

Subpart C—Safety Evaluation

§ 70.40 Safety factors to be considered.

In accordance with section 721(b)(5)(A)(iii) of the act, the following safety factor will be applied in determining whether the proposed use of a color additive will be safe: Except where evidence is submitted which justifies use of a different safety factor, a safety factor of 100 to 1 will be used in applying animal experimentation data to man; that is, a color additive for use by man will not be granted a tolerance that will exceed 1/100th of the maximum no-effect level for the most susceptible experimental animals tested. The various species of experimental animals used in the tests shall conform to good pharmacological practice.

§ 70.42 Criteria for evaluating the safety of color additives.

(a) In deciding whether a petition is complete and suitable for filing and in reaching a decision on any petition filed, the Commissioner will apply the “safe-for-use” principle. This will require the presentation of all needed scientific data in support of a proposed listing to assure that each listed color additive will be safe for its intended use or uses in or on food, drugs, or cosmetics. The Commissioner may list a color additive for use generally in or on food, in or on drugs, or in or on cosmetics when he finds from the data presented that such additive is suitable and may safely be employed for such general use; he may list an additive only for more limited use or uses for which it is proven suitable and may safely be employed; and he is authorized to prescribe broadly the conditions under which the additive may be safely employed for such use or uses. This may allow the use of a particular dye, pigment, or other substance with certain diluents, but not with others, or at a higher concentration with some than with others.

(b) The safety for external color additives will normally be determined by tests for acute oral toxicity, primary irritation, sensitization, subacute dermal toxicity on intact and abraded skin, and carcinogenicity by skin application. The Commissioner may waive any of such tests if data before

him otherwise establish that such test is not required to determine safety for the use proposed.

(c) Upon written request describing the proposed use of a color additive and the proposed experiments to determine its safety, the Commissioner will advise a person who wishes to establish the safety of a color additive whether he believes the experiments planned will yield data adequate for an evaluation of the safety of the additive.

§ 70.45 Allocation of color additives.

Whenever, in the consideration of a petition or a proposal to list a color additive or to alter an existing listing, the data before the Commissioner fail to show that it would be safe to list the color additive for all the uses proposed or at the levels proposed, the Commissioner will notify the petitioner and other interested persons by publication in the FEDERAL REGISTER that it is necessary to allocate the safe tolerance for the straight color in the color additive among the competing needs. This notice shall call for the presentation of data by all interested persons on which the allocation can be made in accordance with section 721(b)(8) of the act. The time for acting upon the petition shall be stayed until such data are presented, whereupon the time limits shall begin to run anew. As promptly as possible after presentation of the data, the Commissioner will, by order, announce the allocation and the tolerance limitations.

§ 70.50 Application of the cancer clause of section 721 of the act.

(a) *Color additives that may be ingested.* Whenever (1) the scientific data before the Commissioner (either the reports from the scientific literature or the results of biological testing) suggest the possibility that the color additive including its components or impurities has induced cancer when ingested by man or animal; or (2) tests which are appropriate for the evaluation of the safety of additives in food suggest that the color additive, including its components or impurities, induces cancer in man or animal, the Commissioner shall determine whether, based on the judgment of appropriately qualified scientists, cancer has been induced and