Title 24—Housing and Urban Development

CHAPTER IX—OFFICE OF INTERSTATE LAND SALES REGISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-73-228]

LAND REGISTRATION, FORMAL PROCEDURES, AND ADVERTISING SALES PRACTICES, AND POSTING OF NOTICES OF SUSPENSION

On May 4, 1973, the Department of Housing and Urban Development published for public comment a proposed revision of Chapter IX of Title 24. Within this chapter, amendments to Parts 1700, 1710, and 1720 were proposed, and a Part 1730, Advertising, Sales Practices, Posting of Notices of Suspension, was proposed to be added to this chapter. Public comments were received and on June 28, 1973, an informal public hearing was held in accordance with a notice published in the FEDERAL REGISTER on June 6, 1973. This notice also announced the extension of the June 15, 1973 deadline for receipt of written comments to June 28, 1973.

Careful consideration has been given to all comments and certain suggestions have been adopted in whole or in part, as reflected in this Chapter IX. These are described in detail in the following paragraphs.

PART 1700—INTRODUCTION

Section 1700.100, Separability of Provisions, is added to make it clear that if any provision in the regulations should be declared invalid by any court of competent jurisdiction, the remaining regulations would not be affected.

PART 1710—LAND REGISTRATION

In § 1710.1, a definition of "lot" is added and the definition of "sale" is amended. The definition of lot, § 1710.1(h), demonstrates the nature of the interest which is subject to the coverage of the Interstate Land Sales Full Disclosure Act (Act).

Considerable comment was received with respect to the proposed definition of lot. Essentially, comments complained that OILSR is seeking to regulate everything from securities to country club memberships. Since in this range of coverage condominiums were mentioned most frequently, OILSR policy on condominium coverage is set forth herein.

The application of the Act to condominiums has been consistent OILSR policy since the issue was first raised in 1969. The bases for this position are that condominiums carry the indicia of and in fact are real estate, whether or not the units therein have been constructed. A condominium is accordingly viewed by OILSR as equivalent to a subdivision, each unit being a lot. Adverse comment, particularly from builders, asserts that condominiums are equivalent to houses and the sale of houses was not intended to be covered by the Act. However, the right to condominium space is a form of ownership, not a structural description. This condominium concept is employed as an ownership form for completely horizontal developments and even for campgrounds. Congress recognized the need to exempt professional builders from the Act and provided an appropriate exemption (15 U.S.C. 1702(3)). For a condominium unit sale to be exempted from the Act, it must accordingly qualify for exemption; i.e., either it must be completed before it is sold, or it must be sold under a contract obligating the seller to erect the unit within two years from the date the purchaser signs the contract of sale. For the purposes of the exemption cited, "building" comprises the dwelling unit and all utilities or systems necessary to support normal occupancy. Additionally, if a condominium dwelling unit is merely incidental to the common facilities (as in the case of recreational developments), all common facilities must be completed within the two-year period to qualify for the exemption since frequently vacation sites are sold without assurances that such facilities will be completed. With respect to condominiums intended as primary residences in metropolitan areas, registration typically is unnecessary since most professional builders would qualify for the exemption inasmuch as they are able to deliver a completed unit to a purchaser within two years after the contract of sale has been signed.

Further, the legislative history of the Act has been cited as not authorizing coverage of condominiums. However, there is negligible legislative history on the present Act and that legislative history with respect to predecessor bills is unclear on this subject. It is OILSR's position that the amended definition of lot merely codifies OILSR's longstanding position on condominiums and is a valid exercise of the Secretary's regulatory authority under the Act to implement the provisions thereof.

Some comments objected to the inclusion of "undivided interest" in the definition of lots as exceeding the statutory authority of the Secretary, inasmuch as the statute is aimed at divisions of land. Accordingly, the proposed definition of lot has been changed to show that although legitimate undivided interests are not covered by the Act, any plans or schemes which in fact are tantamount to a sale or lease of a divided interest although purporting to be a sale or lease of an undivided interest, are covered. This too codifies longstanding OILSR policy.

Also, the language regarding the square yard exception in this proposed definition has been deleted in its final form as being unwarranted in view of § 1710.13(a).

The definition of sale, § 1710.1(n), encompasses any obligation binding a purchaser to directly or indirectly acquire a lot. Such obligations may include options and reservations. The words "or arrangement" are added in response to commentators who advised that the proposed language was not broad enough to satisfy the objectives sought by the proposal.

In § 1710.5, General Applicability, the word "land" is changed to "lots." This is a technical change made to conform with the new definition of lots.

Section 1710.13(a) is amended to delete the 10,000 square feet minimum necessary to qualify for this exemption. This change is to exclude souvenir- or postage-stamp-type operations from the registration requirements. These are more appropriately the subject of Postal Service and Federal Trade Commission jurisdiction.

Section 1710.13(c), which was proposed to be added, is withdrawn pending further consideration.

Section 1710.21 is amended to delete certain words which were published as a result of a printer's error.

Section 1710.22 is amended to provide a procedure whereby replatting of already subdivided land may be included in a filing. The fee for such filing is based on the additional lots to be offered as a result of the replatting.

Section 1710.27(a) is amended to require material that has been filed with an acceptable state to be filed with the Secretary within 15 rather than 10 days after it becomes effective under the applicable state law. This extension is based on the experience of both OILSR and the industry regarding delays in mail service. This section is also amended by the addition of a paragraph (a)(5), which requires that acceptable state consolidations amendments must be accompanied by state certifications when submitted to the Secretary.

Section 1710.35 is changed by adding a paragraph (h), which requires a $100 fee for the second and any subsequent pre-effective amendments unless waived by the Secretary.

Section 1710.45(a)(3) is amended to permit a developer 15 days after receipt of a suspension notice within which to request a hearing, instead of the present 10 days. Also, a new paragraph § 1710.45(a)(4), is added to make clear that suspension notices are effective until all deficiencies cited in the notices are corrected. This paragraph has been changed from the form of the proposal for the purpose of clarity.

Section 1710.102 is amended to require inclusion of a subdivision plat, title evidence and copy of the sales contract as supporting documentation to the Statement of Reservations, Restrictions, Taxes and Assessments.

Section 1710.105 is amended in several parts. The format is amended by adding appropriate lines to conform with the instructions which will be discussed in detail. This includes Part XV regarding the developer's affirmation.

The Instructions for Completion of the Statement of Record are amended first, by identifying the major paragraphs by capital letters A. through H. Paragraphs presently designated by lower case a. through c. are now designated 1. through 3., and a new paragraph 4. is added. Paragraph 2. is changed to specify that documentation and certifications as well as other material information may be required by the Secretary. New paragraph 4. states that all amendments shall

be prepared and filed in accordance with the amendment procedure in § 1710.23.

Paragraph B. is amended to include a requirement that Statements of Record shall be bound. This requirement does not refer to a binding but a fastening together of all pages in the Statement of Record. Also, a requirement that the date of typing of each page of the Statement of Record appear in the lower right-hand corner of each page is made. This step will facilitate processing of amendments.

New paragraph G. (change 12 in the proposals), dealing with the developer's obligation to complete facilities, has been modified in response to comments asserting that the proposed regulation attempted to equate a "proposal" with a legal obligation. As revised, this paragraph recognizes two categories of proposals: obligatory and nonobligatory. The proposals required to be disclosed are those which the developer is obligated to fulfill and those which a third party is obligated to fulfill, if the third party is adequately identified. Proposals which no one is obligated to fulfill may be disclosed only if accompanied by a statement that the developer (or other party) has no obligation to fulfill them.

The paragraph immediately preceding Part I, Administrative Information, is now designated H.

Part I.B.3. is expanded to require inclusion of lots that are added by consolidations and to clarify that the number of lots offered must be supported by appropriate exhibits and must be consistent with the lots identified in the Property Report.

Part I.B.7. requires a disclosure of sales made prior to registration, or disclosure of whatever exemption was applicable to such sales. Some comment was received that this regulation will be counter-productive in that it discourages developers from registering their subdivisions if sales have been made while the subdivision was unregistered. These comments were considered but were not believed to be persuasive on the matter.

Four new items of disclosure are added as Parts I.C.3. through 6. Part I.C.3. has been modified to omit the requirement that developers submit copies of proposed Property Reports to the States in which they expect to offer their lots. This change is responsive to the many comments that were received asserting that a proposed Property Report is virtually meaningless and that inasmuch as many States have no designated agency to use the Property Report, the proposed requirement would have little value.

Part I.C.4. requires the developer to disclose any filings or intended filings with the SEC that are related to the subdivision and identification of such filing and any reference made to the subdivision in the SEC prospectus.

Part I.C.5. requires a statement regarding the involvement of subdivision owners or other principals in SEC filings. Comments received complained of the burden on developers and the lack of relevance to OILSR's responsibilities. After careful consideration, however, it was determined that the benefits for consumer protection available through disclosure of SEC history outweighed any potential burden on developers. The cut-off date for making such disclosure is April 29, 1969, the effective date of the OILSR Act.

Part I.C.6. requires disclosure of any disciplinary action taken by the SEC with respect to persons identified in Part I.C. The key item of criticism with respect to this proposal was that there should be a cut-off date beyond which disclosure of disciplinary action would not have to be made. OILSR has rejected this suggestion as inimicable to adequate disclosure.

Part I.D.2. is added to require the submission to OILSR of any Property Report, subdivision report or similar document that is filed with any State listed in Part I.C.1.

Part I.D.3. is withdrawn based on OILSR's re-examination of the proposal.

The present Part II.C. is redesignated as II.D.1., to which is added II.D.2., which is discussed below. A new Part II.C. is added. Part II.C.1. requires disclosure of any disciplinary measures taken against, indictments or convictions of the developer and principals of the developer in connection with certain enumerated activities, plus "any other activity . . ." This proposal was the subject of heavy commentary, the thrust of which was three-fold: the disclosure of indictments was criticized because indictments are not dispositive of guilt. Although not dispositive of guilt or innocence, indictments are more than mere allegations and not returned unless there is some probable cause indicating a crime has been committed. Consequently, disclosure of indictments is retained in the regulation as a relevant disclosure. The second main objection to this proposal is that no cut-off time was included beyond which developers would not have to disclose disciplinary actions, etc. Disclosures of this nature are deemed relevant and are retained in final publication. The third and most heavily commented upon area was the broad scope of the actions required to be disclosed; i.e., some disciplinary actions or even convictions might have no relevance to the land sales operation. Consideration of these comments revealed them to have merit. Accordingly, the overly broad phrase "any other activity for which such official action was charged" is modified to limit these other activities to areas of fraud, misrepresentation, deceptive sales practices or similar grounds.

Part II.C.2. requires disclosure of bankruptcies by certain persons named in this part. Also, certain specified information such as the names of the petitioners, the trustee and counsel are required to be disclosed. Comment again went to the fact that no cut-off period was allowed. OILSR has accordingly set a cut-off period of 13 years. Also, there was objection to the potentially broad scope that the names and addresses of "any other parties involved" in the proceeding be disclosed. The latter comment was found to have merit and the objected-to phrase is deleted. As in the case of the violations required to be disclosed in II.C.1., the remainder of II.C.2. is retained for final publication with only the deletion as to other parties noted above. Many comments were directed to Part II.C.3. which requires disclosures regarding litigation. First, disclosure of litigation, it was asserted, will spur nuisance suits, upon the bases that developers would rather settle than have suits disclosed in their registrations. OILSR does not believe this practice would be widespread enough to justify deletion. Accordingly, a disclosure requirement for litigation is retained.

There appears to have been some misunderstanding with respect to the proposed $100 fee for pre-effective amendments. Because of the requirement that new actions or the disposition of pending actions would require amendment, some commentators believed that such amendments would have to be accompanied by $100 fees. Such is not the case; no fee is charged for any amendment to an effective registration. The requirement that "all current litigation . . . which may have an effect upon the developer or the subdivision" be listed was criticized as overly broad and would include a listing of virtually all litigation in which a developer is engaged. OILSR finds this argument persuasive and has modified this proposal to require all current litigation of which the developer is aware and which may have a material effect upon the offering or the subdivision.

The materiality factor carries over to the comments on Part II.D.2., which requires copies of legal documents involved in the litigation or other action. This proposal is also modified in final form to be more selective and require only documents dealing with substantive matters.

Part III.A. is amended to require disclosure of involvement in all other subdivisions whether or not they are registered with OILSR. In response to comments received a modification in the proposal has been made by retaining disclosures regarding an "ownership" interest in the land.

A new Part III.B. is added to require information as to the subsidiary status of the developer and involvement of the parent corporation in other subdivisions.

The present Part III.D. is redesignated III.C. and is essentially the same as its present form. Some of the few comments that were received on this proposal indicated a belief that a Suspension Order is a preliminary document. This is not the case. A Suspension Order is a final, though appealable, action by OILSR.

In Part IV., IV.A. has been deleted, and IV.B. through F. have been redesignated IV.A. through E.

Part IV.A. is retained as proposed. It differs from the present regulations by requiring at IV.A.2. disclosures with respect to the location of the subdivision within a 100 year flood plain and the availability of flood insurance; and at Part IV.A.4. by deleting the disclosure requirement regarding "unusual construction techniques" which may vary from area to area, to language having universal understanding by engineers and agronomists.

Part IV.B. is retained in the same form as proposed and is identical to the former Part IV.C.

Part IV.C. is retained in its proposed form, which was previously identified as Part IV.D.

Part IV.D.1. through 6. is retained as proposed and is identical to the present Part IV.E.1. through 6.

Part IV.D.7. and 8. were the subjects of numerous comments. Part IV.D.7. requires the developer to state whether a building permit is needed by a purchaser before construction on an individual lot is permitted and if so, to identify the agency from which the permit must be obtained. The proposal also required developers to describe the procedure a purchaser would follow in the process of obtaining the building permit. Describing the procedure was considered to be unnecessarily burdensome. The comments were found to raise valid points and since the basic fact of a building permit requirement is disclosed, the objected-to provision of this regulation has been omitted.

Part IV.D.8. requires the developer to identify government agencies which have the authority to regulate or issue permits or licenses in connection with development of the subdivision, or in the absence of such authorities, a statement to that effect, or if the subdivision is exempt from any of these types of authorities, a statement of the bases therefor. The all-encompassing nature of this proposal, the identification of agencies even though a permit or license might not be required for development, together with the assertion that the field of environmental protection and conservation is today in a state of flux were points raised. Believing that these comments are valid, the final form of Part IV.D.8. has been changed to delete the provision requiring identification of certain agencies and by qualifying the required identification of other agencies whiich clearly have the authority to issue permits or licenses only if action by such agencies would have a material effect on the developer's plans. This regulation is intended to reveal the potential exposure of a developer's liability in situations where, for example, ski slopes are cut, canals are dredged, lakes are built or bulkheads are formed, and it is reasonable to assume that there is some public agency responsible for approving or rejecting these kinds of development. Other examples of the types of agency identification contemplated by this regulation are planning boards and health authorities.

Part IV.E. includes the present Part IV.F. but is essentially a new section. It requires as supporting documentation for disclosures made in Part IV. of professionally prepared plats and sets forth certain criteria therefor. Also, Part IV.E.2., which requires the submission of current U.S. Geological Survey maps, prohibits the submission of photocopies made by the developer. Black and white copies will not be accepted because topographical maps are virtually useless unless color keys are known. Part IV.E.3. requires as supporting documentation copies of the permits, licenses, opinions or similar documents obtained from the agencies identified in Part IV.D.8. Since the language in IV.D.8. has been revised to narrow the type of agencies with which OILSR is concerned, the supporting documentation required at IV.E.3. should not prove burdensome. As a response to comments to Part IV.E.1. that a subdivision may be offered in stages and that future sections might not be platted at the time of the initial submission, this paragraph is amended in its final form to specify that lot dimensions are required only of lots that are the subject of a given filing.

Part V. is amended by including in Part V.A. a requirement for disclosure of the condition of title to common areas or facilities included in the offering. The reference to title evidence for common areas and facilities in amended Part V.A.1. drew some comment to the effect that the common facilities should be only those which are a part of the offering. These comments apparently overlooked the change in Part V.A. mentioned above that specifically related the common areas or facilities "to or included in this offering." There was also comment that condition of title should be limited only to existing common facilities. Disclosure of the status of title with respect to planned common facilities is essential if this disclosure is to be meaningful, and the proposal will accordingly be retained.

Evoking substantial comment was deletion from Part V.A. of the language allowing the submission of an interim title binder or commitment for title insurance. The thrust of the comments was that status of the title to the property is revealed in title binders, especially in the standard ALTA binder, and that to require the issuance of a policy would be very costly to the developer. The use of title binders as a widespread practice in all phases of real estate operations was also cited. Nevertheless, because developers may seek to sell land that they do not own, the proposal eliminating the use of title binders as evidence of title is retained.

Part V.A.6. through 9. are added, which sets forth certain requirements to be made a part of the title evidence. There being no comment, these provisions are retained in their entirety. However, there are a few editorial changes improving syntax and the order of certain existing sections in Part V.

Part VI.A. is amended by adding paragraphs 4. through 8. as follows: Part VI.A.4. requires a disclosure regarding the existence of any contractual provisions by which the purchaser's selection of a lot may be changed by the developer, as in the case of the prior sale of the same lot, or as a result of a purchaser's failure to qualify with eligibility requirements established by the developer or any other qualifying body.

Part VI.A.5. requires disclosures with respect to a purchaser's right to exchange his lot for another lot and of provisions which offer the purchaser a refund which may only be applied toward the purchase of another lot.

Part VI.A.6. requires disclosures regarding the type of sales transaction to be used, the period of time that will elapse prior to transfer of title to a purchaser, whether or not contracts and deeds will be recorded and who has the responsibility for recordation, the term of installment payments and the interest rate charged. The final form of this paragraph has been changed in response to comments received directed to use of the words "time of closing," which in the industry is not as definitive a term as "transfer of title." Also, rather than a disclosure of the interest rate which the developer expects to receive, the final provision requires a disclosure of the annual interest rate charged.

Part VI.A.7. requires disclosure of the developer's anticipated plans with respect to the sale or assignment of sales documents. The final form of this regulation was changed in response to comments which indicated that it is often difficult for a developer to know at the time of registering his subdivision whether or not he will be keeping or selling his paper.

Part VI.B. is retained in its present form; i.e., the format is still entitled "Proposed Range of Selling Prices or Rents," and the proposed disclosure of the range of prices for similar lots in the area is deleted in final publication. The proposals were dropped in response to comments pointing out that selling prices can practically only be provided in a proposed range and that requiring information on similar lots in the area, particularly without any criteria along these lines, imposed an unwarranted burden on developers.

Part VI.C.1. is amended by setting forth the exact language that is required in contracts or agreements to notify a purchaser of his revocation rights. Presently, this matter is covered by a general instruction. Also, some specificity is provided to show the scope of the terms "contracts or agreements," which OILSR considers to include promissory notes, mortgages and deeds of trusts. Part VI.C.1. is changed to read in the second, rather than the third person.

WAIVER OF PURCHASER'S REVOCATION RIGHTS is added to Part VI.C.1. and the phrase is required to be capitalized. The waiver is in two parts: The notice provision, which informs purchasers of their rights to void their contracts if they do not get a Property Report and of their right to revoke their contracts for a 48-hour period after signing their contracts if they did not receive Property Reports at least 48 hours before signing the contracts or agreements. Purchasers are also notified that the revocation rights are lost if they acknowledge that they have made an inspection of the lot and that they have read and understood the Property Report. They are also advised to seek professional guidance if they have difficulty in understanding the Property Report.

The Acknowledgment by the Purchaser, acknowledges not only the purchaser's inspection of the lot he intends to purchase and receipt and understanding of the Property Report but also his understanding that he is waiving his rights to revoke his contract. Further, acknowledgments must be prepared on a separate paper which is attached to the contract or agreement, one copy of which is to be given to the purchaser and another retained by the developer.

Additional requirements provide that the revocation and voidability provisions may not be limited or qualified in the contract or in any other document by requiring a specific type of notice or by requiring that notice be given in a specified place. Considerable commentary was received regarding the waiver provision. Some say that the length of the notice would have a tendency to keep purchasers from taking the time to read its entire text and would therefore be counter-productive. The length versus brevity argument is one that has always existed and currently exists. However, OILSR continues to require the fullest disclosures for consumer protection. This position applies generally to all of these regulations and not just the waiver provision. One comment raised a narrow but valid point worthy of clarification; namely, that while a type-size requirement is set forth for the acknowledgment by purchaser, no such requirement is made for the description of a purchaser's rights that are placed in the contract or agreement. The latter language is to appear at least in the same size type as the remainder of the contractual terms.

Some commentators argue that use of the word "waiver" is an invalid exercise of the Secretary's authority under the Act; that sec. 1404(b) of the Act provides that the revocation authority "shall not apply" to transactions in which certain conditions have been satisfied and that compliance with these conditions cannot be deemed a waiver of a purchaser's rights since the rights never vest unless the conditions are not met. A similar argument is made for the statement in the purchaser's acknowledgment that the purchaser understands that he is waiving his rights under the Act to revoke his contract. An argument against segregating the acknowledgment from the body of the contract was also made based on the language in sec. 1404(b).

Although the acknowledgment is segregated from the body of the contract, it is a part of the contract. Instructions in this part specifically states that it "shall be attached to the contract or agreement used in the sale or lease . . . ." With respect to the form of, and the use of the word "waiver," as a practical matter, an on-site purchaser does in fact waive his revocation rights primarily because (1) he is unaware of his rights in the first place and (2) too often he is presented a paper and asked to sign a receipt for it or asked to initial a paragraph in a sales contract without knowing its import or its impact. In implementing the statute, any individual section or part of it must be viewed in terms of the overall purpose and spirit of the statute. It is clear from OILSR's experience that the part of Sec. 1404(b) that deprives a purchaser of his revocation rights has been a subject of abuse which is not consonant with the purposes and objectives of the Act and purchaser protection. Therefore, except for editorial changes and a renumbering of paragraphs in this part, the language is essentially the same in final publication as in the proposed rule.

Part VII.C. is amended to include a new paragraph 4 which requires as supporting documentation a synopsis of plans for road construction, including estimated cost and certain drawings. The proposal is changed in final form in response to comments which complain that the proposed wording covered roads outside the subdivision. Certain editorial changes are also made to eliminate duplication in the request for cost data and a redundancy. There were comments complaining that this regulation would, in effect, force developers to do some thoughtful planning prior to registering their subdivisions. These complaints were rejected as indicative of one of the basic problem areas resulting in less than full disclosure; namely, little or poor planning and failure to disclose the limitations of actual planning.

Part VIII.A. is amended to add disclosures with respect to the identity and financial capability of the water supplier, the obligations of purchasers to the supplier and the degree and duration of control of the developer in cases where the developer controls the supplier of the water. These changes are accomplished by amending Part VIII.A.2. to include paragraphs a. through d., as well as changes in paragraph 2. itself. In response to comments that the language proposed for Part VIII.A.2. was ambiguous and that on its face it required certain information about the entities supplying water whether or not such entity was a major power company or a developer-created water district, this paragraph has been changed to require the disclosure only if the entity supplying water is controlled by the developer, and the rates are not regulated by a public body.

Part VIII.A. is also amended by deleting the present paragraph 7., redesignating the present paragraph 8., amending paragraph c. and adding paragraphs e. through h. Part VIII.A.7c. requires the submission of a report indicating the source and quantity of the water. Part VIII.A.7d., which is presently identified as 8d., is amended to require an interpretation of the chemical and bacteriological evaluation of the water into layman's language.

Part VIII.A.7e. requires as supporting documentation copies of the organization documents or proposed organizational documents of the entity supplying the water. Part VIII.A.7f. requires copies of membership agreements with similar documents by which lot owners will be required or permitted to use the services of the supplier. Part VIII.A.7g. requires financial statements or pro forma financial statements of the supplier. Part VIII.A.7h. requires a synopsis of plans for obtaining and distributing the water, including the estimated cost of the water system; this requirement is similar to that now required at Part VII.C.4.

There are certain grammatical corrections made to the paragraphs of Part VIII.A.

Part VIII.E. is amended by expanding the disclosure requirements to those coextensive with Part VIII.A. In the case of Part VIII.E. no paragraph is deleted as in Part VIII.A. Since the comments received with respect to Part VIII.A. were identical or nearly identical to those applying to Part VIII.E., further discussion will not be made on these points.

Part VIII.F. is amended by redesignating paragraph 5., Supporting Documentation, as paragraph 8., by requiring in new paragraphs 5., 6., and 7. disclosures whether the developer has a program to control soil erosion and flooding and if so, whether the program has been approved by any appropriate authority and whether the developer is under any obligation to follow through with the program.

The new Supporting Documentation provisions Part VIII.F.8., require in addition to present documentation, a copy of the appropriate authority's approval of the erosion plan, if any, and a synopsis of the plan, degree of completion of the work and estimated cost of the work.

The proposed language which required a statement as to whether the developer had a comprehensive program to control soil erosion and as to whether it had been approved by appropriate officials, also provided further that a plan which does not obligate the developer to perform (such as a USDA Soil Conservation Service plan) was not acceptable for the purposes of supporting documentation. This last mentioned provision has been deleted in response to comments that a "comprehensive" soil erosion program was a vague requirement, that many jurisdictions do not have officials to approve or disapprove soil erosion programs and that the USDA Soil Conservation Service is one of the few agencies that does have such a program, even though it has no authority to enforce a program it has approved. Although they were not published for comment some guidelines for the preparation of soil erosion plans are provided in the final form of this regulation. Basically these guidelines define the type of information sought in the program synopsis submitted pursuant to this regulation.

Part IX.A.5. is amended to include a synopsis of the plans, degree of completion of work and estimated cost of the proposed recreational facility contemplated in this part. This is accomplished by designating the new requirements as IX.A.5. a. and b. No comments were received specifically on this change. However, the comments relating to the synopses of plans required as supporting docu-

mentation in Parts VII., VIII. and IX. applied to all such parts. One comment complained that furnishing estimated cost of completion was irrelevant. OILSR believes such cost figures to be relevant in assessing the time and feasibility of completion.

Part X. is amended by adding a paragraph G.1. through 3., which requires disclosures concerning the availability of postal service and the locations and distances of post offices in the area.

Part XI.C.3. is amended by requiring disclosure stating how a deficit will be recovered if one is incurred.

The proposed changes to Part XIV., financial statements, also received substantial comment and several suggested changes have been adopted. Use of the phrase "significantly different" in connection with subsequent filings was attacked as vague. Further, it was considered unclear whether the initial interim financial required to be audited, and that it was unclear whether the subsequent six month financials required to be audited. It was also maintained that audited and certified financials generally would be costly, especially for the small developer. Part XIV.A has been changed to now require audited financials for the last full fiscal year, plus unaudited statements for an interim period of up to six months. The audits and certifications are required if either the price of the lots in the subdivision totals $500,000 or more or the subdivision contains 300 or more lots. The proposed regulation set $300,000 as the price limitation. The $500,000 figure has been substituted in response to comments as more realistic. After the initial filing, a developer must submit annual audited statements only if they disclose a material adverse effect on the developer's financial position.

There was a suggestion that net worth rather than retained earnings be used as a threshold that would require an amendment to the Property Report, but the revised requirement expanding the applicable period from six to twelve months, plus the importance of the developer's cash position, persuaded OILSR to retain the retained earnings deficit criterion. Comment was made questioning the Secretary's authority to require these financial statements, claiming the private nature of financials. This authority is clear, however. Sections 1406 (11) and 1405(d), respectively, authorize the disclosure required in this part and its public nature. Some developers asserted that segregating their audited financials from the consolidated statements of their parent companies would be burdensome. OILSR believes such a position to have little merit and has made no special provision to accommodate subsidiaries.

Other comments advanced were that purchasers of lots, unlike purchasers of stock, have no need to inquire into the financial strength of the developer. In reality, however, the prices purchasers pay for lots typically include promised or proposed improvements to be made by the developer, and the developer's financial status has a direct bearing on its ability to provide such improvements. The argument was also made that most developers have been able to obtain financing without furnishing audited financials to their lenders. However, it is significant that lenders normally are given security for the loans granted or they provide loans based on a fraction of the face value of the security, or both. Additionally, lenders have sources of information concerning financial security of developers that are not generally available to purchasers. It has been OILSR's experience that improved and meaningful financial disclosure is essential to achieve the objectives of the Act.

Part XV, Affirmation, was proposed to read as a first person statement of legal obligation "to carry out the proposals, promises and obligations set forth in this Statement of Record and Property Report." An instruction to Part XV. was also proposed to be added to require the signatures of the developer's chief executive officer, chief financial officer and a majority of its board of directors to be affirmed. Comments on these proposals were twofold: that proposed language purported to impose personal liability upon corporate officers for failure to fulfill obligations or to create a personal guarantee by corporate officers to fulfill obligations; and that proposals were elevated to the status of binding obligations when in many cases realization of the proposals was contingent upon action by a party other than the developer. Examination of the comments has persuaded OILSR to modify the proposed regulation. Accordingly, the affirmation has been amended to delete any inference of personal liability for corporate officers, to distinguish proposals that are promises or obligations from those for which the developer does not intend to be obligated and by clarifying that the affirmation is required by all developers and not just corporate developers. Responsibility of the Senior Executive Officer or his duly authorized agent is retained. OILSR notes in this connection that the criminal statute 18 USCA 1001 *Statements and entries generally* provides for fine and imprisonment when false, fictitious or fraudulent statements or entries are made in any matter within the jurisdiction of the Department.

SECTION 1710.110—PROPERTY REPORT

This section has been revised by dividing the section into four parts, A., B., C., and D. Part A. contains the regulations for the Property Report format; Part B., the technical instructions for completing the Property Report and lease addendum; Part C., instructions for answers in the Property Report; and Part D., additional paragraphs to be added in special circumstances. These new parts contain most of the existing regulations relating to the Property Report, as well as many new amendments. This has caused some developers to comment that the report will now be so long that purchasers will be discouraged from reading the report, and thus be less informed than they might otherwise be. These comments have been rejected based upon recognition of the responsibility of the Office of Interstate Land Sales Registration in requiring developers to make as much pertinent information available to purchasers as possible. There are many aspects, both physical and inherent, in the purchase of land and it would be unwise to shorten the report at the expense of omitting vital information which may enable the purchaser to make a more informed decision.

The last sentence of the first paragraph of this section has been amended to make it clear that the questions must be answered in accordance with the format in Part A. and the instructions in Parts B.–D.

PART A—FORMAT

Part A. contains the provisions for the Property Report format. The first paragraph of the notice and disclaimer has been amended in order to emphasize the unlawfulness of representing Federal Government approval of the subdivision, whereas, the present regulation merely states that the Property Report is not a Government recommendation. In addition, the proposed paragraph contained a statement that the Federal Government has not passed on the merits or given approval to the subdivision or passed on the value of the property as an "investment." Several comments critical of the quoted term were received because it was believed the word "investment" suggested that the property did in fact have "investment" potential. Other developers stated that they simply did not want to represent that there was "investment" potential in particular subdivisions. As a result of these comments, the pertinent part of the paragraph has been changed from "or passed upon the value of the property as an investment" to read as follows: "or passed upon the value, if any, of the property."

A new second paragraph has been added to include a statement that representations made contrary to the restrictions in the first paragraph are "unlawful," not, "it shall be unlawful" as provided in the proposed regulations. The paragraph also provides that any representation which differs from the contents of the Property Report is unlawful, and should be reported to HUD at the address given in the paragraph.

The third paragraph of the notice and disclaimer contains the new suggestion that purchasers "seek professional advice" in considering their purchase, and adds the words "by notice to the seller" in advising the purchaser of his contract voidability rights. Some comments said the directive, "seek professional advice" should be deleted, because the proposed "Waiver of Buyer's Rights" form already contained a similar provision which states, that if the buyer has "difficulty in understanding any of the provisions stated in the Property Report, you should consult an attorney or seek other professional assistance". Comments suggested that the advice is more useful in the waiver since the purchaser is surrendering certain rights under the Act, contrasted to the notice and disclaimer where it is assumed the purchaser understands the nature of his actions. Despite

the suggestion, the advice in the notice and disclaimer format is thought to be germane to the purchaser's considerations of the Property Report. The addition of the words "by notice to the seller" has been retained as proposed to alleviate factual disputes between purchasers and sellers as to whether recission rights have actually been exercised.

Objections to the use of the term "Buyer's Rights Form" in the waiver paragraph of the proposed regulations were also directed to the use of that term in the proposed last paragraph of the notice and disclaimer format. As in the prior instance, the term has been changed to "waiver of purchaser's revocation rights form".

The format for paragraph 4 of the Property Report has been amended by revising subparagraphs b. and c., and to redesignate c. and d. as d. and e. The changes will make it clear who will bear the cost, if any, of recording contracts, and the amount of the costs if they are to be borne by the purchaser. Further, in the event of his default, whether the purchaser's loss will be limited to the amount of his payments or whether he will be responsible for paying the balance of the contract. As suggested by one of the comments, the word "immediate" has been deleted where it precedes the word "recording" in proposed subparagraph b., and similarly, subparagraph c. has been changed from the proposed regulations to allow for contingencies where deeds or contracts will not be recorded.

Paragraph 8. of the format for the Property Report has been amended by deleting the parenthesis from the lettered subparagraphs, and inserting periods after each letter. Subparagraph c. has been revised to require a list of permissible uses of the property consistent with restrictive covenants and local zoning ordinances.

Paragraph 9. of the format has been amended by deleting the (a) designation, and the (b) designation as proposed. In addition, the paragraph has been amended by using different examples of recreational facilities and, by also requiring disclosure of the ownership of the facilities. The listing of facilities is now required in tabular form of all those proposed or partially complete, as well as those available, as presently required. Additional information required in the new table includes the percentage of completion, estimated completion date, financial assurance of completion, whether the developer is obligated to complete, and the buyer's cost or assessment.

Paragraph 10. of the format has been amended by adding three subparagraphs, a., b., and c., which require statements of the availability of roads, utilities, and municipal services, respectively. Information is also required concerning whether such are proposed or partially complete, estimated completion date, provisions to assure completion, and an estimate of all costs to the buyer.

Paragraph 13. of the format has been amended by deleting information on facilities now dealt with in paragraph 10., but retaining information on shopping facilities.

Paragraph 15. of the format has been amended by deleting the parentheses from a. through c. and inserting a period after each letter.

Paragraph 17. of the format has been amended to require information concerning physical access to lots and common facilities and the ownership of streets and the responsibility for maintenance.

Paragraph 19. of the format has been amended in order to require disclosure concerning whether the corners of individual lots have been marked so that the purchaser can identify his lot. If not, the estimated cost to the purchaser to obtain a survey must be provided.

A new question 20. has been added to the format which requires a statement whether there is a comprehensive program to control soil erosion, sedimentation and flooding throughout the subdivision and a description of the plan, if any. If there is a plan, approval of appropriate local officials must be indicated, as well as the obligation of the developer to comply.

A new unnumbered paragraph titled "Special Risk Factors" has been added to the format. This paragraph appeared as paragraphs 21. and 22. in the proposed regulations. However, much critical comment was received on the workability of the proposed regulation in a question and answer form; hence, the material has been inserted as points for general consideration. The special risk factors cite the uncertainty of future land values, that the purchaser's resale of his lot may be in competition with the developer's sales program, and other possible restrictions on the purchaser's sales efforts. Purchasers are advised that they may be required to fully satisfy the terms of payment in contracts or promissory notes in the hands of developers or third parties, even though the developer may have defaulted on his promises, and in addition, that changes in the laws of governmental agencies relating to land development and use, may affect the future procurement of permits to use the land.

The format has been amended by adding a new paragraph titled "Financial Statements." The purpose of this paragraph is to direct attention of the lot purchaser to the financial position of the developer by requiring financial statements to be attached as exhibits to the Property Report. The requirement originally appeared in the proposed regulations at the instructions to Part C., paragraph 21c. Despite objections that the requirement is useless because purchasers won't understand the statements, and that unnecessary expenses will be incurred by developers in attaching the exhibit, it is believed that the exhibit will be of immense value to purchasers in giving them adequate information on the basis of which an intelligent judgment can be formed on the opportunities and risks involved in the purchase.

PART B—TECHNICAL INSTRUCTIONS FOR COMPLETING PROPERTY REPORT AND LEASE ADDENDUM

The instructions for completing the Property Report and lease addendum have been redesignated as "Part B. Technical Instructions for Completing Property Report and Lease Addendum." In addition, the section in the existing regulations captioned "Additional Requirements for Property Report" has been incorporated into the new Part B., which contains significant new matter. To begin with, subparagraph d. under instructions for completing the Property Report and lease addendum of existing regulations authorizes the Secretary to require additional information in the Property Report when it appears to him that the additional information is necessary in the public interest. The proposed regulations deleted the provision that the Secretary could require the information, and instead required the developer to add the information whenever appropriate in the public interest or for the protection of purchasers. Several objections were filed to the proposed regulation objecting to placing a burden upon developers to determine when the criteria was met. The final regulations, therefore, retain the existing language by placing the burden on the Secretary to make the determination. The provision is further expanded, however, to require statements which are necessary to make provisions in the Property Report not misleading in the "light of the circumstances under which they are made."

New Part B contains the rest of the subparagraphs which are contained in the existing regulations as subparagraphs b. through f. under "Additional requirements for the Property Report." Those sections are now numbered 8 through 12. Part B 3 contains a new provision that the Property Report shall contain no covers, pictures, emblems, logograms, or identifying insignia. On the first page of the Property Report format, which is the notice and disclaimer, the new instruction 3 requires an over print in centered capital letters in light red type with the following legend: "Purchaser should read this document before signing anything." Also required at the bottom two and one-half inches of the front page is a perforated receipt to be signed by each lot purchaser evidencing the fact that he has received a copy of the Property Report. The receipt is to be retained by the developer and shall be made available for inspection by the Secretary upon demand.

There were many objections in the written comments concerning these provisions, particularly the red overprint warning. Generally, the comments characterized the overprint legend as implying that the Government of the United States is suspicious of the land development industry, and is putting a dampening effect upon the sales efforts of the developers. It is believed that overprint legend on the first page of the Property Report is necessary in order to apprise

lot purchasers of the importance of the Property Report. All too often, salesmen will bury the Property Report amid several other papers, brochures and advertisements, and the purchaser is unaware of the significance and even the existence of the Property Report. The result is that he does not read the Property Report prior to signing his contract and, therefore, is unaware of many important factors concerning his lot. The receipt form should cure many situations in which lot purchasers claim never to have received the Property Report, and there is a factual dispute with the developer. By requiring the receipt to be placed at the bottom of page 1, it is hoped that the attention of the lot purchaser will be more directly focused upon the existence and significance of the Property Report.

A new provision to be contained in Part B. is subparagraph 13 which requires that the format shall be prepared by the developer in such a manner that the introductory information will immediately inform the purchaser of any adverse effects. In addition, mere proposals by the developer to construct amenities or any other improvement affecting the lot (as opposed to already accomplished action) may not be included in the Property Report unless clearly identified as such. Moreover, the developer will be required to state whether he will be obligated to complete such proposals. If the developer wishes to include proposals in the Property Report which he is not obligated to complete, the Property Report is required to contain the following: "The developer is not legally obligated for some of the proposals which he has included in this Property Report."

PART C—INSTRUCTIONS FOR ANSWERS TO PARAGRAPHS IN THE PROPERTY REPORT

The designation of these regulations as Part C. is new, but it embodies to a large extent requirements in the existing regulations under the heading "Special Instructions." The section headings under this part have been changed from those in the proposed regulations to designations corresponding to the referenced paragraph of the Property Report.

The instruction for paragraph 2B has been amended to require a brief legal description of the land offered for sale. The description follows a unit, block, lot description, and permits excepting certain numbered lots. A metes and bounds outboundary description of the subdivision is not required in this paragraph. In response to comment, the procedures for describing lots offered in consolidations are spelled out in the new paragraph 2B instruction.

Paragraph 4 of the instructions has been restructured from the existing instruction because the existing paragraph 4 contains overlapping material with other instructions. The impact of the new paragraph 4 instruction is directed to questions of recording sales contracts or leases, and the effect upon the purchaser in the event recording is not available. In line with some comments, paragraph 4b has been changed from the proposed regulations so as to delete the requirement that developers describe potential adverse effects resulting from the lack of contract recordation. In addition, provision has been made for an answer to be inserted stating that down payments may be set aside in a trust or escrow account if the closing meets the criteria of § 1710.11(c) (1) (ii).

Paragraph 5 requires disclosure of the buyer's risk of losing his "financial interest in the property." This phrase is used in lieu of "investment" in response to comments that this term is vague. The paragraph also mandates supporting documentation where the mortgagee agrees to accept mortgage payments directly from the purchaser when the developer is in default.

Paragraph 7 of the instructions has been expanded. The requirement in the existing regulations that buyers be told of obligations to pay taxes, special assessments and similar charges continues in effect. However, the Property Report must disclose to the purchaser whether construction of proposed facilities will be financed by a property owners' association or similar organization and, if so, whether the developer has control of that entity. Disclosure must be made when the developer's control over the organization will be relinquished and the amounts of any loan or debt, and whether the funds of the association may be used for private purposes on private land other than the one in which the purchaser is buying his lot. A special statement is required in the event the organization is not formed, in which case the Property Report must inform the purchaser that the developer's proposals for facilities lack definition, and that they may not be able to be carried out. In addition, if the answer to Part XI.C.2. of the Statement of Record indicates that not all lot purchasers will be required to belong to the association, then a statement is required in the Property Report that the purchasers who belong to the organization may have to pay a disproportionate share of the cost of operating the facility. Several comments were received suggesting that a distinction be made in the "degree" of control a developer may have over the property owner's association. However, these suggestions failed to indicate how such a distinction could be applied and accordingly OILSR has not adopted them.

Paragraph 8.b. of the instructions has been expanded to require that subdivision restrictions are required to be listed in their entirety, but if lengthy, incorporated by reference. There were several objections to this proposal, mainly from the standpoint that the requirement would further lengthen the Property Report and would cause a great burden upon the developer to insure that a lot purchaser in a particular section was getting the right set of restrictions. In line with the comments, the proposed regulation has been changed in this final version to provide that when more than one section in the subdivision is covered by general restrictions, the developer may summarize those, and attach the restrictions which are applicable to the particular unit involved.

A new paragraph 8.c. has been added to the instructions for the Property Report. It requires answers to this part of the Property Report to list the land uses consistent with the restrictions on the property, and whether the zoning regulations are consistent with the restrictions. If a lot cannot be used for a homesite, a statement to that effect must be included. If there is an architectural control committee, the name of the entity must be included and a statement of the control, if any, of the entity by the developer. In addition, a statement is required indicating whether the buyer must obtain a permit from a state or local agency before he may construct on his lot.

Paragraph 8.d. of the instructions remains essentially unchanged from existing regulations. However, the possibility and the extent of flooding is more carefully delineated in these final regulations. In addition, if the subdivision is located in an area of special flood hazard, a statement is required whether flood insurance is available. There were general comments dealing with the difficulty faced by developers in responding to this instruction, in that, what may be considered a hazard in one part of the United States, may not be so in other parts. However, we believe that developers in various parts of the country will readily recognize special hazard conditions in their locale, and will have little difficulty in making accurate responses. Further, the National Flood Insurance Act which is administered by HUD requires identification of flood-prone areas in connection with eligibility of a community to participate in the program. As a result, identification of all flood-prone areas in the United States is proceeding rapidly.

Paragraph 9. includes a new instruction. In the event the developer is unable to submit the supporting documentation required by Part IV.E.3. of the Statement of Record, which are copies of the permits obtained from governmental agencies for the construction of facilities, common areas or other improvements, he is required to state that such inability makes him unable to give any assurance that the lot owners will be able to use the particular facility. In addition, if the developer has not obtained necessary documentation required by Part IX.A.5. of the Statement of Record, his answer to this item of the Property Report must state that he has not entered into any arrangements to assure completion of the recreational facilities. Comments were received which urge that some governmental jurisdictions did not issue permits until construction had been completed, therefore making it impossible for developers to document such items. Developers suggested that they should be afforded opportunities to explain such situations without being forced to make the answers proposed of they are irrelevant or otherwise subject to explanation.

OILSR's position is that the absence of a permit demonstrates a lack of certainty that the developer will ever obtain or be granted a permit. Accordingly, this proposed instruction requiring disclosure of this uncertainty is retained in final publication. In addition, paragraph 9. seeks information in completing the pertinent table in the format for the Property Report. Here, if the developer has submitted documentation of an obligation to complete a facility, he may include a statement to that effect at the end of his answer.

The instructions for answers to paragraph 10 of the Property Report spell out answers and statements which must be included in the Property Report in the event that public facilities are not available, or have not been completed. The instructions to paragraph 10. in the new regulations are significantly expanded from those in the existing regulations. However, this is necessary in keeping with the belief that as much pertinent useful information should be given the purchaser to make a sound decision. This information must be extracted from the Statement of Record and placed in the Property Report. In response to objections to use of "promise" where the developer is merely proposing to furnish completed facilities, "proposals" has been substituted.

The instruction for paragraph 20. has been revised from that in the proposed regulation in order to distinguish between natural hazards, including identifiable flood areas, and erosion and flooding caused by excessive rainfall and lack of a soil conservation program.

The signature of the senior executive officer or his duly authorized agent is required at the end of the Property Report, but facsimile signatures may be used for the purpose of reproduction, as urged in the comments.

PART D—ADDITIONAL PARAGRAPHS TO BE ADDED TO THE PROPERTY REPORT IN SPECIAL CIRCUMSTANCES

This new Part D. has been added to the instructions for answers to the Property Report in the interest of informing consumers of special circumstances which they are advised to consider. This part contains eight numbered paragraphs. These relate to: whether the subdivision plat map has been recorded, and whether it must be approved by local authorities before it is platted of record; situations where the financial statement of the development indicates a deficit and whether the accountant's opinion on the financial statement is qualified; special rights of the developer to encumber the land subsequent to the purchaser signing a contract; the effect of bankruptcies or litigation upon the operation of the subdivision; and information concerning foreign filings. In connection with foreign filings, statements are required whether it is necessary to obtain a license from the Foreign Government as a condition to acquire title to a lot in a subdivision, and whether it is necessary to obtain a work permit, license or similar permit to do business in the foreign country.

Section 1710.115 contains the regulations for the notice and disclaimer format which is required to preface state property reports. The notice and disclaimer are patterned after the notice and disclaimer in the HUD Property Report. As noted in that section, the disclaimer states that the Federal Government has not passed upon "the value, if any, of the property." The proposed regulation contained the word "investment," which has been deleted in the final regulation. In addition, the waiver caption has been changed from "buyer's right form" to "purchaser's revocation rights form."

Section I of § 1710.120 has been amended as proposed to require state statements of record to conform to the format and instructions for statements of record in § 1710.105, Part II., in addition to Parts I. and III., as presently required. Accordingly, paragraph B. of sec. II of § 1710.120 has been deleted, as proposed. In addition, paragraph C. in the existing rules has been redesignated as paragraph B., and changed as proposed in order to require contracts to contain the language required by Part VI.C.1. of § 1710.105. Paragraph D. in the present regulations has been retained and redesignated as paragraph C. as proposed, with one change, which raises from 10 to 15 days within which consolidation filings shall be made after approved and made effective under state laws.

PART 1715—ADVERTISING, SALES PRACTICES, POSTING OF NOTICES OF SUSPENSION

This part appeared in the proposals as Part 1730 but has been redesignated as Part 1715 for reasons of continuity. The proposed advertising regulations were commented upon to the same extent as Part XIV. of the Statement of Record—Financial Statements. In addition to comments on the specific sections the proposed part as a whole was subjected to broad criticism which questioned on the statutory authority to issue such regulations. The statutory authority will be discussed first.

Section 1402(10) of the Act provides that an "offer includes any inducement, solicitation, or attempt to encourage a person to acquire a lot in a subdivision." There being no specified definition of advertising, that term must be considered to have its ordinary and common meaning, which OILSR believes to be a reasonably widespread dissemination of any inducement, solicitation or attempt to encourage a person to acquire a lot in a subdivision, through the use of the mails, the mass media, or otherwise.

Section 1415(a) of the Act also makes it clear that the Secretary is empowered to restrain and enjoin any act or practice which constitutes or will constitute a violation of the Act. Accordingly, it clearly follows that the Secretary may exercise his power to prevent or correct violations of sec. 1404(a) of the Act. This section, among other things, makes unlawful acts or practices which constitute a "device, scheme, or artifice to defraud," which constitute "material misrepresentation[s] with respect to any information included in the Statement of Record or the Property Report *or with respect to any other information* pertinent to the lot or the subdivision and upon which the purchaser relies" or "which operate or would operate as a fraud or deceit upon a purchaser." Section 1419 of the Act authorizes the Secretary to, among other things, make such rules and regulations as are necessary or appropriate to the exercise, functions and powers conferred upon him elsewhere in this title. The regulations in Part 1715 are promulgated as necessary and appropriate steps by the Secretary to inform developers of the types of advertising which would constitute "material misrepresentation" and upon which OILSR may act pursuant to sec. 1404(a) of the Act and § 1715.5 of these regulations. This part does not propose a substantive regulation of advertising but seeks to refine and define what it believes to be misrepresentations in advertising which would be violative of the Act.

The legislative history of the Act was cited in some comments as not authorizing regulation of advertising is intended. Further, as mentioned in the discussion of condominiums, there is scant legislative history behind the operative statute, and the legislative history of this and predecessor bills, is not persuasive that the Secretary has no authority whatsoever concerning advertising. Former SEC Chairman Cohen testified that the definition of "offer" includes an advertisement. More significantly, however, he suggested that where there is specific rulemaking authority to define fraudulent and deceptive practices the intention is to authorize advertising controls which themselves would have the force of law. What OILSR has proposed are guidelines which will alert developers to that type of advertising OILSR will consider as triggering the authority of the Secretary to seek injunctions or restraining orders.

Another general comment that was submitted argued that Part 1715 is unnecessary for on-site purchasers. However, it has been OILSR's experience from the outset of the Act that a purchaser's presence on-site does not in itself afford him adequate information and protection in making a decision to purchase or not to purchase a lot.

In response to comments that the disclaimer proposed in § 1715.10 was too long and would therefore result in additional unwarranted expenses, the length of the disclaimer in final form has been reduced.

In addition to the general arguments referred to above, comments regarding § 1715.15 included statements that the proposed guidelines were "too vague" and at the same time "too detailed," that there was "no foundation" for the proposals, that the proposals were an "invasion of the freedom of expression" and that they were "impracticable in their application." The series of public hearings held by OILSR during 1972 amply demonstrated the foundation for the guidelines proposed in Part 1715, and

transcripts of these hearings are available as evidence thereof.

Upon reconsideration of the proposals in light of the comments received, proposed guidelines (n), (bb), (dd), (nn) and (oo) are deleted.

Section 1715.15(a) is changed from "All advertising must be consistent with the information contained in the Property Report" to "Advertising must not be inconsistent * * *." and has been consolidated with guideline (1).

Section 1715.15(h), as proposed, is deleted as redundant.

Section 1715.15(k), proposed as (m), is amended by the substitution of the words "specific road mileage" for "actual" mileage.

Section 1715.15(m), proposed as (p), is amended by excepting utility easements from any deductible measure of the size of the lot offered.

Section 1715.15(n), proposed as (q), is amended to substitute "when the improvements will be completed" for "that development will be completed" since the use of the word "development" was criticized as being overly broad and is also deleted in proposed guideline (bb).

Section 1715.15(q), proposed as (t), is amended in response to a comment to include a new sentence stating that all streets and roads shown on subdivision maps will be presumed to be at least of all-weather graded gravel quality and will be presumed to be traversable by conventionable automobile under all normal weather conditions.

Section 1715.15(s), proposed as (v), is amended to include as permissible advertisement of a road easement if it has been dedicated to the appropriate property owners' association as well as to the public or individual property owners.

Section 1715.15(aa), proposed as (ff), is amended to include the availability of water in the future when referring to homesites, to accommodate situations which involve homesites but not immediate building.

Additionally, there have been some editorial changes, primarily a reordering of paragraphs for the purposes of continuity and grammatical changes to improve sentence structure and syntax.

With respect to Sales Practices, § 1715.25, the same basic comments concerning the guidelines in § 1715.15 were received and were treated similarly by OILSR.

The only comment concerning § 1715.50, Posting of notices of suspension, was that this requirement should apply only in the case of a suspension that is a final determination. That is exactly what is intended by this provision, and specific reference is made to a suspension order issued under § 1710.45(b). This does not apply to a notice of suspension issued pursuant to § 1710.45(a).

Comments were received asking that sufficient lead time be allowed for Part 1715 to take effect. Adequate time has been provided for all parts of these regulations. The effective date is December 1, 1973.

PART 1720—FORMAL PROCEDURES AND RULES OF PRACTICE

Very few substantive changes have been made in the rules of practice.

Reference in § 1720.130 of suspensions based on deficient amendments to statements of record under § 1710.45(b)(3) has been deleted, which, with the addition of a new § 1720.131, will have the effect of conforming the procedural requirements for such suspensions to those for a suspension of amendment issued pursuant to § 1710.45(a).

A new § 1720.134 has been added which establishes a presumption of a request for a hearing in certain situations. Sections 1720.140 and 1720.155 have been revised to increase from 10 to 15 days the time within which an answer must be filed after service of notice of proceedings or suspensions, or denials of motions for more definite statement. The number of copies of answers required to be filed has been reduced from six to three in § 1720.140, and in § 1720.155. Section 1720.160(c) has been amended by including failure to appear at a scheduled hearing as a justification for issuance of an order under § 1710.45(b)(1).

Section 1720.230 has been amended by allowing oral motions to be made during the course of hearings, and § 1720.235 has been amended to increase from five to seven days within which parties make written response to motions of the opposition.

Finally, numerous sections have been amended by redesignating the "Hearing Examiner" as the "Administrative Law Judge".

EFFECTIVE DATE

The effective date is December 1, 1973. All initial requests, filings, consolidations, amendments and other actions made thereafter shall be made pursuant to these regulations. The statements of record, consolidations and amendments filed prior to December 1, 1973, will be examined on the basis of the current regulations although the developer may request that they be examined pursuant to the regulations effective December 1, 1973. Amendments filed after December 1, 1973, shall contain all of the changes necessary to bring the entire registration into compliance with the new regulations, except for the items specifically excepted in the Effective date provision hereof. These exceptions (dealing with Ownership Interests, Maps and Title Evidence) are allowed because the changes which will have occurred as a result of a normal land sales program would, in OILSR's opinion, otherwise requirement documentation that would be unduly burdensome or impractical for a developer to obtain.

This effective date allows a lead time of approximately 90 days, within which developers may evaluate or prepare their advertising under the new guidelines, take the steps necessary to prepare any anticipated amendments or other actions in accordance with these regulations, or to otherwise familiarize themselves with Chapter IX, as amended.

Accordingly, Chapter IX of Title 24, CFR, is amended to read as follows:

PART 1700—INTRODUCTION

Subpart A—Authority and Organization

Sec.

Subpart B—Delegations of Basic Authority and Functions

AUTHORITY: The provisions of this Part 1700 issued under sec. 1419, 82 Stat. 598; 15 U.S.C. 1718.

Subpart A—Authority and Organization

§ 1700.1 Scope of authority and purpose.

A land developer is required by the Interstate Land Sales Full Disclosure Act, Title XIV of Public Law 90-448, 82 Stat. 590, 15 U.S.C. 1701, enacted on August 1, 1968 (hereafter in this part referred to as the Act) to make full disclosure in the sale or lease of certain undeveloped, subdivided land. The Act makes it unlawful (except with respect to certain exempted transactions) for any developer to sell or lease, by use of the mail or by any means in interstate commerce, any such land offered as part of a common promotional plan unless the land is registered with the Secretary of Housing and Urban Development and a printed property report is furnished to the purchaser or lessee in advance of the signing of an agreement for sale or lease.

§ 1700.5 Authority of Secretary.

Section 1416(a) of the Act vests authority and responsibility for its administration in the Secretary of Housing and Urban Development (hereafter in this part referred to as the Secretary), and authorizes the Secretary to delegate any of his functions, duties and powers thereunder to employees of the Department of Housing and Urban Development.

§ 1700.10 Delegation of authority.

(a) The Secretary has delegated to the Interstate Land Sales Administrator and the Deputy Administrator all of the authority to exercise the power and authority vested in him under the Act except the authority to:

(1) Conduct hearings in accordance with 5 U.S.C. 556 and 557.

(2) Issue orders or determinations after such hearings.

(3) Issue rules and regulations under section 1416(a) of the Interstate Land Sales Full Disclosure Act 15 U.S.C. 1701-1720 title XIV of the Housing and Urban Development Act of 1963) prescribing