

§ 10.10

Secretary means the Secretary of Health and Human Services.

The laws administered by the Commissioner or the laws administered by the Food and Drug Administration means all the laws that the Commissioner is authorized to administer.

(b) A term that is defined in section 201 of the Federal Food, Drug, and Cosmetic Act or part 1 has the same definition in this part.

(c) Words in the singular form include the plural, words in the masculine form include the feminine, and vice versa.

(d) Whenever a reference is made in this part to a person in FDA, e.g., the director of a center, the reference includes all persons to whom that person has delegated the specific function involved.

[44 FR 22323, Apr. 13, 1979, as amended at 46 FR 8455, Jan. 27, 1981; 50 FR 8994, Mar. 6, 1985; 54 FR 6886, Feb. 15, 1989; 54 FR 9034, Mar. 3, 1989; 59 FR 14363, Mar. 28, 1994; 69 FR 17290, Apr. 2, 2004]

§ 10.10 Summaries of administrative practices and procedures.

To encourage public participation in all agency activities, the Commissioner will prepare for public distribution summaries of FDA administrative practices and procedures in readily understandable terms.

§ 10.19 Waiver, suspension, or modification of procedural requirements.

The Commissioner or a presiding officer may, either voluntarily or at the request of a participant, waive, suspend, or modify any provision in parts 12 through 16 applicable to the conduct of a public hearing by announcement at the hearing or by notice in advance of the hearing if no participant will be prejudiced, the ends of justice will thereby be served, and the action is in accordance with law.

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Subpart B—General Administrative Procedures

§ 10.20 Submission of documents to Division of Dockets Management; computation of time; availability for public disclosure.

(a) A submission to the Division of Dockets Management 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 Division of Dockets Management 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; or
- (iv) A recognized medical or scientific textbook that is readily available to the agency.

(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 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 Division of Dockets Management 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 Division of Dockets Management.

(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 and the deficiency becomes known to the Division of Dockets Management, the Division of Dockets Management 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 Division of Dockets Management does not make decisions regarding the confidentiality of submitted documents.

(d) The filing of a submission means only that the Division of Dockets Management 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 Division of Dockets Management 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 Division of Dockets Management, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

(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 Division of Dockets Management 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 Division of Dockets Management 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 guidance documents developed under §10.115.

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(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) may request a ruling from the Associate Commissioner for Public Affairs whose decision is final, subject to judicial review under §20.48.

(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

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of the hearing. The administrative law judge or presiding officer shall direct to whom the information is to be made available (e.g., to parties or participants, or only to counsel for parties or participants), and persons not specifically permitted access to the data will be excluded from the in camera part of the proceeding. The administrative law judge or other 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.

[44 FR 22323, Apr. 13, 1979, as amended at 46 FR 8455, Jan. 27, 1981; 49 FR 7363, Feb. 29, 1984; 54 FR 9034, Mar. 3, 1989; 59 FR 14363, Mar. 28, 1994; 64 FR 69190, Dec. 10, 1999; 65 FR 56477, Sept. 19, 2000; 66 FR 56035, Nov. 6, 2001; 66 FR 66742, Dec. 27, 2001; 68 FR 25285, May 12, 2003]

§ 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 §71.1, for a food additive petition in §171.1, for a new drug application in §314.50, for a new animal drug application in §514.1, 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 regulation or order or take or refrain from taking any other form of administrative action. FDA has primary jurisdiction to make the initial determination on issues within its statutory mandate, and will request a court to dismiss, or to hold in abeyance its determination of or refer to the agency for administrative determination, any issue which has not previously been determined by the agency or which, if it has previously been determined, the