Effective date. This amendment shall become effective on March 11, 1977.

Dated: March 3, 1977.

FRANK W. NAYLOR, Jr.,
Acting Administrator,
Farmers Home Administration.

[FR Doc.77-7310 Filed 3-10-77;8:45 am]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 78—BRUCELLOSIS

Interstate Movement of Cattle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to provide for a waiver of the 30-day negative brucellosis testing requirement for cattle from herds not known to be affected with brucellosis moved interstate from Modified Certified Brucellosis Areas for other than immediate slaughter or to other than a quarantined feedlot if such herds are tested negative within 12 months prior to movement and no change of ownership of the herd is involved from the date when the herd has tested negative to the date when such interstate movement is completed.

This action is needed to provide herd owners whose normal ranching operations are conducted in more than one State, a means of moving their cattle interstate without undue hardship, and under controlled conditions which will still restrict the dissemination of brucellosis.

EFFECTIVE DATE: March 11, 1977.

FOR FURTHER INFORMATION CONTACT:

Dr. A. D. Robb, USDA, APHIS, Veterinary Services, Room 805, Federal Building, Hyattsville, MD 20782. (301-436-8711).

SUPPLEMENTARY INFORMATION: Because of improved transportation facilities, present day ranching operations often cover wide areas in more than one State. Also, the rotation or cropping of separate parcels of forage frequently results in the cattle owner moving his cattle interstate to his various grazing parcels. Additionally, in some range States, members of grazing associations lease pastures from the U.S. Department of Interior or the U.S. Department of Agriculture. Members of the grazing associations are allotted grazing rights on these pastures for a restricted number of cattle and for a specified time. Consequently, this results in the cattle having to be frequently moved. Since State lines often bisect such ranges, herd owners may be involved in the interstate movement of the same cattle several times each year.

Cattle in herds not known to be affected with brucellosis in Modified Certified Brucellosis Areas that have had an official test for brucellosis and were found negative within the 12 months before interstate movement and which do not change ownership from the date of such a negative test to the date of the completion of such movement will be allowed to move interstate in normal ranching operations. However, the waiver of the 30 day testing requirement for such cattle will not be applicable if such cattle are commingled with cattle described in § 78.9(b)(3)(ii) of the regulations, namely beef breeds under 24 months of age and other breeds under 20 months of age which are not parturient (springers) or postparturient, and if the other cattle have not been officially tested and found negative for brucellosis within 12 months prior to the date the cattle are commingled. The Animal and Plant Health Inspection Service has determined that the risk of the spread of brucellosis by movements of such cattle is no greater than that associated with cattle presently required to be tested individually within the 30 days immediately prior to their interstate movement. Further, where all the herds of a grazing association have passed a negative brucellosis herd test within 12 months of the date of the interstate movement the risk that brucellosis might be spread would be similar to that of a single herd.

Accordingly, Part 78, Title 9, Code of Federal Regulations, is amended as follows:

In § 78.9, paragraph (b)(3)(iii) is amended to read:

§ 78.9 Cattle from herds not known to be affected with brucellosis.

* * * * *

(b) * * *
(3) * * *

(iii) Other such cattle may be so moved if they are accompanied by a certificate, are subjected to an official test for brucellosis and found negative within 30 days prior to such interstate movement and the certificate shows in addition to items required under § 78.1(u), the test dates and results of the official tests; except that cattle moved directly from a farm of origin to a specifically approved stockyard shall be accompanied by an owner's statement, or other document, and the shipper shall cause such cattle to be subjected to an official test for brucellosis upon arrival and prior to losing identity with the herd of origin; and except that, such cattle originating in herds which have been officially tested and found negative for brucellosis within the 12 months immediately preceding the date of the interstate movement and which have not changed ownership from the date of such a negative test to the date when such interstate movement has been completed, need not be so tested and found negative for brucellosis within the 30 days prior to such movement; *Provided, however,* That this exception shall not apply if any such cattle are commingled with any other cattle of the breeds described in paragraph (b)(3)(ii) of this section which have not been officially tested and found negative for brucellosis within 12 months prior to the date the cattle are commingled.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111-113, 114a-1, 115, 117, 120, 121, 125, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

The amendment relieves certain restrictions with respect to the movement of cattle interstate by modifying brucellosis testing requirements no longer deemed necessary for such cattle. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to this Department which would alter the decision in this matter. Further, the grazing season for cattle herds will begin shortly, and to be of maximum benefit to affected persons, this amendment should be made effective promptly.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found for such good cause that notice and other public procedure with respect to the amendment are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, DC, this 7th day of March 1977.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

R. P. JONES,
Deputy Administrator,
Veterinary Services.

[FR Doc.77-7151 Filed 3-10-77;8:45 am]

PART 82—EXOTIC NEWCASTLE DISEASE; AND PSITTACOSIS OR ORNITHOSIS IN POULTRY

Area Quarantined

This amendment quarantines a portion of Medina County in Ohio because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah, and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles, from quarantined areas, as contained in 9 CFR Part 82, as amended, will apply to the quarantined area.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect:

In § 82.3, the introductory portion of paragraph (a) is amended by adding thereto the name of the State of Ohio before the reference to "Virginia" and a new paragraph (a)(4) relating to the State of Ohio is added to read:

§ 82.3 Areas quarantined.

(a) * * *

* * * * *

(4) *Ohio.* The premises of Bill Saraniti, The Bird House, 27 West 130th Street, Hinckley, in Medina County.

* * * * *

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

Effective date: The foregoing amendment shall become effective on March 4, 1977.

The amendment imposes certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish its purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it it found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, DC, this 4th day of March 1977.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

G. V. PEACOCK,
Acting Deputy Administrator, Veterinary Services.

[FR Doc.77–7152 Filed 3–10–77;8:45 am]

CHAPTER III—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, MEAT AND POULTRY INSPECTION, DEPARTMENT OF AGRICULTURE

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

Designation of the State of New York

AGENCY: Animal and Plant Health Inspection Service, Meat and Poultry Inspection, USDA.

ACTION: Final Rule.

SUMMARY: The Secretary of Agriculture hereby designates the State of New York as required under section 5(c)(3) of the Poultry Products Inspection Act. A representative of the Governor of the State of New York has advised this Department that the State of New York is no longer in a position to continue administering the State poultry inspection program after April 9, 1977.

EFFECTIVE DATE: March 10, 1977.

FOR FURTHER INFORMATION CONTACT:

Dr. James K. Payne, Director, Federal-State Relations, Field Operations, Meat and Poultry Inspection Program, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250. (202–447–6313).

SUPPLEMENTARY INFORMATION: A representative of the Governor of the State of New York has advised this Department that the State of New York is no longer in a position to continue administering the State poultry inspection program after April 9, 1977, and has requested the Department to assume the responsibility for carrying out the provisions of sections 1–4, 6–10, and 12–22 of the Poultry Products Inspection Act with respect to establishments within the State at which poultry are slaughtered or poultry products are processed for use as human food, solely for distribution within such State, and with respect to intrastate operations and transactions concerning products and other articles and animals subject to the Poultry Products Inspection Act, and persons, firms, and corporations engaged therein.

The Secretary heretofore determined that the State of New York had developed and activated requirements at least equal to the requirements under sections 1–4, 6–10, and 12–22 of the Poultry Products Inspection Act. However, such sections contemplate continuous, ongoing programs, and in view of the termination date now applicable to the New York program, it is hereby determined that New York is not effectively enforcing requirements at least equal to those imposed under section 1–4, 6–10, and 12–22 of the Poultry Products Inspection Act. Therefore, notice is hereby given that the Secretary of Agriculture designates said State under section 5(c)(3) of the Poultry Products Inspection Act.

On April 10, 1977, the provisions of sections 1–4, 6–10, and 12–22 of the Poultry Products Inspection Act shall apply to intrastate operations and transactions in said State and to persons, firms, and corporations engaged therein, to the same extent and in the same manner as if such operations and transactions were conducted in or for "commerce," within the meaning of the Poultry Products Inspection Act, and any establishment in the State of New York which conducts any slaughtering or processing of poultry or poultry products must have Federal inspection or cease its operations, unless it qualifies for an exemption under section 15 or 5(c)(2) of the Poultry Products Inspection Act.

Therefore, the operator of each such establishment who desires to continue any such operations after April 9, 1977, should immediately communicate with the Regional Director for Meat and Poultry Inspection, as listed below, for information concerning the requirements and exemptions under the Act and application for inspection and survey of the establishment:

Dr. M. J. Hatter, Director, Northeastern Region, Meat and Poultry Inspection Program, Seventh Floor, 1421 Cherry Street, Philadelphia, PA 19102. (Telephone: 215–597–4219).

§ 381.221 [Amended]

Accordingly, the table in § 381.221 of the poultry products inspection regulations (9 CFR 381.221) is amended as follows:

1. In the "State" column, "New York" is added immediately below "New Jersey."

2. In the "Effective date of application of Federal provisions" column, "April 10, 1977" is added on the line with "New York."

(Secs. 5(c) and 14, 71 Stat. 441, as amended, 21 U.S.C. 454(c), 463; 37 FR 28464, 28477.)

These amendments of the Federal poultry products inspection regulations are necessary to reflect the determination of the Secretary of Agriculture under section 5(c) of the Poultry Products Inspection Act. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Secretary. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such public procedure is impracticable and unnecessary.

NOTE: The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Done at Washington, D.C. on March 7, 1977.

F. J. MULHERN,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc.77–7213 Filed 3–9–77;8:45 am]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Amdt. 3]

PART 112—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF SMALL BUSINESS ADMINISTRATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Addition of an Appendix A to Part 112 Which Lists the Types of Federal Financial Assistance Which Are Covered by This Part

On January 12, 1977, there was published in the FEDERAL REGISTER a notice that the Small Business Administration proposed to change its procedures involving nondiscrimination in Financial Assistance Programs by amending 13 CFR Part 112. Interested parties were given until February 11, 1977, to submit comments, suggestions or objections regarding the proposed amendment. Following publication, a comment was received and the proposed amendment was changed accordingly. Part 112 of Chapter 1 of Title 13 CFR is hereby amended by:

§ 112.2 [Amended]

1. Changing § 112.2(a) to read:

(a) This part applies to all recipients of assistance under programs administered by the Small Business Administration. (See Appendix A)

2. Delete § 112.2(a) (1), (2), (3), (4), (5), (6), and (7).

3. Changing § 112.2(b) to read:

§ 112.2 Application of this part.

* * * * *

(b) This part does not apply to financial assistance extended by way of insurance or guarantee.[1]

4. Adding an Appendix to the end of Part 112.

[1] See note at the end of Appendix.

APPENDIX A

Name of program	Authority
Regular business loans	Small Business Act, section 7(a).
Economic opportunity loans	Small Business Act, section 7(i) (formerly title IV of the Economic Opportunity Act).
Revocable revolving line of credit	Small Business Act, section 7(a) and 7(i) (guaranty plan only not covered by title VI, but covered by 13 CFR 113).
Pool loans	Small Business Act, section 7(a)(5).
Displaced business loans	Small Business Act, section 7(b)(3).
Handicapped assistance loans	Small Business Act, section 7(h).
State development company loans (501)	Small Business Investment Act, section 501.
Local development company loans (502)	Small Business Investment Act, section 502.
Disaster loans (physical, including riot)	Small Business Act, section 7(b)(1), as amended by sections 231, 234, and 237 of the Disaster Relief Act of 1970, Public Law 92-385, Public Law 93-24, and Public Law 94-68.
Disaster loans (economic injury)	Small Business Act, section 7(b)(2) as amended by sections 231 and 234 of the Disaster Relief Act of 1970. Public Law 92-385, Public Law 93-24 and Public Law 94-68.
Disaster loans (product disaster)	Small Business Act, section 7(b)(4); Public Law 92-385, Public Law 93-24, and Public Law 94-68.
Disaster loans—coal mine health and safety loans.	Small Business Act, section 7(b)(5).
Disaster loans—consumer protection	Small Business Act, section 7(b)(5).
Disaster loans—occupational safety and health	Small Business Act, section 7(b)(5).
Disaster loans—other regulatory	Small Business Act, section 7(b)(5).
Disaster loans—strategic arms economic injury loans.	Small Business Act, section 7(b)(6).
Air pollution control loans	Small Business Act, section 7(b)(5).
Disaster loans—base closing economic injury	Small Business Act, section 7(b)(7).
Water pollution control loans	Small Business Act, section 7(g)(1).
Emergency energy shortage economic injury	Small Business Act, section 7(b)(8).
Lease guarantees [1]	Small Business Investment Act, title IV.
Surety bond guarantees [1]	Small Business Act, title IV, part B.

[1] Not covered by this part, but covered by part 113 of title 13 of the Code of Federal Regulations as are all other programs involving financial assistance administered by the Small Business Administration. Part 113 prohibits discrimination based on race, color, religion, sex, marital status or national origin. In addition those matters covered by the Equal Credit Opportunity Act, beginning March 1977, will also prohibit such discrimination based on age, source of income, or because of complaints made under the Consumer Protection Act.

Effective date: March 11, 1977.

Dated: March 3, 1977.

MITCHELL P. KOBELINSKI,
Administrator.

[FR Doc.77-7188 Filed 3-10-77;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER A—PROCEDURES AND RULES OF PRACTICE

IMPLEMENTATION OF GOVERNMENT IN THE SUNSHINE ACT

AGENCY: Federal Trade Commission.

ACTION: Final rules.

SUMMARY: These rules implement the open meeting provisions of the Sunshine Act, Pub. L. 94-409.

EFFECTIVE DATE: March 12, 1977.

FOR FURTHER INFORMATION CONTACT:

Jay C. Shaffer, Esquire, Office of the General Counsel, Federal Trade Commission, 6th St. & Pennsylvania Ave., N.W., Washington, D.C. 20580, (202) 523-3802

SUPPLEMENTARY INFORMATION:

The Government in the Sunshine Act, Pub. L. 94-409, requires certain agencies, including the Federal Trade Commission, to publish proposed regulations implementing the Act and to allow at least thirty days for comment by any person. See 5 U.S.C. 552b(g). Accordingly, the Commission published a notice of proposed rulemaking at 41 FR 55885 (December 23, 1976), followed by a notice of corrections at 42 FR 2079 (January 10, 1977). Comments were received from six individuals and organizations. The Commission is now promulgating its final rules, which incorporate some substantive changes suggested by the comments, as well as some changes in wording to improve clarity.

The principal differences between the final rules and the proposed rules are as follows:

Section 4.9(b) is amended by adding two new subsections providing that (a) meeting announcements required by the Sunshine Act and (b) summaries of matters to be considered at open meetings, are part of the public records of the Commission.

Proposed § 4.14 is amended by adding a sentence providing that no Commissioner may delegate the authority to determine his or her vote in any matter requiring Commission action, but that 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.

Proposed §§ 4.15 (a)(2), (a)(3), (b)(1) and (c) are revised for greater clarity.

Proposed § 4.15(a) is amended by adding a new subsection specifying the manner in which meeting announcements will be disseminated.

Proposed § 4.15(b)(2) is amended to provide that requests to close meetings shall be filed "at the earliest practicable time" rather than "promptly after the Commission's announcement of an open meeting."

Proposed § 4.15(c)(1) is amended to specify which members of the Commission's staff may attend non-adjudicative and adjudicative portions, respectively, of closed meetings.

DISCUSSION OF MAJOR COMMENTS

LIMIT THE USE OF WRITTEN CIRCULATIONS

Section 4.14(c) acknowledges the Commission's practice of resolving some of its business by written circulation. One comment expresses concern over the possibility that the Commission may use this method to avoid public observation of its deliberations, and therefore suggests that the use of written circulations be limited by rule to routine, non-controversial matters; public notice be given within five days of all matters disposed of by written circulation; and members of the public be permitted to request that such decisions be reconsidered at open meetings.

The Commission has determined not to adopt these suggestions. The possible disruption of business that could be caused by allowing challenges to the propriety of each use by the Commission of a written circulation procedure outweighs any advantages that such a rule might have. The Commission notes that, (a) as a practical matter, disposition of business by written circulation is in fact limited to non-controversial matters and matters discussed at prior meetings, (b) any Commissioner may direct that a

matter presented for consideration be placed on the agenda of a Commission meeting (see § 4.14(a)), (c) the Commission's existing policy is to disclose determinations made by written circulation in the same manner and in the same circumstances as determinations made at meetings, through the Office of Public Information and the Office of Public Records, and this policy will be continued, and (d) Congress specifically recognized and approved the use of written circulations as an important tool in expediting agency business. See, e.g., S. Rep. No. 94–1178, 94th Cong., 2d Sess. 11 (1976); 122 Cong. Rec. H. 7863, 7871 (July 28, 1976).

WHY NOT RELEASE STAFF MEMORANDA RELATING TO ITEMS SCHEDULED FOR DISCUSSION AT AN OPEN MEETING?

One comment notes that the purpose of the Sunshine Act may be defeated if Commissioners speaking at open meetings refer to staff memoranda that are not available to the public. The Commission recognizes that this problem arises under the Act itself. Although routine duplication of all memoranda to the Commission is not justified, both because of cost and of certain remaining requirements of confidentiality, the Commission has determined to make available before open meetings summaries of matters on the agenda in order to facilitate the public's understanding of open discussions.

HOW WILL THE PUBLIC RECEIVE NOTICE OF COMMISSION MEETINGS?

The proposed rules provide for one week's advance notice of Commission meetings (with certain exceptions permitted by the Act). Comments were received suggesting that the rules specify the means by which announcements will be communicated to the public, and that they include posting the notices on an agency bulletin board, mailing notices to persons who express an interest in receiving them and to the media, and establishing a toll-free telephone message device.

The Commission agrees that a rule explaining how members of the general public can obtain announcements of Commission meetings would be helpful. Accordingly, the Commission has determined to include most of the above suggestions in its new rule § 4.15(a)(5). The suggestion that the telephone message device be "toll-free" has not been adopted because of potential cost.

As a related matter, one comment suggested that the Commission issue public announcements ten days before meetings rather than just one week. The Commission believes that one week's advance notice, as specified in the Sunshine Act, is adequate, and that increasing the amount of advance notice would result in more changes in announcements. The Commission therefore has determined not to alter its rules in this respect.

ALLOW REQUESTS TO OPEN MEETINGS

Section 4.15(b)(2) allows interested persons to request that scheduled meetings be closed. One comment suggested that we provide a rule permitting requests to open meetings as well. The Commission has determined not to adopt this suggestion because of the potential for delay. In addition, because decisions to close meetings will have been examined by the General Counsel and voted on by the Commission, and will be founded on specific expectations that exempt material will be discussed, it is unlikely that a meeting will ever be closed without full consideration.

DISCUSSION OF MISCELLANEOUS COMMENTS

(1) *Include names of Commission employees and consultants in lists of persons expected to attend closed meetings.* While the Commission remains convinced that its proposed rule § 4.15(c)(1) complies with the requirements of the Sunshine Act, the rule is being modified to provide affirmatively that any staff member may attend non-adjudicative meetings, and that certain specified staff members may attend adjudicative meetings, except to the extent that the notice of a particular closed meeting otherwise specifically provides.

(2) *Open all oral arguments in Commission adjudications.* Proposed § 3.52(f) states that oral arguments will be public "unless otherwise ordered by the Commission * * *." One comment suggested that since section (1) of the Sunshine Act (5 U.S.C. 552b(1)) does not authorize the closing of any meeting required by any other provision of law to be open, the proposed rule incorrectly implies that the Commission has the authority to close oral arguments. This argument apparently assumes that section 5 of the FTC Act requires oral arguments to be open. This is not the case. Nevertheless, the Commission has favored openness in its proceedings, see "H. P. Hood & Sons, Inc.," 58 F.T.C. 1184, 1186 (1961), and expects that oral arguments will rarely, if ever, be closed.

(3) *Deletions of information from transcripts of close meetings the disclosure of which "is likely to" have certain effects.* Proposed § 4.10(b) permits the agency to make deletions of information from transcripts where disclosure "is likely to" have any of the effects described in 5 U.S.C. 552b (c)(5), (c)(9), or (c)(10). One comment suggests that since the nature of the information disclosed in transcripts is certain, deletions should be made only where disclosure will have the enumerated effects, and not merely where it is "likely to." The commission believes this analysis is incorrect since it is never possible to know for certain in advance what effects will result from disclosure of information. The Commission therefore has determined that its rule need not be revised. Cf. 120 Cong. Rec. S 9337 (May 30, 1974) (letter of Senator Hart).

(4) *Certification of General Counsel required before meeting may be closed.* One comment suggests that proposed rule § 4.15(c)(1) be amended to make clear that the General Counsel's certification of the propriety of closing a scheduled meeting must be made before the meeting is closed. The Commission agrees that the determination regarding certification must be made in advance, and has appropriately amended the proposed rule.

Another comment states the opinion that the Commission is barred from holding a closed meeting if the General Counsel declines to certify. The Commission does not agree. Public disclosure of the General Counsel's refusal to certify should be sufficient to conform with Congressional intent. The legality of closing any given meeting depends on the matters to be discussed at the meeting, not on the procedures followed. While the Commission expects generally to follow the advice of its General Counsel as reflected in his decision whether or not to certify, the Commission does not believe that Congress intended the General Counsel, an advisor to the Commission, to have veto authority over the decisions of Presidential appointees who are ultimately accountable to Congress and the public.

(5) *The Commission should reconsider whether it may invoke the modified closing procedures under 5 U.S.C. 552b(d)(4) for meetings falling within exemption 10 of the Act, 5 U.S.C. 552b(c)(10).* One comment suggests that in determining whether a majority of the Commission's meetings would fall within sections (c)(4), (c)(8), (c)(9)(A) and (c)(10) of the Act (5 U.S.C. 552b (c)(4), (c)(8), (c)(9)(A), (c)(10)), we should consider each item of each meeting agenda as a separate meeting. The Commission has found nothing in the Act or its legislative history compelling that procedure and believe that each meeting of the Commission may be counted as one "meeting" for purposes of determining our eligibility to invoke subsection (d)(4).

(6) *Allow requests to close meetings prior to the meeting announcement.* Proposed § 4.15(b)(2) originally provided that requests to close meetings must be filed "promptly after the Commission's announcement of an open meeting." One comment suggests that this should be changed to allow requests to be filed even before the announcement. While the Commission does not expect that members of the public will normally know of scheduled open meetings before the announcements are disseminated, intended § 4.15(b)(2) has been revised to make it clear that requests may be filed even before meeting announcements, when that is the earliest practicable time.

COMMENTS BEYOND SCOPE OF THE NOTICE

A number of comments have been received that do not relate to matters covered by the rules. The Commission agrees in principle with the substance of some of these comments, and will bear them in mind in undertaking its responsibilities under the Act. They include:

1. Limiting delegations of the Commissioners' authority;

2. Opening budget discussions to the public;

3. Closing meetings concerning geological and geophysical information and data, including maps, concerning wells,

only to the extent they concern trade secrets and confidential or privileged commercial or financial information;

4. Avoiding delay in issuing public announcements of Commission action;

5. Avoiding narrow interpretations of what constitutes a "meeting" under the Act;

6. Avoiding broad application of Sunshine Act exemptions;

7. Holding meetings for the convenience of the public;

8. Undertaking a public education program about the requirements of the Sunshine Act.

DISCUSSION OF OTHER REVISION

The Commission's final rule contains one significant revision not addressed in the public comments: Section 4.14(c) is amended to provide that no Commissioner may delegate the authority to determine his or her vote in any matter requiring Commission action, but that 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. This provision is added to emphasize that the Commission intends not only to comply with the "no proxies" requirement of section (d)(1) of the Sunshine Act (5 U.S.C. 552b(d)(1), but will continue to observe a "no proxies" rule with respect to all other matters as well. The allowance for votes to be reported pursuant to instructions does not conflict with the "no proxies" rule because it leaves each Commissioner ultimately responsible for determining his or her vote.

In consideration of the foregoing, 16 CFR Chapter I is amended as follows:

PART 0—ORGANIZATION

§§ 0.5 and 0.6 [Deleted]

1. By deleting §§ 0.5 and 0.6.

PART 2—NONADJUDICATIVE PROCEDURES

2. By revising § 2.14(c) to read as follows:

§ 2.14 Disposition.

* * * * *

(c) The Commission has delegated to the Directors, Deputy Directors, and Assistant Directors of the Bureaus of Competition and Consumer Protection, without power of redelegation, limited authority to close investigations. The closing action of a Bureau Director, Deputy Bureau Director or Assistant Bureau Director does not become effective until the files have been sent to the Secretary of the Commission and he shall have advised the Commission of the closing action and, within five (5) working days after receiving the notice to close from the Secretary, no Commissioner has directed that the matter be placed on a meeting agenda or otherwise stayed for further consideration. Thereupon, the Secretary shall enter upon the records of the Commission the closing of the matter and take such other action as is required.

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

3. By adding the following sentence at the beginning of § 3.52(f).

§ 3.52 Appeal from initial decision.

* * * * *

(f) *Oral argument.* All oral arguments shall be public unless otherwise ordered by the Commission. * * *

4. By revising § 3.61(b) to read as follows:

§ 3.61 Reports of compliance.

* * * * *

(b) The Commission has delegated to the Directors of the Bureaus of Competition and Consumer Protection, without power of redelegation, the authority to approve compliance reports, reject compliance reports, and to close compliance investigations. This delegation does not apply to compliance with orders involving section 7 of the Clayton Act, to any matter which has received previous Commission consideration as to compliance or in which the Commission or any Commissioner has expressed an interest, any matter proposed to be closed by reason of expense of investigation or testing, or any matter involving substantial questions as to the public interest, Commission policy or statutory construction, in each of which type of case a report with recommendation will be made to the Commission. The approvals, rejections, and closings shall not be effective until the file relating to the subject matter has been transmitted to the Secretary and he shall have advised the Commission of the Bureau Director's determination and, within five (5) working days after receiving notice of the determination from the Secretary, no Commissioner has directed that the matter be placed on a meeting agenda or otherwise stayed for further consideration. Thereupon, the Secretary shall enter upon the records of the Commission the determination of the matter and take such other action as is required.

PART 4—MISCELLANEOUS RULES

5. By revising § 4.9(b)(4), and by renumbering §§ 4.9(b) (23), (24), and (25) as §§ 4.9(b) (26), (27) and (28), respectively, and by adding new §§ 4.9(b) (23), (24), and (25) to read as follows:

§ 4.9 Public records.

* * * * *

(b) * * *

(4) The pleadings and prehearing conferences (to the extent made available under § 3.21(c) of this chapter), motions, certifications, orders, and the transcripts of hearings, including public conferences, testimony, oral arguments, and other material made a part thereof, and exhibits and all documents received in evidence or made a part of the record in adjudicative proceedings (except matters heard or filed in camera).

* * * * *

(23) Portions of transcripts of closed meetings required to be made available under 5 U.S.C. 552b(f)(2);

(24) Announcements of Commission meetings required under 5 U.S.C. 552b;

(25) Summaries of matters to be considered at open meetings held pursuant to § 4.15(b);

(26) Every amendment, revision, or repeal of any of the foregoing;

(27) Releases from time to time through the Commission's Office of Public Information supplying additional information concerning the activities of the Commission, copies of which may be obtained upon request to the Office of Public Information or the Secretary of the Commission, and

(28) Reprints of the principal laws under which the Commission exercises enforcement or administrative responsibilities, which may be obtained upon request to the Secretary of the Commission.

* * * * *

6. By amending § 4.10(a) and revising § 4.10(b) to read as follows:

§ 4.10 Confidential information.

(a) Except as provided in paragraph (b) of this section, the following records of the Commission are exempt from availability for public inspection and copying pursuant to 5 U.S.C. 552; however, records exempt from disclosure by the provisions of this section may be made available to a requestor for inspection and copying upon request for records under the procedures set forth in § 4.11, or by the Commission upon its own motion: * * *

* * * * *

(b) With respect to information contained in transcripts of Commission meetings, the exemptions contained in paragraph (a) of this section, except for (a)(3) and (a)(7), shall apply; in addition, such information will not be made available if it is likely to have any of the effects described in 5 U.S.C. 552b (c)(5), (c)(9), or (c)(10).

* * * * *

7. By adding § 4.14 and § 4.15, to read as follows:

§ 4.14 Conduct of business.

(a) Matters before the Commission for consideration may be resolved either at a meeting under § 4.15 or by written circulation. Any Commissioner may direct that a matter presented for consideration be placed on the agenda of a Commission meeting.

(b) Quorum. A majority of the members of the Commission, duly appointed and confirmed, constitutes a quorum for the transaction of business.

(c) Any Commission action, either at a meeting or by written circulation, may be taken only with the affirmative concurrence of a majority of the participating Commissioners, except where a greater majority is required by statute or rule or where the action is taken pursuant to a valid delegation of authority. No Commissioner may delegate the authority to determine his or her vote in any matter requiring Commission action.

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.

GENERALLY

415.1 Short title.
415.2 Definitions.
415.3 Purpose and findings.

TYPES OF PROJECTS AND JURISDICTION

415.20 Class I Projects.
415.21 Class II Projects.

STANDARDS

415.30 Regulations generally.
415.31 Prohibited uses.
415.32 Permitted uses generally.
415.33 Uses by special permit.

ADMINISTRATION

415.40 Administrative agency.
415.41 Special permits.
415.42 Technical standards.
415.43 Mapped and unmapped delineations.

ENFORCEMENT

415.50 General conditions.
415.51 Prior non-confirming structures.
415.52 Violations.

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)