

of this color additive in the manufacture of food, drugs, or cosmetics after this date will result in adulteration.

(2) The Commissioner finds, on the basis of the scientific evidence before him, that no action has to be taken to remove from the market food, drugs, and cosmetics containing the color additive.

§ 9.61 [Revoked]

2. Part 9 is amended by revoking § 9.61 *FD&C Red No. 2*.

Notice and public procedure are not necessary prerequisites to the promul-

gation of this order because section 203 (d) (2) of Pub. L. 86-618 so provides.

Effective date. These regulations become effective February 10, 1976.

(Title II, Pub. L. 86-618, 74 Stat. 404-407 (21 U.S.C. 376 note).)

Dated: January 23, 1976.

A. M. SCHMIDT,

Commissioner of Food and Drugs.

[FR Doc.76-2519 Filed 1-26-76; 10:32 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

United States Customs Service

[19 CFR Part 177]

ADMINISTRATIVE RULINGS

Proposed Change in the Tariff Classification of Bobbins

Notice is hereby given under the authority of section 177.10 of the Customs Regulations (19 CFR 177.10) that the Customs Service is reviewing the tariff classification of bobbins (parallel tubes) composed of paper impregnated with plastic. If this change of practice is adopted, it will result in a higher rate of duty for such merchandise.

Under an established and uniform practice, importations of bobbins (parallel tubes) composed of paper impregnated with plastic have been classified under the provision for Tubes, of paper, commonly used for holding thread or yarn: Parallel, in item 256.65, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 0.2 cent per pound plus 4 percent ad valorem.

These articles meet the definition for reinforced plastics found in Schedule 7, Part 12, Subpart A, Headnote 2(ii), TSUS. Accordingly, the Customs Service proposes to classify them under the provision for other articles not specially provided for wholly or almost wholly of reinforced plastics, in item 770.10, TSUS, with duty at the rate of 10 cents per pound plus 8.5 percent ad valorem.

Consideration will be given to any relevant data, views, or arguments pertaining to the correct classification of this merchandise which are submitted in writing to the Commissioner of Customs, Attention Classification and Value Division, Washington, D.C. 20229, not later than April 12, 1976.

Written material or suggestions submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), at the Classification and Value Division, Headquarters, United States Customs Service, Washington, D.C., during regular business hours. (039026)

Dated: February 2, 1976.

VERNON D. ACREE,
Commissioner of Customs.

Approved:

DAVID R. MACDONALD,
Assistant Secretary of the
Treasury.

[FR Doc.76-3927 Filed 2-9-76;8:45 am]

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR Part 230]

NONFOOD ASSISTANCE PROGRAM

Proposed Rulemaking

Notice is hereby given that the Food and Nutrition Service, U.S. Department of Agriculture, proposes to redesignate and amend the regulations governing the Nonfood Assistance Program to implement the requirements of Pub. L. 94-105 and to improve program effectiveness and efficiency. The Nonfood Assistance Program regulations are to be revised in the following areas:

(1) Eligible schools with a food service may be designated as "especially needy" by the State agency or FNSRO where applicable, and therefore will be eligible for 100 percent assistance.

(2) The reserve of funds, to assist schools without a food service program and schools without the facilities to prepare or receive hot meals, has been changed from 50 percent to 33 1/3 percent of the funds appropriated.

(3) After the fiscal year ending June 30, 1976, 33 1/3 percent of the funds appropriated shall be apportioned among the States on the basis of the ratio of the number of children in each State enrolled in schools without a food service and in schools without facilities to prepare or receive hot meals to the number of children in all States enrolled in schools without a food service and in schools without the facilities to prepare or receive hot meals.

(4) Reserved funds returned after a reapportionment may be further apportioned among the States for use in all eligible schools, whether with or without a food service.

(5) The Nonfood Assistance Program is extended to the Trust Territory of the Pacific Islands.

(6) Other revisions, definitions, and additions required for clarification and to improve program effectiveness and efficiency are included.

(7) Standards for the selection of an eligible school for participation have been expanded to require submission of justification of the need for such assistance, including consideration of the financial ability of the school to acquire needed food service equipment.

(8) Provisions with respect to procurement and property management, pursuant to Federal Management Circular 74-7 (36 CFR Part 256) have been included. Applicable procurement and property management provisions will also apply to

nonprofit private schools and institutions.

Comments, suggestions, or objections are invited. In order to be assured of being considered, such comments should be delivered to William G. Boling, Manager, Child Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, not later than March 10, 1976. Communications should identify the regulations, section and paragraph on which comments, etc., are offered. All written submissions received pursuant to this notice will be made available for public inspection at the Office of the Manager, Child Nutrition Programs, during the regular business hours (8:30 a.m. to 5:00 p.m.) (7 CFR 1.27(b)).

The proposed regulations for the Nonfood Assistance Program are amended as follows:

PART 230—NONFOOD ASSISTANCE PROGRAM

Sec.

- 230.1 General purpose and scope.
- 230.2 Definitions.
- 230.3 Administration of the Program.
- 230.4 Apportionment of funds to States.
- 230.5 Multiyear funding.
- 230.6 Method of payment to States.
- 230.7 Matching of funds.
- 230.8 Use of funds.
- 230.9 Requirements for participation.
- 230.10 Reimbursement payments.
- 230.11 Claims for reimbursement.
- 230.12 Special responsibilities.
- 230.13 Claims against School Food Authorities.
- 230.14 Management evaluations and audits.
- 230.15 Procurement standards.
- 230.16 Property management requirements.
- 230.17 Prohibitions.
- 230.18 Other provisions.
- 230.19 Program information.

AUTHORITY: Secs. 5, 10, Public Law 89-642, 80 Stat. 887, 889 (42 U.S.C. 1774, 1779).

§ 230.1 General purpose and scope.

Section 5 of the Child Nutrition Act of 1966, as amended, authorizes the payment of funds to States to assist them to supply schools drawing attendance from areas in which poor economic conditions exist with equipment, other than real property, for the storage, preparation, transportation, and serving of food, to enable them to establish, maintain and expand school food service programs. This part announces the policies and prescribes the regulations necessary to carry out this purpose.

§ 230.2 Definitions.

For the purpose of this part the term: (a) "Acquisition cost" means the act invoice price of unexpendable and ex-

pendable personal property acquired by purchase. This property may include attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it was acquired. Ancillary charges such as taxes, duty, protective intransit insurance, freight, or installation may also be included.

(b) "Act" means the Child Nutrition Act of 1966, as amended.

(c) "Breakfast" means a meal served to a school child at the beginning of the child's day at school which meets the requirements of the School Breakfast Program (7 CFR Part 220).

(d) "Child" means a person under 21 chronological years of age, or a student of high school grade or under as defined by the State educational agency.

(e) "CND" means the Child Nutrition Division of the Food and Nutrition Service of the U.S. Department of Agriculture.

(f) "Department" means the U.S. Department of Agriculture.

(g) "Equipment" means articles and facilities, other than land or buildings, used for the receiving, storage, preparation, transportation or serving of food.

(h) "Especially needy school" means a school in which the School Food Authority does not have access to sufficient resources to contribute towards any portion of the matching requirement of this part, and at least the majority of students enrolled are eligible for free or reduced price meals.

(i) "Expendable personal property" means all tangible personal property other than nonexpendable personal property.

(j) "Fiscal year" means the period of 12 calendar months beginning with July 1, 1975, and ending with June 30, 1976, the period beginning July 1, 1976, and ending September 30, 1976, and the period of 12 calendar months beginning with October 1, 1976, and each October 1 of any calendar year thereafter and ending with September 30 of the following calendar year.

(k) "FMC 74-7" means Federal Management Circular 74-7, the General Services Administration Circular which establishes uniform standards for the administration of grants-in-aid to State and local governments, including school districts (34 CFR Part 256).

(l) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.

(m) "FNSRO" means the appropriate Food and Nutrition Service Regional Office of the Food and Nutrition Service of the U.S. Department of Agriculture.

(n) "Lunch" means a meal served which meets the lunch pattern for specified age groups of children designated in § 210.10 of Part 210.

(o) "National School Lunch Program" means the program authorized by the National School Lunch Act (7 CFR Part 210).

(p) "Needy children" mean children from families meeting the family size income standards for free or reduced price meals established by a State or

FNSRO pursuant to Part 245 of this chapter.

(q) "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and acquisition cost of \$300 or more per unit. The State agency may use its own definition of nonexpendable personal property provided that such definitions would at least include all tangible personal property as defined above.

(r) "Nonprofit private school" means a nonpublic school that is exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954, as amended.

(s) "OA" means the Office of Audit of the Department.

(t) "OI" means the Office of Investigation of the Department.

(u) "Personal property" means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence, such as patents, inventions, and copyrights.

(v) "Program" means the Nonfood Assistance program authorized by section 5 of the Child Nutrition Act of 1966, as amended.

(w) "Real property" means land, land improvements, structures and appurtenances thereto.

(x) "Reimbursement" means financial assistance paid or payable to eligible schools for food service equipment. The term "reimbursement" also includes financial assistance made available through advances of Program funds to eligible schools.

(y) "School" means (1) An educational unit of high school grade or under operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of preprimary grade which do not participate in the Child Care Food Program, when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the State, regardless of whether such preprimary grade classes are conducted in a school having classes of primary or higher grade. (2) With the exception of residential summer camps which are eligible to participate in the Summer Food Service Program for Children and private foster homes, any public or nonprofit private child care institution which (a) maintains children in residence, (b) operates principally for the care of children, and (c) if private, is licensed as a residential child care institution by the State or a subordinate level of government. The term "child care institution" includes, but is not limited to: homes for the mentally retarded, emotionally disturbed, and unmarried mothers and their infants; orphanages; temporary shelters for abused children and for runaway children; hospitals for the long-term care of chronically ill children; and juvenile detention centers. (3) With respect to the Commonwealth of Puerto Rico, nonprofit child care centers certi-

fied as such by the Governor of Puerto Rico.

(z) "School Breakfast Program" means the program authorized by section 4 of the Child Nutrition Act of 1966, as amended.

(aa) "School Food Authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a lunch or breakfast program therein. The term "School Food Authority" also includes a nonprofit agency or organizations to which such governing body has delegated authority to operate the lunch or breakfast program in schools under its jurisdiction, provided the governing body retains the responsibility to comply with Program regulations.

(bb) "School without a food service" means a school in which children do not presently have or have not had for at least one year, reasonable access to a school food service facility capable of preparing or receiving hot meals meeting requirements of the National School Lunch Program or the School Breakfast Program.

(cc) "School without facilities to prepare or receive hot meals" means a school that lacks facilities or does not have reasonable access to facilities capable of preparing or receiving hot meals meeting requirements of the National School Lunch Program or the School Breakfast Program.

(dd) "Secretary" means the Secretary of Agriculture.

(ee) "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(ff) "State agency" means the State educational agency or such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the National School Lunch Program or the School Breakfast Program in schools.

(gg) "State educational agency" means, as the State legislature may determine, (1) the chief State school officer (such as the State superintendent of Public Instruction, Commissioner of Education, or similar officer), or (2) a board of education controlling the State department of education.

§ 230.3 Administration of the Program.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program. Within FNS, CND shall be responsible for administration of the Program.

(b) Within the States, responsibility for the administration of the Program shall be in the State agency, except that FNSRO shall administer the Program in nonprofit private schools of any State where the State agency is not permitted by law to disburse Federal funds paid to it under the Act to nonprofit private

schools. References in this part to "FNSRO where applicable" are to FNSRO as the agency administering the Program in nonprofit private schools.

(c) Each State agency desiring to take part in the Program shall enter into a written agreement with the Department for the administration of the Program in the State in accordance with the provisions of this part. The agreement shall cover the operation of the Program during a period which shall not extend beyond the end of the fiscal year in which the agreement became effective unless the agreement is extended for succeeding fiscal years at the option of the Department.

§ 230.4 Apportionment of funds to States.

(a) Of the Federal funds appropriated for nonfood assistance under the Act, 66 $\frac{2}{3}$ percent shall be apportioned among the States during each fiscal year on the basis of the ratio that the number of lunches, meeting the meal requirements set forth in § 210.10 of this chapter and served in each State in the latest preceding fiscal year for which the Secretary determines data are available at the time such funds are apportioned, bears to the total number of such lunches served in all States in such preceding fiscal year.

(b) For the fiscal year ending June 30, 1976, 33 $\frac{1}{3}$ percent of the funds appropriated for nonfood assistance under the Act shall be apportioned among the States on the basis of the ratio of the number of children in each State enrolled in schools without a food service to the number of children in all States enrolled in schools without a food service.

(c) For each fiscal year, after the fiscal year ending June 30, 1976, 33 $\frac{1}{3}$ percent of the funds appropriated for nonfood assistance under the Act shall be apportioned among the States on the basis of the ratio of the number of children in each State, enrolled in schools without a food service and in schools without the facilities to prepare or receive hot meals, to the number of children in all States enrolled in schools without a food service and in schools without the facilities to prepare or receive hot meals.

(d) If any State agency, or FNSRO where applicable, cannot use all the funds apportioned to it under paragraph (a), (b), or (c) of this section, it shall release such funds to the Department for further apportionment among the remaining States, in the manner and for the purpose of the respective initial apportionment: *Provided, however*, That no further apportionment shall be made if the Department determines that the amount of such funds is too small to make a further apportionment. If funds apportioned under paragraph (b) or (c) remain unused after such further apportionment, they shall immediately be reapportioned under the provisions of paragraph (a) of this section to assist schools with a food service program and

with the facilities to prepare or receive hot meals.

(e) A share of the Program funds apportioned to any State in accordance with paragraph (a), (b), or (c) of this section shall be withheld by FNS for the nonprofit private schools of that State if the State agency is prohibited by law from administering the Program with respect to such schools. The amount withheld from the funds apportioned under paragraph (a) shall bear the same ratio to such apportioned funds as the number of lunches, meeting the requirements of § 210.10 of Part 210 of this chapter and served in nonprofit private schools in such State in the latest preceding fiscal year for which the Secretary determines data are available at the time such funds are withheld, bears to the total number of such lunches served in all schools within such State in such preceding fiscal year. The amount withheld under paragraph (b) of this section for fiscal year 1976 shall bear the same ratio to such funds as the number of children, enrolled in such State in nonprofit private schools without a food service, bears to the total number of children enrolled in all schools without a food service in such State in such fiscal year. For each fiscal year, after the fiscal year ending June 30, 1976, the amount withheld under paragraph (c) of this section shall bear the same ratio to such funds as the number of children, enrolled in such State in nonprofit private schools without a food service and without the facilities to prepare or receive hot meals, bears to the total number of children enrolled in such State in such fiscal year, in all schools without a food service and without the facilities to prepare or receive hot meals.

§ 230.5 Multiyear funding.

If, in any fiscal year, the amount of funds made available under § 230.4 of this part to any State agency, or FNSRO where applicable, is insufficient to pay the entire amount of funds requested and justified in the application of a School Food Authority, the State agency, or FNSRO where applicable, may approve the entire amount justified on condition that such amount will be paid to the School Food Authority, to the extent that sufficient funds are available therefor, over a period not to exceed three consecutive years beginning with the fiscal year in which the application was approved.

§ 230.6 Method of payment to States.

Funds to be paid to any State for the Program shall be made available by means of Letters of Credit issued by FNS in favor of the State agency. The State agency shall: (a) obtain funds needed for reimbursement to School Food Authorities through presentation by designated State officials of a Payment Voucher or Letter of Credit (Treasury Form GFO 7578) in accordance with procedures prescribed by FNS and approved by the U.S. Treasury Department; (b) draw only such funds as are needed to pay claims certified for payment; and

(c) use such funds without delay for the purpose for which withdrawn.

§ 230.7 Matching of funds.

(a) During any fiscal year, payments made by FNS to each State agency and payments made by FNSRO to the School Food Authority of any nonprofit private school shall be upon the condition that at least one fourth of the costs of the equipment acquired shall be borne from sources within the State: *Provided, however*, That payments used to assist schools which are determined by the State agency or FNSRO to be especially needy need not be so matched. Payments made by FNS to a State agency may be matched either by the respective recipient School Food Authorities or from other State or local sources and payments made by FNSRO to a nonprofit private School Food Authority may be matched either by the recipient School Food Authority or from other funds available to nonprofit private schools within the State.

(b) Funds from sources within the State shall include any source of State or local funds other than Federal grants.

(c) It shall be the responsibility of the State agency, or FNSRO where applicable, to determine whether the requirements for financing from sources within the State are being met. In the event it appears that such requirements will not be met, the State agency, or FNSRO where applicable, shall take corrective action to assure compliance.

§ 230.8 Use of funds.

Federal funds made available for the Program shall be used in accordance with the provisions of this part to reimburse the School Food Authorities of schools which draw attendance from areas in which poor economic conditions exist, and which have no equipment or grossly inadequate equipment to conduct a school food service, in connection with the cost of purchase or rental of equipment to establish, maintain, and expand school food service: *Provided, however*, That, with the approval of FNS, any State agency, or FNSRO where applicable, may reserve for use in carrying out special development projects an amount equal to not more than one percent of the sum of the Federal funds initially apportioned to it for any fiscal year for the Program. Funds apportioned under paragraph (a) of § 230.4 of this part may be used to reimburse School Food Authorities of all eligible schools, funds apportioned under paragraph (b) of § 230.4 of this part may be used to reimburse School Food Authorities of schools without a food service and funds apportioned under paragraph (c) of § 230.4 of this part may be used to reimburse School Food Authorities of schools without a food service and schools without the facilities to prepare or receive hot meals.

§ 230.9 Requirements for participation.

(a) The School Food Authority shall make written application to the State agency, or FNSRO where applicable, for any school which it desires to participate

in the Program. Applications shall include information in sufficient detail to ensure that the school is eligible for assistance under § 230.8 of this part, and to ascertain the amount of financial assistance required.

(b) A school which draws attendance from areas in which poor economic conditions exist and which has no equipment or grossly inadequate equipment to operate a school food service under the National School Lunch Program or the School Breakfast Program shall be selected for participation in the Program on the basis of: (1) the financial ability and the relative need of such school for assistance in acquiring adequate equipment, determined on the basis of the information supplied for that school and for other schools in the applications submitted; and (2) the amount of funds available to the State agency, or FNSRO where applicable. State agencies, or FNSRO where applicable, have a positive obligation to inform the School Food Authorities having jurisdiction over any such school of the Program, and, to the extent that funds are available, to work with such School Food Authorities to plan for the acquisition of any equipment needed to operate a school food service under the National School Lunch Program or the School Breakfast Program.

(c) The School Food Authority of each school selected for participation shall enter into a written agreement with the State agency, or FNSRO where applicable. The School Food Authority shall agree to: (1) Participate in the School Breakfast Program or the National School Lunch Program, or both; and (2) maintain full and accurate records to account for the receipt and use of all funds received under the Program.

§ 230.10 Reimbursement payments.

The amount of the reimbursement payment to any School Food Authority shall not exceed the total cost of the equipment acquired, including transportation and installation charges. The total amount of the reimbursement payments made to School Food Authorities in each State, other than School Food Authorities of schools which are determined to be especially needy, shall not exceed three-fourths of the total cost, based on a statewide average, of the equipment acquired by such School Food Authorities, including transportation and installation charges.

§ 230.11 Claims for reimbursement.

Each State agency, or FNSRO where applicable, shall require School Food Authorities to submit claims for reimbursement which shall include data in sufficient detail to justify the amounts claimed and to enable the State to provide the information needed for reports and records required under § 230.12 of this part.

§ 230.12 Special responsibilities.

(a) Each State agency shall submit information on Program operations on a form provided by FNS, and shall maintain current accounting records of Program operations which will adequately

identify fund authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income. The records may be kept in their original form or on microfilm, and shall be retained for a period of three years after the date of the submission of the final Financial Status Report, except that (1) if audit findings have not been resolved, the records shall be retained beyond the three year period as long as required for the resolution of the issues raised by the audit; and (2) records for nonexpendable property acquired with Program funds shall be retained for three years after its final disposition.

(b) Each State agency shall report information on the use of Program funds to FNS on a Financial Status Report form provided by FNS. Reports shall continue to be submitted on a regular basis after the end of the fiscal year to which they pertain until all unpaid obligations have been liquidated, at which time the report reflecting the liquidation of all such unpaid obligations should be marked "Final" and submission discontinued for that fiscal year.

(c) Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. State agencies shall maintain on file evidence on such investigations and actions. FNS or OI shall make investigations at the request of the State agency or where FNS or OI determines investigations are appropriate.

(d) Each State agency shall release to FNS any Federal funds made available to it under the Act which are unobligated at the end of each fiscal year. Release of funds by the State agency shall be made as soon as practicable, but in no event later than 30 days following demand by FNSRO and shall be reflected by a related adjustment in the State agency's Letter of Credit.

(e) Each State agency or FNSRO where applicable shall:

(1) Provide consultive, technical, and managerial personnel to administer the Program, monitor performance, and measure progress toward achieving Program goals, as specified in the State Plan of Child Nutrition Operations provided for under § 210.4a of the regulations governing the National School Lunch Program (7 CFR Part 210). In order to meet the minimum criteria for approval, the portion of the State Plan which deals with Program assistance shall include: (i) objectives, (ii) reasons for the establishment of the objectives, (iii) methods to be used to accomplish the objectives, and (iv) evaluation methods to be used in determining if the objectives are being met.

(2) Visit the participating schools to ensure compliance with Program regulations and with the Department's nondiscrimination regulations (Part 15 of this title) issued under Title VI of the Civil Rights Act of 1964.

(3) Maintain documentation of such assistance on file.

(f) Each State agency shall adequately safeguard all Program assets and as-

sure that they are used for authorized purposes.

(g) Each State agency shall establish a system of accounting under which School Food Authorities shall report the information required in this part to enable the State agency, or FNSRO where applicable, to administer the Program, monitor performance, and measure progress toward Program goals.

(h) Each State agency shall require compliance by School Food Authorities with applicable provisions of this part.

§ 230.13 Claims against School Food Authorities.

(a) State agencies shall disallow any portion of a claim, and recover any payment from Program funds made to a School Food Authority, that is not properly payable under this part. State agencies may use their own procedures to disallow claims and recover overpayments already made.

(b) State agencies may refer to CND through FNSRO for a determination of any action they propose to take under this section.

(c) State agencies shall maintain all records pertaining to action taken under this section. Such records shall be retained for a period of three years after the end of the fiscal year to which they pertain.

(d) If CND does not concur with a State agency's action in paying a claim, or in failing to collect an overpayment, CND shall assert a claim against the State agency for the amount of such claim or overpayment. In all such cases, the State agency shall have full opportunity to submit to CND evidence or information concerning the action taken. If, in the determination of CND, the State agency's action was unwarranted, the State agency shall promptly pay, from sources other than Program funds, to FNS the amount of the claim or overpayment.

(e) Amounts recovered by State agencies from School Food Authority may be utilized, first, to make payments to School Food Authorities for the purpose of the Program during the fiscal year for which the funds were initially available, and, second, to repay any State funds expended in the reimbursement of claims under the Program and not otherwise repaid. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of § 230.12(d) of this part.

(f) With respect to School Food Authorities of schools in which the Program is administered by FNSRO, when FNSRO disallows a claim or a portion of a claim, or makes a demand for refund of an alleged overpayment, it shall notify the School Food Authority of the reasons for such disallowance or demand and the School Food Authority shall have full opportunity to submit evidence or to file reclaims for any amounts disallowed or demanded in the same manner as that afforded to School Food Authorities of schools in which the Program is administered by State agencies.

§ 230.14 Management evaluations and audits.

(a) Each State agency, or FNSRO where applicable, shall provide for audits of the funds and operations of the Program at the State and School Food Authority levels to be made with reasonable frequency, but, beginning in fiscal year 1978, not less frequently than once every two years. The audits shall determine the fiscal integrity of financial transactions and reports, and the compliance with applicable laws and regulations and with the administrative requirements set forth in Attachment G of Federal Management Circular 74-7 (34 CFR Part 256). Audits may be made by State agency internal auditors, by State Auditors General, by State Controllers, or by other comparable State audit groups, or by Certified Public Accountants or State licensed public accountants.

(b) Each State agency shall develop a plan for the conduct of audits which shall be incorporated into the State plan of Child Nutrition Operation provided for under § 210.4a of the National School Lunch Program regulations. The plan shall: (1) state the frequency of audits of State agency and School Food Authorities and delineate the positive action to be taken during fiscal years 1976 and 1977 to achieve audit frequency of not less than once every two years by the beginning of fiscal year 1978; (2) provide a description of the State organization in adequate detail to demonstrate the independence of the audit organization; and (3) provide a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(c) While OA shall rely to the fullest extent feasible upon State sponsored audits, it shall, whenever considered necessary, (1) make audits on a statewide basis, (2) perform on-site test audits, and (3) review audit reports and related working papers of audits performed by or for State agencies.

(d) Use of audit guides available from OA is encouraged. When these guides are utilized, OA will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(e) Each State agency shall provide FNS with full opportunity to conduct management evaluations (including visits to schools) of all operations of the State agency under the Program and shall provide OA with full opportunity to conduct audits (including visits to schools) of all operations of the State agency under the Program. Each State agency shall make available its records, including records of the receipt and expenditure of funds under the Program, upon a reasonable request by FNS or OA. OA shall also have the right to make audits of the records and operations of any school.

§ 230.15 Procurement standards.

(a) This section provides standards for use by State agencies in establishing procedures for the procurement of sup-

plies, equipment, and services with Program funds for use in the Program. These standards will be applicable at the School Food Authority level effective July 1, 1977. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal law and Executive Orders. State agencies or School Food Authorities may use their own procurement regulations which reflect applicable State and local law, rules, and regulations, provided that procurement adheres to the standards set forth in this section.

(b) The standards contained in this section do not relieve the State agency or School Food Authority of the responsibilities arising under its contracts. The State agency or School Food Authority is the responsible authority regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into under the Program. This includes, but is not limited to: disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the State or Federal authority that has proper jurisdiction.

(c) The State agency or School Food Authority shall maintain a code or standard of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Program funds. The State agency's or School Food Authority's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible under State law, rules, or regulations, such standards shall provide for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards either by the State agency's or School Food Authority's officers, employees, or agents, or by contractors or their agents.

(d) All procurement transactions of the State agency or School Food Authority, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. The State agency or School Food Authority should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade.

(e) The State agency or School Food Authority shall establish procurement procedures which comply with the provisions of this section.

(f) Proposed procurement actions shall be reviewed by appropriate officials of the State agency or School Food Authority to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(g) Invitations for bids or requests for proposals shall be based upon a clear

and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement and, when so used, the specific features of the named brand which must be met by offerors should be clearly specified.

(h) Positive efforts shall be made by the State agency or School Food Authority to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for procurements to be made with Program funds.

(i) The type of procuring instruments used (e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts, etc.) shall be appropriate for the particular procurement and for promoting the best interest of the Program. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(j) Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to subparagraph 4 of this paragraph is necessary to accomplish sound procurement. However, procurements of \$10,000 or less need not be so advertised unless otherwise required by State law or regulations. When formal advertising is employed:

(1) The awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the State agency or School Food Authority, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid.

(2) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the State agency or School Food Authority.

(3) Any or all bids may be rejected when it is in the State agency's or School Food Authority's interest to do so, and such rejections are in accordance with applicable State and local law, rules, and regulations.

(4) Procurements may be negotiated by the State agency or School Food Authority if it is not practicable or feasible to use formal advertising. Notwithstanding the existence of circumstances justifying negotiations, competition shall be obtained to the maximum extent practicable. Generally, procurements may be negotiated if one or more of the following conditions prevail:

(i) The public exigency will not permit the delay incident to advertising;

(ii) The material or service to be procured is available from only one person or firm; all contemplated sole source procurements where the aggregate expenditure is expected to exceed \$5,000 shall be referred to the State agency, or FNSRO where applicable, for prior approval;

(iii) The aggregate amount involved does not exceed \$10,000;

(iv) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution;

(v) No acceptable bids have been received after formal advertising;

(vi) The purchases are for materials or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment for manufacture; or

(vii) Negotiation is otherwise authorized by law, rules, or regulations.

(k) Contracts shall be made by State agencies or School Food Authorities only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources.

(l) The procurement records or files of State agencies or School Food Authorities for negotiated purchases in amounts in excess of \$10,000 shall provide at least the following pertinent information: (1) justification for the use of negotiation in lieu of advertising, (2) contractor selection, (3) the basis for the cost or price negotiated.

(m) A system for contract administration shall be maintained by the State agency or School Food Authority to assure contractor compliance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely follow-up of all purchases.

(n) The State agency or School Food Authority shall include provisions to define a sound and complete agreement in all contracts which it awards when the contract costs are to be borne by Program funds.

(o) In awarding contracts the State agency or School Food Authority must comply with the following requirements:

(1) The State agency's or School Food Authority's contract shall contain contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and shall provide for such sanctions and penalties as may be appropriate.

(2) All contracts awarded by State agencies or School Food Authorities in excess of \$10,000 shall contain suitable provisions for termination by the State agency or School Food Authority including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall set forth the conditions under which the contract may be terminated for default as well as conditions where the contract may be

terminated because of circumstances beyond the control of the contractor.

(3) Where applicable, all contracts awarded by State agencies or School Food Authorities in excess of \$2,500 which involve the employment of mechanics or laborers shall include a provision for compliance with section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the Contract Work Hours and Safety Standards Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market or contracts for transportation.

(4) Contracts awarded by State agencies or School Food Authorities, the principal purpose of which is to create, develop, or improve products, processes or methods, or for exploration into fields which directly concern public health, safety, or welfare, or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Department. The contractor shall be advised as to the source of additional information regarding these matters.

(5) All negotiated contracts (except those of \$10,000 or less) awarded by State agencies or School Food Authorities shall include a provision to the effect that the State agency or School Food Authority, the Department, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to the Program for the purpose of making audit, examination, excerpts, and transcriptions.

(6) Contracts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857b et seq.). Suspected violations shall be reported by the State agency or School Food Authority in writing to the Regional Office of the United States Environmental Protection Agency, with a copy to the Department.

(p) State agencies or School Food Authorities shall observe their regular requirements and practices with respect to bonding and insurance.

§ 230.16 Property management requirements.

(a) *General purpose and scope.* This section prescribes policies and procedures governing title, use, and disposition of personal property obtained by the State agency for eligible schools, whose cost was borne in whole or in part with Program funds. This section applies when the State agency is acting in the capacity of a School Food Authority, and when the property is obtained for use in the food service operation in schools participating in any Program authorized under the National School Lunch Act or Child Nutrition Act. The procedures contained herein also shall be followed by School Food Authorities beginning July 1, 1977. State agencies and School Food Authorities may follow their own property management policies and procedures provided they observe the requirements of this section.

(b) *Nonexpendable personal property.* The following requirements shall be observed in the acquisition, use and disposition of nonexpendable personal property:

(1) *Title.* When nonexpendable personal property is acquired by a State agency or by a School Food Authority, in whole or in part with Program funds, title shall be vested in the State agency or School Food Authority, as applicable.

(2) *Use.* The State agency or School Food Authority shall retain such property in the Program as long as there is a need for such property to accomplish the purpose of the Program.

(3) *Disposition—Public school property.* When there is no longer a need for such property to accomplish the purpose of the program for which it was acquired, the State agency or School Food Authority shall use the property in connection with any Federal program it administers. Priority shall be given to Federal programs administered by the Department over the programs administered by other Federal agencies. Approval from the Department or State agency, as applicable, must be obtained by the State agency or the School Food Authority prior to using equipment purchased with Program funds for programs of other Federal agencies. When the State agency or School Food Authority no longer has need for such property in any of its federally assisted programs, the property may be used for the State agency's or School Food Authority's own official activities. In such situations, the State agency or School Food Authority may use the property without reimbursement to the Department, or State agency as applicable, or sell the property and retain the proceeds if the property had an acquisition cost of less than \$500 per unit and has been used 4 years or more. In the case of other property, the State agency or School Food Authority may retain the property for its own use, provided that a fair compensation is made to the Department or State agency, as applicable, for the Federal share of the property. The amount of compensation

shall be computed by applying the percentage of Federal participation in the cost of the property to the current fair market value of the property. If the State agency or School Food Authority has no need for the property, disposition shall be made as follows:

(i) Except for property having an acquisition cost of less than \$500 per unit which has been used for 4 years or more, the State agency or School Food Authority shall sell property having an acquisition cost of \$1,000 or less per unit and reimburse the Department or State agency, as applicable, in accordance with subparagraph (ii) of this paragraph.

(ii) If the property had an acquisition cost of over \$1,000 per unit, the State agency or School Food Authority shall request disposition instructions from the Department or State agency, as applicable. If the Department or State agency, as applicable, has no need for the property, the availability of the property shall be reported to the General Services Administration by the Department to determine whether a requirement for the property exists in other Federal programs. The Department or State agency, as applicable, will issue instructions to the State agency or School Food Authority within 120 days following the receipt of the request. If the State agency or School Food Authority is instructed to ship the property elsewhere, the State agency or School Food Authority shall be reimbursed by the Department or State agency, as applicable, with an amount which is computed by applying the percentage of the State agency's or School Food Authority's participation in the cost of the property to the current fair market value of the property, plus any shipping or interim storage costs incurred. If the State agency or School Food Authority is instructed to otherwise dispose of the property, the State agency or School Food Authority will be reimbursed by the Department or State agency, as applicable, for the costs incurred in the disposition. If disposition instructions are not issued within 120 days after reporting, the State agency or School Food Authority shall sell the property and reimburse the Department or State agency, as applicable, an amount which is computed by applying the percentage of Federal participation in the cost of the property to the sales proceeds. Further, the State agency or School Food Authority may be permitted to retain \$100 or 10 percent of the proceeds, whichever is greater, for the State agency's or School Food Authority's selling and handling expenses.

(iii) When the Department or State agency, as applicable, determines that nonexpendable personal property with an acquisition cost of \$1,000 or more and financed solely with Program funds is unique, or difficult or costly to replace, the Department or State agency, as applicable, may reserve the right to require the State agency or School Food Authority to transfer title to the property to the Department or State agency,

as applicable, or to a third party subject to the following provisions:

(A) The right to require the transfer of title may be reserved only by means of an express special condition in the grant or contract, or, if approval for the acquisition of the property is given after the grant is awarded, by means of a written stipulation at the time the approval is given.

(B) The property shall be appropriately identified in the award document or otherwise made known to the State agency, or FNSRO where applicable.

(C) The Department or State agency, as applicable, shall not exercise this right until the State Agency or School Food Authority no longer needs the property in the program for which it was acquired. That need will be deemed to end on the date of completion or termination of such program unless the State agency or School Food Authority continues to conduct the program after that date and demonstrates to the Department or State agency, as applicable, a continued need for the property in the program.

(D) The Department or State agency, as applicable, shall issue disposition instructions within 120 days after the completion of the need for the property. If instructions are not issued within such 120-day period, the Department's or State agency's right shall lapse, and the State agency or School Food Authority shall apply the applicable standards contained in paragraphs (b) (3) (i) and (b) (3) (ii) of this section.

(E) The State agency or School Food Authority shall be entitled to reimbursement for any shipping and interim storage costs it incurs pursuant to the Department's or State agency's disposition instructions.

(4) *Disposition—Private school property.* When there is no longer a need for personal property to accomplish the purpose of the program for which it was acquired, a School Food Authority of a nonprofit private school shall transfer it with the approval of the State agency or FNSRO, where applicable, to another School Food Authority of a nonprofit private school participating in any program authorized by the Child Nutrition Act of 1966, as amended, or the National School Lunch Act, or to any other school participating in any of the programs authorized by such Acts. Failing either of these dispositions, that part of such equipment financed with Federal funds, or the residual value thereof, shall revert to the United States. Such reversion shall be effected in accordance with instructions from the State agency, or FNSRO where applicable.

(5) *Property management standards.* State agency or School Food Authority property management standards for nonexpendable personal property shall also include the following procedural requirements:

(1) Property records shall be maintained accurately and shall provide for: (A) a description of the property; (B) manufacturer's serial number or other identification number; (C) acquisition

date and cost; (D) source of the property; (E) percentage of Program funds used in the purchase of the property; (F) location, use, and condition of the property; and (G) ultimate disposition data including sales price or the method used to determine current fair market value if the State agency or School Food Authority reimburses the Department or State agency, as applicable, for its share.

(ii) A physical inventory of property shall be taken and the results reconciled with the property records at least once every 2 years to verify the existence, current utilization, and continued need for the property.

(iii) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or the theft of the property. Any loss, damage, or the theft of nonexpendable property shall be investigated and fully documented. The State agency, or School Food Authority shall be responsible for replacing or repairing (with funds of such State agency or School Food Authority) property which is lost, damaged, or destroyed due to the negligence of the State agency or School Food Authority.

(iv) Adequate maintenance procedures, recommended by the manufacturer, shall be implemented to keep the property in good condition.

(v) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

(c) *Expendable personal property.* The State Agency or School Food Authority may at its option either retain or sell items of expendable personal property, not acquired for private school use, when no longer needed for any federally sponsored activity (including activities sponsored by other Federal agencies). Expendable personal property acquired for private schools shall be disposed of in accordance with the provisions of paragraph (b) (4) of this section. Compensation to the Department or State agency, as applicable, is required if the aggregate fair market value of all of those items acquired under the grant or contract exceeds \$500 when no longer needed for any federally sponsored activity. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original property to the current fair market value of items retained and to the sales proceeds of items sold.

(d) *Intangible personal property.*

(1) *Patents and inventions.* If any program activity produces patents, patent rights, processes or inventions in the course of work aided by the Department, such fact shall be promptly and fully reported to the Department or State agency, as applicable. Unless there is prior agreement between the State agency and the Department on disposition of such items, the Department shall determine whether protection of such invention or discovery will be sought and how the rights in the invention or discovery—including rights under any patent issued

thereon—shall be disposed of and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971), and "Statement of Government Patent Policy" (36 FR 16889).

(2) **Copyrights.** When a program activity results in a book or other copyrightable material, the author or State agency or School Food Authority is free to copyright the work, but the Department reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the work for government purposes.

(e) **Publications.** Any publication or presentation resulting from or primarily related to Federal financial assistance shall contain the following acknowledgment: The activity which is the subject of this report was supported in whole or in part by the U.S. Department of Agriculture, Food and Nutrition Service. However, the opinions expressed herein do not necessarily reflect the position or policy of the U.S. Department of Agriculture, and no official endorsement by the U.S. Department of Agriculture should be inferred.

§ 230.17 Prohibitions.

(a) In carrying out the provisions of this part, neither the Department nor the State shall impose any requirements with respect to teaching personnel, curriculum, instructions, methods of instruction, and materials of instruction in any school as a condition for participation in the Program.

(b) The value of assistance to children under the Program shall not be considered to be income or resources for any purposes under any Federal or State laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs.

§ 230.18 Other provisions.

(a) **General.** Grant closeout procedures for the Program shall be in accordance with Attachment L of Federal Management Circular 74-7 of (34 CFR Part 256).

(b) **Termination for cause.** FNS may terminate a State agency's or School Food Authority's participation in the Program, in whole or in part, whenever it is determined that the State agency or School Food Authority has failed to comply with the conditions of the Program. FNS shall promptly notify the State agency or School Food Authority in writing of the termination and the reasons for the termination, together with the effective date. When the Program has been terminated for cause, any payments made to the State agency or School Food Authority or any recoveries by FNS from the State agency shall be in accordance with the legal rights and liabilities of the parties.

(c) **Termination for convenience.** FNS or the State agency may terminate a State agency's or School Food Authority's participation in the Program,

in whole or in part, when both parties agree that the continuation of the Program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The State agency or School Food Authority shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. FNS shall allow full credit to the State agency or School Food Authority for the Federal share of noncancellable obligations properly incurred by the State agency or School Food Authority prior to termination.

(d) **State requirements.** Nothing contained in this part shall prevent the State agency from imposing additional requirements for participation in the Program which are not inconsistent with the provisions of this part.

§ 230.19 Program information.

School Food Authorities desiring information concerning the Program should write to their State educational agency or to the appropriate Food and Nutrition Service Regional Office, as indicated below:

(a) In the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, 729 Alexander Road, Princeton, New Jersey 08550.

(b) In the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont: New England Regional Office, FNS, U.S. Department of Agriculture, 34 Third Avenue, Burlington, Massachusetts 01803.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street, NW., Atlanta, Georgia 30309.

(d) In the States of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 536 South Clark Street, Chicago, Illinois 60605.

(e) In the States of Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming: West-Central Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5-D-22, Dallas, Texas 75202.

(f) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, California 94108.

(Catalog of Federal Domestic Assistance Program No. 10.554 National Archives Reference Services)

NOTES.—The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Dated: February 4, 1976.

JOHN DAMGARD,
Assistant Secretary.

[FR Doc.76-3851 Filed 2-9-76;9:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 102]

[Docket No. 75P-0250]

FRUIT FLAVORED SWEETENED SPREADS

Proposed Common or Usual Name;
Extension of Time for Comment

Correction

In FR Doc. 76-2713 appearing on page 4600 in the issue of Friday, January 30, 1976, the fifth word in the fourth line should have read "usual".

[21 CFR Part 8]

[Docket No. 75N-0342]

Color Additive FD&C Red No. 2

Withdrawal of Proposal and Termination of Rule Making Proceeding

The Food and Drug Administration is withdrawing a proposal published in the FEDERAL REGISTER of July 4, 1972 (37 FR 13181), to establish a regulation under § 8.503 *Temporary tolerances* (21 CFR 8.503) prescribing temporary tolerances for the safe use of FD&C Red No. 2 in foods, ingested drugs, and lipsticks.

Published elsewhere in this issue of the FEDERAL REGISTER are regulations terminating the provisional listing and certification of the color additive FD&C Red No. 2. These regulations render further consideration of the proposed temporary tolerances unnecessary. Accordingly, the Commissioner hereby withdraws the proposal published on July 4, 1972, and terminates the rule making proceeding begun by that proposal.

This action is taken pursuant to the transitional provisions of Title II of the Color Additive Amendments of 1960 (sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: January 23, 1976.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.76-2518 Filed 1-26-76;10:31 am]

CONSUMER PRODUCT SAFETY COMMISSION

[21 CFR Part 191]

CERTAIN VACUUM BOTTLES INTENDED FOR USE BY CHILDREN

Withdrawal of Proposed Rulemaking

The purpose of this notice is to announce that the Consumer Product Safety Commission has taken action to with-

draw a proposal to ban from sale in interstate commerce certain vacuum bottles equipped with glass fillers with labeled capacity of 16 ounces or less that are intended for use by children and do not pass an accompanying proposed test method.

The proposal was published in the FEDERAL REGISTER of April 13, 1973 (38 FR 9311), by the Commissioner of Food and Drugs under authority exercised by the Commissioner at that time under sections 2(f) (1) (D), 2(q) (1) (A), 2(s), and 3(e) (1) of the Federal Hazardous Substances Act (74 Stat. 372, 374, 375 as amended 80 Stat. 1304-1305, 83 Stat. 187-189; 15 U.S.C. 1261, 1262) and by a delegation of authority from the Secretary of Health, Education, and Welfare (21 CFR 2.120).

On May 14, 1973, authority to issue regulations implementing the Federal Hazardous Substances Act was transferred to the Consumer Product Safety Commission by section 30(a) of the Consumer Product Safety Act (16 U.S.C. 2079(a)). Accordingly, the Commission is taking this action to withdraw the proposal.

The proposed regulations contained provisions to ban any vacuum bottle with a glass filler and a labeled capacity of 16 ounces or less intended for use by children and not designed and constructed to pass the proposed test method. The proposal did not apply to vacuum bottles intended for adult use and labeled as such. The test method provided for a drop test for the vacuum bottle while filled with water to check for breakage and glass content in the liquid.

In response to the proposal, comments were received from two manufacturers and a trade association. All the comments raised the issue of the degree of risk of injury associated with these vacuum bottles and contended that the annual injuries occurring to children were not sufficient to justify promulgation of the proposed regulations.

The Commission staff reported 12 cases involving vacuum bottles during 1974. A review of 11 in-depth investigations conducted between November 1965 and April 1975 revealed that five victims were children under 12 years of age. The injuries sustained were scald burns, resulting from spilling liquid, none of which required hospitalization. Only one of the injuries could involve injury from a product defect. The other cases involved human behavior patterns. In addition, the three domestic firms which produce glass-lined vacuum bottles label their products to indicate that they are not recommended for children. There is also increased production of plastic foam bottles for children instead of glass-lined bottles. Recent sampling of vacuum bottles in retail stores confirm that glass vacuum bottles are not marketed for children and that where they are offered for sale, they carry a label saying they are not intended for use by children.

Therefore, the Commission has concluded that the combination of voluntary changes made by manufacturers and the use of labeling have sufficiently re-

duced the risk of the injury to children so that a regulation in this area is no longer necessary. Accordingly, notice is given that the proposed rulemaking of April 13, 1973 (38 FR 9311) regarding vacuum bottles is hereby withdrawn.

Dated: February 4, 1976.

SADYE E. DUNN,
Secretary, Consumer Product
Safety Commission.

[FR Doc. 76-3827 Filed 2-9-76; 8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 20693; FCC 76-72]

TELEVISION BROADCAST SIGNAL FOR CAPTIONING FOR THE DEAF

Vertical Blanking Interval

In the matter of amendment of Subpart E, Part 73, of the Commission's rules and regulations, to Reserve Line 21 of the Vertical Blanking Interval of the Television Broadcast Signal for Captioning for the Deaf, Docket No. 20693, RM-2616.

1. The Commission has before it a Petition for rulemaking filed by the Public Broadcasting Service (PBS) (RM-2616), requesting amendment of Subpart E of Part 73 of the Commission's rules and regulations to provide that Line 21, Field 1, and the available half of Line 21, Field 2, of the television vertical blanking interval be reserved for the transmission of captioning information for the deaf.¹

2. PBS, citing statistics showing that there are at least 13.4 million persons in the United States with hearing impairments severe enough to prevent their enjoyment and use of radio broadcasting and the aural portion of television broadcasting, states that it has developed a system for transmitting information in the television vertical blanking interval which can be decoded into visual captions on specially equipped television receivers. The advantage of this system, PBS notes, is that the captions are not visible on normal receivers and thus do not interfere with the viewing of persons with normal hearing. PBS proposes that Line 21 of the vertical blanking interval (Field 1 and the available half of Field 2) be reserved for the transmission of captioning information and related signals.

3. The captioning system proposed by PBS was initially developed by the National Bureau of Standards (NBS) with a view toward the transmission of time and standard frequency data along with other information, which could include

¹ As appendices to its Petition, PBS offers a number of statements, reports, and engineering studies, prepared by persons or organizations dealing with the problems of the hearing impaired, or by the PBS engineering staff in support of (1) the widespread need for special assistance for those television viewers with hearing difficulties, (2) the general acceptability to such viewers of the captioning format and procedure it has developed, and (3) the choice of the technical parameters of its proposed system for transmitting captioning data.

captioning for the deaf. Subsequent study, in which PBS participated, was undertaken by the National Association of Broadcasters (NAB) Engineering Advisory Committee and the Joint Committee on Intersociety Coordination (JCIC). The PBS petition also describes independent study by PBS and its member stations, starting with a special temporary authorization to Station WETA-TV, Washington, D.C., on June 28, 1972, and continuing through later STA's, the latest of which was issued to PBS on April 3, 1975, and continues until February 28, 1976.

4. PBS' experimental program has involved two captioning systems: the Line 21 system which is the subject of PBS' instant petition and an alternative system developed by Hazeltine Research, Inc. (HRI), which does not use the vertical blanking interval but instead uses a submerged interleaved subcarrier within the active portion of the video signal. In its petition for rulemaking, PBS reports that it prefers the Line 21 system to the HRI system, because the problems with the Line 21 system appear easier to solve.

5. According to PBS, the principal problem with the Line 21 system arises where there are multipath signals ("ghosting"). To solve this problem, PBS proposes to include a special reference pulse signal as part of its transmission. Problems with the HRI system, on the other hand, arise in connection with certain types of picture information and time base instability on many low cost helical videotape recorders; and these problems are not easily solved. Thus, PBS concludes, at least at present, the Line 21 system is preferred.

6. From a practical point of view, PBS states that the time is ripe for adoption of rules for captioning, because of overwhelming acceptance by hearing impaired viewers who have seen captioned programs on an experimental basis, and because PBS' experimental program has demonstrated the practicability of a regular captioning system.² A "mini-computer" or "micro-processor" has been developed to allow captions to be encoded on videotape at a reasonably low operating cost and with a capital investment which could be as low as \$25,000 to \$50,000. Tentative conclusions have been drawn as to how fast captions may be presented on the screen and still be com-

² PBS points out that the reference pulse signal has possible future application in improving picture performance as well as in the working of the captioning system. However, it would appear that this signal has been tested, up to the present time, only in the laboratory, and there may be some question as to its full effectiveness in correcting multipath effects in actual operation, even for the comparatively simple data transmission wave form employed for captioning. It remains to be demonstrated whether it will be at all helpful in minimizing the effect of "ghosting" in complex picture transmission.

³ PBS appends to its petition a report by Gallaudet College, which serves the hearing impaired, presenting the results of the experimental program.