

**(3) Disclosure of waiver**

Notwithstanding section 107(a)(2) of the Ethics in Government Act (5 U.S.C. App.), the following shall apply:

**(A) 15 or more days in advance**

As soon as practicable, but (except as provided in subparagraph (B)) not later than 15 days prior to a meeting of an advisory committee to which a written determination as referred to in section 208(b)(1) of title 18, a written certification as referred to in section 208(b)(3) of title 18, or a waiver as referred to in paragraph (2)(B) applies, the Secretary shall disclose (other than information exempted from disclosure under section 552 of title 5 and section 552a of title 5 (popularly known as the Freedom of Information Act and the Privacy Act of 1974, respectively)) on the Internet Web site of the Food and Drug Administration—

(i) the type, nature, and magnitude of the financial interests of the advisory committee member to which such determination, certification, or waiver applies; and

(ii) the reasons of the Secretary for such determination, certification, or waiver.

**(B) Less than 30 days in advance**

In the case of a financial interest that becomes known to the Secretary less than 30 days prior to a meeting of an advisory committee to which a written determination as referred to in section 208(b)(1) of title 18, a written certification as referred to in section 208(b)(3) of title 18, or a waiver as referred to in paragraph (2)(B) applies, the Secretary shall disclose (other than information exempted from disclosure under section 552 of title 5 and section 552a of title 5) on the Internet Web site of the Food and Drug Administration, the information described in clauses (i) and (ii) of subparagraph (A) as soon as practicable after the Secretary makes such determination, certification, or waiver, but in no case later than the date of such meeting.

**(d) Public record**

The Secretary shall ensure that the public record and transcript of each meeting of an advisory committee includes the disclosure required under subsection (c)(3) (other than information exempted from disclosure under section 552 of title 5 and section 552a of title 5).

**(e) Annual report**

Not later than February 1 of each year, the Secretary shall submit to the Committee on Appropriations and the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Appropriations and the Committee on Energy and Commerce of the House of Representatives a report that describes—

(1) with respect to the fiscal year that ended on September 30 of the previous year, the number of vacancies on each advisory committee, the number of nominees received for each committee, and the number of such nominees willing to serve;

(2) with respect to such year, the aggregate number of disclosures required under sub-

section (c)(3) for each meeting of each advisory committee and the percentage of individuals to whom such disclosures did not apply who served on such committee for each such meeting;

(3) with respect to such year, the number of times the disclosures required under subsection (c)(3) occurred under subparagraph (B) of such subsection; and

(4) how the Secretary plans to reduce the number of vacancies reported under paragraph (1) during the fiscal year following such year, and mechanisms to encourage the nomination of individuals for service on an advisory committee, including those who are classified by the Food and Drug Administration as academicians or practitioners.

**(f) Periodic review of guidance**

Not less than once every 5 years, the Secretary shall review guidance of the Food and Drug Administration regarding conflict of interest waiver determinations with respect to advisory committees and update such guidance as necessary.

(June 25, 1938, ch. 675, §712, as added Pub. L. 110-85, title VII, §701(a), Sept. 27, 2007, 121 Stat. 900.)

## REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (a)(1), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Ethics in Government Act of 1978, referred to in subsecs. (b)(2) and (c)(3), is Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95-521 in the Appendix to Title 5, Government Organization and Employees, and Tables.

The Privacy Act of 1974, referred to in subsec. (c)(3)(A), is Pub. L. 93-579, Dec. 31, 1974, 88 Stat. 1896, which enacted section 552a of Title 5, Government Organization and Employees, and provisions set out as notes under section 552a of Title 5. For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 552a of Title 5 and Tables.

## PRIOR PROVISIONS

A prior section 712 of act June 25, 1938, was renumbered section 711 by Pub. L. 102-571 and is classified to section 379d of this title.

## EFFECTIVE DATE

Section effective Oct. 1, 2007, see section 701(c) of Pub. L. 110-85, set out as an Effective Date of 2007 Amendment note under section 355 of this title.

**§ 379d-2. Policy on the review and clearance of scientific articles published by FDA employees****(a) Definition**

In this section, the term “article” means a paper, poster, abstract, book, book chapter, or other published writing.

**(b) Policies**

The Secretary, through the Commissioner of Food and Drugs, shall establish and make publicly available clear written policies to implement this section and govern the timely submission, review, clearance, and disclaimer requirements for articles.

**(c) Timing of submission for review**

If an officer or employee, including a Staff Fellow and a contractor who performs staff work, of the Food and Drug Administration is directed by the policies established under subsection (b) to submit an article to the supervisor of such officer or employee, or to some other official of the Food and Drug Administration, for review and clearance before such officer or employee may seek to publish or present such an article at a conference, such officer or employee shall submit such article for such review and clearance not less than 30 days before submitting the article for publication or presentation.

**(d) Timing for review and clearance**

The supervisor or other reviewing official shall review such article and provide written clearance, or written clearance on the condition of specified changes being made, to such officer or employee not later than 30 days after such officer or employee submitted such article for review.

**(e) Non-timely review**

If, 31 days after such submission under subsection (c), the supervisor or other reviewing official has not cleared or has not reviewed such article and provided written clearance, such officer or employee may consider such article not to have been cleared and may submit the article for publication or presentation with an appropriate disclaimer as specified in the policies established under subsection (b).

**(f) Effect**

Nothing in this section shall be construed as affecting any restrictions on such publication or presentation provided by other provisions of law.

(June 25, 1938, ch. 675, §713, as added Pub. L. 110-85, title XI, §1101, Sept. 27, 2007, 121 Stat. 971.)

## PART B—COLORS

**§ 379e. Listing and certification of color additives for foods, drugs, devices, and cosmetics****(a) Unsafe color additives**

A color additive shall, with respect to any particular use (for which it is being used or intended to be used or is represented as suitable) in or on food or drugs or devices or cosmetics, be deemed unsafe for the purposes of the application of section 342(c), 351(a)(4), or 361(e) of this title, as the case may be, unless—

(1)(A) there is in effect, and such additive and such use are in conformity with, a regulation issued under subsection (b) of this section listing such additive for such use, including any provision of such regulation prescribing the conditions under which such additive may be safely used, and (B) such additive either (i) is from a batch certified, in accordance with regulations issued pursuant to subsection (c) of this section, for such use, or (ii) has, with respect to such use, been exempted by the Secretary from the requirement of certification; or

(2) such additive and such use thereof conform to the terms of an exemption which is in

effect pursuant to subsection (f) of this section.

While there are in effect regulations under subsections (b) and (c) of this section relating to a color additive or an exemption pursuant to subsection (f) of this section with respect to such additive, an article shall not, by reason of bearing or containing such additive in all respects in accordance with such regulations or such exemption, be considered adulterated within the meaning of clause (1) of section 342(a) of this title if such article is a food, or within the meaning of section 361(a) of this title if such article is a cosmetic other than a hair dye (as defined in the last sentence of section 361(a) of this title). A color additive for use in or on a device shall be subject to this section only if the color additive comes in direct contact with the body of man or other animals for a significant period of time. The Secretary may by regulation designate the uses of color additives in or on devices which are subject to this section.

**(b) Listing of colors; regulations; issuance, amendment or repeal; referral to advisory committee; report and recommendations; appointment and compensation of advisory committee**

(1) The Secretary shall, by regulation, provide for separately listing color additives for use in or on food, color additives for use in or on drugs, or devices, and color additives for use in or on cosmetics, if and to the extent that such additives are suitable and safe for any such use when employed in accordance with such regulations.

(2)(A) Such regulations may list any color additive for use generally in or on food, or in or on drugs or devices, or in or on cosmetics, if the Secretary finds that such additive is suitable and may safely be employed for such general use.

(B) If the data before the Secretary do not establish that the additive satisfies the requirements for listing such additive on the applicable list pursuant to subparagraph (A) of this paragraph, or if the proposal is for listing such additive for a more limited use or uses, such regulations may list such additive only for any more limited use or uses for which it is suitable and may safely be employed.

(3) Such regulations shall, to the extent deemed necessary by the Secretary to assure the safety of the use or uses for which a particular color additive is listed, prescribe the conditions under which such additive may be safely employed for such use or uses (including, but not limited to, specifications, hereafter in this section referred to as tolerance limitations, as to the maximum quantity or quantities which may be used or permitted to remain in or on the article or articles in or on which it is used; specifications as to the manner in which such additive may be added to or used in or on such article or articles; and directions or other labeling or packaging requirements for such additive).

(4) The Secretary shall not list a color additive under this section for a proposed use unless the data before him establish that such use, under the conditions of use specified in the regulations, will be safe: *Provided, however,* That a color additive shall be deemed to be suitable and