

§ 14.5

21 CFR Ch. I (4–1–09 Edition)

(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.

[44 FR 22351, Apr. 13, 1979, as amended at 54 FR 9035, Mar. 3, 1989]

§ 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