(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) complied 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.

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."

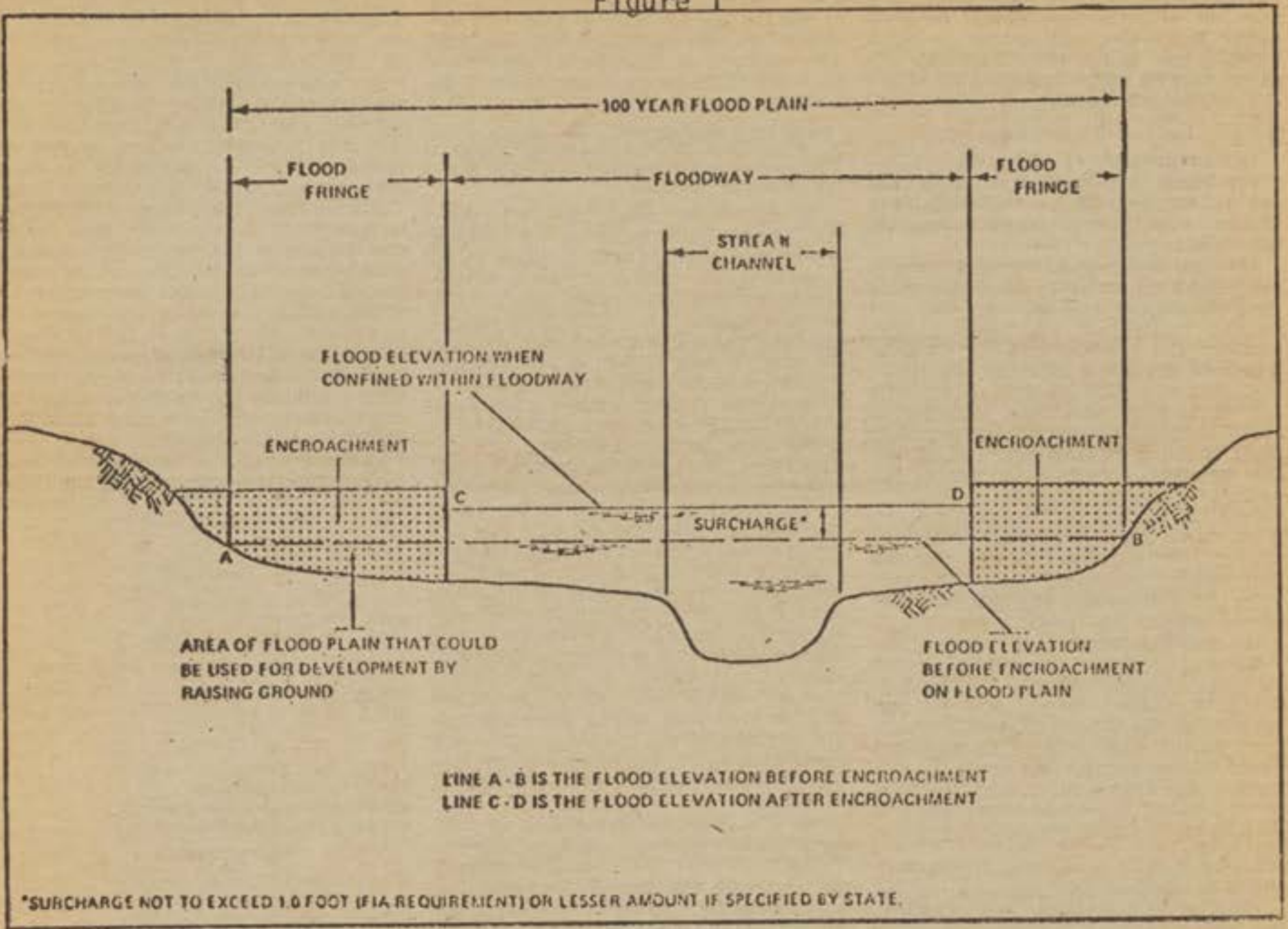
§ 415.2 Definitions.

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 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 Regu-