the color additive is exempt from the certification requirements of section 721(c) of the act.

[51 FR 24816, July 9, 1986]

§ 73.3112  C.I. Vat Orange 1.

(a) Identity. The color additive is C.I. Vat Orange 1, Colour Index No. 59105.

(b) Uses and restrictions. (1) The substance listed in paragraph (a) of this section may be used as a color additive in contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization for this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) with respect to the contact lens in which the color additive is used.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore the color additive is exempt from the certification requirements of section 721(c) of the act.

[50 FR 20407, May 16, 1985]

§ 73.3115  2-[2,5-Diethoxy-4-[(4-methylphenyl)thio][phenyl]azo]-1,3,5-benzenetriol.

(a) Identity. The color additive 2-[2,5-diethoxy-4-[(4-methylphenyl)thio][phenyl]azo]-1,3,5-benzenetriol is formed in situ in soft (hydrophilic) contact lenses.

(b) Uses and restrictions. The color additive 2-[2,5-diethoxy-4-[(4-methylphenyl)thio][phenyl]azo]-1,3,5-benzenetriol may be safely used to mark soft (hydrophilic) contact lenses with the
letter R or the letter L for identification purposes subject to the following restrictions:

(1) The quantity of the color additive does not exceed $1.1 \times 10^{-7}$ grams in a soft (hydrophilic) contact lens.

(2) When used as specified in the labeling, there is no measurable migration of the color additive from the contact lens to the surrounding ocular tissue.

(3) Authorization for this use shall not be construed as waiving any of the requirements of section 510(k) and 515 of the Federal Food, Drug, and Cosmetic Act with respect to the contact lens in which the color additive is used.

(c) Labeling. The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore the color additive is exempt from the certification requirements of section 721(c) of the act.

[48 FR 22706, May 20, 1983]


(b) Uses and restrictions. (1) The substance listed in paragraph (a) of this section may be used as a color additive in contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization for this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the contact lens in which the color additive is used.

(c) Labeling. The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore the color additive is exempt from the certification requirements of section 721(c) of the act.

[48 FR 31375, July 8, 1983]

§ 73.3118 N,N′-(9,10-Dihydro-9,10-dioxo-1,5-anthracenediy) bisbenzamide.

(a) Identity. The color additive is N,N′-(9,10-dihydro-9,10-dioxo-1,5-anthracenediy) bisbenzamide (CAS Reg. No. 82-18-8), Colour Index No. 61725.

(b) Uses and restrictions. (1) The substance listed in paragraph (a) of this section may be used as a color additive in contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization for this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the contact lens in which the color additive is used.

(c) Labeling. The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore the color additive is exempt from the certification requirements of section 721(c) of the act.

[48 FR 31375, July 8, 1983]

§ 73.3119 7,16-Dichloro-6,15-dihydro-5,9,14,18-anthrazinetetron.

(a) Identity. The color additive is 7,16-dichloro-6,15-dihydro-5,9,14,18-anthrazinetetron (CAS Reg. No. 130-20-1), Colour Index No. 69825.

(b) Uses and restrictions. (1) The substance listed in paragraph (a) of this section may be used as a color additive in contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization for this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the contact lens in which the color additive is used.

[48 FR 31375, July 8, 1983]
§ 73.3120 16,17-Dimethoxydinaphtho-[1,2,3-cd:3′,2′,1′-lm] perylene-5,10-dione.

(a) Identity. The color additive is 16,17-dimethoxydinaphtho-[1,2,3-cd:3′,2′,1′-lm] perylene-5,10-dione (CAS Reg. No. 128-58-5), Colour Index No. 59825.

(b) Uses and restrictions. (1) The substance listed in paragraph (a) of this section may be used as a color additive in contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization for this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the contact lens in which the color additive is used.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore the color additive is exempt from the certification requirements of section 721(c) of the act.

[48 FR 31376, July 8, 1983]

§ 73.3121 Poly(hydroxyethyl methacrylate)-dye copolymers.

(a) Identity. The color additives are formed by reacting one or more of the reactive dyes listed in this paragraph with poly(hydroxyethyl methacrylate), so that the sulfate group (or groups) or chlorine substituent of the dye is replaced by an ether linkage to poly(hydroxyethyl methacrylate). The dyes that may be used alone or in combination are:

(1) Reactive Black 5 [2,7-naphthalenedisulfonic acid, 4-amino-5-hydroxy-3-6-bis((4-(2-sulfooxy)ethyl)benzenesulfonyl)phenyl)azo]-, tetrasodium salt] (CAS Reg. No. 17095-24-8);

(2) Reactive Blue 21 [copper, (29H,31H-phthalocyaninato(2-)-N,30,N31,N32)-, sulfo(4-(2-sulfooxy)ethyl)sulfonyl)phenyl)amino) sulfonyle derivs] (CAS Reg. No. 73049-92-0);

(3) Reactive Orange 78 [2-naphthalenesulfonic acid, 7-(acetylaminio)-4-hydroxy-3-(4-(2-sulfooxy)ethyl)benzenesulfonyl)azo]-, CAS Reg. No. 68189-39-9);

(4) Reactive Yellow 15 [benzensulfonic acid, 4-(4-dihydro-4-(2-methoxy-5-methyl-4-(2-sulfooxy)ethyl)benzenesulfonyl)azo)-3-methyl-5-oxo-1H-pyrazol-1-yl]-, CAS Reg. No. 60958-41-0);

(5) Reactive Blue No. 19 [2-anthracene-sulfonic acid, 1-amino-9,10-dihydro-9,10-dioxo-4-((3-(2-sulfooxy)ethyl)sulfonyl)phenyl)amino), disodium salt] (CAS Reg. No. 2580-78-1);

(6) Reactive Blue No. 4 [2-anthracenesulfonic acid, 1-amino-4-(3-(4,6-dichloro-1,3,5-triazin-2-yl)amino)-4-sulfoanilino)-9,10-dihydro-9,10-dioxo, disodium salt] (CAS Reg. No. 4499-01-8);

(7) C.I. Reactive Red 11 [5-(4,6-dichloro-1,3,5-triazin-2-yl)amino)-4-hydroxy-3-(1-sulfo-2-naphthalenyl)azo)-2,7-naphthalenedisulfonic acid, trisodium salt] (CAS Reg. No. 12226-08-3);

(8) C.I. Reactive Yellow 86 [1,3-benzenedisulfonic acid, 4-(5-aminocarbonyl-1-ethyl-1,6-dihydro-2-hydroxy-4-methyl-6-oxo-3-pyridinyl)azo)-6-(4,6-dichloro-1,3,5-triazin-2-yl)amino), disodium salt] (CAS Reg. No. 61951-86-8);

(9) C.I. Reactive Blue 163 [triphenodioxazinedisulfonic acid, 6,13-dichloro-3,10-bis((4-(4,6-dichloro-1,3,5-triazin-2-yl)amino)sulphophenyl)amino), tetrasodium salt] (CAS Reg. No. 72847-56-4); and

(b) Uses and restrictions. (1) The substances listed in paragraph (a) of this section may be used to color contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) As part of the manufacturing process, the lenses containing the color additives are thoroughly washed to remove unbound reactive dyes.

(3) Authorization and compliance with this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act (the act). A person intending to introduce a device containing a poly(hydroxyethyl methacrylate)-dye copolymer listed under this section into commerce shall submit to the Food and Drug Administration either a premarket notification in accordance with subpart E of part 807 of this chapter, if the device is not subject to premarket approval, or submit and receive approval of an original or supplemental premarket approval application if the device is subject to premarket approval.

(c) Labeling. The label of the color additives shall conform to the requirements of §70.25 of this chapter.

(d) Exemption from certification. Certification of these color additives is not necessary for the protection of the public health, and therefore these color additives are exempt from the certification requirements of section 721(c) of the act.


§ 73.3123 6-Ethoxy-2-(6-ethoxy-3-oxobenzo[b]thien-2(3H)-ylidene)benzo[b]thiophen-3(2H)-one.

(a) Identity. The color additive is 6-ethoxy-2-(6-ethoxy-3-oxobenzo[b]thien-2(3H)-ylidene)benzo[b]thiophen-3(2H)-one (CAS Reg. No. 3263-31-8), Colour Index No. 73335.

(b) Uses and restrictions. (1) The substance listed in paragraph (a) of this section may be used as a color additive in contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization for this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the contact lens in which the color additive is used.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore the color additive is exempt from the certification requirements of section 721(c) of the act.

[51 FR 11436, Apr. 3, 1986]

§ 73.3124 Phthalocyanine green.

(a) Identity. The color additive is phthalocyanine green (CAS Reg. No. 1328-53-6), Colour Index No. 74260.
§ 73.3125  Iron oxides.

(a) Identity and specifications. The color additive iron oxides (CAS Reg. No. 977053-38-5), Color Index No. 77491, shall conform in identity and specifications to the requirements of § 73.2250 (a) and (b).

(b) Uses and restrictions. (1) The substance listed in paragraph (a) of this section may be used as a color additive in contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization for this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the contact lens in which the additive is used.

(c) Labeling. The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore the color additive is exempt from the certification requirements of section 721(c) of the act.

[51 FR 11433, Apr. 3, 1986]

§ 73.3126  Titanium dioxide.

(a) Identity and specifications. The color additive titanium dioxide (CAS Reg. No. 13463-67-7), Color Index No. 77891, shall conform in identity and specifications to the requirements of § 73.575(a)(1) and (b).

(b) Uses and restrictions. (1) The substance listed in paragraph (a) of this section may be used as a color additive in contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization and compliance with this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the contact lens in which the additive is used.

(c) Labeling. The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore the color additive is exempt from the certification requirements of section 721(c) of the act.

[51 FR 24816, July 9, 1986]

§ 73.3127  Vinyl alcohol/methyl methacrylate-dye reaction products.

(a) Identity. The color additives are formed by reacting the dyes, either alone or in combination, with a vinyl alcohol/methyl methacrylate copolymer, so that the sulfate groups of the dyes are replaced by ether linkages to the vinyl alcohol/methyl methacrylate copolymer. The dyes are:


(2) C.I. Reactive Black 5 [2,7-naphthalenedisulfonic acid, 4-amino-5-hydroxy-3,6-bis(4-((2-sulfooxy)ethyl)sulfonyl)phenyl]azo), tetrasodium salt] (CAS Reg. No. 17095-24-8).

(3) C.I. Reactive Orange 78 [2-naphthalenesulfonic acid, 7-
(acetylamino)-4-hydroxy-3-((4-((2- sulfooxy)ethyl)sulfonyl)phenyl)azo]- (CAS Reg. No. 68189-39-9).

(4) C.I. Reactive Yellow 15 [benzenesulfonic acid, 4-(4,5-dihydro-4- (2-methoxy-5-methyl-4-((2- sulfooxy)ethyl)sulfonyl)phenyl)azo)-3- methyl-5-oxo-2H-pyrazol-1-yl)-] (CAS Reg. No. 60958-41-0).

(5) C.I. Reactive Blue No. 19 [2- anthracenesulfonic acid, 1-amino-9,10 dihydro-9,10-dioxo-4-((3-((2- sulfooxy)ethyl)sulfonyl)phenyl)amino)-, disodium salt] (CAS Reg. No. 2580-78-1).


(b) Uses and restrictions. (1) The substances listed in paragraph (a) of this section may be used to color contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) As part of the manufacturing process, the lenses containing the color additives are thoroughly washed to remove unbound reactive dye.

(3) Authorization and compliance with this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act (the act). A person intending to introduce a device containing a vinyl alcohol/methyl methacrylate-dye reaction product listed under this section into commerce shall submit to the Food and Drug Administration either a premarket notification in accordance with subpart E of part 807 of this chapter, if the device is not subject to premarket approval, or submit and receive approval of an original or supplemental premarket approval application if the device is subject to premarket approval.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore, this color additive is exempt from the certification requirements of section 721(c) of the act.

[58 FR 3227, Jan. 8, 1993, as amended at 58 FR 17510, Apr. 5, 1993]

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

Subpart A—Foods

Sec.

74.101 FD&C Blue No. 1.

74.102 FD&C Blue No. 2.

74.203 FD&C Green No. 3.

74.250 Orange B.

74.302 FD&C Red No. 2.

74.303 FD&C Red No. 3.

74.340 FD&C Red No. 40.

74.305 FD&C Yellow No. 5.

74.306 FD&C Yellow No. 6.

Subpart B—Drugs

74.1101 FD&C Blue No. 1.

74.1102 FD&C Blue No. 2.

74.1104 D&C Blue No. 4.

74.1109 D&C Blue No. 9.

74.1203 FD&C Green No. 3.

74.1205 D&C Green No. 5.

74.1206 D&C Green No. 6.

74.1208 D&C Green No. 8.

74.1254 D&C Orange No. 4.

74.1255 D&C Orange No. 5.

74.1260 D&C Orange No. 10.

74.1261 D&C Orange No. 11.

74.1303 FD&C Red No. 3.

74.1304 D&C Red No. 4.

74.1306 D&C Red No. 6.

74.1307 D&C Red No. 7.

74.1317 D&C Red No. 17.

74.1321 D&C Red No. 21.

74.1322 D&C Red No. 22.

74.1327 D&C Red No. 27.

74.1328 D&C Red No. 28.

74.1330 D&C Red No. 30.

74.1331 D&C Red No. 31.

74.1333 D&C Red No. 33.

74.1334 D&C Red No. 34.

74.1336 D&C Red No. 36.

74.1337 D&C Red No. 37.

74.1339 D&C Red No. 39.

74.1340 D&C Red No. 40.

74.1602 D&C Violet No. 2.

74.1705 FD&C Yellow No. 5.

74.1706 FD&C Yellow No. 6.

74.1707 D&C Yellow No. 7.

74.1707a Ext. D&C Yellow No. 7.

74.1708 D&C Yellow No. 8.

74.1710 D&C Yellow No. 10.

74.1711 D&C Yellow No. 11.

Subpart C—Cosmetics

74.2101 FD&C Blue No. 1.

74.2104 D&C Blue No. 4.
§ 74.101

FD&C Blue No. 1.

(a) Identity. (1) The color additive FD&C Blue No. 1 is principally the disodium salt of ethyl [(p-ethyl (m-sulfobenzyl) amino)-α-(o-sulfophenyl) benzylidene]-2,5-cyclohexadien-1-ylidene] (p-sulfobenzyl) ammonium hydroxide inner salt and ethyl [(p-ethyl (o-sulfobenzyl) amino)-α-(o-sulfophenyl) benzylidene]-2,5-cyclohexadien-1-ylidene] (o-sulfobenzyl) ammonium hydroxide inner salt.

(2) Color additive mixtures for food use (including dietary supplements) made with FD&C Blue No. 1 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring foods.

(b) Specifications. FD&C Blue No. 1 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by current good manufacturing practice:

- Sum of volatile matter (at 135 °C) and chlorides and sulfates (calculated as sodium salts), not more than 15.0 percent.
- Water-insoluble matter, not more than 0.2 percent.
- Leuco base, not more than 5 percent.
- Sum of o-, m-, and p-sulfobenzaldehydes, not more than 1.5 percent.
- N-Ethyl,N-(m-sulfobenzyl)sulfanilic acid, not more than 0.3 percent.
- Subsidiary colors, not more than 6.0 percent.
- Chromium (as Cr), not more than 50 parts per million.
- Manganese (as Mn), not more than 100 parts per million.
- Arsenic (as As), not more than 3 parts per million.
- Lead (as Pb), not more than 10 parts per million.
- Total color, not less than 85.0 percent.

(c) Uses and restrictions. FD&C Blue No. 1 may be safely used for coloring foods (including dietary supplements) generally in amounts consistent with good manufacturing practice except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act unless added color is authorized by such standards.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.
§ 74.203 FD&C Green No. 3.


(b) Specifications. The color additive FD&C Green No. 3 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by current good manufacturing practice:

Sum of volatile matter at 135 °C (275 °F) and chlorides and sulfates (calculated as sodium salts), not more than 15 percent.

Water insoluble matter, not more than 0.4 percent.

Isatin-5-sulfonic acid, not more than 0.4 percent.

5-Sulfoanthranilic acid, not more than 0.2 percent.
§ 74.250

sulfophenyl)methylamino)phenyl)4-hydroxy-2-sulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-3-sulfobenzenemethanaminium hydroxide. Additionally, F&D C Green No. 3 is manufactured by the acid catalyzed condensation of one molecule of 2-formyl-5-hydroxybenzenesulfonic acid with two molecules from a mixture consisting principally of 3-[(ethylphenylamino)methyl]benzenesulfonic acid, and smaller amounts of 4-[(ethylphenylamino)methyl]benzenesulfonic acid to form the leuco base. The leuco base is then oxidized with lead dioxide and acid to form the dye. The intermediate 2-formyl-5-hydroxybenzenesulfonic acid is prepared by the potassium permanganate oxidation of 2,2′-(1,2-ethenediyl)-bis(5-aminobenzenesulfonic acid) to sodium 5-amino-2-formylbenzenesulfonate. This amine is diazotized and the resulting diazonium salt is hydrolyzed to the desired 2-formyl-5-hydroxybenzenesulfonic acid.

(2) Color additive mixtures for food use (including dietary supplements) made with F&D C Green No. 3 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as suitable in color additive mixtures for coloring food.

(b) Specifications. The color additive F&D C Green No. 3 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by current good manufacturing practice:

- Sum of volatile matter at 135 °C (275 °F) and chlorides and sulfates (calculated as sodium salts), not more than 15 percent.
- Water-insoluble matter, not more than 0.2 percent.
- Leuco base, not more than 5 percent.
- Sum of 2-,3-,4-formylbenzenesulfonic acids, sodium salts, not more than 0.5 percent.
- Sum of 3- and 4-[[ethyl(4-sulfophenyl)amino)methyl]benzenesulfonic acid, disodium salts, not more than 0.3 percent.
- 2-Formyl-5-hydroxybenzenesulfonic acid, sodium salt, not more than 0.5 percent.
- Subsidiary colors, not more than 6 percent.

Chromium (as Cr), not more than 50 parts per million.
Arsenic (as As), not more than 3 parts per million.
Lead (as Pb), not more than 10 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 85 percent.

(c) Uses and restrictions. The color additive F&D C Green No. 3 may be safely used for coloring foods (including dietary supplements) generally in amounts consistent with current good manufacturing practice except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act unless added color is authorized by such standards.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of F&D C Green No. 3 shall be certified in accordance with regulations in part 80 of this chapter.


§ 74.250 Orange B.

(a) Identity. (1) The color additive Orange B is principally the disodium salt of 1-(4-sulfophenyl)-3-ethylcarboxy-4-(4-sulphonaphthylazo)-5-hydroxy-3-pyrazole.

(b) Specifications. The color additive F&D C Green No. 3 shall conform to the following specifications:

- Volatile matter (at 135 °C), not more than 6.0 percent.
- Chlorides and sulfates (calculated as the sodium salts), not more than 7.0 percent.
- Water insoluble matter, not more than 0.2 percent.
- 1-(4-Sulfophenyl)-3-ethylcarboxy-5-hydroxy-3-pyrazole and 1-(4-sulfophenyl)-3-carboxy-5-hydroxy-3-pyrazole, not more than 0.7 percent.
- Naphthionic acid, not more than 0.2 percent.
- Phenylhydrazine-sulfonic acid, not more than 0.2 percent.
- The trisodium salt of 1-(4-sulfophenyl)-3-carboxy-4-(4-sulphonaphthylazo)-5-
Food and Drug Administration, HHS

§ 74.303

(a) Identity. (1) The color additive FD&C Red No. 3 is principally the monohydrate of 9-(o-carboxyphenyl)-6-hydroxy - 2,4,5,7-tetraido-3H-xanthen-3-one, disodium salt, with smaller amounts of lower imdinated fluoresceins.

(2) Color additive mixtures for food use made with FD&C Red No. 3 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring foods.
§ 74.340 FD&C Red No. 40.

(a) Identity. (1) The color additive FD&C Red No. 40 is principally the disodium salt of 6-hydroxy-5-{[2-methoxy-5-methyl-4-sulfophenyl]azo}-2-naphthalenesulfonic acid.

(2) Color additive mixtures for food use (including dietary supplements) made with FD&C Red No. 40 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring foods.

(b) Specifications. FD&C Red No. 40 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

Volatile matter (at 135°C.) and chlorides and sulfates (calculated as the sodium salts), total not more than 14 percent.

Water-insoluble matter, not more than 0.2 percent.

Higher sulfonated subsidiary colors (as sodium salts), not more than 1.0 percent.

Lower sulfonated subsidiary colors (as sodium salts), not more than 1.0 percent.

Disodium salt of 6-hydroxy-5-{[2-methoxy-5-methyl-4-sulfophenyl]azo}-8-(2-methoxy-5-methyl-4-sulfophenoxyl)-2-naphthalenesulfonic acid, not more than 1.0 percent.

Sodium salt of 6-hydroxy-2-naphthalenesulfonic acid (Schaeffer’s salt), not more than 0.3 percent.

4-Amino-5-methoxy-o-toluenesulfonic acid, not more than 0.2 percent.

Disodium salt of 6-hydroxy-5-{[2-methoxy-5-methyl-4-sulfophenyl]azo}-8-(2-methoxy-5-methyl-4-sulfo phenoxyl)-2-naphthalenesulfonic acid, not more than 1.0 percent.

Lead (as Pb), not more than 10 parts per million.

Arsenic (as As), not more than 3 parts per million.

Total color, not less than 85.0 percent.

(c) Uses and restrictions. FD&C Red No. 40 may be safely used for coloring foods (including dietary supplements) in amounts consistent with good manufacturing practice except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act unless added color is authorized by such standards.

(d) Labeling. The label of the color additive and any lakes or mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of FD&C Red No. 40 and lakes thereof shall be certified in accordance with regulations in part 80 of this chapter.
§ 74.705 FD&C Yellow No. 5.

(a) Identity. (1) The color additive FD&C Yellow No. 5 is principally the trisodium salt of 4,5-dihydro-5-oxo-1-(4-sulfophenyl)-1H-pyrazole-3-carboxylic acid (CAS Reg. No. 1934-21-0). To manufacture the additive, 4-amino-benzenesulfonic acid is diazotized using hydrochloric acid and sodium nitrite. The diazo compound is coupled with 4,5-dihydro-5-oxo-1-(4-sulfophenyl)-1H-pyrazole-3-carboxylic acid or with the methyl ester, the ethyl ester, or a salt of this carboxylic acid. The resulting dye is purified and isolated as the sodium salt.

(2) Color additive mixtures for food use made with FD&C Yellow No. 5 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring foods.

(b) Specifications. FD&C Yellow No. 5 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

Sum of volatile matter at 135 °C (275 °F) and chlorides and sulfates (calculated as sodium salts), not more than 13 percent.

Water-insoluble matter, not more than 0.2 percent.

4,4′-(1-Triazene-1,3-diyl)bis[benzenesulfonic acid], trisodium salt, not more than 1 percent.

4-Aminobenzenesulfonic acid, sodium salt, not more than 0.2 percent.

Ethyl or methyl 4,5-dihydro-5-oxo-1-(4-sulfophenyl)hydrazono]-1H-pyrazole-3-carboxylate, disodium salt, not more than 0.1 percent.

(2) Foods for human use that contain FD&C Yellow No. 5, including butter, cheese, and ice cream, shall specifically declare the presence of FD&C Yellow No. 5 by listing the color additive as FD&C Yellow No. 5 among the list of ingredients.

(e) Certification. All batches of FD&C Yellow No. 5 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.706 FD&C Yellow No. 6.

(a) Identity. (1) The color additive FD&C Yellow No. 6 is principally the disodium salt of 6-hydroxy-5-(4-sulfophenyl)azo]-2-naphthalenesulfonic acid (CAS Reg. No. 2783-94-0). The trisodium salt of 3-hydroxy-4(4-sulfophenyl)azo]-2,7-naphthalenedisulfonic acid (CAS Reg. No. 50880-65-4) may be added in small
§ 74.1101

amounts. The color additive is manufactured by diazotizing 4-aminobenzensulfonic acid using hydrochloric acid and sodium nitrite or sulfuric acid and sodium nitrite. The diazo compound is coupled with 6-hydroxy-2-naphthalenesulfonic acid. The dye is isolated as the sodium salt and dried. The trisodium salt of 3-hydroxy-4-[(4-sulfophenyl)azo]-2,7-naphthalenedisulfonic acid which may be blended with the principal color is prepared in the same manner except the diazo benzenesulfonic acid is coupled with 3-hydroxy-2,7-naphthalensedisulfonic acid.

(2) Color additive mixtures for food use made with FD&C Yellow No. 6 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring foods.

(b) Specifications. The color additive FD&C Yellow No. 6 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by current good manufacturing practice:

Sum of volatile matter (at 135 °C) and chlorides and sulfates (calculated as sodium salts), not more than 13 percent.

Water insoluble matter, not more than 0.2 percent.

Sodium salt of 4-aminobenzensulfonic acid, not more than 0.2 percent.

Sodium salt of 6-hydroxy-2-naphthalenesulfonic acid, not more than 0.3 percent.

Disodium salt of 6,6'-oxybis[2-naphthalenesulfonic acid], not more than 1 percent.

Disodium salt of 4,4'-(1-triazene-1,3-diyi)bis[benzenesulfonic acid], not more than 0.1 percent.

Sum of the sodium salt of 6-hydroxy-5-(phenylazo)-2-naphthalenesulfonic acid and the sodium salt of 4[(2-hydroxy-1-naphthalenyl)azo]benzenesulfonic acid, not more than 1 percent.

Sum of the trisodium salt of 3-hydroxy-4-[(4-sulfophenyl)azo]-2,7-naphthalenedisulfonic acid and other higher sulfonated subsidiaries, not more than 5 percent.

4-Aminoazobenzene, not more than 50 parts per billion.

4-Aminobiphenyl, not more than 15 parts per billion.

Aniline, not more than 250 parts per billion.

Azobenzene, not more than 200 parts per billion.

Benzidine, not more than 1 part per billion.

1,3-Diphenyltriazene, not more than 40 parts per billion.

1-(Phenyldiazol)-2-naphthalenol, not more than 10 parts per million.

Lead (as Pb), not more than 10 parts per million.

Arsenic (as As), not more than 3 parts per million.

Mercury (as Hg), not more than 1 part per million.

Total color, not less than 87 percent.

(c) Uses and restrictions. The color additive FD&C Yellow No. 6 may be safely used for coloring foods (including dietary supplements) generally in amounts consistent with current good manufacturing practice, except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act unless added color is authorized by such standards.

(d) Labeling requirements. (1) The label of the color additive and any mixtures intended solely or in part for coloring purposes prepared therefrom shall conform to the requirements of §70.25 of this chapter.

(2) [Reserved]

(e) Certification. All batches of FD&C Yellow No. 6 shall be certified in accordance with regulations in part 80 of this chapter.


Subpart B—Drugs

§ 74.1101 FD&C Blue No. 1

(a) Identity. (1) For ingested drugs, the color additive FD&C Blue No. 1 shall conform in identity to the requirements of §74.101(a)(1).

(2) For externally applied drugs, the color additive FD&C Blue No. 1 shall conform in identity to the requirements of §74.2101(a).

(3) Color additive mixtures for drug use made with FD&C Blue No. 1 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) Specifications. (1) The color additive FD&C Blue No. 1 for use in coloring drugs generally shall conform in specifications to the requirements of §74.101(b).
(2) FD&C Blue No. 1 Aluminum Lake shall be prepared in accordance with the requirements of §74.1102 of this chapter.

(c) Uses and restrictions. (1) FD&C Blue No. 1 may be safely used for coloring drugs, including drugs intended for use in the area of the eye, in amounts consistent with current good manufacturing practice.

(2) FD&C Blue No. 1 Aluminum Lake may be safely used for coloring drugs intended for use in the area of the eye, in amounts consistent with current good manufacturing practice, subject to the restrictions on the use of color additives in §70.5(b) and (c) of this chapter.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of FD&C Blue No. 1 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.1102 FD&C Blue No. 2.

(a) Identity. (1) The color additive FD&C Blue No. 2 shall conform in identity to the requirements of §74.102(a)(1).

(2) Color additive mixtures for use in ingested drugs made with FD&C Blue No. 2 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) Specifications. (1) The color additive FD&C Blue No. 2 for use in coloring surgical sutures shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

- Sum of volatile matter at 135 °C (275 °F) and chlorides and sulfates (calculated as sodium salts), not more than 15 percent.
- Water insoluble matter, not more than 0.4 percent.
- Isatin-5-sulfonic acid, not more than 0.4 percent.
- Isomeric colors, not more than 18 percent.
- Lower sulfonated subsidiary colors, not more than 5 percent.
- Lead (as Pb), not more than 10 parts per million.
- Arsenic (as As), not more than 3 parts per million.
- Total color, not less than 85 percent.

(2) The color additive FD&C Blue No. 2 for use in coloring ingested drugs shall conform to the specifications in §74.102(b).

(c) Uses and restrictions. (1) The color additive FD&C Blue No. 2 may be safely used for coloring nylon (the copolymer of adipic acid and hexamethylene diamine) surgical sutures for use in general surgery subject to the following restrictions:

- The quantity of color additive does not exceed 1 percent by weight of the suture.
- The dyed suture shall conform in all respects to the requirements of the United States Pharmacopeia XX (1980).
- When the sutures are used for the purposes specified in their labeling, the color additive does not migrate to the surrounding tissues.
- If the suture is a new drug, an approved new drug application, pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act, is in effect for it.

(2) The color additive FD&C Blue No. 2 may be safely used for coloring ingested drugs in amounts consistent with current good manufacturing practice.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of FD&C Blue No. 2 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.1104 D&C Blue No. 4.

(a) Identity. (1) The color additive D&C Blue No. 4 is principally the diammonium salt of ethyl[4-[ethyl(m-sulfobenzyl)ami-no]-α-(o-sulfo-phenyl)benzyliden]-2,5-cyclohexadien-1-ylidene] (m- sulfobenzyl) ammonium hydroxide inner salt with smaller amounts of the isomeric...
§ 74.1109 D&C Blue No. 9.

(a) Identity. The color additive D&C Blue No. 9 is principally 7,16-dichloro-6,15-di hydro - 5,9,14,18 - anthrazine-tetrone.

(b) Specifications. D&C Blue No. 9 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Volatile matter (at 135 °C.), not more than 3 percent.

Matter extractable by alcoholic HCl (0.1 ml of concentrated hydrochloric acid per 50 ml of 95 percent ethyl alcohol), not more than 1 percent.

2-Amino anthraquinone, not more than 0.2 percent.

Organically combined chlorine in pure dye, 13.0-14.8 percent.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

Total color, not less than 97 percent.

(c) Uses and restrictions. D&C Blue No. 9 may be safely used for coloring cotton and silk surgical sutures, including sutures for ophthalmic use, subject to the following restrictions:

(1) The dyed suture shall conform in all respects to the requirements of the United States Pharmacopeia XX (1980).

(2) The quantity of the color additive does not exceed 2.5 percent by weight of the suture.

(3) When the sutures are used for the purposes specified in their labeling, the color additive does not migrate to the surrounding tissue.

(4) If the suture is a new drug, a new-drug application approved pursuant to section 505 of the act is in effect for it.

(d) Labeling. The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(e) Certification. All batches of D&C Blue No. 9 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.1203 FD&C Green No. 3.

(a) Identity and specifications. (1) The color additive FD&C Green No. 3 shall conform in identity and specifications
§ 74.1205 D&C Green No. 5.

(a) Identity. (1) The color additive D&C Green No. 5 is principally the disodium salt of 2,2′-(9,10-dihydro-9,10-dioxo-1,4-anthracenediyl)di[(5-methylbenzenesulfonic acid)] (CAS Reg. No. 4403-90-1).

(2) Color additive mixtures for use in drugs made with D&C Green No. 5 may contain only diluents that are suitable and that are listed in part 73 of this chapter for use in color additive mixtures for coloring drugs.

(b) Uses and restrictions. The color additive D&C Green No. 5 may be safely used for coloring drugs generally in amounts consistent with current good manufacturing practice.

(c) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of D&C Green No. 5 shall be certified in accordance with regulations in part 80 of this chapter.

[47 FR 52144, Nov. 19, 1982]

§ 74.1205 D&C Green No. 5.

(a) Identity. (1) The color additive D&C Green No. 5 is principally the disodium salt of 2,2′-[(9,10-dihydro-9,10-dioxo-1,4-anthracenediyl)diimino]bis-[5-methylbenzenesulfonic acid] (CAS Reg. No. 4403-90-1).

(2) Color additive mixtures for use in drugs made with D&C Green No. 5 may contain only those diluents that are suitable and that are listed in part 73 of this chapter for use in color additive mixtures for coloring drugs.

(b) Specifications. (1) D&C Green No. 5 for use in coloring surgical sutures shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by current good manufacturing practice:

<table>
<thead>
<tr>
<th>Specification</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sum of volatile matter (at 135 °C) and chlorides and sulfates (calculated as sodium salts), not more than 20 percent.</td>
<td>20 percent</td>
</tr>
<tr>
<td>Water insoluble matter, not more than 0.2 percent.</td>
<td>0.2 percent</td>
</tr>
<tr>
<td>1,4-Dihydroxyanthraquinone, not more than 0.2 percent.</td>
<td>0.2 percent</td>
</tr>
<tr>
<td>2-Amino-m-toluenesulfonic acid, not more than 0.2 percent.</td>
<td>0.2 percent</td>
</tr>
<tr>
<td>Subsidiary colors, not more than 5 percent.</td>
<td>5 percent</td>
</tr>
<tr>
<td>Lead (as Pb), not more than 10 parts per million.</td>
<td>10 parts per million.</td>
</tr>
<tr>
<td>Arsenic (as As), not more than 3 parts per million.</td>
<td>3 parts per million.</td>
</tr>
<tr>
<td>Total color, not less than 80 percent.</td>
<td>80 percent</td>
</tr>
</tbody>
</table>

(2) D&C Green No. 5 for use in coloring drugs shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by current good manufacturing practice:

<table>
<thead>
<tr>
<th>Specification</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sum of volatile matter (at 135 °C) and chlorides and sulfates (calculated as sodium salts), not more than 20 percent.</td>
<td>20 percent</td>
</tr>
<tr>
<td>Water-insoluble matter, not more than 0.2 percent.</td>
<td>0.2 percent</td>
</tr>
<tr>
<td>1,4-Dihydroxyanthraquinone, not more than 0.2 percent.</td>
<td>0.2 percent</td>
</tr>
<tr>
<td>Sulfonated toluidines, total not more than 0.2 percent.</td>
<td>0.2 percent</td>
</tr>
<tr>
<td>p-Toluidine, not more than 0.0015 percent.</td>
<td>0.0015 percent</td>
</tr>
<tr>
<td>Sum of monosulfonated D&amp;C Green No. 6 and Ext. D&amp;C Violet No. 2, not more than 3 percent.</td>
<td>3 percent</td>
</tr>
<tr>
<td>Lead (as Pb), not more than 20 parts per million.</td>
<td>20 parts per million.</td>
</tr>
<tr>
<td>Arsenic (as As), not more than 3 parts per million.</td>
<td>3 parts per million.</td>
</tr>
<tr>
<td>Mercury (as Hg), not more than 1 part per million.</td>
<td>1 part per million.</td>
</tr>
<tr>
<td>Total color, not less than 80 percent.</td>
<td>80 percent</td>
</tr>
</tbody>
</table>

(c) Use and restrictions. (1) D&C Green No. 5 may be safely used to color nylon 66 (the copolymer of adipic acid and hexamethylenediamine) and/or nylon 6poly-(e-caprolactam)nonabsorbable surgical sutures for use in general surgery, subject to the following restrictions:

(i) The quantity of color additive does not exceed 0.6 percent by weight of the suture.

(ii) When the sutures are used for the purposes specified in their labeling, there is no migration of the color additive to the surrounding tissue.

(iii) If the suture is a new drug, an approved new drug application, under section 505 of the act, is in effect for it.

(2) D&C Green No. 5 may be safely used for coloring drugs generally, including drugs intended for use in the area of the eye, in amounts consistent with current good manufacturing practice.

(d) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.
§ 74.1206  
(e) Certification. All batches of D&C Green No. 5 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.1206  
D&C Green No. 6.  
(a) Identity. The color additive D&C Green No. 6 is 1,4-bis(4-methylphenyl)amino)-9,10-anthracenedione (CAS. Reg. No. 128-80-3).

(b) Specifications. The color additive D&C Green No. 6 for use in coloring externally applied drugs shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

Volatile matter (at 135 °C), not more than 2.0 percent.
Water-soluble matter, not more than 0.3 percent.
Matter insoluble in carbon tetrachloride, not more than 1.5 percent.
p-Toluidine, not more than 0.1 percent.
1,4-Dihydroxyanthraquinone, not more than 0.2 percent.
1-Hydroxy-4-[4-methylphenyl]amino)-9,10-anthracenedione, not more than 5.0 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 96.0 percent.

(c) Uses and restrictions. The color additive D&C Green No. 6 may be safely used for coloring externally applied drugs in amounts consistent with current good manufacturing practice.

(d) Labeling. The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(e) Certification. All batches of D&C Green No. 6 shall be certified in accordance with regulations promulgated under part 80 of this chapter.

§ 74.1208  
D&C Green No. 8.  
(a) Identity. (1) The color additive D&C Green No. 8 is principally the tri-sodium salt of 8-hydroxy-1,3,6-pyrenetrisulfonic acid.

(2) Color additive mixtures for use in externally applied drugs made with D&C Green No. 8 may contain only those diluents that are suitable and that are listed in part 73 of this chapter for use in color additive mixtures for coloring externally applied drugs.

(b) Specifications. D&C Green No. 8 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practices:

Volatile matter (at 135 °C), not more than 15 percent.
Water-insoluble matter, not more than 0.2 percent.
Chlorides and sulfates (calculated as sodium salt), not more than 20 percent.
The trisodium salt of 1,3,6-pyrenetrisulfonic acid, not more than 6 percent.
The tetrasodium salt of 1,3,6,8-pyrenetetrasulfonic acid, not more than 1 percent.
Pyrene, not more than 0.2 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 65 percent.

(c) Uses and restrictions. D&C Green No. 8 may be safely used in externally applied drugs in amounts not exceeding 0.01 percent by weight of the finished product.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) Certification. All batches of D&C Green No. 8 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.1254  
D&C Orange No. 4.  
(a) Identity. (1) The color additive D&C Orange No. 4 is principally the sodium salt of 4-[(2-hydroxy-1-naphthalenyl)azo]benzenesulfonic acid.

(2) Color additive mixtures for use in externally applied drugs made with D&C Orange No. 4 may contain only those diluents that are suitable and that are listed in part 73 of this chapter.
for use in color additive mixtures for coloring externally applied drugs.

(b) Specifications. D&C Orange No. 4 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice.

Sum of volatile matter (at 135 °C) and chlorides and sulfates (calculated as sodium salts), not more than 13 percent.

Water-insoluble matter, not more than 0.2 percent.

2-Naphthol, not more than 0.4 percent.

Subsidiary colors, not more than 3 percent.

4,4′-(Diazaoamino)-dibenzenesulfonic acid, not more than 0.1 percent.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

Mercury (as Hg), not more than 1 part per million.

Total color, not less than 87 percent.

(c) Uses and restrictions. D&C Orange No. 4 may be safely used for coloring externally applied drugs in amounts consistent with good manufacturing practice.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.


§ 74.1255 D&C Orange No. 5.

(a) Identity. (1) the color additive D&C Orange No. 5 is a mixture consisting principally the sodium salt of 4′,5′-dibromofluorescein (CAS Reg. No. 596-03-2) and 2′,4′,5′-tribromofluorescein (CAS Reg. No. 25709-83-5) and 2′,4′,5′,7′-tetrabromofluorescein (CAS Reg. No. 15086-94-9). D&C Orange No. 5 is manufactured by brominating fluorescein with elemental bromine. The fluorescein is isolated and partially purified prior to bromination.

(2) Color additive mixtures for drug use made with D&C Orange No. 5 may contain only those diluents that are suitable and that are listed in part 73 of this chapter for use in color additive mixtures for coloring drugs.

(b) Specifications. D&C Orange No. 5 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice.

4′,5′-dibromofluorescein, not less than 50 percent and not more than 65 percent.

2′,4′,5′-tribromofluorescein, not less than 30 percent and not more than 40 percent.

2′,4′,5′,7′-tetrabromofluorescein, not more than 10 percent.

Sum of 2′,4′-dibromofluorescein and 2′,5′-dibromofluorescein, not more than 2 percent.

4′-Bromofluorescein, not more than 2 percent.

Fluorescein, not more than 1 percent.

Phthalic acid, not more than 1 percent.

Brominated resorcinol, not more than 0.4 percent.

Sum of volatile matter (at 135 °C) and halides and sulfates (calculated as sodium salts), not more than 10 percent.

Insoluble matter (alkaline solution), not more than 0.3 percent.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

Mercury (as Hg), not more than 1 part per million.

Total color, not less than 90 percent.

(c) Uses and restrictions. D&C Orange No. 5 may be safely used for coloring mouthwashes and dentifrices that are ingested drugs in amounts consistent with current good manufacturing practice. D&C Orange No. 5 may be safely used in externally applied drugs in amounts not exceeding 5 milligrams per daily dose of the drug.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.
§ 74.1260 D&C Orange No. 10.

(a) Identity. (1) The color additive D&C Orange No. 10 is a mixture consisting principally of 4',5'-diiodofluorescein, 2',4',5'-triodofluorescein, and 2',4',5,7-tetraiodofluorescein.

(2) Color additive mixtures for drug use made with D&C Orange No. 10 may contain only those diluents listed in this subpart as safe and suitable for use in color additive mixtures for coloring externally applied drugs.

(b) Specifications. D&C Orange No. 10 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

- Sum of volatile matter (at 135 °C) and halides and sulfates (calculated as sodium salts), not more than 8 percent.
- Insoluble matter (alkaline solution), not more than 0.5 percent.
- Phthalic acid, not more than 0.5 percent.
- 2-[3,5-Diiodo-2,4-di(4-hydroxybenzoyl)] benzoic acid, not more than 0.5 percent.
- Fluorescein, not more than 1 percent.
- 4-Iodofluorescein, not more than 3 percent.
- 2',4'-Diiodofluorescein and 2,5'-diodofluorescein, not more than 2 percent.
- 2,4,5-Triiodofluorescein, not more than 35 percent.
- 2',4,5,7-Tetraiodofluorescein, not more than 10 percent.
- 4,5-Diodofluorescein, not less than 60 percent and not more than 95 percent.
- Lead (as Pb), not more than 20 parts per million.
- Arsenic (as As), not more than 3 parts per million.
- Mercury (as Hg), not more than 1 part per million.
- Total color, not less than 92 percent.

(c) Uses and restrictions. D&C Orange No. 10 may be safely used for coloring externally applied drugs in amounts consistent with good manufacturing practice.

(d) Labeling requirements. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of D&C Orange No. 10 shall be certified in accordance with regulations in part 80 of this chapter.

[47 FR 44635, Nov. 2, 1982, as amended at 49 FR 13342, Apr. 4, 1984]

§ 74.1261 D&C Orange No. 11.

(a) Identity. (1) The color additive D&C Orange No. 11 is a mixture consisting principally of the disodium salts of 4',5'-diiodofluorescein, 2',4',5'-triodofluorescein and 2',4',5,7-tetraiodofluorescein.

(2) Color additive mixtures for drug use made with D&C Orange No. 11 may contain only those diluents listed in this subpart as safe and suitable for use in color additive mixtures for coloring externally applied drugs.

(b) Specifications. The color additive D&C Orange No. 11 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

- Sum of volatile matter (at 135 °C) and halides and sulfates (calculated as sodium salts), not more than 8 percent.
- Water-insoluble matter, not more than 0.5 percent.
- Phthalic acid, not more than 0.5 percent.
- 2-[3,5-Diiodo-2,4-di(4-hydroxybenzoyl)] benzoic acid, sodium salt, not more than 0.5 percent.
- Fluorescein, disodium salt, not more than 1 percent.
- 4-Iodofluorescein, disodium salt, not more than 3 percent.
- 2',4'-Diiodofluorescein and 2,5'-diodofluorescein, not more than 2 percent.
- 2,4,5-Triiodofluorescein, not more than 35 percent.
- 2',4,5,7-Tetraiodofluorescein, disodium salt, not more than 10 percent.
- 4,5-Diodofluorescein, not less than 60 percent and not more than 95 percent.
- Lead (as Pb), not more than 20 parts per million.
- Arsenic (as As), not more than 3 parts per million.
- Mercury (as Hg), not more than 1 part per million.
- Total color, not less than 92 percent.

(c) Uses and restrictions. D&C Orange No. 11 may be safely used for coloring externally applied drugs in amounts...
consistent with good manufacturing practice.

(d) Labeling requirements. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of D&C Orange No. 11 shall be certified in accordance with regulations in part 80 of this chapter.

[46 FR 18953, Mar. 27, 1981]

§ 74.1303 FD&C Red No. 3.

(a) Identity and specifications. (1) The color additive FD&C Red No. 3 shall conform in identity and specifications to the requirements of §74.303(a)(1) and (b).

(2) Color additive mixtures for ingested drug use made with FD&C Red No. 3 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring ingested drugs.

(b) Uses and restrictions. FD&C Red No. 3 may be safely used for coloring ingested drugs in amounts consistent with good manufacturing practice.

(c) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of FD&C Red No. 3 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.1304 FD&C Red No. 4.

(a) Identity. (1) The color additive FD&C Red No. 4 is principally the disodium salt of 3-[(2,4-dimethyl-5-sulfophenyl)azo]-4-hydroxy-1-naphthalenesulfonic acid.

(2) Color additive mixtures for use in externally applied drugs made with FD&C Red No. 4 may contain only those diluents that are suitable and that are listed in part 73 of this chapter for use in color additive mixtures for coloring externally applied drugs.

(b) Specifications. FD&C Red No. 4 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Sum of volatile matter (at 135 °C) and chlorides and sulfates (calculated as sodium salts), not more than 13 percent.

Water-insoluble matter, not more than 0.2 percent.

5-Amino-2,4-dimethyl-1-benzene sulfonic acid, sodium salt, not more than 0.2 percent.

4-Hydroxy-1-naphthalenesulfonic acid, sodium salt, not more than 0.2 percent.

Subsidiary colors, not more than 2 percent.

Lead (as Pb), not more than 10 parts per million.

Arsenic (as As), not more than 3 parts per million.

Mercury (as Hg), not more than 1 part per million.

Total color, not less than 87 percent.

(c) Uses and restrictions. FD&C Red No. 4 may be safely used in externally applied drugs in amounts consistent with good manufacturing practice.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of FD&C Red No. 4 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.1306 D&C Red No. 6.

(a) Identity. (1) The color additive D&C Red No. 6 is principally the disodium salt of 3-hydroxy-4-[(4-methyl-2-sulfophenyl)azo]-2-naphthalene carboxylic acid (CAS Reg. No. 5858-81-1). To manufacture the additive, 2-amino-5-methylbenzenesulfonic acid is diazotized with hydrochloric acid and sodium nitrite. The diazo compound is coupled in alkaline medium with 3-hydroxy-2-naphthalene carboxylic acid. The resulting dye precipitates as the disodium salt.

(2) Color additive mixtures for drug use made with D&C Red No. 6 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) Specifications. The color additive D&C Red No. 6 shall conform to the following specifications and shall be free from impurities other than those
§ 74.1307 D&C Red No. 7.

(a) Identity. (1) The color additive D&C Red No. 7 is principally the calcium salt of 3-hydroxy-4-[(4-methyl-2-sulfophenyl)azo]-2-naphthalene-carboxylic acid (CAS Reg. No. 5281-04-9). To manufacture the additive, 2-amino-5-methylbenzenesulfonic acid is diazotized with hydrochloric acid and sodium nitrite. The diazo compound is coupled in alkaline medium with 3-hydroxy-2-naphthalene-carboxylic acid and the resulting dye converted to the calcium salt with calcium chloride.

(2) Color additive mixtures for drug use made with D&C Red No. 7 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) Specifications. The color additive D&C Red No. 7 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

Sum of volatile matter (at 135 °C) and chlorides and sulfates (calculated as sodium salts), not more than 10 percent.

Ether-soluble matter, passes test entitled "The Procedure for Determining Ether-Soluble Material in D&C Red Nos. 6 and 7," which is an Appendix A to part 74.

2-Amino-5-methylbenzenesulfonic acid, calcium salt, not more than 0.2 percent.

3-Hydroxy-2-naphthalene-carboxylic acid, calcium salt, not more than 0.4 percent.

3-Hydroxy-4-[(4-methylphenyl)azo]-2-naphthalene-carboxylic acid, calcium salt, not more than 0.5 percent.

p-Toluidine, not more than 15 parts per million.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

Mercury (as Hg), not more than 1 part per million.

Total color, not less than 90 percent.

(c) Uses and restrictions. The color additive D&C Red No. 6 may be safely used for coloring drugs such that the combined total of D&C Red No. 6 and D&C Red No. 7 does not exceed 5 milligrams per daily dose of the drug.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) Certification. All batches of D&C Red No. 6 shall be certified in accordance with regulations in part 80 of this chapter.

[47 FR 57687, Dec. 28, 1982]
additive mixtures for coloring externally applied drugs.

(b) Specifications. D&C Red No. 17 shall conform to the following specifications and shall be free from impurities, other than those named, to the extent that such other impurities may be avoided by good manufacturing practice:

Volatile matter (at 135 °C), not more than 5 percent.
Matter insoluble in both toluene and water (color additive mixed in toluene and the resultant residue isolated and mixed with water to obtain the matter insoluble in both toluene and water), not more than 0.5 percent.
Chlorides and sulfates (calculated as sodium salts), not more than 3 percent.
Aniline, not more than 0.2 percent.
4-Aminoazobenzene, not more than 0.1 percent.
2-Naphthol, not more than 0.2 percent.
1-[(2-phenylazo) phenylazo]-2-naphthalenol, not more than 2 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 0.5 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 90 percent.

(c) Uses and restrictions. D&C Red No. 17 may be safely used in externally applied drugs in amounts consistent with good manufacturing practice.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of D&C Red No. 17 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.1321 D&C Red No. 21.

(a) Identity. (1) The color additive D&C Red No. 21 is principally 2',4',5',7'-tetrabromofluorescein (CAS Reg. No. 15066-94-9), and may contain smaller amounts of 2',4',5'-tribromofluorescein (CAS Reg. No. 25709-83-5) and 2',4',7'-tribromofluorescein (CAS Reg. No. 25709-84-6). The color additive is manufactured by brominating fluorescein with elemental bromine. The fluorescein is manufactured by the acid condensation of resorcinol and phthalic acid or its anhydride. The fluorescein is isolated and partially purified prior to bromination.

(2) Color additive mixtures for drug use made with D&C Red No. 21 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) Specifications. The color additive D&C Red No. 21 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

Sum of volatile matter (at 135°C) and halides and sulfates (calculated as sodium salts), not more than 10 percent.
Insoluble matter (alkaline solution), not more than 0.5 percent.
Phthalic acid, not more than 1 percent.
2-(3,5-Dibromo-2,4-dihydroxybenzoyl) benzoic acid, not more than 0.5 percent.
2',4',5',7'-Tetrabromofluorescein, ethyl ester, not more than 0.4 percent.
Brominated resorcinol, not more than 0.4 percent.
Fluorescein, not more than 0.2 percent.
Sum of mono- and dibromofluoresceins, not more than 2 percent.
Tribromofluoresceins, not more than 11 percent.
2',4',5',7'-Tetramethylfluorescein, not less than 87 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 90 percent.

(c) Uses and restrictions. The color additive D&C Red No. 21 may be safely used for coloring drugs generally in amounts consistent with current good manufacturing practice.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of D&C Red No. 21 shall be certified in accordance with regulations in part 80 of this chapter.


[47 FR 53846, Nov. 30, 1982]
§ 74.1322  D&C Red No. 22.

(a) Identity. (1) The color additive D&C Red No. 22 is principally the disodium salt of 2,4,5,7-tetrabromofluorescein (CAS Reg. No. 13732-87-1) and may contain smaller amounts of the disodium salts of 2,4,5,7-tetramethylbromofluorescein and 2,4,7-tetramethylbromofluorescein. The color additive is manufactured by alkaline hydrolysis of 2,4,5,7-tetrafluorobromofluorescein. 2,4,5,7-Tetramethylbromofluorescein is manufactured by brominating fluorescein with elemental bromine. The fluorescein is manufactured by the acid condensation of resorcinol and phthalic acid or its anhydride. Fluorescein is isolated and partially purified prior to bromination.

(2) Color additive mixtures for drug use made with D&C Red No. 22 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) Specifications. The color additive D&C Red No. 22 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

- Sum of volatile matter (at 135°C) and halides and sulfates (calculated as sodium salts), not more than 10 percent.
- Water-insoluble matter not more than 0.5 percent.
- Disodium salt of phthathic acid, not more than 1 percent.
- Sodium salt of 2-(3,5-Dibromo-2,4-dihydroxybenzoyl)benzoic acid, not more than 0.5 percent.
- 2,4,5,7-Tetramethylbromofluorescein, ethyl ester, not more than 1 percent.
- Brominated resorcinol, not more than 0.4 percent.
- Sum of disodium salts of mono- and dibromofluoresceins, not more than 2 percent.
- Sum of disodium salts of tribromofluoresceins, not more than 25 percent.
- Disodium salt of 2,4,5,7-tetramethylbromofluorescein, not less than 72 percent.
- Lead (as Pb), not more than 20 parts per million.
- Arsenic (as As), not more than 3 parts per million.
- Mercury (as Hg), not more than 1 part per million.
- Total color, not less than 90 percent.

(c) Uses and restrictions. The color additive D&C Red No. 22 may be safely used for coloring drugs generally in amounts consistent with current good manufacturing practice.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of D&C Red No. 22 shall be certified in accordance with regulations in part 80 of this chapter.

[47 FR 53846, Nov. 30, 1982]

§ 74.1327  D&C Red No. 27.

(a) Identity. (1) The color additive D&C Red No. 27 is principally 2,4,5,7-tetrabromo-4,5,6,7-tetrachlorofluorescein (CAS Reg. No. 13473-26-2). The color additive is manufactured by brominating 4,5,6,7-tetrachlorofluorescein with elemental bromine. Tetrachloro-4,5,6,7-tetrachlorofluorescein is manufactured by the acid condensation of resorcinol and tetrachlorophthalic acid or its anhydride. The 4,5,6,7-tetrachlorofluorescein is isolated and partially purified prior to bromination.

(2) Color additive mixtures for drug use made with D&C Red No. 27 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) Specifications. D&C Red No. 27 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

- Sum of volatile matter (at 135°C) and halides and sulfates (calculated as sodium salts), not more than 10 percent.
- Water-insoluble matter (alkaline solution), not more than 0.5 percent.
- Tetrachlorophthalic acid, not more than 1.2 percent.
- Brominated resorcinol, not more than 0.4 percent.
- 2,3,4,5-Tetrachloro-6-(3,5-dibromo-2,4-dihydroxybenzoyl)benzoic acid, not more than 0.7 percent.
- 2,4,5,7-Tetrabromo-4,5,6,7-tetrachlorofluorescein, ethyl ester, not more than 2 percent.
Food and Drug Administration, HHS

§ 74.1330 D&C Red No. 28.

(a) Identity. (1) The color additive D&C Red No. 28 is principally 6-chloro-2-(6-chloro-4-methyl-3-oxobenzo[b]thien-2(3H)-ylidene)-4-methyl-benzo[b]thiophen-3(2H)-one (CAS Reg. No. 2379-74-0).

(b) Specifications. D&C Red No. 28 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

Sum of volatile matter (at 135 °C) and halides and sulfates (calculated as sodium salts), not more than 15 percent.

Insoluble matter (alkaline solution), not more than 0.5 percent.

Tetrachlorophthalic acid, not more than 1.2 percent.

Brominated resorcinol, not more than 0.4 percent.

2,3,4,5-Tetrachloro-6-(3,5-dibromo-2,4-dihydroxybenzoyl)benzoic acid, not more than 0.7 percent.

2,4,5,7-Tetrabromo-4,5,6,7-tetrachlorofluorescein, ethyl ester, not more than 2 percent.

Lower halogenated subsidiary colors, not more than 4 percent.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

Mercury (as Hg), not more than 1 part per million.

Total color, not less than 90 percent.

(2) Color additive mixtures for drug use made with D&C Red No. 28 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) Certification. All batches of D&C Red No. 28 shall be certified in accordance with regulations in part 80 of this chapter.

[47 FR 42568, Sept. 28, 1982]
§ 74.1331  
(c) Uses and restrictions. D&C Red No. 30 may be safely used for coloring drugs generally in amounts consistent with current good manufacturing practice.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of D&C Red No. 30 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.1333  
(a) Identity. (1) The color additive D&C Red No. 33 is principally the disodium salt of 5-amino-4-hydroxy-3-(phenylazo)-2,7-naphthalenedisulfonic acid (CAS Reg. No. 3567-66-6). To manufacture the additive, the product obtained from the nitrous acid diazotization of aniline is coupled with 4-hydroxy-5-amino-2,7-naphthalenedisulfonic acid in an alkaline aqueous medium. The color additive is isolated as the sodium salt.

(2) Color additive mixtures for drug use made with D&C Red No. 33 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring externally applied drugs.

(b) Specifications. D&C Red No. 33 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practices:

- Sum of volatile matter at 135 °C (275 °F) and chlorides and sulfates (calculated as sodium salts), not more than 18 percent.
- Water-insoluble matter, not more than 0.3 percent.
- 4-Amino-5-hydroxy-2,7-naphthalenedisulfonic acid, disodium salt, not more than 0.3 percent.
- 4,5-Dihydroxy-3-(phenylazo)-2,7-naphthalenedisulfonic acid, disodium salt, not more than 3.0 percent.
- Aniline, not more than 25 parts per million.
- 4-Aminoazobenzene, not more than 100 parts per billion.
- 1,3-Diphenyltriazene, not more than 125 parts per billion.
- 4-Aminobiphenyl, not more than 275 parts per billion.
- Azobenzene, not more than 1 part per million.
- Benzidine, not more than 20 parts per billion.
- Lead (as Pb), not more than 20 parts per million.
- Arsenic (as As), not more than 3 parts per million.
- Mercury (as Hg), not more than 1 part per million.
- Total color, not less than 82 percent.

(c) Uses and restrictions. The color additive D&C Red No. 33 may be safely used in externally applied drugs in amounts consistent with good manufacturing practice.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of D&C Red No. 33 shall be certified in accordance with regulations in part 80 of this chapter.
used for coloring ingested drugs, other than mouthwashes and dentifrices, in amounts not to exceed 0.75 milligram per daily dose of the drug. D&C Red No. 33 may be safely used for coloring externally applied drugs, mouthwashes, and dentifrices in amounts consistent with current good manufacturing practice.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of D&C Red No. 33 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.1336 D&C Red No. 36.

(a) Identity. (1) The color additive D&C Red No. 36 is 1-[(2-chloro-4-nitrophenyl)azo]-2-naphthalenol (CAS Reg. No. 2814-77-9). The color additive is manufactured by diazotization of 2-chloro-4-nitrobenzenamine in acid medium and coupling with 2-naphthalenol in acid medium.

(2) Color additive mixtures for drug use made with D&C Red No. 36 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring externally applied drugs.

(b) Specifications. D&C Red No. 36 shall conform to the following specifications and shall be free from impurities other than those named, to the extent that such impurities may be avoided by current good manufacturing practice:

Volatile matter at 135 °C (275 °F), not more than 0.15 percent.
Matter insoluble in toluene, not more than 0.15 percent.
2-Chloro-4-nitrobenzenamine, not more than 0.02 percent.
2-Naphthalenol, not more than 0.1 percent.
2,4-Dinitrobenzenamine, not more than 0.02 percent.
1-[(2,4-Dinitrophenyl)azo]-2-naphthalenol, not more than 0.5 percent.
1-[(4-Nitrophenyl)azo]-2-naphthalenol, not more than 0.5 percent.
1-[(4-Chloro-2-nitrophenyl)azo]-2-naphthalenol, not more than 0.3 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 95 percent.

(c) Uses and restrictions. The color additive D&C Red No. 36 may be safely used for coloring ingested drugs, other

397
than mouthwashes and dentifrices, in amounts not to exceed 1.7 milligrams per daily dose of the drug for drugs that are taken continuously only for less than 1 year. For drugs taken continuously for longer than 1 year, the color additive shall not be used in amounts to exceed 1.0 milligram per daily dose of the drug. D&C Red No. 36 may be safely used for coloring externally applied drugs in amounts consistent with current good manufacturing practice.

(d) Labeling requirements. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of D&C Red No. 36 shall be certified in accordance with regulations promulgated under part 80 of this chapter.

§ 74.1339 D&C Red No. 39.

(a) Identity. (1) The color additive D&C Red No. 39 is o-[p(β,β'-dihydroxy-diethylamino)-phenylazo]-benzoic acid.

(2) Color additive mixtures made with D&C Red No. 39 may contain the following diluents: Water, acetone, isopropyl alcohol, and specially denatured alcohols used in accordance with 26 CFR part 212.

(b) Specifications. D&C Red No. 39 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

Volatile matter (at 100 °C.), not more than 2.0 percent.

Matter insoluble in acetone, not more than 1.0 percent.

Anthraniolic acid, not more than 0.2 percent.

N,N-(β,β'-Dihydroxy-diethylyl) aniline, not more than 0.2 percent.

Subsidary colors, not more than 3.0 percent.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

Total color, not less than 95.0 percent.

(c) Uses and restrictions. The color additive D&C Red No. 39 may be safely used for the coloring of quaternary ammonium type germicidal solutions intended for external application only, and subject to the further restriction that the quantity of the color additive does not exceed 0.1 percent by weight of the finished drug product.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of D&C Red No. 39 shall be certified in accordance with regulations promulgated under part 80 of this chapter.

§ 74.1340 FD&C Red No. 40.

(a) Identity and specifications. (1) The color additive FD&C Red No. 40 shall conform in identity and specifications to the requirements of §74.340(a)(1) and (b).

(2) Color additive mixtures for drug use made with FD&C Red No. 40 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(3) The listing of this color additive includes lakes prepared as described in §§82.51 and 82.1051 of this chapter, except that the color additive used is FD&C Red No. 40 and the resultant lakes meet the specification and labeling requirements prescribed by §§82.51 or 82.1051 of this chapter.

(b) Uses and restrictions. (1) FD&C Red No. 40 and FD&C Red No. 40 Aluminum Lake may be safely used in coloring drugs, including those intended for use in the area of the eye, subject to the restrictions on the use of color additives in §70.5(b) and (c) of this chapter, in amounts consistent with current good manufacturing practice.

(2) Other lakes of FD&C Red No. 40 may be safely used in coloring drugs, subject to the restrictions on the use of color additives in §70.5 of this chapter, in amounts consistent with current good manufacturing practice.

(c) Labeling. The label of the color additive and any lakes or mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.
Food and Drug Administration, HHS

§ 74.1602  D&C Violet No. 2.

(a) Identity. (1) The color additive D&C Violet No. 2 is principally 1-hydroxy-4-[(4-methylphenyl)amino]-9,10-anthracenedione.

(2) Color additive mixtures for use in externally applied drugs made with D&C Violet No. 2 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring externally applied drugs.

(b) Specifications. D&C Violet No. 2 shall conform to the following specifications and shall be free from impurities, other than those named, to the extent that such other impurities can be avoided by good manufacturing practice:

Volatile matter (at 135 °C.), not more than 2.0 percent.

Matter insoluble in both carbon tetrachloride and water, not more than 0.5 percent.

1-Toluidine, not more than 0.2 percent.

1-Hydroxy-9,10-anthracenedione, not more than 0.5 percent.

1,4-Dihydroxy-9,10-anthracenedione, not more than 0.5 percent.

Subsidiary colors, not more than 1.0 percent.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

Total color, not less than 96.0 percent.

(c) Uses and restrictions. The color additive D&C Violet No. 2 may be safely used for coloring externally applied drugs in amounts consistent with good manufacturing practice.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of D&C Violet No. 2 shall be certified in accordance with regulations in part 80 of this chapter.


§ 74.1705  FD&C Yellow No. 5.

(a) Identity and specifications. (1) The color additive FD&C Yellow No. 5 shall conform in identity and specifications to the requirements of §74.705 (a)(1) and (b).

(2) FD&C Yellow No. 5 Aluminum Lake shall be prepared in accordance with the requirements of §82.51 of this chapter.

(3) Color additive mixtures for drug use made with FD&C Yellow No. 5 may contain only those diluents that are suitable and are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) Uses and restrictions. (1) FD&C Yellow No. 5 may be safely used for coloring drugs generally, including drugs intended for use in the area of the eye, in amounts consistent with current good manufacturing practice.

(2) FD&C Yellow No. 5 Aluminum Lake may be safely used for coloring drugs intended for use in the area of the eye, when prepared in accordance with §82.51 of this chapter.

(c) Labeling requirements. (1) The label of the color additive and any mixtures intended solely or in part for coloring purposes prepared therefrom shall conform to the requirements of §70.25 of this chapter.

(2) The label of OTC and prescription drug products intended for human use administered orally, nasally, rectally, or vaginally, or for use in the area of the eye, when prepared in accordance with §82.51 of this chapter.

The label shall bear a statement such as ``Contains FD&C Yellow No. 5 (tartrazine) as a color additive'' or ``Contains color additives including FD&C Yellow No. 5 (tartrazine).'' The labels of certain drug products subject to this labeling requirement that are also cosmetics, such as: antibacterial mouthwashes and fluoride toothpastes, need not comply with this requirement provided...
§ 74.1706 FD&C Yellow No. 5.

(a) Identity and specifications. (1) The color additive FD&C Yellow No. 5 shall conform in identity and specifications to the requirements of § 74.706(a)(1) and (b).

(2) Color additive mixtures for drug use made with FD&C Yellow No. 5 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) Uses and restrictions. FD&C Yellow No. 5 shall be safely used for coloring drugs generally in amounts consistent with current good manufacturing practice.

(c) Labeling requirements. (1) The label of the color additive and any mixtures intended solely or in part for coloring purposes prepared therefrom shall conform to the requirements of § 70.25 of this chapter.

(2) [Reserved]

(d) Certification. All batches of FD&C Yellow No. 5 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.1707 D&C Yellow No. 7.

(a) Identity. (1) The color additive D&C Yellow No. 7 is principally fluorescein.

(2) Color additive mixtures for use in externally applied drugs made with D&C Yellow No. 7 may contain only those diluents that are suitable and that are listed in part 73 of this chapter for use in color additive mixtures for coloring externally applied drugs.

(b) Specifications. D&C Yellow No. 7 shall conform to the following specifications and shall be free from impurities other than those named, and to the extent that such impurities may be avoided by good manufacturing practice:

- Sum of water and chlorides and sulfates (calculated as sodium salts), not more than 6 percent.
- Matter insoluble in alkaline water, not more than 0.5 percent.
- Resorcinol, not more than 0.5 percent.
- Phthalic acid, not more than 0.5 percent.
- 2-2,4-(Dihydroxybenzoyl) benzoic acid, not more than 0.5 percent.
- Lead (as Pb), not more than 20 parts per million.
- Arsenic (as As), not more than 3 parts per million.
- Mercury (as Hg), not more than 1 part per million.
- Total color, not less than 94 percent.

(c) Uses and restrictions. D&C Yellow No. 7 may be safely used in externally applied drugs in amounts consistent with good manufacturing practice.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) Certification. All batches of D&C Yellow No. 7 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.1707a Ext. D&C Yellow No. 7.

(a) Identity. (1) The color additive Ext. D&C Yellow No. 7 is principally the disodium salt of 8-hydroxy-5,7-dinitro-2-naphthalenesulfonic acid.
(2) Color additive mixtures for drug use made with Ext. D&C Yellow No. 7 may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring externally applied drugs.

(b) Specifications. Ext. D&C Yellow No. 7 shall conform to the following specifications and shall be free from impurities, other than those named, to the extent that such other impurities may be avoided by good manufacturing practice:

- Sum of volatile matter (at 135 °C) and chlorides and sulfates (calculated as sodium salts), not more than 15 percent.
- Water-insoluble matter, not more than 0.2 percent.
- Lead (as Pb), not more than 20 parts per million.
- Arsenic (as As), not more than 3 parts per million.
- Mercury (as Hg), not more than 1 part per million.
- Total color, not less than 85 percent.

(c) Uses and restrictions. Ext. D&C Yellow No. 7 may be safely used in externally applied drugs in amounts consistent with good manufacturing practice.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) Certification. All batches of Ext. D&C Yellow No. 7 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.1710 D&C Yellow No. 10.

(a) Identity. (1) The color additive D&C Yellow No. 10 is a mixture of the sodium salts of the mono- and disulfonic acids of 2-(2-quinolinyl)-1H-indene-1,3(2H)-dione consisting principally of the sodium salts of 2-(2,3-dihydro-1,3-dioxo-1H-indene-2-yl)-6-quinolinesulfonic acid and 2-(2,3-dihydro-1,3-dioxo-1H-indene-2-yl)-8-quinolinesulfonic acid with lesser amounts of the disodium salts of the disulfonic acids of 2-(2-quinolinyl)-1H-indene-1,3(2H)-dione (CAS Reg. No. 8004-92-0). D&C Yellow No. 10 is manufactured by condensing quinaldine with phthalic anhydride to give the unsulfonated dye, which is then sulfonated with oleum.

(2) Color additive mixtures made with D&C Yellow No. 10 for drug use may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring externally applied drugs.

(b) Specifications. D&C Yellow No. 10 shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

- Sum of water and chlorides and sulfates (calculated as sodium salts), not more than 15 percent.
- Matter insoluble in alkaline water, not more than 0.3 percent.
- Resorcinol, not more than 0.5 percent.
- Phthalic acid, not more than 1 percent.
- 2-(2,4-Dihydroxybenzoyl) benzoic acid, not more than 0.5 percent.
- Lead (as Pb), not more than 20 parts per million.
- Arsenic (as As), not more than 3 parts per million.
- Mercury (as Hg), not more than 1 part per million.
- Total color, not less than 85 percent.
impurities may be avoided by current good manufacturing practice:

Sum of volatile matter at 135 °C (275 °F) and chlorides and sulfates (calculated as sodium salts), not more than 15 percent.

Matter insoluble in both water and chloroform, not more than 0.2 percent.

Total sulfonated quinaldines, sodium salts, not more than 0.2 percent.

Total sulfonated phthalic acids, sodium salts, not more than 0.2 percent.

2-(2-Quinolinyl)-1H-indene-1,3(2H)-dione, not more than 4 parts per million.

Sum of sodium salts of the monosulfonates of 2-(2-quinolinyl)-1H-indene-1,3(2H)-dione, not less than 75 percent.

Sum of sodium salts of the disulfonates of 2-(2-quinolinyl)-1H-indene-1,3(2H)-dione, not more than 15 percent.

2-(2,3-Dihydro-1,3-dioxo-1H-indene-2-yl)-6 & 8-quinolinedisulfonic acid, disodium salt, not more than 3 percent.

Diethyl ether soluble matter other than that specified, not more than 2 parts per million, using added 2-(2-quinolinyl)-1H-indene-1,3(2H)-dione for calibration.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

Mercury (as Hg), not more than 1 part per million.

Total color, not less than 85 percent.

(c) Uses and restrictions. The color additive D&C Yellow No. 10 may be safely used in externally applied drugs generally in amounts consistent with current good manufacturing practice.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of D&C Yellow No. 10 shall be certified in accordance with regulations in part 80 of this chapter.

Subpart C—Cosmetics

§74.2101 FD&C Blue No. 1.


(b) Specifications. D&C Yellow No. 11 shall conform to the following specifications and shall be free from impurities, other than those named, to the extent that such other impurities may be avoided by good manufacturing practice:

Volatile matter (at 135 °C), not more than 1 percent.

Ethyl alcohol-insoluble matter, not more than 0.4 percent.

Phthalic acid, not more than 0.3 percent.

Quinaldine, not more than 0.2 percent.

Subsidiary colors, not more than 5 percent.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

Mercury (as Hg), not more than 1 part per million.

Total color, not less than 96 percent.

(c) Uses and restrictions. D&C Yellow No. 11 may be safely used in externally applied drugs in amounts consistent with good manufacturing practice.

(d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of D&C Yellow No. 11 shall be certified in accordance with regulations in part 80 of this chapter.
Food and Drug Administration, HHS

§ 74.2151

No. 1 is manufactured by the acid catalyzed condensation of one mole of sodium 2-formylbenzenesulfonate with two moles from a mixture consisting principally of 3-[(ethylphenylamino)methyl]benzenesulfonic acid, and smaller amounts of 4-[(ethylphenylamino)methyl]benzenesulfonic acid to form the leuco base. The leuco base is then oxidized with lead dioxide and acid, or with dichromate and acid, or with manganese dioxide and acid to form the dye. The intermediate sodium 2-formylbenzenesulfonate is prepared from 2-chlorobenzaldehyde and sodium sulfite.

(b) Specifications. (1) The color additive FD&C Blue No. 1 shall conform to the requirements of §74.101(b).

(2) D&C Blue No. 1 Aluminum Lake shall be prepared in accordance with the requirements of §82.51 of this chapter.

(c) Uses and restrictions. (1) FD&C Blue No. 1 may be safely used for coloring cosmetics generally, including cosmetics intended for use in the area of the eye, in amounts consistent with current good manufacturing practice.

(2) D&C Blue No. 1 Aluminum Lake may be safely used for coloring cosmetics intended for use in the area of the eye, in amounts consistent with current good manufacturing practice.

(d) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of D&C Blue No. 4 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.2151 D&C Brown No. 1.

(a) Identity. The color additive D&C Brown No. 1 is a mixture of the sodium salts of 4-[[5-[(di(alkyl)-phenyl)-azo]-2,4-dihydroxyphenyl]azo]-benzenesulfonic acid. The alkyl group is principally the methyl group.

(b) Specifications. D&C Brown No. 1 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

Sum of volatile matter (at 135 °C) and chlorides and sulfates (calculated as sodium salts), not more than 16 percent.

Water-insoluble matter, not more than 0.2 percent.

Sulfanilic acid, sodium salt, not more than 0.2 percent.

Resorcinol, not more than 0.2 percent.

Xylinines, not more than 0.2 percent.

Disodium salt of 4-[[5-[(4-sulfophenyl)-azo]-2,4-dihydroxyphenyl]azo]-benzenesulfonic acid, not more than 3 percent.

Monosodium salt of 4-[[5-[(2,4-dimethyl-phenyl)azo]-2,4-dihydroxyphenyl]azo]-benzenesulfonic acid, not less than 29 percent and not more than 39 percent.

Monosodium salt of 4-[[5-[(2,5-dimethyl-phenyl)azo]-2,4-dihydroxyphenyl]azo]-benzenesulfonic acid, not less than 12 percent and not more than 17 percent.

Monosodium salt of 4-[[5-[(2,3-dimethyl-phenyl)azo]-2,4-dihydroxyphenyl]azo]-benzenesulfonic acid, not less than 6 percent and not more than 13 percent.

Monosodium salt of 4-[[5-[(2-ethylphenyl)-azo]-2,4-dihydroxyphenyl]azo]-benzenesulfonic acid, not less than 5 percent and not more than 12 percent.

Monosodium salt of 4-[[5-[(3,4-dimethyl-phenyl)azo]-2,4-dihydroxyphenyl]azo]-benzenesulfonic acid, not less than 3 percent and not more than 9 percent.

Monosodium salt of 4-[[5-[(2,6-dimethyl-phenyl)azo]-2,4-dihydroxyphenyl]azo]-benzenesulfonic acid, not less than 3 percent and not more than 8 percent.

Monosodium salt of 4-[[5-[(4-ethylphenyl)-azo]-2,4-dihydroxyphenyl]azo]-benzenesulfonic acid, not less than 3 percent and not more than 8 percent.

§ 74.2104 D&C Blue No. 4.

(a) Identity and specifications. The color additive D&C Blue No. 4 shall conform in identity and specifications to the requirements of §74.1104(a)(1) and (b).

(b) Uses and restrictions. D&C Blue No. 4 may be safely used for coloring externally applied cosmetics in amounts consistent with good manufacturing practice.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of D&C Blue No. 4 shall be certified in accordance with regulations in part 80 of this chapter.
§ 74.2203  
benzenesulfonic acid, not less than 2 percent and not more than 8 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 84 percent.

(c) Uses and restrictions. D&C Brown No. 1 may be safely used for coloring externally applied cosmetics in amounts consistent with good manufacturing practice.

(d) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of D&C Brown No. 1 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.2203  FD&C Green No. 3.

(a) Identity and specifications. The color additive FD&C Green No. 3 shall conform in identity and specifications to the requirements of §74.203(a)(1) and (b).

(b) Uses and restrictions. The color additive FD&C Green No. 3 may be safely used for coloring cosmetics generally in amounts consistent with current good manufacturing practice.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of FD&C Green No. 3 shall be certified in accordance with regulations in part 80 of this chapter.


§ 74.2206  D&C Green No. 6.

(a) Identity and specifications. The color additive D&C Green No. 6 shall conform in identity and specifications to the requirements of §74.1206 (a) and (b).

(b) Uses and restrictions. D&C Green No. 6 may be safely used for coloring externally applied cosmetics in amounts consistent with good manufacturing practice.

(c) Labeling requirements. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of D&C Green No. 6 shall be certified in accordance with regulations in part 80 of this chapter.

[47 FR 14146, Apr. 4, 1982, as amended at 51 FR 9784, Mar. 21, 1986]

§ 74.2208  D&C Green No. 8.

(a) Identity and specifications. The color additive D&C Green No. 8 shall conform in identity and specifications to the requirements of §74.1208(a)(1) and (b).

(b) Uses and restrictions. D&C Green No. 8 may be safely used for coloring externally applied cosmetics in amounts not exceeding 0.01 percent by weight of the finished cosmetic product.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of D&C Green No. 8 shall be certified in accordance with regulations in part 80 of this chapter.


§ 74.2254  D&C Orange No. 4.

(a) Identity and specifications. The color additive D&C Orange No. 4 shall conform in identity and specifications to the requirements of §74.1254 (a)(1) and (b).

(b) Uses and restrictions. D&C Orange No. 4 may be safely used for coloring externally applied cosmetics in amounts consistent with good manufacturing practice.
§ 74.2306 D&C Red No. 6.

(a) Identity and specifications. The color additive D&C Red No. 6 shall conform in identity and specifications to the requirements of § 70.25 of this chapter.

(b) Uses and restrictions. The color additive D&C Red No. 6 may be safely used for coloring externally applied cosmetics in amounts consistent with current good manufacturing practice.

(c) Labeling requirements. The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) Certification. All batches of D&C Red No. 6 shall be certified in accordance with regulations in part 80 of this chapter.

[46 FR 19354, Mar. 27, 1981]
§ 74.2307  
(d) Certification. All batches of D&C Red No. 6 shall be certified in accordance with regulations in part 80 of this chapter.

[47 FR 57668, Dec. 28, 1982]

§ 74.2307  D&C Red No. 7

(a) Identity and specifications. The color additive D&C Red No. 7 shall conform in identity and specifications to the requirements of §74.1307 (a)(1) and (b).

(b) Uses and restrictions. The color additive D&C Red No. 7 may be safely used for coloring cosmetics generally in amounts consistent with current good manufacturing practice.

(c) Labeling requirements. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of D&C Red No. 7 shall be certified in accordance with regulations in part 80 of this chapter.

[47 FR 57668, Dec. 28, 1982]

§ 74.2317  D&C Red No. 17.

(a) Identity and specifications. The color additive D&C Red No. 17 shall conform in identity and specifications to the requirements of §74.1317 (a)(1) and (b).

(b) Uses and restrictions. D&C Red No. 17 may be safely used for coloring externally applied cosmetics in amounts consistent with good manufacturing practice.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of D&C Red No. 17 shall be certified in accordance with regulations in part 80 of this chapter.

[47 FR 57668, Dec. 28, 1982]

§ 74.2321  D&C Red No. 21.

(a) Identity and specifications. The color additive D&C Red No. 21 shall conform in identity and specifications to the requirements of §74.1321(a)(1) and (b).

(b) Uses and restrictions. The color additive D&C Red No. 21 may be safely used for coloring cosmetics generally in amounts consistent with current good manufacturing practice.

(c) Labeling requirements. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of D&C Red No. 21 shall be certified in accordance with regulations in part 80 of this chapter.

[47 FR 53846, Nov. 30, 1982]

§ 74.2322  D&C Red No. 22.

(a) Identity and specifications. The color additive D&C Red No. 22 shall conform in identity and specifications to the requirements of §74.1322(a)(1) and (b).

(b) Uses and restrictions. The color additive D&C Red No. 22 may be safely used for coloring cosmetics generally in amounts consistent with current good manufacturing practice.

(c) Labeling requirements. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of D&C Red No. 22 shall be certified in accordance with regulations in part 80 of this chapter.

[47 FR 53846, Nov. 30, 1982]

§ 74.2327  D&C Red No. 27.

(a) Identity and specifications. The color additive D&C Red No. 27 shall conform in identity and specifications to the requirements of §74.1327 (a)(1) and (b).

(b) Uses and restrictions. D&C Red No. 27 may be safely used for coloring cosmetics generally in amounts consistent with current good manufacturing practice.

(c) Labeling requirements. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of D&C Red No. 27 shall be certified in accordance with regulations in part 80 of this chapter.

[47 FR 42568, Sept. 28, 1982]

§ 74.2328  D&C Red No. 28.

(a) Identity and specifications. The color additive D&C Red No. 28 shall conform in identity and specifications to the requirements of §74.1328 (a)(1) and (b).

(b) Uses and restrictions. D&C Red No. 28 may be safely used for coloring cosmetics generally in amounts consistent
with current good manufacturing practice.

(c) Labeling requirements. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of D&C Red No. 28 shall be certified in accordance with regulations in part 80 of this chapter.

[47 FR 42568, Sept. 28, 1982]

§ 74.2330 D&C Red No. 30.

(a) Identity and specifications. The color additive D&C Red No. 30 shall conform in identity and specifications to the requirements of §74.1330 (a)(1) and (b).

(b) Uses and restrictions. D&C Red No. 30 may be safely used for coloring cosmetics generally in amounts consistent with current good manufacturing practice.

(c) Labeling requirements. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of D&C Red No. 30 shall be certified in accordance with regulations in part 80 of this chapter.

[53 FR 33120, Aug. 30, 1988]

§ 74.2331 D&C Red No. 31.

(a) Identity and specifications. The color additive D&C Red No. 31 shall conform in identity and specifications to the requirements of §74.1331 (a)(1) and (b).

(b) Uses and restrictions. D&C Red No. 31 may be safely used for coloring externally applied cosmetics in amounts consistent with good manufacturing practice.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of D&C Red No. 31 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.2333 D&C Red No. 33.

(a) Identity and specifications. The color additive D&C Red No. 33 shall conform in identity and specifications to the requirements of §74.1333(a)(1) and (b).

(b) Uses and restrictions. The color additive D&C Red No. 33 may be safely used for coloring cosmetic lip products in amounts not to exceed 3 percent total color by weight of the finished cosmetic products. D&C Red No. 33 may be safely used for coloring mouthwashes (including breath fresheners), dentifrices, and externally applied cosmetics in amounts consistent with current good manufacturing practice.

(c) Labeling requirements. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of D&C Red No. 33 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.2334 D&C Red No. 34.

(a) Identity and specifications. The color additive D&C Red No. 34 shall conform in identity and specifications to the requirements of §74.1334(a)(1) and (b).

(b) Uses and restrictions. D&C Red No. 34 may be safely used for coloring externally applied cosmetics in amounts consistent with good manufacturing practice.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of D&C Red No. 34 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.2336 D&C Red No. 36.

(a) Identity and specifications. The color additive D&C Red No. 36 shall conform in identity and specifications to the requirements of §74.1336 (a)(1) and (b).

(b) Uses and restrictions. The color additive D&C Red No. 36 may be safely used for coloring cosmetic lip products in amounts not to exceed 3 percent total color by weight of the finished cosmetic products. D&C Red No. 36 may be safely used for coloring externally applied cosmetics in amounts consistent with current good manufacturing practice.
§ 74.2340  
(c) Labeling requirements. The label of the color additive shall conform to the requirements of §70.25 of this chapter.
(d) Certification. All batches of D&C Red No. 36 shall be certified in accordance with regulations in part 80 of this chapter.
[53 FR 29031, Aug. 2, 1988]

§ 74.2340  FD&C Red No. 40.
(a) Identity and specifications. (1) The color additive FD&C Red No. 40 shall conform in identity and specifications to the requirements of §74.340(a)(1) and (b) of this chapter.
(2) The listing of this color additive includes lakes prepared as described in §§82.51 and 82.1051 of this chapter, except that the color additive used is FD&C Red No. 40 and the resultant lakes meet the specification and labeling requirements prescribed by §82.51 or §82.1051 of this chapter.
(b) Uses and restrictions. FD&C Red No. 40 may be safely used in coloring cosmetics generally, except that only FD&C Red No. 40 and FD&C Red No. 40 Aluminum Lake may be safely used in coloring cosmetics intended for use in the area of the eye. These uses are subject to the following restrictions:
(1) The color additive may be used in amounts consistent with current good manufacturing practice.
(2) The color additive shall not be exposed to oxidizing or reducing agents that may affect the integrity of the color additives or any other condition that may affect their integrity.
(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.
(d) Certification. All batches of FD&C Red No. 40 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.2602  D&C Violet No. 2.
(a) Identity and specifications. The color additive D&C Violet No. 2 shall conform in identity and specifications to the requirements of §74.1602(a)(1) and (b).
(b) Uses and restrictions. The color additive D&C Violet No. 2 may be safely used for coloring externally applied cosmetics in amounts consistent with good manufacturing practice.
(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.
(d) Certification. All batches of D&C Violet No. 2 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.2602a  Ext. D&C Violet No. 2.
(a) Identity. The color additive Ext. D&C Violet No. 2 is principally the monosodium salt of 2-[(9,10-dihydro-4-hydroxy-9,10-dioxo-1-anthracenyl)amino]-5-methyl-benzenesulfonic acid.
(b) Specifications. Ext. D&C Violet No. 2 shall conform to the following specifications and shall be free from impurities, other than those named, to the extent that such other impurities may be avoided by good manufacturing practice:
Sum of volatile matter (at 135 °C) and chlorides and sulfates (calculated as sodium salts), not more than 18 percent.
Water-insoluble matter, not more than 0.4 percent.
1-Hydroxy-9,10-anthracenedione, not more than 0.2 percent.
1,4-Dihydroxy-9,10-anthracenedione, not more than 0.2 percent.
p-Toluidine, not more than 0.1 percent.
p-Toluidine sulfonic acids, sodium salts, not more than 0.2 percent.
Subsidiary colors, not more than 1 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 80 percent.
(c) Uses and restrictions. The color additive Ext. D&C Violet No. 2 may be safely used for coloring externally applied cosmetics in amounts consistent with good manufacturing practice.
(d) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.
(e) Certification. All batches of Ext. D&C Violet No. 2 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.2705  FD&C Yellow No. 5.
(a) Identity. The color additive FD&C Yellow No. 5 is principally the trisodium salt of 4,5-dihydro-5-oxo-(1-4-
(a) Identity and specifications. The color additive FD&C Yellow No. 6 shall conform in identity and specifications to the requirements of §74.2706(a)(1) and (b).

(b) Uses and restrictions. FD&C Yellow No. 6 may be safely used for coloring cosmetics generally in amounts consistent with current good manufacturing practice.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of FD&C Yellow No. 6 shall be certified in accordance with regulations in part 80 of this chapter.

[51 FR 41782, Nov. 19, 1986]
§ 74.2707a Ext. D&C Yellow No. 7.

(a) Identity and specifications. The color additive Ext. D&C Yellow No. 7 shall conform in identity and specifications to the requirements of §74.1707a(a)(1) and (b).

(b) Uses and restrictions. Ext. D&C Yellow No. 7 may be safely used for coloring externally applied cosmetics in amounts consistent with good manufacturing practice.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of Ext. D&C Yellow No. 7 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.2707b D&C Yellow No. 8.

(a) Identity and specifications. The color additive D&C Yellow No. 8 shall conform in identity and specifications to the requirements of §74.1707a(a)(1) and (b).

(b) Uses and restrictions. D&C Yellow No. 8 may be safely used for coloring externally applied cosmetics in amounts consistent with good manufacturing practice.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of D&C Yellow No. 8 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.2707d D&C Yellow No. 10.

(a) Identity and specifications. The color additive D&C Yellow No. 10 shall conform in identity and specifications to the requirements of §74.1710(a)(1) and (b).

(b) Uses and restrictions. The color additive D&C Yellow No. 10 may be safely used for coloring cosmetics generally in amounts consistent with current good manufacturing practice.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of D&C Yellow No. 10 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.2708 D&C Yellow No. 11.

(a) Identity and specifications. The color additive D&C Yellow No. 11 shall conform in identity and specifications to the requirements of §74.1711(a)(1) and (b).

(b) Uses and restrictions. D&C Yellow No. 11 may be safely used for coloring externally applied cosmetics in amounts consistent with good manufacturing practice.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of D&C Yellow No. 11 shall be certified in accordance with regulations in part 80 of this chapter.

Subpart D—Medical Devices

§ 74.3045 [Phthalocyaninato(2-)] copper.

(a) Identity. The color additive is [phthalocyaninato(2-)] copper (CAS Reg. No. 147-14-8) having the structure shown in Colour Index No. 74160.

(b) Specifications. The color additive [phthalocyaninato(2-)] copper shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

- Volatile matter 135 °C (275 °F), not more than 0.3 percent.
- Salt content (as NaCl), not more than 0.3 percent.
- Alcohol soluble matter, not more than 0.5 percent.
- Organic chlorine, not more than 0.5 percent.
Aromatic amines, not more than 0.05 percent.
Lead (as Pb), not more than 40 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 98.5 percent.

(c) Uses and restrictions. (1) The color additive [phthalocyaninato(2-) copper may be safely used to color polypropylene sutures, polybutester (the generic designation for the suture fabricated from 1,4-benzenedicarboxylic acid, polymer with 1,4-butandiol and alpha-hydro-o-methyl hydroxypoly(oxy-1,4-butandiyli), CAS Reg. No. 3782-12-5) nonabsorbable sutures for use in general and ophthalmic surgery, polybutylene terephthalate nonabsorbable monofilament sutures for general and ophthalmic surgery, and polymethylmethacrylate monofilament used as supporting haptics for intraocular lenses, subject to the following restrictions:
(i) The quantity of the color additive does not exceed 0.5 percent by weight of the suture or haptic material.
(ii) The dyed suture shall conform in all respects to the requirements of the U.S. Pharmacopeia.
(2) The color additive [phthalocyaninato(2-) copper may be safely used for coloring contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.
(3) Authorization for these uses shall not be construed as waiving any of the requirements of sections 510(k), 515, or 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the medical device in which [phthalocyaninato(2-) copper is used.
(d) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.
(e) Certification. All batches of [phthalocyaninato (2-) copper shall be certified in accordance with regulations in part 80 of this chapter.

§74.3106 D&C Blue No. 6.
(a) Identity. The color additive D&C Blue No. 6 is principally \( [\text{cyanine-3,3'}] \text{dye} \) (CAS Reg. No. 482-89-3).
(b) Specifications. D&C Blue No. 6 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:
Volatile matter at 135 °C (275 °F), not more than 3 percent.
Matter insoluble in N,N-dimethylformamide, not more than 1 percent.
Isatin, not more than 0.3 percent.
Anthranilic acid, not more than 0.3 percent.
Indirubin, not more than 1 percent.
Lead (as Pb), not more than 10 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 95 percent.
(c) Uses and restrictions. (1) D&C Blue No. 6 may be safely used at a level—
(i) Not to exceed 0.2 percent by weight of the suture material for coloring polyethylene terephthalate surgical sutures for general surgical use;
(ii) Not to exceed 0.25 percent by weight of the suture material for coloring plain or chromic collagen absorbable sutures for general surgical use;
(iii) Not to exceed 0.5 percent by weight of the suture material for coloring plain or chromic collagen absorbable sutures for ophthalmic surgical use;
(iv) Not to exceed 0.5 percent by weight of the suture material for coloring polypropylene surgical sutures for general surgical use; and
(v) Not to exceed 0.5 percent by weight of the suture material for coloring polydioxanone synthetic absorbable sutures for ophthalmic and general surgical use.
(2) Authorization for these uses shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the medical device in which the color additive is used.
§ 74.3206  
D&C Green No. 6.

(a) Identity. The color additive D&C Green No. 6 shall conform in identity to the requirements of §74.1206(a).

(b) Specifications. The color additive D&C Green No. 6 for use in medical devices shall conform to the specifications of §74.1206(b).

(c) Uses and restrictions. (1) The color additive D&C Green No. 6 may be safely used at a level
   (i) Not to exceed 0.03 percent by weight of the lens material for coloring contact lenses;
   (ii) Not to exceed 0.75 percent by weight of the suture material for coloring polyethylene terephthalate surgical sutures, including sutures for ophthalmic use;
   (iii) Not to exceed 0.1 percent by weight of the suture material for coloring polyglycolic acid surgical sutures with diameter greater than U.S.P. size 8-0, including sutures for ophthalmic use;
   (iv) Not to exceed 0.5 percent by weight of the suture material for coloring polyglycolic acid surgical sutures with diameter not greater than U.S.P. size 8-0, including sutures for ophthalmic use;
   (v) Not to exceed 0.21 percent by weight of the suture material for coloring poly(glycolic acid-co-trimethylene carbonate) sutures (also referred to as 1,4-dioxan-2,5-dione polymer with 1,3-dioxan-2-one) for general surgical use; and
   (vi) Not to exceed 0.10 percent by weight of the haptic material for coloring polymethylmethacrylate support haptics of intraocular lenses.

(2) Authorization for these uses shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the medical device in which D&C Green No. 6 is used.

(d) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(e) Certification. All batches of D&C Green No. 6 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.3230  
D&C Red No. 17.

(a) Identity and specifications. The color additive D&C Red No. 17 shall conform in identity and specifications to the requirements of §74.1317(a)(1) and (b).

(b) Uses and restrictions. (1) The substance listed in paragraph (a) of this section may be used as a color additive in contact lens in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization for this use shall not be construed as waiving any of the requirements of section 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the contact lens in which the color additive is used.

(c) Labeling. The label of the color additive shall conform to the requirements of §70.25 of this chapter.

(d) Certification. All batches of D&C Red No. 17 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.3602  
D&C Violet No. 2.

(a) Identity and specifications. The color additive D&C Violet No. 2 shall conform in identity and specifications to the requirements of §74.1632(a)(1) and (b).

(b) Uses and restrictions. (1) The color additive, D&C Violet No. 2, may be safely used for coloring contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) D&C Violet No. 2 may be safely used for coloring sutures for use in surgery subject to the following conditions:
(i) At a level not to exceed 0.2 percent by weight of the suture material for coloring polyglactin 910 (glycolic-lactic acid polyester) synthetic absorbable sutures for use in general and ophthalmic surgery; and

(ii) At a level not to exceed 0.3 percent by weight of the suture material for coloring polydioxanone synthetic absorbable sutures for use in general and ophthalmic surgery.

(iii) At a level not to exceed 0.25 percent by weight of the suture material for coloring poliglecaprone 25 (ε-caprolactone/glycolide copolymer) synthetic absorbable sutures for use in general surgery.

(iv) At a level not to exceed 0.1 percent by weight of the suture material for coloring poly(ε-caprolactone) absorbable sutures for use in general surgery.

(v) At a level not to exceed 0.2 percent by weight of the suture material for coloring glycolide/dioxanone/trimethylene carbonate tripolymer absorbable sutures for use in general surgery.

(3) The color additive, D&C Violet No. 2, may be safely used for coloring polymethylmethacrylate intraocular lens haptics at a level not to exceed 0.2 percent by weight of the haptic material.

(4) Authorization for these uses shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the contact lens in which the color additive is used.

(d) Labeling. The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(e) Certification. All batches of D&C Yellow No. 10 shall be certified in accordance with regulations in part 80 of this chapter.

§ 74.3710 D&C Yellow No. 10.

(a) Identity. The color additive D&C Yellow No. 10 shall conform to the identity requirements of § 74.1710(a).

(b) Specifications. The color additive D&C Yellow No. 10 for use in contact lenses shall conform to the specifications of § 74.1710(b).

(c) Uses and restrictions. (1) The color additive D&C Yellow No. 10 may be used for coloring contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization for this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the contact lens in which the color additive is used.

(d) Labeling. The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(e) Certification. All batches of D&C Yellow No. 10 shall be certified in accordance with regulations in part 80 of this chapter.

[52 FR 28690, Aug. 3, 1987]

APPENDIX A TO PART 74—THE PROCEDURE FOR DETERMINING ETHER SOLUBLE MATERIAL IN D&C RED NOS. 6 AND 7

The dye is dissolved in glacial acetic and 8 N hydrochloric acids (1.33:1) and extracted with diethyl ether. Sulfonated moieties, including the color additive, are discarded in subsequent aqueous extractions of the ether. Carboxylated moieties are removed from the ether by extraction with 2% (w/w) NaOH. The ether is evaporated to near dryness, ethanol (95%) is added, and the solution is analyzed spectrophotometrically in the visible range. The absorbance at each wavelength must not exceed 150% of the absorbance similarly obtained for D&C Red No. 6 Lot AA5169.

APPARATUS

(A) Spectrophotometer (Cary 118 or equivalent).

(B) Separatory funnels—one 1000 mL and one 500 mL.

REAGENTS

NOTE: Use distilled water when water is required.

(A) Glacial Acetic Acid (ACS grade).

(B) Diethyl ether (Anhydrous)—Note and follow safety precautions on container.

(C) 8 N HCl—Pour 165 mL HCl into a 500 mL graduate. Place the graduate in hood, then add HCl conc. to bring to volume. Carefully pour this solution into a 500 mL Erlenmeyer flask, Stopper and shake. Label the flask.
(D) 2% (w/w) NaOH—Pour ca 190 mL H\textsubscript{2}O into a 250 mL mixing graduate. Add 8 g. (5.23 mL) of 50% (w/w) NaOH, bring to 200 mL volume with water, stopper and mix. Pour this solution into a glass bottle, label and stopper with a polytetrafluoroethylene top.

(E) Ethanol (99%).

**PROCEDURE**

Weigh a 250 mL beaker to tenths of a mg and add 100 mg of dye. Record weight to tenths of a mg.

**NOTE:** The following work must be performed in the hood.

Add 75 mL of 8 N H\textsubscript{2}Cl and 100 mL of glacial acetic acid to the beaker and stir.

Place the beaker on a hot plate and heat with stirring, until all of the dye is in solution.

Remove the beaker from the hot plate, cover with a watch glass and allow to cool to room temperature (1-2 hrs).

When the dye solution is at room temperature, transfer the solution to a 1000 mL separatory funnel.

Rinse the beaker three times with 50 mL portions of H\textsubscript{2}O, transferring each rinse to the 1000 mL funnel.

Add 150 mL of ether to the funnel, stopper and shake for 10 seconds, then invert funnel and open stopcock to remove gas buildup.

Shake the funnel for one minute, opening the stopcock a few times while the funnel is inverted to remove gas buildup. (Use this shake procedure throughout method.)

Allow the funnel to stand until the layers have separated.

Transfer the bottom (aqueous) layer to a 500 mL separatory funnel, add 100 mL of ether, stopper and shake for one minute.

When the layers have separated, drain off the bottom layer into a waste beaker.

Pour the ether layer in the 500 mL separatory funnel into the 1000 mL separatory funnel.

Rinse the 500 mL sep. funnel with 100 mL H\textsubscript{2}O, then transfer it to the 1000 mL sep. funnel, stopper and shake for one minute.

When the layers have separated, drain off the bottom aqueous layer into the waste beaker.

Rinse the 500 mL funnel at least three times (total) and repeat the 100 mL water washes until no color is present in the aqueous layer. Discard the bottom aqueous layer to the waste beaker after each separation.

Shake the ether layer twice more with 100 mL portions of H\textsubscript{2}O, discarding the bottom aqueous layer after each separation.

Remove the unsulfonated subsidiary color from the ether by shaking the ether layer for one minute with 20 mL of 2% (w/w) NaOH. Appropriately label a 100 mL beaker. After the layers separate, drain the aqueous alkaline layer into the beaker and save for the determination of 3-hydroxy-4\{[(4-methylphenyl)azo]-2-naphthalene-carboxylic acid, sodium salt.

If there is any color left in the ether, shake for one minute with another 20 mL portion of 2% (w/w) NaOH. After the layers have separated, drain off the aqueous alkaline layer into the 100 mL beaker.

If color remains in the ether layer, repeat the above step for a total of three washes of the ether with 2% (w/w) NaOH. Note: Three washes is usually sufficient to remove the unsulfonated subsidiary.

With the stopper removed, gently swirl the ether layer in the sep. funnel twice to separate the remaining aqueous base. Drain this into the 100 mL beaker.

Appropriately label a 250 mL beaker.

Pour the ether layer into the beaker. Allow the ether to evaporate to near dryness. Cool to room temperature. Add ca 8 mL ethanol (99%). Swirl beaker to mix contents. Quantitatively transfer to a 25 mL graduate using ethanol (99%) rinses. Add ethanol (99%) to bring volume to 15 mL.

**SPECTROPHOTOMETRIC ANALYSIS**

Spectrophotometer Parameters:
- Scan Range: 400-700 nm
- Scan: 50 nm/in; 5.0 nm/sec.
- Absorbance Range: 0-1 A UFS

Cell length: 1 cm (Note: Reference and Sample cells)

1. Record the visible spectrum of a blank. Fill the reference cell with distilled water and the sample cell with ethanol (99%).
2. Rinse the sample cell with 2-3 mL of the ether soluble material (in ethanol solution); then fill the cell. Record the visible spectrum of the ether soluble material.
3. Compare the spectra obtained to the spectra attached. The attached spectra represents 150% of the absorbance at each wavelength for similarly analyzed D&C Red No. 6 Lot AA5169.

The spectra of the current sample must not exceed the attached spectra at any wavelength in order to pass test.
Ether Soluble Material
in
D&C Red No. 6
Lot AA5169
HK 21

Parameters
Spectrophotometer: Cary 11B
Scan: 50 mm/in.; 5.0 nm/sec.
Absorbance Range: 0-1 AODS
Cell length: 1.0 cm
Distilled water in ref. cell
95% Ethanol in sample cell
for blank
Spectra is 150% of absorbance
of AA5169 (Drawn over light
using French curve)
Reference: FDA Notebook
No. 81358 p. 22-27
11/9/82 CBAiley
Sample weight: 100.2 mg

PART 80—COLOR ADDITIVE CERTIFICATION

Subpart A—General Provisions

Sec. 80.10 Fees for certification services.

Subpart B—Certification Procedures

§ 80.21 Request for certification.

A request for certification of a batch of color additive shall:

(a) Be addressed to the Commissioner of Food and Drugs.

(b) Be prepared in the manner set forth in paragraph (j) of this section.

(c) Be submitted in duplicate.

(d) Be signed by a responsible officer of the person requesting certification of the batch. In the case of a foreign manufacturer, the request for certification must be signed by a responsible officer of such firm, and, by his agent who resides in the United States.

(e) Show the name and post office address of the actual manufacturer in case such manufacturer is not the person requesting certification of the batch.


Source: 42 FR 15662, Mar. 22, 1977, unless otherwise noted.

Subpart A—General Provisions

§ 80.10 Fees for certification services.

(a) Fees for straight colors including lakes. The fee for the services provided by the regulations in this part in the case of each request for certification submitted in accordance with §80.21(j)(1) and (j)(2) shall be 30 cents per pound of the batch covered by such requests, but no such fee shall be less than $1.92.

(b) Fees for repacks of certified color additives and color additive mixtures. The fees for the services provided under the regulations in this part in the case of each request for certification submitted in accordance with §80.21(j)(3) and (j)(4) shall be:

(1) 100 pounds or less—$30.

(2) Over 100 pounds but not over 1,000 pounds—$30 plus 6 cents for each pound over 100 pounds.

(3) Over 1,000 pounds—$84 plus 2 cents for each pound over 1,000 pounds.

(c) Advance deposits. Any person regularly requesting certification services may deposit funds in advance of requests as prepayment of fees required by this section.

(d) Method of payment. All deposits and fees required by this section shall be paid by money order, bank draft, or certified check, drawn to the order of the Food and Drug Administration, collectable at par at Washington, DC. All such deposits and fees shall be forwarded to the Center for Food Safety and Applied Nutrition (HFS–100), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, whereupon after making appropriate records thereof, they will be transmitted to the Treasurer of the United States for deposit to the special account “Salaries and Expenses, Certification, Inspection, and Other Services, Food and Drug Administration.”

(e) Refunds from advance deposits. Whenever in the judgment of the Commissioner the ratio between fees collected (which are based upon experience and the best estimate of costs and the best estimate of earnings) and the costs of providing the service during an elapsed period of time, in the light of all circumstances and contingencies, warrants a refund from the fund collected during such period, he shall make ratable refunds to those persons to whom the services were rendered and charged, except that no refund shall be made where the computed ratable amount for the elapsed period is less than $5.00.

(f) Be accompanied by the fee prescribed in §80.10 unless the person has established with the Food and Drug Administration an advanced deposit to be used for prepayment of such fees. In no case shall the Commissioner consider a request for certification of a batch of color additive if the fee accompanying such request is less than that required by §80.10 or if such fee exceeds the amount held in the advance deposit account of the manufacturer submitting such request for certification.

(g) Be accompanied by the sample prescribed in §80.22 consisting of:

(1) Four ounces in the case of straight colors and lakes.

(2) Two ounces in the case of repacks and mixtures.

A sample accompanying a request for certification must be submitted under separate cover and should be addressed to the Color Certification Branch.

(h) The name of a color additive shall be given in the following manner:

(1) The name of a straight color shall be the name of the color as listed in parts 74 and 81 of this chapter.

(2) The name of a lake shall be the name derived in the manner described in part 82 of this chapter.

(3) The name of a mixture shall be the name given to such mixture by the person requesting certification.

(4) The name of a repack shall be the name described in paragraph (h)(1), (2), or (3) of this section, whichever is applicable.

(i) The information and samples enumerated in paragraphs (a) to (h), inclusive, of this section are the minimum required. Additional information and samples shall be submitted at the request of the Food and Drug Administration when such additional information and samples are necessary to determine compliance with the requirements of §80.31 for the issuance of a certificate.

(j) The form for submission of the application shall be one of the following, depending upon whether the color additive is a straight color, a lake, a repack of a previously certified color additive, or a color additive mixture:

(1) Request for certification of a batch of straight color additive.

Date ————-

(2) Request for certification of a batch of color additive lake.

Date ————-

Office of Cosmetics and Colors (HFS-100),
Center for Food Safety and Applied Nutrition,
Food and Drug Administration,
200 C St., SW.,
Washington, DC 20204

In accordance with the regulations promulgated under the Federal Food, Drug, and Cosmetic Act, we hereby make application for the certification of a batch of straight color additive.

Name of color

(As listed in 21 CFR part 74)
Batch number

(Manufacturer's number)
Batch weighs ———— pounds
Batch manufactured by ———— at ————
(Name and address of actual manufacturer)

How stored pending certification

(State conditions of storage, with kind and size of containers, location, etc.)

Certification requested of this color for use in

(State proposed uses)

Required fee, $—— (drawn to the order of Food and Drug Administration).

The accompanying sample was taken after the batch was mixed in accordance with 21 CFR 80.22 and is accurately representative thereof.

(Signed) ————
By ————

(The Title)

(2) Request for certification of a batch of color additive lake.

Date ————-

Office of Cosmetics and Colors (HFS-100),
Center for Food Safety and Applied Nutrition,
Food and Drug Administration,
200 C St., SW.,
Washington, DC 20204

In accordance with the regulations promulgated under the Federal Food, Drug, and Cosmetic Act, we hereby make application for the certification of a batch of color additive lake.

Name of color

Batch number

(Manufacturer’s number)
Batch weighs ———— pounds
Name of color used

Quantity ———— pounds
§ 80.21

Lot number
(When certification of the lake for use in foods is requested)
Precipitant used ___________________________________________
Substratum used ___________________________________________
Quantity manufactured by ______________________ pounds
Batch mixed as follows ________________________________
(State proposed uses)
How stored pending certification ________________________
(State conditions of storage, with kind and size of containers, location, etc.)
Certification requested for use in __________________________
(State proposed uses)
Required fee, $_______ (drawn to the order of Food and Drug Administration).

21 CFR Ch. I (4-1-99 Edition)

The accompanying sample was taken after the batch was mixed in accordance with 21 CFR 80.22 and is accurately representative thereof.

(Signed) ________________________
By _____________________________
(Title)

(4) Request for certification of a batch of color additive mixture.

Date ________________
Office of Cosmetics and Colors (HFS−100),
Center for Food Safety and Applied Nutrition,
Food and Drug Administration,
200 C St. SW.,
Washington, DC 20204

In accordance with the regulations promulgated under the Federal Food, Drug, and Cosmetic Act, we hereby make application for the certification of a batch of color additive mixture.

Name of mixture ____________________________
(Manufacturer’s trade name)
Batch number _____________________________
(Manufacturer’s number)
Weight of batch ____________________________ pounds
Volume of batch ___________________________ (If liquid) gallons

Batch manufactured by ____________________________
Constituents of the mixture:
1. Color(s). (List separately each color and each lot number.)

<table>
<thead>
<tr>
<th>Name of color as certified</th>
<th>Lot number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tbody>
</table>

Quantity used
(in pounds)

<table>
<thead>
<tr>
<th>Obtained from</th>
</tr>
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<tbody>
<tr>
<td></td>
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</table>

2. List of diluents. (List separately each diluent.)

<table>
<thead>
<tr>
<th>Name of diluent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

Quantity used

<table>
<thead>
<tr>
<th>By weight</th>
<th>By volume (if liquid)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

Batch mixed as follows
(Describe in detail)
How stored pending certification
(State conditions of storage, with kind and size of containers, location, etc.)
Certification requested for use in

<p>| |</p>
<table>
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<tr>
<th></th>
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</tbody>
</table>

418
§ 80.21 Requests for certification.

(a) If the Commissioner determines, after such investigation as he considers to be necessary, that:

(1) A request submitted in accordance with § 80.21 appears to contain no untrue statement of a material fact;

(2) Such color additive conforms to the specifications and any other conditions set forth therefor in parts 81 and 82 of this chapter.

(b) The batch covered by such request otherwise appears to comply with the regulations in this chapter, the Commissioner shall issue to the person who submitted such request a certificate showing the lot number assigned to such batch and that such batch, subject to the terms, conditions, and restrictions prescribed by part 74, 81, and 82 of this chapter, is a certified batch.

§ 80.31 Certification.

(a) If the Commissioner determines, after such investigation as he considers to be necessary, that:

(1) A request submitted in accordance with § 80.21 appears to contain no untrue statement of a material fact;

(2) Such color additive conforms to the specifications and any other conditions set forth therefor in parts 81 and 82 of this chapter.

(b) The batch covered by such request otherwise appears to comply with the regulations in this chapter, the Commissioner shall issue to the person who submitted such request a certificate showing the lot number assigned to such batch and that such batch, subject to the terms, conditions, and restrictions prescribed by part 74, 81, and 82 of this chapter, is a certified batch.

(b) If the Commissioner determines, after such investigation as he considers to be necessary, that a request submitted in accordance with § 80.21, or the batch of color additive covered by such request, does not comply with the requirements prescribed by paragraph (a) of this section for the issuance of a certificate, the Commissioner shall refuse to certify such batch and shall give notice thereof to the person who submitted such request, stating his reasons for refusal. Any person who contests such refusal shall have an opportunity for a regulatory hearing before the Food and Drug Administration pursuant to part 16 of this chapter.

§ 80.32 Limitations of certificates.

(a) If a certificate is obtained through fraud or misrepresentation of a material fact, such certificate shall not be effective, and a color additive from the batch on which such certificate was issued shall be considered to be from a batch that has not been certified in accordance with the regulations in this part. Whenever, the Commissioner learns that any certificate has been obtained through fraud or material misrepresentation, he shall notify the holder of the certificate that it is of no effect.

(b) If between the time a sample of color additive accompanying a request for certification is taken and the time a certificate covering the batch of such color additive is received by the person to whom it is issued, any such color additive becomes changed in composition, such certificates shall not be effective with respect to such changed color additive and such changed color additive shall be considered to be from a batch that has not been certified in accordance with the regulations in this part.

(c) If at any time after a certificate is received by the person to whom it is issued any color additive from the batch covered by such certificate becomes changed in composition, such certificate shall expire with respect to such changed color additive. After such expiration, such color additive shall be considered to be from a batch that has not been certified in accordance with
§ 80.32  21 CFR Ch. I (4-1-99 Edition)

this part; except that such color additive shall not be so considered when used for coloring a food, drug, or cosmetic, or for the purpose of certifying a batch of a mixture in which such color additive was used as an ingredient, or for use in preparing a batch of a mixture for which exemption from certification has been authorized, if such change resulted solely from such use.

(d) A certificate shall expire with respect to any color additive covered thereby if the package in which such color additive was closed for shipment or delivery is opened. After such expiration such color additive shall be considered to be from a batch that has not been certified, except that such color additive shall not be so considered when the package is opened;

(1) and such color additive is used, subject to the restrictions prescribed by paragraphs (f), (g), and (h) of this section, in coloring a food, drug, or cosmetic;

(2) for the purpose of certifying a batch made by repacking such color;

(3) for the purpose of certifying a batch of a mixture in which such color is used as an ingredient; or

(4) for the purpose of preparing a batch of a mixture for which exemption from certification has been authorized; or

(5) when the package is reopened solely for repackaging by the person to whom such certificate was issued.

(e) A certificate shall not be effective with respect to a package of color additive and such color additive shall be considered to be from a batch that has not been certified if such package is shipped or delivered under a label which does not bear all words, statements, and other information required by §70.25 of this chapter to appear thereon.

(f) A certificate shall not be effective with respect to a package of color additive and such color additive shall be considered to be from a batch that has not been certified if

(1) Such package has not been sealed in accordance with §70.20 of this chapter,

(2) Such package has been sealed in accordance with §70.20 of this chapter and the seal has been broken, intentionally or accidentally, unless such seal has been broken for the purpose of using color additive in accordance with §80.38, or, such package has been opened by a duly authorized representative of the Administration or Department in the performance of his official duties, and he has immediately resealed the package in conformance with §70.20 of this chapter.

(g) A certificate shall not be effective with respect to a package of color additive and such color additive shall be considered to be from a batch that has not been certified if such color additive is used in any manner other than that for which it was certified.

(h) When the listing or the specifications for a color additive are revoked or amended, the final order effecting the revocation or amendment may specify, in addition to its own effective date, a date on which all certificates for existing batches and portions of batches of such a color additive theretofore issued under such revoked or amended regulations shall cease to be effective; and any such lots of the color additive shall be regarded as unclassified after the date specified unless a new certificate can be and is obtained in conformance with the new regulations. When a certificate thus ceases to be effective for a color additive, any certificates previously issued for a color additive mixture containing that color additive shall cease to be effective on the same date. Use of such color additive or color additive mixture after such specified date without the new certificate in preparing foods, drugs, and cosmetics will result in such food, drugs, or cosmetics being adulterated. When a certified color additive has been used in food, drugs, or cosmetics and the status of the color additive is thereafter changed by amendment or revocation of its listing or specification regulations, such food, drugs, and cosmetics will not be regarded as adulterated by reason of the use of such color additive, unless the hazard to health is such that existing stocks of the foods, drugs, or cosmetics cannot be safely used, in which cases findings to that effect will be made and regulations appropriate for such special cases will be issued.
§ 80.34 Authority to refuse certification service.

(a) When it appears to the Commissioner that a person has:
(1) Obtained, or attempted to obtain, a certificate through fraud or misrepresentation of a material fact.
(2) Falsified the records required to be kept by §80.39; or
(3) Failed to keep such records, or to make them available, or to accord full opportunity to make inventory of stocks on hand or otherwise to check the correctness of such records, as required by §80.39; or
(4) Refused to permit duly authorized employees of the Food and Drug Administration free access to all manufacturing facilities, processes, and formulae involved in the manufacture of color additives and intermediates from which such color additives are derived; he may immediately suspend certification service to such person and may continue such suspension until adequate corrective action has been taken.

(b) Any person who contests suspension of service shall have an opportunity for a regulatory hearing before the Food and Drug Administration pursuant to part 16 of this chapter.

§ 80.35 Color additive mixtures; certification and exemption from certification.

(a) Color additive mixtures to be certified. Any color additive mixture that contains one or more straight colors listed in part 74 of this chapter, together with any diluents listed in such subparts for use with such straight colors, shall be certified if intended for use in foods, drugs, or cosmetics, or in coloring the human body, as the case may be, subject to any restriction prescribed in parts 70 and 71 of this chapter.

(b) Color additive mixtures exempted from certification. A color additive mixture prepared from a previously certified batch of one or more straight colors, with or without any diluent that has been listed in part 73 of this chapter for use in mixtures, shall be exempt from batch certification if the straight color used has not changed in composition in any manner whatsoever since its certification and if it is simply mixed with the approved diluents for exempt mixtures. The label of such color additive mixtures shall not bear the lot number assigned by the Food and Drug Administration to the certified straight color components, but shall bear the manufacturer's control number through which the history of the straight color can be determined.

(c) Additions to the list of diluents. A person requesting additions to the list of diluents authorized for the purposes described in paragraphs (a) and (b) of this section shall submit a petition in accordance with the provisions of §70.11 of this chapter. Each such petition shall be accompanied by the fee prescribed in §70.19 of this chapter, unless there is an advance deposit to be used for prepayment of such fees.

Note: The provisions of §80.35 with respect only to diluents for use in cosmetic color additive mixtures were stayed, until a regulation is effectuated listing safe diluents for cosmetic use, including cosmetics which color the human body, 29 FR 19495, Dec. 29, 1964.

§ 80.37 Treatment of batch pending certification.

Immediately after the sample that is to accompany a request for certification of a batch of color additive is taken, the batch shall be:

(a) Stored in containers of such kind as to prevent change in composition.

(b) Held under the control of the person requesting certification until certified.

(c) Marked, by labeling or otherwise, in a manner such that there can be no question as to the identity of the batch and no question that it is not to be used until the requested certificate has been issued.

§ 80.38 Treatment of batch after certification.

(a) Immediately upon notification that a batch of color additive has been certified, the person requesting certification thereof shall identify the batch, by labeling, with the certified lot number.

(b) The person requesting certification shall maintain storage in such manner as to prevent change in composition until such batch has been packaged and labeled as required by §§70.20 and 70.25 of this chapter, except
that the person requesting certification may use such color additive for the purpose of coloring a food, drug, or cosmetic.

§ 80.39 Records of distribution.
(a) The person to whom a certificate is issued shall keep complete records showing the disposal of all the color additive from the batch covered by such certificate. Upon the request of any officer or employee of the Food and Drug Administration or of any other officer or employee acting on behalf of the Secretary of Health and Human Services, such person, at all reasonable hours until at least 2 years after disposal of all such color additive, shall make such records available to any such officer or employee, and shall accord to such officer or employee full opportunity to make inventory of stacks of such color additive on hand and otherwise to check the correctness of such records.
(b) The records required to be kept by paragraph (a) of this section shall show:
(1) Each quantity used by such person from such batch and the date and kind of such use.
(2) The date and quantity of each shipment or delivery from such batch, and the name and post-office address of the person to whom such shipment or delivery was made.
(c) The records required to be kept by paragraph (a) of this section shall be kept separately from all other records.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

Sec.
81.1 Provisional lists of color additives.
81.10 Termination of provisional listings of color additives.
81.30 Cancellation of certificates.


§ 81.1 Provisional lists of color additives.
The Commissioner of Food and Drugs finds that the following lists of color additives are provisionally listed under section 203(b) of the Color Additive Amendments of 1960 (sec. 203(b), 74 Stat. 405 (21 U.S.C. 379e note)). Except for color additives for which petitions have been filed, progress reports are required by January 1, 1968, and at 6-month intervals thereafter. Specifications for color additives listed in paragraphs (a), (b), and (c) of this section appear in the respective designated sections. The listing of color additives in this section is not to be construed as a listing for surgical suture use unless color additive petitions have been submitted for such use or the Commissioner has been notified of studies underway to establish the safety of the color additive for such use. The color additives listed in paragraphs (a), (b), and (c) of this section may not be used in products which are intended to be used in the area of the eye. The color additives listed in paragraphs (a), (b), and (c) of this section are provisionally listed until the closing dates set forth therein.

(a) Color additives previously and presently subject to certification and provisionally listed for food, drug, and cosmetic use.

<table>
<thead>
<tr>
<th>Color additive</th>
<th>Closing date</th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lakes (FD&amp;C) (sec. 82.51 of this chapter).</td>
<td></td>
<td></td>
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</tbody>
</table>

(b) Color additives previously and presently subject to certification and provisionally listed for drug and cosmetic use.

<table>
<thead>
<tr>
<th>Color additive</th>
<th>Closing date</th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lakes (D&amp;C) (Sec. 82.2051 of this chapter).</td>
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</table>

(c) Color additives previously and presently subject to certification and provisionally listed for use in externally applied drugs and cosmetics.

<table>
<thead>
<tr>
<th>Color additive</th>
<th>Closing date</th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lakes (Ext. D&amp;C) (sec. 82.105(1) of this chapter).</td>
<td></td>
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</tr>
</tbody>
</table>

[42 FR 15665, Mar. 22, 1977]
§ 81.10 Termination of provisional listings of color additives.

(a) Ext. D&C Yellow Nos. 9 and 10. These colors cannot be produced with any assurance that they do not contain β-naphthylamine as an impurity. While it has been asserted that the two colors can be produced without the impurity named, no method of analysis has been suggested to establish the fact. β-Naphthylamine is a known carcinogen; therefore, there is no scientific evidence that will support a safe tolerance for these colors in products to be used in contact with the skin. The Commissioner of Food and Drugs, having concluded that such action is necessary to protect the public health, hereby terminated the provisional listing of Ext. D&C Yellow No. 9 and Ext. D&C Yellow No. 10.

(b) [Reserved]

(c) FD&C Red No. 1. Results of recent feeding tests of this color additive have demonstrated it to be toxic upon ingestion:

(1) Groups of 50 rats are being fed diets containing FD&C Red No. 1 at levels of 5 percent, 2 percent, 1 percent, 0.5 percent, and 0 percent. At this stage of the tests, which have now been in progress for from 15 months to 18 months, 116 animals from the 250 being fed FD&C Red No. 1 at various levels and 27 of the 100 controls have died. Of these, 11 being fed at the 5 percent level, 16 being fed at the 2 percent level, 11 being fed at the 1 percent level, and 2 being fed at the 0.5 percent level, have shown liver damage. None of the controls that have died have shown liver damage.

(2) Groups of 100 mice are being fed diets containing 2 percent, 1 percent, 0.5 percent, and 0.1 percent FD&C Red No. 1, with 400 mice as controls. All mice on dosage levels of 2 percent and 1 percent died before the seventieth week. Gross liver damage has been observed in all groups fed at the 0.5 percent diet and above.

(3) Groups of 4 dogs are being fed diets containing 2 percent, 1 percent, 0.25 percent, and 0 percent FD&C Red No. 1. Three of the dogs on the 2 percent dosage level died before 32 weeks; the other is living. Three of the dogs on the 1 percent dosage level died or were sacrificed within 13 months. All deceased or sacrificed dogs have shown liver damage grossly and/or microscopically. Deceased dogs on the 1 percent and 2 percent dosage level showed poor physical condition.

The Commissioner of Food and Drugs having concluded that ingestion of this color additive over a long period of time would be unsafe, and in order to protect the public health, hereby terminates the provisional listing of FD&C Red No. 1 for use in foods, drugs, and cosmetics.

(d) FD&C Red No. 4. Feeding tests of this color additive have been conducted with three species:

(1) Rats of the Osborne-Mendel and Sprague-Dawley strains were fed FD&C Red No. 4 for 2 years at levels of 5 percent, 2 percent, 1 percent, and 0.5 percent of the diet. No effect was found.

(2) Mice of the C3Hf and C57BL strains were fed FD&C Red No. 4 for 2 years at levels of 2 percent and 1 percent of the diet. No effect was found.

(3) Dogs were fed FD&C Red No. 4 at levels of 2 percent and 1 percent of the diet. Adverse effects were found at both levels in the urinary bladder and in the adrenals. Three dogs of five fed on the 2-percent level died after 6 months, 9 months, and 5½ years on the test. Two of the dogs on the 2-percent level and all five of the dogs on the 1-percent level survived to the completion of the 7 year study.

The Commissioner of Food and Drugs has concluded that available data do not permit the establishment of a safe level of use of this color additive in food, ingested drugs and ingested cosmetics. In order to protect the public health, the Commissioner hereby terminates the provisional listing of FD&C Red No. 4 for use in food and ingested drugs. The Commissioner has previously terminated the provisional listing of FD&C Red No. 4 for use in ingested cosmetics. FD&C Red No. 4 is listed for use in externally applied drugs and cosmetics by §§74.1304 and 74.2304 of this chapter, respectively.

Section 82.304 of this chapter is retained in part 82 of this chapter to permit the use of lakes of FD&C Red No.
4 in externally applied drugs and cosmetics.

(e) FD&C Violet No. 1. The Commissioner of Food and Drugs, in order to protect the public health, hereby terminates the provisional listing of FD&C Violet No. 1 for use in foods, drugs, and cosmetics.

(f) FD&C Red No. 2. The Commissioner of Food and Drugs, in order to protect the public health, hereby terminates the provisional listing of FD&C Red No. 2 for use in food, drugs, and cosmetics.

(g) Carbon black (prepared by the “impingement” or “channel” process). The Commissioner of Food and Drugs, in order to protect the public health, hereby terminates the provisional listing of carbon black (prepared by the impingement or channel process) for use in food, drugs, and cosmetics.

(h) D&C Red Nos. 10, 11, 12, and 13. The petition for these color additives was withdrawn so that there no longer exists a basis for their continued provisional listing. In addition, the Commissioner has learned of the possible contamination of D&C Red No. 10, D&C Red No. 11, D&C Red No. 12, and D&C Red No. 13 with β-naphthyl-amine. The Commissioner concludes that these colors cannot be produced with any reasonable assurance that they will not contain β-naphthylamine as an impurity or not yield β-naphthylamine from the metabolism of subsidiary colors present in them. β-Naphthylamine is a known carcinogen; therefore, there is no scientific evidence that will support a safe tolerance for these colors in drugs or cosmetics. The Commissioner of Food and Drugs, in order to protect the public health, hereby terminates the provisional listing of carbon black (prepared by the impingement or channel process) for use in food, drugs, and cosmetics, effective December 13, 1977.

(i) Ext. D&C Yellow No. 1. The Commissioner concludes that there are inadequate analytical methods to permit certification of the color additive Ext. D&C Yellow No. 1. The Commissioner concludes that there is no scientific evidence that will support a safe tolerance for this color in drugs or cosmetics. Ext. D&C Yellow No. 1, in order to protect the public health, hereby terminates the provisional listing of Ext. D&C Yellow No. 1 for use in externally applied drugs and cosmetics, effective November 29, 1977.

(j) Graphite. Data have been developed that show the contamination of graphite with polynuclear aromatic hydrocarbons (PNA’s). There is no reasonable assurance this color can be produced so that it will not contain PNA’s as an impurity. The presence of certain PNA’s in graphite would indicate that PNA’s known to be carcinogenic to animals and humans may also be present. Therefore, there is no scientific evidence that will support a safe tolerance for this color in drugs or cosmetics. The Commissioner of Food and Drugs, in order to protect the public health, hereby terminates the provisional listing of graphite for use in externally applied cosmetics, effective November 29, 1977.

(k) Ext. D&C Green No. 1. The Commissioner concludes that there are inadequate analytical methods to permit certification of the color additive Ext. D&C Green No. 1. In addition, the Commissioner has found that there was a failure to comply with the conditions attached to the postponement of the closing date in accordance with section 203(a)(2) of the transitional provisions of the Color Additive Amendments of 1960. The Commissioner of Food and Drugs hereby terminates the provisional listing of Ext. D&C Green No. 1 for use in externally applied drugs and cosmetics, effective November 29, 1977.

(l) [Reserved]

(m) D&C Orange Nos. 10 and 11. In the absence of a petition to list D&C Orange No. 10 and D&C Orange No. 11 for use in ingested drugs and cosmetics, there no longer exists a basis for provisional listing for such uses. Therefore, FDA is terminating the provisional
Food and Drug Administration, HHS

§ 81.30 Cancellation of certificates.

(a) Certificates issued heretofore for colors being removed from the provisional list (§81.10(a)) are cancelled and of no effect after December 1, 1960, and use of such color additives in drugs or cosmetics after that date will result in adulteration.

(b)(1) Certificates issued heretofore for the color additive designated FD&C Red No. 1 are cancelled as of the date of the publication of this Order, and use of this color additive in the manufacture of foods, drugs, or cosmetics after that date will result in adulteration.

(2) The Commissioner finds that no action needs to be taken to remove foods, drugs, and cosmetics containing this color additive from the market on the basis of the scientific evidence before him, taking into account that the additive is not an acute toxic substance and that it is only used in small amounts in foods, drugs, and cosmetics.

(c) Certificates issued for FD&C Red No. 4 and all mixtures containing this color additive are cancelled and have no effect after September 23, 1976 insofar as food, ingested drugs, and ingested cosmetics are concerned, and use of this color additive in the manufacture of food, ingested drugs, and ingested cosmetics after that date will result in adulteration. The certificates shall continue in effect for the use of FD&C Red No. 4 in externally applied drugs and cosmetics.

(d) Certificates issued for D&C Red No. 9 for use in mouthwash, dentifrices, and ingested drugs, except ingested drug lip products, and D&C Red No. 10 and D&C Orange No. 11 for use in ingested drugs and cosmetics, effective April 28, 1981.

(e) D&C Blue No. 6. The Commissioner of Food and Drugs, having concluded that unresolved questions remain concerning the chemistry of unidentified minor components, hereby terminates the provisional listing of D&C Blue No. 6 for use in drugs and cosmetics.

(f) D&C Orange No. 6. In the absence of a petition to list D&C Green No. 6 for use in ingested drugs and cosmetics, there no longer exists a basis for provisional listing for such uses. Accordingly, the Commissioner of Food and Drugs hereby terminates the provisional listing of D&C Green No. 6 for use in ingested drugs and cosmetics, effective March 27, 1981.

(g)(1) D&C Red No. 19 and D&C Red No. 37. Having concluded that, when ingested, D&C Red No. 19 causes cancer in rats and mice, the agency hereby terminates the provisional listings of D&C Red No. 19 and chemically related D&C Red No. 37 for use in ingested drugs and ingested cosmetics, effective February 4, 1983.

(2) D&C Red No. 37. In the absence of a petition to list D&C Red No. 37 for external uses, there no longer exists a basis for provisional listing for such uses. Accordingly, the Commissioner of Food and Drugs hereby terminates the provisional listings of D&C Red No. 37 for use in externally applied drugs and cosmetics, effective June 6, 1986.

(h) D&C Orange No. 17. Having concluded that, when ingested, D&C Orange No. 17 causes cancer in rats and mice, the agency has terminated the provisional listing of D&C Orange No. 17 for use in ingested drugs and ingested cosmetics, effective March 31, 1983.

(i) D&C Red No. 8 and D&C Red No. 9. In the absence of a petition to list D&C Red No. 8 and D&C Red No. 9 for mouthwash, dentifrices, and ingested drugs, except ingested drug lip products, there no longer exists a basis for provisional listing for such uses. Accordingly, the Commissioner of Food and Drugs hereby terminates the provisional listings of D&C Red No. 8 and D&C Red No. 9 for use in mouthwash, dentifrices, and ingested drugs, except ingested drug lip products, effective January 6, 1987.

(j) FD&C Red No. 3. Having concluded that FD&C Red No. 3 causes cancer in rats, the agency hereby terminates the provisional listing of FD&C Red No. 3 for use in cosmetics and externally applied drugs and the provisional listing of the lakes of FD&C Red No. 3 for use in food, drug, and cosmetic products, effective January 29, 1990.

[42 FR 15665, Mar. 22, 1977]

EDITORIAL NOTE: For Federal Register citations affecting §81.10, see the List of CFR Sections Affected in the Finding Aids section of this volume.
drugs and cosmetics. The Commissioner finds, on the basis of the scientific evidence before him that no action has to be taken to remove from the market food, ingested drugs and ingested cosmetics containing the color additive.

(d) Certificates issued for the following color additives and all mixtures containing these color additives are canceled and have no effect after October 4, 1966, and use of such color additives in the manufacture of foods, drugs, or cosmetics after that date will result in adulteration:

FD&C Green No. 1.
FD&C Green No. 2.
D&C Red No. 5.
D&C Red No. 18.
D&C Red No. 24.
D&C Red No. 29.
D&C Red No. 35.
D&C Red No. 38.
D&C Orange No. 3.
D&C Orange No. 8.
D&C Orange No. 14.
D&C Orange No. 15.
D&C Orange No. 16.
D&C Blue No. 7.
D&C Black No. 1.
Ext. D&C Yellow No. 5.
Ext. D&C Yellow No. 6.
Ext. D&C Red No. 1.
Ext. D&C Red No. 2.
Ext. D&C Red No. 3.
Ext. D&C Red No. 10.
Ext. D&C Red No. 11.
Ext. D&C Red No. 15.
Ext. D&C Blue No. 1.
Ext. D&C Blue No. 4.
Ext. D&C Orange No. 1.
Ext. D&C Orange No. 4.

(e) Certificates issued for the following color additives and all mixtures containing these color additives are canceled and have no effect after July 1, 1968, and use of such color additives in the manufacture of drugs or cosmetics after that date will result in adulteration:

Ext. D&C Yellow No. 3.
Ext. D&C Red No. 8.
Ext. D&C Orange No. 3.

(f) Certificates issued for D&C Yellow No. 11 and all mixtures containing this color additive are canceled and have no effect after April 30, 1968, insofar as ingestions use is concerned. Use of this color additive in the manufacture of ingested drugs or cosmetics subject to ingestion after that date will result in adulteration.

(g) Certificates issued for D&C Red No. 17, D&C Red No. 31, D&C Orange No. 4, and D&C Violet No. 2, and all mixtures containing these color additives, are canceled and have no effect after December 31, 1968, insofar as ingested use is concerned. Use of these color additives in the manufacture of ingested drugs or cosmetics subject to ingestion after that date will result in adulteration.

(h)(1) Certificates issued for FD&C Violet No. 1 and all mixtures containing this color additive are canceled and have no effect after April 10, 1973, and use of such color additive in the manufacture of foods, drugs, or cosmetics after that date will result in adulteration.

(2) The Commissioner finds that no action needs to be taken to remove foods, drugs, and cosmetics containing this color additive from the market on the basis of the scientific evidence before him.

(i) Certificates issued prior to July 1, 1968, for D&C Brown No. 1 and Ext. D&C Violet No. 2 and all mixtures containing these colors are canceled and have no effect. This cancellation does not apply to certificates issued after March 15, 1973, for D&C Brown No. 1 and Ext. D&C Violet No. 2, which are provisionally listed in §81.1(b) and (c) respectively for coloring externally applied cosmetics.

(j)(1) Certificates issued for FD&C Red No. 2 and all mixtures containing this color additive are canceled and have no effect after January 28, 1976, and use of this color additive in the manufacture of foods, drugs, or cosmetics after this date will result in adulteration.

(2) The Commissioner finds, on the basis of the scientific evidence before him, that no action has to be taken to remove from the market food, drugs, and cosmetics containing the color additive.

(k)(1) Certificates issued for D&C Red No. 10, D&C Red No. 11, D&C Red No. 12, and D&C Red No. 13, their lakes and
all mixtures containing these color additives or their lakes are cancelled and have no effect after December 13, 1977, and use of these color additives in the manufacture of drugs or cosmetics after this date will result in adulteration. (2) The Commissioner finds, on the basis of the scientific evidence before him, that no action has to be taken to remove from the market drug and cosmetic products containing the color additive.

(i)(1) Certificates issued for Ext. D&C Yellow No. 1 and all mixtures containing this color additive are cancelled and have no effect after December 13, 1977, and use of this color additive in the manufacture of drugs or cosmetics after this date will result in adulteration.

(2) The Commissioner finds, on the basis of the scientific evidence before him, that no action has to be taken to remove from the market drugs and cosmetics containing the color additive.

(m)(1) Certificates issued for Ext. D&C Green No. 1 and all mixtures containing this color additive are cancelled and have no effect after November 29, 1977, and use of this color additive in the manufacture of drugs or cosmetics after this date will result in adulteration.

(2) The Commissioner finds, on the basis of the scientific evidence before him, that no action has to be taken to remove from the market drugs and cosmetics containing the color additive.

(n)(1) Certificates issued for D&C Orange No. 10, D&C Orange No. 11, their lakes, and all mixtures containing these color additives are cancelled and have no effect as pertains to their use in ingested drugs and cosmetics after April 28, 1981 and use of these color additives in the manufacture of ingested drugs or cosmetics after this date will result in adulteration.

(2) The agency finds, on the scientific evidence before it, that no action has to be taken to remove from the market ingested drugs and cosmetics to which D&C Red No. 19 and D&C Red No. 37 were added on or before February 4, 1983, or externally applied drugs and cosmetics to which D&C Red No. 37 was added on or before June 6, 1986.

(3) Certificates issued for D&C Red No. 37, its lakes, and all mixtures containing this color additive are cancelled and have no effect as pertains to its use in externally applied drugs and cosmetics after June 6, 1986, and use of this color additive in the manufacture of externally applied drugs or cosmetics after this date will result in adulteration.

(p)(1) Certificates issued for D&C Green No. 6, its lakes and all mixtures containing this color additive are cancelled and have no effect as pertains to their use in ingested drugs and cosmetics after May 4, 1982 and use of the color additive in the manufacture of ingested drugs or cosmetics after this date will result in adulteration.

(2) The agency finds, on the basis of the scientific evidence before it, that no action has to be taken to remove from the market ingested drugs and cosmetics containing the color additive.

(q) [Reserved]
(4) Certificates issued for D&C Red No. 19, its lakes, and all mixtures containing this color additive are cancelled and have no effect as pertains to its use in externally applied drugs and cosmetics after July 15, 1988, and use of this color in the manufacture of externally applied drugs or cosmetics after this date will result in adulteration.

(5) The agency finds, on the scientific evidence before it, that no action has to be taken to remove from the market externally applied drugs and cosmetics to which D&C Red No. 19 was added on or before July 15, 1988.

(s) (1) Certificates issued for D&C Red No. 8 and D&C Red No. 9, their lakes, and all mixtures containing these color additives are canceled and have no effect as pertains to their use in mouthwash, dentifrices, and ingested drugs, except ingested drug lip products, after January 6, 1987, and use of these color additives in the manufacture of mouthwash, dentifrices, and ingested drugs, after this date will result in adulteration.

(2) The agency finds, on the basis of the scientific evidence before it, that no action has to be taken to remove from the market mouthwash, dentifrices, and ingested drugs to which the color additives were added on or before January 6, 1987.

(3) Certificates issued for D&C Orange No. 17, its lakes and all mixtures containing this color additive are cancelled and have no effect as pertains to its use in externally applied drugs and cosmetics after July 15, 1988, and use of this color in the manufacture of externally applied drugs or cosmetics after this date will result in adulteration.

(4) The agency finds, on the scientific evidence before it, that no action has to be taken to remove from the market externally applied drugs and cosmetics to which D&C Orange No. 17 was added on or before July 15, 1988.

(u) (1) Certificates issued for FD&C Red No. 3 and all mixtures containing this color additive are cancelled and have no effect as pertains to their use in cosmetics and externally applied drugs after January 29, 1990. Certificates issued for FD&C Red No. 3 lakes and all mixtures containing these lakes are cancelled and have no effect as pertains to their use in food, drugs, and cosmetics after January 29, 1990. Certificates issued for D&C Red No. 3 lakes and all mixtures containing these lakes are cancelled and have no effect as pertains to their use in ingested drugs and cosmetics after January 29, 1990. Use of this color additive in the manufacture of cosmetics and of externally applied drugs and any use of the lakes of FD&C Red No. 3 (including the lakes of D&C Red No. 3) after this date will result in adulteration.

(2) The agency finds, on the scientific evidence before it, that no action must be taken to remove from the market food, drugs, and cosmetics to which the provisionally listed color additive or its lakes were added on or before January 29, 1990.

[42 FR 15665, Mar. 22, 1977]
Food and Drug Administration, HHS

EDITORIAL NOTE: For Federal Register citations affecting § 81.30, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 81.32 Limitation of certificates.

Certificates issued for the color additives listed in § 81.25 and for all mixtures containing these color additives are limited to the conditions stated in § 81.25. The use of these color additives in drugs and cosmetics in any other manner will result in adulteration. Each of these color additives shall bear a label statement of the tolerance and use limitations applicable to it.

[44 FR 48966, Aug. 21, 1979]

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

Subpart A—General Provisions

Sec.
82.3 Definitions.
82.5 General specifications for straight colors.
82.6 Certifiable mixtures.

Subpart B—Foods, Drugs, and Cosmetics

82.50 General.
82.51 Lakes (FD&C).
82.101 FD&C Blue No. 1.
82.102 FD&C Blue No. 2.
82.203 FD&C Green No. 3.
82.304 FD&C Red No. 3.
82.705 FD&C Yellow No. 5.
82.706 FD&C Yellow No. 6.

Subpart C—Drugs and Cosmetics

82.1050 General.
82.1051 Lakes (D&C).
82.1104 D&C Blue No. 4.
82.1205 D&C Green No. 5.
82.1206 D&C Green No. 6.
82.1208 D&C Green No. 7.
82.1209 D&C Orange No. 4.
82.1210 D&C Orange No. 5.
82.1210a D&C Orange No. 10.
82.1210b D&C Orange No. 11.
82.1206 D&C Red No. 6.
82.1207 D&C Red No. 7.
82.1217 D&C Red No. 17.
82.1221 D&C Red No. 21.
82.1222 D&C Red No. 22.
82.1227 D&C Red No. 27.
82.1228 D&C Red No. 29.
82.1229 D&C Red No. 30.
82.1231 D&C Red No. 31.
82.1233 D&C Red No. 33.
82.1234 D&C Red No. 34.
82.1236 D&C Red No. 36.
82.1602 D&C Violet No. 2.
82.1707 D&C Yellow No. 7.
82.1708 D&C Yellow No. 8.
82.1710 D&C Yellow No. 10.

Subpart D—Externally Applied Drugs and Cosmetics

82.2050 General.
82.2051 Lakes (Ext. D&C).
82.2707a Ext. D&C Yellow No. 7.


SOURCE: 42 FR 15669, Mar. 22, 1977, unless otherwise noted.

Subpart A—General Provisions

§ 82.3 Definitions.

For the purposes of this part:
(a)-(f) [Reserved]
(g) The term alumina means a suspension in water of precipitated aluminum hydroxide.
(h) The term blanc fixe means a suspension in water of precipitated barium sulfate.
(i) The term gloss white means a suspension in water of co-precipitated aluminum hydroxide and barium sulfate.
(j) The term mixed oxides means the sum of the quantities of aluminum, iron, calcium, and magnesium (in whatever combination they may exist in a coal-tar color) calculated as aluminum trioxide, ferric oxide, calcium oxide, and magnesium oxide.
(k)-(m) [Reserved]
(n) The term externally applied drugs and cosmetics means drugs and cosmetics which are applied only to external parts of the body and not to the lips or any body surface covered by mucous membrane.
(o)-(p) [Reserved]
(q) The definitions and interpretations of terms contained in section 201 of the Federal Food, Drug, and Cosmetic Act shall be applicable also to such terms when used in this part.

§ 82.5 General specifications for straight colors.

No batch of a straight color listed in subpart B, C, or D shall be certified under this part unless:
(a) It is free from all impurities (other than those named in paragraph (b) of this section or in the specifications set forth in such paragraph for
such color) to the extent that such impurities can be avoided by good manufacturing practice.
(b) It conforms to the following specifications:
   (1) In the case of a straight color listed in subpart B:
      (i) Lead (as Pb), not more than 0.001 percent.
      (ii) Arsenic (as As₂O₃), not more than 0.00014 percent.
      (iii) Heavy metals (except Pb and As) (by precipitation as sulfides), not more than trace.
   (2) In the case of a straight color listed in subpart C or D:
      (i) Lead (as Pb), not more than 0.002 percent.
      (ii) Arsenic (as As₂O₃), not more than 0.0002 percent.
      (iii) Heavy metals (except Pb and As) (by precipitation as sulfides), not more than 0.003 percent.
   (3) In the case of a straight color which contains a barium salt listed in subpart C or D—soluble barium (in dilute HCl) (as BaCl₂), not more than 0.05 percent.

§ 82.6 Certifiable mixtures.
(a) A batch of a mixture which contains no straight color listed in subpart C or D may be certified for use in food, drugs and cosmetics, if:
   (1) Each coal-tar color used as an ingredient in mixing such batch is from a previously certified batch and such color has not changed in composition in any manner whatever since such previous certification, except by mixing into such batch of mixture.
   (2) Each diluent in such batch of mixture is harmless and suitable for use therein.
(b) A batch of a mixture which contains no straight color listed in subpart D, or which contains a diluent not permitted by paragraph (a)(3) of this section, may be certified in accordance with the provisions of this part, for use only in drugs and cosmetics, if:
   (1) Each coal-tar color used as an ingredient in mixing such batch is from a previously certified batch and such color has not changed in composition in any manner whatever since such previous certification, except by mixing into such batch of mixture.
   (2) Each diluent in such batch of mixture is harmless and suitable for use therein.
(c) A batch of a mixture which contains a straight color listed in subpart D may be certified in accordance with the provisions of this part, for use only in externally applied drugs and cosmetics, if:
   (1) Each coal-tar color used as an ingredient in mixing such batch is from a previously certified batch and such color has not changed in composition in any manner whatever since such previous certification, except by mixing into such batch of mixture; and
   (2) Each diluent in such batch of mixture is harmless and suitable for use therein.

Subpart B—Foods, Drugs, and Cosmetics

§ 82.50 General.
A batch of a straight color listed in this subpart may be certified, in accordance with the provisions of the regulations in this part, for use in food, drugs, and cosmetics, if such batch conforms to the requirements of §82.5 and to the specifications in this subpart set forth for such color.

§ 82.51 Lakes (FD&C).
(a)(1) General. Any lake made by extending on a substratum of alumina, a salt prepared from one of the certified water-soluble straight colors hereinbefore listed in this subpart by combining such color with the basic radical aluminum or calcium.
   (2) Specifications. Prepared from previously certified colors listed in this subpart.
Soluble chlorides and sulfates (as sodium salts), not more than 2.0 percent.
Inorganic matter, insoluble HCl, not more than 0.5 percent.

(b) Each lake made as prescribed in paragraph (a) of this section shall be considered to be a straight color and to be listed therein under the name which is formed as follows:
(1) The listed name of the color from which the lake is prepared;
(2) The name of the basic radical combined in such color; and
(3) The word “Lake”.
(For example, the name of a lake prepared by extending the aluminum salt prepared from FD&C Blue No. 1 upon the substratum would be FD&C Blue No. 1—Aluminum Lake.)

§ 82.101 FD&C Blue No. 1.
The color additive FD&C Blue No. 1 shall conform in identity and specifications to the requirements of § 74.101(a)(1) and (b) of this chapter.

§ 82.102 FD&C Blue No. 2.
The color additive FD&C Blue No. 2 shall conform in identity and specifications to the requirements of § 74.102(a)(1) and (b) of this chapter.
[48 FR 5363, Feb. 4, 1983]

§ 82.203 FD&C Green No. 3.
The color additive FD&C Green No. 3 shall conform in identity and specifications to the requirements of § 74.203(a)(1) and (b) of this chapter.
[47 FR 52144, Nov. 19, 1982]

§ 82.304 FD&C Red No. 4.
The color additive FD&C Red No. 4 shall conform in identity and specifications to the requirements of § 74.304(a)(1) and (b) of this chapter. FD&C Red No. 4 is restricted to use in externally applied drugs and cosmetics.

§ 82.705 FD&C Yellow No. 5.
The color additive FD&C Yellow No. 5 shall conform in identity and specifications to the requirements of § 74.705 (a)(1) and (b) of this chapter.
[51 FR 24519, July 7, 1986]
§ 82.1104

if such name contains the symbol "FD&C," such symbol shall be changed to "D&C";

(2) The name of the basic radical combined in such color; and

(3) The word "Lake." (For example, the name of a lake prepared by extending the color D&C Red No. 9 upon a substratum is "D&C Red No. 9—Barium Lake", and a lake prepared by extending the aluminum salt prepared from FD&C Green No. 1 upon a substratum other than alumina is "D&C Green No. 1—Aluminum Lake").

§ 82.1104  D&C Blue No. 4.

The color additive D&C Blue No. 4 shall conform in identity and specifications to the requirements of §74.1104(a)(1) and (b) of this chapter. D&C Blue No. 4 is restricted to use in externally applied drugs and cosmetics.

§ 82.1205  D&C Green No. 5.

The color additive D&C Green No. 5 shall conform in identity and specifications to the requirements of §74.1205(a)(1) and (b)(2) of this chapter.

[47 FR 24285, June 4, 1982]

§ 82.1206  D&C Green No. 6.

The color additive D&C Green No. 6 shall conform in identity and specifications to the requirements of §74.1206(a) and (b) of this chapter. D&C Green No. 6 is restricted to use in externally applied drugs and cosmetics.

[47 FR 14147, Apr. 2, 1982; as amended at 51 FR 9765, Mar. 21, 1986]

§ 82.1254  D&C Orange No. 4.

The color additive D&C Orange No. 4 shall conform in identity and specifications to the requirements of §74.1254(a)(1) and (b) of this chapter. D&C Orange No. 4 is restricted to use in externally applied drugs and cosmetics.

[42 FR 52396, Sept. 30, 1977]

§ 82.1255  D&C Orange No. 5.

(a) The color additive D&C Orange No. 5 shall conform in identity and specifications to the requirements of §74.1255(a)(1) and (b) of this chapter. D&C Orange No. 5 is restricted to the uses described in this section.

(b) The color additive D&C Orange No. 5 may be safely used for coloring externally applied drugs in amounts not exceeding 5 milligrams per daily dose of the drug. The color additive D&C Orange No. 5 may be safely used for coloring lipsticks and other cosmetics intended to be applied to the lips in amounts not exceeding 5.0 percent by weight of the finished cosmetic products, and for coloring mouthwashes, dentifrices, and externally applied cosmetics in amounts consistent with current good manufacturing practice.

[49 FR 13343, Apr. 4, 1984]

§ 82.1260  D&C Orange No. 10.

The color additive D&C Orange No. 10 shall conform in identity and specifications to the requirements to §74.1260(a)(1) and (b) of this chapter. D&C Orange No. 10 is restricted to use in externally applied drugs and cosmetics.

[46 FR 18954, Mar. 27, 1981]

§ 82.1261  D&C Orange No. 11.

The color additive D&C Orange No. 11 shall conform in identity and specifications to the requirements of §74.1261(a)(1) and (b) of this chapter. D&C Orange No. 11 is restricted to use in externally applied drugs and cosmetics.

[46 FR 18954, Mar. 27, 1981]

§ 82.1306  D&C Red No. 6.

(a) The color additive D&C Red No. 6 shall conform in identity and specifications to the requirements of §74.1306(a)(1) and (b) of this chapter.

(b) The color additive D&C Red No. 6 may be safely used for coloring drugs such that the combined total of D&C Red No. 6 and D&C Red No. 7 does not exceed 5 milligrams per daily dose of the drug.

[47 FR 57691, Dec. 28, 1982]

§ 82.1307  D&C Red No. 7.

(a) The color additive D&C Red No. 7 shall conform in identity and specifications to the requirements of §74.1307(a)(1) and (b) of this chapter.

(b) The color additive D&C Red No. 7 may be safely used for coloring drugs
such that the combined total of D&C Red No. 6 and D&C Red No. 7 does not exceed 5 milligrams per daily dose of the drug.

[47 FR 57691, Dec. 28, 1982]

§ 82.1317 D&C Red No. 17.

The color additive D&C Red No. 17 shall conform in identity and specifications to the requirements of §74.1317 (a)(1) and (b) of this chapter. D&C Red No. 17 is restricted to use in externally applied drugs and cosmetics.

[47 FR 53847, Nov. 30, 1982]

§ 82.1321 D&C Red No. 21.

The color additive D&C Red No. 21 shall conform in identity and specifications to the requirements of §74.1321 (a)(1) and (b) of this chapter.

[47 FR 53847, Nov. 30, 1982]

§ 82.1322 D&C Red No. 22.

The color additive D&C Red No. 22 shall conform in identity and specifications to the requirements of §74.1322 (a)(1) and (b) of this chapter.

[47 FR 42568, Sept. 28, 1982]

§ 82.1327 D&C Red No. 27.

The color additive D&C Red No. 27 shall conform in identity and specifications to the requirements of §74.1327 (a)(1) and (b) of this chapter.

[47 FR 42568, Sept. 28, 1982]

§ 82.1328 D&C Red No. 28.

The color additive D&C Red No. 28 shall conform in identity and specifications to the requirements of §74.1328 (a)(1) and (b) of this chapter.

[47 FR 42568, Sept. 28, 1982]

§ 82.1330 D&C Red No. 30.

The color additive D&C Red No. 30 shall conform in identity and specifications to the requirements of §74.1330 (a)(1) and (b) of this chapter.

[47 FR 22511, May 25, 1982]

§ 82.1331 D&C Red No. 31.

The color additive D&C Red No. 31 shall conform in identity and specifications to the requirements of §74.1331(a)(1) and (b) of this chapter. D&C Red No. 31 is restricted to use in externally applied drugs and cosmetics.

[47 FR 57691, Dec. 28, 1982]

§ 82.1333 D&C Red No. 33.

(a) The color additive D&C Red. No. 33 shall conform in identity and specifications to the requirements of §74.1333(a) (1) and (b) of this chapter.

(b) All lakes of D&C Red. No. 33 shall be manufactured from previously certified batches of the straight color additive.

[53 FR 33121, Aug. 30, 1988]

§ 82.1334 D&C Red No. 34.

Calcium salt of 3-hydroxy-4-[(1-sulfobenzo-2-naphthalenyl)azol-2-naphthalene-carboxylic acid.

Sum of volatile matter (at 135 °C) and chlorides and sulfates (calculated as sodium salts), not more than 15 percent.

2-Amino-1-naphthalenesulfonic acid, calcium salt, not more than 0.2 percent.

3-Hydroxy-2-naphthoic acid, not more than 0.4 percent.

Subsidiary colors, not more than 4 percent.

Total color not less than 85 percent.

[47 FR 42568, Sept. 28, 1982]

§ 82.1336 D&C Red No. 36.

(a) The color additive D&C Red No. 36 shall conform in identity and specifications to the requirements of §74.1336 (a)(1) and (b) of this chapter.

(b) All lakes of D&C Red No. 36 shall be manufactured from previously certified batches of the straight color additive.

[53 FR 29031, Aug. 2, 1988]

§ 82.1602 D&C Violet No. 2.

The color additive D&C Violet No. 2 shall conform in identity and specifications to the requirements of §74.1602(a)(1) and (b) of this chapter.

§ 82.1707 D&C Yellow No. 7.

The color additive D&C Yellow No. 7 shall conform in identity and specifications to the requirements of §74.1707(a)(1) and (b) of this chapter. D&C Yellow No. 7 is restricted to use in externally applied drugs and cosmetics.

[53 FR 29031, Aug. 2, 1988]

§ 82.1708 D&C Yellow No. 8.

The color additive D&C Yellow No. 8 shall conform in identity and specifications to the requirements of §74.1708(a)(1) and (b) of this chapter. D&C Yellow No. 8 is restricted to use in externally applied drugs and cosmetics.
§ 82.1710

D&C Yellow No. 10.
The color additive D&C Yellow No. 10 shall conform in identity and specifications to the requirements of §74.1710(a)(1) and (b) of this chapter.

[48 FR 39220, Aug. 30, 1983]

Subpart D—Externally Applied Drugs and Cosmetics

§ 82.2050 General.

A batch of a straight color listed in this subpart may be certified, in accordance with the provisions of this part, for use in externally applied drugs and cosmetics, if such batch conforms to the requirements of §82.5 and to the specifications set forth in this subpart for such color.

§ 82.2051 Lakes (Ext. D&C).

(a)(1) General. Any lake made by extending on a substratum of alumina, blanc fixe, gloss white, clay, titanium dioxide, zinc oxide, talc, rosin, aluminum benzoate, calcium carbonate, or on any combination of two or more of these (i) one of the straight colors hereinbefore listed in this subpart, which color is a salt in which is combined the basic radical sodium, potassium, barium, or calcium; or (ii) a salt prepared from one of the straight colors hereinbefore listed in this subpart by combining such color with the basic radical sodium, potassium, aluminum, barium, calcium, strontium, or zirconium.

(2) Specifications.

Ether extracts, not more than 0.5 percent.
Soluble chlorides and sulfates (as sodium salts), not more than 3.0 percent.
Intermediates, not more than 0.2 percent.

(b) Each lake made as prescribed in paragraph (a) of this section shall be considered to be a straight color and to be listed therein under the name which is formed as follows:

(1) The listed name of the color from which the lake is prepared.
(2) The name of the basic radical combined in such color; and
(3) The word “Lake.” (For example, the name of a lake prepared by extending the color Ext. D&C Yellow No. 2 upon a substratum is “Ext. D&C Yellow No. 2—Calcium Lake.”)

§ 82.2707a Ext. D&C Yellow No. 7.
The color additive Ext. D&C Yellow No. 7 shall conform in identity with specifications to the requirements of §74.1707a(a)(1) and (b) of this chapter. Ext. D&C Yellow No. 7 is restricted to use in externally applied drugs and cosmetics.

PARTS 83–98 [RESERVED]

PART 99—DISSEMINATION OF INFORMATION ON UNAPPROVED/New Uses for Marketed Drugs, Biologics, and Devices

Subpart A—General Information

Sec.
99.1 Scope.
99.3 Definitions.

Subpart B—Information to be Disseminated

99.101 Information that may be disseminated.
99.103 Mandatory statements and information.
99.105 Recipients of information.

Subpart C—Manufacturer's Submissions, Requests, and Applications

99.201 Manufacturer's submission to the agency.
99.203 Request to extend the time for completing planned studies.
99.205 Application for exemption from the requirement to file a supplemental application.

Subpart D—FDA Action on Submissions, Requests, and Applications

99.301 Agency action on a submission.
99.303 Extension of time for completing planned studies.
99.305 Exemption from the requirement to file a supplemental application.

Subpart E—Corrective Actions and Cessation of Dissemination

99.401 Corrective actions and cessation of dissemination of information.
99.403 Termination of approvals of applications for exemption.

434
§ 99.3 Definitions.

(a) Agency or FDA means the Food and Drug Administration.

(b) For purposes of this part, a clinical investigation is an investigation in humans that tests a specific clinical hypothesis.

(c) Group health plan means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001(1))) to the extent that the plan provides medical care (as defined in paragraphs (c)(1) through (c)(3) of this section and including items and services paid for as medical care) to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise. For purposes of this part, the term medical care means:

(1) Amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;

(2) Amounts paid for transportation primarily for and essential to medical care referred to in paragraph (c)(1) of this section; and

(3) Amounts paid for insurance covering medical care referred to in paragraphs (c)(1) and (c)(2) of this section.

(d) Health care practitioner means a physician or other individual who is a health care provider and licensed under State law to prescribe drugs or devices.

(e) Health insurance issuer means an insurance company, insurance service, or insurance organization (including a health maintenance organization, as defined in paragraph (e)(2) of this section) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of section 514(b)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)(2))).

(1) Such term does not include a group health plan.

(2) For purposes of this part, the term health maintenance organization means:

(i) A Federally qualified health maintenance organization (as defined in section 1301(a) of the Public Health Service Act (42 U.S.C. 300e(a)));

(ii) An organization recognized under State law as a health maintenance organization; or

(iii) A similar organization regulated under State law for solvency in the same manner and to the same extent as such a health maintenance organization.

(f) Manufacturer means a person who manufactures a drug or device or who is licensed by such person to distribute or market the drug or device. For purposes of this part, the term manufacturer may also include the sponsor of the approved, licensed, or cleared drug or device.

(g) New use means a use that is not included in the statement of intended use for a cleared device.
(h) Pharmacy benefit manager means a person or entity that has, as its principal focus, the implementation of one or more device and/or prescription drug benefit programs.

(i) A reference publication is a publication that:

(1) Has not been written, edited, excerpted, or published specifically for, or at the request of, a drug or device manufacturer;

(2) Has not been edited or significantly influenced by such a manufacturer;

(3) Is not solely distributed through such a manufacturer, but is generally available in bookstores or other distribution channels where medical textbooks are sold;

(4) Does not focus on any particular drug or device of a manufacturer that disseminates information under this part and does not have a primary focus on new uses of drugs or devices that are marketed or are under investigation by a manufacturer supporting the dissemination of information; and

(5) Does not present materials that are false or misleading.

(j) Scientific or medical journal means a scientific or medical publication:

(1) That is published by an organization that has an editorial board, that uses experts who have demonstrated expertise in the subject of an article under review by the organization and who are independent of the organization, to review and objectively select, reject, or provide comments about proposed articles, and that has a publicly stated policy, to which the organization adheres, of full disclosure of any conflict of interest or biases for all authors or contributors involved with the journal or organization;

(2) Whose articles are peer-reviewed and published in accordance with the regular peer-review procedures of the organization;

(3) That is generally recognized to be of national scope and reputation;

(4) That is indexed in the Index Medicus of the National Library of Medicine of the National Institutes of Health; and

(5) That is not in the form of a special supplement that has been funded in whole or in part by one or more manufacturers.

(k) Supplemental application means:

(1) For drugs, a supplement to support a new use to an approved new drug application;

(2) For biologics, a supplement to an approved license application;

(3) For devices that are the subject of a cleared 510(k) submission and devices that are exempt from the 510(k) process, a new 510(k) submission to support a new use or, for devices that are the subject of an approved premarket approval application, a supplement to support a new use to an approved premarket approval application.

Subpart B—Information to be Disseminated

§ 99.101 Information that may be disseminated.

(a) A manufacturer may disseminate written information concerning the safety, effectiveness, or benefit of a use not described in the approved labeling for an approved drug or device or in the statement of intended use for a cleared device, provided that the manufacturer complies with all other relevant requirements under this part. Such information shall:

(1) Be about a drug or device that has been approved, licensed, or cleared for marketing by FDA;

(2) Be in the form of:

(i) An unabridged reprint or copy of an article, peer-reviewed by experts qualified by scientific training or experience to evaluate the safety or effectiveness of the drug or device involved, which was published in a scientific or medical journal. In addition, the article must be about a clinical investigation with respect to the drug or device and must be considered to be scientifically sound by the experts described in this paragraph; or

(ii) An unabridged reference publication that includes information about a clinical investigation with respect to the drug or device, which experts qualified by scientific training or experience to evaluate the safety or effectiveness of the drug or device that is the subject of the clinical investigation would consider to be scientifically sound;

(3) Not pose a significant risk to the public health;
§ 99.103 Mandatory statements and information.

(a) Any information disseminated under this part shall include:

1. A prominently displayed statement disclosing:
   
   (i) For a drug, “This information concerns a use that has not been approved by the Food and Drug Administration.” For devices, the statement shall read, “This information concerns a use that has not been approved or cleared by the Food and Drug Administration.” If the information to be disseminated includes both an approved and unapproved use or uses or a cleared and uncleared use or uses, the manufacturer shall modify the statement to identify the unapproved or uncleared new use or uses. The manufacturer shall permanently affix the statement to the front of each reprint or copy of an article from a scientific or medical journal and to the front of each reference publication disseminated under this part;

   (ii) If applicable, the information is being disseminated at the expense of the manufacturer;

   (iii) If applicable, the names of any authors of the information who were employees of, or consultants to, or received compensation from the manufacturer, or who had a significant financial interest in the manufacturer during the time that the study that is the subject of the dissemination was conducted up through 1 year after the time the article/reference publication was written and published;

   (iv) If applicable, a statement that there are products or treatments that have been approved or cleared for the use that is the subject of the information being disseminated; and

   (v) The identification of any person that has provided funding for the conduct of a study relating to the new use of a drug or device for which such information is being disseminated; and

   (2) The official labeling for the drug or device;

   (3) A bibliography of other articles (that concern reports of clinical investigations both supporting and not supporting the new use) from a scientific reference publication or scientific or medical journal that have been previously published about the new use of the drug or device covered by the information that is being disseminated, unless the disseminated information already includes such a bibliography; and

   (4) Any additional information required by FDA under §99.301(a)(2). Such

(b) For purposes of this part:

1. FDA will find that all journal articles and reference publications (as those terms are defined in §99.3) are scientifically sound except:

   (i) Letters to the editor;

   (ii) Abstracts of a publication;

   (iii) Those regarding Phase 1 trials in healthy people;

   (iv) Flagged reference publications that contain little or no substantive discussion of the relevant clinical investigation; and

   (v) Those regarding observations in four or fewer people that do not reflect any systematic attempt to collect data, unless the manufacturer demonstrates to FDA that such reports could help guide a physician in his/her medical practice.

2. A reprint or copy of an article or reference publication is “unabridged” only if it retains the same appearance, form, format, content, or configuration as the original article or publication. Such reprint, copy of an article, or reference publication shall not be disseminated with any information that is promotional in nature. A manufacturer may cite a particular discussion about a new use in a reference publication in the explanatory or other information attached to or otherwise accompanying the reference publication under §99.103.
information shall be attached to the front of the disseminated information or, if attached to the back of the disseminated information, its presence shall be made known to the reader by a sticker or notation on the front of the disseminated information and may consist of:

(i) Objective and scientifically sound information pertaining to the safety or effectiveness of the new use of the drug or device and which FDA determines is necessary to provide objectivity and balance. This may include information that the manufacturer has submitted to FDA or, where appropriate, a summary of such information and any other information that can be made publicly available; and

(ii) An objective statement prepared by FDA, based on data or other scientifically sound information, bearing on the safety or effectiveness of the new use of the drug or device.

(b) Except as provided in paragraphs (a)(1)(i) and (a)(4) of this section, the statements, bibliography, and other information required by this section shall be attached to such disseminated information.

(c) For purposes of this section, factors to be considered in determining whether a statement is "prominently displayed" may include, but are not limited to, type size, font, layout, contrast, graphic design, headlines, spacing, and any other technique to achieve emphasis or notice. The required statements shall be outlined, boxed, highlighted, or otherwise graphically designed and presented in a manner that achieves emphasis or notice and is distinct from the other information being disseminated.

§ 99.105 Recipients of information.

A manufacturer disseminating information on a new use under this part may only disseminate that information to a health care practitioner, a pharmacy benefit manager, a health insurance issuer, a group health plan, or a Federal or State Government agency.

Subpart C—Manufacturer's Submissions, Requests, and Applications

§ 99.201 Manufacturer's submission to the agency.

(a) Sixty days before disseminating any written information concerning the safety, effectiveness, or benefit of a new use for a drug or device, a manufacturer shall submit to the agency:

(1) An identical copy of the information to be disseminated, including any information (e.g., the bibliography) and statements required under §99.103;

(2) Any other clinical trial information which the manufacturer has relating to the effectiveness of the new use, any other clinical trial information that the manufacturer has relating to the safety of the new use, any reports of clinical experience pertinent to the safety of the new use, and a summary of such information. For purposes of this part, clinical trial information includes, but is not limited to, published papers and abstracts, even if not intended for dissemination, and unpublished manuscripts, abstracts, and data analyses from completed or ongoing investigations. The reports of clinical experience required under this paragraph shall include case studies, retrospective reviews, epidemiological studies, adverse event reports, and any other material concerning adverse effects or risks reported for or associated with the new use. If the manufacturer has no knowledge of clinical trial information relating to the safety or effectiveness of the new use or reports of clinical experience pertaining to the safety of the new use, the manufacturer shall provide a statement to that effect;

(3) An explanation of the manufacturer's method of selecting the articles for the bibliography (e.g., the databases or sources and criteria (i.e., subject headings/keywords) used to generate the bibliography and the time period covered by the bibliography); and

(4) If the manufacturer has not submitted a supplemental application for the new use, one of the following:
(i) If the manufacturer has completed studies needed for the submission of a supplemental application for the new use:

(A) A copy of the protocol for each completed study or, if such protocol was submitted to an investigational new drug application or an investigational device exemption, the number(s) for the investigational new drug application or investigational device exemption covering the new use, the date of submission of the protocol(s), the protocol number(s), and the date of any amendments to the protocol(s); and

(B) A certification stating that, “On behalf of [insert manufacturer’s name], I certify that [insert manufacturer’s name] has completed the studies needed for the submission of a supplemental application for [insert new use] and will submit a supplemental application for such new use to the Food and Drug Administration no later than [insert date no later than 6 months from date that dissemination of information under this part can begin]”; or

(ii) If the manufacturer has planned studies that will be needed for the submission of a supplemental application for the new use:

(A) The proposed protocols and schedule for conducting the studies needed for the submission of a supplemental application for the new use. The protocols shall comply with all applicable requirements in parts 312 of this chapter (investigational new drug applications) and 812 of this chapter (investigational device exemptions). The schedule shall include the projected dates on which the manufacturer expects the principal study events to occur (e.g., initiation and completion of patient enrollment, completion of data collection, completion of data analysis, and submission of the supplemental application); and

(B) A certification stating that, “On behalf of [insert manufacturer’s name], I certify that [insert manufacturer’s name] will exercise due diligence to complete the clinical studies necessary to submit a supplemental application for [insert new use] and will submit a supplemental application for such new use to the Food and Drug Administration no later than [insert date no later than 36 months from date that dissemination of information under this part can begin] or

(iii) An application for exemption from the requirement of a supplemental application; or

(5) If the manufacturer has submitted a supplemental application for the new use, a cross-reference to that supplemental application.

(b) The manufacturer’s attorney, agent, or other authorized official shall sign the submission and certification statement or application for exemption. If the manufacturer does not have a place of business in the United States, the submission and certification statement or application for exemption shall contain the signature, name, and address of the manufacturer’s attorney, agent, or other authorized official who resides or maintains a place of business in the United States.

(c) The manufacturer shall send three copies of the submission and certification statement or application for exemption to FDA. The outside of the shipping container shall be marked as “Submission for the Dissemination of Information on an Unapproved/New Use.” The manufacturer shall send the submission and certification statement or application for exemption to the appropriate FDA component listed in paragraphs (c)(1) through (c)(3) of this section.

(1) For biological products and devices regulated by the Center for Biologics Evaluation and Research, the Advertising and Promotional Labeling Staff (HFM-602), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852;

(2) For human drug products, the Division of Drug Marketing, Advertising, and Communications (HFD-40), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or

(3) For medical devices, the Promotion and Advertising Policy Staff (HFZ-302), Office of Compliance, Center for Devices and Radiological Health, Food and Drug Administration, 2058 Gaither Rd., Rockville, MD 20850.
§ 99.203 Request to extend the time for completing planned studies.

(a) A manufacturer may request, prior to or at the time of making a submission to FDA under § 99.201, that FDA extend the 36-month time period for completing the studies and submitting a supplemental application for a new use that is the subject of the information to be disseminated. Such request must set forth the reasons that such studies cannot be completed and submitted in a supplemental application within 36 months.

(b) A manufacturer who has certified that it will complete the studies necessary to submit a supplemental application for a new use within a specified period of time from the date that dissemination of information under this part can begin under § 99.201(a)(4)(ii), but later finds that it will be unable to complete such studies and submit a supplemental application within that time period may request an extension of time from FDA. The manufacturer, in its request for extension, shall identify the product, the new use, and shall:

1. Describe the study or studies that cannot be completed on time and explain why the study or studies cannot be completed on time;
2. Describe the current status of the incomplete study or studies and summarize the work conducted, including the dates on which principal events concerning the study or studies occurred; and
3. Estimate the additional time needed to complete the studies and submit a supplemental application. The requested extension shall not exceed an additional 24 months.

(c) The manufacturer shall send three copies of the request for extension to the same FDA office that received the manufacturer’s initial submission and certification statement. The outside of the envelope shall be marked as “Request for Time Extension—Dissemination of Information on an Unapproved Use.”

§ 99.205 Application for exemption from the requirement to file a supplemental application.

(a) In certain circumstances, described in paragraph (b) of this section, a manufacturer may submit an application for an exemption from the requirement to submit a supplemental application for a new use for purposes of disseminating information on that use.

(b) The manufacturer’s application for an exemption shall identify the basis for the proposed exemption and shall include materials demonstrating that it would be economically prohibitive or that it would be unethical to conduct the studies necessary to submit a supplemental application for the new use.

1. If the basis for the manufacturer’s application for exemption is that it would be economically prohibitive to incur the costs necessary to submit a supplemental application for a new use, the manufacturer shall, at a minimum, provide:
   (i) Evidence explaining why existing data characterizing the safety and effectiveness of the drug or device, including data from the study described in the information to be disseminated, are not adequate to support the submission of a supplemental application for the new use. Such evidence shall include an analysis of all data relevant to the safety and effectiveness of the use, a summary of those data, and any documentation resulting from prior discussions with the agency concerning the adequacy of the existing data; and
   (ii) Evidence demonstrating that the cost of the study or studies for the new use reasonably exceeds the expected revenue from the new use minus the costs of goods sold and marketing and administrative expenses attributable to the new use of the product. Such evidence shall include:
      (A) A description of the additional studies that the manufacturer believes are necessary to support the submission of a supplemental application for the new use, including documentation from prior discussions, if any, with the agency concerning the studies that would be needed, and an estimate of the projected costs for such studies;
      (B) The expected patient population for the new use;
(C) The expected revenue for the new use, including an explanation of the price at which the drug or device will be sold;

(D) Any exclusivity for the drug or device for the new use; and

(E) Any other information that the manufacturer has showing that conducting the studies on the new use would be economically prohibitive; and

(iii) An attestation by a responsible individual of the manufacturer or an individual acting on the manufacturer's behalf verifying that the estimates included with the submission are accurate and were prepared in accordance with generally accepted accounting procedures. The data underlying and supporting the estimates shall be made available to FDA upon request. Alternatively, a manufacturer may submit a report of an independent certified public accountant in accordance with the Statement of Standards for Attestation established by the American Institute of Certified Public Accountants and agreed upon procedures performed with respect to the estimates submitted under this section.

(2) If the basis for the manufacturer's application for exemption is that it would be unethical to conduct the studies necessary for the supplemental application for a new use, the manufacturer shall provide evidence:

(i) Explaining why existing data characterizing the safety and effectiveness of the drug or device, including data from the study described in the information to be disseminated, are not adequate to support the submission of a supplemental application for the new use. Such evidence shall include an analysis of all data relevant to the safety and effectiveness of the new use, a summary of those data, and any documentation resulting from prior discussions with the agency concerning the adequacy of the existing data; and

(ii) Explaining why it would be unethical to conduct the further studies that would be necessary for the approval of the new use. Such evidence shall establish that, notwithstanding the insufficiency of available data to support the submission of a supplemental application for the new use, the data are persuasive to the extent that withholding the drug or device in a controlled study (e.g., by providing no therapy, a placebo, an alternative therapy, or an alternative dose) would pose an unreasonable risk of harm to human subjects. In assessing the appropriateness of conducting studies to support the new use, the manufacturer may provide evidence showing that the new use is broadly accepted as current standard medical treatment or therapy. The manufacturer shall also address the possibility of conducting studies in different populations or of modified design (e.g., adding the new therapy to existing treatments or using an alternative dose if monotherapy studies could not be conducted).

Subpart D—FDA Action on Submissions, Requests, and Applications

§ 99.301 Agency action on a submission.

(a) Submissions. Within 60 days after receiving a submission under this part, FDA may:

(1) Determine that the manufacturer does not comply with the requirements under this part and that, as a result, the manufacturer shall not disseminate any information under this part;

(2) After providing the manufacturer notice and an opportunity for a meeting, determine that the information submitted regarding a new use fails to provide data, analyses, or other written matter that is objective and balanced and:

(i) Require the manufacturer to disseminate additional information, including information that the manufacturer has submitted to FDA or, where appropriate, a summary of such information or any other information that can be made publicly available, which, in the agency’s opinion:

(A) Is objective and scientifically sound;

(B) Pertains to the safety or effectiveness of the new use; and

(C) Is necessary to provide objectivity and balance; and

(ii) Require the manufacturer to disseminate an objective statement prepared by FDA that is based on data or other scientifically sound information available to the agency and bears on...
§ 99.303 Extension of time for completing planned studies.

(a) Upon review of a drug or device manufacturer's proposed protocols and schedules for conducting studies needed for the submission of a supplemental application for a new use, FDA may, with or without a request for an extension from the manufacturer, determine that such studies cannot be completed and submitted within 36 months. The agency may exercise its discretion in extending the time period for completing the studies and submitting a supplemental application. Extensions under this paragraph are not subject to any time limit, but shall be made before the manufacturer begins the studies needed for the submission of a supplemental application for the new use.

(b) The manufacturer may, after beginning the studies needed for the submission of a supplemental application for a new use, request in writing that FDA extend the time period for conducting studies needed for the submission of a supplemental application for a new use and submitting a supplemental application to FDA. FDA may grant or deny the request or, after consulting the manufacturer, grant an extension different from that requested by the manufacturer. FDA may grant a manufacturer's request for an extension if FDA determines that the manufacturer has acted with due diligence to conduct the studies needed for the submission of a supplemental application for a new use and to submit such a supplemental application to FDA in a timely manner and that, despite such actions, the manufacturer needs additional time to complete the studies and submit the supplemental application. Extensions under this paragraph shall not exceed 24 months.

(2) If FDA extends the time period for completing the studies and submitting a supplemental application under paragraph (a) of this section after the manufacturer has submitted a certification under § 99.201(a)(4)(ii)(B), or if FDA grants a manufacturer's request for an extension under paragraph (b) of this section, the manufacturer shall submit a new certification under §99.201(a)(4)(ii)(B) that sets forth the timeframe within which clinical studies will be completed and a supplemental application will be submitted to FDA.

§ 99.305 Exemption from the requirement to file a supplemental application.

(a) Within 60 days after receipt of an application for an exemption from the requirement of a supplemental application, FDA shall approve or deny the application.

(2) If FDA does not act on the application for an exemption within the 60-day period, the application for an exemption shall be deemed to be approved.

(2) If an application for an exemption is deemed to be approved, FDA may, at any time, terminate such approval if it determines that the requirements for granting an exemption have not been met. FDA shall notify the manufacturer if the approval is terminated.

(b) In reviewing an application for an exemption, FDA shall consider the materials submitted by the manufacturer...
Subpart E—Corrective Actions and Cessation of Dissemination

§ 99.401 Corrective actions and cessation of dissemination of information.

(a) FDA actions based on post dissemination data. If FDA receives data after a manufacturer has begun disseminating information on a new use and, based on that data, determines that the new use that is the subject of information disseminated under this part may not be effective or may present a significant risk to public health, FDA shall consult the manufacturer and, after such consultation, take appropriate action to protect the public health. Such action may include ordering the manufacturer to cease disseminating information on the new use and to take appropriate corrective action.

(b) FDA actions based on information disseminated by a manufacturer. If FDA determines that a manufacturer is disseminating information that does not comply with the requirements under this part, FDA may:

(1) Provide to the manufacturer an opportunity to bring itself into compliance with the requirements under this part if the manufacturer’s noncompliance constitutes a minor violation of these requirements; or

(2) Order the manufacturer to cease dissemination of information and to take corrective action. FDA shall issue such an order only after it has:

(i) Provided notice to the manufacturer regarding FDA’s intent to issue an order to cease dissemination; and

(ii) Provided to the manufacturer an opportunity for a meeting. FDA need not provide an opportunity for a meeting if the manufacturer certified that it will submit a supplemental application for the new use within 6 months of the date that dissemination can begin and the noncompliance involves a failure to submit such supplemental application.

(c) FDA actions based on a manufacturer’s supplemental application. FDA may order a manufacturer to cease disseminating information under this part and to take corrective action if:

(1) In the case of a manufacturer that has submitted a supplemental application for the new use, FDA determines
§ 99.403 Termination of approvals of applications for exemption.

(a) FDA may, at any time, terminate the approval of an application for an exemption from the requirement to file a supplemental application if:

(1) The application for an exemption had been deemed to be approved because the agency had not acted on the application within 60 days after its receipt by FDA;

(2) The manufacturer is disseminating written information on the new use; and

(3) FDA determines that it would be economically and ethically possible for the manufacturer to conduct the clinical studies needed to submit a supplemental application for the new use.

(b) If FDA terminates a deemed approval of an application for an exemption under paragraph (a) of this section, FDA also may:

(1) Order the manufacturer to cease disseminating information; and

(2) Order the manufacturer to take action to correct the information that has been disseminated if FDA determines that the new use described in the disseminated information would pose a significant risk to public health.

(c) FDA shall notify the manufacturer if it terminates the deemed approval of an application for an exemption under paragraph (a) of this section. If FDA also issues an order to cease dissemination of information, the manufacturer shall comply with the order no later than 60 days after its receipt.

(d) FDA may, at any time, terminate the approval of an application for an exemption from the requirement to file a supplemental application for a new use if, after consulting with the manufacturer that was granted such exemption, FDA determines that the manufacturer no longer meets the requirements for an exemption on the basis that it is economically prohibitive or unethical to conduct the studies needed to submit a supplemental application for the new use.

(e) If FDA terminates an approval of an application for an exemption under paragraph (d) of this section, the manufacturer must, within 60 days of being
§ 99.501 Recordkeeping and reports.

(a) A manufacturer disseminating information under this part shall:

(1) Maintain records sufficient to allow the manufacturer to take corrective action as required by FDA. The manufacturer shall make such records available to FDA, upon request, for inspection and copying. Such records shall either:

(i) Identify, by name, those persons receiving the disseminated information; or

(ii) Identify, by category, the recipients of the disseminated information, unless FDA requires the manufacturer to retain records identifying individual recipients of the disseminated information. Manufacturers whose records identify recipients by category only shall:

(A) Identify subcategories of recipients where appropriate (e.g., oncologists, pediatricians, obstetricians, etc.); and

(B) Ensure that any corrective action to be taken will be sufficiently conspicuous to individuals within that category of recipients;

(2) Maintain an identical copy of the information disseminated under this part; and

(3) Upon the submission of a supplemental application to FDA, notify the appropriate office identified in §99.201(c) of this part.

(b) A manufacturer disseminating information on a new use for a drug or device shall, on a semiannual basis, submit to the FDA office identified in §99.201(c) of this part:

(1) A list containing the titles of articles and reference publications relating to the new use of drugs or devices that the manufacturer disseminated to a health care practitioner, pharmacy benefit manager, health insurance issuer, group health plan, or Federal or State Government agency. The list shall cover articles and reference publications disseminated in the 6-month period preceding the date on which the manufacturer provides the list to FDA;

(2) A list identifying the categories of health care practitioners, pharmacy benefit managers, health insurance issuers, group health plans, or Federal or State Government agencies that received the articles and reference publications in the 6-month period described in paragraph (b)(1) of this section. The list shall also identify which category of recipients received a particular article or reference publication;

(3) A notice and summary of any additional clinical research or other data relating to the safety or effectiveness of the new use, and, if the manufacturer possesses such clinical research or other data, a copy of the research or data. Such other data may include, but is not limited to, new articles published in scientific or medical journals, reference publications, and summaries of adverse effects that are or may be associated with the new use;

(4) If the manufacturer is conducting studies necessary for the submission of

a supplemental application, the manufacturer shall submit periodic progress reports on these studies to FDA. Such reports shall describe the studies' current status (i.e., progress on patient enrollment, any significant problems that could affect the manufacturer's ability to complete the studies, and expected completion dates). If the manufacturer discontinues or terminates a study before completing it, the manufacturer shall, as part of the next periodic progress report, state the reasons for such discontinuation or termination; and

(5) If the manufacturer was granted an exemption from the requirements to submit a supplemental application for the new use, any new or additional information that relates to whether the manufacturer continues to meet the requirements for such exemption. This information may include, but is not limited to, new or additional information regarding revenues from the product that is the subject of the dissemination and new or additional information regarding the persuasiveness of the data on the new use, including information regarding whether the new use is broadly accepted as current standard medical treatment or therapy.

(c) A manufacturer shall maintain a copy of all information, lists, records, and reports required or disseminated under this part for 3 years after it has ceased dissemination of such information and make such documents available to FDA for inspection and copying.
FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Material Approved for Incorporation by Reference
Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected
Material Approved for Incorporation by Reference
(Revised as of April 1, 1999)

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. This list contains only those incorporations by reference effective as of the revision date of this volume. Incorporations by reference found within a regulation are effective upon the effective date of that regulation. For more information on incorporation by reference, see the preliminary pages of this volume.

21 CFR (PARTS 1 TO 99)
FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR

AOAC International (Association of Official Analytical Chemists)
481 N. Frederick Ave., Suite 500, Gaithersburg, MD 20877-2407
Telephone: (301) 924-7077

NOTE: The following materials are available through the Food and Drug Administration at the addresses indicated.

Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration
200 C St. SW., Washington DC 20204
Measure Container Code of the National Bureau of Standards Handbook 44 “Sec. 4.45 Measure-Containers”.
1.24(a)(6)(i), (ii) and (iii)

International Organization for Standardization
1 rue de Varembe, Case postale 56, CH-1211 Geneve 20, Switzerland
26.60(b)

National Academy Press
2101 Constitution Ave., NW., Washington, DC 20418
Food Chemicals Codex, 3d Ed (1981) ...................................................... 73.160 (a) and (b); 73.450 (a) and (b)
Food Chemicals Codex, 4th Ed (1996) ...................................................... 73.2260(b)
### Table of CFR Titles and Chapters
(Revised as of March 31, 1999)

**Title 1—General Provisions**

I Administrative Committee of the Federal Register (Parts 1—49)
II Office of the Federal Register (Parts 50—299)
IV Miscellaneous Agencies (Parts 400—500)

**Title 2—[Reserved]**

**Title 3—The President**

I Executive Office of the President (Parts 100—199)

**Title 4—Accounts**

I General Accounting Office (Parts 1—99)
II Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100—299)

**Title 5—Administrative Personnel**

I Office of Personnel Management (Parts 1—1199)
II Merit Systems Protection Board (Parts 1200—1299)
III Office of Management and Budget (Parts 1300—1399)
IV Advisory Committee on Federal Pay (Parts 1400—1499)
V The International Organizations Employees Loyalty Board (Parts 1500—1599)
VI Federal Retirement Thrift Investment Board (Parts 1600—1699)
VII Advisory Commission on Intergovernmental Relations (Parts 1700—1799)
VIII Office of Special Counsel (Parts 1800—1899)
IX Appalachian Regional Commission (Parts 1900—1999)
XI Armed Forces Retirement Home (Part 2100)
XIV Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)
XV Office of Administration, Executive Office of the President (Parts 2500—2599)
XVI Office of Government Ethics (Parts 2600—2699)
XXI Department of the Treasury (Parts 3100—3199)
Title 5—Administrative Personnel—Continued

XXII Federal Deposit Insurance Corporation (Part 3201)
XXIII Department of Energy (Part 3301)
XXIV Federal Energy Regulatory Commission (Part 3401)
XXV Department of the Interior (Part 3501)
XXVI Department of Defense (Part 3601)
XXVIII Department of Justice (Part 3801)
XXIX Federal Communications Commission (Parts 3900–3999)
XXX Farm Credit System Insurance Corporation (Parts 4000–4099)
XXXI Farm Credit Administration (Parts 4100–4199)
XXXIII Overseas Private Investment Corporation (Part 4301)
XXXV Office of Personnel Management (Part 4501)
XL Interstate Commerce Commission (Part 5001)
XLII Commodity Futures Trading Commission (Part 5101)
XLIII Department of Labor (Part 5201)
XLIII National Science Foundation (Part 5301)
XLV Department of Health and Human Services (Part 5501)
XLVI Postal Rate Commission (Part 5601)
XLVII Federal Trade Commission (Part 5701)
XLVIII Nuclear Regulatory Commission (Part 5801)
L Department of Transportation (Part 6001)
LII Export-Import Bank of the United States (Part 6201)
LIII Department of Education (Parts 6300–6399)
LIV Environmental Protection Agency (Part 6401)
LVII General Services Administration (Part 6701)
LVIII Board of Governors of the Federal Reserve System (Part 6801)
LIX National Aeronautics and Space Administration (Part 6901)
LX United States Postal Service (Part 7001)
LXI National Labor Relations Board (Part 7101)
LXII Equal Employment Opportunity Commission (Part 7201)
LXIII Inter-American Foundation (Part 7301)
LXV Department of Housing and Urban Development (Part 7501)
LXVI National Archives and Records Administration (Part 7601)
LXIX Tennessee Valley Authority (Part 7901)
LXXI Consumer Product Safety Commission (Part 8101)
LXXIV Federal Mine Safety and Health Review Commission (Part 8401)
LXXVI Federal Retirement Thrift Investment Board (Part 8601)
LXXVII Office of Management and Budget (Part 8701)

Title 6—[Reserved]

Title 7—Agriculture

Subtitle A—Office of the Secretary of Agriculture (Parts 0–26)
Subtitle B—Regulations of the Department of Agriculture
Title 7—Agriculture—Continued

I Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

II Food and Nutrition Service, Department of Agriculture (Parts 210—299)

III Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

IV Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

V Agricultural Research Service, Department of Agriculture (Parts 500—599)

VI Natural Resources Conservation Service, Department of Agriculture (Parts 600—699)

VII Farm Service Agency, Department of Agriculture (Parts 700—799)

VIII Grain Inspection, Packers and Stockyards Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)

IX Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

X Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

XI Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

XIII Northeast Dairy Compact Commission (Parts 1300—1399)

XIV Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

XV Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

XVI Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)

XVII Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

XVIII Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—1899)

XXVI Office of Inspector General, Department of Agriculture (Parts 2600—2699)

XXVII Office of Information Resources Management, Department of Agriculture (Parts 2700—2799)

XXVIII Office of Operations, Department of Agriculture (Parts 2800—2899)

XXIX Office of Energy, Department of Agriculture (Parts 2900—2999)

XXX Office of the Chief Financial Officer, Department of Agriculture (Parts 3000—3099)

XXXI Office of Environmental Quality, Department of Agriculture (Parts 3100—3199)

XXXII Office of Procurement and Property Management, Department of Agriculture (Parts 3200—3299)
Title 7—Agriculture—Continued

XXXIII Office of Transportation, Department of Agriculture (Parts 3300—3399)

XXXIV Cooperative State Research, Education, and Extension Service, Department of Agriculture (Parts 3400—3499)

XXXV Rural Housing Service, Department of Agriculture (Parts 3500—3599)

XXXVI National Agricultural Statistics Service, Department of Agriculture (Parts 3600—3699)

XXXVII Economic Research Service, Department of Agriculture (Parts 3700—3799)

XXXVIII World Agricultural Outlook Board, Department of Agriculture (Parts 3800—3899)

XLII Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture (Parts 4200—4299)

Title 8—Aliens and Nationality

I Immigration and Naturalization Service, Department of Justice (Parts 1—499)

Title 9—Animals and Animal Products

I Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

II Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs), Department of Agriculture (Parts 200—299)

III Food Safety and Inspection Service, Department of Agriculture (Parts 300—599)

Title 10—Energy

I Nuclear Regulatory Commission (Parts 0—199)

II Department of Energy (Parts 200—699)

III Department of Energy (Parts 700—999)

X Department of Energy (General Provisions) (Parts 1000—1099)

XVII Defense Nuclear Facilities Safety Board (Parts 1700—1799)

Title 11—Federal Elections

I Federal Election Commission (Parts 1—9099)

Title 12—Banks and Banking

I Comptroller of the Currency, Department of the Treasury (Parts 1—199)

II Federal Reserve System (Parts 200—299)

III Federal Deposit Insurance Corporation (Parts 300—399)
Title 12—Banks and Banking—Continued

IV Export-Import Bank of the United States (Parts 400—499)
V Office of Thrift Supervision, Department of the Treasury (Parts 500—599)
VI Farm Credit Administration (Parts 600—699)
VII National Credit Union Administration (Parts 700—799)
VIII Federal Financing Bank (Parts 800—899)
IX Federal Housing Finance Board (Parts 900—999)
XI Federal Financial Institutions Examination Council (Parts 1100—1199)
XIV Farm Credit System Insurance Corporation (Parts 1400—1499)
XV Department of the Treasury (Parts 1500—1599)
XVII Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1700—1799)
XVIII Community Development Financial Institutions Fund, Department of the Treasury (Parts 1800—1899)

Title 13—Business Credit and Assistance

I Small Business Administration (Parts 1—199)
III Department of Commerce, Economic Development Administration, (Parts 300—399)

Title 14—Aeronautics and Space

I Federal Aviation Administration, Department of Transportation (Parts 1—199)
II Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)
III Commercial Space Transportation, Federal Aviation Administration, Department of Transportation (Parts 400—499)
V National Aeronautics and Space Administration (Parts 1200—1299)

Title 15—Commerce and Foreign Trade

Subtitle A—Office of the Secretary of Commerce (Parts 0—29)
Subtitle B—Regulations Relating to Commerce and Foreign Trade

I Bureau of the Census, Department of Commerce (Parts 30—199)
II National Institute of Standards and Technology, Department of Commerce (Parts 200—299)
III International Trade Administration, Department of Commerce (Parts 300—399)
IV Foreign-Trade Zones Board, Department of Commerce (Parts 400—499)
VII Bureau of Export Administration, Department of Commerce (Parts 700—799)
Title 15—Commerce and Foreign Trade—Continued

Chap.

VIII Bureau of Economic Analysis, Department of Commerce (Parts 800—899)
IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)
XI Technology Administration, Department of Commerce (Parts 1100—1199)
XIII East-West Foreign Trade Board (Parts 1300—1399)
XIV Minority Business Development Agency (Parts 1400—1499)

SUBTITLE C—Regulations Relating to Foreign Trade Agreements

XX Office of the United States Trade Representative (Parts 2000—2099)

SUBTITLE D—Regulations Relating to Telecommunications and Information

XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300—2399)

Title 16—Commercial Practices

I Federal Trade Commission (Parts 0—999)
II Consumer Product Safety Commission (Parts 1000—1799)

Title 17—Commodity and Securities Exchanges

I Commodity Futures Trading Commission (Parts 1—199)
II Securities and Exchange Commission (Parts 200—399)
IV Department of the Treasury (Parts 400—499)

Title 18—Conservation of Power and Water Resources

I Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)
III Delaware River Basin Commission (Parts 400—499)
VI Water Resources Council (Parts 700—799)
VIII Susquehanna River Basin Commission (Parts 800—899)
XIII Tennessee Valley Authority (Parts 1300—1399)

Title 19—Customs Duties

I United States Customs Service, Department of the Treasury (Parts 1—199)
II United States International Trade Commission (Parts 200—299)
III International Trade Administration, Department of Commerce (Parts 300—399)
Title 20—Employees' Benefits

I Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)
II Railroad Retirement Board (Parts 200—399)
III Social Security Administration (Parts 400—499)
IV Employees' Compensation Appeals Board, Department of Labor (Parts 500—599)
V Employment and Training Administration, Department of Labor (Parts 600—699)
VI Employment Standards Administration, Department of Labor (Parts 700—799)
VII Benefits Review Board, Department of Labor (Parts 800—899)
VIII Joint Board for the Enrollment of Actuaries (Parts 900—999)
IX Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor (Parts 1000—1099)

Title 21—Food and Drugs

I Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)
II Drug Enforcement Administration, Department of Justice (Parts 1300—1399)
III Office of National Drug Control Policy (Parts 1400—1499)

Title 22—Foreign Relations

I Department of State (Parts 1—199)
II Agency for International Development (Parts 200—299)
III Peace Corps (Parts 300—399)
IV International Joint Commission, United States and Canada (Parts 400—499)
V United States Information Agency (Parts 500—599)
VII Overseas Private Investment Corporation, International Development Cooperation Agency (Parts 700—799)
IX Foreign Service Grievance Board Regulations (Parts 900—999)
X Inter-American Foundation (Parts 1000—1099)
XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)
XII United States International Development Cooperation Agency (Parts 1200—1299)
XIII Board for International Broadcasting (Parts 1300—1399)
XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)
XV African Development Foundation (Parts 1500—1599)
XVI Japan-United States Friendship Commission (Parts 1600—1699)
XVII United States Institute of Peace (Parts 1700—1799)
Title 23—Highways

I Federal Highway Administration, Department of Transportation (Parts 1—999)
II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)
III National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)
Subtitle B—Regulations Relating to Housing and Urban Development
I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)
II Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)
III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)
IV Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development (Parts 400—499)
V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)
VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699) [Reserved]
VII Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)
VIII Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs, Section 202 Direct Loan Program, Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons With Disabilities Program) (Parts 800—899)
IX Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)
X Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)
XI Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)
XX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)
XXV Neighborhood Reinvestment Corporation (Parts 4100—4199)
Title 25—Indians

I Bureau of Indian Affairs, Department of the Interior (Parts 1—299)
II Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)
III National Indian Gaming Commission, Department of the Interior (Parts 500—599)
IV Office of Navajo and Hopi Indian Relocation (Parts 700—799)
V Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services (Part 900)
VI Office of the Assistant Secretary-Indian Affairs, Department of the Interior (Part 1001)
VII Office of the Special Trustee for American Indians, Department of the Interior (Part 1200)

Title 26—Internal Revenue

I Internal Revenue Service, Department of the Treasury (Parts 1—799)

Title 27—Alcohol, Tobacco Products and Firearms

I Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

Title 28—Judicial Administration

I Department of Justice (Parts 0—199)
III Federal Prison Industries, Inc., Department of Justice (Parts 300—399)
V Bureau of Prisons, Department of Justice (Parts 500—599)
VI Offices of Independent Counsel, Department of Justice (Parts 600—699)
VII Office of Independent Counsel (Parts 700—799)

Title 29—Labor

Subtitle A—Office of the Secretary of Labor (Parts 0—99)
Subtitle B—Regulations Relating to Labor
I National Labor Relations Board (Parts 100—199)
II Office of Labor-Management Standards, Department of Labor (Parts 200—299)
III National Railroad Adjustment Board (Parts 300—399)
IV Office of Labor-Management Standards, Department of Labor (Parts 400—499)
V Wage and Hour Division, Department of Labor (Parts 500—899)
IX Construction Industry Collective Bargaining Commission (Parts 900—999)
X National Mediation Board (Parts 1200—1299)
Title 29—Labor—Continued

XII Federal Mediation and Conciliation Service (Parts 1400–1499)
XIV Equal Employment Opportunity Commission (Parts 1600–1699)
XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900–1999)
XX Occupational Safety and Health Review Commission (Parts 2200–2499)
XXV Pension and Welfare Benefits Administration, Department of Labor (Parts 2500–2599)
XXVII Federal Mine Safety and Health Review Commission (Parts 2700–2799)
XL Pension Benefit Guaranty Corporation (Parts 4000–4999)

Title 30—Mineral Resources

I Mine Safety and Health Administration, Department of Labor (Parts 1—199)
II Minerals Management Service, Department of the Interior (Parts 200—299)
III Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300–399)
IV Geological Survey, Department of the Interior (Parts 400–499)
VI Bureau of Mines, Department of the Interior (Parts 600–699)
VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700–799)

Title 31—Money and Finance: Treasury

Subtitle A—Office of the Secretary of the Treasury (Parts 0–50)
Subtitle B—Regulations Relating to Money and Finance
I Monetary Offices, Department of the Treasury (Parts 51–199)
II Fiscal Service, Department of the Treasury (Parts 200–299)
IV Secret Service, Department of the Treasury (Parts 400–499)
V Office of Foreign Assets Control, Department of the Treasury (Parts 500–599)
VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600–699)
VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700–799)
VIII Office of International Investment, Department of the Treasury (Parts 800–899)

Title 32—National Defense

Subtitle A—Department of Defense
I Office of the Secretary of Defense (Parts 1–399)
V Department of the Army (Parts 400–699)
VI Department of the Navy (Parts 700–799)
Title 32—National Defense—Continued

Chap.

VII Department of the Air Force (Parts 800—1099)

Subtitle B—Other Regulations Relating to National Defense

XII Defense Logistics Agency (Parts 1200—1299)

XVI Selective Service System (Parts 1600—1699)

XIX Central Intelligence Agency (Parts 1900—1999)

XX Information Security Oversight Office, National Archives and Records Administration (Parts 2000—2099)

XXI National Security Council (Parts 2100—2199)

XXIV Office of Science and Technology Policy (Parts 2400—2499)

XXVII Office for Micronesian Status Negotiations (Parts 2700—2799)

XXVIII Office of the Vice President of the United States (Parts 2800—2899)

XXIX Presidential Commission on the Assignment of Women in the Armed Forces (Part 2900)

Title 33—Navigation and Navigable Waters

I Coast Guard, Department of Transportation (Parts 1—199)

II Corps of Engineers, Department of the Army (Parts 200—399)

IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Title 34—Education

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

Subtitle B—Regulations of the Offices of the Department of Education

I Office for Civil Rights, Department of Education (Parts 100—199)

II Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

IV Office of Vocational and Adult Education, Department of Education (Parts 400—499)

V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)

VI Office of Postsecondary Education, Department of Education (Parts 600—699)

VII Office of Educational Research and Improvement, Department of Education (Parts 700—799)

XI National Institute for Literacy (Parts 1100—1199)

Subtitle C—Regulations Relating to Education

XII National Council on Disability (Parts 1200—1299)
Title 35—Panama Canal

I Panama Canal Regulations (Parts 1—299)

Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 1—199)
II Forest Service, Department of Agriculture (Parts 200—299)
III Corps of Engineers, Department of the Army (Parts 300—399)
IV American Battle Monuments Commission (Parts 400—499)
V Smithsonian Institution (Parts 500—599)
VII Library of Congress (Parts 700—799)
VIII Advisory Council on Historic Preservation (Parts 800—899)
IX Pennsylvania Avenue Development Corporation (Parts 900—999)
X Presidio Trust (Parts 1000—1099)
XI Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)
XII National Archives and Records Administration (Parts 1200—1299)
XIV Assassination Records Review Board (Parts 1400—1499)

Title 37—Patents, Trademarks, and Copyrights

I Patent and Trademark Office, Department of Commerce (Parts 1—199)
II Copyright Office, Library of Congress (Parts 200—299)
IV Assistant Secretary for Technology Policy, Department of Commerce (Parts 400—499)
V Under Secretary for Technology, Department of Commerce (Parts 500—599)

Title 38—Pensions, Bonuses, and Veterans’ Relief

I Department of Veterans Affairs (Parts 0—99)

Title 39—Postal Service

I United States Postal Service (Parts 1—999)
III Postal Rate Commission (Parts 3000—3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1—799)
V Council on Environmental Quality (Parts 1500—1599)

Title 41—Public Contracts and Property Management

Subtitle B—Other Provisions Relating to Public Contracts
50 Public Contracts, Department of Labor (Parts 50-1—50-999)

462
Title 41—Public Contracts and Property Management—Continued

51 Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51-1—51-99)
60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-999)
61 Office of the Assistant Secretary for Veterans Employment and Training, Department of Labor (Parts 61-1—61-999)

SUBTITLE C—FEDERAL PROPERTY MANAGEMENT REGULATIONS SYSTEM

101 Federal Property Management Regulations (Parts 101-1—101-99)
105 General Services Administration (Parts 105-1—105-999)
109 Department of Energy Property Management Regulations (Parts 109-1—109-99)
114 Department of the Interior (Parts 114-1—114-99)
115 Environmental Protection Agency (Parts 115-1—115-99)
128 Department of Justice (Parts 128-1—128-99)

SUBTITLE D—OTHER PROVISIONS RELATING TO PROPERTY MANAGEMENT [RESERVED]

SUBTITLE E—FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATIONS SYSTEM

201 Federal Information Resources Management Regulation (Parts 201-1—201-99) [Reserved]

SUBTITLE F—FEDERAL TRAVEL REGULATION SYSTEM

300 General (Parts 300-1—300-99)
301 Temporary Duty (TDY) Travel Allowances (Parts 301-1—301-99)
302 Relocation Allowances (Parts 302-1—302-99)
303 Payment of Expenses Connected with the Death of Certain Employees (Parts 303-1—303-2)
304 Payment from a Non-Federal Source for Travel Expenses (Parts 304-1—304-99)

Title 42—Public Health

I Public Health Service, Department of Health and Human Services (Parts 1—199)

IV Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)

V Office of Inspector General—Health Care, Department of Health and Human Services (Parts 1000—1999)

Title 43—Public Lands: Interior

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR (PARTS 1—199)

SUBTITLE B—REGULATIONS RELATING TO PUBLIC LANDS

I Bureau of Reclamation, Department of the Interior (Parts 200—499)

II Bureau of Land Management, Department of the Interior (Parts 1000—9999)
Chap. 43—Public Lands: Interior—Continued

III Utah Reclamation Mitigation and Conservation Commission (Parts 10000—10005)

Title 44—Emergency Management and Assistance

I Federal Emergency Management Agency (Parts 0—399)

IV Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH AND HUMAN SERVICES (PARTS 1—199)

SUBTITLE B—REGULATIONS RELATING TO PUBLIC WELFARE

II Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

III Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)

IV Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services (Parts 400—499)

V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)

VI National Science Foundation (Parts 600—699)

VII Commission on Civil Rights (Parts 700—799)

VIII Office of Personnel Management (Parts 800—899)

X Office of Community Services, Administration for Children and Families, Department of Health and Human Services (Parts 1000—1099)

XI National Foundation on the Arts and the Humanities (Parts 1100—1199)

XII Corporation for National and Community Service (Parts 1200—1299)

XIII Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

XVI Legal Services Corporation (Parts 1600—1699)

XVII National Commission on Libraries and Information Science (Parts 1700—1799)

XVIII Harry S. Truman Scholarship Foundation (Parts 1800—1899)

XX Commission on Fine Arts (Parts 2100—2199)

XXII Christopher Columbus Quincentenary Jubilee Commission (Parts 2200—2299)

XXIII Arctic Research Commission (Part 2301)

XXIV James Madison Memorial Fellowship Foundation (Parts 2400—2499)

XXV Corporation for National and Community Service (Parts 2500—2599)
Title 46—Shipping

I Coast Guard, Department of Transportation (Parts 1—199)
II Maritime Administration, Department of Transportation (Parts 200—399)
III Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400—499)
IV Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

I Federal Communications Commission (Parts 0—199)
II Office of Science and Technology Policy and National Security Council (Parts 200—299)
III National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)

Title 48—Federal Acquisition Regulations System

1 Federal Acquisition Regulation (Parts 1—99)
2 Department of Defense (Parts 200—299)
3 Department of Health and Human Services (Parts 300—399)
4 Department of Agriculture (Parts 400—499)
5 General Services Administration (Parts 500—599)
6 Department of State (Parts 600—699)
7 United States Agency for International Development (Parts 700—799)
8 Department of Veterans Affairs (Parts 800—899)
9 Department of Energy (Parts 900—999)
10 Department of the Treasury (Parts 1000—1099)
11 Department of Transportation (Parts 1200—1299)
12 Department of Commerce (Parts 1300—1399)
13 Department of the Interior (Parts 1400—1499)
14 Environmental Protection Agency (Parts 1500—1599)
15 Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)
16 Office of Personnel Management (Parts 1700—1799)
17 National Aeronautics and Space Administration (Parts 1800—1899)
18 Nuclear Regulatory Commission (Parts 2000—2099)
19 Office of Personnel Management, Federal Employees Group Life Insurance Federal Acquisition Regulation (Parts 2100—2199)
20 Social Security Administration (Parts 2300—2399)
21 Department of Housing and Urban Development (Parts 2400—2499)
22 National Science Foundation (Parts 2500—2599)
23 Department of Justice (Parts 2800—2899)
24 Department of Labor (Parts 2900—2999)
Title 48—Federal Acquisition Regulations System—Continued

34 Department of Education Acquisition Regulation (Parts 3400—3499)
35 Panama Canal Commission (Parts 3500—3599)
44 Federal Emergency Management Agency (Parts 4400—4499)
51 Department of the Army Acquisition Regulations (Parts 5100—5199)
52 Department of the Navy Acquisition Regulations (Parts 5200—5299)
53 Department of the Air Force Federal Acquisition Regulation Supplement (Parts 5300—5399)
54 Defense Logistics Agency, Department of Defense (Part 5452)
57 African Development Foundation (Parts 5700—5799)
61 General Services Administration Board of Contract Appeals (Parts 6100—6199)
63 Department of Transportation Board of Contract Appeals (Parts 6300—6399)
99 Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

Title 49—Transportation

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)
Subtitle B—Other Regulations Relating to Transportation
I Research and Special Programs Administration, Department of Transportation (Parts 100—199)
II Federal Railroad Administration, Department of Transportation (Parts 200—299)
III Federal Highway Administration, Department of Transportation (Parts 300—399)
IV Coast Guard, Department of Transportation (Parts 400—499)
V National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)
VI Federal Transit Administration, Department of Transportation (Parts 600—699)
VII National Railroad Passenger Corporation (Amtrak) (Parts 700—799)
VIII National Transportation Safety Board (Parts 800—999)
X Surface Transportation Board, Department of Transportation (Parts 1000—1399)
XI Bureau of Transportation Statistics, Department of Transportation (Parts 1400—1499)

Title 50—Wildlife and Fisheries

I United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)
Title 50—Wildlife and Fisheries—Continued

Chap.  

II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

III International Fishing and Related Activities (Parts 300—399)

IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)

V Marine Mammal Commission (Parts 500—599)

VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

CFR Index and Finding Aids

Subject/Agency Index
List of Agency Prepared Indexes
Parallel Tables of Statutory Authorities and Rules
List of CFR Titles, Chapters, Subchapters, and Parts
Alphabetical List of Agencies Appearing in the CFR
### Alphabetical List of Agencies Appearing in the CFR

(Revised as of March 31, 1999)

<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Committee of the Federal Register</td>
<td>1, I</td>
</tr>
<tr>
<td>Advanced Research Projects Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Advisory Committee on Intergovernmental Relations</td>
<td>5, VIII</td>
</tr>
<tr>
<td>Advisory Committee on Federal Pay</td>
<td>5, IV</td>
</tr>
<tr>
<td>Advisory Council on Historic Preservation</td>
<td>36, VIII</td>
</tr>
<tr>
<td>African Development Foundation</td>
<td>22, XV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 57</td>
</tr>
<tr>
<td>Agency for International Development</td>
<td>22, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 7</td>
</tr>
<tr>
<td>Agricultural Marketing Service</td>
<td>7, I, IX, X, XI</td>
</tr>
<tr>
<td>Agricultural Research Service</td>
<td>7, V</td>
</tr>
<tr>
<td>Agriculture Department</td>
<td></td>
</tr>
<tr>
<td>Agricultural Marketing Service</td>
<td>7, I, IX, X, XI</td>
</tr>
<tr>
<td>Agricultural Research Service</td>
<td>7, V</td>
</tr>
<tr>
<td>Animal and Plant Health Inspection Service</td>
<td>7, III; 9, I</td>
</tr>
<tr>
<td>Chief Financial Officer, Office of</td>
<td>7, XXX</td>
</tr>
<tr>
<td>Commodity Credit Corporation</td>
<td>7, XIV</td>
</tr>
<tr>
<td>Cooperative State Research, Education, and Extension Service</td>
<td>7, XXXIV</td>
</tr>
<tr>
<td>Economic Research Service</td>
<td>7, XXXVII</td>
</tr>
<tr>
<td>Energy, Office of</td>
<td>7, XXXV</td>
</tr>
<tr>
<td>Environmental Quality, Office of</td>
<td>7, XXXI</td>
</tr>
<tr>
<td>Farm Service Agency</td>
<td>7, VII, XVIII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 4</td>
</tr>
<tr>
<td>Federal Crop Insurance Corporation</td>
<td>7, IV</td>
</tr>
<tr>
<td>Food and Nutrition Service</td>
<td>7, II</td>
</tr>
<tr>
<td>Food Safety and Inspection Service</td>
<td>9, III</td>
</tr>
<tr>
<td>Foreign Agricultural Service</td>
<td>7, XV</td>
</tr>
<tr>
<td>Forest Service</td>
<td>7,</td>
</tr>
<tr>
<td>Grain Inspection, Packers and Stockyards Administration</td>
<td>7, VIII; 9, II</td>
</tr>
<tr>
<td>Information Resources Management, Office of</td>
<td>7, XXXVII</td>
</tr>
<tr>
<td>Inspector General, Office of</td>
<td>7, XXVI</td>
</tr>
<tr>
<td>National Agricultural Library</td>
<td>7, XLI</td>
</tr>
<tr>
<td>National Agricultural Statistics Service</td>
<td>7, XXXVI</td>
</tr>
<tr>
<td>Natural Resources Conservation Service</td>
<td>7, VI</td>
</tr>
<tr>
<td>Operations, Office of</td>
<td>7, XXVIII</td>
</tr>
<tr>
<td>Procurement and Property Management, Office of</td>
<td>7, XXXII</td>
</tr>
<tr>
<td>Rural Business-Cooperative Service</td>
<td>7, XVIII, XLII</td>
</tr>
<tr>
<td>Rural Development Administration</td>
<td>7, XLI</td>
</tr>
<tr>
<td>Rural Housing Service</td>
<td>7, XVIII, XXXV</td>
</tr>
<tr>
<td>Rural Telephone Bank</td>
<td>7, XLI</td>
</tr>
<tr>
<td>Rural Utilities Service</td>
<td>7, XVIII, XLII</td>
</tr>
<tr>
<td>Secretary of Agriculture, Office of</td>
<td>7, Subtitle A</td>
</tr>
<tr>
<td>Transportation, Office of</td>
<td>7, XXXIII</td>
</tr>
<tr>
<td>World Agricultural Outlook Board</td>
<td>7, XXXVIII</td>
</tr>
<tr>
<td>Air Force Department</td>
<td>32, VII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation Supplement</td>
<td>48, 53</td>
</tr>
<tr>
<td>Alcohol, Tobacco and Firearms, Bureau of</td>
<td>27, I</td>
</tr>
<tr>
<td>AMTRAK</td>
<td>49, VII</td>
</tr>
<tr>
<td>American Battle Monuments Commission</td>
<td>36, IV</td>
</tr>
<tr>
<td>American Indians, Office of the Special Trustee</td>
<td>25, VII</td>
</tr>
<tr>
<td>Animal and Plant Health Inspection Service</td>
<td>7, III; 9, I</td>
</tr>
<tr>
<td>Appalachian Regional Commission</td>
<td>5, IX</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>------------------------------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>Architectural and Transportation Barriers Compliance Board</td>
<td>36, XI</td>
</tr>
<tr>
<td>Arctic Research Commission</td>
<td>45, XXIII</td>
</tr>
<tr>
<td>Armed Forces Retirement Home</td>
<td>5, XI</td>
</tr>
<tr>
<td>Army Department</td>
<td>32, V</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 51</td>
</tr>
<tr>
<td>Assassination Records Review Board</td>
<td>36, XIV</td>
</tr>
<tr>
<td>Benefits Review Board</td>
<td>20, VII</td>
</tr>
<tr>
<td>Bilingual Education and Minority Languages Affairs, Office</td>
<td>34, V</td>
</tr>
<tr>
<td>Blind or Severely Disabled, Committee for Purchase From</td>
<td>41, 51</td>
</tr>
<tr>
<td>People Who Are</td>
<td></td>
</tr>
<tr>
<td>Board for International Broadcasting</td>
<td>22, XIII</td>
</tr>
<tr>
<td>Census Bureau</td>
<td>15, I</td>
</tr>
<tr>
<td>Central Intelligence Agency</td>
<td>32, XIX</td>
</tr>
<tr>
<td>Chief Financial Officer, Office of</td>
<td>7, XXX</td>
</tr>
<tr>
<td>Child Support Enforcement, Office of</td>
<td>45, III</td>
</tr>
<tr>
<td>Children and Families, Administration for</td>
<td>45, II, III, IV, X</td>
</tr>
<tr>
<td>Christopher Columbus Quincentenary Jubilee Commission</td>
<td>45, XXII</td>
</tr>
<tr>
<td>Civil Rights, Commission on</td>
<td>45, VII</td>
</tr>
<tr>
<td>Civil Rights, Office for</td>
<td>34, I</td>
</tr>
<tr>
<td>Coast Guard</td>
<td>33, I; 46, I; 49, IV</td>
</tr>
<tr>
<td>Coast Guard (Great Lakes Pilotage)</td>
<td>46, III</td>
</tr>
<tr>
<td>Commerce Department</td>
<td>44, 1V</td>
</tr>
<tr>
<td>Census Bureau</td>
<td>15, I’</td>
</tr>
<tr>
<td>Economic Affairs, Under Secretary</td>
<td>37, V</td>
</tr>
<tr>
<td>Economic Analysis, Bureau of</td>
<td>15, VIII</td>
</tr>
<tr>
<td>Economic Development Administration</td>
<td>13, III</td>
</tr>
<tr>
<td>Emergency Management and Assistance</td>
<td>44, 1V</td>
</tr>
<tr>
<td>Export Administration, Bureau of</td>
<td>15, VII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 13</td>
</tr>
<tr>
<td>Fishery Conservation and Management</td>
<td>50, VI</td>
</tr>
<tr>
<td>Foreign-Trade Zones Board</td>
<td>15, 1V</td>
</tr>
<tr>
<td>International Trade Administration</td>
<td>15, III; 19, III</td>
</tr>
<tr>
<td>National Institute of Standards and Technology</td>
<td>15, II</td>
</tr>
<tr>
<td>National Marine Fisheries Service</td>
<td>50, II, IV, VI</td>
</tr>
<tr>
<td>National Oceanic and Atmospheric Administration</td>
<td>15, IX; 50, II, III, IV, VI</td>
</tr>
<tr>
<td>National Telecommunications and Information</td>
<td>15, XXIII; 47, III</td>
</tr>
<tr>
<td>Administration</td>
<td>15, IX</td>
</tr>
<tr>
<td>Patent and Trademark Office</td>
<td>37, I</td>
</tr>
<tr>
<td>Productivity, Technology and Innovation, Assistant Secretary for</td>
<td>37, IV</td>
</tr>
<tr>
<td>Secretary for</td>
<td></td>
</tr>
<tr>
<td>Secretary of Commerce, Office of</td>
<td>15, Subtitle A</td>
</tr>
<tr>
<td>Technology, Under Secretary for</td>
<td>37, V</td>
</tr>
<tr>
<td>Technology Administration</td>
<td>15, XI</td>
</tr>
<tr>
<td>Technology Policy, Assistant Secretary for</td>
<td>37, 1V</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>14, III</td>
</tr>
<tr>
<td>Commodity Credit Corporation</td>
<td>7, XIV</td>
</tr>
<tr>
<td>Commodity Futures Trading Commission</td>
<td>5, XI; 17, I</td>
</tr>
<tr>
<td>Community Planning and Development, Office of Assistant Secretary for</td>
<td>24, V; VI</td>
</tr>
<tr>
<td>Community Services, Office of</td>
<td>45, X</td>
</tr>
<tr>
<td>Comptroller of the Currency</td>
<td>12, I</td>
</tr>
<tr>
<td>Construction Industry Collective Bargaining Commission</td>
<td>29, 1X</td>
</tr>
<tr>
<td>Consumer Product Safety Commission</td>
<td>5, LXXI; 16, II</td>
</tr>
<tr>
<td>Cooperative State Research, Education, and Extension</td>
<td>7, XXXIV</td>
</tr>
<tr>
<td>Service</td>
<td></td>
</tr>
<tr>
<td>Copyright Office</td>
<td>37, II</td>
</tr>
<tr>
<td>Corporation for National and Community Service</td>
<td>45, XII, XXV</td>
</tr>
<tr>
<td>Cost Accounting Standards Board</td>
<td>48, 99</td>
</tr>
<tr>
<td>Council on Environmental Quality</td>
<td>40, V</td>
</tr>
<tr>
<td>Customs Service, United States</td>
<td>19, I</td>
</tr>
<tr>
<td>Defense Contract Audit Agency</td>
<td>32, 1</td>
</tr>
<tr>
<td>Defense Department</td>
<td>5, XXVI; 32, Subtitle A</td>
</tr>
<tr>
<td>Advanced Research Projects Agency</td>
<td>32, 1</td>
</tr>
<tr>
<td>Air Force Department</td>
<td>32, VII</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>--------</td>
<td>------------------------------</td>
</tr>
<tr>
<td>Army Department</td>
<td>32, V; 33, I; 36, III, 48, 51</td>
</tr>
<tr>
<td>Defense Intelligence Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Logistics Agency</td>
<td>32, I, XII; 48, 54</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>32, II; 36, III</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 2</td>
</tr>
<tr>
<td>National Imagery and Mapping Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Navy Department</td>
<td>32, VI; 48, 52</td>
</tr>
<tr>
<td>Secretary of Defense, Office of</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Contract Audit Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Intelligence Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Logistics Agency</td>
<td>32, XII; 48, 54</td>
</tr>
<tr>
<td>Defense Nuclear Facilities Safety Board</td>
<td>10, XVIII</td>
</tr>
<tr>
<td>Delaware River Basin Commission</td>
<td>18, III</td>
</tr>
<tr>
<td>Drug Enforcement Administration</td>
<td>21, II</td>
</tr>
<tr>
<td>East-West Foreign Trade Board</td>
<td>15, XIII</td>
</tr>
<tr>
<td>Economic Affairs, Under Secretary</td>
<td>37, V</td>
</tr>
<tr>
<td>Economic Analysis, Bureau of</td>
<td>15, VIII</td>
</tr>
<tr>
<td>Economic Development Administration</td>
<td>13, III</td>
</tr>
<tr>
<td>Economic Research Service</td>
<td>7, XXVII</td>
</tr>
<tr>
<td>Education, Department of</td>
<td>5, LIII</td>
</tr>
<tr>
<td>Bilingual Education and Minority Languages Affairs, Office of</td>
<td>34, V</td>
</tr>
<tr>
<td>Civil Rights, Office for</td>
<td>34, I</td>
</tr>
<tr>
<td>Educational Research and Improvement, Office of</td>
<td>34, VII</td>
</tr>
<tr>
<td>Elementary and Secondary Education, Office of</td>
<td>34, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 34</td>
</tr>
<tr>
<td>Postsecondary Education, Office of</td>
<td>34, VI</td>
</tr>
<tr>
<td>Secretary of Education, Office of</td>
<td>34, Subtitle A</td>
</tr>
<tr>
<td>Special Education and Rehabilitative Services, Office of</td>
<td>34, III</td>
</tr>
<tr>
<td>Vocational and Adult Education, Office of</td>
<td>34, IV</td>
</tr>
<tr>
<td>Educational Research and Improvement, Office of</td>
<td>34, VII</td>
</tr>
<tr>
<td>Elementary and Secondary Education, Office of</td>
<td>34, II</td>
</tr>
<tr>
<td>Employees' Compensation Appeals Board</td>
<td>20, IV</td>
</tr>
<tr>
<td>Employees Loyalty Board</td>
<td>5, V</td>
</tr>
<tr>
<td>Employment and Training Administration</td>
<td>20, V</td>
</tr>
<tr>
<td>Employment Standards Administration</td>
<td>20, VI</td>
</tr>
<tr>
<td>Endangered Species Committee</td>
<td>50, IV</td>
</tr>
<tr>
<td>Energy, Department of</td>
<td>5, XXIII; 10, II, III, X</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 9</td>
</tr>
<tr>
<td>Federal Energy Regulatory Commission</td>
<td>5, XXIV; 18, I</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 109</td>
</tr>
<tr>
<td>Energy, Office of</td>
<td>7, XXIX</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>Engraving and Printing, Bureau of</td>
<td>31, VI</td>
</tr>
<tr>
<td>Environmental Protection Agency</td>
<td>5, LIV; 40, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 15</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 115</td>
</tr>
<tr>
<td>Environmental Quality, Office of</td>
<td>7, XXXI</td>
</tr>
<tr>
<td>Equal Employment Opportunity Commission</td>
<td>5, LXII; 29, XIV</td>
</tr>
<tr>
<td>Equal Opportunity, Office of Assistant Secretary for</td>
<td>24, I</td>
</tr>
<tr>
<td>Executive Office of the President</td>
<td>3, I</td>
</tr>
<tr>
<td>Administration, Office of</td>
<td>5, XV</td>
</tr>
<tr>
<td>Environmental Quality, Council on</td>
<td>40, V</td>
</tr>
<tr>
<td>Management and Budget, Office of</td>
<td>25, III; LXXVII; 48, 99</td>
</tr>
<tr>
<td>National Drug Control Policy, Office of</td>
<td>21, III</td>
</tr>
<tr>
<td>National Security Council</td>
<td>32, XXI; 47, 2</td>
</tr>
<tr>
<td>Presidential Documents</td>
<td>3</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of</td>
<td>32, XXIV; 47, II</td>
</tr>
<tr>
<td>Trade Representative, Office of the United States</td>
<td>15, XX</td>
</tr>
<tr>
<td>Export Administration, Bureau of</td>
<td>15, VII</td>
</tr>
<tr>
<td>Export-Import Bank of the United States</td>
<td>5, LI; 12, IV</td>
</tr>
<tr>
<td>Family Assistance, Office of</td>
<td>45, II</td>
</tr>
<tr>
<td>Farm Credit Administration</td>
<td>5, XXXI; 12, VI</td>
</tr>
<tr>
<td>Farm Credit System Insurance Corporation</td>
<td>5, XXX; 12, XIV</td>
</tr>
<tr>
<td>Farm Service Agency</td>
<td>7, VII, XVIII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, I</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>--------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Federal Aviation Administration</td>
<td>14, I</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>14, III</td>
</tr>
<tr>
<td>Federal Claims Collection Standards</td>
<td>4, II</td>
</tr>
<tr>
<td>Federal Communications Commission</td>
<td>5, XXIX; 47, I</td>
</tr>
<tr>
<td>Federal Contract Compliance Programs, Office of</td>
<td>41, 60</td>
</tr>
<tr>
<td>Federal Crop Insurance Corporation</td>
<td>7, IV</td>
</tr>
<tr>
<td>Federal Deposit Insurance Corporation</td>
<td>5, XXII; 12, III</td>
</tr>
<tr>
<td>Federal Election Commission</td>
<td>11, I</td>
</tr>
<tr>
<td>Federal Emergency Management Agency</td>
<td>44, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 44</td>
</tr>
<tr>
<td>Federal Employees Group Life Insurance Federal Acquisition Regulation</td>
<td>48, 21</td>
</tr>
<tr>
<td>Federal Employees Health Benefits Acquisition Regulation</td>
<td>48, 16</td>
</tr>
<tr>
<td>Federal Energy Regulatory Commission</td>
<td>5, XXIV; 18, I</td>
</tr>
<tr>
<td>Federal Financial Institutions Examination Council</td>
<td>12, XI</td>
</tr>
<tr>
<td>Federal Financing Bank</td>
<td>12, VIII</td>
</tr>
<tr>
<td>Federal Highway Administration</td>
<td>23, I; 49, VIII</td>
</tr>
<tr>
<td>Federal Home Loan Mortgage Corporation</td>
<td>1, IV</td>
</tr>
<tr>
<td>Federal Housing Enterprise Oversight Office</td>
<td>12, XVII</td>
</tr>
<tr>
<td>Federal Housing Finance Board</td>
<td>12, IX</td>
</tr>
<tr>
<td>Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority</td>
<td>5, XIV; 22, XIV</td>
</tr>
<tr>
<td>Federal Labor Relations Authority</td>
<td>5, I, II</td>
</tr>
<tr>
<td>Federal Law Enforcement Training Center</td>
<td>31, VII</td>
</tr>
<tr>
<td>Federal Maritime Commission</td>
<td>46, IV</td>
</tr>
<tr>
<td>Federal Mediation and Conciliation Service</td>
<td>29, XII</td>
</tr>
<tr>
<td>Federal Mine Safety and Health Review Commission</td>
<td>5, LXXIV; 29, XXVII</td>
</tr>
<tr>
<td>Federal Pay, Advisory Committee on</td>
<td>5, IV</td>
</tr>
<tr>
<td>Federal Prison Industries, Inc.</td>
<td>28, III</td>
</tr>
<tr>
<td>Federal Procurement Policy Office</td>
<td>48, 99</td>
</tr>
<tr>
<td>Federal Property Management Regulations</td>
<td>41, 101</td>
</tr>
<tr>
<td>Federal Property Management Regulations System</td>
<td>41, Subtitle C</td>
</tr>
<tr>
<td>Federal Railroad Administration</td>
<td>49, II</td>
</tr>
<tr>
<td>Federal Register, Administrative Committee of</td>
<td>1, I</td>
</tr>
<tr>
<td>Federal Register, Office of</td>
<td>1, II</td>
</tr>
<tr>
<td>Federal Reserve System</td>
<td>12, 11</td>
</tr>
<tr>
<td>Board of Governors</td>
<td>5, LVIII</td>
</tr>
<tr>
<td>Federal Retirement Thrift Investment Board</td>
<td>5, VI, LXXVI</td>
</tr>
<tr>
<td>Federal Service Impasses Panel</td>
<td>5, XIV</td>
</tr>
<tr>
<td>Federal Trade Commission</td>
<td>5, XLVII; 16, I</td>
</tr>
<tr>
<td>Federal Transit Administration</td>
<td>49, VI</td>
</tr>
<tr>
<td>Federal Travel Regulation System</td>
<td>41, Subtitle F</td>
</tr>
<tr>
<td>Fine Arts, Commission on</td>
<td>45, XXI</td>
</tr>
<tr>
<td>Fiscal Service</td>
<td>31, II</td>
</tr>
<tr>
<td>Fish and Wildlife Service, United States</td>
<td>50, I, IV</td>
</tr>
<tr>
<td>Fishery Conservation and Management</td>
<td>50, VI</td>
</tr>
<tr>
<td>Food and Drug Administration</td>
<td>21, I</td>
</tr>
<tr>
<td>Food and Nutrition Service</td>
<td>7, II</td>
</tr>
<tr>
<td>Food Safety and Inspection Service</td>
<td>9, III</td>
</tr>
<tr>
<td>Foreign Agricultural Service</td>
<td>7, XV</td>
</tr>
<tr>
<td>Foreign Claims Settlement Commission of the United States</td>
<td>45, V</td>
</tr>
<tr>
<td>Foreign Service Grievance Board</td>
<td>22, IX</td>
</tr>
<tr>
<td>Foreign Service Impasses Disputes Panel</td>
<td>22, XIV</td>
</tr>
<tr>
<td>Foreign Service Labor Relations Board</td>
<td>22, XV</td>
</tr>
<tr>
<td>Foreign-Trade Zones Board</td>
<td>15, IV</td>
</tr>
<tr>
<td>Forest Service</td>
<td>36, II</td>
</tr>
<tr>
<td>General Accounting Office</td>
<td>4, I, II</td>
</tr>
<tr>
<td>General Services Administration</td>
<td>5, LVII</td>
</tr>
<tr>
<td>Contract Appeals, Board of</td>
<td>48, 61</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 5</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 5</td>
</tr>
<tr>
<td>Federal Property Management Regulations System</td>
<td>41, 101, 105</td>
</tr>
<tr>
<td>Federal Travel Regulation System</td>
<td>41, Subtitle F</td>
</tr>
<tr>
<td>General Payment From a Non-Federal Source for Travel Expenses</td>
<td>41, 304</td>
</tr>
<tr>
<td>Payment of Expenses Connected With the Death of Certain Employees</td>
<td>41, 303</td>
</tr>
<tr>
<td>Relocation Allowances</td>
<td>41, 302</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Temporary Duty (TDY) Travel Allowances</td>
<td>41, 301</td>
</tr>
<tr>
<td>Geological Survey</td>
<td>30, IV</td>
</tr>
<tr>
<td>Government Ethics, Office of</td>
<td>5, XVI</td>
</tr>
<tr>
<td>Government National Mortgage Association</td>
<td>24, III</td>
</tr>
<tr>
<td>Grain Inspection, Packers and Stockyards Administration</td>
<td>7, VIII; 9, II</td>
</tr>
<tr>
<td>Harry S. Truman Scholarship Foundation</td>
<td>45, XVIII</td>
</tr>
<tr>
<td>Health and Human Services, Department of</td>
<td>5, XLV; 45, Subtitle A</td>
</tr>
<tr>
<td>Child Support Enforcement, Office of</td>
<td>45, III</td>
</tr>
<tr>
<td>Children and Families, Administration for</td>
<td>45, II, III, IV, X</td>
</tr>
<tr>
<td>Community Services, Office of</td>
<td>45, X</td>
</tr>
<tr>
<td>Family Assistance, Office of</td>
<td>45, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 3</td>
</tr>
<tr>
<td>Food and Drug Administration</td>
<td>21, I</td>
</tr>
<tr>
<td>Health Care Financing Administration</td>
<td>42, IV</td>
</tr>
<tr>
<td>Human Development Services, Office of</td>
<td>45, XIII</td>
</tr>
<tr>
<td>Indian Health Service</td>
<td>25, V</td>
</tr>
<tr>
<td>Inspector General (Health Care), Office of</td>
<td>42, V</td>
</tr>
<tr>
<td>Public Health Service</td>
<td>42, I</td>
</tr>
<tr>
<td>Refugee Resettlement, Office of</td>
<td>45, IV</td>
</tr>
<tr>
<td>Health Care Financing Administration</td>
<td>42, IV</td>
</tr>
<tr>
<td>Housing and Urban Development, Department of</td>
<td>5, L XV; 24, Subtitle B</td>
</tr>
<tr>
<td>Community Planning and Development, Office of Assistant Secretary for</td>
<td>24, V, VI</td>
</tr>
<tr>
<td>Equal Opportunity, Office of Assistant Secretary for</td>
<td>24, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 24</td>
</tr>
<tr>
<td>Federal Housing Enterprise Oversight, Office of</td>
<td>12, XVII</td>
</tr>
<tr>
<td>Government National Mortgage Association</td>
<td>24, III</td>
</tr>
<tr>
<td>Housing—Federal Housing Commissioner, Office of Assistant Secretary for</td>
<td>24, II, VIII, X, XX</td>
</tr>
<tr>
<td>Inspector General, Office of</td>
<td>24, XII</td>
</tr>
<tr>
<td>Multifamily Housing Assistance Restructuring, Office of</td>
<td>24, IV</td>
</tr>
<tr>
<td>Public and Indian Housing, Office of Assistant Secretary for</td>
<td>24, IX</td>
</tr>
<tr>
<td>Secretary, Office of</td>
<td>24, Subtitle A, VII</td>
</tr>
<tr>
<td>Housing—Federal Housing Commissioner, Office of Assistant Secretary for</td>
<td>24, II, VIII, X, XX</td>
</tr>
<tr>
<td>Secretary for</td>
<td>45, XIII</td>
</tr>
<tr>
<td>Human Development Services, Office of</td>
<td>8, I</td>
</tr>
<tr>
<td>Immigration and Naturalization Service</td>
<td>28, VII</td>
</tr>
<tr>
<td>Independent Counsel, Office of</td>
<td>25, I, V</td>
</tr>
<tr>
<td>Indian Affairs, Bureau of</td>
<td>25, VI</td>
</tr>
<tr>
<td>Indian Affairs, Office of the Assistant Secretary</td>
<td>25, II</td>
</tr>
<tr>
<td>Indian Arts and Crafts Board</td>
<td>22, V</td>
</tr>
<tr>
<td>Indian Health Service</td>
<td>25, V</td>
</tr>
<tr>
<td>Information Agency, United States</td>
<td>48, 19</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>7, XXVII</td>
</tr>
<tr>
<td>Information Resources Management, Office of</td>
<td>32, XX</td>
</tr>
<tr>
<td>Records Administration</td>
<td>32, XX</td>
</tr>
<tr>
<td>Inspector General</td>
<td>7, XXVI</td>
</tr>
<tr>
<td>Agriculture Department</td>
<td>42, V</td>
</tr>
<tr>
<td>Health and Human Services Department</td>
<td>24, XII</td>
</tr>
<tr>
<td>Institute of Peace, United States</td>
<td>22, XVII</td>
</tr>
<tr>
<td>Inter-American Foundation</td>
<td>5, L XIII; 22, X</td>
</tr>
<tr>
<td>Intergovernmental Relations, Advisory Commission on</td>
<td>5, VII</td>
</tr>
<tr>
<td>Interior Department</td>
<td>25, VII</td>
</tr>
<tr>
<td>American Indians, Office of the Special Trustee</td>
<td>50, IV</td>
</tr>
<tr>
<td>Endangered Species Committee</td>
<td>48, 14</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>41, 14</td>
</tr>
<tr>
<td>Fish and Wildlife Service, United States</td>
<td>50, I, IV</td>
</tr>
<tr>
<td>Geological Survey</td>
<td>30, IV</td>
</tr>
<tr>
<td>Indian Affairs, Bureau of</td>
<td>25, I, V</td>
</tr>
<tr>
<td>Indian Affairs, Office of the Assistant Secretary</td>
<td>25, II</td>
</tr>
<tr>
<td>Indian Arts and Crafts Board</td>
<td>43, II</td>
</tr>
<tr>
<td>Land Management, Bureau of</td>
<td>30, II</td>
</tr>
<tr>
<td>Minerals Management Service</td>
<td>30, VI</td>
</tr>
<tr>
<td>Mines, Bureau of</td>
<td>30, VI</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>National Indian Gaming Commission</td>
<td>25, III</td>
</tr>
<tr>
<td>National Park Service</td>
<td>36, I</td>
</tr>
<tr>
<td>Reclamation, Bureau of</td>
<td>43, I</td>
</tr>
<tr>
<td>Secretary of the Interior, Office of</td>
<td>43, Subtitle A</td>
</tr>
<tr>
<td>Surface Mining and Reclamation Appeals, Board of</td>
<td>30, III</td>
</tr>
<tr>
<td>Surface Mining Reclamation and Enforcement, Office of</td>
<td>30, VII</td>
</tr>
<tr>
<td>Internal Revenue Service</td>
<td>26, I</td>
</tr>
<tr>
<td>International Boundary and Water Commission, United States and Mexico, United States Section</td>
<td>22, XI</td>
</tr>
<tr>
<td>International Development, Agency for</td>
<td>22, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 7</td>
</tr>
<tr>
<td>International Development Cooperation Agency, United States States</td>
<td>22, XII</td>
</tr>
<tr>
<td>International Development, Agency for</td>
<td>22, II; 48, 7</td>
</tr>
<tr>
<td>Overseas Private Investment Corporation</td>
<td>5, XXXIII; 22, VII</td>
</tr>
<tr>
<td>International Fishing and Related Activities</td>
<td>30, III</td>
</tr>
<tr>
<td>International Investment, Office of</td>
<td>31, VIII</td>
</tr>
<tr>
<td>International Joint Commission, United States and Canada</td>
<td>22, IV</td>
</tr>
<tr>
<td>International Organizations Employees Loyalty Board</td>
<td>5, V</td>
</tr>
<tr>
<td>International Trade Administration</td>
<td>15, III; 19, III</td>
</tr>
<tr>
<td>International Trade Commission, United States</td>
<td>19, III</td>
</tr>
<tr>
<td>Interstate Commerce Commission</td>
<td>5, XL</td>
</tr>
<tr>
<td>James Madison Memorial Fellowship Foundation</td>
<td>45, XXIV</td>
</tr>
<tr>
<td>Japan-United States Friendship Commission</td>
<td>22, XVI</td>
</tr>
<tr>
<td>Joint Board for the Enrollment of Actuaries</td>
<td>20, VIII</td>
</tr>
<tr>
<td>Justice Department</td>
<td>5, XXVIII; 28, I</td>
</tr>
<tr>
<td>Drug Enforcement Administration</td>
<td>21, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 28</td>
</tr>
<tr>
<td>Federal Claims Collection Standards</td>
<td>4, II</td>
</tr>
<tr>
<td>Federal Prison Industries, Inc.</td>
<td>28, III</td>
</tr>
<tr>
<td>Foreign Claims Settlement Commission of the United States</td>
<td>45, V</td>
</tr>
<tr>
<td>Immigration and Naturalization Service</td>
<td>8, I</td>
</tr>
<tr>
<td>Offices of Independent Counsel</td>
<td>28, VI</td>
</tr>
<tr>
<td>Prisons, Bureau of</td>
<td>28, V</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 128</td>
</tr>
<tr>
<td>Labor Department</td>
<td>5, XLII</td>
</tr>
<tr>
<td>Benefits Review Board</td>
<td>20, VII</td>
</tr>
<tr>
<td>Employees' Compensation Appeals Board</td>
<td>20, IV</td>
</tr>
<tr>
<td>Employment and Training Administration</td>
<td>20, V</td>
</tr>
<tr>
<td>Employment Standards Administration</td>
<td>20, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 29</td>
</tr>
<tr>
<td>Federal Contract Compliance Programs, Office of</td>
<td>41, 60</td>
</tr>
<tr>
<td>Federal Procurement Regulations System</td>
<td>41, 50</td>
</tr>
<tr>
<td>Labor-Management Standards, Office of</td>
<td>29, II; 29, II, IV</td>
</tr>
<tr>
<td>Mine Safety and Health Administration</td>
<td>29, XVII</td>
</tr>
<tr>
<td>Pension and Welfare Benefits Administration</td>
<td>29, XXV</td>
</tr>
<tr>
<td>Public Contracts</td>
<td>41, 50</td>
</tr>
<tr>
<td>Secretary of Labor, Office of</td>
<td>29, Subtitle A</td>
</tr>
<tr>
<td>Veterans' Employment and Training, Office of the Assistant Secretary for Wage and Hour Division</td>
<td>29, V</td>
</tr>
<tr>
<td>Workers' Compensation Programs, Office of</td>
<td>20, I</td>
</tr>
<tr>
<td>Labor-Management Standards, Office of</td>
<td>29, II, IV</td>
</tr>
<tr>
<td>Land Management, Bureau of</td>
<td>43, II</td>
</tr>
<tr>
<td>Legal Services Corporation</td>
<td>45, XVI</td>
</tr>
<tr>
<td>Library of Congress</td>
<td>36, VII</td>
</tr>
<tr>
<td>Copyright Office</td>
<td>37, II</td>
</tr>
<tr>
<td>Management and Budget, Office of</td>
<td>5, III, LXXVII; 48, 99</td>
</tr>
<tr>
<td>Marine Mammal Commission</td>
<td>50, V</td>
</tr>
<tr>
<td>Maritime Administration</td>
<td>46, II</td>
</tr>
<tr>
<td>Merit Systems Protection Board</td>
<td>5, II</td>
</tr>
<tr>
<td>Micronesian Status Negotiations, Office for</td>
<td>32, XXVII</td>
</tr>
<tr>
<td>Mine Safety and Health Administration</td>
<td>30, I</td>
</tr>
<tr>
<td>Minerals Management Service</td>
<td>30, II</td>
</tr>
<tr>
<td>Mines, Bureau of</td>
<td>30, VI</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>Minority Business Development Agency</td>
<td>15, XIV</td>
</tr>
<tr>
<td>Miscellaneous Agencies</td>
<td>1, IV</td>
</tr>
<tr>
<td>Monetary Offices</td>
<td>31, I</td>
</tr>
<tr>
<td>Multifamily Housing Assistance Restructuring, Office of</td>
<td>24, IV</td>
</tr>
<tr>
<td>National Aeronautics and Space Administration</td>
<td>5, LIX; 14, V</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 18</td>
</tr>
<tr>
<td>National Agricultural Library</td>
<td>7, XLI</td>
</tr>
<tr>
<td>National Agricultural Statistics Service</td>
<td>7, XXXVI</td>
</tr>
<tr>
<td>National Archives and Records Administration</td>
<td>5, L,V; 36, XII</td>
</tr>
<tr>
<td>Information Security Oversight Office</td>
<td>32, XX</td>
</tr>
<tr>
<td>National Bureau of Standards</td>
<td>15, II</td>
</tr>
<tr>
<td>National Capital Planning Commission</td>
<td>1, IV</td>
</tr>
<tr>
<td>National Commission for Employment Policy</td>
<td>1, IV</td>
</tr>
<tr>
<td>National Commission on Libraries and Information Science</td>
<td>45, XVII</td>
</tr>
<tr>
<td>National and Community Service, Corporation for</td>
<td>45, XII, XXV</td>
</tr>
<tr>
<td>National Council on Disability</td>
<td>34, XII</td>
</tr>
<tr>
<td>National Credit Union Administration</td>
<td>12, VII</td>
</tr>
<tr>
<td>National Drug Control Policy, Office of</td>
<td>21, III</td>
</tr>
<tr>
<td>National Foundation on the Arts and the Humanities</td>
<td>45, XI</td>
</tr>
<tr>
<td>National Highway Traffic Safety Administration</td>
<td>23, II, III; 49, V</td>
</tr>
<tr>
<td>National Imagery and Mapping Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>National Indian Gaming Commission</td>
<td>25, III</td>
</tr>
<tr>
<td>National Institute for Literacy</td>
<td>34, XI</td>
</tr>
<tr>
<td>National Institute of Standards and Technology</td>
<td>15, II</td>
</tr>
<tr>
<td>National Labor Relations Board</td>
<td>5, L,XI; 29, I</td>
</tr>
<tr>
<td>National Marine Fisheries Service</td>
<td>50, II, IV, VI</td>
</tr>
<tr>
<td>National Mediation Board</td>
<td>29, X</td>
</tr>
<tr>
<td>National Oceanic and Atmospheric Administration</td>
<td>15, I; 50, II, III, IV, VI</td>
</tr>
<tr>
<td>National Park Service</td>
<td>36, I</td>
</tr>
<tr>
<td>National Railroad Adjustment Board</td>
<td>29, III</td>
</tr>
<tr>
<td>National Railroad Passenger Corporation (AMTRAK)</td>
<td>49, VII</td>
</tr>
<tr>
<td>National Science Foundation</td>
<td>5, LXIII; 45, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 25</td>
</tr>
<tr>
<td>National Security Council</td>
<td>32, XXI</td>
</tr>
<tr>
<td>National Security Council and Office of Science and Technology Policy</td>
<td>47, II</td>
</tr>
<tr>
<td>National Telecommunications and Information Administration</td>
<td>15, XXIII; 47, III</td>
</tr>
<tr>
<td>National Transportation Safety Board</td>
<td>49, VIII</td>
</tr>
<tr>
<td>National Weather Service</td>
<td>15, IX</td>
</tr>
<tr>
<td>Natural Resources Conservation Service</td>
<td>7, VI</td>
</tr>
<tr>
<td>Navajo and Hopi Indian Relocation, Office of</td>
<td>25, IV</td>
</tr>
<tr>
<td>Navy Department</td>
<td>32, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 52</td>
</tr>
<tr>
<td>Neighborhood Reinvestment Corporation</td>
<td>24, XXV</td>
</tr>
<tr>
<td>Northeast Dairy Compact Commission</td>
<td>7, XIII</td>
</tr>
<tr>
<td>Nuclear Regulatory Commission</td>
<td>5, XLVIII; 10, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 20</td>
</tr>
<tr>
<td>Occupational Safety and Health Administration</td>
<td>29, XVII</td>
</tr>
<tr>
<td>Occupational Safety and Health Review Commission</td>
<td>29, XX</td>
</tr>
<tr>
<td>Offices of Independent Counsel</td>
<td>28, VI</td>
</tr>
<tr>
<td>Operations Office</td>
<td>7, XXVIII</td>
</tr>
<tr>
<td>Overseas Private Investment Corporation</td>
<td>5, XXXIII; 22, VII</td>
</tr>
<tr>
<td>Panama Canal Commission</td>
<td>49, 25</td>
</tr>
<tr>
<td>Panama Canal Regulations</td>
<td>35, V</td>
</tr>
<tr>
<td>Patent and Trademark Office</td>
<td>37, I</td>
</tr>
<tr>
<td>Payment From a Non-Federal Source for Travel Expenses</td>
<td>41, 304</td>
</tr>
<tr>
<td>Payment of Expenses Connected With the Death of Certain Employees</td>
<td>41, 303</td>
</tr>
<tr>
<td>Peace Corps</td>
<td>22, III</td>
</tr>
<tr>
<td>Pennsylvania Avenue Development Corporation</td>
<td>36, IX</td>
</tr>
<tr>
<td>Pension and Welfare Benefits Administration</td>
<td>29, XXV</td>
</tr>
<tr>
<td>Pension Benefit Guarantee Corporation</td>
<td>29, XL</td>
</tr>
<tr>
<td>Personnel Management, Office of</td>
<td>5, 1, XXXV; 45, VIII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 17</td>
</tr>
<tr>
<td>Federal Employees Group Life Insurance Federal Acquisition Regulation</td>
<td>48, 21</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>--------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>Federal Employees Health Benefits Acquisition Regulation</td>
<td>48, 16</td>
</tr>
<tr>
<td>Postal Rate Commission</td>
<td>5, XLVII; 39, III</td>
</tr>
<tr>
<td>Postal Service, United States</td>
<td>5, LX; 39, I</td>
</tr>
<tr>
<td>Postsecondary Education, Office of</td>
<td>34, VI</td>
</tr>
<tr>
<td>President's Commission on White House Fellowships</td>
<td>1, IV</td>
</tr>
<tr>
<td>Presidential Commission on the Assignment of Women in the Armed Forces</td>
<td>32, XXIX</td>
</tr>
<tr>
<td>Presidential Documents</td>
<td>3</td>
</tr>
<tr>
<td>Presidio Trust</td>
<td>36, X</td>
</tr>
<tr>
<td>Prisons, Bureau of</td>
<td>28, V</td>
</tr>
<tr>
<td>Procurement and Property Management, Office of</td>
<td>7, XXXII</td>
</tr>
<tr>
<td>Productivity, Technology and Innovation, Assistant Secretary</td>
<td>37, IV</td>
</tr>
<tr>
<td>Secretary</td>
<td></td>
</tr>
<tr>
<td>Public Contracts, Department of Labor</td>
<td>41, 50</td>
</tr>
<tr>
<td>Public and Indian Housing, Office of Assistant Secretary for</td>
<td>24, 1X</td>
</tr>
<tr>
<td>Public Health Service</td>
<td>42, I</td>
</tr>
<tr>
<td>Railroad Retirement Board</td>
<td>20, II</td>
</tr>
<tr>
<td>Reclamation, Bureau of</td>
<td>43, I</td>
</tr>
<tr>
<td>Refugee Resettlement, Office of</td>
<td>45, IV</td>
</tr>
<tr>
<td>Regional Action Planning Commissions</td>
<td>13, V</td>
</tr>
<tr>
<td>Relocation Allowances</td>
<td>41, 302</td>
</tr>
<tr>
<td>Research and Special Programs Administration</td>
<td>49, I</td>
</tr>
<tr>
<td>Rural Business-Cooperative Service</td>
<td>7, XVIII, XLII</td>
</tr>
<tr>
<td>Rural Development Administration</td>
<td>7, XLII</td>
</tr>
<tr>
<td>Rural Housing Service</td>
<td>7, XVIII, XXXV</td>
</tr>
<tr>
<td>Rural Telephone Bank</td>
<td>7, XVI</td>
</tr>
<tr>
<td>Rural Utilities Service</td>
<td>7, XCV, XVIII, XLII</td>
</tr>
<tr>
<td>Saint Lawrence Seaway Development Corporation</td>
<td>33, IV</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of</td>
<td>32, XXIV</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of, and National Security Council</td>
<td>47, II</td>
</tr>
<tr>
<td>Secret Service</td>
<td>31, IV</td>
</tr>
<tr>
<td>Securities and Exchange Commission</td>
<td>17, II</td>
</tr>
<tr>
<td>Selective Service System</td>
<td>32, XVI</td>
</tr>
<tr>
<td>Small Business Administration</td>
<td>13, I</td>
</tr>
<tr>
<td>Smithsonian Institution</td>
<td>36, V</td>
</tr>
<tr>
<td>Social Security Administration</td>
<td>20, III; 48, 23</td>
</tr>
<tr>
<td>Soldiers' and Airmen's Home, United States</td>
<td>5, XI</td>
</tr>
<tr>
<td>Special Counsel, Office of</td>
<td>5, VIII</td>
</tr>
<tr>
<td>Special Education and Rehabilitative Services, Office of</td>
<td>34, III</td>
</tr>
<tr>
<td>State Department</td>
<td></td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 6</td>
</tr>
<tr>
<td>Surface Mining and Reclamation Appeals, Board of</td>
<td>30, III</td>
</tr>
<tr>
<td>Surface Mining Reclamation and Enforcement, Office of</td>
<td>30, VII</td>
</tr>
<tr>
<td>Surface Transportation Board</td>
<td>49, X</td>
</tr>
<tr>
<td>Susquehanna River Basin Commission</td>
<td>18, VIII</td>
</tr>
<tr>
<td>Technology Administration</td>
<td>15, XI</td>
</tr>
<tr>
<td>Technology Policy, Assistant Secretary for</td>
<td>37, IV</td>
</tr>
<tr>
<td>Technology, Under Secretary for</td>
<td>37, V</td>
</tr>
<tr>
<td>Tennessee Valley Authority</td>
<td>5, L, XXXI; 13, XIII</td>
</tr>
<tr>
<td>Thrift Supervision Office, Department of the Treasury</td>
<td>12, V</td>
</tr>
<tr>
<td>Trade Representative, United States, Office of</td>
<td>15, XX</td>
</tr>
<tr>
<td>Transportation, Department of</td>
<td>5, L</td>
</tr>
<tr>
<td>Coast Guard</td>
<td>33, I; 46, I; 49, IV</td>
</tr>
<tr>
<td>Coast Guard (Great Lakes Pilotage)</td>
<td>46, III</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>14, III</td>
</tr>
<tr>
<td>Contract Appeals, Board of</td>
<td>48, 63</td>
</tr>
<tr>
<td>Emergency Management and Assistance</td>
<td>44, IV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 12</td>
</tr>
<tr>
<td>Federal Aviation Administration</td>
<td>14, I</td>
</tr>
<tr>
<td>Federal Highway Administration</td>
<td>23, I, II, 49, III</td>
</tr>
<tr>
<td>Federal Railroad Administration</td>
<td>49, II</td>
</tr>
<tr>
<td>Federal Transit Administration</td>
<td>49, VI</td>
</tr>
<tr>
<td>Maritime Administration</td>
<td>46, II</td>
</tr>
<tr>
<td>National Highway Traffic Safety Administration</td>
<td>23, I, III, 49, V</td>
</tr>
<tr>
<td>Research and Special Programs Administration</td>
<td>49, I</td>
</tr>
<tr>
<td>Saint Lawrence Seaway Development Corporation</td>
<td>33, IV</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Secretary of Transportation, Office of</td>
<td>14, II; 49, Subtitle A</td>
</tr>
<tr>
<td>Surface Transportation Board</td>
<td>49, X</td>
</tr>
<tr>
<td>Transportation Statistics Bureau</td>
<td>49, XI</td>
</tr>
<tr>
<td>Transportation, Office of</td>
<td>7, XXXIII</td>
</tr>
<tr>
<td>Transportation Statistics Bureau</td>
<td>49, XI</td>
</tr>
<tr>
<td>Travel Allowances, Temporary Duty (TDY)</td>
<td>41, 301</td>
</tr>
<tr>
<td>Treasury Department</td>
<td>5, XXI; 12, XV; 17, IV</td>
</tr>
<tr>
<td>Alcohol, Tobacco and Firearms, Bureau of</td>
<td>27, I</td>
</tr>
<tr>
<td>Community Development Financial Institutions Fund</td>
<td>12, XVIII</td>
</tr>
<tr>
<td>Comptroller of the Currency</td>
<td>12, I</td>
</tr>
<tr>
<td>Customs Service, United States</td>
<td>19, I</td>
</tr>
<tr>
<td>Engraving and Printing, Bureau of</td>
<td>31, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 10</td>
</tr>
<tr>
<td>Federal Law Enforcement Training Center</td>
<td>31, VII</td>
</tr>
<tr>
<td>Fiscal Service</td>
<td>31, II</td>
</tr>
<tr>
<td>Foreign Assets Control, Office of</td>
<td>31, V</td>
</tr>
<tr>
<td>Internal Revenue Service</td>
<td>26, I</td>
</tr>
<tr>
<td>International Investment, Office of</td>
<td>31, VIII</td>
</tr>
<tr>
<td>Monetary Offices</td>
<td>31, I</td>
</tr>
<tr>
<td>Secret Service</td>
<td>31, IV</td>
</tr>
<tr>
<td>Secretary of the Treasury, Office of</td>
<td>31, Subtitle A</td>
</tr>
<tr>
<td>Thrift Supervision, Office of</td>
<td>12, V</td>
</tr>
<tr>
<td>Truman, Harry S. Scholarship Foundation</td>
<td>45, XVIII</td>
</tr>
<tr>
<td>United States and Canada, International Joint Commission</td>
<td>22, IV</td>
</tr>
<tr>
<td>United States and Mexico, International Boundary and Water Commission, United States Section</td>
<td>22, XI</td>
</tr>
<tr>
<td>Utah Reclamation Mitigation and Conservation Commission</td>
<td>43, III</td>
</tr>
<tr>
<td>Veterans Affairs Department</td>
<td>38, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 8</td>
</tr>
<tr>
<td>Veterans’ Employment and Training, Office of the Assistant Secretary for</td>
<td>41, 61; 20, IX</td>
</tr>
<tr>
<td>Vice President of the United States, Office of</td>
<td>32, XXVIII</td>
</tr>
<tr>
<td>Vocational and Adult Education, Office of</td>
<td>34, IV</td>
</tr>
<tr>
<td>Wage and Hour Division</td>
<td>29, V</td>
</tr>
<tr>
<td>Water Resources Council</td>
<td>18, VI</td>
</tr>
<tr>
<td>Workers’ Compensation Programs, Office of</td>
<td>20, I</td>
</tr>
<tr>
<td>World Agricultural Outlook Board</td>
<td>7, XXXVIII</td>
</tr>
</tbody>
</table>
List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the Federal Register since January 1, 1986, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.


1986

21 CFR

Chapter I

Mandatory compliance date 1-1-89................................34085
2.125 (Subpart G) Authority citation revised.................4591
(e)(9) and (10) added................................4591
5 Authority citation revised; section authority citations removed...19328
5.10 (a)(28) added................................19328
5.22 (a)(12)(v) removed; (a)(12)(vi) and (vii) redesignated as (a)(12)(v) and (vi); (a)(2), (6), and (12)(iii) revised......11428
(a)(12)(iii) revised ................................32452
(a)(4)(iii), (7)(iii), (iv), and (vi), and (8)(v) revised ..............41765
5.23 (a)(8) removed; (a)(9) and (10) redesignated as (a)(8) and (9);
(a)(2) revised..................................11428
5.28 Added ....................................25883
5.30 (a)(7) and (c)(8) revised........................11428, 32452
5.31 (f)(4) and (5) added........................17011
5.36 Revised................................11428, 32452
5.37 (a)(5)(iv) and (b)(4) introductory text revised...............11428, 32452
5.45 (a) introductory text, (b) introductory text, (c)(5), (d), and
(e)(4) revised..................................11428, 32452
5.47 (d) revised................................11428, 32452
5.63 Introductory text revised..................................11428,
32452
5.89 (a) introductory text revised...................................11428, 32452
5.100 Revised ..................................11429
5.115 Amended ..................................11430

21 CFR—Continued

Chapter I—Continued
14 Authority citation revised; section authority citations removed........32631
14.100 (d)(3) removed..........................32631
16 Authority citation revised........26364
16.1 (b)(2) amended..........................26364
(b)(2) Technical correction ...............34589
20.100 (c)(8) revised..........................22475
73.75 (c) revision effective date confirmed.........................5989
73.3111 Added..................................24616
73.3121 (a)(7) through (9) addition effective date confirmed.......2478
73.3122 Added..................................11432
73.3123 Added..................................11436
73.3124 Added..................................11433
74 Authority citation revised........28346, 28363
74.705 (a)(1) and (b) revised ..................24519
Effective date confirmed..................39654
74.706 Added ..................................41782
74.1206 (b) and (c) revised (eff. 4-22-86)..........................9784
(b) and (c) revision effective date confirmed ..................18883
<table>
<thead>
<tr>
<th>21 CFR—Continued</th>
<th>51 FR Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>74.1267</td>
<td>28346</td>
</tr>
<tr>
<td>Technical correction</td>
<td>35509</td>
</tr>
<tr>
<td>Effective date revised</td>
<td>35511</td>
</tr>
<tr>
<td>74.1308</td>
<td>43898</td>
</tr>
<tr>
<td>74.1309</td>
<td>43898</td>
</tr>
<tr>
<td>74.1319</td>
<td>28363</td>
</tr>
<tr>
<td>Effective date revised</td>
<td>35511</td>
</tr>
<tr>
<td>74.1705</td>
<td>9784</td>
</tr>
<tr>
<td>(a) and (b) revision effective date deferred</td>
<td>376, 7934</td>
</tr>
<tr>
<td>(a) and (b) revision effective date deferred</td>
<td>16675</td>
</tr>
<tr>
<td>(a) revised</td>
<td>24519</td>
</tr>
<tr>
<td>Effective date confirmed</td>
<td>39654</td>
</tr>
<tr>
<td>74.2206</td>
<td>9784</td>
</tr>
<tr>
<td>(a) revision effective date confirmed</td>
<td>39654</td>
</tr>
<tr>
<td>74.2267</td>
<td>28346</td>
</tr>
<tr>
<td>Technical correction</td>
<td>35509</td>
</tr>
<tr>
<td>Effective date revised</td>
<td>35511</td>
</tr>
<tr>
<td>74.2308</td>
<td>43898</td>
</tr>
<tr>
<td>74.2309</td>
<td>43898</td>
</tr>
<tr>
<td>74.2319</td>
<td>28363</td>
</tr>
<tr>
<td>Effective date revised</td>
<td>35511</td>
</tr>
<tr>
<td>74.2705</td>
<td>9784</td>
</tr>
<tr>
<td>Revision effective date deferred</td>
<td>376, 7934</td>
</tr>
<tr>
<td>Revision effective date deferred</td>
<td>16675</td>
</tr>
<tr>
<td>(a) revised</td>
<td>24519, 24524</td>
</tr>
<tr>
<td>Effective date confirmed</td>
<td>39654</td>
</tr>
<tr>
<td>74.2706</td>
<td>41782</td>
</tr>
<tr>
<td>74.3045</td>
<td>22929</td>
</tr>
<tr>
<td>(c)(1)(i)(ii) removed</td>
<td>28346</td>
</tr>
<tr>
<td>(b) amendment confirmed</td>
<td>32453</td>
</tr>
<tr>
<td>(c)(2) revised</td>
<td>39371</td>
</tr>
<tr>
<td>(c)(1)(i)(ii) removal confirmed</td>
<td>46852</td>
</tr>
<tr>
<td>74.3106</td>
<td>5990</td>
</tr>
<tr>
<td>(c)(3) removal effective date confirmed</td>
<td>376, 7934</td>
</tr>
<tr>
<td>74.3206</td>
<td>9784</td>
</tr>
<tr>
<td>(a), (b) and (c) revised (eff. 4-26-86)</td>
<td>24519</td>
</tr>
<tr>
<td>(a), (b), and (c) revision effective date confirmed</td>
<td>18883</td>
</tr>
<tr>
<td>(b) revised; (c)(3) removed</td>
<td>37909</td>
</tr>
<tr>
<td>81.1</td>
<td>7934</td>
</tr>
<tr>
<td>(a) table amended</td>
<td>376, 7934</td>
</tr>
<tr>
<td>(a) table amended</td>
<td>16675</td>
</tr>
<tr>
<td>(a) and (b) tables amended</td>
<td>20786</td>
</tr>
<tr>
<td>(b) table amended</td>
<td>20787</td>
</tr>
<tr>
<td>1987</td>
<td>480</td>
</tr>
</tbody>
</table>

**21 CFR (4-1-99 Edition)**

**21 CFR—Continued**

<table>
<thead>
<tr>
<th>21 CFR—Continued</th>
<th>51 FR Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter I—Continued</td>
<td>35509</td>
</tr>
<tr>
<td>(t) added</td>
<td>43899</td>
</tr>
<tr>
<td>81.25</td>
<td>43900</td>
</tr>
<tr>
<td>(a)(1) and (c)(1) amended; (b)(1)(ii) removed; (a)(2), (b)(2), and (c)(2) revised</td>
<td>43999</td>
</tr>
<tr>
<td>81.27</td>
<td>43899</td>
</tr>
<tr>
<td>(d) introductory text table amended</td>
<td>376, 7934, 16675, 20786, 20788, 24524, 28346, 28363, 28364, 31324, 35511, 39657, 41763, 43899, 43900</td>
</tr>
<tr>
<td>Technical correction</td>
<td>35509</td>
</tr>
<tr>
<td>Effective date confirmed</td>
<td>39654</td>
</tr>
<tr>
<td>81.30</td>
<td>20788</td>
</tr>
<tr>
<td>(r)(2) revised; (r)(3) added</td>
<td>43899</td>
</tr>
<tr>
<td>(s) added</td>
<td>376, 7934, 16675</td>
</tr>
<tr>
<td>82 Authority citation corrected</td>
<td>11014</td>
</tr>
<tr>
<td>Authority citation revised</td>
<td>28346, 28363</td>
</tr>
<tr>
<td>82.705 Revision effective date deferred</td>
<td>376, 7934, 16675</td>
</tr>
<tr>
<td>Revision eff. 10-7-85</td>
<td>24519</td>
</tr>
<tr>
<td>Revised</td>
<td>24519</td>
</tr>
<tr>
<td>Effective date confirmed</td>
<td>39654</td>
</tr>
<tr>
<td>82.706 Revised</td>
<td>41783</td>
</tr>
<tr>
<td>82.1206 (a) amended (eff. 4-22-86)</td>
<td>9785</td>
</tr>
<tr>
<td>Amendment effective date confirmed</td>
<td>18883</td>
</tr>
<tr>
<td>82.1267 Revised</td>
<td>28346</td>
</tr>
<tr>
<td>Technical correction</td>
<td>35509</td>
</tr>
<tr>
<td>82.1308 Revised</td>
<td>43899</td>
</tr>
<tr>
<td>82.139 Revised</td>
<td>43899</td>
</tr>
<tr>
<td>82.1319 Revised</td>
<td>28363</td>
</tr>
<tr>
<td>82.1337 Removed</td>
<td>20788</td>
</tr>
</tbody>
</table>

**21 CFR (1987)**

<table>
<thead>
<tr>
<th>21 CFR</th>
<th>52 FR Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter I</td>
<td>1881</td>
</tr>
<tr>
<td>2.125 (e)(11) added</td>
<td>15717</td>
</tr>
<tr>
<td>5 Authority citation revised</td>
<td>5951</td>
</tr>
<tr>
<td>Corrected</td>
<td>7969</td>
</tr>
<tr>
<td>5.31 (a) introductory text revised; (b)(1) and (d)(3) revised; (b)(2) added</td>
<td>2514</td>
</tr>
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<td>29664</td>
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<td>5.87 Revised</td>
<td>29664</td>
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<td>10881</td>
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</table>
### List of CFR Sections Affected

**21 CFR—Continued**

<table>
<thead>
<tr>
<th>Page</th>
<th>S2 FR</th>
</tr>
</thead>
<tbody>
<tr>
<td>52 FR</td>
<td>Page</td>
</tr>
</tbody>
</table>

#### Chapter I—Continued

5.94 Added........................................ 2514
5.100 Revised........................................ 6970
5.105 (a) and (b) introductory text, (1), and (3) revised; (e) removed; OMB number................. 33780
5.115 Amended........................................ 6971
5.120 (a) revised; OMB number.......................... 33781
5.94 Added........................................ 2514
10.40 (h) revised...................................... 36401
10.95 (d)(8) revised.................................. 35064
58 Authority citation revised......................... 33779
58.1 Existing text designated as (a); (b) added.......................... 33779
58.3 Nomenclature change; (c), (d), and (e)(8) revised; (e)(12) removed; (e)(17) and (18) amended; (o) and (p) added.................. 33779
58.31 (b) revised.................................. 33780
58.35 (a) and (b) introductory text, (1), and (3) revised; (e) removed; OMB number................. 33780
58.41 Revised........................................ 33780
58.43 (c) amended; (e) removed...................... 33780
58.45 Amended........................................ 33780
58.49 Revised........................................ 33780
58.53 Removed........................................ 33780
58.61 Revised........................................ 33780
58.63 (b) revised; OMB number.......................... 33780
58.81 (c) amended.................................... 33780
58.90 (b) and (c) revised; OMB number.................. 33780
58.105 (a) amended; (b) revised; OMB number.................. 33781
58.113 (a)(2) revised................................. 33781
58.120 (a) revised; OMB number.......................... 33781
58.130 (d) and (e) revised; OMB number.................. 33781
58.185 (b) revised.................................. 33781
58.190 (a) and (e) revised; OMB number.................. 33781
58.195 (c) revised; (g) redesignated as (h); new (g) added.......................... 33781
70 Authority citation revised......................... 46586
70.50 (c) added...................................... 46586
73.1496 (a)(1), (b), and (c) revised.................. 29665
(a)(1), (b), and (c) revision effective date confirmed.................. 42429
74.102 Eff. 7-31-87.................................. 28553
74.102 Eff. 7-31-87.................................. 28553
74.102 (d) introductory text table amendment effective date confirmed; (a)(1) revised........ 21509
74.102 Effe 7-31-87.................................. 28553
74.127 Preamble clarification......................... 5081
74.1308 Effective date confirmed...................... 902
74.1706 Addition effective date confirmed; (c)(2) revised........ 21508
74.1309 Effective date corrected...................... 902
74.2267 Preamble clarification......................... 5081
74.2308 Effective date corrected...................... 902
74.2319 Preamble clarification......................... 5083
74.2706 Addition effective date confirmed.................. 21506
74.3045 Technical correction......................... 3224
74.305 (a)(1) revision effective date confirmed.................. 7829
74.3057 (a) introductory text and (i) revised.......... 15945
74.3058 Effective date confirmed...................... 27542
74.3205 (b) revision and (c)(3) removal effective date confirmed.......................... 1902
74.3206 Addition effective date confirmed.................. 45938
74.3208 Effective date confirmed...................... 902
74.3209 Effective date confirmed...................... 902
74.3219 Preamble clarification......................... 5083
74.3270 Addition effective date confirmed.................. 21506
74.3285 Technical correction......................... 3224
74.3301 (c)(2) revision effective date confirmed.................. 7829
74.3304 (c)(1) introductory text and (i) revised.......... 15945
74.3305 Effective date confirmed...................... 27542
74.3306 (b) revision and (c)(3) removal effective date confirmed.......................... 1902
74.3307 Technical correction......................... 7261
74.3602 Added........................................ 19722
74.3710 Added........................................ 28690
74.3719 Addition effective date confirmed.................. 45938
81 Authority citation revised......................... 42098
81.1 Effective date corrected......................... 902
(a) and (b) tables amended ...3224, 10882
Preamble clarification......................... 5081, 5083
(b) table amended............................. 6323, 15946
21305, 25209, 33574, 42098
(a) table amendment effective date confirmed; (a) table amended.......................... 21509
Technical correction......................... 24583
(a) table amended............................. 42097
81.10 Effective date corrected......................... 902
(d) introductory text table amendment effective date confirmed.................. 21509
81.25 Effective date corrected......................... 902
81.27 Effective date corrected......................... 902
(d) introductory text table amendment effective date confirmed.................. 21509
81.30 Effective date and (s)(1) and (2) corrected.................. 902

---

**21 CFR—Continued**

<table>
<thead>
<tr>
<th>Page</th>
<th>S2 FR</th>
</tr>
</thead>
<tbody>
<tr>
<td>52 FR</td>
<td>Page</td>
</tr>
</tbody>
</table>

#### Chapter I—Continued

74.1309 Effective date corrected...................... 902
(a)(1) revised.................................. 21505
Technical correction......................... 24583
Effective date confirmed...................... 28552
74.1319 Preamble clarification......................... 5083
74.1706 Addition effective date confirmed; (c)(2) revised........ 21508
74.2267 Preamble clarification......................... 5081
74.2308 Effective date corrected...................... 902
74.2309 Effective date corrected...................... 902
74.2319 Preamble clarification......................... 5083
74.2706 Addition effective date confirmed.................. 21506
74.3045 Technical correction......................... 3224
(c)(2) revision effective date confirmed.................. 7829
(c)(1) introductory text and (i) revised.......... 15945
Effective date confirmed...................... 27542
74.3205 (b) revision and (c)(3) removal effective date confirmed.......................... 1902
Technical correction......................... 7261
74.3602 Added........................................ 19722
74.3710 Added........................................ 28690
Addition effective date confirmed.................. 45938
81 Authority citation revised......................... 42098
81.1 Effective date corrected......................... 902
(a) and (b) tables amended ...3224, 10882
Preamble clarification......................... 5081, 5083
(b) table amended............................. 6323, 15946
21305, 25209, 33574, 42098
(a) table amendment effective date confirmed; (a) table amended.......................... 21509
Technical correction......................... 24583
(a) table amended............................. 42097
81.10 Effective date corrected......................... 902
(d) introductory text table amendment effective date confirmed.................. 21509
81.25 Effective date corrected......................... 902
81.27 Effective date corrected......................... 902
(d) introductory text table amendment effective date confirmed.................. 21509
81.30 Effective date and (s)(1) and (2) corrected.................. 902
21 CFR—Continued

Chapter I—Continued

21 CFR (4-1-99 Edition)

21 CFR—Continued

Chapter I

Chapter I Uniform compliance date 1-1-91

Authority citation revised; section authority citations removed

1. Authority citation revised; section authority citations removed

1.4 Added

5. Authority citation revised

5.10 (a)(29) added

5.24 Added

5.35 (c) redesignated as (d); new (c) added

5.83 (c) redesignated as (d); new (c) added

5.115 Revised

5.10 Revised

12. Authority citation revised

12.125 (a), (c), and (d) revised

14.80 (a)(2) and (b)(1)(ii) revised

14.95 (a) revised

14.100 (c) added

16. Authority citation revised

16.26 Added

60 Added

73 Technical correction

73.3107 Added

73.310a Added

74.706 (d)(2) suspended

74.1267 Removed

74.1306 Effective date corrected

74.1309 Effective date corrected

74.1319 Preamble clarification

74.1336 Added

(b) corrected

(c) addition deferred in part

(c)(2) suspended

81.25 (a)(1) table, (b)(1)(i), and (c)(1) table amended

81.27 (d) introductory text table amendment at 53 FR 33121 confirmed

21 CFR—Continued

Chapter I—Continued

Addition confirmed

74.1336 Added

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(c) addition deferred in part

(c)(2) suspended

81.25 (a)(1) table, (b)(1)(i), and (c)(1) table amended

81.27 (d) introductory text table amendment at 53 FR 33121 confirmed
List of CFR Sections Affected

<table>
<thead>
<tr>
<th>21 CFR—Continued</th>
<th>S 54 F R</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter I—Continued</td>
<td>54 F R</td>
<td>Page</td>
</tr>
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<td>2 Authority citation revised; sectional authority citations removed</td>
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<tr>
<td>2.19 Amended</td>
</tr>
<tr>
<td>2.125 (d), (g), (h)(1) and (2) introductory text, and (i) amended</td>
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<td>5 Authority citation corrected</td>
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<tr>
<td>5 Technical correction</td>
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<tr>
<td>Authority citation revised</td>
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<tr>
<td>5.10 (a)(7) amended</td>
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### List of CFR Sections Affected

#### 21 CFR—Continued

<table>
<thead>
<tr>
<th>CFR Section</th>
<th>Date</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>21 CFR—Continued</td>
<td>54 FR</td>
<td>Page</td>
</tr>
<tr>
<td>Chapter I—Continued</td>
<td></td>
<td></td>
</tr>
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<td>71</td>
<td>Authority citation revised; sectional authority citations removed</td>
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<td>73.310a</td>
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<td>Regulation at 53 FR 52130 effective date confirmed</td>
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<td>(a) table amended</td>
<td>37307</td>
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| 1990 | |

<table>
<thead>
<tr>
<th>CFR Section</th>
<th>Date</th>
<th>Page</th>
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<tr>
<td>21 CFR</td>
<td>55 FR</td>
<td>Page</td>
</tr>
<tr>
<td>Chapter I</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.46</td>
<td>Revised</td>
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<td>(a)(2) revised</td>
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<td>Added</td>
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<td>(c)(1)(iv) added</td>
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<td>(a)(1) and (b) revised</td>
<td>47053</td>
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<td>(b)(2) and (c)(2) revised</td>
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<td>47054</td>
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<td>9419</td>
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<td>(b) removed</td>
<td>1404</td>
</tr>
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<td>(b) amended</td>
<td>42703</td>
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<td>42703</td>
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<td>(c)(16) added</td>
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<td>35861, 43962</td>
<td>(b)(2)(ii), (c)(11)(i) and (d)(2)(i) amended; (c)(2)(ii) and (e)(2) revised</td>
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<td>(d)(1)(i)(B), (ii)(B), (iii)(B), (iv)(B), (v)(B), (vi)(B), (vii)(B), (viii)(B), (ix)(B), (x)(B), (xi)(B), (xii)(B), (xiii)(B), (xiv)(B), (xv)(B), and (xvi)(B) amended</td>
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<td>27640, 35861, 43962</td>
<td>(d)(1) revised</td>
<td>51282</td>
</tr>
<tr>
<td>21 CFR—Continued</td>
<td>55 FR</td>
<td>Page</td>
</tr>
<tr>
<td>Chapter I—Continued</td>
<td></td>
<td></td>
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<tr>
<td>15</td>
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<td>(c) amended</td>
<td>1405</td>
</tr>
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<td>Authority citation revised</td>
<td>9079</td>
</tr>
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<td>50.23</td>
<td>(d) added; interim</td>
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<td>73.3106</td>
<td>Added</td>
<td>30214</td>
</tr>
<tr>
<td>74.2</td>
<td>Revised</td>
<td>33816</td>
</tr>
<tr>
<td>74.1602</td>
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<td>(c)(2)(i) amended</td>
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<td>74.3045</td>
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<td>19620</td>
</tr>
</tbody>
</table>

Technical correction at 55 FR 20214 effective date confirmed | 46044 |
Regulation at 55 FR 30214 effective date confirmed | 46044 |
Regulation at 55 FR 12172 eff. date confirmed | 26430 |
485
### 21 CFR (4-1-99 Edition)

#### 21 CFR—Continued

<table>
<thead>
<tr>
<th>Section</th>
<th>Date</th>
<th>Description</th>
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<tr>
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<td>Added</td>
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<td>74.3230</td>
<td>Added</td>
<td>.............................22898</td>
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<td>3</td>
<td>Added</td>
<td>...............................58756</td>
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#### 1991

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>56</td>
<td>Effective date confirmed</td>
<td>31824</td>
</tr>
<tr>
<td>21 CFR</td>
<td>Effective date corrected</td>
<td>21674</td>
</tr>
<tr>
<td>74.3230</td>
<td>Added</td>
<td>.............................22898</td>
</tr>
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<td>Regulation at 56 FR 22898 ...</td>
<td>date confirmed</td>
<td>37868</td>
</tr>
<tr>
<td>74.3602 (b)(2)</td>
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</tr>
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<td>31823</td>
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<td>3519</td>
</tr>
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<td>Removed</td>
<td>3519</td>
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#### 1992

<table>
<thead>
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<th>Chapter</th>
<th>Date</th>
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<td>56</td>
<td>Effective date confirmed</td>
<td>31824</td>
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<td>21674</td>
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<td>29756</td>
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</tr>
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#### 21 CFR

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Date</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>56</td>
<td>Authority citation revised</td>
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### 21 CFR (4-1-99 Edition)

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**486**
### 21 CFR—Continued

#### Chapter I

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List of CFR Sections Affected

21 CFR—Continued

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21 CFR—Continued

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21 CFR

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21 CFR—Continued

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### 21 CFR—Continued

**Chapter I—Continued**

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#### 1997

**21 CFR**

**Chapter I**

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*Regulations published January 1, 1999 through April 1, 1999*
## List of CFR Sections Affected

### 1999 (Correction published April 5, 1999)

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