

should read "Division of Drug Quality Compliance".

BILLING CODE 1505-01

## 21 CFR Part 81

[Docket No. 76N-0366]

### Provisional Listing of D&C Orange No. 17 for Use in Externally Applied Drugs and Cosmetics; Postponement of Closing Date

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Orange No. 17 for use as a color additive in externally applied drugs and cosmetics. The new closing date will be May 31, 1983. This brief postponement will provide time for the uninterrupted use of this color additive in externally applied drugs and cosmetics while FDA considers the scientific and legal aspects of the recent skin penetration studies submitted by the Cosmetic Toiletry and Fragrance Association, Inc. (CTFA). Additionally, during this brief postponement, after completing its review of these studies, the agency will prepare the appropriate Federal Register document(s).

**DATES:** Effective March 31, 1983, the new closing date for D&C Orange No. 17 will be May 31, 1983.

**FOR FURTHER INFORMATION CONTACT:** Julia L. Ho, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** FDA established the current closing date of March 31, 1983, for the provisional listing of D&C Orange No. 17 for cosmetic and general drug uses by a rule published in the Federal Register of March 27, 1981 (46 FR 18954). The agency extended the closing date until March 31, 1983, to provide time for the completion of chronic toxicity studies and to allow time for the agency to review and evaluate these studies. Elsewhere in this issue of the Federal Register, FDA is terminating the provisional listing and hence approval of the color additive D&C Orange No. 17 for coloring ingested drugs and cosmetics. Also published elsewhere in this issue of the Federal Register, the agency is publishing a final rule denying those portions of the color additive petition requesting the use of D&C Orange No. 17 in drugs and cosmetics intended for ingestion and in cosmetics for use in the area of the eye.

As noted in the Federal Register of August 6, 1973 (38 FR 21199), D&C Orange No. 17 is the subject of a petition (CAP 9C0090) submitted by the Toilet Goods Association, Inc. (now CTFA) for use in coloring drugs and cosmetics. As discussed in the other two documents published elsewhere in this issue of the Federal Register, the agency has concluded that D&C Orange No. 17 is an animal carcinogen when administered in the diet, based on the increased incidence of hepatocellular neoplasms in two mammalian species. Therefore, FDA is denying that portion of the petition for this color additive that relates to ingested uses. However, under 21 U.S.C. 376(b)(5)(B)(ii), the agency must determine whether the ingestion studies that show D&C Orange No. 17 to be a carcinogen are appropriate for the evaluation of the safety of the external uses of this color additive. To assist the agency in making this determination, the petitioner has recently submitted skin penetration studies on D&C Orange No. 17.

The agency believes that the continued use of the color additive in externally applied products for the short time needed to evaluate the skin penetration and other data that CTFA has submitted will not pose a hazard to the public health. The regulation set forth below will postpone the March 31, 1983, closing date for the provisional listing of this color additive until May 31, 1983. This postponement will provide sufficient time for the agency to consider the CTFA submission and prepare the appropriate Federal Register document(s).

Because of the short time until the March 31, 1983, closing date, FDA concludes that notice and public procedures on this regulation are impracticable. This regulation will permit the uninterrupted use of this color additive until May 31, 1983. To prevent any interruption in the provisional listing of D&C Orange No. 17 and in accordance with 5 U.S.C. 553(d)(1) and (3), this final rule is being made effective March 31, 1983.

#### List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706(b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371, 376(b), (c), and (d))) and under the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner of Food

and Drugs (21 CFR 5.10), Part 81 is amended as follows:

### PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOOD, DRUGS, AND COSMETICS

#### § 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives* by revising the closing date for "D&C Orange No. 17" in paragraph (b) to read "May 31, 1983."

#### § 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing* by revising the closing date for "D&C Orange No. 17" in paragraph (d) to read "May 31, 1983."

*Effective date.* This final rule is effective March 31, 1983.

(Secs. 701, 706(b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371, 376(b), (c), and (d)); sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note))

Dated: March 16, 1983.

William F. Randolph,  
*Acting Associate Commissioner for  
Regulatory Affairs.*

(PR Doc. 83-8421 Filed 3-29-83; 11:12 am)

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## 21 CFR Part 81

[Docket No. 76N-0366]

### Provisional Listing of D&C Red No. 33; Postponement of Closing Date

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 33 for use as a color additive in drugs and cosmetics. The new closing date will be May 31, 1983. This brief postponement will provide time for the agency to complete its review and consider the scientific and legal aspects of the results of the toxicological studies submitted by several petitioners. Additionally, during this brief postponement, the agency will prepare the appropriate Federal Register document(s) upon completion of its review.

**DATES:** Effective March 31, 1983, the new closing date for D&C Red No. 33 will be May 31, 1983.

**FOR FURTHER INFORMATION CONTACT:** Patricia J. McLaughlin, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** FDA established the current closing date of March 31, 1983, for the provisional listing of D&C Red No. 33 by a rule published in the *Federal Register* of March 27, 1981 (46 FR 18954). The agency extended the closing date for D&C Red No. 33 to provide time for the completion of toxicity studies, submission of the data to FDA, review and evaluation of the data concerning the drug and cosmetic uses of D&C Red No. 33 by FDA, and publication of a regulation in the *Federal Register* regarding the agency's final decision on the petition for the permanent listing of this color additive. The regulation set forth below will postpone the March 31, 1983, closing date for the provisional listing of the color additive until May 31, 1983.

As noted in the *Federal Register* of November 20, 1968 (33 FR 17205) and of August 6, 1973 (38 FR 21200), D&C Red No. 33 is the subject of a petition (CAP 8C0086) submitted by the Toilet Goods Association, Inc. (now the Cosmetic, Toiletary and Fragrance Association, Inc.), the Pharmaceutical Manufacturers Association, and the Certified Color Industry Committee (now the Certified Color Manufacturers Association, Inc.) and of a petition (CAP 7C0059) submitted by the Procter & Gamble Co. The petitions requested that D&C Red No. 33 be permanently listed for use in ingested drugs, all types of cosmetics subject to ingestion, including lipsticks, externally applied drugs and cosmetics, and for use in the area of the eye.

The review and evaluation of the data relevant to the use of D&C Red No. 33 have required more time than anticipated. FDA concludes that the brief postponement will provide time for the agency to complete its review and prepare the appropriate *Federal Register* document(s). Therefore, FDA concludes that the brief extension of the closing date to May 31, 1983, is necessary. The agency has also concluded that no harm to the public health will result from this extension.

Because of the short time until the March 31, 1983 closing date, FDA concludes that notice and public procedures on this regulation are impracticable, and that good cause exists for issuing this postponement as a final rule. This regulation will permit the uninterrupted use of this color additive until May 31, 1983. To prevent any interruption in the provisional listing of D&C Red No. 33, and in accordance with 5 U.S.C. 553(d) (1) and (3), this postponement is issued as a final regulation, effective on March 31, 1983.

#### List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371, 376 (b), (c), and (d))), and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

#### PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

##### § 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives* by revising the closing date for the "D&C Red No. 33" in paragraph (b) to read "May 31, 1983."

##### § 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing* by revising the closing date for the "D&C Red No. 33" in paragraphs (d) and (e) to read "May 31, 1983."

*Effective date.* This final rule shall be effective March 31, 1983.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371, 376 (b), (c), and (d)); sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note))

Dated March 21, 1983.

William F. Randolph,  
Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 83-3289 Filed 3-29-83; 12:00 pm]

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#### 21 CFR Parts 81 and 82

(Docket No. 76C-0366)

#### Expiration of Provisional Listing of D&C Orange No. 17 for Use in Ingested Drugs and Cosmetics

**AGENCY:** Food and Drug Administration.  
**ACTION:** Expiration of provisional list; final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the provisional listing of D&C Orange No. 17 for coloring ingested drugs and cosmetics has expired. FDA is not extending the provisional listing of this color additive because the agency has concluded, on the basis of animal experiments that were performed as a condition of the provisional listing of

this color additive, that the color additive is carcinogenic when administered in the diet. D&C Orange No. 17 may not be added to ingested drugs and cosmetics after March 31, 1983. Published elsewhere in this issue is a notice denying those portions of the D&C Orange No. 17 color additive petition that relate to its use in drugs and cosmetics intended for ingestion and withdrawing that portion of the petition relating to its use in cosmetics for use in the area of the eye. In addition, published elsewhere in this issue is a regulation extending the provisional listing of D&C Orange No. 17 for use in externally applied drugs and cosmetics until May 31, 1983.

**EFFECTIVE DATE:** March 31, 1983.

**FOR FURTHER INFORMATION CONTACT:** Julia L. Ho, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** The Color Additive Amendments of 1960 (the amendments) require premarket clearance of any color additive that is represented for use in or on food, drugs, cosmetics, some medical devices, or the human body. Under the amendments, a color additive may be approved only if data established that it is safe under its intended conditions of use. Recognizing that many color additives were already in use at the time it enacted the amendments, Congress provided for the "provisional listing" of these color additives while they were being tested for safety under section 203(b) of the transitional provisions of the amendments (Title II, Pub. L. 86-618, 74 Stat. 404-407 (21 U.S.C. 376 note)).

The color additive D&C Orange No. 17, principally 1-(2,4-dinitrophenylazo)-2-naphthol, has been in use for many years. Because D&C Orange No. 17 was in use at the time the amendments were enacted, it was provisionally listed for drug and cosmetic use in the *Federal Register* of October 12, 1960 (25 FR 9759). This color additive is currently provisionally listed under § 81.1(b) (21 CFR 81.1(b)) for use in drugs and cosmetics, with a closing date of March 31, 1983. Specifications for the certification of D&C Orange No. 17 are listed under § 82.1267 (21 CFR 82.1267).

FDA established the current closing date for this color additive in the *Federal Register* of March 27, 1981 (46 FR 18954). The agency conditioned the provisional listing of D&C Orange No. 17 upon submission of final reports of chronic toxicity studies by March 31, 1982 (see 21 CFR 81.27(d)).

D&C Orange No. 17 is the subject of a petition (CAP 9C0090) submitted by the Toilet Goods Association, Inc. (now the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA)), 1110 Vermont Ave. NW., Washington, DC 20005. This petition was filed for the use of D&C Orange No. 17 for coloring drugs and cosmetics, as noted in the Federal Register of August 6, 1973 (38 FR 21199).

Section 81.27(d) specifies the conditions under which D&C Orange No. 17 is provisionally listed. The petitioner, CTFA, has met those conditions, including the submission of final reports of chronic toxicity tests on rats and mice by March 31, 1982. FDA has reviewed these final reports of the chronic feeding studies in which D&C Orange No. 17 was administered in the diet to Charles River Albino CD rats and Charles River CD-1 mice. The agency has also reviewed all other available toxicological information on D&C Orange No. 17.

On the basis of the results of the chronic toxicity testing and of mutagenicity testing of this color additive, FDA has concluded that D&C Orange No. 17 is an animal carcinogen when administered in the diet. The long-term feeding studies and mutagenicity studies and their results are described in detail in the notice, published elsewhere in this issue of the Federal Register, that denies those portions of the color additive petition for D&C Orange No. 17 that relate to the ingested uses of this color additive and withdraws that portion of the petition that relates to the color additive's use in cosmetics for use in the area of the eye. That discussion is incorporated herein by reference.

Section 203(a) of the transitional provisions of the amendments provides for the provisional listing of a color additive pending completion of scientific investigations. However, section 203(a)(2) states: "The Secretary may terminate postponement of the closing date at any time if he finds \* \* \* that by reason of a change in circumstances the basis for such postponement no longer exists \* \* \*." Section 203(d)(1)(E) provides "for the termination of a provisional listing (or deemed provisional listing) of a color additive or particular use thereof forthwith whenever in [the Secretary's] judgment such action is necessary to protect the public health." Because of the agency's finding that D&C Orange No. 17 is carcinogenic when ingested by laboratory animals, FDA concludes that continued use of this color in ingested drug and cosmetic products poses a potential hazard to the public health. Therefore, the agency has decided not to

extend the provisional listing of this color additive for ingested uses. As a result, the provisional listing of D&C Orange No. 17 for use in ingested drugs and cosmetics terminated upon its expiration on March 31, 1983.

Accordingly, on the basis of the evidence before it, FDA concludes that: (1) The provisional listing of D&C Orange No. 17 for use in ingested drugs and cosmetics has terminated; (2) all certificates heretofore issued for batches of D&C Orange No. 17, its lakes, and all mixtures containing this color additive for ingested use are cancelled as of March 31, 1983; and (3) after that date, the addition of D&C Orange No. 17 to ingested drugs or ingested cosmetics will cause such products to be adulterated within the meaning of sections 501 and 601 of the act (21 U.S.C. 351 and 361) and to be subject to regulatory action. FDA also concludes that the health concern regarding the use of this color additive is limited to chronic ingested use, and that D&C Orange No. 17 does not represent an acute imminent hazard. Therefore, the protection of the public health does not require the recall from the market or destruction of any drug or cosmetic product to which the color additive has already been added. The prohibition on use of D&C Orange No. 17 applies only to the ingested use of the straight color additive, its lakes, and mixtures of the color additive and its lakes.

The agency is now considering recent CTFA submissions in support of listing the external uses of this color additive. The agency believes that the continued use of the color additive in externally applied products for the short time needed to evaluate the data will not pose a hazard to the public health. Published elsewhere in this issue of the Federal Register is an order extending the closing date for the provisional listing of D&C Orange No. 17 for externally applied drugs and cosmetics to May 31, 1983. In the near future, FDA will publish in the Federal Register its final decision on the color additive petition for the use of D&C Orange No. 17 for externally applied drugs and cosmetics.

The final toxicity study reports, the agency's toxicology evaluations of these studies, and other information relied upon by the agency in reaching its decision are on file at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. They may be reviewed between 9 a.m. and 4 p.m., Monday through Friday.

Manufacturers of new drugs and new animal drugs (including certifiable

antibiotics for animal use) that may be ingested and that contain D&C Orange No. 17 may either discontinue use of the color additive or substitute a different color additive in accordance with the provisions of 21 CFR 314.8 (d)(3) and (e) or 514.8 (d)(3) and (e), as appropriate. If a substitute color additive is used, the manufacturer shall file with FDA a supplemental new drug application or supplemental new animal drug application containing data describing the new composition and showing that the change in composition does not interfere with any assay or other control procedures used in manufacturing the drug, or that the assay and control procedures have been revised to make them adequate. The applicant shall also submit data available to establish the stability of the revised formulation. If the data are too limited to support a conclusion that the drug will retain its declared potency for a reasonable marketing period, the applicant shall submit a commitment to test the stability of marketed batches at reasonable intervals, to submit the data as they become available, and to recall from the market any batch found to fall outside the approved specifications for the drug.

Each sponsor of a notice of claimed investigational exemption for a new drug (IND) or a notice of claimed investigational exemption for a new animal drug (INAD) containing D&C Orange No. 17 should promptly amend the IND or INAD to indicate that the color additive has been deleted or a different color additive has been substituted.

FDA is aware that supplies of alternative color additives may be difficult to obtain immediately. Consequently, drug and cosmetic labeling that states that the product contains "artificial color" or that specifically identifies D&C Orange No. 17 may continue to be used with the uncolored product or products containing alternative color additives during the time necessary to obtain supplies of revised labeling or until March 31, 1984, whichever occurs first.

FDA is also making corrections in its regulations to conform them to the actions announced in this document.

The agency believes that Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354) do not apply to actions of this type. Nevertheless, the agency has assessed the economic impacts that would result from this final rule terminating the provisional listing of D&C Orange No. 17 for coloring ingested drugs and cosmetics. A copy of the agency's

economic assessment is on file with the Dockets Management Branch (address above).

The agency has considered the environmental effects of this action, and because the action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not necessary. A copy of the FDA environmental assessment is on file with the Dockets Management Branch (address above).

#### List of Subjects

##### 21 CFR Part 81

Color additives; Color additives provisional list; Cosmetics; Drugs.

##### 21 CFR Part 82

Color additives; Color additives lakes; Color additives provisional list; Cosmetics; Drugs.

Therefore, under the provisions of the Federal Food, Drug, and Cosmetic Act

(sec. 706 (b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 (b), (c), and (d))) and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 81 and 82 are amended as follows:

#### PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS AND COSMETICS

##### 1. Part 81 is amended:

a. In § 81.1 by revising the entry for "D&C Orange No. 17" in paragraph (b), to read as follows:

##### § 81.1 Provisional lists of color additives.

(b) \* \* \*

Closing date	Restrictions
D&C Orange No. 17 (sec. 82.1267 of this chapter)	External use only.

May 31, 1983

\* \* \*

b. In § 81.10 by adding new paragraph (s), to read as follows:

##### § 81.10 Termination of provisional listings of color additives.

(s) *D&C Orange No. 17*. Having concluded that, when ingested, D&C Orange No. 17 causes cancer in rats and mice, the agency has terminated the provisional listing of D&C Orange No. 17 for use in ingested drugs and ingested cosmetics, effective March 31, 1983.

c. In § 81.25 by removing the entries for "D&C Orange No. 17" in paragraphs (a)(1) and (c)(1) and by revising paragraph (b)(1)(ii), to read as follows:

##### § 81.25 Temporary tolerances.

(b) \* \* \*

(1) \* \* \*

(ii) D&C Red No. 8 and D&C Red No. 9 individually may be used in a dentifrice at not more than 0.002 percent of the pure dye by weight of the dentifrice or, in a mouthwash, at not more than 0.005 percent of the pure dye by weight of the mouthwash.

d. In § 81.30 by adding new paragraph (t), to read as follows:

##### § 81.30 Cancellation of certificates.

(t)(1) Certificates issued for D&C Orange No. 17, its lakes, and all mixtures containing this color additive are cancelled and have no effect as pertains to its use in ingested drugs and ingested cosmetics after March 31, 1983, and use of this color additive in the manufacture of ingested drugs or ingested cosmetics after this date will result in adulteration.

(2) The agency finds, on the scientific evidence before it, that no action has to be taken to remove from the market drugs and cosmetics to which the color additive was added on or before March 31, 1983.

#### PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

2. Part 82 is amended in § 82.1267 by adding a new paragraph at the end of the section, to read as follows:

##### § 82.1267 D&C Orange No. 17.

D&C Orange No. 17 is restricted to use in externally applied drugs and cosmetics.

Notice and public procedure are not necessary prerequisites to promulgating these regulations because section 203(a)(2), (d)(1)(E), and (d)(2) of Pub. L. 86-618 so provides.

*Effective date.* These regulations shall be effective March 31, 1983.

(Sec. 706 (b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 (b), (c), and (d)); sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note))

Dated: March 28, 1983.

William F. Randolph,  
Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 83-8420 Filed 3-29-83; 11:14 am]

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#### 21 CFR Part 1003

[Docket No. 78-0400]

#### Protection of Human Subjects; Informed Consent; Correction

##### Correction

In FR Doc. 83-7217 beginning on page 11430 in the issue of Friday, March 18, 1983, make the following correction on that page: In the "SUMMARY" to the document, the fourth line, the words "subject; informal" should read "subjects; informed".

BILLING CODE 1505-01

#### 21 CFR Part 1240

#### Control of Communicable Diseases; Interstate Conveyance Sanitation; Editorial Amendments

##### Correction

In FR Doc. 83-7245 beginning on page 11431 in the issue of Friday, March 18, 1983, make the following correction on that page: In the third column, under the amendment to § 1240.83, in the paragraph designated "a", the fifth line, the word "threat" should have read "thereat".

BILLING CODE 1505-01

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

#### 24 CFR Parts 215, 236, 425, and 426

[Docket No. R-82-1006]

#### Rent Requirements for Section 101 (Rent Supplement) and Section 236 Programs

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

**ACTION:** Confirmation of interim rule with corrections.

**SUMMARY:** The Department of Housing and Urban Development (HUD)