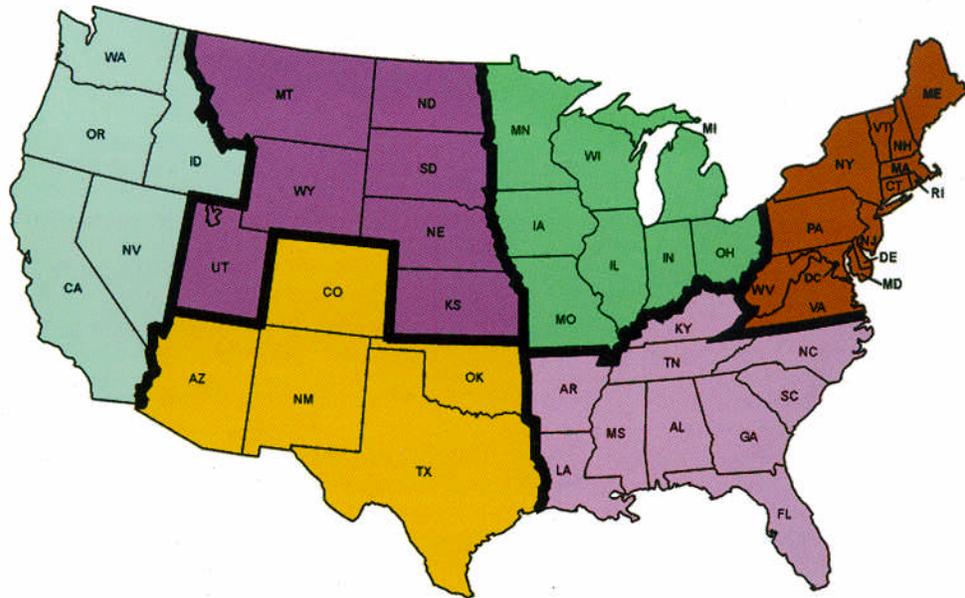
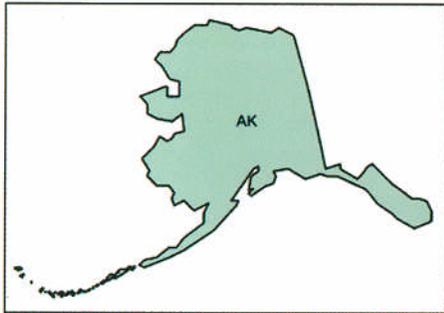


Assessment of Strategies for Using Federal Aid Funds to Buy or Lease Water Rights



National Instream Flow
Program Assessment



-NIFPA-



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**ASSESSMENT OF STRATEGIES
FOR USING FEDERAL AID FUNDS
TO BUY OR LEASE WATER RIGHTS**

Liter E. Spence

August, 1998

**National Instream Flow Program Assessment Project
Anchorage, Alaska**

Development and publication of this manuscript were partially financed by the
Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777K) Project SP94-066.

The National Instream Flow Program Assessment (NIFPA) Report Series is intended for fish and wildlife and other natural resource professionals. Distribution is to NIFPA participants, other state fish and wildlife agencies, the U.S. Fish and Wildlife Service, U.S. Geological Survey Biological Resources Division, publication distribution centers, libraries, individuals and, on request, to other agencies, organizations, and individuals.

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Copies of this document can be obtained from the Alaska Department of Fish and Game, Division of Sport Fish, Research and Technical Services, 333 Raspberry Road, Anchorage, AK 99518-1599, USA 907-267-2142, Email: CEstes@fishgame.state.ak.us or U. S. Fish and Wildlife Service, Region 7, 1011 E. Tudor Rd. Anchorage, AK 99503 907-786-3537 Email: Keith_Bayha@fws.gov

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FORWARD

This is one of a series of report products of the National Instream Flow Program Assessment (NIFPA) project. Because of its content, size, or perceived value to its audience, the NIFPA Steering Committee chose to publish it as a stand-alone-report. Sufficient copies have been produced to meet anticipated demand of participants and interested parties. A list of all reports in this series and other NIFPA products are printed on the backside of the front cover to this report.

The NIFPA project was initiated through a competitive grant prepared by Christopher Estes, Statewide Instream Flow Coordinator for the Alaska Department of Fish and Game, and Keith Bayha, Water Resources Branch Supervisor for Region 7 (Alaska), U.S. Fish and Wildlife Service Resources and facilitated by William Martin, Region 7 Federal Aid Coordinator.. Funding for this project was obtained in 1994 from the Federal Aid in Sport Fish Restoration Program.

The goal of this project is to help each state fish and wildlife agency and USFWS region improve its ability to protect fish and wildlife resources by building a more effective instream flow program. The primary objectives of this project are to:

- (1) Reestablish and expand an informal communication network of state fish and wildlife agency and regional USFWS instream flow coordinators;
- (2) Identify, develop, and apply criteria for evaluating instream flow programs of all 50 state fish and wildlife agencies and the 7 regions of the USFWS;
- (3) Perform a peer reviewed evaluation of each state's and each USFWS region/s instream flow program based on the results of objective two; and
- (4) Identify and compile educational materials and strategies useful to agency staff for strengthening their instream flow program.

NIFPA-10 is a summary of an evaluation of differing opinions on the use of Federal Aid funds for purchasing and leasing water for instream flow purposes.

National Instream Flow Program Assessment Project

Committee Co-Chairmen

Christopher C. Estes, Alaska Department of Fish and Game

Keith D. Bayha, U.S. Fish and Wildlife Service, Region 7

Steering Committee

Gary E. Smith, California Department of Fish and Game

Jay W. Skinner, Colorado Division of Wildlife

Charles E. Coomer, Jr., Georgia Department of Natural Resources

M. Delbert Lobb, Missouri Department of Conservation

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J. Douglas Sheppard, New York Dept. of Environmental Conservation

E. Dawn Whitehead, U.S. Fish and Wildlife Service, Region 4

Alexander R. Hoar, U.S. Fish and Wildlife Service, Region 5

Clair B. Stalnaker, Biological Resources Div., U.S. Geological Survey
(formerly, Mid-continent Ecological Science Center, National Biological Service)

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INTRODUCTION

One means to improve instream flows in de-watered streams is to acquire existing, high priority water rights that are being used for diversionary purposes and transfer those rights back to the stream to provide better flows for fish and wildlife.

Montana Fish, Wildlife and Parks (FWP) implemented a water-leasing program following passage of HB 707 by the 1989 legislature. Several leases have been implemented. FWP has not been using Federal Aid funds in sport fish restoration to pay for water leases but thought it would like to have the option to do so. However, in seeking information from the Federal Aid personnel in the U.S. Fish and Wildlife Service (USFWS), Region 6, FWP was informed that appraisals would be required for leases before these funds could be used. Additionally, the USFWS would have to approve the lease agreement as well as the price paid for the water through an amendment to FWP's Water Leasing Grant Application. FWP currently uses license dollars to pay for leases so no Federal Aid requirements pertaining to the use of federal funds have to be met.

At the present time, there is not an established market in Montana for the transfer of water rights to instream flows. FWP is concerned that obtaining appraisals for leases would inflate the prices now being paid to water users who have voluntarily agreed to the amount paid them through negotiations with FWP.

FWP feels it currently negotiates a fair price with water users without the need for appraisals. This procedure has been acceptable to all parties because water lease transactions are voluntary. No one can be forced to lease a water right.

Sources of funds to pay for leasing water rights was a discussion item at the NIFPA Steering Committee meeting held in Denver in October 1995. As a result of the discussion, Steering Committee Co-chairman Christopher Estes appointed a subcommittee of Litter Spence, Montana Fish, Wildlife and Parks (Chair), Chuck Coomer, Georgia Department of Natural Resources, and Jay Skinner, Colorado Division of Wildlife. The Committee was charged to further investigate the matter and prepare a report for inclusion in the NIFPA project documents that would inform states about federal funding options for water leases.

ANALYSIS OF THE ISSUE

In October 1995, a discussion between Christopher Estes and Bob Pacific, USFWS, Federal Aid in Washington, D.C. revealed that the Federal Aid Manual was in the process of being revised. Estes was advised that it would be appropriate to suggest language changes that would address the water leasing issue where a market has not been established and negotiations are voluntary.

Subsequently, FWP wrote a letter dated November 16, 1995 to the Federal Aid Division, U.S. Fish and Wildlife Service, Region 6, Denver, Colorado, outlining how FWP currently paid for

water leases and its interest in using D-J funds to also pay for them. Attached to the letter were some suggested changes to the Federal Aid Manual (**Exhibit 1**).

Region 6 circulated the FWP correspondence to other USFWS federal aid regional staffers. A written reply was received from the office in the Southeast Region (**Exhibit 2**), suggesting that appraisals were a requirement in these circumstances and that simply negotiating a "fair" value would not be prudent for the expenditure of D-J funds.

FWP personnel did not agree with the substance of the response as it related to water use in the West and continued investigating. A conference call was held with Region 6 federal aid personnel and FWP personnel to further discuss the issue. A January 16, 1996 FWP memorandum summarizes the discussion (**Exhibit 3**). Although the USFWS personnel sympathized with FWP's situation and even agreed to provide the appraisals themselves, they continued to state that appraisals would be required.

During subsequent discussions at FWP about using federal aid funds for water leasing, a similar issue arose regarding the use of Federal Aid funds to pay for conservation easements. FWP has not been using federal funds for acquiring conservation easements but was interested in the possibility. This interest stimulated FWP legal staff to investigate the requirements for use of federal aid funds for conservation easements as well as for water leases.

The investigation revealed that the USFWS, Region 6, had informed the state of Colorado by letter dated August 10, 1987 (**Exhibit 4**) about the need for appraisals. Copies of the letter were sent to all the other USFWS regions. However, further investigation by FWP revealed that an interim federal rule (**Exhibit 5**) issued in December 1987 implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act had different requirements than did the August 10, 1987 letter.

The rules implementing the act are at 49 CFR, Part 24. Also, the final federal rule, issued in March 1989, contained some different requirements than the interim rule for dealing with the need for appraisals in certain circumstances (**Exhibit 6**). However, the USFWS continues to use the August 10, 1987 letter as the basis for the need for appraisals.

Further discussions were held with Region 6 personnel following FWP's questioning of the use of the August 10, 1987 letter by the USFWS. A subsequent letter and attachment from FWP to Region 6 (**Exhibit 7**) summarized FWP's legal analysis of the implementing rules and requested further clarification regarding the establishment of "fair market value" and the need for appraisals in the areas of interest to FWP.

On March 28, 1996, FWP met with Region 6 personnel in Denver and further discussed the issue. The result of that meeting was that Region 6 said FWP was not exempt from determining fair market value through appraisals. However, they agreed that the landowner or water user simply had to be informed of the fair market value, as determined by an appraisal, but did not have to be offered the appraised value. Region 6 said they would follow up this discussion with a letter to FWP.

CURRENT STATUS

FWP legal staff continues to disagree with the federal interpretation because it believes the exceptions in 49 CFR 24.1 01 are valid reasons for not requiring an appraisal under certain circumstances, including the acquisition of conservation easements and water leases. They also believe that the interpretation that Region 6 was giving in the matter made the exceptions in 24.101 quite meaningless. Therefore, Montana legal staff contacted federal legal staff in Washington, D.C. to discuss the matter further. At this writing, no communication has been received from either Region 6 or Washington, D.C.

For the time being, FWP will continue to use only state funds to pay for water leases unless the appraisal issue is resolved to its satisfaction. Because FWP currently has more state dollars available than federal dollars, it will be more practical for FWP to continue to pay for water leases with state dollars. However, it would appropriate to have the option to use federal dollars in the future.

As this evaluation was being written, the committee received an inquiry from Mississippi's instream flow coordinator. He inquired about how that state could fund the development of an "Opportunities to Protect Instream Flow in Mississippi" document (similar to those completed by the USFWS for other states) to increase awareness of what statutes can be used to reserve or protect instream flows. He wondered how the state might use federal aid funds to pay for the publication.

The possible funding sources include using regular federal aid funds (the state would have to set its own priorities for use of the funds) or submit a grant application to the U.S. Fish and Wildlife Service for Federal Aid Administrative funds. This is a one-time only use of funds and grant applications must be submitted in the spring each year.

RECOMMENDATIONS

It is recommended that those states interested in using federal aid funds for water leasing or conservation easements investigate this possible funding source themselves if it applies to their situation. Montana FWP has already done some background work on this subject and could assist other states in this endeavor.

Mississippi and other states wishing to pursue federal aid funding for instream flow programs should set their own priorities for funding these programs with their regular federal aid funds or, for special instream flow projects, submit applications for federal aid administrative funds.

**Montana Department
of
Fish, Wildlife & Parks**



RECEIVED

APR 18 1996

LEGAL UNIT
FISH WILDLIFE & PARKSP.O. Box 200701
Helena, MT 59620-0701
November 16, 1995

Bill Jones
U.S. Fish and Wildlife Service
Division of Federal Aid
P.O. Box 25486
Denver Federal Center
Denver, Colorado 80225

Dear Bill:

As you know, Montana Fish, Wildlife and Parks has been involved in a water leasing program to improve instream flows since 1989. During the last six years, we have gained quite a bit of insight into the pros and cons of the program and we are benefitting from this experience. The purpose of this letter is to get your opinion on a possible revision to the Federal Aid Manual to help us better implement our water leasing program. We understand that the manual is in the process of being revised at the present time.

We currently have implemented seven (7) water leases since the program began. Considering the slow start we got due to the original controversy that surrounded the legislation, I believe we have made some forward strides with these leasing. This year we made total payments of \$28,000 to pay water right holders for these leases. Next year the cost will be \$34,000. To date, lease payments have all been made with state dollars. However, as time goes on, we will need additional funding sources as new leases are acquired.

We have used D-J funds to pay for technical studies needed to acquire leases but we have never used these funds to actually pay for the leases because of requirements in the Federal Aid Manual that water apparently is considered "real property" and therefore is subject to an appraisal if the water, or interests in the water, are to be acquired. (Sections 6.1 and 6.5). When we acquire a lease, we are acquiring "an interest" in the water.

The problem we have in Montana (and perhaps it occurs in other states as well) is that there is no water market established for acquiring instream flows through leasing. Therefore, there is no basis for an appraisal like there is for a land purchase or lease. Consequently, we have not done appraisals before consummating the leases we have acquired. Water leases are voluntary and we simply

negotiate a fair price that is agreeable between us and the lessor of the water right. This has worked very well for us and we would like to continue the concept but also be able to use D-J dollars to pay for these leases. To do this, it appears that the Federal Aid Manual needs revision.

We have enclosed a short summary of how we read the manual now and a suggested change that we feel would allow federal funds to be used in cases where a water transaction is voluntary (i.e., no condemnation or eminent domain processes are occurring) and we have negotiated a fair price in a leasing agreement with a water right holder.

We would like your opinion as to:

- (1) Have we accurately interpreted the manual such that it currently requires an appraisal before using federal funds to pay lessors for instream water leases and, if so,
- (2) Would the change we suggest to the manual (i.e., adding a new subsection E. to Section 6.9) solve the problem and be an appropriate change to make?

We are not aware of the exact timetable for revising the manual but would hope our concern and suggestion is timely for consideration during the revision period. We would appreciate your assistance in resolving the issue.

Sincerely,

Bobbi Keeler

Bobbi Keeler
Federal Aid Coordinator
406-444-4756

Liter Spence

Liter Spence
Water Resources Supervisor
Fisheries Division
406-444-3888

Enclosure

Fedaaid.rv1

SUGGESTED AMENDMENT TO FEDERAL AID MANUAL TO UTILIZE FEDERAL FUNDS FOR WATER LEASING PAYMENTS WITHOUT APPRAISAL

November 16, 1995

Section 6.1 (Chapter 6) of the Federal Aid Manual provides guidance on projects for the acquisition and use of lands or waters to carry out the purposes of the grant programs. The term acquisition means the acquisition of real property or interests in real property by fee title, lease, easement or any other method consistent with state law or regulation.

In the West, a water right is a property right that allows the right holder the right to use waters owned by the state. A water lease for fish and wildlife allows the right to be converted to another use. One could argue that leasing water is not obtaining a interest in real property since water rights are not being acquired. However, since water rights allow only the use of water, the leasing of rights or the leasing of the water are basically the same.

Section 6.5 outlines the documentation required to be submitted with the grant agreement for an acquisition of real property:

- (1) A description of the real property to be acquired;
- (2) An appraisal report for the property to be acquired;
- (3) Purchase options or agreements.

Section 6.5 describes how costs will be established for real property acquisition. Section 6.6(C) states:

"The Federal share of project costs will be based on either the actual price paid or the fair market value, whichever is less. (See section 6.9 for guidance on the determination of value."

Section 6.9, Real Property Valuation, describes how the fair market value of real property may be determined. Suggest adding the following to this list:

"E. The fair market value of water leased for habitat improvement may be that which can be negotiated between parties in cases where the transaction is voluntary and a water market is not established."

Section 6.9(C) discusses how a Memorandum of Opinion of Value (MOV) may be employed in unique situations involving the appraisal of minimal values, generally considered to be less than \$10,000. These values may largely be a matter judgement because they are unsupported in the market place. It would seem that a water lease could fit into this scenario in situations where a water market has not been established.

From the above, it would appear that if Section 6.9 was amended with (E) that a state could:

- (1) Negotiate a price with a potential lessor;
- (2) Submit this price as the appraisal through a Memorandum of Opinion Value (a MOV requires all the essential ingredients of a full appraisal in abbreviated form and are subject to approval by the Regional Director of the USFWS), or
- (3) Submit with the MOV a copy of the water lease agreement signed by all parties that contains the negotiated price, or
- (4) Simply provide a statement of what the negotiated price is, or
- (5) Forget about the MOV and simply submit a signed copy of the water lease agreement as proof of the negotiated price.

From Montana's standpoint, options (1) and (5) are preferable because this is how we do things now. Also, a MOV must be approved by the USFWS Regional Director, which may be time-consuming and prolong the time needed to implement water leases (We have to think about relationships with potential lessors in getting a lease completed in a timely fashion).



United States Department of the Interior

FISH AND WILDLIFE SERVICE
1875 Century Boulevard
Atlanta, Georgia 30345

*For to
Christopher
K. S. S.*

907-248-1967

IN REPLY REFER TO:

RECEIVED

APR 18 1996

DEC 18 1995

DEPARTMENT OF THE INTERIOR
WILDLIFE RESOURCES DIVISION
FISHERIES MANAGEMENT SECTION

DEC 21 1995

LEGAL UNIT
FISH WILDLIFE & PARKS

Mr. Bill Jones
U. S. Fish and Wildlife Service
Division of Federal Aid
Post Office Box 25486
Denver Federal Center
Denver, Colorado 80225

Dear Mr. Jones:

*R-Portland
- Wash. D.C.*

I have reviewed E-mail correspondence from Don Friberg and Tom Taylor about advice being solicited by the Montana Department of Fish, Wildlife, and Parks concerning revision of the Federal Aid Handbook Chapter dealing with real property leasing and water rights. After giving my fishery biologists, who routinely deal with such grant technicalities, a chance to review that query we offer these comment:

- First, we agree with Don and Tom that accepting a price negotiated between two private parties as a "fair" value would be an imprudent policy to guide reimbursement from Sport Fish Restoration program funds. As one of my staff so succinctly put it: "How can a state lease water from the state?"
- Water is a common property resource. As such, it may be distributed to private parties for specific uses (agriculture, municipal supply, or recreation) according to a value determined by the government authority which manages it for the common good. The value of alternative uses for water (power generation, transportation, or flood control) has legal precedents which likely vary from state to state throughout the country (both west and east of the Mississippi River).
- Fair market value appraisal considerations seem cogent when private property is exchanged between private interests or is converted into common property. Thus, it seems likely that each state would have a codified means of weighing alternative values whenever it leases water rights.

*re: previous
Starks*

(valid)

cc: Charles Coomer

We do not believe it is appropriate to modify the language establishing a policy for acquiring title to private property in order to encompass water rights leasing. However, it may be appropriate to consider adding Federal Aid policy guidance that addresses water rights leasing if enough states consider it an essential technique for managing fish or wildlife resources.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Luther E. Zachary, Jr.", written in a cursive style.

Luther E. Zachary, Jr.
Acting Assistant Regional Director
Federal Aid

Montana Department
of
Fish, Wildlife & Parks



RECEIVED

APR 18 1996

LEGAL UNIT
FISH WILDLIFE & PARKSMEMORANDUM

To: NIFPA Federal Aid Committee (Coomer, Skinner)

From: Liter Spence, Chair (L)

Subj: Decision on Federal Aid Manual revisions

Date: January 16, 1966

Today I had a conference call with the Denver federal aid and realty people to discuss the appraisal requirement for using federal money to pay for water leases. This was a discussion resulting from the suggested amendment to the Federal Aid Manual we submitted to Bill Jones, Fish and Wildlife Service, Region 6 Federal Aid biologist in Denver, on November 16, 1995.

Individuals taking part in the conference call were: (Federal) Bill Jones, federal aid, Ken Shelton, realty, David Schmidt, water rights, Mary Gessner, Fed. Aid. and Kristin Nelson, Federal Aid; (Montana FWP) Liter Spence, Bobbi Keeler, Fed. Aid. Coord. and Curt Larsen, attorney.

I gave a history of our leasing program, described the seven leases we have in place now and described how we went about negotiating leases and setting the price. The federal folks then told us their opinion on our request.

They told us that appraisals are required if federal aid funds are to be used to pay for water leases and the appraisals have to be done by certified appraisers.

David Schmidt is a certified appraiser and agreed to make the appraisals himself or come to Montana and train some of our own folks to make them. However, we have no appraisers in our department at present so would have to use an outside certified appraiser. There are about four types of appraisals, some requiring more work than others. We also learned that the Memorandum of Opinion Value that has apparently been used in unique situations involving the appraisal of minimum values (\$10,000 or less) has been discontinued since changes were made to the Uniform Relocation Assistance and Real Property Acquisition Act of 1970. We requested they send us a copy of the document making the modification.

Federal Aid would have to have a copy of the lease agreement, the appraisal and the grant application to approve use of federal

funds. I questioned how fast they could do this and I was assured that they had someone working specifically on this type of thing and the turnaround time would be minimal (10 days).

Ken Shelton felt these appraisals would not be difficult. The appraiser would make a Market Survey Appraisal to determine the basic values of the water being leased i.e., valuing the water right for whatever use it could be used for. Instream flow is just one of the uses. Then, the lease negotiator would get more specific with the water right holder during lease negotiations.

I emphasized that there is no market in Montana for instream uses but that didn't seem to be the main factor. The value of the water right for uses other than what it is now being used for is the question. The appraiser would use, as one of his comparables, the prices we have paid so far for instream leases, but the other potential values that the water right could be used for would also be included, i.e., industrial, commercial, domestic, etc.

The value established by the appraisal is the minimum amount we must offer to the potential lessor if Federal Aid money will be used. If we feel the appraisal is too high, we don't have to make the offer and can use other funds if we want to pursue the lease for a lesser cost. The price can go higher than the appraised value through negotiations but the final price paid cannot be less than the appraisal. It is not likely a potential lessor would agree to less than appraised value.

Our concerns have been that appraising the water might inflate the price above what we are currently paying for leases. We have not forced anyone to sign a lease for a certain price. The price has been reached through negotiation and the final price is considered fair to both parties when the lease agreement is signed.

The federal folks emphasized that they wanted to help us with this process. Montana is the only state acquiring instream leases in Region 6 and they want to get acquainted with the process so they can help other states that may start to lease water for instream flows.

Federal aid fisheries budgets in Montana are now what is called "overmatched". There are more state dollars available than there are federal dollars. Thus, we are matching some projects 40/60 30/70, etc. rather the usual 25/75. Under this circumstance, it may be more practical for Montana to continue paying for water leases with all state dollars and not get another entity involved in completing and paying for leases.

c: B. Keeler
C. Larsen
C. Estes
C. Hunter

NIFPA.FA

EXHIBIT 4

RECEIVED

APR 18 1996

LEGAL UNIT
FISH WILDLIFE & PARKS

AUG 10 1987

FA/Admin
3-30
MAILSTOP 60152

James B. Ruch, Director
Colorado Division of Wildlife
6060 Broadway
Denver, Colorado 80216

Dear Jim:

Real property acquisition procedures under the Federal Aid in Fish and Wildlife Restoration programs have been changed. You may now negotiate with landowners at less than fair market value if the proposed purchase fully meets criteria for a voluntary transaction. The criteria are:

1. No specific site or property needs to be acquired, although the agency may limit its search for alternative sites to a general geographic area.
2. The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is eventually to be acquired.
3. The agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed.

Two examples of the use of the criteria are enclosed.

If the proposed acquisition meets the three criteria, negotiations with the landowner may begin prior to an appraisal of the real property. The landowner must eventually be appraised, in writing, of the fair market value of the property and be provided an opportunity to withdraw from the transaction. This ensures that the landowner is treated in a fair and equitable manner.

The process by which the fair market value for real property is established by an appraisal report, a review of the report, and the signing of a just compensation statement, remains intact. The publication entitled, "Uniform Appraisal Standards for Federal Land Acquisition," shall continue to be the guiding force for the appraisal process. A copy of this publication is enclosed.

Along with the usual land acquisition documents, which are part of the Project Agreement, two additional statements must be provided to support a voluntary transaction. First, a statement, acknowledged by the property owner, that your agency will not acquire the property in the event negotiations fail to result in an amicable agreement. The other statement, also acknowledged by the owner, specifies the fair market value of the real property. To keep paperwork to a minimum, we recommend that both statements be added to the Statement of Just Compensation. A sample statement is enclosed for your consideration.

Another significant change involves relocation benefits. An owner-occupant who sells real property in a voluntary transaction is not subject to relocation benefits. A displaced tenant, however, is not a willing seller and is entitled to receive appropriate relocation benefits.

If you have any questions or comments, please contact us.

Sincerely,



Jerry J. Blackard
Chief, Division of Federal Aid

Enclosures (3)

cc: Wilbur Boldt

bcc: Regions 1,2,3,4,5,&7
Federal Aid, Washington, D.C.
Department of Transportation
LRC: 01/01/01
To file to file
FA/Janardister:01/06/07

Examples of the Use of Criteria to Determine
Voluntary Transaction Classification

Criteria for Voluntary Transaction Classification:

- 1 - no specific site or property needs to be acquired, although the agency may limit its search for alternative sites to a general geographic area.
- 2 - the property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is eventually to be acquired.
- 3 - the agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed.

Fictitious Federal Aid Project Case No. 1:

A substantial sport fishery exists in the Broad River for a 100-mile stretch between the towns of Podunk and Newmoon. The potential for utilization of the resource is not being realized, mainly because of limited public access and a lack of adequate boating facilities. To satisfy the public need for resource utilization, the State established a Federal Aid project designed to acquire, in fee title, 10 tracts of land about 5 acres in size, to be used for public access and include vehicle parking, boat access, and related use facilities. The access areas would be located within reasonable driving distances from identified human population centers and otherwise positioned for maximum access to the entire stretch of river.

Discussion:

In this example, real properties available to the State from willing sellers, within the project area, would be ideal candidates for classification as voluntary transactions. The State did not identify a specific site or property that needed to be acquired. Latitude prevails as to the location of any one site. Furthermore, the State obviously did not plan, or intend in any manner, to purchase the entire area or any substantial part of it. The State's position to proceed with negotiations on a voluntary transaction basis would be justified in this particular example.

Fictitious Federal Aid Project Case No. 2:

A 2,500-acre wetland complex known locally as Compton's Marsh, was identified as a valuable waterfowl area with excellent potential for both resource management and public utilization purposes. The State established a Federal Aid project with boundaries that encompassed the entire 2,500-acre area to be acquired in fee title for the establishment of a waterfowl management area.

Discussion:

In this example, real properties within the project area would not be eligible for classification as voluntary transactions. The State identified a specific site, Compton's Marsh, that needs to be purchased. Alternate sites do not exist within the project boundaries. Furthermore, the intent of the project is to ultimately acquire all or substantially all of the identified area in order to establish a viable project that would be substantial in character and design, toward the accomplishment of stated objectives. The State's position to proceed with negotiations on a voluntary transaction basis would not be justified.

Statement of Just Compensation

I certify that the appraisal report dated _____ for the
(tract name) _____ has been prepared in accordance with the Uniform
Appraisal Standards for Federal Land Acquisitions. I approve said report and
hereby inform the property owner that the report established _____ (dollar
amount) _____ as fair market value and just compensation. I further state that
the (State agency name) will not acquire the subject real property in the
event a mutually satisfactory agreement of sale cannot be reached.

(Agency Director) (date)

I acknowledge the above information.

(Landowner) (date)

ESTABLISHED
1930
FEDERAL
ROADS
PROGRAM

Thursday
March 2, 1989 /

MARK UP CY:
Amendments 4/30/93

Part II

**Department of
Transportation**

Office of the Secretary
Federal Highway Administration

49 CFR Part 24
Uniform Relocation Assistance and Real
Property Acquisition Regulations for
Federal and Federally Assisted Programs;
Final Rule and Notice

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 24

[FHWA Docket No. 87-22]

RIN 2125-AB 85

Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This regulation establishes a governmentwide single rule for the implementation of statutory amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act) made by the Uniform Relocation Act Amendments of 1987 Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (1987 Amendments), Pub. L. 100-17, 101 Stat. 248-256. The Uniform Act applies to all Federal or federally assisted activities that involve the acquisition of real property or the displacement of persons, including displacements caused by rehabilitation and demolition activities. This regulation is intended to ensure that the implementation of the Uniform Act by Federal agencies is, in fact, as uniform and consistent as possible, while encouraging State and local discretion in implementing the Uniform Act's provisions.

DATE: This regulation is effective March 2, 1989. Further information concerning agency implementation is provided below.

FOR FURTHER INFORMATION CONTACT: F.D. Luckow, Chief, Program Requirements Division, Office of Right-of-Way, HRW-10, (202) 366-0116; or Reid Alsop, Office of the Chief Counsel, HCC-40, (202) 366-1371. The address is Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:**Background**

This regulation is the final step in the development of a governmentwide single rule for implementing the Uniform Act. The background of this development is described in considerable detail in the preamble to the interim final rule issued on December 17, 1987 (52 FR 47994), and the Notice of Proposed Rulemaking (NPRM),

issued on July 21, 1988 (53 FR 27598), and is not repeated here.

On February 27, 1985, a Presidential Memorandum was signed and published in the Federal Register on March 5, 1985 (50 FR 8953), naming the Department of Transportation (DOT) as the agency with lead responsibility for the Uniform Act. This led to the publication of a multi-agency governmentwide common rule on February 27, 1986 (51 FR 7000).

The 1987 Amendments named the DOT as lead agency. The Secretary of the Department of Transportation has delegated this responsibility to the Federal Highway Administration (FHWA). The 1987 Amendments require the lead agency, in coordination with other Federal agencies, to issue rules, establish procedures and make interpretations to implement provisions of the Uniform Act.

Implementation of the 1987 Amendments

On Tuesday, May 19, 1987 (52 FR 18768) the FHWA issued a Notice describing significant changes in the law and general plans to implement those changes. On Tuesday, December 1, 1987 (52 FR 45667) the FHWA issued a Notice of Regulatory Intent giving further notice of the specific regulatory actions that it and the other affected Federal agencies would take to implement the 1987 Amendments.

A few provisions of the 1987 Amendments upon which the law is explicit and allows for little, if any, administrative discretion or interpretation, and for which a period of public notice and comment would have been impractical, were implemented in an interim final rule in Part 24 issued by FHWA (52 FR 47994), on December 17, 1987.

On the same day (52 FR 48015) 17 Federal Departments and agencies that administer the Uniform Act, and had adopted the governmentwide common rule, published interim final rules rescinding the governmentwide common rule from the codification of their regulations and adopting in its place a cross-reference to the governmentwide single regulation published by FHWA at 49 CFR Part 24. The effective date for these agency rescissions and cross references varied, however all such actions were to take effect on or before April 2, 1989, the date the 1987 Amendments become mandatory.

An eighteenth Federal Department, the Department of Housing and Urban Development (HUD), was unable to join the other Federal agencies in publishing an interim final rescission and cross referencing action on December 17, 1987, because of its need to first satisfy

certain Congressional review obligations. HUD subsequently published such an interim rule on February 19, 1988 (53 FR 4964).

As discussed in the preamble to the NPRM, no comments were received that objected to the use of the rescission and cross-referencing actions by the various Federal agencies concerned to establish a governmentwide single regulation. The only relevant comment objected to the effective date of HUD's rescission and cross-referencing action. HUD considered that comment but does not believe it is feasible to change the date for administrative reasons, in order to best achieve a smooth transition to the new requirements of the 1987 Amendments.

The objective of the February 27, 1985 Presidential memorandum, and one of the primary goals of the 1987 Amendments, was to establish governmentwide uniformity so as to eliminate the differences and inconsistencies among Federal agencies that had plagued Federal implementation of the Uniform Act since its enactment in 1971. These differences and inconsistencies had been particularly burdensome to State and local governments that were administering a variety of Federal programs, and also, in some cases, resulted in differences in the benefits provided to persons in like circumstances.

The 1987 Amendments clearly provide that a single Federal lead agency will promulgate a governmentwide single rule for the Uniform Act's implementation. Accordingly, other Federal agencies covered by the Act no longer have independent statutory authority to promulgate their own separate Uniform Act regulations and, in implementing the Uniform Act, must follow the regulations published by the lead agency. The Uniform Act is unique in that it imposes requirements directly upon a large number of Federal and Federally assisted programs, but assigns the authority for the publication of all necessary implementing regulations to one lead agency. (Of course, such regulations will continue to be developed with the participation of HUD and other Federal agencies).

Accordingly, because a governmentwide single regulation is required by law, because of the unique nature of the Uniform Act, because no comments were received, and because no useful purpose would be served by having 18 Federal agencies take additional regulatory action to formally finalize their rescission and cross-reference actions, the interim rescission

and cross-reference actions taken by such agencies should henceforth be considered final, and will remain in effect indefinitely.

Those departments and agencies, and the parts of the Code of Federal Regulations which contain a cross reference to this part, are listed below:

Department of Agriculture, 7 CFR Part 21
 Department of Commerce, 15 CFR Part 11
 Department of Defense, 32 CFR Part 259
 Department of Education, 34 CFR Part 15
 Department of Energy, 10 CFR Part 1039
 Environmental Protection Agency, 40 CFR Part 4
 Federal Emergency Management Agency, 44 CFR Part 25
 General Services Administration, 41 CFR Part 105-51
 Department of Health and Human Services, 45 CFR Part 15
 Department of Housing and Urban Development, 24 CFR Part 42
 Department of the Interior, 41 CFR Part 114-50
 Department of Justice, 41 CFR Part 128-18
 Department of Labor, 29 CFR Part 12
 National Aeronautics and Space Administration, 14 CFR Part 1208
 Pennsylvania Avenue Development Corporation, 38 CFR Part 904
 Tennessee Valley Authority, 18 CFR Part 1306
 Veterans Administration, 38 CFR Part 25

The United States Postal Service will incorporate changes in its full-text regulation at 39 CFR Part 777 to make it consistent with this rule and will publish its final rule on or before April 2, 1989 in the Federal Register.

Implementation Dates

This final rule replaces the December 17, 1987 interim final rule that was contained in 49 CFR Part 24. As is discussed further below, this final rule is basically the same as the interim final rule except for the addition of provisions implementing those sections of the 1987 Amendments that were not implemented in the interim final rule. This final rule is the last regulatory step in the implementation of the 1987 Amendments. The preamble to the interim final rule noted that "a final rule will replace this interim final rule prior to the date the 1987 Amendments become mandatory".

The rescission and cross reference actions taken by the agencies listed above provided for some differences in the dates when each agency would implement 49 CFR Part 24. (However all the agencies will adopt Part 24 on or before April 2, 1989, the date on which the 1987 Amendments become mandatory). Agency implementation of this final rule is therefore governed by the implementation dates for implementing 49 CFR Part 24 contained in the various agency's December 17,

1987 rescission and cross reference actions. Generally those actions provide that direct Federal projects, undertaken by a Federal agency itself, will comply with Part 24, and that federally assisted projects would comply with Part 24 if the recipient of the Federal financial assistance was able to comply, except that all programs funded by the Department of Housing and Urban Development and the Environmental Protection Agency would not comply with Part 24 until April 2, 1989.

As was the case with the interim final rule, nothing in this rule prohibits the retroactive payment of any additional benefits provided by this rule. Whether to provide any such benefits retroactively depends entirely on an agency's discretion and funding authorities.

Comments Received in Response to the NPRM

On Thursday, July 21, 1988 (53 FR 27598) the FHWA issued a NPRM for the purpose of developing a comprehensive, governmentwide single rule for the uniform and consistent implementation of the Uniform Act, as amended.

The major changes made by the 1987 amendments include:

—Expansion of the Uniform Act coverage to include virtually all activities that receive Federal funds, including those undertaken by private entities.

—A moderate increase in benefit levels.

—The establishment of a lead agency to issue a governmentwide single implementing regulation.

—Providing that the computation of certain relocation benefits be done in accordance with the lead agency regulations, rather than prescribing the computation method in the statute.

—Granting States greater flexibility and discretion in implementing the provisions of the Uniform Act.

All members of the public affected by relocation or land acquisition activities undertaken or funded by Federal agencies were encouraged to comment on this NPRM. Comments from interested State and local governments were particularly requested.

The NPRM was a "full text" rule, primarily as a convenience to the reader. Comments were specifically requested and desired on changes stemming from the 1987 Amendments. Numerous commenters however took the opportunity to again express an opinion on certain issues that were addressed in the governmentwide common rule or in the governmentwide single interim final rule. As such, comments were exhaustively dealt with

in the preambles to those rules (51 FR 7000 and 52 FR 8015) respectively; they are not repeated in this rulemaking.

A description of the regulatory changes proposed for this part were set forth in the NPRM. The only major changes proposed were those required by enactment of the 1987 Amendments. Where no such changes were required, the provisions of the governmentwide common rule, as modified by the December 17, 1987 interim final rule, were generally repeated in the proposed rule. That is, the proposed rule was basically the same as the common interim final rule with the exception of those additional changes that were considered necessary to fully implement the 1987 Amendments. Comments were invited on both those non-discretionary changes that were adopted in the December 17, 1987, interim final rule and the remaining changes proposed in the NPRM.

In furtherance of the statutory objective of securing the views of State and local governments and the public in the promulgation of these regulations, the FHWA conducted three public meetings during the comment period following publication of the proposed rule.

Dates for the meetings were August 17, 1988 in Philadelphia, Pennsylvania, August 22 in Portland, Oregon and August 24 in Chicago, Illinois.

The purpose of these meetings was to receive comments on the proposed rule from interested parties. These comments are entered in FHWA Docket No. 87-22, and have been given full consideration in the development of the final rule.

In response to the July 21, 1988 Federal Register publication, there were a total of 120 comments received at the docket, including those received at the 3 public meetings. These 120 comments represent 101 different organizations or persons: 31 State highway administrations, 4 other State level agencies, 19 local public agencies, 7 private parties, 5 public interest groups, 4 consultants, and 31 associations. Most of the associations represented utilities and were concerned primarily with their new responsibilities as acquiring agencies under the Act or with § 24.307, dealing with discretionary utility relocation payments. Comments received from several organizations involved in the rural electric cooperative industry relating to acquisition activities claimed a significant economic impact on the industry. However, careful analysis of the comments indicates that because of their unfamiliarity with the provisions of the Uniform Act, the

respondents have misunderstood certain of the requirements of the regulation.

Great care and attention have been given to these comments and as most of the apparent questions concern real property acquisition requirements, these comments have been extensively considered and discussed in § 24.101 (b) and (c) of this preamble.

There is no basis for expecting that reasonable compliance with this regulation as required by the 1987 Amendments will impose exceptional additional expenditures on the part of the members of the rural electric cooperative industry. A number of unnecessary administrative requirements found in earlier regulations have been eliminated with a consequent reduction in the burden on affected entities. Other requirements have been reduced or modified to further the goals of efficient and cost effective implementation of the Uniform Act.

More than 1,200 specific comments were received. Many of the comments were directed at provisions in the current governmentwide common rule, for which no changes were proposed in the NPRM, or provisions which are specifically determined by the statute. A large number of comments were general statements, or questions, regarding a section or subsection which required no change in the regulation but which are addressed in the appropriate section discussion following in this preamble.

A number of respondents had questions about operational details which cannot be addressed in the rule itself. FHWA will, however, respond to these and other concerns in forthcoming technical advisories and similar instructive memoranda.

Except as related to a few specific provisions, which are addressed at the appropriate places in the preamble, the vast majority of the public comments dealt more with clarification of interpretation than with substantive matters.

Some commenters suggested different wording or rearranging certain paragraphs within the rule itself. While a certain amount of such editorial refinement has been done when it was necessary for clarity, the FHWA recognizes that the basic format, as well as most of the specific provisions of this rulemaking were articulated in the governmentwide common rule, and acquiring and displacing agencies have become familiar with the existing format. To avoid confusion, we therefore have not made wholesale changes in format or location of the respective provisions in this rule merely for editorial preference.

Some comments suggested changes that are precluded by statute; however, we are cognizant of the concerns expressed in such comments. We are interested in the experiences gained by persons and agencies as they operate within the framework of this regulation, and will consider legislative changes, if necessary.

In addition, an early draft of the NPRM, the NPRM itself, and a draft of this final rule were each circulated to affected Federal agencies for their review and comment. Further, a number of meetings were held with representatives of interested Federal agencies. Many useful comments were provided during this process. We were particularly assisted by the time and expertise provided by HUD.

All comments were reviewed and appropriate changes to the proposed rule were made. A description of the substantive changes from the proposed rule follows. Other changes not affecting content were made for clarity or readability.

Section-by-Section Analysis

Subpart A—General

Section 24.1 Purpose

Paragraph (c) was proposed to establish efficient and cost effective implementation as one of the primary purposes of this regulation. Two of the three comments on the paragraph commended the inclusion of the paragraph while the other indicated misgivings that, without a definition or explanation of the intent of the paragraph, it may appear to some agencies that cost savings are more important than providing the assistance or protection due an owner or displaced person. This paragraph has been included in the final regulation to emphasize the Federal concern that State and local agencies not be burdened with unnecessary regulatory requirements in the implementation of the Uniform Act. For this reason, the NPRM preamble discussion of this paragraph called attention to the waiver provision of § 24.7 and its use to avoid unnecessary delay or administrative burdens. The waiver provision, in turn, is explicit regarding two major considerations. The first is that the Federal agency, before waiving any requirement, must determine that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this regulation. The second is that any request for a waiver shall be justified on a case-by-case basis. While FHWA does not interpret case-by-case to mean, necessarily, a parcel-by-parcel basis,

neither does it encompass the waiver of a requirement on a program-wide scope. The broader the scope of the waiver, the more carefully the Federal agency must weigh its effect on the assistance and protection to be provided an owner or displaced person.

Section 24.2 Definitions

Section 24.2(a) Agency. There were several comments on this paragraph and as a result the paragraph on lead agency has been removed and is now a separate paragraph (§ 24.2) within the definitions.

Other respondents suggested deletions, expansions, or other changes in the remaining definitions. However, the definitions are taken from the statute and they remain unchanged. As explained in the preamble of the NPRM published in the Federal Register July 21, 1988, the term "Agency" is generally used throughout this part to encompass all entities subject to the Uniform Act.

Section 24.2(d) Comparable replacement dwelling. Comments were received from five entities concerning the definition of the term "comparable replacement dwelling." The term and its definition originate in the Uniform Act and the 1987 Amendments, as stated in the preamble of the NPRM. The terms "comparable style of living" and "functionally equivalent," taken together, mean that the comparable replacement dwelling selected for computing the replacement housing payment is located in the same, or same type of, residential development as the acquired dwelling, on a site typical in size for that development; is the same type of dwelling, i.e., single-family for single family, apartment for apartment, etc.; and provides the same or similar amenities within the dwelling. For example, if the displaced person entertains large groups frequently and the acquired dwelling is arranged to accommodate this living style, then the replacement comparable house should also be capable of being arranged in this fashion.

This does not, however, require strict and absolute adherence to an exhaustive, detailed, feature-by-feature comparison. A mechanistic approach is not required. Reasonable trade-offs can be made. These should reflect the range of purposes for which the various features of the replacement dwelling may be used. Additional discussion about this subject can be found in the appendix.

Section 24.2(d)(8)(i). A recommendation was received to change the word "paid" to "offered" in describing the replacement housing

payment provided to a 180 day owner-occupant. We have retained the current wording because the computation of the full price differential, as described in § 24.401(c), is limited to the lesser of the amount needed for purchase of a comparable replacement dwelling or the actual dwelling purchased.

Section 24.2(d)(8)(ii). This section has been revised to clarify that the utility costs for replacement rental housing will be based on estimated average monthly utility costs because the actual utility costs will not be available. For additional clarification of the issue of utility costs refer to the discussion in this preamble for § 24.402(b), Rental assistance payment.

Eight comments were received about the use of 30 percent of the gross monthly income for determining the financial means of displaced tenants. In accordance with the discussion in the preamble of the NPRM, FHWA examined this issue carefully before revising § 24.2(d)(8) and § 24.402. Replacement housing payment for 90-day occupants. The use of 30 percent of gross monthly income for all tenants, to meet the statutory requirement that the income of a low-income tenant be considered when computing a rental assistance payment, is still considered to be the most equitable, practical, and appropriate method. It is similar to the method used by many agencies such as State highway agencies prior to the Common Rule. Additional discussion of this issue is to be found in this preamble for § 24.402(b) Rental assistance payment.

Section 24.2(d)(8)(iii). Eleven comments were received about the possible eligibility of a less than 90-day occupant for a replacement housing payment under Housing of last resort. Most objected to this eligibility.

Persons who are in occupancy at the time of the initiation of negotiations, but who do not meet the length of occupancy requirements in §§ 24.401 or 24.402, are displaced persons and are entitled to advisory assistance and moving payments. They may, also, be entitled to rental assistance under housing of last resort provisions if comparable rental replacement housing is not available at a rent not greater than 30 percent of the person's gross monthly household income. This section provides financial means standards for a class of displaced persons heretofore called "subsequent occupants." When section 205 was amended in 1987, section 205(c)(3) was revised to require assurances that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable

replacement dwelling. Since an occupant of less than 90 days is a displaced person, the necessary criteria for providing a comparable replacement dwelling was developed. The use of the financial means criteria assure that the displaced person will participate in the cost of a comparable replacement dwelling to the maximum extent of his or her financial capability. In response to another comment, FHWA also addressed the appropriate use of the income of those receiving public assistance. If they receive an amount designated for shelter and utilities, then that is the amount that should be used in determining the displaced person's financial means.

Section 24.2(e) Contribute materially. Four comments were received about this definition. Two recommended that all the criteria would have to be present for the business to contribute materially to the income of a displaced person. This is clearly not the case. One preferred that the displacing agency be authorized to develop alternative criteria. This definition has remained as written. FHWA considers that sufficient flexibility has been permitted in the definition of "contribute materially" to accommodate unusual circumstances.

Section 24.2(f) Decent, safe, and sanitary dwelling. Two comments were received concerning the addition of "cooling" to the requirement for heating. If cooling is determined to be as critical as heating for a particular State or area, a displacing agency may, in a uniform manner, require that an adequate cooling system be provided in a comparable replacement dwelling.

Section 24.2(g)(2)(iv) Persons not displaced. The NPRM specifically requested comments on § 24.2(g)(2)(iv) as to whether certain tenants who are affected by HUD funded rehabilitation activities should be considered "displaced persons." Such tenants are those who are not required to move permanently because of the federally funded physical alteration of their dwelling units, or a change in the unit's ownership, but whose rents are increased following completion of the rehabilitation activities, resulting in the tenants moving elsewhere. The NPRM proposed that such tenants would not be included in the definition of "displaced person" if the other conditions included in § 24.2(g)(2)(iv) were satisfied. These conditions included the opportunity to lease and occupy another dwelling unit in the same building or complex (without regard to the amount of rent charged) and the payment of any temporary relocation costs.

Twenty-two comments were received on this subject. Seven recommended that these tenants be covered. Eight recommended the addition of a further condition mentioned in the NPRM, to provide that, so long as the tenant is offered an opportunity to rent a decent, safe, and sanitary dwelling for the same amount as the tenant paid before the rehabilitation project, or 30 percent of the household's gross income, whichever is greater, such tenant would not be considered a displaced person. Two commenters recommended retaining the language in the NPRM. Three commenters generally opposed considering such tenants as displaced persons. Finally, two comments concerned technical matters.

HUD recommended that this section be deleted from the regulation, but suggested that it could be covered in HUD's various program regulations so that coverage could be tailored to each affected HUD program. HUD continues to believe that these tenants are not covered by the Uniform Act because the rental increase that prompts their move is, in HUD's view, not a direct result of rehabilitation. However, HUD has indicated its willingness and desire to treat the financial hardship faced by such persons on a program-by-program basis, and to deal specifically with this issue in developing new regulations implementing its several programs assisting residential rehabilitation.

Since this issue affects only HUD funded activities, we believe that HUD's views should be given great weight. Accordingly, this section has been revised to include language similar to that contained in § 24.2(f)(2)(iii) of the common governmentwide rule. This would not preclude HUD from providing assistance to such persons in their various program regulations.

Section 24.2(g)(2)(viii). At the request of one Federal agency, we have changed the term "sells" to "conveys" in § 24.2(g)(2)(viii). Occasionally, Federal agencies acquire land through exchanges or other agreements that are not technically "sales."

Section 24.2(k) Initiation of negotiations. Several respondents commented on this section. Since it is not practical to try to identify what specifically constitutes the initiation of negotiations for each and every Federal, or federally assisted program, the definition must be somewhat generic. Nonetheless, the intent and purpose is reasonably clear. The prefatory paragraph addresses those situations in which specific Federal program regulations define the meaning of initiation of negotiations for that

program. For the bulk of the acquisition on Federal, or federally assisted programs, projects, or activities, the proposed definition is sufficient. We have added a definition of Notice of intent to acquire or notice of eligibility for relocation assistance, at § 24.2(c), which should help to clarify the meaning of initiation of negotiations and its relationship to entitlements under the Uniform Act. The two controlling points in this set of circumstances are the action or actions of the agency and the action of the displaced person. There must be a clear, legitimate and reasonable causal connection between the two. For example, a tenant moving on the basis of having learned his landlord had applied for a rehabilitation loan would not establish the tenant's eligibility for benefits.

Section 24.2(l) Lead agency. The definition of "lead agency" was inserted at this point in the definitions, and the following preamble discussion refers to the new section numbers for the definition in question.

Section 24.2(n) Nonprofit organization. The definition was revised to recognize that a non-profit organization must, in addition to having tax-exempt status under the Internal Revenue Code, be appropriately incorporated under the laws of a State as a non-profit organization.

Section 24.2(o) Notice of intent to acquire or notice of eligibility for relocation assistance. This added definition was discussed under § 24.2(k). The purpose of a notice of this nature is to clearly establish a displaced person's eligibility for relocation benefits. However, it should be understood that the absence of such a notice does not deprive the person of eligibility for relocation benefits. The Federal funding agency, within its own program or project requirements, should develop a procedure for the timely delivery of such notices to persons to be displaced, including those affected by activities undertaken prior to the commitment of Federal financial assistance to the activity.

Section 24.2(p) Programs or projects. In response to comments from two Federal agencies the definition of "project" has been revised. Because of the multiplicity of Federal and federally assisted programs and projects, a single definition must necessarily be extremely general. Each Federal agency will continue to have responsibility for identifying its programs and projects that are covered by the Uniform Act.

Section 24.2(i) Small business. A number of respondents commented on the definition of "small business." Specific comment on the 500 employee

threshold was solicited and the responses ranged from one recommending a change to a dollar volume criterion; two recommending 20 employees; three recommending 50 employees; four recommending 100 employees; one recommending 250; one respondent recommended the threshold be eliminated and the payment be available to any and all businesses; two indicated concern, but had no threshold number; and ten indicated agreement with the 500 employee threshold. FHWA's use of a 500 employee threshold for a small business is in accordance with the Small Business Administration's current definition of small businesses. Since the purpose of the definition is to facilitate the application of the small business criterion to the eligibility requirements for business re-establishment payments, the definition remains unchanged except for the addition of the requirement that there must be at least one employee at the affected site.

Section 24.2(j) Unlawful occupancy. The definition of "unlawful occupancy" has been changed slightly to clarify its applicability. One commenter mentioned that local custom, type of tenancy and type of facility may dictate different practices in terms of dealing with unlawful occupants. This has been addressed in the modified language. The main point of the other substantive comments received on this definition actually dealt with the relationship of this provision to § 24.206, Eviction for cause. As these two provisions deal with basic eligibility issues, displacing agencies should be especially aware of the interrelationship. In response to comments, changes have been made in the eviction for cause provision which is discussed below at § 24.206. While the intent of this provision is to generally proscribe certain types of occupants, such as squatters, from eligibility for relocation payments, displacing agencies are permitted some discretion where specific circumstances may warrant a finding that the occupancy is lawful.

Section 24.2(z) Utility costs. There were eight comments on this paragraph, five recommended the addition of the cost of trash removal to utility costs. Due to the wide variance in local practices for trash removal ranging from "haul your own" to free government services, FHWA has not modified the definition of utility costs. All costs now included are generally furnished by public agencies.

Section 24.4 Assurances, monitoring and corrective action

Section 24.4(a) Assurances. Six comments were received on this section. One comment about the procedures for monitoring local public agencies conducting highway projects is more appropriately considered under the FHWA's program guidance. Two commenters were concerned about the effect of the regulatory language on their current procedures and practices. One agency also asked that the requirement for a "specific reference to any State law which the Agency believes provides an exception to section 301 or 302 of the Uniform Act" be deleted and, in its place, the lead agency request each State Attorney General to provide an opinion as to exceptions permissible under State law. This would, then, be provided to each State agency; presumably by the lead agency.

We believe the section on Assurances reflects the intent of sections 210 and 305 of the Uniform Act; provides reasonable uniformity for all Federal agencies; and should not impose any significant or time-consuming burden on those agencies with respect to the approval of a State agency's assurances. Neither the Uniform Act, nor this regulation, dictates the length (sentence, paragraph, or page) of a State agency's assurances. The Uniform Act requires that assurances be "satisfactory" and this regulation requires that assurances be "appropriate," and in accordance with sections 210 and 305, for displacing and acquiring agencies respectively. The Federal funding agency determines that the assurances meet these requirements.

Since it is likely that some State agencies may operate under statutes which could provide them with exceptions not available to other State agencies, we believe it necessary for the individual State agencies, on their own behalf, to identify any State law which provides them with an exception to section 301 or 302 of the Uniform Act.

One commenter may have misunderstood the relationship between the assurances and Subpart C, Certification, as well as the nature of the assurances. The assurances should not be viewed as an alternative to certification. If anything, it is the other way around and, even then, the certification must address the requirements of the Uniform Act covered by the assurances if the certifying State agency intends to assume those responsibilities. The assurances are, therefore, fundamental and it is anticipated that most State agencies will initially provide

assurances to ensure compliance with the Uniform Act rather than seek approval of a certification application. A State agency must provide these assurances, or obtain a certification, as set forth in both the Act and regulation, as a condition of receiving Federal financial assistance.

However, in response to a concern of the Department of Agriculture, agencies who acquire under the procedures for voluntary transactions, or persons without the power of eminent domain, will not be required to certify under section 305 of the Uniform Act. Any agency that displaces persons will have to provide assurances or be certified for compliance with section 210 of the Act.

The purpose for providing exceptions to the real property acquisition procedures in § 24.101(a) is to make it clear that not all acquisitions are subject to the requirements of Subpart B of this regulation. The section is intended to describe circumstances which would exclude specific acquisitions from the application of the regulation; it is not intended to provide the basis for the exclusion of an entire agency program.

Section 24.5 Manner of Notice

Two comments were received on this section, which is unchanged from previous requirements in both the Common and the Interim Final Rules. One comment approved of the requirement and the other comment suggested that the notice to the owner of the Agency's interest in acquiring property described in § 24.102(b) also be personally served or sent by certified or registered first class mail. No change has been made.

Section 24.6 Administration of Jointly-funded Projects.

Two comments were received on this section, which is essentially unchanged from previous requirements, except for the addition of the statutory responsibility of the lead agency to designate a cognizant agency in the absence of agreement between Federal agencies. Neither comment addressed this change and no further change has been made.

Section 24.7 Federal Agency Waiver of Regulations

Two comments were received which were specifically related to this section. One noted approval of the provisions as written, the second asked for some examples of a proper justification, or some basis upon which to make a decision. This section has already been discussed in general in connection with comments on § 24.1. Because of the great variety of situations which may

make seeking a waiver advisable, we do not believe it practical to provide examples. Examples have a tendency to be both limiting and, conversely, to serve as unreliable justifications or precedents for expansive interpretations.

The primary concern is that the waiver of a non-statutory requirement in the regulation does not reduce any assistance or protection provided to an owner or displaced person under this part. There is little doubt that requirements imposed by the Uniform Act may, necessarily, create some delay and administrative burden. Therefore, it would be inappropriate to grant a waiver based on the general proposition of delay and administrative burden. The Waiver proposal must be specific and it must protect the rights of owners and displaced persons and not be designed to serve some convenience of the requesting agency.

The proper implementation of this provision of the regulation requires the exercise of good judgement, with proper concern for displaced persons.

Section 24.8 Compliance with Other Laws and Regulations

Two comments were received on this section. One said the list of authorities should include a statute which was already included. The second comment suggested the inclusion of Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and this has been done.

This section was also revised to emphasize that there may be other laws and regulations to be complied with in implementing this regulation and the list provided is not necessarily all inclusive.

Section 24.9 Recordkeeping and reports

Section 24.9(a) Records. Four comments were received on this section. One appreciated the provision for confidentiality of records. Another asked for the "established requirements" for "adequate records." The adequacy of an agency's records is determined by the ability of those records to demonstrate compliance with this regulation regarding the agency's acquisition and displacement activities. Two comments were concerned with the 3-year retention period for records. One suggested an extension to 5 years, the other suggested a period of 3 years after the project is completed. There is nothing to prevent an Agency from retaining records for a period longer than 3 years after final payment to a property owner or displaced person. FHWA has amended the regulation to

require retention of records for 3 years or in accordance with applicable regulations of the federal funding agency.

Section 24.9(c) Reports. Special consideration and comment was requested on the format and timing of this report. Four comments were favorable to both the format and timing of the report. One comment agreed with the format, but claimed the information was needed on an annual basis. Two comments approved of the timing, but wanted the format changed. The final respondent wanted both the timing and the format altered. With the exception of one suggested format change, to lump all non-residential displacements together, the proposed changes are clearly related to the specific program requirements of the respondents. As such, it would be inappropriate to address these concerns with revisions to a report intended to serve, with as little burden as possible, as source material for periodic reports to the Congress on the principal activities conducted under the Uniform Act. The report format and timing remain unchanged.

Section 24.10 Appeals

Section 24.10(b) Actions which may be appealed. Several comments were received on this section. The principal concern was that the appeal process seemed to extend to the question of just compensation. There are well established procedures in place in every State, and in the Federal government, to handle disagreements involving just compensation. These procedures typically begin with the offer of just compensation and conclude, where necessary, with litigation.

What is appealable is found in the Uniform Act and the regulation where they refer to the aggrieved person's "application." This refers to the application for the benefits of the Uniform Act. The intent of the Act and the regulation is to require that there be a procedure for appeals concerning the benefits or eligibility conferred by the Uniform Act. This provides an administrative remedy for persons aggrieved by an agency determination as to his or her benefits or eligibility. Normally this procedure would have to be completed before such person could seek judicial review.

Section 24.10(c) Time limit for initiating appeal. Two commenters suggested extending the time limit for initiating an appeal. The responsibility for setting the time limit rests with the Agency subject only to the constraint that it not be less than 60 days after the person receives written notification of

the Agency's determination regarding the person's application or claim.

Section 24.10(h) Agency official to review appeal. Several comments were received about agency appeal processes, the levels of review, and the official conducting the review, whether from the agency or another appropriate hearing officer.

The appeal process is an entirely internal process of an agency. The decisions by the agency about the process must only conform to these regulations and whatever other administrative rules which the agency must follow. However, as stated in the rule, agencies must advise the person of his or her right to seek judicial review after the administrative hearing procedure is exhausted.

Having considered the comments, FHWA has elected to retain § 24.10 as written.

Subpart B—Real Property Acquisition

Section 24.101 Applicability of Acquisition Requirements

Section 24.101(a). There were a large number of comments on this section which addresses the applicability of Subpart B and Title III of the Uniform Act. Most of the comments expressed a concern with limited scope of application, and several requested that the voluntary transaction criteria found in Appendix A of the December 17, 1987 interim final rule be included.

FHWA has substantially revised this section based on the comments. Voluntary transaction criteria have been included, and a provision has been added exempting from coverage certain real property transactions between cooperatives and their members. The presence of Federal financial assistance is the basic determinant for applicability, with exceptions provided for those acquisitions listed in § 24.101(a)(1)-(4).

Eminent domain authority is not a determining factor by itself, although any acquisition made under the threat of eminent domain is clearly subject to Subpart B requirements because such an acquisition cannot be a voluntary transaction.

Essential to the voluntary transaction process is the requirement that the owner must be informed in writing that the property will not be acquired unless amicable agreement can be reached. However, even though an acquisition may be excluded as a voluntary transaction, agencies may choose to follow the Subpart B process.

Section 24.101 (b) and (c). Certain clarifications have been made in these sections. The change in § 24.101(c),

federally-assisted projects, is applicability "to the *greatest* extent practicable under State law" (emphasis supplied), which is the same wording as that found in section 305(a) of the Uniform Act. FHWA interprets this to mean an agency must comply if compliance is legally possible under State law. This should be taken into account in an agency's assurances pursuant to § 24.4(a).

Utility companies as acquiring agencies.—When the Congress amended the Uniform Act, it changed the definition of "State agency" to include "any person who has the authority to acquire property by eminent domain under State law." Utility companies are the most common example of non-governmental entities which are granted eminent domain authority. The effect of this change was, for the first time, to bring utility companies under Uniform Act coverage for certain of their projects.

Sixteen comments were submitted by or on behalf of utility companies, representing the views and concerns of many hundreds of individual entities through their associations, cooperatives, and law firms. Almost all of these comments concern the possible impact of Subpart B of these regulations upon rural electric cooperatives that may receive Federal financial assistance from the Rural Electrification Administration (REA) in the Department of Agriculture (USDA).

This section of the preamble is devoted to the comments and concerns of those entities. FHWA believes that compliance with the Uniform Act and these regulations will not be as burdensome as some of the commenters perceive it to be. In addition, as discussed further below, one suggestion, exempting from coverage certain transactions between cooperatives and their members, has been adopted.

Following are the substantive issues raised in the comments, with an FHWA reply.

1. The rule should be amended so it would not apply to electric cooperatives.

Reply: FHWA does not have authority to exempt any entity or group of entities from compliance. However, as described in some detail later, the regulations intentionally provide much latitude and discretion in how a particular objective may be accomplished.

2. It would appear that all of our projects and acquisitions are covered by the regulation.

Reply: There are certain conditions that must be present before a utility company must comply with Subpart B requirements. Most importantly, there must be Federal financial assistance as

defined at § 24.2(j). If Federal involvement is solely the guarantee of a loan from non-Federal sources, for example, the Uniform Act is not applicable.

If an individual acquisition qualifies as a voluntary transaction under § 24.101(a)(1), Subpart B requirements do not apply. This may be important for non-site specific acquisitions.

It was stated in a comment that a condition of membership in a cooperative may include an obligation to contribute power line rights-of-way. A provision has been added in § 24.101(a)(3) to provide that Subpart B requirements do not apply if the contribution of real property to a cooperative is made by a member to meet the requirements of membership agreements, contracts or bylaws. FHWA believes that such cases, where members of cooperatives have agreed to provide real property to the cooperative as necessary to advance the common interest of the members, are similar to voluntary transactions rather than to normal Federal or federally funded acquisition.

3. This regulation appears to replace the State eminent domain law under which we operate.

Reply: Both section 305 of the Uniform Act and § 24.101(c) of this part make it clear that the real property acquisition policies in Title III of the Act and Subpart B of this part are applicable "to the greatest extent practicable under State law". This means that while compliance is required if it is not prohibited by State law, those provisions do not supercede or overrule any State law requirements. Accordingly, utility companies must continue to comply with the requirements of State eminent domain law. Section 24.4(e) of this part addresses the assurances of compliance that must be submitted (generally a one-time action) to the Federal agency providing financial assistance. Section 24.101(c) addresses the matter of exceptions to Subpart B provisions because of provisions of State law.

A utility company may wish to contact the highway agency in its State for assistance in preparing its assurances in those situations where the same State eminent domain law applies to both the highway agency and the utility company. The State highway agency should know whether the assurances of compliance need to be qualified because of State law.

4. We understand §§ 24.102(c)(2) and 24.103(a) to require an appraisal report containing all of the information listed

in § 24.103(a) when the property value exceeds \$2,500.

Reply: That is not the intent of these sections. Under the appraisal waiver provisions of § 24.102(c)(2), the utility company has the option of not making an appraisal if the value is estimated to be less than \$2,500, and the valuation problem is simple and straight-forward. See the preamble discussion of that section for further information.

Under the appraisal standards in § 24.103(a), the utility company essentially determines its own appraisal documentation standards and policies, particularly with respect to acquisitions which do not require a detailed appraisal. The intent of this provision is to match the extent of the analysis and documentation to the complexity of the appraisal problem.

In difficult, complex valuation situations, § 24.103(a) requires preparation of a "detailed" appraisal, and specifies the minimum content of such appraisals. The minimum content specifications apply only to detailed appraisal reports. Several commenters missed this point.

Finally, there is no necessary connection between the \$2,500 appraisal waiver ceiling, and the need to prepare a detailed appraisal report. The decision on when to secure a detailed appraisal lies primarily with the utility company, based on its assessment of the situation.

8. The regulation appears to require that we contract for the services of independent appraisers, even though we have well qualified appraisers on our staff.

Reply: This is incorrect. The use of staff or outside personnel for appraisal work is entirely at the discretion of the utility company. The only policy which addresses this issue is § 24.103(d), which essentially states the appraiser must be qualified to perform the work.

6. The regulation appears to require that we give the owner a copy of the appraisal, which will hinder negotiations.

Reply: The regulation does not require that the owner be given a copy of the appraisal. In some cases this is a matter of State law, but in the typical situation it is a negotiation policy decision at the discretion of the Agency.

In § 24.102(e), the owner is required to be given a written offer and summary statement which, in very brief terms, amounts to a description of what the offer is for. A utility company may wish to contact the State highway agency and obtain a copy of its summary statement form or format for use as a guide.

7. These regulations are not appropriate for use in acquiring substation sites. Generally there are

many alternative locations available, and one of the owners will usually be happy to sell a satisfactory site.

Reply: It was this kind of situation FHWA contemplated when it developed the voluntary transaction policy and criteria found at § 24.101(a)(1). If an acquisition meets the criteria, Subpart B requirements do not apply.

8. Section 24.102(j) regarding a deposit with the court is in conflict with our State law on various points. State law specifies a different place for the deposit, and is likewise specific on how the amount of the deposit is to be determined.

Reply: The provision comes from section 301(4) of the Uniform Act, and, as noted above, is applicable to the greatest extent practicable under State law on federally assisted projects. If State law prescribes a different process there is no conflict because State eminent domain law prevails. See also § 24.4(a) regarding assurances.

9. Just compensation in our State is based on the before and after rule, rather than the take plus damage rule. If we were to appraise damages separately, as seems to be necessary under § 24.103(a)(5), the appraisal would not be admissible in court.

Reply: The language in section 301(3) of the Uniform Act recognizes the differences in State law on what constitutes just compensation. It was not FHWA intent to force a different appraisal process. This oversight has been corrected by the addition of "where appropriate" to § 24.103(a)(5).

10. The requirement for a review appraisal in § 24.104 should be deleted except for high value situations.

Reply: FHWA has not adopted this recommendation because of the importance we place on the appraisal review function.

The comment indicates there may be a misunderstanding. Section 24.104 does not require an appraisal by a reviewer (although the reviewer may choose to do so because of an inadequate appraisal report). Rather, this section is intended to require a review of the appraisal or appraisals on a property.

The review is an essential part of the process of establishing the amount of the offer of just compensation to be made to the owner. In simplistic terms, the reviewer checks for errors of fact, consistency of value from property to property, and general adequacy of the appraisal as a basis for the offer of just compensation.

Where there is only one appraisal, the reviewer is that critical second party involved in the process of setting the amount of the offer. The association with § 24.4(c) regarding prevention of

fraud, waste, and mismanagement is readily apparent.

The reader is directed to the discussion under § 24.104 in Appendix A for further information. As stated there, in low value, uncomplicated situations a signature may suffice as the reviewer's statement.

The foregoing discussion of issues raised in the comments is intended to assist utility companies and others in the implementation of these regulations and to describe how the impact of these regulations on cooperatives will be limited. However, it is possible that there may be other questions that have not been answered. We encourage any further comments relating to the impact of this regulation on rural electric cooperatives. Any further comments on this subject will be considered and, if warranted the regulation will be amended and/or the discussion in the preamble will be supplemented.

Most, if not all, Federal financial assistance for utility companies comes through the REA of the USDA. FHWA intends to work closely with Departmental officials in effecting smooth implementation.

Section 24.102 Basic Acquisition Policies

Section 24.102(c)(2). This section addresses waiver of appraisals. One comment said agencies should have the latitude to decide not to obtain an appraisal where property may be donated without first obtaining a release from the owner.

The Agency has that discretion for the under \$2,500 value category. A prior release is not necessary. However, the FHWA does not agree with extending that same policy to all donation situations. An owner may want an appraisal and an offer before making a decision to donate, and it is only fair to make the owner aware of this option.

On the matter of establishing the dollar threshold at \$2,500, four stated it was too high, seven said it was too low, and ten stated \$2,500 was acceptable. FHWA has decided to retain the proposed threshold.

A commenter raised the question of a review where no appraisal has been made. Other comments questioned how an Agency is going to know if an acquisition is worth less than \$2,500 in the absence of an appraisal.

Section 24.102(c)(2) contemplates that an informed judgment will be made by a qualified person. While it is not a regulatory requirement, prudence suggests the value calculation be in writing, and be retained.

On the matter of a review: Under § 24.102(d), the Agency is required to make a written offer. Offer letters are generally signed by someone at the management level. It is general FHWA policy to have not less than two people involved in setting the amount of an offer of just compensation. This process would constitute a review where no appraisal is made. Precisely how such matters will be handled is within Agency discretion.

A few comments objected to waiving an appraisal for any reason. An Agency has no obligation to waive the appraisal of an acquisition if it prefers not to.

Section 24.103 Criteria for Appraisals

Section 24.103(a). One Agency described how it intended to integrate the appraisal waiver provision in § 24.102(c)(2) with this section on appraisal standards. Many other variations are also possible, but the comment is summarized here for purposes of illustration. In brief, negotiators will be instructed to clearly explain to the owner the right to have an appraisal made and in no way pressure the owner to sign a waiver; acquisitions valued between \$500 and \$2,500 are to be supported by sales in the project area, and will be approved by a review appraiser prior to negotiations. As described, this Agency intends to do more than the minimum: An appraisal would always be a property owner option; some value documentation will be a requirement; and a reviewer's approval is necessary in certain circumstances. This description is intended to illustrate the latitude an agency has in implementing the provisions of this Subpart.

Section 24.103(a)(2). One comment recommended the requirement for a 5-year sales history be cut back to two or three years. This recommendation was not adopted, primarily because it applies only when a detailed appraisal is necessary. When a detailed appraisal is not necessary, the agency may set a different standard.

Section 24.103(a)(3). A comment recommended that a statement be added to the effect that the appraiser must explain the absence of more recent sales data when the sales used are over 6 months old. This is viewed as a good business practice on the part of the appraiser, but not as an essential regulatory requirement.

Section 24.103(e). Three comments recommended an increase in the dollar threshold from \$2,500 to \$5,000 where the same person can both appraise and negotiate. The FHWA has not adopted this recommendation because support for the increase is not widespread.

Section 24.104 Review of appraisals

Section 24.104(b). In response to a comment, a minor editorial clarification has been made to this section regarding the role of the reviewing appraiser in establishment of the Agency's offer of just compensation.

Section 24.105 Acquisition of Tenant-owned Improvements

Four comments expressed a concern with the matter of adequately protecting the rights of a tenant owner of improvements. One of these comments recommended specific reference to tenant owners be made at many points within Subpart B.

FHWA has made no change because it believes tenant owner interests are adequately protected. The language of Subpart B is based on the premise that if a tenant can demonstrate an ownership interest in real property, that person is an owner of real property to be acquired for purposes of this regulation, and is to be treated as such.

Section 24.105(c). Five comments stated that contributory value or salvage value measures of compensation to a tenant-owner are not fair and equitable when the appraiser finds that all of the value is in the land, with no value attributable to the improvement. As a consequence, they recommended a "value in place" measure of compensation be added to this section.

FHWA appreciates the difficulty this circumstance presents, but the provisions of Section 302 of the Uniform Act do not permit it to accommodate the recommendation. Section 302 specifies contributory value, or value for removal (which has been implemented as salvage value) as the measures of compensation.

However, there is some latitude available under § 24.105(e). Payment under "other applicable law" could include provisions of State law and/or relocation assistance benefits. Also, contributory value can be viewed on a temporary basis in the valuation estimate process. FHWA believes the basic objective is payment of an amount of compensation which is just, reasonable, and fair.

Two comments were received from representatives of the outdoor advertising industry. Both comments focused on the way advertising signs are treated by §§ 24.2(q), 24.105, and 24.303(e) of the regulation. They suggested that, pursuant to section 302 of the Uniform Act, all advertising signs covered by the Uniform Act should be acquired as tenant owned improvements, and that the value of a sign in place before removal should be

used in determining the owner's compensation. Neither of these suggestions have been adopted.

Specific language concerning advertising signs in section 101(7)(D) of the Uniform Act makes it clear that some, if not all, signowners should be entitled to moving and related expenses under section 202 of the Uniform Act, rather than to compensation for a sign's acquisition under section 302. Furthermore, that language in section 101(7)(D) was amended in the 1987 Amendments to broaden the benefits available to signowners under section 202. For many years, FHWA has reconciled the specific language in section 101(7)(D) of the Uniform Act and the more general language concerning tenant improvements in section 302 of the Act by providing that an advertising sign considered to be personal property under State law should receive the relocation benefits provided by section 202, and if considered to be real property, it should be acquired in accordance with section 302. FHWA believes this is the most reasonable interpretation of the provisions of the Uniform Act, and it continues to be reflected in this final rule.

When a sign is acquired under section 302, subsection 302(b)(1) provides that its owner should receive the greater of its contributory value to the real property or its "fair market value . . . for removal from the real property."

FHWA interprets this phrase to mean that removal of the sign must be taken into consideration in determining "fair market value for removal," and believes this is done in §§ 24.105 and 24.2(q) of the regulation.

Subpart C—General Relocation Requirements

Section 24.203 Relocation Notices

Section 24.203(a). A comment was received that the term "as soon as feasible" was not sufficiently specific. FHWA considers this term to mean "as soon as practical" and does not believe that any further elaboration is necessary. This comment and several other similar comments addressed to this section may have merit in individual situations, but do not necessitate changes in the regulations. Displacing agencies may wish to clarify particular matters that are of concern to them in their operating instructions.

Section 24.203(b). In response to one comment, a definition of "Notice of intent to acquire or notice of relocation eligibility" has been added at § 24.2(c).

Section 24.205 Relocation Planning, Advisory Services, and Coordination

Section 24.205(a) Relocation planning. There were 13 comments concerning relocation planning. Most were in favor of the planning concept, but were concerned about how relocation plans could hinder project development. The relocation planning required by this section should be a tool to assist in the orderly development of a project and should be considered in this light by both the displacing agency and the funding agency. FHWA believes that most displacing agencies are well aware of the program or project benefits which can be derived through early and sound relocation planning and many agencies currently use comprehensive planning techniques in project development. We do not view relocation planning as a complicated, time consuming activity. We see relocation planning as a process which provides meaningful information to program and project decision makers. It does not need to result in a detailed document containing unnecessary data and needless problem solving. Instead, it should be a process which is scoped to the complexity and nature of anticipated program or project relocation activity and should not require a burdensome commitment of Agency resources. Language emphasizing this has been added to this section. In response to several comments, there is no requirement that planning documents be submitted for approval to the funding agency at any stage of a project or program. Planning is the responsibility of the displacing agency.

Section 24.205(c) Relocation assistance advisory services. Several comments were received concerning relocation assistance advisory services. Three comments objected to the requirement to provide transportation to inspect housing in § 24.205(c)(2)(ii)(D). This provision is not new and has been a part of the common rule for implementation of the Uniform Act since that rule was first promulgated by DCT on March 5, 1985 (50 FR 8955 (1985)). It is the obligation of the displacing agency to assure that both owners and tenants are able to inspect the housing to which they are referred. There is no evidence to suggest that this service has been abused by displaced persons.

Section 24.205(c)(2)(iii). At the suggestion of one commenter, the words "comparable and" have been removed from this section. The emphasis is on the identification of suitable property locations for business and farm operations.

Section 24.205(c)(2)(vi). The provision of advisory services to a person who

initially occupies property after it is acquired by the agency is required by the statute. Therefore, it cannot be deleted as recommended by several commenters. These persons are not displaced persons, but are eligible for advisory services.

Section 24.208 Eviction for Cause

In response to comments, this provision has been modified in several respects. HUD, in its program regulations dealing with displacements caused by other than State-agency acquisition, has long recognized eviction for cause as a basis for denying eligibility for relocation benefits. Now that the Uniform Act and these implementing regulations apply to this broader array of displacement activities, it is necessary that valid evictions continue to be recognized as a factor that can extinguish potential rights to relocation payments.

At the same time, it is important that otherwise entitled persons not be denied relocation payments by an eviction undertaken for the purpose of evading an obligation to make relocation assistance available, or for minor violations of a lease.

Accordingly, this final rule retains the major thrust of the eviction for cause section, which has been a part of the governmentwide common rule since 1980, that persons lawfully occupying property at the time of the initiation of negotiations will continue to have a presumptive entitlement to relocation payments.

However, modifications have been included to clarify that payments may be denied in certain circumstances. Thus, a person who is evicted for cause prior to the initiation of negotiations may be denied payment even if that person vacates the premises after the initiation of negotiations. In addition, persons who seriously or repeatedly violate material terms of the lease or occupancy agreement may be evicted even if the eviction proceeding is begun after the initiation of negotiations.

In either case, the Agency must assure itself that the eviction action is not undertaken to evade the protections of the Uniform Act. Such eviction for cause circumstances should arise only infrequently and Federal funding agencies will be expected to ensure that this provision is not misused.

Section 24.207 General Requirements—Claims for Relocation Payments

Section 24.207 (f) Deductions from relocation payments. This section has remained the same as was published as part of the common rule in the March 5,

1985 Federal Register. Section 24.207 continues to allow agencies to deduct a person's unpaid rent owed to the Agency from the person's relocation payment in cases where it will not prevent the person from obtaining a comparable replacement dwelling. Since the relocation payment is not to be considered income (§ 24.208) and is provided for the particular purpose of obtaining replacement housing for the displaced person, it cannot be released to other creditors without assurances that comparable decent, safe, and sanitary housing will be available to the displaced person.

Subpart D—Payments for Moving and Related Expenses

In addition to comments on proposed rule changes, a number of comments received on this subpart were requests for clarification. Ordinarily, such clarification would be provided by technical advisory guidance. However, to be responsive to the comments, we have summarized the answers to some of these below.

Section 24.306 in the NPRM has been renumbered as § 24.304 and § 24.304 has been renumbered as § 24.306 to provide a better grouping of topics. The numbers used below are those used in this final rule.

Section 24.301 Payment for Actual Reasonable Moving and Related Expenses—Residential Moves

Questions were received about payment for the storage of personal property covered in § 24.301(d). As with all other moving expenses, the Agency determines what storage costs are reasonable and necessary for a move to take place. If the Agency determines storage to be necessary, the costs of moving the personal property to and from storage would also be eligible for payment. Boarding of animals is not considered to be storage.

Section 24.302 Fixed Payment for Moving Expenses—Residential Moves

There were numerous comments concerning the \$50 fixed payment for moving expenses provided in § 24.302. FHWA has clarified the language of this exception to apply only to persons with minimal personal possessions who are in occupancy of a dormitory-style room shared by two or more unrelated persons, or a person whose residential move is performed by an agency at no expense to the person. This language is also reflected in the moving expense schedule which is published by FHWA elsewhere in this Part II of today's Federal Register.

Section 24.303 Payment for Actual Reasonable Moving and Related Expenses—Nonresidential Moves

Sections 24.303(a)(3) and 24.304(a)(4). Four comments asked for clarification of the difference in treatment of utilities in these two sections. The expenses for providing utilities under § 24.303(a)(3) are those costs incurred to attach relocated personal property to utility service already provided on-site, such as electrical boxes, gas meters, and water meters. Modifications to the equipment or to the on-site utility service may also be eligible, if necessary. These costs must be necessary to reinstall personal property that has been moved from a displacement site or newly installed at such site and would generally only benefit the relocated business operation. Section 24.304(a)(4) provides for making electrical and other services available to the replacement site. These costs may be necessary to make the real property suitable for the business operation and could generally enhance the value of the real property. Costs under § 24.304(a)(4) are limited by statute to \$10,000 for all reestablishment expenses. Costs under § 24.303(a)(3) are limited to what is necessary, without dollar limitation.

Section 24.303(a)(9). There were several comments about relettering of signs and replacing stationery made obsolete as a result of a move. This section covers those business items typically used by a business for the purpose of advising its customers and the public of the location of the business. If a displacing agency considers other items appropriate for this category, it may use the waiver procedures in § 24.7 on a case-by-case basis.

Section 24.303(a)(10). One commenter suggested that an acquiring agency could become responsible under the requirements of this section for abandoned personal property that could be considered hazardous material. This is not a Uniform Act issue, but an issue typically governed by Federal or State laws governing the proper disposal of hazardous material.

Section 24.303(a)(13). Two comments stated that the \$1,000 limit on the cost of searching for a replacement location was not adequate for some business and farm operations. The displacing agency may use the waiver procedures in § 24.7 on a case-by-case basis if a displaced business or farm operation has unique requirements or circumstances.

Section 24.303(c). Questions were received about self-moves of business or farm operations. This section does not preclude actual cost self-moves supported by records and receipts of the

costs incurred. The Agency may use moving costs findings prepared by qualified staff, estimates obtained by the Agency, or if acceptable to the Agency, estimates obtained by the business or farm operator. A single moving cost finding for a low cost or uncomplicated move prepared by qualified staff is a "single bid or estimate" for purposes of this section.

Section 24.304 Reestablishment Expenses—Nonresidential Moves

Twenty eight commenters provided comments on this section. While generally in agreement with the list of eligible expenses in § 24.304(a), the majority thought that the dollar limits should be removed from the three categories where limits are imposed. We have elected to retain the dollar limits which serve as cost controls for expenses which we believe to be most vulnerable to abuse. Since it is the Agency's prerogative to determine which reestablishment expenses are reasonable and necessary and since § 24.304(a)(13) allows the Agency to request a waiver from the Federal funding agency within the \$10,000 statutory maximum, there is sufficient flexibility provided to the Agency. On the other hand, the stated limits of \$5,000 for increased operating costs and \$1,500 for exterior signing are considered to be reasonable in most cases, and may assist a business owner in making appropriate decisions about a new business site and the size and type of signing for the new business site. The inclusion of increased costs of operations as an eligible expense in § 24.304(a)(10) was also commented upon. The Uniform Act's legislative history supports the inclusion of these expenses. Since the costs of operation are legitimate reportable business expenses, the income tax records of most businesses should be adequate to provide a record of such costs prior to displacement. The costs at the new location can be established or estimated using such sources as the new leases, utility company projections for utility charges and taxing authority records for tax increases.

Section 24.304(b)(6). This section has been deleted. The 1987 Amendments exclude "a person whose sole business at the displacement dwelling in the rental of such property to others . . ." from qualifying for an "in lieu" payment (see § 24.306(a)(4)). This exclusion, however, does not extend to reestablishment expenses.

Section 24.306 Fixed Payment for Moving Expenses—Nonresidential Moves

Comments were received from 20 sources on this section. Recommendations were made to pay the fixed payment as an option to a business with no criteria or, conversely, to pay the fixed payment only if the business was discontinued. The additional criteria added in the NPRM were also commented upon. Several wanted to add additional criteria. One commenter wanted different criteria for farm operations than for businesses. A number of comments were received that would make the owners of residential property ineligible for this payment. Others thought that the owners of leased commercial property should also be ineligible.

FHWA has not changed this section. The fixed payment is an alternative to the payments for moving and reestablishing a business, farm, or nonprofit organization. The new criteria are added to either clarify eligibility, correct inequities, or implement new statutory exclusions as explained in the preamble of the NPRM. The displacing agency retains the flexibility to determine the basic eligibility based on the substantial loss of existing patronage criteria and gains criteria that can readily be explained to displaced persons.

There is no requirement now, nor has there ever been such a requirement, that a displaced business must be discontinued to receive this payment. Similarly, this payment has been and continues to be available to otherwise eligible businesses that do discontinue operations. There is also no requirement that a business be without a source of income as suggested by three commenters.

Establishing separate income and payment criteria for farm operations would not be appropriate at this time.

There were several comments concerning the perceived inequity of the ineligibility of owners of rental residential property for a fixed payment while owners of other rental property remained eligible. FHWA has corrected this inequity by, generally, excluding owners of rental property from eligibility for non-residential fixed payment.

Section 24.306(d) Nonprofit organization. There were a variety of comments concerning the minimal fixed payment of \$2,500 in lieu of actual moving expenses. Most of them favored increasing the payment available to nonprofit organizations. In response, FHWA has revised the payment to

nonprofit organizations to range from \$1,000 to \$20,000 based on criteria similar to businesses, i.e. the average annual revenue for 2 years minus operating expenses. This procedure will be more equitable for nonprofit organizations.

Section 24.306(e) Average annual net earnings of a business or farm operation. Several comments were received about the computation of average annual net earnings when business or farm operations suffer a net loss for any year. There are several ways to compute net losses. Some agencies have used "0" if the net earnings result in a net loss. Other agencies use the actual net loss figure. Either method is acceptable if used uniformly by a funding agency.

Section 24.307 Discretionary Utility Relocation Payments

A few respondents urged that the reimbursement of extraordinary expenses be made mandatory, while several others indicated the discretion given the displacing agency should be retained. The discretionary language, "the displacing agency may, at its option," has been retained because the 1987 Amendments and the Conference Report accompanying them are quite clear that this payment is intended to be at the discretion, or option, of the displacing agency. It would not be appropriate to make mandatory by regulation that which was left clearly permissive by statute.

Section 24.307(a)(5). A number of respondents objected to the language in the NPRM which requires that State or local reimbursement be "permitted by State statute." The principal thrust of the objections was that this language meant that unless there was a specific State statute permitting the payment, no payment could be considered. FHWA agrees that the proposed language could be subject to misinterpretation and have revised the subsection, to provide that reimbursement must be "in accordance with State law." This conforms to the clear intent of Congress, as expressed in the Conference Report that accompanied the 1987 Amendments.

Section 24.307(b) Extraordinary expenses. Six comments expressed concern with this section's definition of "extraordinary expenses." Three of the comments recommended changes which would permit certain expenses, even though ordinarily budgeted, to be considered as "not routine or predictable expenses" and, therefore, qualify as "extraordinary expenses." FHWA has not adopted these recommendations. It is the expressed intent of Congress, as found in the

Conference Report, that "utilities would continue to pay those ordinary relocation costs within their reasonable contemplation as occupants of local rights-of-way." FHWA believes the language of this section will allow a utility company to present its case for those expenses which it considers to be "not routine or predictable" and not ordinarily budgeted as operating expenses.

Four comments urged removal of the provision which would exclude from extraordinary expenses those expenses which the utility company has explicitly and knowingly agreed to bear as a condition for use of the right-of-way. Again the language of the rule represents the clear intent of Congress as expressed in the Conference Report accompanying the 1987 Amendments.

While we are cognizant of the concerns presented by the public utility industry, we believe this rule clearly expresses the intent of Congress, and, as a consequence, § 24.307(b) is unchanged.

Subpart E—Replacement housing payments

Section 24.401 Replacement Housing Payment for 180-Day Homeowner-Occupants

Section 24.401(a)(2). Several comments were received about the extension of eligibility for a replacement housing payment beyond one year for good cause. In response, the meaning of "for good cause" has been amplified in the appendix.

Section 24.401(a)(2)(i). Comments were received about the appropriate "start" date for the one-year eligibility for a replacement housing payment in the case of condemnation. In response FHWA has clarified that the one-year period starts when the full amount of estimated just compensation is deposited in the court. This may be the Agency's proffered amount or a commissioners' award, if appropriate. In either case, the Agency does not need to delay the one-year start date until final adjudication.

Section 24.401(a)(2)(ii). This section has been changed to conform with the amendments of section 203(a)(2) of the Uniform Act made by section 406(5) of the 1987 Amendments. Several comments were received about the differences between the criteria for eligibility for 180 day owner-occupants and 90 day owner-occupants and tenants. The change in criteria for 180 day owner-occupants is statutory. There is no requirement that changes be made in criteria for 90 day owner-occupants and tenants. The "date the displaced person moves" is a simpler criterion to

use than the "date the displacing agency's obligation under § 24.204 is met" and has been retained where feasible.

Section 24.401(d). Thirty-one comments were received concerning the method for computing increased mortgage interest payments. The commenters were about evenly split between preference for the buydown method as presented in the body of the NPRM, and the buydown method presented in the preamble. A few wanted the option of using the former annuity or amortization method if it should prove less expensive for the Agency.

The discussions in favor of the simplified buydown method presented in the preamble emphasized the cost-savings and time-savings to the Agency, and the ability of a displaced person to plan his or her replacement housing purchase knowing the full amount of payments to which such person is entitled. The view of these commenters was that this would not create a windfall because the displaced person still had to acquire a decent, safe, and sanitary replacement dwelling to be eligible; only the financing terms were his or her choice. Several comments were also made that the displaced person could readily understand the concept that an interest rate at less than current market interest rates was an asset and the computed payment was related to this fact.

On the other hand, those comments that favored the language in the body of the NPRM were concerned that a windfall would be created if a person paid cash for the replacement dwelling or assumed an existing mortgage at a lower interest rate than the computed rate. There was also a question of the legality for the preamble alternate, and concern that making the payment available on terms other than those actually used in the purchase of a replacement dwelling would not satisfy the statutory language.

FHWA has elected to retain the procedure in the body of the NPRM. This procedure requires that an estimate of the amount of the payment be provided to the person. Such estimate shall be based on the current prevailing rate for fixed-rate mortgages and subsequent payment based on the actual mortgage terms obtained. This process will require advisory services to the displaced person to enable such person to be prudent in the financing of his or her replacement dwelling.

In response to comments received, FHWA has revised § 24.401(d)(2), by adopting the language in § 24.401(d)(3)

of the common governmentwide rule, to provide that the payment shall be based on the remaining term of the mortgage on the displacement dwelling or the actual term of the new mortgage, whichever is less.

Many of the same commenters who preferred this method did not think that their agency could make the increased mortgage interest payments at the time of closing because of their payment procedures or the loan processing procedures of lending institutions. In response, the final rule has been revised to provide that the payments must be made "at or near" the time of closing. However, the implied purpose of the increased mortgage interest costs payment is to reduce the replacement mortgage; therefore this payment must be available to lower the amount of the mortgage in a timely manner, preferably at the time of the closing on the replacement property. This procedure does require close coordination with the closing agent, but is more cost-effective than the amortization method. The agencies who thought they would be most successful using the buy-down procedure were those who used escrow accounts to make funds available to displaced persons.

There were also several comments about home equity loans and the inclusion of these mortgages in the computation of the increased mortgage interest costs payment. Home equity loans are valid mortgage liens on residential real property regardless of how the proceeds from the loans are used. Therefore, they must be included in the computation.

In answer to another comment, the mortgage rate to be used to compute the increased mortgage interest costs payment when the property is secured with an adjustable rate mortgage is the interest rate that is current on the property as of the date of acquisition.

A sample computation of an increased mortgage interest costs payment is included in Appendix A, as requested by a number of commenters. An IBM PC compatible computer program and financial calculator instructions will be made available as technical guidance as soon as feasible.

Section 24.402 Replacement Housing Payment for 90-Day Occupants

Section 24.402(a)(2)(ii)(A). The change made in § 24.401(a)(2)(i), concerning the deposit of estimated just compensation, is made here also.

Section 24.402(b) Rental assistance payment. There were numerous comments about the changes made in this section.

The first issue was the inclusion of the cost of utilities in the computation of the rental assistance payment. The inclusion of utilities has been an ongoing issue since the Publication of the common rule in 1985. Since that time, utility services have been included in the computation of a rental assistance payment if they were included at the displacement dwelling and/or the comparable dwelling as a part of the rent. FHWA recognizes the concerns of the current 14 commenters about the increased administrative burden for securing information and the variables in utility usage due to differing user lifestyles. These concerns can be addressed in various ways. One commenter suggested that a schedule be devised for utility costs with the input of utility companies in the project area that will reflect actual, reasonable costs. Another agency suggested that if true comparables are used for payment determination, the utility costs should also be comparable and their inclusion should not increase the cost of replacement housing. Relocation from a substandard dwelling to a standard dwelling could, in fact, decrease the cost of utilities, especially the cost of heat unless a larger dwelling is used to meet the needs of a family, or if all utilities were not available in the displacement dwelling, as noted by another commenter.

Agencies may establish their own procedures to be used for determining the cost of utilities if the procedures are used uniformly.

FHWA is continuing to include utilities in the monthly base housing computation because utilities are considered to be an integral part of monthly housing costs and historically have been treated as such by several Federal programs including those administered by HUD as a standard practice. The existence of adequate utilities is a primary requirement for a dwelling to be decent, safe, and sanitary.

The 30 percent figure used in § 24.402(b)(2)(ii) to determine base monthly rental is considered a reasonable percentage of income to be applied to rental housing costs under current market and economic conditions, and is consistent with the percentage of income figures currently being used in other subsidized housing and related programs of HUD and other agencies. Several commenters stated that, in their experience, many tenants are now paying 40 percent or more of their incomes for housing costs. Our concern is that the 40 percent payments primarily reflect the lack of affordable rental housing in the current market. We

do agree that some tenants voluntarily elect to spend more than 30 percent of their income for housing when more affordable housing is available. However, FHWA believes these lifestyle choices for convenience, prestige or other reasons to be the exceptions, not the rule. Consideration must also be given to the fact that private lending institution requirements set the limit on the monthly cost of housing after purchase of a dwelling at approximately the same level as the 30 percent of income criteria established for tenants.

The inclusion of a person's income in computing a base monthly rent figure was also opposed by several commenters. The biggest concern was a perceived difficulty in the verification of income and an implied reluctance to accept income information from some displaced persons. FHWA believes that accurate information concerning income can be obtained from most persons. If there is obvious evidence that a person has more income than reported, it is the Agency's prerogative to accept the income as reported, to request additional verification of income, including income tax returns, or to inform the person that there is reasonable doubt that the information is accurate. If the income information is not provided or amplified as requested, the Agency may take such action as it deems necessary to obtain income information under a uniform agency-wide or area-wide policy.

Section 24.402(b)(3) Manner of disbursement. Eleven comments were received concerning the vesting of the full amount of the rental assistance payment when the displaced tenant receives the first rental assistance payment, either in lump sum or as an installment. Most of the comments took exception to the idea of vesting.

The vesting of the full amount of the rental assistance payment is intended to establish at a definite point in time, the full amount of the payment for the 42 month period after displacement. Vesting eliminates the red-tape requirements of recordkeeping, re-inspection, and recertification of the replacement dwellings, and continued contacts with the displaced person and the person's landlord that would otherwise be necessary. It also eliminates the potential problem of additional project costs as rents are increased or new DSS dwellings need to be found for those who no longer live in standard housing. FHWA understands that the same commenters are concerned about the diversion of lump sum rental assistance payments for non-housing uses, and a subsequent return of

the displaced person to sub-standard housing. One way to effectively provide installment payments, either to the displaced person or to the person and the person's landlord, without continuing agency supervision, is to place the payment in an escrow account that will be disbursed according to a pre-determined schedule. This method could also serve for disbursement of housing of last resort payments, which are also vested. The method of disbursement remains the Agency's discretion.

It should be understood that, under vesting, the only times a rental assistance payment should change are during the one-year period described in § 24.402(a)(2), and then only if tenant elects to up-grade his or her housing to receive the full amount of the original computed rental assistance payment based on a comparable dwelling, or changes his or her status from tenant to owner and therefore becomes eligible for an additional payment (see § 24.403(e)).

Section 24.402(c) Downpayment assistance payment. Twenty-one comments were received concerning downpayment assistance. Only 4 of the 21 commenters believed that the amount available for downpayment assistance should be limited to the computed amount of the rental assistance payment for tenants. The majority stated that agencies should make downpayment assistance payments of up to \$5,250, with most recommending that the payment be restricted to the amount necessary to obtain conventional loan financing for purchase of a replacement dwelling. The main concern expressed was that allowing each agency to select a procedure for computing the down payment assistance payment did not promote uniformity.

Since the legislation does not give the lead agency the authority to select a particular procedure, but reserves such authority to the displacing agencies, we have elected to retain the existing language. As several commenters suggested, displacing agencies may want to coordinate with other agencies within the State or jurisdiction where they are located to reach a consensus on the procedure to be followed in that State or jurisdiction. FHWA will appreciate being advised of the experience of the various agencies in the implementation of this procedure. If the experience indicates that a change is needed to affect a more uniform implementation, we will seek a legislative change.

Regardless of the procedure selected, a rental assistance payment will have to be initially computed for tenants. If the

computed rental assistance payment is zero, then the downpayment assistance is zero unless the agency has elected to make downpayment assistance payments of up to \$5,250. If their eligibility is greater than \$5,250 for rental assistance, they will be eligible for housing of last resort for rental assistance or downpayment assistance. As is required by statute, eligibility for owners of more than 90 days but less than 180 days for downpayment assistance will be limited to the amount that would have been computed had they been 180 day owners.

Section 24.403 Additional Rules Governing Replacement Housing Payments

Several comments were received concerning the requirement in § 24.403(a)(1) that an adjustment be made to the asking price of any dwelling used to compute the replacement housing payment to the extent justified by local market data. This procedure has been a part of the governmentwide common rule since it was first published in March 1985. It requires that adjustments be made in the asking price of comparable dwellings to the extent that the market demonstrates that expected sale prices will be less than the asking prices. A clarification of the use of this procedure has been added to Appendix A.

In § 24.403(a)(2), for clarity and as suggested by several commenters, FHWA has separated the procedures for major exterior attributes and buildable residential lots into two paragraphs.

Section 24.403(c)(6). Several comments were received concerning the use of current fair market value for the acquisition price of a previously owned dwelling when it is used as the replacement dwelling. The current fair market value is used because (1) it is the amount that would have been paid if the dwelling were purchased on the current market as a replacement residence, (2) the displaced owner could have acquired any other dwelling as a replacement and (3) the use of the previously owned dwelling is the conversion of an existing asset to replacement housing purposes. This regulation operates the same whether the previously-owned dwelling is mortgaged or unencumbered. In response to one commenter, the cost of an appraisal of the previously owned dwelling is a reimbursable cost if the agency considers an appraisal to be appropriate and necessary.

Section 24.404 Replacement Housing of Last Resort

There were 13 comments on replacement housing of last resort. Several concerned the requirement that the use of housing of last resort be justified. Such justification is considered important for good program management and is consistent with the requirement, added by the 1987 Amendments, that any payment provided for housing of last resort that exceeds the maximum amounts provided to tenants and owners by §§ 24.401 and 24.402 must be justified. A slight modification was made to § 24.404(a)(2)(i) at the recommendation of one commenter to clarify that justification for last resort housing assistance may be for an entire project or program area, if appropriate, without additional case-by-case justification. A number of comments were received about the change in status of a displaced person from a tenant to an owner. FHWA has clarified that such a change in status must be with the concurrence of the displaced person. The concurrence of the displaced person should be received prior to the execution of any of the methods of providing for housing of last resort. Several general comments were received about the concept of replacement housing of last resort. Replacement housing of last resort is a legislatively authorized continuation of the replacement housing assistance provided by §§ 24.401 and 24.402 of this part, and provides for comparable replacement housing for displaced persons not adequately provided for under those sections, or who do not meet the eligibility requirements of those sections. Additional flexibility is provided to displacing agencies for the provision of housing of last resort so that housing needs are met for owners and tenants in the most cost-effective, yet equitable way.

Subpart F—Mobile Homes

Section 24.502 Moving and Related Expenses—Mobile Homes

Only one comment was received on this subpart. In response, § 24.502(a) has been modified to state more clearly that, even though an owner-occupant whose mobile home is not acquired may receive replacement housing under § 24.503(a)(3), and therefore is not eligible for payment for moving the mobile home, he may be eligible for payment for moving personal property from the mobile home. Also, the commenter thought that all mobile homes should be treated as real

property. This may be appropriate in areas where mobile homes are treated as real property under State law or where an agency has the option to consider mobile homes to be either real property or personal property. However, some State laws consider mobile homes to be personal property only, and, therefore, they may not be acquired as realty.

Subpart G—Certification

This subpart implements one of the most significant changes added by the 1987 Amendments. As such, FHWA has a special interest in its implementation and would appreciate receiving further information on its use and effectiveness.

Several respondents commented on Subpart G, however no single comment, or group of comments, was sufficiently persuasive to necessitate a change in the proposed text. However, one comment on § 24.603, Monitoring and corrective action, did draw our attention to the need for a substantive revision of § 24.603(b).

Section 24.602 Certification Application

Two commenters recommended that certification applications be made directly from the head of the State agency to the Federal agency providing financial assistance, rather than through the State governor, or the governor's designee. FHWA does not adopt this recommendation. There is a definite need for a focal point within each State for the receipt and screening of certification applications. Consistent with the principles of federalism, the Office of the Governor, as the Chief Executive Officer in any State, is the logical starting point for this process since the governor normally exercises executive authority over the State agencies that are recipients of Federal financial assistance or through which Federal financial assistance is channelled to sub-recipients at the local level, all of whom are subject to the Uniform Act and any of whom could make application for certification approval. The certification process does not alter the existing relationship between local sub-recipients and the State-level recipients of Federal financial assistance. It is expected that any certification application made by a sub-recipient will be made through the State-level agency to the governor, or the governor's designee. In those instances where the local level agency (city, county, etc.) is the direct recipient, and there is no State-level agency authorized to perform such functions, the certification application would be

made directly to the governor, or the governor's designee.

The governor, or a State office or agency designated by the governor, will be able to standardize the process and develop an expertise in the processing of applications. Further, the governor or his or her designee will be more able to assess the capabilities of those State agencies seeking to assume Federal agency responsibilities through the certification process. A focal point of this nature will be particularly advantageous in processing certifications from a State agency seeking certification approval from more than one Federal agency.

Two commenters indicated some misunderstanding of the responsibilities of the Federal funding agency.

It is not intended that the Federal funding agency endorse an approved application received from the governor, or the governor's designee, if the Federal funding agency has appropriate indications revealing program deficiencies regarding the certifying State agency. The purpose of having the Federal funding agency accept the approved application without performing an independent review is threefold: first, it emphasizes the role of the governor, or the governor's designee, in evaluating the State agency certifications; second, it will bring into focus the current status of the Federal funding agency's oversight of its State agencies; third, unless there are pre-existing appropriate indications of deficiencies, the certification approval can be handled more expeditiously. The second of the three foregoing points is the basis for the written assessment of the State agency's capabilities to operate under certification which the Federal funding agency must provide when the certification application is transmitted to the Federal lead agency.

Section 24.603 Monitoring and Corrective action

One respondent objected to the permissive withholding of Federal financial assistance if a certified State agency failed to comply with applicable State law and regulation serving as the basis of its certification. The respondent perceived this to mean that the authority to withhold approval of Federal financial assistance is available to any Federal agency regardless of the source of the financial assistance. This, of course, is not the case. The authority and the responsibility regarding the withholding of Federal financial assistance rests with each Federal agency regarding its projects, programs, and activities. The respondent's comment did, however, lead us to the

recognition of a possible inconsistency between the requirements of § 24.603(b) and the assurances required by § 24.4 and sections 210 and 305 of the Uniform Act. As a consequence, § 24.603(b) is revised and clarified to provide that if a State agency certifies, under State law and regulation, it can and will comply with the provisions of the Uniform Act which would otherwise be covered by the sections 210 and 305 assurances and, then, fails to comply, the Federal agency should withhold Federal financial assistance in that State agency's programs, projects, and activities affected by the Uniform Act.

The certification process does not diminish the State agency's fundamental responsibilities regarding compliance with the Uniform Act, particularly those provisions referred in the sections 210 and 305 assurances. It is clear, from the statute, that compliance with provisions which are the subject of the assurances is of paramount importance to the continued Federal financial assistance of programs, projects, and activities affected by the Uniform Act.

For example, if Uniform Act non-compliance occurred in connection with a federally assisted project the Federal agency should exercise its authority to withhold Federal financial assistance until the state agency is again performing in compliance with the certification.

In order to ensure coordination of information among Federal agencies that may have accepted a certification from the same state agency, language has been added to § 24.603 (b) and (c) to require that the lead agency be consulted by the Federal funding agency before any Federal funds are withheld from a certified state agency or the acceptance of a certification is revoked.

Appendix A to Part 24—Additional Information

The appendix has been modified and augmented to provide for better understanding of the sections of the regulations to which it pertains.

Section 24.2(g)(2)

Persons not displaced. "Permanently" has been added to the first sentence to clarify that some persons may be temporarily displaced but are not displaced persons because they have not been permanently displaced.

Section 24.102(m)

Fair rental. In response to several comments concerning short-term rent, the modifier, "generally," has been added to the last sentence.

Section 24.308

Fixed payment for moving expenses—non-residential moves. FHWA has added

clarifying language in Appendix A for non-profit organizations treated under this section.

Section 24.401

Replacement housing payment for 180-day homeowner-occupants.

Section 24.401(a)(2)

A statement has been added to clarify the phrase "for good cause."

Section 24.401(d)

The computation of a "buydown" payment, the factors used in computation, and the agency's obligation to the displaced person are explained. Even though one commenter suggested that adjustment of the buydown payment, when a displaced person elects to mortgage the replacement dwelling for less than the remaining mortgage on the displacement dwelling, penalizes the displaced person for making a larger downpayment, we are retaining this provision. In addition, we have accepted a recommendation that the mortgage with the shortest term be used to compute the payment. FHWA has amended the procedures to reflect this adjustment.

The FHWA is interested in your experience with this new procedure for computing the mortgage interest differential payment.

Appendix B to Part 24—Statistical Report Form

The reformatted statistical report form includes a new line item for reporting payments for the statutory business reestablishment expense entitlement. (See line 7A). Several comments were received regarding the information required in Part B, column (A). More accurate statistical analyses can be obtained by changing the requirement for column (A) to displacements instead of number of claims since a displaced person may receive more than one claim in several categories. The heading for column (A) has been changed to number of displacements.

As required by Section 1320.21 of OMB's new paperwork clearance regulation that was published in the Federal Register on May 10, 1988, we have included an agency disclosure notice for public reporting on the STATISTICAL REPORT FORM.

A request was received from HUD to add new items to the statistical report form to collect race, sex, ethnicity, handicap and familial status data. These items were not included in the report form presented in the NPRM and, therefore, FHWA does not have the benefit of public comment on what, if any, paperwork burden such additional information collection would have on agencies or persons carrying out acquisition or displacement activities. Therefore, the report form format remains unchanged at this time except for the minor alteration referred to above.

Regulatory Impact

The FHWA has determined that this action does not constitute a major rule under Executive Order 12291 or a significant rule under the regulatory policies and procedures of the

Department of Transportation. Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of \$100 million or more, or has certain other specified effects.

The economic impacts of this final rule are primarily mandated by the provisions of the 1987 Amendments. However, since some of the statutory changes are administrative or procedural, savings to Federal, State, and local agencies should result in the administration of the Uniform Act. Other statutory changes, which alter benefit levels, and expand the Act's application to include certain private persons who receive Federal financial assistance, and persons displaced by certain nonacquisition activities, should result in a modest increase in amounts paid under the Uniform Act.

However, we do not believe that the proposed regulations will have an annual economic effect of \$100 million or more, or the other effects listed in the Executive Order. For this reason, FHWA has determined that this regulation is not a major rule within the meaning of the Order.

Federal agencies administering direct Federal activities, as well as many states, currently have the necessary authority to comply with the additional provisions of the 1987 Amendments implemented in this rule. To delay the promulgation of the amendments made in this rule would deprive many parties of the protections and benefits intended by those provisions of the 1987 Amendments. Accordingly, the FHWA finds good cause to make this regulation effective without the 30-day delay in effective date under the Administrative Procedures Act, 5 U.S.C. 553(b).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that for each rule with a "significant economic impact on a substantial number of small entities" an analysis be prepared describing the rules impact on small entities, and identifying any significant alternatives to the rule that would minimize the economic impacts on small entities.

The provisions of the Uniform Act that are implemented in this final rule have not changed substantially. The primary impact of the 1987 Amendments is expected to be an increase in benefits provided to small businesses, the elimination of unnecessary administrative requirements imposed on State and local agencies, and the consequent reduction of burden on those affected entities, and the expansion of

the Act's application to those private entities that seek and receive Federal financial assistance.

In response to comments received from rural electric cooperatives FHWA has considered the impact that this rule would have on such cooperatives. Primarily for the reasons provided elsewhere in the preamble we have concluded that this regulation would not have a significant economic impact on a substantial number of small electric cooperatives.

Based on information available to FHWA at this time and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act Requirements

Today's final rule makes one change to the Uniform Act Report form, which is contained in Appendix B of Part 24. A new item, 7A, is added to obtain information relating to the new business reestablishment payment added by the 1987 Amendments. Several minor editorial changes have also been made in the form. Federal funding agencies which elect to require a report on Uniform Act activities will submit the revised form to the Office of Management and Budget (OMB) for review under 44 U.S.C. 3504(h), the Paperwork Reduction Act, Pub. L. 96-511. Agencies may continue to use the previous report form until OMB approval is granted.

Federalism Assessment

As discussed in the Supplementary Information sections of this preamble, this final rule builds upon the positive Federalism accomplishments achieved in the promulgation of the governmentwide common rule on February 27, 1988 (51 FR 7000) which significantly reduced administrative burdens on States and local recipients of Federal financial assistance. The FHWA has determined that the Federalism accomplishments of the common rule are retained in today's rule and the changes which have been made are fully consistent with the principles and criteria contained in Executive Order 12612 and do not have sufficient further Federalism implications to warrant the preparation of a complete Federalism Assessment.

This final rule implements a provision of the 1987 Amendments that gives substantial additional discretion to the States. This is the *certification procedure* which provides an alternative whereby State agencies, with adequate

authority under State law, can comply with the Uniform Act with a minimum amount of Federal supervision or oversight. This certification procedure would give maximum authority and control to the State governor, or his or her designee, in managing and coordinating the certification procedure in each State.

List of Subjects in 49 CFR Part 24

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, Transportation.

Accordingly, Title 49 of the Code of Federal Regulations is amended as set forth below.

Issued on: February 22, 1989.

Robert E. Farris,

Federal Highway Administrator.

Part 24 is revised to read as follows:

PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A—General

Sec.

- 24.1 Purpose.
- 24.2 Definitions.
- 24.3 No duplication of payments.
- 24.4 Assurances, monitoring and corrective action.
- 24.5 Manner of notices.
- 24.6 Administration of jointly-funded projects.
- 24.7 Federal agency waiver of regulations.
- 24.8 Compliance with other laws and regulations.
- 24.9 Recordkeeping and reports.
- 24.10 Appeals.

Subpart B—Real Property Acquisition

- 24.101 Applicability of acquisition requirements.
- 24.102 Basic acquisition policies.
- 24.103 Criteria for appraisals.
- 24.104 Review of appraisals.
- 24.105 Acquisition of tenant-owned improvements.
- 24.106 Expenses incidental to transfer of title to the Agency.
- 24.107 Certain litigation expenses.
- 24.108 Donations.

Subpart C—General Relocation Requirements

- 24.201 Purpose.
- 24.202 Applicability.
- 24.203 Relocation notices.
- 24.204 Availability of comparable replacement dwelling before displacement.
- 24.205 Relocation planning, advisory services, and coordination.
- 24.206 Eviction for cause.
- 24.207 General requirements—claims for relocation payments.
- 24.208 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

- 24.301 Payment for actual reasonable moving and related expenses—residential moves.
- 24.302 Fixed payment for moving expenses—residential moves.
- 24.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
- 24.304 Reestablishment expenses—nonresidential moves.
- 24.305 Ineligible moving and related expenses.
- 24.306 Fixed payment for moving expenses—nonresidential moves.
- 24.307 Discretionary utility relocation payments.

Subpart E—Replacement Housing Payments

- 24.401 Replacement housing payment for 180-day homeowner-occupants.
- 24.402 Replacement housing payment for 90-day occupants.
- 24.403 Additional rules governing replacement housing payments.
- 24.404 Replacement housing of last resort.

Subpart F—Mobile Homes

- 24.501 Applicability.
- 24.502 Moving and related expenses—mobile homes.
- 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.
- 24.504 Replacement housing payment for 90-day mobile home occupants.
- 24.505 Additional rules governing relocation payments to mobile home occupants.

Subpart G—Certification

- 24.601 Purpose.
 - 24.602 Certification application.
 - 24.603 Monitoring and corrective action.
- Appendix A to Part 24—Additional Information
Appendix B to Part 24—Statistical Report Form

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note); and 49 CFR 1.48(cc).

Subpart A—General

§ 24.1 Purpose.

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to

promote public confidence in Federal and federally-assisted land acquisition programs;

(b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

§ 24.2 Definitions.

(a) *Agency*. The term "Agency" means the Federal agency, State, State agency, or person that acquires real property or displaces a person.

(1) *Acquiring agency*. The term "acquiring agency" means a State agency, as defined in paragraph (a)(2) of this section, which has the authority to acquire property by eminent domain under State law, and a State agency or person which does not have such authority. Any Agency or person solely acquiring property pursuant to the provisions of § 24.101(a) (1), (2), (3), or (4) need not provide the assurances required by § 24.4(a)(1) or (2).

(2) *Displacing agency*. The term "displacing agency" means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(3) *Federal agency*. The term "Federal agency" means any department, Agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(4) *State agency*. The term "State agency" means any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(b) *Appraisal*. The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the

presentation and analysis of relevant market information.

(c) *Business*. The term "business" means any lawful activity, except a farm operation, that is conducted:

(1) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Primarily for the sale of services to the public; or

(3) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(d) *Comparable replacement dwelling*. The term "comparable replacement dwelling" means a dwelling which is:

(1) Decent, safe and sanitary as described in paragraph (f) of this section;

(2) Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is "equal to or better than" the displacement dwelling. (See Appendix A of this part);

(3) Adequate in size to accommodate the occupants;

(4) In an area not subject to unreasonable adverse environmental conditions;

(5) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

(6) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also § 24.403(a)(2).);

(7) Currently available to the displaced person on the private market. However, a comparable replacement

dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A of this part); and

(8) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in § 24.401(c), all increased mortgage interest costs as described at § 24.401(d), and all incidental expenses as described at § 24.401(e), plus any additional amount required to be paid under § 24.404. Replacement housing of last resort.

(ii) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at § 24.402(b)(2).

(iii) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such rental assistance must be paid under § 24.404. Replacement housing of last resort.

(e) *Contribute materially*. The term "contribute materially" means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least \$5000; or

(2) Had average annual net earnings of at least \$1000; or

(3) Contributed at least 33 1/2 percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may

approve the use of other criteria as determined appropriate.

(f) *Decent, safe, and sanitary dwelling*. The term "decent, safe, and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply unless waived for good cause by the Federal agency funding the project. The dwelling shall:

(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other devices.

(3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

(6) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(g) *Displaced person*— (1) *General*. The term "displaced person" means any person who moves from the real property or moves his or her personal property from the real property; (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at § 24.401(a) and 24.402(a));

(i) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.

(ii) As a direct result of rehabilitation or demolition for a project; or
 (iii) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under § 24.205(c), and moving expenses under § 24.301, § 24.302 or § 24.303.

(2) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(i) A person who moves before the initiation of negotiations (see also § 24.403(e)), unless the Agency determines that the person was displaced as a direct result of the program or project; or

(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

(iii) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(iv) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal agency funding the project (see Also Appendix A of this part); or

(v) An owner-occupant who moves as a result of an acquisition as described at §§ 24.101(a) (1) and (2), or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to this part.); or

(vi) A person whom the Agency determines is not displaced as a direct result of a partial acquisition; or

(vii) A person who, after receiving a notice of relocation eligibility (described at § 24.203(b)), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

(viii) An owner-occupant who voluntarily conveys his or her property, as described at § 24.101(a) (1) and (2), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Agency will not acquire the

property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part; or

(ix) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency; or

(x) A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93-477 or Pub. L. 93-303; or

(xi) A person who is determined to be in unlawful occupancy prior to the initiation of negotiations (see paragraph (y) of this section), or a person who has been evicted for cause, under applicable law, as provided for in § 24.206.

(h) *Dwelling.* The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(i) *Farm operation.* The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(j) *Federal financial assistance.* The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(k) *Initiation of negotiations.* Unless a different action is specified in applicable Federal program regulations, the term "initiation of negotiations" means the following:

(1) Whenever the displacement results from the acquisition of the real property by a Federal agency or State agency, the "initiation of negotiations" means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal agency or State agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery to the initial written purchase offer, the "initiation of negotiations" means the actual move of the person from the property.

(2) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal agency or a State agency), the "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(3) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(l) *Lead agency.* The term "lead agency" means the Department of Transportation acting through the Federal Highway Administration.

(m) *Mortgage.* The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(n) *Nonprofit organization.* The term "nonprofit organization" means an organization that is incorporated under the applicable laws of a State as a nonprofit organization, and exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

(o) *Notice of intent to acquire or notice of eligibility for relocation assistance.* Written notice furnished to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, that establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of Federal financial assistance.

(p) *Owner of a dwelling.* A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

(1) Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

(2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in paragraphs (p) (1) or (2) of this section, or

(4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(q) *Person*. The term "person" means any individual, family, partnership, corporation, or association.

(r) *Program or project*. The phrase "program or project" means any activity or series of activities undertaken by a Federal agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding agency guidelines.

(s) *Salvage value*. The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(t) *Small business*. A business having at least one, but not more than 500 employees working at the site being acquired or displaced by a program or project.

(u) *State*. Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands or a political subdivision of any of these jurisdictions.

(v) *Tenant*. The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

(w) *Uneconomic remnant*. The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner.

(x) *Uniform Act*. The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 *et seq.*; Pub. L. 91-646), and amendments thereto.

(y) *Unlawful occupancy*. A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction

prior to the initiation of negotiations or is determined by the Agency to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under State law. A displacing agency may, at its discretion, consider such a squatter to be in lawful occupancy.

(z) *Utility costs*. The term "utility costs" means expenses for heat, lights, water and sewer.

(aa) *Utility facility*. The term "utility facility" means any electric, gas, water, steampower, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

(bb) *Utility relocation*. The term "utility relocation" means the adjustment of a utility facility required by the program or project undertaken by the displacing agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

§ 24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, or local law which is determined by the Agency to have the same purpose and effect as such payment under this part. (See Appendix A of this part, § 24.3.)

§ 24.4 Assurances, monitoring and corrective action.

(a) *Assurances*—(1) Before a Federal agency may approve any grant to, or contract, or agreement with, a State agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A displacing agency's assurances shall be in accordance with section 210 of the Uniform Act. An acquiring agency's

assurances shall be in accordance with section 305 of the Uniform Act and must contain specific reference to any State law which the Agency believes provides an exception to section 301 or 302 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, a State agency may provide these assurances at one time to cover all subsequent federally-assisted programs or projects. An Agency which both acquires real property and displaces persons may combine its section 210 and section 305 assurances in one document.

(2) If a Federal agency or State agency provides Federal financial assistance to a "person" causing displacement, such Federal or State agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the grantee to comply.

(3) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal agency may provide Federal financial assistance to a State agency after it has accepted a certification by such State agency in accordance with the requirements in Subpart G of this part.

(b) *Monitoring and corrective action*. The Federal agency will monitor compliance with this part, and the State agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal agency may also apply sanctions in accordance with applicable program regulations. (Also see § 24.603, Subpart G.)

(c) *Prevention of fraud, waste, and mismanagement*. The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

§ 24.5 Manner of notice.

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the notice described at § 24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 24.6 Administration of jointly-funded projects.

Whenever two or more Federal agencies provide financial assistance to an Agency or Agencies, other than a Federal agency, to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. In the unlikely event that agreement among the Agencies cannot be reached as to which agency shall be the cognizant Federal agency, then the lead agency shall designate one of such agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federally assisted activities under the agreement shall be deemed a project for the purposes of this part.

§ 24.7 Federal agency waiver of regulations.

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§ 24.8 Compliance with other laws and regulations.

The implementation of this part must be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to, the following:

- (a) Section I of the Civil Rights Act of 1968 (42 U.S.C. 1982 *et seq.*);
- (b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2001 *et seq.*);
- (c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 801 *et seq.*), as amended;
- (d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*);
- (e) Section 104 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*);
- (f) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
- (g) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*);
- (h) Executive Order 11811—Equal Opportunity and Housing, as amended by Executive Order 12259.

(i) Executive Order 11246—Equal Employment Opportunity.

(j) Executive Order 11625—Minority Business Enterprise.

(k) Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

(l) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(m) Executive Order 12259—Leadership and Coordination of Fair Housing in Federal Programs.

(n) Executive Order 12630—Governmental Actions and Interference with Constitutionally Protected Property Rights.

§ 24.9 Recordkeeping and reports.

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding agency, whichever is later.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding agency shows good cause. The report shall be prepared and submitted in the format contained in Appendix B of this part.

§ 24.10 Appeals.

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) *Actions which may be appealed.* Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under § 24.106 or § 24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.*

The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

Subpart B—Real Property Acquisition

§ 24.101 Applicability of acquisition requirements.

(a) *General.* The requirements of this subpart apply to any acquisition of real property for a Federal program or project, and to programs and projects where there is Federal financial assistance in any part of project costs except for:

(1) Voluntary transactions that meet all of the following conditions:

(i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly.

(ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

(iii) The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

(iv) The Agency will inform the owner of what it believes to be the fair market value of the property.

(2) Acquisitions for programs or projects undertaken by an agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and

(ii) Inform the owner of what it believes to be fair market value of the property.

(3) The acquisition of real property from a Federal agency, State, or State agency, if the Agency desiring to make the purchase does not have authority to acquire the property through condemnation.

(4) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

(b) *Less-than-full-fee interest in real property.* In addition to fee simple title, the provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and to the acquisition of permanent easements. (See Appendix A of this part, § 24.101(b).)

(c) *Federally-assisted projects.* For projects receiving Federal financial assistance, the provisions of §§ 24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (See § 24.4(a).)

§ 24.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections, including the agency's obligation to secure an appraisal, provided to the

owner by law and this part. (See also § 24.203.)

(c) *Appraisal, waiver thereof, and invitation to owner.* (1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in § 24.102(c)(2), and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(2) An appraisal is not required if the owner is donating the property and releases the Agency from this obligation, or the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$2,500 or less, based on a review of available data.

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. (See also § 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

(f) *Basic negotiation procedures.* The Agency shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the

basis for the offer of just compensation; and, explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) supports such a settlement.

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for

construction purposes before making payment available to an owner.

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See § 24.2(w).)

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

§ 24.103 Criteria for appraisals.

(a) *Standards of appraisal.* The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, a detailed appraisal shall contain the following items:

(1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(3) All relevant and reliable approaches to value consistent with

commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(4) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

(6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) *Influence of the project on just compensation.* To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 24.2(s)) of the retained improvement.

(d) *Qualifications of appraisers.* The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(e) *Conflict of interest.* No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal

shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is \$2,500, or less.

§ 24.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser may develop appraisal documentation in accordance with § 24.103 to support an approved or recommended value.

(c) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

§ 24.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Subpart.

(c) *Appraisal and establishment of just compensation for tenant-owned improvements.* Just compensation for a

tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole Property or its salvage value, whichever is greater. (Salvage value is defined at § 24.2(s).)

(d) *Special conditions.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real Property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this Subpart shall be construed to deprive the tenant-owner of any right to reject payment under this Subpart and to obtain payment for such property interests in accordance with other applicable law.

§ 24.106 Expenses incidental to transfer of title to the Agency.

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

§ 24.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

§ 24.108 Donations.

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefor, to the Agency as such owner shall determine. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in § 24.102(c)(2).

Subpart C—General Relocation Requirements

§ 24.201 Purpose.

This Subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

§ 24.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at § 24.2(g).

§ 24.203 Relocation notices.

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

(3) Informs the person that he or she will not be required to move without at least 90 days' advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Describes the person's right to appeal the Agency's determination as to

a person's application for assistance for which a person may be eligible under this part.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in § 24.2(k)) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice—(1) General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing agency may issue the notice 90 days before it expects the person to be displaced or earlier.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See § 24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

§ 24.204 Availability of comparable replacement dwelling before displacement.

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 24.2(d)) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location; and

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the

relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

§ 24.205 Relocation planning, advisory services, and coordination.

(a) *Relocation planning.* During the early stages of development, Federal and Federal-aid programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

(1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted.

(3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

(4) Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

(b) *Loans for planning and preliminary expenses.* In the event that an Agency elects to consider using the duplicative provision in section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the lead agency will establish criteria and procedures for such use upon the request of the Federal agency funding the program or project.

(c) *Relocation assistance advisory services—(1) General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offers the services described in paragraph (c)(2) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(2) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(i) Determine the relocation needs and preferences of each person to be displaced and explain the relocation, payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such

assistance. This shall include a personal interview with each person.

(ii) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 24.204(a).

(A) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see § 24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(B) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See § 24.2 (d) and (f).) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(C) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(D) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(iii) Provide current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to

displaced persons, and technical help to persons applying for such assistance.

(vi) Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

(d) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (Also see § 24.8, Subpart A.)

§ 24.206 Eviction for cause.

Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the Agency determines that:

(a) The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or

(b) The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(c) In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.

For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

§ 24.207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall

be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.*—(1) All claims for a relocation payment shall be filed with the Agency within 18 months after:

(i) For tenants, the date of displacement;

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) This time period shall be waived by the Agency for good cause.

(e) *Multiple occupants of one displacement dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) *Deductions from relocation payments.* An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by § 24.204. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

§ 24.208 Relocation payments not considered as income.

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been re-designated as the Internal Revenue Code of 1986 or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law, except for any Federal law providing low-income housing assistance.

Subpart D—Payments for Moving and Related Expenses

§ 24.301 Payment for actual reasonable moving and related expenses—residential moves.

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at § 24.2(g)) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(b) Packing, crating, unpacking, and uncrating of the personal property.

(c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.

(d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under § 24.305, as the Agency determines to be reasonable and necessary.

§ 24.302 Fixed payment for moving expenses—residential moves.

Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under § 24.301. This allowance shall be determined according to the applicable schedule approved by the

Federal Highway Administration. This includes a provision that the expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons or a person whose residential move is performed by an agency at no cost to the person shall be limited to \$50.

§ 24.303 Payment for actual reasonable moving and related expenses—nonresidential moves.

(a) **Eligible costs.** Any business or farm operation which qualifies as a displaced person (defined at § 24.2(g)) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described at § 24.303(a)(12). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for:

(i) Planning the move of the personal property,

(ii) Moving the personal property, and

(iii) Installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$1,000, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation.

(ii) Meal and lodging away from home.

(iii) Time spent searching, based on reasonable salary or earnings.

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(14) Other moving-related expenses that are not listed as ineligible under § 24.305, as the Agency determines to be reasonable and necessary.

(b) **Notification and inspection.** The following requirements apply to payments under this section:

(1) The Agency shall inform the displaced person, in writing, of the requirements of paragraphs (b) (2) and (3) of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in § 24.203.

(2) The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) **Self moves.** If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(d) **Transfer of ownership.** Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(e) **Advertising signs.** The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

§ 24.304 Reestablishment expenses—nonresidential moves.

In addition to the payments available under § 24.303 of this subpart, a small business, as defined in § 24.2(t), farm or nonprofit organization may be eligible to

receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(a) *Eligible expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They may include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs, not to exceed \$1,500 for exterior signing to advertise the business.

(4) Provision of utilities from right-of-way to improvements on the replacement site.

(5) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling, or carpeting.

(6) Licenses, fees and permits when not paid as part of moving expenses.

(7) Feasibility surveys, soil testing and marketing studies.

(8) Advertisement of replacement location, not to exceed \$1,500.

(9) Professional services in connection with the purchase or lease of a replacement site.

(10) Estimated increased costs of operation during the first 2 years at the replacement site, not to exceed \$5,000, for such items as:

(i) Lease or rental charges,

(ii) Personal or real property taxes,

(iii) Insurance premiums, and

(iv) Utility charges, excluding impact fees.

(11) Impact fees or one-time assessments for anticipated heavy utility usage.

(12) Other items that the Agency considers essential to the reestablishment of the business.

(13) Expenses in excess of the regulatory maximums set forth in paragraphs (a) (3), (8) and (10) of this section may be considered eligible if large and legitimate disparities exist between costs of operation at the displacement site and costs of operation at an otherwise similar replacement site. In such cases the regulatory limitation for reimbursement of such costs may, at the request of the Agency, be waived by the Federal agency funding the program or project, but in no event shall total costs payable under this section exceed the \$10,000 statutory maximum.

(b) *Ineligible expenses.* The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

(2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(3) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in paragraph (a)(5) of this section.

(4) Interest on money borrowed to make the move or purchase the replacement property.

(5) Payment to a part-time business in the home which does not contribute materially to the household income.

§ 24.305 Ineligible moving and related expenses.

A displaced person is not entitled to payment for:

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this part does not preclude the computation under § 24.401(c)(4)(iii); or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d) Loss of profits; or

(e) Loss of trained employees; or

(f) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in § 24.304(a)(10); or

(g) Personal injury; or

(h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or

(i) Expenses for searching for a replacement dwelling; or

(j) Physical changes to the real property at the replacement location of a business or farm operation except as provided in §§ 24.303(a)(3) and § 24.304(a); or

(k) Costs for storage of personal property on real property already owned or leased by the displaced person.

§ 24.306 Fixed payment for moving expenses—nonresidential moves.

(a) *Business.* A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by §§ 24.303 and 24.304. Such fixed payment, except for

payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site.

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage; and

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities.

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.

(5) The business is not operated at the displacement site solely for the purpose of renting the site to others.

(6) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see § 24.2(e)).

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at § 24.2(i)) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings

as computed in accordance with paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses. (See Appendix A of this part).

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory.

§ 24.307 Discretionary utility relocation payments.

(a) Whenever a program or project undertaken by a displacing agency causes the relocation of a utility facility (see §§ 24.2 (aa) and (bb)) and the

relocation of the facility creates extraordinary expenses for its owner, the displacing agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way; and

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement; and

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing agency; and

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing agency is in accordance with State law.

(b) For the purposes of this section, the term "extraordinary expenses" means those expenses which, in the opinion of the displacing agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See Appendix A, of this part, § 24.307.)

Subpart E—Replacement Housing Payments

§ 24.401 Replacement housing payment for 180-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one year period for good cause):

(i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court, or

(ii) The date the displacing agency's obligation under § 24.204 is met.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed \$22,500. (See also § 24.404.) The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section; and

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential—(1) Basic computation.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 24.403(a); or

(1) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Mixed-use and multifamily properties.* If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(3) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see § 24.3.)

(4) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at § 24.2(f)); and

(iii) The current fair market value for residential use of the replacement site (see Appendix A of this part, § 24.401(c)(4)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The displacing agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section. The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona

fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (d) (1) through (5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination the payment will be prorated and reduced accordingly. (See Appendix A of this part.) In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

(3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The Agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage (s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the

purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Certification of structural soundness and termite inspection when required.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

(f) *Rental assistance payment for 180-day homeowner.* A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed \$5,250, computed and disbursed in accordance with § 24.402(b).

§ 24.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling, or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date

the full amount of the estimate of just compensation is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) Rental assistance payment—(1)

Amount of payment. An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$5,250 for rental assistance. (See also § 24.404.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) Base monthly rental for displacement dwelling. The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency. (For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances); or

(ii) Thirty (30) percent of the person's average gross household income. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.); or

(iii) The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

(3) Manner of disbursement. A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by § 24.403(f), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(c) Downpayment assistance payment—(1) Amount of payment. An eligible displaced person who purchases a replacement dwelling is entitled to a

downpayment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the discretion of the Agency, a downpayment assistance payment may be increased to any amount not to exceed \$5,250.

However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under § 24.401(b) if he or she met the 180-day occupancy requirement. An Agency's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under § 24.401(a) is not eligible for this payment. (See also Appendix A of this part, § 24.402(c).)

(2) Application of payment. The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ 24.403 Additional rules governing replacement housing payments.

(a) Determining cost of comparable replacement dwelling. The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at § 24.2(d)).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also § 24.205(a)(2) and Appendix A of this part). An obviously overpriced dwelling may be ignored.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

(3) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement

dwelling for purposes of computing the replacement housing payment.

(4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(b) Inspection of replacement dwelling. Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § 24.2(f).

(c) Purchase of replacement dwelling. A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

- (1) Purchases a dwelling; or
- (2) Purchases and rehabilitates a substandard dwelling; or
- (3) Relocates a dwelling which he or she owns or purchases; or
- (4) Constructs a dwelling on a site he or she owns or purchases; or
- (5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

(6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(d) Occupancy requirements for displacement or replacement dwelling. No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

- (1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the displacing agency; or
- (2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

(e) Conversion of payment. A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § 24.402(b) is eligible to receive a payment under § 24.401 or § 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 24.401 or § 24.402(c).

(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

§ 24.404 Replacement housing of last resort.

(a) *Determination to provide replacement housing of last resort.* Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in § 24.401 or § 24.402, as appropriate, the Agency shall provide additional or alternative assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

(i) The availability of comparable replacement housing in the program or project area; and

(ii) The resources available to provide comparable replacement housing; and

(iii) The individual circumstances of the displaced person; or

(2) By a determination that:

(i) There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole; and

(ii) A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and

(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total program or project costs. (Will project delay justify waiting for less expensive comparable replacement housing to become available?)

(b) *Basic rights of persons to be displaced.* Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) *Methods of providing comparable replacement housing.* Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

(1) The methods of providing replacement housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in § 24.401 or § 24.402. A rental assistance subsidy under this section may be provided in installments or in a lump sum at the Agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation and, if necessary, rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers to the handicapped.

(viii) The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a downpayment may be less expensive than a last resort rental assistance payment.

(2) Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (see Appendix A, of this part, § 24.404).

including upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with § 24.2(d)(2).

(3) The agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under §§ 24.401 and 24.402 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the person's financial means, which is 30 percent of the person's gross monthly household income. Such assistance shall cover a period of 42 months.

Subpart F—Mobile Homes

§ 24.501 Applicability.

This subpart describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with Subpart D and a replacement housing payment in accordance with Subpart E to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

§ 24.502 Moving and related expenses—mobile homes.

(a) A homeowner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her mobile home on an actual cost basis in accordance with § 24.301. A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under § 24.303. However, if the mobile home is not acquired, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at § 24.503(a)(3), the owner is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

(b) The following rules apply to payments for actual moving expenses under § 24.301:

(1) A displaced mobile homeowner, who moves the mobile home to a

replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hook-up" charges.

(2) If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe, and sanitary, and the Agency determines that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.

(3) A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

§ 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.

(a) A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed \$22,500, under § 24.401 if:

(1) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

(2) The person meets the other basic eligibility requirements at § 24.401(a); and

(3) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(i) Is not and cannot economically be made decent, safe, and sanitary; or

(ii) Cannot be relocated without substantial damage or unreasonable cost; or

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) If the mobile home is not acquired, and the Agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at § 24.401(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

§ 24.504 Replacement housing payment for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home is eligible for a

replacement housing payment, not to exceed \$5,250, under § 24.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 24.402(a); and

(c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at § 24.503(a)(3).

§ 24.505 Additional rules governing relocation payments to mobile home occupants.

(a) *Replacement housing payment based on dwelling and site.* Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However, the total replacement housing payment under Subpart E shall not exceed the maximum payment (either \$22,500 or \$5,250) permitted under the section that governs the computation for the dwelling. (See also § 24.403(b).)

(b) *Cost of comparable replacement dwelling.*—(1) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(2) If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under § 24.401(c), the cost of a comparable replacement dwelling is the sum of:

(i) The value of the mobile home,

(ii) The cost of any necessary repairs or modifications, and

(iii) The estimated cost of moving the mobile home to a replacement site.

(c) *Initiation of negotiations.* If the mobile home is not actually acquired,

but the occupant is considered displaced under this part, the "initiation of negotiations" is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under this part.

(d) *Person moves mobile home.* If the owner is reimbursed for the cost of moving the mobile home under this part, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(e) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this part.

Subpart G—Certification

§ 24.601 Purpose.

This subpart permits a State Agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with State laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by § 24.4 of this part.

§ 24.602 Certification application.

(a) *General.* (1) The State governor, or his or her designee, on behalf of any State agency or agencies may apply for certification in accordance with this section.

(2) The governor may designate a lead agency to administer certification in accordance with this section.

(b) *Responsibilities of State agency.*—(1) The State agency's application shall be submitted to the governor, or his or her designee, for approval or disapproval.

(2) The State agency application shall contain a statement that the State agency shall carry out the responsibilities imposed by the Uniform Act. The State agency application shall include a copy of the State laws and regulations which shall accomplish the purpose and effect of the Uniform Act.

(c) *Responsibilities of governor or his or her designee.* (1) The governor, or his or her designee, shall approve or

disapprove the State agency's application.

(2) The governor, or his or her designee, shall have discretion to disapprove any State agency application.

(3) The governor, or his or her designee, shall analyze State law and regulations and shall certify that they accomplish the purpose and effect of the Uniform Act.

(4) The governor, or his or her designee, shall determine in writing whether the State agency's professional staffing is adequate to fully implement the State law and regulations.

(5) If the State agency's application is approved by the governor, or his or her designee, it shall be transmitted to the Federal agency providing financial assistance to the State agency, with an information copy to the Federal lead agency.

(6) When a determination is received from the Federal funding agency, the governor, or his or her designee, shall notify the State agency.

(d) *Responsibilities of Federal funding agency.* (1) The Federal funding agency shall accept the approved application for certification provided by the governor or his or her designee and shall not conduct an independent review unless or until future monitoring or other appropriate indicators reveal program deficiencies originating therefrom.

(2) The Federal funding agency shall transmit all complete, approved applications, for certification to the Federal lead agency.

(3) At the same time as transmission to the Federal lead agency or during the public comment period, the Federal funding agency shall provide to the lead agency its written assessment of the State agency's capabilities to operate under certification.

(4) The Federal funding agency shall promptly notify the governor, or his or her designee, of the Federal lead agency's determination described in paragraph (e)(2) of this section.

(5) The Federal funding agency shall recognize the State agency's certification within 30 days of the Federal lead agency's finding.

(e) *Responsibilities of Federal lead agency.* (1) The lead agency shall:

(i) Accept the approval provided by the governor, or his or her designee, and shall not conduct an independent review, except as provided for in paragraphs (e)(1)(ii), (iii) and (iv) of this section, unless future monitoring or other appropriate indicators reveal program deficiencies originating therefrom;

(ii) Analyze the extent to which the provisions of the applicable State laws

and regulations accomplish the purpose and effect of the Uniform Act, with particular emphasis on the definition of a displaced person, the categories of assistance required, and the levels of assistance provided to persons in such categories;

(iii) Provide a 60-day period of public review and comment, and solicit and consider the views of interested general purpose local governments within the State, as well as the views of interested Federal and State agencies and consider all comments received as a result; and

(iv) Consider any extraordinary information it believes to be relevant.

(2) After considering all the information provided, the lead agency shall either make a finding that the State agency will carry out the Federal agency's Uniform Act responsibility in accordance with State laws and regulations which shall accomplish the same purpose and effect as the Uniform Act, or shall make a determination that a finding cannot be made; and shall so inform the Federal funding agency.

§ 24.603 Monitoring and corrective action.

(a) The Federal lead agency shall, in coordination with other Federal agencies, monitor from time to time State agency implementation of programs or projects conducted under the certification process and the State agency shall make available any information required for this purpose.

(b) A Federal agency that has accepted a State Agency's certification pursuant to this subpart should withhold its approval of any of its Federal financial assistance to any project, program, or activity, in progress or to be undertaken by such State agency, if it is found by the Federal agency that the State agency has failed to comply with the applicable State law and regulations implementing those provisions of the Uniform Act for which the State agency would otherwise have provided the assurances required by sections 210 and 305 of the Uniform Act. The Federal agency may withhold Federal financial assistance if the certifying State agency fails to comply with the applicable State law and regulations implementing other provisions of the Uniform Act. The Federal agency shall notify the lead agency at least 15 days prior to any decision to withhold funds under this subpart. The lead agency may consult with the Federal agency upon receiving such notification. The lead agency will also inform other Federal agencies which have accepted certification under this subpart from the same State agency of the pending action.

(c) A Federal agency may, after consultation with the lead agency, and

notice to and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying State agency fails to comply with its certification or with applicable State law and regulations. The Federal agency shall initiate consultation with the lead agency at least 30 days prior to any decision to rescind approval of a certification under this subpart. The lead agency will also inform other Federal agencies which have accepted a certification under this subpart from the same State agency, and will take whatever other action that may be appropriate.

(d) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the lead agency report biennially to the Congress on State agency implementation of section 103. To enable adequate preparation of the prescribed biennial report, the lead agency may require periodic information or data from affected Federal or State agencies.

Appendix A to Part 24—Additional Information

This appendix provides additional information to explain the intent of certain provisions of this part.

Subpart A—General

Section 24.2 Definitions

Section 24.2(c)(2) Definition of comparable replacement dwelling. The requirement in § 24.2(d)(2) that a comparable replacement dwelling be "functionally equivalent" to the displacement dwelling means that it must perform the same function, provide the same utility, and be capable of contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement

dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally equivalent" to a larger but very run-down substandard displacement dwelling.

Section 24.2(d)(7) requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HU Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing program, the rental assistance payment under § 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

Section 24.2(g)(2) Persons not displaced. Section 24.2(g)(2)(iv) recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be permanently displaced. Because such occupants are not considered "displaced persons" under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily-occupied housing must be decent, safe, and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including

moving expenses and increased housing costs during the temporary relocation.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under this part may file an appeal in accordance with § 24.10.

Section 24.2(k) Initiation of negotiations. This section of the part provides a special definition for acquisitions and displacements under Pub. L. 96-510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

Section 24.3 No Duplication of Payments

This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under these regulations is computed.

Section 24.9 Recordkeeping and Reports

Section 24.9(c) Reports. This paragraph allows Federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once every three years. The report, if required, will cover activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on Agencies implementing this part, a basic report form (see Appendix B of this part) has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

Subpart B—Real Property Acquisition

Section 24.101 Applicability of Acquisition Requirements

Section 24.101(b) Less-than-full-fee interest in real property. This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is short of 50 years but which in its judgment should be covered.

Section 24.102 Basic Acquisition Policies

Section 24.102(d) Establishment of offer of just compensation. The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 24.102(f) Basic negotiation procedures. It is intended that an offer to an owner be adequately presented, and that the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this section is not intended to require such contact in all cases.

Section 24.102(i) Administrative settlement. This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including reviewing appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section 24.102(j) Payment before taking possession. It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section 24.102(m) Fair rental. Section 301(8) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed "the fair rental value . . . to a short-term occupier." Generally, the Agency's right to

terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

Section 24.103 Criteria for Appraisals

Section 24.103(a) Standards of appraisal. In paragraph (a)(3) of this section, it is intended that all relevant and reliable approaches to value be utilized. However, where an Agency determines that the market approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the market approach.

Section 24.103(b) Influence of the project on just compensation. As used in this section, the term "project" is intended to mean an undertaking which is planned, designed, and intended to operate as a unit.

Because of the public knowledge of the proposed project, property values may be affected. A property owner should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section 24.103(e) Conflict of interest. The overall objective is to minimize the risk of fraud and mismanagement and to promote public confidence in Federal and federally-assisted land acquisition practices. Recognizing that the costs may outweigh the benefits in some circumstances, § 24.103(e) provides that the same person may both appraise and negotiate an acquisition, if the value is \$2,500 or less. However, it should be noted that all appraisals must be reviewed in accordance with § 24.104. This includes appraisals of real property valued at \$2,500, or less.

Section 24.104 Review of appraisals

This section recognizes that Agencies differ in the authority delegated to the review appraiser. In some cases the reviewer establishes the amount of the offer to the owner and in other cases the reviewer makes a recommendation which is acted on at a higher level. It is also within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on a property.

Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and the analyses of that data, demonstrates the soundness of the appraiser's opinion of value. The qualifications of the review appraiser and the level of explanation of the basis

for the reviewer's recommended or approved value depend on the complexity of the appraisal problem. For a low value property requiring an uncomplicated valuation process, the reviewer's approval, endorsing the appraiser's report, may satisfy the requirement for the reviewer's statement.

Section 24.106 Expenses Incidental to Transfer of Title to the Agency

Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. In addition, it is emphasized that such expenses must be reasonable and necessary.

Subpart C—General Relocation Requirements

Section 24.204 Availability of Comparable Replacement Dwelling Before Displacement

Section 24.204 (a) General. This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, § 24.204(a) requires that, "Where possible, three or more comparable replacement dwellings shall be made available." Thus the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

Section 24.205 Relocation Assistance Advisory Services

Section 24.205(c)(2)(i)(C) is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

Section 24.207 General Requirements—Claims for Relocation Payments

Section 24.207(a) allows an Agency to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the

lowest acceptable bid or estimate, as provided for in § 24.303(c).

Subpart D—Payment for Moving and Related Expenses

Section 24.306 Fixed Payment for Moving Expenses—Nonresidential Moves

Section 24.306(d) Nonprofit organizations. Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the non-profit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising and other like items as well as fund raising expenses. Operating expenses for carrying out the purposes of the non-profit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

Section 24.307 Discretionary Utility Relocation Payments

Section 24.307(c) describes the issues which must be agreed to between the displacing agency and the utility facility owner in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, 23 CFR 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.

Subpart E—Replacement Housing Payments

Section 24.401 Replacement Housing Payment for 180-Day Homeowner-Occupants

Section 24.401(a)(2). The provision for extending eligibility for a replacement housing payment beyond the one year period for good cause means that an extension may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction of a replacement dwelling or other like circumstances should cause delays in occupying a decent, safe, and sanitary replacement dwelling.

Section 24.401(c) Price differential. The provision in § 24.401(c)(4)(iii) to use the current fair market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the fair market value may be used.

Section 24.401(d) Increased mortgage interest costs. The provision in § 24.401(d) set forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the downpayment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. This payment is commonly known as the "buydown."

The remaining principal balance, the interest rate, and monthly principal and interest payments for the old mortgage as well as the interest rate, points and term for the new mortgage must be known to compute the increased mortgage interest costs. If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.

Sample Computation

Old Mortgage:	
Remaining Principal Balance.....	\$50,000
Monthly Payment (principal and interest).....	458.22
Interest rate (percent).....	7
New Mortgage:	
Interest rate (percent).....	10
Points.....	3
Term (years).....	15

Remaining term of the old mortgage is determined to be 174 months. (Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee). However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

Amount to be financed to maintain monthly payments of \$458.22 at 10%—\$42,010.18

	\$50,000.00
	-42,010.18
Increased mortgage interest costs.....	7,989.82
3 points on \$42,010.50.....	1,260.31
Total buydown necessary to maintain payments at \$458.22/month.....	9,250.13

If the new mortgage actually obtained is less than the computed amount for a

new mortgage (\$42,010.18), the buydown shall be prorated accordingly. If the actual mortgage obtained in our example were \$35,000, the buydown payment would be \$7,706.57 (\$35,000 + by \$42,010.18 = .83 \$9,250.13 × .83 = \$7,706.57).

The Agency is obligated to inform the person of the approximate amount of this payment and that he or she must obtain a mortgage of at least the same amount as the old mortgage and for at least the same term in order to receive the full amount of this payment. The displacee is also to be advised of the interest rate and points used to calculate the payment.

Section 24.402 Replacement Housing Payment for 90-Day Occupants

The downpayment assistance provisions in § 24.402(c) are intended to limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for Agency discretion in offering downpayment assistance which exceeds the computed rental assistance payment, up to the \$5,250 statutory maximum. This does not mean, however, that such Agency discretion may be exercised in a selective or discriminatory fashion. The displacing agency should develop a policy which affords equal treatment for persons in like circumstances and this policy should be applied uniformly throughout the Agency's programs or projects. It is recommended that displacing agencies coordinate with each other to reach a consensus on a uniform procedure for the State and/or the local jurisdiction.

For purposes of this section, the term downpayment means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the downpayment may be the amount which the Agency determines is necessary.

Section 24.403 Additional Rules Governing Replacement Housing Payments

Section 24.403(a)(1). The procedure for adjusting the asking price of comparable replacement dwellings requires that the agency provide advisory assistance to the displaced person concerning negotiations so that he or she may enter the market as a knowledgeable buyer. If a displaced person elects to buy one of the selected

comparables, but cannot acquire the property for the adjusted price, it is appropriate to increase the replacement housing payment to the actual purchase amount.

Section 24.404 Replacement Housing of Last Resort

Section 24.404(b) Basic rights of persons to be displaced. This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of a dwelling" at § 24.2(p). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

Section 24.404(c) Methods of providing comparable replacement housing. The use of cost effective means of providing comparable replacement housing is implied throughout the subpart. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are encouraged, they should be cost-effective.

Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may involve variations from the usual methods of obtaining comparability. However, it should be specially noted that such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

Subpart F—Mobile Homes**Section 24.503 Replacement Housing Payment for 180-Day Mobile Homeowner-Occupants**

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under § 24.401 and a replacement housing payment for a site computed under § 24.402. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under § 24.401 to assist in the purchase of a replacement site or, under § 24.402, to assist in renting a replacement site.

Appendix B to Part 24—Statistical Report Form

This appendix sets forth the statistical information collected from Agencies in accordance with § 24.9(c).

General

1. Report coverage. This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by Pub. L. 100-17, 101 Stat. 132.

2. Report period. Activities shall be reported on a Federal Fiscal Year basis, i.e., October 1 through September 30.

3. Where and when to submit report. Submit an original and two copies of this report to (Name and Address of Federal Agency) as soon as possible after September 30, but NOT LATER THAN NOVEMBER 15.

4. How to report relocation payments. The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was

approved, regardless of whether the payment is to be paid in installments.

5. How to report dollar amounts. Round off all money entries in Parts B and C to the nearest dollar.

6. Statutory references. The references in Part B indicate the section of the Uniform Act that authorizes the cost.

Part A. Persons displaced

Report in Part A the number of persons ("households," "businesses, including nonprofit organizations," and "farms") who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling or location. This includes businesses, nonprofit organizations and farms which, upon displacement, discontinued operations. The category "households" includes all families and individuals. A family shall be reported as "one" household, not by the number of people in the family unit. Persons shall be reported according to their status as "owners" or "tenants" of the property from which displaced.

Part B. Relocation payments and expenses

Columns (A) and (B). Report in Column (A) the number of displacements during the report year. Report in Column (B) the total amount represented by the displacements reported in Column (A).

Line 7A is a new line item for reporting the business reestablishment expense payment.

Lines 7A and 9, Column (B). Report in Column (B) the amount of costs that were included in the total amount approved on Lines 6 and 8, Column (B).

Lines 12 A and B. Report in Column (A) the number of households displaced by project or program activities which were provided assistance in accordance with section 206(a) of the Uniform Act.

Report in Column (B) the total financial assistance under section 20; (a) allocable to the households reported in Column (A). (If a household received financial assistance under section 203 or section 204 as well as under section 20; (a) of the Uniform Act, report the household as a displacement in Column (A), but in Column (B) report only the amount of financial assistance allocable to section 206(a). For example, if a tenant-household receives a payment of \$7,000 to rent a replacement dwelling, the sum of \$5,250 shall be included on Line 10, Column (B), and \$1,750 shall be included on Line 12B, Column (B).)

Line 13. Report on Line 13 all administrative costs incurred during the report year in connection with providing relocation advisory assistance and services under section 205 of the Uniform Act.

Line 15. Report on Line 15 the total number of relocation appeals filed during the fiscal year by aggrieved persons.

Part C. Real property acquisition subject to Uniform Act

Line 16, Columns (A) and (B). Report in Column (A) all parcels acquired during the report year where title or possession was vested in the acquiring agency during the reporting period. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.) Report in Column (B) the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the acquiring agency.

Line 17. Report on Line 17 the number of parcels reported on Line 16 that were acquired by condemnation where price disagreement was involved.

BILLING CODE 4910-23-01

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION STATISTICAL REPORT FORM

FEDERAL FISCAL YEAR ENDING SEPT. 30, 19__

Form Approved
OMB No: _____
Exp. Date: _____
Attachment - Appendix B

REPORTING AGENCY _____
CITY/COUNTY/STATE _____
FEDERAL FUNDING AGENCY _____
The burden for this report is estimated to average _____ hours per response, including reviewing instructions, searching data sources, gathering/maintaining data, and completing/reviewing the report. Send comments to: Federal Highway Administration, Office of Right-of-Way, Washington, D.C. 20590 and to: Office of Management and Budget, Paperwork Reduction Project (2105-0508), Washington, D.C. 20503.

PART A. PERSONS DISPLACED BY ACTIVITIES SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM	TOTAL(A)	OWNERS (B)	TENANTS(C)
1. HOUSEHOLDS (FAMILIES & INDIVIDUALS)			
2. BUSINESSES & NONPROFIT ORGANIZATIONS			
3. FARMS			

PART B. RELOCATION PAYMENTS & EXPENSES UNDER THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM	NO. OF DISPLACEMENTS	AMOUNT(B)
4. PAYMENTS FOR MOVING HOUSEHOLDS		ACTUAL EXPENSES-SEC. 202(A)
5. PAYMENTS FOR MOVING HOUSEHOLDS		SCHEDULE PAYMENT/DISLOCATION ALLOWANCE-SEC. 202(B)
6. PAYMENTS FOR MOVING BUSINESSES/FARMS/NPO		ACTUAL EXPENSES-SEC 202(A)
7. PAYMENTS FOR MOVING BUSINESSES/FARMS/NPO		IN LIEU PAYMENTS-SEC. 202(C)
7A. NO. OF CLAIMS AND AMOUNT ON LINE 6 ATTRIBUTABLE TO REESTABLISHMENT EXPENSES		
8. REPLACEMENT HOUSING PAYMENTS FOR 180-DAY HOMEOWNERS-SEC. 203(A)		
9. NO. OF CLAIMS AND AMOUNT ON LINE 8 ATTRIBUTABLE TO INCREASED MORTGAGE INTEREST COSTS		
10. RENTAL ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC. 204(1)		
11. DOWNPAYMENT ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC. 204(2)		
12A. HOUSING ASSISTANCE AS LAST RESORT-SEC. 206(A)		OWNERS
12B. HOUSING ASSISTANCE AS LAST RESORT-SEC. 206(A)		TENANTS
13. RELOCATION ADVISORY SERVICES COSTS-SEC. 205		
14. TOTAL (SUM OF LINES 4(B) THROUGH 13(B)), EXCLUDING LINES 7A AND 9		
15. RELOCATION GRIEVANCES FILED DURING THE FISCAL YEAR IN CONNECTION WITH PROJECT/PROGRAM		

PART C. REAL PROPERTY ACQUISITION SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM	NO. OF PARCELS (A)	COMPENSATION(B)
16. TOTAL PARCELS ACQUIRED		
17. TOTAL PARCELS ACQUIRED BY CONDEMNATION INCLUDED ON LINE 16 WHERE PRICE DISAGREEMENT WAS INVOLVED		

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****Uniform Relocation and Real Property Acquisition for Federal and Federally-Assisted Programs; Fixed Payment for Moving Expenses; Residential Moves**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The purpose of this notice is to publish the alternative moving expense and dislocation allowance schedule for persons displaced from dwellings in each State, the District of Columbia, Puerto Rico, and the Virgin Islands as required by section 405(b) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, 101 Stat. 132 (1987 Amendments).

EFFECTIVE DATE: The provisions of this Notice are effective March 2, 1989. For further information about implementation dates, see the discussion in the supplementary information section below.

FOR FURTHER INFORMATION CONTACT: Barbara J. Satorius, Policy Development Branch, Office of Right-of-Way (202-366-2043); or Reid Alsop, Office of the Chief Counsel (202-366-1371), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours, Monday-Friday are from 7:30 a.m. to 4:00 p.m., e.t.

SUPPLEMENTARY INFORMATION: Section 202(b) of the Uniform Relocation

Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (Uniform Act), as amended by section 405(b) of the 1987 Amendments, provides that a displaced individual or family may elect to be paid for moving expenses on the basis of a moving expense and dislocation allowance schedule established by the head of the lead agency as an alternative to being paid for moving and related expenses actually incurred. Section 405(b) eliminated statutory limitations on the amounts that could be paid pursuant to such a schedule. Implementing regulations at 49 CFR 24.302 provide that the FHWA will develop and approve this schedule.

The purpose of this notice is to publish the schedule approved by the FHWA for use in payment determinations by all Federal, State and local governments, and persons affected by the Uniform Act, as amended. It has been developed from data provided by State highway agencies, and incorporates the dislocation allowance within the schedule's payment amounts. The exceptions and limitations are as follows:

1. The expense and dislocation allowance to a person whose residential move is performed by an agency at no cost to the person shall be limited to \$50.00.

2. An occupant will be paid on an actual cost basis for moving his or her mobile home from the displacement site. In addition, a reasonable payment to the occupant for packing and securing

personal property for the move may be paid at the agency's discretion.

3. The expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons shall be limited to \$50.00.

An occupant who moves from a mobile home may be paid for the removal of personal property from the mobile home in accordance with the moving and dislocation allowance payment schedule.

Any government, agency or person that is in compliance with 49 CFR Part 24 may implement the schedule being published today. Any government, agency or person that is unable to comply with 49 CFR Part 24 at this time may continue to use the moving expense schedule published in the Federal Register on December 30, 1986, until the schedule published here becomes mandatory on April 2, 1989, the date that the 1987 Amendments and 49 CFR Part 24 become fully applicable.

(Catalog of Federal Domestic Assistance Program Number 20.206, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(42 U.S.C. 4601; 49 CFR 24.302(a)).

Issued on February 24, 1989.

Robert E. Farris,
Federal Highway Administrator.

BILLING CODE 4910-22-01

E X H I B I T B

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REGULATIONS

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March 1989

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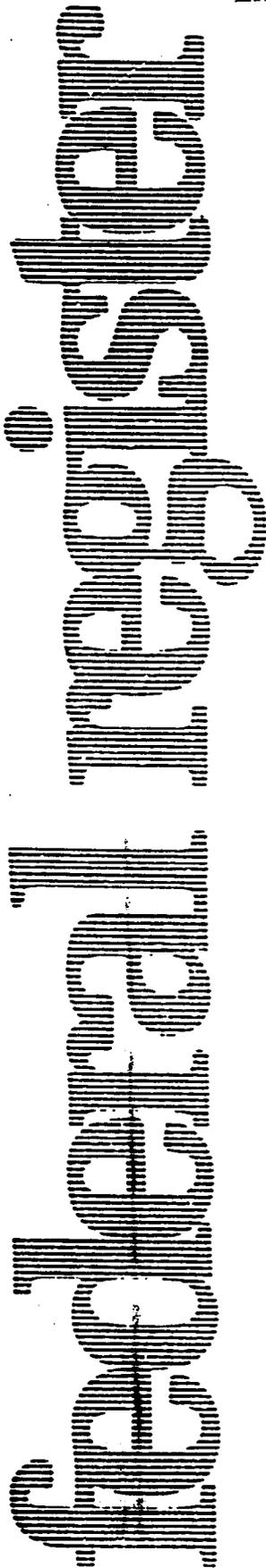
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SUBJECT

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Thursday
December 17, 1987



Part II

Uniform Relocation Assistance and Real
Property Acquisition Regulation for
Federal and Federally Assisted Programs;
Interim Final Rules, Final Rule, and Notice of
Intent

Department of Agriculture
Department of Energy
National Aeronautics and Space Administration
Department of Commerce
Tennessee Valley Authority
Department of Labor
Department of Defense
Department of Education
Pennsylvania Avenue Development Corporation
Veterans Administration
Environmental Protection Agency
General Services Administration
Department of the Interior
Department of Justice
Federal Emergency Management Agency
Department of Health and Human Services
Department of Transportation
Department of Housing and Urban Development

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 24

[FHWA Docket No. 87-22]

Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally Assisted Programs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This regulation incorporates certain statutory amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act) occasioned by passage of Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (1987 Amendments), Pub. L. 100-17, 101 Stat. 246. The interim rule addresses only those amendments upon which the law is explicit and allows little, if any, administrative discretion or interpretation and for which a period of public notice and comment would be impractical. For the easy reference of the reader, the unchanged provisions of the existing regulation are reprinted in their entirety in order to present a complete regulation at a single source. Other changes made in the Uniform Act will require the development or modification of specific criteria which will be the subject of public notice and comment at a later date.

The immediate objective of today's interim final rule action is to provide implementing regulations for those Federal and State agencies that are currently able to allow payment of certain specified benefits as established by the 1987 Amendments for persons displaced on or after April 2, 1987.

DATES: The provisions of this interim final rule are effective December 17, 1987. For further information about implementation dates, see the discussion in the supplementary information section below. Comments must be received on or before February 16, 1988.

ADDRESS: Submit signed, written comments, preferably in triplicate, to FHWA Docket No. 87-22, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., Monday

through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT:

Barbara Reichart, Director, Office of Right-of-Way, HRW 1, (202) 366-0118; or Reid Alsop, Office of the Chief Counsel, HCC-40, (202) 366-1371. The address is Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. For specific program information, see individual agency submissions published elsewhere in this issue of the Federal Register.

SUPPLEMENTARY INFORMATION:**Background**

In 1981, for the Vice President's Presidential Task Force on Regulatory Relief, State and local governments identified the Uniform Act as a good candidate for State and local regulatory relief. Therefore, in May 1982, the Office of Management and Budget (OMB) formed a Uniform Act Interagency Regulatory Review Working Group to develop uniform regulations to be implemented by each covered agency for the Uniform Act. On February 27, 1985, a Presidential Memorandum was signed and published in the Federal Register on March 5, 1985 (50 FR 8953), naming the Department of Transportation (DOT) as the agency with lead responsibility for the Uniform Act. The Secretary of the Department of Transportation delegated this responsibility to the Federal Highway Administration. On March 5, 1985 (50 FR 8953), DOT published in the Federal Register a model Uniform Act rule, which (in accordance with the President's February 27, 1985 memorandum) served as the basis for a proposed common Uniform Act rule for the 18 other affected agencies (50 FR 8955). The proposed common rule was issued for comment by those 18 agencies on May 28, 1985. After consideration of comments, the disparate regulations of all affected agencies were superseded by the common rule which was published as a final rule on February 27, 1986 (51 FR 7000). This common rulemaking effort, applicable to both direct Federal programs and projects and federally-assisted programs and projects undertaken by State or local agencies, achieved consistency in regulations among the separate Federal agencies. To a significant extent, this common rulemaking effort presaged many of the statutory changes to the Uniform Act made by the 1987 Amendments. In the administrative

area, for example, the Amendments specifically designate the DOT as lead agency and require it, in coordination with other Federal agencies, to issue rules, establish procedures and make interpretations to implement provisions of the Uniform Act. In the substantive area, with the major exception of payment levels or criteria that were set by statute, the common rulemaking effort granted greater flexibility and discretion to State and local agencies. A theme reiterated in the 1987 Amendments.

On Tuesday, May 19, 1987 (52 FR 18768) the FHWA issued a Notice describing significant changes in the law and general plans to implement those changes. On Tuesday, December 1, 1987 (52 FR 45607) the FHWA issued a Notice of Regulatory Intent giving further notice of the specific regulatory actions that it and the other affected Federal agencies will take to implement the 1987 Amendments and the reasons for issuing this interim final rule. This interim final rule is intended to assist those Federal and State agencies that are now willing and able to implement the non-controversial provisions of the 1987 Amendments, which are described below. This interim final rule will be followed by a notice of proposed rulemaking (NPRM), that will seek comments on implementing all provisions of the 1987 Amendments. The NPRM will be followed by a final rule that will replace this interim final rule prior to the date the 1987 Amendments become mandatory, which is on or before April 2, 1989.

Implementation Dates

An implementation date prior to December 17, 1987, may be established by a Federal agency for some or all of its programs. However, it must be applied so that it displaces in like circumstances are treated in a uniform and consistent manner. Such date shall not be prior to April 2, 1987, the date of enactment of the 1987 Amendments. For Department of Transportation (DOT) direct Federal projects, displacing agencies may elect to apply this regulation to any person displaced after April 2, 1987. For DOT federally-assisted programs or projects, displacing agencies that lack authority under current State law to comply with the interim final rule shall continue to comply with 49 CFR Part 25 until such authority is obtained. Part 25 will be rescinded on April 2, 1989, by the separate DOT regulatory action published elsewhere in this issue of the Federal Register.

changes in the statutory payment limits made by the 1987 Amendments. For the reader's easy reference, the location of these nondiscretionary changes are simply identified below, by subpart, without further discussion. To better enable agencies to relate interim final rule changes to the existing common rule, subpart, section and paragraph references in this preamble are cited in generic form, i.e., a simple dash has been substituted for the CFR part number. Where a nondiscretionary change has not been made or a change of another nature has been made, these actions are discussed. There are no changes at this time in Subparts B and C.

Subpart A—General

Section 24.1 Purpose.

A new paragraph (c) has been added to refer specifically to the 1987 Amendments which are being promulgated in the interim final rule. This language will simply help to distinguish the interim final rule from the earlier common rule during this transition period.

Section 24.2 Definitions.

In paragraph 24.2(c)(6)(iii) the dollar amounts have been changed to reflect the new statutory limits for payments under the cited sections.

Subpart D—Payment for Moving and Related Expenses

Section 24.302 Fixed payment for moving expenses—residential moves.

For eligible residential displacees who elect to be reimbursed on the basis of a payment schedule as an alternative to reimbursement for actual moving and related expenses, the 1987 Amendments eliminated the ceiling that had been set for the moving expense payment and the fixed amount for a dislocation allowance. Instead, "an expense and dislocation allowance" has been authorized, in accordance with a schedule established by the lead agency. Historically, the moving expense allowance had been established by each state and then approved and published in the Federal Register annually by the Federal Highway Administration. This schedule became the basis for all such alternative payments by other Federal agencies. FHWA intends to develop the schedule from data provided by the State Highway agencies as in the past and then publish the schedule as a notice in the Federal Register. The current fixed payment schedule was published as a Notice in the Federal Register on December 30, 1986 (51 FR 47097) and will remain in effect until

April 2, 1989 for those State and local Federal-aid grant recipients that lack authority to comply with the 1987 Amendments or are not required to do so under this interim final rule.

The interim final rule contains language to reflect the statutory elimination of set amounts and to establish the basis for a revised schedule for such moves. The methodology States will use to develop data for the revised schedule will be similar to that used in the past, while at the same time allowing States to take into consideration geographic variables that may affect moving expenses. The schedule is expected to reflect a logical relationship between the eligible expenses to be covered by the dislocation allowance and the probability that such expenses will be incurred by the displaced person or household instead of a fixed amount payable equally to all residential displacements.

Section 24.304 Fixed payment for moving expenses nonresidential moves.

In paragraphs 24.304(a) and 24.304(c) the dollar amounts have been changed to reflect the new statutory minimum and maximum payments. An eligible displaced business retains the option of receiving a payment for actual moving and related expenses so that the change in the new minimum payment level does not reduce the displacee's financial protection under the law. In paragraph 24.304(d), the amount of payment an eligible displaced nonprofit organization may receive has not been changed.

The 1987 Amendments provide an opportunity to review and revise, if necessary, the criteria to be met in determining eligibility for, and the amount of, an "in lieu of moving" payment as an alternative business allowance. As any significant change to the current criteria should be subject to public notice and comment, such changes are not being included in the interim final rule. As the amount of payment for a nonprofit organization is really a product of the current criteria, there is no strong basis for arbitrarily setting a different amount, such as the new statutory minimum, until the feasibility of criteria for payment to such businesses is adequately explored. To apply the new minimum, which could be interpreted as a reduction in benefits, without a corresponding analysis of alternative payment criteria could result in inconsistent treatment of displacees in otherwise similar circumstances. While the entire subject of criteria for all affected displacees under this section will be dealt with in the forthcoming notice of proposed rulemaking, early

comments will be accepted on all criteria but are especially invited on the question of criteria for nonprofit organizations.

Subpart E—Replacement Housing Payments

Section 24.401 Replacement housing payment for 180 day homeowner—occupants.

In paragraph 24.401(b) the dollar amount has been changed to reflect the new statutory limit for this payment. A new sentence has been added to reflect the changed time limit imposed on payments computed under this section by section 406 of the 1987 Amendments.

Additional language has been included in paragraph 24.401(d) to allow displacing agencies to use an alternative method to determine increased mortgage interest costs. The alternative approach, or "buydown" method, was previously acceptable only for use in computing such costs under the Last Resort Housing provisions in § 24.602 because the method of computing such costs under section 203 of the Uniform Act was set by statute. The 1987 Amendments have now eliminated the statutory "annuity" formula. FHWA has included the "buydown" method in the interim final rule for displacing agencies to elect to use as an alternative for all such computations. Although its application has been widespread in Last Resort Housing situations, some agencies may not be familiar with it nor has it been subject to general notice and comment. As the Congress recognized when it amended section 203 of the Uniform Act, it will be necessary to modify the "annuity" method in order to avoid or reduce "windfall" or unwarranted payments during periods of inflation and high mortgage interest rates. For these reasons, the "buydown" method is included at this time only as a permitted alternative and early comments are invited on it or other possible alternative procedures for computing such costs.

In paragraph 24.401(f) the dollar amount has been changed to reflect the new statutory limit for payment under the cited section.

Section 24.402 Replacement housing payment for 90-day occupants.

In paragraph 24.402(a) the dollar amount has been changed to reflect the new statutory limit for this payment.

In paragraph 24.402(b)(1), the dollar amount and the computation factor have been changed to reflect the new statutory limit for the amount and the time period for financial assistance. The

statement in the law that the computation of a payment under this paragraph to a low-income displaced person shall take into account such person's income is not being specifically addressed in the interim final rule because this statement requires administrative interpretation and any changes in the method of computation is properly subject to public notice and comment. As a practical matter, the current last resort housing provision offers some protection to such displacces.

Paragraph 24.402(c)(1) dealing with the amount of a downpayment has been rewritten to reflect the new statutory limit for such payments and to remove the matching requirement which was eliminated by the 1987 Amendments. This paragraph also sets forth the change under which downpayment assistance may be based on the cost of renting a comparable replacement dwelling.

Also, the language formerly found in paragraph 24.402(c)(2) has been rewritten and placed in Appendix A at 24.402(c). Numbered paragraph 24.402(c)(3), application of payment, has been changed to 24.402(c)(2).

Section 24.403 Additional rules governing replacement housing payments.

In paragraph 24.403(b) the dollar amounts have been changed to reflect the new statutory limits for payments under the cited sections.

Subpart F—Mobile Homes

In §§ 24.503, 24.504 and 24.505(a) the dollar amounts have been changed to reflect the new statutory limits for payment under the cited sections.

Subpart C—Last Resort Housing

Section 24.601(b) Basic rights of persons to be displaced.

For clarity, a sentence has been added at the end of this paragraph to reflect the time limit imposed on payments computed under § 24.401 by section 406 of the 1987 Amendments. This sentence is essentially identical to the sentence added at § 24.401(b) for the same reason.

Appendix A—Additional Information

Section 24.402 Replacement housing payment for 90-day occupants.

The discussion in § 24.402 has been expanded to include the intent of the downpayment assistance provision and guidance on the prudent application of agency discretion.

Section 24.602 Methods of providing replacement housing.

The paragraph permitting the use of the "buydown" method in computing an increased mortgage interest payment has been eliminated as that method has been included as an acceptable alternative method in § 24.401.

Appendix B—Statistical Report Form

In the instructions for completing line 13 of the form, the dollar amounts in the example have been changed to reflect the new statutory limit for the section 204 of the Uniform Act portion of the payment used in the example.

Future Steps

In establishing a Federal lead agency, the 1987 Amendments built upon the earlier governmentwide common rule effort by the Executive Branch which achieved consistency among the almost 20 Federal departments and agencies that are affected by the Uniform Act. However, without specific statutory authority to develop and publish a governmentwide single rule, this earlier effort required each affected Federal agency to take separate, albeit simultaneous, verbatim rulemaking actions. The 1987 Amendments now provide the authority to streamline this process and to have a governmentwide single rule published at a single location in the CFR which is applicable to all Federal programs. The intent of Congress, that "the lead agency rules should provide sufficient direction to preclude the need for the issuance of regulations by other Federal agencies" (H.R. Rep. No. 99-665, 99th Cong., 2d Sess. 92 (1986)), should minimize the burden on State and local agencies. Congress recognized that actual implementation of the 1987 Amendments would probably require a phase-in period to allow for conforming action by State legislatures, if necessary, for federally-assisted programs and therefore set a statutory effective date of no later than April 2, 1989.

It is recognized that many non-Federal agencies whose activities are covered by the Uniform Act will be unable to comply with the 1987 Amendments. This is the reason that the 1987 Amendments in section 418 provided for delay in their effective date. Displacing agencies that are unable to comply with this interim final rule should continue to comply with the provisions of the common Uniform Act rule published on February 27, 1986 (51 FR 7000). The governmentwide common rule will remain in effect, for programs providing Federal financial assistance to displacing agencies, until the date, on or

before April 2, 1989, that the 1987 Amendments become mandatory. Displacing agencies that currently are unable to comply with the new provisions added by this interim final rule are encouraged to comply with this interim final rule or with the final rule that will succeed it as soon as they are able to do so. The FHWA has prepared model State enabling legislation that is designed to permit full compliance with the Uniform Act, as amended. Copies are available from the contacts for further information, listed above.

The assurances provision of this interim final rule at § 24.4 has not been changed. The implementation of this provision as to specific programs or projects is entirely the responsibility of the Federal funding agency involved. However, the use of this provision by the Federal funding agency is encouraged to determine which of its grantee agencies are proceeding under the provisions of this interim final rule.

Many States and Federal agencies administering direct Federal activities already have the necessary statutory authority and are eager to implement the 1987 Amendments. This interim final rule permits them to do so. Further, many Federal agencies are able to move toward the single-rule streamlined process now and have done so by rescinding their agency-specific rule and cross referencing today's interim final rule as the governing regulation for their programs as described in the 17-agency common rule published elsewhere in today's Federal Register. Other agencies will take this action at a later date but not later than April 2, 1989.

There are several other specific changes in the Uniform Act made by the 1987 Amendments that will be proposed in a notice of proposed rulemaking to be published after the start of the new year. Comments on that rulemaking will be solicited and incorporated into the final Uniform Act regulation.

Regulatory Impact

The FHWA has determined that this action does not constitute a major rule under Executive Order 12291 or a significant rule under the regulatory policies and procedures of the Department of Transportation.

The FHWA believes that circumstances warrant the issuance of this rulemaking action without notice or an opportunity for prior public comment. As previously stated, the statutory amendments that are incorporated in this rulemaking action address specific and fixed relocation costs and benefits. The statutory payment limits authorized by the 1987 Amendments are explicit

and require little, if any, administrative interpretation or discretion. For this reason, a period for public comment is unnecessary.

Many States and Federal agencies administering direct Federal activities currently have the necessary statutory authority to implement certain provisions of the 1987 Amendments. To delay the promulgation of the amendments contained in this rulemaking action would deprive many parties from receiving what they are entitled to under the law.

For the foregoing reasons, the FHWA finds good cause to make this regulation effective without prior notice or opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act, 5 U.S.C. 553 (b) and (d). Accordingly, the provisions that are contained in this rulemaking action are effective as provided by the section entitled "Dates."

While the FHWA does not anticipate that there will be any substantive public comment on the general issue of the statutory provisions themselves, there may be some procedural comments on the provisions contained in this interim final rule. For this reason, publication of this interim final rule without an opportunity for prior comment, but with a request for comments following publication is consistent with the Department of Transportation's regulatory policies. Any comments that are submitted specifically to this docket will be fully considered in determining the need for future revisions in conjunction with a notice of proposed rulemaking (NPRM) which will be published separately at a later date and which will address several other provisions mandated by the 1987 Amendments.

The economic impacts of this rulemaking that will occur are primarily mandated by the statutory provisions themselves. For this reason, a full regulatory evaluation is not required. Based on information available to FHWA at this time and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act Requirements

Today's rulemaking does not affect any of the sections that contain paperwork requirements subject to review by OMB under Pub. L. 96-511, the Paperwork Reduction Act of 1980. These sections are §§ 24.102(e), 24.103(b), 24.104(c), 24.203(a), 24.203(c), 24.205(b), 24.207(g), and 24.303(b). It remains the responsibility of each

affected Federal agency to obtain program-specific OMB approval for reporting requirements contained in this rule.

In consideration of the foregoing, the FHWA hereby amends title 49, Code of Federal Regulations, Subtitle A, by adding Part 24 as set forth below.

List of Subjects in 49 CFR Part 24

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, Transportation.

Issued on: December 11, 1987.

R.A. Barnhart,
Federal Highway Administrator, Federal Highway Administration.

PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A—General

- Sec. 24.1 Purpose.
- 24.2 Definitions.
- 24.3 No duplication of payments.
- 24.4 Assurances, monitoring and corrective action.
- 24.5 Manner of notices.
- 24.6 Administration of jointly-funded projects.
- 24.7 Federal agency waiver of regulations.
- 24.8 Compliance with other laws and regulations.
- 24.9 Recordkeeping and reports.
- 24.10 Appeals.

Subpart B—Real Property Acquisition

- 24.101 Applicability of acquisition requirements.
- 24.102 Basic acquisition policies.
- 24.103 Criteria for appraisals.
- 24.104 Review of appraisals.
- 24.105 Acquisition of tenant-owned improvements.
- 24.106 Expenses incidental to transfer of title to the agency.
- 24.107 Certain litigation expenses.
- 24.108 Donations.

Subpart C—General Relocation Requirements

- 24.201 Purpose.
- 24.202 Applicability.
- 24.203 Relocation notices.
- 24.204 Availability of comparable replacement dwelling before displacement.
- 24.205 Relocation assistance advisory services.
- 24.206 Eviction for cause.
- 24.207 General requirements—claims for relocation payments.
- 24.208 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

- 24.301 Payment for actual reasonable moving and related expenses—residential moves.

- 24.302 Fixed payment for moving expenses—residential moves.
- 24.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
- 24.304 Fixed payment for moving expenses—nonresidential moves.
- 24.305 Ineligible moving and related expenses.

Subpart E—Replacement Housing Payments

- 24.401 Replacement housing payment for 180-day homeowner-occupants.
- 24.402 Replacement housing payment for 90-day occupants.
- 24.403 Additional rules governing replacement housing payments.

Subpart F—Mobile Homes

- 24.501 Applicability.
- 24.502 Moving and related expenses—mobile homes.
- 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.
- 24.504 Replacement housing payment for 90-day mobile home occupants.
- 24.505 Additional rules governing relocation payments to mobile home occupants.

Subpart G—Last Resort Housing

- 24.601 Applicability.
- 24.602 Methods of providing replacement housing.

Appendix A to Part 24—Additional Information

Appendix B to Part 24—Statistical Report Form

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note); and 49 CFR 1.48(dd).

Subpart A—General

§ 24.1 Purpose.

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs; and

(b) To ensure that persons displaced as a result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate

injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To implement those provisions of the Uniform Relocation Act Amendments of 1987 (Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, 101 Stat. 246) that are explicit and are not subject to administrative discretion or interpretation.

§ 24.2 Definitions.

(a) *Agency.* The term "Agency" means the Federal agency, State or State agency which acquires the real property or displaces a person (see § 24.2(f)).

(b) *Business.* The term "business" means any lawful activity, except a farm operation, that is conducted:

(1) Primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Primarily for the sale of services to the public; or

(3) Solely for the purpose of § 24.303, conducted primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(c) *Comparable replacement dwelling.* The term "comparable replacement dwelling" means a dwelling which is:

(1) Decent, safe, and sanitary as described in § 24.2(e).

(2) Functionally similar to the displacement dwelling with particular attention to the number of rooms and living space. (See Appendix A of this part.)

(3) In an area that is not subject to unreasonable adverse environmental conditions, is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and is reasonably accessible to the person's place of employment.

(4) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also § 24.403(a)(2).)

(5) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar

government housing assistance. (See Appendix A of this part.)

(6) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner is paid the full price differential as described at § 24.401(c), all increased mortgage interest costs as described at § 24.401(d) and all incidental expenses as described at § 24.401(e).

(ii) A replacement dwelling rented by a displaced person is considered to be within his or her financial means if the monthly rent at the replacement dwelling does not exceed the monthly rent at the displacement dwelling, after taking into account any rental assistance which the person receives under this part. If the cost of any utility service is included in either rent, an appropriate adjustment must be made if necessary to ensure that like circumstances are compared. For a person who paid little or no rent before displacement, the market rent of the displacement dwelling may be used when computing costs (see Appendix A of this part, § 24.402(b)(1)).

(iii) Whenever a \$22,500 replacement housing payment under § 24.401 or a \$5,250 replacement housing payment under § 24.402 would be insufficient to ensure that a comparable replacement dwelling is available on a timely basis to a person, the Agency shall provide additional or alternative assistance under the last resort housing provisions at Subpart C of this part, which may include increasing the replacement housing payment so that a replacement dwelling is within the displaced person's financial means.

(d) *Contribute materially.* The term "contribute materially" means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least \$5,000; or

(2) Had average annual net earnings of at least \$1,000; or

(3) Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(e) *Decent, safe, and sanitary dwelling.* The term "decent, safe, and

sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply, unless waived for good cause by the Federal agency funding the project. The dwelling is all:

(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other electrical devices.

(3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

(6) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(f) *Displaced person—(1) General.* The term "displaced person" means any person (defined at § 24.2(m)) who moves from the real property or moves his or her personal property from the real property:

(i) As a direct result of the Agency's acquisition of such real property in whole or in part for a project. This includes any person who moved from the real property as a result of the initiation of negotiations as described at § 24.2(k); or

(ii) As a result of a written order from the acquiring Agency to vacate such real property for the project; or

(iii) As a result of the Agency's acquisition of, or written order to vacate, for a project, other real property

on which the person conducts a business or farm operation. Eligibility as a displaced person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under § 24.205 and moving expenses under § 24.301, § 24.302, or § 24.303.

(2) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as a displaced person under this part.

(i) A person who moves before the initiation of negotiations (see also § 24.403(e)); or

(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

(iii) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal agency funding the project (see also Appendix A of this part); or

(iv) A person whom the Agency determines is not displaced as a direct result of a partial acquisition; or

(v) A person who, after receiving a notice of relocation eligibility (described at § 24.203), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

(vi) An owner-occupant who voluntarily sells his or her property (as described at § 24.101(a) in Appendix A of this part) after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to this part; or

(vii) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency; or

(viii) A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of the Interior under Pub. L. 93-477 or Pub. L. 93-303.

(g) *Dwelling.* The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(h) *Farm operation.* The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(i) *Federal agency.* The term "Federal agency" means any department, agency, or instrumentality in the Executive Branch of the Government, any wholly owned Government corporation, and the Architect of the Capitol, the Federal Reserve Banks and branches thereof.

(j) *Federal financial assistance.* The term "Federal financial assistance" means any Federal grant, loan, or contribution, except a Federal guarantee or insurance.

(k) *Initiation of negotiations.* The term "initiation of negotiations" means the delivery of the initial written offer by the Agency to the owner or the owner's representative to purchase real property for a project for the amount determined to be just compensation, unless applicable Federal program regulations specify a different action to serve this purpose. However:

(1) If the Agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the "initiation of negotiations" means the date the person moves from the property. (See also § 24.305(c).)

(2) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(l) *Owner of displacement dwelling.* A displaced person is considered to have met the requirement to own a displacement dwelling if the person holds any of the following interests in real property acquired for a project:

(1) Fee title, a life estate, a 99-year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition; or

(2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in paragraphs (1) (1) or (2) of this section, or

(4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(m) *Person.* The term "person" means any individual, family, partnership, corporation, or association.

(n) *Salvage value.* The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(o) *State.* The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands, or a political subdivision of any of these jurisdictions.

(p) *State agency.* The term "State agency" means any department, agency or instrumentality of a State or of a political subdivision of a State, or two or more States, or of two or more political subdivisions of a State or States.

(q) *Tenant.* The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

(r) *Uniform Act.* The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 1894; 42 U.S.C. 4601), and amendments thereto.

§ 24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, or local law which is determined to have the same purpose and effect as such payment under this part. (See Appendix A of this part, § 24.3.)

§ 24.4 Assurances, monitoring and corrective action.

(a) *Assurances.* Before a Federal agency may approve any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A State agency's assurances under section 305

of the Uniform Act must contain specific reference to the State law which the Agency believes provides an exception to sections 301 or 302 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, a State agency may provide these assurances at one time to cover all subsequent federally assisted programs or projects.

(b) *Monitoring and corrective action.* The Federal agency will monitor compliance with this part, and the State agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal agency may also apply sanctions in accordance with applicable program regulations.

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

§ 24.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the notice described at § 24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 24.6 Administration of jointly-funded projects.

Whenever two or more Federal agencies provide financial assistance to an Agency or Agencies to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. At a minimum, the agreement shall set forth the federally assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federally assisted activities under the agreement shall be deemed a project for the purposes of this part.

§ 24.7 Federal agency waiver of regulations.

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§ 24.8 Compliance with other laws and regulations.

The implementation of this part shall be in compliance with all applicable laws and implementing regulations, including the following:

- (a) Section I of the Civil Rights Act of 1966 (42 U.S.C. 1982 *et seq.*).
- (b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).
- (c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended.
- (d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).
- (e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).
- (f) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.
- (g) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12259.
- (h) Executive Order 11246—Equal Employment Opportunity.
- (i) Executive Order 11825—Minority Business Enterprise.
- (j) Executive Order 12259—Leadership and Coordination of Fair Housing in Federal Programs.
- (k) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234).
- (l) Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.
- (m) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).

§ 24.9 Recordkeeping and reports.

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under this

part if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding agency shows good cause.

§ 24.10 Appeals.

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) *Actions which may be appealed.* A person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly determine the person's eligibility for, or the amount of, a payment required under § 24.106 or § 24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the

official shall not have been directly involved in the action appealed.

Subpart B—Real Property Acquisition

§ 24.101 Applicability of acquisition requirements.

(a) *General.* The requirements of this subpart apply to any Agency acquisition of real property for a Federal or federally assisted project, except:

(1) Voluntary transactions that meet the criteria specified in Appendix A of this part, § 24.101(a).

(2) The acquisition of real property from a Federal agency, State, or State agency, if the acquiring Agency does not have the authority to acquire the property through condemnation.

(b) *Less-than-full-fee interest in real property.* The requirements of this Subpart apply to the acquisition of a life estate or a life use, to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more, and to the acquisition of permanent easements. (See also Appendix A of this part, § 24.101(b).)

(c) *Federally-assisted projects.* For federally-assisted projects the provisions of §§ 24.102, 24.103, 24.104, and 24.105 apply to the extent practicable under State law. (See § 24.4(a).)

§ 24.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part. (See also § 24.203.)

(c) *Appraisal and invitation to owner.* Before the initiation of negotiations, the real property shall be appraised and the owner or the owner's designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. (See also § 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

(f) *Basic negotiation procedures.* The Agency shall make reasonable efforts to contact the owner or the owner's representative and (1) discuss its offer to purchase the property including the basis for the offer of just compensation, and (2) explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) supports such a settlement.

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall (1) pay the agreed purchase price to the owner, or (2) in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner.

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. An uneconomic remnant is a remaining part of the property in which the owner is left with an interest that the Agency determines has little or no utility or value to the owner.

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

§ 24.103 Criteria for appraisals.

(a) *Definition of appraisal.* An appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an

opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(b) *Standards of appraisal.* The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, the appraisal shall contain the following items:

(1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(4) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of

the damages and benefits, if any, to the remaining real property.

(6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(c) *Influence of the project on just compensation.* To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(d) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 24.2(n)) of the retained improvement.

(e) *Qualifications of appraisers.* The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(f) *Conflict of interest.* No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is \$2,500, or less.

§ 24.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of just compensation, and it is determined that

it is not practical to obtain an additional appraisal, the reviewing appraiser may develop appraisal documentation in accordance with § 24.103 to support an approved or recommended value.

(c) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

§ 24.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Subpart.

(c) *Appraisal and establishment of just compensation for tenant-owned improvements.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined at § 24.2(n).)

(d) *Special conditions.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this Subpart shall be construed to deprive the tenant-owner of any right to

reject payment under this Subpart and to obtain payment for such property interests in accordance with other applicable law.

§ 24.106 Expenses incidental to transfer of title to the Agency.

The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(a) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and

(b) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(c) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

§ 24.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

§ 24.108 Donations.

Nothing in this part shall prevent a person, after being informed of the right to receive just compensation, based on an appraisal of the real property, from making a gift or donation of real property or any part thereof, or any interest therein, or of any compensation paid therefor, to the Agency. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation.

Subpart C—General Relocation Requirements

§ 24.201 Purpose.

This Subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

§ 24.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at § 24.2(f).

§ 24.203 Relocation notices.

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the Agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

(3) Informs the person that he or she will not be required to move without at least 90 days' advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Describes the person's right to appeal the Agency's determination as to eligibility for, or the amount of, any relocation payment for which the person may be eligible.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in § 24.2(k)) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice.* (1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing agency may issue the notice 90 days before it expects the person to be displaced or earlier.

(3) *Content of notice.* The 90-day notice shall either state a specific date

as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See § 24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the Agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

§ 24.204 Availability of comparable replacement dwelling before displacement.

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 24.2(c)) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location; and

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in § 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. § 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person is required to relocate for a temporary period because

of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in monthly housing costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

§ 24.205 Relocation assistance advisory services.

(a) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), and Executive Order 11063 (27 FR 11527), and offers the services described in paragraph (b) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer the services to such person.

(b) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(1) Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

(2) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 24.204(a).

(i) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see § 24.403 (a) and (b)) and the basis for the determination, so that the person is

aware of the maximum replacement housing payment for which he or she may qualify.

(ii) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See § 24.2 (c) and (e).) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(iii) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(iv) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(3) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(4) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(5) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to persons to be displaced.

(c) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized.

§ 24.206 Eviction for cause.

Eviction for cause must conform to applicable State and local law. Any person who has lawfully occupied the real property, but who is later evicted for cause on or after the date of the initiation of negotiations, retains the right to the relocation payments and other assistance set forth in this part.

For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves or the date a comparable replacement dwelling is made available, whichever is later.

§ 24.207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.* (1) All claims for a relocation payment shall be filed with the Agency within 18 months after:

(i) For tenants, the date of displacement;

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) This time period shall be waived by the Agency for good cause.

(e) *Multiple occupants of one displacement dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) *Deductions from relocation payments.* An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise

entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by § 24.204. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

§ 24.208 Relocation payments not considered as income.

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

Subpart D—Payment for Moving and Related Expenses

§ 24.301 Payment for actual reasonable moving and related expenses—residential moves.

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at § 24.2(f)) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

- (a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.
- (b) Packing, crating, unpacking, and uncrating of the personal property.
- (c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.
- (d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.
- (e) Insurance for the replacement value of the property in connection with the move and necessary storage.
- (f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where

insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under § 24.305, as the Agency determines to be reasonable and necessary.

§ 24.302 Fixed payment for moving expenses residential moves.

Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under § 24.301. This allowance shall be determined according to the applicable schedule approved by the Federal Highway Administration.

§ 24.303 Payment for actual reasonable moving and related expenses—nonresidential moves.

(a) *Eligible costs.* Any business or farm operation which qualifies as a displaced person (defined at § 24.2(f)) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

- (1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.
- (2) Packing, crating, unpacking, and uncrating of the personal property.
- (3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described at § 24.303(a)(12). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)
- (4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.
- (5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.
- (6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for (i) planning the move of the personal property, (ii) moving the personal property, and (iii) installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

- (i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.); or
- (ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

- (i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or
- (ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$1,000, as the Agency determines to be

reasonable, which are incurred in searching for a replacement location, including:

- (i) Transportation.
- (ii) Meals and lodging away from home.
- (iii) Time spent searching, based on reasonable salary or earnings.
- (iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(14) Other moving-related expenses that are not listed as ineligible under § 24.305, as the Agency determines to be reasonable and necessary.

(b) *Notification and inspection.* The following requirements apply to payments under this section:

(1) The Agency shall inform the displaced person, in writing, of the requirements of paragraphs (b) (2) and (3) of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in § 24.203.

(2) The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) *Self-moves.* If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(d) *Transfer of ownership.* Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(e) *Advertising signs.* The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

§ 24.304 Fixed payment for moving expenses—nonresidential moves.

(a) *Business.* A displaced business (except an outdoor advertising display business or a nonprofit organization) may be eligible to choose a fixed payment in lieu of a payment for actual moving and related expenses. The payment shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency demonstrates that it will not suffer a substantial loss of its existing patronage; and

(2) The business is not part of a commercial enterprise having another establishment, which is not being acquired by the Agency, and which is under the same ownership and engaged in the same or similar business activities. (For purposes of this part a remaining business facility that did not contribute materially to the income of the displaced person during the 2 taxable years prior to displacement shall not be considered "another establishment."); and

(3) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see § 24.2(d)).

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at § 24.2(h)) may choose a fixed payment in lieu of a payment for actual moving and related expenses in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. In the case of a partial acquisition of land which

was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment in lieu of a payment for actual moving and related expenses of \$2,500, if the Agency determines that it:

(1) Cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise; and

(2) Is not part of an enterprise having at least one other establishment engaged in the same or similar activity which is not being acquired by the Agency.

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory.

§ 24.305 Ineligible moving and related expenses.

A displaced person is not entitled to payment for:

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this part does not preclude the computation under § 24.401(c)(4)(iii); or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

- (d) Loss of profits; or
- (e) Loss of trained employees; or
- (f) Any additional operating expenses of a business or farm operation incurred because of operating in a new location; or
- (g) Personal injury; or
- (h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or
- (i) Expenses for searching for a replacement dwelling; or
- (j) Physical changes to the real property at the replacement location of a business or farm operation except as provided in § 24.303(a)(3); or
- (k) Costs for storage of personal property on real property already owned or leased by the displaced person.

Subpart E—Replacement Housing Payments

§ 24.401 Replacement housing payment for 180-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

- (1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and
- (2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the later of the following dates:

- (i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the required amount is deposited in the court, or
- (ii) The date the person moves from the displacement dwelling.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed \$22,500. (See also § 24.403(b).) The payment under this section is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date such person is initially offered a comparable replacement dwelling, whichever is later. The payment shall be the sum of:

- (1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section; and
- (2) The increased interest costs and other debt service costs to be incurred in connection with the mortgage(s) on the replacement dwelling, as determined in

accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential.*—(1) *Determination of price differential.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

- (i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 24.403(a); or
- (ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Mixed-use and multifamily properties.* If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(3) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see § 24.3.)

(4) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling, shall be the sum of:

- (i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and
- (ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at § 24.2(e)); and
- (iii) The current fair market value for residential use of the replacement site (see Appendix A of this part, § 24.401(c)(4)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and
- (iv) The retention value of the dwelling, if such retention value is

reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The displacing agency may use either the "annuity" method or the "buydown" method to determine the amount to be paid to a displacee under § 24.401(b)(2). The "annuity" method provides for a payment based upon the present value of the increase in interest costs that results when the mortgage interest rate on the replacement dwelling exceeds the mortgage interest rate on the displacement dwelling. The "buydown" method provides a lump sum payment which could be used to reduce the amount of a mortgage on the replacement dwelling to an amount which could be amortized with the same repayment schedule as that remaining for the mortgage(s) on the displacement dwelling. Payments under either method include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were a valid lien on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Once the Agency determines which method is to be used, that method must be applied in like manner throughout the Agency's program or projects except that, in the case of a Federal agency, the method selected may differ from State to State as long as the same method is used throughout its programs or projects in any given State. Paragraphs (d)(1)–(5) of this section shall apply to use of the annuity method:

(1) The payment shall be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage on the displacement dwelling or the actual term of the new mortgage, whichever is shorter.

(3) The interest charge on the new mortgage shall not exceed the prevailing interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) The present value of the increased interest costs shall be computed at the prevailing interest rate paid on savings deposits by commercial banks in the area in which the replacement dwelling is located.

(5) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

- (i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area; and

(iii) The Agency determines them to be necessary. The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Certification of structural soundness and termite inspection when required.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

(f) *Rental assistance payment for 180-day homeowner.* A 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 24.401(a) but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed \$5,250, computed and disbursed in accordance with § 24.402(b).

§ 24.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling, or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the required amount is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment.*—(1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$5,250 for rental assistance. (See also § 24.403(b).) Such payment shall be 42 times the amount obtained by subtracting the average monthly rent of the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency (for an owner-occupant or tenant who pays little or no rent, the average cost for rent shall be the fair market rent; see Appendix A of this part, Subpart E), from the lesser of:

(i) The monthly rent for a comparable replacement dwelling; or

(ii) The monthly rent for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Utility services.* Any utility service which is included in the monthly rent for either the displacement dwelling or the comparable replacement dwelling must be included when computing the rental assistance payment. Appropriate adjustments to reflect the cost of utility services shall be made, if necessary to ensure that like circumstances are compared.

(3) *Manner of disbursement.* The payment under this section shall be disbursed in a lump sum, unless the Agency determines on a case-by-case basis, for good cause, that the payment should be made in installments.

(c) *Downpayment assistance payment.*—(1) *Amount of payment.* A displaced person eligible for a rental assistance payment may, in lieu of accepting such rental assistance payment, elect to apply that computed payment to a downpayment, including related incidental expenses, for a replacement dwelling. At the Agency's discretion, an eligible displaced tenant or owner who does not meet the 180-day ownership/occupancy requirement may receive a downpayment assistance payment not to exceed \$5,250, except

that an eligible displaced owner may not receive a downpayment assistance payment which exceeds the payment that such person would otherwise have received under § 24.401(b) had the 180-day eligibility criterion been met. An Agency's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. In the case of a Federal agency, the method selected may differ from State to State as long as the same method is used throughout its programs or projects in any given State. A displaced person eligible to receive a payment as a 180-day owner-occupant under § 24.401(b) is not eligible for this payment. (See also Appendix A of this part, § 24.402(c).)

(2) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ 24.403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at § 24.2(c)).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also § 24.205(b)(2)(i)). An obviously overpriced dwelling may be ignored.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(3) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(b) *Applicability of last resort housing.* Whenever a \$22,500 replacement housing payment under § 24.401 or a \$5,250 replacement housing payment under § 24.402 would be insufficient to ensure that a comparable replacement dwelling is available on a timely basis to a person, the Agency shall provide additional or alternative assistance under the last resort housing provisions at Subpart G, which may include increasing the replacement housing payment so that a replacement dwelling is within the displaced person's financial means as described in § 24.2(c)(6)).

(c) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § 24.2(e).

(d) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

- (1) Purchases a dwelling; or
- (2) Purchases and rehabilitates a substandard dwelling; or
- (3) Relocates a dwelling which he or she owns or purchases; or
- (4) Constructs a dwelling on a site he or she owns or purchases; or
- (5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

(e) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in this part for a reason beyond his or her control, including:

- (1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the Agency; or
- (2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

(f) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § 24.402(b) is eligible to receive a

payment under § 24.401 or § 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 24.401 or § 24.402(c).

(g) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced persons period of actual occupancy of the replacement housing shall be paid.

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

Subpart F—Mobile Homes

§ 24.501 Applicability.

This subpart describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile homesite who meets the basic eligibility requirements of this part. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with Subpart D of this part and a replacement housing payment in accordance with Subpart E of this part to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

§ 24.502 Moving and related expenses—mobile homes.

A tenant or owner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her personal property on an actual cost basis in accordance with § 24.301 or, as an alternative, on the basis of a fixed payment under § 24.302. (However, if the mobile home is not acquired but the owner obtains a replacement housing payment under one of the circumstances described at § 24.503(c), the owner is not eligible for payment for moving the mobile home.) Paragraphs (a), (b) and (c) of this section

apply to payments for actual moving expenses under § 24.301:

(a) A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances (such as porches, decks, skirting, and awnings) which were not acquired, anchoring of the unit, and utility "hook-up" charges.

(b) If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe and sanitary, and the Agency determines that it would be practical to relocate it, the reasonable cost of such repairs and/or modifications is reimbursable.

(c) A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

§ 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.

(a) A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed \$22,500, under § 24.401 if:

(1) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

(2) The person meets the other basic eligibility requirements at § 24.401(a); and

(3) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(i) Is not and cannot economically be made decent, safe, and sanitary; or

(ii) Cannot be relocated without substantial damage or unreasonable cost; or

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) If the mobile home is not actually acquired, but the Agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at § 24.401(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

§ 24.504 Replacement housing payments for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed \$5,250, under § 24.402 if:

- (a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;
- (b) The person meets the other basic eligibility requirements at § 24.402(a); and
- (c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at § 24.503(c).

§ 24.505 Additional rules governing relocation payments to mobile home occupants.

(a) *Replacement housing payment based on dwelling and site.* Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However, the total replacement housing payment under Subpart E shall not exceed the maximum payment (either \$22,500 or \$5,250) permitted under the section that governs the computation for the dwelling. (See also § 24.403(b).)

(b) *Cost of comparable replacement dwelling.* (1) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(2) If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under § 24.401(c), the cost of a comparable replacement dwelling is the sum of (i) the value of the mobile home, (ii) the cost of any necessary repairs or modifications, and (iii) the estimated

cost of moving the mobile home to a replacement site.

(c) *Initiation of negotiations.* If the mobile home is not actually acquired, but the occupant is considered displaced under this part, the "initiation of negotiations" is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under this part.

(d) *Person moves mobile home.* If the owner is reimbursed for the cost of moving the mobile home under this part, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(e) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this part.

Subpart G—Last Resort Housing**§ 24.601 Applicability.**

(a) *Basic determination to provide last resort housing.* A person cannot be required to move from his or her dwelling unless at least one comparable replacement dwelling is made available to the person. Whenever an Agency determines that a replacement housing payment under Subpart E would not be sufficient to provide a comparable replacement dwelling on a timely basis to the person, the Agency is authorized to take appropriate measures under this Subpart to provide such a dwelling. The Agency's obligation to ensure that a comparable replacement dwelling is available shall be met when such a dwelling, or assistance necessary to provide such a dwelling, is offered under the provisions of this Subpart.

(b) *Basic rights of persons to be displaced.* The provisions of this Subpart do not deprive any displaced person of any rights the person may have under the Uniform Act or any implementing regulations. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under the procedures in this Subpart (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation

payment for which the person may otherwise be eligible. A 180-day homeowner-occupant who is eligible for a payment under § 24.401 is entitled to a reasonable opportunity to purchase a comparable replacement dwelling. However, the actual amount of assistance shall be limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling or the date the person is initially offered a comparable replacement dwelling, whichever is later. (See Appendix A of this part. § 24.601(b).)

§ 24.602 Methods of providing replacement housing.

Agencies shall have broad latitude in implementing this Subpart, but implementation shall be on a reasonable cost basis. The methods of providing last resort housing include, but are not limited to:

- (a) Rehabilitation of and/or additions to an existing replacement dwelling.
- (b) The construction of a new replacement dwelling.
- (c) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.
- (d) A replacement housing payment in excess of the limits set forth in § 24.401 or § 24.402. A rental assistance subsidy under this Subpart may be provided in installments or in a lump sum.
- (e) The relocation and, if necessary, rehabilitation of a dwelling.
- (f) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with, a displaced person.
- (g) The removal of barriers to the handicapped.

Appendix A to Part 24—Additional Information

This appendix provides additional information to explain the intent of certain provisions of this part.

Subpart A—General**Section 24.2(c) Definition of comparable replacement dwelling.**

The requirement in § 24.2(c)(2) that a comparable replacement dwelling be "functionally similar" to the displacement dwelling means that it must perform the same function, provide the same utility, and be capable of contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

Generally, functional similarity is an objective standard, reflecting the range of purposes for which the various features of a dwelling may physically be used. However, in determining whether a replacement dwelling is functionally similar to the displacement dwelling, the Agency may consider reasonable trade-offs in specific features when the replacement unit is "equal or better than" the displacement dwelling.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa. Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or consequentially less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally similar" to a larger but very run-down substandard displacement dwelling.

Section 24.2(c)(5) requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HUD Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing program, the rental assistance payment under § 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

Section 24.2(f)(2) Persons not displaced.

Section 24.2(f)(2)(iii) recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be displaced. Because such occupants are not considered "displaced persons" under this part, great care must be exercised to ensure

that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily-occupied housing must be decent, safe and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under this part may file an appeal in accordance with § 24.10.

Section 24.2(k) Initiation of negotiations.

This section of the part provides a special definition for acquisitions and displacements under Pub. L. 96-510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

Section 24.3 No duplication of payments.

This section prohibits an Agency from making a payment to a person under this part that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under this part is computed.

Section 24.9(c) Reports.

This paragraph allows Federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once every three years. The report, if required, will cover activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on Agencies implementing this part, a basic report form (see Appendix B of this part) has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

Subpart B—Real Property Acquisition

Section 24.101(a) General.

The provisions of this subpart apply to real property acquisition for the following types of Federal or federally-assisted programs or projects:

(1) Those carried out under the threat of eminent domain, including amicable agreements under the threat of such power.

(2) Where there is an intended, planned, or designated project area, and all or substantially all of the property within that area is eventually intended to be acquired. Such acquisitions are subject to the requirements of this subpart whether or not the Agency has or intends to use the power of eminent domain.

Provided it does not conflict with the foregoing, an Agency may determine that the requirements of this subpart do not apply to an acquisition if all of the following conditions are present:

(1) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area.

(2) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is eventually to be acquired.

(3) The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed.

Acquisitions meeting the foregoing criteria are classified as voluntary transactions. The essence of a voluntary transaction is the conditions surrounding the transaction, not the type of transaction itself. A voluntary transaction may involve a donation, an exchange, or a market sale, if the transaction is without compulsion on the part of the Agency.

In those situations where an Agency wishes to purchase more than one site within a geographic area on a "voluntary transaction" basis, it is intended that all owners be treated similarly.

Although the displacement of the owner-occupant of the real property as a result of a voluntary transaction is not subject to this part (see § 24.2(f)(2)(vi)), the displacement of a tenant-occupant of the real property is subject to this part.

Section 24.101(b) Less-than-full-fee interest in real property.

This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is short of 50 years but which in its judgment should be covered.

Section 24.102(d) Establishment of offer of just compensation.

The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 24.102(f) Basic negotiation procedures.

It is intended that an offer to an owner be adequately presented, and that the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this

**Montana Department
of
Fish, Wildlife & Parks**



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March 25, 1996

Mary Gessner
Chief, Division of Federal Aid
U.S. Fish and Wildlife Service
P.O. Box 25486
Denver Federal Center
Denver, Colorado 80225

RECEIVED
MAR 25 1996
FISHERIES DIV.
DEPT. FISH, WILDLIFE & PARKS

Dear Mary:

When Bill Jones and Kristen Nelson were here earlier this month, one of the many items we discussed was requirements governing land acquisitions when using federal funds. Since we discussed this, we have had further internal discussions about this and wanted to seek clarification from you on several points.

Attached is a memo to me from Curt Larsen, Staff Attorney, dated March 22, 1996. Curt has carefully reviewed the requirements and made several interpretations that are different from the current Federal Aid guidance.

We believe it is valid for the department to operate under an exception to the Uniform Act. See 49 CFR 24.101 (a) (2) in the March 2, 1989, final rule. The final rule expands upon previous rules. The Federal Aid letter to states, dated August 8, 1987, precedes the final rule, and was based on requirements that differed in several significant ways.

Following are four specific issues we would appreciate receiving guidance on.

1. Section 24.101 (a) (2) (ii) requires us to inform the owner of fair market value. We interpret this to mean that we are not required to offer fair market value.
2. Since we may operate under the exemption, the rules do not require the statement of "fair market value" to be based on an appraisal. (See page 3 of Curt Larsen's memo.)

3. For conservation easements, we find no basis for having to do "before and after appraisals." Since we are exempt under the requirements of 24.101, it appears that we are not required to do any appraisal.
4. Similarly, for water leasing, appraisals should not be required since 24.101 exempts us from the requirements, including appraisals, that would otherwise apply.

Beyond the requirements of the Uniform Act, we are, of course, aware that many other Federal Aid requirements must be followed. In submitting acquisition proposals, we realize that the projects need to be "substantial in character and design," and that all costs must meet the "necessary and reasonable" test. Although there would certainly be some instances where we would want to have an appraisal done, we believe that there are other valid ways where we could assess values in order to fulfill the "substantial" and "necessary and reasonable" tests.

We look forward to discussing these issues with you and your staff, as well as Ken Shelton. If you have any questions, please call me or Curt Larsen (406-444-4047).

Thanks for your assistance in reviewing the guidance to states and ensuring that it is correct under the 1989 final rule.

Sincerely,

Bobbi Keeler

Bobbi Keeler
Federal Aid Coordinator
Administration and Finance
406-444-4756

Enclosure

acquis.ltr

M E M O R A N D U M

TO: Bobbi Keeler
FROM: Curt Larsen *Curt Larsen*
DATE: March 22, 1996
RE: Fed-Aid Requirements for Land Purchases

Reference is made to our prior conversations about the above-captioned matter. You asked me to review the federal requirements for land acquisitions, specifically under the Uniform Relocation Assistance and Real Property Acquisition Policies Act and the implementing regulations. The implementing regulations are at 49 CFR Part 24. We have had questions concerning whether this agency must offer to pay the fair market value for a real property acquisition and several other questions relating to appraisals of property. In this memo, I will document the results of my legal research, and point out areas that still need clarification.

A couple of points must be established initially. Our agency does not have the authority to condemn land or water for wildlife habitat or fisheries purposes. All of our transactions relating to land and water are voluntary. If we cannot reach agreement with landowners or water right holders, we cannot acquire the interests that are sought. This is important for how the implementing regulations apply to this agency. The resolution of these issues is important for our water leasing program as well.

Offers of Fair Market Value.

The uniform act was amended significantly in 1987. One of the outcomes of this amendment was the recognition that certain state acquisitions should be treated differently than those involving the state's condemnation authority, as in acquisition of highway rights-of-way, for example. Interim final rules were enacted on December 17, 1987, to initially provide for this different treatment, among other things. 52 Fed. Reg. 47993. Final rules were adopted on March 2, 1989. 54 Fed. Reg. 8911. These final rules are codified at 49 CFR Part 24. These rules address requirements of the "Uniform Act."

Subpart B of the rules concerns the real property acquisition policies to apply when federal financial assistance is involved in a transaction. For purposes of our discussion, section 24.101 is the most important provision of the regulations. That section is

reproduced in an attachment to this memo. This section offers several significant exceptions to the applicability of the rest of the acquisition policies. For purposes of our discussion, we can refer to them as exceptions for "voluntary transactions." The first exception has four parts that must be satisfied to fit a transaction under the exception. The second exception has two parts which must be satisfied.

This second exception is the easier one to apply to transactions of this agency. If this exception fits our transactions, then none of the rest of the acquisition regulations (including the provisions of section 24.102) apply to this agency. This exception requires that we inform the property owner as follows:

- (i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and
- (ii) Inform the owner of what it believes to be the fair market value of the property.

If these two conditions are satisfied, then it is clear that the agency need not offer to pay the fair market value of the property.

During our meeting with the USFWS personnel on March 5, 1996, we were provided a copy of a letter dated August 10, 1987, addressed to the Colorado Division of Wildlife, and sent to other Region 6 states, including Montana. This letter was issued soon after the uniform act was amended in 1987. We were advised that this letter addresses the requirements for voluntary transactions. However, this letter predates the final regulations that were adopted on March 2, 1989. Significantly, this letter does not address the second exception for voluntary transactions discussed above. The criteria that it lists for voluntary transactions do not match the present criteria for the first exception in section 24.101(a). We should request updated guidance from the federal agency as to the implementation of the new regulations.

Appraisal Requirements.

As stated above, if the voluntary transaction exception applies to our land acquisitions, then the rest of the acquisition policies in Subpart B of the regulations do not apply. Among other things, the requirements of an appraisal and an offer of just compensation based on the fair market value revealed by the appraisal do not apply to voluntary transactions, at least under the regulations.

Nevertheless, the fed-aid personnel state that we must still have an appraisal to justify a proposed purchase price on a fed-aid project, relying principally on the 1987 letter referred to above. This is a matter on which we need clarification from the federal agency. As stated above, the 1987 letter predates the final regulations by about a year and a half. The guidance in this letter does not track with the final regulations.

The rules in place now were first published in draft form for public comment on July 21, 1988. 53 Fed. Reg. 27598. The second exception for voluntary transactions discussed above, and now codified as 49 CFR 24.101(a)(2), provided as the second criteria that an agency must "[i]nform the owner of what it believes to be the fair market value of the property, based on an appraisal." (Emphasis added). As noted above, the final rule does not contain the language that the information to the landowner must be based on an appraisal.

If the federal agency still requires an appraisal for voluntary transactions, then we should have clarification of that policy. The 1987 letter is unreliable as a source of that policy. We should also seek clarification of whether an appraisal is required for conservation easements. We will typically undertake to have an appraisal of the fee title performed, but may prefer not to appraise the easement itself.

Donations.

Another area of the regulations on which we could use some clarification is donations of property interests. This may be especially significant in acquisitions of conservation easements, where we frequently strive to purchase them for less than the appraised value. Even though these are still voluntary transactions, we may find it useful in some circumstances to rely on the provisions of section 24.102(c)(2) of the regulations, which deals with donations. This section provides that an appraisal is not required if the owner is donating the property and releases the agency from the obligation of an appraisal. We should seek clarification of whether this section would apply to the partial donation of property interests. This is likely to be the only time this exception would come into play, as we would not ordinarily be seeking federal financial assistance for the acquisition of property that we are obtaining for no cash consideration.

If you have any questions or comments, please contact me.

cc D. Dils, D. Childress, J. Wells

*Memo
1989*

49 CFR 24.101 printed in FULL format.

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*** THIS SECTION IS CURRENT THROUGH THE 2/8/96 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 49 -- TRANSPORTATION
SUBTITLE A -- OFFICE OF THE SECRETARY OF TRANSPORTATION
PART 24 -- UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION
FOR
FEDERAL AND FEDERALLY ASSISTED PROGRAMS
SUBPART B -- REAL PROPERTY ACQUISITION

49 CFR 24.101

§ 24.101 Applicability of acquisition requirements.

(a) General. The requirements of this subpart apply to any acquisition of real property for a Federal program or project, and to programs and projects where there is Federal financial assistance in any part of project costs except for:

— (1) Voluntary transactions that meet all of the following conditions:

(i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly.

(ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

(iii) The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

(iv) The Agency will inform the owner of what it believes to be the fair market value of the property.

— (2) Acquisitions for programs or projects undertaken by an Agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and

(ii) Inform the owner of what it believes to be fair market value of the property.

(3) The acquisition of real property from a Federal agency, State, or State

agency, if the Agency desiring to make the purchase does not have authority to acquire the property through condemnation.

(4) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

(5) Acquisition for a program or project which is undertaken by, or receives Federal financial assistance from, the Tennessee Valley Authority or the Rural Electrification Administration.

(b) Less-than-full-fee interest in real property. In addition to fee simple title, the provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and to the acquisition of permanent easements. (See appendix A of this part, § 24.101(b).)

(c) Federally-assisted projects. For projects receiving Federal financial assistance, the provisions of §§ 24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (See § 24.4(a).)

HISTORY:

[54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989; 58 FR 26072, Apr. 30, 1993]

AUTHORITY:

42 U.S.C. 4601 et seq.; 49 CFR 1.48(cc).

NOTES:

NOTES APPLICABLE TO ENTIRE SUBTITLE:

EDITORIAL NOTE: Other regulations issued by the Department of Transportation appear in 14 CFR chapters I and II, 23 CFR, 33 CFR chapters I and IV, 44 CFR chapter IV, 46 CFR chapters I through III, 48 CFR chapter 12, and 49 CFR chapters I through VI.