

(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 and 71.2, or in §§171.1, 171.6, 171.7, and 171.100, publish a notice of filing of the petition within 30 days after the petition is filed instead of a notice of proposed rule-making.

(c) [Reserved]

(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 399, Jan. 5, 1999]

§ 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, or §601.3 for licenses for biologic products; or

(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.

[44 FR 22339, Apr. 13, 1979, as amended at 47 FR 25734, June 15, 1982; 54 FR 9035, Mar. 3, 1989; 85 FR 72906, Nov. 16, 2020]