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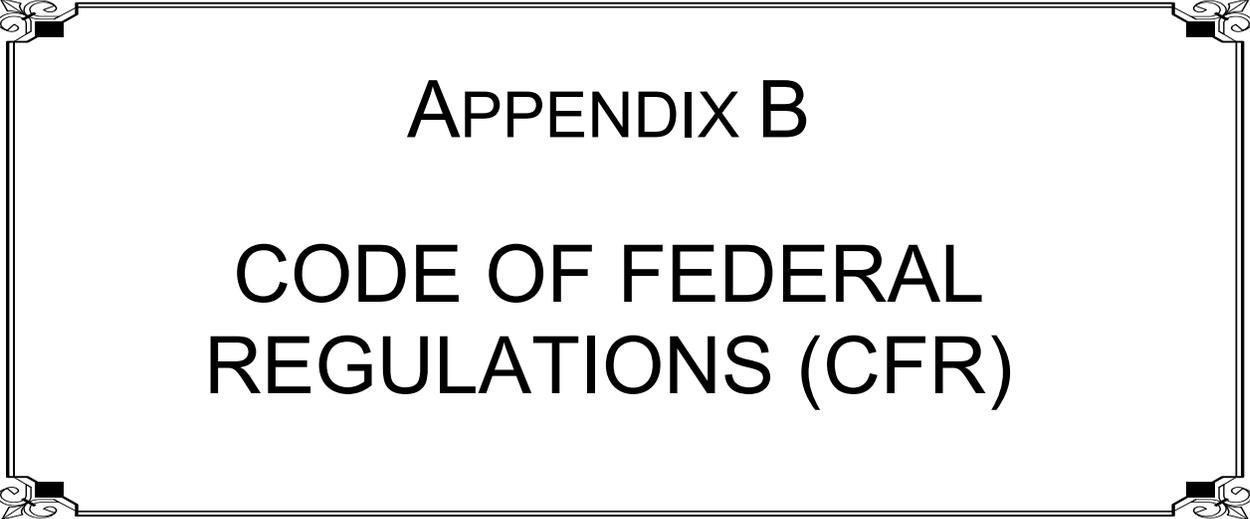
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Maine Right of Way Manual : Appendix B - Code of Federal Regulations (CFR), August 2002

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APPENDIX B

CODE OF FEDERAL
REGULATIONS (CFR)

MAINE RIGHT OF WAY MANUAL

August 2002

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Authority: 23 U.S.C. 101(a), 107, 108, 111,

114, 133, 142(f), 145, 156, 204, 210, 308, 315,

317, and 323; 42 U.S.C. 2000d *et seq.*, 4633,

4651–4655; 49 CFR 1.48(b) and (cc), 18.31, and parts 21 and 24; 23 CFR 1.32.

Subpart A—General

§ 710.101 Purpose.

The primary purpose of the requirements in this part is to ensure the prudent use of Federal funds under title 23 of the United States Code in the acquisition, management, and disposal of real property. In addition to the requirements of this part, other real property related provisions apply and are found at 49 CFR part 24.

§ 710.103 Applicability.

This part applies whenever Federal assistance under title 23 of the United States Code is used. The part applies to programs administered by the Federal Highway Administration. Where Federal funds are transferred to other Federal agencies to administer, those agencies' procedures may be utilized. Additional guidance is available electronically at the FHWA Real Estate services website: <http://www.fhwa.dot.gov/realestate/index.htm>

§ 710.105 Definitions.

- (a) Terms defined in 49 CFR part 24, and 23 CFR part 1 have the same meaning where used in this part, except as modified in this section.
- (b) The following terms where used in this part have the following meaning:

Access rights means the right of ingress to and egress from a property that abuts a street or highway.

Acquiring agency means a State agency, other entity, or person acquiring real property for title 23 of the United States Code purposes.

Acquisition means activities to obtain an interest in, and possession of, real property.

Air rights means real property interests defined by agreement, and conveyed by deed, lease, or permit for the use of airspace.

Airspace means that space located above and/or below a highway or other transportation facility's established grade line, lying within the horizontal limits of the approved right-of-way or project boundaries.

Damages means the loss in value attributable to remainder property due to severance or consequential damages, as limited by State law, that arise when only part of an owner's property is acquired.

Disposal means the sale of real property or rights therein, including access or air rights, when no longer needed for highway right-of-way or other uses eligible for funding under title 23 of the United States Code.

Donation means the voluntary transfer of privately owned real property for the benefit of a public transportation project without compensation or with compensation at less than fair market value.

Early acquisition means acquisition of real property by State or local governments in advance of Federal authorization or agreement.

Easement means an interest in real property that conveys a right to use a portion of an owner's property or a portion of an owner's rights in the property.

NHS means the National Highway System as defined in 23 U.S.C. 103(b).

Oversight agreement means the project approval and agreement concluded between the State and the FHWA to outline which projects will be monitored at the plans, specifications, and estimate stage by FHWA as required by 23 U.S.C. 106(c)(3).

Real property means land and any improvements thereto, including but not limited to, fee interests, easements, air or access rights, and the rights to control use, leasehold, and leased fee interests.

Relinquishment means the conveyance of a portion of a highway right-of-way or facility by a State highway department to another government agency for continued transportation use. (See 23 CFR part 620, subpart B.)

Right-of-way means real property and rights therein used for the construction, operation, or maintenance of a transportation or related facility funded under title 23 of the United States Code.

Settlement means the result of negotiations based on fair market value in which the amount of just compensation is agreed upon for the purchase of real property or an interest therein. This term includes the following:

- (1) *An administrative settlement* is a settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized agency official.
- (2) *A legal settlement* is a settlement reached by a responsible State legal representative after filing a condemnation proceeding, including stipulated settlements approved by the court in which the condemnation action had been filed.
- (3) *A court settlement or court award* is any decision by a court that follows a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of compensation for a taking under the laws of eminent domain.

State agency means a 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; or any person who has the authority to acquire property by eminent domain, for public purposes, under State law.

State transportation department (STD) means the State highway department, transportation department, or other State transportation agency or commission to which title 23 of the United States Code funds are apportioned.

Uneconomic remnant means a remainder property which the acquiring agency has determined has little or no utility or value to the owner.

Uniform Act means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), and the implementing regulations at 49 CFR part 24.

Subpart B—Program Administration

§ 710.201 State responsibilities.

- (a) *Organization.* Each STD shall be adequately staffed, equipped, and organized to discharge its real property related responsibilities.
- (b) *Program oversight.* The STD shall have overall responsibility for the acquisition, management, and disposal of real property on Federal-aid projects. This responsibility shall include assuring that acquisitions and disposals by a State agency are made in compliance with legal requirements of State and Federal laws and regulations.
- (c) *Right-of-way (ROW) operations manual.* Each STD which receives funding from the highway trust fund shall maintain a manual describing its right-of-way organization, policies, and procedures. The manual shall describe functions and procedures for all phases of the real estate program, including appraisal and appraisal review, negotiation and eminent domain, property management, and relocation assistance. The manual shall also specify procedures to prevent conflict of interest and avoid fraud, waste, and abuse. The manual shall be in sufficient detail and depth to guide State employees and others involved in acquiring and managing real property. The State manuals should be developed and updated, as a minimum, to meet the following schedule:
 - (1) The STD shall prepare and submit for approval by FHWA an up-to-date Right-of-Way Operations Manual by no later than January 1, 2001.
 - (2) Every five years thereafter, the chief administrative officer of the STD shall certify to the FHWA that the current ROW operations manual conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State real estate law and regulation.
 - (3) The STD shall update the manual periodically to reflect changes in operations and submit the updated materials for approval by the FHWA

- (d) *Compliance responsibility.* The STD is responsible for complying with current FHWA requirements whether or not its manual reflects those requirements.
- (e) *Adequacy of real property interest.* The real property interest acquired for all Federal-aid projects funded pursuant to title 23 of the United States Code shall be adequate for the construction, operation, and maintenance of the resulting facility and for the protection of both the facility and the traveling public.
- (f) *Recordkeeping.* The acquiring agency shall maintain adequate records of its acquisition and property management activities.
- (1) Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with this part and 49 CFR part 24. These records shall be retained at least 3 years from either:
- i. The date the State receives Federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property, or
 - ii. The date a credit toward the Federal share of a project is approved based on early acquisition activities of the State.
- (2) Property management records shall include inventories of real property considered excess to project needs, all authorized uses of airspace, and other leases or agreements for use of real property managed by the STD.
- (g) *Procurement.* Contracting for all activities required in support of State right-of-way programs through use of private consultants and other services shall conform to 49 CFR 18.36.
- (h) *Use of other public land acquisition organizations or private consultants.* The STD may enter into written agreements with other State, county, municipal, or local public land acquisition organizations or with private consultants to carry out its authorities under paragraph (b) of this section. Such organizations, firms, or individuals must comply with the policies and practices of the STD. The STD shall monitor any such real property acquisition activities to assure compliance with State and Federal law and requirements and is responsible for informing such organizations of all such requirements and for imposing sanctions in cases of material noncompliance.
- (i) *Approval actions.* Except for the Interstate system, the STD and the FHWA will agree on the scope of property related oversight and approval actions that the FHWA will be responsible for under this part. The content of the most recent oversight agreement shall be reflected in the State right-of-way operations manual. The oversight agreement, and thus the manual, will indicate for which non-Interstate Federal-aid project submission of materials for review and approval are required.

- (j) *Approval of just compensation.* The amount determined to be just compensation shall be approved by a responsible official of the acquiring agency.
- (k) *Description of acquisition process.* The STD shall provide persons affected by projects or acquisitions advanced under title 23 of the United States Code with a written description of its real property acquisition process under State law and of the owner's rights, privileges, and obligations. The description shall be written in clear, non-technical language and, where appropriate, be available in a language other than English.

§ 710.203 Funding and reimbursement.

- (a) *General conditions.* The following conditions are a prerequisite to Federal participation in the costs of acquiring real property except as provided in § 710.501 for early acquisition:
 - (1) The project for which the real property is acquired is included in an approved Statewide Transportation Improvement Program (STIP);
 - (2) The State has executed a project agreement;
 - (3) Preliminary acquisition activities, including a title search and preliminary property map preparation necessary for the completion of the environmental process, can be advanced under preliminary engineering prior to National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) clearance, while other work involving contact with affected property owners must normally be deferred until after NEPA approval, except as provided in 23 CFR 710.503 for protective buying and hardship acquisition; and in 23 CFR 710.501, early acquisition. Appraisal completion may be authorized as preliminary right-of-way activity prior to completion of the environmental document; and
 - (4) Costs have been incurred in conformance with State and Federal law requirements.
- (b) *Direct eligible costs.* Federal participation in real property costs is limited to the costs of property incorporated into the final project and the associated direct costs of acquisition, unless provided otherwise. Participation is provided for:
 - (1) *Real property acquisition.* Usual costs and disbursements associated with real property acquisition required under the laws of the State, including the following:
 - (i) The cost of contracting for private acquisition services or the cost associated with the use of local public agencies.
 - (ii) The cost of acquisition activities, such as, appraisal, appraisal review, cost estimates, relocation planning right of way plan preparation, title work, and similar necessary right-of-way related work.
 - (iii) The cost to acquire real property, including incidental expenses.

- (iv) The cost of administrative settlements in accordance with 49 CFR 24.102(i), legal settlements, court awards, and costs incidental to the condemnation process.
 - (v) The cost of minimum payments and appraisal waiver amounts included in the State approved manual.
- (2) *Relocation assistance and payments.* Payments made incidental to and associated with the displacement from acquired property under 49 CFR part 24.
 - (3) *Damages.* The cost of severance and/or consequential damages to remaining real property resulting from a partial acquisition, actual or constructive, of real property for a project based on elements compensable under applicable State law.
 - (4) *Property management.* The net cost of managing real property prior to and during construction to provide for maintenance, protection, and the clearance and disposal of improvements until final project acceptance.
 - (5) *Payroll-related expenses and technical guidance.* Salary and related expenses of employees of an acquiring agency are eligible costs in accordance with OMB Circular A-87 (available at <http://www.whitehouse.gov/omb/> circulars). This includes State costs incurred for managing or providing technical guidance, consultation or oversight on projects where right-of-way services are performed by a political subdivision or others.
 - (6) *Property not incorporated into a project funded under title 23 of the United States Code.* The cost of property not incorporated into a project may be eligible for reimbursement in the following circumstances:
 - (i) *General.* Costs for construction material sites, property acquisitions to a logical boundary, or for eligible transportation enhancement, sites for disposal of hazardous materials, environmental mitigation, environmental banking activities, or last resort housing.
 - (ii) *Easements not incorporated into the right-of-way.* The cost of acquiring easements outside the right-of-way for permanent or temporary use.
 - (7) *Uneconomic remnants.* The cost of uneconomic remnants purchased in connection with the acquisition of a partial taking for the project as required by the Uniform Act.
 - (8) *Access rights.* Payment for full or partial control of access on an existing highway (*i.e.*, one not on a new location), based on elements compensable under applicable State law. Participation does not depend on another real property interest being acquired or on further construction of the highway facility.
 - (9) *Utility and railroad property.*
 - (i) The cost to replace operating real property owned by a displaced utility or

railroad and conveyed to an STD for a highway project, as provided in 23 CFR part 140, subpart I, Reimbursement for Railroad Work, and 23 CFR part 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, and 23 CFR part 646, Subpart B, Railroad- Highway Projects.

- (ii) Participation in the cost of acquiring non-operating utility or railroad real property shall be in the same manner as that used in the acquisition of other privately owned property.
- (c) *Withholding payment.* The FHWA may withhold payment under the conditions in 23 CFR 1.36 where the State fails to comply with Federal law or regulation, State law, or under circumstances of waste, fraud, and abuse.
- (d) *Indirect costs.* Indirect costs may be claimed under the provisions of OMB Circular A-87. Indirect costs may be included on Federal-aid billings after the indirect cost rate has been approved by FHWA.

Subpart C—Project Development

§ 710.301 General.

The project development process typically follows a sequence of actions and approvals in order to qualify for funding. The key steps in this process are provided in this subpart.

§ 710.303 Planning.

State and local governments conduct metropolitan and statewide planning to develop coordinated, financially constrained system plans to meet transportation needs for local and statewide systems, under FHWA's planning regulations contained in 23 CFR part 450. In addition, air quality non-attainment areas must meet the requirements of the U.S. EPA Transportation conformity regulations (40 CFR parts 51 and 93). Projects must be included in an approved State Transportation Improvement Program (STIP) in order to be eligible for Federal aid funding.

§ 710.305 Environmental analysis.

The National Environmental Policy Act (NEPA) process, as described in FHWA's NEPA regulations in 23 CFR part 771, normally must be conducted and concluded with a record of decision (ROD) or equivalent before Federal funds can be placed under agreement for acquisition of right-of-way. Where applicable, a State also must complete Clean Air Act (42 U.S.C. 7401 *et seq.*) project level conformity analysis. In areas in which the Clean Air Act conformity determination has lapsed, acquiring agencies must coordinate with Federal Highway Administration for special instructions prior to initiating new projects or continuing activity on existing projects. At the time of processing an environmental document, a State may request reimbursement of costs incurred for early acquisition, provided conditions prescribed in 23 U.S.C. 108(c) and 23 CFR 710.501, are satisfied.

§ 710.307 Project agreement.

As a condition of Federal-aid, the STD shall obtain FHWA authorization in writing or electronically before proceeding with any real property acquisitions, including hardship acquisition and protective buying (see 23 CFR 710.503). The STD must prepare a project agreement in accordance with 23 CFR part 630, subpart C. The agreement shall be based on an acceptable estimate for the cost of acquisition. On projects where the initial project agreement was executed after June 9, 1998, a State may request credit toward the non-Federal share, for early acquisitions, donations, or other contributions applied to the project provided conditions in 23 U.S.C. 323 and 23 CFR 710.501, are satisfied.

§ 710.309 Acquisition.

The process of acquiring real property includes appraisal, appraisal review, establishing just compensation, negotiations, administrative and legal settlements, and condemnation. The State shall conduct acquisition and related relocation activities in accordance with 49 CFR part 24.

§ 710.311 Construction advertising.

The State must manage real property acquired for a project until it is required for construction. Clearance of improvements can be scheduled during the acquisition phase of the project using sale/removal agreements, separate demolition contracts, or be included as a work item in the construction contract. On Interstate projects, prior to advertising for construction, the State shall develop ROW availability statements and certifications related to project acquisitions as required by 23 CFR 635.309. For non-Interstate projects, the oversight agreement must specify responsibility for the review and availability statements and certifications. Generally, for non-NHS projects, the State has full responsibility for determining that right-of-way is available for construction

Subpart D—Real Property Management**§ 710.401 General.**

This subpart describes the acquiring agency's responsibilities to control the use of real property required for a project in which Federal funds participated in any phase of the project. Prior to allowing any change in access control or other use or occupancy of acquired property along the Interstate, the STD shall secure an approval from the FHWA for such change or use. The STD shall specify in the State's ROW operations manual, procedures for the rental, leasing, maintenance, and disposal of real property acquired with title 23 of the United States Code funds. The State shall assure that local agencies follow the State's approved procedures, or the local agencies own procedures if approved for use by the STD.

§ 710.403 Management.

- (a) The STD must assure that all real property within the boundaries of a federally-aided facility is devoted exclusively to the purposes of that facility and is preserved free of all

other public or private alternative uses, unless such alternative uses are permitted by Federal regulation or the FHWA. An alternative use must be consistent with the continued operation, maintenance, and safety of the facility, and such use shall not result in the exposure of the facility's users or others to hazards.

- (b) The STD shall specify procedures in the State manual for determining when a real property interest is no longer needed. These procedures must provide for coordination among relevant STD organizational units, including maintenance, safety, design, planning, right-of-way, environment, access management, and traffic operations.
- (c) The STD shall evaluate the environmental effects of disposal and leasing actions requiring FHWA approval as provided in 23 CFR part 771.
- (d) Acquiring agencies shall charge current fair market value or rent for the use or disposal of real property interests, including access control, if those real property interests were obtained with title 23 of the United States Code funding, except as provided in paragraphs (d) (1) through (5) of this section. Since property no longer needed for a project was acquired with public funding, the principle guiding disposal would normally be to sell the property at fair market value and use the funds for transportation purposes. The term fair market value as used for acquisition and disposal purposes is as defined by State statute and/or State court decisions. Exceptions to the general requirement for charging fair market value may be approved in the following situations:
 - (1) With FHWA approval, when the STD clearly shows that an exception is in the overall public interest for social, environmental, or economic purposes; nonproprietary governmental use; or uses under 23 U.S.C. 142(f), Public Transportation. The STD manual may include criteria for evaluating disposals at less than fair market value. Disposal for public purposes may also be at fair market value. The STD shall submit requests for such exceptions to the FHWA in writing.
 - (2) Use by public utilities in accordance with 23 CFR part 645.
 - (3) Use by Railroads in accordance with 23 CFR part 646.
 - (4) Use for Bikeways and pedestrian walkways in accordance with 23 CFR part 652.
 - (5) Use for transportation projects eligible for assistance under title 23 of the United States Code.
- (e) The Federal share of net income from the sale or lease of excess real property shall be used by the STD for activities eligible for funding under title 23 of the United States Code. Where project income derived from the sale or lease of excess property is used for subsequent title 23 projects, use of the income does not create a Federal-aid project.
- (f) No FHWA approval is required for disposal of property which is located outside of the limits of the right-of-way if Federal funds did not participate in the acquisition cost of the property.

- (g) Highway facilities in which Federal funds participated in either the right-of-way or construction may be relinquished to another governmental agency for continued highway use under the provisions of 23 CFR 620, subpart B.

§ 710.405 Air rights on the Interstate.

- (a) The FHWA policies relating to management of airspace on the Interstate for non-highway purposes are included in this section. Although this section deals specifically with approval actions on the Interstate, any use of airspace contemplated by a STD must assure that such occupancy, use, or reservation is in the public interest and does not impair the highway or interfere with the free and safe flow of traffic as provided in 23 CFR 1.23.
- (1) This subpart applies to Interstate facilities which received title 23 of the United States Code assistance in any way.
- (2) This subpart does not apply to the following:
- (i) Non-Interstate highways.
 - (ii) Railroads and public utilities which cross or otherwise occupy Federal-aid highway right-of-way.
 - (iii) Relocations of railroads or utilities for which reimbursement is claimed under 23 CFR part 140, subparts E and H.
 - (iv) Bikeways and pedestrian walkways as covered in 23 CFR part 652.
- (b) A STD may grant rights for temporary or permanent occupancy or use of Interstate system airspace if the STD has acquired sufficient legal right, title, and interest in the right-of-way of a federally assisted highway to permit the use of certain airspace for nonhighway purposes; and where such airspace is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility. The STD must obtain prior FHWA approval, except for paragraph (c) of this section.
- (c) An STD may make lands and rights-of-way available without charge to a publicly owned mass transit authority for public transit purposes whenever the public interest will be served, and where this can be accomplished without impairing automotive safety or future highway improvements
- (d) An individual, company, organization, or public agency desiring to use airspace shall submit a written request to the STD. If the STD recommends approval, it shall forward an application together with its recommendation and any necessary supplemental information including the proposed airspace agreement to the FHWA. The submission shall affirmatively provide for adherence to all policy requirements contained in this subpart and conform to the provisions in the FHWA's Airspace Guidelines at: <http://www.fhwa.dot.gov/realestate/index.htm>.

§ 710.407 Leasing.

- (a) Leasing of real property acquired with title 23 of the United States Code, funds shall be covered by an agreement between the STD and lessee which contains provisions to insure the safety and integrity of the federally funded facility. It shall also include provisions governing lease revocation, removal of improvements at no cost to the FHWA, adequate insurance to hold the State and the FHWA harmless, nondiscrimination, access by the STD and the FHWA for inspection, maintenance, and reconstruction of the facility.
- (b) Where a proposed use requires changes in the existing transportation facility, such changes shall be provided without cost to Federal funds unless otherwise specifically agreed to by the STD and the FHWA.
- (c) Proposed uses of real property shall conform to the current design standards and safety criteria of the Federal Highway Administration for the functional classification of the highway facility in which the property is located.

§ 710.409 Disposals.

- (a) Real property interests determined to be excess to transportation needs may be sold or conveyed to a public entity or to a private party in accordance with § 710.403(c).
- (b) Federal, State, and local agencies shall be afforded the opportunity to acquire real property interests considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes, and when such a transfer is allowed by State law. When this potential exists, the STD shall notify the appropriate resource agencies of its intentions to dispose of the real property interests. The notifications can be accomplished by placing the appropriate agencies on the States' disposal notification listing.
- (c) Real property interests may be retained by the STD to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.
- (d) Where the transfer of properties to other agencies at less than fair market value for continued public use is clearly justified as in the public interest and approved by the FHWA, the deed shall provide for reversion of the property for failure to continue public ownership and use. Where property is sold at fair market value no reversion clause is required. Disposal actions described in 23 CFR 710.403(d)(1) for less than fair market value require a public interest determination and FHWA approval, consistent with that section.

Subpart E—Property Acquisition Alternatives**§ 710.501 Early acquisition.**

- (a) *Real property acquisition.* The State may initiate acquisition of real property at any time it

has the legal authority to do so based on program or project considerations. The State may undertake early acquisition for corridor preservation, access management, or other purposes.

(b) *Eligible costs.* Acquisition costs incurred by a State agency prior to executing a project agreement with the FHWA are not eligible for Federal-aid reimbursement. However, such costs may become eligible for use as a credit towards the State's share of a Federalaid project if the following conditions are met:

- (1) The property was lawfully obtained by the State;
- (2) The property was not land described in 23 U.S.C. 138;
- (3) The property was acquired in accordance with the provisions of 49 CFR part 24;
- (4) The State complied with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d– 2000d–4);
- (5) The State determined and the FHWA concurs that the action taken did not influence the environmental assessment for the project, including:
 - (i) The decision on need to construct the project;
 - (ii) The consideration of alternatives; and
 - (iii) The selection of the design or location; and
- (6) The property will be incorporated into a Federal-aid project.
- (7) The original project agreement covering the project was executed on or after June 9, 1998.

(c) *Reimbursement.* In addition to meeting all provisions in paragraph (b) of this section, the FHWA approval for reimbursement for early acquisition costs, including costs associated with displacement of owners or tenants, requires the STD to demonstrate that:

- (1) Prior to acquisition, the STD made the certifications and determinations required by 23 U.S.C. 108(c)(2)(C) and (D); and
- (2) The STD obtained concurrence from the Environmental Protection Agency in the findings made under paragraph (b)(5) of this section regarding the NEPA process.

§ 710.503 Protective buying and hardship acquisition.

(a) *General conditions.* Prior to the STD obtaining final environmental approval, the STD may request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition), provided the following

conditions are met:

- (1) The project is included in the currently approved STIP;
 - (2) The STD has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;
 - (3) A determination has been completed for any property subject to the provisions of 23 U.S.C. 138; and
 - (4) Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 U.S.C. 470(f) (historic properties).
- (b) *Protective buying.* The STD must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.
- (c) *Hardship acquisitions.* The STD must accept and concur in a request for a hardship acquisition based on a property owner's written submission that:
- (1) Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to others; and
 - (2) Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.
- (d) *Environmental decisions.* Acquisition of property under this section shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.

§ 710.505 Real property donations.

- (a) *Donations of property being acquired.* A non-governmental owner whose real property is required for a Federal-aid project may donate the property to the STD. Prior to accepting the property, the owner must be informed by the agency of his/her right to receive just compensation for the property. The owner shall also be informed of his/her right to an appraisal of the property by a qualified appraiser, unless the STD determines that an appraisal is unnecessary because the evaluation problem is uncomplicated and the fair market value is estimated at no more than \$2500, or the State appraisal waiver limit approved by the FHWA, whichever is greater. All donations of property received prior to the approval of the NEPA document must meet environmental requirements as specified in 23 U.S.C. 323(d).
- (b) *Credit for donations.* Donations of real property may be credited to the State's matching share of the project. Credit to the State's matching share for donated property shall be based on fair market value established on the earlier of the following: either the date on

which the donation becomes effective, or the date on which equitable title to the property vests in the State. The fair market value shall not include increases or decreases in value caused by the project. Donations may be made at anytime during the development of a project. The STD shall develop sufficient documentation to indicate compliance with paragraph (a) of this section and to support the amount of credit applied. The total credit cannot exceed the State's pro-rata share under the project agreement to which it is applied.

- (c) *Donations and conveyances in exchange for construction features or services.* A property owner may donate property in exchange for construction features or services. The value of the donation is limited to the fair market value of property donated less the cost of the construction features or services. If the value of the donated property exceeds the cost of the construction features or services, the difference may be eligible for a credit to the State's share of project costs.

§ 710.507 State and local contributions.

- (a) *General.* Real property owned by State and local governments incorporated within a federally funded project can be used as a credit toward the State matching share of total project cost. A credit cannot exceed the State's matching share required by the project agreement.
- (b) *Effective date.* Credits can be applied to projects where the initial project agreement is executed after June 9, 1998.
- (c) *Exemptions.* Credits are not available for lands acquired with any form of Federal financial assistance, or for lands already incorporated and used for transportation purposes.
- (d) *State contributions.* Real property acquired with State funds and required for federally-assisted projects may support a credit toward the non-Federal share of project costs. The STD must prepare documentation supporting all credits including:
- (1) A certification that the acquisition satisfied the conditions in 23 CFR 710.501(b); and
 - (2) Justification of the value of credit applied. Acquisition costs incurred by the State to acquire title can be used as justification for the value of the real property.
- (e) *Credit for local government contributions.* A contribution by a unit of local government of real property which is offered for credit, in connection with a project eligible for assistance under this title, shall be credited against the State share of the project at fair market value of the real property. Property may also be presented for project use with the understanding that no credit for its use is sought. The STD shall assure that the acquisition satisfied the conditions in 23 CFR 710.501(b), and that documentation justifies the amount of the credit.

§ 710.509 Functional replacement of real property in public ownership.

- (a) *General.* When publicly owned real property, including land and/or facilities, is to be acquired for a Federalaid highway project, in lieu of paying the fair market value for the real property, the State may provide compensation by functionally replacing the publicly owned real property with another facility which will provide equivalent utility.
- (b) *Federal participation.* Federal-aid funds may participate in functional replacement costs only if:
- (1) Functional replacement is permitted under State law and the STD elects to provide it.
 - (2) The property in question is in public ownership and use.
 - (3) The replacement facility will be in public ownership and will continue the public use function of the acquired facility.
 - (4) The State has informed the agency owning the property of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement.
 - (5) The FHWA concurs in the STD determination that functional replacement is in the public interest.
 - (6) The real property is not owned by a utility or railroad.
- (c) *Federal land transfers.* Use of this section for functional replacement of real property in Federal ownership shall be in accordance with Federal land transfer provisions in subpart F of this part.
- (d) *Limits upon participation.* Federalaid participation in the costs of functional replacement are limited to costs which are actually incurred in the replacement of the acquired land and/or facility and are:
- (1) Costs for facilities which do not represent increases in capacity or betterments, except for those necessary to replace utilities, to meet legal, regulatory, or similar requirements, or to meet reasonable prevailing standards; and
 - (2) Costs for land to provide a site for the replacement facility.
- (e) *Procedures.* When a State determines that payments providing for functional replacement of public facilities are allowable under State law, the State will incorporate within the State's ROW operating manual full procedures covering review and oversight that will be applied to such cases.

§ 710.511 Transportation enhancements.

- (a) *General.* Section 133(b) (8) of title 23 of the United States Code authorizes the expenditure of surface transportation funds for transportation enhancement activities (TEA). Transportation enhancement activities which involve the acquisition, management, and disposition of real property, and the relocation of families, individuals, and businesses, are governed by the general requirements of the Federal-aid program found in titles 23 and 49 of the Code of Federal Regulations (CFR), except as specified in paragraph (b)(3) of this section.
- (b) *Requirements.*
- (1) Displacements for TEA are subject to the Uniform Act.
 - (2) Acquisitions for TEA are subject to the Uniform Act except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.
 - (3) Entities acquiring real property for TEA who lack the power of eminent domain may comply with the Uniform Act by meeting the limited requirements under 49 CFR 24.101(a)(2).
 - (4) The requirements of the Uniform Act do not apply when real property acquired for a TEA was purchased from a third party by a qualified conservation organization, and—
 - (i) The conservation organization is not acting on behalf of the agency receiving TEA or other Federal-aid funds, and
 - (ii) There was no Federal approval of property acquisition prior to the involvement of the conservation organization. [“Federal approval of property acquisition” means the date of the approval of the environmental document or project authorization/ agreement, whichever is earlier. “Involvement of the conservation organization” means the date the organization makes a legally binding offer to acquire a real property interest, including an option to purchase, in the property.]
 - (5) When a qualified conservation organization acquires real property for a project receiving Federal-aid highway funds on behalf of an agency with eminent domain authority, the requirements of the Uniform Act apply as if the agency had acquired the property itself.
 - (6) When, subsequent to Federal approval of property acquisition, a qualified conservation organization acquires real property for a project receiving Federal-aid highway funds, and there will be no use or recourse to the power of eminent domain, the limited requirements of 49 CFR 24.101(a)(2) apply.
- (c) *Property management.* Real property acquired with TEA funds shall be managed in

accordance with the property management requirements provided in subpart D of this part. Any use of the property for purposes other than that for which the TEA funds were provided must be consistent with the continuation of the original use. When the original use of the real property is converted by sale or lease to another use inconsistent with the original use, the STD shall assure that the fair market value or rent is charged and the proceeds reapplied to projects eligible under title 23 of the United States Code.

§ 710.513 Environmental mitigation.

- (a) The acquisition and maintenance of land for wetlands mitigation, wetlands banking, natural habitat, or other appropriate environmental mitigation is an eligible cost under the Federal-aid program. FHWA participation in wetland mitigation sites and other mitigation banks is governed by 23 CFR part 777.
- (b) Environmental acquisitions or displacements by both public agencies and private parties are covered by the Uniform Act when they are the result of a program or project undertaken by a Federal agency or one that receives Federal financial assistance. This includes real property acquired for a wetland bank, or other environmentally related purpose, if it is to be used to mitigate impacts created by a Federalaid highway project.

Subpart F—Federal Assistance Programs

§ 710.601 Federal land transfer.

- (a) The provisions of this subpart apply to any project undertaken with funds for the National Highway System. When the FHWA determines that a strong Federal transportation interest exists, these provisions may also be applied to highway projects that are eligible for Federal-aid under Chapters 1 and 2 of title 23, of the United States Code, and to highway-related transfers that are requested by a State in conjunction with a military base closure under the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510, 104 Stat. 1808, as amended).
- (b) Sections 107(d) and 317 of title 23, of the United States Code provide for the transfer of lands or interests in lands owned by the United States to an STD or its nominee for highway purposes.
- (c) The STD may file an application with the FHWA, or can make application directly to the land-owning agency if the land-owning agency has its own authority for granting interests in land.
- (d) Applications under this section shall include the following information:
 - (1) The purpose for which the lands are to be used;
 - (2) The estate or interest in the land required for the project;

- (3) The Federal-aid project number or other appropriate references;
 - (4) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;
 - (5) A map showing the survey of the lands to be acquired;
 - (6) A legal description of the lands desired; and
 - (7) A statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, *et seq.*) and any other applicable Federal environmental laws, including the National Historic Preservation Act (16 U.S.C. 470(f)), and 23 U.S.C. 138.
- (e) If the FHWA concurs in the need for the transfer, the land-owning agency will be notified and a right-of-entry requested. The land-owning agency shall have a period of four months in which to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved. The FHWA may extend the four-month reply period at the timely request of the land-owning agency for good cause.
- (f) Deeds for conveyance of lands or interests in lands owned by the United States shall be prepared by the STD and certified by an attorney licensed within the State as being legally sufficient. Such deeds shall contain the clauses required by the FHWA and 49 CFR 21.7(a)(2). After the STD prepares the deed, it will submit the proposed deed with the certification to the FHWA for review and execution.
- (g) Following execution, the STD shall record the deed in the appropriate land record office and so advise the FHWA and the concerned agency.
- (h) When the need for the interest acquired under this subpart no longer exists, the STD must restore the land to the condition which existed prior to the transfer and must give notice to the FHWA and to the concerned Federal agency that such interest will immediately revert to the control of the Federal agency from which it was appropriated or to its assigns. Alternative arrangements may be made for the sale or reversion or restoration of the lands no longer required as part of a memorandum of understanding or separate agreement.

§ 710.603 Direct Federal acquisition.

- (a) The provisions of this section apply to any land and or improvements needed in connection with any project on the Interstate System, defense access roads, public lands highways, park roads, parkways, Indian reservation roads, and projects performed by the FHWA in cooperation with Federal and State agencies. For projects on the Interstate System and defense access roads, the provisions of this part are applicable only where the State is unable to acquire the required right-of-way or is unable to obtain possession with sufficient promptness.

- (b) To enable the FHWA to make the necessary finding to proceed with the acquisition of the rights-of-way, the STDs written application for Federal acquisition shall include:
- (1) Justification for the Federal acquisition of the lands or interests in lands;
 - (2) The date the FHWA authorized the STD to commence right-of-way acquisition, the date of the project agreement and a statement that the agreement contains the provisions required by 25 U.S.C. 111;
 - (3) The necessity for acquisition of the particular lands under request;
 - (4) A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access;
 - (5) The STDs intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition;
 - (6) A statement on compliance with the provisions of part 771 of this chapter;
 - (7) Adequate legal descriptions, plats, appraisals, and title data;
 - (8) An outline of the negotiations which have been conducted by the STD with landowners;
 - (9) An agreement that the STD will pay its pro rata share of costs incurred in the acquisition of, or the attempt to acquire rights-of-way; and
 - (10) A statement that assures compliance with the applicable provisions of the Uniform Act. (42 U.S.C. 4601, *et seq.*)
- (c) If the landowner tenders a right-of-entry or other right of possession document required by State law any time before the FHWA makes a determination that the STD is unable to acquire the rights-of-way with sufficient promptness, the STD is legally obligated to accept such tender and the FHWA may not proceed with Federal acquisition.
- (d) If the STD obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify the FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (*ex parte*) from the proceeding and the estimated just compensation deposited into the registry of the court for the affected parcel be withdrawn after the appropriate motions are approved by the court.
- (e) When the United States obtains a court order granting possession of the real property, the FHWA shall authorize the STD to take over supervision of the property. The authorization shall include, but need not be limited to, the

following:

- (1) The right to take possession of unoccupied properties;
 - (2) The right to give 90 days notice to owners to vacate occupied properties and the right to take possession of such properties when vacated;
 - (3) The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, as appropriate, to protect the public interest;
 - (4) The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner declines to comply with the court order of possession;
 - (5) The right to clear improvements and other obstructions;
 - (6) Instructions that the U.S. Attorney be notified prior to actual clearing, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the case for trial
 - (7) The requirement for appropriate credits to the United States for any net salvage or net rentals obtained by the State, as in the case of right-of-way acquired by the State for Federal-aid projects; and
 - (8) Instructions that the authority granted to the STD is not intended to preclude the U.S. Attorney from taking action, before the STD has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.
- (f) If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal court and the final judgment is that the Federal agency cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property that in the opinion of the court provides reimbursement for the owner's reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings.
- (g) As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, the FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:
- (1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

- (2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and
 - (3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.
- (h) The lands or interests in lands, acquired under this section, will be conveyed to the State or the appropriate political subdivision thereof, upon agreement by the STD, or said subdivision to:
- (1) Maintain control of access where applicable;
 - (2) Accept title thereto;
 - (3) Maintain the project constructed thereon;
 - (4) Abide by any conditions which may set forth in the deed; and
 - (5) Notify the FHWA at the appropriate time that all the conditions have been performed by the State.
- (i) The deed from the United States to the State, or to the appropriate political subdivision thereof, shall include the conditions required by 49 CFR part 21. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.

49 CFR 24 RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION**Subpart A - General**

Sec.

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Sec. 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.

Sec. 24.2 Definitions.

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)(4) 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 Sec. 24.101(a) (1), (2), (3), or (4) need not provide the assurances required by Sec. 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.

Alien not lawfully present in the United States. The phrase "alien not lawfully present in the United States" means an alien who is not "lawfully present" in the United States as defined in 8 CFR 103.12 and includes:

(1) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act and whose stay in the United States has not been authorized by the United States Attorney General, and

(2) An alien who is present in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

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.

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.

Citizen. The term "citizen," for purposes of this part, includes both citizens of the United States and noncitizen nationals.

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 Sec. 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 Sec. 24.401(c), all increased mortgage interest costs as described at Sec. 24.401(d) and all incidental expenses as described at Sec. 24.401(e), plus any additional amount required to be paid under Sec. 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 Sec. 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 Sec. 24.404, Replacement housing of last resort.

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 1/3 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.

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 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.

Displaced person. (1) General. The term "displaced person" means, except as provided in paragraph (2) of this definition, 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 Secs. 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 Sec. 24.205(c), and moving expenses under Secs. 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 Sec. 24.403(d)), 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 Sec. 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 Sec. 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 Sec. 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) An owner 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, except that such owner remains a displaced person for purposes of subpart D of this part; 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 Sec. 24.206.

(xii) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation benefits in accordance with Sec. 24.208.

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.

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.

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.

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.

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

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.

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

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.

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 (3) of this section, or

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

Person. The term "person" means any individual, family, partnership, corporation, or association.

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.

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.

Small business. A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of Sec. 24.304.

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, or a political subdivision of any of these jurisdictions.

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

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.

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.

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.

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

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.

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.

[Sec. 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, Sec. 24.3.)

Sec. 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 Sec. 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.

Sec. 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 Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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 1866 (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) 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 11063--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.

Sec. 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.

Sec. 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 Sec. 24.106 or Sec. 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

Sec.

24.101 Applicability of acquisition requirements.

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- 24.106 Expenses incidental to transfer of title to the Agency.
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Sec. 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, Sec. 24.101(b).)

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

Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 24.2.)

(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.

Sec. 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 Sec. 24.2) of the retained improvement.

(d) Qualifications of appraisers. (1) 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.

(2) If the appraisal assignment requires the preparation of a detailed appraisal pursuant to Sec. 24.103(a), and the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 et seq.)

(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.

Sec. 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 Sec. 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.

Sec. 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 Sec. 24.2.)

(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. [54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989]

Sec. 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.

Sec. 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.

Sec. 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 Sec. 24.102(c)(2).

Subpart C - General Relocation Requirements

Sec.

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 Aliens not lawfully present in the United States.

24.209 Relocation payments not considered as income.

Sec. 24.201 Purpose.

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

Sec. 24.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at Sec. 24.2.

Sec. 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 Sec. 24.2 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 Sec. 24.204(a).)

(4) Informs the person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined in Sec. 24.208(i).

(5) 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.

Sec. 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 Sec. 24.2) 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.)

Sec. 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 Sec. 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 Secs. 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 Sec. 24.2.) 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 Sec. 24.6, Subpart A.)

Sec. 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.

Sec. 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 Sec. 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.

Sec. 24.208 Aliens not lawfully present in the United States.

(a) Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

(1) In the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.

(2) In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.

(3) In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.

(4) In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

(b) The certification provided pursuant to paragraphs (a)(1), (a)(2), and (a)(3) of this section shall indicate whether such person is either a citizen or national of the United States, or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in this rule shall be within the discretion of the Federal funding agency and, within those parameters, that of the displacing agency.

(c) In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payments may be made to him or her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

(d) The displacing agency shall consider the certification provided pursuant to paragraph

(a) of this section to be valid, unless the displacing agency determines in accordance with paragraph (f) of this section that it is invalid based on a review of an alien's documentation or other information that the agency considers reliable and appropriate.

(e) Any review by the displacing agency of the certifications provided pursuant to paragraph (a) of this section shall be conducted in a nondiscriminatory fashion. Each

displacing agency will apply the same standard of review to all such certifications it receives, except that such standard may be revised periodically.

(f) If, based on a review of an alien's documentation or other credible evidence, a displacing agency has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it shall obtain the following information before making a final determination.

(1) If the agency has reason to believe that the certification of a person who has certified that he or she is an alien lawfully present in the United States is invalid, the displacing agency shall obtain verification of the alien's status from the local Immigration and Naturalization Service (INS) Office. A list of local INS offices was published in the Federal Register in November 17, 1997 at 62 FR 61350. Any request for INS verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation. [If an agency is unable to contact the INS, it may contact the FHWA in Washington, DC at 202-366-2035 (Marshall Schy, Office of Real Estate Services) or 202-366-1371 (Reid Alsop, Office of Chief Counsel), for a referral to the INS.]

(2) If the agency has reason to believe that the certification of a person who has certified that he or she is a citizen or national is invalid, the displacing agency shall request evidence of United States citizenship or nationality from such person and, if considered necessary, verify the accuracy of such evidence with the issuer.

(g) No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the displacing agency's satisfaction that the denial of relocation benefits will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States.

(h) For purposes of paragraph (g) of this section, "exceptional and extremely unusual hardship" to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in:

(1) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;

(2) A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or

(3) Any other impact that the displacing agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

(i) The certification referred to in paragraph (a) of this section may be included as part of the claim for relocation payments described in Sec. 24.207 of this part.

Sec. 24.209 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 redesignated 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

Sec.

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.

Sec. 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 Sec. 24.2) 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 Sec. 24.305, as the Agency determines to be reasonable and necessary.

Sec. 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 Sec. 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.

Sec. 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 Sec. 24.2) 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 Sec. 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 Sec. 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 Sec. 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.

Sec. 24.304 Reestablishment expenses-nonresidential moves.

In addition to the payments available under Sec. 24.303 of this subpart, a small business, as defined in Sec. 24.2, farm or nonprofit organization is entitled 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 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 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.

(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 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.

[58 FR 26070, April 30, 1993, (effective date June 1, 1993)]

(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) Interest on money borrowed to make the move or purchase the replacement property.
- (4) Payment to a part-time business in the home which does not contribute materially to the household income.

Sec. 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 Sec. 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 Sec. 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 Secs. 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.

Sec. 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 Secs. 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 Sec. 24.2).

(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 Sec. 24.2) 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.

Sec. 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 Sec. 24.2) 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, Sec. 24.307.)

Subpart E - Replacement Housing Payments

Sec.

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.

Sec. 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 Sec. 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 Sec. 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 Sec. 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 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 Sec. 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 Sec. 24.2); and

(iii) The current fair market value for residential use of the replacement site (see Appendix A of this part, Sec. 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 incidenta1 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 Sec. 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 Sec. 24.402(b).

Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 24.401(a) is not eligible for this payment. (See also Appendix A of this part, Sec. 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.

Sec. 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 Sec. 24.2).

(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 Sec. 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 Sec. 24.2.

(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 Sec. 24.402(b) is eligible to receive a payment under Sec. 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 Sec. 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.

Sec. 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 Sec. 24.401 or Sec. 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 Sec. 24.401 or Sec. 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, Sec. 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 Sec. 24.2.

(3) The agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under Secs. 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

Sec.

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.

Sec. 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.

Sec. 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 Sec. 24.301. A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under Sec. 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 Sec. 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 Sec. 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.

Sec. 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 Sec. 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 Sec. 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 Sec. 24.401(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

Sec. 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 Sec. 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 Sec. 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 mobilehome because of one of the circumstances described at Sec. 24.503(a)(3).

Sec. 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 Sec. 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 Sec. 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

Sec.

24.601 Purpose.

24.602 Certification application.

24.603 Monitoring and corrective action.

Sec. 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 Sec. 24.4 of this part.

[54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989]

Sec. 24.602 Certification application.

An agency wishing to proceed on the basis of a certification may request an application for certification from the lead agency [Director, Office of Right-of-Way, HRW-1, Federal Highway Administration, 400 Seventh St. SW., Washington, DC 20590]. The completed application for certification must be approved by the governor of the State, or the governor's designee, and must be coordinated with the Federal funding agency, in accordance with application procedures.

Sec. 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) The lead agency may require periodic information or data from affected Federal or state agencies.

(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

Definition of comparable replacement dwelling. The requirement in Sec. 24.2 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.

Paragraph (7) in the definition of comparable replacement dwelling 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 Sec. 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

Persons not displaced. Paragraph (2)(iv) under this definition 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 Sec. 24.10.

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(6) 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, Sec. 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 Sec. 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,

Sec. 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)(ii)(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 Sec. 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 fundraising 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 Sec. 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 Sec. 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 \$42,010.18.... 1,260.31

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 = .8331; \$9,250.13 X .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 Sec. 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 Sec. 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 Sec. 24.2. 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 Sec. 24.401 and a replacement housing payment for a site computed under Sec. 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 Sec. 24.401 to assist in the purchase of a replacement site or, under Sec. 24.402, to assist in renting a replacement site.