disadvantaged business, or small women-owned business''.

§ 125.5 [Corrected]

2. On page 3314, in the second column, in § 125.5, in paragraph (d)(3), the second sentence is removed.

3. On page 3315, in the third column, in § 125.5, in paragraph (o), the word ''may'' is corrected to read ''will''.

Dated: February 26, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–4775 Filed 2–29–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10 and 113

[T.D. 96–20]

RIN 1515–AB51

Treatment of Reusable Shipping Devices Arriving From Canada or Mexico

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to allow certain foreign- or U.S.-manufactured shipping devices arriving from Canada or Mexico to be released, under specified conditions, without entry and payment of duty at the time of arrival and without the devices being serially numbered or marked, if they are always transported on or within either intermodal and similar containers which are themselves vehicles or vehicle appurtenances and accessories. As millions of these devices are used annually in hundreds of millions of transportation moves between the United States and Canada or Mexico, Customs has determined that requiring the importing and exporting communities to individually mark and track these devices places a burden on commerce that may be alleviated.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Louis Hryniw, Regulatory Audit, (202–927–1100).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Chapter 98, Subchapter III, U.S. Note 3, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), in order to facilitate the prompt clearance at ports of entry of certain substantial containers and holders, the Secretary of the Treasury is authorized to permit the admission of such devices without entry and to permit any duties thereon to be paid cumulatively from time to time either before or after their importation when conditions exist which permit adequate Customs controls to be maintained.

In this connection, Customs received a petition from, and met with representatives of, the American Automobile Manufacturers Association (AAMA) concerning an amendment to § 10.41b, Customs Regulations (19 CFR 10.41b), intended to ease the burden of serially numbering and marking certain containers or holders arriving from Canada or Mexico, as otherwise generally required thereunder.

After reviewing the AAMA proposal, Customs concluded that the requirements to serially number and mark the substantial holders and containers in question could be eased under the circumstances without risking a loss of control or revenue.

Accordingly, by a document published in the Federal Register on November 1, 1994 (59 FR 54537), Customs proposed to amend § 10.41b, to allow certain foreign-made shipping devices arriving from Canada or Mexico to be released without entry and payment of applicable duty, and without the devices being serially numbered or marked, following the submission and approval of an application by the importer or his agent in this regard.

Such application had to, among other things, describe the subject shipping devices, identify the ports where they would arrive and depart the U.S., and set forth the program for accounting for and reporting the shipping devices to Customs. If the application were approved, the importer or agent would submit to Customs a periodic report for the shipping devices, which could not be less frequent than annual, using his own accounting and recordkeeping procedures to keep track of the devices. Records supporting the periodic reports of the shipping devices would have to be retained for at least 3 years from the date the reports were filed with Customs. Any duty applicable to the devices would have to be tendered cumulatively at the time specified in the approved application. Such tender could not occur more than 90 days following the end of the related reporting period.

In the event the application were to be denied by Customs at the initial stage, a right of appeal was also provided in the proposal.

Since duty under the proposal would be due on all shipping devices acquired within the period covered by the periodic report which the applicant would undertake to file, even though the devices might not have yet been used in transborder traffic, accounting for specific movements of the devices or for diversions to domestic traffic would be superfluous.

Eight comments, including one from the AAMA, were received in response to the notice of proposed rulemaking, six supporting the proposal, with one posing a number of questions regarding the bond conditions applicable under the proposed program. Another comment advocated that the proposal be expanded to allow substantial holders or outer containers formally designated as ''instruments of international traffic'' to be temporarily diverted, from time to time, to domestic traffic without an entry being required therefore. Customs finds that this latter comment would have to be the subject of a separate publication, inasmuch as it clearly falls outside the scope of the published notice.

A discussion of the specific issues that were raised with respect to the proposed program itself, together with Customs response thereto, is set forth below.

Discussion of Comments

Comment: The AAMA in its comment wanted the proposed regulation clarified to state explicitly that an approval by one Customs office of an importer's application for tracking and reporting on its shipping devices would constitute an approval binding on all Customs offices nationwide. Also, it was recommended that the proposed regulation be revised to reflect the Customs Reorganization Plan, which eliminated regional and district offices.

Response: An approval by the Customs office with which the subject application is filed would indeed be binding on all Customs offices nationwide. Section 10.41b(b)(4) is changed by adding an express provision to this effect, and by deleting the provision therefrom indicating that approval would be limited to those Customs offices listed in the application. Likewise, § 10.41b(b)(2)(ii) is changed to make clear that only the intended ports where it is anticipated the devices will be arriving and departing the U.S. need be listed in the application. The applicant should of course endeavor to fully anticipate and list in the application all ports to be involved in the program.

Also, § 10.41b(b) is changed to reflect the Customs Reorganization Plan, by

providing that the application would be filed with a port director, instead of with a district director; and by providing that a right of appeal would lie with the Assistant Commissioner, Office of Field Operations, rather than with a regional commissioner, should the application be denied.

Comment: The AAMA also observed that § 113.66 of the Customs Regulations (19 CFR 113.66) cited in proposed § 10.41b(b)(3) regarding the bond requirements for the importer's recordkeeping and reporting program did not itself make corresponding provision for these requirements; accordingly, the AAMA recommended that § 113.66 be appropriately amended to reiterate the basic requirements set forth for the program in proposed § 10.41b(b), to which the underlying bond would relate.

Furthermore, a surety association posed a number of questions about the bond requirements occasioned under the proposed amendment, viewing the proposal as appearing not to provide sufficient information in this matter. In particular, this commenter wanted the intended coverage under the bond clarified, together with the basis both for assessing liquidated damages under the bond, and for setting the limit of the bond.

Additionally, this commenter compared the 3-year record retention requirement of the proposal to 19 U.S.C. 1508(c) which enabled Customs to require the retention of records relating to import transactions for up to 5 years, and asked in this context which time frame would be applicable. This commenter further wanted to know whether the importer's accounting or auditing records, which would be relied upon by Customs to establish compliance with the proposed program, would be available to the surety as well.

Response: Section 113.66 has been revised to replicate the importer's basic recordkeeping and reporting obligations concerning the subject shipping devices, which would be covered by the bond, as already amply evidenced in the proposed amendment of § 10.41b. Customs believes that the proposed rule in this regard adequately framed the subject matter thereof for effective evaluation and comment. To this end, § 113.66 is revised by redesignating paragraph (c) as paragraph (d), and by making corresponding provision for the bond requirements in a new paragraph (c).

In this latter respect, liquidated damages under the bond would be determined in the manner provided in § 10.41b(b)(3) and in newly redesignated § 113.66(d) (formerly § 113.66(c)). Specifically, if the conditions of the bond were violated, the port director could issue a claim for liquidated damages in an amount equal to the domestic value of the container.

Likewise, the setting of the bond limit will follow the existing guidelines previously issued pursuant to §§ 113.12 and 113.13, Customs Regulations (19 CFR 113.12, 113.13); for activity code 3a bonds (applicable to substantial holders or outer containers under § 10.41b), this means that bond liability would be fixed at $10,000 or such larger amount as deemed necessary to accomplish the purpose for which the bond is given.

By the same token, a surety's access to an importer's business records relating to the reports of its shipping devices would be dependent, once again, on Customs existing practices in this general area, and, in particular, on the Freedom of Information Act, as amended (5 U.S.C. 552), and the Trade Secrets Act, as amended (18 U.S.C. 1905).

The record retention period under 19 U.S.C. 1508(c) is tied to the date of entry. The shipping devices in question, however, will not be subject to entry as such, and Customs is satisfied that a record retention requirement of 3 years from the date the importer's reports of the shipping devices are filed with Customs would be sufficient under the circumstances.

Comment: One commenter observed that the rule should be expanded to apply equally to similar shipping devices of U.S. manufacture, inasmuch as they should not be placed in a less favorable competitive position than the foreign articles.

Response: Customs agrees. Section 10.41b(b) is amended accordingly.

Comment: Two commenters asked that the program not be limited to reusable shipping devices arriving only from Canada or Mexico. It was stated that Part I, Article I, of the GATT (General Agreement on Tariffs and Trade) mandated uniform treatment for like products originating from all contracting parties.

Response: Customs has concluded that a rational basis exists for limiting the amendment, at least initially, to reusable shipping containers and holders arriving from Canada or Mexico, inasmuch as these countries are contiguous to the U.S., and it is believed that the amendment as thus circumscribed can be safely implemented without risking a loss of revenue or a loss of effective Customs control with respect to the shipping devices concerned. Customs thus does not perceive this limitation on the rule as violative of the GATT.

However, Customs finds significant merit in the commenter's request, and will proceed to expeditiously review the prospect of further extending the program.

Conclusion

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has concluded that the proposed amendment with the modifications discussed above should be adopted.

In addition, in order to apprise the Customs inspector that the shipping devices in question have been relieved from having to be serially numbered or marked as otherwise mandated under § 10.41b, the introductory text of § 10.41b(b) is revised to require that a notation appear on the manifest for the transporting vehicle or vessel to the effect that such shipping devices have been exempted from serial numbering or marking requirements pursuant to an application approved under 19 CFR 10.41b(b). Also, Customs has determined to amend § 10.41b(b)(2)(vi) in order to emphasize that the location of the supporting records in the U.S., which is required to be identified in the importer's application, must be so identified therein by specific name and address; and § 10.41b(b)(6) is changed to provide that if an approved application should later be revoked by the port director, the procedures described in § 10.41b(b)(5) will apply. Furthermore, at the end of the introductory text of § 10.41b(b), a provision is added that pallets and other solid wood shipping devices must be accompanied by an importer document, to the extent that this is required by the Animal and Plant Health Inspection Service, Department of Agriculture, regarding plant pest risk.

Regulatory Flexibility Act and Executive Order 12866

For the reasons set forth in the preamble, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604. Nor do the amendments result in a ''significant regulatory action'' under E.O. 12866.

Drafting Information: The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 113

Air carriers, Customs duties and inspection, Exports, Freight, Imports, Surety bonds, Vessels.

Amendments to the Regulations

Parts 10 and 113, Customs Regulations (19 CFR parts 10 and 113), are amended as set forth below.

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

1. The general authority citation for part 10 continues to read as follows, and the specific sectional authority for part 10 is amended by adding specific sectional authority for § 10.41b, in appropriate numerical order thereunder, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

Section 10.41b also issued under 19 U.S.C. 1202 (Chapter 98, Subchapter III, U.S. Note 3, Harmonized Tariff Schedule of the U.S. (HTSUS));

* * * * *

2. Section 10.41b is amended by redesignating paragraphs (b), (c), (d), (e), (f), (g) and (h) as (c), (d), (e), (f), (g), (h) and (i), respectively, and by adding a new paragraph (b) to read as follows:

§ 10.41b Clearance of serially numbered substantial holders or outer containers.

* * * * *

(b) Subject to the approval of a port director pursuant to the procedures described in this paragraph, certain foreign- or U.S.-made shipping devices arriving from Canada or Mexico, 12 including racks, holders, pallets, totes, boxes and cans, need not be serially numbered or marked if they are always transported on or within either intermodal and similar containers or containers which are themselves vehicles or vehicle appurtenances and accessories such as twenty and forty foot containers of general use and ''igloo'' air freight containers. The following or similar notation shall appear on the vehicle or vessel manifest in relation to such shipping devices which are exempt from serial numbering or marking requirements pursuant to this paragraph: ''The shipping devices transported herein, which are not serially numbered or marked, have been exempted from such requirement pursuant to an application approved under 19 CFR 10.41b(b).'' Also, pallets and other solid wood shipping devices must be accompanied by an importer document, to the extent that this is required by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, attesting to the admissibility of such devices as regards plant pest risk, as provided for in 7 CFR 319.40–3.

(1) An importer or his agent, regardless of whether the importer is the owner of the foreign- or U.S.-manufactured shipping devices, may apply to a port director of Customs at one of the importer's chiefly utilized Customs ports or the port within which the importer's or agent's recordkeeping center is located for permission to have such shipping devices arriving from Canada or Mexico released without entry and payment of duty at the time of arrival and without the devices being serially 13 numbered or marked. Application may be filed in only one port. Although no particular format is specified for the application, it must contain the information enumerated in paragraph (b)(2) of this section. Any duty which may be due on these shipping devices shall be tendered and paid cumulatively at the time specified in an approved application, which may be either before or after the arrival of the shipping devices in the U.S. (such as, at the time a contract, purchase order or lease agreement is issued).

(2) The application shall:

(i) Describe the types of shipping devices covered, their classification under the Harmonized Tariff Schedule of the U.S. (HTSUS), their countries of origin, and whether and to whom required duty was paid for them or when it will be paid for them, including duties for repair and modifications to such shipping devices while outside the U.S.;

(ii) Identify the intended ports where it is anticipated the shipping devices will be arriving and departing the U.S., as well as the particular movements and conveyances in which they are intended to be utilized;

(iii) Describe the applicant's proposed program for accounting for and reporting these shipping devices;

(iv) Identify the reporting period (which shall in no event be less frequent than annual), as well as the payment period within which applicable duty and fees must be tendered 14 (which shall in no event exceed 90 days following the close of the related reporting period);

(v) Describe the type of inventory control and recordkeeping, including the specific records, to be maintained to support the reports of the shipping devices; and

(vi) Provide the location in the United States, including the name and address, where the records supporting the reports will be retained by law and will be made available for inspection and audit upon reasonable notice. (The records supporting the reports of the shipping devices must be kept for a period of at least 3 years from the date such reports are filed with the port director.)

(3) The application shall be filed along with a continuous bond containing the conditions set forth in § 113.66(c) of this chapter. If the application is approved by the port director and the conditions set forth in the application or of the bond are violated, the port director may issue a claim for liquidated damages equal to the domestic value of the container. If the domestic value exceeds the amount of the bond, the claim for liquidated damages will be equal to the amount of the bond.

(4) The port director receiving the application shall evaluate the program proposed to account for, report and maintain records of the shipping devices. The port director may suggest amendments to the applicant's proposal. The port director shall notify the applicant in writing of his decision on the 15 application within 90 days of its receipt, unless this period is extended for good cause and the applicant is so informed in writing. Approval of the application by the port director with whom it is filed shall be binding on all Customs ports nationwide.

(5) If the decision is to deny the application, in whole or in part, the port director shall specify the reason for the denial in a written reply, and inform the applicant that such denial may be appealed to the Assistant Commissioner, Office of Field Operations, Customs Headquarters, within 21 days of its date. The Assistant Commissioner's decision shall be issued, in writing, within 30 days of the receipt of the appeal, and shall constitute the final Customs determination concerning the application.

(6) If the application is approved, an importer may later apply to amend his application to add or delete particular types of shipping devices listed in the application in which the procedures set forth in the application may be utilized. If a requested amendment to an approved application should be denied, or if an approved application should be

revoked, in whole or in part, by the port director, the procedures described in paragraph (b)(5) of this section shall apply.

(7) Application for and approval of a reporting program shall not limit or restrict the use of other alternative 16 means for obtaining the release of holders, containers and shipping devices.

* * * * *

PART 113—CUSTOMS BONDS

1. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

2. Section 113.66 is amended by redesignating paragraph (c) as (d) and by adding a new paragraph (c) to read as follows:

§ 113.66 Control of containers and instruments of international traffic bond conditions.

* * * * *

(c) *Agreement to comply with application approved under 19 CFR 10.41b(b).* If the principal establishes a program for the cross-border movements of shipping devices based upon an application approved as provided in § 10.41b(b) of this chapter (19 CFR 10.41b(b)), the principal agrees:

(1) To timely file complete and accurate reports on the shipping devices, and to pay any applicable duty due on the devices and repairs made to such devices, as provided in the approved application;

(2) To retain complete and accurate records regarding the shipping devices, and to make such records available to Customs for inspection and audit upon reasonable notice, as also required in the approved application; and

(3) To otherwise comply with every other condition of the approved application.

Approved: January 31, 1996.

George J. Weise,

Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–4797 Filed 2–29–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 95C–0091]

Listing of Color Additives Exempt From Certification; Fruit Juice Color Additive and Vegetable Juice Color Additive; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of November 13, 1995, of the final rule published in the Federal Register of October 10, 1995 (60 FR 52628), that amended the color additive regulations to provide for the safe use in food of dried fruit juice color additive, dried vegetable juice color additive, and vegetable juice color additive prepared by water infusion of the dried vegetable.

DATES: Effective date confirmed: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 10, 1995 (60 FR 52628), FDA amended the color additive regulations in § 73.250 *Fruit juice* (21 CFR 73.250) to provide for the safe use of dried fruit juice color additive and in § 73.260 *Vegetable juice* (21 CFR 73.260) to provide for the safe use of dried vegetable juice color additive and vegetable juice color additive prepared by water infusion of the dried vegetable.

FDA gave interested persons until November 9, 1995, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the final rule published in the Federal Register of October 10, 1995, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, notice is given that no objections or requests for a hearing were filed in response to the October 10, 1995, final rule. Accordingly, the amendments promulgated thereby became effective November 13, 1995.

Dated: February 12, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–4717 Filed 2–29–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 180

[Docket No. 94F–0152]

Food Additives Permitted in Food on an Interim Basis or in Contact With Food Pending Additional Study; Mannitol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to permit the manufacture of mannitol by fermentation of sugars or sugar alcohols such as glucose, sucrose, fructose, or sorbitol by the action of the yeast *Zygosaccharomyces rouxii*. This action is in response to a petition filed by Roquette America, Inc.

DATES: Effective March 1, 1996; written objections and requests for a hearing by April 1, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3107.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of December 13, 1994 (59 FR 64207), FDA announced that a food additive petition (FAP 4A4412) had been filed by Roquette America, Inc., c/o Keller and Heckman, 1001 G St. NW., Washington, DC 20001. The petition proposed to amend the food additive regulations in § 180.25 *Mannitol* (21 CFR 180.25) to permit the manufacture of mannitol by fermentation of sugars or sugar alcohols such as glucose, sucrose, fructose, or sorbitol by the action of the yeast *Z. rouxii*.