(d) The Food and Drug Administration will not approve an application for a research permit for a clinical investigation that is to be under the review of a disqualified IRB or that is to be conducted at a disqualified institution, and it may refuse to consider in support of a marketing permit the data from a clinical investigation that was reviewed by a disqualified IRB as conducted at a disqualified institution, unless the IRB or the parent institution is reinstated as provided in §56.123.

§ 56.122 Public disclosure of information regarding revocation.

A determination that the Food and Drug Administration has disqualified an institution and the administrative record regarding that determination are disclosable to the public under part 20.

§ 56.123 Reinstatement of an IRB or an institution.

An IRB or an institution may be reinstated if the Commissioner determines, upon an evaluation of a written submission from the IRB or institution that explains the corrective action that the institution or IRB plans to take, that the IRB or institution has provided adequate assurance that it will operate in compliance with the standards set forth in this part. Notification of reinstatement shall be provided to all persons notified under §56.121(c).

§ 56.124 Actions alternative or additional to disqualification.

Disqualification of an IRB or of an institution is independent of, and neither in lieu of nor a precondition to, other proceedings or actions authorized by the act. The Food and Drug Administration may, at any time, through the Department of Justice institute any appropriate judicial proceedings (civil or criminal) and any other appropriate regulatory action, in addition to or in lieu of, and before, at the time of, or after, disqualification. The agency may also refer pertinent matters to another Federal, State, or local government agency for any action that that agency determines to be appropriate.
Subpart K—Disqualification of Testing Facilities

58.200 Purpose.
58.202 Grounds for disqualification.
58.204 Notice of and opportunity for hearing on proposed disqualification.
58.206 Final order on disqualification.
58.210 Actions upon disqualification.
58.213 Public disclosure of information regarding disqualification.
58.215 Alternative or additional actions to disqualification.
58.217 Suspension or termination of a testing facility by a sponsor.
58.219 Reinstatement of a disqualified testing facility.

(b) Test article means any food additive, color additive, drug, biological product, electronic product, medical device for human use, or any other article subject to regulation under the act or under sections 351 and 354–360F of the Public Health Service Act.

(c) Control article means any food additive, color additive, drug, biological product, electronic product, medical device for human use, or any article other than a test article, feed, or water that is administered to the test system in the course of a nonclinical laboratory study for the purpose of establishing a basis for comparison with the test article.

(d) Nonclinical laboratory study means in vivo or in vitro experiments in which test articles are studied prospectively in test systems under laboratory conditions to determine their safety. The term does not include studies utilizing human subjects or clinical studies or field trials in animals. The term does not include basic exploratory studies carried out to determine whether a test article has any potential utility or to determine physical or chemical characteristics of a test article.

(e) Application for research or marketing permit includes:
1. A color additive petition, described in part 71.
2. A food additive petition, described in parts 171 and 571.
3. Data and information regarding a substance submitted as part of the procedures for establishing that a substance is generally recognized as safe for use, which use results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, described in §§170.35 and 570.35.
4. Data and information regarding a food additive submitted as part of the procedures regarding food additives permitted to be used on an interim basis pending additional study, described in §180.1.
5. An investigational new drug application, described in part 312 of this chapter.
6. A new drug application, described in part 314.
(7) Data and information regarding an over-the-counter drug for human use, submitted as part of the procedures for classifying such drugs as generally recognized as safe and effective and not misbranded, described in part 330.

(8) Data and information about a substance submitted as part of the procedures for establishing a tolerance for unavoidable contaminants in food and food-packaging materials, described in parts 109 and 509.

(9) [Reserved]

(10) A Notice of Claimed Investigational Exemption for a New Animal Drug, described in part 511.

(11) A new animal drug application, described in part 514.

(12) [Reserved]

(13) An application for a biologics license, described in part 601 of this chapter.

(14) An application for an investigational device exemption, described in part 812.

(15) An Application for Premarket Approval of a Medical Device, described in section 515 of the act.

(16) A Product Development Protocol for a Medical Device, described in section 515 of the act.

(17) Data and information regarding a medical device submitted as part of the procedures for classifying such devices, described in part 860.

(18) Data and information regarding a medical device submitted as part of the procedures for establishing, amending, or repealing a performance standard for such devices, described in part 861.

(19) Data and information regarding an electronic product submitted as part of the procedures for obtaining an exemption from notification of a radiation safety defect or failure of compliance with a radiation safety performance standard, described in section 516 of the act.

(20) Data and information regarding an electronic product submitted as part of the procedures for obtaining a variance from any electronic product performance standard as described in §1010.4.

(22) Data and information regarding an electronic product submitted as part of the procedures for granting, amending, or extending an exemption from any electronic product performance standard, as described in §1010.5.

(23) A premarket notification for a food contact substance, described in part 170, subpart D, of this chapter.

(f) Sponsor means:

(1) A person who initiates and supports, by provision of financial or other resources, a nonclinical laboratory study;

(2) A person who submits a nonclinical study to the Food and Drug Administration in support of an application for a research or marketing permit; or

(3) A testing facility, if it both initiates and actually conducts the study.

(g) Testing facility means a person who actually conducts a nonclinical laboratory study, i.e., actually uses the test article in a test system. Testing facility includes only those operational units that are being or have been used to conduct nonclinical laboratory studies.

(h) Person includes an individual, partnership, corporation, association, scientific or academic establishment, government agency, or organizational unit thereof, and any other legal entity.

(i) Test system means any animal, plant, microorganism, or subparts thereof to which the test or control article is administered or added for study. Test system also includes appropriate groups or components of the system not treated with the test or control articles.

(j) Specimen means any material derived from a test system for examination or analysis.

(k) Raw data means any laboratory worksheets, records, memoranda, notes, or exact copies thereof, that are the result of original observations and activities of a nonclinical laboratory
study and are necessary for the reconstruction and evaluation of the report of that study. In the event that exact transcripts of raw data have been prepared (e.g., tapes which have been transcribed verbatim, dated, and verified accurate by signature), the exact copy or exact transcript may be substituted for the original source as raw data. Raw data may include photographs, microfilm or microfiche copies, computer printouts, magnetic media, including dictated observations, and recorded data from automated instruments.

(l) Quality assurance unit means any person or organizational element, except the study director, designated by testing facility management to perform the duties relating to quality assurance of nonclinical laboratory studies.

(m) Study director means the individual responsible for the overall conduct of a nonclinical laboratory study.

(n) Batch means a specific quantity or lot of a test or control article that has been characterized according to §58.105(a).

(o) Study initiation date means the date the protocol is signed by the study director.

(p) Study completion date means the date the final report is signed by the study director.

§58.10 Applicability to studies performed under grants and contracts.

When a sponsor conducting a nonclinical laboratory study intended to be submitted to or reviewed by the Food and Drug Administration utilizes the services of a consulting laboratory, contractor, or grantee that the service is part of a nonclinical laboratory study that must be conducted in compliance with the provisions of this part.

§58.15 Inspection of a testing facility.

(a) A testing facility shall permit an authorized employee of the Food and Drug Administration, at reasonable times and in a reasonable manner, to inspect the facility and to inspect (and in the case of records also to copy) all records and specimens required to be maintained regarding studies within the scope of this part. The records inspection and copying requirements shall not apply to quality assurance unit records of findings and problems, or to actions recommended and taken.

(b) The Food and Drug Administration will not consider a nonclinical laboratory study in support of an application for a research or marketing permit if the testing facility refuses to permit inspection. The determination that a nonclinical laboratory study will not be considered in support of an application for a research or marketing permit does not, however, relieve the applicant for such a permit of any obligation under any applicable statute or regulation to submit the results of the study to the Food and Drug Administration.

Subpart B—Organization and Personnel

§58.29 Personnel.

(a) Each individual engaged in the conduct of or responsible for the supervision of a nonclinical laboratory study shall have education, training, and experience, or combination thereof, to enable that individual to perform the assigned functions.

(b) Each testing facility shall maintain a current summary of training and experience and job description for each individual engaged in or supervising the conduct of a nonclinical laboratory study.

(c) There shall be a sufficient number of personnel for the timely and proper conduct of the study according to the protocol.

(d) Personnel shall take necessary personal sanitation and health precautions designed to avoid contamination of test and control articles and test systems.

(e) Personnel engaged in a nonclinical laboratory study shall wear clothing appropriate for the duties they perform. Such clothing shall be changed as often as necessary to prevent microbiological, radiological, or chemical
contamination of test systems and test and control articles.

(f) Any individual found at any time to have an illness that may adversely affect the quality and integrity of the nonclinical laboratory study shall be excluded from direct contact with test systems, test and control articles and any other operation or function that may adversely affect the study until the condition is corrected. All personnel shall be instructed to report to their immediate supervisors any health or medical conditions that may reasonably be considered to have an adverse effect on a nonclinical laboratory study.

§ 58.31 Testing facility management.
For each nonclinical laboratory study, testing facility management shall:

(a) Designate a study director as described in §58.33, before the study is initiated.

(b) Replace the study director promptly if it becomes necessary to do so during the conduct of a study.

(c) Assume that there is a quality assurance unit as described in §58.35.

(d) Assure that test and control articles or mixtures have been appropriately tested for identity, strength, purity, stability, and uniformity, as applicable.

(e) Assume that personnel, resources, facilities, equipment, materials, and methodologies are available as scheduled.

(f) Assure that personnel clearly understand the functions they are to perform.

(g) Assume that any deviations from these regulations reported by the quality assurance unit are communicated to the study director and corrective actions are taken and documented.


§ 58.35 Quality assurance unit.

(a) A testing facility shall have a quality assurance unit which shall be responsible for monitoring each study to assure management that the facilities, equipment, personnel, methods, practices, records, and controls are in conformance with the regulations in this part. For any given study, the quality assurance unit shall be entirely separate from and independent of the personnel engaged in the direction and conduct of that study.

(b) The quality assurance unit shall:

(1) Maintain a copy of a master schedule sheet of all nonclinical laboratory studies conducted at the testing facility indexed by test article and containing the test system, nature of study, date study was initiated, current status of each study, identity of the sponsor, and name of the study director.

(2) Maintain copies of all protocols pertaining to all nonclinical laboratory studies for which the unit is responsible.

(3) Inspect each nonclinical laboratory study at intervals adequate to assure the integrity of the study and maintain written and properly signed records of each periodic inspection.

§ 58.41 General.

Each testing facility shall be of suitable size and construction to facilitate the proper conduct of nonclinical laboratory studies. It shall be designed so that there is a degree of separation that will prevent any function or activity from having an adverse effect on the study.

[52 FR 33780, Sept. 4, 1987]

§ 58.43 Animal care facilities.

(a) A testing facility shall have a sufficient number of animal rooms or areas, as needed, to assure proper: (1) Separation of species or test systems, (2) isolation of individual projects, (3) quarantine of animals, and (4) routine or specialized housing of animals.

(b) A testing facility shall have a number of animal rooms or areas separate from those described in paragraph (a) of this section to ensure isolation of studies being done with test systems or test and control articles known to be biohazardous, including volatile substances, aerosols, radioactive materials, and infectious agents.

(c) Separate areas shall be provided, as appropriate, for the diagnosis, treatment, and control of laboratory animal diseases. These areas shall provide effective isolation for the housing of animals either known or suspected of being diseased, or of being carriers of disease, from other animals.

(d) When animals are housed, facilities shall exist for the collection and disposal of all animal waste and refuse or for safe sanitary storage of waste before removal from the testing facility. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, disease hazards, and environmental contamination.

§ 58.45 Animal supply facilities.

There shall be storage areas, as needed, for feed, bedding, supplies, and equipment. Storage areas for feed and bedding shall be separated from areas housing the test systems and shall be
protected against infestation or contamination. Perishable supplies shall be preserved by appropriate means.


§ 58.47 Facilities for handling test and control articles.

(a) As necessary to prevent contamination or mixups, there shall be separate areas for:
   (1) Receipt and storage of the test and control articles.
   (2) Mixing of the test and control articles with a carrier, e.g., feed.
   (3) Storage of the test and control article mixtures.

(b) Storage areas for the test and/or control article and test and control mixtures shall be separate from areas housing the test systems and shall be adequate to preserve the identity, strength, purity, and stability of the articles and mixtures.

§ 58.49 Laboratory operation areas.

Separate laboratory space shall be provided, as needed, for the performance of the routine and specialized procedures required by nonclinical laboratory studies.

[52 FR 33780, Sept. 4, 1987]

§ 58.51 Specimen and data storage facilities.

Space shall be provided for archives, limited to access by authorized personnel only, for the storage and retrieval of all raw data and specimens from completed studies.

Subpart D—Equipment

§ 58.61 Equipment design.

Equipment used in the generation, measurement, or assessment of data and equipment used for facility environmental control shall be of appropriate design and adequate capacity to function according to the protocol and shall be suitably located for operation, inspection, cleaning, and maintenance.

[52 FR 33780, Sept. 4, 1987]

§ 58.63 Maintenance and calibration of equipment.

(a) Equipment shall be adequately inspected, cleaned, and maintained. Equipment used for the generation, measurement, or assessment of data shall be adequately tested, calibrated and/or standardized.

(b) The written standard operating procedures required under §58.81(b)(11) shall set forth in sufficient detail the methods, materials, and schedules to be used in the routine inspection, cleaning, maintenance, testing, calibration, and/or standardization of equipment, and shall specify, when appropriate, remedial action to be taken in the event of failure or malfunction of equipment. The written standard operating procedures shall designate the person responsible for the performance of each operation.

(c) Written records shall be maintained of all inspection, maintenance, testing, and/or standardizing operations. These records, containing the date of the operation, shall describe whether the maintenance operations were routine and followed the written standard operating procedures. Written records shall be kept of non-routine repairs performed on equipment as a result of failure and malfunction. Such records shall document the nature of the defect, how and when the defect was discovered, and any remedial action taken in response to the defect.


Subpart E—Testing Facilities

Operation

§ 58.81 Standard operating procedures.

(a) A testing facility shall have standard operating procedures in writing setting forth nonclinical laboratory study methods that management is satisfied are adequate to insure the quality and integrity of the data generated in the course of a study. All deviations in a study from standard operating procedures shall be authorized by the study director and shall be documented in the raw data. Significant changes in established standard operating procedures shall be properly authorized in writing by management.

(b) Standard operating procedures shall be established for, but not limited to, the following:
§ 58.83

(1) Animal room preparation.
(2) Animal care.
(3) Receipt, identification, storage, handling, mixing, and method of sampling of the test and control articles.
(4) Test system observations.
(5) Laboratory tests.
(6) Handling of animals found moribund or dead during study.
(7) Necropsy of animals or post-mortem examination of animals.
(8) Collection and identification of specimens.
(9) Histopathology.
(10) Data handling, storage, and retrieval.
(11) Maintenance and calibration of equipment.
(12) Transfer, proper placement, and identification of animals.
(c) Each laboratory area shall have immediately available laboratory manuals and standard operating procedures relative to the laboratory procedures being performed. Published literature may be used as a supplement to standard operating procedures.
(d) A historical file of standard operating procedures, and all revisions thereof, including the dates of such revisions, shall be maintained.

§ 58.83 Reagents and solutions.

All reagents and solutions in the laboratory areas shall be labeled to indicate identity, titer or concentration, storage requirements, and expiration date. Deteriorated or outdated reagents and solutions shall not be used.

§ 58.90 Animal care.

(a) There shall be standard operating procedures for the housing, feeding, handling, and care of animals.
(b) All newly received animals from outside sources shall be isolated and their health status shall be evaluated in accordance with acceptable veterinary medical practice.
(c) At the initiation of a nonclinical laboratory study, animals shall be free of any disease or condition that might interfere with the purpose or conduct of the study. If, during the course of the study, the animals contract such a disease or condition, the diseased animals shall be isolated, if necessary. These animals may be treated for disease or signs of disease provided that such treatment does not interfere with the study. The diagnosis, authorizations of treatment, description of treatment, and each date of treatment shall be documented and shall be retained.
(d) Warm-blooded animals, excluding suckling rodents, used in laboratory procedures that require manipulations and observations over an extended period of time or in studies that require the animals to be removed from and returned to their home cages for any reason (e.g., cage cleaning, treatment, etc.), shall receive appropriate identification. All information needed to specifically identify each animal within an animal-housing unit shall appear on the outside of that unit.
(e) Animals of different species shall be housed in separate rooms when necessary. Animals of the same species, but used in different studies, should not ordinarily be housed in the same room when inadvertent exposure to control or test articles or animal mixup could affect the outcome of either study. If such mixed housing is necessary, adequate differentiation by space and identification shall be made.
(f) Animal cages, racks and accessory equipment shall be cleaned and sanitized at appropriate intervals.
(g) Feed and water used for the animals shall be analyzed periodically to ensure that contaminants known to be capable of interfering with the study and reasonably expected to be present in such feed or water are not present at levels above those specified in the protocol. Documentation of such analyses shall be maintained as raw data.
(h) Bedding used in animal cages or pens shall not interfere with the purpose or conduct of the study and shall be changed as often as necessary to keep the animals dry and clean.
(i) If any pest control materials are used, the use shall be documented. Cleaning and pest control materials that interfere with the study shall not be used.

Subpart F—Test and Control Articles

§ 58.105 Test and control article characterization.

(a) The identity, strength, purity, and composition or other characteristics which will appropriately define the test or control article shall be determined for each batch and shall be documented. Methods of synthesis, fabrication, or derivation of the test and control articles shall be documented by the sponsor or the testing facility. In those cases where marketed products are used as control articles, such products will be characterized by their labeling.

(b) The stability of each test or control article shall be determined by the testing facility or by the sponsor either: (1) Before study initiation, or (2) concomitantly according to written standard operating procedures, which provide for periodic analysis of each batch.

(c) Each storage container for a test or control article shall be labeled by name, chemical abstract number or code number, batch number, expiration date, if any, and, where appropriate, storage conditions necessary to maintain the identity, strength, purity, and composition of the test or control article. Storage containers shall be assigned to a particular test article for the duration of the study.

(d) For studies of more than 4 weeks’ duration, reserve samples from each batch of test and control articles shall be retained for the period of time provided by § 58.195.

§ 58.107 Test and control article handling.

(a) There shall be proper storage.

(b) Distribution is made in a manner designed to preclude the possibility of contamination, deterioration, or damage.

(c) Proper identification is maintained throughout the distribution process.

(d) The receipt and distribution of each batch is documented. Such documentation shall include the date and quantity of each batch distributed or returned.

§ 58.113 Mixtures of articles with carriers.

(a) For each test or control article that is mixed with a carrier, tests by appropriate analytical methods shall be conducted:

1. To determine the uniformity of the mixture and to determine, periodically, the concentration of the test or control article in the mixture.

2. To determine the stability of the test and control articles in the mixture as required by the conditions of the study either:

   i. Before study initiation, or

   ii. Concomitantly according to written standard operating procedures which provide for periodic analysis of the test and control articles in the mixture.

(b) [Reserved]

(c) Where any of the components of the test or control article carrier mixture has an expiration date, that date shall be clearly shown on the container. If more than one component has an expiration date, the earliest date shall be shown.


Subpart G—Protocol for and Conduct of a Nonclinical Laboratory Study

§ 58.120 Protocol.

(a) Each study shall have an approved written protocol that clearly indicates the objectives and all methods for the conduct of the study. The protocol shall contain, as applicable, the following information:

1. A descriptive title and statement of the purpose of the study.

2. Identification of the test and control articles by name, chemical abstract number, or code number.

3. The name of the sponsor and the name and address of the testing facility at which the study is being conducted.
(4) The number, body weight range, sex, source of supply, species, strain, substrain, and age of the test system.
(5) The procedure for identification of the test system.
(6) A description of the experimental design, including the methods for the control of bias.
(7) A description and/or identification of the diet used in the study as well as solvents, emulsifiers, and/or other materials used to solubilize or suspend the test or control articles before mixing with the carrier. The description shall include specifications for acceptable levels of contaminants that are reasonably expected to be present in the dietary materials and are known to be capable of interfering with the purpose or conduct of the study if present at levels greater than established by the specifications.
(8) Each dosage level, expressed in milligrams per kilogram of body weight or other appropriate units, of the test or control article to be administered and the method and frequency of administration.
(9) The type and frequency of tests, analyses, and measurements to be made.
(10) The records to be maintained.
(11) The date of approval of the protocol by the sponsor and the dated signature of the study director.
(12) A statement of the proposed statistical methods to be used.
(b) All changes in or revisions of an approved protocol and the reasons therefore shall be documented, signed by the study director, dated, and maintained with the protocol.

§58.185 Reporting of nonclinical laboratory study results.

(a) A final report shall be prepared for each nonclinical laboratory study and shall include, but not necessarily be limited to, the following:
(1) Name and address of the facility performing the study and the dates on which the study was initiated and completed.
(2) Objectives and procedures stated in the approved protocol, including any changes in the original protocol.
(3) Statistical methods employed for analyzing the data.
(4) The test and control articles identified by name, chemical abstracts number or code number, strength, purity, and composition or other appropriate characteristics.
(5) Stability of the test and control articles under the conditions of administration.

(6) A description of the methods used.

(7) A description of the test system used. Where applicable, the final report shall include the number of animals used, sex, body weight range, source of supply, species, strain and substrain, age, and procedure used for identification.

(8) A description of the dosage, dosage regimen, route of administration, and duration.

(9) A description of all circumstances that may have affected the quality or integrity of the data.

(10) The name of the study director, the names of other scientists or professionals, and the names of all supervisory personnel, involved in the study.

(11) A description of the transformations, calculations, or operations performed on the data, a summary and analysis of the data, and a statement of the conclusions drawn from the analysis.

(12) The signed and dated reports of each of the individual scientists or other professionals involved in the study.

(13) The locations where all specimens, raw data, and the final report are to be stored.

(14) The statement prepared and signed by the quality assurance unit as described in §58.35(b)(7).

(b) The final report shall be signed and dated by the study director.

(c) Corrections or additions to a final report shall be in the form of an amendment by the study director. The amendment shall clearly identify that part of the final report that is being added to or corrected and the reasons for the correction or addition, and shall be signed and dated by the person responsible.


§ 58.195 Retention of records.

(a) Record retention requirements set forth in this section do not supersede the record retention requirements of any other regulations in this chapter.

(b) Except as provided in paragraph (c) of this section, documentation records, raw data and specimens pertaining to a nonclinical laboratory study and required to be made by this part shall be retained in the archive(s) for whichever of the following periods is shortest:

(1) A period of at least 2 years following the date on which an application for a research or marketing permit, in support of which the results of the nonclinical laboratory study were submitted, is approved by the Food and Drug Administration. This requirement does not apply to studies supporting investigational new drug applications (IND’s) or applications for investigational device exemptions (IDE’s), records of which shall be governed by the provisions of paragraph (b)(2) of this section.

(2) A period of at least 5 years following the date on which the results of
§ 58.200 Purpose.

(a) The purposes of disqualification are:

(1) To permit the exclusion from consideration of completed studies that were conducted by a testing facility which has failed to comply with the requirements of the good laboratory practice regulations until it can be adequately demonstrated that such noncompliance did not occur during, or did not affect the validity or acceptability of data generated by, a particular study; and

(2) To exclude from consideration all studies completed after the date of disqualification until the facility can satisfy the Commissioner that it will conduct studies in compliance with such regulations.

(b) The determination that a nonclinical laboratory study may not be considered in support of an application for a research or marketing permit does not, however, relieve the applicant for such a permit of any obligation under any other applicable regulation to submit the results of the study to the Food and Drug Administration.

§ 58.202 Grounds for disqualification.

The Commissioner may disqualify a testing facility upon finding all of the following:

(a) The testing facility failed to comply with one or more of the regulations set forth in this part (or any other regulations regarding such facilities in this chapter);

(b) The noncompliance adversely affected the validity of the nonclinical laboratory studies; and

(c) Other lesser regulatory actions (e.g., warnings or rejection of individual studies) have not been or will probably not be adequate to achieve compliance with the good laboratory practice regulations.
§ 58.204 Notice of and opportunity for hearing on proposed disqualification.

(a) Whenever the Commissioner has information indicating that grounds exist under § 58.202 which in his opinion justify disqualification of a testing facility, he may issue to the testing facility a written notice proposing that the facility be disqualified.

(b) A hearing on the disqualification shall be conducted in accordance with the requirements for a regulatory hearing set forth in part 16 of this chapter.

§ 58.206 Final order on disqualification.

(a) If the Commissioner, after the regulatory hearing, or after the time for requesting a hearing expires without a request being made, upon an evaluation of the administrative record of the disqualification proceeding, makes the findings required in § 58.202, he shall issue a final order disqualifying the facility. Such order shall include a statement of the basis for that determination. Upon issuing a final order, the Commissioner shall notify (with a copy of the order) the testing facility of the action.

(b) If the Commissioner, after a regulatory hearing or after the time for requesting a hearing expires without a request being made, upon an evaluation of the administrative record of the disqualification proceeding, does not make the findings required in § 58.202, he shall issue a final order terminating the disqualification proceeding. Such order shall include a statement of the basis for that determination. Upon issuing a final order the Commissioner shall notify (with a copy of the order) the testing facility of the action.

§ 58.210 Actions upon disqualification.

(a) Once a testing facility has been disqualified, each application for a research or marketing permit, whether approved or not, containing or relying upon any nonclinical laboratory study conducted by the disqualified testing facility may be examined to determine whether such study was or would be essential to a decision. If it is determined that a study was or would be essential, the Food and Drug Administration shall also determine whether the study is acceptable, notwithstanding the disqualification of the facility. Any study done by a testing facility before or after disqualification may be presumed to be unacceptable, and the person relying on the study may be required to establish that the study was not affected by the circumstances that led to the disqualification, e.g., by submitting validating information. If the study is then determined to be unacceptable, such data will be eliminated from consideration in support of the application; and such elimination may serve as new information justifying the termination or withdrawal of approval of the application.

(b) No nonclinical laboratory study begun by a testing facility after the date of the facility’s disqualification shall be considered in support of any application for a research or marketing permit, unless the facility has been reinstated under § 58.219. The determination that a study may not be considered in support of an application for a research or marketing permit does not, however, relieve the applicant for such a permit of any obligation under any other applicable regulation to submit the results of the study to the Food and Drug Administration.


§ 58.213 Public disclosure of information regarding disqualification.

(a) Upon issuance of a final order disqualifying a testing facility under § 58.206(a), the Commissioner may notify all or any interested persons. Such notice may be given at the discretion of the Commissioner whenever he believes that such disclosure would further the public interest or would promote compliance with the good laboratory practice regulations set forth in this part. Such notice, if given, shall include a copy of the final order issued under § 58.206(a) and shall state that the disqualification constitutes a determination by the Food and Drug Administration that nonclinical laboratory studies performed by the facility will not be considered by the Food and Drug Administration in support of any application for a research or marketing permit. If such notice is sent to another Federal Government agency, the
§ 58.215 Alternative or additional actions to disqualification.

(a) Disqualification of a testing facility under this subpart is independent of, and neither in lieu of nor a precondition to, other proceedings or actions authorized by the act. The Food and Drug Administration may, at any time, institute against a testing facility and/or against the sponsor of a nonclinical laboratory study that has been submitted to the Food and Drug Administration any appropriate judicial proceedings (civil or criminal) and any other appropriate regulatory action, in addition to or in lieu of, and prior to, simultaneously with, or subsequent to, disqualification. The Food and Drug Administration may also refer the matter to another Federal, State, or local government law enforcement or regulatory agency for such action as that agency deems appropriate.

(b) The Food and Drug Administration may refuse to consider any particular nonclinical laboratory study in support of an application for a research or marketing permit, if it finds that the study was not conducted in accordance with the good laboratory practice regulations set forth in this part and, without disqualifying the testing facility that conducted the study or undertaking other regulatory action.

§ 58.217 Suspension or termination of a testing facility by a sponsor.

Termination of a testing facility by a sponsor is independent of, and neither in lieu of nor a precondition to, proceedings or actions authorized by this subpart. If a sponsor terminates or suspends a testing facility from further participation in a nonclinical laboratory study that is being conducted as part of any application for a research or marketing permit that has been submitted to any Center of the Food and Drug Administration (whether approved or not), it shall notify that Center in writing within 15 working days of the action; the notice shall include a statement of the reasons for such action. Suspension or termination of a testing facility by a sponsor does not relieve it of any obligation under any other applicable regulation to submit the results of the study to the Food and Drug Administration.


§ 58.219 Reinstatement of a disqualified testing facility.

A testing facility that has been disqualified may be reinstated as an acceptable source of nonclinical laboratory studies to be submitted to the Food and Drug Administration if the Commissioner determines, upon an evaluation of the submission of the testing facility, that the facility can adequately assure that it will conduct future nonclinical laboratory studies in compliance with the good laboratory practice regulations set forth in this part and, if any studies are currently being conducted, that the quality and integrity of such studies have not been seriously compromised. A disqualified testing facility that wishes to be so reinstated shall present in writing to the Commissioner reasons why it believes it should be reinstated and a detailed description of the corrective actions it has taken or intends to take to assure that the acts or omissions which led to its disqualification will not recur. The Commissioner may condition reinstatement upon the testing facility being found in compliance with the good laboratory practice regulations upon an inspection. If a testing facility is reinstated, the Commissioner shall notify the testing facility and all organizations and persons who were notified, under §58.213 of the disqualification of the testing facility. A determination that a testing facility has
PART 60—PATENT TERM RESTORATION

Subpart A—General Provisions

§ 60.1 Scope.

(a) This part sets forth procedures and requirements for the Food and Drug Administration’s review of applications for the extension of the term of certain patents under 35 U.S.C. 156. Patent term restoration is available for certain patents related to drug products (as defined in 35 U.S.C. 156(f)(2)), and to medical devices, food additives, or color additives subject to regulation under the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act. Food and Drug Administration actions in this area include:

(1) Assisting the United States Patent and Trademark Office in determining eligibility for patent term restoration;

(2) Determining the length of a product’s regulatory review period;

(3) If petitioned, reviewing and ruling on due diligence challenges to the Food and Drug Administration’s regulatory review period determinations; and

(4) Conducting hearings to review initial Food and Drug Administration findings on due diligence challenges.

(b) References in this part to the Code of Federal Regulations are to chapter I of title 21, unless otherwise noted.

§ 60.2 Purpose.

(a) The purpose of this part is to establish a thorough yet efficient process for the Food and Drug Administration review of patent term restoration applications. To achieve this purpose, the regulations are intended to:

(1) Facilitate determinations of patent term restoration eligibility and regulatory review period length, and

(2) Ensure that parties interested in due diligence challenges will have an opportunity to participate in that process, including informal hearings.

(b) The regulations are intended to complement those promulgated by the United States Patent and Trademark Office to implement those parts of the law which are under that agency’s jurisdiction. These regulations shall be construed in light of these objectives.

§ 60.3 Definitions.

(a) The definitions contained in 35 U.S.C. 156 apply to those terms when used in this part.

(b) The following definitions of terms apply to this part: