

852(b)(3)(D) the tax on realized undistributed capital gains would be on the shareholder and not the company, no allowance need be made, either for possible Federal income tax on unrealized appreciation or for Federal income tax on capital gains realized during the year. The memorandum stated that at the end of a company's taxable year the Federal income tax to be paid on realized but undistributed capital gains would be carried in an accrual account until paid.

The above procedure is followed as the generally accepted accounting practice by regulated investment companies which elect to retain realized capital gains and pay the tax on behalf of shareholders. Most of such companies are capital exchange funds which issued their shares for securities in tax-free exchanges and which are not making public offerings of shares. Of a total of 34 active exchange funds, 30 elected for their fiscal years ended in 1968 to retain realized capital gains, in whole or in part, and pay the tax on behalf of the shareholders. All except four of these exchange funds followed the practice of making provision for such taxes on the last day of the taxable year. The four funds which did not follow the general practice made provision for taxes on realized undistributed capital gains throughout the year as the gains were realized.

The proposed amendments to the rules would codify the generally accepted practice of making provision, on the last day of the taxable year of the investment company, for taxes on realized undistributed capital gains designated as distributions to shareholders. The amended rules would not affect the rights of any person who may have redeemed shares prior to the adoption of the amendments.

Under the provisions of the Code, the taxes on realized capital gains retained by the company are payable by the company only on behalf of those persons who are shareholders on the last day of the taxable year in which the gains were realized. It is only those persons who are shareholders on the last day of the taxable year who are deemed under the provisions of the Code to have paid the tax imposed on the designated capital gains retained by the company and who, accordingly, are allowed credit or refund for the tax so deemed to have been paid by them and are entitled to increase the tax basis of their shares by the excess of their pro rata portion of the realized gains over the tax credit or refund allowed to them. Accrual of the tax by the company at any time prior to the last day of its taxable year therefore reduces the net asset value of the shares of holders who redeem or sell their shares during the year and who consequently receive no credit for the tax so accrued.

After consideration of the comments and suggestions received from interested persons, the Commission has determined to adopt the amendments to the rules.

The amendment of Rule 6-02-9 of Article 6 of Regulation S-X is adopted pursuant to sections 8, 30, 31(c), and

38(a) of the Investment Company Act of 1940; sections 7 and 19(a) of the Securities Act of 1933; and sections 12, 13, 15(d), and 23(a) of the Securities Exchange Act of 1934. The proposed amendment of Rule 2a-4 under the Investment Company Act of 1940 is adopted pursuant to sections 22 and 38(a) of that Act.

Commission Action: Pursuant to the authority set forth above, the Commission hereby amends paragraph (i) of § 210.6-02, and paragraph (a) of § 270.2a-4, of Chapter II of Title 17 of the Code of Federal Regulations to read as set forth below:

§ 210.6-02 Special rules applicable to management investment companies.

(i) **Federal income taxes.** Appropriate provision shall be made on the basis of the applicable tax laws, for Federal income taxes that it is reasonably believed are, or will become, payable in respect of (1) current net income, (2) realized gain on investments and (3) unrealized appreciation on investments. The company's status as a "regulated investment company" as defined in Subtitle A, Chapter 1, Subchapter M of the Internal Revenue Code as amended shall be stated in a note referred to in the appropriate statements. Such note shall also indicate briefly the principal present assumptions on which the company has relied in making or not making provisions for such taxes. However, a company which retains realized capital gains and designates such gains as a distribution to shareholders in accordance with section 852(b)(3)(D) of the Internal Revenue Code shall, on the last day of its taxable year (and not earlier), make provision for taxes on such undistributed capital gains realized during such year.

§ 270.2a-4 Definition of "Current Net Asset Value" for use in computing periodically the current price of redeemable security.

(a) The current net asset value of any redeemable security issued by a registered investment company used in computing periodically the current price for the purpose of distribution, redemption, and repurchase means an amount which reflects calculations, whether or not recorded on the books of account, made substantially in accordance with the following, with estimates used where necessary or appropriate:

(4) Expenses, including any investment advisory fees, shall be included to date of calculation. Appropriate provision shall be made for Federal income taxes in accordance with paragraph (i) of § 210.6-02 of this chapter.

The amendments to Rule 6-02 of Regulation S-X [17 CFR 210.6-02(1)] and Rule 2a-4 under the Act [17 CFR 270.2a-4] shall be effective so that after the date of adoption of the amendments (Dec. 31, 1969) no further provision shall

be made for taxes in the circumstances stated in the amendment to Rule 6-02-9 except on the last day of the taxable year. The foregoing amendments are adopted in the identical language in which they were published in the notice of proposed rule adoption which appeared in the FEDERAL REGISTER for August 28, 1969 at 34 F.R. 13747. The Commission finds that there is good cause for not delaying any further the effective date of such amendments, and that further notice and procedures as specified in 5 U.S.C. 554 are unnecessary. Accordingly, the foregoing amendments shall take effect on December 31, 1969.

(Secs. 7, 19(a), 48 Stat. 78, 85, 908, 15 U.S.C. 77g, 77s(a); secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 3, 8, 49 Stat. 1377, 1379, secs. 3, 4, 78 Stat. 569, 570, secs. 1, 2, 82 Stat. 454, 15 U.S.C. 781, 78m, 78o(d), 78w(a); secs. 8, 22, 30, 31(c), 38(a), 54 Stat. 803, 823, 836, 838, 841, 15 U.S.C. 80a-8, 80a-22, 80a-29, 80a-30(c), 80a-37(a))

By the Commission, December 31, 1969.

[SEAL]

ORVAL L. DuBois,
Secretary.

[F.R. Doc. 70-258; Filed, Jan. 7, 1970;
8:47 a.m.]

Title 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice

[Order 422-69]

PART 14—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

Amendment of Claims and Reconsideration of Claims Denied

By virtue of the authority vested in me by the first paragraph of section 2672 of title 28, United States Code, Part 14 of Chapter I of Title 28, Code of Federal Regulations, is amended as follows.

1. Section 14.2 is amended by designating the present text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 14.2 Administrative claim; when presented.

(b) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the agency shall have six months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until six months after the filing of an amendment.

2. Section 14.9 is amended by designating the present text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 14.9 Final denial of claim.

(b) Prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 U.S.C. 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the agency for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration the agency shall have 6 months from the date of filing in which to make a final disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of a request for reconsideration. Final agency action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a).

Dated: December 29, 1969.

JOHN N. MITCHELL,
Attorney General.

[F.R. Doc. 70-218; Filed, Jan. 7, 1970;
8:45 a.m.]

Title 45—PUBLIC WELFARE

Chapter II—Social and Rehabilitation Service (Assistance Programs), Department of Health, Education, and Welfare

PART 220—SERVICE PROGRAMS FOR FAMILIES AND CHILDREN: TITLE IV PARTS A AND B OF SOCIAL SECURITY ACT

Child Welfare Services Program

1. In § 220.49, that part of the heading which reads "(Other regulations in 42 CFR Part 201 still pertain)" is revised to read "(See also Subpart D of this Part)".

2. A new Subpart D is added to Part 220 of Chapter II of Title 45. Its content has been transferred from Part 201 of Chapter II of Title 42 of the Code of Federal Regulations which Part is hereby superseded. This transfer contains technical changes but no substantive changes have been made. Subpart D reads as follows:

Subpart D—Other Provisions Governing Child Welfare Services Program

Sec.	
220.70	Meaning of terms.
220.71	The State Plan, the annual budget, submission, approval, duration, purpose, revision.
220.72	State and local funds.
220.73	Allotment of Federal funds.
220.74	Payments from allotments.
220.75	Records and audit.
220.76	Custody and methods of disbursement.
220.77	Fiscal year to which expenditures chargeable.
220.78	Liquidation of obligations.
220.79	Interest and refunds.
220.80	Apportionment of costs.
220.81	Equipment and Supplies.
220.82	Effect of payments.
220.83	Promulgation.
220.84	Reallotment of funds.

AUTHORITY: The provisions of this Subpart D of Part 220 issued under sec. 1102, 49 Stat. 647, 42 U.S.C. 1302.

§ 220.70 Meaning of terms.

Unless the context otherwise requires, the following terms, as used in this subpart have the following meanings:

(a) "Act" means title IV, part B of the Social Security Act, 42 U.S.C. 601-626.

(b) "Social and Rehabilitation Service" means the Social and Rehabilitation Service in the Department of Health, Education, and Welfare.

(c) "State" means the several States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(d) "State agency" means the public welfare agency of a State which has been designated as the single agency for the purpose of administering or supervising the administration of a State plan for child welfare services.

(e) "Local agency" means the public welfare agency of a political subdivision of a State which is engaged in the administration of that part of the State plan that pertains to the locality and which, in such administration, is under the supervision of the State agency.

(f) "Official forms" means forms supplied by the Social and Rehabilitation Service to State agencies for submitting required information and requests.

(g) "Children" means those individuals under the age of 21 years who are homeless, dependent, neglected or in danger of becoming delinquent regardless of the fact that they also may fall into other categories, and for whom services under the State program of child welfare services are authorized by State law.

(h) "Child welfare services" means public social services which supplement, or substitute for, parental care and supervision for the purposes set forth in section 425 of the Act.

(i) "Establishing, extending, and strengthening" means stabilizing, increasing where necessary and desirable the applicability of, and making stronger the State program of child welfare services and undertaking new child welfare services where necessary and desirable for meeting the unmet needs of children.

(j) "State plan" means the plan developed jointly by the State agency and the Social and Rehabilitation Service for establishing, extending and strengthening the State program of child welfare services, taking into account the condition of such program, the needs of children and the potential for meeting the unmet needs of children through Federal financial participation. It includes the basic plan and the annual budget pursuant to § 220.71.

§ 220.71 The State plan; the annual budget; submission, approval, duration, purpose, revision.

(a) *Submission, approval, duration.* Upon adoption by the State of a State plan (including a basic plan and an annual budget and jointly developed by the State agency the Social and Re-

habilitation Service) it shall be certified by a duly authorized officer of the State agency and submitted to the Social and Rehabilitation Service for approval. Upon approval the State plan shall be in effect for the purposes of the Act. The basic plan, as approved and as it may be revised in accordance with paragraph (d) of this section from time to time, shall remain in continuous effect without periodic renewal. The annual budget, as it may be revised in accordance with paragraph (d) of this section during the fiscal year, shall be in effect only for the fiscal year for which it is approved.

(b) *Basic plan, content, purpose.* The basic plan, as a part of the State plan, shall be a narrative description, together with appropriate illustrations, of the total State program of child welfare services. It shall be developed in accordance with instructions as to form and subject matter issued by the Social and Rehabilitation Service. A basic plan which is in effect in accordance with paragraph (a) of this section shall be the State plan for the purpose of allotment to the State of sums appropriated under the Act. From time to time, as determined by the Social and Rehabilitation Service, a new plan may be required of all States.

(c) *Annual budget, content, purpose.* The annual budget, as a part of the State plan, shall be jointly developed annually for the fiscal year and submitted by the State agency on official forms to the Social and Rehabilitation Service for approval. It shall be a statement, certified by a duly authorized officer of the State agency, which includes proposed and estimated expenditures for carrying out those items described in the basic plan which the State agency and the Social and Rehabilitation Service have agreed upon as establishing, extending, and strengthening the State program of child welfare services for the fiscal year. The annual budget, upon approval, and subject to applicable provisions of the Act, the regulations in this subpart and the basic plan, shall be the State plan for the fiscal year for purposes of determining the amount of the Federal share of the total sum expended thereunder, and making payments to the State out of the sums allotted to it for the fiscal year.

(d) *Revision.* The State plan shall be revised whenever necessary because of any material change in the program provided by the plan, in the organization, policies or operations relating to the program, or any changes in pertinent law, and as may otherwise be deemed necessary by the Social and Rehabilitation Service. Revisions are subject to joint development by the State agency and the Social and Rehabilitation Service, and shall be submitted to the Social and Rehabilitation Service, certified by a duly authorized officer of the State agency, for approval. Revisions shall be incorporated into the State plan and shall be in effect for the purposes of the Act upon, and in accordance with, the approval. Except when it is not feasible for a revision to the annual budget to be submitted to the Social and Rehabilitation Service

a reasonable time in advance of being carried out by the State agency, approval of revisions shall be prospective.

§ 220.72 State and local funds.

In order to be entitled to payments from the sums available from the State's allotment under section 421 of the Act in the amount of the Federal share, up to the amount of such sums, the State must make expenditures under the Annual budget equal to the State's share from State or local funds.

§ 220.73 Allotment of Federal funds.

Section 421 of the Act prescribes the following method for determining a State's allotment for State child welfare services for each fiscal year:

(a) (1) From the sums appropriated for each fiscal year for grants to States for State child welfare services, each State shall be entitled to an allotment of \$70,000, and

(2) Each State shall be entitled to an allotment from the remainder of the sums appropriated of an amount which bears the same ratio to such remainder as the product of the population of such State under the age of 21 and its allotment percentage bears to the sum of the corresponding products of all the States.

(b) The "allotment percentage" for any State shall be 100 per centum less the State percentage, which is that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that the allotment percentage shall in no case be less than 30 per centum or more than 70 per centum, and the allotment percentage for Puerto Rico, the Virgin Islands, and Guam shall be 70 per centum.

§ 220.74 Payments from allotments.

Payments to a State from the sums available from its allotments under section 421 of the Act shall be computed and made pursuant to sections 422 and 423 of the Act, as follows:

(a) For any fiscal year the "Federal share" for any State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States except that the Federal share shall in no case be less than 33 1/3 per centum or more than 66 2/3 per centum, and the Federal share for Puerto Rico, the Virgin Islands and Guam shall be 66 2/3 per centum.

(b) Estimates: Prior to the beginning of each fiscal quarter an authorized official of the State agency should submit to the Social and Rehabilitation Service on official forms an estimate of the amount of the Federal share which it will require from the sums available from its allotments under section 421 of the Act in carrying out the annual budget during such quarter.

(c) Payments: On the basis of the annual budget and the quarterly estimates submitted by the State agency, each State shall be paid from the sums available from its allotments, the estimated Federal share of the cost of carry-

ing out the annual budget for such fiscal quarter. The amount so to be paid to the State shall be reduced or increased, as the case may be, by any overpayment or underpayment to the State for any prior quarter not previously adjusted under this paragraph.

§ 220.75 Records and audit.

The State agency shall establish and maintain such accounts, records, and supporting documents as will permit an accurate and expeditious Federal audit of the program to be made at any time. Such accounts, records and supporting documents shall be maintained until the completion of such audits (including the final resolution of any questions raised thereby) or for 3 years, whichever is later, unless the State agency is requested to retain particular accounts, records, or supporting documents for a longer period.

§ 220.76 Custody and methods of disbursement.

Except as otherwise provided in the Act and the regulations in this subpart, State laws, rules, regulations, and standards governing the custody and methods of disbursement of State funds shall govern the custody and methods of disbursement of Federal funds paid to the State.

§ 220.77 Fiscal year to which expenditures chargeable.

An expenditure under an annual budget will be charged to that Federal fiscal year in which the obligation was incurred: *Provided*, That obligation incurred in 1 fiscal year for services and expenses continuing into the next fiscal year may be charged to the allotment for either year when consistent with the plan and with State laws, rules, and regulations governing the expenditure of State appropriated funds. Such budgets and expenditure reports as are required by the Social and Rehabilitation Service will be prepared on this basis. For the purposes of this section and § 220.78, "obligation" shall mean only bona fide encumbrances or commitments which are supported by contracts or other evidence of liability consistent with State purchasing procedure.

§ 220.78 Liquidation of obligations.

All obligations of the State agency incurred in carrying out the annual budget shall be liquidated within 2 years after the close of the fiscal year in which the obligation was incurred unless otherwise authorized by the Social and Rehabilitation Service.

§ 220.79 Interest and refunds.

Interest earned on payments made under the Act and the regulations in this subpart and any amount refunded or repaid to the State shall be duly reported for any necessary adjustment in accordance with § 220.74(c).

§ 220.80 Apportionment of costs.

Where an expenditure is made for the benefit of this program and any other programs the amount to be charged as

a cost of carrying out the State plan shall not exceed the amount arrived at by a reasonable apportionment except that, as may be authorized by applicable law and policy, the expenditure may be chargeable in whole either to this program or another program.

§ 220.81 Equipment and supplies.

All items of equipment or supply purchased in carrying out the annual budget shall be used only for purposes for which expenditures may be included in the annual budget, and the State agency shall maintain a complete equipment inventory and adequate property controls covering such items.

§ 220.82 Effect of payments.

Neither approval of the State plan nor any payments to the State pursuant thereto shall be deemed to waive the failure of the State to observe before or after such administrative action any Federal requirements or the right or duty of the Federal government to withhold funds by reason thereof.

§ 220.83 Promulgation.

The Federal shares and the allotment percentages shall be promulgated between July 1 and August 31 of each even-numbered year, as required by and with the effect given by section 423(c) of the Act.

§ 220.84 Reallocation of funds.

Under section 424 of the Act the amount of any allotment to a State under section 421 of the Act for any fiscal year which the State certifies will not be required for carrying out the State plan shall be available for reallocation to other States in accordance with the following:

(a) On or before dates fixed by the Social and Rehabilitation Service each State shall certify on an official form whether or not it will require the full amount of its allotment for carrying out the State plan for the fiscal year. If it is certified that the full amount will not be required, the certification shall contain the amount of the allotment not so required. If it is certified that the full amount will be required, and if the State has need for and will be able to use sums in excess of its allotment in carrying out the State plan, the State agency may so state in a letter to the Social and Rehabilitation Service together with an estimate of the amount of such sums.

(b) The total amount certified by States as not being required for carrying out their State plan for the fiscal year shall be tentatively apportioned among those States which have stated need for and capacity to use sums in excess of their allotments in carrying out their plans: *Provided*, That in no event shall the amount of such apportionment to a State exceed the estimated amount of its request under paragraph (a) of this section, and any excess shall be tentatively apportioned among the remaining States. The Social and Rehabilitation Service promptly shall notify such States of such tentative apportionment. Each such State, after taking into consideration the amount of the tentative apportionment

to it, shall notify the Social and Rehabilitation Service on or before a date fixed by the Social and Rehabilitation Service whether or not it desires to continue to be considered for purposes of the reallocation.

(c) In the event that all such States notify the Social and Rehabilitation Service that they desire to continue to be considered for purposes of the reallocation, each State shall develop jointly with the Social and Rehabilitation Service a revision to the State plan covering the amount tentatively apportioned to it.

(d) In the event that a State notifies the Social and Rehabilitation Service that it does not desire to continue to be considered for purposes of the reallocation the tentative apportionment shall be recomputed without the withdrawing State. Each of the remaining States shall be notified of the recomputation and shall develop jointly with the Social and Rehabilitation Service a revision to the State plan covering the amount tentatively apportioned to it under the recomputation.

(e) Reallocation shall be made among those States which have plan revisions pursuant to paragraph (c) or (d) of this section and which the Social and Rehabilitation Service determines (1) have need in carrying out their State plan for the additional funds and (2) will be able to use such additional funds during the fiscal year.

(f) In computing the amount of the reallocated funds to each State consideration shall be given to the population under the age of 21 and the per capita income of each such State as compared with the population under the age of 21 and the per capita income of all such States participating in the reallocation.

(g) Any amount reallocated to a State shall be deemed part of its allotment under section 421 of the Act.

Effective date: The provisions in this Subpart are effective on the date of their publication in the FEDERAL REGISTER.

Dated: December 23, 1969.

JOHN D. TWINAME,
Acting Administrator,
Social and Rehabilitation Service.

Approved: January 2, 1970.

ROBERT H. FINCH,
Secretary.

[F.R. Doc. 70-257; Filed, Jan. 7, 1970;
8:46 a.m.]

Title 42—PUBLIC HEALTH

Chapter II—Children's Bureau, Social and Rehabilitation Service, Department of Health, Education, and Welfare

PART 201—CHILD WELFARE SERVICES

PART 206—ADMINISTRATIVE PROCEDURE

Miscellaneous Amendments to Chapter

Part 201 is deleted from Chapter II of Title 42 of the Code of Federal Regulations

and its content is set forth in Subpart A and Subpart D, Part 220 of Chapter II of Title 45.

In Part 206, § 206.8 is deleted.

(Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302)

Effective Date: Effective upon date of publication in the FEDERAL REGISTER.

Dated: December 23, 1969.

JOHN D. TWINAME,
Acting Administrator,
Social and Rehabilitation Service.

Approved: January 2, 1970.

ROBERT H. FINCH,
Secretary.

[F.R. Doc. 70-256; Filed, Jan. 7, 1970;
8:46 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 4753]

[Wyoming 18167]

NEBRASKA

Partial Revocation of Reclamation Withdrawal

By virtue of the authority vested in the Secretary of the Interior by section 3 of the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), as amended and supplemented, it is ordered as follows:

The departmental order of May 3, 1904, withdrawing lands for reclamation purposes is hereby revoked so far as it affects the following-described lands:

SIXTH PRINCIPAL MERIDIAN

T. 22 N., R. 52 W.,
Sec. 15, N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$.

The area described contains approximately 20 acres, in Morrill County. The lands are included in an allowed homestead entry.

HARRISON LOESCH,
Assistant Secretary of the Interior.

DECEMBER 24, 1969.

[F.R. Doc. 70-228; Filed, Jan. 7, 1970;
8:45 a.m.]

Title 49—TRANSPORTATION

Chapter I—Hazardous Materials Regulations Board, Department of Transportation

[Docket No. OPS-2]

PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: REPORTS OF LEAKS

Office of Pipeline Safety; Leak Reporting Requirements

This regulation establishes requirements for the reporting of natural gas pipeline leaks and test failures by operators of transmission and distribution

systems and by operators of gathering systems located in populated areas. This regulation supersedes all accident reporting requirements contained in the Interim Minimum Federal Safety Standards for the Transportation of Natural and Other Gas by Pipeline, as set forth in Part 190 of this chapter.

The substance of this regulation was issued as a notice of proposed rule making on July 8, 1969 (Notice 69-1, 33 F.R. 11979). The public was also provided with copies of the forms that the Department proposed for submitting the prescribed reports. In response to these proposals, over 200 comments were submitted. All have been carefully considered and many have resulted in changes that should improve the usefulness of the regulation and the forms.

In addition to considering the comments submitted by the general public, the Department has consulted with the Technical Pipeline Safety Standards Committee established under the Natural Gas Pipeline Safety Act of 1968 with respect to both the proposed regulations and the forms. Their advice and comments have resulted in a number of beneficial changes.

A number of comments expressed the opinion that, due to the broad statement of nonapplicability in § 5(a) of the Natural Gas Pipeline Safety Act (hereinafter referred to as "the Act"), the receipt of a State certification under that section precludes the Secretary from requiring direct reports of accidents or incidents that occur on the intrastate pipeline facilities to which the certification applies. As was indicated in the preamble to the notice proposing these rules, the Department considers that detailed information about the causes of pipeline accidents or incidents is essential for the development of a rational regulatory program. Notwithstanding the broad language of section 5(a) of the Act, the Secretary has a continuing responsibility for establishing new and amended standards for intrastate pipeline facilities and, where necessary, for issuing orders to abate hazardous conditions discovered therein. In order to properly discharge these responsibilities, the Secretary must have the detailed information that will be provided by this reporting system and the Department believes that there is sufficient authority to support these reporting requirements.

A number of comments indicated that there was some misunderstanding as to the purpose of the required reports. Many persons felt that all reports concerning intrastate facilities covered by a certification under section 5(a) of the Act should be sent to the State agency concerned since that Agency, and not the Secretary is responsible for enforcement. Others felt that only leaks that caused injury or property damage should be reported. In view of these and other similar comments, a restatement of the purpose of this regulation appears warranted.

The preamble to the notice of proposed rulemaking stated that " * * * the first task is to marshal * * * detailed information about the causes of [leaks]." Thus, the primary purpose of this regulation is to provide for the accumulation

of factual data that will give the Department a sound statistical base with which to define safety problems, determine their underlying causes, and propose regulatory solutions. For this purpose, an accident or leak does not become less significant because no one was injured or the damage was minimal. Nor does the existence of a regulatory violation or lack thereof have any bearing upon the statistical impact of a particular mishap. If reports were limited to instances such as these, the data base would be much narrower and therefore less likely to suggest appropriate regulatory solutions.

Another aspect of the reporting requirements that received significant attention in the comments was the question of confidentiality of the reports. Several comments requested that reports be classified as confidential and not be made available to the general public, because of the possibility they might be used "for other purposes which could be detrimental to their interests." Concern was expressed that information might be quoted out of context, distorting the truth, and presenting an erroneous image of a particular reporting company. It was further urged that confidentiality was required "to protect against unwarranted claims and nuisance litigation," since the required reports could include questions, the answers to which might be "self-incriminating in the event of future litigation." In this connection it was also claimed that questions relating to the value of property owned by others and damaged by pipeline accidents, are not pertinent to the cause of the incidents, and might expose the reporting company to unnecessary litigation, or at least place it at a disadvantage in contesting claims for damage. It was accordingly requested that if the reports are not kept confidential, the section concerning property damage be rewritten so as to require the submission of estimated damage to the property "of the company and others," rather than "of the company or others." This last request has to some extent been accepted as is indicated below in the discussion of changes to these forms.

These arguments are all necessarily speculative. On consideration and analysis of all of these comments, they do not contain any argument that is substantial enough to require that the reports be kept confidential.

It is the policy of the Department of Transportation to make information available to the public to the greatest extent possible in keeping with the spirit of the Freedom of Information Act (5 U.S.C. 552). In the light of the statute, a refusal to permit public access to accident reports would be contrary to sound public policy. The public interest is better served by not keeping such reports confidential.

The only statutory exceptions to the basic requirement of disclosure are set out in section 552(b). None of these exceptions provides confidentiality for the reports under consideration here. Section 552(b)(4) excepts "trade secrets and commercial or financial information obtained from a person and privileged or

confidential." However, the legislative history indicates that this exception refers to instances where privileged information (not required by law, and that would not customarily be released to the public) is voluntarily furnished and received in confidence. Examples are commercial or financial information submitted with loan applications, or information voluntarily given to the Government in confidence for the purpose of compiling statistics which are then published in the aggregate.

Moreover, in promulgating the regulations by which the Department implemented the Freedom of Information Act (49 CFR Part 7), the Secretary announced that "the policy of the Department will be to make all information available to the public except that which must not be disclosed in the national interest, to protect the right of an individual to personal privacy, or to insure the effective conduct of public business. To this end, the [regulation] provides that information will be made available to the public even if it falls within one of the exemptions set forth in section 552(b), unless the release of that information would be inconsistent with the purpose of the exemption" (32 F.R. 9284 (1967)).

The exemption of documents from mandatory public disclosure merely authorizes the Secretary to withhold them, it does not compel him to do so.

Section 7.51 of the regulations provides that, even though a record is exempt from public inspection, nevertheless the Department will release it, "unless it determines that the release of that record would be inconsistent with a purpose of" the particular exemption.

There is nothing in the Natural Gas Pipeline Safety Act of 1968 which overrides the basic policy embodied in the Freedom of Information Act favoring disclosure of public records. On the contrary, the specific provision in section 12 (d) of the Natural Gas Pipeline Safety Act that "information (which) contains or relates to a trade secret referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that Section," suggests that Congress chose not to prevent disclosure of other information obtained by the Government under the Act.

The policy statement of the Department of Transportation regarding the Office of Pipeline Safety, states that the Office, in administering the Natural Gas Pipeline Safety Act of 1968, will "act as a clearing house of safety information, systematically distributing safety information acquired from government and industry research and development programs and from industry operating experience." It is further stated that the general public will have ample opportunity to participate in the identification and definition of safety problems, and that "while we may deal on a daily basis with representatives of the affected industry, we recognize that it is our duty to ensure that the interests of the unorganized general public are served."

Finally, it must be pointed out that accident reports are not protected from disclosure for any other mode of trans-

portation in the Department. The availability of these reports does not appear to have caused any great difficulty to the other transportation industries, and no reason is apparent for a different treatment of gas pipeline accident reports.

A number of comments stated that leak reports with regard to intrastate pipeline facilities should be made only to the State regulatory agencies because these agencies were better equipped to deal with these essentially local safety problems. While the State agencies have a major legitimate interest in these reports and should receive them if they so desire, nonetheless the Secretary must also have full access to this information to be able to carry out his responsibilities under the Act. The collection and compilation of these statistics on a nationwide basis gives them much greater validity and value than those which would be assembled by each individual State. Consequently, for the reasons discussed above, the general requirement for making reports directly to the Secretary is retained. However, § 191.7 has been modified to permit, under certain conditions, the submission of reports relating to intrastate facilities that are the subject of a State certification under section 5(a) of the Act, directly to a State agency rather than to the Secretary. This may be done if the regulations under which that agency operates require submission in duplicate to the State and provide for further transmittal of one copy to the Department, within 10 days for leak reports and not later than February 15th for annual reports. While not specifically set forth in the regulation, under this change each State will also have the option of requiring that only one copy of each report relating to pipeline facilities under its jurisdiction be sent to the State, in which case the requirement for direct reporting to the Secretary would remain.

A discussion of each section of the regulation follows with respect to some of the more significant comments and changes that have been made.

§ 191.1. Several comments pointed out that the scope of the proposed rules appeared to go beyond the authority contained in the Act. Therefore, § 191.1 has been modified to conform to the limits stated in the Act by excluding gathering lines outside of certain specified areas.

§ 191.3. In response to several comments, the term "system failure" and the various gradations of leaks have been removed from the definitions. In their place, the scope provisions in section 191.1 have been restated to limit the applicability of the regulation to leaks that would have been included in the proposed definition as "Grade 1" and "Grade 2" leaks and to exclude therefrom the leaks that would have been defined as "Grade 3" leaks. It appears that an adequate statistical base can be obtained by requiring the reporting of only the more significant leaks that require immediate or scheduled repair. Certain leaks will require telephonic notice as specified in section 191.5. These and other leaks must also be individually reported in accordance with criteria set

forth in sections 191.9 and 191.15. These criteria replace the different gradations of leaks that were proposed.

In response to the request in the preamble to the notice of proposed rule making, a number of suggestions were made as to definitions for transmission lines of a distribution system and for transmission, gathering, and distribution systems. It appears that these terms are fairly well understood throughout the industry, and there should be no need to prescribe precise definitions at this time. If any difficulties arise, the Department will examine the facts in each situation and will establish definitions as they are needed. Those lines of distribution systems that must be reported as a transmission system are clearly delineated by the criteria set forth in section 191.13.

The definition of "system" has been changed slightly to make it clear that service lines and customers' meters are included in that term.

A number of other definitions have been added to section 191.3. The terms "gas," "municipality," "person," "pipeline facilities," "Secretary," "State," and "transportation of gas" are included as they are defined in the Act with minor changes to conform to the purpose, language, and style of this regulation. As requested by comments, definitions of the terms "operator" and "test failure" are also included. An "operator" is defined as any person (as person is defined in section 191.3) who engages in the transportation of gas. "Test failure" is defined to include only breaks or ruptures of such magnitude that repair is required before continuation of the test. This limited definition, which encompasses testing with gas, air, or water, is intended to reduce the number of reports required due to failures during testing.

§ 191.5. This section has not been changed significantly. Some comments requested the option of reporting by telegraph in any case in which the person reporting is not able to reach the correct person by telephone. However, this problem will not arise since the published phone number will be manned 24 hours a day, 7 days a week.

The term "failure" was used uniformly in the proposal to describe the incident to be reported, and many comments requested that this be changed to either accident, incident, or leak. As stated above in conjunction with the changes in definitions, the scope of the regulation has been restated to clearly delineate the leaks to which it applies.

Some comments suggested the deletion of certain of the criteria for making these reports. The five stated categories are virtually identical to those developed by the Federal Power Commission for telephonic reports of accidents. The experience of the Commission indicates that these types of incidents are of sufficient magnitude to require immediate notification in order that the Department may investigate the incident and take any action that may be necessary to protect persons or property.

§ 191.9. Individual leak reports under this section will not be required from distribution companies providing service to less than 100,000 customers. Studies by the Department indicate that approximately 28 percent of the total number of distribution companies have over 100,000 customers. This group of larger companies services over 85 percent of the total number of gas customers in the United States. Requiring reports only from this group of companies will furnish a statistically valid sample and will significantly lessen the reporting burden on smaller companies who are least able to bear it.

Several comments suggested that the information on this report for distribution companies could be summarized and submitted annually or semiannually. This reporting requirement is designed to elicit information that might be the basis for prompt regulatory action or for the issuance of an order requiring immediate steps to remove a hazardous condition. A delay of 6 months or a year in receiving this information would significantly reduce the value of this information and make it unusable for most of these purposes.

Many comments also urged a longer reporting period. For the reasons discussed above and also to facilitate any investigations that may appear to be necessary, the 20-day reporting period has been retained. The forms make it clear that if certain information is not available the incomplete report should be submitted indicating this unavailability. When the information becomes available, a supplemental report will be submitted. This in effect permits operators to take as much time as is reasonably necessary to assemble all of the information while still assuring the Department of early receipt of the first written report.

§ 191.11. A number of comments on this section and § 191.17 requested a later reporting date for the annual report, varying from March 15 to April 15. The Department is required to submit its annual report to Congress on March 17th and in order to allow adequate time to compile the data from these annual reports for inclusion in the Departmental report, a reporting date of February 15th is necessary. However, to allow operators more time to organize their internal reporting and information systems so as to be able to meet the February 15th deadline, the first annual report will not be required until 1971 for calendar year 1970. This will also satisfy a number of comments that indicated that assembling the cumulative information for 1969 would be very difficult due to the time that has passed since most of the incidents occurred.

§ 191.13. As discussed above, a large number of suggestions were made as to classifying "transmission lines of a distribution system". This section sets forth the two basic criteria that have been selected for this purpose. Reports involving pipeline facilities that operate at 20 percent or more of specified minimum yield strength (SMYS) or that are used to

convey gas into or out of storage, are to be submitted in accordance with the requirements for transmission systems as specified in §§ 191.15 and 191.17.

§ 191.15. This section now contains the requirements both for leaks occurring during normal operations and for test failures. Both will be reported on the same form, thereby reducing the number of different forms for these operators from three to two.

The form prescribed by this section has been developed in coordination with the Federal Power Commission so as to require most of the information presently required on their accident reports. The Commission is preparing to amend its regulations to eliminate all duplicative reporting requirements. When this is completed, it is expected that the Commission will require that copies of certain of the Department of Transportation reports be submitted to it.

§ 191.17. The requirements for annual reports for transmission or gathering systems has been reworded slightly. The discussion with respect to § 191.11 applies to this section as well.

§ 191.19. This new section has been added to notify interested persons as to where copies of the prescribed forms may be obtained. It also provides that other formats may be used if acceptable to the Secretary. This will permit submission of reports in machine record form when the Department develops its statistical systems sufficiently to accommodate information in this form.

Forms. The comments on the proposed forms were very detailed and very helpful in making necessary revisions. The forms have been reorganized and reworded so as to eliminate redundant and unnecessary questions and to present the remaining questions more precisely.

Several comments objected to the requirements for reporting the pH of soil and soil resistivity. These items have been retained in the forms for reporting on corrosion caused leaks because they give environmental information needed for the determination and evaluation of corrosion control measures and because they are easily obtained. However, the requirement for reporting soil resistivity has been modified to require reporting of the most recent soil resistivity measurement in the area of the leak instead of requiring an actual test to be made at the leak site upon discovery of the leak. The requirement is stated so that if a soil resistivity measurement is not available then it will not be necessary to obtain one.

Several objections were made to requiring a report of "Unaccounted for gas". It is recognized that this information is not precise and that care must be taken in its use. Nevertheless, it is believed that this information should be obtained and studied so that it can be determined whether there is a connection between loss of gas and accidents.

Due to the time required to prepare, print, and distribute an adequate supply of the forms for public use, the printed forms may not be available at the time this regulation becomes effective. In that

event, a small supply of temporary forms will be distributed for use until receipt of the permanent printed forms. These temporary forms may be reproduced by any company if additional copies are needed in the interim period.

In consideration of the foregoing and for the reasons discussed in the preamble to Notice 69-1, Title 49 of the Code of Federal Regulations is amended by adding a new Part 191 to read as set forth below, effective February 9, 1970.

Issued in Washington, D.C., on December 31, 1969.

W. C. JENNINGS,
Acting Director,
Office of Pipeline Safety.

PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; REPORTS OF LEAKS

- Sec.
- 191.1 Scope.
 - 191.3 Definitions.
 - 191.5 Telephonic notice of certain leaks.
 - 191.7 Addressee for written reports.
 - 191.9 Distribution system: Leak report.
 - 191.11 Distribution system: Annual report.
 - 191.13 Distribution system: Certain facilities reported as a transmission system.
 - 191.15 Transmission and gathering systems: Leak report.
 - 191.17 Transmission and gathering systems: Annual report.
 - 191.19 Report forms.

AUTHORITY: The provision of this Part 191 issued under the Natural Gas Pipeline Safety Act (49 U.S.C. 1671 et seq.), Part 1 of the Regulations of the Office of the Secretary of Transportation (49 CFR Part 1), and the delegation of authority to the Director, Office of Pipeline Safety, dated November 6, 1968 (33 F.R. 16468).

§ 191.1 Scope.

(a) This part prescribes requirements for the reporting of gas leaks that are not intended by the operator and that require immediate or scheduled repair and of test failures, by persons engaged in the transportation of gas. However, it does not apply to leaks and test failures that occur in the gathering of gas outside of the following areas:

- (1) An area within the limits of any incorporated or unincorporated city, town, or village; or
- (2) Any designated residential or commercial area such as a subdivision, business or shopping center, or community development.

(b) The reporting requirements in this part supersede any accident or leak reporting requirements that were incorporated by reference in the Interim Minimum Federal Safety Standards in Part 190 of this chapter.

§ 191.3 Definitions.

As used in this part and in the DOT Forms referenced in this part—

"Gas" means natural gas, flammable gas, or gas which is toxic or corrosive;
"Municipality" means a city, county, or any other political subdivision of a State;
"Operator" means a person who engages in the transportation of gas;

"Person" means any individual, firm, joint venture, partnership, corporation, association, State, municipality, coopera-

tive association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof;

"Pipeline facilities" includes, without limitation, new and existing pipe, right-of-way, and any equipment facility, or building used in the transportation of gas or the treatment of gas during the course of transportation;

"Secretary" means the Secretary of Transportation or any person to whom he has delegated authority in the matter concerned;

"State" includes each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico;

"System" means all pipeline facilities used by a particular operator in the transportation of gas, including but not limited to, line pipe, valves and other appurtenances connected to line pipe, compressor units, fabricated assemblies associated with compressor units, metering (including customers' meters) and delivery stations, and fabricated assemblies in metering and delivery stations;

"Test failure" means a break or rupture that occurs during strength-proof testing of transmission or gathering lines that is of such magnitude as to require repair before continuation of the test;

"Transportation of gas" means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas in or affecting interstate or foreign commerce.

§ 191.5 Telephonic notice of certain leaks.

(a) At the earliest practicable moment following discovery, each operator shall give notice in accordance with paragraph (b) of this section of any leak that—

- (1) Caused a death or a personal injury requiring hospitalization;
- (2) Required the taking of any segment of transmission pipeline out of service;
- (3) Resulted in gas igniting;
- (4) Caused estimated damage to the property of the operator, or others, or both, of a total of \$5,000 or more; or
- (5) In the judgment of the operator, was significant even though it did not meet the criteria of subparagraphs (1), (2), (3), or (4) of this paragraph.

An operator need not give notice of a leak that met only the criteria of subparagraph (2) or (3) of this paragraph, if it occurred solely as a result of, or in connection with, planned or routine maintenance or construction.

(b) Each notice required by paragraph (a) of this section shall be made by telephone to Area Code 202-962-6000 and shall include the following information:

- (1) The location of the leak.
- (2) The time of the leak.
- (3) The fatalities and personal injuries, if any.
- (4) All other significant facts that are known by the operator that are relevant to the cause of the leak or extent of the damages.

§ 191.7 Addressee for written reports.

Each written report required by this part must be made to the Director, Office of Pipeline Safety, Department of Trans-

portation, Washington, D.C. 20590. However, reports for intrastate facilities subject to the jurisdiction of a State agency pursuant to certification under section 5(a) of the Natural Gas Pipeline Safety Act, may be submitted in duplicate to the State agency if the regulations of that agency require submission of these reports and provide for further transmittal of one copy, within 10 days of receipt for leak reports and not later than February 15 for annual reports, to the Director, Office of Pipeline Safety.

§ 191.9 Distribution system: Leak report.

(a) Each operator of a distribution system serving more than 100,000 customers shall, as soon as practicable but not more than 20 days after detection, report the following on Department of Transportation Form DOT-F-7100.1:

(1) A leak that required notice by telephone under § 191.5.

(2) A leak that, because of its location, required immediate repair and other emergency action to protect the public such as evacuation of a building, blocking off an area, or rerouting of traffic.

(b) Where additional related information is obtained after a report is submitted under paragraph (a) of this section, the operator shall make a supplemental report as soon as practicable with a clear reference by date and subject to the original report.

§ 191.11 Distribution system: Annual report.

Each operator of a distribution system shall submit an annual report on Department of Transportation Form DOT-F-7100.1-1. This report must be submitted for the preceding calendar year not later than February 15, 1971, and not later than February 15 of each year thereafter.

§ 191.13 Distribution system: Certain facilities reported as a transmission system.

Each operator of a distribution system shall, for pipeline facilities that operate at 20 percent or more of specified minimum yield strength, or that are used to convey gas into or out of storage, submit reports for those facilities under § 191.15 and § 191.17.

§ 191.15 Transmission and gathering systems: Leak report.

(a) Each operator of a transmission system or a gathering system shall, as soon as practicable but not more than 20 days after detection, report the following on Department of Transportation Form DOT-F-7100.2:

- (1) A leak that required notice by telephone under § 191.5.
- (2) A leak in a transmission line that required immediate repair.
- (3) A test failure that occurred while testing either with gas or another test medium.

(b) Where additional related information is obtained after a report is submitted under paragraph (a) of this section, the operator shall make a supplemental report as soon as practicable with

a clear reference by date and subject to the original report.

§ 191.17 Transmission and gathering systems: Annual report.

Each operator of a transmission system or a gathering system shall submit an annual report on Department of Transportation Form DOT-F-7100.2-1. This report must be submitted for the preceding calendar year not later than February 15, 1971, and not later than February 15 of each year thereafter.

§ 191.19 Report forms.

Copies of the prescribed report forms are available without charge upon request from the Office of Pipeline Safety. Additional copies in this prescribed format may be reproduced and used if in the same size and kind of paper. In addition, the information required by these forms may be submitted by any other means that is acceptable to the Secretary.

NOTE: The recordkeeping and reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

[F.R. Doc. 70-318; Filed, Jan. 7, 1970; 8:50 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Brigantine National Wildlife Refuge, N.J.

The following special regulation is issued and is effective on date of publication in the **FEDERAL REGISTER**.

§ 28.28 Special regulations, public access, use, and recreation; for individual wildlife refuge areas.

NEW JERSEY

BRIGANTINE NATIONAL WILDLIFE REFUGE

Public access, during daylight hours, for the purpose of nature study, wildlife observation, photography, picnicking, hiking, swimming, and sunbathing is

permitted. Access on foot is permitted except in areas posted as closed, and by motor vehicle on designated travel routes. Pets are allowed if on a leash not exceeding 10 feet in length. Hunting and fishing are permitted under special regulations.

Refuge public use areas, comprising more than 19,385 acres, and respective permissible activities, are designated on maps available at refuge headquarters, Oceanville, N.J., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, Mass. 02109.

The provisions of this special regulation supplement the regulations governing recreation on wildlife refuge areas generally, as set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1970.

RICHARD E. GRIFFITH,
*Regional Director, Bureau of
Sport Fisheries & Wildlife.*

DECEMBER 31, 1969.

[F.R. Doc. 76-224; Filed, Jan. 7, 1970; 8:45 a.m.]