recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAP's for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260-3, 8260-4, or 8260-5 and made a part of the public rulemaking dockets of the FAA in accordance with the procedures set forth in amendment No. 97-696 (35 FR 5609).

SIAP's are available for examination at the rules docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591. Copies of SIAP's adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAP's may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue SW., Washington, D.C. 20591, or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft, or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $150 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Additional copies mailed to the same address may be ordered for $30 each.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, part 97 of the Federal Aviation regulations is amended as follows, effective on the dates specified:

1. Section 97.23 is amended by originating, amending, or canceling the following VOR-VOR/DME SIAP's, effective May 10, 1973:

Tifton, Ga.—Henry Tift Myers Airport, VOR Runway 33, original.

* * * effective April 25, 1973:

Kent, Ohio—Andrew W. Paton of Kent State University Airport, VOR-A, amendment 6.

2. Section 97.25 is amended by originating, amending, or canceling the following SDF-LOC-LDA SIAP's, effective May 17, 1973:

Barre-Montpelier, Vt.—Edward F. Knapp State Airport, LOC runway 17, original.

3. Section 97.27 is amended by originating, amending, or canceling the following NDB/ADF SIAP's, effective June 7, 1973:

Orlando, Fla.—Herndon Airport, NDB runway 31, original.

Orlando, Fla.—McCoy AFB, NDB runway 18L and 18R, original.

* * * effective May 17, 1973:

Tell City, Ind.—Perry County Municipal Airport, NDB runway 31, original, effective March 30, 1972; canceled.

Tell City, Ind.—Perry County Municipal Airport, NDB runway 31, original.

* * * effective May 10, 1973:

Tifton, Ga.—Henry Tift Myers Airport, NDB runway 33, amendment 3.

* * * effective April 26, 1973:

Port Clinton, Ohio—Carl R. Keller Field, NDB runway 26, amendment 1.

4. Section 97.29 is amended by originating, amending, or canceling the following ILS SIAP's, effective May 31, 1973:

Atlanta, Ga.—Fulton County Airport, ILS runway 8R, original.

* * * effective April 24, 1973:

Dayton, Ohio—James M. Cox-Dayton Municipal airport, ILS runway 18, amendment 2.

* * * effective April 26, 1973:

Miami, Fla.—Miami International Airport, ILS runway 9L, amendment 15.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1948; 49 U.S.C. 1438, 1354, 1421, 1510; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c) and 5 U.S.C. 552(a)(1).)

Issued in Washington, D.C., on April 26, 1973.

JAMES M. VINES,
Chief, Aircraft Programs Division.

NOTE.—Incorporation by reference provisions in §§ 97.10 and 97.20 (35 FR 5610) approved by the Director of the Federal Register on May 12, 1969.

[FR Doc.73-9224 Filed 5-9-73;8:45 am]

[Docket No. 10858]

PART 154—ACQUISITION OF U.S. LAND FOR PUBLIC AIRPORTS UNDER THE AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970

The purpose of this part is to implement section 23 (use of Government-owned lands) of the Airport and Airway Development Act of 1970 (84 Stat. 232).

Interested persons have been afforded an opportunity to participate in the making of these regulations by a notice of proposed rulemaking (notice 71-6) issued on February 12, 1971, and published in the FEDERAL REGISTER on February 23, 1971 (36 FR 3373). Due consideration has been given to all comments received in response to that notice. The four public comments received favored the proposal. However, several recommendations were made for modification of proposed provisions. Except as modified by the following discussion, the reasons for the provisions in this part are those contained in the notice.

Two comments concerned the provision in proposed § 154.1(b) requiring that the airport for which the property interest in U.S. land is to be acquired be included in, or currently meet the entrance criteria for, the current National Airport system plan. It was recommended that airports included in a State airport system plan be eligible for acquisition of U.S. lands.

Notice 71-6 stated that this provision as proposed was considered appropriate to make the part consistent with the proposed rules in part 152 of the Federal Aviation regulations covering airport development aid that would limit grants of Federal funds for airports to projects for airports listed in the National Airport system plan. The FAA is of the opinion that since the Airport and Airway Development Act of 1970 in all other respects contemplates development of, and aid to, airports in the NASP, section 23 of the act cannot be considered as applicable to airports other than those included in, or which meet the criteria for entrance in, the current NASP. Accordingly, § 154.1(b) is being adopted as published in the notice.

With reference to another comment, it should be noted that proposed §§ 154.13 (d)(2) and 154.13(d)(3), pertaining to exclusive rights are consistent. Section 154.13(d)(2) applies only to exclusive rights for the sale of gasoline and oil that were authorized prior to July 17, 1962, by FAA policy. Section 154.13(d)(3) applies to all other exclusive rights.

One comment recommended that the definition of "operational use" proposed in § 154.1(d)(1), in connection with the definition of "airport purposes," be expanded to include land for clear zones, buffer zones, and adjacent to airport boundaries for compatible land use. The FAA believes that the term "clear zones" should be used in lieu of "aerial approaches" in the definition since it is a term defined in part 152. The phrase "land necessary to preserve the operational integrity of the airport" has also been included in the definition of operational use. This language contemplates land on or adjacent to the airport where incompatible development or encroachment would interfere with current airport operation or future development and operation. Section 154.1(d)(1) has been amended accordingly. In this connection, it should be noted that under § 154.13(a) the grantee covenants that such property interest will be used for airport purposes, and that he will develop that interest for airport purposes within 1 year after the conveyance, and that if the property interest is necessary to meet future development of the airport in accordance with the NASP, the grantee will develop that interest for airport purposes within a period of time satisfactory to the Administrator, and that any interim use of that interest for other than airport purposes will be subject to such terms and conditions as the Administrator may prescribe.

In response to a comment received, proposed § 154.1(d)(3) has been revised consistent with § 139.89 of part 139 by changing the words "crash rescue, fire fighting" to "fire fighting and rescue equipment and service."

Section 154.13 relating to covenants in conveyance has been changed to conform with Department of Transportation policy on discrimination expressed in part 21 of the regulations of the Office of the Secretary (49 CFR 21), and order 1050.2 of the Office of the Secretary of Transportation (Standard DOT Title VI Assurances) issued August 24, 1971. Appendix B of the current order contains an appropriate assurance clause. This change appears in § 154.13(c) in the rules as issued.

Order 5610.1A (36 FR 23679) of the Office of the Secretary of Transportation has implemented section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), portions of section 16 of the 1970 act, and section 4(f) of the Department of Transportation Act (airport programs or projects affecting public parks, recreation areas, wildlife refuges, or historic sites). Pursuant to that order, these regulations require the applicant for a conveyance of a property interest under this part to submit a proposed draft environmental impact statement, to be utilized in the preparation of an environmental impact statement or negative declaration by the Administrator. This provision is substituted for the statement on environmental impact proposed by the notice and appears in § 154.7(b)(14).

An additional item has been added to the list of items required to be submitted with an application for conveyance under § 154.7(b) which would require a statement to be included in the application that if the conveyance involves the displacement of any person or the acquisition of any interest in real property that is within the purview of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the applicant will make the assurances required by §§ 25.57(a) and 25.59(a) of the regulations of the Office of the Secretary of Transportation.

Finally, the title of this new part has been changed to read: "Acquisition of U.S. Land for Public Airports Under the Airport and Airway Development Act of 1970." The title change has been made to distinguish this part from part 153 (Acquisition of U.S. Land for Public Airports), which prescribes policies and procedures for administering section 16 of the Federal Airport Act. Until the programs under the Federal Airport Act are completely phased out, part 153 will continue to apply to U.S. lands acquired for public airports under that act.

In consideration of the foregoing, title 14, chapter I of the Code of Federal Regulations is amended, effective June 9, 1973, by adding the following new part 154 in subchapter I.

Issued in Washington, D.C., on May 3, 1973.

ALEXANDER P. BUTTERFIELD,
Administrator.

AUTHORITY.—Secs. 11–27, Airport and Airway Development Act of 1970, 84 Stat. 220–233; § 1.47(g) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.)

§ 154.1 Applicability and purpose.

(a) *General.*—This part applies to the acquiring by public agencies, under section 23 of the Airport and Airway Development Act of 1970 (Public Law 91–258, 84 Stat. 232), of property interests in land owned or controlled by the United States, the use of which is reasonably necessary to carry out a project for airport development under part II of that act or to operate a public airport, including lands reasonably necessary to meet future development of an airport in accordance with the national airport system plan. If the Administrator determines that such a property interest is reasonably necessary to carry out such a project or to operate a public airport, he is authorized by section 23 of the act to request the head of the Department, Board, Bureau, Commission, or other agency in the executive branch of the Federal Government, or corporation wholly owned by the United States (in this part called the "controlling agency") that owns or controls that property interest to convey so much of it as the Administrator considers necessary, to the public agency sponsoring the project concerned or owning or controlling the airport concerned, as the case may be. The head of that agency is then required to determine whether the conveyance is inconsistent with the needs of that agency. If he determines that it is not inconsistent with those needs, he shall make the conveyance as provided in § 154.11 of this part.

(b) *Property interests to which this part applies.*—This part applies with respect to fee title or any other interest in land that is reasonably necessary to carry out a project under the airport development aid program or to operate a public airport or in lands reasonably necessary to meet future development of an airport, in accordance with the national airport system plan, including leaseholds, permits, licenses, and easements, over lands adjacent to the airport that will assure freedom from interference with the intended purpose. The property interest must be in land for an airport that is included in, or currently meets the entrance criteria for, the current national airport system plan.

(c) *Property interests to which this part does not apply.*—This part does not apply with respect to—

(1) Property interests in lands owned or controlled by the United States within—

(i) Any national park, national monument, national recreation area, or similar area under the administration of the National Park Service;

(ii) Any unit of the National Wildlife Refuge System or similar area under the jurisdiction of the Bureau of Sport Fisheries and Wildlife; or

(iii) Any national forest or Indian reservation; or

(2) Any entire, existing Federal airport.

(d) *Definition of "airport purposes."*—For the purposes of this part, "airport purposes" means uses of property interests in land that are directly related to the actual operation of the foreseeable aeronautical development of the public airport. It includes—

(1) *Operational use.*—Use of property interest for clear zones, navigation aids, runways, taxiways, aprons and other aircraft movement areas, and land necessary to preserve the operational integrity of the airport.

(2) *Future developmental use.*—Reservation of property interests for foreseeable aeronautical development (for example, a planned runway extension or a planned terminal building development);

(3) *Essential support services use.*—Use of property interests for activities directly supporting flight operations (for example, aircraft maintenance, fueling, and servicing; mail, passenger, and cargo processing facilities; communications and air traffic control; airport firefighting and rescue equipment and service, and airport maintenance); and

(4) *Complementary activities use.*—Use of property interests for facilities or services that enhance the utility or convenience of the aeronautical services (for example, facilities to provide food, shelter, surface transportation, or vehicular parking).

§ 154.3 Public agencies eligible for conveyances.

A State, Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, any agency of any of them, a municipality or other political subdivision, a tax-supported organization, or an Indian tribe or pueblo may apply for a conveyance of a property interest under this part if—

(a) It plans to use that property interest for or in connection with—

(1) Developing a public airport as a project under the airport development aid program;

(2) Improving, developing, or protecting an existing public airport, whether or not in connection with a project under the program; or

(3) Establishing or constructing a new public airport, whether or not in connection with a project under that program;

(b) It has legal authority to accept the conveyance; to engage in the kind of airport development described in § 152.41 of this chapter, improvement, or construction necessary to benefit fully from the conveyance; to establish, operate, and maintain the proposed or existing airport; and to raise funds necessary for the proposed development, improvement, or construction and for financing the operation and maintenance of the airport;

(c) It has enough funds, or will be able to get them, to pay for any development, improvement, or construction that is necessary to benefit reasonably from the conveyance, and to operate and maintain the airport; and

(d) It is not in default on any obligation to the United States in connection with developing, operating, or maintaining an airport.

§ 154.5 Application for conveyance.

A public agency that is eligible under § 154.3 of this part may apply for a conveyance of a property interest under this part by filing an application for it in quadruplicate with the FAA office serving the area in which the property interest is located.

§ 154.7 Form and content of application for conveyance.

(a) An application for a conveyance of a property interest under this part need not be in any special form. However, the public agency applying must provide enough information to enable the Administrator to determine—

(1) That it is eligible to apply for the conveyance;

(2) That it will accept the conveyance subject to the conditions and covenants in the deed of conveyance;

(3) That the property interest applied for is reasonably necessary to carry out a project under the airport development aid program or to operate a public airport; and

(4) The extent of the property interest that is necessary to accomplish the purpose.

(b) Each public agency applying for a conveyance must send with its request, or as soon thereafter as possible, the following information, if applicable and available, together with any other information requested by the Administrator:

(1) Its name and address.

(2) The name, location, and ownership of the airport concerned, or if the airport is not in existence, the proposed name, the approved location, and the prospective owner.

(3) If the airport is being operated under a lease or agreement from the public agency, a copy of the lease or agreement.

(4) A statement of its legal authority and financial ability to develop, improve, construct, operate, and maintain the airport.

(5) The name of the department or agency of the United States that owns or controls the property interest.

(6) A legal description of the land requested, and the amount of acreage, if applicable.

(7) A list of all improvements on the land and the use or disposition to be made thereof.

(8) A statement of the specific property interest, such as fee title, leasehold, easement, permit, license, or other interest, that it needs.

(9) A complete justification of its need for the property interest, supported by any maps, charts, photographs, or other documents that may be necessary to show the need for that property interest, and if use of other land might fill the need, a statement of the particular advantage of the U.S. land over the other suitable land.

(10) A statement of the plans and commitments for the financing of or accomplishing any development, improvement, or construction requiring the use of the property interest.

(11) An estimated date on which the property interest will be needed.

(12) The status of any project for developing the airport under the airport development aid program.

(13) A statement that it has the legal authority to accept a conveyance subject to the covenants and reverter clause described in § 154.13 of this part.

(14) The sponsor's proposed draft environmental impact statement prepared in conformance with Department of Transportation "Procedures for Considering Environmental Impacts" (DOT Order 5610.1A, 36 FR 23679, Dec. 11, 1971), and Federal Aviation Administration "Interim Instructions for Processing Airport Development Actions Affecting the Environment" (FAA Order 5050.2), 36 FR 23686, December 11, 1971.

(15) A statement that if the conveyance involves the displacement of any person or the acquisition of an interest in real property that is within the purview of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 18949), the applicant will make the assurances required by §§ 25.57(a) and 25.59(a) of the regulations of the Office of the Secretary of Transportation (49 CFR 25).

(c) Each application for a conveyance under this part must be signed by an officer of the public agency concerned who has been authorized by it to file the application. The application must be accompanied by a certified copy of a resolution or ordinance authorizing him to file the application and indicating that the public agency is willing to accept the conveyance subject to the covenants described in § 154.13 of this part.

§ 154.9 Determinations by the Administrator.

The Administrator reviews each application for a conveyance under this part and determines whether the public agency requesting the conveyance is eligible and a conveyance is proper, under section 23 of the Airport and Airway Development Act of 1970 and this part. If he decides that the public agency is eligible and the conveyance is proper, he requests the head of the controlling agency to convey to the public agency as much of an interest as the Administrator considers to be reasonably necessary, without consideration, other than the benefits to accrue to the public and the United States from the use of the land for airport purposes. The Administrator accompanies his request with a detailed statement of the items required by section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

§ 154.11 Determination and conveyance by head of controlling agency.

(a) Upon receiving a request for a conveyance under this part from the Administrator, the head of the controlling agency is required, by section 23(b) of the Airport and Airway Development Act of 1970, to determine whether the conveyance is inconsistent with the needs of his agency, and to notify the Administrator of his determination within 4 months after receiving the Administrator's request.

(b) Section 23(b) of the act provides that, if the head of the controlling agency concerned determines that the requested conveyance is not inconsistent with those needs, he shall, upon the approval of the Attorney General and the President, perform any acts and execute any instruments necessary to make the conveyance, without expense to the United States.

§ 154.13 Covenants in conveyances.

Whenever the Administrator requests the head of a controlling agency to make a conveyance under this part, he also requests that the instrument of conveyance contain, as a covenant binding on the grantee, its successors and assigns, the following provisions:

(a) That the grantee will use the property interest for airport purposes, and will develop that interest for airport purposes within 1 year after the date of this conveyance. However, if the property interest is necessary to meet future development of an airport in accordance with the national airport system plan the grantee will develop that interest for airport purposes within a period of time satisfactory to the Administrator, and any interim use of that interest for other than airport purposes will be subject to such terms and conditions as the Administrator may prescribe.

(b) That the airport, and its appurtenant areas and its buildings and facilities, whether or not on the land conveyed, will be operated as a public airport on fair and reasonable terms, without unjust discrimination.

(c) That in the operation of the airport and its appurtenant areas, whether or not on the land conveyed, the grantee—

(1) Agrees that no person shall be excluded from any participation, be denied any benefits, or be otherwise subjected to any discrimination, on the grounds of race, color, or national origin; and

(2) Agrees to comply with all requirements imposed by or pursuant to part 21 of the regulations of the Office of the Secretary of Transportation (49 CFR 21)—nondiscrimination in federally assisted programs of the Department of Transportation—effectuation of title VI of the Civil Rights Act of 1964.

(d) That the grantee will not grant or permit any exclusive right forbidden by section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349(a)) at the airport, or at any other airport now owned or controlled by it.

(e) That in furtherance of the policy of the FAA under this covenant the grantee—

(1) Agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm, or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity;

(2) Agrees that it will terminate any existing exclusive right to engage in the sale of gasoline or oil, or both, granted

before July 17, 1962, at such an airport, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right; and

(3) Agrees that it will terminate forthwith any other exclusive right to conduct any aeronautical activity now existing at such an airport.

(f) That any later transfer of the property interest conveyed will be subject to the covenants and conditions in the instrument of conveyance.

(g) That, if the covenant to develop the property interest (or any part thereof) for airport purposes within the time specified in paragraph (a) of this section is breached, or if the property interest (or any part thereof) is not used in a manner consistent with paragraph (a) of this section or the terms of the conveyance, the Administrator may give notice to the grantee requiring him to take specified action, within a fixed period, towards development or use as prescribed, as the case may be. These notices may be issued repeatedly, and outstanding notices may be amended or supplemented. Upon expiration of a period so fixed without completion by the grantee of the required action, the Administrator may, on behalf of the United States, enter, and take title to, the property interest conveyed or the particular part of that interest to which the breach relates.

(h) That, if any covenant or condition in the instrument of conveyance, other than the covenant contained in paragraph (g) of this section, is breached, the Administrator may, on behalf of the United States, immediately enter, and take title to, the property interest conveyed or, in his discretion, that part of that interest to which the breach relates.

(i) That a determination by the Administrator that one of the foregoing covenants has been breached is conclusive of the facts; and that, if the right of entry and possession of title stipulated in the foregoing covenants is exercised, the grantee will, upon demand of the Administrator, take any action (including prosecution of suit or executing of instruments) that may be necessary to evidence transfer to the United States of title to the property interest conveyed, or, in the Administrator's discretion, to that part of that interest to which the breach relates.

[FR Doc.73-9225 Filed 5-9-73;8:45 am]

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Regulation ER-800]

PART 252—PROVISION OF DESIGNATED "NO-SMOKING" AREAS ABOARD AIRCRAFT OPERATED BY CERTIFICATED AIR CARRIERS

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the seventh day of May 1973.

In EDR-231,[1] the Board issued a notice of proposed rulemaking to enact a new part 252 of the economic regulations to require certificated air carriers (both route and supplemental carriers) to establish procedures designed to segregate passengers who desire to be seated in designated "smoking" areas and to prohibit smoking in all areas not so designated on commercial flights. Pursuant to the notice, formal comments[2] have been filed by certain member carriers of the Air Transport Association (ATA),[3] with an individual supplementary comment by Frontier Airlines; Pan American World Airways; Overseas National Airways; Saturn Airways; World Airways; and Kodiak Airways and Western Alaska Airlines (jointly). Besides the carriers, formal comments have been filed by Action on Smoking and Health (ASH), which favors the rule, Aviation Consumers Action Project (ACAP), which advocates a complete ban on smoking, and five members of the public. In addition, 4,500 letter comments have been timely filed, most of them in favor of the proposed rule.[4] Upon consideration, the Board has determined to adopt the proposed rule, as revised herein, and the tentative findings and conclusions set forth in EDR-231 are incorporated and made final, except as modified. Except to the extent indicated herein, all requests contained in the comments are denied.

[1] Sept. 13, 1972, 37 FR 19146 (docket 21708).

[2] By "formal comments" is meant comments submitted in 12 copies as specified in EDR-231.

[3] The 10 U.S. trunkline carriers (excluding Pan American), the 8 local service carriers, Alaska Airlines, Wien Consolidated Airline, and Hawaiian Airlines.

[4] ACAP has filed a motion for "Rectification Of Record," requesting the Board, inter alia, to "[a]scertain, through an appropriate investigation, the extent to which any parties have engaged in campaigns to distort the record herein by causing their agents and employees to submit comments without disclosing their source." The motion is based on evidence that Lorillard, a tobacco company, through its general counsel, Mr. Arthur J. Stevens, covertly organized a campaign involving the inducement of advertising agency employees to write letters to the Board in sample format opposing the rule. Mr. Stevens has filed a letter in answer to the motion, in which he does not deny generating the campaign, but does deny that he violated any Board rules. We appreciate ACAP's bringing the matter to our attention, but no useful purpose would be served by pursuing the matter further. Assuming a violation of the Board's rules, as contended by ACAP, to conduct an investigation to determine the extent to which comments received were generated by the tobacco company would be a major undertaking without compensating productive results. The Board does not decide issues by polling the number of comments received on each side, and there would be no point in "invalidating" comments which were generated by the tobacco company. Although the extent to which passengers favor the regulation of smoking is a relevant consideration, it obviously cannot be measured by counting the number of comments pro and con, particularly since both sides on the issue have engaged in campaigns soliciting the submission of comments to the Board. The motion is therefore denied.

Among the carriers, only ONA supports Board regulation of smoking on aircraft they operate. The consolidated comment of the ATA carriers contains the most extensive argument against the proposal, and we now consider these contentions.

In EDR-231, it was noted that a joint study of the Federal Aviation Administration and the Department of Health, Education, and Welfare[5] had concluded that the low levels of contaminants measured do not represent a health hazard to the nonsmoking passengers on aircraft. On the other hand, the study found that a significant portion of the nonsmokers (over 60 percent) stated that they were bothered by tobacco smoke, and suggested that corrective action should be taken, such as a ban on smoking or the segregation of smokers from nonsmokers on commercial flights. It was further noted in EDR-231 that although the FAA had not yet taken final rulemaking action with respect to the issue of whether smoking presented a health hazard, there no longer seemed to be any reason for the Board to defer institution of rulemaking proceedings on whether the extent to which tobacco smoke causes annoyance and discomfort to passengers warrants remedial action, and, if so, what form of action should be taken.

The ATA carriers object to the Board's reliance on the study as a measure of passenger annoyance with smoking on aircraft and the appropriate corrective action to be taken. They assert that the Board ignored the finding in the study that the atmosphere in aircraft cabins is substantially cleaner than is advised for public buildings or required by Environmental Protection Agency standards and also ignored the evidence that commercial aircraft cabins are extremely effective in changing air throughout the cabin every 5 minutes or less.

We find this objection to be without merit. Aircraft cabins are not public buildings. There is no indication that standards applicable to public buildings are applicable to the special high-density seating conditions of aircraft. Moreover, unlike persons in public buildings, nonsmoking passengers on aircraft may be assigned a seat next to, or otherwise in close proximity to, persons who smoke and cannot escape this environment until the end of the flight. Finally, notwithstanding that aircraft cabins are very effective in changing cabin air, a substantial number of passengers are bothered by smoking on aircraft, as will be seen.

It is also alleged that the questionnaire on which the study was based was "loaded" against toleration of smoking on aircraft. Specifically, the carriers refer to the fact that the question asking whether smoking on aircraft should be permitted in certain areas, not at all, or as at present, makes no distinction as to

[5] "Health Aspects of Smoking in Transport Aircraft," December 1971, conducted jointly by the Federal Aviation Administration, Department of Transportation, and the National Institute for Occupational Safety and Health.

cigar, cigarette, or pipe smoke.[6] Apparently, the carriers contend that if this question had been broken down by type of smoke, relatively few passengers would be in favor of restricting the smoking of cigarettes aboard aircraft.

If this is the point of the argument, it cannot be sustained. Of the 3,073 passengers on the MAC flights,[7] 1,604 (52 percent) stated that they had smoked on the flights, as follows: 1,538 passengers—cigarettes; 28—cigars; 37—pipe. Of the 265 passengers on domestic flights, 83 (31 percent) reported that they had smoked on the flights, as follows: 72 passengers—cigarettes; 1—cigars; 5—pipe. On the MAC flights, 26 percent of the passengers reported that they were bothered by cigarette smoking and 30 percent on domestic flights. In sum, since cigarette smoking was the overwhelming type of smoking engaged in and since substantial numbers of passengers specifically stated they were bothered by cigarette smoking, it seems clear that cigarette smoking was of serious concern to those urging that corrective action be taken.

In addition, the ATA carriers calculate that if 60 percent of nonsmokers were bothered by smoking and favored corrective action, the number of such passengers would be 900, or less than 27 percent of the total number of passengers surveyed. This calculation assumes that only nonsmokers are bothered by tobacco smoke and want remedial action taken. This assumption ignores the fact that a number of smokers side with the nonsmokers on this issue. Thus, the study shows that of the total 3,338 passengers, 1,258 (38 percent of the total) stated that they were bothered by tobacco smoke and 1,343 passengers (40 percent of the total) want corrective action taken.

The ATA carriers further note that the survey took place primarily on international military flights, and not on actual air carrier flights where the great percentage of passengers desiring remedial action "would have already been accommodated by the voluntary smoker segregation efforts of the air carriers."[8] The carriers add that the "fact that 3,072 passengers of the total 3,338 were military passengers should make it obvious that this was a study of military flights and military passengers and cannot be relied upon to the extent conceived by the Board to show a need for rulemaking in the area of domestic civil air transportation."

Certainly the fact that the study concerned mostly MAC flights and passengers is a factor to be considered in weighing the results of the study. But, as will appear, this consideration suggests that the results obtained from the MAC flights understate the dimensions of the smoking problem in civil air transportation.

On MAC flights, 1,745 passengers (56 percent of all passengers) were smokers, and 92 percent of the latter smoked on the flights. On the domestic flights, 116 passengers (43 percent of all passengers) were smokers, and 72 percent of the latter smoked on the flights. The greater incidence of smokers and smoking on the MAC flights would suggest that there would be greater tolerance of smoking on such flights than on domestic flights. This is confirmed by the study data. Corrective action was asked by only 39 percent of the MAC passengers (41 percent of those answering the question). But remedial action was asked by 54 percent of domestic flight passengers (58 percent of those responding). Accordingly, if the study had been confined to civil air transportation, it seems evident that even greater support for corrective action would have been manifested than was shown in the study.

Finally, it is asserted that the questions used in the survey do not test the depth of concern of the passenger. Any defect of the questions on this score has been fully compensated for by the many comments filed by nonsmokers in this proceeding which forcefully illustrate that antipathy against unsegregated smoking runs deep. Based upon these comments, as well as complaints received by the Board, there can no longer be any doubts that smoking aboard aircraft causes real discomfort to passengers, and the survey shows that such passengers constitute a substantial number of air travelers.

We conclude that the ATA carriers have failed in their effort to discredit the study results as to the extent of passenger annoyance and discomfort over smoking on aircraft and their views that remedial action be taken. It is also to be emphasized that if the carriers believed that unregulated smoking aboard aircraft does not give rise to significant and widespread discomfort among nonsmoking passengers, they were free to, and had the full capability to, conduct their own surveys and offer them in rebuttal. Moreover, their own efforts at segregating smokers and nonsmokers on aircraft is, we believe, convincing evidence that the carriers are quite cognizant of the considerable passenger annoyance with smoking on aircraft and their demand that corrective action be taken.

This brings us to the argument that the rulemaking of the Board is totally unnecessary at present. In this connection, the ATA carriers' comment states that all trunk carriers now offer segregation of smokers from nonsmokers, and an increasing number of local service operators are either actually segregating or initiating steps to do so. In addition, the ATA carriers have supplemented their comments by advising that in November 1972, the Air Traffic Conference of America adopted a resolution, recently filed for Board approval, with an effectiveness date of January 1, 1973, which reads: "Members shall provide for the separation of smokers and nonsmokers on all scheduled flights. Methods of separation shall be determined and supplemented by members individually."

If the carriers' voluntary rules in this area had been effective in separating smokers from nonsmokers, and could thus be reasonably expected to continue to be effective, there would be some force to the argument that the Board should not adopt these rules. But this is far from being the case. The docket in this proceeding is replete with letters from passengers—many of them copies to airlines—complaining that the carriers have not maintained the purported separation and that they have been subjected to discomfort and distress thereby.[9] A recurrent theme is that the nonsmoking passengers are told the nonsmoking section is full; or, having been placed in a nonsmoking section, nevertheless find that fellow passengers who smoke in their section are not required to desist.[10]

We conclude that the carriers' self-imposed smoking rules have not offered an adequate remedy, and that the recent ATC resolution is so vague and general that it cannot reasonably be expected to make them more effective. We therefore reject the argument that industry action on the smoking problem renders Board rulemaking unnecessary.

The ATA carriers also submit that the Board does not possess the requisite authority to promulgate the proposed regulation. We cannot agree.

Section 204(a) of the act empowers the Board to make such rules, "pursuant to and consistent with the provisions of this act as it shall deem necessary to carry out the provisions of and to exercise and perform its powers and duties under this act." Section 404(a)(1), among other things, requires air carriers "to provide safe and adequate service, equipment and facilities," and sections 404(a)(1) and (2) require air carriers "to establish, observe and enforce * * * just and reasonable * * * practices * * * relating to air transportation.

In the Board's judgment, service and

[6] The carriers also assert that passengers on being handed questionnaires near the end of the flights were informed that "the HEW was investigating the hazards of smoking on aircraft," which would invite passengers to support regulation of smoking. Nothing is cited to support the statement that passengers were so informed. The study shows that an announcement was made to passengers "briefly describing the purpose of the study and requesting the passengers' cooperation in answering the questions" (p. 18). The principal objectives of the study are stated to be "(1) to measure the levels of environmental contaminants resulting from tobacco smoking by passengers during flight of commercial transport aircraft and (2) to obtain from the passengers information about their smoking history and their reaction to passenger smoking" (p. 15).

[7] The study sample involved 20 MAC flights to Europe and Asia carrying 3,073 passengers and 8 "domestic flights" with a total of 265 passengers.

[8] It appears, however, that the study's domestic passenger flights, which took place in June 1971, provided no smoker separation. Otherwise, the question asking, whether smoking should be permitted only in certain places, not at all, or "as at present" would have been meaningless.

[9] That the carriers do not enforce segregation is also evidenced by the many letters from smokers strongly opposing the change in the status quo which would result from adoption of the proposed rule.

[10] The ATC carriers acknowledge that this situation exists. (Comment, pp. 10–13.)

practices which do not provide for the effective separation of smokers and nonsmokers on aircraft are not "adequate service" or "just and reasonable practices." Moreover, the carriers' certificates expressly state that the exercise of the privilege granted therein shall be subject to such other reasonable terms, conditions, and limtations required by the public interest as may from time to time be prescribed by the Board. The restrictions on smoking aboard aircraft imposed by this rule are, in our view, reasonable limitations required by the public interest.

In the first place, there can be no doubt that substantial numbers of passengers are bothered by smoking. As indicated earlier the study shows that 38 perecent of the total number of passengers surveyed stated that they were bothered by smoking on aircraft. Furthermore, it is clear that this annoyance is rooted in a perceived physical discomfort, rather than on moralistic judgment. Thus, the passengers stated that tobacco smoke in the aircraft cabin bothered their eyes, nose, throat or chest to the extent shown in the margin.[11] The survey also shows substantial sentiment that smoking should be permitted only in certain areas.[12] Moreover, the study stated:

"If it is presumed that two trends in American society continue, namely that: (1) Greater emphasis is placed on the health aspects of nonsmoking; and (2) the incidence of respiratory symptomology among the American population is increasing,[13] it can be predicted that more people will be annoyed by tobacco smoke in the future, unless corrective action is taken." (p. 48)

In addition, the carriers, as noted, have taken voluntary action to provide for the separation of smokers and nonsmokers on scheduled flights. And in doing so, they are, in the words of the ATA carriers, "responding to market interest and demands." This is a palpable indication that the carriers themselves recognize that they have an obligation to substantial numbers of their passengers to relieve the annoyance and discomfort they are subjected to from being seated in close proximity to smokers and that the era of indiscriminate and unsegregated smoking on aircraft is over.

Finally, we take note of the ATA carriers' argument that the adequacy of service language in section 404(a) cannot be considered to constitute statutory authority for the regulation by the Board "of the level of comfort of air passengers." The question here is not one of requiring the carriers to provide optimum comfort to passengers. The question instead is whether the carriers should be free to subject passengers (both nonsmokers and numbers of smokers) to the discomfort of unregulated smoking. We cannot agree that they have such freedom and cannot accept the implied thesis that it is wholly within the discretion of management to decide whether or not to provide for segregated smoking on aircraft. To the contrary, as shown by the survey and comments, the extent and depth of passenger discomfort and annoyance from unsegregated and unregulated smoking on aircraft compels the conclusion that service which does not provide for the effective separation of smokers constitutes neither adequate service nor reasonable practice and cannot be permitted under the act.

The ATA carriers point to section 401(e)(4) of the Act, which they assert must be regarded as outweighing any implicit authority ascribed to section 404(a). Section 401(e)(4) proscribes the imposition of certificate conditions restricting "the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require," with an exception not pertinent here. This section is not relevant, in our opinion, since the rule does not restrict a carrier's right to add to or change schedules, equipment, accommodations, or facilities. In any event, although section 401(e)(4) prohibits prior restraints by way of certificate conditions upon managerial discretion, the Board may nevertheless impose restraints on carrier discretion where such action is required under other provisions of the act. In particular, where the Board finds that service provided is inadequate, the Board clearly is empowered to "specify in detail what constitutes minimally adequate service"[14] and "[i]n fashioning its remedy, the Board has wide discretion."[15] In our estimation, a regulation providing for the separation of smokers and nonsmokers is an appropriate and reasonable remedy.

In light of the foregoing, the Board finds that it has authority to adopt a regulation providing for the separation of smokers and nonsmokers.

A number of comments opposing the rule contend that the segregation of smokers discriminates against them. We find no reasonable basis for this contention. Smoking plainly causes annoyance and discomfort to nonsmokers to a degree warranting separate placement of smokers. Although smokers often refer to their "right" to smoke, their freedom to smoke, as a court recently observed, "may have to give way to the freedom of others to be unannoyed by smoke."[16] For reasons given, the right to smoke must be restricted on aircraft through the segregation of smokers.

At the other extreme are those who urge an absolute ban on smoking on aircraft, the position advocated by ACAP.[17] Just as the attitude of many smokers appears insensitive to the rights of nonsmokers to be relieved of the annoyance and discomfort caused by smoking, so does the attitude of many nonsmokers appear insensitive to the rights of smokers. Smoking is a lawful activity, and requiring smokers to abstain totally on flights would cause many of them severe discomfort. Nor is there any reason to believe, at this juncture, that the discomfort caused by smoking aboard aircraft can be reasonably dealt with only by an absolute ban. The segregation of smokers, we believe, strikes an equitable balance, allowing neither smokers nor nonsmokers to infringe on the reasonable exercise of the rights of others.

We turn next to suggested revisions of the rule.[18]

Kodiak and Western Alaska ask that the rule be modified to exclude any aircraft having 30 seats or less. The carriers contend that the regulation will place the small certificated carrier at a disadvantage vis-a-vis an air taxi or a commuter carrier, since the latter are not covered by the rule.[19] But Kodiak and Western Alaska have not shown that this circumstance would put small certificated car-

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[11] See the following table:

	MAC flights		Domestic flights	
	Passengers	Percent	Passengers	Percent
Eyes	998	32	85	32
Nose	594	19	66	24
Throat	286	9	27	10
Chest	82	2	9	3

[12] See the following table:

	MAC flights		Domestic flights	
	Passengers	Percent	Passengers	Percent
Permitted only in certain areas	990	32	105	40
Not at all	211	7	37	14
As at present	1,706	56	102	38

[13] In this connection, it is noted that 32 and 39 percent, respectively, of the passengers on the MAC and domestic flights stated that they had been told they have hay fever, asthma, sinus trouble, lung disorder, or an allergy.

[14] *Capital Airlines* v. *C.A.B.*, 108 U.S. App. D.C. 215, 218 F. 2d 48, 52 (1960).

[15] *National Airlines, Inc.* v. *Civil Aeronautics Board*, 112 U.S. App. D.C. 119, 300 F. 2d 711, 716 (1962).

[16] *Nader* v. *Federal Aviation Administration*, 440 F. 2d. 292, 295 at fn. 4 (C.A.D.C. 1971).

[17] In its comment ACAP requests that "voluminous data and factual material" submitted in rulemaking proceedings before the FAA "be incorporated fully in the proceedings in this docket." The request is denied. To the extent that such material bears on whether exposure to tobacco smoke aboard aircraft creates a health hazard to passengers, that issue is before the FAA. (See EDR-231, pp. 3-4). To the extent such data may bear on the issue of passenger annoyance from smoking, ACAP does not show why the already voluminous record here on the issue needs to be supplemented.

[18] In addition to those noted hereafter, ONA suggests that the maintenance of manuals with the Board as required by § 252.4 is unnecessary and a futile gesture with no regulatory significance. We do not agree. The requirement is a necessary adjunct to the requirement in § 252.2 that each carrier shall adopt procedures to insure a sufficient number of seats in the "no-smoking" areas.

[19] The carriers also refer to serious load-balancing problems were they required to seat all smokers at the rear of the aircraft. As will be seen, this feature of the proposed rule is being withdrawn.

riers at a disadvantage. To the contrary, it is just as reasonable to believe that by offering a more attractive service to the substantial number of passengers who want and demand segregated smoking, the small certificated carriers will have a competitive advantage over part 298 carriers who do not provide such service. The request is therefore denied.

The ATA carriers, Saturn and World, urge that charter services should be treated separately from scheduled services and that, as to charters, the decision whether to provide a special smoking section should be left to the charterer in each case. This request will also be denied.

The provision of smoking and no-smoking areas on aircraft is, as previously indicated, required as an element of adequate service and reasonable practice. It does not fall within the discretion of a charterer any more than it falls within the discretion of management.[20] Indeed, in view of the generally greater length of charter flights, as compared to scheduled flights, the need for segregation would appear greater.

We also find no need for the alternate suggestion of World that any regulation adopted require each chartering organization to notify the carrier in advance of the charter flight as to the number of seats which must be set aside as a smoking area. Since the identity of the charterer is known to the carrier in advance of the flight and considerable contact between the carrier and charterer normally occurs during the charter planning, we see no reason why the carrier cannot ascertain the number of seats to be set aside for nonsmoking passengers. If a carrier considers an affirmative obligation be placed on the charterer to supply the information, this may be stipulated in the charter contract.

We have determined, however, to delete the proposed requirement that smoking be confined to the rear of each compartment. This proposed provision was based on a tentative finding that smoke drifts to the rear of an aircraft.[21] On the basis of the comments received it appears that in many aircraft types[22] cabin air flow circulates downward and exhausts through floor vents, and tobacco contaminants are vectored along this same flow pattern.

Accordingly, the rule (§ 252.2) will be revised to require a "no-smoking" area or areas for each class of service and for charter service. The rule, as revised, will avoid load-balancing problems and provide greater flexibility to the carriers. We expect this flexibility to be used in such a manner as to minimize, to the greatest practicable extent, points of contact between smokers and nonsmokers. If it is not so used, we shall consider the prescription of the location of no-smoking areas in a future rulemaking proceeding.

ACAP criticizes the proposed rule in that it "establishes a mandatory right to smoke aboard aircraft and removes from the carriers the option of prohibiting smoking altogether," since the proposed rule would obligate carriers to provide smoking areas and establish company rules to permit smoking. It had not been our intent to require carriers to permit smoking of any kind, and indeed we are aware that certain carriers prohibit the smoking of pipes and cigars. Accordingly, in line with ACAP's comment, § 252.1 (applicability) has been revised to require the provision of "no-smoking" areas rather than "smoking" areas, and it will also provide that nothing in this regulation shall be deemed to require that carriers permit the smoking of cigarettes, pipes, and/or cigars aboard aircraft.[23] And § 252.3 is being revised to provide that each carrier shall take necessary action to insure that smoking is not permitted in "no-smoking" areas.

The Board is aware that the adoption of the rule, even as revised, will create problems at peak periods and in high load factor and multi-stop flights. Thus, the requirement of procedures to insure sufficient seats in the "no-smoking" area to accommodate persons who wish to be seated there[24] may, from time to time, result in insufficient seats for passengers who prefer the "smoking" area and their placement in the "no-smoking" area. However, nothing in the rule would prevent stewardesses from arranging for the temporary exchange of seats between passengers in the "smoking" area and those in the "no-smoking" area who wish to smoke. In any event, the Board is convinced that any problems attending the implementation of this rule will be considerably less than those under the present system of voluntary and largely unforced segregation of smokers.

In consideration of the foregoing, the Board hereby enacts a new part 252 of its Economic Regulations (14 CFR Part 252) effective July 10, 1973, as follows:

Sec.
252.1 Applicability.
252.2 Carrier to provide specially designated "no-smoking" areas in which smoking is prohibited.
252.3 Carrier to insure smoking not permitted in "no-smoking" areas and to nforce its rules for the segregation of smokers and non-smokers.
252.4 Manual containing company rules for smoking by passengers aboard aircraft.
252.5 Board may modify manual rules to conform them to the provisions of this part.

AUTHORITY.—Sec. 204(a), 404(a), and 407, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 760, 766 (as amended); 49 U.S.C. 1324, 1374, 1377.

§ 252.1 Applicability.

This part establishes the rules for the provision of specially designated areas in which smoking of cigarettes, cigars, or pipes is prohibited (hereinafter "no-smoking" areas). This part shall apply to each direct air carrier which holds a certificate of public convenience and necessity issued pursuant to section 401 of the act authorizing the transportation of persons. Nothing in this regulation shall be deemed to require such carrier to permit the smoking of cigarettes, cigars, and/or pipes aboard aircraft.

§ 252.2 Carriers to provide specially designated "no-smoking" areas in which smoking is prohibited.

Carriers subject to this part shall provide a "no-smoking" area or areas for each class of service and for charter service. Each carrier shall adopt procedures, pursuant to this section, which shall insure that a sufficient number of seats in the "no-smoking" areas of the aircraft are available to accommodate persons who wish to be seated in such areas.

§ 252.3 Carrier to insure smoking not permitted in "no-smoking" areas and to enforce its rules for the segregation of smokers and nonsmokers.

Each carrier shall take such action as is necessary to insure that smoking is not permitted in "no-smoking" areas and to enforce its rules with respect to the segregation of passengers in "smoking" and "no-smoking" areas.

§ 252.4 Manual containing company rules for smoking by passengers aboard aircraft.

Each air carrier subject to this part shall maintain an employees manual containing company rules for smoking by passengers aboard aircraft. Two copies of such manual shall be filed with the Bureau of Economics on or before August 9, 1973, and revisions and amendments shall be filed within 15 days following adoption by the company.

§ 252.5 Board may modify manual rules to conform them to the provisions of this part.

If the Board finds that any company rule set forth in the manual is at vari-

[20] We are unwilling to permit a charterer or a majority of those in a chartering organization, for example, to impose unsegregated smoking on a minority, in the case of single-entity or affinity charters. Moreover, other charters (ITC and TGC) are comprised of members of the general public.

[21] Its source was a statement in material submitted by a carrier in connection with the Bureau of Enforcement's investigation of the practices of carriers in providing segregated smoking. (See EDR-231, p. 3.)

[22] Such as the B-707, B-727, B-747, and DC-10.

[23] ACAP has filed a petition for a public hearing. The petition is moot to the extent that it seeks a hearing "on the issue of whether it is in the public interest for the Board to issue a regulation which compels air carriers to establish designated smoking areas on all commercial aircraft." Moreover, to the extent the petition seeks a public hearing on other issues all interested persons have been given full opportunity to express their views through written comments, the comments received are voluminous, and the petition fails to show why the record needs to be supplemented through a public hearing. The petition is denied.

[24] Section 252.2 of the proposed rule has been revised to require carriers to provide sufficient seats "to accommodate persons who wish to be seated in such [no-smoking] areas." This should make it clear that a person wishing to sit in a "no-smoking" area must be accommodated, regardless of his reason for such preference.

ance with any provision of this part, the Board may by order modify such company rule to the extent necessary to conform the rule to the provisions of the part.

Effective July 10, 1973.

Adopted May 7, 1973.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND, *Secretary*.

[FR Doc.73-9320 Filed 5-9-73;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER C—DRUGS

PART 130—NEW DRUGS

Listing of Methadone With Special Requirements for Use

The Honorable Paul G. Rogers, Member of Congress from Florida, Chairman of the Subcommittee on Public Health and Environment of the Committee on Interstate and Foreign Commerce, U.S. House of Representatives, has written the Commissioner of Food and Drugs to request revision of the regulations governing methadone, published in the FEDERAL REGISTER of December 15, 1972 (37 FR 26789), to include a requirement for discontinuance of methadone after 2 years of treatment unless, based on clinical judgment, the patient's status indicates that treatment with methadone should be continued for a longer period of time. The Commissioner concurs in this suggestion and regards it as a clarification of the intent of the regulations.

Therefore, pursuant to the provisions of sections 505 and 701(a) of the Federal Food, Drug, and Cosmetic Act as amended (21 U.S.C. 355, 371(a)), section 303(a) of the Public Health Service Act as amended (42 U.S.C. 242a(a)), and section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (42 U.S.C. 257(a)), and under authority delegated to the Commissioner (21 CFR 2.120), part 130 is amended in § 130.44 by adding two new sentences to the end of paragraph (d)(8), by adding the same two new sentences to the end of item IX.D. of Form FD 2632 in paragraph (k)(1), and by adding the same two new sentences to the end of item VI.D. of Form FD 2633 in paragraph (k)(2), as follows:

§ 130.44 Conditions for use of methadone.

* * * * *

(d) * * *

* * * * *

(8) * * * Maintenance treatment using methadone shall be discontinued within 2 years after such treatment is begun unless, based upon clinical judgment recorded in the clinical record for the patient, the patient's status indicates that such treatment should be coninued for a longer period of time. Any patient continued on methadone for longer than 2 years shall be subject to periodic reconsideration for discontinuance of such treatment.

* * * * *

(k) * * *

(l) * * *

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

FOOD AND DRUG ADMINISTRATION

Form FD 2632 Application for Approval of Use of Methadone in a Treatment Program

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IX. * * *

* * * * *

D. * * * Maintenance treatment using methadone shall be discontinued within 2 years after such treatment is begun unless, based upon clinical judgment recorded in the clinical record for the patient, the patient's status indicates that such treatment should be continued for a longer period of time. Any patient continued on methadone for longer than 2 years shall be subject to periodic reconsideration for discontinuance of such treatment.

* * * * *

(2) * * *

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

FOOD AND DRUG ADMINISTRATION

Form FD 2633 Medical Responsibility Statement for Use of Methadone in a Treatment Program

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VI. * * *

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D. * * * Maintenance treatment using methadone shall be discontinued within 2 years after such treatment is begun unless, based upon clinical judgment recorded in the clinical record for the patient, the patient's status indicates that such treatment should be continued for a longer period of time. Any patient continued on methadone for longer than 2 years shall be subject to periodic reconsideration for discontinuance of such treatment.

* * * * *

The Commissioner finds that publication of a proposal on this matter, time for comment, and delayed effective date, are impracticable, unnecessary, and contrary to the public interest, since the change made is merely a clarification of the intent of the regulation previously published and the regulation is just being implemented throughout the country and should therefore include this clarification immediately. The clarification further protects the health and safety of patients treated with methadone and is consistent with the earlier regulation on which substantial relevant comment was received, and no further purpose would be served by delaying this clarification until further comment of the type already received has been obtained.

Effective date.—This order shall become effective on May 10, 1973.

(Secs. 505 and 701(a) of the Federal Food, Drug, and Cosmetic Act as amended (21 U.S.C. 355, 371(a)), sec. 303(a) of the Public Health Service Act as amended (42 U.S.C. 242a(a)), and section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (42 U.S.C. 257(a)).)

Dated May 4, 1973.

SAM D. FINE, *Associate Commissioner for Compliance*.

[FR Doc.73-9261 Filed 5-9-73;8:45 am]

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Lincomycin

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (33-887V) filed by the Upjohn Co., Kalamazoo, Mich. 49001, proposing the safe and effective use of lincomycin hydrochloride monohydrate tablets for the treatment of dogs and cats. The supplemental application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), part 135c is amended by adding a new section as follows:

§ 135c.100 Lincomycin hydrochloride monohydrate tablets.

(a) *Specifications*.—The lincomycin hydrochloride monohydrate meets the specifications prescribed by § 148x.1(a)(1). The quantity of antibiotic activity cited in this section refers to the equivalent weight of the base activity of the drug.

(b) *Sponsor*.—See code No. 037 in § 135.501(c) of this chapter.

(c) *Conditions of use*.—(1) The drug is indicated in infections caused by gram-positive organisms which are sensitive to its action, particularly streptococci and staphylococci.

(2) It is administered orally to dogs and cats at a dosage level of 10 mgs per pound of body weight every 12 hours, or 7 mgs per pound of body weight every 8 hours. Treatment may be continued for periods as long as 12 days if clinical judgment indicates.

(3) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date.—This order shall be effective May 10, 1973.

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i).)

Dated May 3, 1973.

C. D. VAN HOUWELING, *Director, Bureau of Veterinary Medicine*.

[FR Doc.73-9262 Filed 5-9-73;8:45 am]

Title 36—Parks, Forests, and Memorials

CHAPTER I—NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

PART 4—VEHICLES AND TRAFFIC SAFETY

Load, Weight, Length and Width Limitations

A proposal was published at page 2765 of the FEDERAL REGISTER of January 30, 1973, to amend § 4.11 by the addition of a new paragraph (e) to establish a limitation on the length of side mirrors on