

(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.

[44 FR 22348, Apr. 13, 1979, as amended at 50 FR 8994, Mar. 6, 1985]

**§13.15 Separation of functions; ex parte communications; administrative support.**

(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 of-

fice of the Commissioner and the office of the Chief Counsel for FDA.

[44 FR 22348, Apr. 13, 1979, as amended at 54 FR 9035, Mar. 3, 1989]

**Subpart B—Hearing Procedures**

**§ 13.20 Submissions to a Board.**

(a) Submissions are to be filed with the Division of Dockets Management 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 Division of Dockets Management—

(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