able only as an investigational drug for treating narcotics addicts or, in the alternative,

(*b*) "Support [the Health Research Group's] petition . . . [to the Attorney General and the Administrator of the Drug Enforcement Administration] to reschedule [propoxyphene] as a Schedule II narcotic which would impose production quotas and prohibit refills of prescriptions."

Dr. Wolfe argues that propoxyphene is relatively ineffective: "[a]t present the preponderance of properly-controlled studies fail[s] to show that DPX [propoxyphene] is any more effective than aspirin and many show it to be less effective than aspirin, or, in some cases, no more effective than a placebo. It is clearly less effective than codeine." HRG also contends that propoxyphene is unsafe because its limited effectiveness is outweighed by the several hundred deaths per year that are associated with its use. These deaths are reported in the Drug Enforcement Administration's Drug Abuse Warning Network (DAWN). HRG suggests that many of these deaths are the result of accidents rather than suicide.

Upon receiving the HRG petition, I requested FDA Commissioner Donald Kennedy and his scientific colleagues in the Bureau of Drugs to evaluate it and advise me on the proper response. On January 17, 1979, Commissioner Kennedy forwarded to me the Bureau's detailed analysis of the use and risks of propoxyphene, accompanied by a discussion of the options available to me and copies of the materials cited in the analysis. Additional materials were compiled by the Bureau and submitted to me on February 10, 1979.

On January 30, February 1, and February 5, 1979, the Senate Select Committee on Small Business held hearings on the safety and effectiveness of propoxyphene. The testimony presented at those hearings has been included in the materials submitted to me.

In addition to the materials referred to herein, I have relied on an examination of the full record created with FDA's assistance.

IV. Procedures and criteria for suspension of a new drug application

A. The Statutory Framework

The Secretary of Health, Education, and Welfare, and his delegate, the Commissioner of Food and Drugs, are responsible for the administration of the Food, Drug, and Cosmetic Act (the "Act"). 21 U.S.C. 301; 21 CFR 5.1. The provisions of the Act require that all "new drugs" be subject to a new drug application "approved" by the Secretary before they may be shipped in interstate commerce. 21 U.S.C. 505(a). To obtain approval for an NDA, a manufacturer must prove, *inter alia*, that such a drug is safe and effective.

The burden of establishing safety and efficacy of a new drug under the conditions prescribed, recommended, or suggested in the proposed labeling of the drug remains at all times on the manufacturer. Whenever new evidence warrants the conclusion that an approved new drug is unsafe or ineffective, the Food and Drug Administration is required to remove the drug from the market. Section 505(e) of the Act establishes two procedures for removing an approved drug from the market: "withdrawal" and "suspension."

1. Procedures for withdrawal of approval of an NDA.—The Act requires the Commissioner to withdraw an NDA if new evidence shows either that a drug is "unsafe for use" under the conditions for which it was approved, or that the manufacturer can no longer sustain its burden of demonstrating that the drug is safe and effective. The administrative procedure for withdrawing approval of an NDA ordinarily includes notice to the manufacturer of an opportunity for a hearing, the conduct of a full evidentiary hearing before a hearing officer, and a decision by the Commissioner based on the hearing record.

This procedure usually requires at least six months, and sometimes much longer. A drug may remain on the market for years while withdrawal proceedings are underway.

2. Procedures for suspension of approval of an NDA.—The elaborate procedural protections against improvident withdrawals emphasize the importance of the immediate suspension provision available under section 505(e) of the Act.[1] Established in 1962, this summary procedure permits the Secretary

[1] Section 505(e) provides, in pertinent part, as follows: If the Secretary (or in his absence the officer acting as Secretary) finds that there is an imminent hazard to the public health, he may suspend the approval of such [new drug] application immediately and give the applicant the opportunity for an expedited hearing under this subsection. * * *