

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: February 23, 1972.

PAUL A. NICHOLSON,  
Deputy Director, Fruit and  
Vegetable Division, Consumer  
and Marketing Service.

[FR Doc. 72-2890 Filed 2-23-72; 11:27 am]

[Valencia Orange Reg. 376]

## PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

### Limitation of Handling

#### § 908.676 Valencia Orange Regulation 376.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the

period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 22, 1972.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period February 25 through March 2, 1972, are hereby fixed as follows:

- (i) District 1: Unlimited;
- (ii) District 2: Unlimited;
- (iii) District 3: 49,132 cartons.

(2) As used in this section, "handler", "District 1", "District 2", "District 3", and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

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## Title 15—COMMERCE AND FOREIGN TRADE

### Chapter VI—Bureau of Domestic Commerce, Department of Commerce

#### PART 602—INSTRUMENTS AND AP- PARATUS FOR EDUCATIONAL AND SCIENTIFIC INSTITUTIONS

CROSS REFERENCE: For a document issued jointly by the Deputy Assistant Secretary for Resources, Department of Commerce, the Assistant Secretary for Domestic and International Business, Department of Commerce, and the Assistant Secretary of the Treasury regarding the carrying out of the functions and responsibilities of the Deputy Assistant Secretary for Resources of the Department of Commerce relating to the Office of Export Programs, see F.R. Doc. 72-2709, Office of Import Programs, Department of Commerce, Part 701, *infra*.

### Chapter VII—Office of Import Programs, Department of Commerce

#### PART 701—INSTRUMENTS AND AP- PARATUS FOR EDUCATIONAL AND SCIENTIFIC INSTITUTIONS

A new Chapter VII is added to Title 15 of the Code of Federal Regulations to provide for carrying out the functions and responsibilities of the Deputy Assistant Secretary for Resources of the Department of Commerce relating to the Office of Import Programs. Part 701 is added to Chapter VII of Title 15 of the Code of Federal Regulations to provide for rules and regulations relating to duty-free entry of instruments and apparatus for educational and scientific institutions. Regulations formerly found in

Part 602 of Chapter VI of Title 15 of the Code of Federal Regulations are revised as set forth below and redesignated as Part 701 of Chapter VII of Title 15.

The notice, public rule making procedure and effective date requirements contained in 5 U.S.C. 553 are omitted as unnecessary because the changes are procedural and editorial in nature. Accordingly, this revision shall become effective on the date of its publication in the FEDERAL REGISTER (2-24-72).

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AUTHORITY: The provisions of this Part 701 issued under the Educational, Scientific, and Cultural Materials Importation Act of 1966 (80 Stat. 897; 19 U.S.C. 1202), and Department of Commerce Organization Order 10-3 of February 14, 1971 (36 F.R. 4553).

#### § 701.1 General provisions.

(a) The purpose of this part is to set forth regulations relating to the responsibilities vested in the Secretary of Commerce under the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897; see particularly section 6(c) thereof and headnote 6(f) to part 4 of Schedule 8, Tariff Schedules of the United States, 19 U.S.C. 1202 as added by said section 6(c)). The Act provides, inter alia, that any nonprofit institution (whether public or private) established for educational or scientific purposes may obtain duty-free treatment of certain instruments and apparatus entered for its use, if the Secretary of Commerce determines that no instrument or apparatus of equivalent scientific value to such article, for the purposes for which the instrument or apparatus is intended to be used, is being manufactured in the United States. The responsibilities of the Secretary of Commerce under the Act have been delegated to the Assistant Secretary for Domestic and International Business of the Department of Commerce, with power of redelegation, by Department of Commerce Organization Order 10-3 of February 14, 1971.

(b) All references in this part to items, headnotes, schedules or parts, unless otherwise indicated, are references to items, headnotes, schedules or parts of the Tariff Schedules of the United States (19 U.S.C. 1202).

(c) Applications for duty-free entry of foreign instruments, and comments submitted in accordance with § 701.9, shall be written, typed or printed, in the English language and shall be legible. Copies of relevant documents, such as manufacturers' specifications, advertisements for bids, correspondence relating

to availability of instruments or apparatus or the like, should be made a part of an application or comments, and be fully identified. Each copy should be permanent and legible, and shall be attached as part of the response to the question to which it relates. A document in a foreign language shall be accompanied by an accurate translation.

(d) The Educational, Scientific, and Cultural Materials Importation Act of 1966 vests certain responsibilities in the Secretary of the Treasury in connection with the duty-free entry of scientific instruments and apparatus. Regulations of the Bureau of Customs pertaining to receipt and processing of applications, exclusion of certain articles from duty-free entry, procedures for entry and liquidation, disposition of articles entered duty-free, and other relevant matters are set forth in 19 CFR 10.114-10.119.

§ 701.2 Definitions.

For the purposes of the regulations in this part and the forms issued to implement them:

(a) "Deputy Assistant Secretary" means the Deputy Assistant Secretary for Resources of the Department of Commerce, or such official as may be designated by him to act in his behalf.

(b) "Instruments and apparatus" embraces only instruments and apparatus classifiable under the tariff items specified in headnote 6(a) of part 4 of Schedule 8. A combination of a basic instrument or apparatus and additional components shall be treated as a single instrument or apparatus provided that, under normal commercial practice, such combination is considered to be a single instrument or apparatus and provided further that the applicant has ordered or, upon favorable action on its application, firmly intends to order the combination as a unit.

(c) "Accessory" has the meaning which it has under normal commercial usage. An accessory for which duty-free entry is sought under item 851.60 shall be the subject of a separate application when it is not an accompanying accessory.

(d) "Accompanying accessory" means an accessory for a foreign instrument that is listed as an item in the same purchase order and that is necessary for accomplishment of the purposes for which the foreign instrument is intended to be used.

(e) "Article" means a foreign instrument and its accompanying accessories, unless context indicates otherwise.

(f) "Foreign instrument" means an instrument, apparatus, or accessory for which duty-free entry is sought under item 851.60. However, "foreign instrument" does not include repair components, which enter under item 851.65.

(g) "Domestic instrument" means an instrument, apparatus, or accessory which is manufactured in the United States.

(h) "United States" includes only the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(i) "Produced for stock" means an instrument, apparatus, or accessory which

is manufactured, on sale and available from a stock.

(j) "Produced on order" means an instrument, apparatus, or accessory which a manufacturer lists in a current catalog and is able and willing to produce and have available without unreasonably delay to the applicant.

(k) "Custom-made" means an instrument, apparatus or accessory, which a manufacturer makes to purchaser's specifications.

(l) "Same general category" means the category in which an instrument, apparatus or accessory is customarily classified in trade directories and product-source lists, e.g., electron microscopes, mass spectrometers, light microscopes, X-ray spectrometers, and the like.

(m) "Most closely comparable instrument" means the domestic instrument that most closely fulfills the applicant's technical requirement described in response to question 7 of the application form, without regard to differences in cost, design or structural characteristics.

(n) "Pertinent specifications" of an instrument, apparatus, or accessory means those structural, operational, performance, and other characteristics specified for the instrument, apparatus, or accessory that are necessary for the accomplishment of the purposes described by the applicant in response to question 7 of the application form, excluding from consideration those purposes excluded by headnotes 1 or 6(a) to Part 4 of Schedule 8. The term does not extend to such characteristics as size, durability, complexity, ease of operation, ease of maintenance and versatility, unless the applicant can demonstrate that they are necessary for accomplishing the purposes for which the article is intended to be used. The term does not include cost differences between the domestic and foreign instrument, apparatus or accessory.

(o) "Guaranteed specifications" means those pertinent specifications for the foreign article and comparable domestic instruments, whereby the respective manufacturers define as an explicit part of the contractual agreement with the purchaser, for each related capability, the minimum performance level that the user may routinely expect to achieve as well as the conditions under which the specified minimum level was established by the manufacturer.

§ 701.3 Application for duty-free entry.

(a) Any public or private nonprofit institution established for educational or scientific purposes desiring to obtain duty-free entry of an instrument or apparatus under item 851.60 shall file an application in seven copies on Form OIPF-768, "Request for duty-free entry of scientific instrument or apparatus." Applications and attachments shall comply with the language requirement and other provisions of § 701.1(c). Application forms may be obtained from the Deputy Assistant Secretary, from field offices of the U.S. Department of Commerce, or from U.S. Customs ports. For a period of 60 days from date of publica-

tion of this revision in the FEDERAL REGISTER, Form BDSAF-768, "Request for duty-free entry of scientific instruments and apparatus," may be used if Form OIPF-768 is not yet available.

(b) The applicant should answer all applicable questions appearing on Form OIPF-768 in accordance with the instructions set forth on the form and in this part. Unless otherwise indicated from context, terms used in the form have the meanings defined in § 701.2. Questions 5, 7, 8, and 9, together with the certification on the reverse of the form, shall be completed by the person in the applicant institution under whose direction and control the foreign instrument will be used and who is thoroughly familiar with the specific program requiring an instrument, apparatus or accessory having the pertinent specifications of the foreign instrument. Two of such forms shall be executed in original by the aforementioned person, and five shall be true copies. The seven completed copies of the form, with the attachments required to complete the form fully, should be mailed or delivered to:

Bureau of Customs, Attention: Tariff Classification Rulings, Washington, D.C. 20226.

(c) Only one application shall be required for a foreign instrument and its accompanying accessories. A single application may be submitted for any quantity of the same type or model of the foreign instrument, apparatus or accessory, provided that all of that quantity are intended to be used for all of the purposes described in the response to question 7. If the purchase order includes different types or models of the same general category of the foreign instrument, and its accompanying accessories, a separate application shall be submitted for each type or model although all may be intended for the same purposes.

§ 701.4 Description of article.

The specifications provided by the manufacturer of the foreign instrument or facsimile thereof shall be included in the response to question 5 of the application form. These specifications shall be in a form that permits comparison with the specifications for comparable domestic instruments, apparatus, or accessories. If the technical nature of the foreign instrument, apparatus, or accessory is such that the specifications for a performance capability may vary according to variations in test procedures, sample material, sample size, and other parameters, the specifications for the article shall identify the relevant parameters. In the case of produced on order or custom-made instruments, apparatus, or accessories, the response to question 5 shall include a statement from the manufacturer of the foreign instrument attesting to the degree of compliance with purchaser's specifications.

§ 701.5 Intended purposes.

The response to question 7 of the application form shall describe the intended purposes of the article in sufficient detail to permit identifying each specification of the article that is alleged

to be pertinent with the particular purpose(s) and the related objective(s) for the accomplishment of which the specification is claimed to be necessary. If the article is intended to be used in both research and educational programs, the purposes and relevant objectives of each program shall be described separately. Programs that may be undertaken in some unspecified future period shall not be considered in the comparison.

#### § 701.6 Justification for duty-free entry.

In response to question 8 of the application form, the applicant shall justify the request for duty-free entry of the article and accompanying accessories on the basis of either scientific equivalency or excessive delivery time.

(a) *Scientific equivalency.* (1) The justification shall include a statement than an instrument, apparatus, or accessory of the same general category as the article is or is not being manufactured in the United States. If any instrument, apparatus, or accessory of the same general category is being manufactured in the United States, without regard to the degree of comparability with the article, the applicant shall justify the non-equivalency of such instrument, apparatus, or accessory.

(2) The applicant shall further justify that no instrument, apparatus, or accessory being manufactured in the United States, whether or not of the same general category, is of equivalent scientific value to the article for such purposes as described in response to question 7.

(3) In justifying nonequivalency, the comparison of the alleged pertinent specifications of the article shall be made with similar specifications of the most closely comparable instrument being manufactured in the United States. In making the comparison only the article and accompanying accessories described in response to question 5 and the purposes described in response to question 7 shall be considered. The planned purchase of additional accessories or the planned conversion of the article at some unspecified future time, for programs that may be undertaken in some unspecified future period, shall not be considered in the comparison.

(b) *Excessive delivery time, without regard to the scientific equivalency of an available domestic instrument.* The applicant should set forth the shortest delivery times quoted by the manufacturer of the foreign article and the manufacturer(s) of the equivalent domestic instrument or apparatus from the place of shipment to the site where the instrument or apparatus is to be delivered. The applicant should also state how the difference in such delivery times will seriously impair the purposes described in response to question 7.

#### § 701.7 Availability of domestic instrument.

The response to question 9 of the application form should indicate the efforts made by the applicant to ascertain whether there was being manufactured in the United States an instrument, apparatus, or accessory of equivalent scien-

tific value to the foreign article for the purposes described in response to question 7, as well as the reasons for the applicant's selection of the particular type or model for comparison with the article in response to question 8c when more than one type or model of the same manufacturer was available. If one or more manufacturers of domestic instruments were afforded an opportunity to bid, the response to question 9 should indicate the manner in which such opportunity was offered, such as a formal invitation to bid that included a description of applicant's technical requirements. Copies of any correspondence between the applicant and domestic manufacturers (including invitations to bid and replies thereto) should be attached to the application form.

#### § 701.8 Denial without prejudice to resubmission.

The Deputy Assistant Secretary may, at any stage in the processing of an application, deny an application without prejudice to its resubmission, if the application contains a deficiency which, in his opinion, prevents its consideration on its merits. The Deputy Assistant Secretary shall state the deficiencies of the application in writing when making such a denial. A copy of the notice of such denial shall be transmitted to the Secretary of Health, Education, and Welfare and the Commissioner of Customs. A copy shall also be transmitted to the district director of Customs for the port of entry concerned, if the information requested in question 10 of the application form has been furnished by the applicant by the time the notice of denial without prejudice to resubmission is being prepared. The applicant shall on or before the 20th day following the date of such notice, inform the Deputy Assistant Secretary whether it intends to resubmit another application for the same article for the same intended purposes to which the denied application relates. The applicant shall then resubmit the new application on or before the 90th day following the date of the notice of denial without prejudice to resubmission, unless an extension of time is granted by the Deputy Assistant Secretary in writing prior to the expiration of the 90-day period. The resubmitted application shall indicate in the space provided the docket number of the original application. If the applicant fails, within the applicable time periods specified above, to either (a) inform the Deputy Assistant Secretary whether it intends to resubmit another application for the same article to which the denial without prejudice to resubmission relates, or (b) resubmit the new application, the prior denial without prejudice to resubmission shall have the effect of a final decision by the Deputy Assistant Secretary on the application within the context of § 701.11. In such a case, the Deputy Assistant Secretary shall transmit a summary of the prior denial without prejudice to resubmission to the FEDERAL REGISTER for publication, to the Commissioner of Customs, and to the applicant.

At the same time, he shall make a copy of the record available for public review.

#### § 701.9 Public notice and opportunity to present views.

(a) *Publication of notice.* Upon receipt from the Commissioner of Customs of an application that has been found by him to be in accordance with applicable regulations, the Deputy Assistant Secretary shall assign it a docket number and, unless application is denied without prejudice to resubmission under § 701.8, cause an appropriate notice to be published in the FEDERAL REGISTER to afford reasonable opportunity for presentation of views with respect to the question "whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States." (Headnote 6(c) to part 4 of schedule 8.) The complete notice shall include the date on which the Commissioner of Customs received the application, the docket number and applicant's answer to questions 1, 2, 5, and 7 of the application form. The date of the last day of the period for comment shall be 20 days after the date on which the notice of the application is published unless a later date for such last day is published in the notice. As soon as the notice of an application is filed with the FEDERAL REGISTER, the Deputy Assistant Secretary shall make a copy of the application available for public review during ordinary business hours.

(b) *Additional requirements applicable to comments.* Persons who are authorized by headnote 6(e) to part 4 of schedule 8 to appeal an adverse finding upon a question or questions of law to the U.S. Court of Customs and Patent Appeals (hereinafter called "parties") and who wish to comment must submit their views and comments in one of the formats stated in paragraph (c) of this section. Views and comments from other interested persons and Government agencies will be received in any written form complying with § 701.1(c); however, one of the formats of paragraph (c) of this section should be used if feasible. Any comment, to be placed upon the record, must be submitted in three copies and must state the name and address of the person submitting the comment and the docket number of the application to which the comment applies. Since each application file must be complete in itself, a separate set of copies of a comment must be furnished for each application to which the comment pertains, even though the sets of copies pertaining to two or more applications may be identical. Comments should be addressed to the Deputy Assistant Secretary.

(c) *Format for comments.* Comments favoring the granting of an application should be in the form of supplementary answers to the applicable questions on the application form, and should avoid duplication on the content of the application insofar as is practicable. Comments opposing the granting of an application should be in the following form:

(1) State name and address of the party commenting.

(2) State the docket number of the application to which the comment applies.

(3) List instruments or apparatus considered by the party to be scientifically equivalent to the foreign instrument and its accompanying accessory(ies). Provide pertinent specifications for instruments or apparatus manufactured by the party.

(4) Direct the comments to the applicant's response to question 8 and, with respect to each specification of the article listed as pertinent therein, demonstrate—

(i) That the specification can be equaled or exceeded with the instrument or apparatus described in subparagraph (3) of this paragraph; or

(ii) That although the instrument or apparatus differs in design from the article, it is nonetheless scientifically equivalent because it is as capable as or better than the article in fulfilling the purpose(s) relevant to the specification; or

(iii) The specification is not pertinent because it does not relate to one or more purposes described by the applicant in response to question 7, being rather a convenience or representing personal preferences, cost factors and the like.

(5) Where the comments regarding subparagraph (4) (i) or (ii) of this paragraph relate to a particular accessory or optional device offered by the domestic manufacturer, cite the type, model, or other catalog designation of the accessory or device and include the specifications therefor in the comments.

(6) Where the justification for duty-free entry is based on excessive delivery time, show whether—

(i) Such instrument or apparatus are as a general rule either produced for stock, produced on order, or are custom-made; and

(ii) An instrument or apparatus of equivalent scientific value to the article, for the purposes described in response to question 7 could have been produced and delivered to the applicant within a reasonable time following the receipt of the order.

(7) Indicate whether the applicant afforded the domestic manufacturer an opportunity to furnish an instrument or apparatus of equivalent scientific value to the article for the purposes described in response to question 7 and, if such be the case, whether the applicant submitted a formal invitation to bid that included the technical requirements of the applicant.

**§ 701.10 Additions to the record.**

(a) The Deputy Assistant Secretary shall assemble the application, and those comments meeting the requirements of § 701.9 into a record. After the period for comment (§ 701.9(a)) has ended, he shall not place explanations, arguments, or recommendations, other than those obtained from any selected Federal agency(ies) pursuant to paragraph (b) of this section, in the record in any form. He shall treat written comments received after the period for comment has

ended as offers to provide additional information (see paragraph (c) of this section) to the extent that they contain factual information, as contrasted with arguments, explanations or recommendations.

(b) The Deputy Assistant Secretary may add to the record such additional written factual information available within the executive branch of the Government, and such printed information generally available to the public, as he deems appropriate and pertinent. He may also obtain for the record an opinion on any issue before him and reasons therefor from any agency of the Government which he regards as having particular competency in the field in question.

(c) If it appears to the Deputy Assistant Secretary that the information in the record is not sufficient to enable him to render a decision, if the action of denial without prejudice to resubmission appears to be inappropriate, and if it further appears that certain additional factual information will cure the insufficiency of the record, the Deputy Assistant Secretary, in his discretion, may request and place in the record such additional factual information as he feels will enable him to render a decision from the party or those parties that appear best suited to provided the information. The Deputy Assistant Secretary may attach appropriate conditions and time limitations upon the provision of such information, and may draw appropriate inferences from the failure of a party to provide the information requested from him. The Deputy Assistant Secretary shall not, under this procedure, place arguments, explanations or recommendations upon the record. The Deputy Assistant Secretary may also, in his discretion, request from any party or parties to a proceeding hereunder, and place in the record, such additional affirmations as he deems necessary to enable him to render a decision.

**§ 701.11 Review and findings of the Department of Commerce.**

(a) *Scientific equivalency.* The determination of scientific equivalency shall be based on a comparison of the pertinent specifications of the foreign instrument with similar pertinent specifications of the most closely comparable domestic instrument. The guaranteed specifications for the foreign article will be considered in the comparison, including any amendments to the guaranteed specifications which have been inserted in the record. Similarly, the guaranteed specifications for the most closely comparable domestic instrument will be considered, including any amendments to the guaranteed specifications which have been inserted in the record. In the comparison, the Deputy Assistant Secretary may consider any reasonable combination of domestic instruments and accessories as being comparable to a foreign instrument that combines two or more functions in an integrated unit, if the combination of domestic instruments and accessories is capable of accomplishing the purposes for which the foreign in-

strument is intended to be used. If the Deputy Assistant Secretary finds that at least one domestic instrument or reasonable combination of domestic instruments does possess all the pertinent specifications of the foreign article, he shall find that there is being manufactured in the United States an instrument of equivalent scientific value to the foreign instrument for such purposes as described in the response to question 7 of the application form. Otherwise, he shall find to the contrary.

(b) *Manufactured in the United States.* An instrument, apparatus, or accessory shall be considered as being manufactured in the United States if it is customarily produced for stock, produced on order, or custom-made within the United States. In determining whether a U.S. manufacturer is able and willing to produce a produced on order, or custom-made instrument, apparatus, or accessory and have it available without unreasonable delay to the applicant the Deputy Assistant Secretary shall take into account the normal commercial practices applicable to the production and delivery of instruments, apparatus, or accessories of the same general category. For example, in determining whether a domestic manufacturer is able to produce a custom-made instrument, apparatus, or accessory the Deputy Assistant Secretary may take into account the production experiences of the domestic manufacturer with respect to the types and complexity of products, the extent of the technological gap between the instrument, apparatus, or accessory to which the application relates and the manufacturer's customary products, and the availability of the professional and technical skills, as well as manufacturing experience, essential to bridging the gap and the time required by the domestic manufacturer to produce an instrument, apparatus, or accessory to purchaser's specifications.

(c) *Excessive delivery time.* Duty-free entry of the article shall be considered justified without regard to whether there is being manufactured in the United States an instrument, apparatus, or accessory of equivalent scientific value for the purposes described in response to question 7 of the application form, if the delay in obtaining such domestic instrument, apparatus, or accessory (as indicated by the difference between the delivery times quoted by domestic manufacturer and foreign manufacturer) will seriously impair the accomplishment of the purposes. In determining whether the difference in delivery times is excessive, the Deputy Assistant Secretary shall take into account the relevancy of the applicant's program to other research programs with respect to timing, the applicant's need to have such instrument, apparatus, or accessory available at the scheduled time for the course(s) in which the article is intended to be used, and other relevant circumstances.

(d) *Decision on the application.* The Deputy Assistant Secretary shall prepare a written decision granting or

denying the application in whole or in part. The decision shall be in the form of one or more findings stating whether an instrument or apparatus of equivalent scientific value to the article for which duty-free entry is sought, for the purposes for which it is intended to be used, is or is not being manufactured in the United States, and it shall include a statement of his reasons for the finding(s). He shall transmit the decision to the FEDERAL REGISTER for publication, to the Commissioner of Customs, and to the applicant. At the same time, he shall make a copy of the record available for public review. (Copies of materials received pursuant to paragraphs (a) and (c) of § 701.10 which were not entered in the record pursuant to § 701.10 shall also be made available for public review. The Deputy Assistant Secretary may dispose of such materials at any time after final disposition of the application.) Pursuant to 19 CFR 10.117, the Deputy Assistant Secretary shall notify the district director of customs for the district in which entry of the merchandise in question was made, or the Commissioner of Customs if the district of entry is not known to the Deputy Assistant Secretary, of the final disposition of each application. If the Deputy Assistant Secretary thereafter receives notice from the applicant in accordance with 19 CFR 10.116(c), he shall then notify said district director of the final disposition of the application. For purposes of this paragraph, disposition of an application shall be deemed final (1) when 20 days have elapsed after publication of the decision in the FEDERAL REGISTER and no appeal has been taken pursuant to § 701.12, or (2) if such appeal has been taken, when final judgment is made and entered by the U.S. Court of Customs and Patent Appeals.

(e) *Consolidated decision.* The Deputy Assistant Secretary may on his own initiative, consolidate two or more applications under a single notice of consolidated decision whenever he deems such consolidation to be appropriate. An appeal from any decision published in such notice of consolidated decision which is taken in accordance with headnote 6(e) to part 4 of Schedule 8, shall affect only that application(s) to which the specified decision and appeal relates.

#### § 701.12 Appeal.

An appeal from any decision made pursuant to § 701.11 may be taken, in accordance with headnote 6(e) to part 4 of Schedule 8, only to the U.S. Court of Customs and Patent Appeals and only on a question or questions of law, within 20 days after publication of the decision in the FEDERAL REGISTER. If at any time while its application is under consideration by the Deputy Assistant Secretary or by the Court of Customs and Patent Appeals on an appeal from a finding by him, an institution cancels an order for the instrument or apparatus to which the application relates or ceases to have a firm intention to order such instrument or apparatus, the institution shall promptly notify the Deputy Assistant

Secretary or such court, as the case may be.

Dated: October 27, 1971.

STANLEY NEHMER,  
Deputy Assistant Secretary for  
Resources, Department of  
Commerce.

Dated: October 28, 1971.

HAROLD B. SCOTT,  
Assistant Secretary for Domes-  
tic and International Busi-  
ness, Department of Com-  
merce.

Dated: February 11, 1972.

EUGENE T. ROSSIDES,  
Assistant Secretary of the Treasury.  
[FR Doc.72-2709 Filed 2-23-72;8:48 am]

## Title 19—CUSTOMS DUTIES

### Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 72-64]

#### PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

##### Instruments and Apparatus for Educa- tional and Scientific Institutions

The Business and Defense Services Administration (BDSA) of the Department of Commerce has been reorganized as the Office of Import Programs (OIP) necessitating amendments of that office's regulations regarding the determination of scientific equivalency for instruments and apparatus sought to be entered free of duty under the provision of item 851.60, Tariff Schedules of the United States. These changes in the OIP regulations make necessary certain editorial changes in the Customs Regulations. The changes are to cross references, form numbers, and "administrator" to "official".

In order to effect these changes the following sections of Part 10 of the Customs Regulations are amended as set forth below:

#### § 10.114 [Amended]

In § 10.114, paragraph (a) is amended by substituting "15 CFR 701.9" for "15 CFR 602.4", "15 CFR 701.8" for "15 CFR 602.5(e)", and "15 CFR 701.11" for "15 CFR 602.5" where they appear.

In paragraph (d) of § 10.114, subparagraph (1) is amended by substituting "Form OIPF 768" for "Form BDSAF-768".

In paragraph (d) of § 10.114, subparagraphs (2) and (3) are amended by substituting "Form OIPF 768" for "Form BDSAF-768" and "official" for "Administrator".

Section 10.115 is amended to read as set forth below:

#### § 10.115 Application for duty-free entry of foreign instruments.

Form OIPF 768, "Request for duty-free entry of scientific instruments and

apparatus" (copies may be obtained from the Deputy Assistant Secretary for Resources, Department of Commerce, field offices, or Customs ports), shall be used in the preparation of an application. This form shall be completed and filed in accordance with 15 CFR 701.3 and the instructions appearing on the form.

(77A Stat. 14, 419, as amended; 19 U.S.C. 1202 (Gen. hdntc. 11, sch. 8, part 4, hdnotes. 1, 6))

#### § 10.116 [Amended]

Section 10.116 is amended by substituting "Form OIPF 768" for "Form BDSAF-768" and "official" for "administrator" wherever they appear.

#### § 10.117 [Amended]

Section 10.117 is amended by substituting "official" for "administrator" wherever it appears.

In paragraph (a) of § 10.118, subparagraph 4 is amended to read as follows:

#### § 10.118 Disposition of articles entered under item 851.60, TSUS.

(a) \* \* \*

(4) The description of the article required by question 5 of Form OIPF 768.

(R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

Because these amendments conform the Customs Regulations with changes in the regulations of the Department of Commerce and are merely editorial changes, notice and public procedure thereon are unnecessary, and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

*Effective date.* These amendments shall be effective upon publication in the FEDERAL REGISTER (2-24-72).

[SEAL] EDWIN F. RAINS,  
Acting Commissioner of Customs.

Approved: February 11, 1972.

EUGENE T. ROSSIDES,  
Assistant Secretary  
of the Treasury.

[FR Doc.72-2706 Filed 2-23-72;8:48 am]

## Title 21—FOOD AND DRUGS

### Chapter I—Food and Drug Adminis- tration, Department of Health, Ed- ucation, and Welfare

#### SUBCHAPTER A—GENERAL

#### PART 8—COLOR ADDITIVES

##### Subpart—Provisional Regulations

#### POSTPONEMENT OF CLOSING DATES OF PROVISIONAL LISTING

Pursuant to the provisions of Title II of the Color Additive Amendments of 1960 (sec. 203(a)(2), Public Law 86-618, 74 Stat. 404; 21 U.S.C. 376, note) and under authority delegated to him (21 CFR 2.120), the Commissioner of Food and Drugs is authorized to postpone the closing date of a provisional listing of a color additive on his own initiative or upon application of an interested person.

He is also authorized to promulgate and keep current a list or lists of the color additives and of the particular uses thereof, and to provide for the termination of a provisional listing of a color additive or particular use thereof, whenever in his judgment such action is necessary to protect the public health.

In a notice published in the FEDERAL REGISTER on September 11, 1971 (36 F.R. 18336), it was announced that, for those uses of color additives listed in paragraphs (a) and (b) of § 8.501 of the color additive regulations which involved ingestion because of use in products such as food, drugs for internal use and cosmetic lipsticks, petitions for regulations under section 706 of the Federal Food, Drug, and Cosmetic Act (sec. 706, 74 Stat. 399-403; 21 U.S.C. 376) shall include reports of studies for teratological potential and reports of multigeneration reproduction studies in animals.

Requests have been received to postpone the closing dates of provisional listings of a number of color additives including those involving ingestion, for which certain scientific investigations necessary for listing these color additives under section 706 of the act, have not been completed, or for which certain stability data are to be submitted. The requests with respect to ingested colors also meet the requirements for extension of provisional listing prescribed by the FEDERAL REGISTER notice of September 11, 1971, referred to above. The status of the provisional listing of FD&C Red No. 2 will be considered in a future notice in the FEDERAL REGISTER.

The closing date of the provisional listing for the color additive, fustic, for use in surgical sutures, is not postponed; its provisional listing is therefore terminated as of December 31, 1971. This color additive had been provisionally listed on the basis that scientific investigations were underway, preparatory to submission of a petition for its listing. The sponsor of these investigations has decided that he no longer has a commercial interest in this color additive and the Food and Drug Administration knows of no other investigations in progress.

The Commissioner finds that postponement of the closing dates of the provisional listings of the color additives included in this order is consistent with the protection of the public health, and with the objective of carrying to completion the scientific investigations, and regulatory review thereof, necessary for making a determination as to the listing of such color additives, or specified uses thereof, under section 706 of the act.

These extensions are granted on condition that, where applicable, progress reports shall be received on or before June 30, 1972, and final reports of the respective studies for teratological potential shall be received on or before October 1, 1972, by FDA. All future requests for postponement of the closing dates of provisionally listed color additives must be received by FDA no later than 30 days preceding the then-current closing date.

Therefore, pursuant to authority of the Federal Food, Drug, and Cosmetic Act

(secs. 203(a) (2), (d) (1) (E), Public Law 86-618; 74 Stat. 404-405; 21 U.S.C. 376, note) and under authority delegated to the Commissioner (21 CFR 2.120), Part 8 is amended by revising § 8.501 as follows:

1. In the provisional listing of color additives in paragraph (f) by deleting the color additive "fustic."

2. In the provisional listings in paragraphs (a), (b), (c), (e), (f), and (g) by changing the closing dates for all of the color additives listed to read "December 31, 1972," except for the color additives FD&C Red No. 2 and fustic.

Notice and public procedure and delayed effective date are not prerequisites to the promulgation of this order, since section 203(a) (2) of Public Law 86-618 provides for this issuance.

*Effective date.* This order became effective as of January 1, 1972.

(Sec. 203(a) (2), (d) (1) (E), Public Law 86-618, 74 Stat. 404-405; 21 U.S.C. 376, note)

Dated: February 15, 1972.

SAM D. FINE,  
Associate Commissioner  
for Compliance.

[FR Doc.72-2689 Filed 2-23-72;8:46 am]

## Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard,  
Department of Transportation

[CGFR 72-30]

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

Richardson Bay Channel, Mill Valley, Calif.

This amendment adds regulations for the floating work span used in modification of the U.S. 101 bridge to require at least 2 hours notice from 8 a.m. to 5 p.m., Monday through Friday from February 14, 1972 through September 1, 1972, for openings of the draw. The purpose of this amendment is to allow this modification to be made to the U.S. 101 bridge.

This rule is issued without notice of proposed rule making and is effective in less than 30 days. The Coast Guard has found that good cause exists for taking this action on the basis that it would be contrary to the public interests to delay this modification.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by adding a subparagraph (g) to § 117.712 to read as follows:

§ 117.712 Tributaries of San Francisco Bay and San Pablo Bay, Calif.

(g) *Work Bridge contiguous to U.S. 101 Bridge, Richardson Bay, Mill Valley, Calif.* The draw of this span shall open on signal from 8 a.m. to 5 p.m., from February 14, 1972 through September 1, 1972, if at least 2 hours' notice has

been given. At all other times the draw shall be left in the open position.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g) (2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g) (2); 49 CFR 1.46(c) (5), 33 CFR 1.05-1(c) (4))

*Effective date.* This revision is effective from February 14 through September 1, 1972.

Dated: February 15, 1972.

W. M. BENKERT,  
Rear Admiral, U.S. Coast  
Guard, Chief, Office of Marine  
Environment and Systems.

[FR Doc.72-2705 Filed 2-23-72;8:47 am]

## Title 37—PATENTS, TRADE-MARKS, AND COPYRIGHTS

Chapter I—Patent Office,  
Department of Commerce

### PART 2—RULES OF PRACTICE IN TRADEMARK CASES

#### Miscellaneous Amendments

A proposal was published at 36 F.R. 19315 to revise §§ 2.54, 2.67, 2.87, 2.88, and 2.187. Pursuant to this notice, comments have been received from interested persons. Full consideration has been given to all matter presented and changes in the text of the original proposal have been made in view thereof.

Section 2.54 is being revised to permit the Patent Office to accept substitute drawings in appropriate situations.

The revision of § 2.67 clarifies the situations in which an examiner may suspend action on an application.

Sections 2.87 and 2.88 are being revised to state that both goods and services may be the subject of a single application or certificate of registration in accordance with section 30 of the Trademark Act of 1946. Additionally, § 2.87 requires five specimens be submitted for each class.

The revision to § 2.187 insures that the certificate of registration issues to the current owner of the mark.

*Effective date.* This revision shall become effective March 17, 1972.

In consideration of the foregoing and pursuant to the authority contained in section 41 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1123) and section 6 of the Act of July 19, 1952 (66 Stat. 793; 35 U.S.C. 6), Part 2 of Chapter I of Title 37 of the Code of Federal Regulations is hereby amended as follows:

1. Section 2.54 is revised to read as follows:

#### § 2.54 Informal drawings.

A drawing not in conformity with §§ 2.51 to 2.53 may be accepted for purpose of examination, but the drawing must be corrected or a new one furnished, as required, before the mark can be published or the application allowed. The necessary corrections will be made by the Patent Office upon applicant's request and at his expense.