Order 12291 by section 1(a)(1) of the Order.

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended as follows:

1. In § 558.311 by revising paragraph (b) and adding a fifth entry to the table in paragraph (e) to read as follows:

**§ 558.311 Lasalocid sodium.**

* * * * * *

(b) *Approvals.* (1) Premix levels of 3.0, 3.3, 3.8, 4.0, 4.3, 4.4, 5.0, 5.1, 5.5, 5.7, 6.0, 6.3, 6.7, 7.2, 7.5, 8.0, 8.3, 10.0, 12.5, 15, 20, and 50 percent lasalocid sodium activity granted to 000004 in § 510.600(c) of this chapter for use as provided in paragraph (e)(1), (2), (3), and (4) of this section.

(2) Premix level of 15 percent lasalocid sodium activity granted to 000007 as provided by 000004 in § 510.600(c) of this chapter for use as provided in paragraph (e)(5) of this section.

* * * * * *

(e) * * *

| Lasalocid sodium activity in grams per ton | Combination in grams per ton | Indications for use | Limitation | Sponsor |
|---|---|---|---|---|
| | | | | |
| (5) 68 (0.0075 pct) to 113 (0.0125 pct). | Virginiamycin 20 | For prevention of coccidiosis caused by *Eimeria tenella E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for increased rate of weight gain and improved feed efficiency. | For broiler and fryer chickens only; feed continuously as sole ration; do not feed to laying chickens; withdraw 5 days before slaughter; lasalocid sodium provided by No. 000004 in § 510.600(c) of this chapter. | 000007 |

2. In § 558.635 by adding new paragraph (f)(3)(ii) to read as follows:

**§ 558.635 Virginiamycin.**

* * * * *

(f) * * *

(3) * * *

(ii) Lasalocid sodium in accordance with § 558.311.

*Effective date.* This amendment is effective September 22, 1981.

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

Dated September 15, 1981.

**Gerald B. Guest,**

*Acting Director, Bureau of Veterinary Medicine.*

[FR Doc. 81-27483 Filed 9-21-81; 8:45 am]

BILLING CODE 4110-03-M

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**21 CFR Part 558**

## New Animal Drugs for Use in Animal Feeds; Virginiamycin and Monensin Sodium

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by SmithKline Animal Health Products, Division of SmithKline Corp., providing for the use of virginiamycin in combination with monensin sodium in broiler or fryer chicken feeds for increased rate of weight gain and improved feed efficiency, and to aid in the prevention of coccidiosis.

**EFFECTIVE DATE:** September 22, 1981.

**FOR FURTHER INFORMATION CONTACT:** Adriano R. Gabuten, Bureau of Veterinary Medicine (HFV-149), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

**SUPPLEMENTARY INFORMATION:** SmithKline Animal Health Products, Division of SmithKline Corp., 1500 Spring Garden St., Philadelphia, PA 19109, filed an NADA (122-481) providing for manufacture of broiler or fryer chicken feeds containing 5 grams per ton of virginiamycin for increased rate of weight gain and improve feed efficiency in combination with 90 to 110 grams per ton of monensin as monensin sodium as an aid in the prevention of coccidiosis. The firm submitted data to comply with the requirements of the Bureau of Veterinary Medicine's combination drug guidelines. Each drug is presently regulated for use alone at such levels in broiler chicken feed for the same individual drug claim. Effectiveness of virginiamycin as a growth enhancer for broiler chickens is established by data from controlled clinical studies which also indicate the optimal dose level and also establish that such effectiveness is not diminished in the presence of monensin sodium. Effectiveness of monensin sodium for the intended use is established by data from controlled studies and such data establish that virginiamycin does not interfere with the anticoccidial effect of monensin sodium. Safety of the drug combination to broiler or fryer chickens is established. This approval does not change the indications for the drugs. Residues from each drug component in the combination are below their corresponding tolerances at withdrawal times currently established for their individual use.

The agency concludes that this approval poses no increased risk to humans exposed to residues of the drugs. Accordingly, under the Bureau of Veterinary Medicine's supplemental approved policy (42 FR 64367; December 23, 1977) this NADA has been treated as a Category II supplement which did not require a reevaluation of the underlying human safety data on the drugs. The application is approved and the regulations are amended to reflect this approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined pursuant to 21 CFR 25.24(d)(1)(ii) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of

Veterinary Medicine (21 CFR 5.83), Part 558 is amended as follows:

1. In § 558.355 by adding new paragraphs (b)(5) and (f)(1)(xiii) to read as follows:

**§ 558.355 Monensin.**

* * * * *

(b) * * *

(5) To 000007: 45 grams per pound as monensin sodium as provided by No. 000986 in § 510.600(c) of this chapter, paragraph (f)(1)(xiii).

* * * * *

(f) * * *

(1) * * *

(xiii) *Amount per ton.* Monensin, 90 to 110 grams, plus 5 grams virginiamycin.

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. maxima,* and *E. mivati;* for increased rate of weight gain and improved feed efficiency.

(*b*) *Limitations.* For broiler or fryer chickens; do not feed to laying chickens; feed continously as sole ration; withdraw 5 days before slaughter; as monensin sodium provided by No. 000986 in § 510.600 of this chapter; virginiamycin provided by No. 000007 in § 510.600 of this chapter.

2. In § 558.635 by adding new paragraph (f)(3) to read as follows:

**§ 558.635 Virginiamycin.**

* * * * *

(f) * * *

(3) Virginiamycin may be used in accordance with the provisions of this section in the combinations provided, as follows:

(i) Monensin sodium in accordance with § 558.355.

(ii) [Reserved]

*Effective date.* This amendment is effective September 22, 1981.

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

Dated: September 15, 1981.

**Gerald B. Guest,**

*Acting Director, Bureau of Veterinary Medicine.*

[FR Doc. 81-27485 Filed 9-21-81; 8:45 am]

BILLING CODE 4110-03-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### 21 CFR Part 1308

### Schedules of Controlled Substances; Placement of Alpha-Methylfentanyl in Schedule I

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule is issued by the Acting Administrator of the Drug Enforcement Administration to place the substance, alpha-methylfentanyl, into Schedule I of the Controlled Substances Act (CSA). As a result of this rule, the possession, distribution, manufacture, importation and exportation of alpha-methylfentanyl is subject to the control mechanisms and criminal sanctions of Schedule I.

**EFFECTIVE DATE:** September 22, 1981.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Regulatory Control Division, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 633-1366.

**SUPPLEMENTARY INFORMATION:** A notice was published in the **Federal Register** on Wednesday, August 5, 1981 (46 FR 39848-9), proposing that alpha-methylfentanyl be placed into Schedule I of the Controlled Substances Act (21 U.S.C. 801 *et seq.*). This notice further stated that the Acting Administrator found that the abuse of alpha-methylfentanyl has had a substantial and detrimental effect on the public health and safety. Consequently, the Acting Administrator gave notice that the effective data of control of alpha-methylfentanyl would be the date of publication of the final order placing it into Schedule I unless evidence showing why this should not be was presented. All interested parties were given until September 4, 1981 to submit their comments or objections in writing regarding this proposal.

Several comments concerning the proposed placement of alpha-methylfentanyl into Schedule I were submitted by Ohio Medical Products. Their comments refer to the compound 3-methylfentanyl or 1-(2-phenylethyl)-3-methyl-4-(N-propanoyl-anilino) piperidine which was not proposed for control and not alpha-methylfentanyl as proposed in the August 5, 1981 notice (46 FR 39848-9). However, a number of the comments are applicable to either compound and therefore will be addressed in this final order.

Ohio Medical Products suggests the use of another nomenclature system to describe the chemical structure of alpha-methylfentanyl. In addition to that used in the proposal, the name 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine will be included in the listing to describe alphamethylfentanyl. The question of which isomers are to be covered by the proposed regulation was raised by Ohio Medical Products. Alpha-methylfentanyl was proposed for control in Schedule I (21 CFR 1308.11(b)) which includes the listed opiates and their isomers with the term isomers defined in 21 CFR 1308.02 as the optical isomer. Ohio Medical Products further questions why alpha-methylfentanyl was singled out for Schedule I control from the many fentanyl derivatives which they suggest are likely to have high abuse potential. As described in the **Federal Register** proposal to place alpha-methylfentanyl in Schedule I, this substance has been identified in illicit drug traffic, reported by Narcotic Treatment Program Directors as abused by heroin addicts and associated with numerous drug overdose deaths. Specific studies conducted under National Institute on Drug Abuse contracts have shown alpha-methylfentanyl to be morphine-like and capable of producing physical dependence. Although other fentanyl derivatives may have pharmacological properties which are commensurate with a potential for abuse, they have not been specifically studied to determine whether they have an abuse potential nor is there any evidence that the other derivatives are being abused.

Ohio Medical Products recommends that alpha-methylfentanyl be placed into Schedule II of the CSA until research has shown that it has no potential for clinical use. 21 U.S.C. 812(b)(2) lists the criteria for placing a substance into Schedule II and they are as follows:

(A) The drug or other substance has a high potential for abuse;

(B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions; and

(C) Abuse of the drug or other substance may lead to severe psychological or physical dependence.

Alpha-methylfentanyl satisfies criteria (A) and (C) but it has no accepted medical use in treatment in the United States. The criteria for Schedule I are:

(A) The drug or other substance has a high potential for abuse;

(B) The drug or other substance has no currently accepted medical use in treatment in the United States; and

(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

Using the criteria for inclusion of a substance in any of the five schedules of the CSA, as outlined in 21 U.S.C. 812(b), alpha-methylfentanyl best fits the criteria for Schedule I control. Should there be an approved medical use for alpha-methylfentanyl in the future as determined by the Food and Drug Administration, administrative mechanisms exist for the transfer of this substance to the appropriate schedule.

Ohio Medical Products maintains that placing alpha-methylfentanyl into Schedule I will create an unnecessary regulatory burden on researchers. The main regulatory requirement imposed on a researcher using a Schedule I substance is that he or she is registered with DEA for handling that particular substance. The requirements attendant to a Schedule I research registration are not particularly onerous when one considers the serious health consequences associated with the abuse of alpha-methylfentanyl. Further, it is highly probable that a researcher who would want to work with alpha-methylfentanyl would be registered with DEA for other substances used for comparison. An amended registration to include alpha-methylfentanyl imposes only a minimal regulatory burden on these individuals.

A letter was received from Mr. Ronald D. Veteto who objects to the control of alpha-methylfentanyl and drugs in general. This comment questions the general philosophy of drug control but provides no valid reason, given the requirements of the Controlled Substances Act, for not placing alpha-methylfentanyl under control.

No other comments or objections were received, nor were there any requests for a hearing. Based upon the investigations and review conducted by the Drug Enforcement administration and upon the scientific and medical evaluation and recommendation of the Assistant Secretary for Health, Department of Health and Human Services, received in accordance with 21 U.S.C. 811(b), the Acting Administrator of the Drug Enforcement Administration, pursuant to 21 U.S.C 811(a) and 811(b), finds that:

(1) Based on information now available, alpha-methylfentanyl has a high potential for abuse;

(2) Alpha-methylfentanyl has no currently accepted medical use in treatment in the United States; and

(3) Alpha-methylfentanyl lacks accepted safety for use under medical supervision.

The above findings are consistent with the placement of alpha-methylfentanyl into Schedule I of the Controlled Substances Act. The Acting Administrator further finds that alpha-methylfentanyl is an opiate as defined in 21 U.S.C. 802(17) since it has addiction-forming and addition-sustaining liabilities similar to those of morphine. Consequently, alpha-methylfentanyl is a narcotic since the definition of narcotic, as stated in 21 U.S.C. 802(16) (A) includes: "* * * opium, coca leaves and opiates."

Neither of the comments received gave any reason for not making the control of alpha-methylfentanyl in Schedule I effective when this final order is published. All regulations applicable to Schedule I narcotic substances are effective on (date of publication) with respect to alpha-methylfentanyl. However, individuals registered with the Drug Enforcement Administration in accordance with Parts 1301 or 1311 of Title 21 of the Code of Federal Regulations and who currently possess alpha-methylfentanyl may continue to do so pending submission of an amended registration application no later then October 22, 1981.

1. *Registration.* Any person who manufactures, distributes, delivers, imports or exports alpha-methylfentanyl, or who engages in research or conducts instructional activities with respect to this substance, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. *Security.* Alpha-methylfentanyl must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of alpha-methylfentanyl must comply with the requirements of §§ 1302.03–1302.05, 1302.07 and 1302.08 of Title 21 of the Code of Federal Regulations.

4. *Quotas.* All persons required to obtain quotas for alpha-methylfentanyl shall submit applications pursuant to §§ 1303.12 and 1303.22 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of alpha-methylfentanyl shall take an inventory pursuant to §§ 1304.11–1304.19 of Title 21 of the Code of Federal Regulations, of all stocks of this substance on hand.

6. *Records.* All registrants required to keep records pursuant to §§ 1304.21–1304.27 of Title 21 of the Code of Federal Regulations shall maintain such records on alpha-methylfentanyl.

7. *Reports.* All registrants required to submit reports pursuant to §§ 1304.37–1304.41 of Title 21 of the Code of Federal Regulations shall do so regarding alpha-methylfentanyl.

8. *Order Forms.* All registrants involved in the distribution of alpha-methylfentanyl shall comply with the order form requirements of §1305.01–1305.16 of Title 21 of the Code of Federal Regulations.

9. *Importation and Exportation.* All importation and exportation of alpha-methylfentanyl shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* The Acting Administrator, Drug Enforcement Administration, hereby orders that any activity with respect to alpha-methylfentanyl not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act shall be unlawful.

Pursuant to 5 U.S.C. 605(b), the Acting Administrator certifies that the placement of alpha-methylfentanyl into Schedule I of the Controlled Substances Act will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). This action involves the initial control of a substance with no legitimate medical use or manufacture in the United States.

In accordance with the provisions of 21 U.S.C. 811(a), this scheduling action is a formal rulemaking "on the record after opportunity for a hearing." Such formal proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557, and as such, have been exempted from the consultation requirements of Executive Order 12991 (46 FR 13193).

## PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

Under the authority vested in the Attorney General by section 201(a) of the Act (21 U.S.C. 811(a)) and delegated to the Acting Administrator of the Drug Enforcement Administration by regulations of the Department of Justice (28 CFR Part 0.100), the Acting Administrator hereby orders that:

1. 21 CFR 1308.11(b)(6)–(45) is redesignated as 21 CFR 1308.11(b)(7)–(46); and

2. A new § 1308.11(b)(6) is added to read as follows: § 1308.11 Schedule I.

**§ 1308.11 Schedule I.**

* * * * *

(b) * * *

| | |
|---|---|
| (6) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine) | 9814 |

* * * * *

Dated: September 16, 1981.

**Francis M. Mullen, Jr.,**

*Acting Administrator, Drug Enforcement Administration.*

[FR Doc. 81-27553 Filed 9-21-81; 8:45 am]

BILLING CODE 4410-09-M

## NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

### 25 CFR Part 700

### Commissions Operations and Relocation Procedures; Determination of Eligibility, Hearing and Administrative Review (Appeals)

**AGENCY:** Navajo and Hopi Indian Relocation Commission.

**ACTION:** Final rule.

**SUMMARY:** This final rulemaking establishes Subpart L, Determination of Eligibility, Hearing and Administrative Review (Appeals) to 25 CFR Part 700. Subpart L provides procedures for administrative hearings and appeals concerning individual eligibility or benefits for any person who has filed a claim for benefits or for granting of a life estate lease.

**EFFECTIVE DATE:** September 22, 1981.

**FOR FURTHER INFORMATION CONTACT:** Paul M. Tessler, CFR Liaison Officer, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002. Telephone No.: (602) 779–3311, Extension 1376, FTS: 261–1376.

**SUPPLEMENTARY INFORMATION:** The principal author is William G. Lavell, General Counsel, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002, Telephone No.: (602) 779–3311, Extension 1376, FTS: 261–1376.

A proposed rule on this subject was published in the **Federal Register** on March 9, 1981 (46 FR 15720–15743) as a part of a recodification revision and addition to Part 700—Commission Operations and Relocation Procedures. Comments were invited for a period ending July 7, 1981. Comments were timely received from a number of different sources concerning the overall recodification, revision and addition some of which commented on the appeals procedures. It has been decided to publish this subpart at this time prior to the adoption of the remainder of the overall recodification, revision and addition to Part 700 in order to establish the hearings and appeals procedures and contract for services of one or more hearing officers as provided in the new procedures.

### Review of Comments

Comments upon which action was taken were as follows.

(1) Section 700.311(i) was changed to read as follows: Applicants may be represented by a licensed attorney or by an advocate licensed to practice in any Hopi or Navajo Tribal Court.

(2) Section 700.303(c) was amended by changing the hearing request period from 14 to 30 days to make it consistent with § 700.307.

(3) The reference in § 700.311(h) was amended to read § 700.313(a)(5).

(4) Section 700.303(b) was amended to extend the period for requesting an explanatory conference from 14 to 30 days.

(5) Section 700.311 (b) and (c) were amended to extend the notice of the hearing from 14 to 30 days.

### Comments Upon Which No Action Was Taken Were as Follows

(1) *Section 700.301.* It was suggested that a definition of presiding officer be included to include either a commissioner, a non-partial judge or a relocatee. No action was taken since presiding officers are covered by § 700.309.

(2) *Section 700.303.* (a) It was suggested that applicants always be informed of a determination in person. The reason for this proposed change was that relocatees receive their mail general delivery and do not pick it up on a regular basis. Even after mail is picked up, many relocatees must wait for someone who can read it to them. Also, the amount to which the individual is entitled should not be included in the notice since benefits are not determined until the individual relocatee is turned over to Realty. No action was taken since it was determined that current notice requirements are adequate under the circumstances.

(c) It was suggested that applicant's counsel should be paid for by the Relocation Commission. No action was taken since the Commission did not deem it appropriate to pay for counsel.

(d) It was suggested that this section should be eliminated completely. No action was taken since it was determined that this provision is essential to the regulations.

(3) *Section 700.311(d).* It was suggested that the old age or handicap of the applicant be included as a reason for extending the hearing date. This change is not necessary since under the existing regulations the presiding officer could use this reason for extension.

(4) *Section 300.315.* It was suggested that the time for submitting post-hearing briefs should be extended from 14 to 30 days. No action was taken since counsel for the appellant handles filing of post-hearing briefs and 14 days was determined to be adequate.

(5) *Section 700.321.* It was suggested that appeals brought pursuant to this subsection should be made to the presiding officer, not the Commissioners. No action was taken since these appeals often involve policy determinations which must be made by the Commission.

(6) *Section 700.323.* It was suggested that relocatees should have up to one year after the date of relocation to request a hearing under the regulations. No action was taken since this section provided a "grandfather right" which expired 180 days after April 15, 1980. The time within which an appeal must be filed has been governed by 25 CFR 700.8(c) since then. (25 CFR 700.307 in this recodification). It was determined that 30 days is adequate.

(7) *Sections 700.311 and .313.* It was suggested that both tribes, or at least the tribe to whom the land has been partitioned, should be given notice of all hearings and be allowed to participate therein, receive copies of notices and other documents, and examine witnesses. No action was taken. An aggrieved person is defined in § 700.301(b). The Commission determined that the tribes would not be appropriate for inclusion in that definition.

As of the day of publication of this final rule the Office of Management and Budget has not approved the information collection requirements, if any, related to these regulations. Notice of such approval will be published at a later date.

Accordingly, Part 700 of Title 25 of the Code of Federal Regulations is amended in its final form by adding regulations designated as Subpart L—Determination of Eligibility, Hearing and Administrative Review (Appeals).

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## PART 700—COMMISSION OPERATIONS AND RELOCATION PROCEDURES

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700.317 Presiding officer decision.
700.319 Final agency action.
700.321 Direct appeal to Commissioners.

**Authority:** Pub. L. 93–531, (25 U.S.C. 640–d).

### § 700.301 Definitions.

(a) Certifying Officer, as used in this subpart, means that member of the Commission staff who certifies

eligibility for relocation assistance benefits and/or for life estate leases.

(b) An aggrieved person, as used in this subpart, means a person who has been denied any relocation assistance benefits for which he/she has applied.

**§ 700.303 Initial Commission determinations.**

(a) Initial Commission Determination concerning individual eligibility or benefits for any person who has filed a claim for benefits or for granting of Life Estate Leases shall be made by the Certifying Officer. The Determination shall include the amount, if any, to which the individual is entitled, and shall state the reasons therefor. Such Determination shall be communicated to the Applicant by certified letter or in person by Commission staff. A record of personal notice shall be maintained by the Commission.

(b) An explanatory conference shall be scheduled by and with the Certifying Officer, if requested by the Applicant or the Certifying Officer, within thirty days of the communication of the Determination; the right to a hearing is not dependent on the holding of such a conference. The Certifying Officer may reverse, amend, or leave standing the Initial Determination as a result of such conference: *Provided, however,* his/her decision shall be communicated in writing to the Applicant by certified letter or in person by Commission staff within five days after such conference.

(c) Communications of Determinations to the Applicant as provided for in 700.303(a) shall include an explanation of the availability of grievance procedures, including hearings and representation of counsel and the fact that a hearing must be requested within 30 (thirty) days of receipt of the determination.

(d) No decision which at the time of its rendition is subject to appeal to the Commission shall be considered final agency action subject to judicial review under 5 U.S.C. 704, *Provided* that in the event of a whole or partial denial, no benefits shall be paid unless and until said Determination is reversed or modified as provided for herein.

**§ 700.305 Availability of hearings.**

All persons aggrieved by Initial Commission Determinations concerning eligibility, benefits, or for granting of Life Estate Leases may have a Hearing to present evidence and argument concerning the Determination. Parties seeking such relief from the Commission's Initial Determination shall be known as "Applicants." When multiple Applicants claim interest in one benefit, determination, or question of eligibility, their hearings may be consolidated at the Presiding Officer's discretion.

**§ 700.307 Request for hearings.**

Hearing requests shall be made in person or by letter and must be received by the Commission within thirty days after the notice letter was received, the personal notice was given, or if an explanatory conference is held, after the decision of the Certifying Officer. The request shall also contain a specific statement indicating the basis for the request.

**§ 700.309 Presiding officers.**

The hearing shall be presided over and conducted by one of the Commissioners appointed pursuant to 25 U.S.C. 640d–11(b) or by such other person as the Commission may designate.

**§ 700.311 Hearing scheduling and documents.**

(a) Hearings shall be held as scheduled by the Presiding Officer.

(b) Notice of the hearing shall be communicated in writing to the applicant at least thirty days prior to the hearing and shall include the time, date, place, and nature of the hearing.

(c) Written notice of the Applicant's objections, if any, to the time, date, or place fixed for the hearing must be filed with the Presiding Officer at least five days before the date set for the hearing. Such notice of objections shall state the reasons therefor and suggested alternatives. Discretion as to any changes in the date, time, or place of the hearing lies entirely with the Presiding Officer, *Provided,* that the 30 (thirty) day notice period as provided in paragraph (b) above shall be observed unless waived in writing by the applicant or his representative.

(d) All hearings shall be held within thirty days after Commission receipt of the applicant's request therefor unless this limit is extended by the Presiding Officer.

(e) All hearings shall be conducted at the Commission office in Flagstaff, Arizona, unless otherwise designated by the Presiding Officer.

(f) All time periods in this regulation include Saturdays, Sundays and holidays. If any time period would end on a Saturday, Sunday, or holiday, it will be extended to the next consecutive day which is not a Saturday, Sunday, or holiday.

(g) A copy of each document filed in a proceeding under this section must be filed with the Commission and may be served by the filing party by mail on any other party or parties in the case. In all cases where a party is represented by an attorney or representative, such attorney or representative will be recognized as fully controlling the case on behalf of his client, and service of any document relating to the proceeding shall be made upon such attorney or representative, which service shall suffice as if made upon the Applicant. Where a party is represented by more than one attorney or representative, service upon one of the attorneys or representatives shall be sufficient.

(h) Hearings will be recorded verbatim and transcripts thereof shall be made when requested by any parties; costs of transcripts shall be borne by the requesting parties unless waived according to § 700.313(a)(5).

(i) Applicants may be represented by a licensed attorney or by an advocate licensed to practice in any Hopi or Navajo Tribal Court.

**§ 700.313 Evidence and procedure.**

(a) At the hearing and taking of evidence the Applicant shall have an opportunity to:

(1) Submit and have considered facts, witnesses, arguments, offers of settlement, or proposals of adjustment;

(2) Be represented by a lawyer or other representative as provided herein;

(3) Have produced Commission evidence relative to the determination, *Provided,* that the scope of pre-hearing discovery of evidence shall be limited to relevant matters as determined by the Presiding Officer;

(4) Examine and cross-examine witnesses;

(5) Receive a transcript of the hearing on request and upon payment of appropriate Commission fees as published by the Commission, which may be waived in cases of indigency.

(b) The Presiding Officer is empowered to:

(1) Administer oaths and affirmations;

(2) Rule on offers of proof;

(3) Receive relevant evidence;

(4) Take depositions or have depositions taken when the ends of justice would be served and to permit other pre-hearing discovery within his/her discretion;

(5) Regulate the course and conduct of the hearings; including pre-hearing procedures;

(6) Hold pre-hearing or post-hearing conferences for the settlement or simplification of the issues;

(7) Dispose of procedural requests or similar matters;

(8) Make a record of the proceedings;

(9) Hold the record open for submission of evidence no longer than

fourteen days after completion of the hearings;

(10) Make or recommend a decision in the case based upon evidence, testimony, and argument presented;

(11) Enforce the provisions of 5 USCA section 557(d) in the event of a violation thereof;

(12) Issue subpoenas authorized by law; and

(13) Extend any time period of this subpart upon his/her own motion or upon motion of the applicant, for good cause shown.

**§ 700.315 Post hearing briefs.**

Applicants may submit post-hearing briefs or written comments to the Presiding Officer within fourteen days after conclusion of the Hearings. In the event of multiple applicants or parties to a hearing, such briefs shall be served on all such applicants by the applicant submitting the brief.

**§ 700.317 Presiding officer decisions.**

(a) The Presiding Officer shall submit to the Commission a written decision based upon the evidence and argument presented, within *sixty* days, not including any period the record is held open, if any, after conclusion of the hearing, unless otherwise extended by the Presiding Officer.

(b) Copies of the Presiding Officer's decision shall be mailed to the Applicant. The Applicant may submit briefs or other written argument to the Commission within fourteen days of the date the Presiding Officer's determination was mailed to the Applicant.

**§ 700.319 Final agency action.**

Within 30 (thirty) days after receipt of the Presiding Officer's decision, the Commission shall affirm or reverse the decision and issue its final agency action upon the application in writing; *Provided*, that in the event one Commissioner sits as the Presiding Officer, the final agency action shall be determined by the remaining Commissioners and such other person as they may designate who did not so preside over the hearing. Such decisions shall be communicated in writing to the Applicant by certified mail.

**§ 700.321 Direct Appeal to Commissioners.**

Commission determinations concerning issues other than individual eligibility or benefits which do not require a hearing may be appealed directly to the Commission in writing. The Commission decision will constitute final agency action on such issues.

**Roger Lewis,**

*Commissioner, Navajo and Hopi Indian Relocation Commission.*

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BILLING CODE 4310-HB-M

## DEPARTMENT OF LABOR

## Employment and Training Administration

## 29 CFR Part 56

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Office of Human Development Services

## 45 CFR Part 224

## Work Incentive Program for AFDC Recipients Under Title IV of the Social Security Act

**Note.**—This document originally appeared as the Part IV in the **Federal Register** for Sept. 21, 1981. It is reprinted in this issue to meet requirements for publication on the Tuesday, Friday schedule assigned to the Department of Labor.

**AGENCIES:** Employment and Training Administration, Labor; and Office of Human Development Services, Health and Human Services Department.

**ACTION:** Interim final rules.

**SUMMARY:** The Secretary of Labor and the Secretary of Health and Human Services jointly revise the regulations for the Work Incentive Program. These rules are made necessary by the Omnibus Budget Reconciliation Act of 1981.

**EFFECTIVE DATE:** October 1, 1981. However, consideration will be given to comments received before November 20, 1981. These will be carefully considered, and any changes to these regulations or our reasons for not accepting recommendations for change will be published in the **Federal Register.**

**ADDRESSES:** Mail or deliver comments to the Executive Director, Work Incentive Program, Patrick Henry Building, Room 5102, 601 D Street, NW., Washington, D.C. 20213. Agencies and organizations are requested to submit comments in duplicate. Beginning October 5, 1981, these comments shall be available for public review at the above address, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Robert Easley, (202) 376-7030.

**SUPPLEMENTARY INFORMATION:**

### Background

The purpose of the WIN program is to utilize all available employment and social services, including those authorized under provisions of other laws, so that individuals receiving Aid to Families with Dependent Children (AFDC) under Part A of Title IV of the Social Security Act will be furnished incentives, opportunities, and necessary services for (1) the employment of such individuals in the regular economy, (2) the training of such individuals for work in the regular economy, and (3) the participation of such individuals in WIN public service employment, thus assisting the families of such individuals to achieve economic independence and to assume useful roles in their communities.

### History of the WIN Program

Enactment of amendments to Title IV of the Social Security Act in 1967, authorizing the Work Incentive Program (Pub. L. 90-248), was a recognition of the need for an employment program directed to the special needs of public assistance recipients and their families. Earlier measures funded under the Manpower Development and Training Act of 1962 (Pub. L. 87-415) and the Economic Opportunity Act of 1964 (Pub. L. 88-452) provided some assistance to this group but did not address the multiple problems of the public assistance population, and had limited impact.

Under the 1967 legislation, registration in WIN was by referral of persons deemed by public welfare agencies to be appropriate for participation. An employment plan tailored to the specific needs and goals of each individual was developed jointly by the registrant and WIN staff. Emphasis tended to be on the provision of classroom training and other aids to employability development, rather than on immediate job placement.

Amendments to Title IV of the Social Security Act (Act) in December 1971 (Pub. L. 92-223) changed the administration and focus of the program. WIN registration was mandated for all persons at least 16 years of age receiving or applying for AFDC, unless legally exempt. Exemptions were provided under Section 402(a)(19)(A) of the Act (42 U.S.C. 602(a)(19)(A)) for full-time students, the ill and disabled, persons too remote from WIN program sites, and certain persons needed to care for a family member in the home.

The emphasis was shifted from employability development to employment at the earliest point