

§ 70.20

costs of preparing a transcript of the record on which the order is based.

(p) All deposits and fees required by the regulations in this section shall be paid by money order, bank draft or certified check drawn to the order of the Food and Drug Administration, collectable at par at Washington, DC. All deposits and fees shall be forwarded to the Center for Food Safety and Applied Nutrition (HFS-200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, whereupon after making appropriate record thereof they will be transmitted to the Treasurer of the United States for deposit in the special account "Salaries and Expenses, Certification, Inspection, and Other Services, Food and Drug Administration."

(q) The Commissioner of Food and Drugs may waive or refund such fees in whole or in part when in his judgment such action will promote the public interest.

(r) Any person who believes that payment of these fees will work a hardship on him may petition the Commissioner of Food and Drugs to waive or refund the fees.

[42 FR 15636, Mar. 22, 1977, as amended at 54 FR 24890, June 12, 1989; 61 FR 14478, Apr. 2, 1996; 66 FR 56035, Nov. 6, 2001]

Subpart B—Packaging and Labeling

§ 70.20 Packaging requirements for straight colors (other than hair dyes).

Straight colors shall be packaged in containers which prevent changes in composition. Packages shall be sealed so that they cannot be opened without breaking the seal. An unavoidable change in moisture content caused by the ordinary and customary exposure that occurs in good storage, packing, and distribution practice is not considered a change in composition. If the packaging material is a food additive it shall be authorized by an appropriate regulation in parts 170 through 189 of this chapter.

21 CFR Ch. I (4–1–04 Edition)

§ 70.25 Labeling requirements for color additives (other than hair dyes).

(a) *General labeling requirements.* All color additives shall be labeled with sufficient information to assure their safe use and to allow a determination of compliance with any limitations imposed by this part and parts 71, 73, 74, 80, and 81 of this chapter. In addition to all other information required by the act, labels for color additives, except those in a form suitable for coloring the human body, shall state:

(1) The name of the straight color or the name of each ingredient comprising the color additive, if it is a mixture.

(2) A statement indicating general limitations for the use of the color additive, such as "for food use only"; "for food, drug, and cosmetic use"; "for use in drugs for external application only."

(3) Where regulations issued impose quantitative limitations for a general or specific use of a straight color, the amount of each such straight color in terms of weight per unit/volume or percent by weight.

(4) An expiration date if stability data require it.

(b) *Special labeling for color additives with tolerances.* Where tolerances are imposed for a general or specific use of a color additive, the label shall in addition provide directions for use of the color additive which if followed will preclude the food, drug, or cosmetic to which it is added from containing an amount of the color additive in excess of the tolerance.

(c) *Special labeling for color additives with other limitations.* If use of the color additive is subject to other limitations prescribed in this part, such limitations shall be stated on the label of the color additive by a plain and conspicuous statement. Examples of such limitation statements are: "Do not use in products used in the area of the eye"; "Do not use for coloring drugs for injection."

(d) *Special labeling for color additives not exempt from certification.* Color additives not exempt from the certification procedures shall in addition include in the labeling the lot number assigned by the Color Certification Branch, except that in the case of any mixture for

household use which contains not more than 15 percent of pure color and which is in packages containing not more than 3 ounces there appears on the label, a code number which the manufacturer has identified with the lot number by giving to the Food and Drug Administration written notice that such code number will be used in lieu of the lot number.

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 cer-

tain 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