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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 371

[Docket No. 85-407]

Organization, Functions, and Delegations of Authority

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document revises the statement of organization, functions, and delegation of authority of the Animal and Plant Health Inspection Service (APHIS) by making minor changes in the organizational structure under the Deputy Administrator for Management and Budget. The organizational title of the Automated Data Systems Staff is changed to the Information Systems and Communications Division. The changed title is more representative of the functions performed in this Division.

EFFECTIVE DATE: November 15, 1985.

FOR FURTHER INFORMATION CONTACT:

John C. Frey, Classification, Employment, and Executive Resources Program, Human Resources Division, Animal and Plant Health Inspection Service, 6505 Belcrest Road, Room 221, Federal Building, Hyattsville, Maryland, 20782, (301) 436-6466.

SUPPLEMENTARY INFORMATION: The purpose of this document is to record minor changes in the management structure under the Deputy Administrator for Management and Budget. The name of the Automated Data Systems Staff is changed to that of Information Systems and Communications Division. This change will more closely portray the functions actually performed by the Division and the new identification is comparable to the names used by other organizations within the Department of Agriculture

with similar functions. The basic functions of the Division remain unchanged.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be made effective less than 30 days after publication in the *Federal Register*. Further, since this rule relates to internal agency management, it is exempt from the provisions of E.O. 12291. Finally, this action is not a rule as defined by Pub. L. 95-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 371

Authority delegations (Government agencies), Organizations and functions (Government agencies).

PART 371—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

Accordingly, 7 CFR Part 371 is amended as follows:

1. The authority citation for Part 371 continues to read as follows:

Authority: 5 U.S.C. 301.

§§ 371.5 and 371.6 [Amended]

2. 7 CFR Part 371 is amended by removing the words "Automated Data Systems Staff" and inserting in their place, the words "Information Systems and Communications Division" in the introductory paragraph and paragraph (d) of § 371.5 and in paragraph (d) of § 371.6.

Done in Washington, D.C., on November 1, 1985.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 85-27221 Filed 11-14-85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 287

Field Officers; Powers and Duties

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule; Correction.

SUMMARY: The Immigration and Naturalization Service is correcting an error in the listing of categories of Service officials who may issue subpoenas as published on July 24, 1985 at 50 FR 30133.

FOR FURTHER INFORMATION CONTACT:

Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-17589 dated July 24, 1985 on page 30133, the Service published a final rule setting forth procedures for the issuance of subpoenas in connection with criminal and civil investigations and other immigration proceedings. In the listing of those categories of Service officials authorized to issue subpoenas, the category of assistant district director for investigations was erroneously omitted. This omission should have been included in § 287.4 (a)(1) and (c) and these paragraphs are being corrected as follows:

1. Section 287.4(a)(1) is corrected by inserting "Assistant District Director, Investigations" after Patrol Agents in Charge.

2. Section 287.4(c) is corrected by inserting "Assistant District Director, Investigations" after Officer-in-Charge.

Dated: November 7, 1985.

Raymond M. Kisor,

Associate Commissioner, Enforcement, Immigration and Naturalization Service.

[FR Doc. 85-27280 Filed 11-14-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

(T.D. 85-186)

Customs Regulations Amendment
Relating to Referral of Seizures of
Imported Obscene Articles

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to the referral to the U.S. Attorney of cases involving the seizure of imported obscene articles pursuant to 19 U.S.C. 1305(a). The amendment requires that these cases be referred to the U.S. Attorney for possible institution of condemnation proceedings within 4 days, but in no event more than 14 days, after the date of Customs initial examination, and that the referral be initiated simultaneously with the mailing to the importer of the seizure notice and the form for assent to forfeiture of the articles. Under the existing regulation, the referral to the U.S. Attorney is not required until the importer declines to complete the assent to forfeiture form or fails to submit, within 30 days of notification of his privilege to do so, a petition for remission of the forfeiture and permission to export the seized articles. The change is necessary to conform the regulation to a Supreme Court decision that in order for seizures of obscene articles under 19 U.S.C. 1305(a) to be considered constitutional, the complaint for condemnation must be filed in the district court within 14 days after the initial seizure.

EFFECTIVE DATE: November 15, 1985.**FOR FURTHER INFORMATION CONTACT:**

Legal Aspects: Ellen McClain, Office of the Chief Counsel, (202-566-2482), Operational Aspects: Linda Mays, Duty Assessment Division, (202-535-4142), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:**Background**

Pursuant to section 305(a), Tariff Act of 1930 (19 U.S.C. 1305(a)), all persons are prohibited from importing into the U.S. from any foreign country "... any obscene booklet, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material. . . ." Section 1305(a) further provides that upon the appearance of any such book or matter at any Customs office, it shall be seized

and held by the appropriate Customs officer to await the judgment of the district court. Upon seizure of the article, the Customs officer transmits information to the U.S. Attorney for the institution of proceedings in the district court for the forfeiture, confiscation, and destruction of the article. If adjudged to be obscene, the article may be destroyed.

Section 12.40, Customs Regulations (19 CFR 12.40), provides for the seizure of articles or matter prohibited entry by 19 U.S.C. 1305(a). If these articles are of small value and no criminal intent is apparent, a blank assent to forfeiture, Customs Form 4607, is sent to the importer with the notice of seizure. If the recipient completes and returns the form to Customs, the articles are destroyed if they are not needed for official use. However, if the importer declines to complete the assent to forfeiture form and fails to submit, within 30 days after being notified of his privilege to do so, a petition under section 618, Tariff Act of 1930 (19 U.S.C. 1618), for the remission of the forfeiture and permission to export the seized articles, information concerning the seizure is submitted to the U.S. Attorney for the institution of condemnation proceedings, pursuant to 19 U.S.C. 1305(a).

The Supreme Court, in its decision in *United States v. Thirty-Seven (37) Photographs*, 402 U.S. 363 (1971), held that 19 U.S.C. 1305(a) required intervals of no more than 14 days from seizure of the articles to the institution of judicial proceedings for their forfeiture, and no longer than 60 days from the filing of the action to final decision in the district court, in order for the seizure to be deemed constitutional. However, no seizure would be invalidated for delay where the claimant is responsible for extending either administrative action or judicial determination beyond the allowable time limits or where administrative or judicial proceedings are postponed pending the consideration of constitutional issues appropriate only for a three-judge court.

Subsequent to the above decision, Customs issued instructions to its field offices by Circular RES-11-RM, dated May 14, 1971, requiring that seizures of imported obscene materials made under 19 U.S.C. 1305(a) be referred to the U.S. Attorney for the institution of forfeiture proceedings, not later than the fourth day, excluding intervening Saturdays, Sundays, and holidays, after the date on which the formal Customs seizure occurred, unless a timely referral is excepted because of a delay caused by the importer or anyone acting in his behalf. Recognizing that there might be

undue delay between initial examination of the article and its formal seizure, Customs later modified these instructions in Circular RES-11-RM, XMAI-11-RM, dated October 1, 1971, to require obscenity seizures to be referred to the U.S. Attorney not later than the fourth day, excluding intervening weekend days and holidays, after the date on which the import shipment, baggage, or mail was initially examined or inspected by Customs, rather than the date of formal seizure. Also, mindful of the inconsistent language in § 12.40(e), Customs Regulations, allowing for referrals to the U.S. Attorney when an executed assent to forfeiture form has not been received from the addressee, within 30 days from notification to him of his right to file a petition for relief, Customs made a clarification of this issue in the modification. The clarification required referral within the 4-day period after initial examination or inspection, even if an executed assent to forfeiture form had not been received, thus superseding the referral procedures set forth in § 12.40(e).

To ensure that no seizure is subsequently held to be unconstitutional because of delay on the part of Customs, and to conform the regulations to the Court's decision in the *Thirty-Seven (37) Photographs* case and current Customs procedures; we are amending § 12.40(e), to require all obscenity seizures under 19 U.S.C. 1305(a) to be referred to the U.S. Attorney, for possible institution of condemnation proceedings, within 4 days, but in no event more than 14 days, after the date of Customs initial examination. The referral to the U.S. Attorney would be initiated simultaneously with the mailing of the seizure notice and the assent to forfeiture form.

The above case does not affect child pornography seizures made under 18 U.S.C. 2253 and 2254, the civil and criminal forfeiture provisions of the Child Protection Act of 1984 (Pub. L. 98-292, as amended). That act, which incorporates Customs seizure and forfeiture law by reference, 18 U.S.C. 2253, 2254, was amended in 1984 to define sexual exploitation of children without reference to "obscenity" with the express purpose of avoiding conflict with the First Amendment. See H.R. Rep. 536, 98th Cong., 2d Sess. (1983). See also *New York v. Ferber*, 458 U.S. 747 (1982). Therefore, the general Customs seizure and forfeiture laws apply to such seizure rather than those at 19 U.S.C. 1305.

Inapplicability of Public Notice and Delayed Effective Date Provisions

Inasmuch as this amendment merely conforms the regulations to existing law, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary, and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Executive Order 12291

Because this document will not result in a "major rule" as defined by E.O. 12291, the regulatory analysis and review prescribed by the E.O. is not required.

Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*) That Act does not apply to any regulation, such as this, for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Immoral articles, Pornography.

Amendment to the Regulations

Part 12, Customs Regulations (19 CFR Part 12), is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624; section 12.40 also issued under 19 U.S.C. 1305.

2. Section 12.40 is amended by revising paragraph (e) to read as follows:

§ 12.40 Seizures; disposition of seized articles; reports to United States Attorney.

(e) All cases in which articles have been seized pursuant to 19 U.S.C. 1305(a) should be referred to the U.S. Attorney, for possible institution of condemnation proceedings, within 4 days, but in no event more than 14 days, after the date of Customs initial examination. The referral to the U.S. Attorney should be initiated simultaneously with the mailing to the

importer of the seizure notice and the assent to forfeiture form. If the importer declines to execute an assent to forfeiture of the articles other than those mentioned in paragraph (a) of this section and fails to submit, within 30 days after being notified of his privilege to do so, a petition under section 618, Tariff Act of 1930 (19 U.S.C. 1618), for remission of the forfeiture and permission to export the seized articles, then the U.S. Attorney, who has already received information concerning the seizure pursuant to this paragraph, may proceed with the condemnation action.

William von Raab,
Commissioner of Customs.

Approved: September 12, 1985.

Edward T. Stevenson,
Acting Assistant Secretary of the Treasury.
[FR Doc. 85-27036 Filed 11-14-85; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; New Drug Applications

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

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority regarding the approval of new drug applications (NDA's). This amendment will also delegate additional authorities to officials with regard to approval of supplemental applications to approved new drug applications.

EFFECTIVE DATE: November 15, 1985.

FOR FURTHER INFORMATION CONTACT: Melissa M. Moncavage, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is revising § 5.80 *Approval of new drug applications and their supplements* (21 CFR 5.80) to delegate additional authorities to officials listed under § 5.80(b) (1) and (2), with regard to approval of supplemental applications to approved new drug applications for drugs for human use and new drug applications for products that contain, in the same or different dosage form or strength, one or more active ingredient(s) identical to, or differing only in a salt or ester portion of, the ingredient(s) of an approved drug

product already marketed in the United States. In the case of an application for a product with more than one active ingredient, there must be an approved product with the same combination of ingredients. This authorization does not include applications submitted for new molecular entities (new chemical entities) or new combinations. This authorization does not require or suggest that the officials listed in § 5.80(b) (1) and (2) will be, in all cases, the officials to take final action on applications of the types, described above, to which the authorization applies. Such applications may, in appropriate circumstances, continue to be acted upon by those officials who are so authorized in § 5.10(a) and the introductory text and paragraph (a) of § 5.80.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and function (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)); 21 CFR 5.10.

2. In § 5.80 by revising the introductory text of paragraph (b) to read as follows:

§ 5.80 *Approval of new drug applications and their supplements.*

(b) The officials listed in paragraph (b) (1) and (2) of this section, for drugs under their jurisdiction, are authorized to perform all functions of the Commissioner of Food and Drugs with regard to approval of supplemental applications to approved new drug applications for drugs for human use that have been submitted under § 314.70 of this chapter and new drug applications for drug products that contain, in the same or different dosage form or strength, one or more active ingredient(s) identical to, or differing only in a salt or ester portion of, the ingredient(s) of an approved drug

product already marketed in the United States. In the case of an application for a product with more than one active ingredient, there must be an approved product with the same combination of active ingredients. This authorization does not include applications submitted for new molecular entities (new chemical entities) or new combinations. The applications to which this authorization applies may, in appropriate circumstances, continue to be acted upon by the officials so authorized in § 5.10(a) and the introductory text and paragraph (a) of this section.

Dated: November 7, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85-27317 Filed 11-14-85; 8:45 am]

BILLING CODE 4150-01-M

21 CFR Parts 175 and 176

[Docket No. 85F-0192]

Indirect Food Additives: Adhesives and Components of Coatings; Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of certain styrene/acrylate-based copolymers as components of adhesives and coatings intended for use in contact with food. This action responds to a petition filed by S.C. Johnson & Son, Inc.

DATES: Effective November 15, 1985; objections by December 16, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of June 5, 1985 (40 FR 23767), FDA announced that a food additive petition (FAP 4B3763) had been filed by S.C. Johnson & Son, Inc., Racine, WI 53403, proposing that the food additive regulations be amended to provide for the safe use of styrene/acrylate-based copolymers as components of coatings, inks, and adhesives intended for use in

contact with food. During its review of this petition, the agency and the petitioner agreed that the use of the copolymer in ink was not intended for use in contact with food. Therefore, this use has been deleted from this petition.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive uses are safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the Notice of Filing for FAP 4B3763 (June 5, 1985; 50 FR 23767). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

Any person who will be adversely affected by this regulation may at any time on or before December 16, 1985, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be

seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 175

Adhesives, Food additives, Food packaging.

21 CFR Part 176

Food additives, Food packaging, Paper and paperboard.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Parts 175 and 176 are amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Part 175 is amended in § 175.105(c)(5) by revising the heading "Polymers: Homopolymers and copolymers of the following monomers" and by alphabetically inserting a new item under it, to read as follows:

§ 175.105 Adhesives.

- (c) * * *
- (5) * * *

Substances	Limitations
Polymers: Homopolymers and copolymers of the following monomers:	
-Methyl styrene	

3. In § 175.300(b)(3)(xx) by alphabetically inserting a new item, to read as follows:

§ 175.300 Resinous and polymeric coatings.

- (b) * * *
- (3) * * *
- (xx) * * *

Styrene polymers made by the polymerization of any combination of styrene or alpha methyl styrene with acrylic acid, methacrylic acid, 2-ethyl hexyl acrylate, methyl methacrylate, and butyl acrylate. The styrene and alpha methyl styrene, individually, may constitute from 0 to 80 weight percent of the polymer. The other monomers,