but authority to report a Commissioner's vote on a particular matter resolved either by written circulation, or at a meeting held in the Commissioner's absence, may be vested in a member of the Commissioner's staff.

§ 4.15 Commission meetings.

(a) *In general.* (1) Meetings of the Commission, as defined in 5 U.S.C. 552b (a)(2), are held at the principal office of the Commission, unless otherwise directed.

(2) *Initial announcements of meetings.* For each meeting, the Commission shall announce: (i) The time, place and subject matter of the meeting, (ii) whether the meeting will be open or closed to the public, and (iii) the name and phone number of the official who will respond to requests for information about the meeting. Such announcement shall be made at least one week before the meeting except that where the agency determines pursuant to 5 U.S.C. 552b(e)(1) to call the meeting on less than one week's notice, or where the agency determines to close the meeting pursuant to paragraph (c)(2) of this section, the announcement shall be made at the earliest practicable time.

(3) *Announcements of changes in meetings.* Following the announcement of a meeting, any change in the time, place or subject matter will be announced at the earliest practicable time, and, except with respect to meetings closed under paragraph (c)(2) of this section, any change in the subject matter or decision to open or close a meeting shall be made only as provided in 5 U.S.C. 552(e)(2).

(4) *Deletions from announcements.* The requirements of paragraphs (a)(2) and (a)(3) of this section do not require the disclosure of any information pertaining to a portion of a closed meeting where such disclosure is likely to concern a matter within the scope of 5 U.S.C. 552b(c).

(5) *Dissemination of notices.* Notices required under paragraphs (a)(2) and (a)(3) of this section will be posted at the principal office of the Commission, recorded on a telephone message device, and, except as to notices of meetings closed under paragraph (c)(2) of this section, submitted to the FEDERAL REGISTER for publication. In addition, notices issued under paragraph (a)(2) of this section one week in advance of the meeting will be sent to all persons and organizations who have requested inclusion on a meeting notice mailing list, and will be issued as a press release to interested media.

(b) *Open meetings.* (1) Commission meetings shall be open to public observation unless the Commission determines that portions may be closed pursuant to 5 U.S.C. 552b(c).

(2) Any person whose interest may be directly affected if a portion of a meeting is open, may request that the Commission close that portion for any of the reasons described in 5 U.S.C. 552b(c). The Commission shall vote on such requests if at least one member desires to do so. Such requests shall be in writing, filed at the earliest practicable time, and describe how the matters to be discussed will have any of the effects enumerated in 5 U.S.C. 552b(c). Requests shall be addressed as follows:

Closed Meeting Request, Office of the General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue N.W., Washington, D.C. 20580.

(c) *Closed meetings.* (1) Whenever the Commission votes to close a meeting or series of meetings under these rules, it shall make publicly available within one day notices both of such vote and the General Counsel's determination regarding certification under 5 U.S.C. 552b(f)(1). Such determination by the General Counsel shall be made prior to the Commission vote to close a meeting or series of meetings. Further, except with respect to meetings closed under paragraph (c)(2) of this section, the Commission shall make publicly available within one day a full written explanation of its action in closing any meeting, and a list specifying the names and affiliations of all persons expected to attend, except Commission employees and consultants. All Commission employees and consultants may attend non-adjudicative portions of any closed meeting and members of Commissioners' personal staffs, the General Counsel and his staff, and the Secretary and his staff may attend the adjudicative portions of any closed meeting except to the extent the notice of a particular closed meeting otherwise specifically provides.

(2) If a Commission meeting, or portions thereof, may be closed pursuant to 5 U.S.C. 552(c)(10), the Commission may, by vote recorded at the beginning of the meeting, or portion thereof, close the portion or portions of the meeting so exempt.

(d) The presiding officer shall be responsible for preserving order and decorum at meetings and shall have all powers necessary to that end.

PART 14—ADMINISTRATIVE INTERPRETATIONS, GENERAL POLICY STATEMENTS, AND ENFORCEMENT POLICY STATEMENTS

§ 14.10 [Deleted]

9. By deleting § 14.10.

(Sec. 6, 38 Stat. 721 (15 U.S.C. 46); 90 Stat. 1244-45 (5 U.S.C. 552b).)

By direction of the Commission dated March 9, 1977.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-7373 Filed 3-10-77;8:45 am]

Title 18—Conservation of Power, Water Resources

CHAPTER III—DELAWARE RIVER BASIN COMMISSION

PART 415—BASIN REGULATIONS—FLOOD PLAIN REGULATIONS

Minimum Standards of Flood Plain Use on Non-Tidal Sections of Delaware River

On November 10, 1976, the Delaware River Basin Commission amended its Administrative Manual, Part III, Basin Regulations, by the addition thereto of a new Part 415, "Flood Plain Regulations," 18 CFR Part 415. The new regulations follow generally the recommendations of the Commission's Flood Plain Regulation Advisory Committee submitted and publicized in July 1975. The new regulations establish minimum standards of flood plain use on the non-tidal sections of the Delaware River and its major tributaries in New York, Pennsylvania, New Jersey and Delaware. The regulations contain definitions of various component lands, graded according to the severity of the damage threat, and suggested allowable and prohibited uses for each. The standards apply to projects subject to review by the Commission. Minimum basin-wide standards can be supplemented by more stringent regulations by states and local units of government.

Public hearings on the proposed flood plain regulations were held by the Commission on July 7, 1976, in Trenton, New Jersey. The regulations became effective January 1, 1977.

AUTHORITY: Pub. L. 87-328 (75 Stat. 688).

GENERALLY

§ 415.1 Short title.

This Part shall be known and may be cited as the "Flood Plain Regulations."

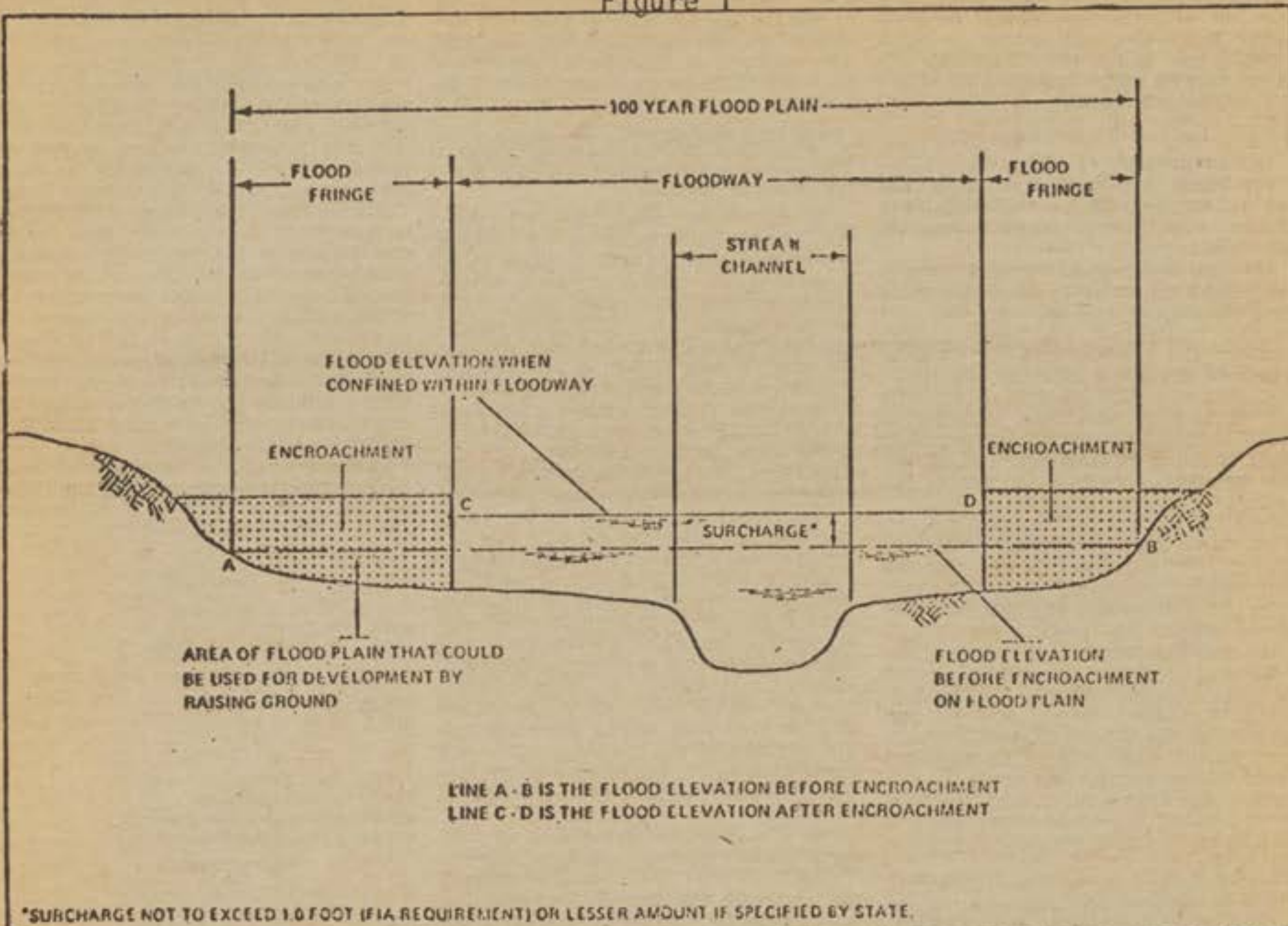
§ 415.2 Definitions.

For the purposes of this Part, except as otherwise required by the context:

"Project" means the same word as defined by section 1.2(g) of the Delaware River Basin Compact.

"Floodway" means the channel of the watercourse and those portions of the adjoining flood plains which are reasonably required to carry and discharge the regulatory flood. For this purpose the limit of the floodway shall be established by allowing not more than a one-foot rise of the water surface elevation of the regulatory flood as a result of encroachment. Wherever practical, equal conveyance reduction from each side of the flood plain shall be used. (See Figure 1)

Figure 1



"Flood fringe" means that portion of the flood hazard area outside the floodway.

"Flood hazard area" means the area inundated by the regulatory flood.

"Flood plain" means the area adjoining the channel of a stream which has been or hereafter may be covered by flood water.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures which reduce or eliminate flood damage to lands, water and sanitary facilities, structures, and contents of buildings.

"Flood protection elevation" means one foot above the elevation of the flood that has a one percent chance of occurring in any one year. (The 100-year flood.)

"Major tributary" means the mainstem of the following streams:

PENNSYLVANIA

Brandywine Creek	Lehigh
Brodhead Creek	Schuylkill
Big Bushkill Creek	Neshaminy
Lackawaxen	

DELAWARE

Brandywine Creek	Christina

NEW YORK

East Branch	Neversink
Mongaup	West Branch

NEW JERSEY

Assunpink	Rancocas
Musconetcong	Pequest
Paulins Kill	

"Official flood plain map" means a map showing the flood plain area of a community prepared pursuant to the National Flood Insurance Act, or a map recognized by the Executive Director as meeting equivalent hydraulic or engineering criteria.

"Regulatory flood" means the flood which has a one percent chance of occurring in any one year. (The 100-year flood).

"Structure" means any assembly of material above or below the surface of land or water, including but not limited to, buildings, dams, fills, levees, bulkheads, dikes, jetties, embankments, causeways, culverts, roads, railroads and bridges.

§ 415.3 Purpose and findings.

(a) The Commission hereby finds and determines that the use of flood plains is affected with a public interest due to:

(1) The danger to life and property due to increased flood heights or velocities caused by encroachments.

(2) The danger that materials may be swept onto other lands or downstream to the injury of others.

(3) The requirements of a facility for a waterfront location.

(b) In order to protect the public interest, the following principles and goals have been determined:

(1) The overall goal is prudent land use within the physical and environmental constraints of the site.

(2) The principle of equal and uniform treatment shall apply to all flood plain users who are similarly situated.

(3) Flood plain use shall not result in nuisance to other properties.

(4) Flood plain use shall not threaten public safety, health and general welfare.

(5) Future land uses in private flood plains shall not result in public expense to protect the property and associated public services from flood damage.

(6) All future public and private flood plain users shall bear the full direct and indirect costs attributable to their use and actions.

(7) Restrictions on flood plain use, and flood hazard information shall be widely publicized.

(8) Land and water use regulations of responsible units of government shall not impair or conflict with the flood plain use standards duly adopted for the basin, except as provided for in Section 415.42(a) hereof.

(9) Plans for land and water use adopted by responsible agencies shall not impair or conflict with these flood plain use standards.

(10) No action of any unit of government shall impair or conflict with these flood plain use standards.

TYPES OF PROJECTS AND JURISDICTION

§ 415.20 Class I Projects.

Projects described in sub-paragraphs A and B below shall be subject to review by the Commission under standards provided by this Section and in accordance with the provisions of §§ 415.30 through 415.33 hereof, as follows:

(a) All projects subject to review by the Commission under Section 3.8 of the Compact and the regulations thereunder.

(b) State and local standards of flood plain regulation.

§ 415.21 Class II Projects.

Class II projects, subject to review in accordance with §§ 415.40 through 415.43 hereof, include all projects other than Class I projects, in non-tidal areas of the basin, which involve either:

(a) A development of land, either residential or non-residential within a flood hazard area which:

(1) Includes one or more structures covering a total land area in excess of 50,000 square feet; or

(2) Contains in excess of 25 residential building lots or 25 dwelling units as part of an integrated development plan whether or not such development is included in a single application; or

(b) A development of land in the flood hazard area to mine, manufacture, process, store or dispose of materials which, if flooded, would pollute the waters of the basin or threaten damage to off-site areas, including, without limitation thereto, materials which are poisonous, radioactive, biologically undesirable or floatable.

STANDARDS

§ 415.30 Regulations generally.

The uses of land within a flood hazard area shall be subject to regulation within one of the following categories:

(a) Prohibited uses;

(b) Permitted uses generally;

(c) Uses by special permit.

§ 415.31 Prohibited uses.

(a) Within the floodway, except as permitted by special permit, the following uses are prohibited:

(1) Erection of any structure for occupancy at any time by humans or animals.

(2) Placing, or depositing, or dumping any spoil, fill or solid waste.

(3) Stockpiling or disposal of pesticides, domestic or industrial waste, radioactive materials, petroleum products or hazardous material which, if if flooded, would pollute the waters of the basin.

(4) The storage of equipment or of buoyant materials, except for purposes of public safety.

(b) Within the flood fringe, except as permitted by special permit, the following uses are prohibited:

(1) Stockpiling or disposal of pesticides, domestic or industrial waste, radioactive materials, petroleum products or hazardous material which, if flooded, would pollute the waters of the basin.

(2) Any use which will adversely affect the capacity of channels or floodways of any tributary to the main stream, drainage ditch, or any other drainage facility.

§ 415.32 Permitted uses generally.

(a) Within the floodway, the following uses are permitted to the extent that they do not require structures, fill or storage of materials or permanently installed equipment, and do not adversely affect the capacity of the floodway:

(1) Agricultural uses such as general farming, livestock and dairy farming, horticulture, truck farming, sod farming, forestry, wild crop harvesting, and normal operating practices associated therewith.

(2) Industrial-commercial uses such as loading areas, parking areas and airport landing strips.

(3) Private and public recreational uses such as golf courses, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails.

(4) Uses such as lawns, gardens, parking areas and play areas.

(b) Within the flood fringe, the following uses are permitted:

(1) Any use permitted in the floodway.

(2) Residences and other structures constructed so that the first floor, including basement, is above the Flood Protection Elevation. When fill is used the finished fill elevation shall be no lower than the Flood Protection Elevation for the particular area and shall extend at least 15 feet beyond the limits of any structure or building erected thereon.

§ 415.33 Uses by special permit.

(a) Within the floodway the following uses by special permit may be authorized under the standards hereinafter provided:

(1) Uses or structures accessory to open space use.

(2) Circuses, carnivals and similar transient enterprises.

(3) Drive-in theaters, signs and billboards.

(4) Extraction of sand, gravel and other non-toxic materials.

(5) Marinas, boat liveries, docks, piers, wharves and water control structures.

(6) Fish hatcheries.

(7) Railroads, streets, bridges, utility transmission lines and pipelines.

(b) Within the flood fringe the following uses by special permit may be authorized under standards hereinafter provided:

(1) *Non-residential uses generally.* Structures other than residences shall ordinarily be elevated as herein provided but may in special circumstances be otherwise flood proofed to a point above the Flood Protection Elevation.

(2) *Commercial uses.* Commercial structures shall be elevated so that no first floor or basement floor is below the Flood Protection Elevation; or such structures may be flood proofed to the Flood Protection Elevation. Accessory land uses, such as yards, railroad tracks and parking lots may be at lower elevations. However, a permit for such facilities to be used by the general public shall not be granted in the absence of a flood warning system, if the area is inundated to a depth greater than two feet or subject to flood velocities greater than four feet per second upon the occurrence of the Regulatory Flood.

(3) *Manufacturing and industrial uses.* Manufacturing and industrial buildings, structures, and appurtenant works shall be elevated so that no first floor or basement floor is below the Flood Protection Elevation; or such structures may be flood proofed to the Flood Protection Elevation. Measures shall be taken to minimize flood water interference with normal plant operations especially for streams having protracted flood durations. Certain accessory land uses as yards and parking lots may have lesser protection subject to the flood warning requirements set out in 2 above.

(4) *Utilities, railroad tracks, streets and bridges.* Public utility facilities, roads, railroad tracks and bridges shall be designed to minimize increases in flood elevations and shall be compatible with local comprehensive flood plain development plans to the extent applicable. Protection to the Flood Protection Elevation shall be provided where failure or interruption of these public facilities would result in danger to the public health or safety, or where such facilities are essential to the orderly functioning of the area. Where failure or interruption of service would not endanger life or health, a lesser degree of protection may be provided for minor or auxiliary roads, railroads or utilities.

(5) *Water supply and waste treatment.* No new construction, addition or modification of a water supply or waste treatment facility shall be permitted unless the lowest operating floor of such facility is above the Flood Protection Elevation, or the facility is flood proofed according to plans approved by the Commission, nor unless emergency plans and procedures for action to be taken in the event of flooding are prepared. Plans shall be filed with the Delaware River Basin Commission and the concerned state or states. The emergency plans and procedures shall provide for measures to prevent introduction of any pollutant or toxic material into the flood water or the introduction of flood waters into potable supplies.

ADMINISTRATION

§ 415.40 Administrative agency.

(a) Class I projects as defined by § 415.20 hereof shall be subject to review and approval by the Commission.

(b) Class II projects as defined by § 415.21 shall be subject to review and approval by a duly empowered state or local agency; and if there be no such state or local agency at any time on and after January 1, 1978, and only during such time, the Commission may review any such project which has been identified by the Executive Director as having special flood hazards, and: (1) is located along the mainstem Delaware River or a major tributary thereof, or (2) an agency of a signatory party requests such review.

§ 415.41 Special permits.

A special permit may be granted, or granted on stated conditions, provided:

(a) There is a clear balance in favor of the public interest in terms of the following environmental criteria:

(1) The importance of a facility to the community.

(2) The availability of alternative locations not subject to flooding for the proposed use.

(3) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

(4) The relationship of the proposed use to any applicable comprehensive plan or flood plain management program for the area.

(5) The safety of access to the property in times of flood for ordinary and emergency vehicles.

(6) The expected heights, velocity, duration, rate of rise and sediment transport of the flood water expected at the site.

(7) The degree to which the proposed activity would alter natural water flow or water temperature.

(8) The degree to which archaeological or historic sites and structures, endangered or rare species of animals or plants, high quality wildlife habitats, scarce vegetation types, and other irreplaceable land types would be degraded or destroyed.

(9) The degree to which the natural, scenic and aesthetic values at the proposed activity site could be retained.

(b) The project shall not:

(1) Endanger human life.

(2) Have high flood damage potential.

(3) Obstruct flood flows nor increase flood heights or velocities unduly whether acting alone or in combination with other uses.

(4) Degrade significantly the water carrying capacity of any delineated floodway or channel.

(5) Increase significantly the rate of local runoff, erosion, or sedimentation.

(6) Degrade significantly the quality of surface water or the quality or quantity of ground water.

(7) Be susceptible to flotation.

(8) Have service facilities installed below the elevation of the regulatory flood without being adequately flood proofed.

§ 415.42 Technical standards.

(a) Standards used by state and local governments shall conform in principle to Commission standards but may vary in detail provided that resulting flood plain use will not be less restrictive than would result from the application of Commission standards. The Commission will review proposed state and local flood plain regulations to determine their compliance with Commission standards.

(b) Because of the variety and diversity of presently recognized hydrologic procedures, no one procedure or method is prescribed for determining the peak flow in cubic feet per second for the 100-year storm (Q 100) on which profiles for the delineation of flood hazard areas are based. The following may be used:

(1) A uniform Technique for Determining Flood Flow Frequencies—Bulletin No. 15—Water Resources Council, December 1967.

(2) Basin-Wide Program for Flood Plain Delineation—Delaware River Basin Commission—Anderson-Nichols & Co., Inc., June 1973.

(3) Magnitude and Frequency of Floods in New Jersey with Effects of Urbanization—Special Report 38 U.S.G.S.—New Jersey Department of Environmental Protection, 1974.

(4) Guidelines for Determining Flood Flow Frequency—Bulletin No. 17—Water Resources Council, March 1976.

State and local agencies may use methods resulting in Q 100s which are in reasonable agreement with those of the Commission. Any significant difference shall be reviewed with and subject to approval by the Executive Director.

(c) Methods and procedures shall be uniform, so far as practicable, within sub-basins which have a major effect on the larger basins of which they are a part. To assist in achieving this objective the Commission staff will periodically provide to the various interested governmental agencies and others Q 100 data as developed by the Delaware River Basin Commission Hydrology Coordinating Committee for key locations in the Delaware River Basin. These will be based on a Log Pearson Type 3 analysis of data from the U.S.G.S. gaging stations using station skew, regional skew, or weighted skew, depending on the scope of data at each station.

§ 415.43 Mapped and unmapped delineations.

(a) Whenever an official flood plain map providing the pertinent information is available with respect to a given project, the map shall be used for the delineation of the flood hazard area, floodway, flood fringe and determination of flood protection elevation.

(b) Whenever an official flood plain map providing the required information is not available with respect to a given project, the administrative agency shall require the project landowner to submit details concerning the proposed uses as needed to determine the floodway and flood fringe limits at the proposed site, including: cross-sections of the stream channel and overbanks, stream profile, and factors involved in determining obstructions to flow. From the data submitted, soil surveys, historic flood maps, high water marks and other empirical data, the applicant, subject to verification by the administrative agency, shall calculate flood hazard areas and establish the flood protection elevation for the particular site.

(c) Pending the preparation and completion of flood plain mapping, a "general flood plain" area shall be prescribed by the administrative agency to delineate for public guidance the areal limits of site locations which are required to be submitted for review under this regulation.

ENFORCEMENT

§ 415.50 General conditions.

On and after January 1, 1978, where: (a) the flood hazard at the site is clear, present and significant, or the local government having jurisdiction has special flood hazard areas identified pursuant to the National Flood Insurance Act; and (b) the site is not subject to an approved state or municipal regulatory system having the same or similar effect on the flood hazard as this regulation, the Commission may condition its approval on any local governmental project under Section 3.8 of the Compact upon the adoption and enforcement of flood plain regulations, approved hereunder, by the state or local government having jurisdiction.

§ 415.51 Prior non-conforming structures.

A structure which was lawful before the adoption of this regulation but which is not in conformity with the provisions hereof, shall be subject to the following conditions (to be enforced by the appropriate authority as to Class I and Class II projects, respectively, under §§ 415.40 through 415.43 hereof):

(a) A non-conforming structure in the floodway may not be expanded, except that it may be modified, altered or repaired to incorporate flood proofing measures provided such measures do not raise the level of the 100-year flood.

(b) A non-conforming structure in the floodway which is destroyed or damaged by any means, including a flood, to the extent of 50 percent or more of its market value at that time may not be restored, repaired, reconstructed or improved except in conformity with the provisions of these regulations.

§ 415.52 Violations.

Any violation of this regulation shall be subject to penalties imposed by the Compact.

W. BRINTON WHITALL,
Secretary,
Delaware River Basin Commission.

[FR Doc.77-7043 Filed 3-10-77;8:45 am]

PART 420—BASIN REGULATIONS—WATER SUPPLY CHARGES

System of Charges for Certain Surface Water Withdrawals

On May 22, 1974, the Delaware River Basin Commission amended its Administrative Manual, Part III—Basin Regulations by the addition thereto of a new Part 420 "Water Supply Charges", 18 CFR, Part 420. The new Part 420 establishes a system of charges for certain surface water withdrawals in the Delaware River Basin region of New York, Pennsylvania, New Jersey and Delaware, to be used to reimburse the Federal Government for the cost of water supply storage space at federal reservoir projects. The water supply program implements the water pricing policy amendments to the Commission's Comprehensive Plan adopted in Resolution No. 71-4 on April 7, 1971.

Public hearings were held by the Commission on the proposed water supply charges regulations on February 28, 1973, and March 26, 1974, in Philadelphia, Pa. The regulations became effective upon adoption on May 22, 1974.

AUTHORITY: Pub. L. 87-328 (75 Stat. 688).

GENERAL

§ 420.1 Definitions.

For the purposes of this Part 420, except as otherwise required by the context:

"Person" means any person, corporation, partnership, association, trust, or other entity, public or private.

"Water user" means any person who uses, takes, withdraws or diverts surface waters within the Delaware River Basin.

"Executive Director" means the Executive Director of the Delaware River Basin Commission.

"Consumptive use" means the water lost due to transpiration from vegetation in the building of plant tissue, incorporated into products during their manufacture, lost to the atmosphere from cooling devices, evaporated from water surfaces, exported from the Delaware River Basin, or any other water use for which the water withdrawn is not returned to the surface waters of the basin undiminished in quantity.

WATER SUPPLY POLICY

§ 420.21 Policy.

The provisions of this Part 420 implement Commission Resolution No. 71-4 (Comprehensive Plan) relating to water supply charges.

§ 420.22 Prohibition; Sanctions.

Any person, firm, corporation or other entity, including a public corporation, body or agency, who shall use, withdraw or divert surface waters of the basin, shall pay such charges therefor as may be required by this resolution. Any violation of this resolution shall be subject to penalty as prescribed under Article 14.17 of the Compact. The Commission may also recover the value (according to the established water pricing schedules of the Commission) of any such use, withdrawal or diversion, and invoke the jurisdiction of the courts to enjoin any further use, withdrawal or diversion, unless all charges under this resolution are paid in full when due.

§ 420.23 Exempt uses under the Compact.

(a) Section 15.1(b) of the Delaware River Basin Compact provides that "no provision of section 3.7 of the Compact shall be deemed to authorize the Commission to impose any charge for water withdrawals or diversions from the basin if such withdrawals or diversions could lawfully have been made without charge on the effective date of the Compact; * * *" In compliance with this provision: There shall be no charge for water withdrawn or diverted in quantities not exceeding the legal entitlement of the user, determined as of October 27, 1961. Each water user may submit proof satisfactory to the Commission of the factors constituting legal entitlement, as defined in paragraph (b) hereof. In the absence of such proof of these conditions as of October 27, 1961, the quantity of water exempt from charge to each user will be the legal entitlement of the user determined as of March 31, 1971.

(b) For the purposes of paragraph (a) of this section:

(1) "Legal entitlement" means the quantity or volume of water expressed in million gallons per month determined by the lesser of the following conditions:

(i) a valid and subsisting permit, issued under the authority of one of the signatory parties, if such permit was required as of October 27, 1961, or thereafter;

(ii) physical capability as required for such taking; or

(iii) the total allocable flow without augmentation by the Commission, using a seven-day, ten-year, low-flow criterion measured at the point of withdrawal or diversion.

(2) "Physical capability" means the capacity of pumps, water lines and appurtenances installed and operable, determined according to sound engineering principles. The physical capability specifically includes plant facilities actually using water, but excludes facilities which may have been installed in anticipation of future plant expansion not yet realized.

(c) Whenever adequate records of legal entitlement for agricultural irrigation purposes are not available to the Commission, such legal entitlement shall be measured by the maximum number of acres under irrigation by the water user at any time during the year ending March 31, 1971, allowing one acre-foot of surface water annually per acre irrigated.

(d) Notwithstanding the provisions of (a), (b) and (c), there shall be no charge for water made available from storage where: (1) the cost of the storage facility has or will be otherwise paid for by the user, (2) such storage controls a drainage area, and (3) the use does not exceed the yield of such storage without augmentation from other surface water of the basin.

§ 420.24 Effective date of rates.

Rates and charges shall apply to all water users not exempt hereunder on and after the date of the first impoundment of water for water supply purposes at the Beltzville Reservoir (February 8, 1971), or the effective date hereof, whichever is later.

ENTITLEMENT; MEASUREMENT; BILLING

§ 420.31 Certificate of entitlement.

(a) The Executive Director will issue to each known water user a certificate of entitlement within 30 days after the effective date of these regulations subject to the provisions of paragraph (b). In addition, any other water user may apply for a certificate of entitlement at any time. A preliminary notice of entitlement shall be issued to each user. Such entitlement shall become final and take effect, unless the user shall file with the Commission, within 20 days after the service of the notice of entitlement, a request for hearing by the Commission. At such hearing the water user may show cause why the proposed entitlement shall not take effect.

(b) The Executive Director shall schedule a hearing to be held not less than ten days after receipt of a request for a hearing by the Commission. Hearings shall be conducted and the results thereof subject to review in accordance with Article 5 of the Commission's rules of practice and procedure.

(c) A final certificate of entitlement will be issued either upon expiration of the time to request a hearing, where there has been no request, or in accordance with the determination of a hearing where one is held.

(d) A certificate of entitlement is not transferable, except as provided in paragraphs (e) and (f) below.

(e) Whenever ownership or possession of land in agricultural use is transferred, a certificate of entitlement with respect to such land shall be deemed to run with the land, so long as the water use continues to be for agricultural irrigation. Upon any such land transfer, the Executive Director will reissue a certificate of entitlement to the new user.

(f) A certificate of entitlement may be transferred in connection with a corporate reorganization within any of the following categories:

(1) Whenever property is transferred to a corporation by one or more persons

solely in exchange for stock or securities of the same corporation, provided that immediately after the exchange the same person or persons are in control of the transferee corporation, that is, they own 80 percent of the voting stock and 80 percent of all other stock of the corporation.

(2) Whenever the transfer is an incident of a statutory merger or consolidation pursuant to the corporation laws of any state, the District of Columbia or the United States.

(3) Whenever the transfer is included in a transfer by a corporate holder of a certificate of entitlement of all or a part of its assets to another corporation if immediately after the transfer, the transferor or one or more of its stockholders, or any combination thereof, are in control of the corporation to which the assets are transferred, and such transfer is in exchange solely for stocks or securities of the transferee corporation as a party to a reorganization within the meaning of section 354 or section 361 of the Internal Revenue Code.

(4) Where such transfer is required merely as a result of a change of the name, identity, form or place of organization of a corporate holder of a certificate of entitlement.

§ 420.32 Measurement and billing of water taken.

(a) The quantity and volume of waters used by each person shall be determined by meters, or other methods approved by the Commission, installed, maintained and read by or on behalf of the taker. Meters or other methods of measurement shall be subject to approval and inspection by the Commission as to installation, maintenance and reading.

(b) Each user of surface water who is not exceeding the quantity specified in his "certificate of entitlement" shall annually, on or before January 31, file with the Commission, on a form to be prescribed by the Executive Director, a report of the user's physical capability, as defined, permit limitations, and the volume of water used during the preceding year.

(c) Each user of surface water who is taking a quantity of water greater than the amount specified in his "certificate of entitlement" shall report his usage to the Commission on or before April 30, July 31, October 31 and January 31, of each year covering the next preceding calendar quarter, respectively, on forms to be prescribed by the Executive Director. The amount due for water usage in excess of the legal entitlement for each of the first three quarters of a calendar year shall be computed and paid by the user, together with the report.

(d) The Commission will render a statement of the net amount due based on the fourth quarter report, including a negative or positive adjustment, so that the net total billing and payment for four quarters will equal the total water used during the four quarters less the user's legal entitlement, if any.

§ 420.33 Payment of bills.

The amount due for each quarter shall bear interest at the rate of 1 percent per month for each day it is unpaid beginning 30 days after the due date of the quarterly report for the first three quarters and 30 days after the bill is rendered for the fourth quarter.

CHARGES; EXEMPTIONS

§ 420.41 Schedule of water charges.

The Commission will from time to time, after public notice and hearing, make, amend and revise a schedule of water charges. Until changed, the charge for water shall be as follows:

(a) Four cents per thousand gallons for consumptive use; and

(b) Four-tenths of a mill per thousand gallons for non-consumptive use.

§ 420.42 Contracts; minimum charge.

Subject to the exclusions for certificates of entitlement and exempt uses, the Executive Director may require contracts for any taking, use, withdrawal or diversion of waters of the basin. Each contract shall provide for a minimum annual payment in accordance with an estimated annual demand schedule, regardless of use, withdrawal or diversion. The failure of any person to execute a contract under this section shall not affect the application of other requirements of this resolution.

§ 420.43 Exempt use.

The following uses shall be exempt from charge:

(a) Non-consumptive uses of less than 1,000 gallons during any day, and less than 100,000 gallons during any quarter.

(b) Ballast water used for shipping purposes.

(c) Water taken, withdrawn or diverted from streams tributary to the river master's gauging station at Montague.

(d) Water taken, withdrawn or diverted below R.M. 38 (the mouth of the Cohansey River) and such proportion of waters taken, diverted or withdrawn above R.M. 38 and below R.M. 92.4 (the mouth of the Schuylkill River) as the Executive Director may determine, on the basis of hydrologic studies, would have no discernible effect upon the maintenance of the salt front below the mouth of the Schuylkill River.

§ 420.44 Cooling water.

Water used exclusively for cooling purposes which is returned to the stream in compliance with the effluent requirements of applicable water quality standards, shall be charged at the non-consumptive use rate except that losses due to instream evaporation caused by cooling uses will be charged as consumptive use.

§ 420.45 Historical use.

A person who or which could not for any reason use, take, withdraw or divert waters of the basin from the place in question on March 31, 1971, shall not be entitled to a certificate of entitlement.

W. BRINTON WHITALL,
Secretary,
Delaware River Basin Commission.

[FR Doc.77-7042 Filed 3-10-77;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

[Docket No. 76N-0070]

PART 121—FOOD ADDITIVES

Acrylonitrile Copolymer Beverage Containers; Stay of Regulations

AGENCY: Food and Drug Administration, HEW.

ACTION: Stay of regulations.

SUMMARY: The Food and Drug Administration (FDA) is staying those food additive regulations or portions thereof that permit acrylonitrile copolymers to be used to fabricate beverage containers.

DATES: This stay is effective March 11, 1977.

FOR FURTHER INFORMATION CONTACT:

Thomas C. Brown, Division of Food and Color Additives, (HFF-334), Bureau of Foods, Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs is staying those food additive regulations or portions thereof that permit acrylonitrile copolymers to be used to fabricate beverage containers. This stay will remain in effect until further notice.

Elsewhere in this issue of the FEDERAL REGISTER, FDA is proposing to amend the interim food additive regulation for those acrylonitrile copolymers (21 CFR 121.2010 and 121.4010) permitted for food-contact use to lower the amount of acrylonitrile monomer permitted to migrate from acrylonitrile copolymers from the currently permitted level of 0.3 part per million (ppm) to 0.05 ppm (50 parts per billion (ppb)).

Acrylonitrile copolymers have been used in a variety of food-contact applications for approximately 30 years. These uses include margarine tubs, food-packaging films, vegetable oil bottles and, most recently, beverage containers. Some uses of acrylonitrile copolymers in food-contact applications were sanctioned by FDA before 1958; these prior sanctions were based on analytical data available at that time which indicated that there was no significant migration of acrylonitrile monomer to food under ordinary conditions of use. Since 1958, FDA has approved additional food-contact uses of acrylonitrile copolymers through issuance of food additive regulations in 21 CFR Part 121. These include the following regulations which permit acrylonitrile copolymers to be used to fabricate beverage containers: 21 CFR 121.2614, 121.2625, 121.2627, 121.2629, and 121.2633.

In a petition (FAP 3B2926) filed by E. I. du Pont de Nemours & Co., Wilmington, DE 19898, notice of which was published in the FEDERAL REGISTER of September 7, 1973 (38 FR 24391), a delayed extraction problem with acrylonitrile copolymer bottles stored at elevated temperatures for an extended period of time was reported. As noted, prior sanctions and food additive regulations for acrylonitrile copolymers had been issued on the belief that there was no significant migration of acrylonitrile monomer to food. The recognition of delayed extraction problems, coupled with the development of improved analytical procedures for measuring acrylonitrile in food-simulating solvents, a process which continues today, led in 1974 to a complete review by FDA of all safety data available on acrylonitrile.

As migration into the contents of acrylonitrile containers seemed more probable, the safety issue loomed larger. The Commissioner thereupon concluded that additional toxicological studies should be conducted on acrylonitrile, that further restrictions should be imposed on the amount of acrylonitrile monomer that could be extracted to food-simulating solvents, and that continued use of acrylonitrile copolymers on an interim basis would be permitted only if the necessary toxicological studies were undertaken. To implement these conclusions, the Commissioner proposed in the FEDERAL REGISTER of November 4, 1974 (39 FR 38907) to establish an interim food additive regulation for acrylonitrile. The final interim food additive regulation (21 CFR 121.4010) was promulgated in the FEDERAL REGISTER of June 14, 1976 (41 FR 23940), and included a 0.3 ppm limit on the amount of acrylonitrile permitted to migrate from acrylonitrile copolymers to food-simulating solvents under the test conditions specified in 21 CFR 121.4010.

Toxicological studies, including mutagenicity tests, teratology tests, and short-term and chronic toxicity tests, have been undertaken in accordance with the requirements of the interim food additive regulation. Additionally, FDA, and others including the Monsanto Corporation, the manufacturer of the acrylonitrile copolymer beverage container being used by the Coca-Cola Company, have undertaken further extraction tests on acrylonitrile copolymers using food-simulating solvents and the best available analytical methodology.

Within the past few months, FDA has received reports—some preliminary and some final—on these toxicity studies and has continued to accumulate data on acrylonitrile monomer migration. These recently acquired data, and the additional considerations discussed below, form the basis for this stay. The results of the toxicity studies and the state-of-the-art with respect to the analytical methodology for measuring acrylonitrile monomer in food-simulating solvents are discussed in detail in the preamble to the proposed amendments to the interim food additive regulation for acrylonitrile copolymers, published elsewhere in this issue of the FEDERAL REGISTER. The significant aspects of those results are, however, also briefly summarized in this notice.

On November 9, 1976, the Manufacturing Chemists Association (MCA) submitted to FDA a final report of its testing of acrylonitrile monomer for teratogenic effects. These tests, performed by gavage introduction of acrylonitrile monomer into 4 groups of rats at dosages of 0, 10, 25, and 65 milligrams/kilogram (mg/kg) of body weight, showed some teratogenic responses at dose levels of 25 and 65 mg/kg of body weight of the test animals. The dose level of 10 mg/kg showed no evidence of teratogenicity to either the mother or her developing embryo or fetus. A copy of this report is on file with, and available to the public from, the Hearing Clerk, Food and Drug Administration.

On January 14, 1976, the MCA submitted to FDA a 13-month interim report on an ongoing 2-year study in which acrylonitrile monomer is incorporated into the drinking water of rats at concentrations of 0, 35, 100, and 300 ppm. This study began in November 1975 and will be completed in November 1977. The final report is expected in early 1978. The MCA reported that "administration of AN [acrylonitrile monomer] under the condition of this study has significantly lowered body weight, produced pathologic changes in the gastric epithelium, increased the incidence of masses of the ear duct and produced proliferative lesions in the central nervous system of rats." The MCA also reported a higher incidence of subcutaneous masses in the mammary region of the test animals. The interim report is also on file with, and available to the public from, the Hearing Clerk, Food and Drug Administration.

Since 1975, FDA has been actively involved in reviewing and refining the analytical methodology for acrylonitrile monomer. This methodology is used by FDA to measure the amount of acrylonitrile monomer that migrates from acrylonitrile copolymer to food-simulating solvents under specified test conditions.

The need for precise and sensitive analytical methodology to measure the amount of acrylonitrile monomer that may reasonably be expected to migrate from the acrylonitrile copolymer is derived from the definition of a "food additive" in section 201(s) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(s)). Section 201(s) defines a food additive, in pertinent part, as:

* * * any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food * * *.

Indirect food additives include those that "may reasonably be expected" to become a component of food through migration from the food-contact surface to food. The procedure ordinarily used to determine if migration may reasonably be expected to occur and, if so, to measure the amount of migration, is to place the food-contact surface (e.g., an acrylonitrile copolymer beverage container) into contact with food-simulating solvents. These food-simulating solvents—water, 3 percent acetic acid, 8 or 50 percent ethanol, and n-heptane or an appropriate oil or fat—are used to approximate the actual conditions of use of the food-contact surface with different categories of food (e.g., oils, acidic substances, alcoholic beverages).

Extraction studies with the food-contact article and the food-simulating solvents are ordinarily conducted until the equilibrium point—the point of maximum migration—is reached. The extraction studies are ordinarily conducted under conditions more extreme than ordinary conditions of use of the food-contact substance to ensure that an adequate margin of safety exists for consumers. Thus, the amount of a substance extracted during these tests represents the maximum amount likely to migrate during actual use.

The results of the toxicological studies have been evaluated by FDA scientists and, on the basis of those evaluations, the Commissioner concludes that the amount of acrylonitrile monomer permitted to migrate to food-simulating solvents should be substantially reduced for all acrylonitrile copolymer food-contact applications. A proposal to implement this conclusion is published elsewhere in this issue of the FEDERAL REGISTER. The preamble to that proposal discusses the basis for the Commissioner's determination that use of acrylonitrile copolymers can safely be continued with a 0.05 ppm (50ppb) limit on acrylonitrile monomer migration during this interim period until the studies are completed and evaluated.

This conclusion does not, however, apply to the use of acrylonitrile copolymers for beverage containers. The beverage containers, in the Commissioner's judgment, present a somewhat different set of considerations from those applicable to other food-contact applications; those considerations make necessary a stay of the food additive regulations or portions thereof permitting use of the beverage containers.

First, data generated during recent FDA extraction studies on acrylonitrile copolymer beverage containers establish that some migration of acrylonitrile monomer occurs. These data also indicate that the containers may not currently meet the proposed 0.05 ppm (50 ppb) limit on acrylonitrile monomer migration. Conclusive proof that the beverage containers do not meet the proposed limit is not possible at this time, in part because the analytical methodology for determining monomer migration to food-simulating solvents is still being developed. Nevertheless, the sophisticated analytical methodology employed by FDA in determining acrylonitrile monomer migration has every indication of being a reliable and accurate procedure. Furthermore, the Commissioner believes that it would be inappropriate to risk additional exposure of the public to acrylonitrile monomer from beverage containers, pending further refinement and validation of the analytical method. The failure of the beverage containers tested to meet the proposed limit increases the possibility that acrylonitrile monomer will migrate in significant amounts to the beverages. A report of FDA's extraction studies on the acrylonitrile beverage containers is on file with, and available to the public from, the Hearing Clerk, Food and Drug Administration.

Shortly after FDA announced in the FEDERAL REGISTER of February 15, 1977 (42 FR 9227) its intention to stay the food additive regulations that permit acrylonitrile copolymers to be used to fabricate beverage containers, the Monsanto Company requested, and was given, the opportunity to submit data to FDA regarding migration of acrylonitrile monomer from its acrylonitrile copolymer bottle. Those data were reviewed by FDA and, in the view of the agency, do not establish that the bottles can currently meet the proposed 0.05 ppm limit on acrylonitrile monomer migration. It is worth noting also that the methodology used by Monstanto to measure the migration is essentially identical to that used by FDA.

This stay is also made necessary by the magnitude of the anticipated exposure of consumers to acrylonitrile monomer from the beverage containers, if those containers were permitted to be introduced further into the marketplace. Recent reports indicate that, in those areas in which the beverage containers—particularly soft drink bottles—have been marketed, they are being accepted by consumers, and their share of the market is increasing and may be expected to continue to increase. A stay at this time will prevent further introduction into the market place of the containers while the safety of the acrylonitrile monomer is studied further and while the studies of acrylonitrile monomer migration continue. This stay applies to all food additive regulations that permit acrylonitrile copolymers to be used to fabricate beverage containers, although it should be noted that at least two of those regulations are not being used at present as authority to market acrylonitrile beverage containers.

The possibility of exposure of consumers to acrylonitrile monomer migrating from acrylonitrile copolymer beverage containers can reasonably be projected to be considerably greater than from other acrylonitrile copolymer food-contact uses. Consumers ingest beverages in much greater quantities and more frequently, than, for example, margarine or vegetable oils. The World Health Organization (WHO) reports that in 1973, the last year for which data are available, per capital consumption of soft drinks in the United States was 110.1 liters per year.[1] Obviously, no individual would consume an amount approaching that amount of margarine or vegetable oil. Thus, acrylonitrile copolymer beverage containers are a potentially significant source of acrylonitrile monomer migration, particularly if use of the containers were to increase, as present trends indicate. Suspending further use of the containers at this time is an effective way of minimizing the potential exposure.

To summarize, the Commissioner concludes that the food additive regulations for acrylonitrile copolymers should be stayed, effective immediately, insofar as they permit acrylonitrile copolymers to be used to fabricate beverage containers. The regulations are stayed pending full review of the objections and requests for hearing filed by the Natural Resources Defense Council (NRDC) on 21 CFR 121.2627 and 121.2633, and on the interim food additive regulation, 21 CFR 121.-4010. The NRDC objection to the interim food additive regulation, 21 CFR 121.-4010 (which is the current legal basis for all food contact uses of acrylonitrile), which explicitly seeks a stay of the food additive regulations permitting acrylonitrile copolymers to be used in contact with food, and the other objections received on the interim food additive regulation, are being reviewed in conjunction with the data from the recently completed and ongoing toxicity studies on acrylonitrile monomer.

The NRDC objections raise a number of issues regarding the safety of acrylonitrile copolymers in food-contact applications, and especially as beverage containers. The issues raised in the objections are substantial. The Commissioner anticipates, therefore, that when the chronic feeding study is complete or possibly sooner it will be appropriate to convene an evidentiary hearing under section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) to resolve those factual issues. If the Commissioner decides that a hearing should be convened or, less likely, that the requests for hearing should be denied, a notice would be issued in the FEDERAL REGISTER setting forth the Commissioner's conclusions. However, the Commissioner concludes that the request of NRDC to stay certain acrylonitrile copolymer food additive regulations should be granted with respect to the use of acrylonitrile copolymers to fabricate beverage containers. The Commissioner concludes that it is in the public interest to act prudently, albeit not definitively, at this time on the acrylonitrile copolymer beverage containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 409, 701, 52 Stat. 1055-1056 as amended, 72 Stat. 1785-1788 as amended (21 U.S.C. 348, 371)) and under authority delegated to him (21 CFR 5.1), the Commissioner hereby stays, pending completion of the studies required under 21 CFR 121.4010 and evaluation of the results of those studies, and until further notice, the following food additive regulations under Subpart F of Part 121:

1. In § 121.2614 *Nitrile rubber modified acrylonitrile-methyl acrylate copolymers* insofar as it permits a nitrile rubber modified acrylonitrile-methyl acrylate copolymer to be used to fabricate beverage containers;

2. In § 121.2625 *Acrylonitrile/styrene copolymer modified with butadiene/styrene elastomer* insofar as it permits an acrylonitrile/styrene copolymer modified with butadiene/styrene elastomer to be used to fabricate beverage containers;

3. In § 121.2627 *Acrylonitrile/butadiene/styrene/methyl methacrylate copolymer* insofar as it permits an acrylonitrile / butadiene / styrene / methyl methacrylate copolymer to be used to fabricate beverage containers;

4. In § 121.2629 *Acrylonitrile/styrene copolymer* insofar as it permits an acrylonitrile/styrene copolymer to be used to fabricate beverage containers; and

5. In § 121.2633 *Acrylonitrile/butadiene/styrene copolymer* insofar as it permits an acrylonitrile/butadiene/styrene copolymer to be used to fabricate beverage containers.

The Commissioner concludes that the protection of the public health does not require the recall from the market of beverages packaged in acrylonitrile copolymer containers. The bottles are currently on the market only in limited areas and because of this stay will not be introduced further into interstate commerce. Moreover, the potential exposure to the acrylonitrile monomer from beverage containers already on the market is limited; therefore, the Commissioner concludes that permitting the beverage containers already in interstate commerce to be sold will not present a hazard to the public health.

Effective date: This stay is effective March 11, 1977. No acrylonitrile copolymer beverage containers may be shipped in interstate commerce after March 11, 1977.

Dated: March 4, 1977.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc.77-7046 Filed 3-7-77;10:30 am]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 510—NEW ANIMAL DRUGS

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Sponsors of Approved Applications; General Provisions; Diamond Shamrock Corp.; Change of Firm Name and Address.

The Food and Drug Administration is amending the animal drug regulations to reflect a change in corporate name and address; effective March 11, 1977.

(Sec. 512(i), (82 Stat. 347 (21 U.S.C. 360(b) (i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1).)

Parts 510 and 558 are amended as follows:

1. In Part 510, § 510.600 is amended in paragraph (c)(1) by deleting the firm name and address for Diamond Shamrock Chemical Co. and inserting in its place the name and address for Diamond Shamrock Corp., and in paragraph (c)(2) in the entry No. 025001 by deleting the firm name and address for Diamond Shamrock Chemical Co., and inserting in

[1] Joint FAO/WHO Food Standards Programme, Codex Committee on Food Additives, 10th Sess., The Hague, 2-7 June 1975, "Food Additives in Soft Drinks."