# PART 509—UNAVOIDABLE CONTAMINANTS IN ANIMAL FOOD AND FOOD-PACKAGING MATERIAL

## Subpart A—General Provisions



## Subpart B—Tolerances for Unavoidable Poisonous or Deleterious Substances



## Subpart C—Regulatory Limits for Added Poisonous or Deleterious Substances [Reserved]

## Subpart D—Naturally Occurring Poisonous or Deleterious Substances [Reserved]

AUTHORITY: 21 U.S.C. 336, 342, 346, 346a, 348, 371.

SOURCE: 42 FR 52821, Sept. 30, 1977, unless otherwise noted.

## Subpart A—General Provisions

### § 509.3 Definitions and interpretations.

(a) *Act* means the Federal Food, Drug, and Cosmetic Act.

(b) The definitions of terms contained in section 201 of the act are applicable to such terms when used in this part unless modified in this section.

(c) A *naturally occurring poisonous or deleterious substance* is a poisonous or deleterious substance that is an inherent natural constituent of a food and is not the result of environmental, agricultural, industrial, or other contamination.

(d) An *added poisonous or deleterious substance* is a poisonous or deleterious substance that is not a naturally occurring poisonous or deleterious substance. When a naturally occurring poisonous or deleterious substance is increased to abnormal levels through mishandling or other intervening acts, it is an added poisonous or deleterious substance to the extent of such increase.

(e) *Food* includes pet food, animal feed, and substances migrating to food from food-contact articles.

### § 509.4 Establishment of tolerances, regulatory limits, and action levels.

(a) When appropriate under the criteria of § 509.6, a tolerance for an added poisonous or deleterious substance, which may be a food additive, may be established by regulation in subpart B of this part under the provisions of section 406 of the act. A tolerance may prohibit any detectable amount of the substance in food.

(b) When appropriate under the criteria of § 509.6, and under section 402(a)(1) of the act, a regulatory limit for an added poisonous or deleterious substance, which may be a food additive, may be established by regulation in subpart C of this part under the provisions of sections 402(a)(1) and 701(a) of the act. A regulatory limit may prohibit any detectable amount of the substance in food. The regulatory limit established represents the level at which food is adulterated within the meaning of section 402(a)(1) of the act.

(c)(1) When appropriate under the criteria of § 509.6, an action level for an added poisonous or deleterious substance, which may be a food additive, may be established to define a level of contamination at which a food may be regarded as adulterated.

(2) Whenever an action level is established or changed, a notice shall be published in the FEDERAL REGISTER as soon as practicable thereafter. The notice shall call attention to the material supporting the action level which shall be on file with the Division of Dockets Management before the notice is published. The notice shall invite public comment on the action level.

(d) A regulation may be established in subpart D of this part to identify a food containing a naturally occurring poisonous or deleterious substance which will be deemed to be adulterated under section 402(a)(1) of the act. These

regulations do not constitute a complete list of such foods.

[42 FR 52821, Sept. 30, 1977, as amended at 55 FR 20786, May 21, 1990]

### § 509.5 Petitions.

The Commissioner of Food and Drugs, either on his own initiative or on behalf of any interested person who has submitted a petition, may issue a proposal to establish, revoke, or amend a regulation under this part. Any such petition shall include an adequate factual basis to support the petition, shall be in the form set forth in § 10.30 of this chapter, and will be published in the FEDERAL REGISTER for comment if it contains reasonable grounds for the proposed regulation.

[42 FR 52821, Sept. 30, 1977, as amended at 54 FR 18280, Apr. 28, 1989]

### § 509.6 Added poisonous or deleterious substances.

(a) Use of an added poisonous or deleterious substance, other than a pesticide chemical, that is also a food additive will be controlled by a regulation issued under section 409 of the act when possible. When such a use cannot be approved under the criteria of section 409 of the act, or when the added poisonous or deleterious substance is not a food additive, a tolerance, regulatory limit, or action level may be established pursuant to the criteria in paragraphs (b), (c), or (d) of this section. Residues resulting from the use of an added poisonous or deleterious substance that is also a pesticide chemical will ordinarily be controlled by a tolerance established in a regulation issued under sections 406, 408, or 409 of the act by the U.S. Environmental Protection Agency (EPA). When such a regulation has not been issued, an action level for an added poisonous or deleterious substance that is also a pesticide chemical may be established by the Food and Drug Administration. The Food and Drug Administration will request EPA to recommend such an action level pursuant to the criteria established in paragraph (d) of this section.

(b) A tolerance for an added poisonous or deleterious substance in any food may be established when the following criteria are met:

(1) The substance cannot be avoided by good manufacturing practice.

(2) The tolerance established is sufficient for the protection of the public health, taking into account the extent of which the presence of the substance cannot be avoided and the other ways in which the consumer may be affected by the same or related poisonous or deleterious substances.

(3) No technological or other changes are foreseeable in the near future that might affect the appropriateness of the tolerance established. Examples of changes that might affect the appropriateness of the tolerance include anticipated improvements in good manufacturing practice that would change the extent to which use of the substance is unavoidable and anticipated studies expected to provide significant new toxicological or use data.

(c) A regulatory limit for an added poisonous or deleterious substance in any food may be established when each of the following criteria is met:

(1) The substance cannot be avoided by current good manufacturing practices.

(2) There is no tolerance established for the substance in the particular food under sections 406, 408, or 409 of the act.

(3) There is insufficient information by which a tolerance may be established for the substance under section 406 of the act or technological changes appear reasonably possible that may affect the appropriateness of a tolerance. The regulatory limit established represents the level at which food is adulterated within the meaning of section 402(a)(1) of the act.

(d) An action level for an added poisonous or deleterious substance in any food may be established when the criteria in paragraph (b) of this section are met, except that technological or other changes that might affect the appropriateness of the tolerance are foreseeable in the near future. An action level for an added poisonous or deleterious substance in any food may be established at a level at which the Food and Drug Administration may regard the food as adulterated within the meaning of section 402(a)(1) of the act, without regard to the criteria in paragraph (b) of this section or in section 406 of the act. An action level will be

withdrawn when a tolerance or regulatory limit for the same substance and use has been established.

(e) Tolerances will be established under authority appropriate for action levels (sections 306, 402(a), and 701(a) of the act, together with section 408 or 409 of the act, if appropriate) as well as under authority appropriate for tolerances (sections 406 and 701 of the act). In the event the effectiveness of a tolerance is stayed pursuant to section 701(e)(2) of the act by the filing of an objection, the order establishing the tolerance shall be deemed to be an order establishing an action level until final action is taken upon such objection.

[42 FR 52821, Sept. 30, 1977, as amended at 55 FR 20786, May 21, 1990]

### § 509.7 Unavoidability.

(a) Tolerances and action levels in this part are established at levels based on the unavoidability of the poisonous or deleterious substance concerned and do not establish a permissible level of contamination where it is avoidable.

(b) Compliance with tolerances, regulatory limits, and action levels does not excuse failure to observe either the requirement in section 402(a)(4) of the act that food may not be prepared, packed, or held under insanitary conditions or the other requirements in this chapter that food manufacturers must observe current good manufacturing practices. Evidence obtained through factory inspection or otherwise indicating such a violation renders the food unlawful, even though the amounts of poisonous or deleterious substances are lower than the currently established tolerances, regulatory limits, or action levels. The manufacturer of food must at all times utilize quality control procedures which will reduce contamination to the lowest level currently feasible.

[42 FR 52821, Sept. 30, 1977, as amended at 55 FR 20786, May 21, 1990]

### § 509.15 Use of polychlorinated biphenyls (PCB's) in establishments manufacturing food-packaging materials.

(a) Polychlorinated biphenyls (PCB's) represent a class of toxic industrial chemicals manufactured and sold under a variety of trade names, including: Aroclor (United States); Phenoclor (France); Colphen (Germany); and Kanaclor (Japan). PCB's are highly stable, heat resistant, and nonflammable chemicals. Industrial uses of PCB's include, or did include in the past, their use as electrical transformer and capacitor fluids, heat transfer fluids, hydraulic fluids, and plasticizers, and in formulations of lubricants, coatings, and inks. Their unique physical and chemical properties and widespread, uncontrolled industrial applications have caused PCB's to be a persistent and ubiquitous contaminant in the environment, causing the contamination of certain foods. In addition, incidents have occurred in which PCB's have directly contaminated animal feeds as a result of industrial accidents (leakage or spillage of PCB fluids from plant equipment). These accidents in turn caused the contamination of food products intended for human consumption (meat, milk and eggs). Investigations by the Food and Drug Administration have revealed that a significant percentage of paper food-packaging material contains PCB's which can migrate to the packaged food. The origin of PCB's in such material is not fully understood. Reclaimed fibers containing carbonless copy paper (contains 3 to 5 percent PCB's) have been identified as a primary source of PCB's in paper products. Some virgin paper products have also been found to contain PCB's, the source of which is generally attributed to direct contamination from industrial accidents from the use of PCB-containing equipment and machinery in food-packaging manufacturing establishments. Since PCB's are toxic chemicals, the PCB contamination of food-packaging materials as a result of industrial accidents, which can cause the PCB contamination of food, represents a hazard to public health. It is therefore necessary to place certain restrictions on the industrial uses of PCB's in establishments manufacturing food-packaging materials.

(b) The following special provisions are necessary to preclude the accidental PCB contamination of food-packaging materials:

(1) New equipment or machinery for manufacturing food-packaging materials shall not contain or use PCB's.

(2) On or before September 4, 1973, the management of establishments manufacturing food-packaging materials shall:

(i) Have the heat exchange fluid used in existing equipment for manufacturing food-packaging materials sampled and tested to determine whether it contains PCB's or verify the absence of PCB's in such formulations by other appropriate means. On or before Sept. 4, 1973, any such fluid formulated with PCB's must to the fullest extent possible commensurate with current good manufacturing practices be replaced with a heat exchange fluid that does not contain PCB's.

(ii) Eliminate to the fullest extent possible commensurate with current good manufacturing practices from the establishment any other PCB-containing equipment, machinery and materials wherever there is a reasonable expectation that such articles could cause food-packaging materials to become contaminated with PCB's either as a result of normal use or as a result of accident, breakage, or other mishap.

(iii) The toxicity and other characteristics of fluids selected as PCB replacements must be adequately determined so that the least potentially hazardous replacement is used. In making this determination with respect to a given fluid, consideration should be given to (*a*) its toxicity; (*b*) the maximum quantity that could be spilled onto a given quantity of food before it would be noticed, taking into account its color and odor; (*c*) possible signaling devices in the equipment to indicate a loss of fluid, etc.; and (*d*) its environmental stability and tendency to survive and be concentrated through the food chain. The judgment as to whether a replacement fluid is sufficiently non-hazardous is to be made on an individual installation and operation basis.

(c) The provisions of this section do not apply to electrical transformers and condensers containing PCB's in sealed containers.

## Subpart B—Tolerances for Unavoidable Poisonous or Deleterious Substances

### § 509.30 Temporary tolerances for polychlorinated biphenyls (PCB's).

(a) Polychlorinated biphenyls (PCB's) are toxic, industrial chemicals. Because of their widespread, uncontrolled industrial applications, PCB's have become a persistent and ubiquitous contaminant in the environment. As a result, certain foods and animal feeds, principally those of animal and marine origin, contain PCB's as unavoidable, environmental contaminants. PCB's are transmitted to the food portion (meat, milk, and eggs) of food producing animals ingesting PCB contaminated animal feed. In addition, a significant percentage of paper food-packaging materials contain PCB's which may migrate to the packaged food. The source of PCB's in paper food-packaging materials is primarily of certain types of carbonless copy paper (containing 3 to 5 percent PCB's) in waste paper stocks used for manufacturing recycled paper. Therefore, temporary tolerances for residues of PCB's as unavoidable environmental or industrial contaminants are established for a sufficient period of time following the effective date of this paragraph to permit the elimination of such contaminants at the earliest practicable time. For the purposes of this paragraph, the term *polychlorinated biphenyls (PCB's)* is applicable to mixtures of chlorinated biphenyl compounds, irrespective of which mixture of PCB's is present as the residue. The temporary tolerances for residues of PCB's are as follows:

(1) 0.2 part per million in finished animal feed for food-producing animals (except the following finished animal feeds: feed concentrates, feed supplements, and feed premixes).

(2) 2 parts per million in animal feed components of animal origin, including fishmeal and other by-products of marine origin and in finished animal feed concentrates, supplements, and premixes intended for food-producing animals.

(3) 10 parts per million in paper food-packaging material intended for or used with finished animal feed and any

components intended for animal feeds. The tolerance shall not apply to paper food-packaging material separated from the food therein by a functional barrier which is impermeable to migration of PCB's.

(b) A compilation entitled ''Analytical Methodology for Polychlorinated Biphenyls, February 1973'' for determining compliance with the tolerances established in this section is available from the Division of Dockets Management, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

[42 FR 52821, Sept. 30, 1977, as amended at 46 FR 8460, Jan. 27, 1981; 59 FR 14365, Mar. 28, 1994; 68 FR 24879, May 9, 2003]

## Subpart C—Regulatory Limits for Added Poisonous or Deleterious Substances [Reserved]

## Subpart D—Naturally Occurring Poisonous or Deleterious Substances [Reserved]

# PART 510—NEW ANIMAL DRUGS

### Subpart A—General Provisions



### Subpart B—Specific Administrative Rulings and Decisions



### Subpart C [Reserved]

### Subpart D—Records and Reports



### Subpart E—Requirements for Specific New Animal Drugs



### Subpart F [Reserved]

### Subpart G—Sponsors of Approved Applications



AUTHORITY: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

SOURCE: 40 FR 13807, Mar. 27, 1975, unless otherwise noted.

## Subpart A—General Provisions

### § 510.3 Definitions and interpretations.

As used in this part:

(a) The term *act* means the Federal Food, Drug, and Cosmetic Act, as amended (secs. 201–902, 52 Stat. 1040 *et seq.*, as amended; 21 U.S.C. 321–392).

(b) *Department* means the Department of Health and Human Services.

(c) *Secretary* means the Secretary of Health and Human Services.

(d) *Commissioner* means the Commissioner of Food and Drugs.

(e) *Person* means individuals, partnerships, corporations, and associations.

(f) The definitions and interpretations of terms contained in section 201 of the act shall be applicable to such terms when used in the regulations in this part.

(g) The term *new animal drug* means any drug intended for use for animals other than man, including any drug intended for use in animal feed but not including such animal feed:

(1) The composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of animal drugs, as safe and effective for use under the conditions prescribed,