

which the GRAS status of the substance was affirmed. If the conditions of use are significantly different, such use of the substance may not be GRAS. In such a case a manufacturer may not rely on the regulation as authorizing the use but must independently establish that the use is GRAS or must use the substance in accordance with a food additive regulation.

(j) If an ingredient is affirmed as GRAS in part 184 or §186.1 of this chapter with specific limitation(s), it may be used in food only within such limitation(s) (including the category of food(s), the functional use(s) of the ingredient, and the level(s) of use). Any use of such an ingredient not in full compliance with each such established limitation shall require a food additive regulation.

(k) Pursuant to §170.35, a food ingredient may be affirmed as GRAS in part 184 or §186.1 of this chapter for a specific use(s) without a general evaluation of use of the ingredient. In addition to the use(s) specified in the regulation, other uses of such an ingredient may also be GRAS. Any affirmation of GRAS status for a specific use(s), without a general evaluation of use of the ingredient, is subject to reconsideration upon such evaluation.

(l) New information may at any time require reconsideration of the GRAS status of a food ingredient. Any change in part 182, part 184, or §186.1 of this chapter shall be accomplished pursuant to §170.38.

[42 FR 14483, Mar. 15, 1977, as amended at 49 FR 5610, Feb. 14, 1984; 53 FR 16546, May 10, 1988]

**§ 170.35 Affirmation of generally recognized as safe (GRAS) status.**

(a) The Commissioner, either on his initiative or on the petition of an interested person, may affirm the GRAS status of substances that directly or indirectly become components of food.

(b)(1) If the Commissioner proposes on his own initiative that a substance is entitled to affirmation as GRAS, he will place all of the data and information on which he relies on public file in the office of the Division of Dockets Management and will publish in the FEDERAL REGISTER a notice giving the name of the substance, its proposed

uses, and any limitations proposed for purposes other than safety.

(2) The FEDERAL REGISTER notice will allow a period of 60 days during which any interested person may review the data and information and/or file comments with the Division of Dockets Management. Copies of all comments received shall be made available for examination in the Division of Dockets Management's office.

(3) The Commissioner will evaluate all comments received. If he concludes that there is convincing evidence that the substance is GRAS as described in §170.30, he will publish a notice in the FEDERAL REGISTER listing the substance as GRAS in part 182, part 184, or part 186 of this chapter, as appropriate.

(4) If, after evaluation of the comments, the Commissioner concludes that there is a lack of convincing evidence that the substance is GRAS and that it should be considered a food additive subject to section 409 of the Act, he shall publish a notice thereof in the FEDERAL REGISTER in accordance with §170.38.

(c)(1) Persons seeking the affirmation of GRAS status of substances as provided in §170.30(e), except those subject to the NAS/NRC GRAS list survey (36 FR 20546; October 23, 1971), shall submit a petition for GRAS affirmation pursuant to part 10 of this chapter. Such petition shall contain information to establish that the GRAS criteria as set forth in §170.30 (b) or (c) have been met, in the following form:

(i) Description of the substance, including:

- (a) Common or usual name.
  - (b) Chemical name.
  - (c) Chemical Abstract Service (CAS) registry number.
  - (d) Empirical formula.
  - (e) Structural formula.
  - (f) Specifications for food grade material, including arsenic and heavy metals. (Recommendation for any change in the Food Chemicals Codex monograph should be included where applicable.)
  - (g) Quantitative compositions.
  - (h) Manufacturing process (excluding any trade secrets).
- (ii) Use of the substance, including:
- (a) Date when use began.

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(b) Information and reports or other data on past uses in food.

(c) Foods in which used, and levels of use in such foods, and for what purposes.

(iii) Methods for detecting the substance in food, including:

(a) References to qualitative and quantitative methods for determining the substance(s) in food, including the type of analytical procedures used.

(b) Sensitivity and reproducibility of such method(s).

(iv) Information to establish the safety and functionality of the substance in food. Published scientific literature, evidence that the substance is identical to a GRAS counterpart of natural biological origin, and other data may be submitted to support safety. Any adverse information or consumer complaints shall be included. Complete bibliographic references shall be provided where a copy of the article is not provided.

(v) A statement signed by the person responsible for the petition that to the best of his knowledge it is a representative and balanced submission that includes unfavorable information, as well as favorable information, known to him pertinent to the evaluation of the safety and functionality of the substance.

(vi) If nonclinical laboratory studies are involved, additional information and data submitted in support of filed petitions shall include, with respect to each nonclinical study, either a statement that the study was conducted in compliance with the requirements set forth in part 58 of this chapter, or, if the study was not conducted in compliance with such regulations, a brief statement of the reason for the non-compliance.

(vii) [Reserved]

(viii) A claim for categorical exclusion under § 25.30 or § 25.32 of this chapter or an environmental assessment under § 25.40 of this chapter.

(2) Within 30 days after the date of filing the petition, the Commissioner will place the petition on public file in the office of the Division of Dockets Management and will publish a notice of filing in the FEDERAL REGISTER giving the name of the petitioner and a brief description of the petition includ-

ing the name of the substance, its proposed use, and any limitations proposed for reasons other than safety. A copy of the notice will be mailed to the petitioner at the time the original is sent to the FEDERAL REGISTER.

(3)(i) If intended uses of the substance include uses in meat, meat food product, or poultry product subject to regulation by the U.S. Department of Agriculture (USDA) under the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) or Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), FDA shall, upon filing of the petition, forward a copy of the petition or relevant portions thereof to the Food Safety and Inspection Service, USDA, for simultaneous review under the PPIA and FMIA.

(ii) FDA will ask USDA to advise whether the proposed meat and poultry uses comply with the FMIA and PPIA or, if not, whether use of the substance would be permitted in products under USDA jurisdiction under specified conditions or restrictions.

(4) The notice of filing in the FEDERAL REGISTER will allow a period of 60 days during which any interested person may review the petition and/or file comments with the Division of Dockets Management. Copies of all comments received shall be made available for examination in the Division of Dockets Management's office.

(5) The Commissioner will evaluate the petition and all available information including all comments received. If the petition and such information provide convincing evidence that the substance is GRAS as described in § 170.30 he will publish an order in the FEDERAL REGISTER listing the substance as GRAS in part 182, part 184, or part 186 of this chapter, as appropriate.

(6) If, after evaluation of the petition and all available information, the Commissioner concludes that there is a lack of convincing evidence that the substance is GRAS and that it should be considered a food additive subject to section 409 of the Act, he shall publish a notice thereof in the FEDERAL REGISTER in accordance with § 170.38.

(7) The notice of filing in the FEDERAL REGISTER will request submission of proof of any applicable prior sanction for use of the ingredient under

conditions different from those proposed to be determined to be GRAS. The failure of any person to come forward with proof of such an applicable prior sanction in response to the notice of filing will constitute a waiver of the right to assert or rely on such sanction at any later time. The notice of filing will also constitute a proposal to establish a regulation under part 181 of this chapter, incorporating the same provisions, in the event that such a regulation is determined to be appropriate as a result of submission of proof of such an applicable prior sanction in response to the notice of filing.

(Information collection requirements were approved by the Office of Management and Budget under control number 0910-0132)

[42 FR 14488, Mar. 15, 1977, as amended at 50 FR 7492, Feb. 22, 1985; 50 FR 16668, Apr. 26, 1985; 53 FR 16547, May 10, 1988; 62 FR 40599, July 29, 1997; 65 FR 51762, Aug. 25, 2000]

**§ 170.38 Determination of food additive status.**

(a) The Commissioner may, in accordance with § 170.35(b)(4) or (c)(5), publish a notice in the FEDERAL REGISTER determining that a substance is not GRAS and is a food additive subject to section 409 of the Act.

(b)(1) The Commissioner, on his own initiative or on the petition of any interested person, pursuant to part 10 of this chapter, may issue a notice in the FEDERAL REGISTER proposing to determine that a substance is not GRAS and is a food additive subject to section 409 of the Act. Any petition shall include all relevant data and information of the type described in § 171.130(b). The Commissioner will place all of the data and information on which he relies on public file in the office of the Division of Dockets Management and will include in the FEDERAL REGISTER notice the name of the substance, its known uses, and a summary of the basis for the determination.

(2) The FEDERAL REGISTER notice will allow a period of 60 days during which any interested person may review the data and information and/or file comments with the Division of Dockets Management. Copies of all comments shall be made available for examination in the Division of Dockets Management's office.

(3) The Commissioner will evaluate all comments received. If he concludes that there is a lack of convincing evidence that the substance is GRAS or is otherwise exempt from the definition of a food additive in section 201(s) of the Act, he will publish a notice thereof in the FEDERAL REGISTER. If he concludes that there is convincing evidence that the substance is GRAS, he will publish an order in the FEDERAL REGISTER listing the substance as GRAS in part 182, part 184, or part 186 of this chapter, as appropriate.

(c) A FEDERAL REGISTER notice determining that a substance is a food additive shall provide for the use of the additive in food or food contact surfaces as follows:

(1) It may promulgate a food additive regulation governing use of the additive.

(2) It may promulgate an interim food additive regulation governing use of the additive.

(3) It may require discontinuation of the use of the additive.

(4) It may adopt any combination of the above three approaches for different uses or levels of use of the additive.

(d) If the Commissioner of Food and Drugs is aware of any prior sanction for use of the substance, he will concurrently propose a separate regulation covering such use of the ingredient under part 181 of this chapter. If the Commissioner is unaware of any such applicable prior sanction, the proposed regulation will so state and will require any person who intends to assert or rely on such sanction to submit proof of its existence. Any regulation promulgated pursuant to this section constitutes a determination that excluded uses would result in adulteration of the food in violation of section 402 of the Act, and the failure of any person to come forward with proof of such an applicable prior sanction in response to the proposal will constitute a waiver of the right to assert or rely on such sanction at any later time. The notice will also constitute a proposal to establish a regulation under part 181 of this chapter, incorporating the same provisions, in the event that such a regulation is determined to be appropriate as a result of submission of proof