

## § 12.35

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 Division of Dockets Management 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

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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.