account), if greater, or less than 120% of the minimum dollar amount required by paragraph (f) of this section, or (C) the amount of its then outstanding subordination agreements exceeds the limits specified in paragraph (d) of 17 CFR 240.15c3-1. Such temporary subordination agreement shall be subject to all other provisions of this Appendix D.

(ii) * * *

(A) After giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either aggregate indebtedness of the broker or dealer would exceed 900 percent of its net capital or its net capital would be less than 200 percent of the minimum dollar amount required by 17 CFR 240.15c3-1 or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, its net capital would be less than 6% of the aggregate debit items computed in accordance with 17 CFR 240.15c3-3a or, if registered as a futures commission merchant, 10% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, or its net capital would be less then 200% of the minimum dollar amount required by paragraph (f) of 17 CFR 240.15c3-1 or

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. By revising Form X-17A-5 described in 17 CFR 249.617 by: (A) deleting the last sentence from item 23 of the General Instructions on page 4 of Schedule 1 relating to the Commission's billing for payment of transaction fees for over-the-counter sales of exchange listed securities; (B) amending Part II to include the amended CFTC Segregation Schedule and; (C) amending Part II to reflect prior amendments to the net capital rule which provided for the reduction in the required amount of net capital for firms on the alternative method of computing net capital and to reflect the corresponding reduction in the early warning levels (Form X-17A-5 does not appear in the Code of Federal Regulations).

By the Commission.

George A. Fitzsimmons,

Secretary.

August 3, 1984.

[FR Doc. 84-21190. Filed 8-8-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 151

[T.D. 84-173]

Customs Regulations Amendment Relating To the Classification of Imported Grape Juice Concentrate

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by increasing the average Brix value (amount of sugar in solution) assigned to natural unconcentrated *vitis vinifera* grape juice in the trade and commerce of the United States. Average Brix values of various unconcentrated fruit juices are used in determining the dutiable quantity of the corresponding imported juice concentrates under the Tariff Schedules of the United States. The amendment is being made to more accurately reflect the currently recognized Brix value of such grape juice in the trade and commerce of the United States and will effectively lower the duty on *vitis vinifera* grape juice concentrate.

EFFECTIVE DATE: September 10, 1984.

FOR FURTHER INFORMATION CONTACT: Lee C. Seligman, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

Customs published a notice in the **Federal Register** on November 14, 1983 (48 FR 51784), informing the public of the receipt of a petition from an importer of certain grape juice concentrate. The petitioner contended that the average Brix value (amount of sugar in solution) of natural unconcentrated *vitis vinifera* grape juice in the trade and commerce of the United States, which is set forth as 18.0 degrees in section 151.91, Customs Regulations (19 CFR 151.91), is no longer reflective of the quality of such juice and should be changed.

The petitioner claimed that: (1) In order for a determination to be made in this matter the Secretary of the Treasury must consider only the grapes grown in California, which is the sole source of *vitis vinifera* grapes grown in the United States; (2) table grapes and raisin grapes should be eliminated from consideration because they vary significantly from such grapes used for the production of juice; and (3) *vitis vinifera* grapes should be divided into two Brix categories, black (red) and white, since those categories are clearly distinct. Based upon the "Final Grape Crush Reports" of the California Department of Food and Agriculture for crops from 1976 through 1981, the petitioner requests that the Secretary make determinations that: (1) The average Brix level is 20.1 degrees for juice from white *vitis vinifera* grapes; and (2) the average Brix level is 22.4 degrees from juice from black (red) *vitis vinifera* grapes. Such determinations, as requested by the petitioner, would result in a lowering of the duty on imported grape juice concentrates.

The average Brix value is important because it is the measure by which the quantity of a dutiable importation and, thereby, the amount of duty owed, is determined. The duty is assessed under item 165.40, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), which provides for the collection by Customs of a column 1 rate of duty of 25 cents per gallon on imported grape juice concentrate. Headnote 3(a) of Subpart A, Part 12, Schedule 1, TSUS, states that "the term 'gallon' * * * means gallon of natural unconcentrated juice or *gallon of reconstituted juice* (emphasis provided)." Headnote 3(b) specifies that "the term 'reconstituted juice' means the product which can be obtained by mixing the imported concentrate with water in such proportion that the product will have a Brix value equal to that found by the Secretary of the Treasury from time to time to be the average Brix value of like natural unconcentrated juice in the trade and commerce of the United States." Brix value is defined in Headnote 3(c) to be "the refractometric sucrose value of the juice, adjusted to compensate for the effect of any added sweetening materials, and thereafter corrected for acid." Section 151.91, Customs Regulations, sets forth the average Brix values of natural unconcentrated fruit juices in the trade and commerce of the United States for purposes of the provisions of Schedule 1, Part 12A, TSUS, and is used by Customs in

determining the dutiable quantity of imports of concentrated fruit juices.

In the November 14, 1983, notice Customs sought the comments of the public on the following:

1. Is the production of *vitis vinifera* grape juice exclusive or so effectively restricted to California as to provide the sole source for determination of the average Brix value of such natural unconcentrated juice for purposes of section 151.91, Customs Regulations?

2. If the response to the first question is in the affirmative, does the average Brix value reported in the "Final Grape Crush Reports" of the California Department of Food and Agriculture for such crops (from which the juice involved is processed) for the period 1976 through 1981 constitute a valid basis for the requested determination? Customs noted that the Brix values stated in those reports are determined in the laboratory from *grape* samples selected from the hoppers just prior to crushing, and therefore represent the average Brix value of fresh grapes. Brix values of juice can be affected by numerous factors, such as delays in transit and length of storage.

3. Does the term "* * * in the trade and commerce of the United States * * *", as used in headnote 3(b) of Subpart A, Part 12, Schedule 1, TSUS, encompass only such single strength juice (natural unconcentrated juice) produced domestically, or does it also encompass foreign-produced single strength juice (natual unconcentrated juice) imported into the United States, if any?

4. Is there a separate and distinct trade understanding of *vitis vinifera* grape juice or grapes for concentrating (*e.g.*, wine grapes as opposed to table or raisin grapes) which separates the genre into two specific categories (*i.e.*, white and black (red)) of is the single description currently used reflective of such understanding (*i.e.*, does the color of the grapes from which such juice is produced—white and black (red)—control the use to which each is put or, apart from color and possibly Brix value, are the two used interchangeably, compensating, where necessary, for differing Brix values)?

Discussion of Comments

Only three comments were received in response to the notice, all of which supported the petitioner's position.

The replies to the first question were in the affirmative. The commenters noted that, since the unconcentrated juice does not move in international commerce because of shipping considerations due to excesive water weight, the California product is the only measue available to properly set an average Brix value. The response to the second question was that the California reports contained an accurate measure by which to establish an average Brix level. It was stated that while slight evaporation might tend to affect the particular Brix level in a given batch, this would likely be a negligible change.

Regarding the third question, the commenters responded that the *only* significant commercial source of natural unconcentrated *vitis vinifera* grape juce in the United States is from California producers. None (or at least not any commercially significant amount) is imported from foreign sources.

In response to the last question, the commenters indicated that white and black (red) grape have different uses, are distinct, and are not interchangeable. The implication is that the commenters would support the establishment of separate Brix levels for natural unconcentrated white and black (red) grape juice, as urged by the petitioner.

After analysis of the comments received, together with independent research, and after consideration of the points raised in the petition, we believe that the petitioner has established, with adequate support by the trade, that the average Brix value for natural unconcentrated *vitis vinifera* grape juice set forth in § 151.91, Customs Regulations, is incorrect and must be raised to properly reflect the current Brix value of such juice in the trade and commerce of the United States. We believe that the "Final Grape Crush Report(s)," issued by the California Department of Food and Agriculture and representing the crop years 1976 through 1981, are the best presently available measure for properly estabishing an accurate average Brix value for this juice.

In regard to a determination concerning the term "* * * in the trade and commerce of the United States", sources queried by Customs indicate that importations of natural unconcentrated juice or of single-strength juice are exceedingly rare. We have been unable to locate any meaningful precedent regarding the scope of the term. Accordingly, the term is to be construed on the basis of the common and commercial meanings thereof, which are presumed to be identical, absent a showing of contrary legislative intent or commercial understanding, neither of which are ascribable to the language under consideration. In order to arrive at a proper definition of the scope of the term, we believe that we have an obligation to consider all commercially significant sources whether of foreign or domestic origin, so long as those sources' products move in and are part of the commerce of the United States. In this instance, there being no significant commercial trade or commerce in the United States involving either foreign-produced natural unconcentrated *vitis vinifera* grape juice or any such juice produced in meaningful commercial quantities outside of California, the average Brix level of such California-produced juice defines the basis of the determination.

Regarding the question of the establishment of separate average Brix values for white and black (red) natural unconcentrated grape juice, there does not appear to be any practical means available to Customs to determine either the source of imported concentrate (*i. e.*, whether produced from white or black (red) *vitis vinifera* grapes) or, more importantly, whether any particular importation may consist of a mixture of the two. The establishment of separate and distinct Brix values would, we believe, invite fraud. Therefore, although we agree that the petitioner has made a showing that a significant difference exists between the two varieties, in light of the technical problems involved in making the required differentiation and our belief that the tolerance provided for in headnote 4, Subpart A, Part 12, Schedule 1, TSUS, adequately protects the importer, we do not deem it advisable to subdivide the average Brix values. The Brix values sought are not so far different that significant financial detriment or any other inequity would result from applying one Brix value to both. Accordingly, § 151.91, is being amended by changing the average Brix value of natural unconcentrated *vitis vinifera* grape juice in the trade and commerce of the United States from 18.0 degrees to 21.5 degrees.

Executive Order 12291

It has been determined that the amendment is not a "major rule" within the criteria provided in section 1(b) of E.O. 12291 and, therefore, no regulatory impact analysis is required.

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 et. seq.), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 151

Customs duties and inspection, Imports, Fruit juices.

Amendment of the Regulations

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

The list of Brix values in § 151.91, Customs Regulations (19 CFR 151.91), is amended by removing the numeral "18.0" under the column headed "Average Brix value (degrees)" and opposite the words "Grape (Vitis Vinifera)" and inserting, in its place, the numeral "21.5."

(R.S. 251, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14, (19 U.S.C. 66, 1202, 1624))

William von Raab,

Commissioner of Customs.

Approved: July 23, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-21142 Filed 8-8-84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 82N-0268]

D&C Orange No. 5; Permanent Listing as a Color Additive; Confirmation of Effective Dates

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of December 3, 1982, for a final rule published in the Federal Register of November 2, 1982, that amended the color additive regulations by permanently listing D&C Orange No. 5 for use in lipsticks or other lip cosmetics and in drug and cosmetic mouthwashes and dentifrices. FDA is also confirming the effective date of May 7, 1984, for a final rule published in the Federal Register of April 4, 1984, that further amended the color additive regulations by permanently listing D&C Orange No. 5 for use in externally applied drugs and cosmetics.

DATES: Effective dates confirmed: December 3, 1982, for use in lipsticks or other lip cosmetics and in drug and cosmetic mouthwashes and dentifrices; May 7, 1984, for use in externally applied drugs and cosmetics.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: On October 28, 1982, FDA signed and placed on immediate display in the Dockets Management Branch a final rule that amended the color additive regulations by permanently listing D&C Orange No. 5 for use in coloring mouthwashes and dentifrices that are ingested drugs or cosmetics and for use in coloring lipsticks and other cosmetics intended to be applied to the lips. This final rule was published in the Federal Register of November 2, 1982 (47 FR 49632). This action was a partial response to a color additive petition for D&C Orange No. 5. The final rule added new §§ 74.1255 and 74.2255 (21 CFR 74.1255 and 74.2255), conforming the identity and the specifications paragraphs of § 74.2255 to the requirements of § 74.1255 (a)(1) and (b). The final rule also amended § 81.1(b) (21 CFR 81.1(b)) by removing D&C Orange No. 5 from the provisional list for color additives; § 81.25 (a)(1) and (b)(1)(i) (21 CFR 81.25 (a)(1) and (b)(1)(i) by removing D&C Orange No. 5 from the list of color additives for which temporary tolerances had been established; § 81.27(d) (21 CFR 81.27(d)) by removing D&C Orange No. 5 from the list of color additives that are provisionally listed while chronic toxicity feeding studies involving them are conducted and evaluated; and § 81.30 (21 CFR 81.30) by adding a new paragraph (q) cancelling the certificates for the use of D&C Orange No. 5 in externally applied drugs and cosmetics. Additionally, the final rule amended § 82.1255 (21 CFR 82.1255) to conform the identity and specifications for D&C Orange No. 5 to the requirements of § 74.1255 (a)(1) and (b).

In the final rule, FDA gave interested persons until November 29, 1982—30 days from date the final rule was signed and put on public display—to file objections. However, to provide interested persons with an opportunity to file objections during the 30 days from the date of publication of the final rule, FDA published a correction in the Federal Register of November 23, 1982 (47 FR 52694), that revised the date for submission of objections to December 2, 1982, and the date for the final rule to become effective to December 3, 1982.

The agency has not received any objections or requests for a hearing on any aspect of the November 2, 1982 final rule. Therefore, FDA concludes that the effective date of the final rule published on November 2, 1982, for D&C Orange No. 5 should be confirmed.

Recently, based on information that resolved the remaining questions that the agency had about the safety of the use of D&C Orange No. 5 in externally applied drugs and cosmetics, FDA amended its color additive regulations by permanently listing D&C Orange No. 5 under § 74.1255 for use in externally applied drugs in amounts not exceeding 5 milligrams per daily dose of the drug product and under § 74.2255 for general use in externally applied cosmetics (49 FR 13339; April 4, 1984). The final rule also amended § 81.10 by removing and reserving paragraph (p) and § 81.30 by removing paragraph (q). The agency also amended § 82.1255 by adding a new paragraph (b) that specifies the uses of the color additive. This action completed FDA's response to the color additive petition on D&C Orange No. 5.

FDA gave interested persons until May 4, 1984, to file objections in response to the final rule published on April 4, 1984. The agency has not received any objections or requests for a hearing on any aspect of this final rule. Therefore, FDA concludes that the effective date of the final rule published in the Federal Register of April 4, 1984, for the permanent listing of D&C Orange No. 5 for use in externally applied drugs and cosmetics should be confirmed.

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

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 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 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), notice is given that no objections or requests for

hearing were filed in response to the final rules of November 2, 1982, and April 4, 1984. Accordingly, the amendments to Part 74 promulgated thereby became effective on December 3, 1982, and May 7, 1984, respectively.

Dated: July 26, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-21081 Filed 8-8-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-84-1142; FR 1926]

Use of Materials Bulletin No. 85; HUD Building Product Standards and Certification Program for Poly (Vinyl Chloride) (PVC) Window Units

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

ACTION: Final rule.

SUMMARY: This Rule adopts as a part of HUD's Minimum Property Standards (MPS), a Use of Materials Bulletin (UM) that references a standard issued by the American Society for Testing and Materials (ASTM) for the manufacture of poly (vinyl chloride) PVC window units. The UM also contains requirements for a replaceable weather strip, and specifies PVC resin characteristics required for outdoor exposure.

The Final Rule supplements HUD's Building Product Standards and Certification Program by requiring that certain additional information be included on a label which each manufacturer would affix to the certified product, and would specify the frequency with which PVC window units would be tested in order to be acceptable to HUD.

EFFECTIVE DATE: October 4, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie H. Breden, of Manufactured Housing and Construction Standards Division, Room 9156, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 755-5929. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In response to industry requests, HUD has evaluated the technical standard prepared by the American Society for Testing Materials (ASTM) for PVC window units. As a result of its evaluation, HUD will accept this standard with a modificaton regarding weather stripping and is proposing to adopt it through issuance of Use of Materials Bulletin No. 85 (UM 85). In doing so, the Department follows provisions of 24 CFR 200.935 regarding Administrator Qualifications and Procedures under the HUD Building Products Certification Program, and the Technical Suitability of Products Program, HUD Handbook 4950.1, REV-1. In addition, UM 85 augments labeling requirements of § 200.935(d)(6) to include manufacturer's name and code identifying the manufacturing plant location. Finally, UM 85 specifies that the frequency of testing under § 200.935 (d)(8) would be every four years. Because these added requirements relate only to this particular certification program, they are set out in a new § 200.941, not as amendments to existing § 200.935, which governs all certifications. Thus, § 200.941 would augment § 200.935; it would not supplant it.

The text of UM 85 is not being reproduced in this rule because its substance is embodied in a new § 200.941, which HUD is adopting as set forth below. However, a copy of UM 85 is available for public inspection during regular business hours in the Manufactured Housing and Construction Standards Division, Room 9156, and in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, Washington, DC 20410.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, at the above address.

This Rule does not constitute a "Major Rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations, issued by the President on February 17, 1981. Analysis of the Rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this Rule would not have a significant economic impact on a substantial number of small entities. UM 85 adopts a product standard that is nationally recognized throughout the affected industry and will not create a burden on manufacturers currently meeting the standard.

This Rule was listed as item 22 in the Department's Semiannual Agenda of Regulations published on April 19, 1984, 49 FR 15902, 15914, in accordance with Executive Order 12291 and the Regulatory Flexibility Act. A Proposed Rule was published in the **Federal Register** (49 FR 22106, May 25, 1984). One editorial comment was received which indicated a necessary updating of the reference standard for PVC from ASTM D-1784-78 to ASTM D-4216-83. The newer standard supersedes the older one and has been incorporated in the rule. This is not a substantive change.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: Housing and community development, Mortgage insurance, organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum Property Standards, and Incorporation by reference.

PART 200—[AMENDED]

Accordingly, 24 CFR Part 200 is amended by adding a new § 200.941, to read as follows:

§ 200.941 Supplementary specific Procedural requirements under HUD Building Product Standards and Certification Program for PVC Window Units.

(a) *Applicable Standards.* (1) PVC window units shall be designed, assembled and tested in accordance with the following standard:

ASTM D 4099-82 Standard Specification for Poly(Vinyl Chloride) (PVC) Prime Windows

In addition, the following are required:

(i) Weatherstrip shall be replaceable;

(ii) PVC resin compound shall comply with requirements of ASTM D 4216-83, Class 1-154-33-00, 1-231-13-00, and 1-431-13-00. The manufacturer shall