

## § 80.34

### § 80.34 Authority to refuse certification service.

(a) When it appears to the Commissioner that a person has:

(1) Obtained, or attempted to obtain, a certificate through fraud or misrepresentation of a material fact.

(2) Falsified the records required to be kept by § 80.39; or

(3) Failed to keep such records, or to make them available, or to accord full opportunity to make inventory of stocks on hand or otherwise to check the correctness of such records, as required by § 80.39; or

(4) Refused to permit duly authorized employees of the Food and Drug Administration free access to all manufacturing facilities, processes, and formulae involved in the manufacture of color additives and intermediates from which such color additives are derived; he may immediately suspend certification service to such person and may continue such suspension until adequate corrective action has been taken.

(b) Any person who contests suspension of service shall have an opportunity for a regulatory hearing before the Food and Drug Administration pursuant to part 16 of this chapter.

### § 80.35 Color additive mixtures; certification and exemption from certification.

(a) *Color additive mixtures to be certified.* Any color additive mixture that contains one or more straight colors listed in part 74 of this chapter, together with any diluents listed in such subparts for use with such straight colors, shall be certified if intended for use in foods, drugs, or cosmetics, or in coloring the human body, as the case may be, subject to any restriction prescribed in parts 70 and 71 of this chapter.

(b) *Color additive mixtures exempted from certification.* A color additive mixture prepared from a previously certified batch of one or more straight colors, with or without any diluent that has been listed in part 73 of this chapter for use in mixtures, shall be exempt from batch certification if the straight color used has not changed in composition in any manner whatsoever since its certification and if it is simply mixed with the approved diluents

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for exempt mixtures. The label of such color additive mixtures shall not bear the lot number assigned by the Food and Drug Administration to the certified straight color components, but shall bear the manufacturer's control number through which the history of the straight color can be determined.

(c) *Additions to the list of diluents.* A person requesting additions to the list of diluents authorized for the purposes described in paragraphs (a) and (b) of this section shall submit a petition in accordance with the provisions of § 71.1 of this chapter. Each such petition shall be accompanied by the fee prescribed in § 70.19 of this chapter, unless there is an advance deposit to be used for prepayment of such fees.

NOTE: The provisions of § 80.35 with respect only to diluents for use in cosmetic color additive mixtures were stayed, until a regulation is effected listing safe diluents for cosmetic use, including cosmetics which color the human body, 29 FR 18495, Dec. 29, 1964.

### § 80.37 Treatment of batch pending certification.

Immediately after the sample that is to accompany a request for certification of a batch of color additive is taken, the batch shall be:

(a) Stored in containers of such kind as to prevent change in composition.

(b) Held under the control of the person requesting certification until certified.

(c) Marked, by labeling or otherwise, in a manner such that there can be no question as to the identity of the batch and no question that it is not to be used until the requested certificate has been issued.

### § 80.38 Treatment of batch after certification.

(a) Immediately upon notification that a batch of color additive has been certified, the person requesting certification thereof shall identify such batch, by labeling, with the certified lot number.

(b) The person requesting certification shall maintain storage in such manner as to prevent change in composition until such batch has been packaged and labeled as required by §§ 70.20 and 70.25 of this chapter, except